

Tentative title:

**Undocumented immigrants in Assam:
Understanding the Jurisprudence in past, present and future**

‘Undocumented immigration’, in Assam is a perennial socio-political issue in Assam since colonial times resulting spectrum of legislations and executive policies for detection and deportation of undocumented immigrants in post-colonial situation after the partition of 1947. Legal architecture concretised from time to time is reminiscent of the colonial norms included a colonial understanding of ‘foreigners’. Laws related to citizenship, land rights reflect dominant racial and cultural particularly linguistic aspect and claims of civilizational superiority. Any non-conforming person is regarded as ‘outsider’, an ‘Other’ [Bohiragoto in Assamese] and is subjected to persecution, censorship, social stigma, prolonged incarceration and virtual statelessness.

The legislation dealing with the foreigners in India didn’t shed its colonial root even after the independence in 1947. The principle of equality before law and fair trial before a competent authority was not adhered to during the determination of citizenship for certain ‘other’ minority communities compromising the spirit of a written constitution and obligation under international human rights treaties by the Government of India. The Foreigners Act, the primary legislation controls entry, stay and exit of foreigners was enacted in 1864 and underwent several amendments in 1939, 1940, 1946. Foreign Tribunal Order, set of rules to implement the Foreigners Act came into force in 1964. The Passport Act was enacted in 1920 and continues to be in force.

Foreigner’s Tribunal (FT), a quasi-judicial body is the main institution for determining the status of ‘suspected foreigner’ as per the definition of the Foreigner’s act 1946. This is an exceptional measure for Assam in the legal standards dealing with the foreigners. Established under the Foreigner’s Tribunal Order 1964, these tribunals have investigated the status of thousands of ‘suspected’ foreigners and declared 1,17,164 persons as foreigners residing in Assam. A total number 1043 persons are detained in detention camps waiting for years to be deported. Tribunals are under the central Government and its expenses are totally reimbursed to the state. About 64 thousand that is 70 % of the orders of the FTs are ex-parte, raising question of its efficiency and fairness. These Tribunals over the years has played a controversial role in arbitrarily depriving people of right to nationality and exposed them at a risk of ‘statelessness’. Several studies and reports¹ proved beyond doubt that the FTs act arbitrarily from a political perspective rather than a judicial or human rights perspective.

¹ Report on NHRC Mission to Assam’s Detention Centres from 22 to 24 January, 2018, <https://cjp.org.in/wp-content/uploads/2018/11/NHRC-Report-Assam-Detention-Centres-26-3-2018-1.pdf>, Between Fear and Hatred: Surviving Migration Detention In Assam, Amnesty International, 2018, <https://drive.google.com/file/d/1dTyiGuOV-OMqjvaxSsqZZ9TSxc7RvUU2/view>, Designed to Exclude: How India’s Courts are allowing Foreigners Tribunals to Render People Stateless in Assam, Amnesty International, 2019, <https://amnesty.org.in/wp-content/uploads/2019/11/Assam-Foreigners-Tribunals-Report-1.pdf> Indian or foreigner? Doubtful or Bonafide? A Fact-Finding Report by United Against Hate. July 23, 2018. Raiot. [https://www.raiot.in/doubtful-citizenship-distorted-rights-in-assam/and many more](https://www.raiot.in/doubtful-citizenship-distorted-rights-in-assam/and-many-more)

FTs are definitely created a fear for a particular class of people by categorizing as 'Bohiragoto', 'illegal immigrant' 'Bangladeshi' 'Foreigner' and further increased their vulnerability through legal machinery, social control and an institutionalized culture of impunity.

Paper will discuss functioning of the FTs, Judiciary, merits of their judgments and its impact assessment through empirical data and personal narratives on the process 'determination' of irregular migrants in Assam. This paper is divided into three parts. The part I will discuss the historical background behind resorting to a quasi judicial body for determination of an important right like that of right to nationality along with the legal landscape created over a period of time to deal with the 'suspected foreigners' in Assam. Part II will focus on the instruments of operation that includes judiciary, election commission, detention camps, NRC process, with a focus on the recent judgments. Part III of the paper will be summarized versions of personal narratives highlighting life and longings of those 'suspected' foreigners. A brief conclusion will be followed.

PART I

- Historical background and the Foreigner's Tribunals [FTs]

The development of legal regime and jurisprudence on irregular or undocumented immigration issue in Assam can be divided into three different time period: Pre IMDT period [1947 to 1983], IMDT Period [1983 to 2005] and Post IMDT period [2005 onward]. In the first time period, setting of legal norms for citizenship was carried out via the Citizenship Act 1955. This time period also changed definition of citizenship and divided people under three category of citizenship: a) citizenship by birth [*jus soli*] and it continued till 1 June, 1987, b) citizenship through descent after 1 June, 1987 [*jus sanguinis*] and c) naturalization of persons. Section 6A was inserted in the Citizenship Act to implement Assam Accord and is applicable only in Assam and it aims to give special protection. It divided immigrants from East Pakistan [now Bangladesh] into three categories: a. those who came to the state before 1966 are considered citizen, b. those entered from 1966 to 1977 can stay on in Assam but will lose voting rights for the time being and will be regularized after ten years, c. those entered Assam after 24 March, 1971 are non-citizens and will be deported. This arrangement has been challenged as unconstitutional violating article 14 of the constitution and is waiting final judgment.

Assam agitation from 1979 to 1983, Nellie massacre of 1983 and the subsequent signing of Assam Accord in 1985 expedited implementation of Illegal Migrants Determination Tribunal [IMDT] Act passed in 1983. Major demand of the Assam Accord was to secure the border with Bangladesh with barbed wire fencing, updating NRC of 1951 and expulsion of all irregular immigrants in Assam who entered Assam after March 21, 1971. 16 tribunals were formed under IMDT, however only a few remained functional till 2005. Currently there are 100 active tribunals and another 200 will be operational soon.

In post IMDT period starting from 2005 onwards Supreme Court struck down the IMDT Act and since then gradually the judiciary turned authoritarian. It often assumed executive roles and compromised neutrality. Orders of FTs are often upheld by the

judiciary despite the presence of glaring unfairness in those orders. Judiciary also was the main authority supervising the process of NRC. Since this paper deals mostly with the functioning of the FTs, post IMDT period will be the main focus.

- Standard setting of unfair legal norms for ‘suspected foreigners’ in Assam

Several laws are enacted since independence to define Indian citizenship as well as to determine illegal immigrants or foreigners in Indian soil. However, the preliminary responsibility of detecting an illegal foreigner in Assam is based on administrative law and not on constitutional law. Foreigner’s Tribunal is an administrative process under the state executive, the Home Department. During the constituent assembly debate, representative from Assam demanded special protection in the Constitution. However it didn’t gain much support. Instead Immigrants (expulsion from Assam) Act was passed in 1950 in addition to the continuation of colonial era legal mechanisms to determine who is a foreigner. The Foreigner’s Act, 1946² along with Foreigner’s Tribunal [FT onwards] Order 1964 are the primary source of legal standards to be followed in case of determination and identification of foreigners in India. The Foreigners Act has a colonial legacy as an earlier version was promulgated in 1864 to control entry and exit for British Burma. To counter the impact of the World War II, Foreigners Ordinance 1939 was promulgated in British India. This was replaced by the Foreigners Act 1940 and again another version was replaced by Foreigners Act 1946 that remains in force even today. FTs are so far a unique feature in Assam. Its only in 2019, an amendment enabled all other Indian states to form their own FTs³.

In 1960s, as a response to the international criticism of expulsion of foreigners without due process⁴, the Foreigner’s Tribunals Order was issued in 1964 to establish Foreigner’s Tribunal. However these bodies were non-functional for a long time till the cut off date for the entry of the ‘foreigners’ was agreed through Assam Accord of 1985.

Additionally in 1962, the Assam Police was empowered to establish a Special Border Organization under PIP Scheme (Prevention of Infiltration of Pakistan). Currently the Assam Police Border Organisation (APBO) is armed with more than 4000 personnel. APBO conducts surveys in the so-called ‘infiltration’ prone districts, identifies the suspected foreigners and registers cases called ‘Reference Case’ and report the same to Foreigners’ Tribunals⁵.

