

THE INDIGENOUS V. THE ALIEN: THE CHAKMA & HAJONG ISSUE OF ARUNACHAL PRADESH

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Introduction

The phenomenon of migration has existed for the entire timeline that mankind has existed. It has been an intrinsic part of evolution, playing a significant part in influencing the dynamics of the demography of regions all over the world.¹ Not only does this phenomenon affect the demography, its consequences also invariably involve the conditions of the communities which are parties to it, be it the migrants or the hosting community. This ongoing phenomenon and its effects have over the years in various instances raised issues and concerns in the study of international law and policy.²

One such instance of migration is the mass exodus of the Chakma-Hajong refugees from the Chittagong Hill Tracts of Bangladesh (erstwhile East Pakistan), who have since then been an ethnic group in the search of an identity. They have gone from rejected people pushed into the periphery of a newly created nation-state to unwanted migrants in the edges of civilisation of the neighbouring nascent nation which was already struggling with its own issue of integration.

¹M. Amarjeet Singh, *A Study on Illegal Immigration into North-East India: The Case of Nagaland* (2009), (29 December 2016), Institute for Defence Studies and Analyses 7 <https://idsa.in/system/files/OccasionalPaper8_NagalandIllegalImmigrationl.pdf> .

²Ibid.

Therefore, this paper makes an in-depth study of the Chakma-Hajong refugee issue of Arunachal Pradesh, highlighting the developments that it has seen in the recent past. The analysis attempts to bring forth the various perspectives of the stakeholders. Although before probing into these viewpoints, the essay firstly, studies the issue of migration that has existed between India and Bangladesh which has been the point of inception of the Chakma-Hajong issue. Secondly, a comprehensive enquiry has been instituted into the events of the conflict itself which is followed with a discourse into the perspectives of the communities whose fates are at stake-the Chakma-Hajong refugees and the indigenous people of Arunachal Pradesh-which inherently lend a necessary perspective into the conflict. Lastly, the essay ends with an interrogation of the way forward into the tussle discussing the probability of the granting of a 'limited citizenship' and the various opinions that have been expressed on its repercussions.

The Refugee Struggle between India and Bangladesh

Before delving into the essentials of the broader picture of the Chakma-Hajong issue, it is imperative to understand the dynamics of the refugee affair that has existed between the two countries of India and Bangladesh for a long time; even preceding the period of Independence.

The erstwhile East Pakistan, while still a part of undivided Bengal Province, was an integral part of pre-independence India. Even during this time there was a flow of population that was seen from this part of the country to another for various reasons such as economic (trade), cultural, social and ethnic.³ This movement of people only became an issue of concern post partition in 1947, when this area was annexed into the territories of Pakistan and was termed East Bengal till 1956 and then as East Pakistan from 1956 to 1971.⁴

³Chirantan Kumar, 'Migration and Refugee Issue between India and Bangladesh', (2009) 1 Scholar's Voice: A New Way of Thinking 64, 64, 67.

For further reading: K.C. Majumdar, J.N. Chowdhury and G.C. Phukan, *The Land Laws of Assam*, (Assam Law House, 2nd ed 2015) vol 2.

⁴Ibid.

The problem of migration from Bengal to India was initially the creation of the British East India Company, who were the first to bring in Bengali Muslim peasant settlers from Bengal into the Brahmaputra Valley in the beginning of the 19th century.⁵ The policies that were brought in by the British in Assam for its 'development', due to its position as a frontier state to India, also attracted large number of settlers from all over the country.⁶ People in search of their own piece of land migrated from the densely populated East Bengal to the newly discovered world of Assam where land was abundant.⁷

The Partition of Bengal in 1905 showed itself as the epitome of the British's divide and rule policy and was one of the main events which gave rise to forced migration of a large number of people from East of Bengal to Assam.⁸ The division of Bengal into two communal halves: Hindu and Muslim Bengalis eventually gave rise to communal riots for and against the partition in various parts of province. The unfolding of these events left a deep sense of insecurity between the Hindu population in East Bengal, leading to the migration of this section of the population, particularly the elite class, into western part of Bengal and Assam.⁹

The partition of undivided India and the consequent birth of Pakistan cropped up as the next event which led to massive rise in migration from erstwhile East Pakistan into India. Although Jinnah, in his first speech in front of the constituent assembly of Pakistan, had assured that there would be no difference between the treatment of the Muslims and the Hindus and other minorities under the Pakistani governance, this policy was overthrown by the ruling elite after his death resulting in massive communal riots in East Pakistan in 1950.¹⁰

⁵E.N. Rammohan, 'Bangladesh- A Problem State', (2006) 7(2) Dialogue 33, 33.

⁶Kumar, above n 9. See also: Mayumi Murayama, 'Borders, Migration and sub-Regional Cooperation in Eastern South Asia', (2006) 41(14) Economic and Political Weekly, 1355

⁷Ibid.

⁸Dalem Ch. Barman, 'Forced Migration in South Asia: A Study of Bangladesh', in Omprakash Misra (ed.) Forced Migration in the South Asian Region: Displacement, Human Rights and Conflict Resolution (Centre for Refugee Studies, Jadavpur University in collaboration with Brookings Institution-SAIS Project on Internal Displacement, 2004) 161, 161.

⁹Ibid.

¹⁰Ibid, 162, 163. See also: Abul Barkat et al, Political Economy of the Vested Property Act in Rural Bangladesh, (Association of Land Reform and Development, 1997) 19.

Pakistan's emergence as a new nation marked the movement of a huge population into India under the tags of legality and illegality.¹¹ Even though the migration of people from Bengal was not a new phenomenon, it increased by several folds from 1947 to 1971 where over 4.7 million Hindus had made their way into Indian territories seeking refuge.¹² With the outbreak of the Bangladesh liberation war, millions of East Pakistanis sought refuge in India, with a large number of them setting base in Assam. Even after the liberation, a large section of these refugees did not return to Bangladesh and assimilated themselves as permanent settlers in the region. On the contrary, with the end of the war and the worsening economic and communal condition in Bangladesh, there was a continuous inflow of Bangladeshis in the 1970s.¹³

Even though the policies of the newly formed Bangladeshi government under the leadership of Sheikh Mujibur Rehman had shown streaks of secularism, the situation changed entirely after he was assassinated in 1975.¹⁴ The Islamic roots in the country deepened with the strict military regime and strategies adopted by the government which again sowed feelings of insecurity in the minds of the Hindu minority which were further intensified

Muhammad Ali Jinnah, in his first Presidential Address in front of Constituent Assembly of Pakistan, on Aug. 11, 1947 pledged the protection of all the majority and minority communities of that found themselves living within the territories of Pakistan post independence. His words, 'You are free; you are free to go to your temples, you are free to go to your mosques or to any other place or worship in this State of Pakistan. You may belong to any religion or caste or creed-that has nothing to do with the business of the State.' established his intention of building Pakistan as a secular nation, although, his vision was disregarded after his death.

For more information: Muhammad Ali Jinnah, 'First Presidential Address to the Constituent Assembly of Pakistan' (Speech delivered at the First Constituent Assembly 11 August, 1947) <http://www.columbia.edu/itc/mealac/pritchett/00islamlinks/txt_jinnah_assembly_1947.html>

See also: G. Allana, *Pakistan Movement Historical Documents*, (Dept. of International Relations, University of Karachi, 1967) 407-411.

