Serial No. 1
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 448 of 2018

Date of Hearing : 07.12.2018
Date of Decision: 10.12.2018

Shri. Amon Rana Vs. State of Meghalaya & Ors.

Coram: Hon'ble Mr. Justice S.R.Sen, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R.Gurung, Adv.

For the Respondent(s) : Mr. A.Kumar, AG with
Ms. R.Colney, GA (For R 1-3)
Ms. A.Paul, ASG (For R 4 & 5)

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. Heard Mr. R.Gurung, learned counsel for and on behalf of the petitioner as well as Mr. A.Kumar, learned Advocate General assisted by Ms. R.Colney, learned GA for and on behalf of the respondents No. 1 to 3 and Ms. A.Paul, learned Assistant Solicitor General, Govt. of India for and on behalf of the respondents No. 4 &5.

2. The issue here is refusal of granting Domicile Certificate to the petitioner. I feel the difficulties faced by the residents to get the Domicile Certificate and the Permanent Residence Certificate have become a great issue today which will have to be examined since the inception of India

(Bharat Barsh). Therefore, I am of the view and that I will fail in my duty if I do not project the original India and its partition.

3. As we all know that India was one of the largest country in the world and there was no concept of Pakistan, Bangladesh and Afghanistan. They were in one country and was commanded by Hindu Kingdom but thereafter the Mughal came to India and captured the different parts of India and started ruling the country and at that point of time many conversion took place by force.

Thereafter, the English people entered India in the name of East India Company and started ruling over India and were torturing the Indians so ultimately the independence movement started and India got its independence in the year 1947 and India was divided into two countries; one was Pakistan and the other was India.

It is an undisputed fact that at the time of partition, lakhs and lakhs of Sikhs and Hindus were killed, tortured and raped and forced them to leave their forefather's property and compelled them to enter India to save their lives and dignity.

4. Pakistan declared themselves as an Islamic country and India since was divided on the basis of religion should have also been declared as a Hindu country but it remained as a secular country.

Even today, in Pakistan, Bangladesh and Afghanistan, the Hindus, Sikhs, Jains, Buddhists, Christians, Parsis, Khasis, Jaintias and Garos are tortured and they have no place to go and those Hindus who entered India during partition are still considered as foreigners, which in my

understanding is highly illogical, illegal and against the principle of natural justice. I have read the book written by Tathagata Roy, the present Governor of Meghalaya called "*My People Uprooted: The Exodus of Hindus from East Pakistan and Bangladesh*". I have also read the book written by Dr. Dilip Lahiri, a Professor of St. Edmunds College, now retired which is titled "*Nirbashita Sribhumi* Part II and *Sundori Sribhumi Srihotto* Part I" and other related materials. After reading those books, it really pains and hurts me and therefore I feel that I will fail in my duty if it is not brought to the notice of the common people and Government of India. The gist of the books referred above are reproduced herein below:

> *"Eternal Vigilance is the price of liberty. Culturally, racially, and linguistically, every non Assamese is a Foreigner in Assam. In this connection we must bear in mind that Assam from the very ancient times never formed a part of India. (Lahiri, Sundori Tumi Srihotto, Part I pg 373)*
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> *The tragedy on a monumental scale. The tragedy of the Hindu Bengalis of Sylhet district of Assam-the district which was subjected to an unnatural referendum according to which most of the district opted for Pakistan, except for three thanas of Ratabari, Patharkandi, Badarpur and part of Karimganj. Persecution forced this section of the people to flee from East Pakistan and the fact that their plight has remained unaddressed seventy two years since partition is the most unjust part."...the atrocities against Hindus in erstwhile East Pakistan began with overt or covert state sponsorship, and gradually took on the form of another holocaust."(Roy, My People Uprooted pg, 40). Atrocities have taken covert form even after the Independence of Bangladesh in 1971 and post Babri Masjid demolition in 1992 unspeakable horrors were unleashed against the Hindus once again. 2001 -2002 was a special case measured up to the state sponsored progrom of the East Pakistan times of 1950.There is a continued human rights violation in Bangladesh even today.*

It is a long saga of denials and deprivations, wilful neglect.

The Jewish Holocaust, or the mass murder of the Jews by Nazis during World War II and the preceding years, is known to the whole world. It has been researched and documented extensively and intensively books written and films like Schindler's List made. Persecution of Jews in Eastern Europe ,which preceded the Nazi horror, and which has contributed the word progrom to the English language as well as aberrations like the Dreyfus affair of France are well known throughout the civilised world. The 'Young Turk 'government of the Turkey-based Ottoman Empire committed a genocide of Christian Armenians in 1915-16. Armenians all over the world commemorate this great tragedy on April 24 each year. Slavery followed by deprivation of Civil Rights of African Americans in the U.S.South has been denounced and censured...Alex Haley's 'Roots' tells the world about the experience of the slaves in America.

Human Rights Abuses and State Sponsored persecution of ethnic groups have been fought by leaders who have been awarded Nobel Prize. Martin Luther King Jr.Albert Luthuli, Bishop Desmond Tutu and Nelson Mandela, Boris Pasternak, Alexander Solzhenytsin, Andrei Sakharov and Lech Walsea and Aung San Suu Kyi.

Tathagata Roy Governor of Meghalaya a prolific writer in his book My People Uprooted: The Exodus of Hindus from East Pakistan and Bangladesh contends that whereas all these injustices have been highlighted, researched and documented by the descendants and brought to the attention of the world, the mass exodus of Hindus from East Pakistan has remained unknown to the world and does not constitute a major refugee movement according to the annals of the UNHCR.

And yet this was one of the major cases of Human Rights violation in the world. The state sponsored persecution of the Hindus from East Pakistan and hereafter the wilful, deliberate concealment and near erasure of this violent tragedy from the history of the world needs to be dealt with urgently. Truth needs to be unearthed because history is

repeating itself in the recent raking up of the "Foreigner" issue in the neighbouring state of Assam where Hindu Bengalis have been targeted once by a tragic turn of tale.

The mass exodus of Bengali Hindus from East Pakistan post partition and 1971 onwards from Bangladesh who were dispossessed and rendered homeless suffered twice over because of policy decisions of the British, because of linguistic and religious biases of the people on either or both sides of the border. The people in question many of whom are termed as illegal immigrant or foreigners in India are the very same people who were part of undivided India. Partition was Britain's filthiest trick to keep the embers of communalism burning. Burn it did, both the East and the West. India's two states suffered from it the most-Punjab and Bengal. But whereas the exodus in Punjab was both sided and refugees from West Pakistan were rehabilitated the Bengali Hindus remained in a continuous state of turmoil. While 5,500,000 non –muslims were brought across the border from West Punjab and other provinces of Western Pakistan, during the same period about 12,50,000 non-muslims crossed the border from Eastern Pakistan into West Bengal(Ray, pg 169).

