

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION
WRIT PETITION (CIVIL) NO 562 OF 2012

IN THE MATTER OF:

- 1) ASSAM SANMILITA MAHASANGHA,
(AN INDIGENOUS PEOPLES ORGANISATION
OF ASSAM),
HOUSE NO 10, CHANDMARI COLONY,
GUWAHATI-781003, ASSAM
REPRESENTED BY ITS WORKING PRESIDENT,
MR. MATIUR RAHMAN
- 2) NATIONAL DEMOCRATIC FRONT OF BODOLAND
(PROGRESSIVE)
HEADQUARTERED AT VILLAGE: GOLMAGAON,
P.O. UDALGURI, DISTRICT-UDALGURI,
BODO TERRITORIAL AUTONOMOUS DISTRICT, ASSAM
REPRESENTED BY ITS GENERAL SECRETARY,
MR.GOBINDA BASUMOTORY
- 3) INDIGENIOUS TRIBAL PEOPLES FEDERATION,
VILL & P.O BORDEURIGAON,
NARAYANPUR, DISTRICT: LAKHIMPUR,
ASSAM
REPRESENTED BY ITS PRESIDENT,
MR RANA PRASAD DEURI

PETITIONERS

VERSUS

- 1) UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI-110001

- 2) MINISTRY OF EXTERNAL AFFAIRS,
REPRESENTED BY THE SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS,
SOUTH BLOCK,
NEW DELHI-110001

- 3) THE REGISTRAR GENERAL & CENSUS
COMMISSIONER OF INDIA,
2 A, MAN SINGH ROAD,
NEW DELHI-110011
REPRESENTED BY ITS SECRETARY

- 4) THE ELECTION COMMISSION OF INDIA,
NIRVACHAN SADAN.
ASHOKA ROAD,
NEW DELHI
REPRESENTED BY ITS SECRETARY,

- 5) STATE OF ASSAM,
REPRESENTED BY ITS CHIEF SECRETARY,
ASSAM SECRETARIAT,
DISPUR CAPITAL COMPLEX,
G.S. ROAD, GUWAHATI-781006,
ASSAM

CONTESTING RESPONDENTS

6) ALL ASSAM STUDENTS UNION,
'SWAHID NIYAS BHAWAN',
M.G ROAD, UZAN BAZAR,
GUWAHATI-781001, ASSAM
REPRESENTED BY ITS GENERAL SECRETARY,
MR. TAPAN KUMAR GOGOI

PROFORMA RESPONDENT

A WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ENFORCEMENT OF THE
PETITIONERS RIGHTS GUARANTEED AND PROTECTED
UNDER PART-III OF THE CONSTITUTION OF INDIA

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS LORDSHIPS OTHER COMPANION
JUSTICES OF THE SUPREME COURT

THE HUMBLE PETITIONER OF THE PETITION ABOVENAMED

MOST RESPECTFULLY SHOWETH:

- 1) The petitioner no 1, 2 and 3 are un-registered bodies. The instant writ petition has been preferred by the petitioners in the representative capacity of a majority of the indigenous tribal and non-tribal people living in Assam. The petitioners herein have never approached any of the respondents seeking a relief similar to the relief sought for in this writ petition. However they did submit memorandum dated 28/05/2010 (Annexure P-11 Colly) to the President of India,

Prime Minister of India, Union Home Minister and the Union Law Minister for repeal of Section 6A of The Citizenship Act, 1955. However no favourable response in this regard has been received till date. The petitioners through the instant writ petition is invoking the civil original writ jurisdiction of this Hon'ble Court to issue a writ, order or direction of like nature against all the respondents praying inter-alia that Section 6A of The Citizenship Act, 1955 inserted into the principal Act vide The Citizenship (Amendment) Act, 1985 (Act No 65 of 1985) w.e.f 07/12/1985 be struck down as illegal and invalid, being, ultra-vires the Constitution of India.

2) **DESCRIPTION OF PARTIES**

- a) The petitioner no 1 is a un-registered society and a non-political confederation of 60 organization of indigenous people's communities living in Assam namely Kochari, Bodo, Rabha, Miching, Tiwa, Deuri, Dimacha, Karbi, Thengal, Sonowal, Mech, Moran, Mattak, Ahom, Chingphow, Tai-phake, Tai-Turung, Tai-Aiton, Garia-Mari-Deshi (Assamese Muslim of Mongoloid Origin), Kalita, Kayastha, Brahmin, Koivortta, Nat-Yogi, Assamese Shikh, Sut and also, Naga, Mizo, Manipuri, Michi, Aadi, Garo, Khachi, Jayantia etc . It was established on 17th April, 2007 at the Talatal Ghar, Rangpur (the old Capital of Ahom Kingdom), Sivasagar, Assam. "Unity among the Indigenous People" is the motto of the petitioner no 1. The primary aim of the petitioner no 1 is to protect and preserve the land rights, culture, rituals, and religious beliefs of the indigenous people of Assam. The petitioner no 1 is being represented by its Working President, Mr. Matiur Rahman, who is their authorized representative.

- b) The petitioner no 2 is a un-registered society and non-political organization which has been struggling to assert the socio-political, socio-economic and socio-cultural right and justice of the oppressed, dominated and marginalized Boro and other indigenous tribal people, the sons of the soil of Assam for the last twenty seven (27) years. It was formed on the 3rd October, 1986, with the nomenclature as the Boro Security Force (abbreviated as the BSF) and adopted the means to fight with arms. Its name was later on changed to the National Democratic Front of Boroland (abbreviated as the NDFB) on the 24th November, 1994, and continued its struggle. It signed a Cease-fire agreement with the Government of India on the 25th May, 2005, and came to the peace process. Unfortunately a small splinter group violated the Cease-fire agreement in the last part of 2008 and retreated back to the jungle. However the major portion of the organization stood stead fast to the Cease-fire agreement and is in dialogue with the government for the last 7 years. For distinct identity and differentiate the identity from the break-away group a slight change in the name of the organization was made in the year 2009 as the National Democratic Front of Boroland (Progressive) (abbreviated as the NDFB(P)). The petitioner no 2 is being represented by its General Secretary, Mr. Gobinda Basumotory, who is their authorized representative.
- c) The petitioner no 3 is a un-registered society and a non-political organization of the tribal people of Assam. This organization was established on the 19th February, 2009. The petitioner no 3 is working for protection and for the benefit of the indigenous tribal people of Assam. One of their principal aim is to ensure full implementation of the UN Declaration of the Rights of the Indigenous People as well

as for the proper preservation of the Tribal Belts and Blocks established in the State of Assam. The petitioner no 3 consists of several different tribal organizations of Assam, namely, Sonowal-Kachari Chatra Santha, Sonowal-Kachari Sangram Samiti, Thengal-Kachari Chatra Santha, Thangal-Kachari Jatiya Sangathan, Nikhil Rabha Chatra Santha, Moran Chatra Santha, Matak Yuva-Chatra Sanmilan, Deuri Sahitya Sabha, All Bodo Shanti aru Adhikar Mancha, All Tiwa Chatra Santha, Konch-Rajbanshi Chatra Santha, Mec-Kachari Chatra Santha and Takam Miching Pin Kabang. The petitioner no 3 is being represented by its President, Mr. Rana Prasad Deuri, who is their authorized representative. It is stated that there is no adverse interests between the petitioners.

- d) The respondent no 1 is the Ministry of Home Affairs who is primarily responsible for dealing with the issue of illegal trans-border infiltration. The petitioners understand that this is the nodal ministry for detection of illegal immigrants. It is also a signatory to the Assam Accord. The respondent no 2 is the Ministry of External Affairs whose duty will be to initiate bi-lateral talks with Bangladesh and draw up an effective and time bound plan of action for deportation of the illegal immigrants. The respondent no 3 is the authority under whom the National Register of Citizens is prepared. The respondent no 4 is the Election Commission of India who has a vital and definite role to ensure no names of illegal immigrants find place in the electoral rolls. The respondent no 5 is the State of Assam whose primary duty is to effectively implement the measures at the field level for detection and deportation of the illegal immigrants. The proforma respondent no 6 is the organization who

spearheaded the Assam Movement and with whom the government of India signed the Assam Accord.

3) LIST OF DATES AND EVENTS:

The relevant list of dates and events has been elaborately dealt with under the caption “Synopsis and list of Dates” (Pages B-LL). Therefore for the sake of brevity the same is not repeated in extenso herein under:

- a) The Nehru-Liaquat Agreement was signed on 8th April, 1950 a copy of which is annexed hereto and marked as **Annexure P-1 (Pages 65-73)**
- b) A Treaty for friendship, co-operation and peace, popularly known as the Indira-Mujib Agreement was signed between India and Bangladesh on 19/03/1972, a copy of which is annexed hereto and marked as **Annexure P-2 (Pages 74-79)**
- c) The All Assam Students Union submitted a letter on 18/01/1980 to the Prime Minister, a copy of which is annexed hereto and marked as **Annexure P-3 (Pages 80-85)**
- d) The All Assam Students Union submitted a letter on 25/06/1980 to the Prime Minister, a copy of which is annexed hereto and marked as **Annexure P-4 (Pages 86-88)**
- e) The Assam accord was signed on 15/08/1985 between AASU, AAGSP, Central and State Government, a copy of which is annexed hereto and marked as **Annexure P-5 (Pages 89-96)**
- f) A copy of the statement of objects and reasons for The Citizenship (Amendment) Act, 1985 (Act No 65 of 1985) was published in the Gazette of India, Extra-Ordinary, Pt

II, Section 1 on 18/11/1985, a copy of which is annexed hereto and marked as **Annexure P-6 (Pages 97-98)**

- g) The then Governor of Assam, Lt. Gen (Retd.) S. K. Sinha submitted an exhaustive report dated 08/11/1998 to the then President of India on the grave threat posed by the unabated influx of people from Bangladesh to Assam, a copy of which is annexed herewith and is marked as **Annexure P-7(Pages 99-143)**
- h) The Minister of State, Home Affairs submitted a statement to the Parliament indicating therein that the estimated number of illegal Bangladeshi immigrants in India as on 31/12/2001 was 1, 20, 53,950. Out of the total figure of 1.20 crores, 50 lacs illegal Bangladeshi immigrants were in Assam alone. A copy of the record of proceedings of the parliament dated 14/07/2004 is annexed hereto and marked as **Annexure P-8 (Pages 144-146)**
- i) The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly during its 61st session at UN Headquarters in New York City on 13 September 2007, a copy of which is annexed hereto and marked as **Annexure P-9 (Pages 147-172)**
- j) The Chief Minister, Assam vide his letter dated 04/08/2008 requested the Prime Minister to ensure that the Government of India take a decision for updating of National Register of Citizens early in accordance with the suggestions made in the modalities. A copy of the letter dated 04/08/2008 from Chief Minister, Assam is annexed hereto and marked as **Annexure P-10 (Pages 173-174)**
- k) The petitioners organization submitted memorandums dated 28/05/2010 to the to the President of India, Prime Minister of India, the Home Minister and the Law

Minister, copies of which are annexed hereto and marked as **Annexure P-11 COLLY (Pages 175-198)**

- l) The Secretary to the Government of Assam, Home & Political Department vide letter dated 29/08/2012 forwarded to the center the report of the cabinet sub-committee with regard to updating of the NRC. A copy of the letter dated 29/08/2012 is annexed hereto and marked as **Annexure P-12(Pages 199-200)**
- m) The petitioners herein again submitted a memorandum dated 24/09/2012 to the Prime Minister with regard to the identification and deportation of illegal foreigners from Assam according to the provisions of Indian Constitution and existing law, a copy of which is annexed hereto and marked as **Annexure P-13(Pages 201-205)**
- n) The Government of Assam published a White Paper on 20/10/2012 giving selective information relevant to the Foreigners' Issue. A copy of the white paper dated 20/10/2012 is annexed hereto and marked as **Annexure P-14(Pages 206-290)**

4) **THE ILLEGAL IMMIGRANTS INFILTRATION ISSUE**

The Burmese ceded Assam to the British on February 24 as per the Treaty of Yandabo, thus bringing to end Ahom rule in Assam which had begun in the 13th century. The British annexed placed Assam under the administrative unit of Bengal Province.

In the wake of partition of India, the State of Assam was exposed to a situation where a large number of persons who were permanent residents of the erstwhile East Pakistan (now Bangladesh) had exercised their choice of migrating to India from East Pakistan and settling down in different parts of Assam. The people included in this

category were Indian national even before the partition. Subsequently, by migrating to India at the time of partition, they had consciously adopted Indian citizenship. In other words, these people had migrated from the one part of the un-divided India to the other. The founding fathers of the constitution being conscious of the ground realities had provided for a Constitutional mechanism in the form of Article 6 of the Constitution of India. Accordingly the citizenship rights of such persons migrating to India at the commencement of the constitution are governed by Article 6 of the Constitution of India. However, in sharp contradiction to such migration of Indian citizens from the erstwhile East Pakistan to the Indian Territory on account of historical and political reasons, the State of Assam has also been a mute spectator to a large number of Bangladeshi Nationals who have illegally crossed over the Indo-Bangla border in the post partition era. These “illegal immigrants” have stealthily sneaked in through the porous Indo-Bangla border and entered Assam. It is believed that initially such illegal migration was driven by economic reasons. However, taking advantage of the lack of adequate protection of the international border, such illegal migration of Bangladeshi Nationals into India Territory continues unabated even today. Due to the complete lack of political will to tackle such external aggression by the Bangladeshi Nationals, these people continued to remain in Indian soil for past many years thereby posing serious threat to the question of identity of the indigenous people of Assam as well as security of the nation.

It is stated that the demographic invasion continues unabated even today, encouraged by governments, for various reasons. It is recorded that between 1905 and 1921, the immigrant population from East Bengal increased four

times over. Assam has had the highest rate of population growth in India since the beginning of this century. Between 1961 and 1971, the proportion of Assamese declined for the first time and that of illegal migrants increased; between 1971 and 1981, 1.2 million migrants were added to a population of 14.6 million in 1971, and the number of registered voters increased inexplicably from 6.5 million in 1972 to 8.7 million in 1979. Clearly, the demographic invasion and its electoral returns, and the inevitable conflict for livelihoods, land and political power had begun.

The year 1979 saw Assam explode into a massive agitation against illegal immigration, with an agenda of compelling the government to identify and expel illegal immigrants and prevent new immigration. Though the agitation was mostly non-violent, there was also the Nellie massacre that left 3,000 dead after the controversial 1983 state elections. The agitation ended in 1985 following the Assam Accord that was signed by the agitation leaders and the Government of India. The agitation leaders formed a political party, Asom Gana Parishad, which came to power after the Assembly elections of 1985. But the simmering anger and discontent amongst the indigenous tribes, that the government was not preventing illegal migration from Bangladesh, was not extinguished. Electoral politics and the lust for minority votes has deepened the fault lines.

The petitioners categorically state that this is not a communal or Hindu-Muslim issue, but an issue of foreign infiltrators who are inundating the land that for centuries has belonged to the Assamese and tribals. It is basically an issue between Indians and non-indians/ foreigners.

Your Petitioner submits that it is high time that rest of the country realize and appreciate that Assam's problem of illegal influx is not at all her own making. On the contrary

millions of these illegal migrants have been forcible thrust upon her. While the rich natural resources of Assam are undoubtedly national assets, her problems, particularly those which are not of her own creation, certainly must be dealt as a national problem. After all, the entire debate revolves around the issue of Citizenship including the right to franchise. The phenomenon of illegal presence of millions of foreigners in the soil of Assam is known to the Central Government, State Government, Election Commission, Legislature and the Judiciary. Assam has been facing a silent invasion for decades. As such the genuine threat to the entire country's territorial integrity cannot be over emphasized. It is needless to say and submit that Assam is the integral part of India, got her freedom from the British rule on August 15, 1947, but she is yet to get her freedom from the fear of being extinct in the hands of illegal immigrants coming from erstwhile East Pakistan and present Bagladesh. If the said Section 6-A of the Citizenship Act, 1955 is not struck off being ultravires, it would be impossible to free Assam from the clutches of illegal immigrants, who have entered Assam in view of the impugned provisions of the aforesaid amended Act.

5) **RELEVANT CONSTITUTIONAL PROVISIONS VIS-À-VIS
CITIZENSHIP OF INDIA**

The subject of citizenship is dealt with in Articles 5 to 11 of the Constitution. Article 5 provides that every person who has his domicile in India and satisfies one of the three conditions (a), (b) and (c) shall be a citizen of India. Article 6

deals with persons who have migrated to the territory of India from Pakistan and lays down conditions under which a person would be a citizen of India. It divides such persons into two classes; i.e. those who migrated to India before 19-7-1948 and those who migrated after that date.

The first class of persons is deemed to be citizens if they have been ordinarily resident in India for six months after the migration. The second class of persons -can be deemed to be Indian citizens if they register themselves as such. The words "At the commencement of the Constitution" are expressly used in these two articles and thus there is no difficulty in appreciating that they deal with citizenship of persons as existing on that date.

Then follows Article 7 which begins with a non-obstante clause and is in the nature of a proviso to the earlier two articles. Article 7 provides that a person who would be a citizen of India by virtue of the provisions in Articles 5 and 6 shall not be deemed to be such if he "has after the 1st day of March 1947 migrated from the territory of India to the territory now included in Pakistan".

It appears necessary to read Article 7 in the light of the earlier Articles, as these earlier articles deal with citizenship on the date of the commencement of the Constitution, it seems reasonable to infer that Article 7 also deals with a situation on that date.

6) **RELEVANT STATUTORY PROVISIONS**

A) Section 6A in The Citizenship Act, 1955 (IMPUGNED)

6A Special provisions as to citizenship of persons covered by the Assam Accord.

(1) For the purposes of this section-

- (a) "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;
- (b) "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946), and the Foreigners (Tribunals) Order, 1964 by Tribunal constituted under the said Order;
- (c) "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;
- (d) a person shall be deemed to be of Indian origin, if he, or either of his parents or any of his grandparents was born in undivided India;
- (e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order,

1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

- (2) Subject to the provisions of sub- sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966 .
- (3) Subject to the provisions of sub- sections (6) and (7), every person of Indian origin who-
 - (a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and
 - (b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and
 - (c) has been detected to be a foreigner;

shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (thereafter in this sub- section referred to as

the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

Explanation.- In the case of every person seeking registration under this sub- section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub- section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,-

- (i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;
- (ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

- (4) A person registered under sub- section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assemble or Parliamentary constituency at any time before the expiry of the said period of ten years.
- (5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.
- (6) Without prejudice to the provisions of section 8,-
 - (a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year a declaration that he does not wish to be a citizen of India, such person shall not be deemed

to have become a citizen of India under that sub-section;

- (b) if any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation.- Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

- (7) Nothing in sub-sections (2) to (6) shall apply in relation to any person-
 - (a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, for year is a citizen of India;

- (b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, for year under the Foreigners Act, 1946 (31 of 1946).
- (8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.]

B) The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003

4. Preparation of the National Register of Indian Citizens.-

- (1) The Central Government shall, for the purpose of National Register of Indian Citizens, cause to carry throughout the country a house-to-house enumeration for collection of specified particulars relating to each family and individual, residing in a local area including the Citizenship status.
- (2) The Registrar General of Citizen Registration shall notify the period and duration of the enumeration in the Official Gazette.

- (3) For the purposes of preparation and inclusion in the Local Register of Indian Citizens, the particulars collected of every family and individual in the Population Register shall be verified and scrutinized by the Local Registrar, who may be assisted by one or more persons as specified by the Registrar General of Citizen Registration.
- (4) During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.
- (5) (a) Every person or family specified in sub-rule (4), shall be given an opportunity of being heard by the Sub-district or Taluk Registrar of Citizen Registration, before a final decision is taken to include or to exclude their particulars in the National Register of Indian Citizens.
- (b) The Sub-district or Taluk Registrar shall finalize his findings within a period of ninety days of the entry being made, or within such reasonable extended time for which he shall record the reasons in writing.

- (6) (a) The draft of the Local Register of Indian Citizens shall be published by the Sub-district or Taluk Registrar, for inviting any objections or for inclusion of any name or corrections for the family or individual particulars collected and proposed to be finally entered in the National Register of Indian Citizens.
- (b) Any objection against a particular entry or for inclusion of a name, or corrections if any, in the Local Register of Indian Citizens may be made within a period of thirty days from the date of publication of the draft of the Local Register of Indian Citizens, spelling out the nature and reasons for the objection in such form as may be specified by the Registrar General of Citizen Registration.
- (c) Subject to the provisions contained in clause (a) of sub-rule (5), the Subdistrict or Taluk Registrar shall consider such objections and summarily dispose off the same within a period of ninety days, and thereafter submit the Local Register of Indian Citizens so prepared to the District Registrar of Citizen Registration who shall cause the entries in the Local Register of Indian Citizens, to be transferred to the National Register of Indian Citizens.

- (7) (a) Any person aggrieved by the order of the Sub-district or Taluk Registrar under sub-rule (5) or sub-rule (6), may prefer an appeal within thirty days from the date of such order, to the District Registrar of Citizen Registration.
- (b) The District Registrar of Citizen Registration shall take a final decision, after giving an opportunity of being heard to the person so aggrieved, within a period of ninety days from the date of appeal.
- (c) In case the appeal is allowed, the particulars shall be entered in the National Register of Indian Citizens.

4A. Special provisions as to National Register of Indian Citizens in State of Assam-

- (1) Nothing in Rule 4 shall, on and after the commencement of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Amendment Rules, 2009, apply to the State of Assam.
- (2) The Central Government shall, for the purpose, of the National Register of Indian Citizens of the State of Assam, cause to carry out throughout the State of Assam for preparation of the National Register of Indian Citizens in the State of Assam by inviting applications from all the residents, for collection of specified particulars relating to

each family and individual, residing in a local area in the State including the citizenship status based on the National Register of Citizens 1951 and the electoral rolls upto the midnight of the 24th day of March, 1971.

(3) The Registrar General of Citizens Registration shall notify the period and duration of the enumeration in the Official Gazette.

(4) The manner of preparation of the National Register of Indian Citizens in the State of Assam shall be such as specified in the Schedule appended to these rules.

C) The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003

[SCHEDULE]

[See Rule 4A (4)]

SPECIAL PROVISIONS AS TO MANNER OF PREPARATION
OF NATIONAL REGISTER OF INDIAN CITIZEN IN STATE OF
ASSAM

1. Definitions.- (1) In this Schedule, unless the context otherwise requires,-

(a) “National Register of Citizens 1951” means the Register containing details of Indian citizens residing

in the State of Assam, as mentioned in the National Register of Citizens which was prepared along with 1951 census under a directive of the Ministry of Home Affairs;

[(b) “electoral rolls up to the midnight of the 24th day of March, 1971” means the electoral rolls containing details of voters prepared by the Election Commission of India or the State Election Commission of the State of Assam in a relevant period upto the midnight of the 24th day of March, 1971.]

(2) All other words and expressions used herein and not defined in Rule 2 of these rules, shall have the meanings, respectively, assigned to them in that rule.

2. Manner of preparation of draft National Register of India Citizen in State of Assam.-

(1) (a) The District Magistrate shall cause to be published the copies of the National Register of Citizens 1951 and [electoral rolls upto the midnight of the 24th day of March, 1971], as available, insufficient numbers and publish it and send the same to the Local Register of Citizen Registration for wide circulation and public inspection in each village and ward.

(b) The Local Registrar of Citizen Registration shall select centrally located public places for display of the records and for issue and receipt of the application forms.

(c) The Local Registrar of Citizen Registration shall be the custodian of the records in the area under his jurisdiction and shall be responsible for its display during the office hours.

(2) The Local Registrar of Citizen Registration shall receive the filled up application forms, at the same place where the applications are issued, and issue the receipt thereof to the applicant.

(3) The Local Registrar of Citizen Registration, after the receipt of the application under sub-paragraph (2) shall scrutinize the applications and after its verification, prepare a consolidated list thereof which shall contain the names of the following persons, namely:-

(a) Persons whose names appear in any of the [electoral rolls upto the midnight of the 24th day of March, 1971] or in National Register of Citizens, 1951;

(b) Descendants of the persons mentioned in clause (a) above.

3. Scrutiny of applications.-

(1) The scrutiny of applications received under subparagraph (3) of paragraph 2 shall be made by comparing the information stated in the application form with the official records and the persons, of whom the information is founding order, shall be eligible for inclusion of their names in the consolidated list.

(2) The names of persons who have been declared as illegal migrants or foreigners by the competent authority shall not be included in the consolidated List:

Provided that the names of persons who came in the State of Assam after 1966 and before the 25th March, 1971 and registered themselves with the Foreigner Registration Regional Officer and who have not been declared as illegal migrants or foreigners by the competent authority shall be eligible to be included in the consolidated list.

(3) The names of persons who are originally inhabitants of the State of Assam and their children and descendants, who are Citizens of India, shall be included in the consolidated list if the citizenship of such persons is ascertained beyond reasonable doubt and to the Satisfaction of the registering authority;

(4) The Local Registrar of Citizen Registration may, in case of any doubt in respect of parental linkage or any particular

mentioned in the application received under sub-paragraph (3) of paragraph 2, refer the matter to the District Magistrate for investigation and his decision and Local Registrar of Citizens Registration shall also inform the same to the individual or the family;

(5) The Local Registrar of Citizens Registration may, in respect of a person who-

(a) was residing in a place other than the State of Assam up to the midnight of the 24th day of March, 1971; or

(b) has shifted from one district to another within the State of Assam up to the midnight of the 24th day of March, 1971,

verify information relating to such person through inter-state correspondence, or, as the case may be, through inter-district correspondence].

4. Publication of consolidated list-

(1) The Local Registrar of Citizens Registration shall, after completion of scrutiny of all applications, prepare the consolidated list village and ward wise and authenticate each entry in the list.

(2) The District Magistrate, shall cause to publish the consolidated list, prepared and authenticated under sub-paragraph (1), as draft of the National Register of

Indian Citizens in the State of Assam, and cause to publish a public notice with regard to publication of the draft National Register of Indian Citizens in the State of Assam in the local newspaper having wide circulation in the village and ward inviting objections and suggestions on it.

- (3) The Local Registrar of Citizens Registration may at any time before the final publication of the National Register of Indian Citizens in the State of Assam may cause or direct to cause verification of names of such persons considered necessary.
- (4) The Local Registrar of Citizens Registration shall take special care in attending the instances of allegation of undue harassment, if brought out their notice during the conduct of verification and take necessary action as he may consider appropriate.
- (5) The report of the verification shall be examined by the District Registrar of Citizen Registration.
- (6) The District Registrar of Citizen Registration shall, by order, and for reasons to recorded in writing for inclusion or, as the case may be exclusion of names, dispose of the report of the verification, and the report of verification which are allowed for inclusion of

names and which are not allowed for inclusion shall be kept separately, village and ward wise along with a list of all such cases.

5. Publication of additional list- (1) After the decision of the District Registrar of Citizens Registration under subparagraph (6) of paragraph 4, the additional list, if any, to the draft National Register of Indian Citizens shall be published in the manner specified under paragraph 2.

6. Claims and objection-

(1) Any person may-

(a) Whose names do not appear in the draft National Register of Indian Citizens published under paragraph 2 or in the additional list published under paragraph 4, file his claim, along with necessary documents in support of thereof; or

(b) Object to inclusion of any name in the draft National Register of Indian Citizens published under paragraph 2 or in the additional list published under paragraph 4, within a period of thirty days from the date of such publication, before the Local Registrar of Citizens Registration.

(2) The Local Registrar of Citizens Registration shall maintain the list of claims received under clause (a) of

sub-paragraph (1) and the objections received under clause (b) of sub-paragraph (1) in separate registers in 'chronological order;

- (3) The Local Registrar of Citizens Registration shall, give a notice to every person, who has filed his claim or objection under sub-paragraph (1) to file documents, if any, in support of his claim or objection, and after giving the reasonable opportunity of hearing to the applicant or objector, dispose of the claim or, as the case may be, the objection.

7. Publication of supplementary list- The Local Registrar of Citizens Registration shall, after the disposal of claims and the objections under sub-paragraph (3) of paragraph 6, prepare and publish a supplementary list for inclusion or deletion of names, as the case may be, and thereafter, the Registrar General of Citizens Registration shall publish the final National Register of Indian Citizens in the State of Assam.

Appeal- any person, not satisfied with the outcome of the decisions of the claims and objections under paragraph 7, may prefer appeal, before the designated Tribunal constituted under the Foreigners (Tribunals) Order, 1964 within a period of sixty days from the date of such order; and on the disposal of

appeal by the Tribunals the names shall be included or deleted, as the case may be, in the National Register of Indian Citizens in the State of Assam.]

