

# THE CHAKMAS' STRUGGLE FOR CITIZENSHIP: BREAKING DOWN INDIA'S CITIZENSHIP ACQUISITION REGIME

*Moosa Izzat\**

*In the 1960s, several thousand refugees of Chakma origin fled to India from the erstwhile East Pakistan- modern-day Bangladesh. While their counterparts in other Indian states were eventually granted citizenship, the status has eluded the Chakmas in Arunachal Pradesh for over 50 years. The Chakmas have since claimed- or applied for-citizenship, through multiple pathways. After briefly addressing the history of the Chakmas' relocation in Arunachal Pradesh, the paper assesses the Chakmas' claim to citizenship through these various pathways: a) naturalization or registration; b) special provisions inserted by the Citizenship (Amendment) Act, 2019; and c) by birth. The paper thus has three central aims. First, it argues that the majority of the Chakmas in Arunachal Pradesh are citizens by birth; the remainder have since decades met the eligibility requirements for the acquisition of citizenship through registration or naturalisation. In spite of this, challenges to the Chakmas' citizenship status have consistently resurfaced in Arunachal Pradesh. The second aim of the paper is to address these challenges. Finally, through its discussion of the provisions that entitle the Chakmas to citizenship, as well as the legal challenges to the same, the paper provides an overview of India's citizenship acquisition regime and its evolution in the past half-century.*

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\* The author is an incoming LLM (Human Rights) candidate at The University of Edinburgh. He graduated from West Bengal National University of Juridical Sciences, Kolkata, in 2023. He would like to thank the editorial board of NUJS Law Review for their insights with the paper. The author is also grateful to Ms. Darshana Mitra for her module on citizenship law, which allowed him to conceive of the idea for this paper. All errors, however, are the sole responsibility of the authors. For any feedback or constructive criticism, the author can be reached at moosa218029@nujs.edu.

## I. INTRODUCTION

The acquisition of citizenship is the means through which an individual becomes, or is deemed to be, a citizen. Citizenship by birth and descent exist inherently within a person, either on the basis of the location of their birth,<sup>1</sup> or the status of their parents.<sup>2</sup> Incidentally, both citizenship by birth and through descent confer the status of citizenship *at birth*, and do not involve an overt act of acquisition. In spite of this, the citizenship regimes of various countries, including India, place the two terms within the umbrella of acquisition of citizenship.<sup>3</sup> The Citizenship Act, 1955 ('Citizenship Act') discusses citizenship by birth and citizenship by descent in the same chapter along with other forms of wilful acquisition of citizenship. These alternative modes of citizenship acquisition, primarily through registration or naturalisation, are paths through which an individual, who is not yet a citizen of India, may *become* one.

This division of citizenship acquisition into inherent and wilful modes of acquisition acts as the starting point of this article. On this basis, the article presents two related questions in the context of Chakma refugees. *First*, are Chakma refugees Indian citizens? *Second*, what mode of citizenship acquisition was used, or could be used, to confer Chakma refugees with citizenship?

Part II will briefly trace the developments in the last several decades surrounding the Chakma refugees in Arunachal Pradesh. Part III will approach the legal bases for Chakmas' citizenship along three fronts: *first*, the three Supreme Court judgments, in 1993, 1996, and 2015 on Chakmas' citizenship; *second*, the Citizenship Amendment Bills of 2016 and 2019, which culminated in the Citizenship (Amendment) Act, 2019, from the ambit of which the Chakmas' were excluded; and *third*, the case for Chakmas' citizenship by birth, which has been helped in part by the inclusion of a large number of Chakmas in the electoral rolls of various assembly constituencies in Arunachal Pradesh. Finally, Part IV will conclude.

## II. A BRIEF HISTORY OF THE CHAKMA REFUGEES' SETTLEMENT IN ARUNACHAL PRADESH

As per the 2011 Census, there were 2.2 million Chakmas in India.<sup>4</sup> In Assam, Mizoram, Meghalaya, Tripura, and West Bengal, the citizenship of Chakmas is not in dispute. In fact, in each of these states, Chakmas have been designated as members of the Scheduled Tribes.<sup>5</sup> It is the relatively smaller popula-

<sup>4</sup> *Chakmas in Northeast Oppose Citizenship Bill but for a Different Reason*, THE NEW INDIAN EXPRESS, November 22, 2019, available at <https://www.newindianexpress.com/nation/2019/nov/22/chakmas-in-northeast-oppose-citizenship-bill-but-for-a-different-reason-2065539.html> (Last visited on May 03, 2022).

