

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

Anjuman Ara Begum

‘Irregular immigration’, in Assam is a perennial socio-political issue in Assam since colonial times resulting spectrum of legislations and executive policies for detection and deportation of irregular immigrants in post-colonial situation after the partition of 1947. Legal architecture concretised from time to time is reminiscent of the colonial norms included a colonial understanding of ‘foreigners’. Laws related to citizenship, land rights reflect dominant racial and cultural, especially linguistic, aspect and claims of civilizational superiority. Any non-conforming person who doesn’t fall under this criteria and regarded as ‘outsider’, an ‘Other’ [Bohiragoto in Assamese] and is subjected to persecution, censorship, social stigma, prolonged incarceration and virtual statelessness.

The legislation dealing with the foreigners in India didn’t shed its colonial root even after the independence in 1947. The principle of equal treatment and right to human dignity was often derailed for certain ‘other’ minority communities despite a written constitution and adoption of international human rights treaties by the Government of India. The Foreigners Act, the primary legislation controls entry, stay and exit of foreigners was enacted in 1946 and underwent several amendments in 1939, 1940, 1946. Foreign Tribunal Order, set of rules to implement the Foreigners Act came into force in 1964. The Passport Act was enacted in 1920 and continues to be in force.

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

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

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

Paper will discuss functioning of the FTs, Judiciary, merits of their judgments, accountability and the 'final solution' on 'determination' of irregular migrants in Assam. This paper is divided into three parts. The part I will discuss the historical background behind resorting to a quasi-judicial body for determination of an important right like that of right to nationality along with the legal landscape created over a period of time to deal with the 'suspected foreigners' in Assam. Part II will focus on the instruments of operation that includes judiciary, election commission, detention camps, citizen enrolment process called NRC, with a focus on the recent judgments. Part III of the paper will be summarized versions of the people's experience and their life and longings in a 'state of exception'. A brief conclusion will be followed.

PART I

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

The development of legal regime and jurisprudence on irregular or undocumented immigration issue in Assam can be divided into three different time period: Pre IMDT period [1947 to 1983], IMDT Period [1983 to 2005] and Post IMDT period [2005 onward]. In the first time period, setting of legal norms for citizenship was carried out via the Citizenship Act 1955. It divided three categories of citizenship: by birth till 1 June, 1987, naturalization of persons who entered Assam in between 1987 to March 21, 1971 after ten years. Anyone entering Assam after this cut off date is considered and subject to deportation. Assam agitation from 1979 to 1983, Nellie massacre of 1983 and the subsequent signing of Assam Accord in 1985 expedited implementation of Illegal Migrants Determination Tribunal [IMDT] Act passed in 1983. Major demand of the Assam Accord was to secure the border with Bangladesh with barbed wire fencing, updating NRC of 1951 and expulsion of all irregular immigrants in Assam who entered Assam after March 21, 1971. 16 tribunals were formed under IMDT, however only a few remained functional till 2005.

Section 6A was inserted in the Citizenship Act to implement Assam Accord and is applicable only in Assam. It divided immigrants from East Pakistan [now Bangladesh] into three categories: a. those who came to the state before 1966 are considered citizen, b. those entered from 1966 to 1977 can stay on in Assam but will lose voting rights for the time being and will be regularized after ten years, c. those entered Assam after 24 March, 1971 are non-citizens and will be deported. This arrangement has been challenged as unconstitutional violating article 14 of the constitution and is awaiting final judgment.

In post IMDT period starting from 2005 onwards Supreme Court struck down the IMDT Act and since then gradually the judiciary became authoritarian. It often assumed executive roles and compromised neutrality. Since this paper deals mostly with the functioning of the FTs, post IMDT period will be the main focus.

- Emergence of exceptional legal regime for Assam

During the constituent assembly debate, representative from Assam demanded special protection in the Constitution. However, it didn't gain much support. Instead Assam was given a differential treatment when it's come to the issue of 'illegal migration' by enacting Immigrants (expulsion from Assam) Act in 1950 in addition to colonial legal mechanisms to continue to determine who is a citizen or not even after independence. The Foreigner's Act, 1946² was made enforceable all over India and till today it sets the primary source of legal standards to be followed in case of determination and identification of foreigners in India. FTs are so far an exclusive feature in Assam. Its only in 2019, an amendment enabled all the states now to form their own FTs³. The Foreigners Act has its legacy in an earlier version was promulgated in 1864 that acted as the primary legislation to control entry and exit for British Burma. To counter the impact of the World War II, Foreigners Ordinance 1939 was promulgated in British India. This was replaced by the Foreigners Act 1940 and was finally replaced by Foreigners Act 1946.

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

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

No uniformity of procedures of detecting and deporting of foreigners was maintained between Assam and other states in India. The process of detection and deportation of illegal foreigners in other states of India is different from that of Assam⁵. Rationale behind such a differential treatment lacks a reasonable explanation.

²The Foreigners Act, 1946 https://indiacode.nic.in/bitstream/123456789/6803/1/foreigners_act_1946.pdf
Foreigners (Tribunal) Order, 1964
[https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=Foreigners%20\(Tribunal\)%20Order,1964.pdf](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_5_23_00048_194631_1523947455673&type=order&filename=Foreigners%20(Tribunal)%20Order,1964.pdf)

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

⁴ White paper on Foreigners Issue, Government of Assam, 2012
<https://cjp.org.in/wp-content/uploads/2018/10/White-Paper-On-Foreigners-Issue-20-10-2012.pdf>

⁵ Rustom Ali vs. State of Assam and others, WP(C) 3226 of 2009 in Gauhati High Court

A separate procedure for deportation of illegal Bangladeshi migrants was set out in September 1997⁶. This process includes verification with the Bangladesh High commission, confirmation of the nationality and then repatriation to the original country with the help of state government and Border Security Forces. Till their deportation, foreigners are to be lodged in detention facilities.

