

Title- The Questions of Contested Territoriality and Identity Under a Liberal Constitutional Framework: A Case Study of the National Register for Citizens(NRC) drafting procedure in Assam

Abstract

The issue of identity and citizenship has always been one of the most contentious and vexed propositions in the discourse of the modern state. The history of modern South Asia is replete with instances in which territorial and juridical boundaries failed to co-opt and legitimize demands of multi-layered identities based on race and religion and multi-dimensional sense of belonging of many sections of people. This inherent dichotomy between territorial borders and psychological borders has historically marred the terrain of South Asia amongst other parts of the globe. The most gruesome and brutal manifestation of such a dichotomous interaction between territoriality, identity and sense of belonging can be traced in the displacement of a gargantuan magnitude of people during such critical moments of convulsions regarding nationhood like partition between India and Pakistan in 1947 and subsequently during the Bangladesh liberation war in 1971. Besides these crucial junctures of perceptible disenfranchisement and persecution, the instances of forced migration due to contested ideas of identity and territoriality has continued unabated in various parts of South Asia. And such mass migration of people due to harsh and inadvertent conditions of politico-socio-economic compulsions have moulded, shaped and determined the politics in a number of south Asian nations. One such case is the unfolding politics over the drafting of a fresh National Register for Citizens (NRC) for the people of Assam. It is yet another instance of how the contested ideas of identity and citizenship are making space for politics of “otherisation” and polarisation in the state of Assam in India. The diabolical procedure of drafting the fresh NRC might lead to the disenfranchisement, detention and deportation of a large number of hapless people without any recourse to legal, political or diplomatic assistance. In all probability, the dispossessed lot might be rendered as “in between people” as either indeterminate citizens or indeterminate stateless people after the final formulation of the NRC.¹ The ambiguity and speculation regarding the fate of people whose names would be excluded from the draft might lead to a situation of massive human rights crisis and violence in India. In the above background, the paper would excavate how the questions of territoriality and identity are interacting with the Indian constitutional and legal framework by taking NRC drafting procedure in Assam as a case study. The paper first attempts to broadly look at how the notions of contested territoriality and identity were perceived in the foundational constitutional framework that shaped the idea of citizenship at the time of the commencement of the Indian constitutional order. Furthermore, the paper intend to look at the constitutionality and legality of the NRC drafting procedure in Assam to trace how the questions of dealing with the issues of forced eviction and human agony transpired over the years under the Indian constitutional framework for preventing the threat of human rights violation and further dehumanization of the disenfranchised lot. Finally, the paper would study the NRC process in Assam to extrapolate how the imperatives of political expediency impacted the constitutional discourse on identity, citizenship and human rights. Hence, this research might enable us to understand whether a liberal constitutional framework under democratic condition is capable of acting as a part of the protection regime for the casualties emanating from such contested identities in the South Asian context.

Introduction

The sanctity of the territorial boundaries of the nation states is instrumental for the durability and sustenance of the modern state system. The border is the marker that demarcates the extent of spatial control of a state and therefore, determines the very identity of the territorial state. Hence, the phenomenon of modern state building is primarily predicated upon the central notion of locating the geographical expanse of a territory bounded by demarcated border that distinguishes one territorial nation-state from the other. Hence, a clearly defined delimitation of a territory becomes the primary determining principle of a modern nation-state. Coming close to the heels of the imperative of territorial confinement, is the need to demarcate the inhabitants residing within such juridical boundary. It further requires the identification of the people with a

