



Justification of the policy of the updation of national register of citizenship 1951 for the maintenance of the cultural identity and unity and integrity of India

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Abstract

In India after independence in the year of 1991 general census was conducted. In said census in all villages, towns and cities housings of the individuals (in any forms) were assigned with particular serial numbers along with names of the person staying there in. On the basis of these and many other details collected in form of data of 1951 census for the first time the National Register of Citizen (NRC) was published. This register denotes and displays the nationality of Indian citizens. Since 1951 National Register of Citizen has not been updated.

Now question arises whether the new registration of the citizenship can be made on the basis of data of census of 1951. At that time considerable portion of the Indian population were unaware about their rights and duties. With the advancement of the time the issues such as need to maintain cultural identity of the state, formulation of the refugee policies on the basis of national interest, problem of terrorism and political instability in the neighbouring countries of India came into existence. Therefore it may not be appropriate to use the data recorded in 1951 as mentioned above for the registration of citizenship, warranting the necessity of the updation of the National Register of Citizens which has already commenced in state of Assam.

In this background it is necessary to analyze policy of the verification of the citizenship of the peoples in state of Assam for the sake of updation of National Register of Citizens for Assam, the provisions of the Indian Citizenship Act 1955, Citizenship (Registration of Citizens and issue of National Identity Cards) Rules 2003 etc. inclusive of the justifiability of the Amendment Act of 2020 in the light of the Article 14, 15, 19 & 21 of the Constitution.

Keywords: human rights – fundamental rights under Indian constitution – updation of the national register of citizens – Indian refugee policies – provisions under citizenship act 1955

Introduction

Background of the updation of the National Register of Citizenship: The state of Assam has always been facing the problem of the illegal intrusion of the Bangla Muslims from then East Pakistan and now Bangladesh. However it also includes some Hindus who have been facing religious persecution and accordingly migrating in to India including Assam. It has created threat to the religious and cultural identity of the Assam. The people of Assam have always been agitating against it. In 1980's the violent Assam movement against all migrants from Bangladesh had started with a demand of revising the provisions of the Citizenship Act of 1955 so that the illegal migrants could be identified and deported back into Bangladesh.

In this background the Citizenship Act was first amended in 1985 after the Assam Accord was signed, wherein then Prime Minister Shri Rajivji Gandhi agreed to identify foreign citizens, remove them from the electoral roles, and expel them from the country. The Assam accord is one of the political settlements entered after Indian independence which has been appreciated by all political parties. Reason was that it could bring peace and tranquility in the society of Assam which otherwise would have lean in favour of the terrorist movement which have always been in existence in North East states. Judicial response to the root cause of Assam accord i.e. problem of illegal immigration of the Bangladeshis (mostly Muslims) in the state of Assam and in other Indian states was positive. Supreme Court in *Sarbananda Sonowal vs Union of India & Anr. on 12 July, 2005* has termed it at par with external aggression on India.

The Citizenship Act 1955 was amended in 1992, 2003, 2005 and 2015. In December 2003 central Government amended the Citizenship Act 1955. Accordingly it has inserted the concept of 'illegal immigrants' in the Act, who have been held ineligible to apply for citizenship (by registration or naturalization), and declaring their children also as illegal immigrants. Illegal immigrants were defined as citizens of other countries who entered India without valid travel documents, or who remained in the country beyond the period permitted by their travel documents.

The 2003 Amendment has also mandated the Government of India to create and maintain a National Register of Citizens. The said bill before assuming the shape of amendment Act while presented in the Parliament was supported by all important political parties namely BJP, Congress, and Communist Party of India etc. The main

objective of this amendment was to make verification of the citizenship of the peoples living in India to find out that who illegal immigrants are? so that they could be deported back in the country of origin. However perceptions of the political parties regarding religious groups to which refuge followed by citizenship to be granted were different (now under Citizenship Amendment Act 2020 only non-Muslims from Pakistan Bangladesh and Afghanistan may seek refuge in India and eventually may apply for citizenship).

Thus under Citizenship Amendment Act 2003 the National Register of Citizens has been contemplated to be updated wherein citizenship of the peoples living in India will be verified with the help of cogent evidence pertaining their ancestry, domicile, nationality and citizenship. Even though under the said amendment Act it has been mandated for the entire country but as of now it has only been implemented in state of Assam for the reasons as mentioned above. The implementation of the policy of the updation of the National Register of Citizens for state of Assam has not been stayed; in fact facilitated by the Supreme Court in writ petition number (C) 274/2009 which is sub judice before it pertaining Constitutional validity of NRC.