¹¹Kumar, 'Migration and Refugee Issue between India and Bangladesh', above n 3, 69.

¹²Pranati Datta, 'Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study', (2004) 9 (2) *The Qualitative Report*, 337.

¹³Partha S. Ghosh, *Migrant, s Refugees and the Stateless in South Asia* (Sage Publication India Pvt. Ltd., 2016) 92.

¹⁴Kumar, 'Migration and Refugee Issue between India and Bangladesh', above n 3, 69.

with the passing of legislations like The Enemy Property Act, which came into force in 1965, but had now become a powerful instrument that worked as a primary cause for persecution leading to migration.¹⁵

A United Nations Survey report which compared the census records of Bangladesh from 1971-81 and 1981-91 and the increased growth rate of population in the North-Eastern states of India, directed towards the concern of "missing people" of Bangladesh.¹⁶ This indicated towards the illegal infiltration of missing Bangladeshi citizens into the neighbouring countries, predominantly India. The minorities in Bangladesh, for reasons such as religious persecution and political pressure, have fled the country and tried to seek refuge in India; although there also has been an influx of majorities of Bangladesh (the Muslims) who for various economic reasons have entered illegally into India.¹⁷

The two countries share a boundary which stretches up to 4,096 kilometre.¹⁸ This border, drawn by Sir Cyril Radcliffe, divided the country in terms of religious lines which led to the formation of India and Pakistan giving birth to a perpetual state of disturbance along these man-made

¹⁵ Ibid.

The Enemy Property (Custody and Registration) Order II of 1965 (Pakistan), The Enemy Property Act, 1965, passed by the Government of Pakistan, was aimed at appropriation of land owned by the minorities of East Pakistan, the Hindus and other tribal communities, who were labelled as enemies by the State following the commencement of the Indo-Pak war of 1965. The effects of this oppressive law led to a 'drastic' decline in the population of these minorities in the country.

Samir Kalra and Arvind Chandrakantan, A Legal Analysis of the Enemy Property Act of Bangladesh, Hindu American Foundation, 1 <https://www.hafsite.org/sites/default/files/Legal_Analysis_Enemy_Property_Act_Bangladesh.pdf>.

See also: Amena A. Mohsin, Religion, Politics and Security: The Case of Bangladesh, (23 December 2017) Daniel K. Inouye Asia-Pacific Center for Security Studies, <<http://apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismandSecurityinSouthAsiach20.pdf>> .

¹⁶ Kumar, 'Migration and Refugee Issue between India and Bangladesh' above n 3, 68. See also: Archana Upadhyay, Cross-Border Illegal Migration and Conflicts in India's North-East: Emerging Challenges and Responses.

¹⁷ Bimal Pramanik, 'Illegal Migration from Bangladesh- A Case Study of West Bengal', (2005) 6(3) Dialogue 43, 43. <http://www.asthabharati.org/Dia_Jan%2005/bim.htm>.

¹⁸ Rizwana Shamshad, Bangladesh Migrants in India: Foreigners, Refugees or Infiltrators? (Oxford University Press, 2017) 1.

boundaries. The border passing through mountains, forests, islands and the Bay of Bengal remains highly porous and the consequences of movement of population have led to a death toll which exceeds the numbers that were killed during Cold War, while attempting to cross the borders of East and West Germany.¹⁹

Much like the Indo-Nepal open border, the border between India and Bangladesh is also virtually open at a number of points.²⁰ This continuous migration into the North-Eastern states of India has made large impacts on the local politics of the region, leading to landmark political events such as the Anti-Foreigners movement that swept through Assam in the late 1970s which also spread its after effects into the other neighbouring states.²¹ One of such incidents is the beginning of the movement against the Chakma and Hajong refugees in Arunachal Pradesh which catapulted in the early 1990s. The parallels of a movement spearheaded by Student Unions turning into a force to eliminate foreigners to protect the vulnerable indignity of the original indigenous people that was seen in the All Assam Students' Union (AASU) led Assam Movement also ran through the similar anti-refugee (anti-foreigner) movement started by the All Arunachal Pradesh Students' Union (AAPSU) in the state of Arunachal Pradesh, the events of which have been discussed in the following section.

The Chakma-Hajong Conflict: the Story so far

With the refugee crisis between India and Bangladesh spanning over several decades, numerous continuing unresolved issues remain; the question of the Chakmas and the Hajongs (the second community to have migrated from Bangladesh) being one of them.

The history of the Chakmas and Hajongs in India dates back to the 1960s, when thousands of people from these communities entered the Indian territories, following their flight from the Chittagong Hill Tracts and

¹⁹Ibid 2. See also: Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* 214 (Anthem Press, 2005) 210-255.

²⁰Ghosh, above n 13, 32.

²¹For more information: Basanta Deka, *The Design, the Betrayal, the Assam Movement*, (Orchid Publication, 2015)

Myemensingh district of erstwhile East Pakistan²². Following this, during the years of 1964-69 a total of 2,748 Chakma and Hajong families consisting of 14,888 persons were brought into the North-East Frontier Agency (NEFA, now Arunachal Pradesh) under the aegis of the Government of India.²³ These refugees had first arrived in Assam after which they were shifted to Bihar where settling them was a predicament and thereafter, they were finally brought into NEFA.²⁴

Although the mass exodus took place during the period of 1964-65, the conflict predominantly arose with the wake of the "Quit Arunachal Notice" that was served by the AAPSU on September 30, 1994 to the Chakma and Hajong refugees, who had been residing in Arunachal Pradesh.²⁵ The refugees who were settled in the areas near Kokila under Papum Pare and the erstwhile Lohit (now Namsai) districts were allegedly threatened by the AAPSU volunteers who had taken up the cause actively.²⁶

Following these developments, the issue has over the years gone through several litigations. With the worsening situation in 1994, the Committee for Citizenship Rights of the Chakmas in Arunachal Pradesh (CCRCHAP) appealed to the National Human Rights Commission (NHRC) to institute an inquiry into the situation.²⁷ A case was registered under the citation of Case No.: 5385/95-96/NHRC, wherein directions were issued towards the Arunachal Pradesh State Government by the NHRC and the Central Government which were not complied with.²⁸ Following this, the NHRC moved into the Supreme Court through a Writ Petition (Civil) No. 720 of 1995 seeking to protect the rights and liberties of the Chakmas and Hajongs

²²S.P. Talukdar, *The Chakmas: Life and Struggle*, (Gian Publishing House, 1988) 47. Government of Arunachal Pradesh, *White Paper on Chakma and Hajong Refugee Issue*, 1. (on file with author)

²³*Ibid.*

²⁴*Ibid.*

²⁵Committee for Citizenship Rights of the Chakmas and Hajongs of Arunachal Pradesh (CCRCHAP), 'CCRCHAP: Celebrating 25 years of Community Service', Diyun, Changlang District, Arunachal Pradesh. (on file with author)

²⁶*Ibid.*

²⁷*Ibid.*

²⁸*Ibid.*

in Arunachal Pradesh.²⁹ In November 1995, an interim order was passed by the Supreme Court, directing the State Government of Arunachal Pradesh to not evict any Chakma or Hajong in a method which did not comply with the law and also prevented the State Government from undertaking any forcible eviction of the refugees.³⁰ This was further upheld in the Apex Court's final order and judgment dating January 9, 1996 laying down that if a Chakma has an application pending consideration then the State Government shall not evict or remove the concerned person from his occupation on the grounds that the he is not a citizen of India until the required competent authority has taken a decision in the matter.³¹

The 1996 decision of the Supreme Court was challenged by an organization named Arunachal Pradesh Indigenous and Tribal People's Organisation (APITRO) seeking its revision which was dismissed on August 6, 1996.³² Following this another review petition was filed by the APITRO and another individual named John Moyong which was also dismissed by the Apex Court on December 9, 1996.³³

With the failure of the State Government in complying with the 1996 Supreme Court order, the CCRCAP had filed a contempt petition in the Apex Court, against the State of Arunachal Pradesh and the Union of India for the "intentional non-compliance with the Supreme Court's judgment" which was later converted into a writ petition under W.P. (C) No. 510/2007.³⁴ The final order came from a bench consisting of Justice A.R. Dave and Justice A.K. Goel in 2015, directing the state of Arunachal Pradesh and the Union of India: 'to finalize the conferment of citizenship rights on eligible Chakmas and Hajongs and also to ensure compliance of directions in judicial decisions referred to in earlier part of this order for protection of their life and liberty and against their discrimination in any manner.'³⁵

²⁹Ibid.

