

Community Identity and Citizenship: Dimensions of Citizenship and Theory of Justice

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Nationality vs. Citizenship

Making of the Indian Nation and Indian Citizenship: A Brief Background

- Gandhi's philosophy *Swaraj*, or self-rule, both in the spiritual and political realm, believed that the ideals of *Swaraj* can be achieved in modern times only in a united Indian nation or *Praja*.
- Unity In Diversity: "The Indian people, freed from the terrible sense of oppression and frustration, will grow in stature again and lose their narrow nationalism and exclusiveness. Proud of their Indian heritage, they will open their minds and hearts to other peoples and other nations and become citizens of this wide and fascinating world, marching onwards with others in that ancient quest in which their forefathers were the pioneers." (Nehru, *Discovery of India*, 1985(1946), 523.)
- Constitution bound the heterogeneous culture of India with one rule of law.

Citizenship in New Nation-state India:

- Challenges to define her people and bring them within a constitutional framework.
- Burden of Partition.
- Existing literatures invariably reflect on this burdened constituent moment and its unavoidable consequences in the process of defining citizenship in India.
- Historian Joya Chatterji observes that the process of defining citizens in India was complex, messy and often ugly, and that refugees (immigrants) were active agents in it. (Chatterji, Joya, South Asian History of Citizenship, (1946-1970), *The Historical Journal*, Vol.55, Issue 04/December 2012, pp. 1049-1071)
- The (illegal) migrants would make a constant reference to citizenship laws for their claims.
 - (Roy, Anupama, 2012, *Mapping Citizenship in India*, New Delhi: Oxford University Press; Sadiq Kamal, 2008, *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*, Delhi: Oxford University Press.)

- The Nationality question: Jayal observed, "...delinking citizenship with nationality was consistent...Since the Indian nation was not defined in terms of any ethno-cultural identity, nationality couldn't form the basis of claims for citizenship." However, in the following decades, this, in linking with the declination of dual citizenship and internal migration, would lead to nativist movements in states like Maharashtra and Assam. (Jayal, Niraja Gopal, 2013, *Citizenship and Its Discontents*, p.55.)

The case of (undivided) Assam and the Nationality question:

- Unlike the claims to citizenship by varied people from different castes, classes, religions and genders in other parts of India, Assam would orient *her claim to citizenship in the counter of nationalism*.
- Drawing critically from various observations made in existing literatures, this work argues that set in the periphery of the modern Nation-State of India and being at constant exposure to migration, Assam's unique case marks a significant trajectory in the citizenship discourse.
- Constant interpretation of the content of citizenship with several actors in play paved the way for new questions, which finally will **bring laws of citizenship closer to the people** of India and engage them in matters of legislature.