The infamous ethnic cleansing carried out by East Pakistan on Bengali Hindus in 1950 was the result of a faulty and most contentious Sylhet Referendum. The referendum stained the pages of history with the blood of the innocent Bengali Hindus and subsequently sealed their fates forever. They were uprooted and made to flee their land (now an alien country) facing forcible conversion, religious persecution, loot, murder and mayhem, arson and rape and raiding of property. As Tathagata Roy recounts in his book My People Uprooted: The Exodus of Hindus from East Pakistan and Bangladesh:

The scenes of the two most horrendous killings were the villages of Muladi and Madhabpasha ...Home of several hundred Hindus, when their houses were torched the Hindus flocked to the Police station for shelter. They were attacked and killed in the very precincts of the

Police Station...At Madhabpasha, under Babugunj Police Station, some two to three hundred Hindus were rounded up by a bloodthirsty Muslim mob, made to squat in a row and had their heads chopped off one by one with a ramda...(Roy, My People Uprooted, pg 218).

Roving Muslim men indulged in looting from the villagers living close to the border who were trying to cross over to India.

Uniformed East Pakistani civil defence personnel, known as Ansars participated in the looting and snatching of women. (Roy, My People Uprooted, pg221)

Post 1971 was the first period when the history of the brutalities on the Hindus were documented. The gory details of the mass murder in Dhaka University has been recorded in the book Dacca BishshobidyalayeGonohatyar 1971, Jagannath Hall. During the Liberation War Pakistani army targeted the Hindus. Lt.Col.Aziz Ahmed Khan, Commanding Officer of 8 Baluch, said in his deposition before the Hamidoor Rahman Commission "General Niazi asked as to how many Hindus we had killed. In May there was an order in writing to kill Hindus. This order was from Brigadier Abdullah Malik of 23 Brigade."

The publication of the seminal work The Blood Telegram: India's Secret War in East Pakistan, by Gary J.Bass has helped unravel many unknown aspects of this genocide.

Sylhet Referendum

In the case of Sylhet Referendum James Madison's argument seems to be applicable. He defined Referendum as a "tyranny of the majority".

In a book titled Nirbashita Sribhumi ***Part II*** *Dr Dilip Lahiri in a section entitled Referendum (Unfiltered)has questioned the validity of the Referendum in Sylhet. Making use of the rare archival sources in the form of exchange of letters between the then Viceroy, Governor General, Pandit Jawaharlal Nehru, Liaqat Ali Khan and several top brasses in administration a file which was destroyed by Assam*

Government and recently procured from Archive section of London Museum he has raised few questions about Sylhet Referendum.

1. The Viceroy had fulfilled neither the conditions laid out in the June 8 statement that The referendum in Sylhet like in NWFP would be held under the aegis of the Governor General and British officers of the Indian army would supervise the proceedings. In Sylhet no such military officer was deputed Instead matters appear to have been left in the hands of the Provincial Government which means Congress Ministry interested in the referendum and a Governor notorious for his Muslim League views and also his anxiety to placate the Congress.

Lord Mountbatten said the results have already been sent to London and permission given for release of the news in response to Nehru's request for an immediate enquiry.

2. There was a hasty announcement of the results. In a telegraphic message dtd 12th of July, 1947 the Governor of Assam sent the results of the Referendum as "Sylhet referendum result. Valid voters joining East Bengal 279,619. For remaining in Assam 164,041. Majority of 56,578. Percentage of valid votes to total electorate entitled to vote 77.33. Request your announcing on July 14th morning. Bordoloi, Prime Minister who is now in Delhi may himself be informed in advance of your announcement."

3. The Referendum was not free and fair and Rabindranath Choudhury said in his telegram to the Viceroy of India HE Lord Louis Mountbatten "The Hindus of Sylhet in all fairness cannot be called upon to abide by the results of the spurious Referendum" (Lahiri, Nirbashita Sribhumi part II pg 162). There was demand for a fresh referendum "untrammelled by Muslim League violence and interference of outsiders". He further said "Elaborate Military arrangement ought to be made so that not a single voter in the remotest village may be prevented from visiting the Polling Booth. When 17,000 soldiers were provided to NWFP for the purpose of referendum there why was not similar arrangement made for the

district of Sylhet consisting of 32,00,000 of people and an area of over 6,000 square miles?" (Lahiri, NS, pg 162) What had happened was complete injustice to the Bengali Hindus of Sylhet and it could only be set right by holding fresh referendum.

The said letter is reproduced herein below:

"RABINDRANATH CHOUDHURY
B.A.BL.
PHONE : 8.8.6374.

P.S.S, C.I.T.SOVABAZAR,
POST BOX 12211.
Ref. CALCUTTA-5.
THE 17th July, 1947.

To

His Excellency,
Lord Louis Mountbatten,
Viceroy of India,
New Delhi.

Your Excellency,

I confirm having sent to you a telegram on the 15th instant a copy of which is being enclosed herewith. The Sylhet Referendum has been vitiated by Muslim League violence and grave irregularities which are too many to be catalogued here but I understand the whole question has been referred to you from other sources also. The fact remains that the Viceroy's assurance has not been kept due to whose fault I do not know. It has not been a free and fair Referendum. Under the circumstances the very dignity of the Viceroy requires that he should arrange for a free and fair Referendum under ideal circumstances. The Hindus of Sylhet in all fairness cannot be called upon to abide by the result of this spurious Referendum. Kindly, therefore, take steps immediately to hold another referendum untrammelled by Muslim League violence and interference of outsiders. Let there be a fresh Referendum which will be a concern of the people of the Sylhet District only and no one from outside should be allowed to complicate the issue.

Elaborate Military arrangement ought to be made so that not a single voter in the remotest village may be prevented from visiting the Polling Booth. When 17,000 soldiers were provided to North-West Frontier Province for the purpose of the Referendum there why was not similar arrangement made for the District of Sylhet consisting of 32,00,000 of people and an area over 6,000 square miles?

This injustice done to the citizens of Sylhet and specially the Hindus ought to be set right by holding a fresh Referendum. Kindly take steps accordingly.

I remain,
Your Excellency's
Your most obedient servant,
Sd/-"

Enclo: 1 Copy
Telegram.

Amrita bazar Patrika in its edition of the newspaper on 7th July 1947 captioned Gigantic Plot to Sabotage Free Voting in Sylhet reported that there was serious charge against officers blockading voters.