³⁰National Human Rights Commission v. State of Arunachal Pradesh and Another, (1996) 1 SCC 742, para. 9.

³¹Ibid., para. 21 (4) & (5).

³²CCRCAP report, above n 25.

³³Ibid.

³⁴Ibid.

³⁵Committee For Citizenship Rights of Chakmas of Arunachal Pradesh & Or.s v. State Of Arunachal Pradesh & Ors., (2016) 15 SCC 540, para 21.

This CCRCAP judgement had been vehemently opposed by the AAPSU, with rallies held in both Arunachal Pradesh and New Delhi in protest.³⁶ Following this an Interlocutory Application [I.A. No. 3 in W.P. (C) No. 510/2007] had been filed by the Union of India in January 2016, with the request of seeking an extension of time for the implementation of the 2015 judgment of the Apex Court.³⁷ In the course of the hearing of the I.A. the bench headed by Justice Anil R. Dave had directed the State Government of Arunachal Pradesh to submit a status report on the implementation of the 2015 judgment. According to the two reports that were submitted by the state government, a total of 2025 (43.67%) of the total pending applications of the Chakmas have been processed whereas only 110 applications have been forwarded to the Ministry of Home Affairs (MHA).³⁸ These forwarded applications had been sent without further recommendations on the grounds that the applications did not meet the conditions as have been prescribed under the Sections 5(1) (a) of the Citizenship Act, 1955.³⁹ As these applications were sent without the required recommendation, therefore, the MHA had to send the applications back to the State government of Arunachal Pradesh without the further processing.⁴⁰

³⁶'Chakma-Hajong logjam: Arunachal students protest in Delhi', The Times of India (online), 16 October 2015 <<http://timesofindia.indiatimes.com/india/Chakma-Hajong-logjam-Arunachal-students-protest-in-Delhi/articleshow/49418366.cms>>.

³⁷CCRCAP report, above n 25.

³⁸CCRCAP report, above n 25.

³⁹The Citizenship Act, 1955 (India) s 5(1)(a).

⁴⁰The Citizenship Rules, 2009 (India) Rule 12 (2): states that: "The State Government or the Union territory Administration, as the case may be, shall forward the application along with its recommendation and the report of the Collector, to the Central Government within a period of thirty days from the date of receipt of the report of the Collector under sub-rule(1): Provided, that if for sufficient reasons, the Collector or the State Government or the Union territory Administration, as the case may be, is unable to forward the application within the period specified in sub-rule (1) or sub-rule (2), the same may be forwarded to the State Government or the Union territory Administration or the Central Government, as the case may be, after the expiry of the period so specified but not exceeding ninety days along with the reasons for delay." Therefore, the recommendation of the State Government is mandatory for the permit of citizenship by the Ministry of Home Affairs. < http://mha1.nic.in/pdfs/Citi_Rule-2009.pdf>.

On September 13, 2017 reports started flowing in that the Centre has decided to open the matter of the Chakma and Hajong Refugees where, the 2015 order of the Supreme Court will be deliberated upon.⁴¹ The consultations had started between the Centre and the State to find a 'working solution' with the anticipation that the proposal would bring a middle ground which would be acceptable to the stakeholders.⁴² Union Minister of State for Home, Kiren Rijiju post this announcement expressed that the Centre is hopeful of finding a middle ground so as the 2015 order can be honoured although care will be taken as to that the indigenous people's rights will not be diluted by the direction of granting citizenship to the Chakmas.⁴³ The Centre's take on a 'workable solution' has been proposed as version of 'limited citizenship' that will be granted to the Chakmas and the Hajongs where the special rights that have been bestowed upon the indigenous people of Arunachal Pradesh including the right to ownership of land will not be made available for the refugees.

The Centre's decision had been met with massive outrage with bandhs and protests being called by the AAPSU within the state.⁴⁴ Almost all tribal organisations and NGOs came out in their support where they expressed their dissent over the Centre's decision.⁴⁵ AAPSU General Secretary, Tobom Dai, in his correspondence with the Hindustan Times was quoted, "*The support for our agitation has sent out a loud and clear message that the indigenous people will not tolerate arbitrary decisions of the Centre that could change the state's demography*".⁴⁶ His input voicing the concerns of the Arunachalis is also an indicator that the issue has reached a

⁴¹PTI, 'Government to grant citizenship to Chakmas', The Wire (online), 13 September 2017 <<https://thewire.in/176951/government-to-grant-citizenship-to-chakmas/>>.

⁴²Ibid.

⁴³ Special Correspondent, 'Chakma-Hajong issue still open', The Hindu (online), 13 September 2017, at New Delhi, <<http://www.thehindu.com/news/national/chakma-hajong-issue-still-open/article19678071.ece#>>

⁴⁴Rahul Karmakar, 'Arunachal shuts down over citizenship to Chakma-Hajong refugees', Hindustan Times (online), 19 September 2017, <<http://www.hindustantimes.com/india-news/arunachal-shuts-down-over-citizenship-to-chakma-hajong-refugees/story-5Zl1HYedOB2MkrhG85LEUK.html>>.

⁴⁵Ibid.

⁴⁶Ibid.

stage where the fear of being outnumbered by the refugees in their own state and their distaste over how the Centre has been handling the issue becomes apparent. Incidents of violence, especially in the areas where the population of the Chakmas and the Hajongs are concentrated, along with destruction of public transport had also been reported.⁴⁷

The Chief Minister of Arunachal, Pema Khandu, didn't refrain from voicing his concerns over the Centre's decision, and his statements also echo of the stance of the Arunachalis.⁴⁸ In his letter addressed to the Home Minister, Rajnath Singh, Khandu had reiterated his position that Arunachalis will not accept any orders from the Central Government if they feel that it is going to be detrimental to the rights that they have been guaranteed under the Indian Constitution as indigenous people.⁴⁹

Post the outrage and violence back in Arunachal Pradesh, Rijiju changed his position, blaming the media for misrepresenting his statements, saying that there is no way in which the Chakma and Hajong refugees can be guaranteed citizenship as this would disturb the demography of the state infringing the rights of the indigenous people.⁵⁰ These changes in opinions not only make the situation chaotic but also portrays that the State Government does not have settlement of the issue as its priority which has only aggravated the situation further.