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

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

The FTs has determined the status of 1,17,164 persons till 31 March 2019 with a majority of the cases, about 60% are ex-parte decisions. G Kishan Reddy, Minister of State for Home Affairs, on July 2, 2019, informed Parliament that 63,959 people have been declared as foreigners through ex-parte proceedings by FTs in Assam from 1985 to February 28, 2019. Case studies indicate that an inefficient and faulty system of delivering notices and summons is the common cause for ex-parte decisions.

- **Recruitment and accountability of FT members:**

In a response to a parliamentary question, the home ministry revealed that there is no process to hold the FT members accountable⁷. However, their training and overall function is monitored by the Gauhati High Court.

Amnesty International India in its report published in 2019 concluded that with the reversal of burden of proof, the investigations have become shoddy and lackadaisical⁸. Gauhati High Court has recognized these lax investigations. Both citizens and non-citizens are entitled to fair trial as per article 21 of the Indian constitution. However political and social pressure compels the FT members to dispose of cases as fast as possible to avoid dismissal from their service. In June 2017, 19 members of FTs were fired for 'poor performance'. Procurement of documents by

⁶ Ministry of Home Affairs vide letter No. 14011/55/09-F.VI dated 23.11.2009.

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⁸ Amnesty report, see above

the accused is expensive and time consuming. Hence many accused persons failed to meet the demand of the FTs and hence are declared foreigners.

In 2017, within eleven months, 13343 people were declared foreigners whereas average declaration was 2586, as per the Amnesty report. This clearly reflects the pressure on the FT members. Media reports and activists working on the ground also reported similar pressure on the Border Police.

On May 2020, for the first time a member of FT was faced accountability for his irresponsible behaviour. A FT member who had donated to the State COVID-19 fund with a rider that his contribution should not be spent on Tablighi Jamaat attendees who tested positive after returning to the State was removed⁹.

Part II

Post IMDT period and the rise of judiciary

- Burden of proof

Burden of proof concept played a significant part in the legal architecture of irregular immigration and this concept proved a game changer. Burden of proof is a legal terminology, originated during second world war, indicates the obligation of a party in a litigation. As per Indian Evidence Act, burden of proof lies with the state. Under Foreigner's Act the accused person has to prove their entry, stay and exit is not violative of the existing laws.

IMDT made a departure from this norm and shifted the burden of proof to the state or the vigilant citizens. IMDT Act didn't contain provision similar to section 9 of the Foreigners Act. This reportedly slowed down the rate of detection of 'foreigners' in Assam. From 1983-1998, 489046 persons were detected as foreigners in West Bengal, whereas only 1494 persons were detected and allegedly deported till 30th June 2001. Out of 87222 cases only 12180 persons were declared foreigners in Assam till March 31, 2004. The constitutionality of the IMDT was challenged in the Supreme Court on the ground that its applicable only in Assam and the law has proved ineffective in containing irregular immigration. The petition heavily dependent on a 1998 report prepared by SK Sinha, the then governor of Assam. The report quoted information from intelligence sources as primary data and also quoted that 6000 people are entering Assam everyday, a figure quoted without any empirical data or research. The report referred to an observation by SC Mulan, the Census Superintendent of 1931 Census, under the heading "Illegal Migration" and expressed fear of demographic change in Assam. The Supreme Court accepted the report that deemed migration on 1931 as illegal. Sarbananda Sanowal empowered the judiciary to be authoritarian and facilitates the judiciary later on to down play international standards on non-refoulment, statelessness and natural justice. It set "External aggression" and "internal disturbance" became a dominant narrative and emphasized the need for being harsh to the accused in order to 'protect' Assam. This precedent influenced all subsequent proceedings under the FTs and Gauhati High Court and increased scope of arbitrariness and bias. Over a period of time the judiciary rendered

⁹ <https://www.thehindu.com/news/national/other-states/foreigners-tribunal-member-removed/article31666251.ece>

invalid a set of acceptable documents as a proof of citizenship. Most remarkable one is that the Gauhati High Court in a civil writ petition filed later held the Gaon Panchayat Secretary certificate as “private document” and thereby invalidated around 46 lakh Gaon Panchayat Secretary certificate issued to women as documents for establishing linkage with parents. In another case, a woman was declared foreigner despite submitting 15 documents to prove her legacy with parents. Sarbananda Sanowal also narrowed down the principle of separation of power, a basic structure of Indian constitution. Supreme Court’s direct supervision of the NRC authority without maintaining neutrality is the outcome of this.

Following the Sarbananda Sanowal I judgment, the Centre government amended the Foreigners Tribunal Order 1964. This amendment was again challenged before the Supreme Court by Sarbananda Sanowal, the current chief minister of Assam. Supreme Court again struck it down on the ground that its unconstitutional. The amendment The Foreigners (Tribunals) Order 1964 stated that the accused in question should be given an opportunity to defend his case before the tribunal while the Foreigners (Tribunals for Assam) Order 2006 vested tribunals with special powers to decide if there were sufficient grounds to proceed against a suspected foreigner. Supreme Court also observed, “uncontrolled immigration into the northeastern states posed a threat to the integrity of the nation” and ordered to establish more FTs in Assam within four months. As per Supreme Court’s order, all cases pending before the IMDT tribunals were transferred to the FTs to be decided in the procedure prescribed under the Order of 1964. A total of 25 tribunals were established in 2005. 4 came up in 2009 and another 64 came up in 2014 making it a total of 100. Another 100 FTs are established in 2019 making it a total of 200.