Habiganj, July 7-The referendum voting has just been completed and the doors of the 239 polling stations have just been closed....everywhere the Muslim League took to some tactics for preventing non-Muslim voters from coming to polling stations. Muslim presiding officers openly sided with the Muslim League, it is reported by the referendum office here. A formal complaint has been lodged against one E.A.C. and in one centre the presiding officer and his staff resigned on account of the malpractices of the Muslim Police Officers and their colleagues and disturbances caused by the Leaguers."(Lahiri, NS, part II, pg 237).

In a communiqué between Hon'ble Pandit Jawaharlal Nehru and Mountbatten of Burma, Mountbatten said "such irregularities as there were could not have affected the result of the referendum and Bengal Boundary Commission was entrusted with the task of dealing with the boundaries for Sylhet. (Lahiri,pg 166)

Again in an extract from the letter dtd 21st July, from HE the Viceroy to HE the Governor of Assam he said, "I am entirely satisfied that it was properly carried out."(Lahiri, pg 167).

4. There were two files one of Assam Government and the other for HH Queen of England. The copy in Assam was burnt down or destroyed keeping only the blue note sheets. So the actual happening never came to light. Sylhet was divided

5. In another letter to Mountbatten, Nehru said

"There is one important matter to which our attention has been drawn by Mr. Gopinath Bordoloi, Prime Minister of Assam...it is highly probable that certain parts of Sylhet district will have to go back to Assam after the report of the boundary commission..."(Lahiri, NS part II, pg 226).

5. Also, referendum is not an authority to give independence to any part of the country. It needs to be ratified by the Parliament. Whether Sylhet Referendum was ratified by the British or Indian Parliament is not known. It is a possibility that a great chunk of Assam land was thus lost without legal approval.

Nehru tried to retain a part of Sylhet and had the planters' lobby, communists, labour unions pressuring Hyderi for keeping the tea plantations in India and a slice of Sylhet was included in Assam.

History

Under the British rule Assam was created as a new province in 1874 and Sylhet transferred from Bengal to Assam to boost the latter's revenues because Sylhet was rich in tea plantations. Thus Sylhet the frontier Bengali district was made a part of Assam since it appeared vital to maintaining effective economic and intellectual links between the delta and the mountains. Three fourths of the people relocated were Sylhetis. Sylhet continued to be a part of Assam from 1874 to 1947 except for a brief period (1905-1912) when it was attached to Bengal during partitioning of Bengal and when it was annulled joint back to Assam. A referendum was held on the 6th and 7th of July, 1947 to decide on the question of its amalgamation with Eastern Bengal. Referendum results made Sylhet part of Eastern Bengal except for the three thanas of Karimganj, Badarpur and Ratabari. Religious extremism, bestiality of the worst kind was perpetrated attempts made at ethnic cleansing which forced the Hindus to flee to India a country essentially his own and from which he never strayed. The history of persecution continued even after East Pakistan became Bangladesh in 1971 with the help of India and also with the help of the residual Hindu population there. The sacrifices were forgotten and post 1971

situation turned barbaric time and again. Years later when the Hindu Bengali identity has been put under scanner and his citizenship questioned, we need to re-examine the veracity and legal status of the Sylhet Referendum which took them away from India.

In the initial phases when Sylhet was attached to Assam in 1874 till many decades later Sylhet continued to fight for merger with Bengal. Inhabitants of Sylhet submitted their protest in a memorial, dated 10th August 1874 to the then Viceroy and Governor General of India expressing their wish and intent to do so. (Lahiri, Sundori Sribhumi Srihotto PartI, pg 311).

Assam on the other hand had become resentful of the dominance of Sylheti Bengalis in High profile jobs and other spheres. Also desirous of creating a culturally and linguistically homogenous Assam, the Assam Congress put forth the idea of transference of Sylhet to Bengal as part of a futuristic plan for organizing the provinces within undivided India. But in June 1947 the transference meant it would be part of East Pakistan. To the Assam Congress it did not matter whether Sylhet went to Pakistan or remained in India. Gopinath Bordoloi made it publicly known that that Cabinet was not interested in retaining Sylhet. Thus with an overenthusiastic Muslim League who rigged the polls, an apathetic British and disinterested Assam the Referendum happened. The Hindu voters were physically prevented from voting. Intimidation was exercised by large number of armed Muslim National Guards and others who had come from Bengal (Lahiri, part II142) A Minister of Assam Government supported the charges made. Nehru wanted a thorough enquiry and said if the anomalies reported are true the validity of the Referendum becomes questionable.

The document on the basis of which Monumental changes were brought about in the destiny of a race. What subsequently happened would put shake the conscience of a nation and put humanity to shame.

Just when the worst atrocities were forgotten and healing started history repeated itself and this time the perpetrators were his own countrymen.

Assam's dealing with Sylhet

India a country which has preached and practiced multiple presence, a land which has accommodated and embraced racial ,cultural , linguistic and religious diversity since the beginning of civilisation seem to be failing in preserving this spirit in its pursuance of a policy in the North Eastern state of Assam. The state's habit of intolerance is age old and the state and its people were b responsible for virtually shoving Sylhet and the Bengali Hindus to the kind of acute crisis situation it is suffering from today.

Utterly regardless of the rights of a displaced ,dispossessed people called Hindu Bengalis from Sylhet the state machinery in Assam has engaged itself in an exercise of identifying illegal immigrants or so called foreigners .Midnight of March 24 ,1971has been set as the cut off year. The draft of NRC released on July 30 excluded 4 million people whose fate remains uncertain. Citizenship Amendment Bill which is being opposed tooth and nail by the entire Assamese populace necessitates a relook at the history of the people targeted, their nationality known ,their habitats visited and most importantly focus on the travails of their historical journey. It must be first instance in the history of mankind where a race stands to suffer dispossession twice over-once when his native land was usurped by religious fanatics in Pakistan and subsequently Bangladesh and on his return to India he was termed an immigrant.

-Assam has always been desirous of organising the province of Assam on a linguistic and cultural basis. The inclusion of Bengali speaking Sylhetis and immigration and importation of lakhs of Bengali settlers on wastelands has been threatening to destroy the distinctiveness of Assam.

In 1946 Gopinath Bordoloi told a British delegation that Assam would be quite prepared to hand over Sylhet to Bengal.

Historian Sujit Choudhury wrote:

The Bengali speaking district was regarded as an ulcer hindering the emergence of a unilingual Assam. Hence, when the decision for the referendum was announced. Gopinath Bordoloi, conveyed to all concerned that the cabinet was not interested in retaining Assam.

In fact Assam made no serious effort to win the plebiscite in Sylhet and even allowed propagandist from Punjab to rally for Pakistan. Sylhet leaders were discouraged when they tried to salvage a portion of the district through effective representation in the Boundary commission.

