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Examining the Legitimacy of the CAA and NRC within Human Rights Framework

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ABSTRACT

As the CAB, Citizenship Amendment Bill was presented at the centre, outbreaks and protests occurred, particularly in the North-eastern State, Assam, the most affected area on account of its location and the demographics of its ethnic minorities. Owing to the state's geographic location, it has seen the greatest inflow of refugees, and because it is viewed as a treasure trove of ethnic communities, there exists rapid growing fear that these communities would lose their identities as a result of adulteration. Since it violated the conditions of the 1985 Assam Accord, the outcome that was almost reached between the federal government, state governments, and the indigenous people of Assam, the law has also generated controversy in this area. Nonetheless, in terms of the human rights regime, the preservation of refugees' rights is crucial. Any state that upholds the concept of non-refoulement has given rise to customary international law or a pre-emptive standard from which deviation is prohibited, hence it is impossible for any state to refuse to fulfil its obligations to refugees. However, a state must consider both its own national security and the rights of its indigenous population, which are enshrined in international law. This tension has caused the bill to take up the role of a contentious issue, particularly in pertaining to the human rights regime, and it has given rise to two opposing schools of thought. One of them is inclined for protecting the rights/freedoms of refugees, while the other is directed towards protecting the rights/freedoms of people of Indigenous origin (IP) and maintaining national security.

Keywords: Citizenship Amendment Act (CAA); National Register of Citizens (NRC); Human Rights; Non-Refoulement; Refugee Protection

INTRODUCTION

A list of Indian citizens residing in Assam is intended to get listed in the register. The continued existence of migrants, also referred to as "bahiragat" or outsiders, has constantly been a contentious topic in this field for many years. After being a border state in self-governing, autonomous India and later a colonial province, Assam experienced waves of migration. After the Census was finished in 1951, the first National Register of Citizens was created. Significant developments have lately occurred as population swaps at the border by enabling the subcontinent's partition and communal riots. The administration of the state endures working to update the 1951 registry since 2015. Finding so-called "illegal immigrants" in the state is one of the exercise's stated goals; it is thought that many of them flooded into Assam following the 1971 Bangladesh War. Eight years after the war, in 1979, there was anti-foreign movement in the state. Ethnic nationalists in Assam



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asserted that undocumented immigrants had registered to vote and were robbing populations classified as indigenous of their ability to choose their own political destiny.

With the signing of the Assam Accord in 1985, the All Assam Students' Union's anti-foreign campaign came to an end. This agreement stated that those who moved to the state between 1966 and 1971 is likely to have their identities dropped from the electoral records and their ability to vote taken away for ten years, after that they would be possibly added back. Prior to the Bangladesh War, on March 25, 1971, everyone entering would be considered a foreigner and deported. Later, in 2016, a law amending the citizenship was introduced. The bill's goal is to grant citizenship to non-Muslims living in various parts of India who fled religious persecution in Bangladesh and Pakistan by traveling to India. After being approved, the bill became law. The Assamese indigenous people were against this action because they believed it would jeopardize their culture and language, which would put their very life in jeopardy. The issue is not merely legal but deeply socio-political, involving competing claims of refugee protection and indigenous rights.

Emergence of Two Distinct School of Thoughts

Two opposing schools of thought emerge in anticipation to the unveiling of the citizenship amendment bill: one is pro-bill and the other is against it. In terms of human rights/rights of everyone, proponents emphasized the right of a natural person to nationality, the major problem of statelessness, and the freedom for individuals to get accepted for asylum, while opponents emphasized the collective and cultural rights that are associated with culture of people of indigenous origin and the possibility which is likely to be an outcome, that granting citizenship rights would upset the demographics of the cultural communities and endanger their language and culture.

Supporting Arguments

The controversial measure is written with the rights of Bangladeshi minority under persecution in mind. These groups have nowhere place to move and are presented with an entitlement of life under the Indian constitution. Furthermore, although immigrants are the predominant subject matter of the Citizenship Act, section 6A does not specifically address immigrants who arrived after 1971; furthermore, the Foreigners Act, the Passport Act, the Citizenship Act, and even the Indian Written Constitution treat all immigrants as foreigners. Thus, the rights or we can say privileges to refugees provided in India are unincorporated by any domestic legislation, and international law will take its precedence over domestic law in this situation. It argues that humanitarian obligations must guide state action.