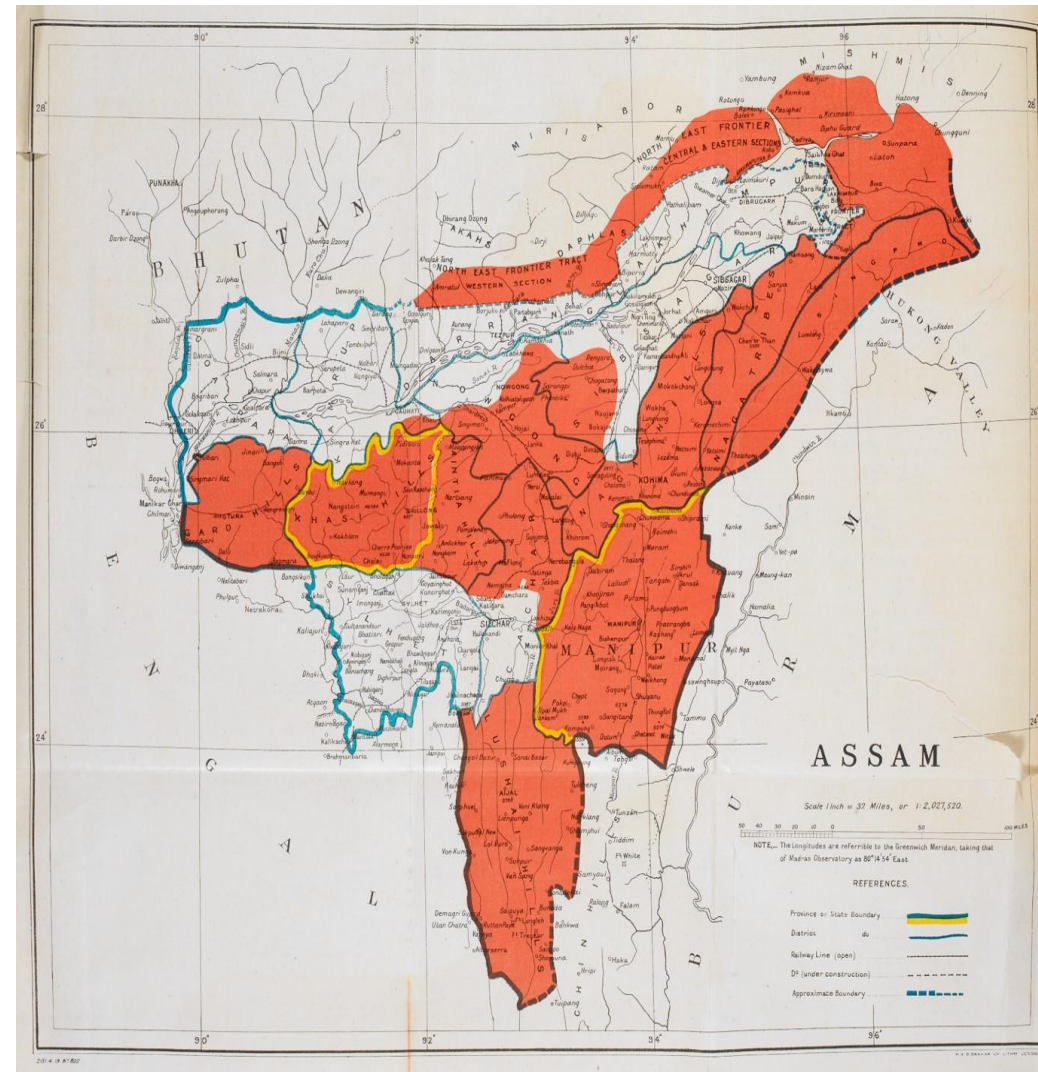
Often we hear that if India doesn't get united it wouldn't attain *Swaraj*. What is the meaning of it? How should the different provinces, different languages, different literary traditions and different religions get united? Should we form one nationality, one language, and one literary tradition by loosing all variances? Is it practically necessary for *Swaraj*?

- Jnananath Bora, *Asamot Bideshi* (Translation mine)

(Jnananath Bora, *Asamot Bideshi*, (Guwahati: Bani Printers, 1996), 1.)

Assam and Bengal in the Colonial Rule

In the initial years of colonial rule, Assam was a part of Presidency of Bengal. Until 1912 major areas of Assam and parts of its hill districts were moved around like puzzle pieces. In the course, Assam remained as a very close administrative associate of Bengal. Though many a time these overlapping areas made one province, yet these parts of Assam and Bengal maintained their separate spatial identities. This reflected more particularly in the context of migration.



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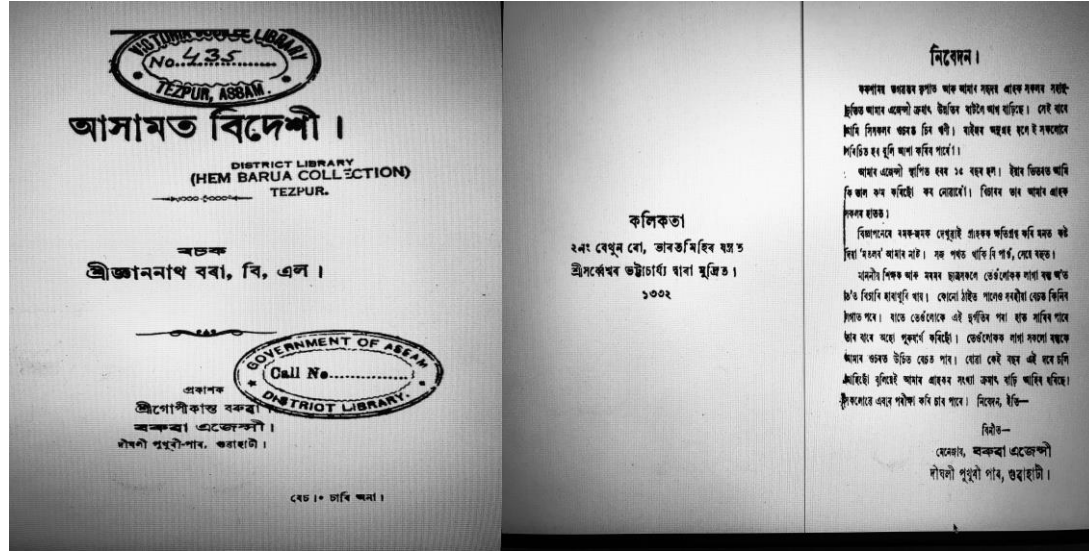
<https://blogs.nottingham.ac.uk/interwarconferencing/files/2016/10/Assam.jpg>