No uniformity of procedures of detecting and deporting of foreigners was maintained between Assam and other states in India. The process of detection and deportation of illegal foreigners in other states of India is different from that of Assam⁶. Rationale behind such a differential treatment lacks a reasonable explanation.

² The Foreigners Act, 1946,

https://indiacode.nic.in/bitstream/123456789/6803/1/foreigners_act_1946.pdf

Foreigners (Tribunal) Order, 1964,

[https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=Foreigners%20\(Tribunal\)%20Order,1964.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=Foreigners%20(Tribunal)%20Order,1964.pdf)

³ All States can now constitute Foreigners Tribunals, The Hindu, June 10, 2019

⁴ White paper on Foreigners Issue, Government of Assam, 2012

<https://cjp.org.in/wp-content/uploads/2018/10/White-Paper-On-Foreigners-Issue-20-10-2012.pdf>

⁵ Abdul Kalam Azad, ‘Human Cost of NRC in Assam’, unpublished paper

⁶ Rustom Ali vs. State of Assam and others, WP(C) 3226 of 2009 in Gauhati High Court

A separate procedure for deportation of illegal Bangladeshi migrants was set out in September 1997⁷ to be followed all over India. This process includes verification with the Bangladesh High Commission, confirmation of the nationality and then repatriation to the original country with the help of state government and Border Security Forces. Till their deportation, foreigners are to be lodged in detention facilities.

A departure from this process is in force in Assam. In case of Assam, accused or suspected foreigner has to go through a process of long trial before the FTs. This process starts once Border Police deployed all over the state to 'detect' presence of 'suspected foreigners' and refer them to the FTs. FTs also act on reference from Election Commission. Once the FT declares its final order after investigation, the appeals can be made to the high judiciary bodies. This process excludes the involvement of the Bangladesh High Commissioner immediately. Details guidelines are also issued for suspected Bangladeshi national claiming Indian citizenship and the process has to be completed in 30 days time period. Once confirmation, the foreigner will be deported with the help of Border Security Forces (BSF).

The Foreigner's Tribunal's comprised of members recruited by the government doesn't required to be trained lawyers or judicial personality. Even former bureaucrats are eligible to be employed. They are recruited by the Home Department and are trained by the Gauhati High Court. Primary duty of the FT members is to review the cases referred by the Border police and will issue summons and after completing the process will declare if a person is a citizen or not. Once a person is confirmed 'foreigner', there will be punishment ranging three months to eight years of imprisonment. After completion of the sentence, the person is to be deported to their country of origin and they will be lodged to a detention centres till the country accepts them.

The FTs has determined the status of 1,17,164 persons till 31 March 2019 with a majority of the cases [about 60%] are ex-parte decisions means without any hearing. A total of 63,959 people⁸ have been declared as foreigners through ex-parte proceedings by FTs in Assam from 1985 to February 28, 2019. Case studies indicate that an inefficient and faulty system of delivering notices and summons is the common cause for ex-parte decisions. Procurement of documents by the accused is expensive and time consuming. Hence many accused persons failed to meet the demand of the FTs in time and hence are declared foreigners. The process is not only unfair but also often violates the principle of double jeopardy. Until recently, tribunals could declare individuals as foreigners even if their Indian citizenship is confirmed by another tribunal⁹.

One of the major defects in FT process is that it has no appeal process and it cannot be termed as a fair trial. Only recourse to challenge the order of the FT is to file a writ petition before the High Court.

- **Accountability of FT members:**

⁷Ministry of Home Affairs vide letter No. 14011/55/09-F.VI dated 23.11.2009.

⁸G Kishan Reddy, Minister of State for Home Affairs, informed Parliament on July 2, 2019.

Source: www.loksabha.in

⁹ 'Case closed', The Caravan, see above

There's no process for accountability of the members of FTs and over the years it is evident that it has created additional avenues for further persecution and prosecution of suspected foreigners¹⁰ though training, performance evaluation and overall functioning is monitored by the Gauhati High Court. In a response to a parliamentary question, the Home Ministry too revealed that there is no process to hold the FT members accountable.

Lack of accountability is also reflected in a research by Amnesty International India. In its report published in 2019 concluded that with the reversal of burden of proof, the investigations have become shoddy and lackadaisical¹¹. Gauhati High Court has recognized these lax investigations. Both citizens and non-citizens are entitled to fair trial as per article 21 of the Indian constitution. However political and social pressure compels the FT members to dispose of cases as fast as possible to avoid dismissal from their service. In June 2017, 19 members of FTs were fired for 'poor performance'. Less number of 'foreigners' declared by FT member amounts to 'poor performance'. In last few years, there's a growing tendency to declare more people as foreigners. In 2017, within eleven months, 13343 people were declared foreigners whereas average declaration was 2586 in previous years, as per the Amnesty report. This clearly reflects the pressure on the FT members. Media reports and activists working on the ground also reported similar pressure on the Border Police.

The researcher didn't come across a case if any FT member faced for abuse of power by wrongly declaring citizens as foreigners. It was only in May 2020, for the first time a member of FT has faced accountability for his irresponsible behaviour. A FT member who had donated to the State COVID-19 fund with a rider that his contribution should not be spent on Tablighi Jamaat attendees who tested positive after returning to the State was removed¹².

An examination of Assam's Foreigners Tribunals raises grave questions about their functioning and independence—the processes are clearly unfair towards suspected illegal immigrants.¹³ Both the executive and judiciary seem to encourage the tendency of Foreigners Tribunals' members to declare suspected immigrants as foreigners—sometimes even when there is evidence to the contrary¹⁴.

Part II: Post IMDT period and the rise of judiciary

- Fairness and Burden of Proof

Burden of proof concept played a significant part in the legal architecture of irregular immigration and this concept proved a game changer. Burden of proof is a legal

¹⁰Case Closed: How Assam's Foreigners Tribunals, aided by the high court, function like kangaroo courts and persecute its minorities. November 6, 2019. The Caravan, <https://caravanmagazine.in/law/assam-foreigners-tribunals-function-like-kangaroo-courts-persecute-minorities> accessed on July 4, 2020

¹¹ Amnesty report, see above

¹²<https://www.thehindu.com/news/national/other-states/foreigners-tribunal-member-removed/article31666251.ece>

¹³ 'Case closed', The Caravan....

¹⁴ Ibid

terminology, originated during second world war, indicates the obligation of a party in a litigation. As per Indian Evidence Act, burden of proof lies with the state. Under Foreigner's Act the accused person has to prove their entry, stay and exit is not violative of the existing laws.

IMDT made a departure from this norm and shifted the burden of proof to the state or the vigilant citizens. IMDT Act didn't contain provision similar to section 9 of the Foreigners Act. This reportedly slowed down the rate of detection of 'foreigners' in Assam. From 1983-1998, 489046 persons were detected as foreigners in West Bengal, whereas only 1494 persons were detected and allegedly deported till 30th June 2001. Out of 87222 cases only 12180 persons were declared foreigners in Assam till March 31, 2004. The constitutionality of the IMDT was challenged in the Supreme Court on the ground that its applicable only in Assam and the law has proved ineffective in containing irregular immigration. The petition heavily dependent on a 1998 report prepared by SK Sinha, the then governor of Assam. The report quoted information from intelligence sources as primary data and also quoted that 6000 people are entering Assam everyday, a figure quoted without any empirical data or research. The report referred to an observation by SC Mulan, the Census Superintendent of 1931 Census, under the heading "Illegal Migration" and expressed fear of demographic change in Assam. The Supreme Court accepted the report that deemed migration in 1931 as illegal. SarbanandaSanowal empowered the judiciary to be authoritarian and facilitates the judiciary later on to down play international standards on non-refoulment, statelessness and natural justice. It set "External aggression" and "internal disturbance" became a dominant narrative and emphasized the need for being harsh to the accused in order to 'protect' Assam. This precedent influenced all subsequent proceedings under the FTs and Gauhati High Court and increased scope of arbitrariness and bias. Over a period of time the judiciary rendered invalid a set of acceptable documents as a proof of citizenship. Most remarkable one is that the Gauhati High Court in a civil writ petition filed later held the GaonPanchayat Secretary certificate as "private document" and thereby invalidated around 46 lakh GaonPanchayat Secretary certificate issued to women as documents for establishing linkage with parents. In another case, a woman was declared foreigner despite submitting 15 documents to prove her legacy with parents. SarbanandaSanowal also narrowed down the principle of separation of power, a basic structure of Indian constitution. Supreme Court's direct supervision of the NRC authority without maintaining neutrality is the outcome of this.