While India has signed various human rights treaties and conventions that include provisions for ensuring the safety of refugees, it is unlikely scheduled the ratification of Convention of 1951 and the 1967 Protocol on the Protection of Refugee Rights. As a signatory to international treaties, India is bound by law to uphold the principle of non-refoulment and protect refugees' human rights



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by enacting the requisite legislative and administrative initiatives under Articles 51(c) and 253 of the Indian Constitution. Particularly in Assam, indigenous groups fear that demographic shifts may undermine their identity and autonomy.

Obligation imposed by UNHCR

India has a moral and legal commitment to develop a positive collaboration with UNHCR by adhering to the 1951 UN Refugee Convention, since it serves as a notable member of the Executive Committee of the office of the United Nation High Commissioner for Refugees.

The high commissioner's jurisdiction also includes any other such individual who is present outside the ambit of their country of nationality, or whether they are non-national, their previous habitual residence, because they have a legitimate fear of being executed for the obvious race-related reasons, religious beliefs, nationality/Nationhood, or political ideology and are incapable of or unwilling enough to take any advantage of the protection offered by their country of nationality's government.

UDHR Obligation

India is bound by international law to safeguard the entirety of human rights of refugees as a notable member to the United Nations Human Rights Declaration and other fundamental human rights treaties. The nation state shall endeavour to develop respect for international law and treaty obligations in dealing with the organized people among themselves, as provided by Article 51(c) of the constitution.

The Universal Declaration of Human Rights (UDHR) and the UN Charter both mention "the principle that human beings shall enjoy fundamental rights and freedom without discrimination" in their preambles. In this sense, refugee law is fundamentally grounded in human rights/the rights of mankind. Refugees are directly accredited to the protection of universally recognized human rights. Among these are all the rights to life, immunity from torture and other cruel treatment, nationality, freedom of movement, the ability to leave and return to any country, including one's own, and the prohibition against being brought back against one's will. Every single person/individual has the right to apply for and be granted protection from persecution in other countries, according to Article 14 of the UDHR. This power cannot be used in prosecutions that truly result from non-political offenses or from actions that go against the goals and ideals of the UN.

“No one shall be conditioned to arbitrary arrest, detention or exile”

“Everyone has the right to a nationality” (Article 15 UDHR)

“Everyone has the right to freedom of movement and residence within the borders of each State” (UDHR, article 13; ICCPR, Article 12) Article 2 of the ICCPR accords individuals equal basic liberties and rights as citizens. It appears that discrimination/biasedness against refugees contingent on their social standing as such is completely prohibited by the fundamental principles



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of international human rights law, which include the right to equality/parity or equal treatment before the law, equal protection/fair assistance under the law, and non-discrimination. Furthermore, these laws would forbid discriminatory behaviour based on those traits/qualities that are frequently linked with refugee situations, including ethnicity, religious ideologies, national or societal background, and do not possess any property. Furthermore, in accordance with the numerous declarations, refugees are also entitled/apt to all guarantees offering protection against particular kinds of discrimination, such as discrimination/prejudicial thinking based on race or gender.

The result would be absolutely unfair to compel the migrants who are excluded or eliminated from this rule back to their homeland or home countries because they are victims of persecution there. The human rights regime protects people from being forcibly returned to areas where their lives, security, or dignity might be in jeopardy. Human rights legislation acknowledges a person's right to return or get back to home when they are outside of their nation.

The Indian judiciary has suggested in a majority of rulings that the terms of the Covenant and another relevant standard be given careful consideration when it comes to the return of refugees or asylum seekers. These cases establish that state power is not absolute and is subject to constitutional scrutiny.

Dependence on Fundamental Refugee Treaties

The basic refugee treaties can be relied upon easily, even though they haven't been acceded to, as long as there is no national legislation protecting refugees or clarity regarding the legal status of those recognized as refugees by the Indian government. Uncertainty also exists over the relationship between the Foreigners Act of 1946 and other laws controlling foreigners' entry and stay and the refugee status that the government grants.

"The provisions of the (1951) Refugee Convention and its Protocol can be relied upon when there is no conflict with any provisions in the municipal laws," recently noted Justice J.S. Verma, Chairman of the National Human Rights Commission.