The Chakma-Hajong issue has for long been criticised as being over politicised by the State Government.⁵¹ The BJP led Centre and State have not refrained from blaming the then Congress led government who were responsible for bringing the Chakma and the Hajong refugees into Arunachal Pradesh (then NEFA) initially. Rijiju has claimed that the Congress had

⁴⁷Ibid.

⁴⁸Samudra Gupta Kashyap, 'Arunachal not ready to accept Chakma citizenship, Pema Khandu tells Rajnath Singh', Indian Express (online), 18 September 2017, <<http://indianexpress.com/article/india/aranachal-not-ready-to-accept-chakma-citizenship-pema-khandu-tells-rajnath-singh-4849948/>>.

⁴⁹Ibid.

⁵⁰Vijaita Singh, 'Rijiju now says Chakmas can't be given citizenship', The Hindu (online), 19 September 2017, <<http://www.thehindu.com/news/national/centre-takes-a-u-turn-on-citizenship-to-chakma-hajong-refugees/article19715216.ece>>.

⁵¹Interview with Representatives of the Chakmas and Hajongs, Asian Centre of Human Rights, (New Delhi 5 January 2017).

relocated these refugees without taking prior permission of the local community, which is why the conflict has worsened at this time.⁵² Although their contention may have legitimate grounds, to what extent it is going expedite the process of providing a resolution when the matter has aggravated to such an extent remains a matter of inquisition.

With a view to ensure the protection of rights of the tribal population, the Arunachal Pradesh Legislative Assembly had passed a resolution on October 18, 2017 to urge the Central and State Government to *'take immediate steps to protect the territorial and other consequential rights of its tribal population as protected and guaranteed under the Constitution of India and other relevant laws enforced in the State with regard to granting of Citizenship to the Chakma and Hajong refugees.'*⁵³ The Assembly through this resolution had reiterated its position that under no circumstances the rights, privileges and protection that have been awarded to the indigenous population of the State should be compromised in pursuance of compliance of whether the Hon'ble Supreme Court's 2015 order or any other statutory laws already in force for granting of citizenship to the refugees.⁵⁴ The purpose of this resolution was to protect the unique social, demographic, cultural and economic structure of the society which belongs to the tribal community of Arunachal Pradesh.⁵⁵

This resolution that was floored by Bamang Felix, Minister of Parliamentary Affairs, was condemned by the groups advocating the rights of the Chakma and Hajong Refugees in Arunachal Pradesh.⁵⁶ Subimal Bikash Chakma, President of the Committee for Citizenship Rights of the Chakmas and Hajongs of Arunachal Pradesh (CCRCHAP), was of the opinion that

⁵²Neeta Sharma, 'Congress Mistake,' Says Kiren Rijiju, Chakma Refugees To Become Citizens', NDTV (online), 13 September 2017 <<https://www.ndtv.com/india-news/chakma-refugees-as-citizens-the-controversy-and-rajnath-singhs-big-meet-1749655>>.

⁵³Arunachal Pradesh Legislative Assembly, Resolution on Granting of Citizenship to Chakma & Hajong, from the Arunachal Pradesh Sixth Legislative Assembly, 13th Session, 18 October 2017 (on file with author).

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶EMN, 'Arunachal Pradesh orgs. deplore State Assembly resolution on Chakmas and Hajongs', Eastern Mirror (online), 19 October 2017 <<http://www.easternmirrornagaland.com/arunachal-pradesh-orgs-deplore-state-assembly-resolution-on-chakmas-and-hajongs/>>.

this measure was just an excuse on the part of the Assembly to further delay the compliance of the Supreme Court's order and also deteriorate the *'the atmosphere of peace, communal harmony and inter-community relationship established and strengthened in the past 53 years and continue the repression of the Chakmas and Hajongs.'*⁵⁷ This move by the Assembly had been criticized as a measure that would constitute a contempt of the Apex Court with a view to lower its authority.⁵⁸ Claims were made that the resolution is not just against the Chakmas and Hajongs but also contradicts the policy that was adopted by the Bharatiya Janata Party (BJP) for the protection of the Hindu, Sikh, Buddhist, Jain, Parsi and Christian minorities from Afghanistan, Bangladesh and Pakistan through the Citizenship (Amendment) Bill of 2016.⁵⁹

The passing of this resolution by the Assembly had given a renewed legitimacy to the cause of the Arunachalis and further strengthened the position of the stakeholders spearheading this cause of the indigenous.

On December 3, 2017 the All Papum Pare District Students' Union (APPDSU) had appealed to the Electoral Registration Officer of the Balijan Circle to refrain from including the names of the Chakma voters into the electoral rolls belonging to the Doimukh Assembly Constituency since the matter regarding the granting of citizenship to these refugees was still pending in the Supreme Court.⁶⁰ Therefore, according to their claims these refugees cannot be legally inducted into the fresh electoral rolls. Thus, the movement against the refugees, lead by the AAPSU, had also percolated down to the smaller organisations that had started taking hands-on steps in this measure.

⁵⁷Ibid.

⁵⁸Suhas Chakma, 'Resolution against Chakmas & Hajongs in Arunachal Pradesh Assembly: A slap on the face of RSS and BJP or much more?', The aPolitical (online), 22 October 2017 <<https://www.theapolitical.in/homenews/resolution-chakmas-hajongs-arunachal-pradesh-assembly-slap-face-rss-bjp-much>>.

⁵⁹Ibid.

The Citizenship (Amendment) Bill, (No 172) 2016 (India), s 2 <[http://www.prsindia.org/uploads/media/Citizenship/Citizenship%20\(A\)%20bill,%202016.pdf](http://www.prsindia.org/uploads/media/Citizenship/Citizenship%20(A)%20bill,%202016.pdf)>.

⁶⁰APPDSU opposes inclusion of Chakma and Hajong refugees in fresh electoral rolls', The Arunachal Times (online), 4 December 2017 <<https://arunachaltimes.in/index.php/2017/12/04/appdsu-opposes-inclusion-of-chakma-and-hajong-refugees-in-fresh-electoral-rolls/>>.

Following these developments, the situation in Arunachal Pradesh has become volatile. Although with the matter still pending in the Supreme Court, whether or not the solution proposed will follow through remains ambiguous.

Although a study of the events that have constituted the Chakma-Hajong conflict which has prolonged itself over two decades is mandatory, a comprehensive study of any conflict situation is only fulfilled if the perceptions of the communities who are engaged in the conflict are taken into consideration. Therefore, the following two sections have been dedicated to discuss the stance of the Chakma and Hajongs refugees while the one after that would continue with the study of the points of contention of the indigenous Arunachalis.

India's "Nowhere"⁶¹ People: The Chakmas & the Hajongs

The history of the Chakmas can be traced from a tribal group who had been inhabitants of the Chittagong Hill Tracts of Bangladesh for centuries.⁶² Even during the British rule, the government had maintained a non-interference policy while governing the Hill Tracts, although the governance intensified by some degrees as an aftermath of the great mutiny of 1857, with the Crown assuming direct control of India.⁶³

In 1900, the British Government introduced the Chittagong Hill Tracts Manual which divided the region into four circles each of which were put under the jurisdiction of a tribal chief who was responsible for the internal affairs of the circle and the collection of revenues.⁶⁴ The manual also prohibited the entry of any outsider into the tracts without prior permission of the Deputy Commissioner, only after due consultation with the local tribal chief.⁶⁵

⁶¹Deepak K. Singh, *Stateless in South Asia: The Chakmas between Bangladesh and India*, (Sage Publications India Pvt. Ltd., 2010) 3.

