RUMMAGING HUMANITY IN THE BLURRED LINES OF CITIZENSHIP AMENDMENT ACT AND NATIONAL REGISTER OF CITIZENS

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ABSTRACT

The trajectories of wars, violence and persecutions have led nearly 70.8 million[1]people across the world to experience forcible displacement. The number of undocumented immigrants in India is at an estimated number of 20[2] million. The fundamental reason behind this chaotic situation is the fear of persecution faced by displaced groups in their home country, which forces them to dilute their identities in search of a safe haven.

India is the oldest civilization and home to diverse cultures and religions. India has served as the third largest 'settler country' for the displaced population. It is lately witnessing a significant transition in its immigration regimes in the name of a newly enacted Citizenship Amendment Act, 2019 w.e.f. Jan 10, 2020. Though asserting a global application, this law seems to outcaste its western obligations and potentially poses a "mean-spirited remodelling of immigration," which completely ignores a basic human-rights model to which India owes legal obligation perhaps. Ideally, where on one end this hard-line immigration reshaping in the country suggests filtrating out of "illegal migrants" that has been long desired, on the other hand, it marks an explicit derogation of fundamental rights enshrined in the Constitution of India.

The authors, through the research paper, adopt an analytical approach based on critical and objective delineation, taking into account the past and present migration laws and policies and the current change it has undergone, which is challengeable on domestic as well as on the international front. The paper envisages conceptualizing the new citizenship law, serving as a navigating tool for drawing a link between the past and the present migration laws with the challenges it faced, it faces and it might face soon. Towards the end, the authors reserve a caveat of their paper to address the International Standards CAA and NRC oppose as a newly Integrated Immigration Law.

[1] UNHCR, global trends, 2018.
[2]UNHCR India, Figures at a glance, 2019.

Keywords: CAA, NRC, Refugees, illegal immigrants, displacement, Statelessness, International Refugee Law, International Human Rights Law

I. A NOTE ON THE TERMINOLIGIES

It is undeniably true that 'illegal immigration' is the act of residing in a country without government permission and against the immigration laws of a country. Though no clear and comprehensive definition has been provided by any State Laws so far, lack of documentation makes an immigrant illegal. The description of undocumented immigrants as being tantamount to ‘Illegal Immigrants’ is a relatively recent phenomenon and was not known to exist in the world until the 1930s[3]. Even then, it remained restricted to scarce and occasional mentions in publications of reports or media for decades but certainly free from political connotations. The terms 'illegal alien' and 'illegal immigrant' didn't gain impetus until the 1970s, from its genesis term "irregular immigrant," which referred to irregular movement across the borders of other countries in irregular patterns influenced by several irregular factors. However, in India, the concept of Illegal Immigration broke into common inspections sooner than in western countries with the enactment of the Citizenship Act, 1955. Although, the terminology of "illegal immigrant" was used interchangeably with other similar terms such as 'Foreigner[4]'or 'Alien', it did not create severe implications on the mere application of different terminologies.

II. ANALYSIS OF PREVIOUSLY EXISTING NRC MECHANISM

India geopolitically shares a densely porous border along the eastern side of its boundaries. This area has been subjected to periodic violence and large-scale influx of people from neighbouring countries due to war and cross migrations. However, the situation emerged out with fierce merging of politics of identity with the ideas of progressive secularism.

The origins of the National Register of Citizens can be traced to the turbulent political history of Assam which was characterized by a strong sense of indignation that the Assamese felt at the way the Central Government side-lined them from mainstream development as well as

[3] J Econ Lit. 2017 Dec; 55(4): 1311–1345.
[4] The Foreigners Act, 1946, s. 2(a); The Citizenship Act, 1955, s. 2(1)(b)

discriminate allocation of funds[5]. The other major grievance was that the dominant economic control over resources was attributed to the outsider community settled within Assam comprising of mainly the Marwaris and the Bengalis. Consequently, there was a strong demand by the Assamese for greater representation in government services and state enterprises.