Following the SarbanandaSanowal I judgment, the Centre government amended the Foreigners Tribunal Order 1964. This amendment was too challenged before the Supreme Court by SarbanandaSanowal, the current chief minister of Assam. Supreme Court again struck it down on the ground that it's unconstitutional. The amendment The Foreigners (Tribunals) Order 1964 stated that the accused in question should be given an opportunity to defend his case before the tribunal while the Foreigners (Tribunals for Assam) Order 2006 vested tribunals with special powers to decide if there were sufficient grounds to proceed against a suspected foreigner. Supreme Court also observed, "uncontrolled immigration into the northeastern states posed a threat to the integrity of the nation" and ordered to establish more FTs in Assam within four months. As per Supreme Court's order, all cases pending before the IMDT tribunals were transferred to the FTs to be decided in the procedure prescribed under the Order of 1964. A total of 25 tribunals were established in 2005. 4 came up in 2009 and another 64 came

up in 2014 making it a total of 100. Another 100 FTs are established in 2019 making it a total of 200.

- **Doubtful voters**

In proof of citizenship, voter list entry has been given extra importance despite the fact that it was not mandatory. Entry in voter list of 1966 and 1977 are considered conclusive proof of citizenship. However it is observed that typos, wrong entries, minor anomalies in age, surname etc. are upheld by the judiciary as valid points to cancel the citizenship of a person. In 1997, the Election Commission (EC) 'identified' several hundred thousand people as D voters, most of them Muslims along with Bengali speaking Hindus, Koch Rajbangshis, Nepalis and others. The process of identifying D voters came into action after a huge political mobilisation led by All Assam Students Union (AASU) and other ultra-nationalist organisations, with the government being asked to carry out an intensive revision of the voters lists across Assam. Government figures suggest that over 2.4 lakh people have been declared as 'D-Voters' in the state since 1997, and over 1.1 lakh cases are still pending in tribunals¹⁵. An over whelming 60% of D-voters are married women. List of D-voters was sent to the FTs to initiate trial to investigate the D-voters. Entry in D-voters list renders a person virtual statelessness and immediately deprived of social benefits and other rights as citizen. D-voter's list is prepared based on suspicion and not after an inquiry.

- **The rise of authoritarian judiciary**

Post IMDT period also reflects an overwhelming institutional effort in creating fear and trauma through social exclusion, bureaucratic hurdles and humiliation. Minor 'technical lapses' like typos, spelling and age discrepancy, absence of linkage document are the main reasons cited by the Judiciary for stripping of Indian citizenship of the accused. The Gauhati High Court in various judgments took note of callous nature of authorities in recording minute details or timely actions, prolonged delay in FTs of the average 10-15 years, difficulties in procuring documents and most importantly difficulty in deportation. Despite these observations, the Court said that delay in FT is of the average '10/15/20' gives scope to the accused to file case as writ petition and offers opportunity to register their children as Indian citizen. Court then asked Central government to allow summary trial and disposal of the cases by spot inquiry¹⁶. It further cautioned that any amount of delay in deciding the cases always leads to serious consequences with felling effects on integrity, sovereignty and security of the State.

In a study of 787 cases¹⁷ of appeals before the Gauhati High Court on the decisions of FTs, it was found that in 99% of the appeals from ex-parte orders of the Foreigners Tribunals, the High Court agreed with the findings of the Tribunals. All the persons who appealed to the High Court had some form of documentation. Around 61% of them produced electoral rolls and 39% of them produced permanent residence certificates/certificates from the panchayat. In 66% of the cases, the Foreigners

¹⁵ <https://www.newsclick.in/Foreign-Tribunals-Assam-Citizenship-NRC>

¹⁶ Md. Rustom Ali vs. State of Assam and other, WP(C) No. 3236/2009, <http://ghconline.gov.in/Judgment/WPC32362009.pdf>

¹⁷ Caught in a bureaucratic web, <https://www.thehindu.com/opinion/op-ed/caught-in-a-bureaucratic-web/article30983165.ece>

Tribunals found the documentation unsatisfactory. In 38% of the cases, documentation was rejected because spellings did not match and in 71% of them, the secondary evidence was deemed inadmissible.

There has been a change of trend in the role of judiciary on the issue of irregular migration. Since 2005, while striking down the IMDT Act the judiciary's action shown a paradigm shift. It is assuming more proactive executive role rather than remaining constrained to judicial delivery. The Gauhati High Court ordered construction of detention camps while the Supreme Court undertook the role of supervising enrollment of citizens through the NRC process.

A quick note of the cases decided by the Gauhati High Court will provide much clarity.

- Ajjur Ali vs. State of Assam¹⁸

Person was declared foreigner based on clerical discrepancy like the spelling of parents names in voter list of 1966 and 1977. The accused person's name was spelled as Ajibur while his father's name Hajarat Ali was spelled as Harzat Ali. There was discrepancy in the records of the age of his parents. Their age recorded both in the voter list of 1966 and 1977 were same. Another reason to deprive nationality to the accused was that he claimed to be educated till class VIII, however in one of the document submitted to the court, he has put his thumb impression. These raised serious doubt in the mind of the judiciary and found it enough to declare the person as 'foreigner'. Police authority was to act swiftly and detain him. It took ten years to complete the process starting from the FT. The Gauhati High Court also noted that the delay in determining and deporting Bangladeshis has created danger for the indigenous population and called for summary disposal by the FTs based on spot visit.

- AnowaraKhatunvs. State of Assam and others¹⁹

AnowaraKhatunwas declared a foreigner ex parte by FT in 2009. She challenged the decision before the Gauhati High Court and claimed to be Indian by birth. Her name appeared in the voter list twice in 1994 and 1997. There is discrepancy in the spelling of the names and also the age. Anowara sought time before the FT to prepare her written submission when the notice was served to her in August 2008. She claimed that due to bandhs called by a social organization followed by a silent protest meet by the lawyers, she was not able to attend the hearings. The High Court noted that her citizenship became doubtful when the electoral roll for the year 1997 was under preparation and a reference was made to the FT and all procedures were followed. The Gauhati High Court observed that the act of absence from hearing has become 'convenient' for the irregular Bangladeshi migrant and Anowara's absence from hearing was deliberate. The court was satisfied with the discrepancies in the voter list and upheld the decision of the FT. The Court also observed that since Anowara is 60 years old, her name should have appeared in the voter list before 1994 and she couldn't prove 'linkages' of her existence in Assam before the cut off date. This raises suspicion over her claim of being Indian by

¹⁸WP(C) No. 2358/2011, AjjurRahman vs. Union of India, State of Assam and others, <http://ghconline.gov.in/Judgment/WPC23582011.pdf>

¹⁹WP(C) 643/2009 (MsAnowaraKhatun Vs. Union of India
, <https://www.casemine.com/judgement/in/56b49555607dba348f012127>

birth. The court ordered to be deported. AnowaraKhatun was soon found missing from the locality. The Court also held that given the prevalence of the problem [illegal immigration], act of leniency would mean anti thesis to the whole purpose and the accused is duty found to prove his/her citizenship as per section 9 of the FT Act 1946.

- Moinal Mullah vs. union of India and other²⁰

Moinal Mullah is another disturbing one that affirms the corruption and inefficient adjudication of justice. The FT in Barpeta on 16 February, 2010 declared Moinal Mullah as foreigner. The decision was ex parte. The FT based its judgment on the testimony of the local verification officer who pointed out that in an earlier occasion Moinal was asked to submit his citizenship credentials and he failed to submit and hence he is a foreigner. Moinal was detained on 5 September 2013. Moinal's parents were also marked as D-voters in 1997 and they required to prove their citizenship before the erstwhile IMDT for the removal of D-voter status. In 2003 Moinal's father Ashan Mullah and mother Monowara Begum were cleared of the doubt and they were restored of their Indian citizenship. His lawyer advised that since his parents are proved Indians, he doesn't need to attend the hearing before the FT. Once he was declared a foreigner, he was taken into Detention camp in Goalpara. A petition was filed before the Gauhati High Court against the decision of the FT and the his lawyer. However, the petition was rejected. A social organisation supported Moinal to appeal before the Supreme Court. The Supreme Court directed the FT to restart and Moinal was asked to appear before the FT on 29 August 2016. FT cleared Moinal Mullah and he was declared an Indian soon after.

