

ASSAM PUBLIC WORKS

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v.

UNION OF INDIA & ORS.

(Writ Petition (C) No. 274 of 2009)

AUGUST 13, 2019

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[RANJAN GOGOI, CJI AND R. F. NARIMAN, J.]

Citizenship Act, 1955: ss.3, 6 – State of Assam – Report of State Coordinator – Action proposed in Paragraph 7(a) that for any NRC Applications/Claimants, if parent/legacy person through whom eligibility is sought to be established is a DV or DF or PFT, then such persons will not be included in NRC irrespective of the status of the other parent – Challenged on the ground that the said action ran contrary to the provisions of s.3(1)(a) of the Act which dealt with acquisition of citizenship by birth in the case of every person born in India on or after the 26.1.1950 but before 1.7.1987

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– Held: The purport and effect of provisions of s.3(1)(a) and (b) of the Act is pending consideration before a Constitution Bench of this court in Writ Petition (c) No.311 of 2015 – The issue pending is whether the expression “every person born in India” would apply only to persons born to Indian citizens and whether the expression “either of whose parents is a citizen of India at the time of his birth” in s.3(1)(b) of the Act would apply to only a person who is born to parents one of whom is a citizen and the other a foreigner, provided he or she has entered India lawfully and his/her stay in India is not in contravention of applicable Indian laws.

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Citizenship Act, 1955: State of Assam – Report of State Coordinator – Actions proposed in Paragraph 7(b) and 7(c) that those persons born before 3.12.2004, if the parent through whom legacy is drawn is not DV or DF or PFT and is found eligible for inclusion in NRC, but the other parent from whom legacy is not drawn is a DV or DF or PFT, then, such descendants may be included in NRC; and those persons who are born on or after 3.12. 2004, they will not be included in NRC if any of the parent is DV or DF or PFT even if the parent from whom legacy is drawn is clear from all angles – The suggestions/prayers made in paragraph 7(b) and (c)

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- A *of Report dated 10.7.2019 of the State Coordinator are in consonance with the provisions of s.3(1)(b) and (c) of the Act and the Standard Operating Procedure (SoP) for disposal of claims and objections – Therefore, there is no reason to refuse leave to the State Coordinator to act in terms of the action proposed in the said suggestions/prayers made in Paragraph 7(b) and (c) subject to such orders that this Court may pass in Writ Petition (c) No.311 of 2015 – Moreover, as suggested by the State Coordinator, the issue raised could be best decided by the Tribunal, if so required as and when appeals are filed.*
- B *Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 – rr.4A, 6A – r.4A of the 2003 Rules carves out special provisions in the matter of preparation of National Register of Indian Citizens in the State of Assam – r.4A(2) specifically provides that the National Register of Indian Citizens in the State of Assam shall be prepared by inviting applications from all the residents*
- C *calling for specified particulars relating to each family and individual including the citizenship status based on the National Register of Citizens 1951 and the electoral rolls upto the midnight of 24.3.1971 – The special provision contained in r.4A of the 2003 Rules read with the Schedule framed thereunder, for preparation of National Register of Indian Citizens in the State of Assam, had been necessitated on account of the provisions contained in s.6A of the Act which are special provisions as to grant citizenship to persons covered by the Assam Accord – Under s.6A(2) of the Act, all persons of Indian origin who had come to the State of Assam before 1.1.1966 from the specified territory (defined as territories included in Bangladesh) immediately before the commencement of the Citizenship (Amendment) Act, 1985, including such persons whose names were included in the electoral rolls for purposes of the General Election to the House of the People held in 1967, and who have been ordinarily resident in Assam since the dates of their entry into Assam are deemed to be citizens of India as on and from 1.1.1966 – Person(s) who had entered Assam between 1.1.1966 but before the 25.3.1971 and who has been ordinarily resident in Assam, upon being detected as a foreigner(s), was/were liable to register himself/ themselves in accordance with the Rules made by the Central Government – On such registration, under s.6A(4) of the Act, such*
- D *H a person would have the same rights and obligations as a Citizen*

of India; but for a period of ten years he/she shall not be entitled to have his/her name included in any electoral roll – s.6A of the Act which was inserted with effect from 7.12.1985 by the Citizenship (Amendment) Act, 1985 (Act No.65 of 1985), thus, carves out a special category of citizens in the State of Assam – The entire NRC exercise having been performed on the aforesaid basis, the same cannot be now ordered to be reopened by initiation of a fresh exercise on certain other parameters that have been suggested on behalf of the intervenors/applicants on the strength of the provisions of s.3(1)(a) of the Act – Citizenship Act, 1955 – ss.3, 6.