-Had there been no partition, there would not have been any foreigner issue in Assam says historian Sujit Choudhury.

Post partition the Sylheti Bengali Hindus saw the worst of Human Rights Violation untold to the rest of the world the flood of refugees who now crossed the international border and entered Assam faced another kind of discrimination. This time it was linguistic and cultural.

Muslim Bengalis in Assam who were educationally backward saw opportunity in siding with Assamese and the educationally and culturally elite Bengalis slowly lost out.1956 saw the organisation of the states along linguistic lines and Assam elites retained power.

History of Sylhet

A look at antiquity would help us understand the Bengali Hindu situation in Assam better.

Sylhet was a hub of great commercial activity since ancient times, inhabited primarily by the Indo-Aryan Brahmins with some ethnic

traces of Assamese .It is believed that the ancient kingdom of Harikela was situated here. The last chieftain to reign Sylhet was Raja Govinda of Gaur. Shah Jalal the Sufi missionary defeated Raja Gaur Govinda and the entire region fell into the hands of Shah Jalal. The year was 1357.Thus fourteenth century marked the beginning of Islamic influence in Sylhet. During the Mughal regime Sylhet was put together with Bengal through a decree. Sylhet district was established in1782 and until 1878 it was part of Bengal Province. In that year Sylhet was included in the newly created Assam Province and it remained part of Assam upto 1947 besides a brief breakup of Bengal Province in 1905-1911.In 1947 Sylhet became a part of East Pakistan as a result of referedum.

What caused the mass exodus of Bengali Hindus from East Pakistan post partition and 1971 onwards from Bangladesh were dispossessed and rendered homeless twice over because of policy decisions of the British, because of linguistic and religious biases of the people on both sides of the border. The people in question many of whom are termed as illegal immigrant or the foreigners in India are the very same people who were part of undivided India. The Referendum through which he is said to have voted for joining East Bengal became a part of East Pakistan through partition. Partition was Britains filthiest trick to keep the embers of communalism burning. Burn it did, both the East and the West. Indias two states suffered from it the most-Punjab and Bengal. But whereas the exodus in Punjab was both sided and refugees from Pakistan rehabilitated the Bengali Hindus remained in a continuous state of continuous turmoil. Made to lose his hearth and home and shoved into an alien identity the people became homeless for ever he has become rootless.

The Indian subcontinent shrunk in size with the divisioning of the country by the British in the year 1947.Before that it was in land area and all the residents living within that area were essentially Indians. The concept of a partitioned country never existed in thought or imagination of its people. Yet India's East and West suffered the situation, its residents went through the harrowing

experience of forcible ouster, rioting, bloodshed that made them counterparts in the worst human tragedies in the world. The fate of the people in India's East called Bengali Hindus residing in the fertile tract of land called Sylhet changed overnight. The doubtful Referendum which decided their destiny, made them part of an enemy country without their participation or wish through shrewd political mechanisation of the Muslim League and Provincial Congress of Assam made them go through the worst kind of violence and dehumanisation ,made them refugees and rendered them homeless and dispossessed for life. With no rehabilitation programme in place by the Govt., these people have spreaded all over the world in search of a home.

India has essentially been a Hindu Civilisation. The earliest evidences as recovered from Indus Valley seals, the engravings, the vedic ages, the epics, the large Hindu population Muslim conquest happened much later. Britishers Bengali Hindus have been residents of the country. The question is how can a Hindu belong elsewhere physically, psychologically and spiritually. His heart and home is India his native land India. In denying him of one of his essential rights we are committing the gravest of injustices.

<u>Detention camps</u>

NRC not fool-proof-a state machinery for accentuating division and divide and it would be inhumanity, bestiality and injustice of the worst kind if ever the NRC non qualifiers (several of them men and women in their eighties)are sent to the detention camps, made to languish and perish. The horrific living conditions in such camps have already come to light. The lack of documents which one may not have preserved carefully thinking such a need may never arise thus failing to make it to the NRC list cannot be made to suffer the fate of a detention camps. The faulty mechanism of enlistment and the sufferers thereof may challenge it in a court of law.

-Whereas the rehabilitation programme for the Hindu Bengalis has been virtually non-existent the state apparatus has become keen on identifying them as foreigners. Rather than making them go through the horrors and tortures that they suffered in East Pakistan and later on in Bangladesh it is better that they be shot down by the thousands.

-The whole contention is that the people who were unfortunate victims of a historical blunder, political gimmick, made unwitting accomplices in a decision he never had a voice or hand in can never be allowed to be turned out as a foreigner from the India nor can there ever be a cut off year for his entry into the land where he essentially and integrally belongs. The Bengali Hindus residing in Bangladesh today ,if at any point in time he decides to migrate to India he should be given citizenship status without being asked to produce documents.

One of the major points of agreement that is witnessed in scholarship on Indian independence is the cardinal role played by the two-nation theory in the division of Indian subcontinent into India and Pakistan. Scholars such as Peter Gottschalk, argue in his book, "Religion, Science and Empire: Classifying Hinduism and Islam in British India "published in 2013, that, religious polarities contributed in a large manner to the production of partition in India. It is also important to reflect on the Pakistan movement led by Muhammad Ali Jinnah who argued that the movement was articulated as one that sought to create a territory for the exclusive empowerment of the Muslims of the Indian subcontinent. By the time Jinnah was addressing the annual conference of the Muslim League in 1940 at Lahore, he shed all tones of compromise and coexistence and declared that, "The Hindus and Muslims belong to two different religious philosophies, social customs and literature.....and indeed they belong to two different civilizations...." (Presidential Address at the Lahore Session of the Muslim League in Sharifuddin Pirzada, Foundations of Pakistan: All India Muslim League Documents, Karachi). Thus when the country was partitioned on the 14th of August, 1947, there was no ambiguity in the minds of the policy makers that the philosophy of

Oxford University Press, New York

Two-Nations, essentially polarized against each other, had won the day and Pakistan was created as an exclusive homeland for the Muslims, while India would be the home of the non-Muslims of the subcontinent. The followers of Mr. Jinnah were not as sophisticated as their leader as they pointed out, in no ambiguous terms, that the non-Muslims who would remain in Pakistan would be hostages to ensure the good treatment of the Muslims who would continue to remain in India after partition. It is in this context that one can argue that the conditions of Hindus in Pakistan who precarious from the first day of partition itself as it was declared from the very inception of the new state that, "Let us be very clear that Pakistan is going to be a Muslim State based on Islamic ideals." (S.Pirzada, Foundation of Pakistan, Vol-II P.571).