Obligation to uphold International Law

The "Pacta Sunt Servanda" concept is emphasized in Article 51(c). The maintenance of India's connections with foreign nations is outlined in Article 51(b) and (d). India is that type of nation that values peace, and Article 51(a) itself states that it should advance global peace and security. Furthermore, every treaty a nation signs is obligatory on it, and the duties imposed by treaties must be high-headedly carried out by the nation in good faith, in accordance with the general pacta sunt servanda principle outlined in Article 26 of the VCLT. The fact that refugee law incorporates customary international law, pre-emptive standards, international legal instruments, and regional legal instruments demonstrate the world community's fair sensitivity for the entitlements of refugees.



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Currently, these regional statutory instruments are parties to 175 other countries, including India. Refugee law often provides protection to individuals who have departed from their country of origin. India currently hosts one of the greatest groups of refugees worldwide; its inability to provide asylum is not only incomprehensible, but it will also probably damage India's reputation abroad.

Constitutional Mandate

Article 37 of the Indian Constitution must be read in combination with any article falling under Part IV (Directive Principles of State Policy). Consequently, in the event that local/domestic and international law differ, the court must interpret and construe in a way that balances the interests of both laws.

Doctrine of Incorporation

A legal principle states that, generally speaking, a jurisdiction may enforce the norms of international law to the extent that those laws do not conflict with its local legal system.

“The comity of nations requires that the rules of international law may be accommodated in the municipal law even without express legislative sanctions provided they do not run conflict with the acts of parliament,” the Honourable Superior Court of India ruled in the case of *Gramophone Co. of India vs. Birendra Bahadur Pandey*. The doctrine of incorporation also acknowledges the view that, absent acts of conflict, the norms of international law are assimilated into national or domestic law and are regarded as part of it.

Judicial Activism

The Higher Court i.e. Supreme Court ruled in *Vellore Citizens Welfare Forum v. Union of India* that "there should be no difficulties in accepting these principles as part of our Domestic law once they are accepted as part of customary international law."

In the decisions of *Nilabati Behera v. State of Orissa* and *Vishakha v. State of Rajasthan*, the Hon'ble Superior Court attempted to make clear that, provided the two are not in conflict, domestic law may be supplemented by international conventions. The Indian Constitution's rights could be strengthened by the usage of international accords.

People's Union for Civil Liberties v. Union of India established the liberalized guidelines by ruling that, provided that they comply with Indian municipal law, peremptory regulations already enacted by the several states may be incorporated into it.

The court noted in *Gramophone Company of India Limited v. Birendra Pande* that international agreements must be honoured as long as they are not at odds with the spirit of national laws. In India, it has developed into a well-established position that if there is no contradiction between the two, then there is no need to pass separate domestic legislation to create international obligations. It stems from the idea that states have a duty to uphold international treaties and international customary law in accordance with domestic legislation. India has also ratified the Bangkok



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principles. "The person cannot be expelled if there is a possibility that he might be exposed to some danger on account of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion," according to Article III of the Bangkok Principles.

Constitutional Protection

Certain Fundamental Rights are majorly guaranteed to refugees by the Indian Constitution. Specifically, non-citizens, including refugees, have the same access to certain rights as citizens do: freedom of religion (Article 25), right to equality (Article 14), right to life and personal liberty (Article 21), protection from arbitrary arrest (Article 22), protection from conviction for crimes (Article 20), and right to petition the higher Supreme Court for the enforcement of such fundamental rights (Article 32).

In the absence of laws to control and legitimize refugees' presence in India, the Supreme Court has turned to Article 21 of the Constitution. In *NHRC v. State of Arunachal Pradesh*, the court held that the government of Arunachal Pradesh should protect the life, health, and welfare of Chakmas living in the State and that their citizenship application should be sent to the relevant authorities rather than being denied.

In several further instances, it was decided that refugees had the right to petition the UN High Commissioner for the award of refugee status and that they shouldn't be subjected to detention or deportation. The necessity of voluntary repatriation was stressed in *P. Nedumaran v. Union of India*, where the court determined that the UNHCR, as a global organization, had a duty to verify the refugees' voluntariness and therefore, the court was relieved from having to make a decision, if the consent was voluntary. Similarly, B. S. Chimni claims that the Supreme Court erred when it decided in *Louis de Raedt v. Union of India* that the Foreigners Act of 1946 gave the government unrestricted authority to deport foreigners and that the Constitution contains no such limitations.