In the backdrop of this, the Assamese youth felt disadvantaged because of being economically backward as compared to the demographically and dominantly well-placed position of Bengalese in the education sector and other professions in the state. As a result of this there was an apprehension of this impinging over their cultural autonomy and language. Violent clashes broke out between the Assamese and the Bengalese. The situation was only to be aggravated in the middle of the 20th century when India and Pakistan locked horns in the year 1971, eventually leading out to war creating Bangladesh.

Before the war, the process of a massive change of demographic profile of Assam began at a large scale leading to large scale impetus towards the anti-foreigners' movement in 1979. These systematic patterns of migration were of people who wanted to own land for survival after coming from Bangladesh apart from the huge numbers in the workforce of Bengalese in the Plantation industry in Assam. While the state of Assam was caught in the whirlwind of rapid change, the gradual and persistent influx of immigrants generated a constant and alarming sense of political and cultural insecurity among the Assamese people. They feared being relegated to a position of minority within their state.

The pertinent point is that the issue of constituents of demography came to the central fore in the aftermath of the 1971 War after which both the Bengalese and the Assamese jointly resisted the influx of immigrants onto their land. It was original inhabitants on the one hand and desperate mass of people who had fled the scourge of war on the other hand in which India was involved. The political leadership voicing the same narrative was the All India Assam Student Union, which sought the sealing of borders as well as the deletion of some of the voters who were migrants who had entered the state after 1961. The chances of any peace negotiations between both sides were dispelled by the lack of mutual good faith in them, overshadowed by the prevailing ethnic violence disrupting the state of normalcy in the state

[5]The National Register of Citizens (NRC), 1951, accessed at 9:15 am, 20th November, 2019, http://www.nrcassam.nic.in/faq01.html

for a long time. The situation dragged on until there was a near constitutional breakdown of state machinery in the 1980s.

Until the historically controversial Assam Accord on Aug 5, 1985, was signed between the then Rajiv Gandhi Government and leaders of the movement, this Accord detailed the fate of millions of people in the state stating that all those "foreigners" who had entered Assam between 1951 and 1961 were to be given citizenship inclusive of the right to vote. However, those who came to reside after 1971 were to be deported, while the people in the intervening period, which is from 1961-71, shall be given entitlement to all other rights except voting rights[6]. The Centre promised inter alia legislative safeguard for the protection of Assamese heritage and a greater share in the economic development of the state, which came across as a triumph for millions. Perhaps, the noteworthy point about this historical discourse that created havoc in the state is that the movement did not have a violent secessionist tendency. On the contrary, it possessed and still possesses a grave possibility of internal displacement of its very own people who cannot be arbitrarily wiped out and sent back to their origins. The movement was directed to restore the natural and cultural right of indigenousness and not a pursuit that had remote yet strong elements of ethnic cleansing.

The current position of setting up detention centers in the state surrounded by ambiguity of the legal aftermath of being left out in the exercise of NRC not only sears into the confusion of being a refugee but also reeks of being devoid of civil amenities being accorded to our people. This is in clear violation of the basic norms of humanitarian law[7]. The displacement of so many people and being packed into detention centres brings us to the nuances of International Humanitarian Law (IHL), which regulates relations between States, international organizations and other subjects of international law.

IHL is a compromise between two underlying principles of humanity on the one side and of military necessity on the other. These two principles shape all its rules. It consists of an international treaty or customary rules (i.e., rules emerging from State practice and followed out of a sense of obligation) that are meant to resolve humanitarian issues arising directly from armed conflict, whether of an international or a non-international character. Internal disturbances and tensions (such as riots and isolated and sporadic acts of violence) are characterized by acts that disrupt public order without amounting to armed conflict. They

[6]Sangeeta Barooah Pisharoty, Assam: The Accord, the Discord, 2019.
[7]State Res. Doc. A/CN.4/106; see also McKay, What Next?, in Human Dignity 65, 65-66

cannot be regarded as armed conflicts because the level of violence is not sufficiently high or because the persons resorting to violence are not organized as an armed group. Cases of this type are governed by the provisions of human rights law and domestic legislation. However, in certain grave cases where the non-state actors or other communal groups are responsible for sporadic violence and spreading mass violence, hampering the peace and national security on a major scale, it becomes the responsibility of a State to curb such internal movements before they attract Responsibility to Protect under various International Law, more vividly, International Humanitarian Law[8]

The historical background of National Register of Citizens is evident of the fact that it has remained close to being embroiled in the trap of political dynamics weaning away from its core Constitutional issues of citizenship and human rights. Inevitably situating the legality of NRC within the ambit of Citizenship in Constitution is pivotal.