This founding philosophy of Pakistan, being based on Islam jeopardized the life, liberty and property of the Hindus living in Pakistan, and who found themselves on the wrong side of the border. This precarious condition of the Hindus living in Pakistan soon attracted the attention of the leadership in India who pointed out in clear terms that, "They are of us and will remain of us whatever may happen and we shall be sharers in their good and ill fortunes alike." (Jawaharlal Nehru's message to the countrymen on the 15th of August, 1947, Amrita Bazar Patrika).

Even Sardar Patel was clear in his support to the Hindus of Pakistan, who found themselves on the wrong side of the border. He is quoted by the newspaper as declaring that,

"But let not our brethren across the border feel that they are neglected or forgotten. Their welfare will claim our vigilance and we shall follow with abiding interest their future in full hope and confidence that sooner than later we shall again be united in common allegiance to our country." (Amrita Bazar Patrika, 15th August, 1947).

From the very inception of the state of Pakistan, minorities were victims of threat, intimidation and violence, which resulted in the

displacement of these people from their homes. It is today accepted by international scholarship on violence and trauma that, "violence is not always to be measured by external acts of murder, loot, abduction...violence also typifies a state where a sense of fear is generated and perpetrated in such a way as to make it systemic, pervasive and inevitable." (Meghna Guha Thakurta, 'Uprooted and divided' in Josodhara Bagchi & Subhoranjan Dasgupta (ed) The Trauma and the Triumph, Kolkata, 2003, pp.98-112). Thus when the minorities in Pakistan were persecuted and faced violence in diverse ways, they found their stay impossible and crossed over to India, armed by the Indian political leadership's assurance to the minority community in Pakistan. According to the Census Report of 1951, in 1949, there were as many as 24,600 families of displaced persons, approximately 1,14,500 persons who had migrated from East Pakistan. (Census of India Vol-XII p.356). The Census further points out that "Lessening prospects for Hindus in government and administrative service, in business and trade, examples of petty types of fanaticism and intolerant attitude towards other religions and the oft repeated declarations of the top ranking leaders of Pakistan that Pakistan will become a purely Islamic state – an ideology enshrined in the Objective Resolution of the Pakistan Constituent Assembly caused an exodus of Hindus from Pakistan to India. "(Census of India Vol-XII p.356). Soon after the riots of 1950 (Feb-March) there was a largescale migration of Hindus from East Pakistan to India. The number of such displaced person, at March-April 1950 exceeded 5 lakhs. But the Census Report points out that about 2,59,946 persons stayed back in Assam. The presence of such persons raised a political protest which forced the Government of India to come out with an Act to legitimize the settlement persecuted Hindus in Assam, inspite of political protests. The Immigrants (Expulsion From Assam) Act, 1950 which provided for the expulsion of certain immigrants from Assam pointed at Section 2 that;

"Provided that nothing in this Section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been

displaced from or has left his place of residence in such area and who has been subsequently residing in Assam." (Section 2, Act 10 of 1950). With the situation worsening in East Pakistan, by 1956, 3 lakh 990 thousand displaced persons settled in Assam (U. Bhaskar Rao 'The Story of Rehabilitation', Government of India, 1967).

With the birth of Bangladesh the Act of 1950 was soon forgotten and it fell to disuse. The Act was revived in 2005, when the Supreme Court, in its judgments on Writ Petition (C) No. 131 of 2000 ruled at para 83 that while the IMDT Act was set aside as ultra vires and struck down, the tribunals for determining illegal foreigners in Assam would be guided by, among other Acts and statutes, the Immigrants (Expulsion From Assam) Act, 1950 (para 83, (2005) 5 SCC, 656/AIR 2005 SC 2920) (J) Mathur held, "To sum up our conclusion, the provisions of the illegal Migrants (Determination by Tribunals) Act 1983 are ultra vires the Constitution of India and are accordingly struck down....As a result, the Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act 1983 shall cease to function. The Passports (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion From Assam) Act, 1950 and the Passport Act, 1967 shall apply to the State of Assam...."

This judgment has helped to revive the Act of 1950 in Assam well beyond 1971, thereby granting protection to the Hindus in Bangladesh as well, who decide to migrate to India to escape violence and persecution."

Writ Petition (C) No. 131 of 2000 in the case of ***Sarbananda Sonowal Vrs. Union of India and Anr. Reported in (2005) 5 SCC, 656/ AIR 2005 SC 2920)*** para 83 is reproduced herein below for ready reference:

> *"**83**. To sum up our conclusions, the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 are ultra vires the Constitution of India and are accordingly struck down. The Illegal Migrants*

(Determination by Tribunals) Rules, 1984 are also ultra vires and are struck down. As a result, the Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function. The Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967 shall apply to the State of Assam. All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made there under and the procedure prescribed under the Foreigners (Tribunals) Order, 1964. In view of the finding that the competent authority and the Screening Committee had no authority or jurisdiction to reject any proceedings initiated against any alleged illegal migrant, the orders of rejection passed by such authorities are declared to be void and non est in the eye of law. It will be open to the authorities of the Central Government or the State Government to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever. The appeals pending before the Appellate Tribunals shall be deemed to have abated."

5. I mention here that laws are made for the people and people are not made for laws and it is also a fact that now laws can be effective until and unless the history and real ground reality is taken into consideration. Therefore, I request our beloved Prime Minister, Home Minister, Law Minister and Hon'ble Members of the Parliament to bring a law to allow the Hindus, Sikhs, Jains, Buddhist, Parsis, Christians, Khasis, Jaintias and Garos who have come from Pakistan, Bangladesh and Afghanistan to live in this country peacefully and with full dignity without making any cut off year and be given citizenship without any question or production of any

documents. Similar principle should be taken to those who live in Pakistan, Bangladesh and Afghanistan. They may be allowed to come at any point of time to settle in India and Government may provide rehabilitation properly and declare them citizens of India. Similar principle to be adopted for those Hindus and Sikhs who are of Indian origin and presently residing abroad to come to India at any time as they like and they may be considered automatically as Indian citizens. This Court expects that the Government of India will take a conscious decision to protect the innocent Hindus, Sikhs, Jains, Buddhist, Parsis, Christians, Khasis, Jaintias and Garos who have come from Pakistan, Bangladesh and Afghanistan and who are yet to come as well as from abroad as they have the same right to come to India as Indian citizens. Though Boundary Commission was appointed at the time of partition but the Boundary Commission did not do any work and drew an imaginary line to divide India into two pieces. A burning example is that if we visit the border, it is difficult to understand which land falls within India and which is in Bangladesh as somebody's kitchen is in India and their bedroom is in Bangladesh.

Indo-Nepal treaty should also be taken into consideration.