Principle of Non-Refoulement

The core tenet of refugee protection—non-refoulement—which forbids sending someone back to a nation where they might face persecution—has become more and more essential. As many modern writers have claimed, non-refoulement has actually become customary international law or a *jus cogens* norm, meaning that it is now the preeminent standard of international law from which deviation is not allowed. The fundamental tenet of this principle corresponds with other treaties pertaining to the protection of human rights and refugees, alongside international customary law.

According to Article 38(1)(b) of the Rome Statute, "international custom, as evidence of a general practice accepted as law," serves as the foundation for legal decisions and references. The following summarizes the position of customary international law in the *Nicaragua v. United States of America* case: "The Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule



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should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule, in order to deduce the existence of customary rules." The relevance of a state's behaviour is to strengthen rather than to undermine a recognized rule when it violates it and then claims that the rule itself contains exceptions or justifications for its actions. Whether or whether the state's actions are justified, this remains true.

The International Court of Justice declared that it will adhere to international law's customary rules:

"With regard to general or customary law rules and obligations, this cannot be the case because, by definition, they must have equal force for all members of the international community and cannot be the subject of any right of unilateral exclusion exercisable at will by any one of them in its own favour. For the most part, this is because, with regard to them, some faculty of making unilateral reservations may, within certain limits, be admitted."

Furthermore, emphasizing the essential attributes of the non-refoulement principle, UNHCR took an activist stance in defending the rights of refugees. It was stated that Article 33 of the 1951 Convention and other human rights accords expressly accepted the "prohibition to return" as a component of customary international law. Therefore, because of its normative nature, it is argued that UNHCR agrees insofar as the concept of non-refoulement has become the customary international law.

Indian Legal Framework

Courts have attempted to liberalize the rights of equality and the right to life and personal liberty, respectively, under Articles 14 and 21 of the Constitution of India, 1952, which apply to both citizens and non-citizens.

Significantly, the Gujarat High Court[xxx] recognized non-refoulement under Article 21 in the case of *Ktaer Abbas Habib Al Qutaifi v. Union of India & Ors.* Since refugees are covered by Article 22 of the Indian Constitution, they are also entitled to protection from unjustified arrest. Furthermore, in accordance with Article 25 of the Constitution, they are free to exercise their faith. One further aspect for which India takes accountability is its membership in the United Nations. UNHCR emphasizes the need of providing international refugee protection based on humanitarian law and human rights. Despite not being a signatory to the 1951 Convention, India assumes responsibility for its actions under Article 51 of the Constitution. Article 51(c) of the Indian Constitution states that "the State shall aim to strengthen the international law and the treaties" in reference to the "promotion of international peace and security." India should therefore adhere to the customary international concept of non-refoulement because of its standing in international jurisprudence.

The constitution makes it clear that Parliament may pass legislation pursuant to Article 253 in order to incorporate international treaties, accords, or conventions into local law. This authority



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must be used in accordance with List I25, Entry 14, which specifies the Union Legislature's legislative authority regarding the implementation of treaties, agreements, and conventions with foreign nations. These measures must be taken with the intention of strengthening international law and treaties.

Article 14 of the 1948 UDHR was also highlighted by the Pre-eminent Court of Honor in the *Khudiram Chakma v. State of Arunachal Pradesh* case. The court ruled that if there is a possibility of persecution, after filing for asylum in one state, a person cannot be sent back to their original state. By delaying the refoulement of the Burmese refugees from the Andaman Islands, the supreme court advanced the interests or concerns of the refugees and requested that their status be verified. In addition, if a person's status is still being determined in the current country, they cannot be transported back to their country of origin if they wish to seek shelter elsewhere.

Violence of Principle of Natural Justice

One argument made in favour of non-refoulement is that the natural justice principle shouldn't be broken. Therefore, they shouldn't be deported based on arbitrary standards. Speaking of alignment, the Indian government has consistently acted in the refugees' best interests. If refugees are afraid in their home country or place of origin, their mere presence in the nation does not grant anyone the power to force them to return.