particular territory as its citizens who enjoy certain rights and privileges as well as be subjected to the duties and laws of their territory of residence. Hence, it is the territorial and demographic distinctiveness that moulds the demeanour of a modern nation-state. While the challenge of maintaining territorial distinctiveness of a nation-state by keeping its boundaries sacrosanct and free from violations by any external power is formidable, it has become increasingly possible as the international world order came of age. The comity of nations in the world comprising of a plethora of distinctive territorial units of variegated geographical, economic, political and military capacities identified as nation-states, have evolved to realize the irrefutable necessity of peaceful coexistence after decades of horrific misadventures of full-scale wars with the savageries of territorial aggression and expansionist ambitions. Hence, mutual respect for territorial integrity of each other and negotiation of the outstanding disputes under amicable conditions, except certain highly disruptive instances at various points of time, became the modus operandi of the modern day territorial nation states. While, maintaining the inanimate territorial integrity has been a relatively easier task, despite the multi-dimensional challenges, ascertaining demographic sanctity or distinctiveness of a nation-state has remained the most insurmountable challenge that confronts the nation-states till today. This is because migration of people poses the most formidable challenge to the demographic sanctity of nation-states. And so the process of migration catapults a concomitant tension in the discourse of citizenship for the receiving states. As human mobility remains the dominant motif of human nature and existence, migration of people from one place to another has remained one of the most relentless phenomenon which has caused ripples across the globe, in a more significant way after the advent of the territorially defined nation-states. Such movements of people can be historically attributed to the need for better economic and work opportunities, filial ties and matrimonial alliances and more catastrophic circumstances like fleeing violence or threats of violence and persecution. Such free movement of people further got its impetus in the contemporary world order with the advent of globalization that has reinforced the interconnected interaction between people transcending the confines of the juridical territorial boundaries. Such unaccounted and spontaneous influx of people into the territorial jurisdiction of another nation-state raises crucial questions of identity, belongingness and ultimately of the claims of citizenship, of the displaced population in the migrants receiving states.

Migration and Contested Identity in South Asia

South Asia, as a geographical and political space that is marked by the legacy of colonial rule and as a societal space that is riddled with a hierarchical order that is replete with a multitude of overlapping and cross-cutting group of communities and ethnicities with deep and amorphous kinship ties, the post colonial project of state building as well as nation building in South Asia confronts the challenge of dealing with the phenomenon of migration that incessantly moulds the political and diplomatic dynamics of the south-Asian nation states. Barring Maldives, all the other nation states in South Asia are known for sending and receiving people from one another who flees their original country due to factors like political instability, violence or livelihood crisis, the problems that are endemic to all the post colonial states in the region. This is

particularly because these relatively younger nation states which are constantly confronting challenges of nation building stemming from the political complexities of recognition and redistribution, facilitates the mobility of people from one country to another in search of better political, economic and social security. One of the dominant reasons that have facilitated the flow of people within the region is its historical and societal idiosyncrasies. First, the modern history of South Asia has witnessed a constant flow of people due to economic opportunities and more importantly due to physical security as the region has witnessed violent territorial balkanization in the partition of India and formation of a distinctive nation of Pakistan in 1947 and due to the civil war in East Pakistan that has led to the further bifurcation of Pakistan and formation of Bangladesh as a new nation-state. The large-scale persecution of the ethnic and religious minorities in the convulsive moments of majoritarian onslaughts as challenges of nation building has created conditions for large scale movement of people from one state to another in search of safety and protection in South Asia. Apart from that, political disaffection has been making South Asia a theatre of mass movement of hapless populace ravaged by violence and material deprivation and emaciated by the denial of political identity and civil liberty, and unenviable living conditions. Second, the deeply embedded complex ethnic, religious and kinship ties that binds the different communities residing in the region since ages has created as emotive connect amongst people that doesn't necessarily overlap with the juridical boundaries of the modern territorial nation states of south Asia, thus rendering the borders of south Asia porous and violable. These chasms between the territorial border of the nation states and the psychological borders of the people have created an acrimonious dynamics amongst the South Asian states due to constant flow of people across boundaries in the region. This acrimony primarily spurs from the suspicion and paranoia of the states that emanates from their vulnerability due to weak state capacity and already bludgeoning problems of nation building. Moreover, as the south asian nations have gradually moved towards democratization of its political systems, demographic disruption that has direct impact on the political dynamics of a democratic polity due to accounted inflow of people. It further complicates the narrative of security, stability and identity for the paranoid south Asian states that on one hand clamours for hardening of borders and on the other hand, perceives the immigrants as the "other". The schism between the indigenous population and the immigrants often gets further aggravated due to religious and ethnic differences, solidifying the perception of the "other".