⁶²Talukdar, above n 22.

⁶³*Ibid.*

⁶⁴'Chakma Refugees, Emerging Issues and Questions of Resettlement, as read in Chakma Refugees, Emerging Issues and Questions of Resettlement', Shodhganga, 118 <http://shodhganga.inflibnet.ac.in/bitstream/10603/18992/10/10_chapter%203.pdf>.

See also: R.H. Sneyd Hutchinson, *Chittagong Hill Tracts* (Vivek Publishing House, 1978) 21.

⁶⁵*Ibid.*

The Manual went under an amendment in the year 1920, according to which a new administration was established in the Chittagong Hill Tracts. In the year 1935, the Government of India declared the Hill tracks as "totally excluded area" with a view to protect the Jumma people (original inhabitants of the Chittagong Hill Tracts) and their land and resources from being exploited in the hands of the people who were not indigenous to the Hill Tracts. It was to protect the indigenous people's traditional socio-cultural and political institutions which were based on their customary laws and communal land ownership.⁶⁶

With the independence of Pakistan and India, it was declared on August 16, 1947 by Sir Cyril Radcliffe that the Chittagong Hill Tracts will be annexed into the 'sovereign Islamic' nation of Pakistan.⁶⁷ This decision was met with a rebellion in the Hill Tracts headed by a committee of inhabitants of the area, consisting of mostly students which were silenced by the Pakistani government with a heavy hand.⁶⁸

Although the movement of the tribals from the Chittagong Hill Tracts started right after the independence in masses, the 'great exodus' began in the 1960s owing to the religious persecution that followed after the violation of the Chittagong Hill Tracts Manual post independence and primarily due to the construction of the Kaptai Dam.⁶⁹

The lives of the Chakmas and the other non-Bengali communities dwelling in the Chittagong Hill Tracts were devastated as a consequence of the partition of India in 1947 and the division of the continent based on the demography of religion, a policy that was adopted by the Boundary Commission lead by Radcliffe.⁷⁰ The Chakmas, based on religious and ethnic grounds, recognised themselves as Indians and the assurance given to them

⁶⁶'Chakma Refugees, Emerging Issues and Questions of Resettlement', above n 64.

⁶⁷Talukdar, above n 18.

⁶⁸Ibid.

⁶⁹ Jyoti Bikash Chakma, The Great Exodus of the Chakma, Academia (6 January 2017) < https://www.academia.edu/9785357/THE_GREAT_EXODUS_OF_THE_CHAKMAS_AND_ITS_AFTERMATH_AN_OVERVIEW>. (Paper presented at the International Seminar on Society, Polity and Economy of the Chakmas, Chakma Literary Academy, Mizoram. 12-13 December 2013).

⁷⁰ Ibid.

by the Indian officials that the Hill Tracts would remain in India even after the partition was disregarded by the Commission and consequently the region was relinquished to Pakistan.⁷¹

The new Pakistani government introduced several amendments into the Chittagong Hill Tracts Manual which permitted the influx of the Bengali speaking Muslims into the region leading to the abuse and expropriation of the land and resources and the oppression of the indigenous Jumma people.⁷² The difference between the tribal groups and the Bengali Bangladeshis in terms of their livelihood, belief and faith became apparent and there was no assimilation between the new occupants of Hill Tracts with the original dwellers, resulting in religious persecution of these indigenous people.

The primary reason for the mass exodus of the Chakmas and the Hajongs can be credited to the construction of USAID-sponsored Kaptai Hydro-Electric Dam in 1962, across the Kharnaphuli (Borgang) river located in the Chittagong Hill Tracts.⁷³ While the dam was intended to provide benefits such as hydropower, flood control, drainage and irrigation; the events that followed changed the course of the history of the Chakmas.⁷⁴ As a result of the construction of the dam, an area of about 655 square kilometres got flooded resulting in the displacement of 1,00,000 tribal indigenous people of which 70% were Chakmas.⁷⁵ These displaced persons were resettled into the higher banks of the rivers of Kasalong and Chengji; and the low-lying areas of Barkal, Langdu and Baghaichari which were also submerged by the end of 1962; rendering these people homeless for the second time.⁷⁶ The

⁷¹Ibid. See also: Chunnu Prasad, 'Between Nation and Nationality: Chakma refugees in Arunachal Pradesh', (2012) 13(3) *Dialogue* <http://www.asthabharati.org/Dia_Jan012/chun.htm>.

⁷²Ibid. See also: Deepak K. Singh, 'The Arunachal Tangle: Migration and Ethnicity', (1996a), 3 *Journal of Peace Studies* 54.

⁷³Charlotte-Anne Malichewski, 'Where the Exception is the Norm: the Production of Statelessness in India', (2 (8) IHRI Working Paper Series, Centre for Human Rights & Legal Pluralism, 2014) 29. <https://www.mcgill.ca/humanrights/files/humanrights/ihri_wps_v2n8-charlotte-anne_malischewski.pdf>.

⁷⁴Chakma, above n 69

⁷⁵Ibid.

⁷⁶Ibid. Also see: Saila Parveen and I.M. Faisal, 'People versus Power: The Geopolitics of Kaptai Dam in Bangladesh', (2002) 18(1) *International Journal of Water Resources Development* 197, 197-208.

rehabilitation and compensation measures taken up by the Pakistani government was inadequate, thus finding no other alternative most of these homeless people sought refuge into the Indian territories. By the middle of the month of July, 1964, around 1,40,000 people including Chakmas and Hajongs which consisted of 2,748 families (14,888 individuals) had migrated into Assam, seeking asylum.⁷⁷ Due to the inability of the Assam government to rehabilitate these displaced people, as according to the relocation initiatives, 2902 families were resettled into the erstwhile North-East Frontier Agency (now Arunachal Pradesh) in the three districts of Lohit, Tirap and Subansiri.⁷⁸ On arrival, these refugees were issued migration certificates by the Government of India indicating their legal entry into the country, which have been perceived by some as the Central government's willingness to grant these people citizenship.⁷⁹

With the signing of the Indira-Mujib agreement (Indo-Bangladeshi Treaty of Friendship, Cooperation and Peace) it was determined that the refugees who had entered into the Indian territories before March 25, 1971 would be taken under the protection of the Indian Government and their applications for Citizenship would be lawfully considered.⁸⁰ This implied that the newly formed and the consequent Bangladeshi governments did not consider them as Bangladeshi nationals; even then the promises made by the Indian Government of granting them citizenship did not materialise.⁸¹

The year 2004 saw the inclusion of 1497 Chakmas' names being included in the voters' list of the Election Commission of India while the rest were still kept out of the reach of voting rights. Although stakeholders and

⁷⁷Counter Affidavit of Union of India on the Chakmas and Hajongs of Arunachal Pradesh in the Supreme Court of India, (Civil Jurisdiction) WP(C) No. 720 Of 1995, para. 2. (on file with author). Government of Arunachal Pradesh, above n 22.

⁷⁸Malichewiski, above n 73.

⁷⁹South Asia Human Rights Documentation Centre (SAHRDC), 'The Stateless Chakmas and Hajongs of the Indian State of Arunachal Pradesh: A study of systemic repression', (Report, the SAHRDC Resource Centre, 1997) http://www.hrdc.net/sahrdc/resources/stateless_chakmas.htm.

⁸⁰Malichewiski, above n 73.

