

Fracturing Childhoods, Wounding Children's Futures

IMPACTS OF THE NRC ON CHILDREN IN ASSAM



**HAQ: CENTRE FOR CHILD RIGHTS
& THE ACTION NORTH-EAST TRUST (THE ANT)
April 2020**

**With support from –
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Fracturing Childhoods, Wounding Children's Futures

Impacts of the NRC on Children in Assam

A Fact-Finding Report



In Times of NRC...

A child does not remember her mother... The mother was in
detention for ten years

Two children lost all contact with the world outside... They were in
detention for nine years

A child had sleepless nights... Her name was not in the final NRC

Children lost four years of education... Teachers were on NRC duty

Tea-workers reconsider their demands for fair wages... Their
children's citizenship depends on tea-estate managers

A mother fears separation from her children... She cannot afford a
legal battle against deportation orders to Bangladesh

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HAQ: Centre for Child Rights is a human rights organisation that focusses on all rights for all children. Founded in 1998 and formally registered in June 1999, HAQ envisions an inclusive society where all children grow up in an environment that rests on the principles of non-discrimination and equality and where the human rights of all children are recognised, protected and realised. The organisation thus seeks to mainstream child rights and children's concerns in all development planning and action. In doing so, HAQ works through knowledge creation, evidence based advocacy and communication, direct support for children in distress, strategic collaboration and partnership. This report is yet another outcome of the vision and mission that guides HAQ in its endeavours.

Chapter Authors

Bharti Ali: Chapters 1 and 6

Ashish Kumar: Chapter 2

Kavita Mangani & Farzana Nasreen: Chapter 3

Mukund Madhav: Chapters 4 and 5

Editing

Bharti Ali

Mukund Madhav

Tamanna Basu

For more information contact us at –

HAQ: Centre for Child Rights

B-1/2, Ground Floor, Malviya Nagar

New Delhi – 110017, INDIA

Tel: +91-11-26677412

Email: info@haqcrc.org

Website: www.haqcrc.org

Fact-Finding Team and Field Visit Areas

Name	Places Covered	Organisation
Mukund Madhav	Bongaigaon, Silchar, Karimganj	HAQ: Centre for Child Rights
Kavita Mangnani	Bongaigaon, Silchar, Karimganj	
Ashish Kumar	Bongaigaon, Jorhat, Guwahati	
Farzana Nasreen	Bongaigaon, Jorhat, Guwahati	
Iftikar Hussain Siddique	Bongaigaon, Silchar, Karimganj	Development and Justice Initiative
Tahreen Chaudhury	Bongaigaon	

Field Partners

Organisation	Districts
The Action North-East Trust (The Ant)	Chirang
Development and Justice Initiative	Bongaigaon
North-East Affected Area Development Society (NEADS)	Jorhat
Sanatan Unnayan Sangstha	Silchar
Dr. Abdul Aziz Memorial Foundation	Karimganj



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Bharti Ali

Co-Founder & Executive Director

Kumar Shailabh

Co-Director

Preeti Singh

Co-Director

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ACRONYMS & ABBREVIATIONS

AASU	All Assam Student's Union
ASHA	Accredited Social Health Activist
CAA	Citizenship Amendment Act, 2019
CJP	Citizens for Justice and Peace
CRIA	Child Rights Impact Assessment
CRIN	Child Rights International Network
CWC	Child Welfare Committee
D-voter	Doubtful Voter
DCPO	District Child Protection Officer
DCPU	District Child Protection Unit
e.g.	For example
FT	Foreigners' Tribunal
Govt.	Government
HC	High Court
HRLN	Human Rights Law Network
IAWG	Inter-Agency Working Group
ICCPR	International Covenant on Civil and Political Rights
ICPS	Integrated Child Development Scheme
JJ Act	Juvenile Justice (Care and Protection of Children) Act or Juvenile Justice Act
LRCR	Local Registrar of Citizens Registration
NALSA	National Legal Services Authority
NFHS	National Family Health Survey
NHM	National Health Mission
NHRC	National Human Rights Commission
NRC	National Register of Citizens
OHCHR	Office of the High Commissioner for Human Rights
PPP	Public Private Partnership
PTR	Pupil Teacher Ratio
RTE	Right to Free and Compulsory Education Act, 2009
SDG	Sustainable Development Goals
SLSA	State Legal Services Authorities
SMC	School Management Committee
SOP	Standard Operating Procedure
U-Dise	Unified District Information System for Education
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of the Child
w.e.f.	with effect from
WSS	Women against Sexual Violence and State Repression

LEGAL GLOSSARY

Child Care Institution: This means a children's home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under the Juvenile Justice (Care and Protection of Children) Act, 2015 for providing care and protection to children, who are in need of such services. This definition is drawn from section 2, sub-section 21 of the said Act.¹

Child Welfare Committee: As per section 29 of the Juvenile Justice (Care & Protection of Children) Act, 2015, the Child Welfare Committee is a statutory body of five persons set up at the district level with the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children in need of care and protection, as well as to provide for their basic needs and protection.²

The Citizenship Act and Citizenship Amendment Act: The Citizenship Act was enacted in 1955 to fulfil the mandate of Article 11 of the Constitution of India, which had laid the proposal to develop laws pertaining to attainment and termination of the Citizenship of India. It laid down five provisions specifying how citizenship could be acquired in India: by birth, by descent, by naturalisation, by registration, or the incorporation of territory. The Citizenship Act has been amended ten times since it came into force. The first amendment was in 1957, followed by amendments in 1960, 1985, 1986, 1987, 1992, 2004, 2005, 2015 and now in 2019 w.e.f. 12.12.2019.³ Some of the critical amendments that have drawn attention to the citizenship for illegal migrants through naturalisation were in 1986, 2003, 2004 and 2019. The recent Citizenship Amendment Act, 2019 provides Indian citizenship to the illegal migrants who entered India on or before 31st December 2014. The amendment has drawn criticism for providing greater relaxation in the criteria for acquiring Indian citizenship by naturalisation to the Hindu, Christian, Budhhist, Jain, Parsi and Sikh illegal migrants from Bangladesh, Pakistan and Afghanistan as compared to the Muslim illegal migrants from these countries.⁴

D-Voter: It is the acronym used for 'doubtful voter'. A D-voter is one who is marked "doubtful or dubious" on the electoral rolls by the election department officials. A D-voter is one who is marked "doubtful or dubious" on the electoral rolls by the election department officials. Doubtful voters are not eligible to cast their vote in elections as their Indian citizenship is not confirmed. They are also barred from contesting elections in the country. Those persons whose citizenship was doubtful or was under dispute were categorized as 'D- Voters' during the preparation of the National Register of Citizens in Assam. Those persons whose citizenship was doubtful or was under dispute were categorised as 'D- Voters' during the preparation of the National Register of Citizens in Assam. D- Voters can apply and get their names included in the National Register of Citizens in Assam National Register of Citizens (NRC) in Assam, provided they get clearance from the Foreigners Tribunals and their names are removed from electoral rolls under the 'D' category.⁵

Detention: Condition of being deprived of personal liberty except as a result of conviction for an offence.⁶

District Child Protection Officer: The District Child Protection Officer (DCPO) is the head of the District Child Protection Unit (DCPU), responsible for carrying out all day to day functions of the DCPU at the district level. The DCPO has to coordinate and supervise implementation of the Integrated Child Protection Scheme of the Ministry of Women and Child Development, Government of India and other child protection measures at the district level.⁷ The DCPO is also the Nodal Officer in the district for the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the rules made there under.⁸

Ex-Parte order: An ex-parte order is any court order that is issued when one party is not present at the hearing. Such hearings are called “ex-parte” hearings or ex-parte judgments.⁹

Foreigners' Tribunal: Foreigners' Tribunal is a quasi-judicial body established as per the Foreigners' Tribunal Order, 1964 and the Foreigners' Act, 1946. It is for those who have been left out in the final NRC list or have been marked as 'D' meaning 'doubtful'. The ones falling under this category have the right to appeal to the Foreigners Tribunal. Under the provisions of Foreigners' Act, 1946 and Foreigners' Tribunal Order, 1964, only Foreigners' Tribunals have the right to declare a person as a foreigner.¹⁰

The Juvenile Justice (Care and Protection of Children) Act [JJ Act]: An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.¹¹

Kala Pani: A colloquial term for the most cruel and inhuman treatment of prisoners until death; a ruthless form of imprisonment from where there can be no return. The term literally means 'black waters'. It comes from the colonial times of the British rule over India, when political prisoners were exiled to the Andaman Islands. The Cellular jail in the South Andaman Islands came to be known as Kala Pani.¹²

Litigation: It is the action of carrying on or the process of bringing and pursuing a suit in law.¹³ Litigation is action brought in court to enforce a particular right or a judicial contest between two opposing parties working in the interest of enforcing or defending a legal right or a dispute.¹⁴

National Human Rights Commission (NHRC): The National Human Rights Commission (NHRC) of India is a statutory body constituted on 12 October 1993 under section 3 of the Protection of Human Rights Act (PHRA), 1993 (as amended in 2006) for the protection and promotion of human rights, defined by section 2, sub-section (e) of the Act as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".¹⁵

National Register of Citizens (NRC): The National Register of Citizens or NRC is a register maintained by the Government of India for identification of genuine Indian citizens.¹⁶ It thus contains names and certain relevant demographic information of those individuals who qualify as citizens of India as per the Citizenship Act, 1955 and its amendments.¹⁷

NRC updation: This basically refers to the process of registering citizens whose names appear in the Electoral Rolls up to 1971 and the 1951 NRC, based on the documents admissible to establish this fact as well as their descendants.¹⁸

Parens Patriae: *Parens Patriae* refers to the power of the State to intervene against an abusive or negligent parent, legal guardian or informal caretaker, and to act as the parent of any child or individual who is in need of protection, attributing to the state the role of a King who has to look after his people; a supervisory role. According to the Black's Law Dictionary *Parens Patriae* regards the State as a sovereign; having capacity as provider of protection to those unable to care for themselves; having a standing to prosecute a lawsuit on behalf of a citizen, especially someone who is under a legal disability to prosecute the suit.¹⁹

The Right To Free and Compulsory Education Act: The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), is an Act of the Parliament of India enacted on 4 August 2009 in conformity with Article 21 A of the Constitution of India guaranteeing free and compulsory education for children between 6 and 14 years and casting an obligation on the appropriate government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group.²⁰

Standard Operating Procedures (SOP): Standard Operating Procedures or SOPs are a set of written, step-by-step instructions on how to execute a task. They are a list of procedures that anyone can follow. SOPs help ensure standardisation of procedures as well as continuity so that crucial tasks can be completed even if key members change roles or leave the task. SOPs are also a written method of controlling a practice in accordance with predetermined specifications to obtain a desired outcome.²¹

State Legal Services Authority (SLSA): It is state level body constituted under section 6 of the Legal Services Authorities Act, 1987. Its prime function is to give effect to the policies and

directions of the National legal services Authority (NALSA), provide free legal services to eligible people who are in need, and conduct Lok Adalats in the State. It serves as the administrative head of all the District Legal Services Authorities and Taluka Legal Services Committees in the concerned state.²²

Writ Petition: One can file a writ petition in the High Court (Article 226) or the Supreme Court (Article 32) of India when one's fundamental rights guaranteed by the Constitution of India are violated. The jurisdiction of the High Courts (Article 226) concerning a writ petition is wider and extends to other constitutional rights too.²³ A writ petition is generally filed before an appellate level court to seek some extraordinary action and intervention in a lower court's process or to institute some higher legal remedy or legal relief.²⁴



GLOSSARY OF TERMS USED IN PSYCHOLOGY

Approach-Avoidance Conflict: Approach-Avoidance conflict arises when a goal has both positive and negative aspects, and thus leads to approach-avoidance reactions occurring at the same time.²⁵

Clinical Depression: Clinical depression is a more-severe form of depression, also known as major depression or major depressive disorder. It causes severe symptoms that affect how you feel, think, and handle daily activities, such as sleeping, eating, or working.²⁶

Cognitive Dissonance: Cognitive Dissonance refers to the mental conflict that occurs when a person's behaviours and beliefs do not align. It causes feelings of unease and tension, and people attempt to relieve this discomfort in different ways.²⁷

Cognitive Maturation: Cognitive maturation refers to the cognitive development of children from birth to adulthood. It refers to how babies think, learn, interact with their environment, etc. Some important aspects of cognitive development include the processing of information, language development, reasoning skills, development of intellects and memory.²⁸

Parent-Child Relationship: It consists of a combination of behaviours, feelings and expectations that are unique to a particular parent and a particular child. The relationship involves the full extent of a child's development.²⁹

Passive aggression: Passive aggression is marked by display of behaviour characterized by expression of negative feelings, resentment and aggression in an unassertive way such as through procrastination, stubbornness and unwillingness to communicate.³⁰

Separation Anxiety: Separation Anxiety is a developmental stage during which a child experiences anxiety when separated from the primary care giver (usually the mother).³¹

Toxic stress: Exposure to stressful and adverse experiences over a long period of time can become toxic. This repeated exposure to stress without the benefit of buffering protection of a supportive, adult relationship has been termed as toxic stress.³²



CHAPTER 1

INTRODUCTION

The year 2019 will go down in the history of India as a year of protests and violence, as the country witnessed series of administrative and legal measures defeating the spirit of the Constitution of India, denying basic freedoms and promoting exclusion in the name of nationalism. Amongst many factors that contributed to such protests and violence has been the 2019 amendment to the citizenship law with very little clarity on how will the law be implemented and what would be its implications for undocumented persons, who may not be able to procure the documents that would make them eligible for Indian citizenship. Much of the fear is linked to the Assam experience, where the National Register of Citizens has been used as a tool to identify those who meet the eligibility for citizenship of India and detain or deport others who do not.