7) RIGHTS OF INDIGENOUS PEOPLE

- a) The Sixth Schedule of the Indian Constitution provides a separate administrative system for the tribal areas of the Northeastern region to protect the tribes from political and economic exploitation. To safeguard the rights and interests of the tribal people in India, the 'scheduled areas' were formulated under the Indian Constitution. The Indian Constitution envisaged bringing about development and progress among the tribal communities and further assimilation of these groups with mainstream Indian society. The various provisions of the 6th Schedule also allowed these indigenous people to preserve their distinct identity, history, customary practices and traditional beliefs. However the constitutional safeguards have not necessarily guaranteed them their share of special rights in as much as the impugned provision seeking to confer citizenship to the illegal immigrants have uprooted the indigenous people from their lands and denied of their livelihoods.

b) The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly during its 61st session at UN Headquarters in New York City on 13 September 2007. It is submitted that India is a signatory to the aforesaid Declaration. The Declaration sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It also "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations". It "prohibits discrimination against indigenous peoples", and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development". The goal of the Declaration is to encourage countries to work alongside indigenous peoples to solve global issues, like development, multicultural democracy and decentralization. According to Article 31, there is a major emphasis that the indigenous peoples will be able to protect their cultural heritage and other aspects of their culture and tradition, which is extremely important in preserving their heritage.

c) Chapter X in the Assam Land and Revenue Regulation, 1886 (hereinafter shortly called the Regulation): The Regulation which came into force on 1st of July, 1886 gave the State a systematic Regulation of Land Revenue Administration practically covering all the issues for the first time. The Regulation, the Rules framed thereunder, the Assam Land Record Manual, 1906, the Assam Land Revenue Reassessment Act, 1936 and the Assam Resettlement Manual, 1936 constituted the edifice of Land Revenue Administration formulated by the British. This system of Land Revenue Administration which was put in place by the British about over 100 years has been continuing till date, with certain modifications. There were no well defined safeguards to the Ryots (lessees or tenants) belonging to the backward classes either during the Ahom, Koch or Kachari Rules or during the East India Company and subsequently during the British era, separate from those available to the other general class of lessees. This was primarily because land in this part of the country was still not scarce and population relatively sparse. For the first time during 1930s undesirable impact of the large number of migrants and other people mostly from eastern parts of the then Bengal were felt, though the migration to char areas and the sparsely populated parts of Assam were continuing by then.

Under these circumstances and in order to maintain peace and order the then administration were compelled to delimit certain areas as “closed” to the immigrants and non tribals by means of imaginary lines with a view to protect the predominantly tribal inhabited areas. This was popularly known as “Line System”. The “Line System”, however, did not work satisfactorily. In 1936, the Government formed a committee with Mr. Hockenull as Chairman to enquire into the working of the “Line System”. The committee, in its report, recommended for ejection of the unauthorized occupants from the closed villages. The committee also recommended enlargement of the prohibited area for protection of the backward communities from the land hungry outsiders. Having regard to the recommendations of the committee noticed above the Government in 1939 decided in principle that whole mouzas or compact parts of the mouzas predominantly inhabited by the tribals and other backward classes should be construed as protected areas. In early 1945, the Government included a para in the “Resolution of Land Settlement” published vide notification no. RD.68/44/52 dated 15.01.1945 for providing protection to the tribals and other backward classes of the people. The said para which has special

significance in the context of the present adjudication is quoted herein below-

“13. Special provisions will be made for protection of tribal classes by constituting a tribal belt in the sub montane track where they predominate”

Finally, in July, 1945 the Government adopted a Resolution bearing no. RD.68/44 dated 13.07.1945 for protection of tribal classes of the people in areas predominantly inhabited by them against aggression of outside elements. Consequently the principal Regulation was amended in 1947 by adding a new Chapter *i.e.* Chapter X, providing for welfare and protection of certain backward classes so far as land settlement and allied matters are concerned. It would thus be noticed that Chapter X had to be introduced in the Regulation for the protection of the backward classes and tribals in particular who on account of their primitive conditions and lack of education or material advantages were not capable of looking after their own welfare. Further, the undesirable impact of large number of migrants from the then Eastern part of Bengal is also considered to be one of the principal reason for conceiving the idea of having tribal belts and blocks. Chapter X was inserted in the Regulation with a view to achieve larger public interest *i.e.* protection of the identity, interest and welfare of the

backward classes and tribals in particular living in the foot hills and sub montane areas of Assam.

8) **GROUND OF CHALLENGE :**

- a) FOR THAT irreparable damage has been caused to the people of Assam as well as nation by amending the provision of Section 6-A of the Citizenship Act, 1955 with effect from 07.12.1985, which is absolutely violative of Article 14 of the Constitution of India not to speak of being violative of Article 5 & 6 of the Constitution as the said amendment by which Section 6-A has been introduced in the Citizenship Act, 1955 has been specially made applicable to the State of Assam. Any person entering in any part of the country, not to speak of the specified territory, as mentioned in the Citizenship Act, 1955 cannot be treated as citizen under the provision of the Constitution of India. But same person entering Assam on or before 25.03.1971 would be acquiring right of citizenship as provided. Thus the said impugned provision of the Citizenship Act, being absolutely discriminatory and being violative of the provisions of the Constitution is liable to set aside and quashed.
- b) FOR THAT the impugned provisions of Section 6(A) of the Act of 1955 created a separate class of people living in the State of Assam giving special treatment to them vis-a-vis

other similarly situated persons entering into and living in other states of India without any reasonable ground in gross violation of Article 14 of the Constitution of India. As such the impugned provision is liable to be declared ultra vires Articles 5, 6 and 14 of the Constitution of India and accordingly struck down.

c) FOR THAT the problem of presence of a large number of illegal immigrants is no more limited to the State of Assam. As a matter of fact these immigrants are present across the country as would be evident from the statement dated 14/07/2004 given on the floor of the parliament by the Minister of State, Home, Government of India. With respect to the other regions of India, the date of entry of these illegal immigrants whether before or after 25/03/1971 does not change their legal status and they continue to be treated as illegal immigrants. But it is only with respect to the State of Assam that Section 6A has been enacted conferring upon these very illegal immigrants the privilege of Indian citizenship if they had come to Assam on or after the 1st day of January 1966 but before 25th day of March 1971 from the specified territory and has since the date of their entry into Assam, been ordinarily resident in Assam. This in itself would go to clearly show that the people of Assam have discriminated against and have been put to an obvious disadvantage without any reasonable basis. As such the

impugned provision is violative of Article 14 of the Constitution and hence liable to be struck down.

- d) FOR THAT the scheme of the Constitution of India does not anywhere provide for giving shelter to any illegal immigrant who have stealthily sneaked in through the border and settled down in the territory of India. As a matter of fact nowhere in the world would one find any legal provision which seeks to shelter foreigners who have illegally entered that country with the only exception being the State of Assam by virtue of section 6A of the Citizenship Act of 1955.
- e) FOR THAT Article 6 of the Constitution of India clearly states that a person, who came to India from the territory then included in Pakistan and whose parents or grandparents were born in India as understood under the Government of India Act, 1935, would be treated as an Indian Citizen. However, for acquiring citizenship, this Article has stated that such a person should migrant to India before July, 19, 1948. There is a rider, too, that if any other person had come to India before six months of the commencement of the Constitution in order to be treated as Indian Citizen, he or she must get himself / herself registered as an Indian Citizen with the prescribed authorities in the manner laid down by the Government of India. The Constitution was enforced with effect from January 26, 1950. Therefore, any

person who came to India, the last date should be before 19 January, 1949 at the latest. It is thus seen that there are two cut-off dates, i.e July, 19, 1948 without application and January 19, 1949 with application, for acquiring Indian Citizenship. These are the laid down under the Constitution of India and till now provisions of Article 6 of the Constitution have remained unchanged. It is also provided by the Constitution that any law, which in any manner infringes the fundamental rights conferred on the citizens by the Constitution, is void.

- f) FOR THAT the territory of Assam is a part and parcel of Union of India. But the Citizenship Act, 1955 was amended in the year 1985 incorporating section 6A purportedly on the strength of the Assam Accord which is totally unconstitutional. As per the petitioners understanding a Law would normally mean “Any Ordinance, Order, Bylaw, Rule, Regulation, Notification, Custom or Usage.” So, a Memorandum of Understanding or Accord (Political Settlement) has not been included within the meaning of law. As a result the 1985 amendment of the Citizenship Act laying down two cut-off dates as per Section 6A (3)(a)(b) respectively, namely January 1, 1966 and March, 25, 1971 on the plain reading apparently contravenes the above provision of the Constitution. So, anything done under the said provision is unenforceable. For the above provision of

the Citizenship Act contravene Articles 14 & 21 of the Indian Constitution. And as such, the said provisions should be struck off from the Citizenship Act for the ends of justice and, equity and fair play.

g) FOR THAT Clause 5 of the Assam Accord have been arbitrarily foisted upon the people of Assam much against their wishes. The provisions of Clause 5 and its sub-clauses are inherently illegal being discriminatory in as much as the same tends to forcibly deny the people of Assam their right to equality. It may be noted that none of the respondents have till date been able to explain and/or justify the reasons that prompted them to decide 25/03/1971 as the cut-off date. The petitioner's state as a matter of fact there is none. As such the aforesaid clause being violative of the petitioners Constitutional safeguards is unenforceable. It therefore follows that Section 6A which traces its origin to the aforesaid clause of the Assam Accord also is unenforceable being ultra-vires the Constitution.

h) FOR THAT the respondents owe an answer to the citizens of this country as to the reasons, if any, that prompted them to decide 25/03/1971 as the cut-off date for the purpose of detection and expulsion of illegal immigrants from Assam. The respondents are duty bound to justify their aforesaid decision. It would also be in the fitness of things if all the documents pertaining to the consultation process that

preceeded the signing of the Assam Accord is placed before this Hon'ble Court. The petitioners respectfully submit that unless the respondents are able to justify the decision to treat 25/03/1971 as the cut-off date for the purpose of detection and expulsion of illegal immigrants with cogent reasons, Clause 5 of the Assam Accord and the provisions of Section 6A of The Citizenship Act, 1955 cannot withstand judicial scrutiny. As a consequence the impugned section has to be necessarily struck down as illegal and invalid, being, ultra-vires the Constitution of India.

- i) FOR THAT even if assuming but not admitting that Clause 5 of the Assam Accord and the provisions of Section 6A of The Citizenship Act, 1955 are legally sustainable, it is an admitted fact that the State has virtually done nothing till date to detect and deport those illegal immigrants who have entered into the State of Assam after 25/03/1971. The central government has totally failed in its constitutional obligations in this regard. Therefore in any event Clause 5 of the Assam Accord has been rendered otiose.
- j) FOR THAT the founding fathers of our Constitution never intended to extend protection to illegal infiltrators and confer citizenship upon them at any stage. However, notwithstanding the same, the Government of India has failed to initiate effective steps to free the country from such illegal infiltrators and on the contrary has actually enacted

Section 6 A of the Citizenship Act, 1955 with the sole purpose and intent of conferring citizenship to illegal immigrants coming from Bangladesh far beyond the time frame prescribed by the Constitution. There is absolutely no relevance of 25-3-1971 in so far as India or Assam is concerned. Nor does the date 25-3-1791 have any nexus with the Independence of India. Yet such a cutoff date has been arbitrarily inserted forming the sole basis of the provision of 6A.

- k) FOR THAT Article 6 of the Constitution brings forth a closure to the issues of citizenship of such category of migrants from Pakistan by spelling out cut off dates in clear and unequivocal terms. Therefore, all persons illegally entering the Indian territory from Bangladesh contrary to the Constitutional scheme and beyond the time frame prescribed by the Constitution is required to be treated as an offender under the Indian Law and the Government is constitutionally bound to take action against such a person by ensuring his/ her removal from the territory of India at the earliest. However, in a marked departure of the said principle, Section 6A of the Act of 1955 seeks to legitimize the entry and stay of the “illegal immigrants” who have entered on or before 25.03.1971. The net result of such an enactment would be that an illegal immigrant who enters Assam in violation of the Indian legal system gets an

opportunity of legitimizing his/ her transgression as such, only by virtue of Section 6A of the Act of 1955. The question that would therefore arise is that, can an individual who is in conflict with the constitutional right on the very day of his/her illegal entry into Indian territory be accorded citizenship by operation of Section 6A of the Act of 1955 by condoning his illegal entry into India, which act had been unconstitutional on the very date of its inception, more so when Art. 6 of the Constitution itself has not been amended to provide for enlarging the time frame prescribed by the Constitution.

- i) FOR THAT Article 14 of the Constitution guarantees the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. In this regard that the petitioner submit that Section 6A was inserted into the principal Act for the purpose of giving effect to certain provisions of the Memorandum of settlement relating to the foreigners issue in Assam i.e Assam Accord. Whatever be the reasons, if any, the people of Assam cannot be compelled to waive of their fundamental right guaranteed under Article 14 and accept illegal immigrants who have entered the State from 1950 to 1971. It may be noted that the cut-off date of 25/03/1971 is 21 years beyond the cut-off date accepted by the Indian government for giving citizenship post-Partition for rest of the country.

m) For that the definition of “detected to be foreigners” in Section 6 A (1) (b) of the Citizenship (Amendment) Act, 1985 is inconsistent with the law enunciated in Sarbananda Sonowal (1). The prescription in Citizenship (Amendment) Act, 1985 that foreigners are to be detected only in accordance with the provisions of Foreigners Act, 1946 is inconsistent with law laid down in Sarbananda Sonowal (1), whereby the IMDT Act was held to be ultra vires the constitution. The effect of striking down the IMDT Act is that the legislation, namely, Passport (Entry into India) Act, 1920; The Immigrants (Expulsion from Assam) Act, 1950; The Passport Act, 1967 and Foreigners Act, 1946 stood revived. Under the circumstances the mandate in Section 6 A (1) (b) that foreigners are to be detected only in accordance with the Foreigners Act, 1946 cannot be countenanced. The aforesaid provision has the potential of creating a class of foreigners for the State of Assam as distinct from foreigners as is understood in the rest of the country. Therefore Section 6 A which is plainly contrary to the constitutional provision is liable to be declared as ultra vires.

n) For that the impugned provision is also contrary to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien *lawfully* entering the territory of a State party to the Covenant be expelled only

pursuant to a decision reached by law. Ironically India is a signatory to the said Covenant. Under the circumstances the purported attempt to confer legitimacy to the illegal migrants from the then East Pakistan by way of impugned provision is legally not sustainable. As a matter of fact in terms of Article 13 aforementioned migrants who have entered illegally or unlawfully are not entitled to any substantive and procedural safeguards. All these fundamental aspects which have special relevance in the contextual facts were ignored by the lawmakers. On the contrary safeguards in the form of the impugned provision are sought to be conferred on the illegal migrants who entered Assam between 26.01.1950 and 25.03.1971 in gross violation of the constitutional mandate and the International legal principles which have been approved by this Hon'ble Court.

- o) For that the Central Government failed to take note of its consistent stand on the issue large scale influx of person from the then East Pakistan into India (Assam) before and following Indo-Pak War of 1971. It has been noted by this Hon'ble Court in Sarbananda Sonowal (1) at para 56 that on 03.11.1971, Dr. Nagendra Singh, India's representative in the 6th Committee of the General Assembly on the definition of aggression, made a statement to the effect that influx of large number of persons from across the border into India is

an *act of aggression*. Having regard to the said stand and also having regard to the constitutional scheme on acquisition of citizenship, the insertion of Section 6A in the Citizenship Act by way of the impugned enactment is not only inconceivable but is also plainly contrary to the constitutional scheme. The purported action on the part of the Central Government to confer legitimacy to these hoards of illegal immigrants therefore cannot withstand legal scrutiny.

- p) For that Article 5 to 10 of the Constitution of India lay down the procedure, inter alia, with regard to citizenship at the commencement of the constitution, acquisition of the citizenship, and continuance of the citizenship. Article 11 confers power on the parliament to regulate the right of citizenship by law. The power conferred on the Parliament by Article 11 noticed above cannot be construed in a manner as to empower the parliament to override the constitutional mandate contained in Article 5 to 10 while purporting to regulate the right of citizenship by law made in exercise of power under Article 11. In the respectful submission of the petitioner the Citizenship (Amendment) Act, 1985 is one such enactment made by the Parliament under Article 11 which has in fact over ridden the basic mandate contained in Article 5 to 10 of the Constitution. It is no more *res intregra* that power to make law either by the

Parliament or the State legislature has to be consistent with the constitutional mandate. The impugned legislation being on the face of it discriminatory and contrary to the mandate of article 5 to 10 and international legal principles approved by this Hon'ble Court necessarily needs judicial intervention of this Hon'ble Court.

q) FOR THAT Article 29 (1) of the Constitution confers a fundamental right on all sections of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own to conserve the same and any invasion of this right would be ultra-vires. In this regard the petitioner respectfully submits that enforcement of Section 6A has no doubt facilitated to a large extent the illegal migrants from Bangladesh to continue to reside in Assam. This has resulted in rapid changes in the demographic patterns in the state of Assam and it is emerging as a serious threat to the very identity of the Assamese people. It is submitted that indigenous communities are losing control of their land while illegal Bangladeshi immigrants have embarked on a large-scale land grab policy. This has also given rise to ethnic problems as was recently faced by the Bodos. The problem of immigration is also leading to change in demography in the state, and a serious threat to the unity, integrity and security of India. The presence of millions of illegal immigrants in

Assam purportedly under the protection given to them by Section 6A of the Citizenship Act, 1955 has adversely affected the language, script and culture of the local indigenous people. As a matter of fact there are several districts in Assam where the local indigenous people have already been reduced to a minority. Under the circumstances it is submitted that the impugned provision is ultra-vires Article 29 (1) of the Constitution and is therefore liable to be struck down.

- r) FOR THAT the right conferred upon the citizens residing in the territory of India or any part thereof to conserve their language, script or culture is made by the Constitution absolute. Therefore any legislation that directly or indirectly affects this very valuable fundamental right has to be necessarily struck down as ultra-vires.
- s) FOR THAT it is essential to note that the land rights of the tribal's as guaranteed under Chapter X of the Assam Land Revenue Regulation, 1886 have been consistently violated. A number of non-tribal villages have come up in notified tribal blocks in clear violations of the Assam Land Revenue Regulation, 1886. The Government of Assam has never taken any measure to prevent encroachment of tribal lands. This has led to development of consciousness that the Government of Assam because of its vote-bank politics

seeks to reduce tribal's to minorities in their own land. The fears of losing land and identities connected with land have been one of the root causes of conflicts between the indigenous tribal people and the vast majority of illegal immigrants. Special Rapporteur of the United Nations Sub-Commission on Human Rights José R. Martínez Cobo, in volume V of the Study of the Problem of Discrimination against Indigenous Populations describing the relationship of indigenous peoples with land stated: "It is essential to know and understand the deeply spiritual special relationship between indigenous peoples and their land as basic to their existence as such and to all their beliefs, customs, traditions and culture. For such peoples, the land is not merely a possession and a means of production. The entire relationship between the spiritual life of indigenous peoples and Mother Earth, and their land, has a great many deep-seated implications. Their land is not a commodity which can be acquired, but a material element to be enjoyed freely."

- t) FOR THAT Article 13 of the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries stated that while applying the Convention "governments shall respect the special importance for the cultures and spiritual values

of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.”

- u) FOR THAT Section 6A of the Citizenship Act is ultra-vires the 6th Schedule of the Constitution and hence liable to be struck down as null and void. In this regard the petitioner respectfully submits that the Sixth Schedule of the Indian Constitution provides a separate administrative system for the tribal areas of the Northeastern region to protect the tribes from political and economic exploitation. To safeguard the rights and interests of the tribal people in India, the ‘scheduled areas’ were formulated under the Indian Constitution. The Indian Constitution envisaged bringing about development and progress among the tribal communities and further assimilation of these groups with mainstream Indian society. The various provisions of the 6th Schedule also allowed these indigenous people to preserve their distinct identity, history, customary practices and traditional beliefs. However the constitutional safeguards have not necessarily guaranteed them their share of special rights in as much as the impugned provision seeking to confer citizenship to the illegal immigrants have uprooted the indigenous people from their lands and denied of their

livelihoods. Because of rampant and illegal settlements primarily by the illegal immigrants their entire social and cultural fabric has been considerably weakened and undermined. Many have lost their livelihood and are living in extreme poverty. This resulted in causing a threat to their tradition and identity leading to widespread unrest. Despite the serious demographic, economic, security and political ramifications of the illegal immigrants in the Assam, these developments continue to remain substantially outside the realm of the security discourse in the country.

- v) FOR THAT the population patterns of Assam have been changed as a result of illegal migration of foreign nationals. The huge magnitude of the problem and the serious threat to the territorial integrity of the nation that this influx of foreign nationals possesses, is clearly revealed by the following figures of census report of Assam.

PERCENTTAGE OF INCREASE OF POPULATION PER
DECADE ASSAM AND INDIA

Year	Population of Assam	% increase Assam	% increase India
1951	80,28,856	19.94	13.31
1961	108,37,329	34.98	21.64
1971	146,25,152	34.95	24.80

Assam tops the list of states, which registered more than 50% increase during 1911-1961.

w) FOR THAT a comparative study of the increase of voters of Assam since 1957 to 1971 also reveals the gravity of the changing population pattern of Assam-

Year	No. of Electors	Increase	% of increase during the period
1957	44,93,359		
1962	49,42,816	4,49,457	10% (in 5 years)
1966	55,85,056	6,42,240	12.99% (in 4 years)
1970	87,01,805	31,16,749	2.09% (in 4 years)
1971	92,96,198	5,94,393	10.42 % (in 1 year)

x) FOR THAT a cumulative reading of the provisions of the Constitution pertaining to citizenship would reveal that the concept of citizen of India cannot be interpreted outside the scope, content, meaning and effect of Article 5 and 6 of the Constitution of India. Section 6A of the Citizenship Act' 1955 carves out a new class of citizens which is beyond the

scope of Article 5 & 6 of the Constitution and hence not sustainable.

- y) FOR THAT Section 6A of the Citizenship Act' 1955 amounts to amending the scheme of the Constitution and Article 5 & 6 and thereby negating effect of the said articles which is not permissible.
- z) FOR THAT having regards to Section 6-A of the Citizenship Act 1955, the cut-off date for detection and deportation of illegal migrants from Bangladesh vis-à-vis the State of Assam is 25/03/1971. However, the cut-off date in respect of the other States of India is 26/01/1950. The application of Section 6-A to the State of Assam alone is wholly discriminatory and violates Article 14 of the Constitution.
- aa) FOR THAT this Hon'ble Court in Sarbananda Sonowal versus Union of India (2005) 5 SCC 665 came to the categorical conclusion to the effect that "...there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large-scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of the Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution." In this regard the petitioner submits that the impugned provisions seek to promote illegal infiltration and at the same time protect and regularize lacs

of illegal migrants who have illegally entered into Assam. As noted by this Hon'ble Court, Assam is facing "external aggression and internal disturbance" on account of large-scale illegal migration of Bangladeshi nationals. Therefore any law that attempts to confer citizenship on these aggressors instead of detecting and deporting them has to be necessarily struck down as ultra-vires the Constitution.

- bb) FOR THAT the classification made vide Section 6-A is not based upon any intelligible differentia and there is absolutely no nexus between the basis of the classification and the object sought to be achieved by the said amendment. The impugned provision is hence liable to be set-aside and quashed being ultra-vires the provisions of the Constitution.
- cc) FOR THAT the application of Section 6-A to the State of Assam alone has led to a perceptible change in the demographic pattern of the State and has reduced the people of Assam to a minority in their own State. The same is detrimental to the economic and political well-being of the State and acts as a potent force against the cultural survival, political control and employment opportunities of the people.
- dd) FOR THAT the procedure contemplated under Section 6-A for registration as a citizen of India for a person of Indian origin who came into Assam on or after 01.01.1966 but before 25.03.1971, has miserably failed in its execution

and has resulted in the vast and incessant flow of illegal migrants into Assam post 25.03.1971.

- ee) FOR THAT the scheme laid down under Section 6-A does not include the status of the illegal migrants who have entered Assam between 01.01.1966 and 25.03.1971 and who do not satisfy the requirement of Section 6-A (3) of the Citizenship Act, 1955. This vacuum is the core factor for the continuous influx of illegal migrants into the State of Assam.
- ff) FOR THAT the illegal migrants from Bangladesh have entered Assam have occupied vast tracts of lands in total disregard to the provisions of Chapter 10 of the Assam Land Revenue and Regulation Act, 1886; the said Regulation meant to protect the land rights of the tribal population from illegal encroachments on the tribal lands.
- gg) FOR THAT having regards to the Sixth Schedule to the Constitution ensuring special protection to the tribal population of North East India, it is the duty of the Union of India to protect the constitutional rights of tribal people and usurping of their land rights by the illegal migrants, facilitated by the classification made under Section 6-A, requires serious re-consideration and ought to be set-aside and quashed.
- hh) FOR THAT the United Nations Declaration on the Rights of Indigenous People adopted on 13.09.2007 and duly signed by India envisaged the need to respect and

promote the inherent rights of the indigenous people which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to land, territories and resources. Hence, it is the duty of the Union of India to protect such rights of the indigenous people of Assam which have been violated vide the operation of Section 6-A of the Citizenship Act, 1955.

- ii) FOR THAT the United Nations Declaration adopted on 13.09.2007 had envisaged that the indigenous people shall have a right to live in freedom, peace and security and shall not be subjected to forced assimilation and destruction of their culture. However, the ramification due to the vast and incessant flow of illegal migrants into the State of Assam has disrupted the traditional socio fabric of Assam and the rights thereto of the indigenous people.
- jj) FOR THAT the recent unrest witnessed in the State of Assam is a resultant of the classification made under Section 6-A and unless the same is struck down as being ultra-vires the Constitution, the threat of such future discord will continue to haunt the State of Assam and more so the national security of our country.
- kk) FOR THAT as per law of the land only the name of the genuine Indian Citizen should be included in the National Register of Citizens (NRC in short) but if the Government of

India upgraded the NRC of Assam according to provisions of Indian Citizenship Act, 1955 (as amended in 1985, 1986 and 2003) on the basis of the Electoral Roll of 1971 a huge number of foreign nationals would be registered as Indian Citizen and the indigenous people of the region would be totally outnumbered forever/ loss all political, economical and other fundamental rights being the son of the soil.

ll) For that while the existing rules, applicable across the country, provide for preparation of the National Register of Citizens (NRC) strictly through house-to-house enumeration, the Citizenship Act rules have been amended exclusively for Assam to enable updating of its NRC by inviting claims from direct descendants of those figuring in the 1951 NRC or 1971 electoral rolls for Assam. The petitioner submits that this has been done only with a view to protect and benefit the illegal immigrants.

mm) FOR THAT such a vast and incessant flow of illegal migrants has impaired the economic and political well-being of the State of Assam and have to be categorized as “aggression” as envisaged under Article 355 of the Constitution. It is also the core factor behind the outbreak of insurgency in the State of Assam having adverse effect not only to the Assamese community but has more dangerous dimensions of greatly undermining the national security of our country.

- nn) FOR THAT Section 6A of the Citizenship Act is ultra-vires Article 253 of the Constitution and hence liable to be struck down as null and void. In this regard the petitioner submits that the impugned provision was enacted only to give effect to the Indira-Mujib Agreement of 1972 without taking into consideration the adverse and discriminatory consequences it will entail to the people of Assam.
- oo) FOR THAT even as per the latest Census figures of 2011, the figures for population density in the three Districts of Assam bordering Bangladesh i.e. Dhubri, Cachar and Karimganj and the adjoining Districts of Goalpara and Hailakandi have increased in the last decade (2001-2011) as against the State and National average, this grim reality has to be acknowledged:

[2001-2011]

	Population Density/ sq. km	Growth Rate (in %)
National Average	382	17.64
State Average	397	16.90

Dhubri	1171	24.40
Karimganj	673	20.74
Cachar	459	20.17
Goalpara	553	22.74
Hailakandi	497	21.44

These figures would clearly go to conclusively prove that there is a continuous alarming rise in population in the bordering districts of Assam which is not only a potent threat to the security and well being of the people of Assam but the nation as well.

- 9) That the petitioners seek the leave and liberty of this Hon'ble Court to add, alter, modify, amend and/or substitute any of the afore-stated grounds if so advised at a later stage.
- 10) The petitioners state and submits that the impugned Act and the impugned regulations/rules are in violation of the petitioners rights guaranteed under Article 14, 29 (1) and the 6th Schedule of the Constitution. The petitioners are therefore seeking enforcement of the rights guaranteed and protected by Part III of the Constitution.
- 11) That the petitioners have no other equally efficacious and alternative remedy except to approach this Hon'ble Court by way of filing the instant writ petition. The issues raised herein have ramifications nationwide and this Court has already on earlier occasion extensively dealt with the issue of illegal immigration vis-à-vis the State of Assam in (2005) 5 SCC 665.
- 12) The petitioners states and submits that they have never earlier filed any other writ petition before this Hon'ble Court or in any other High Court praying that Section 6A of The Citizenship Act, 1955 be struck down as illegal and invalid, being, ultra-vires the Constitution of India.

11) That this petition is made bonafide and for the ends of justice.