Statement of Problem

The policy of the updation of national register of citizenship at the instance of the rules framed under Citizenship Act 1955 for the people of Assam has been under criticism. Similarly Citizenship Amendment Act 2020 passed by Parliament has also been strongly criticized. The line of the criticism is that updation of the national register of citizenship implemented in Assam eventually will be implemented throughout the country wherein citizenship of the Muslims and marginalized groups in India will be cancelled. The base of the updation of national register of citizenship for state of Assam is law of precedent as well as policy decision unanimously supported by all political parties involving the aspect of maintenance of cultural identity of the country. Hence it is necessary to analyze criticism as well as justification of the updation of national register of citizenship policy and its implementation in state of Assam and in the rest of India.

Issue of Implementation of the Policy of Updation of National Register of Citizenship throughout the Country

It seems that present central Government is inclined to update National Register of the Citizens out of Assam for entire country. But through the implementation of the updation of NRC in Assam many peoples living there who were expected to clear verification process easily apparently not being the intruders have failed to clear the process because of the deficiencies at the documentary part. Thus the verification of the citizenship of the peoples by updating National Register of Citizens is required to be streamlined in fair manner so that it could meet out with the desired objectives. The present Union Home Minister Shri Amitji Shah addressing this issue has promised that no Indian citizen needs to worry. "We will make special provisions to ensure that no Indian citizen from minority communities is victimised in the NRC process."

Present Prime Minister Shri Narendraji Modi in this context said that, "The NRC had only been implemented in Assam to follow a directive from the Supreme Court of India, and that there had been no decision so far taken to implement it nation-wide."

While the amendment bill of 2019 to the Citizenship Act 1955 was pending for consideration before Parliament some petitions were filed before the Supreme Court of India challenging the same. One was filed by Indian Union Muslim League and another one by the royal family of Tripura. These petitions challenging the Constitutional validity of the proposed amendment to the Citizenship Act for the first time were listed for hearing before the Supreme Court on 18 December 2019. In the first hearing court declined to stay process of passing of Amendment Bill pending before Parliament. By 22 January 2020, around 143 petitions were filed; however Court declined to grant stay. Meantime citizenship Amendment Act was passed by the Parliament in 2020 and now its Constitutional validity is sub judice before the Supreme Court.

In this background as updation of the National Register of Citizens has been made applicable for state of Assam it seems that same may shortly be implemented in rest of India. In this context Citizenship Amendment Act 2020 has already passed providing remedy of refuge followed by citizenship to the non-Muslims living in Pakistan, Bangladesh and Afghanistan. It is apparent that in terms of the aggression defined by Supreme Court in *Sarbananda Sonowal vs Union of India & Anr. on 12 July, 2005* Government want to retain existing cultural identity of Indian society which has been presumed to be hampered if Bangladeshi/Myanmar Rohingya, Pakistani and Afgan Muslims are illegally entering and living in India.

Provisions under Indian Citizenship Act 1955 and National Register of Citizenship

Under Citizenship Act 1955 for the foreigners there exist two methods of acquiring Indian citizenship. The people living in undivided India could become Indian citizen by registration after seven years of residency in India. Foreigners inclusive of refugees who are citizens of other countries and are lawfully residing in India could become citizen by means of the process of naturalization after 12 years of continuous stay in India.

As mentioned above amendments in the citizenship Act in 1985 and 2003 have made the provision of the identification of the illegal migrants in India, their removal from the electoral rolls followed by their expulsion from the country. Thus now the citizens of the other countries entered in India without valid travel document or who remained in India beyond the period permitted by their travel documents have been termed as illegal immigrants. These illegal immigrants by virtue of said amendment have been held ineligible to apply for the citizenship either by registration or by naturalization. Moreover their children have also been placed into the

category of illegal immigrants. 2003's Amendment has permitted the district authority to put illegal immigrants in prison or to secure their immediate deportation. 2003's Amendment has also introduced the concept of National Register of Citizens containing the process of the verification of the citizenship of the people in Assam.