Located in the north eastern part of India, Assam shares international borders with Bangladesh and Bhutan and national borders with seven states. The root of NRC in Assam lies in its complex history of migration. Without going much into those complexities, it shall suffice to say that immigration of both Hindu and Muslim Bengalis from the neighbouring Bangladesh has always been viewed by the Assamese people as a threat to their language and culture.³³ The state has witnessed several conflicts between the Assamese speaking people and the Bengali speaking people, seen as outsiders. It has also seen clashes between the ethnic minorities and the religious minorities with increasing pressure on land resources and job opportunities. In the recent years, influx of Rohingya Muslims from Myanmar into Assam has only worsened the fears and sharpened the divide on communal lines. As per the 2011 Census, the state has a population of 31.2 million, majority of whom are Hindus (61.47 per cent). Muslims constitute 34.22 per cent of the state population while the indigenous tribal communities account for 12.4 per cent, and other religions make up for 4.31 per cent of the population.³⁴ For several decades the state has been in the grip of violence and protests around assertion of identity.

All violence takes its toll on the most vulnerable populations, pushing them further to the periphery due to multiple victimisation resulting from exclusion and denial of fundamental rights and opportunities. Amongst them, those at greater risks are women, children, the aged and persons suffering physical or mental illness or disability. Little attention is paid to their fears, struggles and the pain they endure. For children, the situation is even grimmer. It is usually assumed that if the concerns of adults are addressed, those of children will automatically find a solution. What does it mean for a child to be a non-citizen or to be a ward of a non-citizen needs to be understood in the context of the amendments to the citizenship law and tools such as the NRC. What are the human rights violations they face as a result requires some examination, as is attempted through this report.

This report is thus based on a fact-finding undertaken to understand what children in Assam have suffered over the years as a result of the NRC process in the state and decades of protests and violence associated with it.

Before focussing on child rights violations however, it is important to understand the background of NRC in Assam and why has it been a cause for disruption.

Understanding the NRC in Assam

The National Register of Citizens (NRC) is a register containing names of all “genuine” Indian citizens; thus a tool that verifies Indian citizenship. The register was first prepared after the 1951 Census of India and was not updated since then, despite insertion of section 14A in the 2004 amendment to the citizenship law allowing the Central Government to compulsorily register every citizen and maintain a National Register of Indian Citizens. The only state in the country to have maintained such a register and to have fought for its updation is Assam.

In 1970, the Gauhati High Court had ruled out admissibility of the 1951 NRC as evidence of citizenship.³⁵ The influx from Bangladesh in the following year only added to the insecurities, leading to violent struggles for assertion of Assamese identity. The unrest grew further in the years to come by and took the shape of what is known as the Assam agitation of 1980s, led by the All Assam Student Union (AASU). The agitation “called for elections to be postponed until the names of foreigners were taken off electoral rolls.”³⁶ A demand for updating the NRC came up during the course of the agitation, which was acceded to in the form of the Assam Accord of 1985 between the Assam state government and the central government.³⁷

With the 1986 amendment to the citizenship law immigrants who entered and settled in Assam after March 24, 1971 were not eligible for citizenship of India and could be detained or deported to their native country. In other words, those who entered Assam after this cut off date became “illegal migrants”. Amongst other connected processes directed at exclusion of those seen as “outsiders” in Assam has been the electoral roll revision in 1997, which created a category of 'doubtful voters' or 'D voters' who had to prove their citizenship in the Foreigners Tribunal or get ready to be sent to detention centres or be deported to their country of origin.³⁸

Over a period of time, several petitions were filed in the Supreme Court for updating the NRC in Assam with a view to exclude more and more people from the NRC. A writ petition filed by the Assam Public Works and Assam Sanmitra Mahasangha & Ors in the Supreme Court demanded deletion of names of illegal migrants from the voter lists in Assam. The petitions resulted in directions that led to the initiation of an NRC updation process in 2015.³⁹

The final list of the National Register of Citizens (NRC) for the state of Assam, India, was published on 31st August, 2019. Segregation of people of Assam into “citizens” of India and “illegal immigrants” was not new in the state. What was new was the process that excluded 19 lakh people from the NRC, many of whom have been residents of Assam for nearly 50 years or have had ancestors who came to Assam before the 1971 cut off date but cannot prove it due to absence of documents. This number also includes people who are victims of poor documentation and misspelt names in different documents. Clearly, people have had to run from pillar to post filing applications and bribing officials and lawyers to get their work done.

The NRC initiated processes have created an intensity of precariousness and vulnerability that resonates closely with the horrors of the Partition of the Indian Subcontinent. Ever since the processes of NRC began in June 2015, Assam has been in the grip of communal tensions and upheaval.

Interestingly, The Citizenship Amendment Act, 2019 provides Indian citizenship to illegal migrants who entered India on or before 31 December, 2014 and no exception is carved out for Assam. This means inclusion of many more people in the NRC in Assam, whereas the very purpose of NRC in Assam in all these years has been to exclude the ethnic and linguistic groups who settled in the state post 24 March, 1971. As is rightly stated about the 2019 protests in Assam, “... what is primarily driving the protests is not who are excluded from the ambit of the new law, but how many are included.”⁴⁰



Need to explore the impact of such measures on the most vulnerable – the children

At a recent public hearing organised in Delhi on the occasion of 30 years of the UNCRC, a young 17 year old Muslim boy from Chirang District in Assam vociferously shared his concerns stating that ...

“Even though Citizenship is my right and is also recognised in the CRC, it is sad that the government is forcing me to prove it again and again.”

This 17 year old drew attention to several issues faced by many like him due to the NRC. The key ones highlighted in his deposition are as follows:

1. Complicated form filling and the enrolment procedure. We don't know how to fill up these forms and those who do, charge us 300-400 rupees per form. It is too expensive for us.
2. Most of us do not have the basic documents that are required for NRC. Some have lost these documents during the ethnic clashes or during floods. Many others do not have them at all.
3. Children are really suffering because of NRC. We are unable to attend school regularly because of all the process that NRC needs.
4. Most teachers are called off to attend NRC duties and therefore they are not available to take classes for long periods. At times we have even missed our exams because of this.
5. Because of these ongoing issues regarding the NRC, we are unable to concentrate or pay attention to our studies.
6. All the children are under severe mental stress due to uncertainty arising out of the NRC process.
7. We are scared to step out of our homes because people might just point a finger at us saying that you are not an Assamese or throw questions like, ‘Are you an Assamese or a Bengali?’ If I am not either – what then is my identity?

Historically, during times of extreme social unrest and violence, children become a secondary concern. This is evident from the few reports - by Women against Sexual Violence and State Repression (WSS),⁴¹ Amnesty International,⁴² TDN World,⁴³ Citizens for Justice and Peace (CJP)⁴⁴ - which, while shedding light on the situations faced by communities, fail to adequately explore the issues and vulnerabilities of children living through such times.

Children in Assam constitute 2.7 per cent of the country's child population as per Census 2011. In absolute numbers, Assam has 1,20,77,721 persons below the age of 18 years (0 to 17 years, both inclusive). Every child is entitled to rights woven around the ethos of liberty, equality and freedom. Right to identity - name and nationality, are key to several entitlements. Besides, there are a set of protection rights guaranteed to all irrespective of

citizenship. Recognising that laws like CAA and processes like NRC are bound to create possibilities of jeopardizing the basic rights of children, a need was felt to explore the basic question of what an exercise to determine citizenship means for children, their right to name and identity and their entitlements as citizens or non-citizens.

The fact-finding thus aims at locating where violation of child rights arise in such situations and exploring the impact of the NRC and its processes on children, their realities, as faced and experienced by them and people around them, within the specificities of their respective socio-economic contexts.

Finally, this fact-finding report seeks to advocate for greater accountability from state towards children and make possible suggestions so that every child is able to access its fundamental rights irrespective of socio-political scenario in the state.

About the Fact-finding

Methodologically, the fact-finding was conducted along three specific lines of inquiry - Legal fallacies in times of NRC, Psychological Impact of the NRC on children, Socio-Economic Re-Alignments of communities due to the NRC. Together, these three lines of inquiry have provided a holistic picture of the realities of living in Assam in times of NRC. The report concludes with a list of concrete suggestions for the path forward.

Locations covered

Six districts in Assam, namely, Jorhat in Upper Assam, Cachar and Karimganj in Barak Valley, and Bongaigaon, Chirang, and Kamrup in Lower Assam were covered with the help of local partners. This was keeping in mind the complex socio-cultural profile of the state and the varied responses to the NRC process and the CAA of 2019.

As various reports suggest, the impact of the NRC has varied between the socio-economic contexts of communities and, in effect, generated different frameworks of meaning and signification for different social groups - both, during its processes and in its final outcome. To illustrate, it is vividly clear that communities marginalised along socio-economic lines faced various hardships (such as non-comprehension of official forms and struggles at NRC *Kendras* (or the NRC Centres) in enrolling themselves in the NRC list, while individuals with social capital or economic privilege had access to information and assistance in navigating the intricacies of the NRC processes. It is also important to note the complex landscape of public opinion on the “processes” of the NRC versus the “vision” of the NRC. Some people who were able to enrol their names with ease were deeply uncomfortable with the ultimate vision and aims of the NRC, while, ironically, some people who faced major difficulties in enrolling their names or may still be excluded from the NRC were entirely supportive of its final motive of

granting “legal” citizenship. It was evident that the manner in which people’s individual experiences - whether of comfort or constraint - related to their political and ideological affiliations were complex, and could not be homogenised into singular or binary categories. Such a complex field made it crucial for the fact-finding team to pose different questions to different social communities in order to tease out their experiences with the NRC processes on the one hand and, on the other, to trace the backgrounds of their socio-political affiliations reflected in their approach to the NRC’s ultimate goals and motives.

Sources of Information

The primary sources of information were conversations with nearly a hundred children. Additionally, engagement with various stakeholders, such as guardians, school-teachers, advocates, Child Welfare Committee (CWC) members, and District Child Protection Officers (DCPOs), whose role and functioning directly or indirectly impacts the lives of children in relation to the NRC processes, formed a crucial source of information.

Sources of Information	
Categories	Number
Children (comprising 37 children aged 6-12 years, 57 children aged 12-18 years, 1 child without parental care, 7 children with disability)	104
Women who were in detention centres	2
Families (comprising 3 male members, 6 female members and 7 children)	3
Teachers	14
CWC members	5
DCPOs	2
Lawyers	24
In-charge of the child care institution/Principal/Caretaker	5
Aaganwadi Worker	1
Tea Garden workers and residents	17
Tea Garden Manager	1
NRC officer	1
Total Participants (including all members of the three families covered)	192

Fact-finding in Assam in times of NRC has been a navigation through complex realities that vary between communities and social groups. One of the fundamental axis through which the magnitude of the impact of NRC in Assam can be comprehended is Assam’s sociological heterogeneity and diversity. It is precisely for that reason that the NRC, with its homogenising, singularising, and arbitrary impulse, has unleashed such an intense sense of precarity, confusion, and fear amongst the people and the children of Assam. Living through times of NRC, the everyday presentness of people is at stake, as is perhaps the future of social relations in Assam.

CHAPTER 2

LEGAL FALLACIES IN TIMES OF NRC

THE STATELESSNESS OF CHILDREN IN ASSAM

Previously on two accounts – migration of Tamils from Sri Lanka and individuals entering Assam before 1966 – were granted citizenship by the Indian state through the Indo-Ceylon Agreement 1964 and the Assam Accord 1985 respectively. Post such scenarios, India has never granted citizenship to migrants coming from territories outside India. In the history of India, the NRC in Assam has perhaps generated the largest mass of stateless people.

India is neither a signatory to UN Convention of Status of Stateless Persons (1954) nor the UN Convention on the Reduction of Statelessness (1961).

It remains a matter of grave concern that India is neither a signatory to UN Convention of Status of Stateless Persons (1954) nor the UN Convention on the Reduction of Statelessness (1961). This seriously limits any scope of protecting rights of individuals who would be categorised as ‘illegal’ immigrants after the NRC process and trials in Foreigners Tribunals (FTs).