- Jabeda Begum@Jabeda Khatun vs. Union of India²¹

Jabeda Begum was declared a foreigner by FT in Baksa District in May 2019. She has submitted 14 documents to claim that she was an Indian citizen by birth²². She challenged the order in Gauhati High Court. Gauhati High Court dismissed her plea and upheld the order of the FT. She had also produced documents like land revenue payment receipts, her bank passbook, PAN card and a ration card. She also added a certificate from the Gaon Burah, village headman to link her legacy with her parents. First certificate said her father Jabed Ali was a permanent resident of the village while second certificate one said Begum was Jabed Ali's daughter and married to Rejak Ali. The High Court ruled that PAN card, bank document and land revenue documents are not proof of citizenship. Certificates issued by a village Gaon Burais also not to be considered as

²⁰Moinal Mullah vs. Union of India, State of Assam and others

<https://www.news18.com/news/india/my-name-is-moinal-mollah-i-am-an-indian-1274971.html>,

https://images.news18.com/ibnlive/uploads/2016/07/Moinal_Mollah_1.jpg

²¹Jabeda Begum vs. Union of India and others, <https://indiankanoon.org/doc/161150352/>

²² In support of her contention, the petitioner filed 14 (fourteen) numbers of documents. They are - NRC details of Jabed Ali [Petitioner's brother], Voter Lists of 1966 parents, grandparents, Voter Lists of 1970; Land Revenue Paying Receipt; Voter Lists of 1997; Voter Lists of 2015; Land Revenue Paying Receipt; another Land Revenue Paying Receipt, another Land Revenue Paying Receipt; certificate of Gaon Bura certifying that Md. Jabed Ali is a permanent resident of Village No. 2 Dongergaon; another certificate of Village Gaon Bura certifying that the petitioner being the daughter of Lt. Jabed Ali was married to Rejak Ali; a copy of Ration Card in the name of the petitioner; Bank Passbook; the PAN Card of the petitioner; another bank document of the petitioner.

proof of citizenship of a person. GoanBurahcertificate can only be used by a married woman to prove her post marriage relocation in her husband's village [Rupjan Begum Vs. Union of India, reported in (2018) 1 SCC 579].

The Court in Md. Babul Islam Vs. Union of India [WP(C)/3547/2016], held that PAN Card and Bank documents are not proof of citizenship. So in absence of any linkage certificate Jabeda was declared a foreigner. The court held, 'the certificate issued by the G.P. Secretary merely acknowledges the shifting of residence of a married woman from one village to another. The said certificate by itself and by no means establishes any claim of citizenship of the holder of the certificate'²³.

In Anima Das vs. state of Assam and other, two certificates dated 30.08.1993 and 03.04.2018 are both issued by the Headmaster of her school. The certificates were not accepted by the Foreigners Tribunal, Baksabecause the Headmaster of the school who had issued the two certificates was not examined²⁴.

- Sanaullah vs. State of Assam and others²⁵

The accused Sanaullah, a retired army officer was declared a foreigner ex parte by the FT based on discrepancy in the age of birth in May 2019. The inquiry report by the Border Police doesn't include any visit to his house. He was quoted as a labourer and illiterate in that report. The case created a public outrage since Sanaullah was a veteran army officer and educated person. Decision of the FT was challenged in the Gauhati High Court and well-known lawyer Indira Jaising appeared on behalf of Sanaullah. It was subsequently revealed during the litigation before the Gauhati High Court that the Inquiry Officer who reportedly conducted inquiry twice was found to be misleading. He forged papers and put thumb impression on confession papers saying that Sanaullah accepted that he has come from Bangladesh. Sanaullah was arrested and was put in detention centre in Goalpara for ten days based on this report. Later he was granted bail by the Gauhati High Court and the matter is pending for final solution.

- **Declared foreigners facing endless captivity in the process of deportation**

In a study by Michelle Peterie on Immigration Detention Centre in Australia argued that 'the camp, in this context, is a "state of exception" – a place in which "the rule of law [is] suspended" and the individual is reduced to a state of "bare life"²⁶. He quoted examples of concentration camps of 20th century fascist regimes, detention at Guantanamo Bay, detention of immigrants at a football field in Bari, Italy etc as kind of 'state of exceptions' where certain kind of people live and state creates environment for mass support of this treatment where basic rights are suspended or denied'.

Detention camps in Assam are not free from this unfairness. The Detention Centres, a transit facility for the declared or suspected foreigners is the result of the verdict of Judiciary. The Gauhati High Court in 2008, ordered establishment of these facilities.

²³Rupjan Begum vs. Union of India, <https://indiankanoon.org/doc/7961750/>

²⁴ WP © 3056/2018 decided on 3-1-2019

²⁵ <https://thewire.in/rights/declared-foreigner-former-army-subedar-assam-detention-centre>

²⁶ Michelle Peterie, Deprivation, Frustration, and Trauma: Immigration Detention Centres as Prisons, *Refugee Survey Quarterly*, 2018, 37, 279–306

Detention centres came up in Assam in 2010, 2012, 2014 and 2018. These facilities in practice resulted in prolonged captivity, delayed justice and financial harassment of the victims along with enormous psychological trauma. Construction of detention camps/centres was ordered in 2009 expedited when Gauhati High Court said that 'Bangladeshis are becoming Kingmakers' [in Assam]. The government immediately formed three camps, carved out of central jails in Goalpara, Silchar and Kokrajhar. A total of 362 inmates were taken into it by the end of 2011.

Till date, these camps have no rules and procedures and have no operating manual. Inmates were not entitled to any facilities like that of jail²⁷. They are treated like prisoners and still deprived of the rights of a prisoner like parole, wages against work, family visits and have confined within the confined camp area. Interactions with former inmates revealed that food quality or sleeping space was too small causing lack of nutrition and psychological illness. A manual similar to that of jail manual is currently under consideration as per the instruction of the Supreme Court.

Detention camps are also a unique feature in the whole discourse on expulsion of irregular immigrants. No other state has detention camps. Assam has been sanctioned additional fund from central government to construct a detention centre at Matia, Goalpara district of Assam that could house 3000 people, possibly the largest detention centre in the world. The researcher visited this under construction detention centre. About six hundred construction workers are working there and many of them are not successful to have their names in the NRC list. 'We are working here for a living but I could be the one living here as illegal immigrant', one of them informed.

Michelle Peterie further pointed out that 'psychological and psychiatric studies have consistently demonstrated that asylum-seekers who are subject to detention experience high levels of anxiety, depression, and Post Traumatic Stress Disorder (PTSD), with self-harm and suicidal ideation widely reported'²⁸. The negative impacts of detention on detainees are well established in Assam. Every detainee interviewed by this researcher indicated mental illness along with physical weakness and financial loss. Detention camps had about 1300 inmates. Compared to the population of 2.6 million in Assam, this number looks miniscule. However it's enough to inflict a collective trauma to the targeted communities. Those excluded from NRC list also shared similar state of anxiety and sleeplessness.

A total of 29 inmates have died inside the detention camps [as of March 2020]. A public interest litigation filed by social activist Harsh Mander in 2017 asking for better living condition at the detention centre. Supreme Court initially acted harshly for filing the petition and removed Harsh Mander from the litigation. Later it ruled that detainees in these centres are eligible for bail after completing three years and has to present themselves before the police every week after the grant of bail. Biometric data and security of 1 lakh along with two Indian national as guarantee has to be furnished. Few hundred inmates were released. In April 2020, another PIL was filed for release of all

²⁷ Researcher received hand written notes from inmates depicting over crowded and unhygienic condition.

²⁸ Michelle Peterie, Deprivation, Frustration, and Trauma: Immigration Detention Centres as Prisons, *Refugee Survey Quarterly*, 2018, 37, 279–306

the declared foreigners on bail in absence of any deportation mechanism. The prevailing COVID situation probably have influenced the Supreme Court which ordered that inmates completing one year in detention should be released after furnishing two Indian witnesses and 10 thousand rupees security. Goalpara has 201 inmates, Kokrajhar has 140, Silchar 71, Dibrugarh 41, Jorhat 196 and Tezpur holds 322 inmates currently. A sum of 4.74 crores rupees has been spent at the detention centres so far of its maintenance.