- The chapter introduces the development of the idea of membership and belongingness in Assam during colonial time. It discusses the gradual building up of the idea of membership in the colonial India drawing from vernacular writings. The first section discusses the development of the idea of citizenship in colonial India drawing from selected literatures. The second section attempts to situate Assam in this context and examines what parallels could be drawn.
- The chapter argues that the Assamese nationality question, which found expression in the vernacular writings, entangled certain crucial aspects like right over resources (land), economy (development) and the idea of others.

The primary vernacular texts referred:

Asamot Bideshi

Courtesy: archive.org

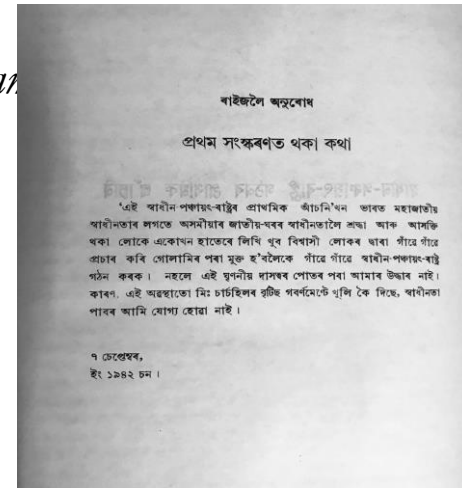
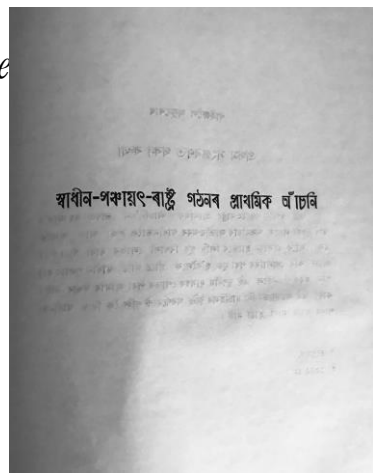