12) In view of the aforesaid facts and circumstances of the present case the petitioners most humbly pray that this Hon'ble Court may be graciously pleased to pass the following:

PRAYER

In the aforesaid premises it is therefore prayed that your Lordship would graciously be pleased to admit this writ petition, call for the records and issue notice upon the respondents to show cause as to why the reliefs prayed for should not be granted. And upon cause or causes being shown this Hon'ble Court may be pleased to issue:

- a) a writ in the nature of Certiorari or any other appropriate writ(s), order(s) or direction(s) declaring Section 6A of The Citizenship Act, 1955 as discriminatory, arbitrary and illegal and consequently striking down the impugned provision as ultra-vires the Constitution of India;
- b) a writ in the nature of Mandamus or any other appropriate writ(s), order(s) or direction(s) directing the respondent no 1 and 3 not to update the National Register of Citizens with respect to the State of Assam by taking into account the electoral rolls prior to March 24th (midnight) 1971;

- c) a writ in the nature of Mandamus or any other appropriate writ(s), order(s) or direction(s) directing the respondent no 1 and 3 to update the National Register Of Citizens with respect to the State of Assam relying only on the details incorporated in the National Register of Citizens prepared in 1951;
- d) a writ in the nature of Mandamus or any other appropriate writ(s), order(s) or direction(s) directing the respondents to treat 1951 as the base year for the purpose of detection and deportation of illegal immigrants in the State of Assam;
- e) a writ in the nature of Mandamus or any other appropriate writ(s), order(s) or direction(s) directing the respondents no 1 and 2 to immediately take effective steps towards ensuring the deportation of the illegal immigrants from the territory of India;
- f) Issue Rule Nisi in terms of prayers (a), (b), (c), (d) and (e) above;

g) Pass such other further or other writ, orders or directions as your Lordships may deem fit and proper in the facts and circumstances of the instant case.

AND FOR THIS ACT OF KINDNESS, YOUR PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn by

Filed by

Manish Goswami

(M/s. MAP & Co)

Advocate

Advocate for the Petitioner

Drawn on: 10/11/2012

Filed on: 29/11/2012

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. OF 2012

IN THE MATTER OF:

ASSAM SANMILITA MAHASANGHA & ORS PETITIONERS

VERSUS

UNION OF INDIA & OTHERS RESPONDENTS

AFFIDAVIT

I, Mr.Matiur Rahman, [REDACTED]

[REDACTED]

[REDACTED] do hereby

solemnly affirm and declare as under:-

1. That I am the Working President of the petitioner no 1 organisation in the accompanying Writ Petition and as such I am well acquainted with facts and circumstances of the case. I am also competent and authorized to swear this affidavit on behalf of all the petitioners.
2. That the contents of the List of dates (Pages B-), Writ Petition (Pages 1-62, paras 1- 12) and Application for Stay (Pages 291-295, paras 1- 11) have been drawn by my Advocate under my instructions. I have read and understood the contents of the above and I say that the same are true

and correct to my knowledge and belief and I believe the same to be true.

3. That the Annexure P-1 to P14 (Pages 65-290) are true and correct copies of its respective original.

DEPONENT

VERIFICATION

I, the above named deponent do hereby verify that the contents of para 1 to para 3 of the above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

Solemnly affirmed on this the 16th day of November '2012 at Gauhati, Assam

Place: Gauhati

Dated: 16 /11/2012

DEPONENT

ANNEXURE P-1**Agreement Between India and Pakistan On Minorities****A**

THE GOVERNMENTS of India and Pakistan solemnly agree that each shall ensure, to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality. Members of the minorities shall have equal opportunity with members of the majority community to participate in the public life of their country, to hold political or other office, and to serve in their country's civil and armed forces. Both Governments declare these rights to be fundamental and undertake to enforce them effectively. The Prime Minister of India has drawn attention to the fact that these rights are guaranteed to all minorities in India by its Constitution. The Prime Minister of Pakistan has pointed out that similar provision exists in the Objectives Resolution adopted by the Constituent Assembly of Pakistan. It is the policy of both Governments that the enjoyment of these democratic rights shall be assured to all their nationals without distinction.

Both Governments wish to emphasise that the allegiance and loyalty of the minorities is to the State of which they are citizens, and that it is to the Government of their own State that they should look for the redress of their grievances.

B

In respect of migrants from East Bengal, West Bengal, Assam and Tripura, where communal disturbances have recently occurred, it is agreed between the two Government:

1. That there shall be freedom of movement and protection in transit;
2. That there shall be freedom to remove as much of his moveable personal effects and household goods as a migrant may wish to take with him. Moveable property shall include personal jewellery. The maximum cash allowed to each adult migrant will be Rs. 150/- and to each migrant child Rs. 75/-;
3. That a migrant may deposit such of his personal jewellery or cash as he does not wish to take with him with a bank. A proper receipt shall be furnished to him by the bank for cash or jewellery thus deposited and facilities shall be provided, as and when required, for their transfer to him, subject, as regards cash to the exchange regulations of the Government concerned;
4. That there shall be no harassment by the Customs authorities. At each Customs post agreed upon by the Governments concerned liaison officers of the other Government shall be posted to ensure this in practice;

5. Rights of ownership in or occupancy of the immoveable property of a migrant shall not be disturbed. If, during his absence, such property is occupied by another person, it shall be returned to him, provided that he comes back by the 31st December, 1950. Where the migrant was a cultivating owner or tenant, the land shall be restored to him, provided that he returns not later than the 31st December, 1950. In exceptional cases, if a Government considers that a migrant's immoveable property cannot be returned to him, the matter shall be referred to the appropriate Minority Commission for advice.

Where restoration of immoveable property to the migrant who returns within the specified period is found not possible the Government concerned shall take steps to rehabilitate him.

6. That in the case of a migrant who decides not to return, ownership of all his immoveable property shall continue to vest in him and he shall have unrestricted right to dispose of it by sale, by exchange with an evacuee in the other country, or otherwise. A Committee consisting of three representatives of the minority and presided over by a representative of Government shall act as trustees of the owner. The Committee shall be empowered to recover rent for such immoveable property according to law.

The Government of East Bengal, West Bengal, Assam and Tripura shall enact the necessary legislation to set up these Committees.

The Provincial or State Government, as the case may be, will instruct the District or other appropriate authority to give all possible assistance for the discharge of the Committee's functions.

The provisions of this sub-paragraph shall also apply to migrants who may have left East Bengal for any part of India, or West Bengal, Assam or Tripura for any part of Pakistan, prior to the recent disturbances but after the 15th August, 1947. The arrangement in this sub-paragraph will apply also to migrants who have left Bihar for East Bengal owing to communal disturbances or fear thereof.

C

As regards the Province of East Bengal and each of the States of West Bengal, Assam and Tripura respectively, two Governments further agree that they shall:

1. Continue their efforts to restore normal conditions and shall take suitable measures to prevent recurrence of disorder.
2. Punish all those who are found guilty of offences against persons and property and of other criminal offences. In view of their deterrent effect, collective fines shall be imposed,

where necessary. Special Courts will, where necessary, be appointed to ensure that wrong-doers are promptly punished.

3. Make every possible effort to recover looted property.
4. Set up immediately an agency, with which representatives of the minority shall be associated, to assist in the recovery of abducted women.
5. NOT recognize forced conversions. Any conversion effected during a period of communal disturbance shall be deemed to be a forced conversion. Those found guilty of converting people forcibly shall be punished.
6. Set up a Commission of Enquiry at once to enquire into and report on the causes and extent of the recent disturbances and to make recommendations with a view to preventing recrudescence of similar trouble in future. The personnel of the Commission, which shall be presided over by a Judge of the High Court, shall be such as to inspire confidence among the minority.
7. Take prompt and effective steps to prevent the dissemination of news and mischievous opinion calculated to rouse communal passion by press or radio or by any individual or organization. Those guilty of such activity shall be rigorously dealt with.
8. Not permit propaganda in either country directed against the territorial integrity of the other or purporting to incite war

between them and shall take prompt and effective action against any individual or organisation guilty of such propaganda.

D

Sub- paragraphs (1), (2) , (3), (4), (5), (7) and (8) of C of the Agreement are of general scope and applicable, according to exigency, to any part of India or Pakistan.

E

In order to help restore confidence, so that refugees may return to their homes, the two Governments have decided (i) to depute two Ministers, one from each Government to remain in the affected areas for such period as may be necessary; (ii) to include in the Cabinets of East Bengal, West Bengal and Assam a representative of the minority community. In Assam the minority community is already represented in the Cabinet. Appointments to the Cabinets of East Bengal and West Bengal shall be made immediately.

F

In order to assist in the implementation of this Agreement, the two Governments have decided, apart from the deputation of their Ministers referred to in E, to set up Minority Commissions, one for East Bengal, one for West Bengal and one for Assam. These Commissions will be constituted and will have the functions described below.

1. Each Commission will consist of one Minister of the Provincial or State Governments concerned, who will be Chairman, and one representative each of the majority and minority communities from East Bengal, West Bengal and Assam, chosen by and from among their respective representatives in the Provincial or State Legislatures, as the case may be.
2. The Two Ministers of the Governments of India and Pakistan may attend and participate in any meeting of any Commission. A Minority Commission or any two Minority Commissions jointly shall meet when so required by either Central Minister for the satisfactory implementation of this Agreement.
3. Each Commission shall appoint such staff as it deems necessary for the proper discharge of its functions and shall determine its own procedure.
4. Each Commission shall maintain contact with the minorities in Districts and small administrative headquarters through Minority Boards formed in accordance with the Inter-Dominion Agreement of December, 1948.
5. The Minority Commissions in East Bengal and West Bengal shall replace the Provincial Minorities Boards set up under the Inter-Dominion Agreement of December, 1948.

6. The two Ministers of the Central Governments will from time to time consult such persons or organizations as they may consider necessary.
7. The functions of the Minority Commission shall be :-
 1. To observe and to report on the implementation of this Agreement and, for this purpose, to take cognizance of breaches or neglect.
 2. To advise on action to be taken on their recommendations.
8. Each Commission shall submit reports, as and when necessary, to the Provincial and State Governments concerned. Copies of such reports will be submitted simultaneously to the two Central Ministers during the period referred to in E.
9. The Governments of India and Pakistan, and the State and Provincial Governments, will normally give effect to recommendations that concern them when such recommendations are supported by both the Central Ministers. In the event of disagreement between the two Central Ministers, the matter shall be referred to the Prime Ministers of India and Pakistan who shall either resolve it themselves or determine the agency and procedure by which it will be resolved.
10. In respect of Tripura, the two Central Ministers shall constitute a Commission and shall discharge the functions

that are assigned under the Agreement to the Minority Commissions for East Bengal, West Bengal and Assam. Before the expiration of the period referred to in E, the two Central Ministers shall make recommendations for the establishment in Tripura of appropriate machinery to discharge the functions of the Minority Commissions envisaged in respect of East Bengal, West Bengal and Assam.

G

Except where modified by this Agreement, the Inter-Dominion Agreement of December, 1948, shall remain in force.

JAWAHARLAL NEHRU.

Prime Minister of India.

LIAQUAT ALI KHAN.

Prime Minister of Pakistan.

NEW DELHI

April 8th, 1950

True Copy

(MAP & Co)

ANNEXURE – P2

TREATY OF FRIENDSHIP, CO-OPERATION AND PEACE

BETWEEN INDIA AND BANGLADESH

MARCH, 19, 1972

Following is the text of the Treaty of Friendship, Co-operation and Peace between the Republic of India and the People's Republic of Bangla Desh signed in Dacca on March 19, 1972 by the Prime Ministers of India and Bangladesh.

INSPIRED by common ideals of peace, secularism, democracy, socialism and nationalism,

HAVING struggled together for the realization of these ideals and cemented ties of friendship through blood and sacrifices which led to the triumphant emergence of a free, sovereign and independent Bangla Desh,

DETERMINED to maintain fraternal and good neighborly relations and, transform their border into a border of eternal peace and friendship,

ADHERING firmly to the basic tenets of non-alignment, peaceful co-existence, mutual co-operation, non-interference in internal affairs and respect for territorial integrity and sovereignty,

DETERMINED to safeguard peace, stability and security and to promote progress of their respective countries through all possible avenues of mutual co-operation,

DETERMINED further to expand and strengthen the existing relations of friendship between them,

CONVINCED that further development of friendship and co-operation meets the national interests of both States as well as the interests of lasting peace in Asia and the world,

RESOLVED to contribute to strengthening world peace and security and to make efforts to bring about a relaxation of international tension and the final elimination of vestiges of colonialism, racialism and imperialism,

CONVINCED that in the present day world international problems can be solved only through co-operation and not through conflict or confrontation,

REAFFIRMING their determination to follow the aims and principles of the United Nations Charter, the Republic of India on the one hand, and the People's Republic of Bangla Desh, on the other, have decided to conclude the present Treaty.

ARTICLE 1

The High Contracting Parties, inspired by the ideals for which their respective peoples struggled and made sacrifices

together, solemnly declare that there should be lasting peace and friendship between their two countries and their peoples, each side shall respect the independence, sovereignty and territorial integrity of the other and refrain from interfering in the internal affairs of the other side.

The High Contracting Parties shall further develop and strengthen the relations of friendship, good neighbourliness and all round co-operation existing between them, on the basis of the abovementioned principles as well as the principles of equality and mutual benefit.

ARTICLE 2

Being guided by their devotion to the principles of equality of all peoples and States, irrespective of race or creed, the High Contracting Parties condemn colonialism and racialism in all forms and manifestations and are determined to strive for their final and complete elimination.

The High Contracting Parties shall co-operate with other States in achieving these aims and support the just aspirations of peoples in their struggle against colonialism and racial discrimination and for the national liberation.

ARTICLE 3

The High Contracting Parties reaffirm their faith in the policy of Non-Alignment and peaceful co-existence as important factors

for easing tension in the world, maintaining international peace and security, and strengthening national sovereignty and independence.

ARTICLE 4

The High Contracting Parties shall maintain regular contacts with each other on major international problems affecting the interests of both States, through meetings and exchanges of views at all levels.

ARTICLE 5

The High Contracting Parties shall continue to strengthen and widen their mutually advantageous and all round co-operation in the economic, scientific and technical fields. The two countries shall develop mutual co-operation in the fields of trade, transport and communications between them on the basis of the principles of equality, mutual benefit and the most-favoured nation principle.

ARTICLE 6

The High Contracting Parties further agree to make joint studies and take joint action in the fields of flood control, river basin development and the development of hydro-electric power and irrigation.

ARTICLE 7

The High Contracting Parties shall promote relations in the fields of art, literature, education, culture, sports and health.

ARTICLE 8

In accordance with the ties of friendship existing between the two countries each of the High Contracting Parties solemnly declares that it shall not enter into or participate in any military alliance directed against the other party.

Each of the High Contracting Parties shall refrain from any aggression against the other party and shall not allow the use of its territory for committing any act that may cause military damage to or constitute a threat to the security of the other High Contracting Party.

ARTICLE 9

Each of the High Contracting Parties shall refrain from giving any assistance to any third party taking part in an armed conflict against the other party. In case either party is attacked or threatened with attack, the High Contracting Parties shall immediately enter into mutual consultations in order to take appropriate effective measures to eliminate the threat and thus ensure the peace and security of their countries.

ARTICLE 10

Each of the High Contracting Parties solemnly declares that, it shall not undertake any commitment, secret or open, toward one or more States which may be incompatible with the present Treaty.

ARTICLE 11

The present Treaty is signed for a term of twenty five years and shall be subject to renewal by mutual agreement of the High Contracting Parties.

The Treaty shall come into force with immediate effect from the date of its signature.

ARTICLE 12

Any differences in interpreting article or articles of the present Treaty that may arise between the High Contracting Parties shall be settled on bilateral basis by peaceful means in a spirit of mutual respect and understanding. DONE IN DACCA ON THE NINETEENTH DAY OF MARCH, NINETEEN HUNDRED AND SEVENTY TWO.

Sd/- INDIRA GANDHI
Prime Minister
For the Republic of India

Sd/- SHEIKH MUJIBUR RAHMAN
Prime Minister
For the People's Republic of
Bangladesh

True Copy

(MAP & Co.)

ANNEXURE P-3

Guwahati

January 18, 1980

To

The Prime Minister of India

New Delhi

Subject: Problem of presence of foreign nationals in Assam and continued influx of foreigners into Assam from Bangladesh and Nepal.

Honourable Madam,

I take this opportunity to congratulate you on becoming the Prime Minister of India again.

I am writing this letter to draw your attention to the alarming situation created by the unabated infiltration from the neighbouring countries, particularly Bangladesh and Nepal. The problem, in fact, requires no introduction. It exists from the days of independence. It is now agitating the minds of the people of the entire N.E. Region. The situation has assumed such magnitude that the very existence of the indigenous population is threatened. But we are determined to preserve our identity, our history, our

culture and our heritage. The Constitution of India certainly guarantees each Indian nationality to do so.

The huge extent of the problem and the serious threat to the territorial integrity of the nation this influx of foreign nationals poses is clearly revealed by the following figures:-

Percentage of increase of population per decade :::: Assam & India

Year	Population of Assam	% increase Assam	% increase India
1951	8,028,856
1961	10,837,329	34.98%	21.64%
1971	14,625,152	34.95%	24.80%

Commenting on this huge increase of 34.95% per decade compared to the national figure of 24.80% (one of the highest in the world), no less a person than the Chief Election Commission of India said at Ootcamund during the conference of the Electoral Officers held from 24th to 26th September, 1978:

“The influx has become a regular feature. I think that it may not be a wrong assessment to make on the basis of this increase of 34.95% between the two censuses, the increase that is likely to be recorded in 1991 census would be more than 100% over the

1961 census. In other words a stage would be reached when the state may have to reckon with the foreign nationals who may in all probability constitute a sizeable percentage, if not the majority population in the state”.

There is absolutely no other explanation for this extremely high increase of population other than that of influx of foreigners. If unabated, Assam will have to reckon with perhaps 50 lakh foreign nationals in 1981, and the Assamese in Assam shall become a minority.

We are not prepared to face such a situation at any cost. We cannot remain silent spectators when the sovereignty of India is attacked. We cherish our Indian Constitution Our Constitution clearly defines who is an Indian and who is not. But he provisions of the Constitution have been blatantly violated by the politicians of the state. This is again testified to by the following remarks of the CEC.

“Another disturbing factor in this regard is the demand made by the political parties for the inclusion in the electoral rolls of the names of such migrants who are not Indian citizens, without even questioning and properly determining their citizenship status.”

We are now firm to free Assam and India from the grip of the foreign nationals. The number of foreign nationals in Assam has

already become explosive. The problem must be tackled. The problem, Madam, does not defy solution. The foreign nationals must be removed from the voters list. It is our duty to prevent foreign nationals from determining the destiny of our state and our country. Electoral roll of every constituency must be thoroughly revised before the ensuing elections. This is a 'must' for the interest of a free, fair and democratic election.

For the effective solution of the problem, we submit some broad proposals which we believe, must be implemented to detect, delete and deport the foreign nationals.

The National Register of Citizens (NRC) of 1951 should be made up-to-date by including the additions to the number of each family since the time of the compilation of the Register.

The comparison of the NRC with the successive electoral rolls since 1951 may also be helpful in making it up-to-date.

The entire Indo-Bangladesh border must be demarcated at the earliest and a free zone devoid of trees and houses should be created all along the border and anyone crossing it from either side must be shot at. We attach great importance to this suggestion. We have reached a stage when threat to the state of Assam and to the country can no longer be ignored.

Identity Cards must be issued throughout the N.E. Region. The process should start immediately and in all the states and union

territories simultaneously. This has been successful in Sikkim and we insist upon its implementation in the N.E. Region. We are glad that the Chief Election Commissioner of India has recommended this step to the Home Ministry. We urge the concerned Ministry to immediately implement it.

Birth and Death Register at all Block and village level should be strictly maintained in order to prevent future infiltration into Voters' list.

Additional number of armed battalions should be raised to help the BSF to check fresh infiltration into our territory. A River Police Force may also be raised to check infiltration through the riverine portion of the border.

Madam, the problem demands immediate attention of the Central Government. Firm and strong decision to detect and deport foreign nationals from Assam can only ease the minds of the people. We believe, you will not allow the people of Assam to feel neglected any more.

We look forward to discuss the problem in detail. Your personal visit to Assam will facilitate the people of Assam to express their determination to work for a lasting solution of the problem.

We firmly believe that his problem of foreign nationals is a national problem and we strongly condemn the communal forces who are trying to discredit the movement.

With regards,

Yours sincerely,

Sd/- P. Mahanta

President

All Assam Students' Union

True Copy

(MAP & Co)

ANNEXURE – P4

ALL ASSAM STUDENT'S UNION

GAUHATI

JUNE 25, 1980

The Prime Minister of India,

New Delhi

Respected Prime Minister,

We have received your letter dated 22nd June 1980, transmitted to us through the Principal Advisor to the Governor of Assam.

At the very outset, we express our deep condolence at the premature, demise of your son Shri Sanjay Gandhi, who was also a member of the Parliament, on June 23, 1980.

We acknowledge your assurance that the foreigners issue would be solved within the frame-work of the Constitution. However, you have neither accepted nor objected to using the NRC and the earliest electoral rolls as documents for detection. This raises a question which is of vital importance to us. We would like to know how the Government propose to identify the foreigners. We firmly believe that there exists no documents alternative to the NRC and the first Electoral Rolls prepared after

adoption of the Constitution, to detect the foreigners within a reasonable period of time. We request you to clarify this aspect.

There is another important aspect of the problem. Regarding deportation, you have unambiguously stated that those who entered India after 1971, must go back to their own country. We also appreciate your statement that all re-infiltrators would be deported. However, the Government has expressed its inability to deport the persons who came before 1971. Under such circumstances, we would like to know what the Government propose to do with those persons whom the Government cannot deport. Any solution aimed at keeping the entire bulk in Assam, would surely be unacceptable to us. Any practical solution must be capable of removing the sense of insecurity from the minds of the people of Assam in the socio-political, cultural and economic life.

In this regard, as reported in newspapers, you told Parliament (June 11) that no burden should be imposed on Assam because of the presence of foreigners. Again on May 5, 1980 the Home Minister announced in Chandigarh that the persons who could not be deported would be settled in other States. AASU has also been suggesting that the persons who entered Assam between 1951-70 (Fifty one to Seventy) period should be distributed among all the States.

We believe that negotiations on the above basis can lead to a solution. We are ready for talks once the repressive measures including those against the Government employees are withdrawn.

Lastly, looking forward to your reply we would like to inform you that copies of this letter will be released to the press in due course.

With regards

Yours faithfully

Sd/- Prafulla Kumar Mahanta

President, AASU

Sd/- Bhrigu Kumar Phukan

General Secretary, AASU

TRUE COPY

(MAP & CO.)

ANNEXURE P-5

ASSAM ACCORD

15th August, 1985

(Accord between AASU, AAGSP, Central and State Government
on the Foreigner Problem Issue)

MEMORANDUM OF SETTLEMENT

1. Government have all along been most anxious to find a satisfactory solution to the problem of Foreigners in Assam. The All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) have also expressed their Keeness to find such a solution.
2. The AASU through their Memorandum dated 2nd February, 1980 presented to the Late Prime Minister Smt. Indira Gandhi, conveyed their profound sense of apprehensions regarding the continuing influx of foreign nationals into Assam and the fear about adverse affects upon the political, social, cultural and economic life of the State.
3. Being fully alive to the genuine apprehensions of the people of Assam, the then Prime Minister initiated the dialogue with the AASU/AAGSP. Subsequently, talks were held at the Prime Minister's and Home Ministers

levels during the period 1980-83. Several rounds of informal talks were held during 1984. Formal discussions were resumed in March, 1985.

4. Keeping all aspects of the problem including constitutional and legal provision, international agreements, national commitments and humanitarian considerations, it has been decided to proceed as follows :-

Foreigners Issue :

5.
 1. For purpose of detection and deletion of foreigners, 1-1-1966 shall be the base date and year.
 2. All persons who came to Assam prior to 1-1-1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections, shall be regularized.
 3. Foreigners who came to Assam after 1-1-1966 (inclusive) and upto 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1939.
 4. Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of

the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.

5. For this purpose, Government of India will undertake suitable strengthening of the governmental machinery.
6. On the expiry of the period of ten year following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored.
7. All persons who were expelled earlier, but have since re-entered illegally into Assam, shall be expelled.
8. Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and expelled in accordance with law. Immediate and practical steps shall be taken to expel such foreigners.
9. The Government will give due consideration to certain difficulties express by the AASU/AAGSP regarding the implementation of the illegal Migrants (Determination by Tribunals) Act, 1983.

Safeguards and Economic Development:

6. Constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.

7. The Government takes this opportunity to renew their commitment for the speedy all round economic development of Assam, so as to improve the standard of living of the people. Special emphasis will be placed on the education and Science & Technology through establishment of national institutions.

Other Issues :

8.

1. The Government will arrange for the issue of citizenship certificate in future only by the authorities of the Central Government.
2. Specific complaints that may be made by the AASU/AAGSP about irregular issuance of Indian Citizenship Certificates (ICC) will be looked into.

9.

1. The international border shall be made secure against future infiltration by erection of physical barriers like walls barbed wire fencing and other obstacles at appropriate places. Patrolling by security forces on land and riverine routes all along the international border shall be adequately intensified. In order to further strengthen the security arrangements, to prevent

effectively future infiltration, an adequate number of check posts shall be set up.

2. Besides the arrangements mentioned above and keeping in view security considerations, a road all along the international border shall be constructed so as to facilitate patrolling by security forces. Land between border and the road would be kept free of human habitation, wherever possible. Riverine patrolling along the international border would be intensified. All effective measures would be adopted to prevent infiltrators crossing or attempting to cross the international border.

10. It will be ensured that relevant laws for prevention of encroachment of government lands and lands in tribal belts and blocks are strictly enforced and unauthorized encroachers evicted as laid down under such laws.

11. It will be ensured that the law restricting acquisition of immovable property by foreigners in Assam is strictly enforced.

12. It will be ensured that Birth and Death Registers are duly maintained.

Restoration of Normalcy :

13. The All Assam Students Unions (AASU) and the All Assam Gana Sangram Parishad (AAGSP) call off the

agitation, assure full co-operation and dedicate themselves towards the development of the Country.

14. The Central and the State Government have agreed to :

1. Review with sympathy and withdraw cases of disciplinary action taken against employees in the context of the agitation and to ensure that there is no victimization;
2. Frame a scheme for ex-gratia payment to next of kin of those who were killed in the course in the agitation.
3. Give sympathetic consideration to proposal for relaxation of upper age limit for employment in public service in Assam, having regard to exceptional situation that prevailed in holding academic and competitive examinations etc. in the context of agitation in Assam :
4. Undertake review of detention cases, if any, as well as cases against persons charged with criminal offences in connection with the agitation, except those charged with commission of heinous offences.
5. Consider withdrawal of the prohibitory orders/ notifications in force, if any :

15. The Ministry of Home Affairs will be the nodal Ministry for the implementation of the above.

Sd/-

(P.K. Mahanta)

President

All Assam Students' Union

Sd/-

(R.D. Pradhan)

Home Secretary

Government of India

Sd/-

(B.K. Phukan)

General Secretary

All Assam Students' Union

Sd/-

(Smt. P. P. Trivedi)

Chief Secretary

Government of Assam

Sd/-

(Biraj Sharma)

Convenor

All Assam Students' Union

In the Presence of

Sd/-

(Rajiv Gandhi)

Prime Minister of India

Date: 15th August, 1985

Place: New Delhi

1. Election Commission will be requested to ensure preparation of fair electoral rolls.

2. Time for submission of claim and objections will be extended by 30 days, subject to this being consistent with the Election Rules.
3. The Election Commission will be requested to send Central Observers.

Sd/- Illegible

Home Secretary

1. Oil Refinery will be established in Assam
2. Central Government will render full assistance to the State Government in their efforts to reopen.

1. Ashok Paper Mill
2. Jute Mills
3. I.I.T. will be set up in Assam.

Sd/- Illegible

Home Secretary

True Copy

(MAP & Co)

ANNEXURE P-6

STATEMENT OF OBJECTS AND

REASONS OF THE ACT NO. 65 OF 1985

1. The core of the Memorandum of settlement (Assam Accord) relates to the foreigners issue, since the agitation launched by the A.A.S.U. arose out of their apprehensions regarding continuing influx of foreign nationals into Assam and the fear about adverse effects upon the political, social, cultural and economic life of the State.
2. Assam Accord being a political settlement, legislation is required to give effect to the relevant clause of the Assam Accord relating to the foreigners issue.
3. It is intended that all persons of Indian origin who came to Assam before the first January 1966 (including such of those whose names were included in the electoral rolls used for the purpose of General Election to the House of the People held in 1967) and who have been ordinarily resident of Assam ever since shall be deemed to be citizens of India as from the 1st day of January 1966. Further, every person of Indian origin who came on or after the 1st January 1966 but before 25th March 1971 from territories presently included in Bangladesh and who has been ordinarily resident in Assam ever since

and who has been detected in accordance with the provision of the Foreigners Act, 1946, and the Foreigners (Tribunals) order, 1964, shall upon registration, be deemed to be citizen for all purpose as from the date of expiry of a period of ten years from the date of detection as a foreigner. It is also intended that in the intervening period of 10 years, these persons should not suffer from any other disability vis-à-vis citizens, expecting the right to vote and that proper record should be maintained of such persons. To inspire confidence, judicial element should be associated to determine eligibility in each and every case under this category.