- **Deportation**

Deportation is an important part of the process of expelling a foreigner entered without proper permits. However, in case of Assam, there is not settled practice or norm for deportation of a person once declared foreigner. Government has admitted of 'push back' in various cases filed before the Gauhati High Court. Home Ministry has informed in the parliament that till date 39 persons have been sent back to Bangladesh and a few thousand has been pushed back with the help of BSF. In a significant number of cases, the accused person and their family went missing once the Gauhati High Court upheld the decisions of FT and declared them as foreigners²⁹. In most of the cases, the jurisdictional Superintendent of Police has submitted report that the Bangladeshi nationals are not traceable and their whereabouts are not known.³⁰

- **Overall Impact and collective traumatization**

Collective traumatization through violence could be traced in Assam since 1983. Nellie massacre of 1983 followed by several mass killings and ethnic conflicts in the state in Bodo inhabited areas in last three decades has reinforced the collective trauma, demonization and otherisation of the Bengali speaking Muslims in Assam. Transitional justice mechanism is one of the fast growing popular mechanism started with Argentine 40 years ago is widely used to address the peace and reconciliation issues in post conflict situation. In case of Nellie massacre³¹, a Inquiry commission was reportedly established to document of the circumstances leading to the massacre of nearly 2000 Bengali speaking muslims in four hours remain untraceable in the office of the Assam

²⁹ Once declared as foreigner, the petitioners of these cases became untraceable. WP(C) 643/2009 (MsAnowaraKhatun Vs. Union of India), WP(C) 1258/2009 (Mrs. AisaBibi Vs. Union of India and Ors), WP(C) 1311/2009 (NidhanBiswas Vs. Union of India and Ors), WP(C) 1307/2009 (Md. Khused Ali Vs. Union of India and Ors), WP(C) 190/2009 (Md. Abdul Kuddus Vs. State of Assam and Ors), WP(C) 698/2009 (Munindra Ch. Roy Vs. Union of India and Ors), WP(C) 747/09 (HimangshuSarkar Vs. State of Assam and Ors), WP(C) 152//09 (RajiaKhatun Vs. Union of India and Ors), WP(C) 464/09 (Md. SamsulHaque and Ors Vs. State of Assam and Ors), WP(C) 1044/09 (SalemaBibi (Khatun) Vs. Union of India and Ors), WP(C) 80/09 (Smt. Malati Das Vs. Union of India and Ors), WP(C) No.1334/09 (MamezaKhatun Vs. Union of India and Ors), WP(C) 191/09 (Upendra Roy Vs. Union of India), WP(C) 1708/08 (SamsulHoque Vs. State of Assam and Ors), WP(C) 5497/08 (Nathu Ram Biswas Vs. Union of India and Ors), WP(C) 5545/08 (Gopal Ch. Das Vs. Union of India and Ors), WP(C) 1166/09 (Tarabhanu Vs. Union of India and Ors), WP(C) 1045/09 (Mustt. SaheraKhatun Vs. Union of India and Ors), WP(C) 5542/2008 (Mustt. HazeraKhatun Vs. Union of India and Ors) and WP(C) 5560/2008 (Md. Jalal Uddin Vs. Union of India and Ors)

³⁰LQ 2011 HC 25759, SomironNessa @ NozironBibi @ SomironBibi vs. Union of India, Writ Petition No. 5032 of 2009 under article 226 and 227 of the constitution

³¹ Anjuman Ara Begum and Patrick Hoenig,

Government³². A compensation amount of five thousand rupees for those killed in the massacre was thought sufficient enough to rebuild life. The issue of criminal accountability was not even addressed. Instead 312 chargesheeted cases were dropped to maintain peace and harmony. Many instances of mass killings of minorities in Assam took place and no accountability was established. Its only in 2013, NIA court was ordered to investigate criminal culpability charges against rioters in Khagrabari massacre and charge sheet is submitted.

- **National Register of Citizen (NRC)**

The NRC process is one of the most significant citizen identification processes so far aiming detection of non-citizens. This is again is very exceptional to Assam. The first NRC was carried out in 1951 and updating of the same was one of the main demands during Assam agitation. Started in 2015, the process was enormously heavy on exchequer and has already put millions of people at the risk of being stateless/ The National Register of Citizens (NRC) process has already affected millions of people from across communities in Assam. More than 33 million people of Assam had to collect their historical legacy document, a digitized form of pre 1971 archival document, to fill their application, submit 'acceptable' current documents to prove linkage with the 'legacy person', establish a water-tight 'family tree', attend several round of verifications and hearings, including the hearings for disposal of frivolous 'objections' and so on³³. Millions of people have spent their hard-earned money in the labyrinthine process, lost jobs and lost livelihood resources; children had to drop out of schools, and many people lost life while waiting in the queue to proof their citizenship.

On August 31, 2019, the NRC authority published the final list of Indian citizens living in Assam. The list included 31 million applicants and excluded 1.9 million people, mostly belonging to marginalized groups like religious and linguistic minorities, tribals, married women, children and sexual minorities creating an imminent risk of statelessness if these population fail in the final legal battle before the judiciary to prove their historical legacy in Assam. NRC process is another traumatizing process leading many suicides and fear psychosis of uncertainty of future of the person excluded from the NRC and their families. This process further weakened already economically marginalized population of the state of Assam. NRC process put stress on the legacy of the person rather than the person himself. Government has not formed any policy on those excluded from the NRC list except increasing the number of FTs to 200 and these excluded people will now be required to go through the final test in the foreigners' tribunal to defend their Indian citizenship. However this process has been slowed down. In December 2019 the BharatiyaJanata Party-led government in Delhi amended India's citizenship Act and offered to provide first track citizenship to migrants from religious minorities from three Muslim-majority countries i.e. Bangladesh, Pakistan and Afghanistan. This provision doesn't apply to Muslim migrants. Arguably, the non-Muslims who are excluded from the NRC will be provided citizenship through the new Citizenship Amendment Act (CAA).

³² As per RTI reply to Harsh Mander filed in 2010

³³ NRC applicant: 32.9 million, NRC included: 31.1 million, NRC excluded: 1.9 million, Declared foreign nationals: 1043, as on 31 March, 2019, Detainee: 1043, as on 27 November, 2019, Death in detention camps: 29 as on 3 January, 2020

The search for ‘original inhabitant’ in Assam and NRC process has created social polarization and has bolstered communal politics based. About 12 lakh Bengali speaking Hindus are excluded from the final list of NRC whereas number of Muslims were around 6 lakh. This was against the expectations of the nationalist forces as no legal option is available to invalidate the NRC process since it was carried out under the supervision of the Supreme Court. Muslims supported NRC process with a hope that it will free the community from the tag of ‘illegal Bangladeshi’, alter the dominant prejudiced narrative and ensure equality. NRC was successful in this regard to some extent. Muslims youths started taking pride in being ‘Miya’, an honourable term used to ridicule Bengali speaking Muslims. Hindu community specially those refugees from East Pakistan under the influence of the current ruling party on the other hand are reluctant to carry forward the NRC results as majority of the excluded are Hindus. Assamese linguistic nationalists being sandwiched in between are now looking for new avenues in the Assam Accord to uphold their interests and to secure privilege and reservation in terms of the entitlements.

However, an entry in the NRC list doesn’t guarantee the further ordeal. Rahima Begam of Nalbari, Assam was declared as foreigner on November 8, 2019 after the publication of final NRC list on 31 August, 2019. Gauhati High Court has asked the NRC Authority to file an affidavit to bring in record the ‘undeserving’ or ‘not legally’ individuals entitled to citizenship. Such order and terminology used could further enhance persecution of the ‘suspected foreigners’.

With the passing of Citizenship Amendment Act in 2019 (CAA), the issue of detection and deportation of foreigners has reinforced inequality before the law and sanctioned discrimination based on religion. Illegal immigration of four religious groups has been decriminalized, exonerated and with this a chapter has commenced in the citizenship jurisprudence with the potential of impacting whole South Asia. Illegal immigrants of four religious groups became eligible for Indian citizenship under CAA. About 59 petitions challenging its constitutional validity is pending before the Supreme Court.