Citizenship Amendment Act 2020: Citizenship Amendment Act 2020 has amended section (2) subsection (1) of the Act enabling the non-Muslim refugees namely the *Hindus, Shikhas, Jains, Parsis, Buddhists* and *Christians* who have left any of the country of origin namely Pakistan, Bangladesh and Afghanistan on the basis of religious persecution and came down in India on or before 31st December 2014 to acquire Indian citizenship. Under the Citizenship Act for the grant of citizenship by neutralization applicant must have lived in India during the last 12 months from the date of presentation of the application and for previous 11 years. Under the Amendment Act the time span of the 11 year's residence in India has been lowered down to the 05 years for the refugees belonging to same six religions came down in India from said three countries. The amendment Act has also exempted these refugees from the provisions of the Foreigners Act 1946 and Passport (Entry into India) Rules 1950.

Issue of Updation of National Register of Citizenship and Indian Refugee Policies

The developed and democratic countries in the world like USA, UK, European Union etc. have exercised the policy of verification & registration of their citizens and provide nationality, citizenship or domicile status to the foreign nationals according to their established laws and policies. In the said process of the verification, registration, conferring of the citizenship the civil, natural, human rights of persons concerned are determined in context with the provisions of international law as well.

India is not party to any international conventions and declarations relating to the refugees, asylees. Moreover no municipal law on the asylum for the refugees has been enacted by India. Still India is hosting largest number of the refugees /asylees in comparison of any other country in the world. It shows Indian sensitivity in consonance with the Constitutional provisions towards human rights of the refugees who are basically foreign nationals and seeking shelter in India or already living there. Indian policies towards asylees or refugees have been determined at the administrative level purely on ad hoc basis in the national interest. Cabinet Ministry of the central Government takes decision on the issue of the grant of the refuge to person or group of persons and the rights and facilities to be made available to them. These are the persons who are entering into Indian territory without any passport and visa because of the persecution of their country of nationality or who are in search of the better economic opportunities. Thus India has adopted the policy of giving temporary refuge in such cases which it thinks fit. The recognized refugee groups in India are namely Tibetan refugees, Sri Lankan Tamil refugees, Burmese Chin refugees, Buddhist Chakma refugees, some Iranian and Afghan refugees. Apart from the members of any of these refugee groups if any foreign national without a visa and passport has been found in Indian territory is liable for the immediate arrest, detention followed by their deportation to the country of origin under the provisions of the Foreigners Act 1946 and Passport (Entry into India) Rules 1950.

Bangladeshi nationals and the Rohingyas of Myanmar who are Muslim and making illegal intrusion in India are liable for the legal actions as mentioned above at the instance of police and courts. (As far as Hindus migrating from these and other countries are concerned they could take benefit under the provisions of Citizenship Amendment Act 2020 discussed above.)

Criticism on Implementation of National Registrar of Citizens throughout the Country: As of now the process of the updation of National Register of Citizens has been implemented in the state of Assam only. If nationwide updation of NRC in India is made then as per the Government rules all peoples living in India will have to prove their citizenship by providing certain documents so they could be enlisted in NRC.

However it is criticized that,

1. If now the process of the updation of National Register of Citizens has been made applicable throughout the country for all the peoples living in India then it will be next to impossible to give proof of the nationality for some of the people of India (Muslims having Bangla ancestry) having roots in India but somehow their forefather's names are absent in the census list of 1951. If they fail to produce any document of the year which may be prior to 24th March 1971 (day on which the neighboring Bangladesh became an independent country) as demanded by the state they will not be able to comply requirements of the National Register of Citizens resulting into loss of their citizenship.
2. Similarly it is equally criticized that the process of the verification of the citizenship of all peoples living in India for the updation of the National Register of Citizens will be very harsh on the peoples belonging to the socially backward categories particularly on the nomadic tribes. The peoples belonging to some caste groups who are socially backward inclusive of the nomadic tribes keep on migrating themselves as a part of their traditional occupation. They do not stay at one place or change their place of residence on day to day basis therefore any record of such people including the record of the ancestry; domicile, nationality etc. will not be available with them. Thus in the verification of the citizenship these peoples will be losing their citizenship.
3. India is the state party to the Universal Declaration of Human Rights 1948, International Convention on Civil, Political, Economic, Social and Cultural Rights 1966 and other important international conventions /declarations on the human rights adopted by UNO. At the instance of the written Constitution India has