⁸¹Ibid.

representatives of the Chakmas have also claimed that there has been an increase in this figure and almost 3000 people's names have been included in the electoral rolls in the following years.⁸²

The plethora of the existing literature on the concept of refugees often depicts them as units who are devoid of any capacity to rebuild their lives; they are often reduced to helpless creatures strewn due to the events leading to their displacement. The depiction of Mahmood Mamdani's "totally malleable creatures"⁸³ has been painted over the texts depicting the narrative of the Chakmas.⁸⁴ Unlike others conventional refugees, the Chakmas, have not lived their lives in isolated refugee camps expecting the state or other government officials to come to their aid. Over the past decades the Chakmas and the Hajongs have built villages, developed the land they have been granted and integrated themselves into the social fabric of Arunachal Pradesh.⁸⁵ The Chakmas who have been allegedly denied basic aids such as education and proper health by the State Government, in their own capacity have built schools and hospitals in their areas of dwelling.

Although with these measures for survival, these refugees as has been alleged by the AAPSU and government officials have moved out of their demarcated camps and encroached into the reserved areas of Namdapha National Park destroying its fragile ecology. Furthermore, it has also been claimed that some of these refugees have been indulging in anti-social activities and organised themselves into militant groups, one of them being "Shanti Bahini".⁸⁶

Entangled between the Centre and the State: The voice of the Arunachalis

An in depth study of a conflict requires the perspectives of all the parties engaged in the conflict to be taken into consideration, which is rarely ever

⁸²See above n 51.

⁸³Singh, above n 61. See also: Mahmood Mamdani, *From Citizens to Refugees: Ugandan Asians come to Britain* (Frances Pinter, 1973).

⁸⁴Singh, above n 61, 20.

⁸⁵SAHRDC, above n 79.

⁸⁶Singh, above n 61, 125. See also: 'AAPSU revives refugee issue', *Shillong Times* (online), 2007.

seen in refugee studies. The self-perception of the hosting community, especially if they themselves have been marginalised into the edge of the society, the imperative need of seeking prior and well informed approval is more often overlooked.⁸⁷ Although, ironically such steps are not overlooked to move matters more rapidly for dealing with the more urgent issues of the refugees but only to reinstate the 'prerogative' of the state in settling these deracinated people from their homeland, as it was obvious that the hosting community with its highly demobilized civil society and evident lack of regional administration could hardly pose any threats to the 'exclusive' power of the Centre.⁸⁸ This is clearly demonstrated in the action of the Centre with the treatment of NEFA as a dumping ground for settling the new refugees, where the population of the indigenous people was thin and lacked the awareness and means to oppose the authority of the 'modern nation state'.⁸⁹

The literature on the Chakma issue portrays the apparent trend of steering away from the discourse of the narrative of the Arunachalis. The security centric debate that has been taken up by the state or the academic commentaries on the subject steers clear of the self perceptions of the issue from the standpoint of these indigenous people. The Chakma issue's character has evolved in a way that if the vantage points of the two parties are not evaluated, a realistic appreciation of the actual nature of the problem will be impractical and attaining a closure would not be feasible. There is a dire need of enquiry into the socio-anthropological dimensions of the Chakma conflict which has been overlooked by the scholars who have restricted their interpretation of the conflict only to a mere legalistic perspective surrounded by the various litigations that it has witnessed.⁹⁰ Any law or policy, no matter how ideal it may show on paper, will only serve its purpose if its implementation is adequate into the issue on the ground level and how effectively it is complied with. Furthermore, the compliance of a law will only be done smoothly if its intention runs parallel with the perceptions of the community on which it will be implemented.

⁸⁷Singh, above n 61, 180.

⁸⁸Ibid.

⁸⁹Ibid.

⁹⁰Singh, above n 61, 181.

The acceptance of the term 'indigenous' and its political connotations by the Arunachalis to describe themselves has served as one of the reasons attributing to Indian Government's unwillingness in acknowledging the special status of Arunachal Pradesh.⁹¹ The growth of the concept of 'indigenous' in India has only started with the concept getting internationalised.⁹² The growing consciousness of the international community with respect to the protection of the rights of the indigenous as against the increasing 'western and other forms of civilisation' and 'internal forms of majoritarian colonialism'⁹³ is only due to the efforts of international organisations like the International Labour Organisation (ILO) and other mechanisms such as the United Nations Declaration on the Rights of the Indigenous People (UNDRIP) where the rights of the indigenous people relating to land and resources, safeguarding traditional economic structures, indigenous laws and customs are given utmost priority.⁹⁴ There were no reservations from India on the use of the term in the 1957 ILO Convention⁹⁵

⁹¹Ibid.

⁹²Ibid 185. See also Virginius Xaxa, 'Tribes as Indigenous people of India', (1999) 34 (51) Economic and Political Weekly 3589, 3589-3595.

⁹³Ibid., 182. See also: Minority Rights Group Urgent Issues Paper, 'Indigenous and tribal Rights in Asia/Pacific Region, (Paper presented at the Workshop on Tribal and Indigenous People, 23-25 February 1996)

⁹⁴The ILO Convention No. 107, (See below n 95) brought about nascent changes into the discourse of the protection of indigenous rights, through which an 'assimilationist' approach was taken although with the Martinez Study coming up in the following and the discussions that took place in the Working Group on Indigenous Populations in 1982 which was a devoted United Nations mechanism towards the cause of indigenous right, the shortcomings of the 1957 Convention became apparent which called for the establishment of a better framework that would work for the protection of the rights of the indigenous people. This led to the drafting of the 1988 and 1989 ILO Conventions which provided with better developmental policies, under international law, for the protection of the indigenous people.

See more: The United Nations Declaration on the Rights of Indigenous Peoples: A Manual for National Human Rights Institutions, Asia Pacific Forum of National Human Rights Institutions & the Office of the United Nations High Commissioner for Human Rights (August 2013) <<http://www.ohchr.org/Documents/Issues/IPeoples/UNDRIPManualForNHRI.pdf>>

United Nations Declaration on the Rights of the Indigenous People, GA Res A/RES/61/295, UN GAOR, 61st see, 107th plen mtg, (2 October 2007)

⁹⁵Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (ILO No. 107), 328 UNTS 247, (2 June 1959). See above n 94.

because back in time, the only concern of the Indian Government was the need for integrating the indigenous into the larger fabric of the term '*Indian*'.

With the coming of the ILO Convention in 1989 where the focus had shifted from the integration of the indigenous to the rights and empowerment of the people, India too changed its policy regarding the category. The thesis of 'historical continuity' was taken up to refrain from any discourse regarding individual and collective rights of the indigenous people and the protection of the natural resources in the areas where these originally inhabited.⁹⁶ It is from this position that has been portrayed by the Indian government over the years that shows the negligence towards the protection of the rights of the indigenous people.

It has always been a point of contention that the rights of the indigenous Arunachalis were violated with the advent of the settlement of the Chakmas and Hajongs into the areas of NEFA. The situation has turned such that there is a strong divide of 'us' and 'them' between the refugees and the indigenous. The self-perception of the Arunachalis is based on their assumption of being historically 'peace-loving', 'innocent' and 'ignorant' and the belief that the extent of their generosity has been far too stretched by the Indian Government where it has become a necessity for them to protect themselves from the encroaching 'foreigners' on their land.⁹⁷ This cause has been spearheaded by the AAPSU, who have over the years opposed the settlement of the refugees in Arunachal. It remains their contention that the Chakmas and the Hajongs are aliens in another country seeking 'temporary refuge' based on humanitarian grounds.⁹⁸

The claim of AAPSU stems from what they call an unprecedented and unchecked growth of the Chakma and Hajong population in Arunachal Pradesh over which the State Government had also shown their growing concerns. The number of families that came during the period of 1964-69

⁹⁶Singh above n 61, 183. See also: Benedict Kingsbury, 'Indigenous People: in International Law: a Constructivist Approach to the Asian Controversy', (1998) 92(3) American Journal of International Law 414, 414-57.