Primarily the National Registry of Citizens was first adopted in 1951 with the sole aim of eliminating migrants who, as a result of not falling under the Twin-Cut-off Date criterion, are recognised as 'Illegal Immigrants'. Let alone the political history of Assam, the antecedent immigration policies under NRC were entirely based on two cut-off dates: (i) Jan 1, 1967, and (ii) Mar[9]. However, now with CAA coming into the picture from Dec 7, 2019, the role other subsidiary territorial laws play in implementing the NRC in the North-Eastern region of the India need more attention than ever.

II.I Role of Dormant Laws in Implementing NRC:

Various north-east bordering states in India have been covered under the umbrella of ILP (Inner Line Permit) by the Bengal Eastern Frontier Regulation, 1873, which ran parallel to exercising of NRC in Assam. Though this secondary legal regime covered only 7 segments out of 33 North-eastern districts, it albeit gave powerfully couched rights to Manipur, Dimapur, Nagaland, Mizoram to register outsiders, including Indian Citizens who crossed their borders. It not only imposed a check on the infiltration figures but also ensured the regulation of NRC in the North-Eastern part of the country.

However, since CAA with nationwide implementation is contradictory to the long-practiced system of ILP. ILP might not yield in guarding the indigenous community of the northeast

[8]Ibid 7
[9] 24, 1971, IDSA Monograph Series no. 56, 2016; 2019 SCC Vol. 10 December 28, 2019 Part 5

independently despite entailing the lawful defense of the sixth schedule under the Constitution of India**.** In other words, if CAA subjugates the practice of ILP or other immigrant laws prevalent in the north-eastern borders, it will also outcaste the independent exercise of NRC and the protection certain eastern states received under the Sixth Schedule, with itself becoming the autocratic rule of immigration law in the entire country.

III. INTERSECTION OF NRC AND CAA

The previously enacted Citizenship Act, 1955, was based on the principle of 'Jus Soli', which means citizenship based on birth or descent or soil of a country and rightfully observed it under Articles 5 to 11, thereby upholding the intentions of the drafting committee of 1950. Moreover, the law on Indian citizenship was the corollary to Constitutional Framework which observed naturalisation and equal rights to all citizens irrespective of caste, colour, creed, tribe or gender[10]. On the contrary, the new CAA shifts the humanitarian-based principle to leftist principle of 'Jus Sanguinis,' which introduces an explicitly religious criterion into a hitherto religion-neutral law. Although, it may not be true that CAA impacts the Muslims directly who form the largest portion of minorities, when clubbed with NRC, its implications could be far impactful for the minorities, excluding those who are recognized as 'Hindus' and protected under CAA.

The federal U.S. Commission on International Religious Freedom (USCIRF) also gave a similar opinion and observed that CAA, along with ongoing NRC will strip millions of Muslims of their citizenship, whether genuine or illegal[11].

Two judgments shed light on the several aspects and nuances characterizing NRC which are the Sarbananda Sonowal vs Union of India[12]& Anr. and Lal Babu Hussain vs Electoral Registration Officer[13]. The former case was the tipping point for the situation of the immigrant influx in the state of Assam. This judgment had struck down two discriminatory laws, one of them being the Illegal Migrants (Determination by Tribunals) Act, 1983, which was enacted to detect illegal immigrants who had entered India and possessed no documents. The resistance was fierce under the Assam Accord and the promises laid in that. To put together, the case established a benchmark in laying down a crude definition for the term

[10]AIR 1963 SC 1811
[11]USCIRF Rep. Dec 9, 2019; U.N. press release, Dec 13, 2019.
[12]AIR 2005 SC 2920
[13]1995 SCC (3) 100

"illegal immigrant" as well as establishing the control on surreptitious population flowing in from Bangladesh and ultimately integrating with the ethnic composition of Assam.