- **Doubtful voters**

In proof of citizenship, voter list entry has been given extra importance. Entry in voter list of 1966 and 1977 are conclusive proof of citizenship. However its observed that spelling mistakes, wrong entries, minor anomalies in age etc are upheld by the judiciary to cancel the citizenship of a person. In 1997, the Election Commission (EC) ‘identified’ several hundred thousand people as D voters, most of them Muslims along with Bengali speaking Hindus, Koch Rajbangshis, Nepalis and others. The process of identifying D voters came into action after a huge political mobilisation led by All Assam Students Union (AASU) and other ultra-nationalist organisations, with the government being asked to carry out an intensive revision of the voters lists across Assam. Government figures suggest that over 2.4 lakh people have been declared as ‘D-Voters’ in the state since 1997, and over 1.1 lakh cases are still pending in tribunals¹⁰. An over whelming 60% of D-voters are married women. List of D-voters was sent to the FTs to initiate trial to investigate the D-voters. Entry in D-voters list renders a person virtual statelessness and immediately deprived of social benefits and other rights as citizen. D-voter’s list is prepared based on suspicion and not after an inquiry.

¹⁰ <https://www.newsclick.in/Foreign-Tribunals-Assam-Citizenship-NRC>

- **The rise of Authoritarian judiciary**

Post IMDT period also reflects an overwhelming institutional effort in creating fear and trauma through social exclusion, bureaucratic hurdles and humiliation. Minor ‘technical lapses’ like typos, spelling and age discrepancies, absence of linkage document are the main reasons cited by the Judiciary for stripping of Indian citizenship of the accused. The Gauhati High Court in various judgments took note of callous nature of authorities in recording minute details or timely actions, prolonged delay in FTs of the average 10-15 years, difficulties in procuring documents and most importantly difficulty in deportation. Despite these observations, the Court said that delay in FT is of the average ‘10/15/20’ gives scope to the accused to file case as writ petition and offers opportunity to register their children as Indian citizen. Court then asked Central government to allow summary trial and disposal of the cases by spot inquiry¹¹. It further cautioned that any amount of delay in deciding the cases always leads to serious consequences with felling effects on integrity, sovereignty and security of the State.

In a study of 787 cases¹² of appeals before the Gauhati High Court on the decisions of FTs, it was found that in 99% of the appeals from ex-parte orders of the Foreigners Tribunals, the High Court agreed with the findings of the Tribunals. All the persons who appealed to the High Court had some form of documentation. Around 61% of them produced electoral rolls and 39% of them produced permanent residence certificates/certificates from the panchayat. In 66% of the cases, the Foreigners Tribunals found the documentation unsatisfactory. In 38% of the cases, documentation was rejected because spellings did not match and in 71% of them, the secondary evidence was deemed inadmissible.

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

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

- **Ajijur Ali vs. State of Assam¹³**

Person was declared foreigner based on clerical discrepancy like the spelling of parents names in voter list of 1966 and 1977. The accused person’s name was spelled as Ajibur while his father’s name Hajaral Ali was spelled as Harzat Ali. There was discrepancy in the records of the age of his parents. Their age recorded both in the voter list of 1966 and 1977 were same. Another reason to deprive nationality to the

¹¹ Md. Rustom Ali vs. State of Assam and other, WP(C) No. 3236/2009, <http://ghconline.gov.in/Judgment/WPC32362009.pdf>

¹² Caught in a bureaucratic web, <https://www.thehindu.com/opinion/op-ed/caught-in-a-bureaucratic-web/article30983165.ece>

¹³ WP(C) No. 2358/2011, Ajijur Rahman vs. Union of India, State of Assam and others, <http://ghconline.gov.in/Judgment/WPC23582011.pdf>

accused was that he claimed to be educated till class VIII, however in one of the document submitted to the court, he has put his thumb impression. These raised serious doubt in the mind of the judiciary and found it enough to declare the person as 'foreigner'. Police authority was to act swiftly and detain him. It took ten years to complete the process starting from the FT. The Gauhati High Court also noted that the delay in determining and deporting Bangladeshis has created danger for the indigenous population and called for summary disposal by the FTs based on spot visit.

- Anowara Khatun vs. State of Assam and others¹⁴

Anowara Khatun was declared a foreigner ex parte by FT in 2009. She challenged the decision before the Gauhati High Court and claimed to be Indian by birth. Her name appeared in the voter list twice in 1994 and 1997. There is discrepancy in the spelling of the names and also the age. Anowara sought time before the FT to prepare her written submission when the notice was served to her in August 2008. She claimed that due to bandhs called by a social organization followed by a silent protest meet by the lawyers, she was not able to attend the hearings. The High Court noted that her citizenship became doubtful when the electoral roll for the year 1997 was under preparation and a reference was made to the FT and all procedures were followed. The Gauhati High Court observed that the act of absence from hearing has become 'convenient' for the irregular Bangladeshi migrant and Anowara's absence from hearing was deliberate. The court was satisfied with the discrepancies in the voter list and upheld the decision of the FT. The Court also observed that since Anowara is 60 years old, her name should have appeared in the voter list before 1994 and she couldn't prove 'linkages' of her existence in Assam before the cut off date. This raises suspicion over her claim of being Indian by birth. The court ordered to be deported. Anowara Khatun was soon found missing from the locality. The Court also held that given the prevalence of the problem [illegal immigration], act of leniency would mean anti thesis to the whole purpose and the accused is duty bound to prove his/her citizenship as per section 9 of the FT Act 1946.