A saga of deprivation of rights - What does it mean to be a child without a state, to be deprived of belonging within a nation, without the identity of “citizen”, to grow up without parents or with parents in detention centres and in a state of conflict?

Articles 7 of the UNCRC require the States Parties to ensure that every child is “registered immediately after birth” and has “the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.” It further requires States Parties to implement these rights “in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”⁴⁵

Article 8 of the UNCRC mandates the States Parties “to respect the *right of the child to preserve* his or her identity, including nationality, name *and family relations* as recognized by law without unlawful interference.”⁴⁶

Yet, the reality of the children of Assam in times of NRC is of a negotiation with the state of statelessness.

The mission of the team has been to understand how this battle of statelessness, and its myriad consequences upon the lives of individuals - children and adults, families, and communities, manifests at the level of legal processes and procedures. To develop this picture, the team interacted with various stakeholders engaged with the legal apparatus, both

functionaries and civil society. The sources varied between officials such as lawyers, Child Welfare Committee (CWC) members, and District Child Protection Officers (DCPOs), to individuals/families who had been declared foreigners years ago and had long term experience in grappling with the NRC processes, as well as those who, as a result of being excluded from the final NRC, were only beginning to speculate upon their options and journeys forward.

The challenges of navigating through the legal system and processes

The legal process of fighting against statelessness is mired in some structural, functional and systemic challenges. These include:

- 1) Arbitrariness in legal structures and processes related to NRC
- 2) The Obscurity of Public Legal-Aid
- 3) Lack of awareness regarding legal processes, litigation and legal aid

"Exclusion", "arbitrariness", and "precarity" are intrinsically built into the legal apparatus controlling the NRC processes.

Through discussions with various communities across the districts of Bongaigoan, Chitrangada, and Karimganj, it was evident that the legal mechanisms - the Foreigners Tribunals and judicial practices in general - are fundamentally oriented against those excluded from the NRC, leaving them vulnerable to financial and social exploitation, and depriving them of any ray of hope of recovering their status of "citizen."

The arbitrary nature of the legal system's operation has resulted in a powerful state of affective and material "precarity" amongst adults as well as children.

Arbitrariness in legal structures and processes related to NRC

Arbitrariness and exclusion inform the very constitution of the FTs. This manifests crucially in the manner in which members of FTs are appointed, the eligibility criteria for which has been successively diluted.

There is an increasing demand for FTs and lack of applications forthcoming for the post of judges to be appointed in the FTs. To begin with, sitting judges were appointed as members. However, subsequently, due to the increase in the number of tribunals, retired judicial officers were appointed as members. And finally, with a hundred tribunals, the government could not identify enough judicial officers so advocates with ten years' experience were appointed as members on a contractual basis. Presently, as per the affidavit filed by the Ministry of Home Affairs in July 2019 before the Supreme Court, one thousand more tribunals

are to be created for which the Guwahati High Court has already notified fresh, relaxed criteria of selection.⁴⁷ The impact of dilution in the appointment criteria for FT members upon the proceedings of the Foreigners Tribunals is a cause for grave concern.

To make matters worse, the government has been bypassing the process for appraisal of FT members laid out by the High Court. While It is mandated that all appraisals must be made under the monitoring committee of the High Court, the government has been making independent appraisals. It is alleged that the appraisals are based on the number of foreigners declared by a member instead of number of disposals of inquiry, thus placing undue pressure on FT members to follow the unwritten principles of exclusion. In *Mamoni Rajkumari vs. State of Assam, WPC 4476 / 2017*, (paras 58-61) *Guwahati High Court observed that the government had in fact bypassed its authority* by making individual assessments of FT members and denying them extensions on technical grounds.⁴⁸ Such government malpractices have been covered by news agencies and online journals as well, amongst which *The Print* published a convincing piece that also contained the official performance appraisal sheet.⁴⁹ With declaration of foreigners determining the extension of tenures, members are in fact incentivised to exclude and function with arbitrariness, and tribunals are unlikely to carry out fair inquiries in referred cases.

The Obscurity of Public Legal-Aid

State Legal Services Authorities (SLSA) are officially responsible for providing legal aid to litigants in need. However, there is no data on the website of Assam State Legal Services Authorities that reflects whether or not the same has been done.

In fact, as per the SLSA website, neither people defending the proceedings before FTs nor detainees of FT cases are specifically eligible for providing or receiving legal aid.⁵⁰ It is clear that post the recent finalisation of NRC, lakhs of people will have to face proceedings before FTs in Assam, but till date, there is no official notification regarding the process for availing legal aid in such matters. Most of the adversely affected belong to social groups that are severely economically marginalised. As discovered in Bongaigaon, Jorhat, and Karimganj, in the absence of legal aid services, people are resorting to taking loans on unregulated interest rates and selling land and cattle to hire private lawyers who charge exorbitant fees.

Ms. RK, along with her husband, Mr. AH, had been declared a foreigner and their four children were not included in the NRC. Inquiry against them began in 2003. Ms. RK and Mr. AH were served notice by the FT2, Bongaigaon, Assam, in 2009 (Case No. 2858/ 2009 and 2861/ 2009, respectively) based on the report of the inquiry officer from the Border Police, and asked to establish their citizenship. This family, which barely had a roof over its head and nothing except daily wage income to survive on had to hire a private lawyer to fight their cases. They sold their sheep to arrange some money to meet litigation expenses. After an eight-year long

battle, in 2016, the final verdict - via separate findings - declared Mr. AH an Indian citizen, and Ms. RK a Bangladeshi. The basis for declaring Ms. RK a Bangladeshi was an ex-parte order, i.e., insufficient legal follow up in her case. Ms. RK did in fact have written statements and photocopies of necessary documents to prove her legacy and linkage and, technically, there are legal ways to prove such secondary evidences. For example, copies of birth certificates can be filed before a tribunal and its veracity can be ascertained through summoning the registrar of births and deaths with relevant record or, in the case of electoral rolls, by summoning the voter list for relevant periods or via ocular evidences. *However, due to lack of legal representation Ms. RK's photocopies were discarded as inadmissible evidence in the eyes of the law.* Ultimately, the legal fees and expenses became unaffordable for the family, and the private lawyer stopped representing them, culminating in the FT declaring Ms. RK a Bangladeshi.

Such narratives multiply and echo one another. Piyasree Dasgupta, in an article in Huffington Post,⁵¹ captures the trauma of Alekha Khatun who was a witness to rising debts as a result of which her children had to drop out of school. Khatun's narrative echoes very closely with the broader reality of loan traps to afford an out-of-pocket legal aid – leveraging land, cattle, labour, and themselves - that is the central trope in narratives of people who find themselves on the wrong side of final NRC list.

It is evident that the government has provided no support system to aid people in the procurement of documents directly resulting in placing many people in doubtful category.

The Border Police has the mandate to identify foreigners and file reference/report in the concerned Foreigners Tribunal responsible for taking cognizance and issuing notice to the named people to prove citizenship by establishing legacies and linkages. Through discussions with various stakeholders, the team observed that during the NRC, collection of documents is one of the most crucial processes. In order to prove one's place of birth, linkage to parents, and stay within the country, each individual requires access to government records, e.g. hospital records for proof of birth in the absence of date of birth certificate, school records, records of municipality or panchayats, land revenue records, electoral roll etc.

Lack of documents has been a challenge for many, especially by those facing socio-economic marginalisation combined with the wrath of environmental disasters. Specific identity coordinates of belonging to tribal communities or religious minorities or gender vulnerabilities only exacerbate the distress of individuals. In the Char area along the Brahmaputra river belt in Bongaigaon district, the river often changes routes due to which the people residing along its banks have to frequently endure floods and displacement, which has led to socio-economic backwardness and a nomadic lifestyle. To meet these environmental challenges, these communities usually live in a *chali* (a non-concrete, easy to

build, temporary structure). Many people in this area have been declared foreigners due to lack of documents.

Lack of awareness regarding legal processes, litigation and legal aid

Disempowered due to lack of awareness regarding legal processes, litigation and legal aid and the fear of formal processes has rendered people vulnerable to exploitation. Filling forms and filing applications remains the most tedious and challenging task for a vast majority in India. The fear of formal processes is so large that people lose even the little confidence they have in themselves when it comes to paper work.

Situations like the NRC and FT hearings add to the chaos and confusion and provide a futile ground to fraudulent minds who engage in exploiting the pain and lack of awareness of the vulnerable to make money.

Ms. FB spent three years in Kokrajhar Detention Centre and secured her release through an order from the Guwahati High Court after her family spent about Rs. Eight lakhs in meeting litigation expenses. In this midst, an imposter arrived guaranteeing the release of Ms. FB in exchange for Rs. Fifty Thousand. The family gave him the money in good faith and he disappeared.

Official information around legal processes, litigation and legal aid is entirely opaque, murky and unclear which has directly generated intense and wide scale confusion and anxiousness across communities that struggle without structural support or awareness to belong to a nation-state. As explained above, the legal apparatus they negotiate with is built foundationally upon exclusion, arbitrariness, and cryptic absence of clarity. Existence within a zone of statelessness is an endless navigation through legal labyrinths that produce and reproduce confusion, uncertainty and precariousness within people who are fighting a battle for identity, and for their constitutional human right to belong and live in dignity.

The scales of legal justice are always, already pitted against some of the most socio-economically marginalised people in Assam who get labelled as “doubtful citizens.” Marginalised along the lines of economics, environmental factors, gender, awareness, confronted with statelessness and detention, devoid of any aid or help, desperate and afraid, people are rapidly reducing themselves to impoverishment in order to defend their right to be citizens. In all of this, families are disrupted and children suffer the most.

The Impact of a flawed legal system and processes on children

Children are directly impacted and perhaps the worst affected when their parents are unable to navigate through the legal processes and face detention or deportation. They either end

up accompanying their parents to the detention centres or are separated from them. A third category of children are those who end up in the juvenile justice system either as children in conflict with the law or as children in need of care and protection. Statelessness is the common thread in all these situations.

Children in detention centres

The Morigaon case

A married couple from Morigaon was locked for nine years inside the Kokrajhar detention centre along with their two daughters aged three and nine years, respectively. The family exhausted all their money in defending their citizenship in the Foreigners Tribunal (FT). So when, post the trial, the tribunal declared them foreigners to be put in detention centres, they did not have the financial resources to approach the High Court and languished in detention for *nine years*. In 2018 they approached the Human Rights Law Network (HRLN), which filed a writ petition W.P. (C) No. 2108/ 2018 challenging the order of the FT. Vide order dated 05.02.2019, Hon'ble High Court took notice of the fact that reference to *the FT had been made only against the father, not the mother and children*. Thus, HC held that "Clause (2) of the Foreigners Tribunal Order, 1964 confers jurisdiction on the Tribunal to adjudicate such matters which have been referred by the competent authority. There is no such provision to adjudicate when a reference had not been made. In such view of the matter, the opinion given by the Foreigners Tribunal No. 1., Morigaon in Case No. FTC 151/ 2007 in the order dated 8.02.2010 in respect of the petitioner No's. 2, 3, and 4 are set aside." In pursuance of the HC order dated 01.02.2019, the mother and children were finally released in February, 2019.

The story of the Morigaon family is not unique; it resonates with many others. An article by *The Hindu* referred to the 2018 Amnesty International Report claiming that the number of children who were held in detention centres in Assam was as significant as thirty-one.⁵² The fact-finding team too met a lady who was recently released from Kokrajhar Detention Centre in December, 2019 and shared that six children were lodged inside it at the time of her release.

The team did not come across reports of inspections and visits carried out in detention centres by legal aid counsels or Juvenile Justice Boards or other authorities to get sense of children's status and well-being.

To understand the situation of children in need of care and protection placed in detention centres or child care institutions, or separated from their parents due to NRC, the team met with DCPOs of Jorhat, Chirang, and Majuli, and CWCs of Jorhat and Chirang. These officers claimed that no children have ever been sent to detention centres and, within their

knowledge, there were no FT proceedings pending against children. The 2017 and 2018 National Crime Record Bureau (NCRB) also claimed that no juvenile had been booked under the Foreigner's Act 1946.⁵³ Such reporting from a state agency comes in direct contradiction not only to reports produced by local civil society organisations but also to the findings of international organisations.

Such probable discrepancies between official reporting and narratives from the ground raise major concerns regarding how many children are lodged inside detention centres and what deprivation of rights they are suffering. In this regard, the 2018 report of Amnesty International⁵⁴ highlights how situations prevailing inside the detention centres were a complete upheaval of the juvenile justice principles and other constitutional guarantees, besides a violation of Article 37 of the UNCRC requiring detention to be a measure of last resort. The report points to lack of counselling and age appropriate and special diet, thus taking away the opportunity for children to grow in a healthy environment and to their full potential. It was against such reports of vivid transgression of rights and guarantees that the National Human Rights Commission (NHRC) in 2018 had moved a motion demanding that children, even whose parents were declared 'foreigners', were to be cared for and protected according to the guidelines laid down within the JJ Act.⁵⁵

Recognising that children should not be separated from their mothers in their formative years, the Supreme Court of India, in RD Upadhyay vs. State of Andhra Pradesh and others (1999 4 SCC 437), allowed children to stay with their mothers inside the prisons up to the age of six years, but not beyond. The Hindu article, which draws upon the 2018 Amnesty International report, mentions how boys who were above six-years old were separated from their family members while girls were still kept inside the detention centres after attaining the age of six years, pointing to the need to ensure care and protection of children who are sent out.