4. The Bill seeks to amend the Citizenship Act, 1955 to achieve the above objectives.

(Vide Gazette of India, Extra-Ordinary, Pt II, Section 1, dated 18th November 1985)

True Copy

(MAP & Co)

ANNEXURE P-7

GOVERNOR'S REPORT TO THE
PRESIDENT
ON INFLUX PROBLEM

Guwahati, 8th November, 1998.

The Assam Governor Lt. General (retired) S. K. Sinha, in a D.O. letter No. GSAG 3/98 dated November 8, 1998, submitted an exhaustive report on the grave threat posed by the unabated influx of people from Bangladesh to Assam, to the President Mr. K. R. Narayanan. He told the President that he felt it to be his bounden duty, both to the nation and the State he had sworn to serve, to place before him the report on the dangers arising from the "continuing silent demographic invasion". We publish below the full text of the Governor's report:-

1. The unabated influx of illegal migrants from Bangladesh into Assam and the consequent perceptible change in the demographic pattern of the State, has been a matter of grave concern. It threatens to reduce the Assamese people to a minority in their own State, as happened in Tripura and Sikkim.

2. Illegal migration into Assam was the core issue behind the Assam student movement. It was also the prime contributory factor behind the outbreak of insurgency in the State. Yet we have not made much tangible progressing dealing with this all important issue.
3. There is a tendency to view illegal migration into Assam as a regional matter affecting only the people of Assam. It's more dangerous dimensions of greatly undermining our national security, is ignored. The long cherished design of Greater East Pakistan/ Bangladesh, making in-roads into strategic land link of Assam with the rest of the country, can lead to severing the entire land mass of the North-East, with all its rich resources from the rest of the country. The will have disastrous strategic and economic consequence.
4. I have held prolonged discussion about illegal migration with a large number of people of Assam of different background and with different shades of opinion. This has included politicians, leaders of minority community, journalists, lawyers, Government officials, both serving and retired, social workers and so on. I have also discussed this issue at length with the Indian High Commissioner at Dhaka. Besides, I have extensively toured the border areas of Assam with Bangladesh, visiting a number of land and riverine BOPS of the Border Security Force. Further, I have studied the relevant literature and statistics on this subject.

On this basis, I have formulated my views and recommendations contained in this report. Different aspects connected with legal migration have been examined. Recommendations have been made for more effectively arresting the ongoing influx of illegal migrants and taking practical steps to soften the adverse fallouts from the large-scale infiltration that has already taken place.

MIGRATION INTO ASSAM

HISTORICAL BACKGROUND

1. Illegal migration from Bangladesh into Assam should be viewed against the back drop of past history, present realities and future design. Migration into Assam has been taking place from the dawn of history. However, after the British annexed Assam, large-scale population movement from the south (Bengal, East Pakistan and now Bangladesh) has been an ongoing phenomenon for over a century. Initially, this movement was for economic reasons only but with the approach of Independence, it started developing both communal and political overtones. After Independence, it acquired an international dimension and it now poses a grave threat to our national security.
2. The British developed the tea industry in Assam. They imported labour from Bihar and other provinces to work in the tea gardens. The Assamese people living mostly in

upper Assam and cultivating one crop per year, were not interested in working as labour in the tea gardens nor in increasing or expanding land cultivation to meet the additional requirement of food for the large labour population employed in the tea gardens. Therefore, the British encouraged Bengali Muslim peasants from present Bangladesh to move into lower Assam for putting virgin land under cultivation. This set in motion a movement pattern which, despite changed conditions, has been continuing to this day.

3. When Lord Curzon partitioned erstwhile Bengal Presidency in 1905, Assam was a Chief Commissioner's province. It was merged with the new Muslim majority province of East Bengal. This led to tremendous popular resentment in the country and it ushered political awareness, ultimately culminating in India's Independence. In 1911, the British Government annulled the partition of Bengal. Assam was restored its status as a province and was placed under a Lieutenant Governor. The Assamese fear of losing their identity and being swamped by Bengalis goes back to this merger and even earlier. This fear had been aroused both by Bengali Hindus dominating the administration and professions and the Bengali Muslims altering the demography of the province. The Bengali Muslims were hard working peasants who occupied vacant land and put

virgin areas under cultivation. They made a significant contribution to the agricultural economy of Assam.

4. With Constitutional reforms, the country started advancing towards democracy which is a game of numbers. The Muslim League now came up with its demand for partition, on the basis of religion. This added a new twist to this population movement. During Sir Mohammad Sadulla's Muslim League Ministry, a concerted effort was made to encourage the migration of Bengali Muslims into Assam for political reasons. The Viceroy, Lord Wavell wrote in the Viceroy's Journal-"The Chief political problem is the desire of the Muslim Ministers to increase this immigration into the uncultivated Government lands under the slogan of Grow More Food but what they are really after, is Grow More Muslims."
5. When the demand for partition was raised, it was visualized that Pakistan would compromise Muslim majority provinces in the west and Bang-e-Islam comprising Bengal and Assam in the east. Mr. Moinul Haque Chowdhary, the Private Secretary of Jinnah, who after Independence become a Minister in Assam and later at Delhi, told Jinnah that he would "present Assam to him on a silver platter." Jinnah confidently declared at Guwahati that Assam was in his pocket. The Cabinet Mission Plan placed Assam in Group C with Bengal. Both the Congress High command and the

Muslim League accepted the grouping plan but Lokapriya Gopinath Bordoloi vehemently opposed it. He was supported by Mahatma Gandhi. The grouping plan was foiled and Assam was saved from becoming a part of Pakistan.

6. Partition brought about a sea change in the situation. An international border now separated Assam and East Pakistan. Population movement from East Pakistan continued but it was initially mostly of Hindu refugees fleeing from religious persecution. Unlike the west, where refugee movement lasted for a few months only, in the case of east, this spread over several years and is still continuing. Hindu population in East Pakistan started declining steeply. In 1947 it was 27 percent, by 1971 it got reduced to 14 percent and in 1991 it was down to 10 percent. Along with the Hindu refugees, Muslim infiltrators continued migrating into Assam for economic reasons. The movement of Hindu refugees into Assam got largely arrested due to anti-Bengali riots and as a result of violence in the wake of insurgency in the State. However, Hindu refugee movement from Bangladesh has continued to Tripura and West Bengal. Illegal migrants from Bangladesh into Assam are now almost exclusively Muslims.
7. Failure to get Assam included in East Pakistan in 1947 remained a source of abiding resentment in that country.

Zulfikar Ali Bhutto in his book "Myths of Independence" wrote—"It would be wrong that Kashmir is the only dispute that divides India and Pakistan, though undoubtedly the most significant. Once at least is nearly as important as the Kashmir dispute, that of Assam and some districts of India adjacent to East Pakistan. To these Pakistan has very good claims". Even a pro-India leader like Sheikh Mujibur Rahman in his book "Eastern Pakistan; its population & economics" observed, "Because Eastern Pakistan must have sufficient land for its expansion and because Assam has abundant forests and mineral resources, coal, petroleum etc., Eastern Pakistan must include Assam to be financially and economically strong".

8. Leading intellectuals in Bangladesh have been making out a case for "lebensraum" (living space) for their country. Mr. Sadek Khan, a former diplomat wrote in Holiday of October 18, 1991, "all projections, however, clearly indicate that by the next decade that is to say by the first decade of the 21st century, Bangladesh will face a serious crisis of lebensraum if consumer benefit is considered to be better served by borderless competitive trade of labour, there is no reason why regional and international co-operation could not be worked out to plan and execute population movements and settlements to avoid critical demographic pressure in pockets of high concentration... A national overflow of

population pressure is there very much on the cards and will not to be restrainable by barbed wire or border patrol measures. The natural trend of population overflow from Bangladesh is towards the sparsely populated lands in South East in the Arakan side and of the North East in the Seven Sisters side of the Indian Sub-continent.” Mr. Abdul Momin, former Foreign Secretary and Bangladesh’s first Ambassador to China writing in the same magazine in its issue of November 22, 1991 stated “The runaway population growth in Bangladesh resulting in suffocating density of population in a territorially small country, presents a nightmarish picture.” Urging that along with borderless circulation of goods and commodities there should be borderless competitive tradeoff labour, he proposed that “if we in Bangladesh ingratiate ourselves with the hill tribes within our borders, our bulging population might find a welcome in adjacent lands inhabited by kindred peoples”. The views of Jinnah, Zulfikar Ali Bhutto, Sheikh Mujibur Rahman, Sadik Khan and Abdul Momin have a common thread running through them. No matter how friendly our relation with Bangladesh, we can ill afford to ignore the danger inherent in demographic invasion from that country.

CONTRIBUTORY FACTORS

9. Illegal migration from Bangladesh has been taking place primarily for economic reasons. Bangladesh is the world's most densely populated country with a population density of 969 per square kilometer. The growth rate of population in that country is 2.2 percent and its population is growing at the rate of 2.8 million per year. Each year nearly one third of Bangladesh gets inundated by floods displacing 19 million people. Seventy million people constituting 60 percent of the population live below the poverty line. The per capita income in Bangladesh is 170 dollars per year, which is much lower than the per capita income in India. The border between India and Bangladesh is very porous. In these circumstances the continued large-scale population movement from Bangladesh to India is inevitable unless effective measures are taken to counter it.
10. Besides the above considerations, there are other contributory factors facilitating infiltration from Bangladesh. Ethnic, linguistic and religious commonality between the illegal migrants and many people on our side of the border enables them to find shelter. It makes their detection difficult. Some political parties have been encouraging and even helping illegal migration with a view to building vote banks. These immigrants are hard-working and are

prepared to work as cheap labour and domestic for lower remuneration than the local people. This makes them acceptable. Moreover, with corruption being all pervasive, corrupt officials are bribed to provide help. Recently, a racket has been busted in Lakhimpur. Four individuals were found to have been providing forged citizenship certificates and other documents to illegal migrants for the last 14 years.

11. There is no evidence of Bangladesh authorities organizing this movement of population but they certainly have made no attempts to prevent it and indeed, may be welcoming it, to ease their problem of busting population. Thus there is now even an attempt to cover up this movement. Prime Minister Sheikh Hashia has recently asserted that no Bangladeshi is illegally living in India.

ILLEGAL MIGRANTS

12. Illegal migrants have been defined in Assam Accord as those who infiltrated illegally after 24 December, 1971. However, the stream that infiltrated illegally between January 1, 1966 and December 24, 1971 was not to be deported and was to be given Indian citizenship after a lapse of ten years. No doubt, Hindus required special consideration at the time of partition and had to be treated

as refugees, but this cannot be allowed to continue forever. Post 1971 Hindu illegal migrants cannot justifiably claim refugee status.

13. No census has been carried out to determine the number of these illegal migrants. Precise and authentic figures are not available but on the basis of estimates, extrapolations and various indicators, there numbers run into millions.
14. Mr. S. C. Mulan ICS, Census Superintendent of Assam wrote in 1931, "Probably the most important event in the province during the last 25 years-an event, more over, which seems likely to alter permanently the whole future and Assam and to destroy more surely than did the Burmese invaders of 1829, the whole structure of Assamese culture and civilization- has been the invasion of a vast horde of land hungry Bengali immigrants, mostly Muslims from the districts of Eastern Bengal and in particular Mymensingh. This invasion began sometime before 1911 and the census report of that is the first report which makes mention of the advancing host. But, as we now know, the Bengali immigrants censused for the first time on their char islands of Goalpara in 1921 were merely the advanced guard-or rather the Scouts of a huge army following closely at their heels. By 1921 the first army corps had passed into Assam and had practically conquered the District of goalpara.

Where there is waste land thither flock the Mymensinghians. In fact, the way in which they have seized upon the vacant areas in Assam valley seems almost uncanny. Without fuss, without tumult, without undue trouble to the district revenue staffs, a population which must about to over half a million has transplanted itself from Bengal into the Assam Valley during the last twenty-five years. It looks like a marvel of administrative organization on the part of the Government but it is nothing of the sort; the only thing I can compare it to is the mass movement of a large body of ants. It is sad but by no means improbable that in another thirty years Sibsagar district will be the only part of Assam in which an Assamese will find himself at home." The Census Report of 1931 has graphically shown the growth of Mymensinghians in the three undivided districts of Goalpara, Kamrup and Nowgong from 1911 to 1931.

15. I have quoted the 1931 census report in extension for three reasons. First, it contains precise figure for migration from Bengal into Assam even when this did not involve any movement across international border, Unfortunately, today we have no census report on the basis of which we can accurately define the contours of trans-border movement. Thus we have to rely on broad estimates or theoretical extrapolations to work out the dimension of illegal migration that has taken place from East Pakistan/ Bangladesh.

Second, Mr. Mulan described this invasion using military terminology which in present geostrategic contest, underscores the strategic aspect of the problem. It is unfortunate that to this day, after half a century of independence, we have chosen to remain virtually oblivious to the grave danger to our national security arising from this unabated influx of illegal migrants. Third, the prophecy that except the Sibsagar district, the Assamese people will not find themselves at home in Assam, is well on its way to becoming true as reflected by the present demographic pattern of Assam.

16. Mr. Indrajit Gupta, the then Home Minister of India stated in the Parliament on May 6, 1997 that there were 10 million illegal migrants residing in India. Quoting Home Ministry / Intelligence Bureau sources, the August 10, 1998 issue of India Today has given the breakdown of these illegal migrants by states-

West Bengal	-	5.4 millions.
Assam	-	4 millions
Tripura	-	0.8 millions
Bihar	-	0.5 million
Maharastra	-	0.5 million
Rajsthan	-	0.5 million
Delhi	-	0.3 million
Making a total of	-	10.83 millions.

17. On April 10, 1992 Mr. Hiteswar Saikia, the then Chief Ministry of Assam stated that there were 3 million Bangladeshi illegal migrants in Assam but two days later, he committed a volte face and declared that there were no illegal migrants in Assam. However, one can see for one self, the large scale infiltration of Bangladeshis that has taken place into Assam. Looking at the population in the border areas of Assam, sometime one wonders whether one is in Assam or in Bangladesh. Mr. E.N. Rammohan, D.G., B. S. F., who is an IPS Officer of Assam Cadre, in his report of February 10, 1997 has stated, "as additional S. P. in 1968 in Nowgang, I did not see a single Bangladeshi village in Jagiroad or Kaziranga. In 1982, when I was posted as DIGP, Northern Range, Tezpur, five new Bangladeshi Muslim village had come up near Jagiroad and hundreds of families had built up their huts encroaching in the land of the Kaziranga Game Sanctuary." He mentioned that in 1971 the large island of Chowlknowa comprising 5000 bighas of land was being cultivated by Assamese villagers from Gorukhuti and Sanuna and went on to state.- "In 1982, when I was posted as DIGP, Tezpur, there was a population of more than 10,000 immigrant Muslims on the island. The pleas of the Assamese villagers to the District Administration to evict those people from the island fell on deaf ears. An honest young IAS. SDO of Mangaldoi Sub-division who tried to do

this, found himself transferred. In 1983 when an election was forced on the people of Assam... the people of the village living on the banks of the Brahmaputra opposite Chowkhwa attacked the encroachers on this island when they found that they had been given voting rights by the Government. It is of interest that Assamese Muslims of Sanuna village attacked the Bengali Muslim encroachers on this island. I am a direct witness to this.”

18. The following indicators of the dimension of illegal migration taking place are relevant.

(a) Bangladesh census records indicate a reduction of 39 lakhs Hindus between 1971 and 1981 and another 36 lakhs between 1981 and 1998. These 75 lakhs (39+36) Hindus have obviously come to India. Perhaps most of them have come into States other than Assam.

(b) There were 7.5 lakhs Bihari Muslims in Bangladesh in 1971. At the instance of Saudi Arabia, Pakistan was persuaded to accept 33,000 Bihari Muslims. There are at present only 2 lakhs Bihari Muslims in refugee camps in Bangladesh. The unaccounted for 5.17 lakhs must have infiltrated into India as there is little possibility or evidence of their having merged into Bangladeshi Society.

(c) In 1970, the total population of East Pakistan was 7.5 crores but in 1974 it had come down to 7.14 crores. On the basis of 3.1 percent annual population growth rate at that period, the population in 1974 should have been 7.7 crores. The shortfall of 6 million people can be explained only by large-scale migration.

19. Assam's specific figures of illegal migrants have been worked out from available statistics as follows:

(a) Recent enumeration of electors list in Assam by the election commission shows that more than 30 percent increase in 17 Assembly constituencies and more than 20 percent increase in 40 constituencies between 1974 and 1997.

Whereas the all India average growth for a three year period intervening the two intensive revisions in 1994 and 1997, is seven percent, the growth in Assam for this period is 16.4 percent.

(b) Relative decadal percentage growth of population of Assam, all India and Bangladesh as follows:

	<u>Assam</u>	<u>All India</u>	<u>Bangladesh</u>
(1) 1901-1911	16.99	5.75	9.1
(2) 1911-1921	20.48	0.31	5.4
(3) 1921-1931	19.91	11.00	7.06
(4) 1931-1941	20.40	14.22	17.6

(5) 1941-1951	34.98	21.51	0.1
(6) 1951-1961	34.95	24.80	29.93
(7) 1961-1971	23.8	24.66	31.83
(8) 1971-1981	23.8	23.85	22.00

EXPLANATORY NOTES

(i) there was no census in Assam in 1981. The figure indicated have been worked out on the basis of 1971-91 growth rate.

(ii) there were no census in Bangladesh in 1971. It was carried out in 1974. The population grew by 40.4 percent between 1961-1974 and another 21.9 percent during 1974-1981.

(iii) The much higher percentage of growth in Assam from 1911 to 1971 over All India and Bangladesh figures indicate migration into Assam. The All India growth rate for 1921 should be treated as an aberration but evening that decade, Assam's growth rate was higher than neighboring Bengal District which now constitute Bangladesh.

(iv) The reduced percentage growth for Assam in 1971-1991 presented a distorted picture unless one related it to community wise percentage of growth in Assam as compared to All India figures.

This is shown in Sub-para (c) below.

(c) Community wise growth:

	<u>Assam</u>		<u>India</u>
	<u>Hindus</u>	<u>Muslims</u>	<u>Hindus</u>
(1) 1951-1961 25.61	33.71	38.35	20.29
(2) 1961-1971 30.85	37.17	30.99	23.72
(3) 1971-1991 55.04	41.89	77.42	48.38

EXPLANATORY NOTE

The decadal growth rate of both Hindus and Muslims for the periods 1951-1961 and 1961-1971 was higher than their respective All India growth rate indicating migration of both communities into Assam. However, during the period 1971-91 Hindu growth rate in Assam was much less than All India figure. Possibly, this was due to large scale population movement of non Assamese Hindus out of Assam during the students movement and subsequent militancy in the State. In the case of Muslims the Assam growth rate was much higher than the All India rate. This suggests continued large scale Muslim illegal migration into Assam.

(d) Muslim population in Assam has shown a rise of 77.42 percent in 1991 from what it was in 1971. Hindu population has rises by nearly 41.89 percent in this period.

(e) Muslim population in Assam has risen from 24.68 percent in 1951 to 28.42 percent in 1991. As per 1991 census four districts (Dhubri, Goalpara, Barpeta and Hailakandi) have become Muslim majority districts. Two more districts (Nagaon and Karimganj) should have become so by 1998 and one district Morigaon is first approaching this position.

20. The growth of Muslim population has been emphasized in the previous paragraph to indicate the extent of illegal migration from Bangladesh to Assam because as stated earlier, the illegal migrants coming into India after 1971 have been almost exclusively Muslims.

21. Pakistan's ISI has been active in Bangladesh supporting militant movement in Assam. Muslim militant organization have mushroomed in Assam and there are reports of some 50 Assamese Muslim youths having gone to training for Afganistan and Kashmir.

CONSEQUENCES

22. The dangerous consequences of large scale illegal migration from Bangladesh, both for the people of Assam and more for the Nation as a whole, need to be emphatically stressed. No misconceived and mistaken notions of secularism should be allowed to come in the way of doing so.
23. As a result of population movement from Bangladesh, the spectre looms large of the indigenous people of Assam being reduced to a minority in their home state. Their cultural survival will be in jeopardy, their political control will be weakened and their employment opportunities will be undermined.
24. The silent and invidious demographic invasion of Assam may result in the loss of the geostrategically vital districts of lower Assam. The influx of these illegal migrants is turning these districts into a Muslim majority region. It will then only be a matter of time when a demand for their merger with Bangladesh may be made. The rapid growth of international Islamic fundamentalism may provide the driving force for this demand. In this context, it is pertinent that Bangladesh has long discarded secularism and has chosen to become an Islamic State. Loss of lower Assam will sever the entire land mass of the North East, from the

rest of India and the rich natural resources of that region will be lost to the Nation.

PREVENTING INFILTRATION,

EARLY YEARS.

1. Assam has 262 kilometer border with Bangladesh of which 92 kilometer is riverine. In 1947, with the emergence of two dominions on the sub-continent, India and Pakistan, this became an international border. For the first few years, unrestricted trans-border movement continued in this sector. Bengali Hindu refugees from East Pakistan fleeing from their homes poured across this border seeking asylum. Concurrently, Bengali Muslims too continue to come across the border for economic reasons. There was also some movement of Muslims from Assam into East Pakistan.
2. Whereas in the west, the trans-border movement of refugees from India to Pakistan and vice versa was a deluge which lasted only a few months, in the East the situation was very different. Hindus from East Pakistan (Bangladesh) kept coming across for many years and indeed they still continue to come. Muslims from Assam going into East Pakistan were relatively in much less numbers. The traditional influx of Bengali Muslims into Assam continued unabated. The large scale movement of Bengali population,

both Hindus and Muslims into Assam, caused considerable resentment among the Assamese people and there were instances of anti Bengali riots.

3. Initially, the state police with its limited resources policed this border but they could not stem the trans border movement. The large influx into Assam was a matter of great concern. The Government of India evolved the PIP (Prevention of Infiltration from Pakistan) scheme which came into operation in 1964. 159 watch Posts, 15 Patrol Posts, 6 Passport check Posts were set up. A police force of 1914 personnel under a DIG was deployed to check infiltration. After the 1965 war, when the Border Security Force came into being, responsibility for guarding the border was taken over by that Force. The Border Organization set up under the PIP scheme was now deployed in the interior to identify and deport illegal migrants. In 1987 this organization was augmented by 1280 officers and men provided by Government of India and 806 by Government of Assam, making a total of 4,000 personnel. Currently, this organization is functioning under an Additional DGP of Assam.
4. Neither the BSF on the border nor the Border Organization in the interior, could prevent large-scale illegal migrants from Bangladesh. The border is very porous and the illegal migrants enjoyed political patronage. Efforts to prevent their

ingress or to deport them were not very successful. Nevertheless in the first flush as per JTC paper No. 04/95 of January 3, 1995, 1.5 lakhs illegal migrants were pushed back but many managed to re-enter from different points on the border. There were reports of police excesses and high handedness as also allegation of harassment of genuine India Muslims.

5. The Chief Election Commissioner, Mr. S. L. Shakhdar told a conference of State Chief Electoral Officers in 1978 "In one state (Assam), the population in 1971 recorded an increase as high as 34.98 percent, over the 1961 figures and this increase was attributed to the influx of a very large number of persons from the neighboring countries. The influx has become a regular feature. I think it may not be a wrong assessment to make, on the basis of the increase of 34.98 percent between the two censuses, the increase that is likely to be recorded in 1991m census would be more than 100 percent over the 1961 census. In other words, a stage would be reached when the state would have no reckon with the foreign nationals who may probably constitute a sizeable percentage, if not the majority of the population of the state. Another disturbing factor in this regard is the demand made by the political parties for the inclusion in the electoral rolls of the names of such migrants who are not Indian citizens, without even questioning and properly determining the

citizenship status.” A few months later a by-election was to be held at Mangaldoi in which there were complaints about 70,000 illegal migrants figuring in the voter’s list. The people got convinced that illegal migration on a colossal scale had been taking place and this sparked the anti-foreigners movement in Assam. Government of India forced the 1983 election in Assam on the basis of a defective voters list. This was done on the plea that there was not enough time to revise the electoral rolls before the election. There was wide spread violence during the agitation including the infamous massacre of 1,700 Bengali Muslims at Nellie by the Lalung tribe.

6. After years of a massive agitation demanding detection, deletion and deportation of foreigners, the agitators reached a settlement with Government of India. Assam Accord was signed in 1985. Besides other agreed on, Assam Accord stipulated fencing of the border with Bangladesh, to prevent ingress of illegal migrants.

BORDER FENCING

7. Border fence may not be a foolproof method of preventing infiltration but there is no better way to doing so. To be effective, border fencing has to be supplemented by vigorous patrolling and other measures. The motivating

factors behind infiltration must be addressed. If this can be done successfully, then a permanent solution of the problem can be found.

8. Border policing in both Punjab and Assam should prevent trans-border movement of smugglers, militants and infiltrators. In the case of Assam, infiltration has a much bigger and more dangerous dimension. Despite this, the measures to counter trans-border movement in Assam appear to have been given a lower priority than in Punjab.

This is evident from the following facts-

(a) The decision to fence the border was taken in 1985 and reflected in the Assam Accord but the work of fencing started seven years later in 1992. 13 years have elapsed since this Accord and fencing has not yet been completed. Whereas in Dhubri sector of Assam it is nearly complete, in the Cachar sector, only a little over half has been completed. As against this, fencing in Punjab started in 1988 and was completed in 3 years by 1991.

(b) The quality of fencing in Punjab is superior. It is two feet taller. Observation towers and lighting of fence have been provided in the Punjab all along the border. In Assam observation towers have been constructed in Dhubri sector only and there are none in Cachar

sector. There is no lighting of the fence anywhere in Assam.

(c) The density of troops guarding the fence is higher in Punjab. A BSF battalion in Punjab holds a frontage of approximately 30 kilometers. In Assam, BSF Battalions in Dhubri sector are deployed over frontage of 40 kilometers.

9. Border fencing in Assam must be completed forthwith on a war footing. In terms of cost outlay, it may not now be possible to provide border fencing of the same height as in Punjab but there must be lighting arrangements for the fence. Observation towers must be provided in Cachar sector.
10. Additional BSF battalions should be provided in the East with each battalion having a frontage of 30 kms. It is understood that one reason for the deployment of BSF in the East is the fact that 16 battalions are deployed on counter insurgency tasks. Such diversion of forces from border policing to other duties when the battle against illegal migrants is on, cannot but have adverse effect. The shortage of BSF units must be made up on priority through new raising.
11. The present arrangement of guarding the riverine border with some speed boats and out board fitted country boats, is not adequate. There is a need to have floating

BOPs. On medium watercraft with four to five speed boats attached to them. A proposal for nine medium crafts has been put up by DG, BSF. This should be sanctioned soon.

12. All country boats plying on the river near the border must be registered with the registration number marked on them and the registration papers available with the crew for verification, when required.

OTHER MEASURES

13. Certain other measures are also required to be taken to deal with illegal migration. These are as follows:
 - (a) Our nationals in the border districts and for that matter in the whole state, should be provided multi purpose photo identify card. This task should be completed on high priority.
 - (b) Effective arrangement must be made for registration of births and deaths in the state.
 - (c) The 1950 National Register of Citizens should be updated. Computerization will facilitate the process. A separate Register for illegal migrants (stateless citizens) should also be maintained.
14. The Brahmaputra is normally 5 to 7 km wide and during floods have only one water channel. However, in lean seasons, there are two, three or even more water channels

throwing up chars (islands). Due to changing river configurations, it is difficult to survey the chars. The Bangladeshi Muslims settle on these chars. They are hardy and are prepared to face difficult living conditions, particularly when the chars get submerged for a few days during floods, which comes three to four times in a season. Chickens are put on roots, cattle herded on platforms above the water level and in emergent situations men and cattle live in boats. This hardy community has been living on chars in the Brahmaputra from Dhubri (near the international border) to Lakhimpur. There are still several chars which are uninhabited. These should be handed over to the Forest Department and notified as forest land. Trees which can withstand 1 to 3 feet of water during flood season should be planted on them.

DEVELOPMENT IN BANGLADESH

15. The measures recommended to arrest the influx of illegal migrants may not completely stop their ingress but will certainly go a long way in reducing it to a small trickle. A more lasting and effective solution can come about through economic development in Bangladesh. This will remove the motivation behind trans-border migration. Lately, there have been welcome development in this regard in Bangladesh.

There are signs of the economy picking up in that country through the unique experiment of Grameen Bank supported by a large amount of international funding and the effort of the Government and other NGOs. The Grameen Bank has been targeting the women. Its membership has swelled to over two million, and of these, 93 percent are women. It is providing micro-credit loans without any collateral. These run into several billions and they have a record recovery rate of 98 percent. This is bringing about a perceptible change in the rural areas. Targeting women for economic development provides multi-benefits. It adds to the earning of the family, encourages gender justices, promotes women's education, which acts as a curb on population growth, and liberated women become a bulwark against the spread of Islamic fundamentalism. All these benefits suit the interests of India. India should, as far as possible, be prepared to assist in socio-economic development of Bangladesh.