PART III

Case studies: Search for ‘original inhabitant’ and a process of inflicting collective trauma

The researcher visited 6 former inmates of detention camps, families in the month of February 2020. Each of these cases depicts chilling account of cyclic vilification and traumatic experience of deliberate denial of due process and fairness in dealing with the status of their citizenship. In a majority of the cases, the inmates have to spend years in detention camps for their ‘failure’ to proof the legacy with the ancestors. DNA test, a scientific method to ascertain the legacy was silently thrown out the list of ‘verification’³⁴.

³⁴How DNA went missing from the NRC’s blueprint for proving Indian citizenship
<https://scroll.in/article/931004/how-dna-went-missing-from-the-nrcs-blueprint-for-proving-indian-citizenship>

The ten cases physically documented by the researcher require travel to remote areas often completely disconnected by the governance system. Police station, fire and hospital were not found in their vicinity. Over populated schools lacking basic infrastructure with acute shortage of teaching staff was often the only visible structure representing the presence of fragile state and marginalisation of its minorities. Inmates in riverine areas [i.e Char areas] were found to be internally displaced people often shifted their house 10-12 times due to flood and river erosion. This phenomenon of environment crisis often increased their vulnerability in protecting their legal documents and engaging with the foreigners detection/determination system. Every case studied for this paper reflects the deep level of trauma inflicted and exhaustion of all available financial resources. The experience of helplessness of the accused and their families spread trauma over the whole community and contributed collective fear and agony. In all the cases, it was found that the families are living with very basic subsistence and were compelled to spend all their available resources in procuring historical documents to claim their citizenship. The researcher also didn't come across of incidents if anyone is paid compensation for wrongful trial and denial of right to nationality.

Case 1³⁵: Respondent AjbaharAli, is a 56-year-old small farmer from Kheluapara village in Jogighopa, Goalpara, Assam was declared foreigner and was taken into custody in May 2016. Ajbahar belongs of Deshi Muslim community, an indigenous group of Assam. Despite struggles in life, Ajbahar was a happy person with four family members including three sons, one daughter and his wife. He supported his eldest son MoinulHoque to open a mobile repairing shop. Sometime in 2014, a notice was received by the family saying that he is has been declared a foreigner by the Foreigner's Tribunal, Barpeta. After receiving the notice he filed a statement and necessary documents stating that he is an Indian citizen by birth with the help of a lawyer. He regularly attended hearings and was expecting a positive order. Then one day in 2016, while waiting for the hearing of his case, police personnel reached him and arrested him in the Tribunal premises saying that he has been already declared a foreigner as per proceedings and ex-parte order of another case in Goalpara Foreigner's Tribunal. Ajbahar has no clue that he is facing double jeopardy and there is a second case against him. He was detained in the Detention camp in Goalpara for more than three years. The fault that Ajbahar could find is a spelling mistake of his father's name and this made him a foreigner in his own land. His son challenged the order in the Gauhati High Court. To meet the expenses of a prolonged litigation, the family sold their assets and paid to the lawyer hoping for a positive outcome. However the High Court upheld the Tribunal's decision. Only recourse for justice left for the family was to challenge the decision before the Supreme Court. Ajbahar's wife BalijanBibi, was depressed over the prolonged detention and the expensive litigation. Finding no way to meet the financial requirements, she died by suicide on early morning of September 24, 2016. This incident added another layer of hardship to the family.

Ajbahar found that he was 'identified' by the two Border Police personnel and referred the case to the two different Foreigners Tribunals in two different districts. Ajbahar has been released on bail after a Supreme Court verdict in 2019 that ordered to release inmates detained for more than three years. He is back to his home after a long time. However, he is now physically weak, mentally disturbed, forgetful and sits in one place

³⁵ Based on personal interview on 24 February, 2020

for a long time without even moving. His family's financial situation is deteriorating day by day in absence of income sources. Land properties are sold and the family faces food shortages and often starves. Though Ajbahar is now out of the detention camp on bail but the system that prescribed him a 'foreigner' remains intact and his future status as an Indian citizen remains uncertain.

Case 2³⁶: Respondent Saherakhatun is 40 years old woman with no formal education was born in remote riverine Takakata village of Barpeta district. She was a victim of child marriage practice and was married off at the age of approximately 12. Since then she lived with her husband in a nearby village called Chinkigaon. With three sons and seven daughters, she hardly understands the legal process and was shocked to learn that she is foreign national as per the order of Foreigner's Tribunal in Barpeta. She has the knowledge that litigation is ongoing for last four years in Gauhati High Court that has challenged the order of the Tribunal. She is informed by her lawyer that once she clears his 40 thousand balance fees [one lakh already paid], she will be declared an Indian again. She blames number of erosion and displacement she experienced in her life and her family. She said, 'the river Beki made my life hell. I had to shift my house 8 times due to flood and river erosion'. Her current house at Chikni reserve village is where she shifted about 12 years ago. This village was denotified in 1962. Later settlement of victims of river erosion was arranged in this village by the then government. This provided her an opportunity to settle in this village and she bought a small piece of land for residential purpose. She showed four small houses made entirely of tin sheets sharing a small courtyard and she lives in one of those houses. She has 8 children and five of them are enrolled in NRC while 3 of them born after 2003 couldn't make it to the NRC list. Sahera regrets that her sons are daily wagers and major part of their income is spent on her litigation. This has left the family with no saving and was exposed at the risk of multiple hardships.

Sahera's case depicts the fact that citizenship determination norms are gender discriminatory and creates enormous barriers in proving their citizenship. In major cases, women fail to prove their linkage with their parents despite having documents where husband's names are mentioned as guardians. Due to social discrimination and patriarchy their education is not prioritised in the family. They are married off early as the family itself faces survival challenges like multiple internal displacements and then the state comes asking for proof with documents. Most the excluded ones from NRC are married women who used their husbands name as guardian after marriage and their children since they couldn't prove their legacy. Since Citizenship Amendment Act 2003, if one parent is declared doubtful citizen then the children is not entitled to citizenship. India is a party to the Convention on Child Rights [CRC] prohibits denial of citizenship of child born in a country. This international norm is totally violated.

Case 3³⁷: Respondent MomironNessa of Takakata village, Barpeta district is approximately 40 years old and is one of those who spent more than ten years in detention camp. MomironNessa was the only daughter of her parents and grew up along with four other sons. She is not formally educated and married off at the age of 12. After her marriage, Momiron enrolled her name as voter during a door to door enrollment process. After five years since then she went to vote in 2010 and found that she has been

³⁶ Based on personal interview on 23 February, 2020

³⁷ Based on personal interview on 13 February, 2020

marked as 'D voter' [Doubtful voter]. She couldn't vote that day. Later they enquired with police. Police informed that three notices issued by Foreigner's Tribunal have been already served to them and they never attend hearing. Neither MomironNessa nor his family members ever received those notices. While the family was exploring means to seek remedy, police arrested Momiron and immediately detained her in the detention camp in Kokrajhar. She was forcibly separated from her three years old lactating son. Momiron was reportedly pregnant and had an abortion during her detention. Momiron's detention was one of the longest detention in a detention camp in Assam. She was released on bail after ten years and six months in October 2019. Her release on bail was possible because of Supreme Court's order. Momiron said, 'My father is 108 years old and is still alive. He has cleared his name in NRC and has all the documents to prove his citizenship starting from the NRC of 1951. Then why I am suffering like this? I was the only daughter of my parents and lived like a queen and why they [the state] are behaving so cruelly with me'.

Meanwhile, why Momiron was counting her days to come out of the detention camp, her depressed husband died at the age of 42. Financial constraints and loneliness seems obvious reasons contributing this early death. Momiron was unaware of this for a long time. Her son was replaced as official visitor Momiron was finally released on bail in 2019. In ten years of detention, Momiron met her eldest son twice and her daughter only once due to financial constraints. She met her 3 years old lactating son only after her release. Momiron is suffering from low eyesight, sleeplessness, palpitation and trauma. Her financial capacity cannot afford litigation in future. Activists monitoring Momiron's case is of the opinion that DNA testing could have solved the issues long ago and ten years of detention is nothing less than a punishment for a heinous crime.

Case 4: Respondent Roshia Begum, 40 years, is currently living in Fekamari, Mankachar, Dhubri district. She was born in a village called Shilkata, Rajabala under Phulbari police station, Block Selsela, West Garo Hills, Meghalaya. Roshia was the eldest daughter out of 8 children. Her parent prioritized marriage than her education. She was married at the age of 13 and she remembers going to primary level school.