During the nine or ten or whatever number of years children spend in the detention centres, they stand completely deprived of their fundamental rights to liberty and life, the right to and free and compulsory education, right to food, right to health, the right against prolonged and arbitrary detention, the right to be heard and the right to care and protection.

Separation from parents

NRC has resulted in separation of children from their family members who are placed in the detention centers or are deported. Many are on the verge of separation.

With amendments to the Citizenship Act in 2003, the nationality of children is completely dependent upon both their parents being able to prove their citizenship. This has resulted in

children being out of NRC final list even if one of their parents are declared a Foreigner or a D-Voter.

Shah Alam Khan of The Wire⁵⁶ writes about families separated and childhoods eroded amidst people's fight against hope to save their citizenship and dignity, reverberating with similar narratives that the fact-finding team came across.

The story of Ms. M from Bongaigaon

Ms. M was separated from her two children and sent to Kokrajhar Detention Centre when she was three months pregnant. She gave birth to a still baby and went on to spend ten years and six months in detention. Her brothers sold their family shop and two bigha land to meet the litigation expenses. Presently, Ms. M is restored with her family but she is still a D-voter, is excluded from the NRC, and her right to motherhood and upbringing of her children has been violated forever. A fresh series of litigation awaits Ms. M for which her family has no property/land left to sell. The story of Ms. M from Bongaigaon is reflective of multiplication of people's suffering and marginalisation on account of economic weakness coupled with gender vulnerability within the NRC processes.

Children in a family in the Char region were also excluded from the final NRC as a result of their mother being declared a foreigner. Though the family continues to live together and is not in a detention centre, the mother has received deportation orders, and separation of children from the mother cannot be ruled out unless she is able to contest the decision of the FT and win her case. Such jolts to a family result in children dropping out of school and an erosion of their social life, besides increasing their vulnerability to different forms of child exploitation and abuse.

The Right To Free and Compulsory Education Act, 2009 (RTE Act) in Section 2 (c) defines "child" as a male or female between the age of six to fourteen years. Article 21A of the Indian Constitution, Section 3 (1) of the RTE Act, Article 28 of the UNCRC, and Article 26 of UDHR *mandate the Indian state to uphold the right of free and compulsory education for all children equally irrespective of their status as citizens or non-citizens.*⁵⁷

Exploring the denial of basic rights to children ranging across prenatal care and life long healthcare and medical treatment to access to education, Rinku Ghosh of *The Pioneer* quotes the findings of Child Rights International Network (CRIN) which has found that stateless mothers "may not receive proper prenatal medical care and stateless infants may not receive necessary immunisations. Unless stateless children obtain a nationality, accessing appropriate medical treatment can become a life-long struggle. As a result, stateless populations suffer high mortality rates and their overall health outcomes are generally worse than those of non-stateless groups. Poor overall health among the stateless is further

exacerbated by a lack of educational access. Many stateless children are denied the right to education because they do not have the documentation required for school enrollment. In turn, without a basic primary education, it becomes much harder for stateless populations to advocate for themselves. Hence, depriving stateless children of education can further perpetuate statelessness and the human rights violations that accompany it.”⁵⁸

NRC and the situation of children in the juvenile justice system

Orphaned and abandoned children are confronted with immense confusion and lack of clarity at the level of rules, procedures, and documentation. The Assam NRC website Standard Operating Procedure (SOP) states that orphaned and abandoned children need not have all required documents as per NRC rules. However, neither has any procedure been activated to respond to those children whose names are not in the NRC due to their residence in a shelter home at the time of its implementation, nor is there any clarity on whether they are required to provide their linkage to a governmental or non-government shelter home for duration of stay.

Focussed research on the response of the legal apparatus in relation to children caught within the NRC process revealed *a severe lack of awareness amongst child protection officials regarding what was to be done with non-citizen children or children of non-citizen parents in child care institutions and contradictions in their statements.* When the DCPOs were asked about the status of inclusion of children in child care institutions or shelter homes under their jurisdiction in the NRC, all, except the officers at Chirang district, were unaware. DCPO, Chirang, mentioned a government order that authorised them to issue certificates of inclusion within the NRC to children in child care institutions. The DCPO issued such certificates to three children with extreme circumstances whose parents had never visited them. The other two CWCs had no knowledge of their authority to issue such certificates.

Even where possible, child protection functionaries do not seem forthcoming to extend a helping hand to children who are or have been part of the juvenile justice system and require assistance with the FT and the NRC process.

A lady, whom the team met in Dhubri District, Assam, shared that in the year 2000, when she was nine years old, she attended a Puja fair in Guwahati with her parents where she unfortunately got separated from them in the crowd and went missing. She was found by the police and sent to a child care institution in Guwahati. The scant details she was able to provide about her family were not sufficient for the police to trace them and she was placed in a shelter home where she lived until 2006. One night in 2006, twelve girls at the shelter home planned to run away. Being one of the oldest in the home, she had the key to the main gate, and decided to accompany them. After successfully running away from the shelter, she met a Muslim man, fell in love, adopted Islam, changed her name, and married him. She did

not register any documentation of her religious conversion as it did not feel necessary at the time. During the first phase of the NRC process, her husband cited her as a daughter of his uncle. After documentation, at the stage of verification, the uncle refused to verify her as his daughter, and her name was excluded from the first NRC. During the second phase of the NRC, in order to unearth any documents that could prove her identity, she approached the Superintendent of the shelter home where she had spent most of her childhood. It was to no avail. She claims that despite some of the old staff duly identifying her before the Superintendent, the Superintendent refused to provide any documents. She further claims that her signatures are present in the registers of the home along with documents that can prove her narrative of the manner in which she went missing at the age of nine, but she has been denied all access to them. She is very apprehensive about the prospect of being suddenly separated from her husband and infant baby and being locked in a detention centre. When the team met her, she was severely traumatised, praying vehemently for someone to help her. *She has asserted that if the police comes to take her away, she would prefer to have poison and die rather than leave her family for a life in a detention centre.*

The Legal Framework and Commitments to children that stand violated by NRC in Assam

To conclude, as a signatory to the UNCRC, India has completely breached Articles 25-31 requiring it to secure the rights of children residing within its boundaries.⁵⁹

The principle of best interest of child has been violated by the NRC on multiple fronts.

Article 3 (1) of the UNCRC provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration. In General Comment No. 14, the CRC-Committee (Paragraph 40) describes the principle of best interest of the child as a three-fold concept comprising of a substantive right, an interpretive legal principle, and a rule of procedure. In relation to the implementation of measures, a continuous process of Child Rights Impact Assessment (CRIA) is required to predict the impact of any proposed law, policy, or budgetary allocation, upon children and their enjoyment of their rights. This is mandated in order to ensure that the best interest of children is the primary consideration in legislation, policy development, and delivery at all levels of the government.⁶⁰

Here is an overview of key national and international laws applicable to children that stand violated in the wake of NRC in Assam.

The Constitution of India

India is signatory to the United Nations Declaration of Human Rights, 1948 (UDHR) which sets out that fundamental human rights should be universally protected.

The Constitution of India guarantees certain fundamental rights to both citizens of India and non-citizens present within the geographical territory of India. These are:

- Article 14** right to equality before law and equal protection of laws
- Article 20** right to protection in respect to conviction for offences
- Article 21** right to protection of life and personal liberty
- Article 21A** right to free elementary education
- Article 22** right to protection against arrest and detention in certain cases
- Article 23** prohibition of traffic in human beings and forced labour
- Article 24** prohibition of employment of children in factories or hazardous places
- Article 25** right to freedom of conscience and free profession, practice and propagation of religion
- Article 26** right to freedom to manage religious affairs
- Article 27** right to freedom from payment of taxes for promotion of any religion
- Article 28** right to freedom from attending religious instructions or worship in certain educational institutions

The Supreme Court of India, in Anwar vs. State of J & K, 1971 AIR 337 and further in Chairman Railway Board and others v. Chandrima Das, 2 SCC 465 held that certain fundamental rights are available to citizens as well as non-citizens. However, the NRC in Assam has led to a serious compromise on letter and spirit of the Constitution of India and the case law established by the above-cited judgements.

Juvenile Justice (Care & Protection of Children) Act, 2015 and Model Rules, 2016

If parents or guardian of any child are sent to a detention centre by an order of a Foreigners Tribunal or any other competent court, and there is no other guardian to take care of such child, the state can consider the child as a child in need of care and protection under section 2, sub-section 14, clause (v) of the JJ Act. This will protect the child's safety and well-being. In other words, children can be provided protection through the various institutional and non-institutional care measures listed under the JJ Act.

The principles and provisions of the JJ Act do not limit themselves to children who are citizens of India. The provisions of the law are geared towards ensuring protection and care for vulnerable children within the territories of the country. Certain fundamental rights and development of non-citizen children or children of non-citizen parents can be met by placing

them in a child care institution or through kinship care or foster care. In fact, children who only have the earning parent in a detention centre can continue to live with the other parent and receive support through a sponsorship programme. However, much of this sounds like a wish list as children continue to grapple with their statelessness and related vulnerabilities on their own, without support from the child protection system.

While the government claims that children are not being sent to detention centres, there is no system in place for children whose parents or guardians are incapacitated to take care of them on account of their detention or deportation.

The principle of best interest of the child, ensuring participation of children in all processes and decisions affecting their life, repatriation and restoration, equality and non-discrimination, use of non-stigmatising semantics, non-waiver of rights and natural justice are some of the basic principles enshrined in section 3 of the JJ Act, 2015. The law lays down the minimum standards to be applied while making any decision in cases of children irrespective of their status of citizenship. However, children affected by the process of NRC or decisions of Foreigners Tribunal in Assam have not been able to receive the benefits of this legislation or the Constitution of India.

Right of Children to Free and Compulsory Education Act, 2009

Section 2(c) of the RTE Act defines 'child' as any male or female child aged six to fourteen years. As the provisions of this law too do not distinguish between citizen and non-citizen children, the State is duty bound to provide free and compulsory education up to elementary level irrespective of the citizenship status of a child. Children in detention centres have been deprived of this right and those not in detention centres are unable to continue their education while their parents struggle to get their documents in place and fight legal battles in the Foreigners Tribunals, spending all their savings and even taking loans to pay for legal assistance.

International Legal Framework

International Human Rights Legal Instruments	Significant Rights
UDHR⁶¹ - Article 15	Right to registration of birth, name, nationality and identity
ICCPR⁶² - Articles 24.2, 24.3	
UNCRC⁶³ - Articles 7.1, 7.2, 8.1, 8.2	
UDHR - Article 9	Rights against arbitrary deprivation of liberty
ICCPR - Articles 6.1, 9.1, 9.4 and 9.5	

UNCRC - Article 37.b	by way of arrest, detention or exile
Havana Rules⁶⁴ - Rule 2	
Declaration on Human Rights of Non-nationals⁶⁵ - Article 5.1.a	
UNCRC - Articles 37.1	Deprivation of liberty as a measure of last resort and for the shortest period of time
Havana Rules - Rule 2	
Beijing Rules⁶⁶ - Rule 19.1	
UDHR - Article 5	Right against being subjected to neglect, exploitation, abuse, torture or to cruel, inhuman or degrading treatment or punishment and respect for dignity of persons deprived of liberty
ICCPR - Articles 7, 10.1	
UNCRC - Articles 37.a, 39, 40.1	
Havana Rules - Rules 12, 67, 87.a	
Declaration on Human Rights of Non-nationals - Article 6	
SAARC Convention on Child Welfare⁶⁷ - Articles IV.3.c and V.d	
UDHR - Article 3	Right to life, liberty and security of person, including children's inherent right to life, survival and development
ICCPR - Article 6.1	
UNCRC - Articles 6.1, 6.2	
Declaration on Human Rights of Non-nationals - Article 5.1.a	
UDHR - Article 7	Rights against discrimination and equal protection of law
ICCPR - Articles 2.1, 4.1, 14.1, 24 and 26	
UNCRC - Article 2	
Havana Rules - Rule 4	
Declaration on Human Rights of Non-nationals - Article 5.1.c	
UNCRC - Articles 20.1, 22.1, 22.2, 38.4	Right to special protection measures for children deprived of

	family environment or in difficult circumstances
UDHR - Articles 8, 10 ICCPR - Articles 9.4, 14 UNCRC - Article 40.2.iii Beijing Rules - Rule 20.1 SAARC Convention on Child Welfare - Article V.c	Right to fair trial, speedy justice and repatriation
ICCPR - Article 14.3.d UNCRC - Article 37.d Havana Rules - Rule 18.a Beijing Rules - Rule 15.1	Right to legal representation and legal aid
UNCRC - Article 3.1 SAARC Convention on Child Welfare - Articles III.4, III.5	Primary consideration for the principle of best interest of the child in all decisions and actions affecting children
UNCRC - Articles 9, 20.1 Beijing Rules - Rule 18.2	Right to family, family environment and right against separation from family unless necessary in the child's best interest
UNCRC - Article 12	Right of a child to be heard in administrative and judicial proceedings and respect for child's views
UDHR - Article 25.1 UNCRC - Article 24.1	Rights to highest attainable standard of health and access to health care services

UDHR - Article 26 ICCPR - Articles UNCRC - Articles 28 and 29 Havana Rules - Rule 38 Beijing Rules - Rules 13.5, 22.1, 26.1	Right of to education and equal opportunity for education
UDHR - Article 18 ICCPR - Articles 18, 27 UNCRC - Articles 14, 30 Declaration on Human Rights of Non-nationals - Article 5.1.e, 5.1.f	Right to enjoy and practice one's own culture, religion and language



India needs to remind itself of the legal framework and work towards realisation of its commitments to children facing threats and impacts of the NRC and statelessness.