The Lal Babu case resonates with the current scenario of state-imposed evidentiary onus that is pinned on the citizens. This case[14] deals with the subject matter of a citizen's name being inducted in an electoral role. After examining the constitutional provisions of Article 5, 6 and 7 the Court drew up a conclusion about the deletion of names from electoral rolls and the right of citizenship, which is constitutionally protected. The Court observed that if the opportunity of being heard before deletion of the name is to be a definite and purposive one, it means that the concerned person whose name is borne on the roll and is intended to be removed must be informed why a suspicion has arisen in regard to his status as a citizen of India. Unless the basis for the doubt is disclosed, it would not be possible and comprehensible for the concerned person to remove the doubt and explain any circumstance or circumstances which are responsible for the arousal of such doubt.

The case highlights that several people of a certain constituency who were suspected of being foreigners and not citizens of India on account of suspicion. The Court nabbed at the documents relied on by the police and further forwarded to the Election Commission to proceed with the suspicion. No other documentary evidence was examined to supplement it. The formidable point which came out of this case law was that the executive machinery can tend to act in a haphazard manner when dealing with the status of person which is the citizenship having a gamut of fundamental and legal rights. The Court held that the Election Commission shall disclose or furnish the evidence or documents on the basis of which it comes to the premise that there is reason to suspect the nationality and citizenship of a person in the backdrop of all the provisions in the Constitution of India dealing with the principles of citizenship.

The above two cases cover the twin aspects of the whole exercise of NRC and its aftermath. While any law which remains clouded in ambiguity and is uncertain of its ultimate aim ends up discriminating people and work against its own intention in derogation of human rights. To keep a check on executive abuses was a consideration the Courts had applied their mind too even before NRC had acquired such a multifarious political colour to it.

[14]ibid

IV. THE POLITY OF NRC IN ASSAM

Thirty-five years old Assam Accord which was signed by the Central Government and the leaders of Assam Movement in 1985 had its rudimentary implementation in providing citizenship to all the illegal immigrants who came to Assam prior to Jan 1, 1966, including those whose names appeared on the electoral rolls during elections in 1967.[15] To put it differently, the Accord held the deportation of those who migrated to Assam between 1966 and Mar 24, 1971, were required to register themselves as Foreigners under the Foreigners Act, 1939. Whereas, the new Citizenship Amendment Act, 2019 shifts the cut-off date to December 2014 setting up religion as the primary classification for granting citizenship. Though CAA as rebutted by the legislation, is neither derogative of Clause 5 and Clause 6 of the Accord nor of the secular spirit of the country, yet the political history of Assam following the three decades of the Accord leading to the final phase of NRC in August 2019, is worth examining to reach the near end of truth.

The first doubtful objection was issued on excluding Assamese people holding surname of 'Chaudhary' with a significant objection been filed on inclusion of former Chief Minister of Assam, Mahendra Mohan Choudhury who was suspected to be Bengali by origin. Further, recently during the NRC objection process too, identical confusion occurred on inclusion of Bengalis and Muslims wherein names of a lot of genuine citizens were struck down. Various such events led to the probable formation of various organisations such as AASU and AAMSU in wake of immigration politics movements which surprisingly correspond to the current scenario of CAA wherein religion has been made the main element to qualify for citizenship of the country.

V. NRC AND CAA IN THE BACKDROP OF INTERNATIONAL REFUGEE LAW

While migration is a challenging and empowering experience for many human races even natural and traditional, it is increasingly clear that a lack of fair migration governance at the global, regional and national levels is leading to the routine, systematic and unreported violation of migrants' rights in transit, at international borders, and in the countries they migrate to. The same sort of experience is outreaching to people in India with the enforcement of CAA. It would be unfair to suggest the migration problems were real before

[15]The Assam Accord, 1985, Clause 5.

the Civil War of 1971 and the rest of the migration would all fall under the ambit of Illegal infiltrations. Ironically, the straight jacket formula cannot be applied to any migration groups, the new citizenship law in India imposes such restrictions on not only the asylum seekers in the country but also its citizens who migrated in the history yet to be discovered. Unfortunately, on analysing the citizenship law along with its enforcing mechanism NRC, India clearly fails to abide by its international obligations to which it became a signatory in the past few years, particularly the International Human Rights and the Refugee Law.