National Register of Citizens: Prayer of the State Coordinator with regard to maintenance of security of the NRC data – This Court directed that an appropriate regime be enacted on lines similar to the security regime provided for AADHAR data – Only thereafter, the list of inclusions and exclusions shall be made available to the State Government, Central Government and Registrar General of India – Further it was directed that only hard-copies of the supplementary list of inclusions be published at the NRC Seva Centers, Circle Offices and Offices of the District Magistrates of the State – Also direction passed that the list of exclusions to be published on 31.8.2019 shall be published only on on-line and shall be family-wise – So far as the validity of orders passed under the IMDT Act are concerned, such cases shall be governed by the decision of the Gauhati High Court in Anowar Ali v. State of Assam.

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 274 of 2009.

(Under Article 32 of the Constitution of India)

With

I.A. Nos. 114781, 114788, 114807, 114814, 116964, 117074, 117697 and 117689 of 2019.

Tushar Mehta, SG, Kapil Sibal, Salman Khurshid, C. U. Singh, B. H. Marlapalle, Vinay Navare, Sr. Advs., Kailash Prashad Pandey, Ms. Shefali Sethi, Ms. Binu Tamta, Ms. Rekha Pandey, Ankur Talwar, Ms. Shraddha Deshmukh, B. Krishna Prasad, B. V. Balaram Das, Shuvodeep Roy, Rajat Nair, Sataroop Das, Fuzail Ahmad Ayyubi, Mushtafa Khaddam Hussain, Ibad Mushtaq, Ms. Aditi Gupta, Ms. Tehsina, Ms. Shabeen Anjum, Ms. Lubna Naz, Ms. Kunika, Somesh

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- A Chandra Jha, Ms. Aparna Bhat, Ms. Krishna Maria, A. S. Tapadar, Ajit Wagh, Mansoor Ali, Ms. Rubina Jawed, Ms. Rashmi Singhania, Ms. Diksha Rai, Ms. Palak Mahajan, Siddhesh Kotwal, Ms. Bansuri Swaraj, Ms. Arshiya Ghose, Divyansh Tiwari, Shourajeet Chakravarty, Ms. Astha Sharma, Amlan Kumar Ghosh, Ms. Jayashree Satpute, Mohit Chaudhary, Ms. Tripti Poddar, Deboji Borkokati, Vivek Shankar, Ms. Malvika Trivedi, Ankit Yadav, T. Mahipal, Ms. Sneha Kalita, Ms. Jissy Kurian, S. Ahmed, Ms. Arna Das, Gaurav Dhingra, M.C. Dhingra, Ms. Indira K., Krishna Kumar Pandey, Hitesh Kumar Sharma, Mritunjay Kumar Mishra, Mohan Pandey, G. N. Reddy, Ms. Sujatha Bagadhi, T. Vijaya Bhaskar Reddy, Shibashish Misra, Ms. Madhusmita Bhattacharjee, Shadan Farasat, C Snehasish Mukherjee, Guntur Prabhakar, Mohit D. Ram., Abhijit Sengupta, Sanand Ramakrishnan, Avijit Roy, Ms. Rashmi Nandakumar, M/s. Corporate Law Group, Advs. for the appearing parties.

The Order of the Court was passed by

RANJAN GOGOI, CJI.