CHAPTER 3

SCARS OF LIFE

PSYCHOLOGICAL IMPACT OF THE NRC ON CHILDREN

“Every day, all around the world, millions of children are affected by immigration detention. Whether detained themselves or impacted by the detention of their parents or guardians, children are particularly vulnerable to abuse and neglect when subject to detention on the basis of their or their parents’ migration status.”

- *Ending Child Immigration Detention*, The Inter-Agency Working Group (IAWG) to End Child Immigration Detention⁶⁸

Assessment of psychological impact of the NRC on children was largely conducted through group and individual interactions with over a hundred children from the districts of Bongaigaon, Silchar, Jorhat and Karimganj.

The NRC and subsequent detention of some parents has directly resulted in causing a range of mental health concerns among children including stress, fear and anxiety, depression, sadness, grief, anger and resentment, and cognitive concerns. The impact and experience of the NRC process however, is not uniform or homogenous.

Children’s experience of the NRC process in Assam has varied starkly in intensity and severity along the lines of differing realities, economic background, emotional ties and family dynamics, and the outcome of the process – whether or not they could succeed in getting the names of all family members included in the NRC.

Children from emotionally supportive and healthy family units and economically privileged backgrounds, whose names along with the names of all other family members got easily registered in the NRC were visibly happier, communicative, and open in sharing their opinions and experiences regarding the process and the event of the NRC. While they had also experienced a certain degree of stress, success with the NRC freed them of the burden of exclusion forever, allowing them to carry on with their regular life. A girl in Karimganj shared that initially her name was not in the NRC. When her family made an inquiry, they discovered that an incorrect spelling had caused the problem. However, she recalled, they were able to get things corrected in one visit to the NRC centre. Another girl in Karimganj, aged 13 years, had the same problem of misspelt name. She was even more fortunate as she did not have to visit the NRC centre. Her maternal uncle (mama) got everything sorted out.

On the other hand are children whose names and/or whose family member’s names have not made it to the NRC despite lengthy struggles and battles, who mostly hail from socially,

economically and educationally marginalised backgrounds. These children have experienced psychological impacts that are grave and indicate a large scale mental health crisis requiring immediate intervention, relief and care-work.

The requirements, logistics and consequences of the NRC have been responsible for causing stress in children's everyday life. Conversations with children provided important insights into the manner in which their home environment and the parent-child relationship in particular got fissured and conflict-ridden during the NRC. In this context, it is important to note that parents too went through a period of unusual and intense stress through the NRC processes resulting in changes in their behaviour and capacities towards children. Children recounted witnessing parents and grandparents fighting at home when documents could not be located. They felt neglected as their parents had stopped spending quality time with them; they found their parents to frequently be in an irritable mood and, in extreme moments, children even became easy targets for parents to vent their own stress induced anger.

A boy in Bongaigaon shared:

"Papa ne mujhe photocopy karne ke liye bheja tha aur mujhe late ho gaya kyunki wahan bahut bheed thi, aur jab mein ghar pahucha toh papa ne mujhe bahaut danta. Jab ki meri koi galti bhi nahi thi. Mujhe bahut bura laga aur rona bhi aaya.

Papa had sent me to get documents photocopied and I got late because there was a huge crowd there, and when I reached home papa scolded me a lot. Even though it was not my fault at all. I felt very bad and also cried."

The school, usually the second institution alongside home that dominates the lives of children and carries the mandate to ensure safe and wholesome learning and development, also became a zone of stress for children owing to the absence of teachers who were assigned NRC duties without any provision for substitutes. Children were further stressed on account of the fact that some of their friends had actually failed the exams or scored very low marks, and many expressed difficulty in concentrating and focussing on studies. There is extensive and growing scientific evidence that prolonged and/or excessive stress can impair early learning and adversely affect later performance in school, the workplace, and the community. Multiple studies on childhood development conducted within the academia, such as the Center on the Developing Child, Harvard University,⁶⁹ have documented that early exposure to intense or persistently triggering events can cause problems in cognitive control and learning as a result of toxic stress.

Stress in relation to the school space exacerbated in situations where children had to take decisions involving an approach-avoidance conflict.

A girl in Bongaigaon had to choose between either taking an exam at school or attending an NRC hearing that fell on the same date.

Friend of the aggrieved girl from Bongaigaon shared:

"Aisa bhi hua meri friend ke saath ki school mein exam tha aur ussi din usko hearing ke liye bhi jaana pada. Ab woh bahaut pareshan ho gayi ki kya kare; agar hearing mein jaati hai toh pura saal kharab jayega, aur agar nahi jaati toh humko desh mein bhi rehna hai. Usko bahaut bura laga. Teacher se baat ki toh woh bole ki passing marks de denge bas, but woh toh humesha bahautache marks laati thi aur isliye usko bahut mushkil hui.

This also happened with my friend that there was an exam in school and, on the same day, she had to go for a hearing. Now she got very worried about what she should do; if she goes to the hearing the whole year will get ruined, and if she doesn't go then they won't be allowed to live in the country. She felt very sad. Upon speaking to the teacher, the teacher said they'll give her passing marks, but she had always scored well, and so she had a lot of difficulty."

To be caught in such a dilemma would plausibly evoke a range of emotions within a child ranging from sadness to helplessness to passive anger. The response of the teacher to pass the girl with minimum marks would have only intensified the trauma of an otherwise bright and diligent child, who would score well given an opportunity to write the exam. The NRC process forced the child into a situation where she had to choose between a compromise on her education and possible statelessness, which was made harder by the insensitivity of the school, an institution meant to serve as a safe support space for children. It is understandable that the child, out of anger and confusion, decided not to go to the NRC centre to submit her documents. Such an experience may instil in the child a sense of helplessness and betrayal by the state.

Jennifer S. Middlebrooks and Natalie C. Audage in their study, *The Effects of Childhood Stress on Health Across the Lifespan*,⁷⁰ argue that children require supportive and caring adults to help them with stress management and, if sufficient support is not made available, stress responses may be activated that extend across weeks to months to years. To provide such care, the emotional well-being of parents, caregivers and teachers is equally necessary.

As described by a girl in Karimganj...

"Mera naam NRC list mein nahi aaya hai, aisa maine papa se suna jab woh mummy ko bata rahe the. Jab maine papa se poochha toh woh bole koi baat nahi hai, sab theek ho jayega. Aas pas ke log mujhe tease karte hain, kehte hain mujhe Bangladesh bhej denge aur mere parents yahin rahenge. Mein jitna bholne ki koshish karti hun utna hi mujhe log yaad karaate hain ki mera naam NRC me nahi hai. Mujhe achha nahi lagta hai, dar lagta hai. Maine apne teacher se bhi baat ki, woh bhi yahi boli sab theek ho jayega.

I heard papa tell mama that my name has not come in the NRC list. When I asked papa he said never mind, everything will be fine. People around me tease me, they say I will be sent to Bangladesh and my parents will remain here. The more I try to forget it, the more people remind me that my name is not in the NRC. I don't feel good, I feel scared. I spoke to my teacher also who also said that everything will be alright."

Children whose names were excluded from the NRC inhabited a world that was psychically and affectively distinct from their peers whose names were included in the NRC - it was a world of *heightened fear and anxiety*. Stories that people whose names are not in the NRC would be picked up and locked in detention centres or sent away to Bangladesh dominated public conversations. These stories translated within children's peer groups in the form of a dark and aggressive humour wherein children whose names were included in the list frequently teased and mocked others whose names were excluded, with images of being locked in detention, separated from family, and deported to Bangladesh.

What children whose names were in the NRC perhaps treated as casual banter and teasing was, in effect, a dark humour that had surrounded and enveloped the lives of the "excluded children", becoming a patterned experience that echoed across their narratives, distancing them from their peers, placing them in an altogether different reality - a reality of fear, anxiety, stress, and sadness.

A thirteen year old girl in Bongaigaon shared that her own brother would often tease her with remarks such as ...

"Your name will not be in NRC final list and then you will be sent to Bangladesh and we all will live here. Also the entire room will be with me only."

Another thirteen-year-old girl said ...

"My friends and neighbours started labelling me a 'Bangladeshi' when my name did not come in the final NRC."

No matter how hard she tried to dismiss and forget such statements, peers of the thirteen year old continued to pass remarks at her, calling her “Bangladeshi”, which haunted her constantly. She did share her experience with her teacher but no amount of reassurance helped her cope with the persistent anxiety she experienced. In the group discussion as well, the team observed that she hardly participated, was mostly quiet with visible tension and sadness, and only after a certain prodding and probing did she share her fears and anxieties. In comparison to her peers, who were fairly vocal and cheerful, her anxiousness and stress stood out. It was common for children to respond to such dark humour by refusing to step out of their homes or go to school, or meet friends, or be part of any social gatherings out of the fear that their friends or others known to them would find out that their name was not in the NRC.

A fourteen-year-old boy in Karimganj shared that such teasing had initially caused him to feel really bad and he had started avoiding going out of his house or playing with other children. Signs of sadness were visible within his narrativisation, indicating that the memories of that struggle remained raw and fresh in his mind.

Unfortunately, another source of fear for children are the adults and parents themselves who, in some cases, had begun to use the NRC as a trope for disciplining of children.

In the Char region in Bongaigaon, the team met with a family in which many members, including children, had not made it to the NRC. During this meeting the team observed that the adults of the family would repeatedly issue threats to children, who were about seven-eight years old, that if they didn’t obey or study then the police will take them away and send them to Bangladesh since their names are not in the NRC. Adults also confirmed that children had developed greater fear of the police. So much so that whenever they would spot a police person they would ask if they were going to be taken away. This had led to sleeplessness and constant worry amongst children.

Researches offered by reputed publications such as *Development and Psychopathology*⁷¹ and the *Journal of Clinical Psychiatry*⁷² demonstrate the manner in which chronic and intense fear early in life affects the development of stress response systems and influences the processing of emotional memories. Threat-based disciplinary measures that adults deployed fairly casually had already begun to have a visible detrimental effect on the mental health of children who sat quietly for a long time with expression of meekness, stress and fear. The team had to reassure the children that they had not come to take them away anywhere and it was only after a long time was spent in rapport building that the children began to speak a little. The team provided awareness to the adults on the mental health consequences of such disciplining and counselled them to mend their ways.

The term “NRC” itself appears to have become associated with memories that get relived by a child whenever the topic is brought up.

Children enjoyed the games played to break the ice and talked freely on other topics, but the moment the issue of NRC was brought up, they would go quiet and look stressed, and wanted to avoid the topic.

A seven year old boy in Silchar who had been actively participating in a focussed group discussion suddenly went quiet when the topic of the NRC came up. Thereafter, he did not utter a word for the rest of the discussion. Later, when the team interacted with him alone, he shared that his parents' names had got into the NRC but his had not. His teacher further shared that the child was part of a group of four siblings out of whom only one's name reached the NRC. The boy told the team that he had visited the NRC centre and found it very inconvenient and that his mother, who was very worried about him, frequently said, “kaise aayega naam NRC mein? (How will the name come in the NRC?)” Another child, also approximately six-seven years of age, who could not make it to the NRC was hesitant to speak on the topic.

The fear and anxiety are prominent in the conversation that emerged during the interactions with children ...

“Agar NRC mein naam nahi aaya to jail mein band kar denge.
If the name does not come in the NRC then they will lock us/me in prison);

“Agar papa ka naam nahi aaya NRC mein to ghar kaise chalega?
If dad's name does not come in the NRC then how will the house be supported?;

“Agar NRC mein naam nahi hota hai to kaala pani bhej denge.
If name is not in the NRC then we will be sent to kaala pani (exile from where there is no return).”