Setting the Context

India, due to its humongous size, crucial geographical location and relatively greater economic prowess, remains one of the major recipients of immigrants from other South Asian countries across the border. Such inflow of people in large number have naturally raised the questions on the identity and legitimacy of the immigrants and led to a political, economic and cultural consternation against such influx in quite a few states in India which has been at the receiving end of facing the pressure of the influx of immigrants. The partition of India in 1947 in the wake of the creation of separate dominions of India and Pakistan and the civil war in East Pakistan that

led to the Liberation war of 1971 and eventual creation of Bangladesh, were the two major tumultuous moments of political violence that caused large scale persecution of people. Both these events catapulted a mammoth displacement of people in dire need of physical security and survival opportunities into India. Such a massive migration of people from west as well as East Pakistan to India posed a huge challenge before India as to how to deal with the already embattled and persecuted “refugees”. It is indeed a dilemma for any nation-state which is caught in between the responsibility of safeguarding the security and demographic sanctity of its own people on one hand and extending a hand of refuge and protection to the hapless displaced people from the other side of the border who are in desperate need of safety after escaping their own country and home due to unspeakable adverse circumstances. It is all the more a vexed question for India as it is not a signatory to the 1951 Refugee Convention, which is a United Nations multilateral treaty that defines who a refugee is and sets out the rights of individuals who are granted asylum and the responsibility of nations that are granted asylum as well as the Protocol Relating to the status of refugees of 1967. As India doesn’t have a national refugee protection framework and as it continues to grant asylum to a large number of refugees from neighbouring states since independence, it is crucial to look at how does India deal with vexed question of refugees and migrants within its territory. And, more importantly, it is also important to assess that in the absence of any distinct framework, how India confronts the challenge of migration within its existing liberal constitutional framework. In this paper, the protracted conflict over the question of illegal immigrants in Assam and the Supreme Court monitored ongoing exercise of drafting a National Register of Citizens for detecting the illegal immigrants in the state is taken as a case study in order to understand the approach to Indian state apparatus towards the challenge of massive migration of people into its territory under the aegis of the liberal constitutional framework under democratic conditions in India. The first section of the paper would attempt to broadly trace how the notions of territoriality and identity were perceived in the foundational constitutional framework that shaped the idea of citizenship at the time of the commencement of the Indian constitutional order by briefly studying the constituent assembly debates on the question of citizenship in the independent republic of India. The second section of the paper would assess the approach to the Indian constitutional state in safeguarding the basic human rights of the immigrants in Assam and how it dealt with the threats of forced eviction and violence against the suspected immigrants. The third section of the paper would assess how the imperatives of political expediency and electoral mobilization impacted the constitutional discourse on immigration and citizenship in the context of anti-foreigners movement in Assam.

The Constitutional Vision of Indian Citizenship

A cursory glance at the constituent assembly debates will reveal that the constitution makers of India had indeed taken a liberal and inclusive view of citizenship for the new liberal democratic dominion of India. The formal adoption of *jus soli* i.e. the principle of birth as the precondition for granting citizenship to a person within the union is emblematic of the fact that the Indian constitutional moment has displayed considerable amount of maturity and far-sightedness by