<sup>5</sup> Chunnu Prasad, *Students' Movements in Arunachal Pradesh and the Chakma-Hajong Refugee Problem*, Vol.42(15), ECONOMIC AND POLITICAL WEEKLY, 1373, 1378 (2007).

tion of Chakma refugees in Arunachal Pradesh whose citizenship has for decades been heavily contested.<sup>6</sup> The term Chakma *refugees* is deliberately used here to distinguish them from the larger population of Chakmas who were present in India decades before the influx of refugees in the 1960s. In fact, much of the discussion surrounding Chakma refugees has focused on a specific group of Chakmas: those who entered India from the erstwhile East Pakistan in the 1960s and find themselves today in various parts of Arunachal Pradesh. Thus, the Chakmas of Arunachal Pradesh, whose citizenship is most disputed, form the subject matter of the present article.

The Chakmas, a tribal community of predominantly Buddhist faith, lived in the Chittagong Hill Tract, then a part of East Pakistan, up until 1961. In 1961, ethnic riots in the Chittagong Hills prompted the first wave of Chakma and Hajong refugees into India.<sup>7</sup> By 1964 religious persecution and the construction of the Kaptai hydro-electric dam had together displaced thousands of Chakma and Hajong refugees.<sup>8</sup> The construction of the dam had submerged the localities where the Chakma and Hajong refugees had resided.<sup>9</sup>

Upon entering India, the Chakma refugees temporarily settled in the Lushai Hills Region of Assam.<sup>10</sup> In the late 1960s, up till 1972, the Central Government, in accordance with its policy decision at the time, resettled the majority of the Chakma and Hajong Refugees in the North Eastern Frontier Agency.<sup>11</sup> This region would later become Arunachal Pradesh, although at the time of the resettlement project the region was under the control of Assam.<sup>12</sup> Subsequently, in 1972 two events unfolded that were of significance to the Chakma refugees: a) Arunachal Pradesh became a union territory; and b) India entered into the Indira-Mujib treaty, undertaking responsibility for all migrants from the erstwhile East Pakistan who entered into India prior to 1971.<sup>13</sup>

<sup>6</sup> See *infra* text accompanying notes 14-19.

<sup>7</sup> *Id.*, 1373.

<sup>8</sup> *Id.*, 1376.

<sup>9</sup> *Why is it Difficult to Grant Citizenship to Chakmas?* THE HINDU, September 23, 2017, available at <https://www.thehindu.com/news/national/why-is-it-difficult-to-grant-citizenship-to-chakmas/article19743294.ece> (Last visited on May 3, 2022); *Chakma, Hajong Refugees to get Indian Citizenship. All you Need to Know*, INDIA TODAY, September 13, 2017, available at <https://www.indiatoday.in/india/story/chakma-hajong-refugee-indian-citizenship-1043986-2017-09-13> (Last visited on May 03, 2022).

<sup>10</sup> THE NEW INDIAN EXPRESS, *supra* note 4.

<sup>11</sup> Prasad, *supra* note 5.

<sup>12</sup> *Id.*

<sup>13</sup> Antara Datta, *Refugees and Borders in South Asia* (2013), 116 (Notably, copies of the Indira-Mujib treaty that are presently available do not contain any reference to refugees. However, in support of her claim that a cut-off date had been established through the Indira-Mujib treaty, Antara Datta referred to subsequent statements by the State Government of Assam that acknowledged the cut-off date of March 25, 1971. “Thus, the Press Note suggested that those who had entered between 1950 and 1971 had, effectively, under the Constitution, attained citizenship, even if they had not legally filed for it: ‘These refugees have been accepted for all practical purposes as citizens. ...They are, therefore, foreign nationals only in the purely technical sense that they have not applied for and secured registration as citizens of India’”)

Thus, as of 1972, the Chakmas living in Arunachal Pradesh were legal residents owing to circumstances evidenced earlier for the following three reasons: *first*, the Chakma refugees were granted migration certificates by the central government in 1964;<sup>14</sup> *second*, the relocation and resettlement of the Chakma refugees in the North Eastern Frontier Agency was a policy decision by the Central Government; and *third*, India had taken responsibility for the Chakma refugees under the Indira-Mujeeb pact of 1972 since the Chakma Refugees had entered India before 1971.<sup>15</sup> This conclusion on the legality of the Chakmas' residence is necessary to determine their eligibility for the acquisition of citizenship, as is discussed in greater detail in Part III.<sup>16</sup>