Handbook of Attachment⁷³ studies the manner in which separation of children from their parents, particularly when done suddenly and without adequate support, threatens the attachment bond and forms an additional root of fear and lack of safety. This deep, enduring affectional bond between a child and caregiver begins in infancy and is critical to the child's inherent sense of safety and protection. Neurologically, attachment relationships drive the brain development foundational for subsequent physical, emotional, social and cognitive maturation. Grappling with a persistent fear of separation as a result of parents or grandparents, or they themselves, being taken away to some unknown place, children had developed separation anxiety.

Middlebrooks and Audage⁷⁴ assert that childhood stress that remains prolonged in duration and intensity can turn into toxic stress, which can lead to permanent emotional damage and changes in brain development.

Worryingly, the ideological conflicts within Assam have already led to the development of inconsistencies and cognitive dissonances within the thought processes of children, particularly those who expressed the opinion of supporting the NRC. For example, the team observed children reflecting contradictory states of mind, wherein on the one hand they narrated the distress and difficulties faced by their friends and neighbours due to the NRC and, on the other hand, they firmly supported the NRC. They opined that those who are not from “Assam” should not be given citizenship and they should be sent back to their own country. It is evident that these children are mimicking and narrating the political views of their families. The contradictoriness within the children may, if permitted to persist, lead to the development of rigidity within them and may also make their thought processes inconsistent and create cognitive dissonance. The long term effects of such early exposure to persistent and intense fears bears various warnings for children’s mental health, emotional development, and cognitive growth.

Depression and sad moods have set in due to different kinds of fears and separation anxiety. These symptoms, if persistent, can lead to clinical depression, which would have a very long term impact on children’s mental health.

Children suffered with sleeplessness, loss of appetite, crying spells, loss of interest in activities they previously enjoyed, difficulty in concentrating on studies, and a fall in academic performance.

Mother of a seven-year-old child in the Char area shared:

“Meri beti kayi baar yeh soch ke rone lagti hai ki kahin uske dady ko police le kar na chali jaye. Kayi baar woh so bhi nahi pati aur neend se uthkar rone lagti hai dady ji ke liye. Khaana bhi nahi khaati achhe se.

My daughter frequently starts crying with the thought that the police might take her father away. Very often she is not able to sleep and wakes up in between and starts crying for her father. She doesn’t eat properly either.”

Grief manifested in children who had experienced separation from parents for long and uncertain periods of time. Children were unable to understand or estimate for how long their parents had been taken away, and whether or not they will ever come out of the detention centre and return to them; they couldn’t meet their parents and, deprived of parental love and affection, children experienced immense loss and grief. This feeling aggravated when

with disruption in children's schooling/education when they had to take care of younger siblings, as well as due to the isolation children had imposed upon themselves by avoiding friends and social gatherings.

Anger and resentment had fostered in children due to the impact the NRC has had on their and their families' lives. Children who have faced the wrath, questioned and resented the manner in which the NRC processes discriminated against and targeted a particular community. Passive aggression towards the entire NRC process was observed. Anger was also visible in children who had borne loss in studies due to the NRC.

To conclude, the NRC has resulted in a host of major mental health concerns amongst children ranging from fear and anxiety, stress, grief, anger and resentment, to depression. It has impacted their social, personal, and educational development. It has disrupted their lives and relationships with peers, friends and family, at home and at school.

Children in Assam are currently battling myriad psychological and mental challenges which amount to a large scale public health crisis that merits immediate medical and therapeutic intervention.

Resilience comes easy to children and youth as compared to adults. However, witnessing prolonged emotional, social and political upheavals can leave such scars of life that may never heal if not addressed timely.



CHAPTER 4

SOCIO-ECONOMIC RE-ALIGNMENTS POST THE NRC

Incomplete Syllabus: Children's Education in the times of NRC

What would happen 'if' all schools were to become dysfunctional for a period of 4-years? One is almost at loss of imagination thinking about incomplete course, possible delays in nutritional supplements like Mid-Day Meals scheme, poor performance in examinations, schools closing down etcetera. In short, a strong negative impact on both physical and cognitive aspects of child's development. As soon as we remove the 'if' from the above question, we get the status of education in Assam during the phase when the NRC process was ongoing.

To map the impact of the NRC on children's primary education, the team interacted with teachers of primary schools from sixteen blocks of Jorhat district and eleven blocks of Chirang district. The teachers, most of whom were mandated to be involved in the NRC processes, shared their experiences and revealed the deeply adverse impact the NRC has had, primarily at a structural level, on children's fundamental right to education and their own lives.

The fundamental cause of children being deprived of their basic education can be traced to the beginning of June 2014, when teachers were assigned the "additional" duty to implement certain steps within the NRC process - distribution of the NRC forms and assisting people in filling forms. However, as the NRC process progressed, the burden upon the teachers multiplied much beyond what had been originally stated.

A teacher shared ...

"...pehle toh yahi bataya gaya tha ki ghar-ghar jaakar sirf form dena hai. Phir bad mein jab records ka entry karna tha toh bhi LRCR ke office par humein bulaya gaya. Time kam tha aur records bahaut zyada the, iss karan se humko bola gaya ki NRC data ko verify karke usko computer mein feed bhi karna hai.

...Earlier we were told that we have to go door-door and just give the forms. Later when records had to be entered then also we were called to the LRCR office. Time was less and records were a lot, so we were told that we also have to verify the NRC data and feed it in the computer."

The manner in which teachers were assigned NRC duties appeared to be entirely arbitrary. For example, one primary school, which had only three teachers, one of whom was the headmaster, operated for almost three years without any teacher at all as all three teachers were picked up by the government for NRC duty. It was only once the parents of the students

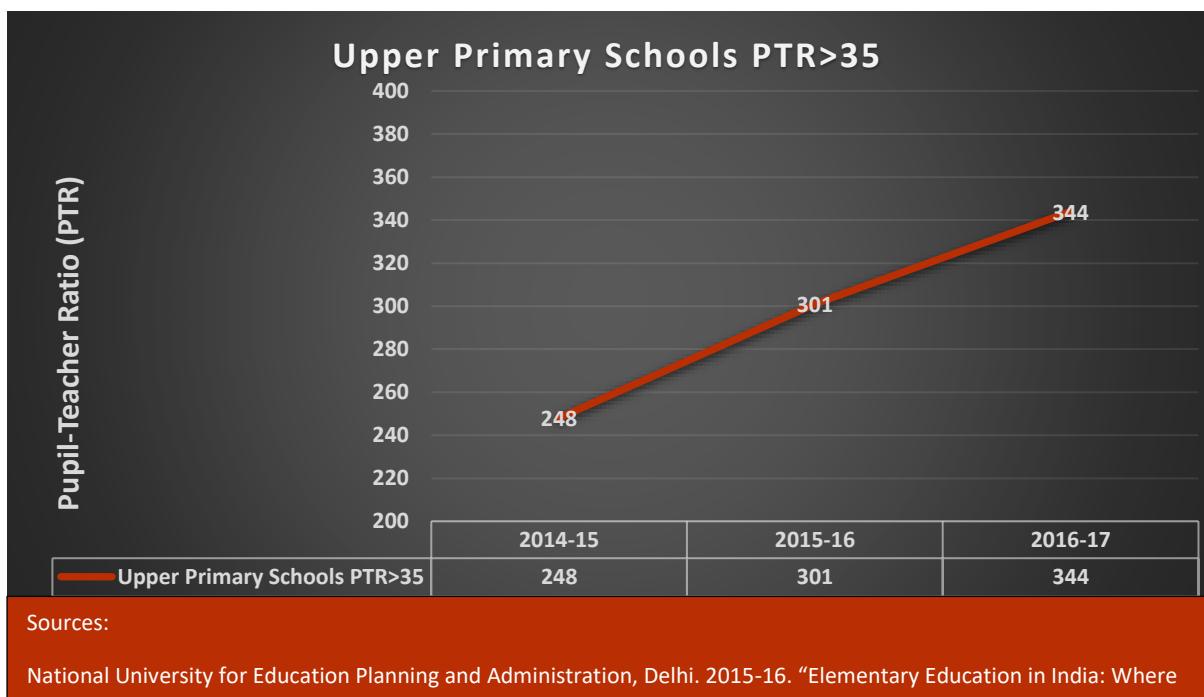
began protesting that the headmaster was relieved and permitted to focus on teaching. The other two teachers had to continue with NRC duties.

The headmaster recalled ...

"Class one se lekar class five tak, pura school mujhe hi sambhalna pad raha tha. Kabhi kabhi do classes ko ek saath mila kar classes karni padti thi. Bahaut saare classes ke bacche toh din bhar khelte rehte the kyunki unki classes ho hi nahi pati thi. Saare subjects mein padha bhi nahi pata tha toh woh classes ho hi nahi pati thi. Kaafi saare parents ne aakar bola ki classes jab nahi ho pati toh school band hi kar dena chahiye."

From class one to class five, I had to manage the whole school all alone. Sometimes two classes had to be merged and conducted. Students of many classes would keep playing the whole day because their classes could not be held. I was not even able to teach all subjects, so those subject classes could not happen. Many parents came and said that if classes cannot be held the school should be shut down."

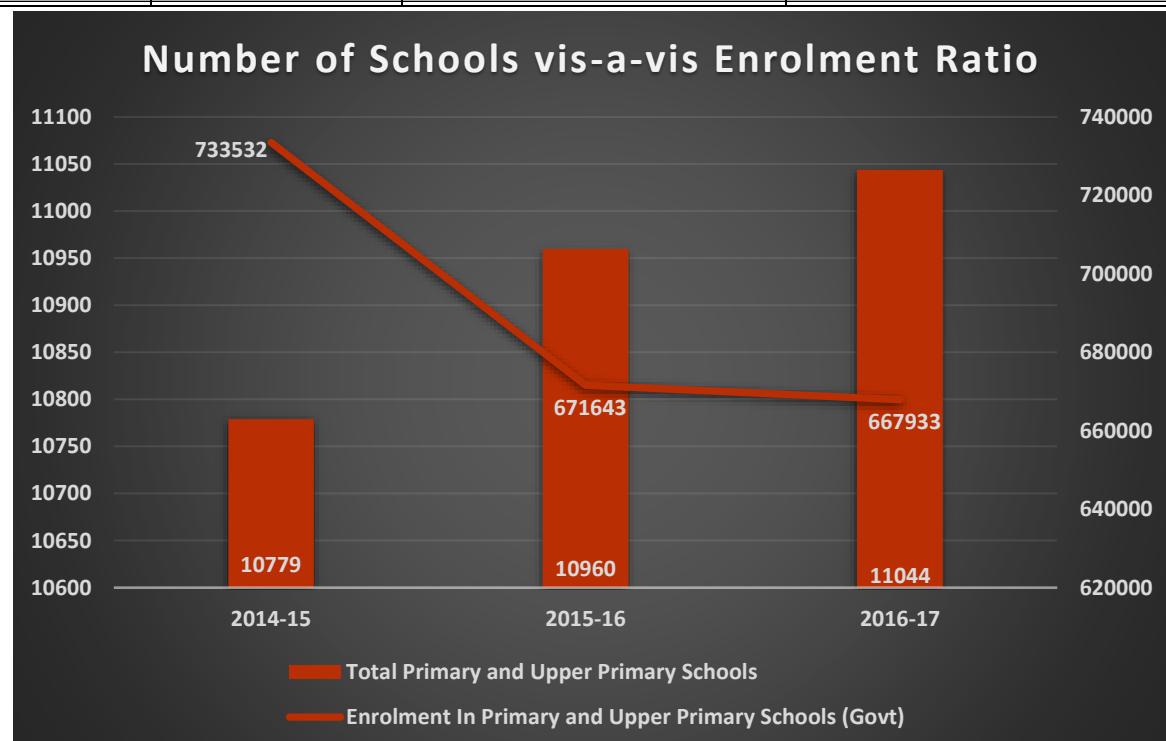
The significant unevenness in the ratio of teachers to students (referred to as the Pupil Teacher Ratio (PTR) in RTE) highlights the realities often masked by computation of data that is delivered by the State Education Department at regular intervals. For the year 2017-18, the Assam State Education Department recorded a PTR of 19 in Lower-Primary schools in Chirang district.⁷⁵ This was clearly not the case, a hint of which comes from the narrative above, and probably not for many schools in the last four-years. The same goes for the district of Jorhat, which recorded a PTR of 18. This puts a question mark on the computation, which seems to be reduced to the level of mere paperwork by the authorities.⁷⁶



To cap the disarray, the government established the NRC *Kendras* inside the school compounds. They occupied playgrounds and some classrooms. Teachers had to merge a class, which had already saturated its one classroom capacity, with other classes to accommodate school schedules in fewer classrooms, leading to overcrowding. The hustle bustle of the NRC processes disrupted children's concentration on their studies and the environment of learning necessary for an educational institution. In Jorhat the teachers raised points about continuous shifts in examination cycle to the extent that annual examinations had to be shifted completely.

In effect, families, even those from financially weaker backgrounds, have begun to shift their children to private schools as they feel the public school education stands completely compromised. A headmaster of a lower primary school in Chirang district shared that the enrolment ratio has shown a steady decline ever since the NRC work commenced. The metadata, sourced from U-Dise, vividly portrays the disturbing reality of children's primary and upper-primary education that the team observed during its interaction with teachers in different districts.