Counter Arguments

The "Amendment vis-a-vis Assam Accord" addresses worries that the Assam Accord and the special citizenship regime that Assam was granted under Section 6A of the Citizenship Act 1955 may be rendered unconstitutional by the Citizenship Amendment Act, 2016.

The act is specifically accused of nullifying the 1985 Assam Accord, which called for the provision of "constitutional, legislative and administrative safeguards" to "protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese" additionally to the lawful detection, removal, and expulsion of "foreigners who came to Assam on or after March 25, 1971." The Assamese people's culture, social identity, and language legacy shall be protected, preserved, and promoted through the provision of constitutional, legislative, and administrative safeguards, as may be necessary, according to Clause 6 of the Assam Accord. Foreigners who arrived in Assam on or after March 25, 1971, are to be detected, erased, and ejected in compliance with the law, according to clause 8 of the Assam accord. It will be necessary to take prompt action to remove these alien nationals. By providing citizenship to non-Muslims, the amendment bill breaches both article 8 and clause 6, as well as the Assam accord. Section 6A of the Citizenship Act, which was derived from the Assam Accord's provisions and stipulates the 10-year political disenfranchisement of all persons of Indian origin who entered Assam from Bangladesh between 1 January 1966 and 25 March 1971 and are identified as "foreigners" by the established Foreigner



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Tribunals, is violated by the Citizenship Amendment Act by treating individuals from the six communities as legal migrants.

In the case of *Union of India vs. Assam Sanmilita Mahasangha*, the Superior Court upheld Section 6A's validity. To ensure that the required actions are carried out to prevent unlawful entry into the country from Bangladesh, the Superior Court of India issued suitable directives to the Union of India and the State of Assam for the implementation of the accord; to locate and expel any unlawful immigrants who entered the State of Assam after 25.3.1971, as well as to identify foreign nationals who fall into the stream from 1.1.1966 to 24.3.1971 in order to conveniently implement the terms of Section 6(3) & of the Citizenship Act.

How the Citizenship Act Undermines the Purpose of the NRC?

The Assam Accord stated that people who settled in the state after March 24, 1971 would be weeded out and their citizenship rights would be revoked. However, according to the amended bill, the minimum residency period for citizenship will be reduced from 12 years under current law to 7 years. The first draft of the list for detecting immigrants was issued on July 30, 2018.

The sole criterion for inclusion in the NRC is citizenship under the Indian Constitution and the Citizenship Act, including Section 6A. Citizens who are original inhabitants/residents of the state of Assam, and also those who are not, are held to be eligible for inclusion in the NRC.

In the case of *Sarbananda Sonowal v. Union of India and Anr*, The Supreme Court directed the Union of India and the State of Assam to take effective steps to prevent illegal entry into the country from Bangladesh, to detect foreigners born between 1.1.1966 and 24.3.1971 in order to give purpose/effect to the provisions of Sections 6(3) and (4) of the Citizenship Act, and to detect and deport all illegal migrants who arrived in the State of Assam after 25.3.1971. The judiciary further urged the union to take all necessary steps to complete the barrier (double coiled wire fencing) in those regions of the Indo-Bangla border (including Assam) that are currently incomplete.

Violation of Rights of People of Indigenous Origin

Assam is the home of ethical minorities and communities. Assam's total population in the 2001 Census was 26,655,528. Scheduled Tribes (STs) account for 3,308,570 people, or 12.4% of the state's total population. Between 1991 and 2001, the state's ST population increased by 15.1%. There are twenty-three (23) notified STs in the state.

The United Nations Declaration of Minority Rights 1993 anticipates that the continuous encouragement and contentment of the advancement of minority rights, including those related to race, religion, and language, is essential to the development of society and the community at large, and inside an external structure founded on the rule of law or a democratic system or spirit of law, would encourage peoples and states to work together and become more friendly.



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Assam's ST population is largely rural, with 95.3% living in rural areas and only 4.7% in cities. Dimasa has the biggest urban population of the eight major STs, at 10.4%, followed by Mikir (8.3%). Miri, on the other hand, has the lowest urban population, at 1.8%.

Indigenous peoples, also known as indigenous peoples, aboriginal peoples, or native peoples, are ethnic groups who were the first settlers in a certain territory, as opposed to those who inhabited, occupied, or colonized the area more recently. Groups are frequently regarded as indigenous when they keep customs or other features of an early culture linked with a certain place.