By the 1980s, the All Arunachal Pradesh Students' Union ('AAPSU') had launched a state-wide movement against the granting of citizenship to Chakmas and Hajongs.<sup>17</sup> Thereafter, in 1985, the success of the All Assam Students' Union in securing the Assam Accords appeared to have encouraged the AAPSU to increase their crackdown on foreigners and refugees.<sup>18</sup> The agitation by the AAPSU has continued to this day, posing itself as the largest obstacle between Chakma refugees and Indian citizenship.<sup>19</sup>

### III. LEGAL BASES FOR CHAKMAS' CITIZENSHIP

For the purposes of citizenship acquisition through registration and naturalisation, the legality of the Chakma's residence in India is relevant under the amended §5 and §6 of the Citizenship Act. Under these provisions, citizenship can only be granted to those who are not illegal immigrants.<sup>20</sup> However, the exclusion of illegal immigrants from the application of §5 and §6 was effected only in 2003.<sup>21</sup> Prior to the amendment, the legality of the Chakmas' residence in India was irrelevant for the purposes of granting them citizenship.

<sup>14</sup> Chunnu Prasad, *Migration and the Question of Citizenship: People of Chittagong Hill Tract in Arunachal Pradesh*, Vol.67(3), THE INDIAN JOURNAL OF POLITICAL SCIENCE, 479 (2006).

<sup>15</sup> *Id.*

<sup>16</sup> See paragraph accompanying The Citizenship Act, 1955, §§5(1), 6(1).

<sup>17</sup> Prasad, *supra* note 5, at 1374.

<sup>18</sup> *Id.*, 1375.

<sup>19</sup> *See Arunachal Shuts Down Over Citizenship to Chakma-Hajong Refugees*, HINDUSTAN TIMES, September 19, 2017, available at <https://www.hindustantimes.com/india-news/arunachal-shuts-down-over-citizenship-to-chakma-hajong-refugees/story-5Z11HYedOB2MkrhG85LEUK.html> (Last visited on January 6, 2023); *Clear Stand on Chakma-Hajong Refugees: AAPSU to Centre*, DECCAN HERALD, December 13, 2019, available at <https://www.deccanherald.com/national/east-and-northeast/clear-stand-on-chakma-hajong-refugees-aapsu-to-centre-785310.html> (Last visited on January 6, 2023); *Citizenship Rights for Chakmas, Hajongs Unacceptable: Aapsu*, THE TIMES OF INDIA, June 18, 2018, available at <https://timesofindia.indiatimes.com/city/itanagar/citizenship-rights-for-chakmas-hajongs-unacceptable-aapsu/articleshow/64643706.cms> (Last visited on January 6, 2023).

<sup>20</sup> The Citizenship Act, 1955, §5(1), §6(1).

<sup>21</sup> The Citizenship Amendment Act, 2003.

Such was the existing law in 1972, when the Central Government decided to grant Chakma and Hajong refugees citizenship under §5(1)(a) of the Citizenship Act. This decision was made in pursuance of a joint statement issued by the Prime Ministers of India and Bangladesh.<sup>22</sup> However, the decision was never implemented.

Decades later, the inaction of the State Government in processing the citizenship applications of Chakmas, in addition to the growing threat to their safety due to the crackdown by the AAPSU, prompted the second of three Supreme Court rulings on the citizenship of Chakma refugees. The first ruling on the subject had come just three years prior, when Chakma refugees had claimed citizenship under §6A of the Citizenship Act.

### A. THE SUPREME COURT JUDGEMENTS (1993, 1996, AND 2015)

As previously mentioned, there have been three noteworthy Supreme Court rulings, in 1993,<sup>23</sup> 1996,<sup>24</sup> and 2015,<sup>25</sup> that dealt with the citizenship of Chakma refugees. The first of these judgments was in *State of Arunachal Pradesh v. Khudiram Chakma* ('Khudiram Chakma'), where the Supreme Court had to determine whether the Chakmas living in Arunachal Pradesh were citizens under §6A of the Citizenship Act.<sup>26</sup>

§6A was inserted into the Citizenship Act as a result of the Assam Accord.<sup>27</sup> It addressed specifically the citizenship of migrants in Assam. The Court noted that the provision laid down two conditions which must be satisfied for an individual to be deemed a citizen. *First*, the individual must be of Indian origin and ought to have entered Assam prior to January 1, 1966, from the specified territory.<sup>28</sup> The specified territory was the region that is today Bangladesh. *Second*, the individual must have been *ordinarily resident* in Assam since their entry into the state. Here, 'Assam' referred to the state as it existed in 1985, upon the enactment of the amending Act.<sup>29</sup>

The Supreme Court held that the Chakmas whose citizenship status was in question before them, were residing in Arunachal Pradesh and therefore,

<sup>22</sup> Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh v. State of Arunachal Pradesh, (2016) 15 SCC 540, ¶2.