IMPLEMENTATION

16. The various measures recommended to stop illegal migration are non-controversial. No political party or organization within the country can legitimately protest and demand that these steps should not be taken. Through

these measures, we can bring about a sea-change in the situation and trans-border migration will become a trickle. If we do not take effective measures to stop this movement and allow trans-border migration to continue unabated then it may spell the doom of Assam and put our national security in grave jeopardy.

CHAPTER – IV

DETECTION AND DEPORTATION

CONFLICTING VIEW POINTS

1. Measure to stem illegal migration can be undertaken without any controversy but any alteration of status quo in regard to detection and deportation of these migrants will result in strident assertion of conflicting view point. The “secular” parties and the minorities do not see any danger from illegal migration. They believe that most of the so-called illegal migrants are Bengali-speaking Indian Muslims and this issue has been unnecessarily blown out of proportion. They fear that in the garb of deporting foreigners, Indian Muslims will be harassed. Thus they are for the continuance of IM (DT) Act in its present form. On the other hand, the majority community of Assam and the political parties dubbed as “communal” by the “secularists”

have a diametrically opposite view point. They are gravely concerned about the large influx of illegal migrants and want their ingress stopped. They also want that the highly discriminating IM (DT) Act be repealed forthwith. There appears to be no meeting ground between these opposing views. Notwithstanding this, it is our national interest to work out a mutually acceptable solution to this burning problem, which not only affects the people of Assam but the entire nation.

2. The furore raised over the attempt by Maharashtra Government to deport 34 Bangladeshis from Mumbai in accordance with due process of law, underscored the sharp divide in the country over this issue. The ugly incidents in Calcutta, the stalling of proceeding of the parliament and the outraged feeling so strongly expressed in the press, showed how sensitivities got aroused on this issue. In the past few years, many illegal migrants from different states, including Maharashtra were being pushed back into Bangladesh-4,895 in 1993, 5,782 in 1994, 3,612 in 1995, 2,791 in 1996, 4,922 in 1997 and 1,597 upto September 1998. In other words such deportation had been a common feature and no protest were being raised on that account. The point about Government of West Bengal not being given prior information does not hold much water. The deportation had to be effected by a central agency, the

BSF. No doubt the illegal migrants escorted by Maharashtra police had to transit through West Bengal but for that matter, they had also to transit through other states enroute. On that basis, each State Government enroute could ask for prior information of their deportation. It is pertinent that during the days of terrorism in Punjab, policemen from that state had come to Calcutta and had picked up suspected terrorists without any intimation to West Bengal Government. The protest made about that action was almost mute compared to what happened in the case of the attempted deportation of Bangladeshis from Mumbai. Understandably there was sharp reaction in Bangladesh. The Bangladesh Press was highly critical of the design of the "Hindu fundamentalist Government" in India, trying to throw out innocent India Muslims and dump them on Bangladesh. One newspaper went to the extent of demanding that Bangladesh should seek assistance from USA to deal with India. Prime Minister, Sheikh Hasina, a known friend of India, issued a statement that no Bangladeshi was illegally living in India. Her predecessor, not known to be so friendly towards India, had agreed to a Joint Working Group of India and Bangladesh to be set up for examining the issue of illegal migrants. This had implied acceptance of the existence of this problem, which was now being so summarily dismissed.

DEPORTATION

3. International law does not provide for unilateral deportation in defiance of the views of the country to which the deportation is to take place. With the stand now taken by Bangladesh, it will not be possible for India to deport millions of illegal migrants to Bangladesh. From 1993 to September 1998, the BSF tried to hand over 39,476 illegal migrants to Bangladesh Rifles. The latter accepted only 9,253 and refused to accept 30,493. The acceptance figures by Bangladesh declined from 5,799 in 1993 to only 55 in 1998 (upto 30th September). With the recent developments in the wake of the attempt to deport 34 Bangladeshi Muslims from Mumbai and the statement of the Prime Minister of Bangladesh it is unlikely that Bangladesh Rifles will now accept Bangladesh migrants. Moreover, the bursting population of Bangladesh creates a Malthusian nightmare and is not conducive to that country accepting them. Further, our capability to identify and deport over ten million such people is questionable. In these circumstance, deportation of these illegal migrants is not now a practical proposition.

IM (DT) Act.

4. IM (DT) Act was enacted at the height of the anti-foreigners movement in Assam. The large scale violence during the movement including the Nellie massacre had led to understandable apprehension among the minorities of harassment and victimization. A large number of illegal migrants had been pushed back in previous years. It is possible that in this process, some genuine India citizens had been harassed and pushed back. Be that as it may, the fact is that on the plea of protecting genuine India citizens the IM (DT) Act was formulated but in practice, it has been found to be primarily serving the interest of the illegal migrants.
5. The Act provided for two individuals living within a radius of 3 kms. of a suspected illegal migrant to file a complaint accompanied with a deposit of sum of Rs. 25/-. The 3 km. Restriction was modified and now the complaint can be from the same police station area as the individual being complained against. The deposit has been reduced from Rs. 25 to Rs. 10/-. The police can also suo moto initiate action. Elaborate time consuming procedure have been laid down for screening, for examination by District Tribunals and for appeal to the Appellate Tribunal.

6. Proponent of IM (DT) maintain that unwarranted fears have been aroused about large influx of population from Bangladesh when in actual fact their number is very small. They want to retain this Act at all costs. They feel that otherwise the minorities would face great hardship and harassment.
7. The opponents of this Act demand its immediate repeal as it is highly discriminatory legislation applying only to Assam and not to other states. They argue that such legislation should not have been on the statute of any sovereign state. It gives freedom to an alien to enter this country, secure in the knowledge that the country he has entered illegally will have to prove that he is an illegal migrant to deny him citizenship. Under the Foreigners Act which applies to rest of the country and which is in consonance with the practice followed the world over, it is the foreigner to prove that he is an Indian national to claim Indian citizenship. The IM (DT) Act shifts the burden of proof on the complainant or the police, to establish that the person complained against is a foreigner.
8. This Act caters for an Appellate Tribunal of two retired High Court Judges, 16 District Tribunals of two retired District / Additional District Judges with supporting staff. The Border Organization of 4000 Policemen processes the cases of alleged illegal migrants. The efforts of these agencies

maintained at a cost of hundreds of crores to the Exchequer, expanding over a period of 15 years, has led to the identification of only 9,599 illegal migrants. Out of these, only 1,454 could be deported. These statistics amply establish the futility of continuing with the IM (DT) Act in its present form.

9. Apart from the conflicting views of the proponents and the opponents of the IM (DT) Act, those working for executing its provisions have been facing difficulties as indicated below-

(a) The Tribunals have been starved of funds and resources. Out of 16 District Tribunals only 5 are functioning. The remaining 11 Tribunals have only one person on each bench and as such are non functional. Salaries and TA bills of the staff are not paid in time. Essential facilities like transport and telephone are lacking and funds are often not available to buy even postage stamps.

(b) The Border organization requires to process these cases have been encountering difficulties at every step. Often by the time a complaint received or the police initiates inquiry against a suspect, that individual shifts to another location and is not traceable, when the individual is available, he insists he is an Indian national and while the police tries to

collect evidence, he often disappears. The process of absconding also occurs at two subsequent stages before the case is heard by the Tribunal and during the 30 days period allowed to the person to appeal to the higher tribunal or face expulsion. Under this Act, the police does not have the powers of search, seizure or arrest as available under the Foreigner Act. During trial by Tribunals, the prosecution witnesses do not appear because there is no provision for paying them their traveling expense.

10. Any move to repeal the IM (DT) Act is likely to encounter strong opposition from minorities and their supporters, for the vested and opportunistic reasons. Some of these have begun to suggest that to remove the allegation of discrimination connected with this Act, its provisions should be extended to other states. They argue that Foreigners Act of 1946 is a legacy of the British era and was meant to deal with foreign nationals who were ethnically and culturally different from Indians. The requirements for dealing with Bangladeshis who have ethnic, cultural, linguistic and religious affinities with our population, are different. This requires a different legislation. The line of argument ignores similarities between the Tamil people of Sri Lanka and of Tamil Nadu or for that matter, the similarity among the people living on either side of Indo-Nepal border. It is further

argued that the meager number of foreigners detected under the IM (DT) Act is not due to any infirmities of this Act or in procedures being followed, but due to the very small numbers of illegal migrants in the country. This argument flies in the face of all available statistics and other indicators, establishing the presence of a very large number of illegal Bangladeshi migrants in the country.

11. As deportation of such a large number of illegal migrants is no longer a viable option and because of the numerous infirmities in the IM (DT) Act which have rendered its continuation a wasteful exercise, it is imperative that this Act be repealed. It should be replaced by a more just, workable and fair enactment.

REPLACING IM (DT) ACT.

12. The IM (DT) Act does not exclusively apply to any religious community. It is applicable as much to Bengali Hindus as to Bengali Muslims. Providing asylum to minorities fleeing from their home country was a Partition liability for both India and Pakistan. Yet in Assam no distinction has been made between Hindus and Muslims. Those migrants who came to Assam upto 24th March, 1971, have been given India citizenship, irrespective of the religious community to which

they belong. However the ground reality is that of late all the illegal migrants now coming into Assam are Muslims.

13. The repeal of IM (DT) Act and its replacement by another Act, must take into account the legitimate fears of the minorities. They should be assured that new Act will be fair, just and transparent, leading to expeditions disposal of cases.

The following aspects have to be noted.

(a) Partition liability of India in relation to refugees from East Pakistan / Bangladesh is only in respect of minority community of that country. However, this liability should not be extended beyond a reasonable time frame. A quarter of a century is adequate for this purpose. Any Hindu migrant coming to India after 24th March 1971 without valid papers should be classified as illegal migrants.

(b) Although India had no Partition liability for East Pakistani Muslims. Assam Accord caters for Indian citizenship being granted to all East Pakistani Muslims who came across illegally between 15th August 1947 and 24 March 1971 with a special provision that those who came between 1 January 1966 and 24 March 1971 would be eligible for this,

only after a lapse of ten years of being identified as foreigners.

(c) As per JC paper No. 04/95 dated 3 January 1995, even after legitimizing pre-1971 illegal migrants, 18 percent of the population of Assam in 1991 comprises illegal migrants. Since deportation is being ruled out as a viable option, even those, whether Hindus or Muslims, who came illegally after 24 March 1971 will now not be deported. Thus the scope for harassment gets considerably reduced and the main sting in the whole process gets taken out.

14. Although illegal migrants, who came in after 24 March, 1971 will not be deported, they must be identified and after identification denied voting rights and certain other facilities like acquisition of immovable property. A suitable process for doing so which may have acceptability and command credibility should be evolved. This exercise should be completed expeditiously. This process for doing so should be on the following lines:

(a) Ground survey teams each under a Magistrate assisted by the Border Organization, should extensively tour the areas allotted to them, to identify illegal migrants. To ensure maximum objectivity and freedom from local pressures, political or otherwise, Magistrates from outside Assam be deputed for this

task. The survey should be completed in a fixed time frame of a few months. Inducting Magistrates from outside will be on the lines of what happened in 1983 elections when officers were brought into Assam from different states on temporary deputation.

- (b) Individuals identified as illegal migrants should be allowed the right of appeal before Foreigners Tribunal set up under Foreigners Act. This will provide necessary judicial sanctity to this exercise.
- (c) Foreigners identified as illegal migrants should be denied voting rights and their children born in India should not automatically become eligible for Indian citizenship. Disfranchisement may be a big issue for political parties who so assiduously try to build vote banks but is no hardship to the immigrant. The denial of voting rights to these migrants can by no stretch be deemed to be unjust. Over 1 lakh Hindu and Sikh refugees from West Pakistan, who settled in Jammu region in 1947, have to this day, after a lapse of 50 years, not being given voting rights. However, refugees from West Pakistan who settled in other states were given full citizenship rights and many amongst them become union cabinet Minister and one became Prime Minister.

15. The proposed arrangement should adequately assuage the legitimate fears of the minority community and also be a human measure for the illegal migrants. Pre- 1971 illegal migrants stand already legitimized and the post 1971 illegal migrants, not now to be deported, will be partially legitimized.
16. The minority community in Assam now comprises nearly 30 percent of the population and with their tendency to vote as a block, they can hardly be considered a minority in real terms. They have come to acquire a decisive role in Assam's democratic polity, which the majority community with its split votes, cannot match. So far as the majority community is concerned, they may resent the decision not to deport the illegal migrants but in present circumstances, there is no other alternative. They should get reconciled to it. Illegal migrants up to 24 March 1971, have been made India citizens and this has been accepted by them. Illegal migrants of post 24 March, 1971 vintage will not be deported but will be made stateless citizens. The minority community should appreciate that the repeal of IM (DT) Act and its replacement by a just, fair, transparent and expeditious Act will provide adequate safeguards against harassment and victimization. This will also reduce political patronage for illegal migration and will be yet another disincentive for prospective illegal migrants.

CHAPTER – V

CONCLUSION

1. A silent and invidious invasion of Assam has been taken place for several decades and successive Governments have failed to stem this demographic onslaught. It started as a purely economic movement contributing to the development of Assam's agricultural economy. As independence approached, it acquired communal and political contours. And today, an international dimension with security overtones has got added to this population movement.
2. Hitherto the intrusion of illegal migrants has generally been looked upon as a local problem affecting only the people of Assam. This myopic view accounts for more sinister and dangerous aspects being overlooked. The views expressed by Jinnah, Bhutto, Sheikh Mujibur Rahman and the present day intellectuals in Bangladesh cannot be ignored. Assam can provide the much desired lebensraum for Bangladesh. This fact coupled with Assam's geostrategic importance, Bangladesh's bursting population and growing international Islamic fundamentalism, underscore the volatile situation created by this on going demographic intrusion from across the border. We must not allow any misconceived notion of secularism to blind us to these realities.

3. Although Bangladeshi illegal migrants have come into several states of India and they are more numerous in West Bengal than in Assam, they pose a much greater threat in Assam than in any other state. If not effectively checked, they may swamp the Assamese people and may sever the North East land mass from the rest of India. This will lead to disastrous strategic and economic results.
4. Political parties have been underplaying the grave importance of this problem and have been viewing as something affecting only the Assamese people. Thus an issue of great concern for national security has been made into a partisan affair and a matter of vote bank. It must be lifted above the mire of party politics and viewed as a national security issue of great importance. There is an imperative need to evolve national consensus on this all important threat facing the nation.
5. Concrete steps must be taken on war footing to ensure that the borders are as nearly sealed as possible and the unabated flood of infiltration, reduced to a trickle. Concurrently, the highly discriminatory IM (DT) Act which during the last 15 years has proved to be an exercise in futility, should be repealed. With deportation of illegal migrants to Bangladesh no longer a viable option, a new legislation needs to be introduced which will ensure a just, fair, practical and expeditious approach to detecting illegal

migrants and declaring them stateless citizens without voting rights and without right to acquire movable property.

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ANNEXURE – P8

GOVERNMENT OF INDIA

MINISTRY OF HOME AFFAIRS

RAJYA SABHA

UNSTARRED QUESTION NO. 332

TO BE ANSWERED ON THE 14th JULY, 2004/ASADHA 23, 1926
(SAKA)

DEPORTATION OF ILLEGAL BANGLADESH MIGRANTS

332. SHRI DATTA MEGHE:

Will the Minister of HOME AFFAIRS be pleased to state:

- (a) Whether an Action Plan was prepared which visualized deportation of at least 100 illegal Bangladeshi migrants per day:
- (b) If so, the details in regard thereto;
- (c) The State-wise details of the likely number of illegal Bangladeshi migrants in the country;
- (d) How many such illegal Bangladeshi migrants have been deported during last three years, year-wise and
- (e) The efforts made to identify and deport 100 illegal Bangladeshi migrants per day, as visualized in the Action Plan in this regard?

ANSWER

MINISTER OF STATE IN THE MINISTRY OF HOME
AFFAIRS

(SHRI SRIPRAKASH JAISWAL)

(a) To (e): A statement is attached.

Estimated Number of Illegal Bangladeshi Immigrants in India as
on 31.12.2001.

Sl. No.	Name of the State/UT	Estimated Numbers
1	ANDHRA PRADESH	
2	ARUNACHAL PRADESH	800
3	ASSAM	50,00,000
4	BIHAR	4,79,000
5	GOA	-
6	GUJARAT	100
7	HARYANA	550
8	HIMACHAL PRADESH	-
9	JAMMU & KASHMIR	-
10	KARNATAKA	-
11	KERALA	-
12	MADHYA PRADESH	700
13	MAHARASHTRA	20,400
14	MANIPUR	-
15	MEGHALAYA	30,000
16	MIZORAM	-

17	NAGALAND	59,500
18	ORISSA	30,850
19	PUNJAB	150
20	RAJASTHAN	2,500
21	SIKKIM	-
22	TAMIL NADU	-
23	TRIPURA	3,25,400
24	UTTAR PRADESH	26,000
25	WEST BENGAL	57,00,000
26	A & N ISLANDS	3,000
27	CHANDIGARH	-
28	DADAR & NAGAR HAVELI	-
29	DAMAN & DIU	-
30	DELHI	3,75,000
31	LAKSHDWEEP	-
32	PONDICHERRY	-
	TOTAL	1,20,53,950

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ANNEXURE – P9

UNITED NATIONS DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES

13 September 2007

Resolution adopted by the General Assembly

[without reference to a Main Committee (A/61/L.67 and Add.1)]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,¹ by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples, Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting

13 September 2007

Annex

United Nations Declaration on the

Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfillment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind, Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures

and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights²

and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate

fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner

appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into

account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to

engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the

necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and

legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a

relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to

facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through

international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote

respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part,

the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

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ANNEXURE P-10

**Chief Minister, Assam
Guwahati**

D.O. No.PLB.38/91/Pt.IV/34

Date: 04.08.2008

Respected Dr. Singh

I would like to draw your kind attention to the issue of updating of National Register of Citizens (NRC) in the State of Assam. You may kindly recall that you had taken a tripartite meeting in connection with implementation of the Assam Accord on 5th May, 2005 at New Delhi in which it was decided to update the National Register of Citizens, 1951. In pursuance to the decision, the State Government initiated measures for the preparation of NRC and preliminary works of updating have been taken up.

However, according to the Citizenship Act 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules 2003, the responsibility for the preparation of the National Register of Indian Citizens (NRIC) has been vested with the Central Government. The State Government has, therefore, suggested that the Central Government should get directly involved with the process of preparation and updating of the NRC.

As requested by the Ministry of Home Affairs, New Delhi the State Government has prepared the modalities for the updating of National Register of Citizens and the said modalities has been

submitted to the Ministry of Home Affairs in the month of June, 2008 after it has been approved by the State Cabinet.

In this connection, it needs mention that updating of the National Register Citizens, 1951 is looked upon as the solution to the vexed foreigners issue in the State and there seems to be a consensus among cross section of people with regard to the updating of National Register of Citizens. The people of Assam look forward to an updated National Register of Citizens prepared at the earliest. As the modalities have been submitted the Government of India may take a decision for updating of National Register of Citizens early in accordance with the suggestions made in the modalities.

It shall be highly appreciated if you could kindly look into the matter and use your good offices to ensure for an early action on the matter.

With regards.

Yours sincerely,

Sd/-

(TARUN GOGOI)

Dr. Manmohan Singh

True Copy

Hon'ble Prime Minister of India

New Delhi

(MAP & Co)

ANNEXURE – P11 COLLY

ASSAM SANMILITA MAHASANGHA

(AN INDIGENOUS PEOPLES ORGANIZATION OF ASSAM)

Office: Chandmari Colony, House No. 10

Near Chandmari Police Station, Guwahati-3

A

MEMORANDUM

TO

SMT. PRATIVA DEVI SINGH PATIL

Hon'ble President

Republic of India, New Delhi

Dated New Delhi the 28th May 2010

Sub: Latest Direction of the Government of India to start the upgradation of National Register of Citizens (N. R. C.) of Assam from 01.06.2010 on the basis of the Electoral Roll, 1971 violating the provision of the Constitution of India.

Respected Sir,

The under signed most respectfully begs to submit the following for favour of your kind sympathetic considerations and necessary decision please.

1. That, the Petitioner of the “Assam Sanmilita Mahasangha” (An Indigenous Peoples Organization of Assam) prefer this petition in the interest of Indigenous People of Assam being aggrieved by the decision of the Government of India for upgradation of the National Register of Citizens (NRC) on the basis of Electoral Roll, 1971, violating the provision of the Article 6 of the Constitution of India in relation to Citizenship.
2. That Article 6 of the Constitution of India has clearly stated that a person, who came to the India from the territory then included in Pakistan and whose parents or grandparents were born in India as understood under the Government of India Act, 1935, would be treated as an Indian Citizen. However, for acquiring citizenship, this Article has stated that such a person should migrate to India before July, 19, 1948. There is a rider, too, that if any other person had come to India before six months of the commencement of the Constitution in order to be treated as Indian Citizen, he or she must get himself / herself registered as an Indian Citizen with the prescribed authorities in the manner laid down by the Government of India. The Constitution was enforced with effect from January 26, 1950. Therefore, any person who came to India, the last date should be before January 19, 1949 at the latest. It is thus seen that there are

to cut-off dates, that is July, 19, 1948 without application and January 19, 1949 with application, for acquiring Indian Citizenship. These are the laid down under the Constitution of India and till now provisions of Article 6 of the Constitution has remained unchanged. It is also provided by the Constitution that any law, which takes away the fundamental rights conferred on the citizens by the Constitution, is void.

3. That the territory of Assam is a part and parcel of Union of India. But the Citizenship Act, 1955 was amended in the year 1985 and 2003, incorporating section 6A (3)(a)(b) respectively, which is made applicable only of the State of Assam purportedly on the strength of the Assam Accord which is totally unconstitutional as per provision of Constitution, a Law means "Any Ordinance, Order, Bylaw, Rule, Regulation, Notification, Custom or Usage." So, an Memorandum of Understanding or Accord has not been included within the meaning of law. As a result, 1985 and 2003 amendment of the Citizenship Act laying down two cut-off dated by Section 6A (3)(a)(b) respectively, namely January 1, 1966 and March, 25, 1971 on the plain reading apparently contravenes the above provision of the Constitution. So, anything done under the said provision is unenforceable. For the above provision of the Citizenship Act contravene Articles 14 & 21 of the Indian Constitution.

4. That the population patterns of Assam have been changed as a result of illegal migrants of foreign nationals. The huge magnitude of the problem and the serious threat to the territorial integrity of the nation that this influx of foreign nationals possess is clearly revealed by the following figures of census report of Assam.

PERCENTTAGE OF INCREASE OF POPULATION PER
DECADE ASSAM AND INDIA

Year	Population of Assam	% increase Assam	% increase India
1951	80,28,856	19.94	13.31
1961	108,37,329	34.98	21.64
1971	146,25,152	34.95	24.80

Assam tops the list of states which registered more than 50% increase during 1911-1961.

5. That the comparative study of the increase of voters of Assam since 1957 to 1971 also reveals the gravity of the changing population pattern of Assam-

Year	No. of Electors	Increase	% of increase during the period
1957	44,93,359		
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1966	55,85,056	6,42,240	12.99% (in 4

			years)
1970	87,01,805	31,16,749	2.09% (in 4 years)
1971	92,96,198	5,94,393	10.42 (in 1 years)

6. That due to the infiltration of illegal migrants in to the territory of Assam the population pattern of the region abruptly changed and seriously effected in the field of socio economy of this region. Moreover, the tendency of capture the political, economical and other rights by the suspected foreign national create a great threat to the security of the nation as a whole and also the indigenous people of this region provoke to loss their identity in their own motherland.
7. That as per law of the land only the genuine Indian Citizens should be included in the National Register of Citizens (NRC in short) but if the Government of India upgraded the NRC of Assam according to provisions of Indian Citizenship Act, 1955 (as amended in 1985 and 2003) on the basis of the Electoral Roll of 1971 a huge number of foreign nationals would be registered as Indian Citizen and the indigenous people of the region would be totally outnumbered forever/ loss all political, economical and other fundamental rights being the son of the soil.

Under the above facts and circumstances we on behalf of Assam Sanmilita Mahasangha would like to place the following dements for urgent for consideration to save Assam & save India as a whole.

OUR DEMANDS:

1. Don't start the NRC upgradation work in Assam from 01.06.2010, as because it violate the Article 6 of the Indian Constitution.
2. Take necessary steps to upgrade N. R. C. in Assam by following the directions in Article 6 of Indian Constitution.
3. Uphold the Indian Citizenship Act, of 1955 and repeal the modification of this Act, in 1985 and 2003 which is contradictory of the 14 & 21 Article of Indian Constitution.

With due regards,

Yours faithfully

Sd/-

(Mr. Chandra Kanta
Terang)
President
Assam Sanmilia
Mahasangha

Sd/-

(Mr. Matiur Rahman)
Working President
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True Copy

(MAP & Co.)

ANNEXURE – P11 COLLY

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(AN INDIGENOUS PEOPLES ORGANIZATION OF ASSAM)

Office: Chandmari Colony, House No. 10

Near Chandmari Police Station, Guwahati-3

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TO

DR. MANMOHAN SINGH

Hon'ble Prime Minister

Republic of India, New Delhi

Dated New Delhi the 28th May 2010

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Hon'ble Home Minister

Republic of India, New Delhi

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(MAP & Co.)

ANNEXURE – P11 COLLY

ASSAM SANMILITA MAHASANGHA

(AN INDIGENOUS PEOPLES ORGANIZATION OF ASSAM)

Office: Chandmari Colony, House No. 10

Near Chandmari Police Station, Guwahati-3

A

MEMORANDUM

TO

MR. V. VEERAPPA MOILY

Hon'ble Law Minister

Republic of India, New Delhi

Dated New Delhi the 28th May 2010

Sub: Latest Direction of the Government of India to start the upgradation of National Register of Citizens (N. R. C.) of Assam from 01.06.2010 on the basis of the Electoral Roll, 1971 violating the provision of the Constitution of India.

Respected Sir,

The under signed most respectfully begs to submit the following for favour of your kind sympathetic considerations and necessary decision please.

1. That, the Petitioner of the “Assam Sanmilita Mahasangha” (An Indigenous Peoples Organization of Assam) prefer this petition in the interest of Indigenous People of Assam being aggrieved by the decision of the Government of India for upgradation of the National Register of Citizens (NRC) on the basis of Electoral Roll, 1971, violating the provision of the Article 6 of the Constitution of India in relation to Citizenship.
2. That Article 6 of the Constitution of India has clearly stated that a person, who came to the India from the territory then included in Pakistan and whose parents or grandparents were born in India as understood under the Government of India Act, 1935, would be treated as an Indian Citizen. However, for acquiring citizenship, this Article has stated that such a person should migrate to India before July, 19, 1948. There is a rider, too, that if any other person had come to India before six months of the commencement of the Constitution in order to be treated as Indian Citizen, he or she must get himself / herself registered as an Indian Citizen with the prescribed authorities in the manner laid down by the Government of India. The Constitution was enforced with effect from January 26, 1950. Therefore, any person who came to India, the last date should be before January 19, 1949 at the latest. It is thus seen that there are

to cut-off dates that is July, 19, 1948 without application and January 19, 1949 with application, for acquiring Indian Citizenship. These are the laid down under the Constitution of India and till now provisions of Article 6 of the Constitution has remained unchanged. It is also provided by the Constitution that any law, which takes away the fundamental rights conferred on the citizens by the Constitution, is void.

3. That the territory of Assam is a part and parcel of Union of India. But the Citizenship Act, 1955 was amended in the year 1985 and 2003, incorporating section 6A (3)(a)(b) respectively, which is made applicable only of the State of Assam purportedly on the strength of the Assam Accord which is totally unconstitutional as per provision of Constitution, a Law means "Any Ordinance, Order, Bylaw, Rule, Regulation, Notification, Custom or Usage." So, an Memorandum of Understanding or Accord has not been included within the meaning of law. As a result, 1985 and 2003 amendment of the Citizenship Act laying down two cut-off dated by Section 6A (3)(a)(b) respectively, namely January 1, 1966 and March, 25, 1971 on the plain reading apparently contravenes the above provision of the Constitution. So, anything done under the said provision is unenforceable. For the above provision of the Citizenship Act contravene Articles 14 & 21 of the Indian Constitution.

4. That the population patterns of Assam have been changed as a result of illegal migrants of foreign nationals. The huge magnitude of the problem and the serious threat to the territorial integrity of the nation that this influx of foreign nationals possess is clearly revealed by the following figures of census report of Assam.

PERCENTTAGE OF INCREASE OF POPULATION PER
DECADE ASSAM AND INDIA

Year	Population of Assam	% increase Assam	% increase India
1951	80,28,856	19.94	13.31
1961	108,37,329	34.98	21.64
1971	146,25,152	34.95	24.80

Assam tops the list of states which registered more than 50% increase during 1911-1961.