Therefore, I can simply say that the Hindus, Sikhs, Jains, Buddhist, Parsis, Christians, Khasis, Jaintias and Garos residing in India which ever date maybe, they have come to India are to be declared all as Indian citizens and those who will come in future also to be considered as Indian citizens. However, I am not against my Muslim brothers and sisters who are residing in India for generations and abiding Indian laws, they should also be allowed to live peacefully. I also request the Government that a uniform law should be made for all Indian citizens and they are bound to abide the

law of the country and constitution. Anybody opposing the Indian laws and constitution, they cannot be considered as citizens of the country. We must remember that first, we are Indians, then good human beings and thereafter comes the community we belong.

I hope and expect that Government of India will take a decision to save these deprived people as discussed above who have been forced to part with their land, properties etc with a human touch.

It has also been heard from the Members of the Bar that the detention camp at Assam where people are kept at the tag of foreigner were under handcuff and living in inhumane condition.

India achieved independence through bloodshed and the worst sufferers were the Hindus and Sikhs who had to leave their forefather's property, birth place with tear and fear and we will never forget that. However, I will not be wrong to mention that when the Sikhs came, they got the rehabilitation from the Government but the same was not given to the Hindus. Therefore, it is not correct that Indian independence is by non-violence, but it is through violence wherein the Hindus and Sikhs in terms of lakhs, sacrificed their life, property, land and livelihood.

The demarcation of the boundary between Pakistan and Hindustan as well as the Referendum is totally unfiltered and our political leaders were too much in a hurry to get the independence without considering the future generation and interest of the country, thus, creating all the problems today.

I appeal to all the Hindu people of both the Barak Valley as well as the Assam Valley to come together to find an amicable solution because our culture, traditions and religions are same. We should not hate each other just on the basis of language. Furthermore, I also mention that the present

NRC process in my view is defective as many foreigners become Indians and original Indians are left out which is very sad.

I make it clear that nobody should try to make India as another Islamic country, otherwise it will be a dooms day for India and the world. I am confident that only this Government under Shri. Narendra Modiji will understand the gravity, and will do the needful as requested above and our Chief Minister Mamataji will support the national interest in all respect.

6. Now let me look to the issues involved in WP(C). No. 448 of 2018.

The brief facts of the petitioner's case in a nutshell is that:

> *"That the Respondents for reasons best known to them had been deliberately harassing the job aspirants by denying their domicile certificates consequent to which the lives and career of many students community were destroyed. In the past many such victims had assailed their grievances before this Hon'ble court by way of number of writ petitions and to settle the matter once and for all an elaborate order was passed by the Hon'ble single judge of this Hon'ble High Court in* ***WP(C) No. 203 of 2016*** *reported in* ***Rabbe Alam Vs State of Meghalaya and Ors, (2017) 1 MJ 128*** *as per which the mandatory period for issuing of a domicile certificate is five days and the same is issued solely on the basis of the police report, violation of the same would amount to contempt of the Hon'ble court's order. The petitioner herein had applied for recruitment in the Indian Army and for this purpose the Petitioner had also applied for a domicile certificate in the office of the Respondents as early as 18/01/2018 online and though not required, the Petitioner also submitted all documents such as birth certificates, EPICs of parents, self, educational certificates, ration cards etc. That in spite of passage of more than 10 months the Respondent No. 3 slept over the case of the Petitioner and had to run like a beggar hundreds of time from post to pillar and on the other hand the petitioner having excelled in all respect has received a final appointment letter from the Indian Army. Being aggrieved, the Petitioner had approached this Hon'ble Court vide WP(C) No. 415 of 2018 and vide order dated 15.11.2018 this Hon'ble Court was pleased to direct the Respondent to consider the case of*

the Petitioner within 5 days as per applicable rules. The respondent on receipt of the above order suddenly woke from its slumber after sleeping over the case of the Petitioner for more than 10 months and seething with anger making mockery of the Hon'ble court's order delivered a cryptic two-line order at the residence of the Petitioner late in the night informing that the Petitioner's application for domicile certificate has been rejected. The petitioner with folded hands is before your Lordship for appropriate remedy."

7. Mr. R. Gurung, learned counsel for the petitioner submits that the petitioner was a resident of Shillong for the last three generations and applied for domicile certificate, but it took ten months to get the domicile certificate only after the intervention of this Court.

8. Mr. A. Kumar, learned Advocate General assisted by Ms. R. Colney, learned GA submits that there is a clear-cut notification, therefore in his view, there should not be any difficulty to get the permanent residential certificate or domicile certificate. However, he also produce certain notifications bearing No. POL.97/74/174 dated Shillong, the 10th June, wherein the year is not clear. Learned AG also submitted three judgments passed by the Hon'ble Supreme Court.

9. On the other hand, Ms. A. Paul, learned ASG submits that from Para 8 of the affidavit, it is clear that the Government of Meghalaya has an intention not to grant the domicile certificate, which goes against the whole concept of the Constitution of India and prayed that necessary judgment may be passed.

10. To determine the issues now, let me reproduce the judgment given by

the Hon'ble Apex Court as well as by this Court. The Hon'ble Apex Court in case of ***Sondur Gopal vrs. Sondur Rajini reported in AIR 2013 SC 2678*** at para 26 and 27 observed that:

> *"**26**. Domicile are of three kinds, viz. domicile of origin, the domicile by operation of law and the domicile of choice. In the present case, we are concerned only with the domicile of origin and domicile of choice. Domicile of origin is not necessarily the place of birth. The birth of a child at a place during temporary absence of the parents from their domicile will not make the place of birth as the domicile of the child. In domicile of choice one is abandoned and another domicile is acquired but for that, the acquisition of another domicile is not sufficient. Domicile of origin prevails until not only another domicile is acquired but it must manifest intention of abandoning the domicile of origin. In order to establish that Australia is their domicile of choice, the husband has relied on their residential tenancy agreement dated 25.01.2003 for period of 18 months, enrolment of Natasha in Warrawee Public School in April, 2003; and submission of application by the husband and wife on 11.11.2003 for getting their permanent resident status in Australia."*
>
> *"**27**. The right to change the domicile of birth is available to any person not legally dependent and such a person can acquire domicile of choice. It is done by residing in the country of choice with intention of continuing to reside there indefinitely. Unless proved, there is presumption against the change of domicile. Therefore, the person who alleges it has to prove that. Intention is always lodged in the mind, which can be inferred from any act, event or circumstance in the life of such person. Residence, for a long period, is an evidence of such an intention so also the change of nationality."*

From this judgment above, to my humble understanding it appears that any person residing in a particular district or state has the right to apply for domicile certificate.