<sup>23</sup> State of Arunachal Pradesh v. Khudiram Chakma, 1994 Supp (1) SCC 615.

<sup>24</sup> NHRC v. State of Arunachal Pradesh, (1996) 1 SCC 742.

<sup>25</sup> Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh v. State of Arunachal Pradesh, (2016) 15 SCC 540.

<sup>26</sup> State of Arunachal Pradesh v. Khudiram Chakma, 1994 Supp (1) SCC 615.

<sup>27</sup> Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord), 15 August 1985, available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/IN\\_850815\\_Assam%20Accord.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IN_850815_Assam%20Accord.pdf) (Last visited on January 6, 2023).

<sup>28</sup> *Id.*, 411.

<sup>29</sup> *Id.*

were not ordinarily resident in Assam. Accordingly, the Chakma refugees did not meet the second requirement laid down in §6A and were not citizens under the provision.<sup>30</sup> It must be noted, however, as acknowledged in the judgment, that the region wherein the Chakmas were residing had earlier been a part of Assam. It was only in 1972, years after the Chakmas' relocation in the region, that Arunachal Pradesh had become a separate union territory.

The 1993 judgment, although against the granting of citizenship to Chakma refugees, had only addressed the question with reference to §6A of the Citizenship Act. The judgment had not precluded Chakmas from applying for citizenship under §5 of the Act. In fact, in the 1990s, a large number of Chakma refugees had applied for citizenship under §5(1)(a) of the Citizenship Act, which dealt with persons of Indian origin who had been ordinarily residing in India for a period of seven years prior to the application for citizenship.

A mere three years after the judgment in *Khudiram Chakma*, in 1996, the Supreme Court addressed the citizenship of Chakma refugees again in *NHRC v. State of Arunachal Pradesh* ('the NHRC case'). In the present case, the NHRC had appealed for the protection of 65,000 Chakma refugees under Article 21 of the Constitution. The AAPSU had threatened the Chakmas with forceful removal from Arunachal Pradesh. In the neighbouring states, residents had, in the words of the Supreme Court, "threatened to kill them" if they entered the state.<sup>31</sup> Meanwhile, several Chakmas had applied for citizenship under §5(1)(a) of the Citizenship Act. These applications, which had been made to the relevant Deputy Commissioners in various parts of Arunachal Pradesh, had not been forwarded to the Central Government for consideration.<sup>32</sup>

The Court first distinguished the present case from *Khudiram Chakma*, stating that the 1993 judgement dealt only with §6A of the Citizenship Act, which had a narrower scope.<sup>33</sup> Conversely, citizenship by registration under §5 of the Act was meant for individuals who were not citizens but wanted to become citizens by registration. The Court then held that on a cumulative reading of Rule 8 and 9 of the Citizenship Rules, 1956, the Collector was required to transmit every application for registration of citizenship to the Central Government.<sup>34</sup> It was not up to the Collector, or the State Government for that matter, to determine the eligibility of an individual to obtain citizenship under §5 of the Citizenship Act. On these grounds, the Supreme Court directed that the applications of the Chakma Refugees under §5 be entered in the register and transmitted to the Central Government.<sup>35</sup>

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<sup>30</sup> *Id.*, 420.

<sup>31</sup> *NHRC v. State of Arunachal Pradesh*, (1996) 1 SCC 742, ¶18.

<sup>32</sup> *Id.*, ¶4.

<sup>33</sup> *Id.*, ¶17.

<sup>34</sup> *Id.*, ¶19.

<sup>35</sup> *Id.*, ¶21.

For nearly two decades after the judgement in the NHRC case, nothing changed with regard to the citizenship of Chakma refugees. The applications for citizenship were never acted upon. In 2015, the Supreme Court considered a petition on this matter by the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh ('C.C.R.C.A.P').<sup>36</sup> The Court took note of the developments in the last several decades that had strengthened the claim of Chakmas to citizenship. This included, inter alia, the decision of the Central Government to grant citizenship to Chakmas in 1972.<sup>37</sup> The Court also quoted a Rajya Sabha Committee which, in 1997, had recommended that the Chakmas who had entered into India prior to the cut-off date in 1971 be granted citizenship. Similar to the 1972 government decision, this recommendation had also not been acted upon.<sup>38</sup> Finally, the Supreme Court held that on the basis of the Central Government's stand on the citizenship of Chakma refugees, they were entitled to citizenship subject to the procedure being complied with.<sup>39</sup> The Court, thereby, directed both the Central and State Government to "finalise the conferment of citizenship on eligible Chakmas and Hajongs."<sup>40</sup>

The aforementioned Supreme Court judgments addressed two distinct paths to Chakmas' citizenship. The first path, under §6A of the Citizenship Act, was rejected in 1993 as the Chakma refugees in present-day Arunachal Pradesh had not been ordinary residents in Assam. The second path, under §5(1) of the Citizenship Act, required some action on the part of the State and Central Governments. In both 1996 and 2015, the Supreme Court took note of the failure of the executive to process the citizenship applications of the Chakmas.