- D 1. In our order dated 23rd July, 2019 we had extracted paragraphs 7 and 8 of the Report of Shri Prateek Hajela, learned State Coordinator dated 10th July, 2019. After setting out the contents of aforesaid two paragraphs of the Report dated 10th July, 2019 we had deemed it appropriate to direct the learned State Coordinator to issue a public notice to enable all stake-holders to appear before this Court, in a representative capacity, to contest the prayers made by the learned State Coordinator in the aforesaid two paragraphs of the Report dated 10th July, 2019, if so desired. The said two paragraphs read as follows:
- F “7. Another matter which the undersigned wishes to bring to the kind attention is about such cases of descendants of D Voter (DV)/ Declared Foreigner (DF)/Cases Pending at Foreigners Tribunals/ Other Courts (PFT), whose one parent is DV/DF/PFT but the parent from whom the legacy is drawn for inclusion in NRC is not WP(C) 274/2009 4 DV/DF/PFT and is also found eligible for inclusion in NRC. The Hon’ble Supreme Court in their order of 2
- G July 2018 have ordered that those persons who are DVs or PFTs as well as their descendants are not to be included in updated NRC. As descendancy can be drawn from either of the parents, clarification appears to be required in cases where one of the parents is clear from all angles (not DV/DF/PFT and eligible for NRC inclusion) while the other parent is a DV or DF or PFT. It also appears that while deciding eligibility of descendants,
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provisions of Section 3(1)(b) & (c) of the Citizenship Act, 1955 may be important to be taken into account, though citizenship purely by birth and not by descendancy (Section 3(1)(a) is not eligible for inclusion in NRC. It is humbly felt that the substance of Section 3(1)(b) & (c) is that while determining citizenship of any descendant born up to 3 December, 2004, citizenship eligibility of any one of the parents suffices, while for those descendants born on or after 3 December 2004, citizenship eligibility of both the parents needs to be taken into account. From a conjoint reading of Hon'ble Supreme Court's order dated 2 July 2018 and the provisions contained in Section 3(1)(b) & (c) of the Citizenship Act, 1955, the following appears to be the best course of action:

- a. For any NRC Applications/Claimants, if parent/legacy person through whom eligibility is sought to be established is a DV or DF or PFT, then such persons will not be included in NRC irrespective of the status of the other parent.
- b. For those persons born before 3 December 2004, if the parent through whom legacy is drawn is not DV or DF or PFT and is found eligible for inclusion in NRC, but the other parent from whom legacy is not drawn is a DV or DF or PFT, then, such descendants may be included in NRC.
- c. For those persons who are born on or after 3 December 2004, they will not be included in NRC if any of the parent is DV or DF or PFT even if the parent from whom legacy is drawn is clear from all angles.

In this regard, it is submitted that the aforementioned matter was submitted by the deponent before the Judges Committee for opinion but the Committee advised to seek the order of the Hon'ble Court on the matter. As such the WP(C) 274/2009 5 above is submitted for kind approval.

8. That the deponent also would like to seek clarification on the matter of validity of orders passed under the Illegal Migrants (Determination by Tribunal) (IMDT) Act. Some of the applicants have submitted orders passed under IMDT declaring them as Indian. This matter was also referred by the deponent to the Judges Committee, however, the Committee advised the deponent to seek order from the Hon'ble Court on the matter. As such, directions

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A are sought about acceptability of orders of IMDT, whether declaring the person to be Indian or Illegal Migrant.”

2. Pursuant to our aforesaid order dated 23rd July, 2019, several Interlocutory Applications (I.As) have been filed contesting the action proposed under paragraph 7(a) of the said Report dated 10th July, 2019

B of the learned State Coordinator primarily on the ground that the said action runs contrary to the provisions of Section 3 (1)(a) of the Citizenship Act, 1955 (hereinafter referred to as “the Act”) which deals with acquisition of citizenship by birth in the case of every person born in India on or after the 26th day of January, 1950 but before the 1st day of July, 1987.

C 3. The aforesaid objection against the prayer made by the learned State Coordinator is sought to be fortified by reference to the following statement contained in the report dated 10th July, 2019.

D “It also appears that while deciding eligibility of descendants, provisions of Section 3(1)(b) & (c) of the Citizenship Act, 1955 may be important to be taken into account, though citizenship purely by birth and not by descent (Section 3(1)(a) is not eligible for inclusion in NRC.”