dissociating the issue of citizenship from nationality, therefore rejecting the bloodline based exclusive principle of citizenship i.e. *jus sanguinis*, for a newly founded nation that is ethnically, linguistically and religiously diverse and that has witnessed the atrocious potential of communal passions and narrow ethnic prejudices in the course of the partition. Thus, it was befitting for a liberal democratic secular constitutional commencement of a territorially defined political nationhood would adopt *jus soli* as its modus operandi for determining the question of citizenship. But a more closer reading of the multitude of voices in the Constituent Assembly would reveal that the temptations of underlying suspicions and skepticism which are communally surcharged did not altogether evade the consciousness of the constitution makers, especially at a time when religious logic of collective existence have shown the propensity of tearing apart a syncretic civilization into two separate states. The assembly has witnessed concerns over the loyalty of muslim citizens who crossed over to Pakistan upon the declaration of partition on religious grounds in order to escape the majoritarian communal pogrom but returned back to India after assurance of their safety and well being. Their very act of crossing over to Pakistan in the first instance, no matter under what kind of adversarial conditions, has been viewed as an act of breach of trust on the part of muslims against India and hence the suspicion regarding their return to India for dubious intentions or for fomenting instability in India at the behest of Pakistan. This suspicion has catapulted the implicit difference in attributing the movement of Hindu “refugees” from Pakistan and the muslim “migrants” from Pakistan, clearly denoting the difference in perceiving the intention, agency and circumstances of migration by hindus and muslims from Pakistan in the eyes of the Indian state. Moreover, the difference in treatment meted out to the hindu migrants and muslim migrants is also palpable in the absence of any rigid legal procedure for the hindus of Pakistan to enter India, whereas the muslims who left India during violence and again wanted to return back of India from Pakistan were subjected to higher standards of scrutiny with legitimate permit document, an implicit manifestation of suspicion towards the returning muslims. The difference in treatment is manifested in the words of Ambedkar in the assembly. “The persons coming from Pakistan to India in the matter of their aquisition of citizenship on the date commencement of the Constitution are put into two categories-those who have come before 19th July 1948, and those who have come afterwards. In the case of those who have come before the 19th July 1948 citizenship is automatic. No conditions, no procedure is laid down with regard to them.”. Whereas, for muslims who went to Pakistan and came back had to “procure a permit which was given to him by the Government of India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit system’”. The communal paranoia in some sections of the assembly was blatantly found in the words of another member of constituent Assembly, P. S. Deshmukh. “ He told the assembly during the debate of citizenship, “I think that we are going

too far in this business of secularity. Does it mean that we must wipe out our own people, that we must wipe them out in order to prove our secularity, that we must wipe out Hindus and Sikhs under the name of secularity, that we must undermine everything that is sacred and dear to the Indians to prove that we are secular? I do not think that that is the meaning of secularity and if that is the meaning which people want to attach to that word "a secular state". I am sure the popularity of those who take that view will not last long in India. If the Muslims want an exclusive place for themselves called Pakistan, why should not Hindus and Sikhs have India as their home? We are not debarring others from getting citizenship here. We merely say that we have no other country to look to for acquiring citizenship rights and therefore we the Hindus and the Sikhs, so long as we follow the respective religions, should have the right of citizenship in India and should be entitled to retain such citizenship so long as we acquire no other. I do not think this claim is in any way non-secular or sectarian or communal." Beyond the communal prejudice, the reservations over the returning back of muslims to India who left their homes in India and fled to Pakistan to escape communal attacks , was also to a large extent due to the "property factor" as the houses left by the muslims in India were given to the Hindu refugees who came from Pakistan for shelter. Hence, the concerns of material resources were always inextricably linked with the ethnic and religious schism that migration catapulted in India from the very outset of Indian constitutional commencement. Hence, while on one hand, as it is clear that Indian adoption of *jus soli* as a principle of citizenship reinforces its commitment to inclusivity and secularism by granting equal treatment to migrants of all religion, the underlying Hindu majoritarian predilections can be traced in the debates of constituent assembly and the legal modalities and parlance of the Indian laws and amendments on citizenship in the subsequent years, which would push India eventually towards the racially defined nationality – based *jus sanguinis* notions of citizenship, repercussion of which is being felt in full swing in the contemporary political order in India.