Notably, on neither occasion did the Supreme Court confer citizenship on Chakma refugees. Instead, it directed the State and Central Governments to do so subject to the applications meeting the procedural requirements.<sup>41</sup> Seemingly, this qualifier has allowed the Central and State governments to continue to delay the granting of citizenship.<sup>42</sup>

<sup>36</sup> Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh v. State of Arunachal Pradesh, (2016) 15 SCC 540.

<sup>37</sup> *Id.*, ¶2.

<sup>38</sup> *Id.*, ¶8.

<sup>39</sup> *Id.*, ¶6.

<sup>40</sup> *Id.*, ¶20.

<sup>41</sup> The Supreme Court had initially prescribed that the applications for citizenship be finalised within three months of the judgement. The State Government of Arunachal Pradesh was subsequently mandated to provide periodic updates to the Supreme Court on its compliance with the judgment. In July 2017, a daily order of the Supreme Court recorded the state government counsel's statement that 900 out of the 4637 applications had been "finalised as far as the state is concerned". However, no further indication of compliance with the Supreme Court order was given by the state government in subsequent hearings. Although the updates on compliance with the judgment remained pending before the Supreme Court, the writ petition was last listed before the Court in April, 2019, see Committee of C.R. of C.A.P v. State of Arunachal Pradesh, 2017 SCC OnLine SC 725.

<sup>42</sup> See e.g. Reuters, *Chakma Refugees to get Citizenship after 50 Years in India, not Land*, September 19, 2017 available at <https://www.reuters.com/article/us-india-landrights-refugees-idUSKCN1BU1ICK>

Meanwhile, in 2016, another mode of citizenship acquisition presented itself to Chakma refugees in the form of the Citizenship Amendment Bill. The next sub-part will address how the initial version of Citizenship Amendment Bill included the Chakma refugees within its ambit, while a later version of the bill implicitly, yet deliberately, excluded them.

## B. THE CITIZENSHIP AMENDMENT BILLS

The recently enacted Citizenship Amendment Act, 2019 ('CAA'),<sup>43</sup> catered to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who had entered into India from Afghanistan, Bangladesh, or Pakistan. The CAA primarily granted two benefits to these categories of persons. *First*, they were protected from being designated as illegal immigrants by way of a proviso added to the definition of "illegal immigrants" under §1(b) of the Citizenship Act.<sup>44</sup>

*Second*, it provided a shorter path to citizenship to the aforementioned category of persons. This was done through the insertion of §6-B, a dedicated provision that reduced the minimum number of years of residence in India before acquisition of citizenship from 11 years to 5, solely in the case of those belonging to the aforementioned category.<sup>45</sup> The final version of the Act laid down certain specific requirements in addition to the primary ones mentioned above. For instance, the above category of persons would be protected from being designated as illegal immigrants only if they had entered into India before the cut-off date of December 31, 2014,<sup>46</sup> and had been granted formal exemption by the Central Government.<sup>47</sup>

The aforementioned Act was first introduced in the Lok Sabha in 2016. Incidentally, this earlier version of the bill, namely Bill 172-C of 2016 ('CAB 2016'),<sup>48</sup> was shorter than the later version of the bill, namely Bill 370 of 2019 ('CAB 2019'),<sup>49</sup> that went on to become the CAA. CAB 2016 contained two significant amendments to the mode of acquiring citizenship under the Citizenship Act. *First*, it added a proviso to §2 of the Act that would exclude the class of persons mentioned herein from the term illegal immigrant, as long as they were

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(Last visited on May 03, 2022); *Chakma, Hajong Refugees to get Indian Citizenship. All you Need to Know*, INDIA TODAY, September 13, 2017, available at <https://www.indiatoday.in/india/story/chakma-hajong-refugee-indian-citizenship-1043986-2017-09-13> (Last visited on May 3, 2022) (In September 2017, the Home Ministry announced that it would comply with the 2015 Supreme Court Order and grant citizenship to approximately 54000 Chakmas and Hajongs. Pertinently, this declaration came with a caveat that Chakma would not be placed at an equal pedestal as other citizens. It was suggested that the Chakma refugees would not be given certain rights, such as land ownership, even if they were granted "citizenship").