[underlining is ours]

E 4. We have heard the learned counsels for the parties as well as the learned State Coordinator who is present in Court in person. The purport and effect of the provisions of Section 3 (1) (a) and (b) of the Act is presently pending consideration before a Constitution Bench of this court in Writ Petition (Civil) No.311 of 2015. Reference to the

F Constitution Bench was made by the order of this Court dated 21st July, 2015 in the said Writ Petition (Civil) No.311 of 2015. The issue pending is whether the expression “every person born in India” would apply only to persons born to Indian citizens and whether the expression “either of whose parents is a citizen of India at the time of his birth” in S.3(1)(b) of the Citizenship Act, 1955 would apply to only a person who is born to

G parents one of whom is a citizen and the other a foreigner, provided he or she has entered India lawfully and his/her stay in India is not in contravention of applicable Indian laws.

H 5. The suggestions/prayers made in paragraph 7(b) and (c) of the Report dated 10th July, 2019 of the learned State Coordinator are in

consonance with the provisions of Section 3 (1) (b) and (c) of the Act and the Standard Operating Procedure (SoP) for disposal of claims and objections. Therefore, we find no reason to refuse leave to the learned State Coordinator to act in terms of the action proposed in the said suggestions/prayers made in Paragraph 7(b) and (c) subject to such orders that this Court may pass in Writ Petition (Civil) No.311 of 2015. Moreover, as suggested by the learned State Coordinator, the issue raised could be best decided by the Tribunal, if so required as and when appeals are filed.

6. This will bring the Court to a consideration of the prayers made/ suggestions offered by the learned State Coordinator in paragraph 7(a) of the Report dated 10th July, 2019 and the objections raised in this regard to the effect that the same overlooks the provisions of Section 3 (1) (a) of the Act.

7. Even though the contours of the provisions of Sections 3 and also 6A of the Act are pending consideration by the Constitution Bench of this Court in W.P.(C) No.562 of 2012 and W.P.(C) No.311 of 2015, and will be governed by such orders as may be passed, we may, at this stage, take note of the provisions of Rule 4A the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (hereinafter referred to as “2003 Rules”) which are set out hereunder.

“4A. Special provisions as to National Register of Indian Citizens in the State of Assam—

(1) Nothing in rule 4 shall, on and after the commencement of the Citizenship (Registration of Citizenship and Issue of National Identity Cards) Amendment Rules, 2009, apply to the State of Assam.

(2) The Central Government shall, for the purpose, of the National Register of Indian Citizens in the State of Assam, cause to carry out throughout the State of Assam for preparation of the National Register of Indian Citizens in the State of Assam by inviting applications from all the residents, for collection of specified particulars relating to each family and individual, residing in a local area in the State including the citizenship status based on the National Register of Citizens 1951, and the electoral rolls up to the midnight of the 24th day of March, 1971.

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- A (3) The Registrar General of Citizens Registration shall notify the period and duration of the enumeration in the Official Gazette.
- (4) The manner of preparation of the National Register of Indian Citizens in the State of Assam shall be such as specified in the Schedule appended to these rules.”
- B 8. Rule 4A of the 2003 Rules carves out special provisions in the matter of preparation of National Register of Indian Citizens in the State of Assam. The provisions of Rule 4A are a departure to the provisions contained in Rule 4 of the 2003 Rules which deals with preparation of National Register of Indian Citizens in the rest of the country. Rule 4A(2) specifically provides that the National Register of Indian Citizens in the State of Assam shall be prepared by inviting applications from all the residents calling for specified particulars relating to each family and individual including the citizenship status based on the National Register of Citizens 1951 and the electoral rolls upto the midnight of the 24th day of March, 1971. The aforesaid two documents have been supplemented by an additional list of documents, any of which can be utilized by a claimant in support of his/her claim for inclusion in the NRC that the claimant or his ancestor had been residing in the State of Assam on or before 24th March, 1971. The particulars of the documents included are as follows:
- E “LIST A -LIST OF LEGACY DOCUMENTS ADMISSIBLE
1. Extract of NRC, 1951
 2. Extract/certified copy of Electoral Rolls up to the midnight of 24th March 1971 (midnight)
- F 3. Land records including tenancy records of relevant period [upto 24th March, 1971 (midnight)]
4. Citizenship Certificate issued by competent authority (upto 24th March, 1971 (midnight))
- G 5. Permanent Residential Certificate issued from outside the State upto 24th March, 1971 (midnight) (which all should be got verified from the issuing authority by the Registering authority)
6. Refugee registration certificate issued upto 24th March, 1971 (midnight)
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- 7. Passport issued by the Government of India upto 24th March, 1971 (midnight) A
- 8. Life Insurance Corporation of India Insurance Policy (LICI) of relevant period upto 24th March, 1971 (midnight)
- 9. Any license/certificate issued by any Government authority of relevant period i.e. upto 24th March, 1971 (midnight) B
- 10. Document showing service/employment under Government Public Sector Undertaking upto 24th March, 1971 (midnight)
- 11. Bank/Post Office Accounts of relevant period i.e. upto 24th March, 1971 (midnight) C
- 12. Birth certificates issued by the competent authority upto 24th March, 1971 (midnight)
- 13. Educational certificate issued by Board/Universities upto 24th March, 1971 (midnight)
- 14. Records/processes pertaining to court upto 24th March, 1971 (midnight) D