⁹⁷Interview with Representative of Government of Arunachal Pradesh (Itanagar, 21 January 2017).

⁹⁸Interview with Representatives of AAPSU, (Itanagar, 22 January 2017).

was 2748 which increased to the number of 3919 families according to a census carried out by the Government exclusively for Chakma and Hajong refugees in October 1979.⁹⁹ As per the local census their population of 14,888 in 1969 increased to 21,494 which then again added up to 30,064 according to the census of 1991.¹⁰⁰ As according to the 2011 census this figure stands at 9854 families and 52,657 persons. While as has been accorded by the refugees themselves, their number stands close to 65,000.¹⁰¹ It has been a contention of the Arunachali stakeholders that the number of refugees is not just limited to the census figures and the growth of their population has swelled unnaturally over the years; indicating towards the idea that there has been an illegal influx of non-settler Chakmas and Hajongs who have entered Arunachal Pradesh under the tag of being a 'refugee'. Therefore, the fear of being outnumbered runs deep within the Arunachali consciousness based on the impact that granting of citizenship and voting rights to these refugees would have upon the already fragile political scenario in Arunachal Pradesh. Although it has been a contention of the stakeholders on the side of the Chakma-Hajong refugees is that this fear of the Arunachalis has no legitimate grounds and that the growth of the population of the refugees have mostly been similar to that of the state and the other indigenous tribes.¹⁰²

Census Years	1981-1991	1991-2001	2001-2011
Growth of Arunachal Pradesh Population	37%	27%	26%
Growth of Indigenous Population	25%	28%	35%
Growth of Refugee population	26%	24%	19%

Fig.: Comparison of the growth of population of the state of Arunachal Pradesh, the indigenous population and refugee population.¹⁰³

⁹⁹Government of Arunachal Pradesh, above n 22, 9.

¹⁰⁰Ibid.

¹⁰¹Ibid.

¹⁰²See above n 51.

¹⁰³G. Seetharaman, 'Government's flip-flops leaves Chakma and Hajong refugees on wings of hope', The Economic Times (online), 24 September 2017 <<https://economictimes.indiatimes.com/news/politics-and-nation/governments-flip-flop-leaves-chakma-and-hajong-refugees-on-wings-of-hope/articleshow/60810196.cms>>.

This comparison chart sourced from The Economic Times¹⁰⁴ portrays that the claims of the AAPSU may be unfounded and based on mere hearsay. Although they have also proclaimed that they would not consider the 2011 census record in case of these refugees and demanded that there needs to be a proper count of the refugees so as to figure out if there has been infiltration post the settlement in the late 1960s.¹⁰⁵

Claiming that the Chakmas and the Hajongs, on account of being Buddhists and Hindus, are made eligible for citizenship, even the illegal migrants who were not resettled under the direction of the Government of India, by virtue of the Citizenship (Amendment) Bill of 2016 can be criticised. The Bill makes illegal migrants belonging to the minority of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan entitled to apply for citizenship.¹⁰⁶ This provision of the Bill has been condemned on the basis that it violates Article 14 of the Constitution¹⁰⁷ which guarantees any person '*equality before the law and equal protection of the laws within the territory of India.*'¹⁰⁸ The 2016 Bill also reduces the required period of naturalisation for the illegal migrants belonging to these minority communities from the abovementioned countries to six years, which only highlights the contention against religion based discriminatory grounds inherent in the Bill; thus violating Article 14 of the Constitution and by implication Article 7 of the Universal Declaration of Human Right which declares that '*all are equal before the law and are entitled without any discrimination to equal protection of the law.*'¹⁰⁹

Over the years and several litigations later, the legal dimension of the conflict remains unforgiving towards the pleas of the Arunachalis, which

¹⁰⁴Ibid.

¹⁰⁵Sangeeta Barooah Pisharoty, 'Chakma Issue Roils Arunachal as Supreme Court Decrees End to Their Statelessness', The Wire (online), 12 December 2015 <<https://thewire.in/17017/chakma-issue-roils-arunachal-as-supreme-court-decrees-end-to-their-statelessness/>>.

¹⁰⁶See above n 59.

¹⁰⁷Anviti Chaturvedi, Legislative Brief: The Citizenship (Amendment) Bill, 2016, (27 September 2016) PRS Legislative Research <http://www.prsindia.org/uploads/media/Citizenship/Legislative%20Brief%20Citizenship%20Amendment%20Bill%202016.pdf>.

¹⁰⁸Indian Constitution Art. 14.

¹⁰⁹Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd pln mtg, UN Doc A/810 (10 December 1948).

portrays itself as an indicator of the judiciary's nonchalance regarding the issues of the indigenous. The Supreme Court in the CCRCAP judgement has laid down that since the Chakma refugees have been residing in Arunachal Pradesh for the past five decades, they do not require an Inner Line Permit; this goes in clear violation of Section 2 and 7 of the Bengal Eastern Frontier Regulation of 1873.¹¹⁰ A similar stance was also taken up by the Gauhati High Court in its judgement of *AAPSU v. Election Commission*.¹¹¹ This opinion stands erroneous and also discounts the fact that such legislations still hold ground by the virtue of Article 372 of the Indian Constitution.¹¹²

Furthermore, the stance of the Arunachal Pradesh government, if not runs parallel with, echoes the demands of the AAPSU where the blame has been shifted to the central government for settling the refugees in this part of the country, without much premonition. The Arunachali contention claims the settlement to be unilateral, illegal and unjustified with complete disregard to the special status that has been awarded to the state of Arunachal Pradesh with respect to various legislations like the Bengal Eastern Frontier Regulation, 1873; the Assam Forest Regulation Act, 1891; the Chin Hills Act, 1896; and a multitude of local customary laws and conventions which are followed and upheld by the indigenous people.

Even though, the status of Arunachal Pradesh back in 1964 was that of a Frontier Agency under direct control of the Central Government through the Governor of Assam, the ignorance of gaining prior consent of the Arunachalis before settlement of the refugees has left a sense of resentment

¹¹⁰Committee For Citizenship Rights of Chakmas of Arunachal Pradesh & Ors v. State of Arunachal Pradesh & Ors, (2016) 15 SCC 540, para. 15.

The Bengal Eastern Frontier Regulation, 1873, (Arunachal Pradesh) s 2 & 7. <http://mdoner.gov.in/sites/default/files/silo4_content/entry%20restrictions%20in%20NER/Bengal%20Eastern%20Frontier%20Regulation,%201873.pdf>.

¹¹¹The All Arunachal Pradesh Students Union (AAPSU) & Ors. v. The Election Commission of India & Ors., P.I.L. No. 52 of 2010, in the Gauhati High Court. <<http://164.100.149.229/casestatus/ShowOrders.asp>>.