<sup>43</sup> The Citizenship (Amendment) Act, 2019.

<sup>44</sup> *Id.*, §2.

<sup>45</sup> *Id.*, §3, §6.

<sup>46</sup> *Id.*, §2.

<sup>47</sup> *Id.*

<sup>48</sup> The Citizenship (Amendment) Bill, 2016, Bill No. 172-C of 2016.

<sup>49</sup> The Citizenship (Amendment) Bill, 2019, Bill No. 370 of 2019.



first exempted by the Central Government.<sup>50</sup> *Second*, under the Third Schedule, it reduced the period of residence required for acquisition of citizenship from 11 years to 5 years for this category of persons.<sup>51</sup>

The Chakma refugees of Arunachal Pradesh fitted squarely into the ambit of the CAB 2016. They were Buddhists who had entered India from what is now Bangladesh. The CAB 2016 did not include a cut-off date, although it would not have affected the applicability of the proposed Act on the Chakmas, who had entered decades prior in 1964. The region they had fled from belonged, at the time, to Pakistan, which was also included within the ambit of the Bill.

The CAB 2016 was passed in the Lok Sabha on January 08, 2019. On the same day, the Chief Minister of Arunachal Pradesh stated that the state would challenge the granting of citizenship to Chakmas and Hajongs under the amended Citizenship Act.<sup>52</sup> This statement is relevant to the present discussion for two reasons: *first*, it was further indication of the applicability of the proposed amendment to Chakma refugees; and *second*, it displayed the resistance such an amendment would face from the Arunachal Pradesh state government.

With the dissolution of the 16<sup>th</sup> Lok Sabha, the CAB 2016 lapsed.<sup>53</sup> Later in the year, a modified version of the same bill, CAB 2019, was tabled in the Lok Sabha by the then recently appointed Union Home Minister, Amit Shah.<sup>54</sup> The new Bill introduced the cut-off date and, more importantly, proposed the insertion of §6-B into the Citizenship Act.

§6-B was a dedicated provision for the granting of citizenship to certain categories of persons, although its addition or absence did little to modify the path to citizenship for the aforementioned categories; its absence merely meant that individuals in this category would have to apply for citizenship under §5 or §6 as opposed to the dedicated §6-B. After all, the primary obstacle to citizenship was being designed as “illegal immigrants”; the 2016 Bill had sufficiently protected the concerned category of persons from designation as illegal immigrants by way of the proposed amendment to §2(1)(b). Further, the criteria for naturalisation under §6 had been relaxed by the amendment to the Third Schedule.

<sup>50</sup> Who have been exempted by the Central Government under Cl.(c) of sub-section (2) of §3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any order made thereunder”, see The Citizenship (Amendment) Bill, 2019, Bill No. 172-C of 2016, §2.

<sup>51</sup> *Id.*, §4.

<sup>52</sup> *Arunachal to Fight Case in SC to Disallow Citizenship to Chakma, Hajong Refugees: CM Pema Khandu*, THE FINANCIAL EXPRESS, January 8, 2020, available at <https://www.financialexpress.com/india-news/aranachal-to-fight-case-in-sc-to-dissallow-citizenship-to-chakma-hajong-refugees-cm-pema-khandu/1817297/> (Last visited on May 3, 2022).

<sup>53</sup> *Entry on the Citizenship (Amendment) Bill, 2019*, PRS Legislative Research, available at <https://www.prsindia.org/billtrack/citizenship-amendment-bill-2019> (Last visited on May 3, 2022).

<sup>54</sup> The Citizenship (Amendment) Bill, 2019, Bill No. 370 of 2019.

As noted above, the impact of §6-B on the access to citizenship for the relevant class of persons was minimal. Conversely, the impact of the provision on the status of Chakma refugees was of greater consequence. Clause 4 of the proposed §6-B excluded from the ambit of the provision, among other areas, the “area covered under ‘The Inner Line’ notified under the Bengal Eastern Frontier Regulation, 1873.”<sup>55</sup> As Arunachal Pradesh was covered under the Inner Line, §6-B would not apply to the Chakma refugees of Arunachal Pradesh.