made the meticulous implementation of the first, second and third generation of human rights (collective human rights excluding right of the self-determination). Article 14, 15, 19 and 21 of the Constitution are playing pivotal role regarding it. Article 21 of the Constitution speaks about right to life, personal liberty and dignified standard of life to citizens and noncitizens as well. Under Article 19 six fundamental freedoms (the particular species of liberty) have been provided. Article 14 speaks about the assurance to the absence of arbitrariness and implementation of fairness in every state action towards citizens and noncitizens. However distinction between these Articles is that whereas protection under Article 14 and 21 is available to the foreigners /noncitizens inclusive of refugees, illegal migrants the rights under Article 19 are exclusively available to the citizens only. Reading of the above mentioned Articles in liberal manner under the concept of constitutionalism particularly under the rule of law may warrant that these rights up to the possible extent should also be made available to the refugees in India as well as to the persons filling the applications of the asylum before Indian authorities or persons illegally entered and living in India; which are not available to them.

4. It is criticized that the implementation of policy of updation of the NRC is having lack of impartiality, transparency, equality and because of the huge population in India same is very difficult task. Further it is said that the process of updation of the NRC will increase feeling of alienation in the group of people who are not in the main stream of the society in India and also in the religious minority like Muslims people in India. Particularly when non-Muslims coming down into Indian territory from Pakistan, Bangladesh, Afganistan are considered illegal migrants and ineligible for the grant of refuge followed by grant of citizenship under Citizenship Amendment Act 2020. It may be conveying the message of inequality in the world which could be ultra-virus to the Indian Constitution under Article 14 & 21.
5. India is the responsible member state of the modern nation state system with written Constitution having constitutionalism inclusive of the concept of rule of law. Therefore three organs of the state are duty bound to exercise their respective powers fairly in conformity to the procedure established by law. It is criticized that the Central Government through Parliament can not exercise the lawmaking powers in breach of the fundamental rights which also contains international human rights jurisprudence protecting the interest of noncitizens and illegal immigrants.

Conclusion (Justification of the Updation of the National Register of Citizens).

There is some substance in the criticism as levied above; still it cannot be claimed that Muslims in India having Bangla ancestry and the peoples belonging to socially backward categories who keep on migrating will not at all be having any document of ancestry towards verification of their citizenship. Moreover above-mentioned peoples belonging to socially backward categories have always been of an Indian origin. Even though they are constantly migrating but they have always been integral part of the mainstream society hence degree of the proof pertaining their ancestry, domicile, nationality as a part of verification under National Register of Citizens can be validly diluted by carving out the justifiable exceptions. These groups cannot directly be placed in this category of illegal migrants at par with the Bangladeshi Muslims or Rohingya Muslims of Myanmar etc. living in India. The state authorities may also refer the caste analysis record having details of the history of all castes in India and their existence in India.

Implementation of the policy of NRC may include taking cognizance of the facts about peoples under verification process regarding their history, traditional occupation and culture with application of the spirit of human right jurisprudence wherein genuine cases can be handled in sensitive manner.

The feeling of the Muslim religious minority in India other than the Muslims having Bangla ancestry that verification of the citizenship as a part and parcel of updating National Register of Citizenship may deprive them from the Indian Citizenship is possible to be addressed. The model of the NRC in the rest of the India excluding Assam may be different as in this case most of the Indian citizens will be able to get their ancestry, domicile, citizenship verified in an easy manner by making necessary compliance. It may include the cases where these Muslims may not be having documentary proof of their Indian ancestry, domicile or citizenship. In such cases oral testimony of the old age law-abiding relevant peoples confirming their ancestry, domicile, nationality etc. is possible to be relied upon and similar mechanism could be introduced.

No doubt that under the process of NRC nationality of the Muslims in India having Bangla ancestry will be in conflict with the provisions of the Indian Citizenship Act 1955. It speaks that all the persons born in India between 26th January 1950 and 1st July 1987 automatically received citizenship by birth regardless of the nationalities of their parents. However as a part of exception in the national interest in the verification process under NRC certain reservations resulting into amendment of the Citizenship Act 1955 may be made permitting the verification of the ancestry of the persons born between 1950 to 1987. Moreover in the larger public interest citizenship of such category of the persons may be regularized. In that case as well the objective of the updation of the NRC to find out intruders in India on the basis of just process inclusive of Muslims having Bangla ancestry, Rohingya Muslims of Myanmar, Muslims belonging to the neighbouring countries like Iran Pakistan Afghanistan illegally entered in India for their deportation is possible to be achieved. Similarly through updation of NRC process the other peoples illegally entered into India and living here who could be part of the any of the recognized refugee groups such as Tibetan refugees, Sri Lankan Tamil refugees, Burmese chin refugees, Buddhist Chakma refugees or otherwise are also possible to be identified for taking suitable decision regarding them. The collateral international issues arising from such deportation such as refusal of above-mentioned