After her marriage, she applied to enroll her name in the voter list of Assam. During census, officials visited her house and asked for 'documents' to prove her citizenship that could serve as 'linkage' certificate with her father. She couldn't produce any. Soon police started inquiry and visited her family several times in the village. She felt intimidated and was in fear. Her husband moved her to her parent's house in Meghalaya where she went underground. But she couldn't remain in hiding due to police pressure on the family. As soon as she appeared for an interrogation before police, she was immediately arrested and was shifted to few police stations in Meghalaya and Assam. Local people gathered at Hatsingimari police station and protested against her detention. Visiting a police station was traumatic for her and also the thought of being separated from the family was so painful that, she fainted and was hospitalized at Panbari Hospital where she was treated for nearly a month. Her medical treatment was financially taken care of by her family. Once recovered, she was taken into detention camp in Kokrajhar, Assam and continued in detention for more than 3 years. After one and half months in detention camp, District Commissioner of West Garo Hills certified her as a bonafide citizen of Meghalaya which was rejected by the authority in Assam and didn't release her. Her family sold land properties to finance litigation in the Gauhati High Court at the cost of 1.5 lakh.

Roshiya informed the researcher that a heavy flood during 1988 completely submerged the schools for more than a week and destroyed all the documents in the school.

The researcher interacted with Roshiya at her home. Roshiya's detention had devastating consequences for her children. All her three sons dropped from school and the eldest son was married early in order to have a woman in the house to take care of the household chores. Fear and uncertainty about her future status as citizen of India is affecting the whole family. Her two sons are already in low wage manual work while she is trying hard to bring her third son back to school. She has to report to police every week and it costs her about 400 rupees for transportation. It's a burden for the whole family and affecting adversely. Roshiya feels good for the fact that her whole family has been included in the NRCList except her.

Case 5³⁸: Respondent Jinu Koch is a widow after the death of her husband Naresh Koch while in detention. She is surviving on donations in the village of Tinkuniapara, Goalpara, Assam. This village is away from modern connectivity and about 40 kms away from the main city of Goalpara where basics life hospital, police and government offices are situated. Naresh was daily wage and most of the time worked as agricultural labour. In 2017, he along with Jinu took up an employment as resident manual labour at a fishery farm at Mornoi, about 40 away from his village. Naresh made few friends there and became a frequent visitor to a local bar. Naresh had no formal education and married Junu after the death of his first wife. One afternoon in month of March 2018, he was having a drink at the same local bar. A vehicle full of police men reached there and informed that he had been declared a foreigner by the FT in June 2017 and a search was on to trace him. He was arrested and taken into custody immediately. Utterly shocked, Naresh had no means even to inform his family about his arrest. He was taken to Goalpara Detention camp. The whole incident left him traumatic and depressed for the rest of his life. Till his arrest his family had no information that he has been declared a D-voter, then a foreigner and that he had been served notice to appear before the FT for four consecutive times. The process was completely ex-parte and the family never received summons. Consequently, Naresh was in Goalpara Detention camp for nearly two years.

Naresh's family was unaware of his detention for few days and once they came to know of it, there was no money to meet him. Local Police donated 100 rupees to the family to visit him in the detention centre, about 40 km away. Naresh would fall sick often in the detention camp. After two years, local police again visited his family in December 2019 and donated 1000 rupees to his wife Junu to visit him in a hospital in Guwahati, about 150 kms away from her village. Jinu Koch visited him and found that Naresh had suffered a stroke and not able to talk. Jinu met him after two years and wanted to hear his voice. 13 days she took care of him in the hospital. On 5 January, 2020 he died at the age of 56 years. His death marked the 29th custodial death in detention camp. Police asked the family to take his dead body for last rites. This created a public outcry. People protested, 'why a foreigner's dead body is delivered in India?', they asked. After few days of negotiation the family agreed to receive the dead body and his last rites were performed. Naresh belonged to Koch-Rajbongshi community, an indigenous community in Assam. His son Baruram Koch is included in the NRC as citizen of India. As a token of compensation, the family has been given a subsidized house and toilet under government's scheme.

³⁸ Based on personal interview on 24 February, 2020

Case 6³⁹: Respondent Nazrul Islam is 40 years old and is released on bail from Goalpara detention camp in 2019 after more than four years. In November 2015, he was arrested by the police from his home in Hatsingimari, Dhubri district, Assam and was immediately taken to the detention camp. Before that he received notice from Foreigner's Court, Goalpara and had appeared before the proceedings. He is not formally educated and panicked with fear. During the proceedings, he submitted documents to prove his Indian citizenship and one of the documents was a birth certificate. He procured the birth certificate with the help of a 'dalal' [middle man] Birth certificates issued after 90 days of birth is not an acceptable valid document in the FT. It was found that the birth certificate was forged and hence his claim of Indian citizenship was rejected. Nazrul is a married man with three children. He was earning about 12-13 thousand rupees a month by working as a mason in Guwahati. With his arrest, the primary earning member of the family was gone and consequently his wife and children went to her parental house and living there. After spending four years four months in the detention camp, Nazrul was released on bail after the Supreme Court's verdict in 2019. About 4 lakh rupees spent by the family ever since he was detained and this amount was procured by selling their property and other resources. Currently Nazrul lives in his father in laws house along with his wife and children. None of his children are into school and his youngest child, five years old daughter couldn't recognize him and doesn't mix with him. Nazrul lived along with 216 inmates in the detention camp and had to survive on poor quality of food and crowded living condition. His health is fragile and is extremely tiring for him to work as mason. His 17 years old son has become a migrant labourer and supports family financially. Nazrul is suffering from sleeplessness and anxiety and extremely worried of the future course of action on his citizenship.

Case 7⁴⁰: Respondent JyotishSutradhar lost his father for not having 'legacy document' to prove his citizenship. AngadhSutradhar, his father was an old man belonging to indigenous KochRajbongshi community of Assam that NRC Authority has categorised as 'original inhabitant' to provide special relaxation to include their names in the NRC even if they don't possess sufficient proof of citizenship. He was living in a remote village called Pakriguri in Baksa district of Assam. Angadh who was not formally educated and didn't had sufficient historical documents to prove his birth linkage with his ancestors, was under enormous stress to file NRC application and the deadline to submit such application expired in July 2015. His son JyotishSutradhar made several efforts to find an arrangement with the help of the local NRC registration office but failed due to absence of an 'legacy document'. Angadh and his son couldn't find a way to process their application. Meanwhile they heard from media and villagers that those excluded from the updated NRC will be either deported or detained in detention centres. That day evening AngadhSutradhar and his family members again discussed on what they should do but couldn't find a way and decided to try to meet the officers again and explain their situation. Soon after this discussion, Angadh went to the bank of the small canal passing nearby his home and was sitting there quietly. At around 10:30 pm when the family went to call him for dinner, he was found hanging on a tree nearby and died by suicide.

³⁹ Based on personal interview on 13 February, 2020

⁴⁰ Personal interview conducted by community worker Abdul Kalam Azad on behalf of the researcher due to COVID restrictions

Case 8⁴¹: Respondent SabiyaKhatun is 45 years old woman from Shimlabari village in Bongaigaon district of Assam. She was not formally educated and is a survivor of early child marriage. She was declared a foreigner by the Kokrajhar Foreigner's Tribunal and was detained in Kokrajhar detention centre for four years. She submitted a lot of documents from her father whose name figured in several legal documents that prove his Indian citizenship. Her father has 1951 NRC certificate, 1970 voter's list and even Sabiya was enrolled in voter list of 1997 onwards. She submitted a panchayat certificate to prove her linkage with her father. The Foreigner's Tribunal still declared her a foreigner because the panchayat secretary, who provided the linkage certificate did not appear before the tribunal and testify that he has issued the certificate.

Absence of Sabiya in her family was devastating. Her sons dropped from schools and became manual labourers. Her daughter dropped schooling to cook for the family and to look after Sabiya's three years old daughter. Her husband was mentally shocked and developed psychological trauma. A small amount of money was saved for the treatment of her husband. Meanwhile Gauhati High Court rejected her petition claiming Indian citizenship and there was a need to file a review petition. The family spent the amount saved for this litigation and consequently Sabiya lost her husband while she continued in detention. No parole was issued to her to take part in his last rites.