The CAB 2019 was promptly passed in both houses of Parliament. At this juncture, it would not be too far-fetched to suggest that the inclusion of Clause 4 was a deliberate attempt at excluding Chakma refugees, along with other categories of refugees in the North-Eastern states, from the ambit of the CAA. After all, the granting of citizenship to Chakmas had been contentious for decades.<sup>56</sup> While it is unlikely that the inclusion of the Chakmas in the CAB 2016 was similarly deliberate, even the incidental strengthening of the Chakmas’ argument for Indian citizenship had been met with tough resistance from the state government in Arunachal Pradesh.<sup>57</sup>

Admittedly, the effect of this exclusion on the Chakmas’ *legal* claim to citizenship is limited. This is particularly so because the Chakmas’ exclusion from § 6-B of the Citizenship Act did not deprive them of the protection that the amended § 2 granted from designation as illegal immigrants. Although they stand not to benefit from any potential citizenship acquisition drives in furtherance of the CAA, the argument remains that the Chakmas’ claim to citizenship acquisition is strong enough as it is. To illustrate, the next sub-part outlines the Chakmas’ legal claim to citizenship under the pre-CAA regime, with an emphasis on their claim to citizenship by birth.

### C. THE CASE FOR CHAKMA REFUGEES’ CITIZENSHIP BY BIRTH

§3(1) of the Citizenship Act confers citizenship on the basis of a person’s birth within the territory of India. In addition to the threshold requirement of birth within the territory of India, the provision imposes certain additional requirements based on the year of birth. While those born before January 26, 1950, are outside the purview of §3(1) altogether,<sup>58</sup> the provision prescribes additional requirements for those born after July 1, 1987.

<sup>55</sup> The Citizenship (Amendment) Bill, 2019, Bill No. 370 of 2019, §3; The Citizenship Act, 1955, §6-B(4).

<sup>56</sup> See Part II and accompanying footnotes.

<sup>57</sup> The Citizenship (Amendment) Bill, 2019, Bill No. 172-C of 2016.

<sup>58</sup> Citizenship by birth for persons born before January 26, 1950, is governed by Chapter II of the Constitution of India.

Persons born in India after January 26 1950 and before July 1, 1987 need not meet any additional requirements; the fact of their birth in the territory of India during this period is sufficient for them to be deemed citizens by birth.<sup>59</sup> Those persons who are born after July 1, 1987 need to establish that at least one of their parents was a citizen of India.<sup>60</sup> A third requirement was added for persons born after the commencement of the Citizenship (Amendment) Act, 2003, namely that neither of their parents must be an illegal immigrant.<sup>61</sup>

Before applying the above provisions to Chakma refugees, it is necessary to note that the division between those born before and after the commencement of the Citizenship (Amendment) Act, 2003, held no relevance to the Chakma refugees. This is because, as discussed in Part II, the legality of the Chakma refugees' residence had not been in dispute since the 1970s. As a result, the claim to citizenship by birth of Chakma refugees born in India after July 1, 1987, would be dependent solely on whether either of their parents was a citizen of India.

For the purposes of §3(1) of the Citizenship (Amendment) Act, 2003, Chakma refugees may be divided into three categories: 'Category A' which consists of first-generation refugees who entered India in the 1960s, 'Category B' which consists of second-generation refugees who were born in India at any point prior to July 1, 1987, and 'Category C' which consists of persons born after 1987.

Category A refugees do not meet the threshold requirement under §3 of birth in India and, therefore, cannot make any claim to citizenship by birth. Category B, being the offspring of the earliest Chakma refugees, were born inside India during a time period where the citizenship status of their parents had no bearing on their own status as citizens by birth. Accordingly, Category B refugees in their entirety were citizens by birth under §3(1)(a) of the Citizenship Act.

It is in the assessment of Category C refugees that the citizenship status of their parents becomes relevant. Pertinently, the Supreme Court judgments in 1996 and 2015 had inadvertently revealed that at no point in the past several decades had the applications for citizenship under §5(1) by Chakma refugees been processed or granted. Consequently, Category A refugees were neither citizens by birth nor were they citizens under §5(1) of the Citizenship Act. On the other hand, Category B refugees were all citizens by birth. Therefore, the citizenship status of Category C refugees was dependent on whether they were children of Category A refugees or Category B refugees. Those who were children of Category B refugees were thus citizens by birth in accordance with §3(1)(a) and §3(1)(b) of the Citizenship Act.

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<sup>59</sup> The Citizenship Act, 1955, §3(1)(a).

<sup>60</sup> *Id.*, §3(1)(b).

<sup>61</sup> *Id.*, §3(1)(c).