Year	Total Primary and Upper Primary Schools	Enrolment In Primary and Upper Primary Schools (Govt. & Private)	Enrolment In Primary and Upper Primary Schools (Govt.)
2014-15	10,779	8,88,722	7,33,532
2015-16	10,960	8,07,439	6,71,643
2016-17	11,044	8,09,289	6,67,933



Note: The chart does not take into account data for number of schools and enrolment number for Guwahati primarily because U-Dise does not provide data solely for Guwahati. The data is provided for Kamrup Metropolitan districts which includes Dispur along with Guwahati.

2014 onwards, it becomes clear that the five districts – Bongaigaon, Chirang, Jorhat, Karimganj, Cachar – have seen an increase in number of primary and upper-primary schools. On the contrary, the decline in enrolment numbers continues to drop significantly with only 6,67,933 children enrolling in 2016-17 as compared to 7,33,532 in 2014-15 (a decline of 8.4%). To add, grades of students in lower primary schools have shown a steady fall in the annual and time-to-time assessments.

As shared by a teacher ...

"Math aur English jaise subjects toh waise bhi padhana mushkil hota tha. Pehle bhi kaafi samay lagta tha in subjects ke course ko complete karne mein, par saal bhar mein zyaada classes lekar kar lete the. Jab se NRC chalu hua aur hum logon ki duty laga di hai tab se ek toh kam time mein course complete karna padta hai jis se chapters achhe se cover nahi kar patey. Bacchon ke marks bhi kam hote jaa rahe hain jabse NRC ke karan hum log classes nahi le patey hain.

Subjects like Math and English were anyways difficult to teach. Earlier also it would take quite a bit of time to complete their course but by taking extra classes through the year, we could do it. Since the NRC has started and we have been assigned duties, we have to finish the course in less time because of which chapters don't get covered well. Children's grades are also falling because of the NRC as we are not being able to hold the classes."

The compromise with children's education in the last four-years through a forced teacher's absenteeism raises significant questions on promises that the State makes regarding its educational policies and goals. One of the foundational social policies for education found in the Right to Free and Compulsory Education Act, enacted in 2009, is thoroughly violated in the schema of employing teachers in the NRC process. At the very onset, the Act offers clarification regarding the extended duties of teachers beyond their basic duty of teaching children such as decennial census, election-duties or disaster relief work. This also exposes a very basic loophole in foundations of the RTE Act regarding the fact that merely enrolling children does not suffice in providing quality education to children, one of the Sustainable Development Goals to which India is supposed to stand committed. This also raises concerns about the functioning of the School Management Committee (SMC) that has been made a compulsory part of every school administration through the RTE Act. In the face of such damage to primary education in the last four years, what have the parents and local educationists who are part of the SMCs done?

While the NRC process was ongoing (which in some ways continues to be suspended in the current atmosphere of protests in the state), children's access to education became ruptured on a large scale. There is hardly any doubt that education completely broke down for children whose parents were sent to detention centres. Sayeda A. Zahan's article in the *Times of*

*India*⁷⁷ highlights that children who found their parents in detention centres were forced to drop-out from their schools and support the family in achieving subsistence wages. Zahan narrates the turmoil of Rahima Begum, whose children had to undertake informal employment of rolling beedis after dropping out of their schools when their father was sent to the detention centre in Goalpara. The story of Rahima's children being deprived of their fundamental right to education echoes many narratives that the team came across in every interaction with children throughout the six districts covered through the fact-finding. Such cases not only puncture the promises of providing free and quality education to every child but also highlight the loopholes in The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

From a school teacher in Jorhat ...

“Mein aise char bacchon ko jaanta hoon jinhe school chhodhna pada kyunki unke fathers ko detention centre bhej diya tha. Woh log paanch bhai the, usme se ek bhai ko chhodhkar baki sabko foreigner declare kar diya. Uske baad unko detention centre mein daal diya. Bacchon ko support karne ke liye koi baccha nahi toh bacchon ko hi yahan ke ration dukaan par jaakar kaam karna pada. Un sabke pitaji ko Jorhat detention centre mein rakha gaya hai. Na toh state government aur na hi kisi vyakti ne aakar unki madad ki hai.”

I know of four children who had to leave their schooling as their fathers were sent to detention centres. They were five brothers out of which four were sent to detention centres. No one was available to provide for their children's education after they were sent to the detention centres as a result of which they had to dropout and were forced to work in local groceries shops. All four brother have been kept in Jorhat detention centre. Neither the state government nor any individual came forward to help them.”

One is only left to imagine the plight of children and their access to the fundamental right to education, especially children of those 802 “alleged” foreigners who languish in detention centres at present and many more whose fate is left hanging after the publication of the final NRC list.

The differentiated impact of NRC and CAA on different regions of Assam was vividly clear in the team's discussion with the teachers in Jorhat. The teachers brought up a crucial indicator to demarcate the difference - they pointed out that while the NRC had impacted the Lower-Primary schools in Upper Assam and Lower Assam, the protests erupted only after it impacted the Upper-Primary schools of Upper Assam. It was in parts of Upper Assam, which had been the most volatile during anti-CAA protests that students went on to join in as “protestors.”

The teacher from Jorhat went on to say ...

"Anti- CAA protests ke samay par sabhi schools band ho gaye the. Official order aane se pehle hi students ne darr ke kaaran school aana band kar diya tha. Official order aane se December 13 se December 22 tak schools band the aur uss samay internet bhi down ho gaya tha. Lower-Primary school ke bacche toh bahut chote hain par Upper-Primary school ke bacche protests mein bhi chale gaye the. Par unko kuch hua nahin.

The schools were completely shut down during anti-CAA protests. Even before the official orders were given to close down the schools, children had stopped coming to the schools. As an effect of the official order, the schools were completely closed down from December 13 to December 22 and during that time even the internet was completely cut-off. The students at Lower-Primary level are too small but students from Upper-Primary level also participated in the protests. Thankfully nothing happened to them."

A major reason for this was, as the teacher revealed, a significant number of school students were part of the students' groups related to the All Assam Student's Union (AASU) and therefore had to participate in the anti-CAA protests.

The state of Assam in 2017 had launched a scheme by the name of *Gunotsav*. Its purpose was to train teachers so that they would be able to deliver quality education and bring up the educational indicators in the state; to increase student's retention rate, track academic performances and evaluate how to cover the gaps in learnings of a child.⁷⁸ One is made to realise after engaging with the teachers the impossibilities of achieving these goals because the teachers themselves are 'absent' from schools.

Insight into the degree of mismanagement and stress negotiated by teachers within the NRC duties assigned to them lends a more holistic picture on the levels at which pedagogy was subject to damage. Teachers were not provided training for the various roles they were suddenly forced to perform and exhausted several hours attempting to understand the work on their own. In effect, their NRC duty extended way beyond their official timings - at times beginning work at 9:00am and concluding around midnight. Most of the villagers weren't able to understand the NRC forms and had to pay Rs. 500 to individuals who would fill out the form on their behalf at the NRC *Kendras*. The teachers themselves had to incur huge personal costs on NRC work related expenses over a period of four years - in some cases extending to Rs. one lakh - for which they were compensated with as little as Rs. five thousand.

A teacher lamented ...

"Hum logon ko ek hi baar training mil jisme sirf yahi kaha tha ki form samjhane hain. Jaise jaise kaam badta gaya hum logo hi document verification kar rahe the aur usko record par bhi chadana hota tha. Uske liye toh hum logon ko training nahi diya gaya tha. Hum logon ko bhi yeh saara kaam samajhne mein kaafi time lag gaya.

We only received one training in which we were told that forms have to be explained. As work kept increasing, we only ended up doing document verification, which had to be entered into the records as well. For this, we were not given any training. We also took quite a lot of time to understand all this work."

Overworked, untrained, and financially strained, evidently teachers were unable to perform their primary role as teachers in schools. Frequent teacher absenteeism from school and an entirely disrupted educational environment for four years has deprived children of their right to education.

In conclusion, a teacher posed an important question to reflect upon while understanding the impact of the NRC on education ...

"Ek taraf toh sarkar humko kehti hai ki bacchon ko quality education provide karein aur doosri taraf iss sab kaam mein bhi laga deti hai. Jab teacher log raat mein gyarah-barah baje tak NRC ki duty par hi rahenge toh school kaun aakar padhayega? Pichhle chaar saal mein jo bacchon ka school education miss ho gaya toh aage bhi dikkat aana swabhawik hai. Iss tarah hi agar chalta raha toh kya hum ko quality education provide karne ke liye kehna chahiye? Ya iski koi ummeed bhi rakhi jaa sakti hai kya?

On the one hand, the government tells us that we should provide quality education to children, and on the other hand it engages us in all this work. When teacher will remain at the NRC duty till eleven-twelve in the night, who will come to school to teach? Now that children have missed education in the last four years, it is natural that there will be difficulties in the future. If this is how it is going to be then should we be told to provide quality education? Or should we even keep any hopes in this regard?"



CHAPTER 5

REFIGURING MODALITIES OF BONDAGE

IMPACT OF NRC ON CHILDREN IN ASSAM'S *CHA BAGANS*

The NRC has led to a remarkable structural reconfiguration of the economic and socio-political positioning of *cha bagan* (tea garden) workers in Assam. The team interacted with tea garden workers in Jorhat and Derby Tea Estates in Narsingpur in Chachar district where a total of a thousand workers are employed. The workers, now colloquially referred to as "*cha baganis*" (tea-tribes), belong to communities that were forced to migrate during the colonial period from the present day states of Jharkhand and Bihar that were earlier part of the Bengal Presidency. The workers survive on meagre daily wages amounting to Rs. 120-160 per day. Most of the families of tea garden workers struggle to find proper shelter or healthcare and are dependent upon the facilities provided by the tea estate owners to meet these basic needs. The NRC process was an ordeal for the tea garden workers and they have emerged from it significantly weakened, both economically and socially.

The NRC process failed to take cognizance of the literacy levels of tea-garden workers, both in terms of general parameters as well as knowledge regarding the process itself. It required the workers, at the very beginning, to fill the NRC forms and gather necessary documents for verification. As with others in the state, these workers too needed assistance with filling forms and became dependent upon the few individuals who sat near the NRC *Kendras* to fill out the forms for themselves and these workers.

A Derby Tea Estate worker recalling the NRC experience said ...

"Gaon ke kuchh padhe-likhe ladke hum sabka form bharte the. Unke paas samay kam hota tha aur log bahaut zyaada tadaat mein unke paas line banakar khade rehte the. Zyada logon ka form bharne ke karan kayi baar unse hi form bharne mein galtiyan ho jaati thi, jiss karan se kuchh logon ko apna naam NRC mein chadhane mein dikkat aayi."

A few educated boys of the village would fill all our forms. They had little time and people, in large numbers, would stand before them in form queues around them. Due to filling up forms for such large numbers, very often they only would make mistakes in filling the form, because of which some people faced difficulties in getting their names into the NRC."

The risks involved in such a chaotic unfolding of the NRC process resulting in errors in documentation had significant economic and material consequences upon the lives of the workers and their families. It put the children of tea garden workers at a greater risk of either being excluded from the NRC themselves or having one of their parents excluded. At times, as a result of the local presence and familiarity of these intermediaries with the families, names of children got missed out of the NRC purely due to an unfortunate communication

gap and misunderstanding between the official names and house-names. An NRC official who had been on duty at the NRC Kendra in Silchar explained that where households of tea garden workers submitted a “family-tree” chart as a proof of verification, which at times carried house-names instead of the official name, incorrect information found its way into the documents. This happened commonly with children who, being more familiar with their house names, responded with the same whenever they had to be present at the NRC centre.

A tea garden worker shared ...

“Ghar par bacche ka naam toh janam ke waqt mata-pita ne Monu rakh diya hai jaise. Ab jab school mein dakhila ka bari aaya toh Monu naam achha nahi laga toh use badal kar Manoranjan kar diya. Jab NRC ka form bhara toh form bharne wale ko Monu likhwa diya par certificate par toh Manoranjan likha hua tha. Iss karan se bhi kuchh bacchon ka naam NRC list se bahar reh gaya tha. Baad mein jab pata chala, toh hum logon ne naya form bhara aur bacche ka naam dakhil karaya.

At home the child was given the name “Monu” at birth by the parents, for example. Now when the time came for school admission, the name Monu did not feel good so they changed it and made it “Manoranjan.” When they filled the NRC form then they gave the name ‘Monu’ to the person filling the form, but the certificate had the name ‘Manoranjan’. For this reason also some children’s names got left out of the NRC list. Later when they found out, then we filled a new form and got the child’s name into the NRC.”