Indian Liberal Constitutional Framework and the Question of Immigrant in Assam

The political discourse in the state of Assam regarding the issue of illegal immigrants since 1978 provides a curious case of how the Indian constitutional state dealt with the question of migration and protection of their basic human rights. On the outbreak of civil war of 1971 in East Pakistan, when India faced huge influx of refugees from East Pakistan into its north-eastern states, India took a two-pronged approach to deal with the crisis. First, despite India's fragile economic conditions and its own challenges of nation building, India hosted the refugees from East Pakistan and provided them with basic essential amenities for survival. Second, India first diplomatically tried to maneuver and then resolved the crisis militarily by liberating the people of East Pakistan from the repressive regime of West Pakistan. However, all refugees from East Pakistan did not return back to the newly created state of Bangladesh and eventually got assimilated in the population of India's northeastern states by illegal means. Though, the menace of illegal migration in the eastern and North-eastern parts of India from the erstwhile East Pakistan (present Bangladesh) has been a long-drawn phenomenon. Such massive exodus of

people gradually created suspicion, anxiety and anger amongst the indigenous people of Assam as the presence of immigrants led to a perceptible change in the demographic character of Assam. The magnitude of the mass inflow was demonstrably noticed particularly during the 1978 Assam State elections. There was a precipitous increase in the population of Assam in the post-1971 era which further reiterated the threat of fundamentally marginalizing the indigenous population of Assam. This paved the way to a powerful protest movement in Assam by the indigenous groups to immediately detect and deport the illegal migrants from Assam. This protest movement against the foreigner migrants gained considerable momentum in between 1979 to 1985 led by All Assam Students Union (AASU). It was a phase which saw substantial violence and bloodshed in Assam in the light of unrestricted antagonism against illegal migrants of Assam which, due to political opportunism, took a communal colour. The detection of illegal immigrants became difficult as the Bengali muslims as well as hindus got co-opted with the indigenous Assamese hindus and muslims in the state. Though the movement against the foreigners did not brook any communal condition, i.e. the protesters wanted the deportation of all immigrants regardless of their religion, it indeed took a communal colour. The decision to hold elections before detecting and deporting the Bangladeshi migrants in 1983 gave further spark to the already exacerbating imbroglio. One of the most violent and atrocious fallout of the Assam crisis was the Nellie massacre of 1983. The Nellie riots witnessed the genocidal slaughter of over 3000 people, mostly Muslims, in the district of Nagoan in Assam. Even, the post riots relief distribution also witnessed a discriminatory approach against the muslim victims. The culmination to the stints of protracted violence was the signing of Assam Accord in 1985 under the Prime Ministership of Rajiv Gandhi. The Assam Accord emphasized upon the drafting of a NRC for detecting the illegal migrants of Assam who came to the state after 24th march, 1971 and deporting them back to Bangladesh. This accord gave legal sanctity by adding an additional clause in the Citizenship law as Article 6A that mandates the specific formulation of NRC in the state of Assam. However, administrative lacuna coupled with political vacillation emanating from electoral pragmatism kept the process of NCR deferred lackadaisically for almost three decades. The imperatives of vote bank politics can be attributed to this delay, as pandering of the anxieties and vulnerabilities of the immigrants population guaranteed their solid support to the political parties. The enactment of the The Illegal Migrants (Determination by Tribunal) Act of 1983 that described the procedures to detect illegal immigrants (from Bangladesh) and expel them from Assam. However, as a considerable departure from the other existing laws on immigration and detection of foreigners, this law shifted the onus of proving the citizenship from the person concerned to the state. For the change in this clause, though the argument used by the government was that it was trying to protect the common people from undue harassment of law, it was widely believed that the incumbent government deliberately drafted a weak foreigners detection act so that it can pacify the anti-foreigners movement by the act on one hand and implicitly protect the immigrants on the other hand, who forms its formidable vote bank. Finally, it took almost two decades for the judiciary to squash the ineffective IMDT Act. But what is crucial is that the Supreme Court, while quashing the act, took a palpably hard stand on the issue