countries in receiving the deportation can be solved with the bilateral and international channels like UNO, UNHRC etc. In the national interest updation of NRC will surely be having deterrent effect against the possibility of any future illegal entry into India by the nationals of any of these neighbouring countries. India being the member state of the international community under international law enjoys its power to deport such persons who have illegally intruded into Indian Territory or lived here for considerable time by initiating the process of verification of their citizenship or verification of the citizenship of all peoples living in India and accordingly updating National Register of citizens.

This criticism is required to be viewed from the valid spectrum of bitter Indian experience of the partition of undivided India on the line of religion. Similarly the violence and terrorism experienced by *Kashmiri Pandits* in Jammu and Kashmir and by the common men in many parts of the rest of India cannot be ignored where extremist philosophy of the neighbouring Muslim countries played vital role in occurring of those terrorist attacks. It has underlined the significance of the protection of traditional Indian cultural demography devoid of illegal immigrants for the maintenance of law and order, national security and territorial unity and integrity of the country.

The Pakistan, Bangladesh and the Afghanistan are the officially declared Muslim countries with absolute Muslim majority; the percentage of the rest of the religious minorities in these countries is just between 5 to 10% of the total population. Moreover in these countries Muslim extremist, hardcore terrorist organizations are functional. *Ahmadiyyas* is an independent Muslim sect in Pakistan similarly *Hajaras* is another Muslim sect which exists in Afghanistan. The members of these sects are not considered as true Muslims and accordingly they are under constant violent attacks by the extremists, terrorist organizations. In Pakistan the minority *Shia* Muslim community is dominated by majority *Sunni* Muslim community and armed conflict between them is going on. In Bangladesh also up to some extent this kind of the extremism and internal conflict among the Muslims does exist. Governments in these countries have failed to put curb on the activities of these hardcore groups. Similarly the nationals of these countries are inclined to settle in India for the economic betterment of their lives. In this background Indian citizenship cannot be opened for the Muslim population of these countries otherwise it will result in to mass influx of Muslim refugees in India who are being persecuted on the basis of the membership of a particular sect, political opinion etc. or who are in search of the better economic avenues in India.

As stated above India is neither a party to any international conventions declarations etc. relating to the refugees/ asylum nor it has enacted any municipal law of refugee. Hence; i) central Government as part of discretion of the framing of the policy to deal with the illegal migrants who have entered in the Indian territory and living there may be justified in making said amendment of 2020 in the Citizenship Act 1955. ii) Parameter of the arbitrariness, equality, rule of law under Article 14 may not be applicable in the purely administrative decision of making enabling provisions of the verification of the citizenship of the people living in India or in any of its state and offer of the citizenship in favour of particular religious classes only who are living in certain neighboring countries and facing religious persecution while excluding the others living in those countries on the basis of religion. iii) International human rights jurisprudence may not be stretched to such an extent wherein right to claim citizenship could be conferred under Article 14, 15, 19 and 21 of the Constitution on the Muslims nationals of Pakistan, Bangladesh, Afghanistan, and Myanmar who may be facing persecution on any ground or may be aspiring for economic betterment by coming down to India.

Thus Citizenship Amendment Act 2020 cannot be held as violative of Article 14, 15, 19 and 21 of the Constitution. The base of the nature of Citizenship Amendment Act 2020 is Indian experience about the prosecution, forced conversion, inhuman treatment inflicted on persons belonging to non-Muslim faith who are citizens of the above-mentioned Muslim countries compelling them to flee the country of nationality and to take shelter in India and its willingness to provide remedy to these refugees.

Therefore it can be concluded that the policy and laws for the updation of the National Register of Citizens of in state of Assam and its implementation in entire India is not violative of the Constitutional provisions and international human rights jurisprudence in fact this updation is imperative to be made at the earliest for the sake of protection of cultural identity of India which is the base of territorial unity and integrity of the country.

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