Supporting Documents

- 15. Ration cards issued by competent authority with official seal and signature upto 24th March, 1971 (midnight) E

Note: Any of the documents specified in the above List of Documents would be accepted except Document mentioned against Sl. 15 which may be regarded as supporting document only.”

9. Rule 4A(4) also provides that the manner of preparation of National Register of Indian Citizens in the State of Assam will be as laid down in a separate Schedule appended to the 2003 Rules. Clauses 2 and 3 of the Schedule are extracted below to show that a specific procedure for entry into the NRC in the State of Assam is provided for.

“2. Manner of preparation of draft National Register of Indian Citizen in State of Assam-(1)(a) The District Magistrate shall cause to be published the copies of the National Register of Citizens, 1951 and electoral rolls up to the midnight of the 24th day of March, 1971, as available, in sufficient numbers and publish it and send the same to the Local Register of Citizens Registration G

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- A for wide circulation and public inspection in each village and ward.
 - (b) The Local Registrar of Citizen Registration shall select centrally located public place for display of the records and for issue and receipt of the application forms.
- B (c) The Local Registrar of Citizens Registration shall be the custodian of the records in the area under his jurisdiction and shall be responsible for its display during the office hours.
 - (2) The Local Registrar of Citizen Registration shall receive the filled up application forms, at the same place where the applications are issued, and issue the receipt thereof of the applicant.
- C (3) The Local Registrar of Citizen Registration, after the receipt of the application under sub-paragraph (3) shall scrutinize the applications and after its verification, prepare a consolidated list thereof which shall contain the names of the following persons, namely:—
 - (a) persons whose names appear in any of the (electoral rolls up to the midnight of the 24th day of March, 1971) or in National Register of Citizens, 1951;
 - (b) descendants of the persons mentioned in clause(a) above.”
- E “**3. Scrutiny of applications.-**(1) The scrutiny of applications received under sub-paragraph (3) of Paragraph 2 shall be made by comparing the information stated in the application form with the official records and the persons, of whom the information is found in order, shall be eligible for inclusion of their names in the consolidated list.
 - (2) The names of persons who have been declared as illegal migrants or foreigners by the competent authority shall not be included in the consolidated list:
 - Provided that the names of persons who came in the State of Assam after 1966 and before the 25th March, 1971 and registered themselves with the Foreigner Registration Regional Officer and who have not been declared as illegal migrants or foreigners by the competent authority shall be eligible to be included in the consolidated list;
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(3) The names of persons who are originally inhabitants of the State of Assam and their children and descendants, who are Citizens of India, shall be included in the consolidated list if the Citizenship of such persons is ascertained beyond reasonable doubt and to the satisfaction of the registering authority; A

(4) The Local Registrar of Citizens Registration may, in case of any doubt in respect of parental linkage or any particular mentioned in the application received under sub-paragraph (3) of Paragraph 2, refer the matter to the District Magistrate for investigation and his decision and Local Registrar of Citizens Registration shall also inform the same to the individual or the family; B

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

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

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

verify information relating to such person through inter-State correspondence, or, as the case may be, through inter-district correspondence.” E

10. An extract from the order of this Court dated 21.07.2015 will further clarify the issue with regard to original inhabitants of Assam as well as citizens who may have migrated from other parts of the country to Assam after 24.03.1971.