- Moinal Mullah vs. union of India and other¹⁵

Moinal Mullah is another disturbing one that affirms the corruption and inefficient adjudication of justice. The FT in Barpeta on 16 February, 2010 declared Moinal Mullah as foreigner. The decision was ex parte. The FT based its judgment on the testimony of the local verification officer who pointed out that in an earlier occasion Moinal was asked to submit his citizenship credentials and he failed to submit and hence he is a foreigner. Moinal was detained on 5 September 2013. Moinal's parents were also marked as D-voters in 1997 and they required to prove their citizenship before the erstwhile IMDT to get the D-voter status removed. In 2003 Moinal's father Ashan Mullah and mother Monowara Begum were cleared of the doubt and they were restored of their Indian citizenship. Moinal was told by his lawyer that since his

¹⁴ WP(C) 643/2009 (Ms Anowara Khatun Vs. Union of India,
<https://www.casemine.com/judgement/in/56b49555607dba348f012127>

¹⁵ Moinal Mullah vs. Union of India, State of Assam and others
<https://www.news18.com/news/india/my-name-is-moinal-mollah-i-am-an-indian-1274971.html>,
https://images.news18.com/ibnlive/uploads/2016/07/Moinal_Mollah_1.jpg

parents are proved Indians, he doesn't need to attend the hearing before the FT. Once he was declared a foreigner, he was taken into Detention camp in Goalpara. A petition was filed before the Gauhati High Court against the decision of the FT and his lawyer. However, the petition was rejected. A social organisation supported Moinal to appeal before the Supreme Court. The Supreme Court directed the FT to restart and Moinal was asked to appear before the FT on 29 August 2016. FT cleared Moinal Mullah and he was declared an Indian soon after.

- Jabeda Begum@Jabeda Khatun vs. Union of India ¹⁶

Jabeda Begum was declared a foreigner by FT in Baksa District in May 2019. She has submitted 14 documents to claim that she was an Indian citizen by birth¹⁷. She challenged the order in Gauhati High Court. Gauhati High Court dismissed her plea and upheld the order of the FT. She had also produced documents like land revenue payment receipts, her bank passbook, PAN card and a ration card. She also added a certificate from the gaon burah, village headman to link her legacy with her parents. First certificate said her father Javed Ali was a permanent resident of the village while second certificate one said Begum was Javed Ali's daughter and married to Rejak Ali. The High Court was satisfied that pan card, bank document and land revenue document are not proof of citizenship. Certificates issued by a Village Gaon Bura can never be the proof of citizenship of a person. Such certificate can only be used by a married woman to prove that after her marriage, she had shifted to her matrimonial village [Rupjan Begum Vs. Union of India, reported in (2018) 1 SCC 579].

The Court in Md. Babul Islam Vs. Union of India [WP(C)/3547/2016], held that PAN Card and Bank documents are not proof of citizenship. So in absence of any linkage certificate Jabeda was declared a foreigner. The court held, 'the certificate issued by the G.P. Secretary merely acknowledges the shifting of residence of a married woman from one village to another. The said certificate by itself and by no means establishes any claim of citizenship of the holder of the certificate'¹⁸.

In Anima Das vs. state of Assam and other, two certificates dated 30.08.1993 and 03.04.2018 are both issued by the Headmaster of her school. The certificates were not accepted by the Foreigners Tribunal, Baksa because the Headmaster of the school who had issued the two certificates was not examined¹⁹.

¹⁶ Jabeda Begum vs. Union of India and others, <https://indiankanoon.org/doc/161150352/>

¹⁷ In support of her contention, the petitioner filed 14 (fourteen) numbers of documents. They are - NRC details of Javed Ali [Petitioner's brother], Voter Lists of 1966 parents, grandparents, Voter Lists of 1970; Land Revenue Paying Receipt; Voter Lists of 1997; Voter Lists of 2015; Land Revenue Paying Receipt; another Land Revenue Paying Receipt, another Land Revenue Paying Receipt; certificate of Gaon Bura certifying that Md. Javed Ali is a permanent resident of Village No. 2 Dongergaon; another certificate of Village Gaon Bura certifying that the petitioner being the daughter of Lt. Javed Ali was married to Rejak Ali; a copy of Ration Card in the name of the petitioner; Bank Passbook; the PAN Card of the petitioner; another bank document of the petitioner.

¹⁸ Rupjan Begum vs. Union of India, <https://indiankanoon.org/doc/7961750/>

¹⁹ WP © 3056/2018 decided on 3-1-2019

- Sanaullah vs. State of Assam and others²⁰

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

- **Endless captivity in the name of detention**

In a study by Michelle Peterie on Immigration Detention Centre in Australia argued that 'the camp, in this context, is a "state of exception" – a place in which "the rule of law [is] suspended" and the individual is reduced to a state of "bare life" ²¹. He quoted examples of concentration camps of 20th century fascist regimes, detention at Guantanamo Bay, detention of immigrants at a football field in Bari, Italy etc as kind of 'state of exceptions' where certain kind of people live and state creates environment for mass support of this treatment where basic rights are suspended or denied'.

Detention camps in Assam are not free from these symptoms. The Detention Centres, a transit facility for the declared or suspected foreigners is the result of the verdict of Judiciary. The Gauhati High Court in 2008, ordered establishment of these facilities. Detention centres came up in Assam in 2010, 2012, 2014 and 2018. This facilities in practice resulted in prolonged captivity, delayed justice and financial harassment of the victims along with enormous psychological trauma. Construction of detention camps/centres was ordered in 2009 expedited when Gauhati High Court said that 'Bangladeshis are becoming Kingmakers' [in Assam]. The government immediately formed three camps, curved out of central jails in Goalpara, Silchar and Kokrajhar. A total of 362 inmates were taken into it by the end of 2011.