Indigenous people are defined in ARTICLE 1 of ILO CONVENTION 16 as tribal people in sovereign nations whose social or societal, cultural, and economic or financial conditions separate them from every other group within a global society, and whose status is determined wholly or partly by its own peace, values, traditions, or practices, or by particularly important rules or regulations.

Because indigenous peoples' sovereignty, economic well-being, and access to the resources on which their cultures rely are frequently threatened, international organizations such as the United Nations, the International Labour Organization, and the World Bank have established political rights in international law.

United Nation Declaration on Rights of Indigenous People (UNDRIP)

The United Nations Declaration on the Rights of People who are of indigenous origin (UNDRIP) is an international instrument, globally oriented endorsed by the United Nations on September 13, 2007. The UNDRIP protects collective rights/group rights that may not be addressed and mentioned in other human rights charters that place emphasis on individual rights, as well as Indigenous people's individual rights. In *Orissa Mining Corporation Ltd. v. Ministry of Environment and Forest Court*, the court acknowledged the customary and cultural rights of people of indigenous origin in Orissa's Kalahandi and Rayagada districts. The three-judge bench extensively referenced to international laws for violations of tribal rights, including primitive tribal tribes and the dalit community, and proceeded to observe:

Several international conventions have addressed indigenous people's customary and cultural rights.

- ILO Convention on people of indigenous origin and people of tribe origin, 1957 (No. 107).
- India has only signed the ILO Convention (No. 107), the Indigenous and People of tribe origin Convention (1989), and the United Nations Declaration on the Rights of people of indigenous origin(2007).

Self Determination

Article 3 declares that people of indigenous origin have the right to self-determination. Because of this right, they have the freedom to choose their political status and pursue their development related to economy, society and culture.



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Individuals of indigenous descent possess the entire advantage or entitlement to preserve and enhance their unique political, juridical, and socioeconomic establishments, while retaining the capacity to actively participate, if they so desire, in the governmental, financial, interpersonal, and cultural affairs of the state.

Cultural Rights

People of indigenous descent enjoy and preserve their cultural, social norms and customs is guaranteed by Article 11. This includes the right/privilege to protect, preserve, and develop cultural manifestations from the past, present, and future, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies, visual and performing arts, and literature.

Duty of the State

Individuals who identify as indigenous have the freedom to live free from coerced assimilation or cultural erasure. States are required to establish efficient systems for both preventing and remedying the following: (a) any action intended to cause them to lose their identity as a distinct people or their cultural values; (b) any action intended to cause them to lose their lands, territories, or resources; (c) any kind of forcible population transfer intended to violate or undermine any of their rights; and (d) any form of compelled integration or assimilation in whatever manner; (e) any type of promotion intended to promote or provoke racial or ethnic discrimination against them.

Rights

Native Americans i.e. people of indigenous origin have the right or freedom to preserve and advance their cultural practices. This encompasses the privilege to defend, conserve, and advance cultural expressions from the past, present, and future, including ancient and archaeological finds, artifacts, designs, rituals, technologies, literature, and the visual and performing arts. For cultural, intellectual, religious, and spiritual property taken without the indigenous peoples' free, prior, and informed consent or in violation of their laws, traditions, and customs, states are required to provide redress through efficient mechanisms, such as restitution, developed in partnership with them.

Article 26 says:

People of indigenous origin have the right to lands, territories, and assets that they have formerly owned, occupied, used, or obtained.

Such type of people has the right and freedom to own, use, develop, and govern the lands, territories, and resources that they hold through traditional ownership or other traditional occupation or use, as well as those things they've acquired via other means.

States must provide legal recognition and protection for these areas, territories, and resources. Such acknowledgment shall be carried out with the utmost regard for the relevant indigenous people's customs, traditions, and land tenure systems.

Article 32



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It is the right of people of indigenous descent to set goals and plans for the use and development of their lands, territories, and other resources.