11. This Court in the case of ***Rabbe Alam Vs. State of Meghalaya and Others reported (2017) 1 MJ 128*** in para 6 and 7 observed that:

"6. We all know that India is one country and one nation and every citizen of India has a right to settle or reside in any part of the country, nobody can deny that. In that sense a citizen is a domicile either by birth or by choice, however, one cannot hold two domicile certificates at a time. For eg., if a person comes from Mumbai and resides here for the last five years, he has got every right to apply for a domicile certificate, and it also applies to his children and other family members. Similarly, a person born at Kolkata is automatically a domicile of Kolkata and he can apply for it."

"7. Now the question which remains before this Court is what are the documents required to issue a domicile certificate? Firstly, to determine whether a person have resided here for the last five years, the office of the Deputy Commissioner is to seek information or verification from the Superintendent of Police concerned and Superintendent of Police concerned should submit his report within three days. Secondly, besides the report from the Superintendent of Police, if a person has got any other educational qualification certificates or electricity bill or certificate from the owner of a residence if he is a tenant may be asked but this portion will not be mandatory. Primarily, a domicile certificate should be issued on the basis of the report of the Superintendent of Police of the district concerned. Whenever anybody applies for a domicile certificate the Deputy Commissioner and Superintendent of Police concerned are directed to see that it should be hassle free and not make the applicant run like a beggar. Superintendent of Police should complete his report within three days from the date of requisition and thereafter the Deputy Commissioner's office will have to grant the domicile certificate within three days which means that the entire exercise should be completed within one week. If there is any violation, it will be amount to contempt of Court. However, if the applicant has got any criminal background, domicile certificate shall be rejected subject to the final order of the criminal Court."

12. Now let me look at the judgments relied by the learned Advocate General, Government of Meghalaya which are reproduced below:

(i) Hon'ble Supreme Court in the case of ***Yogesh Bhardwaj Vs. State of U.P. & Ors reported in (1990) 3 SCC 355*** para 9 states that:

> *"9. Domicile which is a private international law or conflict of laws concept identifies a person, in cases having a foreign element, with a territory subject to a single system of law, which is regarded as his personal law. A person is domiciled in the country in which he is considered to have his permanent home. His domicile is of the whole country, being governed by common rules of law, and not confined to a part of it. No one can be without a domicile and no one can have two domiciles."*

On mere reading of the said judgment, it is understood that no one can be without a domicile and no one can have two domiciles.

(ii) Hon'ble Supreme Court in the case of ***Shri. D.P.Joshi Vs. State of Madhya Bharat and Another reported in (1955) 1 SCR 1215*** or ***AIR 1955 SC 334*** at para 5, 6, 7, 8, and 11 held that:

> *"5. Now the contention of Mr. N. C. Chatterjee for the petitioner is that this rule is in contravention of Articles 14 and 15(1), and must therefore be struck down as unconstitutional and void. Article 15(1) enacts:*
>
> *"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them".*
>
> *The argument of the petitioner is that the rule under challenge insofar as it imposes a capitation fee on students who do not belong to Madhya Bharat while providing an exemption therefrom to students of Madhya Bharat, makes a discrimination based on the place of birth, and that it offends Article 15 (1). Whatever force there might have been in this contention if the question had arisen with reference to the rule as it stood when the State took over the administration, the Rule was modified in 1952, and that is what we are concerned with in this petition. The rule as modified is clearly not open to attack as infringing Article 15(1). The ground for exemption from payment of capitation fee as laid down therein is bona fide residence in the State of Madhya Bharat. Residence and place of birth are two distinct conceptions with different connotations both in law and in fact, and when article 15(1) prohibits discrimination based on the place of birth, it cannot be read as prohibiting discrimination based on residence. This is not seriously disputed. The argument that is pressed on us is that though the rule purports to grant exemption based on residence within the State, the*

definition of bon-fide residence under the Rule shows that the exemption is really based on the place of birth. Considerable emphasis was laid on clauses (a) and (b) of the rule wherein 'residence' is defined in terms of domicile, and it was argued that the original domicile, as it is termed in the rules, could in substance mean only place of birth, and that therefore the exemption based on domicile was, in effect, an exemption based on place of birth under an alias. That, however, is not the true legal position. Domicile of a person means his permanent home. "Domicile meant permanent home, and if that was not understood by itself no illustration could help to make it intelligible" observed Lord Cranworth in Whicker v. Hume[2]. Domicile of origin of a person means "the domicile received by him at his birth". (Vide Dicey on Conflict of Laws, 6th Edition, p. 87). The learned author then proceeds to observe at p. 88:

"The domicile of origin, though received at birth, need not be either the country in which the infant is born, or the country in which his parents are residing, or the country to which his father belongs by race or allegiance, or the country of the infant's nationality".

In Somerville v. Somerville[3], Arden, Master of the Rolls, observed:

"I speak of the domicile of origin rather than of birth. I find no authority which gives for the purpose of succession any effect to the place of birth. If the son of an Englishman is born upon a journey, his domicile will follow that of his father".

6. Mr. N. C. Chatterjee argued that domicile of origin was often called domicile of birth, and invited our attention to certain observations of Lord Macnaghten in Winans v. Attorney-General[4]. But then, the noble Lord went on to add that the use of the words "domicile of birth" was perhaps not accurate. But that apart, what has to be noted is that whether the expression used is "domicile of origin" or "domicile of birth", the concept involved in it is something different from what the words "place of birth" signify. And if "domicile of birth" and "place of birth" cannot be taken as synonymous, then the prohibition enacted in Article 15(1) against discrimination based on place of birth cannot apply to a discrimination based on domicile.

7. It was argued that under the Constitution there can be only a single citizenship for the whole of India, and that it would run counter to that notion to hold that the State could make laws based on domicile within their

territory. But citizenship and domicile represent two different conceptions. Citizenship has reference to the political status of a person, and domicile to his civil rights. A classic statement of the law on this subject is that of Lord Westbury in Udny v. Udny[5]. He observes:

"The law of England, and of almost all civilised countries, ascribes to each individual at his birth two distinct legal states or conditions: one by virtue of which he becomes the subject of some particular country binding him by the tie of national allegiance, and which may be called his political status, another by virtue of which he has ascribed to him the character of a citizen of some particular country and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status. The political status may depend on different laws in different countries; whereas the civil status is governed universally by one single principle, namely, that of domicile, which is the criterion established by law for the purpose of determining civil status. For it is on this basis that the personal rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, must depend".

Dealing with this question Dicey says at p. 94:

"It was, indeed, at one time held by a confusion of the ideas of domicile and nationality that a man could not change his domicile, for example, from England to California, without doing at any rate as much as he could to become an American citizen. He must, as it was said, 'intend quatenus in illo exuere patriam'. But this doctrine has now been pronounced erroneous by the highest authority".