Till date, these camps have no rules and procedures and have no operating manual. Inmates were not entitled to any facilities like that of jail²². They are treated like prisoners and still deprived of the rights of a prisoner like parole, wages against work, family visits and have confined within the confined camp area. Interactions with former inmates revealed that food quality or sleeping space was too small causing

²⁰ <https://thewire.in/rights/declared-foreigner-former-army-subedar-assam-detention-centre>

²¹ Michelle Peterie, Deprivation, Frustration, and Trauma: Immigration Detention Centres as Prisons, *Refugee Survey Quarterly*, 2018, 37, 279–306

²² Researcher received hand written notes from inmates in 2008 depicting overcrowded and unhygienic condition.

lack of nutrition and psychological illness. A manual similar to that of jail manual is currently under consideration as per the instruction of the Supreme Court.

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

Michelle Peterie further pointed out that 'psychological and psychiatric studies have consistently demonstrated that asylum- seekers who are subject to detention experience high levels of anxiety, depression, and Post Traumatic Stress Disorder (PTSD), with self-harm and suicidal ideation widely reported'²³. The negative impacts of detention on detainees are well established in Assam. Every detainee interviewed by this researcher indicated mental illness along with physical weakness and financial loss. Detention camps had about 1300 inmates. Compared to the population of 2.6 million in Assam, this number looks miniscule. However it's enough to inflict a collective trauma to the targeted communities. Those excluded from NRC list also shared similar state of anxiety and sleeplessness.

A total of 29 inmates have died inside the detention camps [as of March 2020]. A public interest litigation filed by social activist Harsh Mander in 2017 asking for better living condition at the detention centre. Supreme Court initially acted harshly for filing the petition and removed Harash Mander from the litigation. Later in it ruled that detainees in these centres are eligible for bail after completing three years and has to present themselves before the police every week after the grant of bail. Biometric data and security of 1 lakh along with two Indian national as guarantee has to be furnished. Few hundred inmates were released. In April 2020, another PIL was filed for release of all the declared foreigners on bail in absence of any deportation mechanism. The prevailing COVID situation probably have influenced the Supreme Court which ordered that inmates completing one year in detention should be released after furnishing two Indian witnesses and 10 thousand rupees security. Goalpara has 201 inmates, Kokrajhar has 140, Silchar 71, Dibrugarh 41, Jorhat 196 and Tezpur holds 322 inmates currently. A sum of 4.74 crores rupees has been spent at the detention centres so far of its maintenance.

- **Deportation**

There is no clear norm for deportation of a person once declared foreigner. Government has admitted of 'push back' in various cases filed before the Gauhati High Court. Home Ministry has informed in the parliament that till date 39 persons

²³ Michelle Peterie, Deprivation, Frustration, and Trauma: Immigration Detention Centres as Prisons, Refugee Survey Quarterly, 2018, 37, 279–306

have been sent back to Bangladesh and a few thousand has been pushed back with the help of BSF. In a significant number of cases, the accused person and their family went missing once the Gauhati High Court upheld the decisions of FT and declared them as foreigners²⁴. In most of the cases, the jurisdictional Superintendent of Police has submitted report that the Bangladeshi nationals are not traceable and their whereabouts are not known.²⁵

- **Overall Impact and collective traumatization**

Collective traumatization through violence could be traced in Assam since 1983. Nellie massacre of 1983 followed by several mass killings and ethnic conflicts in the state in Bodo inhabited areas in last three decades has reinforced the collective trauma, demonization and otherisation of the Bengali speaking Muslims in Assam. Transitional justice mechanism is one of the fast growing popular mechanism started with Argentine 40 years ago is widely used to address the peace and reconciliation issues in post conflict situation. In case of Nellie massacre²⁶, a Inquiry commission was reportedly established to document of the circumstances leading to the massacre of nearly 2000 Bengali speaking muslims in four hours remain untraceable in the office of the Assam Government²⁷. A compensation amount of five thousand rupees for those killed in the massacre was thought sufficient enough to rebuild life. The issue of criminal accountability was not even addressed. Instead 312 chargesheeted cases were dropped to maintain peace and harmony. Many instances of mass killings of minorities in Assam took place and no accountability was established. Its only in 2013, NIA court was ordered to investigate criminal culpability charges against rioters in Khagrabari massacre and charge sheet is submitted.

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

The NRC process is one of the most significant citizen identification processes so far aiming detection of non-citizens. This is again is very exceptional to Assam. The first NRC was carried out in 1951 and updating of the same was one of the main demands during Assam agitation. Started in 2015, the process was enormously heavy on

²⁴ Once declared as foreigner, the petitioners of these cases became untraceable. WP(C) 643/2009 (Ms Anowara Khatun Vs. Union of India), WP(C) 1258/2009 (Mrs. Aisa Bibi Vs. Union of India and Ors), WP(C) 1311/2009 (Nidhan Biswas Vs. Union of India and Ors), WP(C) 1307/2009 (Md. Khused Ali Vs. Union of India and Ors), WP(C) 190/2009 (Md. Abdul Kuddus Vs. State of Assam and Ors), WP(C) 698/2009 (Munindra Ch. Roy Vs. Union of India and Ors), WP(C) 747/09 (Himangshu Sarkar Vs. State of Assam and Ors), WP(C) 152//09 (Rajia Khatun Vs. Union of India and Ors), WP(C) 464/09 (Md. Samsul Haque and Ors Vs. State of Assam and Ors), WP(C) 1044/09 (Salema Bibi (Khatun) Vs. Union of India and Ors), WP(C) 80/09 (Smt. Malati Das Vs. Union of India and Ors), WP(C) No.1334/09 (Mameza Khatun Vs. Union of India and Ors), WP(C) 191/09 (Upendra Roy Vs. Union of India), WP(C) 1708/08 (Samsul Hoque Vs. State of Assam and Ors), WP(C) 5497/08 (Nathu Ram Biswas Vs. Union of India and Ors), WP(C) 5545/08 (Gopal Ch. Das Vs. Union of India and Ors), WP(C) 1166/09 (Tarabhanu Vs. Union of India and Ors), WP(C) 1045/09 (Mustt. Sahera Khatun Vs. Union of India and Ors), WP(C) 5542/2008 (Mustt. Hazera Khatun Vs. Union of India and Ors) and WP(C) 5560/2008 (Md. Jalal Uddin Vs. Union of India and Ors)