Even though these two segments of International law which should ideally deal in migration issues are quite nebulous till date. There is no definite legal apparatus to provide aid to Refugees and displaced persons on humanitarian grounds; still, it gives no rightful defence to any country to not observe the principles of western law while dealing in migration issues. To put better, the illegal or undocumented migrants by virtue of being human are covered under the domain of International Law, which attracts the state responsibility of every state (including India) where they seek asylum. The present gamut of NRC is in stark violation of several international instruments and conventions to which India is a signatory. The most important convention to address the stateless people is the 1961 Convention on the Reduction in Statelessness. The golden triangle of Citizenship Act in India, the Convention on Reduction in Statelessness and Universal Declaration of Human Rights is modelled around safeguarding an individual as a member of the global community against arbitrariness in state action and geopolitical action as a whole. To limit the occurrences which result in a large scale of people in a situation losing their nationality. Article 1 of the Convention states that Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted[16]:

(a) At birth, by operation of law, or

(b) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

[16]UNCRS, 989 U.N.T.S.175, Dec 13, 1975.

The operation of NRC is to be regulated by the Foreigners' Tribunals. The tribunals will adjudge and give a chance of hearing to the ones who could not make it to the final list of NRC.

Many nations have faced myriads of infiltrations, with India and United States being no exception and a few among other nations which have been successful in providing aegis to such displaced groups. The major reason being these States have implemented domestic citizenship laws in a way to adhere to the humanitarian model of the International Law whereas the other nations due to domestic problems failed to observe the same. Other setback has been the modern refugee law which is largely the product of the second half of the 20th century and borrows its principles from other segments of International Law. [17]

In *M. Nagaraj v. UOI*[18]it was held that it is a delusion to think of fundamental rights as a gift from the state to its citizens. An individual possesses basic human rights independently of any Constitution by virtue of being part of the human race. Part three of the Constitution is not limited to conferring fundamental rights but also extends to confirming their existence and giving them protection. The foundational and intrinsic value of a fundamental right is the purpose of withdrawing certain subjects from the area of political controversy, establishing them as legal principles to be applied by Court. It is a limitation on the power of the state. These rights have survived the test of times of political turbulence and repression.

Subsequent to 1948 convention, The Convention relating to the Status of Refugee 1951 and its optional protocol of 1967 elaborate on the status of refugees and the rights available to refugee in the form of principle of non-refoulement. Again, the rights available to immediate displaced groups prior to their identification as refugees remain uncontested except for a few general international human rights treaties and conventions elaborating on this issue[19]. The major setback in the 1951 Convention is that though it confers meaning to the term' refugee[20]'yet it does not defines how States parties are to determine whether an individual

[17]G.A. Res. 217A, U.N. Doc. A/810; also International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966); International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A16316 (1966); Optional Protocol to the International Covenant on Civil and Political Rights, GA. Res. 2200, 21 U.N. GAOR Supp. (No. 16), U.N. Doc. A/6316 (1966).

[18](2006) 8 SCC 212 ¶ 20

[19]Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3); See also UNCRC, art 22; European Convention on Human Rights, arts. 2, 3, and 5.

[20] UNGA, *Convention Relating to the Status of Refugees*, Jul 28 1951, United Nations, Treaty Series, vol. 189, p. 152, Article 1

meets the definition of a Refugee. It generally speaks of principle of non-discrimination[21] and reciprocity[22] after the determination of Refugee Status. This allows the countries to adopt their own legislations and interpretations in determining the status of displaced groups.

It is obvious that a truly universal humanitarian community can never be achieved by translating perspectives from one part of the world into a "one size fits all" approach, but one apparent fact is that not all migrants are illegal[23] and even though the international law is not very clear about migration issues, yet Refugees Convention, 1951 which is in existence since decades, adheres to the fact that human rights do not cease to function on crossing the border. Also, United Nations Convention on Reduction of Statelessness (UNCRS) lays down guidelines on prevention of statelessness. The convention gives significant importance to conferring citizenship to stateless children.[24]

Further, the Brookings Process in the late 1990s marked the increased cooperation between the UNHCR and other international actors – primarily IGOs, NGOs and states which depict their growing interest in dealing with the "gap between humanitarian assistance and long-term development" in a more comprehensive manner[25].