of immigrants by calling them “external threats of national security” and explicitly called out the muslim migrants to be a larger threat as they were “perceived” to be in larger number. Such alarmist and communal pronouncement from the very custodian of the fundamental right of the people can be perceived as an indication to the change in the demeanor of the Indian liberal constitutional regime. It is probably crucial in this regard to underline the fact that Indian constitution not only guarantees fundamental rights only to its citizens but also to the non-citizen, some basic rights like right to equality and right to life are conferred upon. Apart from the judicial pronouncements, the lexicon and conditionalities in the subsequent amendments of 1986 and 2003 in the citizenship law is also suggestive of the slow but sure shift of the predilection of the Indian state from the principle of *jus soli* to *jus sanguinis*. It is not unprecedented, as it was the constituent assembly that conferred the discretion of defining the citizenship laws on the parliament trusting the wisdom and ingenuity of the future political leadership. However, again the process of NRC got a fillip in 2005 when UPA I revived the process. But again it was kept in the cold due to political impediments. Interestingly, it took the Supreme Court to authoritatively intervene in the matter and the court gave strict directive in 2013 to initiate the process of framing the NRC draft responding sincerely and immediately to the process. After decades of vacillation, the final draft of the NRC in Assam was finally published in August 2019 and it was found that out of 3.3 crores people of Assam, 2.9 crores found their names successfully registered for NRC. Remaining almost more than 19 Lakh people were found out of the final draft of NCR.

A Case of Evasive Constitutionality?

However, though the NRC process in Assam under the auspices of the Supreme Court in India, appears to have been concluded after a vacillation of more than three decades, the entire process of NRC reveals intriguing revelations of the interaction of Indian liberal constitutional regime with the question of immigrants in Assam. First, the logic of the conduct of the NRC appears to be on slippery grounds as the section 6A of the citizenship law, the provision that mandated NRC, is waiting judicial scrutiny for assessing its constitutional validity. If the section is found to be unconstitutional, then the entire process of NRC would also be declared unconstitutional. Moreover, the reports and data regarding the presence of large scale illegal immigrants in Assam that the Supreme Court referred to for expediting the process, is found to be largely exaggerated and distorted as the final outcome of the NRC revealed that the number of “potential” immigrants are far lesser than what was speculated. Second, the process of ascertaining the citizenship of a person has the potential to be flawed given the insurmountable technical impediments that such a task involves. While it might be true that the process conducted under the auspices of the apex court has been largely robust and the possibility of intended biases and prejudices in the process might be minimum. But to be technically transparent in accurately ascertaining the citizenship and identity of a populace, who might have migrated under adversarial and unfavourable historical, political and social circumstances, is undoubtedly a herculean feat. The process of scrutiny that required the people to produce