²⁵ LQ 2011 HC 25759, Somiron Nessa @ Noziron Bibi @ Somiron Bibi vs. Union of India, Writ Petition No. 5032 of 2009 under article 226 and 227 of the constitution

²⁶ Anjuman Ara Begum and Patrick Hoenig,

²⁷ As per RTI reply to Harsh Mander filed in 2010

exchequer and has already put millions of people at the risk of being stateless/ The National Register of Citizens (NRC) process has already affected millions of people from across communities in Assam. More than 33 million people of Assam had to collect their historical legacy document, a digitized form of pre 1971 archival document, to fill their application, submit 'acceptable' current documents to prove linkage with the 'legacy person', establish a water-tight 'family tree', attend several round of verifications and hearings, including the hearings for disposal of frivolous 'objections' and so on²⁸. Millions of people have spent their hard-earned money in the labyrinthine process, lost jobs and lost livelihood resources; children had to drop out of schools, and many people lost life while waiting in the queue to proof their citizenship.

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

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

²⁸ NRC applicant: 32.9 million, NRC included: 31.1 million, NRC excluded: 1.9 million, Declared foreign nationals: 1043, as on 31 March, 2019, Detainee: 1043, as on 27 November, 2019, Death in detention camps: 29 as on 3 January, 2020

are Hindus. Assamese linguistic nationalists being sandwiched in between are now looking for new avenues in the Assam Accord to uphold their interests and to secure privileges and reservation in terms of the entitlements.

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

PART III

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

The researcher visited 6 former inmates of detention camps, families in the month of February 2020. Each of these cases depicts chilling account of cyclic vilification and traumatic experience of deliberate denial of due process and fairness in dealing with the status of their citizenship. In a majority of the cases, the inmates have to spend years in detention camps for their ‘failure’ to prove the legacy with the ancestors. DNA test, a scientific method to ascertain the legacy was silently thrown out the list of ‘verification’²⁹.

The six cases physically documented by the researcher require travel to remote areas often completely disconnected by the governance system. Police station, fire and hospital were not found in their vicinity. Over populated schools lacking basic infrastructure with acute shortage of teaching staff was often the only visible structure representing the presence of fragile state and marginalisation of its minorities. Inmates in riverine areas were also internally displaced people often shifted their house 10-12 times due to river erosion. This phenomenon of environment crisis often increased their vulnerability in engaging with the foreigners detection/determination system. Every case study reflects the deep level of trauma inflicted. The experience of helplessness of the accused and their families that soon spread that trauma over the whole community. In addition to economic hurdles, the ‘detection’ process further contributed collective fear and agony. In all the cases, it was found that the families are living with very basic subsistence and were compelled to spend all their available resources in procuring documents of historical documents to claim their citizenship.

Case 1: Ajbahar Ali

Ajbahar Ali, a 56-year-old small farmer from Kheluapara village in Jogighopa, Goalpara, Assam was declared foreigner and was taken into custody in May 2016.

²⁹How DNA went missing from the NRC’s blueprint for proving Indian citizenship
<https://scroll.in/article/931004/how-dna-went-missing-from-the-nrcs-blueprint-for-proving-indian-citizenship>

Ajbahar belongs of Deshi Muslim community, an indigeneous group of Assam. Despite struggles in life, Ajbahar was a happy person with four children, 3 sons and one daughter and his wife. He saved some amount and opened a mobile repairing shop for his eldest son Moinul Hoque. Then one day in 2014, he was served a notice saying that he is declared foreigner by the Foreigner's Tribunal, Barpeta. After receiving the notice he filed an appeal to the tribunal with the help of a lawyer. He was attending the hearings regularly and was expecting a positive order. Then one days in 2016, while waiting for the hearing of his case, police personnel reached him and arrested on the ground that he has been already declared a foreigner as per proceedings and ex-parte order of another case. Ajbahar has no clue that there is a second case against him. He was taken to the Detention camp in Goalpara where he lived more than three years. Ajbahar believes that a spelling mistake of his father's name made him a victim of the arbitrary process of detention. His son challenged the order in High Court. The family sold their assets and paid to the lawyer hoping for a positive outcome. However the High Court upheld the tribunal's decision and a case was file before the Supreme Court. Ajbahar's wife Balijan Bibi, was mentally depressed over the detention. Finding no way to meet the financial demands of litigation before the Supreme Court, she died by suicide on early morning of September 24, 2016.

Ajbahar was 'identified' by the Border Police and referred the case to the Foreigners Tribunal. Two police reported the same case in two different police stations. Ajbahar believes a spelling mistake in his father's name made him a suspected foreigner. Ajbahar is now mentally disturbed, forgetful and he sits in one place for a long time without even moving. His family's financial situation is deteriorating day by day. They can hardly afford a good meal these days. Ajbahar said his sons hardly manage to earn 100 rupees these days. Though Ajbahar is now out of the detention camp on bail but the system that prescribed him a 'foreigner' remains intact and his future status as a citizen remains uncertain.

Case 2: Sahera Khatun

Sahera khatun is 40 years old illiterate woman, born in Takakata village of Barpeta district. She was married at an early age of about 12 years in nearby village called Chinki gaon. With three sons and seven daughters., she has no clue of what process was followed to declare her a foreigner by the Foreigner's Tribunal. Litigation is ongoing for last four years in Gauhati High Court challenging the order of the Tribunal. Till now she has spent one lakh in hiring lawyer and a balance of 40 thousand lawyer's fees. She said, 'the river Beki made my life hell. I had to shift my house 8 times due to flood and river erosion'. Her current house at Chikni reserve village is where she shifted about 12 years ago. It was a reserve village originally before it was denotified in 1962. Victim of river erosion was allowed to settle here. That's how she settled in this village and bought a small piece of land for residential purpose. We have four tin houses here and I live with my children. Her 3 children born after 2003 couldn't make it to the NRC. Her husband is and other kids are in the NRC list. Her sons are daily wagers and major part of the income is spent on her litigation.