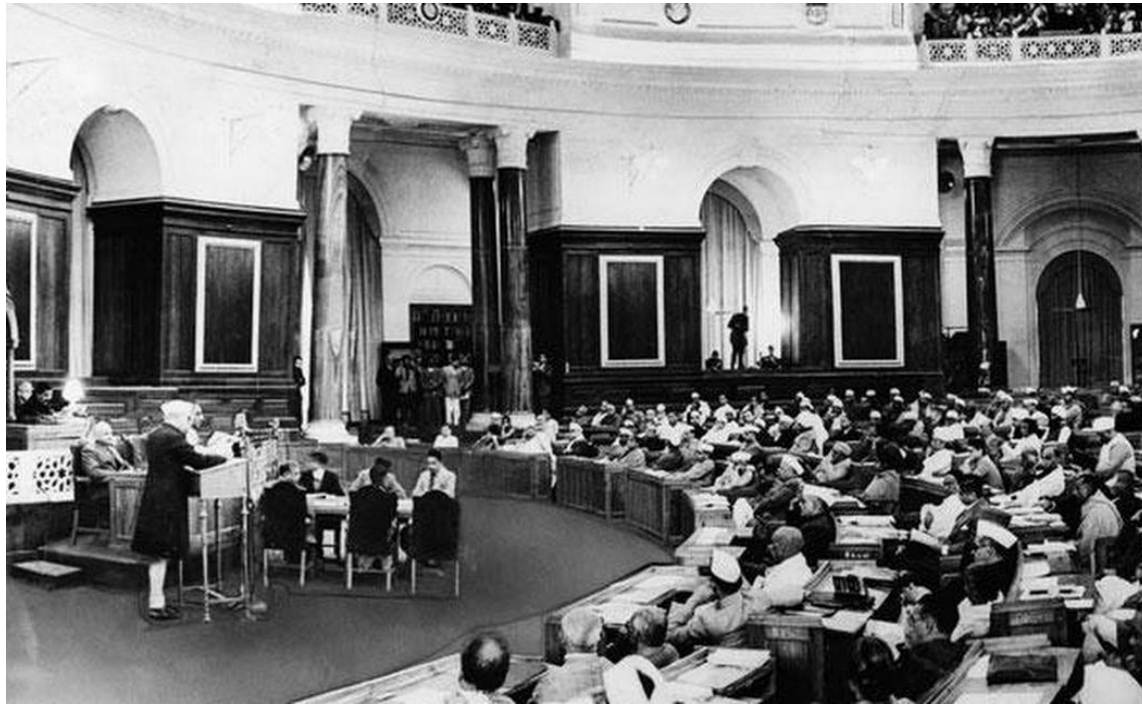
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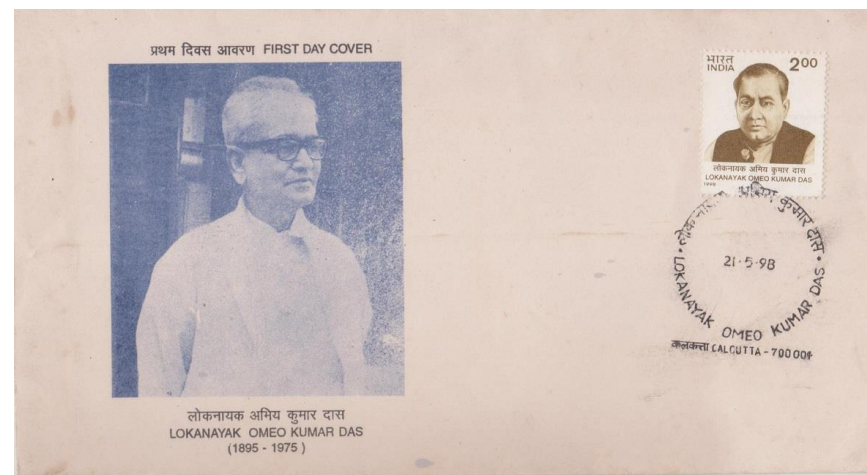
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Omeo Kumar Das places the question of Assam at the Constituent Assembly



Source-Internet

Omeo Kumar Das, member from Assam:

- “...migration and naturalization... these two subjects also should be put in the concurrent list or the language so altered as to permit the Province to have scope of action in these two subjects...We know how mass migration into Assam has altered the very complexion of the population. It has disturbed the relative distribution in population...” (Constituent Assembly Debates, 20 August 1947. pp. 1095, 1096.)

N. Gopaldaswami Ayyangar, member of the Union Powers Committee:

- ‘the Federation is responsible for maintaining the integrity of India, preserving its internal security, providing for its defense and so on. An authority charged with these heavy responsibilities should have absolute power to make laws controlling immigration and expulsion from the territory.’ (Report of the Union Powers Committee to the Constituent Assembly, *ibid*, pp. 379, 380, 381.)

- J.J. Nichols Roy, another member from Assam, a leading Khasi leader, also raised question of protection for the tribes in the hill districts of Assam.
- Roy insisted on making constitutional provisions for the protection of land owned by the tribes to protect their cultural identity.
- The tribal question and the protection of their culture were thereby carefully handled through the provisions of the Sixth Schedule of the constitution.
- Nichols-Roy, acknowledging Jawaharlal Nehru's effort in the matter, however argued that this provision had left other tribal people living in the valleys Debate on Sixth Schedule of Indian Constitution, which extends autonomous status to the tribal states of Northeast India. (J.J. Nichols-Roy, *Constituent Assembly India Debates*, 8 November 1948).



Source-Internet

Census of 1961

The 1961 census report recorded Assamese as the language of majority of the people, where (Muslim) immigrants marked Assamese as their mother tongue highlighting their need. Secondly it digressed the attention from the language issue towards the infiltration problem, highlighting Muslim immigrants.

What languages do the immigrants speak?