“Insofar as clause 3(3) of the Schedule appended to the Rules is concerned, we clarify that the expression “original inhabitants of the state of Assam” would include the “Tea Tribes” and the inclusion of such original inhabitants would be on the basis of proof to the satisfaction of the Registering Authority which establishes the citizenship of such persons beyond reasonable doubt. Any directions by the Registrar General of India in this regard shall also be followed by the Registering Authority. F

Insofar as clause 3(5) of the Schedule to the Rules is concerned, we clarify that Indian citizens, including their children and G

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- A descendants, who may have moved to the State of Assam subsequent to 24th March, 1971 would be eligible for inclusion in the NRC on adducing satisfactory proof of residence in any part of the country (outside Assam) as on 24th March, 1971.”
11. The special provision contained in Rule 4A of the 2003 Rules
- B read with the Schedule framed thereunder, for preparation of National Register of Indian Citizens in the State of Assam, had been necessitated on account of the provisions contained in Section 6A of the Act which are special provisions as to grant citizenship to persons covered by the Assam Accord. Under Section 6A(2) of the Act, all persons of Indian origin who had come to the State of Assam before 1st day of January, 1966 from the specified territory (defined as territories included in Bangladesh) immediately before the commencement of the Citizenship (Amendment) Act, 1985, including such persons whose names were included in the electoral rolls for purposes of the General Election to the House of the People held in 1967, and who have been ordinarily resident
- C in Assam since the dates of their entry into Assam are deemed to be citizens of India as on and from 1st day of January, 1966.
12. Person(s) who had entered Assam between 1st day of January, 1966 but before the 25th day of March 1971 and who has been ordinarily resident in Assam, upon being detected as a foreigner(s), was/were liable
- E to register himself/themselves in accordance with the Rules made by the Central Government. On such registration, under Section 6A(4) of the Act, such a person would have the same rights and obligations as a Citizen of India; but for a period of ten years he/she shall not be entitled to have his/her name included in any electoral roll.
- F 13. Section 6A of the Act which was inserted with effect from 7th December, 1985 by the Citizenship (Amendment) Act, 1985 (Act No.65 of 1985), thus, carves out a special category of citizens in the State of Assam. In view of the special category of citizens so created a special procedure came to be prescribed by Rule 4A of the 2003 Rules read with the Schedule thereto in the matter of preparation of National Register
- G of Indian Citizens in the State of Assam whereby the claims of all persons (including persons born in India) for inclusion in the NRC were to be related to the entries either in the National Register of Citizens 1951 or any of the electoral rolls prepared upto the midnight of the 24th day of March, 1971 or on the basis of any of the additional documents referred to earlier.
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14. The above said procedure was necessitated on account of a large number of persons who acquired citizenship by virtue of Section 6A of the Act without being actually born within the territories of India. Yet, as Section 6A of the Act confers citizenship on such person(s), a special procedure, indicated above, has to be devised for inclusion in the NRC in the State of Assam. This is what was agreed upon under the Assam Accord which led to the introduction of Section 6A in the Citizenship Act, 1955 with effect from 7th December, 1985.

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15. The entire NRC exercise having been performed on the aforesaid basis, the same cannot be now ordered to be reopened by initiation of a fresh exercise on certain other parameters that have been suggested on behalf of the intervenors/applicants on the strength of the provisions of Section 3(1)(a) of the Act.

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16. Insofar as the prayer of the learned State Coordinator with regard to maintenance of security of the NRC data is concerned, we direct that an appropriate regime be enacted on lines similar to the security regime provided for AADHAR data. Only thereafter, the list of inclusions and exclusions shall be made available to the State Government, Central Government and Registrar General of India. We further direct that only hard-copies of the supplementary list of inclusions be published at the NRC Seva Centers, Circle Offices and Offices of the District Magistrates of the State. We also direct that the list of exclusions to be published on 31st August, 2019 shall be published only on on-line and shall be family-wise.

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17. So far as the validity of orders passed under the IMDT Act are concerned, we direct that such cases shall be governed by the decision of the Gauhati High Court in *Anowar Ali v. State of Assam* reported in 2014 (3) GLT 500.

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18. We make it clear that subject to orders as may be passed by the Constitution Bench in Writ Petition (C) No.562 of 2012 and Writ Petition (C) No.311 of 2015, National Register of Citizens (NRC) will be updated.

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