Sahera's case depicts the barriers women face in proving their citizenship. Due to social discrimination and patriarchy their legal identity and education are not prioritised in the family and then the state comes asking for proof with documents.

Most the excluded ones from NRC are married women who used their husbands name as guardian after marriage and their children since they couldn't prove their legacy. Since Citizenship Amendment Act 2003, if one parent is declared doubtful citizen then the children is not entitled to citizenship. India is a party to the Convention on Child Rights [CRC] prohibits denial of citizenship of child born in a country. This international norm is totally violated.

Case 3: Momiron Nessa

Momiron Nesse of Takakata village, Barpeta district of Assam was married of at the age of 12. She was a pampered daughter in a family with four sons. After her marriage, Momiron enrolled her name as voter during a door to door enrollment. After five years since then she went to vote in 2010 and found that she has been marked as 'D voter' [Doubtful voter]. She couldn't vote that day. Later they enquired with police. Police informed that three notices issued by Foreigner's Tribunal have been already served to them and they never attend hearing. Neither Momiron Nessa nor his family members ever received those notices. While the family was trying to find out a way to seek remedy for Momiron, police arrested her and brought to the Barpeta police station. Her three years old breastfeeding son was not allowed to be with her and she was immediately taken to Kokrajhar detention camp.

Momiron spent ten years and six months in that camp. Momiron also claimed that she was three months pregnant during her arrest, a fact she didn't reveal during her detention and after six months in the detention camp she was given 'some injection' and as a result had an abortion. Momiron said, 'My father is 108 years old and is still alive. He has cleared his name in NRC and has all the documents to prove his citizenship. Then why I am suffering like this? I was the only daughter of my parents and lived like a queen and the state is behaving so cruelly with me'.

Both her parents are alive till today. My father is about 108 years old. He has all the documents starting from the NRC of 1951. However Momiron has no linkage document. Following Supreme Court order on release of detainees completing 3 years in the camp, Momiron was released in October 2019. Her husband already expired during her detention and was suffering from depression and financial constrains.

In ten years of imprisonment, Momiron met her eldest son twice and the daughter one. She met her 3 years old son at the age of 13 after ten years and initially couldn't recognise. Momiron is suffering from low eyesight, sleeplessness and trauma. Her financial situation is not sound and has no capacity to face litigation in future.

Activists monitoring Momiron's case believe that if scientific method like DNA testing was adopted, she would require to suffer for ten years in detention.

Case 4: Roshia Begum, Fekamari, Mankachar, Dhubri district

Roshia is 40 years old with three children. She was married of at the age of 13 probably. She was the eldest child of her parents with 8 siblings, 5 sisters and 3 brothers. She was born in a village called Shilkata, Rajabala under Phulbari police station, Block Selsela, West Garo Hills, Meghalaya. She said she studied upto primary level.

After her marriage in Fekamari, Assam, she shifted to her husband's house and tried to enroll her name in the voter list of Assam. During census, officials visited her house and she couldn't submit paper that could serve as 'linkage' certificate with her father. She believes the census people reported to the police and police visited her several times in the village. Sensing danger and fear, she left for her parents house in Meghalaya and went underground. Local police inspector in Rajabal, Mr. Z.I Khan, In charge, convinced the family that he wants to just meet her for a statement only. Due to pressure the family agreed to present her before the Police in charge and then she immediately arrested and was taken to Phulbari police station. From there she was transferred to Hatsingimari police station, then to Salmara police station.. When she was taken in Hatsingimari police station, locals gathered at the police station at around 5 pm and protested against her detention. Visiting a police station was traumatic for her and also the thought of being separated from the family was so painful that, she fainted and was hospitalized at Panbari Hospital where she was treated for nearly a three months. Her family spent a total of 7 thousand rupees for her treatment. Once recovered, she was taken to detention camp in Kokrajhar, Assam where she lived for more than 3 years. After one and half month in detention camp, District commissioner of West Garo Hills certified that she is a bonafide citizen of Meghalaya which was still rejected by the authority and didn't release her. Her family sold properties to finance a litigation in the Gauhati High Court and about 1.5 lakh has been spent so far.

Roshiya thinks that the 1988 flood destroyed all the documents in the school. School house was submerged in that flood and all the records were destroyed. All her three sons dropped from school and the eldest son was married early such that his wife can cook for the family and carry on other domestic chores.

Roshiya is suffering from low eye-sights and weakness. She informs that the food served at the detention camp was not up to her taste and she avoided having meals. Even after her release she has to report to the police station every week which costs her 500 rupees and its difficult to keep this expenses every week.

Her whole family has been included in the NRC except her.

Case 5: Naresh Koch

Naresh Koch along with his wife was living in village Tinkuniapara, Goalpara. He worked as daily wager and agricultural labour. In 2017, he and his wife took up an employment as manual labour at a fishery farm at Mornoi, about 40 away from her house and was . Naresh also made few friends there and a local bar for occasional drinks. His village is away from modern connectivity and about 40 kms away from the the main city of Goalpara where basics life hospital, police and government offices are situated. Naresh is illiterate and hardly bothered about anything else except his basic needs. However his days were numbered. One fine day in the afternoon in March 2018, he was having a drink at the same local bar. A vehicle full of police men reached there and informed that he had been declared a foreigner by the FT in June 2017 and a search was on to trace him. He was arrested and taken into custody. Utterly shocked, Naresh had no means even to inform his family about the status of his nationality. He was taken to Goalpara Detention camp. The whole incident left him traumatic and depressed for the rest of his life. Till his arrest his family had no information that he has been declared a D-voter and that he failed to appear before the FT for four consecutive times. However, the family informed the researcher that they never received summons and the whole process was carried out ex-parte.