Census Report, 1961 noted: “because what they (Bengali Muslims immigrants) want is land in the valley, and if knowledge of Assamese language helps them to become ‘indigenous’, they do not mind about their mother tongue...”

What religion do the immigrants follow?

It also noted that the birthplace statistics was considered to be ‘fairly accurate’ in case of ‘displaced persons’ i.e. the (Hindu) refugees from East Pakistan and people from other parts of India. Muslims, on the other hand, were highlighted as the ‘liars’ who apparently provided false information about their place of birth during the census enumeration in 1961, but who earlier in 1951 actually rightly provided information about place of birth. The report remarked that response for religion generally returned accurately.

A New Citizenship Regime:

- Paranoia for (Muslim) immigrants.
- Executive measures of detection by the police.

Prevention of Infiltration from Pakistan, 1962

B.N. Mullik, chief of India's IB argued,

“Besides preventing future immigrants, there is a problem of the large number of infiltrators who have come and settled down. In several past instances it has been that while they have come and they are making a living in this country, their sympathy lies entirely with Pakistan. This can be illustrated by the attitude of the immigrants in Darrang district during the time of Chinese invasion in November, 1962 and Morajhar area of Nowgong district recently.”

- Between 1961 and 1971 around 3 lakh migrants were deported under the Foreigners' Tribunal and PIP scheme. However, a later estimate stated that of them 2.5 lakhs returned following the same infiltration route.

Interpretative Citizenship:

- Tribunals under the Foreigners (Tribunals) Order, 1964. The order aimed to set up the tribunals, akin to quasi-judicial bodies, to decide the nationality of alleged illegal immigrants.
- A new era of interpretation of citizenship Law:

“certified to be true copy of the N.R.C.1951” couldn’t be considered as a supporting proof to justify the claim of Indian citizenship. The Court further elaborated that the document, which was the ‘certified to be true copy of the N.R.C.1951’, issued by a local branch of the Jamiat-Ulema-e-Hind, Tezpur, was not a public document within the meaning of Section 74 of the Indian Evidence Act 1872.


Card no 2072 ANNEXURE -1

National Register of Citizenship Card
(Copy of the N. R. C. 1951)

Vill Srimari
Mouza Biswanath 5/2/68
Ps. Sookia
Dist. Darrang. [Assam]

House No.	House hold No.	Serial No	Name	Father's/Husband's Name
1	2	3	4	5
২৪	৩৩	১	বানি গাৰা (বানি)	বানি গাৰা
		২	হেমা (বানি)	বানি গাৰা
		৩	জামাল মাহমুদ	বানি গাৰা
		৪	জামাল মাহমুদ	বানি গাৰা

Certified to be True Copy of the N. R. C. 1951


 TEZPUR DISTRICT, JAMIAT-
 ULEMA-E-HIND.
 Bhoikhowa.

Signature

Collected from Gauhati High Court Library: Bhanbhasa Seikh vs. Union of India and others, 6 October 1969.

Little Nationalism and Citizenship: The Assamese Middle Class vs. the Government of India:



Source: Internet

Fresh Arrival of the Refugees

- Following the large-scale migration during the Indo-Pak war in 1971, grim situations in states like Tripura, Assam and West Bengal raised genuine apprehensions because of government's welcoming nature.
- Record on growth of population in 1971 census report exhibited Assam's extraordinary rate sparked a new political debate around the question of migration, this time more particularly around the (Hindu) refugees.

Popular Protest:

Soon, in 1979 everyday life was disrupted in Assam following demonstration by the student body, All Assam Student's Union (AASU), on 8 June 1979.

The Electoral Roll and Contested Citizenship:

- The claim that a large number of 'illegal foreigners' were enfranchised invited wide attention. Before the 1970s it was in 1962, after publication of census report of 1961, the claim about enfranchisement of illegal foreigners was made.
- The Election Commission of India's assertion that to identify a name of an alleged foreigner from the voter list, his/her citizenship status had to be established first.
- The Assamese middle class played a crucial role in publishing about illegal infiltration. The form 7 collected during the fieldwork in Jamugurihat, Sonitpur. The informant shared that local police personals distributed these forms along with copies of NRC to expedite the process of identification of illegal foreigners whose names were included in the voter list.