5. That the comparative study of the increase of voters of Assam since 1957 to 1971 also reveals the gravity of the changing population pattern of Assam-

Year	No. of Electors	Increase	% of increase during the period
1957	44,93,359		
1962	49,42,816	4,49,457	10% (in 5 years)
1966	55,85,056	6,42,240	12.99% (in 4 years)
1970	87,01,805	31,16,749	2.09% (in 4

			years)
1971	92,96,198	5,94,393	10.42 (in 1 years)

6. That due to the infiltration of illegal migrants in to the territory of Assam the population pattern of the region abruptly changed and seriously effected in the field of socio economy of this region. Moreover, the tendency of capture the political, economical and other rights by the suspected foreign national create a great threat to the security of the nation as a whole and also the indigenous people of this region provoke to loss their identity in their own motherland.
7. That as per law of the land only the genuine Indian Citizens should be included in the National Register of Citizens (NRC in short) but if the Government of India upgraded the NRC of Assam according to provisions of Indian Citizenship Act, 1955 (as amended in 1985 and 2003) on the basis of the Electoral Roll of 1971 a huge number of foreign nationals would be registered as Indian Citizen and the indigenous people of the region would be totally outnumbered forever/ loss all political, economical and other fundamental rights being the son of the soil.

Under the above facts and circumstances we on behalf of Assam Sanmilita Mahasangha would like to place the

following dements for urgent for consideration to save Assam & save India as a whole.

OUR DEMANDS:

1. Don't start the NRC upgradation work in Assam from 01.06.2010, as because it violate the Article 6 of the Indian Constitution.
2. Take necessary steps to upgrade N. R. C. in Assam by following the directions in Article 6 of Indian Constitution.
3. Uphold the Indian Citizenship Act, of 1955 and repeal the modification of this Act, in 1985 and 2003 which is contradictory of the 14 & 21 Article of Indian Constitution.

With due regards,

Yours faithfully

Sd/-

(Mr. Chandra Kanta

Terang)

President

Assam Sanmilia

Mahasangha

Sd/-

(Mr. Matiur Rahman)

Working President

Assam Sanmilita

Mahasangha

Sd/-

(Mr. Tilak Mohan)

Secretary General

Assam Sanmilita

Mahasangha

True Copy

(MAP & Co.)

ANNEXURE P-12GOVERNMENT OF ASSAM
POLITICAL (B) DEPARTMENT: DISPUR: GUWAHATI

No.PLB.119/2010/142 Dated Dispur, the 29th August, 2012

From : Sri G. D. Tripathi, IAS
Secretary to the Government of Assam
Home & Political DepartmentTo : Sri Sushil Ekka
Under Secretary to the Government of India
Ministry of Home Affairs, NE.IV, New Delhi-110 001

Sub: Report of the Cabinet Sub-Committee on NRC.

Ref: No.11012/41/2003-NE.IV dated 1st May, 2012

Sir,

In inviting a reference to the letter on the subject cited above, I am directed to say that the report of the Cabinet Sub-Committee on NRC has been approved by the Cabinet in its sitting on August 16, 2012.

Further, the Cabinet has approved inclusion of following in the illustrative list of documents below Sl.No.13:

13.A. Certificate issued by Circle Officer in respect of females who have migrated from an urban area after marriage. However, this would be a supporting document only.

The Cabinet also observed that the possibility of using bar coded application forms be explored and NRC be updated by developing a user friendly software.

A copy of the report submitted by the Cabinet Sub-Committee is also enclosed herewith.

Enclo: As stated above.

Yours faithfully,

Sd/-
Secretary to the Government
of Assam
Home & Political Department

True Copy

(MAP & Co)

ANNEXURE – P13

INDIGENOUS PEOPLES UNITY IS OUR MOTTO
ASSAM SANMILITA MAHASANGHA
(A confederation of Indigenous People of Assam)

A
MEMORANDUM
TO
DR. MANMOHAN SINGH
Hon'ble Prime Minister
Republic of India, New Delhi

Dated New Delhi the 24th September, 2012

Sub: Identification and deportation of illegal foreigners from Assam according to the provisions of Indian Constitution and existing law.

Respected Sir,

Accept our warm welcome.

We the undersigned most respectfully beg to submit the following for favour of your kind sympathetic considerations and necessary decision please.

As you know that, the illegal foreigners problem has been a very disturbing fact for the people of Assam. It has created a feeling of unrest among the indigenous people of Assam. It is

necessary to mention, that while scrapping the IMDT Act (1983) by the Hon'ble Supreme Court of India on 12 July, 2005, termed the illegal foreigners problem as a Silent Aggression and Great threat to the Sovereignty of the Nation. Nevertheless, this spine chilling comment has been made in this regard. At this situation we the Indigenous People of Assam feel that the policies made by the Government to solve the illegal foreigners problem are discriminatory and boise. The imposition of anti-Indigenous policy by the Government is never acceptable. According to the U.N. declaration of Indigenous Peoples rights of 2007, the Union Government should take prior opinion and consent of the Indigenous Peoples, while forming any policy which effect them. India have voted in favour of the U.N. declaration of Indigenous Peoples rights 2007. So, it is obligatory for India to implement the U. N. declaration.

Hence we put forward the following demands for your immediate action.

OUR DEMANDS:

1. Make 1951 as the base year for identification of illegal foreigners and identify them according to the 1951 N.R.C., voter list of 1952, Foreigners Act of 1946 and Foreigners Ordinance of 1964.

2. Immediately arrange for illegal migrants extradition pact with Bangladesh & Nepal.
3. Put the identified illegal foreigners under detention camps or keep them under house arrest and take appropriate steps to get their finger print on biometric machine and photograph.
4. Prepare the voter list only after the identification of illegal foreigners.
5. Abolish the discriminatory amendments of Citizenship Act of 1955 in 1985, 1986 and 2003 as it violates the Article 5, 6, 14, 15, 21 as well as Article 355 of Indian Constitution, which promises to protect every State against External Aggression and Internal disturbance by Union Government.
6. Take the Indigenous peoples into full confidence and respect their opinion while forming any policy regarding the illegal foreigners issue.
7. As the cut of date for identification of illegal foreigners, 01.01.1966, voter list 1967, 25th March, 1971 and 2004 are self contradictory and violates the Constitution which promise right to equality before law. Hence we demand for its abolition and fix 1951 as base year and made the voter list of 1952 as the legal documents to identify the foreigners.

8. Stay the process of NRC upgradation in Assam on the basis of the electoral roll 1971, as because it violates the Article 5, 6, 14, 15, 21 & 355 of the Indian Constitution.
9. All the foreigners encroachers should be driven out from the Tribal Belts and Blocks to safeguard the Indigenous Tribal people.
10. All the foreigners encroachers should be driven out from the Satra areas to safeguard the Satras of Assam.
11. Seal the Indo-Bangla Border as like as Indo-Pak border.
12. Impose shoot at sight order for 24 hours in Indo-Bangla Border as like as Indo-Pak border.
13. Concrete wall should be erect in the Indo-Bangla border, as the fencing is not useful in the border
14. All the Indo-Bangla Treaty should be terminated as because the Bangladesh people creating great trouble in India, specially in Assam.
15. If the Bangladesh refuse to accept their own people then India should occupy Bangladesh and drive away the Bangladeshi to their original land.

Thanking You

Yours faithfully

Sd/-

Sd/-

Sd/-

(Mr. Gobinda

(Mr. Rana Prasad

(Mr. Matiur

Basumatary)

Deuri, President

Rahman)

General Secretary

Indigenous Tribal

24.09.2012

National Democratic

Peoples front

Executive President

Front of Bodoland

Assam Sanmilita Mahasangha

TRUE COPY

(MAP & CO.)

WHITE PAPER
ON
FOREIGNERS' ISSUE

October 20, 2012

HOME & POLITICAL DEPARTMENT

GOVERNMENT OF ASSAM

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CHAPTER 1

HISTORICAL PERSPECTIVE

1.1 BACKGROUND

- 1.1.1 Historically, in the nineteenth and twentieth centuries, Colonial Assam saw migrations from other provinces of British India, which resulted in a change in the demographic profile in some districts of the Province. The growth of tea industry necessitated the migration of people from Bihar, Orissa etc in composite Bengal Presidency and other provinces, who came as plantation labour to work in the newly opened tea gardens. With the expansion of colonial

administration, local economy and tea industry, Marwari traders from Rajasthan also made Assam their home. Further, the construction of railways, discovery of coal and oil facilitated migration from other parts of British India. The colonial authorities also encouraged the educated Bengalis to come to Assam to take up jobs in the lower echelons of the Provincial Government, as teachers and other such professions. Similarly, the availability of cultivable wastelands attracted the peasantry from the densely populated neighbouring districts of Bengal like Mymensingh, Bogra, Rangpur and Pabna, who came to Assam in large numbers in the twentieth century.

1.1.2 The foreigner's issue has been a matter of considerable concern after independence as articulated by various sections of the society including student organizations. There is, therefore, a strong need to place on record all relevant facts to arrive at greater clarity on the matter. In this background, Hon'ble Chief Minister, Assam announced the publication of a White Paper giving all details relevant to the Foreigners' Issue including detection and deportation of foreigners, updation of NRC and steps

taken to protect the international border like taking up fencing, strengthening of border outposts etc.

1.1.3 It is important to note some positive and beneficial effects of migration of the peasants from East Bengal. The Goalpara Zamindars and other landlords had in fact initially encouraged these hardy peasants to settle down in Assam. The peasant migrants from the erstwhile East Bengal brought with them superior cultivation techniques including multiple cropping and introduced poultry farming. Because of the agricultural practices of the hardworking immigrants and their contribution to the agricultural economy, rice production increased significantly. A number of vegetables and crops including jute hitherto unknown in the state were also introduced by the migrants.

1.1.4 The demographic composition of the State from 1901 census onwards has been placed at annexure 1. It reveals that the population in all religious classes has registered growth at varying pace. It may be noted that major changes in the demographic profile of districts such as Goalpara, Nowgong, Darrang and Kamrup had taken place since 1871 census as shown in annexure 1A and 1B. A statement showing major

religion population percentages in some states is shown in Annexure 1C.

1.2 THE IMMIGRANTS (EXPULSION FROM ASSAM) ACT 1950

1.2.1 Following partition and communal riots in the subcontinent, Assam initially saw an influx of refugees and other migrants from East Pakistan. The number of such migrants other than refugees was initially reported by the State Government to be between 1,50,000 and 2,00,000 but later estimated to be around 5,00,000.

1.2.2 Taking note of the serious situation arising from this immigration, the Government of India initially promulgated an Ordinance on 6th January 1950. The ordinance was soon replaced by an Act known as Immigrants (Expulsion from Assam) Act 1950 which came into effect from 1st March 1950. According to the Act, any person or class of persons having been ordinarily resident outside India, has or have, whether before or after commencement of the aforesaid Act, come into Assam and that, in the opinion of the Central Government (or the Government of Assam or

its officials if so delegated by a specific notification) the stay of such person or class of persons is detrimental to the interests of the general public of India or any Section or of any Schedule Tribe in India, the Central Government (or the Government of Assam or its officials if so delegated by a specific notification) may by order a) direct such person or class or persons to remove himself from India or Assam within such time and by such route as may be specified in the order: and b) give such further directions in regard to his or their removal from India or Assam as it may consider necessary or expedient. The Act however barred the application of its provisions on refugees fleeing Pakistan on account of civil disturbances or fear of such disturbances and on coming to India residing in Assam. A Copy of the Act is placed at Annexure 2.

1.3 NEHRU-LIAQUAT AGREEMENT

1.3.1 When fresh communal disturbances occurred in early 1950 in Assam (along with East Pakistan, West Bengal and Tripura), some immigrants living in the districts of Goalpara, Kamrup and Darrang fled to East Pakistan leaving their properties behind. In the Nehru-Liaquat Agreement signed on 8th April, 1950, it was

agreed by the two Governments-India and Pakistan- that the rights of the immovable property of a migrant shall not be disturbed and the same shall be restored to him, even if it is occupied by another person in his absence, provided he returns to his original home by 31st December, 1950. The agreement facilitated the return of almost all the displaced persons. By 31st December 1950, there was net influx of 1,61,360 people into Assam who had entered Assam through recognized routes of travel. A copy of the agreement is placed at Annexure 3.

1.4 THE CENSUS OF 1951 AND NATIONAL REGISTER OF CITIZENS (NRC) 1951

- 1.4.1 During the Census of 1951, a National Register of Citizens was prepared under a directive of Ministry of Home Affairs by copying out in registers the census documents containing information on relevant particulars of each and every person enumerated. Against each village, the NRC showed the houses or holdings in a serial order mentioning the number and names of persons staying therein. Further in respect of each individual, the father's name or husband's name, nationality, sex, age, means of livelihood or occupation etc were indicated. These NRC registers

were initially kept in the offices of DCs and SDOs, but were later transferred to the Police in the early 1960s for facilitating verification of infiltrants /illegal immigrants.

1.4.2 The effectiveness of any drive against illegal immigrants in the early fifties was handicapped by the fact that passport and visa regulations between India and Pakistan came into operation only from October 1952 and the definition of a foreigner to cover a Pakistan national was only clearly spelt out with the amendment of the Foreigner's Act 1946 in 1957. In the then existing Foreigner's Act 1946 under section 2(a)(i), 'Foreigner' was defined among other things, as a person who is not a natural-born British subject as defined in Sub-section (1) and (2) of Section 1 of the British Nationality and Status of Aliens Act of 1914 or (ii) has not been granted certificate of naturalization as a British subject under any law for the time being in force in India. In 1957, Section 2 (a) of the then existing Foreigners Act, 1946 was amended and a foreigner came to be defined as a person who is not a citizen of India. This amendment, which came into force on 19th January 1957 brought Pakistani nationals within the purview of the definition of

foreigner. The provisions and rules made under Foreigner's Act, 1946 prior to the above amendment were not applicable to the citizens of Pakistan. As such, they were not required to get themselves registered with the Registration officer of the district which they visited. After amendment of the Foreigners Act, 1946, detailed instructions were only thereafter issued by the Government of India in March, 1957 to all State Governments including Assam to deport Pakistani nationals staying in India without proper authority or sanction. It would be pertinent to mention that the Citizenship Act was only passed in 1955 and had come into effect from 30th December 1955. It would also be pertinent to note that the Government of India entrusted the functions of the Central Government under the Foreigners Act 1946 to the Superintendents of Police and the Deputy Commissioner (in charge of Police) in Assam in respect of sections 3 (2)(c) and (cc) vide notification 1/7/61-F.III dated 22.3.1961 and in respect of sections 3 (2) (a) and (b) vide notification 1/32/61-F.III dated 15.3.1962. Both were specific entrustments of functions in respect of nationals of Pakistan. A copy of the notification dated 22.3.1961 is placed at Annexure 3A.

1.5 THE CENSUS OF 1961 AND SETTING UP OF FOREIGNERS TRIBUNALS

1.5.1 The Registrar General of Census in his report on the 1961 census assessed that 2,20,691 infiltrants had entered Assam. In light of this report of Census 1961 coupled with intelligence reports about entry of infiltrants, police launched a drive in 1962-1964 to detect and deport such infiltrants. By mid 1964, the State Government had also set up 4 tribunals through an executive order to cover those cases of suspected infiltrants who claimed to be Indian. These tribunals were headed by special officers with judicial background who were appointed to scrutinize cases of infiltrants before issuing Quit India notices. A copy of the press statement issued by Chief Minister, Assam on July 27, 1965 is placed at Annexure 4.

1.5.2 During the period 1961-1966 approximately, 1,78,952 infiltrants were either deported or had voluntarily left the country but an estimated 40,000 infiltrants did not leave India. The Police drive, which commenced in mid 1962 against infiltrators continued but invited criticism from some leaders of Assam. Pakistan also threatened to drag the issue of deportation to the United Nations. A Conference of Home Ministers of

India and Pakistan was held in New Delhi on 7th – 11th April 1964 to discuss primarily the deportation issue and need to maintain communal harmony in the sub-continent including minority protection, but the conference did not yield any substantial result. The issue of eviction of infiltrants was deliberated by the cabinet several times during 1964-66 and there was a general consensus till early part of 1964 that any stoppage of deportation would seriously affect the internal situation in Assam. A copy of the letter from Deputy Secretary, Political Department addressed to Superintendents of Police is placed at Annexure 5.

- 1.5.3 It was decided by the Central Government that before eviction every individual case should be examined by judicial authority even though this may result in delay, by introducing a judicial element in the procedure for the eviction of Pakistani infiltrators to stand the test of scrutiny before the international forum. All this culminated in the issue of a statutory order called the Foreigners (Tribunal) Order on 23rd September 1964 and the creation of Foreigners Tribunals under clause-2 of the order, thereby making it mandatory for the appointment of Member with judicial background. This was done in the context of representations made by

various organizations about harassments being caused to bona fide Indian persons while 'Quit Notices' were served on infiltrants as also adverse publicity on this issue over the international media. Under the aforesaid statutory order, 4 Foreigners Tribunals were set up in 1964 and as many as 35,080 persons were referred to these Tribunals till the end of August 1965. Apparently, most of the cases were disposed of in 10 month's time. The procedure of detection was relaxed so as to give the suspected infiltrant adequate opportunity to contest the Police case, should he desire to do so. In doing so, the Government was also attempting to counter criticisms that procedure followed was arbitrary and unfair. By 1968, there were 9 Foreigners Tribunals with headquarters at Tezpur, Gauhati, Nowgong(2), Sibsagar, Goalpara, Dhubri, Barpeta and Jorhat. A copy of order of 1964 is placed at Annexure 6.

- 1.5.4 In 1969 Government decided that only following three categories of foreigners were to be summarily deported: - (1) Pakistani nationals who held Pakistani passports, (2) Re-infiltrants who were once deported. (3) Fresh infiltrants, caught at the border. Further, the Superintendents of Police were directed not to detain

persons being checked at railway stations leading to their missing train connections as a consequence of such checking and detention. If a person was suspected to be a Pakistani, he was to be questioned and followed or information sent to where he was proceeding so that a track is kept on him and future inquiries can be pursued, but he should not be detained at the station itself. The Superintendents of Police were further instructed that there should be no wholesale checking of villages and houses. Only when there were specific suspicious circumstances surrounding the cases, which need to be further gone into, would such a probe be made. The Superintendents of Police were also advised that, as far as possible, the investigation should be done under the supervision of responsible officer. A Copy of the letter is at Annexure 7.

1.6 THE PIP SCHEME AND OTHER MEASURES

1.6.1 In June 1962 Project PIP (Prevention of infiltration into India of Pakistani Nationals) was approved by the Ministry of Home Affairs, Government of India. The main object of the scheme was to establish a security screen in depth to exercise a physical check and control over the number, identity and movement of

existing inhabitants in the immigrant settlements near the border making it impossible for any new entrants to go untraced or unnoticed. The Police screen was originally intended to cover the border areas in three border districts-Goalpara, Garo Hills and Cachar, and three interior districts- Kamrup, Nowgong and Darrang where the infiltrators found shelter by mixing up with older settlers. In later years, the scheme was extended to cover Lakhimpur district as well. Under this scheme each police outpost was to be under one sub-inspector of Police backed by two unarmed constables. Each outpost would have a responsibility over an area of 3 to 5 sq. miles to keep watch over movement of infiltrators across the border and to detect the arrival of new immigrants in existing immigrant settlements near the border to prevent fresh encroachment of Government Reserves and to prepare a Register in a prescribed form, of all residents within this area. In the more vulnerable areas, these posts were to be given armed Police support from the existing staff of the State Government. Initially, 52 such posts were established in 1962 which entailed the creation of 26 posts of sub-inspectors, 26 posts of Assistant sub-inspectors and 156 constables. In 1964 the scheme was extended to

the establishment of 180 Police watch posts and 39 armed personnel posts on the border with Pakistan along the border, employing in the process 219 sub-inspectors, 19 inspectors 396 constables. A post of Assistant Inspector General of Police along with posts of ministerial staff at headquarters were also created under this scheme. The AIG's post was later upgraded to that of Deputy Inspector General of Police and subsequently, in the recent times, to Additional Director General of Police. Till 1984, 1873 posts were sanctioned by the Government of India under the PIP scheme. Originally, it was envisaged that Police officers in these border outposts be vested with extensive revenue powers to enable them to evict the encroachers from the reserved or khas land, but these powers were eventually not given to them. The idea behind this scheme 'was that it was better to stop infiltration at the border, and make it unattractive for the foreigners to come to Assam by denying the benefits that lure them into this state'. In 1967, a scheme for keeping thumb and finger impressions and photographs of Pakistani infiltrants was introduced as a complement to the PIP and Watch post Schemes

1.6.2 In 1965, the Government of India took up with the State Government to expedite compilation of Register of Citizens and to issue identity cards on the basis of this register to Indian inhabitants at least in selected areas. Under this proposal for Identity cards, Indian citizens in Assam were to carry Identity cards on a voluntary basis so that citizens possessing identity cards are not embarrassed by officials checking infiltration of Pakistanis. Furthermore, Government of India proposed to Government of Assam for clearance of a mile deep belt along the border with Pakistan so that barbed wire fencing is erected. Government of Assam, however expressed difficulties in expeditiously clearing up the border areas since it involved shifting of 25,000 families (1,28,000 persons) along the 560 square mile belt on the Assam-East Pakistan border. In January 1965, the State Government also submitted a scheme to the Union Home Ministry for providing barbed wired fencing to cover vulnerable stretches. The Home Ministry decided that a beginning in barbed wire fencing must be made in a few key sectors but owing to shortage of barbed wire, amongst other things, the project, however, could not get off the ground. Eventually, by 1966, the Central Government dropped the proposal to issue identity

cards in consultation with the Government of Assam, having found the project impracticable.

- 1.6.3 On February 17, 1976 Ministry of Home Affairs issued a notification entrusting the Superintendents of Police and the Deputy Commissioners (in charge of police) with powers of Central Government in making orders against Bangladesh nationals under Foreigners' Act, 1946. Prior to this, such entrustment of functions to Superintendent of Police in Assam was made only in respect of nationals of Pakistan in 1961 and 1962. While enclosing the above notification dated February 17, 1976 in respect of Bangladesh nationals, Government of India instructed the State Government that 'persons who (had) come to India from erstwhile East Pakistan/Bangladesh prior to March, 1971 are not to be sent back to Bangladesh'. In his reply at the end of the debate on the Governor's address on 2nd March, 1979, the then Chief Minister of Assam Shri Golap Borbora also made a statement before the Assam Legislative Assembly in this regard. Copies of the letter dated February 17, 1976 and Statement of CM are placed as annexure 8 and 9 respectively.

1.7. ASSAM AGITATION AND ASSAM ACCORD

1.7.1 The death of Shri Hiralal Patwari, sitting Member of Parliament from Lok Sabha representing the Mangaldai LS Constituency on March 28, 1979 necessitated the holding of by-elections, which set in motion the events leading up to the Assam movement. The Assam agitation was born when it was alleged that a large number of names of suspect nationality was included in the voter's list in the Mangaldai LS constituency. The All Assam Students' Union (AASU) on June 8, 1979 sponsored a 12 hour general strike demanding 'detection, disenfranchisement and deportation' of foreigners. This turned out to be the first of such state-wide protests against infiltration. The Assam Agitation (1979-1985) was a mass movement against illegal immigrants in Assam led by All Assam Students' Union (AASU) and All Assam Gana Sangram Parishad (AAGSP) to compel the Government to identify and expel illegal immigrants. While the agitation programme was largely non-violent, communal incidents were witnessed in some parts of the State particularly in 1983. In 1980 when the Congress party led by Mrs Indira Gandhi came to power at the centre, AASU wrote to Prime Minister Mrs. Indira Gandhi on January 18, 1980 drawing her attention to the problem of infiltration. A copy of the

letter is placed at annexure 9 A. They submitted some broad proposals for the purpose of detecting and deleting the names of foreigners from the electoral rolls based on the NRC of 1951 and thereafter deporting them. The broad proposals for undertaking such an exercise are briefly summarized below: 1) Updating of NRC of 1951, 2) Cross checking of electoral rolls with the updated NRC, 3) Demarcation of the Indo-Bangladesh border and creation of a free uninhabited Belt 4) Issuing of identity cards throughout the Northeast region, 5) Strict maintenance of Birth and Death Register at all Block and Village levels, 6) Raising of additional armed Police battalions and a River Police Force with a view to checking infiltration. Following AASU's letter to the Prime Minister, the student leaders were invited for discussions and negotiations with the Central Government. The AASU delegation met Prime Minister Indira Gandhi on 2nd February, 1980 which signaled the beginning of protracted negotiations between the movement leaders and the Central Government headed by Mrs Gandhi. The AASU delegation also submitted a detailed memorandum to the Prime Minister, which is placed at annexure 9B. The Government of India insisted that March 25, 1971 be the cutoff date for

identifying foreigners, which the AASU rejected and insisted on 1951 being the cut off year for identifying and deporting foreigners. In April 1980, the Governor of Assam held discussions with AASU during which the Governor suggested that 1967, should be the base year for detection and deletion of foreigners and 1971 for deportation of foreigners. This offer was rejected by AASU vide their General Secretary's letter dated April 5, 1980, which was subsequently accepted by them in 1985. The Prime Minister Mrs. Indira Gandhi herself came to Assam and held discussions with the AASU leaders on April 12, 1980 but there was no progress in the negotiation as AASU stuck to their stated position. In September 1980, AASU announced that it would agree to a negotiated settlement for allowing immigrants who came to Assam after 1951 till 1961 provided the Government agreed to shift the immigrants of 1961-1971 stream to other states, which was not agreed to by the Government. It appears that between 1980 and 1982 there were as many as 23 rounds of negotiations, which, however, did not yield any positive outcome.

- 1.7.2 After a 6 year long Assam agitation from 1979 to 1985, a landmark agreement- Assam Accord was signed on August 15, 1985 at the behest of Prime Minister Shri Rajiv Gandhi. This agreement between All Assam Students Union (AASU), Government of India & Government of Assam contains some important clauses relating to the foreigners issue, border fencing, construction of border roads, setting up of border out posts etc. A copy of Assam Accord is placed as annexure 10. A detailed account of implementation of various clauses of this accord is discussed in chapter 3.

CHAPTER 2

ILLEGAL IMMIGRATION

2.1 ILLEGAL IMMIGRANTS

- 2.1.1. Although “illegal migration” or/and “illegal immigrants” (particularly from Bangladesh) are very much a part of the public discourse on society, polity, and economy of Assam, there is some haziness as regards the precise meaning of these terms. The shared history of the British colonial rule, the partition at the time of independence, the role played by India in the creation

of Bangladesh, and the provisions under the Citizenship Act – all contribute to this lack of concreteness. Section 2(1)(b) of the Citizenship Act of 1955 defines an “illegal migrant” as a foreigner who entered India

- (i) Without a valid passport or other prescribed travel documents: or
- (ii) With a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time.

2.1.2 The Assam Accord settled March 24, 1971, as the cutoff date for identification and deportation of immigrants from East Pakistan into Assam. This accord also provided for citizenship to those who came to Assam between January 1, 1966 and March 24, 1971 after defranchising for a period of 10 years subject to registration.

2.1.3. Thus, those who crossed the international border without proper legal documents to come to Assam on or after March 25, 1971, are the illegal immigrants provided all those who came before that deadline became citizens through the legal process akin to naturalization. It should be kept in mind, however, that

the children born to these illegal immigrants may or may not be lawful citizens of India by birth. In this regard, the following provisions stated in Section 3 of the Citizenship Act of 1955 would apply:

- (i) A person born in India on or after 26th January, 1950, but before 1st July, 1987, is a citizen of India by birth irrespective of the nationality of his/her parents.
- (ii) A person born in India on or after 1st July, 1987, but before 3rd December, 2004, is considered a citizen of India by birth if either of his/her parents is a citizen of India at the time of his/her birth.
- (iii) A person born in India on or after 3rd December, 2004, is considered citizen of India by birth if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his/her birth.

2.1.4. Furthermore, any minor child can be registered as a citizen of India under Section 5(4), if the Central Government is satisfied that there are “special circumstances” justifying such registration. Each case would be considered on merit. These provisions together with the fact that most immigrants who entered before 1971 have not followed the legal

process to become Indian citizens, complicate the issue of identifying the illegal immigrants.

2.2. LEGAL PROVISIONS:

2.2.1. A brief summary of various statutes governing provisions in respect of foreigners detection, deportation, citizenship, National Register of Citizens (NRC) in respect of Assam is presented below:

2.2.2 THE FOREIGNERS ACT, 1946. This Act was enacted to confer upon the Central government (Government of India) certain powers in respect of entry of foreigners into India, their presence therein and their departure therefrom. The term 'foreigner' is defined in Section 2, clause (a) to mean a person who is not a citizen of India. The regulations regarding recognition of citizenship are contained in the Citizenship Act, 1955 and the Indian Constitution. Section 3 of this Act empowers the Central Government by order, to make provisions, either generally or with respect to all foreigners, or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting their entry into India or their departure therefrom or their presence or continued presence therein.

2.2.3. THE FOREIGNERS ORDER, 1948. In exercise of the powers conferred by Section 3 of the Foreigners Act, 1946 the Central Government made the Foreigners Order, 1948. This Order came into force on 14th February, 1948 and lays down regulations concerning foreigner's entry into, movement in and departure from, India.