Notably, the fact that Category B refugees were citizens by birth was effectively recognized by the Election Commission in India ('ECI') as early as 2003, when the ECI had directed Election Registration Officers to include eligible Chakmas in the electoral rolls of various assembly constituency.<sup>62</sup> Two years after the initial direction of the ECI had been made and implementation of the same was not forthcoming, the ECI added specific guidelines pertaining to Chakmas in its Memorandum dated March 23, 2005.<sup>63</sup> The 2005 guidelines laid down the procedure for the inclusion of Chakmas born between January 26, 1950 and July 1, 1987 in the electoral rolls of the concerned assembly constituency. The guidelines prescribed the categorisation of such persons on the basis of whether their linkage to parents who had migrated to Arunachal Pradesh in 1964 had been established. Those whose linkages were established were to be immediately added to the electoral rolls whereas those whose linkages were not established were subject to local verification by the concerned Election Registration Officers.

The 2005 guidelines pertaining to Chakmas were reiterated by the ECI vide a memorandum on October 03, 2007.<sup>64</sup> In spite of the repeated directions by the ECI to include eligible Chakmas in the electoral rolls, the guidelines were not implemented by the Election Registration Officers. To make matters worse for the Chakmas, the validity of the two aforementioned guidelines was challenged before the Guwahati High Court in *AAPSU v. Election Commission of India*.<sup>65</sup> The Guwahati High Court held that the birth of Chakmas in Arunachal Pradesh between January 26, 1950 and July 1, 1987 would entitle them to citizenship by birth under §3(1) of the Citizenship Act and the consequential right of inclusion in the electoral role of the assembly constituency where they are settled.<sup>66</sup> On the basis of this finding, *inter alia*, the High Court upheld the validity of the ECI guidelines.<sup>67</sup>

The Order of the Guwahati High Court in *All Arunachal Pradesh Students Union v. Election Commission of India*, coupled with the ECI guidelines of 2005 and memorandum of 2007, thus confirmed that Chakmas born in India between January 26, 1950 and July 01, 1987 are citizens of India. Accordingly, the children of the above category of Chakmas, provided they were born in India, would also be citizens of India under §3(1)(a) and §3(1)(b) of the Citizenship Act. As for the first-generation refugees who had traveled from erstwhile East Pakistan and entered India in the 1960s, their citizenship status would be subject to the Central Government processing their applications for citizenship by registration under §5(1) of the Citizenship Act.

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<sup>62</sup> All Arunachal Pradesh Students Union v. Election Commission of India, 2013 SCC OnLineGau 664, ¶5.

<sup>63</sup> *Id.*, ¶8.

<sup>64</sup> *Id.*, ¶9.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*, ¶15.

<sup>67</sup> *Id.*, ¶18.

#### IV. CONCLUSION

The Chakma refugees are distinguishable from most other categories of refugees in India because their residence in the country has been legal for several decades. The legality of their residence, in turn, meant that they were not precluded from applying for citizenship under §5 of the Citizenship Act. This was affirmed on multiple occasions by the Supreme Court.

While the 2015 Supreme Court decision had directed the conferment of citizenship on eligible Chakma refugees,<sup>68</sup> it had targeted a relatively small number of Chakma refugees whose applications for citizenship by registration had been pending for several years. A large number of Chakma refugees would remain in a state of limbo even after, if at all, the judgement was implemented.

This state of limbo exists because there is presently no framework in India- Assam's National Register of Citizens being the exception -that confirms the citizenship status of those who claim it under §3 or §4 of the Citizenship Act. Such a confirmation is seldom required, as the citizenship status of those born in India is typically assumed in their favour without any questioning. But second-generation Chakmas born in Arunachal Pradesh find themselves in a peculiar situation where their claim to citizenship by birth is perpetually ignored.

Arguably the closest alternative to a confirmation of citizenship by birth is one's inclusion in the electoral rolls of an assembly constituency. Between 2003 and 2010, the ECI issued repeated directions for the inclusion of Chakmas in the electoral rolls of certain constituencies. Finally, in 2012, the Guwahati High Court recognised the eligibility of a large proportion of Chakmas to citizenship by birth and upheld the validity of the ECI directions on the same.

However, resistance to Chakmas' citizenship has still remained. Examples of such resistance were witnessed most recently when CAB 2016 was passed in the Lok Sabha. The object of this article was thus to highlight how the ambiguity surrounding the citizenship of Chakmas has been forcefully imposed around six decades after the first wave of Chakma refugees entered India. That this ambiguity has been *forcefully imposed* is emphasised because the Chakmas' path to citizenship under the Citizenship Act ought to have otherwise been straightforward. Those who were not eligible for citizenship by birth could have obtained citizenship by registration after completing the requirements laid down in §5(1) of the Citizenship Act. In spite of this, the question of *granting* citizenship to Chakmas has been raised repeatedly, with each endeavour to confirm their status being met with resistance in Arunachal Pradesh.

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<sup>68</sup> Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh v. State of Arunachal Pradesh, (2016) 15 SCC 540.