Therefore, we need to look for narrowing down the gaps between the international law and adopt a solidarity approach- which would aim towards developing a comprehensive humanitarian model- which is already there but often overlooked.

VI. COMPARISON OF ASYLUM LAWS OF WESTERN COUNTRIES WITH NRC AND CAA

Canada and America

Having a global perspective on asylum laws and framework of other countries on refugee laws is imperative to demystify and analyze the layout of NRC and Citizenship Amendment Act. To a much likely similar amendment in India's CAA, Canadian Government introduced an element in the Citizenship Act, 1947 called C-37 which took effect on Apr 17, 2009. This amendment introduces a twin pronged set of citizenship rights to several unsuspected foreigners who might have lost or must be ignorant of their Canadian citizenship, however

[21]Ibid Art. 3
[22]Ibid Art. 7
[23]U.N. Doc A/RES/70/1 (2015); see also Catherine Dauvergne, 'No one is Illegal'. Ch 2
[24] UNCRS, Article 1-4; See also GA Res A/73/205
[25]Jeffrey Crisp, Mind the Gap! UNHCR, Humanitarian Assistance and the development process, Mar 1, 2001,Volume 35 Issue 1, pp. 168–191

reserving limitation only up till the first generations born abroad[26]. More likely as interpreted, the Canadian citizenship mandate is the by-product of a decade's long struggle by a motley group of people who claim they were unfairly denied or lost their Canadian nationality.[27] Moreover, to protect the future of Canadian citizenship and immigration policies, the Refugee Protection Board upholds the 'first generation restriction clause' as a fundamental departure from Canada's mixed ius-soli and ius-sanguinis citizenship laws thereby introducing uniformity in the newly amended citizenship law.

To better serve the purpose, The United States Refugee Act, 1980 branched out as an amendment to the principle acts known as Immigration and Nationality Act and the Migration and Refugee Assistance Act, and was created to provide explicit procedure to admission of refugee in the U.S. by the creation of a uniform and effective resettlement agenda.[28] This act was the first of its kind in U.S. to provide a comprehensive mechanism which would across the country make one to face realities of modern immigration and refugee problems on the domestic level. Unlike the integration of NRC-CAA which seems to give effect to the new citizenship and immigration laws in India, the citizenship laws in the western countries such as Canada and America prevail on the principle of stricter adherence to the international law by bidding farewell to any sort of prejudice created on the basis non-christian identities. The understanding of persecuted minorities underlying the Citizenship Amendment Act is in fact in contradiction to the homeland exercise of NRC which is sought to be extended to the entire country leaving out people who belong to majorly all religions but most importantly the poor citizens.

India's tumultuous past has seen the monumental transition of Indians undergoing the transition from being subjects in the colonial years of the British rule to free citizens. The clamp down by the Citizenship Amendment Act and NRC disregards this historical transition by degrading the ethos surrounding and defining citizenship.

European Union

European Union, slightly distinct in its nature, follows a simple yet comprehensive system of asylum for refugee protection. The Asylum in E.U. traces its origin to the fundamental regime of refugee law in International Law, the 1951 Convention Relating to the Status of

[26] Lorne Waldman & Jacqueline Swaisland, Canada's Refugee Determination Procedure: A Guide for the post Bill C-31 era 2013; Covarrubias v. Canada; Portillo v. Canada
[27] Dvorak, Writing in the wall street, April 2009
[28] Kennedy, 1981

Refugees promulgated on Article 14 of the Universal Declaration of Human Rights, 1948.[29] Further, the E.U. adopted the Schengen Agreement to eliminate and reduce internal border controls of signatories and its subsequent formulation in the Amsterdam Treaty which further requires all the member states of E.U. to adopt appropriate and efficient asylum measures in accordance with customary norms laid down in Geneva Convention and the Protocol Relating to the Status of Refugees in 2004[30]. The most effective system introduced by the E.U. till date is the Common European Asylum System (CEAS). Though the system has not been updated after 2014 due to prevailing refugee crisis on the western front, yet the uniformity it tries to achieve cannot be ignored owing to its regular practice rather than the reformation of laws which have not been its pivotal focus. Although, the council members of European Union do not follow ius soli or ius sanguinis principle while exercising the asylum laws, yet the final decision to grant asylum rests in them, as is the case with NRC mechanism in India. Perhaps the aftermath of NRC creates an undeniably serious confusion regarding the identity of the people left out after the scrutiny of documents as it remains unclear if they can be regarded as asylum seekers or have the status of refugees even if they are called as illegal immigrants by the Indian Authorities, they can certainly be left with the limited gamut of rights available to asylum and refugees.