ফর্ম ৭
[১৩ (১) আৰু ২৩ বিধি চাওক]
নাম ভিত্তিক-বণত আপত্তি

নং: ১৩২/৭৪
পাঠক: ১৩২/৭৪
ব নাম ভিত্তিক নৈ আপত্তি কৰা: -
পূৰ্ব নাম: ১৩২/৭৪
পিতা/মাতা/স্বামীৰ নাম: ১৩২/৭৪
জন্মিক তা: ১৩২/৭৪
আবেদন: ১৩২/৭৪
গাওঁ: ১৩২/৭৪
সম্পূৰ্ণ ঠিকনা: ১৩২/৭৪
আপত্তিকারীৰ চহা/টিপ চহা: ১৩২/৭৪
স্বাক্ষৰ: ১৩২/৭৪
নং জন্মিক নম্বৰ: ১৩২/৭৪
ভোটাৰ চহা (সম্পূৰ্ণ নাম): ১৩২/৭৪

নোংৰা আন-বিধাৰত ওপৰত উল্লেখ কৰা কথাখিনি দাঁড়া বুলি নৈ খোৱা কৰিবো। এই সম্বন্ধে ভোটাৰ তালিকাত ভুলত মিছা বহলে মোৰ নাম ভাঙি কৰা হৈছে-

ইয়াৰ কোনো লোকে মিছা বুলি জনা বা বিপুল কৰা নাইবা দাঁড়া বুলি বিবাদ কৰিব নোৱাৰা বিৰুদ্ধে দিলে বা খোৱা কৰিলে তেওঁক ১০০০ টকাৰ মান অৱশিষ্ট আইনৰ ওপৰত অফাৰি দণ্ডবিধান কৰা হ'ব।

From Field Tezpur
Courtesy: Dibakar Saikia,
Jamugurihat, Sonitpur

Across the Table



Courtesy: <https://indianexpress.com/article/opinion/editorials/forty-years-ago-february-3-1980-assam-foreigners-6247877/>

Assamese Nationality Question:

- Solution to the problem of migration within the legal framework of Indian Constitution.
- The Assamese leaders pressed the matter of Constitutional safeguard to the Assamese culture.

Who is a Foreigner?

Mrs. Gandhi maintained that it was very difficult to define a 'foreigner' as several interpretations were being given to the word. Furthermore, "different sections were calling different people foreigners...People who have shared joy and sorrow with us,...voted in elections...who are here for long time couldn't be called foreigners. But if Assam is not prepared to accept them, we have to find other places for them."

Date of identification: 1951 vs. 1971

- The Assam leaders for 1951
- Indian government for 1971

The spaces of the bargain:

Both the popular protest and the discussion meetings provided the spaces for bargaining between the Assamese middle class and the Government of India.



Dilip Mahanta (ed.) *Best of Assam Movement: A Pictorial Assam* (Assam: Publication Board)

The Assam Accord

- The Accord's central premise was founded on the citizenship question. Clause 5 of the Accord dealt with it.
- It categorically defined the foreigners from Bangladesh on the basis of their entry dates and accordingly offered different modalities to treat them.
- The Assamese nationality question repeatedly asserted by the Assamese middle class over these years found expression in the Clause 6 of the Accord. It promised that constitutional, legislative and administrative safeguard, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social and linguistic identity and heritage of the Assamese people.
- This clause entangled the Assamese nationality question with citizenship.

The Citizenship (Amendment) Act 1985

- The Bill aimed to deal with the two categories of people, those who came prior to 1 January 1966 and those, who came between 1 January 1966 and 24 March 1971, which would be added to a new section 6(A) in the Act.
- Criticized mainly for scraping voting right of people who entered Assam from Bangladesh between 1 January 1966 and 24 March 1971.

P. Namgyal from Ladakh narrated an interesting story about how the process of deletion of the names of the identified foreigners was dubious in Assam. He said that at the time of scrutiny of the electoral rolls, the Asom Gana Parishad (AGP) people handed over the rolls to the students of sixth, seventh, eighth, ninth and tenth classes. From those list, the young students would delete the names of those who didn't appear to be Assamese. To give an example he said that, if the students saw Mukherjee or Banerjee against a name, they would delete it immediately thinking that the person was not an Assamese. Namgyal claimed that similarly names of the people from other parts of India like from Bihar, Uttar Pradesh were also deleted. He also claimed that deletion was being done without any scrutiny and around 22 lakhs complaints had been filed this way. (*Parliamentary Debate*, Fourth Session, Vol. X, Nos.1 to 10, 20 November 1985, 264)

- Many lawmakers feared that the aim to create specific categories of citizens would create divides among the 'universal we'; against the interest of minorities.