vintage documents to establish their national identity, which was subjected to verification by bureaucratic arbitrariness, diluted the transparency in maintaining the yardsticks to ascertain a person's citizenship. Moreover, the poor, impoverished, unlettered and rural sections of people were exposed to unimaginable struggle as they were more likely to be unable to furnish the requisite documents to prove their nationality, given their lack of awareness and capacity regarding conservation of such documents. Especially, the women population of the lower strata was further more at the receiving end in the scrutiny process, given their complex identity dynamics in the quagmire of their pre-marriage and post-marriage name, which makes it difficult to establish their proper legacy documents. As the people had to travel with their family considerable distance for appearing in the NRC verification centres, the entire process took a huge financial toll on the poor people. Even after the list is out, the process of filing fresh appeals for re-verification of documents for the people whose names are excluded in the current list will be tedious and expensive that is shrouded in the garb of further uncertainty. Furthermore, the Foreigners Tribunal (FT), which is mandated to hear the appeals, is few in numbers considering the possibility of appeals from 19 lakhs applicants. The FTs are usually comprised of lawyers with no prior judicial experience, thus indicating that the re-verification process based on the fresh appeals might be arbitrary and devoid of complete transparency. Third, the outcome of the process appears to be equally ambiguous. It is still not clear that after the detection of illegal immigrants, how the government would deal with them. There are a number of ominous speculations about the possibilities -- that is further spreading the fear amongst the people. First, the possibility of deporting the foreigners back to Bangladesh is implausible as Bangladesh has never admitted, and is unlikely to admit in the future, that these immigrants are residents of Bangladesh. Instead, they have always maintained that NRC is an internal matter of India. Second, the possibility of detaining such huge number of immigrants in jails would turn Assam virtually into a "prison-state" which is also an imprudent eventuality. Third, the government of Assam might try to convince other friendly States in India to share the demographic burden. Even that would require intense political parleys and compromises. Lastly, there is a speculation that the voting and property rights of such immigrants would be taken away and instead be given special work permit with certain "essential" services like health and education which would render a huge section of people second class citizens. Since, no clear communication on the part of the government or political leadership has been done yet, uncertainty and ambiguity looms large over the ultimate outcome of process. As the process is conducted under the auspices of the highly revered Supreme Court of India that is posited as the sole protector and upholder of the Constitutional sanctity in India, it raises questions on the commitment of Indian constitutional legal democratic framework to offer a protection regime to the migrants population. India's judicial and constitutional history is replete with instances when the Supreme Court rose repeatedly to such occasions in which attempts are made to violate or jeopardize the Constitutional supremacy and fundamental rights by the politically motivated legislature or the

executive. Despite all its records of institutional uprightness, there are emerging vocal critics who argue, with conviction and reason that the custodian of our virtuous and benevolent Constitution has failed to protect its sanctity in regard to the NRC question in Assam. In the course of the drafting of the NRC in Assam, the hardships caused to the people and the rights that were violated coupled with the possibility of a mammoth human rights crisis that the outcome of the NRC process is capable of creating, makes the possibility of a viable protection regime under constitutional auspices, appear bleak.

Political Expediency and the Indian Constitutional Order

The imperatives of political expediency and vote bank politics have always played a very important role in the political discourse of migration in India. As the strong political impact of mass mobilization during the anti-foreigner's movement which catapulted the political outfit at the helm of the movement to power in Assam and communal violence during Niall massacre of 1983 during state elections reveals, how the political polarization and the construction of the "other" plays a pivotal role in the electoral mass mobilization in Assam. If the IMDT Act of 1983 and the forcible elections of 1983 despite the boycott shows the political opportunism of the ruling elite in safeguarding the immigrants as vote banks, the rhetoric of NRC and the promise to facilitate the ouster of illegal immigrants often addressed as 'termites' by the ruling dispensation led by Bharatiya Janata Party (BJP) presently shows the communal "otherisation" of migrants which finds or is yet to find a constitutional culmination in the proposed Citizenship Amendment Bill of 2016 which denies citizenship rights only to the muslim migrants in India. Hence, the changing nature of the political rhetoric as well as constitutional substance that is increasingly linking the question of nationality with citizenship and the question of migration to a communally shaped view of security is probably drifting India towards a citizenship regime which is akin to a *jus sanguinis* regime. In the current circumstances, the constitutional promise of inclusive citizenship and fundamental rights of the citizens and non-citizens has exposed the perennial dichotomy between the intentions of "constitutional state" and actions of "political state". But it also seems that the moral dressing of the constitutional state in India which should have offered at least an assurance of protection regime for immigrants is gradually unraveling due to the inexorable pressure of the "political state" that is encumbered by the imperatives of ossified identities and the project of an exclusive citizenship regime.

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