CONCLUSION

The challenge now is not how to use the NRC mechanism to entrench the old migration and infiltration problems, but instead to analyze how we can use this along with CAA to design such legal apparatus that would prove just, fair and transparent to not only the people residing in the country but would prevent from sullying down its image in the international community.

Regardless of whether this system posits to more quickly and effectively reproduce the status quo or whether its aim is to dramatically transform the 1951 NRC for better outcomes, the fact that it challenges the existing International obligations to which India is a signatory is yet more Ironic than its aims which are too good to be true.

[29] United Nations General Assembly Resolution 429 (V), Dec 14 1950.
[30] Consolidated version of the Treaty on European Union, Article 63,Official Journal of the European Communities, C 340, p. 202

The terminology of illegal immigrants and refugees gets recklessly misplaced and inadvertently juxtaposed. Under section 2(1)(b) of the Citizenship Act, 1955[31] illegal immigrant means a foreigner who has entered into India without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period. The mechanism of NRC which is the basis to detect whether a person is an illegal immigrant, or a genuine citizen creates an overlap with the meaning of refugee on the land. The way United Nations Refugee Agency describes refugees as "people who have fled war, violence, conflict or persecution and have crossed an international border to find safety in another country"[32]. There might not be a direct relation with the definition of illegal immigrants, but the existence of an inchoate consonance cannot be denied. While the creation of refugees is attributable to persistent violence of a huge magnitude which renders a section of society totally homeless and vulnerable uprooting them from their homeland the patterns of dealing with illegal immigrants is based on lines of erroneously defining them particularly in the Indian context.

The cornerstones of any law, social change or executive action are purely and majorly dependent on the factor that how the pillars and institutions of the legal system choose to operate it. What may come across as a long and overarching policy action sought to eradicate illegal immigrants without due process can reasonably and palpably be regarded as a tardy bureaucratic process[33]. It shall not only entail immense human sufferings but far-fetched channels of red tapism which are bound to trap the poor. There is a strong presumption of no accountability being followed to verify the documents determining the fate of many. The grounds on which objection can be raised and the suspicion can be settled casts a doubt on the veracity of the simplicity of the procedure. Furthermore, till what extent this whole exercise of NRC will be Court monitored or even subject to interference by it is a matter of substantial concern.

The troubled roots of NRC stemming out of Laws which could not operate on the rational nexus with the objective to be achieved by their enactment can be attributable to the

[31] *Act No. 57 of 1955, Citizenship Act, 1955*, Dec 30. 1955
[32] What is a refugee?, accessed on 5th January, 2020 at 5:15 pm, https://www.unhcr.org/what-is-a-refugee.html.
[33] Nayanika Mathur, The NRC is a bureaucratic paper-monster that will devour and divide India, accessed on 14th January, 2020 at 1:00 pm, https://scroll.in/article/948969/the-nrc-is-a-bureaucratic-paper-monster-that-will-devour-and-divide-india?fbclid=IwAR1chbpgIdzmYfhPEtRnEDbtOq7uGQlfg6Rjyg5afmutgCg8VxS9uL3KVFI

institutional behaviour towards it.[34] The tribunals are the only institution which stands in the period of a person's citizenship being stripped away and reclaiming it, and yet it cannot be said that it is free from executive influence. In the coming years, Indians can only hope not to witness that the procedural justice being ruptured by the NRC and the development being promised by the incorporation of the Citizenship Amendment Act taking a catastrophic turn.

[34]The Great Indian Citizenship Mess, accessed on 21st January at 8:00 am,https://www.thehindu.com/opinion/op-ed/the-great-indian-citizenship-mess/article30609610.ece.