Sabiya is finally out of detention following the Supreme Court's order in 2019. However, uncertainties over her citizenship continue.

Case 9: Respondent SulemaKhatun is 70 years old was born in Meghalaya and married to a man from Assam. She is a retired teacher and has documents like passport, voter card, bank passbook, school certificate and her service book. Along with these she submitted a certificate issued by the Meghalaya government indicating the entry of her father's name in NRC of 1951. However her name was deleted from the first NRC list while all her family members including children could make it to the list. Sulema has five brothers. Her two brothers were excluded from the list while three brothers could prove their citizenship using the same documents linking with the parents. After rounds of hearing and verification Sulema was included in the final list of NRC. The whole process was expensive and traumatic for her and the family. Sulema's great grandfather was a Hindu man who later converted to Islam and married a Muslim woman. A Hindu name in the family history drew suspicion about the authenticity of the documents. The government of Meghalaya delayed verification of the documents issued rendering exclusion her two brothers. They are now waiting for the trial before the FTs. To procure the historical documents of their family, they have spent a lot of time and money and still future is uncertain.

Case 10⁴²: Respondent AbironNessa is 45 years old widow from Jaklibilpathar village in Baksha district. She was married as second wife to her husband Abdul Rahman at the age of 15 years. She survives on meager earning by selling fish,

⁴¹Personal interview conducted by community worker Abdul Kalam Azad on behalf of the researcher due to COVID restrictions

⁴² Based on personal interview on 11 October, 2020

vegetables or working as domestic help. Her two sons are daily wagers. Abiron was not mentioned as wife in the legal documents of her husband. His first wife's name remained as wife. Abiron did enrol as voter and she didn't attend school as well. There's no document to prove her linkage with her father. Her father, both her sons and husband are all included in the final list of NRC. Her name was included in the ration card with her father. However, once she is married her name was deleted from the list card they didn't save the older card. Abiron has been served a notice from Foreigners Tribunal in the month of September, 2020 and was asked to submit her statement. With the help of a pro bono lawyer, she has submitted her statement. She doesn't have the financial or physical capacity to procure historical documents related to her legal identity. Days are passing by and increasing her stress. Since the day the notice was served, Abiron couldn't sleep properly, suffering from tension and has developed chest and neck pain due to stress. Her sons were daily wagers who are now jobless since the lockdown. With uncertain future, Abiron developed a fear psychosis. She went on hiding for a whole night when she heard sound of a vehicle. She feels police will come in a vehicle and will put her in a detention camp. Abiron's case is pending before the FT.

Case 11⁴³: Respondent Jaymona Khatun is 50 years old widow was married to Hareh Ali of Jaklibilpothar village in Baksha district of Assam. She works a domestic help and agricultural labour. She was declared a D-voter in 1997. She received a notice from the Kokrajhar Foreigners Tribunal in the month of September 2020 during the pandemic and movement restrictions that she has been suspected as a foreigner and needs to appear for hearing. Joymona's parents are not alive and she has five brothers and 3 sisters. She was married off as a child and didn't receive formal education. She was the second wife to her husband and doesn't have linkage document to proof her relation with her father. She has visited various local offices to procure documents. No document was issued in her name and she was told that all the local officers have been asked not to issue any document to the D-voters. Joymona is under extreme stress since the notice was served. She lost appetite, cannot sleep and mental tension caused her chest pain. She devotes her time in praying such that god saves her from this ordeal. All her three sons are also excluded from the NRC list and are currently working as daily wagers in constructions sites.

Conclusion:

The above discussion clearly shows that there are no standard rules and procedures and the entire process of confirming an important right like the citizenship is left on the administrative discretion via excessive delegation of power. Author Rohit De wrote about in his book 'People's Constitution' that there is distinction between legality and rule of law. He wrote that 'unlike the West, administrative laws in India are shaped though legislative and bureaucratic action'⁴⁴. The system in Assam is a reflection of this proposition where the executive through a quasi-judicial process taking away nationality rights of those recognised as citizens. It constitutes denial of human rights and Universal Declaration of Human Rights. Matter of citizenship is handed over to the executive

⁴³ Based on personal interview with Joymona in Barpeta on 11 October, 2020

⁴⁴ Rohit De, *Everyday Constitution*, Princeton University Press, 2018, page 118

while judiciary too actively took part and supported this excessive delegation of power. The current process of determining citizenship of a population is discriminatory towards the economically weaker section of the society as well as towards women and children who don't have enough resources to defend themselves. Double jeopardy is prohibited by the constitution however the FTs didn't protect this right. There is no provision for compensation for anyone wrongfully declared foreigner.

Foreigner's Act was passed keeping in mind the people from a different country entering in India with or without valid passport, visa and then immediately found in a foreign soil without legitimate claim to stay in India. However, in case of Assam the Act is applicable on people who are living in the country for years and acquired Indian citizenship. Citizenship once given cannot be arbitrarily forfeited except under certain circumstances as stipulated in the citizenship laws. Judicially speaking Foreigner's Act is not fit for someone who has already acquired Indian citizenship and living for ages in Indian soil. Foreigners Act probably the second such Act that heavily stressed on 'suspicion' similar to that of AFSPA. FT presumed a person a foreigner and prosecution starts from there. This is violation of criminal justice principles.

The situation of Assam and its institutional response towards migration detention remain more or less elusive from the national and international media for a long time. The Rohingya issue that shocked the South Asia in 2017 raised concerns over similar situation in the region. Gradually the migration detention and the NRC issues gained publicity momentum in India and Assam became a case study. Lack of academic engagement with minority's perspectives encouraged dominant narrative of 'illegal immigration' posing a threat to the indigenous community in Assam. Marginalization of the voice and perspective of the minority community, culture of alienation of Bengali speaking Muslims created a vacuum resulting social conflict and paranoia. Denial of citizenship is applicable only in case of 'confirmed foreigners', not for people who are found in Indian soil simply because they are not in possession of historical documents.

Lack of organized resistance from the community contributed to the overall traumatization and suffering. Its only during the Bodo-Muslim ethnic violence in 2012 when nearly 50 thousand Muslims were displaced, youths began to organize themselves and resorted to judiciary and other human rights mechanisms to enforce their entitlements and sought justice for massacres. As a result Khabribari massacre of 40 people is under investigation by a central agency. International human rights organisations like Amnesty International and Human Rights Watch intervened late and published detailed research report on NRC issues only in 2019 and 2020. In 2018, for the first time, four UN Special rapporteurs issued statement and expressed concern over the NRC process. The statement quoted that 'the experts also highlighted the lack of clarity in the link between the NRC process, electoral roll information and the separate judicial processes of citizenship determination before the Assam Foreigners' Tribunals. "This adds to the complexity of the whole process and opens the door to arbitrariness and bias"⁴⁵." Convention on Child Rights an UN treaty ratified by government of India

⁴⁵UN experts: Risk of statelessness for millions and instability in Assam, India <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24781&LangID=E>

Preliminary draft only. Not for circulation. Anjuman

prohibits denial of nationality to children. However, NRC process has denied inclusion of nearly lakhs children and they are at the risk of statelessness.

Nellie massacre and lack of accountability created a precedent that permitted institutional negligence of the rights and entitlements of Bengali speaking Muslims. River erosion in the western Assam displaced thousand. Land resources shrank and agriculture based economy was affected in the char areas where majority of Bengali speaking population reside. They were forced to shift to the city areas where unskilled labour provided easy livelihood and play a significant part in development of urban infrastructure. Reportedly river erosion has displaced 4 million of people. There is a need to study the trend of migration of those displaced as a result.

Absence of a policy on refugee in India has adversely impacted the population migration post partition in South Asia. Indian law and practice provide a distorted and incomplete protection to the refugees⁴⁶. There's complete distortion of who is a 'foreigner' or 'illegal or suspected immigrant' as well their detection and judicial interventions didn't adopt international human rights norms specially those deals with statelessness and international obligation to prevent it.

Rights now the uncertainty of final list NRC, mushrooming of detention camps and the political narratives are not suitable for a fair trial of 'suspected foreigners' and there's a possibility of repeat of Rohingya like crisis in future.

The End

⁴⁶SauravBhattacharji, Indian needs a refugee law, EPW, March 2008 accessed online via JSTORE