ICSCER

Article 1

- All persons have the right to self-determination. Because of this right, they have the freedom to choose their political status and pursue their economic, social, and cultural development.
- All people have the right to freely dispose of their natural wealth and resources for their own purposes, without regard for any duties emerging from international economic cooperation based on the principle of mutual benefit or international law. In no case may a people be denied of their own means of survival.
- The States Parties to the present Covenant, including those responsible for the administration of Non-Self-Governing and Trust Territories, shall promote and respect the right to self-determination, in accordance with the provisions of the United Nations Charter.

Article 9

- The States Parties to the present Covenant respect everyone's right to social security, including social insurance.

Article 27

- In states where there are ethnic, spiritual, or geographical minorities, people who belong to these groups cannot be denied the freedom to practice and enjoy their own religion, enjoy their own culture, or speak and use their native tongue in the same manner as other members of their community.

ICCPR

In states having ethnic, religious, or linguistic minorities, individuals from these minorities have the freedom to practice and enjoy their own religion, enjoy their own culture, and communicate with other members of their community in their own tongue, as stated in Article 27 of the Covenant. The Committee notes that in addition to the other rights guaranteed to them by the Covenant as persons, this article establishes and acknowledges a right granted to members of minority groups.

National Application of International Laws

Promotion of International Peace and Security

The State shall endeavour to -

To promote international peace and security, states should maintain equitable and honourable relations, uphold international law and treaty responsibilities, and use arbitration to settle international disputes.



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Clause (c) of this Article requires India to follow international law.

A combined reading of this with Part III of the Constitution helped India's judiciary create human rights and environmental jurisprudence. Clause(d) of the Article states that "international disputes shall be settled through arbitration."

In *Apparel Export Promotion Council v. A.K. Chopra*, it was stated that domestic courts have an obligation to give due regard to international conventions and norms when construing domestic laws, particularly whenever there is a gap in domestic law and there is no disagreement between them. Any international treaty that is not conflicting with the fundamental rights and in harmony with its spirit shall be read into those provisions, such as Articles 14, 15, 19, and 21 of the Constitution, to broaden the meaning and content thereof and to further the purpose of constitutional guarantee.

Article 51, as previously stated, must be read alongside Article 253 of the Constitution.

If Parliament passes legislation that conflicts with international law, Indian courts must apply Indian law rather than international law. However, in the absence of contrary legislation, municipal courts in India will obey the rules of international law.

Article 51(c) of India's Constitution specifies that the state must strive to promote respect for international law and treaty obligations. As a result, this country's courts adhere to international law rules that are not in conflict with domestic law. This is a circumstance in which there is an international treaty that India is not a signatory to, or general rules of international law are made applicable. Interestingly, in instances such as *G Sundarrajan v Union of India (2013)* and the *Transgender case*, the court has even referred to international accords that are consistent with Indian law but India has not ratified. In *Vellore Citizens' Welfare Forum v. Union of India, 1996*, the court stated that it is not difficult to accept CIL as part of the Indian legal system, as long as it does not violate local law. Although both treaties and CIL impose equally enforceable responsibilities on a country, unlike treaties, determining if a standard has attained CIL status is often a challenging task. Only when nations largely adhere to a rule because they felt obligated by law, it becomes part of CIL. With regard to the idea of non-refoulement, it is true that it has been regarded as customary international law; nonetheless, it's important to always take both views into account, which means that refugees can be sent back if there is a genuine threat to national security and public order. In the case of *Ananda Bhavani Geethanando, Ananda Ashram, Pondicherry v. Union of India*, the court ruled that if the presence of individuals constituted a threat to national security, their deportation order without a hearing will not be regarded a violation of natural justice principles.

Conclusion

The legitimacy of the CAA and NRC cannot be assessed solely through the lens of state sovereignty. While the state retains the authority to regulate citizenship and protect national



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security, such power is constrained by constitutional guarantees and international human rights obligations. The principle of non-refoulement, now widely regarded as customary international law, limits arbitrary deportation and ensures protection against persecution.

Simultaneously, the concerns of indigenous communities—particularly in Assam—are legally valid and demand robust safeguards. Therefore, the challenge lies not in privileging one set of rights over another, but in developing a harmonized legal framework that accommodates both.

A constitutionally compliant and internationally consistent approach requires that state action be guided by proportionality, non-discrimination, and judicial accountability, rather than absolute sovereignty. Only through such a balanced framework can India reconcile humanitarian obligations with its legitimate interest in preserving cultural identity and national integrity.

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