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

Case 6: Nazrul Islam

Nazrul Islam is around 40 years old and recently released on bail from Goalpara detention camp. In November 2015, he was arrested by the police from his home and was immediately taken to the detention camp. He appeared before the proceedings in FTs. During the proceedings, he submitted documents that included a birth certificate. He procured the birth certificate with the help of a 'dalal' [middle man] since he is illiterate and doesn't understand the procedures to obtain certificates. Birth certificates issued after 90 days of birth is not an acceptable valid document. His lawyer informed him that the birth certificate was forged and hence his claim of Indian citizenship was rejected. Nazrul is a married man with three children. He was earning about 12-13 thousand rupees a month by working as a mason in Guwahati. With his arrest, the primary earning member of the family was gone and consequently his wife and children went to her father's house and living there since then. After spending four years four months in the detention camp, Nazrul was released on bail. His family has spent about 4 lakh rupees ever since he was detained. Their property and other resources were sold out. Currently Nazrul lives in his father in laws house along with his wife and children. None of his children are into school and his youngest child, a daughter couldn't recognize him and doesn't mix with him. Nazrul complained of poor living condition and poor food quality in the camp where he lived along with 216 inmates. His health is not good and he finds it extremely tiring to work as mason. His eldest son who is only 17 years old is now looking for work in Guwahati. During the interaction, Nazrul informed that a blind man from Dhubri district is also living in the camp for 9 years and inmates looks after him and assists in having food or bathing. The blind person has no relative and he couldn't be bailed out. He thinks with all the inmates leaving the camp on bail, will create problem for the blind inmate since there is no one to look after him. Nazrul is suffering from sleeplessness and anxiety and extremely worried of the future course of action on his citizenship.

Case 7: Sulema Khatun

Sulema Khatun is 70 years old was born in Meghalaya and married to a man from Assam. She is a retired teacher and has documents like passport, voter card, bank passbook, school certificate and her service book. Along with these she submitted a certificate issued by the Meghalaya government indicating the entry of her father's name in NRC of 1951. However her name was deleted from the first NRC list while all her family members including children could make it to the list. Sulema's has five brothers. Her two brothers were excluded from the list while three brothers could prove their citizenship. After rounds of hearing and verification Sulema was included in the final list of NRC. The whole process cost her 30 thousand rupees. Sulema's great grand father was a Hindu man who later converted to Islam and married a Muslim woman. A Hindu name in the family history drew suspicion in the mind of the NRC authority and also government of Meghalaya delayed verification of the documents issued rendering exclusion her two brothers. They are now waiting for the trial before the FTs. To procure the historical documents of their family, they have spent nearly 25 thousand rupees.

Conclusion:

1. The situation of Assam and its institutional response towards migration detention remain more or less elusive from the national and international media for a long time. The Rohingya issue that shocked the South Asia in 2017 raised concerns over similar situation in the region. Gradually the migration detention and the NRC issues gained publicity momentum. Lack of academic engagement with minority's perspectives encouraged dominant narrative of 'illegal immigration' posing a threat to the indigenous community in Assam. Marginalization of the voice and perspective of the minority community like Bengali speaking Muslims created a vacuum resulting social conflict and paranoia.
2. Analysis of the immigration issues and the foreigner detection legislations and judicial analysis lacks analysis from international human rights norms specially those deals with statelessness. Amnesty International and Human Rights Watch published detailed research report on NRC issues only in 2019 and 2020. In 2018 for the first time, four UN Special rapporteurs issued statement and expressed concern over the NRC process. The statement quoted that 'the experts also highlighted the lack of clarity in the link between the NRC process, electoral roll information and the separate judicial processes of citizenship determination before the Assam Foreigners' Tribunals. "This adds to the complexity of the whole process and opens the door to arbitrariness and bias³⁰."

³⁰ UN experts: Risk of statelessness for millions and instability in Assam, India https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24781&Lan_gID=E

3. Lack of organized resistance from the community contributed to the sufferings. Its only during the Bodo-Muslim ethnic violence in 2012 when nearly 50 thousand Muslims were displaced, youth began to organize themselves and resorted to judiciary and other human rights mechanisms to enforce their entitlements
4. Nellie massacre and lack of accountability created a precedent that permitted institutional negligence of the rights and entitlements of Bengali speaking Muslims.
5. River erosion in the western Assam displaced thousand. Land resources shrunk and agriculture based economy was affected in the char areas where majority of Bengali speaking population reside. They were forced to shift to the city areas where unskilled labour provided livelihood and play a significant part in development of urban infrastructure. Reportedly river erosion has displaced 4 million of people. There is a need to study the trend of migration of those displaced as a result.
6. Foreigner's Act was passed keeping in mind the people from a different country entering in India with or without valid passport, visa and then immediately found in a foreign soil without legitimate claim to stay in India. However, in case of Assam the Act is applicable on people who are living in the country for years and acquired Indian citizenship. Citizenship once given cannot be arbitrarily forfeited except under certain circumstances as stipulated in the citizenship laws. Judicially speaking Foreigner's Act is not fit for someone who has already acquired Indian citizenship and living for ages in Indian soil.
7. Genocide Watch, an organization that monitors situations of Genocide has placed India under its 'early warning' category. With the uncertainty over NRC and CAA, civil society should keep monitoring the situation of Assam. Creation of knowledge with diverse perspective and academic engagement at this moment crucial than before.