The financial position of tea-garden workers has been significantly compromised due to their frequent absence from work to fulfil the demands of the NRC, leading to major cuts in their daily wage incomes. As a result of lack of awareness and literacy, workers visited the NRC office repeatedly to check if they had brought the correct documents. Since very few families possessed crucial documents such as birth and death certificates, they had to visit various government departments to obtain proper documents. Workers who had recently migrated from tea gardens to different districts, such as from Jorhat to Chachar, had to make trips back to their earlier place of residence to arrange for the documents. The frequent travel and movement by workers, their preoccupation with the NRC process and the mandated requirement for children’s presence during the verification process, resulted in children frequently missing out on school. It also compromised the tea garden workers’ attendance record at workplace, which resulted in loss of daily wages and economic hardship.



According to another tea garden worker ...

"Kagaz ka zyada samajh toh nahi tha hum logon ko. Iss karan se do-teen baar NRC office mein jaana pada. Hum log toh dehadi mazdoor hai; jis din kaam par nahi jaate uss din ka paghar toh manager katega hi. Do se teen din jo document banane ke liye gaye uss din ka paghar kata gaya.

We did not have much of an understanding about paperwork. For that reason, two-three times we had to go to the NRC office. We are daily wage workers; the day we don't go to work, the manager will obviously cut that day's wage. Our wages were cut for the two to three days that we went to get our documents in place."

Pullock Dutta's article in *The Telegraph* reveals that the situation faced by the workers of Derby Tea Estate was also faced by those working in the tea estates in Jorhat. He highlights the impact of illiteracy on documentation and how, due to working in an unorganised sector, workers in Jorhat too had to travel extensively to meet the demands of the process. This, Dutta finds, has resulted in most of them not being on the electoral list and overall difficulty in procuring documents to substantiate their claim of being a 'native'.⁷⁹

The economic vulnerability of tea garden workers has directly translated into placing their entire community in a debilitating social dependence upon the tea estate owners to claim their fundamental human rights to education, nutrition and health for themselves and their children. Data from the National Family Health Survey (NFHS)-4 highlights that close to 40% child births take place in private facilities in rural areas of Cachar district, majority of which are *cha bagan* areas.⁸⁰ The birth rate in private institutions is significantly higher (45% as compared to just 14% in public facilities) in the case of caesarean birth procedures. One of the plausible reasons for this can be located in the Public Private Partnership (PPP) model for providing healthcare to tea garden workers initiated by the State of Assam in 2007-08.⁸¹ As a Through this PPP model, the tea garden hospitals were brought under the National Health Mission and demarcated as primary providers of healthcare to the tea garden workers. This push towards privatisation of healthcare for tea garden workers has strengthened a chain of bondage that ties the workers to their private employers, especially for healthcare and childbirth, and by extension, for procurement of birth certificates. This became strikingly clear to the team as the tea garden workers shared the curious analogy of the *cha bagan* certificates.

The SOP for NRC states that tea garden workers could use *cha bagan* certificates to establish citizenship. These certificates were mainly useful for establishing a child's birth and linkage to the parents so that the child could be enrolled in the NRC. The workers expressed a

preference for *cha bagan* certificates for various reasons amongst which were convenience and the type of healthcare available.

To illustrate, one worker shared ...

"Yahan aas-paas toh koi government hospital nahi hai. Bacchon ka janam yahan ke *cha bagan* haspatal mein hi hota hai. Wahan par ek diary hota hai jisme bacche ka janam ka samay, janam ki tareekh, aur mata-pita ka naam likha jaata hai. Agar bacche ka janam ghar par bhi hota hai toh gharwale *cha bagan* haspatal mein jaa kar diary mein naam likha dete hain.

Here, nearby, there is no government hospital. Births take place in the local *cha bagan* hospital only. There a diary is maintained in which the child's time of birth, date of birth, and mother-father's names are written. Even if a child is born home, the family goes to the *cha bagan* hospital and gets the name entered in the diary."

The process for legitimising the *cha bagan* certificate was shorter and less cumbersome. The tea garden workers shared that according to the NRC guidelines, birth certificates issued before 2014 (corresponding to the year of the NRC initiation) were considered authentic but those issued after 2014 had to be cross-verified to prove authenticity. This was not required in the case of *cha bagan* certificates. Additionally, while government school certificates testifying to a child's identity as legal citizens had to carry the signatures of two other government officials, the *cha bagan* certificates, once issued by the *cha bagan* hospital, only had to be verified by the *cha bagan* manager to be considered an official and authentic document.

The equation between the tea garden worker and tea estate manager has historically been one of power asymmetry, where the former was significantly vulnerable to exploitation by the latter. The NRC has only swayed this power dynamic even more in favour of the estate owners by giving them the power to legitimise the citizenship of the workers' children. The legitimacy of *cha bagan* certificates and the tea-garden workers' preference for them for various logistical and resource-related reasons has, in effect, deepened the dependence of tea garden workers on the *cha bagan* managers. The National Health Mission makes it mandatory for ASHA workers, who are supposed to track the records of childbirths and link them to government hospitals at block or district level, to be recruited from among the residents of the village. This was not the case in these districts earlier, but has now become yet another power play, thereby aggravating the problem.

The children of the tea garden workers have been exposed to multi-faceted vulnerabilities of belonging to a community that is disadvantaged by illiteracy, does not have access to any public aid for navigating the complex NRC processes, and additionally, exists in a state of

corrosive dependence upon private tea estate owners for their basic rights of livelihood, nutrition, education and healthcare. In sum, the children of tea estate workers - the inadvertent victims - were often left out of the NRC purely due to illiteracy or miscommunication, the risk of frequently missing out on school in order to satisfy the NRC processes, and their parents' dependence upon the private employers to legitimise their births, and by extension, their identities.

The history of tea estates in Assam has witnessed labour movements as exemplified by the Derby Tea Estate where, in recent times, workers united to demand the removal of their estate superintendent/manager. It is a question to be explored, what the future of labour movements and workers' capacity for asserting demands for fair working conditions would look like when they depend upon the estate manager to certify their right to citizenship. The NRC has placed the tea-garden workers into a state of economic and social dependency, vulnerability, and precarity, the effects of which are perhaps to unfold in times to come.



CHAPTER 6

REALISATION OF RIGHTS OF CHILDREN AFFECTED BY THE NRC

SOME SUGGESTIONS

Fixing responsibilities for ensuring children their right to protection and well-being

India is a signatory to the United Nations Convention on the Rights of the Child and must actualise the rights and liberty of children. The provisions of the Indian Constitution including clause (3) of article 15, clauses (e) and (f) of article 39, articles 45 and 47 impose on the State a primary responsibility for ensuring that all needs of children are met and their basic human rights are protected - this must be followed throughout. Other statutory remedies available must be made applicable for the betterment of the condition of children. The Juvenile Justice (Care and Protection of Children) Act, 2015, does not classify children into citizens or doubtful/non-citizens. State being the duty bearer and operating under the principle of *parens patriae*, must act as the guardian for all children, regardless of any legal proceedings pending against their parents or the children themselves. This calls for action on several fronts - from ensuring children their right to education so that they are able to protect themselves better as well as participate in their own growth and development and that of the state and the country productively, to activating the child protection system for addressing children's struggle for justice, care and protection in situations such as the NRC process, which has heightened their vulnerability.

- The NRC has left a lasting adverse impact on children's right to education in government schools. This is in contradiction to the role and promise of the Indian state to abide by the Sustainable Development Goals that includes providing free, fair, and quality education to every child. Therefore, it is necessary for the state to keep teachers out of the NRC duties and avoid using the resources of the schools - compounds, playgrounds, classrooms - as NRC Kendras. This is crucial at a time when people in huge numbers would be applying to review their citizenship status.
- As posited by this report, it appears that six children were present in Kokrajhar detention centre as recently as December 2019. Different CWCs should take complete cognizance of children placed in these centres and make important decisions to ensure that no child suffers deprivation of their basic rights as a result of being placed in detention centres.
- As the JJ Act requires the Juvenile Justice Boards to make visits to jails, such visits should also be mandated for detention centres so as to ensure no child is languishing in a detention centre as a child in conflict with the law.

- Further, Section 2 (14) (i) of the JJ Act defines a child in need of care and protection to include “a who is found without any home or settled place of abode and without any ostensible means of subsistence”. Section 2 (14) (v) extends the definition to also include a child “who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child”. Many children whose parents are in detention centres would fit into the category of children in need of care and protection and should be entitled to receive all protections guaranteed under the law. Even if they are found to have violated the Foreigners Act, 1946, they should not be treated as children in conflict with the law and instead should be transferred to the concerned Child Welfare Committee for short term or long-term care as may be required by the child.
- Although the fact-finding team did not come across cases of child abuse and exploitation, including trafficking in the wake of processes that put children in a situation of emotional, psychosocial and economic crisis, such violations cannot be ruled out. It is imperative to form village level child protection committees and make them functional as such bodies can act as community level watch-dog bodies and help in both reporting and addressing such issues locally. This should become a priority investment for the state and the central government. A distinct budget and special funds may be demarcated for such purposes.
- Mental health care issues of children facing the brunt of the NRC process requires urgent attention. Such services should be made available to children through schools. School education must include a happiness curriculum. The Delhi experiment in this regard may be adapted to the Assam situation. Special helplines should be set up for children to

In Exploitation of Children in Orphanages in the State of Tamil Nadu Vs Union of India & Ors. (Writ Petition (Crl.) No. 102 of 2007), Judgment dated 05.05.2017, the Supreme Court of India held that “a child accused of an offence and brought before the Juvenile Justice Board or any other authority might also be a child in need of care and protection.”

Attributing a wider import to the definition of a child in need of care and protection under the JJ act, the Apex Court further stated that, “since the JJ Act is intended for the benefit of children and is intended to protect and foster their rights, the definition of a child in need of care and protection must be given a broad interpretation. It would be unfortunate if certain categories of children are left out of the definition, even though they need as much care and protection as categories of children specifically enlisted in the definition. Beneficial legislations of the kind that we are dealing with demand an expansive view to be taken by the Courts and all concerned. ...The definition of the expression ‘child in need of care and protection’ under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need

receive counselling and support. Community mental health programmes can go a long way in addressing both the child and the parents as a unit and making mental health care more accessible and affordable.

Training and Capacity Building of concerned functionaries on Child Rights

- All child protection functionaries, persons serving as Members of the FTs, school teachers and others engaged in the NRC process must be provided necessary orientation and training on the fundamental rights of non-citizens, particularly children and how to deal with children they come in contact with as a result of the NRC process.

Addressing children's statelessness

- Citizenship can be accorded by birth and through naturalisation. Any child who is born within the territory of India must have a right to claim their preference for taking the citizenship of this country even if their legacy is not proven by their parents.
- The citizenship of children of tea garden workers can be secured by obtaining *cha bagan* certificates, which are accepted as valid for purposes of the NRC. This brings power to the private employers issuing such certificates, while rendering the tea garden workers even more vulnerable to subjugation of rights. In any event, it is crucial that the role of ASHA workers be enforced the state machinery becomes accountable for providing birth certificates instead of allowing private actors into such matters.

Free Legal Aid and Assistance to affected children and their families

- At the same time, as lakhs of cases are expected to come before all three hundred Foreigners' Tribunals, State Legal Services Authorities must ensure that free and competent legal aid is available to anyone left out of the NRC to defend themselves. For people aggrieved by FT orders, the Guwahati High Court Legal Services Committee and State Legal Services Authority ought to provide legal aid to assail the orders of FTs.
- Maximum people who are left out of the NRC belong to the lower strata of society and need assistance in filling up forms and procuring certified copies of documents such as voter list, previous NRC certificates, land revenue records, school records of children, etc. For this purpose, para legal volunteers may be imparted training on the requirements of the NRC process and deputed at community levels in adequate numbers to assist people.
- It must further be ensured that requisite awareness is created at the community level and the name and contact details of concerned para legal volunteers, the District Legal Services Authority and the Taluka level Legal Services Committees is publicised and made

available to all. Trained para legal volunteers can also be deputed to spread awareness regarding the NRC and FT procedures and processes in order to empower people with necessary information and knowledge to engage with the formal procedures themselves as far as possible.

- Mechanisms need to be put in place to check the corruption that has set in at all levels in the name of assisting the poor and the illiterate through the NRC process. Strict action must be taken against those exploiting their position and people's vulnerability for their personal gains. Helplines that can be easily reached for help must be established, with trained staff to respond to people's queries and also follow-up on their requests with necessary information and assistance such as connecting them to the concerned officials and services.

Convergence, coordination and cooperation

- The role of civil society organisations in defending human rights must be recognised considering the social conditions generated in Assam as a result of the NRC. This fact-finding has discovered that there is a direct relation between the rate of exclusion and organic solidarities within communities. For example, in the districts of Karimganj, Bongaigaon, and Chirang, the rate of exclusion was higher in communities that were more insulated and dispersed, and lower where communities were more united and connected. The residents of Karimganj and Chirang shared a greater internal solidarity and concern for one another, thus they addressed the difficulties arising in the NRC process together at the community level. This was not the case with Bongaigaon. Thus, organisations must be called upon to work collectively with each other and the local communities at the most micro levels to facilitate individuals excluded from the NRC in claiming their citizenship.



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