¹¹²Indian Constitution Art 372(1) states that: '...all the laws in force in the territory of India immediately before the commencement of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.'

into the consciousness of the indigenous people. The attitude of the Centre and their inaction towards the demands of the indigenous population has led to a state of resentment that lies within the mindset of the Arunachalis with a bitter sense of betrayal and the feeling of victimization in the hands of a majoritarian democracy.

The Way Forward

The Chakma-Hajong issue as over-politicised as it has been has reached a point where if a permanent solution is not brought in soon, the situation in Arunachal Pradesh will aggravate as has already been portrayed in the protests against Centre's decision to grant the refugees citizenship in September, 2017.¹¹³ The solution of 'Limited Citizenship' remains halfbaked as the contours of the concept still remains ambiguous; consequently bringing in fear of the unknown both in the minds of the indigenous people and the refugees. Furthermore, the Centre's assurance of protecting the rights of the indigenous still falls flat if it is to unilaterally uphold the decision of the Supreme Court in the 2015 order; this makes it especially important on the part of the Government of India to decide upon the ambit of the 'limited citizenship' so as the privileges and interests of the Arunachalis are not infringed.

The handling of the issue of Chakma-Hajong refugees from the advent of their influx back in the 1960s and the attitude of the Government towards this brewing concern is an aspect that has been criticised over the discourse that has developed on the issue. The integrationist policy of the Government taking control of a newly formed state with far flung areas which act as its frontiers, quite ironically managed to overlook Nehru's own Panchasheel policy in which protection and administration of the tribal areas was dealt with. The lack of concern of taking prior approval of the local community before settling these refugees into the areas of NEFA which were already protected under a plethora of laws, showed the nonchalance that the Central administration had towards these areas which did not merge into their nationalistic perspective of 'mainland India'.

¹¹³Karmakar, see above n 44.

On the other hand, The Chakmas and Hajongs have been living in a constant state of being 'stateless' in Arunachal Pradesh. The issue which has its roots into the historical backgrounds beginning with the British policies and continuing with the consequent Indian and Pakistani regimes have led to the cause of migration ultimately rendering these refugees homeless. They have been torn from their source of citizenship, their home country and placed into an area which over the years they have started to call 'home'. Even after numerous litigations, over the decades, the conflict still hasn't reached a position where a solution shows itself in the horizon. The numerous stakeholders in their own right have represented their views where their perceptions clash as loggerheads and a resolution seems impossible without the parties giving an opportunity to its opponent to communicate their viewpoints regarding the matter. Their futures are at stake as this new kind of citizenship has been assured to them which again apply with a list of conditions.

Furthermore, granting of citizenship to the Chakma-Hajong refugees will have repercussions that will portray themselves in the political scenarios the other North-Eastern states. Particularly in the state of Assam, where tension has already started brewing with regards to the much anticipated National Register of Citizens; therefore the decision of whether or not the refugees are to be granted citizenship has the potential of aggravating the already critical situation in Assam. In this regard Upamanyu Hazarika, Senior Advocate of the Hon'ble Supreme Court and Convenor of Prabajan Virodhi Mancha, had expressed his concern stating that if the Chakmas and the Hajongs are granted with the 'limited citizenship' as the Central Government has envisaged, these citizens who have not been given land rights in Arunachal Pradesh would make their way into the other North-Eastern states.¹¹⁴ Hazarika further claimed that most of these refugees would come down to settle in Assam as this would be a favourable destination for them.¹¹⁵

¹¹⁴'More Than 1 lakh Chakmas-Hajongs might enter Assam, claims Upamanyu Hazarika', The Eclectic North-East (online), 18 September 2017 < <https://eclecticnortheast.in/senior-advocate-upamanyu-hazarika-claims-that-more-than-1-lakh-chakma-hajongs-might-enter-assam/>>.

¹¹⁵Ibid.

Most conflicts in the North-East are centred on land, a resource that has been given massive importance by the tribal communities residing in this region who source their identity through their ownership of land.¹¹⁶ If the Chakmas and Hajongs do become eligible as deemed citizens, they will be given the right to move and reside freely within the territory of India by virtue of Article 19 of the Constitution.¹¹⁷ The concept of 'limited citizenship' as has been proposed by the Centre contains land owning rights of these refugees only in the state of Arunachal Pradesh, failing to protect the rights and privileges of the indigenous communities in the rest of the states of North-East. Land being the most contested resource, with numerous stakeholders already claiming their right over it, especially in Assam, movement of these 'deemed citizens' would not only add another complication but also magnify the already existing conflicts over land. This anti-refugee discourse that has already started brewing concern in Assam will not just limit itself there and has the potential to spill into the political climate of the other neighbouring states of the North-East leading to an aggravated scenario in this region.

Conclusion

Land is considered the most invaluable resource for the indigenous communities in the Northeast as they claim their identity through it. Therefore, endangering this right that they are entitled to, governed by the Indian Constitution and plethora of other statutes in force and their own customary law, would not only be unconstitutional but also a setback on the development that the rights of indigenous has seen in the discourse of domestic and customary international law. Although, in the particular issue of the Chakma-Hajong conflict provides with a paradox where if the protection of the rights of the indigenous people of Arunachal Pradesh is given precedence over the rights of the stateless refugees, the latter will be deemed victims of the law which showed its shortcomings in not only to

¹¹⁶Walter Fernandes & Sanjay Barbora, 'Tribal Land Alienation in the North-East: An Introduction', in Walter Fernandes and Sanjay Barbora (eds) *Land People and Politics: Contest Over Tribal Land in North-East India*, (North Eastern Social Research Centre and IWGIA, 2009) 1, 1.

¹¹⁷Indian Constitution Art. 19(d).

protect them but also provide them with an identity.

This conflict comprises of two such communities where both have been victims of an unjust partition, leading to a majoritarian democracy, where the voices of the people have somehow subdued by the more comprehensive articulation of their representatives. Spanning over several decades, at this point this issue demands a resolution that would be acceptable to the all the parties at stake. The issue of Inner Line Permit for instance, in which the Hon'ble Supreme Court through its judgment has allowed the Chakmas and Hajong refugees to continue residing in the state of Arunachal Pradesh, without issuing Inner Line Permits, in spite of the fact that the Bengal Eastern Frontier Regulation of 1873 only extends its protection to the indigenous inhabitants of the state. Although the refugees maybe allowed to reside in the state but also conceding to the idea that they would not be requiring Inner Line Permits is an argument that is faulty and erodes the constitutional safeguards allowed to the Arunachalis. In such conditions, the indigenous communities and their representatives feel the necessity to forcefully oppose such measures, which only further destabilises the scenario of the conflict. The only manoeuvre that would possibly succeed in such a situation is to arrive at a resolution that does not undermine the rights of any of the stakeholders involved. Furthermore, these measures have to be tactful considering the geographical location of Arunachal Pradesh and its vulnerability as a frontier state. Care must also be taken that formulating a resolution in haste, without taking into account all the critical nuances that are attached to the conflict, must be avoided because imposing a design into a structure that is not capable of accepting it would only result in further deterioration of the situation.

The Chakma-Hajong conflict resultant of a neglected aspect of Partition, nonchalance of a Government who overlooked the consequences of its actions under the flag of its integrationist policy has tagged on for too long and even now a solution still falls short of its resolution. The current ruling parties handling the government, rather than picking bones at the mistakes of the then government and keeping aside its political inclinations, for once, must work with the judiciary in concocting a solution that is not ambiguous and respects the ordeal of all stakes involved.

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