2.2.4 THE FOREIGNERS (TRIBUNALS) ORDER, 1964. Under the provisions of this order the matter whether a person is or is not a foreigner is referred to the Foreigners Tribunals within the meaning of the Foreigners Act, 1946 for opinion. The Tribunals shall consist such number of persons as the Central Government may think fit. The Tribunals shall have the powers to regulate its own procedure. And also shall have the power of the Civil Court under the code of Civil Procedure, 1908 in respect of –

- ➔ Summoning and enforcing the attendance of any person and examining on oath.
- ➔ Requiring the discovery and production of any document.
- ➔ Issuing commissions for examination of any witness.

2.2.5. THE FOREIGNERS (TRIBUNAL) AMENDMENT ORDER, 2012. Under the Foreigners Tribunal amendment order 2012, every case should be disposed of within a period of 60 days after the receipt of the reference from the

competent authority. A copy of the order is placed at Annexure 11.

2.2.6. THE PASSPORT (ENTRY INTO INDIA) ACT, 1920. This Act confers powers on the Central Government, to make rules requiring possession of passports by persons entering India. Under Section 3 of the Act, the Central Government may make Rules requiring that persons entering India shall be in possession of passports, and for all matters ancillary or incidental to that purpose, and also provides for fines, penalties for contravention thereof, if any.

2.2.7. THE CITIZENSHIP ACT, 1955. A comprehensive law dealing with citizenship was passed by Parliament in 1955 in accordance with the powers vested in it by Article 11 of the Constitution. The provisions of the Act may be broadly divided into three parts, acquisition of citizenship, termination of citizenship and supplementary provisions. The Act provides five modes of acquiring the citizenship of India. These are:

- By birth.
- By descent
- By registration.
- By naturalization

→ By incorporation of territory

6(A) Special provisions as to citizenship of persons covered by the Assam Accord. Any person who came to Assam on or after the 1st January 1966 but before the 25 March 1971 and has been ordinarily resident in Assam and detected to be a foreigner shall register himself before the Registering Authority as specified by the Central Government in accordance with the rule and if his name is included in any Electoral Roll in force on the date, his name shall be deleted there from on the date of such detection. He shall be deemed to be a citizen of India for all purposes from the date of expiry of a period of 10 years from the date on which he has been detected to be a foreigner.

2.2.8. THE CITIZENSHIP (REGISTRATION OF CITIZEN & ISSUE OF NATIONAL IDENTITY CARDS) RULES, 2003. The Central Government has made the rules for preparation of National Register of Indian Citizen in the State of Assam in exercise of the powers conferred by Section 18 of the Citizenship Act, 1955.

2.2.9. THE CITIZENSHIP RULES, 2009 The Central Government had made rules in exercise of powers conferred by Section 18 of Citizenship Act, 1955 in respect of (a) Application for Citizenship, (b) Issue of

certificates of Citizenship and maintenance of Registers and connected papers. (c) Provisions as to citizenship of India for persons covered by Assam Accord. (d) Renunciation and deprivation of Citizenship of India. These rules have repealed the earlier citizenship rules, 1956.

2.3. FOREIGNER'S TRIBUNAL AND ILLEGAL MIGRANTS (DETERMINATION TRIBUNALS)

2.3.1. The Foreigner's Tribunals are to furnish opinion on the question as to whether a person is or is not a foreigner within the meaning of Foreigner's Act, 1946 whenever such reference is made to them. The Tribunals have the powers of a civil Court while trying a suit under the code of civil procedure in respect of summoning and enforcing the attendances of any person and examining him on oath, requiring the discovery and production of any document and issuing commissions for the examination of any witness. The number of Foreigner's Tribunals established has varied from time to time, according to the requirements of the situation. The Foreigner's Tribunals established after 1964 were gradually wound up between December 31, 1969 and March 1, 1973 in phases when they were no longer found necessary as most of the infiltrators had been

deported. Besides, with the issue of revised procedure for deportation of Pakistani infiltrators in June 1969, it was decided that fresh references for the Foreigners Tribunals were to be dispensed with and the existing Tribunals were to continue only till the old pending cases were disposed of. For the residue work, the task was to be by the normal course of law. However, the Foreigner's Tribunals were revived in 1979, and 10 Foreigners Tribunals were constituted on July 4, 1979.

2.3.2. In 1983, IM(D)Ts were established under the Illegal Migrants (Determination by Tribunals) Act, 1983. Prior to that an ordinance was passed facilitating the setting up of IM(D)Ts. The State Government had initially decided to set up 20 IM(D)Ts. At the same time after 1985, the Foreigner's Tribunals co-existed with IM(D)Ts with the signing of the Assam Accord. While IM(D)Ts took up cases of suspected foreigners of the post March 25th 1971 stream, the existing Foreigners Tribunals were entrusted with the responsibility of disposing of cases pertaining to pre-March 25th 1971 stream of suspected foreigners. IM(DT) Act was amended by IM(DT) Amendment Act 1988 on April 25, 1988. With the Hon'ble Supreme Court declaring the

IM(DT) Act, 1983 as ultra vires in 2005 and striking them down, the Tribunals and Appellate Tribunals have ceased to function. The performance of the IM(DT) during various time periods is summarized below.

IM(DT) cases

Period	Cases Referred	Cases Disposed	Cases pending (cumulative)	Number of Persons declared as foreigners	Number of declared foreigners pushed back/ deported.
1985-90	22682	6486	16196	6724	521
1991-95	3488	7335	12349	2577	792
1996-2000	17623	4420	25552	902	179
2001-July 2005	68998	5780	88770	2643	55
Total	112791	24021	88770	12846	1547

2.3.3. All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunal) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made there under and the procedure

prescribed under the Foreigners (Tribunals) Order, 1964.

- 2.3.4. It has been found that due to a variety of reasons – lack of judicial supervision, long vacancies of members, inadequate staff – large number of cases were pending unregistered in some of the tribunals. On specific pursuance from Government of Assam and judicial intervention by Hon'ble Gauhati High Court, the number of unregistered cases has come down but there are still more than 65000 unregistered cases pending for years together in some of the foreigners tribunals. Additional staff have been deputed from Border Police so that all cases are registered without further delay.
- 2.3.5. The 21 IMDTs functioning in Assam were wound up and replaced by 21 new Foreigners Tribunals. The learned judges and staff of IMDT were redeployed in the newly created additional Foreigners Tribunals. As a result, after 2005, 32(21 new + 11 existing) Foreigners Tribunals started functioning. The number of Foreigners Tribunal has now been raised to 36 with the functioning of 4 new Foreigners Tribunals. The performance of Foreigners Tribunal over different time period is presented in the table below:

Foreigners Tribunal Cases

Period	Cases referred	Cases disposed	Cases pending (cumulative)	Persons declared as Foreigners	Number of declared foreigners pushed Back/ deported.
1985-90	32991	15929	17062	14801	133
1991-95	482	5909	11635	4005	267
1996-2000	2986	3552	11069	6026	235
2001-2005	6094	2216	14947	4593	39
2006- July 2012	65666	45456	35157	12913	221
Total	108219	73062	35157	42338	895

Consolidated total of deported/ pushed back illegal migrants on being declared as foreigners by IMD(T)s and Foreigners Tribunals collectively till July 2012 –
 $1547 + 895 = 2442$.

2.3.6. The various Tribunals have since 1985 declared 61,774 persons as foreigners, both from the 1966-1971 stream and the post 25 March 1971 stream. A table indicating the streams to which these foreigners belong on being so declared by appropriate tribunals at various phases is placed below:

Period	1966-1971 stream	Post-1971 stream	Total	'D' Voters declared as foreigners.	Total with 'D' voters
1985-1990	14801	6724	21525		21525
1991-1995	4005	2577	6582		6582
1996-2000	6026	902	6928	6590 (1998 to 31.07.2012)	33667
2001-2005	4593	2643	7236		
2006-2012 July	3	9801	12913		
Grand Total	32537	22647	55184	6590	61774

2.3.7. The above table clearly brings out the fact that a majority of the foreigners declared by the tribunals

belong to the 1966-1971 stream, who, at any rate, are not to be deported but to be given time for registering themselves as Indian citizens. From the figures collected by Border police from various tribunals, out of 32,537 foreigners belonging to the 1966-1971 stream only 12,914 foreigners have registered themselves with the jurisdictional FRROs. On the other hand, tribunals (IMD(T)s and FTs) have declared 29,237 as foreigners who belong to the post 25 March 1971 stream. These 29,237 foreigners so declared by the appropriate tribunals over a long period of time were to be deported forthwith. However, records reveal that only 2442 such persons have been deported/pushed back.

2.4. PROCEDURE OF DETECTION AND DEPORTATION

2.4.1. Border Police Personnel are deployed in all Districts of Assam for detection of suspected foreigners and deportation / push back of declared foreigners. Apart from district deployment, Border Police Personnel are also deployed in 159 Watch Posts located in infiltration prone areas of 17 Districts to detect illegal foreigners settled in their area of jurisdiction. There are 12 BOPs and 2 TAC Hqs of Border Organization functioning as Second Line of Defence behind the

BSF BOPs in Dhubri, Cachar and Karimganj districts to check the infiltrators who might sneak through the first line of BoPs.

2.4.2. For detection of illegal foreigners, Border Police personnel mainly carry out survey work for identification of the suspected foreigners. During the village survey, Border Police personnel keep liaison with local Gaonbura, VDP etc. who may give vital information about presence of suspected foreigners. The list of the villagers is collected from the Gaonbura and VDP. Accordingly, the number of members in each family is checked and if any person is found whose name does not appear in the list then his/her citizenship is doubted and they are asked to produce documents in support of their citizenship. Every such person is given reasonable opportunity to produce the documents in support of his/her citizenship and enquiry is initiated against him/her only if he/she fails to produce satisfactory evidence after availing due opportunity.

2.4.3. Further, the survey and surveillance is generally carried out in the areas of new Settlements, Construction sites, encroached land, Government Land, Forest Land and hitherto uninhabited areas to

identify and detect the suspected foreigners. Spot visits to Ferry Ghats, Bus Stands, Weekly Bazars, Railway Station are also carried out to check movement of suspected foreigners.

2.4.4. It has been observed by Border Police that most of the suspected foreigners are found to be working as daily-wage labourers and Rickshaw Pullers who live in rented houses and do not own property. Most of these suspected foreigners claim that they do not keep required documents with them to prove their Indian citizenship and therefore they seek time fetch the relevant documents from their home districts for production before the authorities. However, during the given period, most of these suspected foreigners go untraced. In such cases, enquiries initiated against untraced suspected foreigners remain pending for long.

2.4.5. If the suspected foreigner produces documents to prove himself / herself as citizen of India and if the documents produced is found to be unauthenticated and unreliable, then an enquiry is initiated with approval of Superintendent of Police. After receiving the enquiry report from the enquiry officer, the Superintendent of Police, if satisfied, makes a

reference to the Foreigners Tribunal under Foreigners Tribunal order 1964. The immigrants from the erstwhile East Pakistan, who came to India prior to January 1, 1966 are treated as Indian citizens under the Citizenship Act 1955. Generally, any of the following documents like the Voter list of 1966, NRC of 1951, Refugee Certificate issued by the Government of India, Revenue record prior to 1966, School certificate prior to 1966 are asked for establishing the date of arrival of foreigners. If the person fails to produce the above mentioned documents to establish his citizenship as on January 1, 1966 then an enquiry is initiated against him/her that he/she is a suspected foreigner. If he/she fails to produce any of the above mentioned documents but produces some other documents which establish his/her entry into India between the period January 1, 1966 to March 24, 1971 (midnight), then an enquiry is initiated under Citizenship Act that he /she is a suspected foreigner of the 1966 –1971 stream. As per provision of section 6A of Citizenship Act 1955 the names of such foreigners are deleted from the electoral rolls for a period of 10 years from the date of detection and they are required to register their names with registering authority within

extended period of 60 days. In case they fail to do so, they are liable to be deported.

- 2.4.6. As per orders dated October 21, 2009 Government has authorized Border Organization to obtain the fingerprints and photographs of suspected foreigners before or at the time of referring the cases to Foreigners Tribunal.
- 2.4.7. Foreigners Tribunal sends the copy of Opinion/Judgment to the Superintendent of Police for necessary action. The Foreigners Tribunal also decides whether or not the foreigner belongs to the post 1971 stream or the 1966–71 stream.
- 2.4.8. The process of detection has inherent difficulties since language, culture and living habits sometimes makes it difficult to identify the illegal immigrants. In the process of detection therefore even the genuine citizens may sometimes get subjected to enquiry. The suspected foreigners often work as daily workers and have no permanent addresses and some of them frequently change their locations. The Border Police also faces problem when suspected foreigners resist enquiry and do not cooperate in producing the documents.

2.4.9 It is difficult to give a precise estimate of illegal migrants/foreigners in Assam. Even when the new Government came to power after the Assam Accord, the Government in reply to a starred assembly question asked by Sheikh Abdul Hamid M.L.A during the session of August, 1986 regarding the number of foreigners residing in Assam then, stated that 'there is no definite information as regards the exact number of foreigners residing in Assam'. Similarly, in reply to another starred question asked by Amrit LaL Basumatary in the same session of August, 1986 about how many foreigners had entered Assam after 25 March 1971, the Government replied that 'the exact number of foreigners who entered Assam after 25th March 1971 is not known'. Much later in the December session of the Assembly in 1996 in reply to an unstarred question no 398 asked by Shri Afzalur Rehman M.L.A regarding the total number of foreigners and illegal migrants in Assam, the Government stated that 'the exact number of foreigners and illegal migrants in Assam cannot be estimated as it is a fact of history and continuous process'.

2.5. DEPORTATION / PUSH BACK

- 2.5.1. For deportation of declared foreigners he/she is handed over to the BSF who takes up the matter of such deportation with their counter part - the Border Guards of Bangladesh (BGB) – as well as with the Ministry of External Affairs, Government of India. Often, it is found that the BGB refers to the local police authorities in Bangladesh for verifying the address as also the character and antecedents of these persons. It is only after complete and satisfactory verification that they accept such persons – a process which delays the return of the illegal immigrant to his home country.
- 2.5.2. Once a person is declared as foreigner he or she is taken into custody and kept in detention centre till he or she is pushed back to his or her country of origin. The foreigners who are kept in detention centre are pushed back through BSF deployed on the border.
- 2.5.3. There is difference between 'Push Back' and 'Deportation'. In case of Push Back there is no need for acceptance of the person concerned by the BGB. In case of deportation, on the other hand, there is proper flag meeting between BSF and BGB and deportation takes place only when BGB accepts the foreigner. If BGB refuses to accept the foreigner, BSF

is left with no further option and such persons become 'stateless'.

2.5.4. In the absence of a proper laid down procedure for deportation of illegal migrants between the Government of India and the Government of Bangladesh, it has become difficult to carry out deportations. As such, deportation of foreigners is mainly carried out through the 'push back' method. However, to overcome this problem, the Ministry of Home Affairs has recently prescribed a detailed proforma which has been circulated to all State Governments for collecting data of such foreigners who are presently being detained in detention centres. The matter of deportation of foreigners who have illegally entered into India needs to be taken up by the Government of India with the Government of Bangladesh so that a proper policy could be evolved and the process of deportation of such declared foreigners become easier and hassle free.

2.6. 'D' VOTERS

2.6.1. In pursuance of instructions of Election Commission of India dated January 5, 1998 during intensive revision of electoral roll in Assam in 1997, the letter 'D' was marked against the names of those electors who

could not prove their Indian citizenship status at the time of verification through officers, especially appointed for the purpose. 'D' meant that the citizenship status of the elector was doubtful / disputed. Verification was done through local verification officers (LVOs). Based upon the report of the Local Verification Officers (LVOs), the Electoral Registration Officers took a decision on whether a reference to the concerned Tribunal was necessary to ascertain the Indian citizenship status of such elector. Once the Electoral Registration Officers confirmed in the affirmative, such cases were forwarded to the competent authority (SP of the concerned district) for reference to the concerned Tribunal. Such electors marked with 'D' were neither permitted to cast their votes nor contest in Elections. In issuing such instructions, the Commission took into consideration various orders of the Gauhati High Court, Supreme Court and provisions of Article 326 of the constitution read conjointly with section 16 of the Representation of People's Act, 1950 and section 62 of the Representation of the People's Act, 1951. The cases of such 'D' voters were forwarded by the Electoral Registration Officers concerned to the competent authority (Police Department) for further reference to

the relevant Tribunals for determination of their citizenship. Based on the judgment /orders of the Tribunals, the letter 'D' was either removed from against the names of those electors whose Indian citizenship status was confirmed or the name of the elector deleted from the Electoral Rolls in the case of those whose citizenship status as Indian could not be established in Court. A total of 2,31,657 'D' references were made to the competent authorities.

2.6.2. Following table summarizes the disposal of D voters cases by the Tribunals since 1998.

'D' VOTERS (1998- April, 2012)

Cases referred	Cases disposed	Cases pending	Persons declared as foreigners	Persons declared as Indian	Cases where no opinion could be expressed
231657	88192	143465	6590	44220	37382

2.7. INTENSIVE REVISION OF ELECTORAL ROLLS.

2.7.1. A detailed note on the intensive revision of electoral rolls undertaken in Assam from 1985 to 1997 is presented below:

2.7.2. In Assam, because of the agitation over the Foreigners issue, no intensive revision of rolls was undertaken between 1979 and 1985.

2.7.3. 1985: E/Rolls in Assam were intensively revised in 1985 with 1/1/85 as the qualifying date with the date of final publication being 7/11/85. The Election Commission of India (ECI) decided to undertake this intensive revision in fulfillment of an assurance given before the Supreme Court in September 1984 in the context of the hearing of the Writ Petition challenging the validity of the 1983 General Elections in Assam. Polling Station wise lists of persons enumerated during house-to-house enumeration were subjected to thorough scrutiny with reference to the 1971 Electoral Rolls. Those whose linkages could not be established with the 1971 E/Rolls or could not prove their Indian Citizenship were deleted from the E/Rolls during the revision process. General Elections in 1985 were held on the basis of these rolls.

2.7.4. 1989: In 1987, the state government objected to the Election Commission's proposal for a summary revision of E/Rolls with the 1985 E/Rolls as the reference roll and demanded that an intensive revision of rolls be undertaken with 1/1/87 as the qualifying date, where, instead of the 1971 E/Rolls, the 1966 E/Rolls should be considered as the basic document for linkage reference. At the end of wide ranging

consultation, intensive revision of E/Rolls was taken up in Assam with reference to 1/1/89 as the qualifying date and the 1966 Rolls as the basic reference document. Two lists were directed by the Commission to be prepared after enumeration- List I containing the names of persons enumerated about whom the Electoral Registration Officer (ERO) does not consider it necessary to make an enquiry and List II containing names of persons in respect of whom, ERO has doubts about eligibility, including, but not restricted to citizenship.

In preparing List II, EROs consulted the following smaller lists:

- a. Electors in 1985 E/Roll but without linkage to 1966 Roll.
- b. Persons whose claims were rejected during revision of rolls in 1985.
- c. List of persons served with Quit India notices on the basis of orders of FTs.
- d. Refugee registration list prepared in 1971 of persons migrating to Assam in the wake of the Bangladesh war

Draft Rolls were published containing names of those in List I, names of those from List II in respect of whom ERO, after enquiry, concludes that they are eligible for entry in the draft rolls and, also, those in whose cases the ERO could not complete the enquiry before draft publication. Deletions of those found ineligible, whether on account of their citizenship or any other account, were made during the process of revision following due process. Final Rolls were accordingly published.

- 2.7.5. 1993 (de novo revision) : The state government was initially asked by the Commission to identify all polling station areas where there was an increase of more than 4% in the 1992 enumerated figures over the 1990 rolls. The state government duly identified certain such areas in all LACs. But representations to the Commission from various quarters alleging that the 1990 rolls suffered from major defects and some discrepancies in the figures projected by the state government and those available with the Election Commission resulted in the Commission ordering special instructions for revision of rolls with 1/1/93 as the qualifying date in all LACs of Assam. These instructions, which were issued after consultation with

the Ministry of Home Affairs on 21/8/92, prescribed a new procedure for verification of names enumerated so as to exclude all foreign nationals from the E/Rolls.

In pursuance of these instructions, names of all persons enumerated after house-to-house visits, after consolidation polling station wise, were referred to the District Administration for verification of status as Indian citizens (through established laws, linkage to 1966 E/Rolls/ NRCs etc). From the consolidated list, List I- containing names of those verified and found to be Indians, and List II –containing names of those not considered Indian were prepared. Those in List I automatically found their names in the Draft Rolls. Observers from other states were appointed by the Commission to oversee revision work. Deletions were made during revision process by EROs from List I where the ERO was satisfied, even after verification by District Magistrate, that the person was ineligible for entry in the E/Rolls on ground of citizenship.

The Commission however allowed final publication of E/Rolls only in respect of 86 LACs after this revision exercise and withheld the publication of E/Rolls in 40 LACs, being dissatisfied with the revision exercise in those LACs. The Commission then ordered special

revision in these 40 LACs in 1994 and ordered summary revision with 1/1/94 as the qualifying date in respect of the other 86.

In view of Special Leave Petitions no 2484-85/94 in the Supreme Court, these twin processes were suspended by the Commission in April 1994. Following affirmation by the Supreme Court on 5.5.94 of the Gauhati High Court order dated 28.1.94 (and modified on 1.2.94) in Civil Rules 1566, 1616, 1836 and 2814, all of 1993 that challenged some of the provisions made under this de novo revision process, the Commission directed that the names of persons in List II prepared in 1993, except the names of persons declared or detected by Tribunals under IM(D)T and FT and those whose claims/ objections have been disposed off by the EROs) be published as supplementary draft rolls. But the names of those who were not entitled to be registered in the rolls for disqualification or lack of qualification on ground of citizenship or any other ground were to be deleted after following due procedure, including providing opportunity to the person concerned to be heard. All the above were duly followed. The rolls were finally

published on 31/8/94 in consonance with the instructions of the Commission.

- 2.7.6. 1997: The Election Commission ordered intensive revision with 1.1.97 as the qualifying date and issued special guidelines for this purpose. The guidelines were framed keeping in view the judgment and order dated 28.1.94 and 1.2.94 of the Gauhati High Court in the case of HRA Chaudhury vs Election Commission of India and others (Civil Rules 1566,1616,1836 and 2814 of 1993) which was upheld by the Supreme Court by its judgment and order dated 5.5.94 and Civil Appeals no 4171-4180 of 1994 arising out of SLPs(Civil) 2484-85 of 1994) and the judgment and order dated 6.2.95 of the Supreme Court in the case of Lal Babu Hussain and others vs. Electoral Registration Officer and others.

The Gauhati High Court had held in HRA Chaudhury vs. Election Commission and others (upheld by the Supreme Court)

“the draft rolls are to be prepared on the basis of the statements submitted by the heads of the households in a constituency in Form 4 under Rule 8.....the statement made by the head of the household has its own value and cannot

be lightly brushed aside. Rules do not contemplate any inquiry into the question of citizenship at the stage of preparation of draft roll, although there is provision for objection after a draft roll is published on the ground that a person who is not a citizen of India has been erroneously included.”

The Supreme Court had held in *Lal Babu Hussain vs Electoral Registration Officer and others*:

“Thus the question whether a person is a foreigner is a question of fact which would require careful scrutiny of evidence since the enquiry is quasi-judicial in character....”

(This implied that the question of citizenship is to be determined by the authorities vested with such powers under the Citizenship Act 1955 and other laws relating to citizenship)

The 1997 draft rolls that were published after enumeration comprised two categories of persons:

- a. Persons whose names appeared in the roll prepared in 1993-94 and further revised with reference to 1.1.96 as the qualifying date.

- b. Persons who did not find their names in the roll prepared in 1993-94 and further revised with reference to 1.1.96 as the qualifying date

2.7.7. After publication of rolls in draft, the EROs caused verification through Local Verification Officers (LVOs) in respect of those in the draft rolls where linkages could not be established with the earlier rolls but were provisionally included. After due verification, the LVO submitted his report in a specified format to the ERO, who in turn forwarded the cases, where he had reasonable doubt about the citizenship of any person, to the Competent Authority under the IM(D)T Act or the FT Act for further reference to the concerned Tribunal. Where decisions of the Tribunals on referred cases were not received before the date of final publication of rolls, the letter 'D' was marked against the name of such electors to indicate that the citizenship status of those persons is Doubtful/Disputed. The names of such persons were either retained or deleted based on the decisions of the Tribunals on the references made. Persons marked as 'D' in the E/Rolls are neither allowed to cast their votes at elections nor allowed to contest any elections.

CHAPTER 3

STATUS OF IMPLEMENTATION OF THE ASSAM ACCORD

As the position of action taken on clauses 5.1 to 5.9 pertaining to the foreigner's issue has been discussed in previous chapter, the status of action taken in respect of clauses 6 to clause 14, is brought out below:

3.1. CLAUSE 6

3.1.1. As per the Clause 6 of the Assam Accord, constitutional, legislative and administrative safeguards as may be appropriate shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people. For this purpose the Government of Assam had earlier constituted a Committee of Ministers for Clause 6 under notification No. IAA 51/2005/29 dated 19th October 2006 to examine all the issues relating to the implementation of the Clause 6 of the Assam Accord including the definition of 'Assamese people'. This Committee had held a number of meetings and also met Political Parties. It sought the views of different Political Parties, Sahitya Sabhas, Youth Organisations, Student Bodies etc on the definition of 'Assamese People' and deliberated on the same. After

the present Government assumed office in May 2011, a Cabinet Sub-Committee was constituted in July 2011 to inter alia deal with the matter of implementation of Clause 6 of the Assam Accord. The entire matter is now under examination of the Cabinet Sub-Committee.

- 3.1.2. A cultural centre called the Srimanta Sankardeva Kalashetra Complex has been established in 1992 at a cost of Rs 18.85 crores in Guwahati. Out of this, an amount of Rs 3.15 crores were spent during 1991-1995 and the remaining Rs 15.75 crores spent during 1996-2000. The Jyoti Chitraban Film Studio (Phase-I&II) at Guwahati has been modernised at a cost of Rs 8.79 crores, of which Rs 4.79 crores were spent during 1998-2000 and Rs 4.20 crores were spent during 2001-2003. The Phase III (Part I) of the modernisation of the Jyoti Chitraban Film Studio for Rs 10 crores has also been sanctioned by the Govt. of India in 2007. Against the release of Rs 10.00 crores by the Govt. of India, the State Govt. has already sanctioned Rs. 6.66 crores to the Jyoti Chitraban Film Studio Society (JCFSS), which is implementing the scheme. A Technical Committee and a Monitoring & Supervision Committee have been constituted to

implement the project. An amount of around Rs. 2.64 crores have been spent so far and works are under progress.

3.1.3. In addition to the two Monuments at Poa-Mecca, Hajo and Urvarsi Archaeological Site that were taken over by the Archaeological Survey of India in 1919 and 1918 respectively, the Archaeological Survey of India has taken up another three Monuments for their preservation in 2005. These Monuments are the Hayagriva Madhava Temple, Hajo, the Kedar Temple, Hajo and the Ganesh Temple, Hajo.

3.1.4. The Government of Assam has also taken up the development of Historical Monuments and Archaeological Sites in Assam. During 2009-10, three Historical Monuments and Archaeological Sites have been taken up for Rs 2.00 crores and another 8 taken up for Rs 5.00 crores during 2010-11. An amount of Rs 5.00 crores has been provided during 2012-13 for taking up the development of more Historical Monuments and Archaeological Sites in Assam.

3.1.5. The Government of Assam has also taken up the protection, preservation and development of Sattras in Assam. During 2009-10, three Sattras were taken up for Rs 3.00 crores and during 2011-12, Rs 10.00

crores was provided for the protection, preservation and development of 87 Sattras in Assam. An amount of Rs. 15.00 crores has been provided during 2012-13 for the protection, preservation and development of 85 Sattras in Assam

- 3.1.6. The Executive Council of the Jawaharlal Nehru University has approved the establishment of an Assamese Chair in the Centre of Indian Language, Literature and Culture Studies of the University in 2007.

3.2. CLAUSE 7

- 3.2.1 Under Clause 7, the Government has renewed their commitment for the speedy all round economic development of Assam so as to improve the standard of living of the people. As per this Clause, special emphasis would be placed on education and science & technology through the establishment of national institutions.
- 3.2.2. An IIT has been set up in Assam and has been functioning since 1991. Central Universities have been established through Acts of Parliament at Silchar in 1989 and at Tezpur in 1993. They have started functioning since 1994. The Numaligarh Oil Refinery

has been established in Assam at a cost of Rs 2,500 crores and was inaugurated in 1999. The State of Assam has been categorised as a special category state for the purpose of grants-in-aid on the pattern of 90% grant and 10% loan. Assam is also being provided substantial funds out of the Non-Lapsable Central Pool of Resources for different socio-economic projects.