The question of Justice

- Following the ‘successful’ end of the Assam Movement, Various Popular movements started in North-east India, Including Meghalaya, that raised the question of Identity or nationality.
- Rise of KSU in Meghalaya
- Movement Against outsiders and foreigners

The Outcome and the Question of Justice

- While transitioning from colonial subjects to citizens of independent India, the contest between the right to citizenship and the rights of ‘indigenous’ people evolved into a contestation of rights over resources, including access to land.
- The roles of the regional/ethnic identity-based political mobilization, which sought to undo economic and political injustices resulting from the new nation-state-making process, changed the political discourse around citizenship’s entanglement with nationality.

Idea of Justice

- The word “justice” is derived from the Latin words *jungere* (to bind, to tie together) and *jus* (a bond or tie). As a bonding or joining idea, justice serves to organise people together into a *right* or *fair* order of relationships by distributing to each person his or her *due* share of rights and duties, rewards and punishments.
- Justinian’s precepts of justice were derived from the Greek philosopher Aristotle, who had defined justice as the treating of equals equally and of unequals unequally in proportion to their inequalities. He also distinguished three types of justice, namely, distributive justice, corrective justice and commutative justice (i.e. the justice of equivalence in the exchange of different kinds of goods).
- As a moral-political value, justice is interlinked with such other moral-political values as liberty, equality and fraternity. What makes a society or state just in a basic sense is its *right* or *fair* ordering of human relations by giving to each person her or his *due* rights and duties as well as *due* rewards and punishments. Justice does this by bringing about adjustments between the principles of liberty, equality, cooperation, etc.

Procedural Justice and Substantive Justice

- In discussions of justice, a distinction is drawn between procedural justice and substantive justice. The former refers to justice or fairness or impartiality of the processes and procedures through which a law or policy or decision is arrived at and applied. Substantive justice refers to justice or fairness of the content or outcome of laws, policies, decisions, etc.
- Needs Rights and Deserts

Theories of Social Justice

- Utilitarianism (Jeremy Bentham, JS Mill, Harriet Taylor Mill, Henry Sidgwick, Richard Hare, Peter Singer (Major contemporary thinkers-Effective Altruism is about doing good better))
- Deontological Theory of Justice/Egalitarian ToJ (Kant Rawls, Amartya Sen, Martha Nussbaum, Thomas Nagel, T.M. Scanlon, Thomas Pogge)
- Virtue Theory of Justice (Aristotle, Paul Ricoeur, Rosalind Hursthouse and others)
- Communitarian Theory of Justice (Sandel, Walzer, Charles Taylor etc.)

RAWLS'S LIBERAL-EGALITARIAN PRINCIPLES OF SOCIAL JUSTICE

- Rawls's principles of social justice are a corrective to the liberal-utilitarian principle of the greatest happiness of the greatest number
- Rawls recognises that liberal utilitarianism marked a progressive, welfare-oriented departure from classical liberalism's preoccupation with individualistic rights. Yet, in Rawls's view, utilitarianism is a morally flawed theory of justice. Its moral flaw is that it justifies or condones sacrificing the good of some individuals for the sake of the happiness of the greatest number. For utilitarians, the criterion of justice in a society is the aggregate sum of utility or happiness or welfare it produces and not the well-being or welfare of *each* member of the society.
- According to Rawls, a stable, reasonably well-off society is "a cooperative venture for mutual advantage." Along with cooperation, there is conflict among its members regarding their share of the burdens and benefits of social living. The purpose of the principles of social justice is to ensure that the distribution of the benefits and burdens of society is just or fair to all its members.
- Rawls argues that the distribution of the primary social goods among the members of a society is just if that distribution is made in accordance with the following principles of justice:

Principle 1 (Principle of Equal Basic Liberties)

- Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, a scheme which is compatible with the same scheme of liberties for all.

Principle 2

- i: Fair Equality of Opportunity
- ii: Difference Principle

- **The Social Contract Procedure**
- **The Basic Structure of Society**
- **Criticism**