3.2.3. The foundation stone of the Assam Gas Cracker Project was laid by Dr Manmohan Singh, Hon'ble Prime Minister of India on 9th April 2007. This project is under implementation and its present cost is Rs 8,920.00 crores. The Government of Assam has a 10% equity participation in the project. A Joint Venture company in the name and style Brahmaputra Cracker & Polymers Ltd (BCPL) has already been formed and is functioning. The physical and financial progress so far is to the tune of 80% and 60% respectively.

3.2.4. For the purpose of utilisation of the finished products of BCPL and for promoting industrial development and generating employment, a Plastic Park is proposed to be set up in Assam. Assam Industrial Development Corporation (AIDC) is the nodal agency for implementation of the project over an area of 1,500

bighas at Gellapukhuri near Tinsukia at a cost of Rs 104.00 crores. To create awareness among the end-consumers, the manufacturers and the distributors as well as the retailers of plastic commodities, an International Plastofair was held in Guwahati in May 2010 in association with Plast India Foundation.

3.2.5. In an effort to revive the Ashok Paper Mill, it was leased out twice, first to M/s. Sanghi Textiles Ltd in 1995 and thereafter to M/s North East Paper & Industries Ltd. (NEPIL) in 2000. However, both failed to revive it and it was taken over by the Government of Assam in 2008. Thereafter, through the aegis of the Department of Heavy Industries, Gol, a DPR has been prepared by an international consultant for the purpose of revival of the Ashok Paper Mill by taking up a green field project. This DPR has been placed before the Government of Assam. A decision has been taken in January 2011, to execute the project either through the Hindustan Paper Corporation (HPC) or by putting up an Expression of Interest for inviting Companies to take up the project and the Government of India has been moved accordingly. Actions are now being taken to enable the revival of the Ashok Paper Mill.

3.3. CLAUSES 8.1 & 8.2

3.3.1. The Citizenship Act has been amended in 1985 and issuance of citizenship certificates is done only by the authorities of the Central Government. The Government of India have informed that they have not received any specific complaints relating to irregular issuance of citizenship certificates.

3.4. CLAUSES 9.1 & 9.2

3.4.1. BORDER FENCING & BORDER ROADS

3.4.1.1. The Indo-Bangladesh border with Assam has a length of 267.30 km. Out of this 223.068 km is the land border and 44.232 km are river stretches and other non-feasible gaps across the river border. Within 44.232 km, the Brahmaputra river has a stretch of 32.750 km in Dhubri District. Details of the river border areas is given in the Annexure-12. Roads and Fences are erected only on land border and the length of 44.232 km is unfenced.

3.4.1.2. Roads and Fences have been taken up for construction on the land border in three phases. In the Phase-I, construction of new roads and fencing was taken up in 1986 by Assam PWD and works completed in 2003. In the Phase-II, construction of

remaining new roads and fencing was taken up by Assam PWD in 2000-01. Subsequently some parts of this Phase-II works were handed over to the National Building Construction Corporation (NBCC) by the Assam PWD. While Assam PWD has almost completed its works, that of NBCC are in progress. Under the Phase-III reconstruction of the fences constructed in Phase-I was taken up from 2006-07 through NBCC and NPCC (National Projects Construction Corporation). While NBCC has completed its Phase-III assigned works, works of NPCC are in progress.

- 3.4.1.3. A total of 228.118 km of new fencing was sanctioned under Phase- I & II, out of which, based on field conditions, the actual required length was 224.694 km. Against this 218.170 km of fencing (97.1%) has been completed. A stretch of 2.874 km could not be taken up at Lathitila-Dumabari area of Karimganj district due to an international dispute. Works in respect of 150 metres of fencing are in progress with Assam PWD. These interalia relate to approaches of two bridges and are targeted for completion within 31st December 2012. A length of 3.50 km in Karimganj Town could not be taken up earlier as it

was within 150 metres of the Bangladesh border. It has now been decided to take up single fencing in this stretch in Karimganj Town, for which actions have been initiated by the NBCC.

3.4.1.4. A total of 251.558 km of new roads were sanctioned under Phase-I&II, out of which, based on field conditions, the actual required length was 246.073 km. Against this 234.153 km of roads (95.16%) have been completed. Assam PWD is yet to complete 60 metres of roads, which is targeted to be completed by 31st December 2012. NBCC is yet to complete 11.86 km of roads out of which 3.50 km relates to Karimganj Town, where work is yet to be started, and 8.36 km relates to Masalabari area in Dhubri district where work is in progress and scheduled to be completed this year.

3.4.1.5. A total of 144.961 km of reconstruction of Phase-I fencing was sanctioned under Phase-III, out of which based on field conditions the actual required length was 134.727 km. Against this, 121.707 km (90.34%) has been completed. NBCC has completed all works assigned to it. Works are in progress in respect of 13.020 km of fencing being constructed by NPCC, which are targeted to be completed by 31st March

2013. The Government of India has sanctioned the Phase-III of the fencing project, entailing the use of concertina with double coil wire fencing for replacing the entire fencing constructed under Phase-I. Due to persistent efforts from Chief Minister, Assam, phase II fencing was designed to be double row where concertina with double coil wire has been used in contrast to Phase I fencing which was only single row. A copy of the DO letter written by Chief Minister, Assam to Union Home Minister in 2004 is placed as Annexure 13.

- 3.4.1.6. The period-wise achievement in respect of Phase I & II works done by Assam PWD since 1986 is given in annexure-14 and works done by all agencies is at Annexure-15. A summary of the works done by all the agencies is given in the table below:

Progress under Phase-I and Phase-II (Fencing)

(in kms)

Phase	Sanctioned / Actual Length	Actual required	Completed	Disputed	Balance
Phase-I	150.55	147.17	144.3	2.87	0
Phase-II	77.57	77.52	73.87	0	3.65
Phase-I & II	228.12	224.69	218.17	2.87	3.65

Phase-III Fencing	144.95	134.73	121.71	0	13.02
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3.4.1.7 While Assam has almost completed its fencing project under phase I and II with around 97% of the work having been completed, the work in other states bordering Bangladesh is lagging behind as indicated below:

State	State Total length of border fencing sanctioned under Phase-I and Phase-II	Total length of border fencing completed under Phase-I and Phase-II	Percentage of completion
West Bengal	1528 km	1222 km	80%
Meghalaya	470.23 km	380.06 km	81%
Tripura	856 km	730.50 km	85%
Mizoram	352.32 km	206.80 km	59%
Assam	224.69 km	218.17 km	97%

3.4.1.8. The total unfenced portion of the Assam-Bangladesh border at present is given in the table below:

(in km)

1	River stretches and other non-feasible gaps across the river border	44.23	
2	Unfenced River Border:		44.23
	Phase-II fencing yet to be completed by APWD & NBCC	3.65	

3	Disputed land in Lathitila-Dumabari	2.87	
4	Earlier completed fence in Phase-I, now under reconstruction by NPCC and yet to be completed	13.02	
5	Unfenced Land Border:		19.55
	Total unfenced length along Assam-Bangladesh Border:		63.79

3.4.2. BORDER PATROLLING AND GUARDING

3.4.2.1. In order to strengthen border domination and to prevent any transborder crimes including infiltration and exfiltration, after 2001 in the Assam portion of the Indo-Bangladesh border, 11 new BOPs have been established. More BSF troops have been deployed and the water wing personnel have been made active on duty round the clock in the riverine border areas. At present the BSF and the state police are doing joint patrolling of the borders. A total of 6 battalions of BSF are deployed for guarding of the Indo-Bangladesh border (Assam portion). There are 91 BOPs at present and the distance between two BOPs has been reduced. Night vision devices, thermal indicators and radar for better surveillance are being used by the BSF at the border. The state police are also having BOPs for providing a second line of defence. To strengthen the Government machinery for the purpose

of detection and deportation of foreigners, the Government of India has sanctioned 1,280 additional posts in different ranks under the PIF Scheme. Including these 1,280 posts, the total sanctioned strength of the Assam Police Border Organization is 4,002 police personnel in different ranks.

3.4.3. COMMITTEE FOR PREVENTING INFILTRATION THROUGH THE UNPROTECTED RIVERINE AREAS

3.4.3.1 The actions taken for completing the fencing of the land border have been detailed above. Initiative has also been taken to ensure that infiltration is prevented from the river stretches and other non-feasible gaps across the river border. With this end in view the Governor of Assam constituted a Committee vide the notification No. IAA 56/2011/1 dated 12th September 2011 to examine and recommend ways and means for preventing infiltration through the unprotected riverine areas in the Assam-Bangladesh Border. The Committee visited the riverine border areas of Dhubri district in October 2011 and the riverine border areas of Karimganj and Cachar districts in November 2011. During these visits extensive discussions were held with BSF and other local authorities. Various technical

options of preventing infiltration through such riverine areas are presently being considered.

3.4.4. FLOODLIGHTING

3.4.4.1. To enable proper vigilance of the international border during the night, action has been taken to provide floodlighting all along the Assam-Bangladesh border. Floodlighting works are being implemented by the CPWD in the Assam. These works are divided between the Guwahati sector and the Silchar sector and the total length comes to 213.74 kms. The Guwahati sector comprises a stretch of 37.60 km in Dhubri sub-sector and 43.44 km in Mancachar sub-sector. Work has started in both these sub-sectors and is scheduled to be completed within 2012-13. The Silchar sector comprises three sub-sectors. The works in respect of the first, from BP. No. 1338 to 1356 & 680635 for 40.50 km have started and are scheduled to be completed within 2012-13. Works in respect of the remaining two sub-sectors having stretches of 46.70 km and 45.50 km are yet to be started and are scheduled to be completed within 2013-14.

3.5. CLAUSE 10

3.5.1. Land administration in the Protected Belts and Blocks in Assam is carried out as per provisions of Chapter X of the Assam Land and Revenue Regulation 1886 and Rules framed there under. Steps are taken for removal of encroachment on a continuous basis.

3.6. CLAUSE 11

3.6.1. The Assam Alienation of Land (Regulation) Act 1980 restricts the acquisition of immovable property by foreigners in Assam. Progress made is indicated below:

No. of Cases instituted	Persons involved	Area involved	Area made free and restored
141	461	661 bigha, 3 katha & 9 lessa	471 bigha, 1 katha & 0 lessa

3.7. CLAUSE 12

3.7.1. Due to persistent efforts the percentage registration of births and deaths has shown an increasing trend. The registration of birth has increased from 56% in 2003 to 86.23% at present. Death registration has also increased from 27% in 2003 to 46.92% at present.

3.8. CLAUSE 13

3.8.1. The agitation was called off by the All Assam Students Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP).

3.9. CLAUSE 14

3.9.1. All disciplinary cases against government employees were withdrawn vide O.M.No.ABP 179/85/Pt.III/16 dated 22.8.1986.

3.9.2. The Assam Public Service (Preferential Appointment) Rules 1986 and thereafter 1999 was made to regulate appointment in public services under the Government of Assam of the next of kin of persons who sacrificed their lives by participating in the Assam movement on the problem of insurgency. As per available records, so far 391 next of kin of victims of the Assam Agitation have been given jobs under the State Government.

3.9.3. An ex-gratia of Rs 30,000/- each has been given to next of kin of martyrs of the Assam agitation.

CHAPTER 4

EFFORTS OF THE GOVERNMENT OF ASSAM SINCE 2001 AND THE ROAD AHEAD

4.1. UPDATING NRC

4.1.1. Due to efforts of the Government of Assam, a tripartite meeting for Implementation of Assam Accord was held at the level of Prime Minister in 2005 with representatives of AASU and the State Government after almost 20 years of signing of Assam Accord. Updation of NRC of 1951 has been a long standing demand but not reflected in the Assam accord. However due to bold initiative of Chief Minister, the decision for updating the NRC 1951 was taken in the aforesaid tripartite meeting on May 5, 2005. Based on the recommendations of the Group of Ministers in 2008, THE CITIZENSHIP (REGISTRATION OF CITIZEN & ISSUE OF NATIONAL IDENTITY CARDS) RULES, 2003 was amended in 2009 to put necessary legislative framework in place for updation of NRC by inserting rule 4A and procedures after rule 18. The NRIC preparation in Assam is to be carried out by taking into account the names of persons included in NRC 1951, electoral rolls prior to March 24th (midnight) 1971 and their descendents along with

other supporting documents. Accordingly, modalities for the updating of NRC and standard operating procedures were prepared and 2 Pilot Projects were undertaken in Chaygaon (Kamrup district) and Barpeta (Barpeta district) revenue circles. However, due to protests it had to be put on hold for some time and a Cabinet Sub-Committee was set up to make recommendations for removing the difficulties and simplifying the procedures. The Cabinet Sub Committee had extensive negotiation with all the agitating groups and was able to successfully arrive at a consensus on various issues. Now all the hurdles in the way of NRC updation preparation have been removed by simplification of the application form and increasing the number of alternative documents required for establishing the authenticity of the claims. A proposal has been sent to Government of India to undertake the process of updation/preparation of NRC vide annexure 16. A copy of DO letter written by Chief Minister Assam in August 2008 to Prime Minister of India is place at annexure 16A.

4.2. PROGRESS IN DETECTION AND DISPOSAL OF CASES

4.2.1. There has been a substantial increase in the number of cases detected during the last 11 years. The disposal of cases also has shown a significant increase during this time period. The following table provides a comparative picture of the cases registered and disposed of by Foreigners Tribunals and IMDT:

FOREIGNERS' TRIBUNAL & IMDT

Period	Cases referred	Cases disposed of
1985-2000	80252	43631
2001-July 2012	140758	53452

4.2.2. It may be seen that the progress in 10 years time period from 2001-2012 far exceeds the progress made during the 15 years time period from 1985 to 2000. Keeping in view that the disposal mechanism is a judicial process and also subject to judicial review, the disposal of cases has not been able to keep pace with the number of cases registered in the Foreigners Tribunals. Therefore, there has been a large

cumulative pendency of cases in the Tribunals which needs to be addressed through special measures.

4.3. STRENGTHENING OF MACHINERY FOR DETECTION AND DEPORTATION

- 4.3.1. In order to prevent infiltration into the State through Riverine Routes 4(four) River Police Stations and 7(seven) River Police Out Posts have been set up under River Police Organization. In addition, a new I.R. Battalion for River Police has also been raised and steps are being taken to provide necessary equipments and training to this riverine battalion. The Assam Police Border Organization has set up 159 Watch Posts in the infiltration prone areas of 17 districts of Assam for detection of illegal infiltrators.
- 4.3.2. The ex-servicemen employed under PIF scheme have been given the status of regular government servants so that they do not suffer from uncertainties of employment. Government has paid more than Rs 22 crores as arrears to these ex-servicemen deployed since 1988 during 2011-2012.
- 4.3.3. The number of Foreigner's Tribunals which was hovering between 4 and 11 from 1964 to 2005 increased to 36 Tribunals in 2009. All of them have

been made functional. Standard staffing pattern and service order governing service conditions of FT staff have been notified. Proposal for providing additional staff depending on workload is submitted to MHA for approval. Power of appointment of vacant staff position has been delegated to Member FT based on a transparent selection process by a board headed by Deputy Commissioner.

- 4.3.4. New terms and conditions have been issued for appointment of Members so as to make the service conditions attractive. The upper age limit has been relaxed from 65 to 67 years, remuneration has been made more attractive besides providing other amenities like vehicle, orderly peons etc. This has led to significant reduction in vacancy position of Judicial members of Foreigners' Tribunals – 33 members are in place and other 4 applications are in process to achieve 100 % occupancy. It is noted that till February 2011 there were as many as 13 vacancies of Members, Foreigners Tribunal. The Government of Assam has also received 7 nominations from the registrars of the High Courts of other states and 3 members have been appointed so far from outside the state. There is a paucity of suitable judicial officers in

the State and all efforts have been made to fill up all the posts of members. This is the biggest impediment to our efforts in increasing the number of tribunals.

- 4.3.5. Office infrastructure of Foreigners Tribunals has been improved by providing computers, printers, telephone, fax, photocopiers etc. The Government of Assam is making every effort to overcome the constraints of inadequate infrastructure including office space for all the Foreigners Tribunals.

4.4. DETENTION CENTRES

- 4.4.1. In most cases it was found that illegal migrants detected as foreigners by the foreigners Tribunal under the provision of the foreigners Act, 1946 go untraced after they are so detected. This has created hurdles in deportation of the foreigners detected by the Foreigners Tribunals. To impose restrictions in the movement of the detected foreigners and requiring them to reside in a particular place immediately after they are so detected and to ensure that such persons do not 'perform the act of vanishing', it was decided to set up detention centres to keep such foreigners till they are deported to their country of origin. The Government of India has authorized the State Government under the provisions of Section 3(2) (e)

of the Foreigners Act, 1946 and Para 11(2) of the Foreigners Order, 1948 to set up detention centres. Accordingly, detention centres have been set up at Goalpara, Kokrajhar and Silchar for keeping persons declared as foreigners. The number of such foreigners kept in three detention centres (as on 15/10/2012) is as follows-. Goalpara (66), Kokrajhar (32), and Silchar (20). Their finger prints and photographs are also being kept and the photographs of absconding foreigners are being published in Newspapers.

4.5. COMMITTEES FOR DETECTION OF FOREIGNERS AND PREVENTING HARASSMENT OF GENUINE INDIAN CITIZENS

- 4.5.1. Thana Level Committees headed by Circle Officer (Revenue) of the area have been set up in all districts to ensure that genuine Indian citizens are not harassed. Besides, Circle Level, District Level and State Level Committees have also been formed with the objective of assisting the Government in the detection of foreigners in the State while ensuring that no genuine Indian citizens are harassed. Copies of Government notifications are placed at annexure 17 and 17A.

4.6. IMPACT OF GOVERNMENT MEASURES ON INFILTRATION

4.6.1. Assam witnessed a decadal population growth rate higher than the all India average during the major part of the twentieth century. The decadal growth of Assam since 1901 is given in the table below.

POPULATION TREND IN ASSAM AND INDIA

Year	Population (in lakh)		Percentage Decadal Variation		Density (Person per Sq. Km.)	
	ASSAM	INDIA	ASSAM	INDIA	ASSAM	INDIA
1901	33	2384	0	0	42	77
1911	38	2521	17	5.8	49	82
1921	46	2513	20.5	0.3	59	81
1931	56	2789	19.9	11	71	90
1941	67	3186	20.4	14.2	85	103
1951	80	3611	19.9	13.3	102	117
1961	108	4392	35	21.5	138	142
1971	146	5481	35	24.8	186	177
1981	0	6833	0	24.7	0	230
1991	224	8463	24.2	23.9	286	267
2001	266	10270	18.9	21.5	340	325
2011#	312	12102	16.9	17.6	397	382

* Interpolated

Provisional

The higher decadal population growth rate of the state has been attributed to migration from outside Assam. However, due to various measures taken by the Government to curb cross border migration, amongst other things, growth rate of population in 1991-2001 (18.9%) and 2001-2011(16.9%) censuses has shown a declining trend. This rate has been lower than the national growth rate which was 21.5% in 1991-2001 and 17.6% in 2001-2011.

4.7. ROAD MAP FOR FUTURE

4.7.1. The Government of Assam is committed to expediting the process of detection and disposal of cases pending with the Foreigners Tribunals. Towards this end, the Government of India has amended the rules mandating the Tribunals to dispose of cases within a stipulated time of 60 days. In regard to the cases which are already pending, a plan of action will be put in place in consultation with the Foreigners Tribunals so that all cases pending in tribunals are disposed of in a time bound manner. A workshop to finalize the plan of action will be held with all the Members of foreigners Tribunals and border Police shortly. Earlier on 10th April 2008, a workshop was held to discuss ways and means for expediting the disposal of cases

and the problems faced by Members of Foreigners Tribunal. In addition, the existing Foreigners Tribunals are being strengthened in terms of infrastructure and man power. Separately, Border Wing of the Assam Police Border Organization will also be strengthened with the enabling support structure for servicing the Foreigners Tribunals and also for the purpose of detection and investigation of the cases. The Government of Assam has also sent a proposal to the Government of India to increase the number of Foreigners Tribunals in the State so as to cope with the extra load in select districts.

- 4.7.2. The Government of Assam is committed to updation /preparation of a correct National Register of Indian Citizens for the entire State in phases. All the procedural hurdles have now been removed amicably and the Central Government has been requested to bring about necessary changes in the rules and standard operating procedures for commencing the work. The areas comprising 42 LA constituencies shall be taken up in the first phase. An NRIC Directorate / Commissionerate to be headed by a Commissioner/ Secretary ranked officer with modern infrastructure, adequate officers and staff will be set up soon to

undertake the myriad processes of NRIC. In addition, the Government is setting up an Advisory Commission headed by a retired Judge as Chairperson and 2 senior Retired Government officials as Members to advise the Government on NRIC matters and the Foreigners' issue. NRIC Directorate will render secretarial service to this commission. The Government of Assam is hopeful of completing the preparation of NRIC within 3 years.

- 4.7.3. The Government of India notified the Unique Identification Authority of India (UIDAI) as an attached office under the aegis of the Planning Commission to implement the UID Scheme. The UID initiative proposes to develop a comprehensive database for the entire resident population of the country and its objective is to create a core database which is regularly updated and is easily accessible by all departments for identification of residents in the country for various purposes. The Government approved that UIDAI may create initial database from the Electoral Rolls as one of the partner databases and validate the same through BPL database and PDS database. The database so created would be a database of residents, not of citizens. UIDAI also has

the responsibility of defining mechanism and processes for interlinking AADHAAR Numbers with other databases on a continuous basis, coordinating with the implementing agencies.

4.7.4. The Government of Assam is fully seized of the problem of unguarded riverine areas where ingress of infiltrants is possible. Therefore, the Government is committed to implementing the recommendations of the committee constituted for the purpose as brought out in paragraph 3.4.3 in the previous chapter.

4.7.5. The Government seeks to activate and strengthen the local thana level committees for detecting foreigners and preventing harassment of genuine Indian citizens so that infiltration of foreigners is checked at the grass root level besides preventing harassment of genuine Indian citizens in the process.

AN EXPLANATORY NOTE ON COMPILATION OF POPULATION FIGURES OF ASSAM

- Over the years, in both the pre-independence and post-independence periods, the boundaries of districts of Assam have undergone several administrative re-organizations. Hence, for the purpose of clarity, the areas used for comparison of the population have kept as unvarying as

possible in the table by keeping the original districts of erstwhile province of Assam, as the basic unit while excluding those areas which are not part of post independence Assam and subsequently areas of States which were carved out of Assam. Accordingly, the following may be noted:

- Goalpara district as mentioned in the table comprises of present Kokrajhar, Bongaigaon, Dhubri & Goalpara districts.
- Kamrup district as mentioned in the table comprises of present Kamrup, Kamrup(Metro) Nalbari & Barpeta districts.
- Sivasagar district as mentioned in the table comprises of present Sivasagar, Jorhat & Golaghat districts.
- Lakhimpur district as mentioned in the table comprises of present Dhemaji, Lakhimpur, Dibrugarh & Tinsukia districts.
- Cachar district as mentioned in the table comprises of present Cachar, Karimganj, Hailakandi districts
- Nowgaon as mentioned in the table include present Nowgaon, Morigaon & 2 Hills districts namely N C Hill and Karbi Anglong districts.

The following is pertinent:

- Assam Province originally had 7 districts namely the 6 districts of Goalpara, Kamrup, Darrang, Nowgong, Sivasagar

and Lakhimpur which comprised the Brahmaputra Valley and the Cachar Plains district. North Cachar Hill was a subdivision of Cachar plain.

- The present Karimganj district was not a part of the Cachar Plains but was a sub-division of Sylhet District [excluding population under Jaldhup Thana in 1911 to 1931 and excluding population under Beani Bazar and Barlekha Thana in 1941]. Hence, while computing the population of Cachar districts, the population figures of Karimganj (out of the figures of Sylhet district) have accordingly been taken into account.
- Present Karbi-Anglong District was created in 1951 with some parts of the districts of Sivasagar (now Golaghat), Nagaon, Cachar and United K&J Hills). At the same time, N C Hills District (present Dima Hasao district) was carved out of United Mikir Hills and North Cachar Hill District in 1971 and prior to 1951 it was a subdivision under Cachar district . For the sake of convenience, the populations of 2 hills districts have all along been shown in Nowgaon district.

True Copy

(MAP & Co)

(Amendment) Act, 1985 (Act No 65 of 1985) w.e.f 07/12/1985 be struck down as illegal and invalid, being, ultra-vires the Constitution of India.

- 2) That the petitioners are filing the present application for ex-parte stay on and amongst the grounds mentioned in the Writ Petition as well and the same is not being repeated for the sake of brevity of the matter.
- 3) That the Assam Cabinet on 16/08/2012 accepted the recommendations of the Cabinet sub-committee on updating the National Register of Citizens (NRC). As per reliable information the petitioners submit that the recommendations state that the NRC will be updated by including the names of all those who entered Assam on or before March 25, 1971, provided they can furnish relevant documents. Significantly, the Cabinet sub-committee has also recommended that the doubtful voters too will be able to apply for inclusion in the NRC after completing the necessary formalities. The sub-committee has recommended updating of the NRC in 42 legislative Assembly constituencies in the first phase.
- 4) That the Secretary to the Government of Assam, Home & Political Department vide letter dated 29/08/2012 forwarded to the center the report of the cabinet sub-committee with regard to updating of the NRC.

- 5) The on 24/09/2012 the petitioners herein submitted a memorandum to the Prime Minister with regard to the identification and deportation of illegal foreigners from Assam according to the provisions of Indian Constitution and existing law. Amongst other issues the petitioners demanded that 1951 be made as the base year for identification of illegal foreigners and identify them according to the 1951 N.R.C., voter list of 1952, Foreigners Act of 1946 and Foreigners Ordinance of 1964. It is submitted that the petitioners are yet to receive any effective and positive response from the respondents.
- 6) That the petitioners are highly aggrieved by the action proposed by the State whereby the National Register of Citizens pertaining to Assam is sought to be updated by including therein all illegal immigrants who have invaded Assam on or before March 25, 1971. The proposed action tantamount to infringing the petitioners fundamental rights guaranteed under Article 14 and 29 (1) of the Constitution. It is also an affront to their other constitutional safeguards provided under the 6th Schedule of the Constitution.
- 7) That the petitioners have established a prima facie good case on merits and the balance of convenience tilt overwhelming in favour of the them and against the Respondent. It is in the interest of justice that the interim

relief as prayed for is granted to avoid any hardship and irretrievable injury to the petitioners.

8) That the petitioners have established a prima facie good case on merits as per the grounds urged in the Writ Petition.

It is respectfully submitted that if the interim relief as prayed for is refused the enormity of irreparable loss and hardships that the petitioners will suffer may not be possible to be redeemed or compensated later. It is therefore submitted that it is just, proper and expedient that the interim relief as prayed for may be granted in favour of the petitioners.

9) That in the facts and circumstances it is therefore prayed that pending disposal of this instant writ petition the proposed action of the respondents of updating the National Register of Citizens in Assam may be stayed.

10) That it is most respectfully submitted that if the prayer for stay is not granted the petitioners will be highly prejudiced and would render the instant writ petition infructuous.

11) That this petition is made bonafide and for the ends of justice.

PRAYER

In the premises as aforesaid it is, therefore, most respectfully prayed that this Hon'ble Court will be graciously pleased to:

- a) Stay the contemplated action of the respondent authorities of updating the National Register of Citizens with respect to the State of Assam by including the names of all those who entered Assam on or before March 25, 1971;
- b) Grant ex-parte ad-interim orders restraining the respondent authorities from proceeding any further with the updation of the National Register Of Citizens with respect to the State of Assam;
- c) Grant ex-parte ad-interim orders restraining the respondent authorities from taking any action in pursuance to the recommendations of the cabinet sub-committee accepted by the Assam Cabinet on 16/08/2012;
- d) confirm the above prayers (a), (b) and (c) by notice of motion to the respondents.
- e) pass any other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Filed by

Date: 29/11/2012

(M/s MAP & Co)

New Delhi

Advocate for the Petitioners

1955 inserted into the principal Act vide The Citizenship (Amendment) Act, 1985 (Act No 65 of 1985) w.e.f 07/12/1985 be struck down as illegal and invalid, being, ultra-vires the Constitution of India.

- 2) That the petitioners are filing the present application for permission to file lengthy list of dates on and amongst the grounds mentioned in the Writ Petition as well and the same is not being repeated for the sake of brevity of the matter.
- 3) That it is submitted that the history of illegal infiltration into the State of Assam is more than a century old problem. Therefore to trace back the history and put all the facts and circumstances in its correct perspective the petitioners are constrained to file a lengthy list of dates and events. It is therefore submitted that it is just, proper and expedient that the permission as prayed for may be granted in favour of the petitioners.
- 4) That this petition is made bonafide and for the ends of justice.

PRAYER

In the premises as aforesaid it is, therefore, most respectfully prayed that this Hon'ble Court will be graciously pleased to:

- a) permit the petitioners to file lengthy list of dates and events

b) pass any other or further orders as this Hon'ble
Court may deem fit and proper in the
circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, YOUR HUMBLE
PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Filed by

Date: 17/12/2012

(M/s MAP & Co)

New Delhi

Advocate for the Petitioners