Vide also the observations of Lord Lindley in Winans v. Attorney-General[6]. In Halsbury's Laws of England, Vol. VI the law is thus stated at p. 198, para 242:

"English law determines all questions in which it admits the operation of a personal law by the test of domicile. For this purpose it regards the organisation of the civilised world in civil societies, each of which consists of all those persons who live in any territorial area which is subject to one system of law, and not its Organization in political societies or States, each of which may either be co-extensive with a single legal system or may unite several systems under its own sovereignty".

Under the Constitution, Article 5, which defines citizenship, itself proceeds on the basis that it is different from domicile, because under that article, domicile is not by itself sufficient to confer on a person the status of a citizen of this country.

8. A more serious question is that as the law knows only of domicile of a country as a whole and not of any particular place therein, whether there can be such a thing as Madhya Bharat domicile apart from Indian domicile. To answer this question we must examine what the word "domicile" in law imports. When we speak of a person as having a domicile of a particular country, we mean that in certain matters such as succession, minority and marriage he is governed by the law of that country. Domicile has reference to the system of law by which a person is governed, and when we speak of the domicile of a country, we assume that the same system of law prevails all over that country. But it might well happen that laws relating to succession and marriage might not be the same all over the country, and that different areas in the State might have different laws in respect of those matters. In that case, each area having a distinct set of laws would itself be regarded as a country for the purpose of domicile. The position is thus stated by Dicey at p. 83:

"The area contemplated throughout the Rules relating to domicile is a 'country' or territory subject to one system of law. The reason for this is that the object of this treatise, insofar as it is concerned with domicile, is to show how far a person's rights are affected by his having his legal home or domicile within a territory governed by one system of law, i.e. within a given country, rather than within another. If, indeed, it happened that one part of a country, governed generally by one system of law, was in many respects subject to special rules of law, then it would be essential to determine whether D was domiciled within such particular part, e.g. California in the United States; but in this case, such part would be pro tanto a separate country, in the sense in which that term is employed in these Rules".

The following statement of the law in Halsbury's Laws of England, Volume VI, p. 246, para 249 may also be quoted:

"……law, a domicil is acquired in that part of the State where the individual resides".

11. It was also urged on behalf of the respondent that the word "domicile" in the Rule might be construed not in its technical legal sense, but in a popular sense as meaning "residence", and the following passage in Wharton's Law Lexicon, 14th Edn., p. 344 was quoted as supporting such a construction:

"By the term 'domicile', in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile".

In Mcmullen v. Wadsworth[8], it was observed by the Judicial Committee that "the word `domicile' in article 63 (of the Civil Code of Lower Canada) was used in the sense of residence, and did not refer to international domicile". What has to be considered is whether in the present context "domicile" was used in the sense of residence. The Rule requiring the payment of a capitation fee and providing for exemption therefrom refers only to bona fide residents within the State. There is no reference to domicile in the Rule itself, but in the explanation which follows, clauses (a) and (b) refer to domicile, and they occur as part of the definition of "bona fide resident". In Corpus Juris Secundum, Vol. 28, p. 5, it is stated:

"The term `bonafide residence' means the residence with domiciliary intent".

There is therefore considerable force in the contention of the respondent that when the rule-making authorities referred to domicile in clauses (a) and (b) they were thinking really of residence. In this view also, the contention that the rule is repugnant to Article 15(1) must fail."

From the above observation of the Hon'ble Apex Court, it is also clear that a person has every right to apply for a domicile certificate.

(iii) Hon'ble Supreme Court in the case of ***Dr. Pradeep Jain & Ors. Vs. Union of India & Ors reported in (1984) 3SCC 654*** para 8 held that:

"8. Now it is clear on a reading of the Constitution that it recognises only one domicile namely, domicile in

India. Article 5 of the Constitution is clear and explicit on this point and it refers only to one domicile, namely, "domicile in the territory of India." Moreover, it must be remembered that India is not a federal state in the traditional sense of that term. It is not a compact of sovereign states which have come together to form a federation by ceding a part of their sovereignty to the federal states. It has undoubtedly certain federal features but it is still not a federal state and it has only one citizenship, namely, the citizenship of India. It has also one single unified legal system which extends throughout the country. It is not possible to say that a distinct and separate system of law prevails in each State forming part of the Union of India. The legal system which prevails through-out the territory of India is one single indivisible system with a single unified justicing system having the Supreme Court of India at the apex of the hierarchy, which lays down the law for the entire country. It is true that with respect to subjects set out in List II of the Seventh Schedule to the Constitution, the States have the power to make laws and subject to the overriding power of Parliament, the States can also make laws with respect to subjects enumerated in List III of the Seventh Schedule to the Constitution, but the legal system under the rubric of which such laws are made by the States is a single legal system which may truly be described as the Indian Legal system. It would be absurd to suggest that the legal system varies from State to State or that the legal system of a State is different from the legal system of the Union of India; merely because with respect to the subjects within their legislative competence, the States have power to make laws. The concept of `domicile' has no relevance to the applicability of municipal laws, whether made by the Union of India or by the States. It would not, therefore, in our opinion be right to say that a citizen of India is domiciled in one state or another forming part of the Union of India. The domicile which he has is only one domicile, namely, domicile in the territory of India. When a person who is permanently resident in one State goes to another State with intention to reside there permanently or indefinitely, his domicile does not undergo any change: he does not acquire a new domicile of choice. His domicile remains the same, namely, Indian domicile. We think it highly detrimental to the concept of unity and integrity of India to think in terms of State domicile. It is true and there we agree with the argument advanced on behalf of the State Governments, that the word `domicile' in the Rules of some of the State Governments prescribing domiciliary requirement for admission to medical colleges situate within their territories, is used not in its technical legal

sense but in a popular sense as meaning residence and is intended to convey the idea of intention to reside permanently or indefinitely. That is, in fact the sense in which the word 'domicile' was understood by a five Judge Bench of this Court in D. P. Joshi's case[2] while construing a Rule prescribing capitation fee for admission to a medical college in the State of Madhya Bharat and it was in the same sense that word 'domicile' was understood in Rule 3 of the Selection Rules made by the State of Mysore in Vasundra v. State of Mysore. We would also, therefore, interpret the word 'domicile' used in the Rules regulating admissions to medical colleges framed by some of the States in the same loose sense of permanent residence and not in the technical sense in which it is used in private international law. But even so we wish to warn against the use of the word 'domicile' with reference to States forming part of the Union of India, because it is a word which is likely to conjure up the notion of an independent State and encourage in a subtle and insidious manner the dormant sovereign impulses of different regions. We think it is dangerous to use a legal concept for conveying a sense different from that which is ordinarily associated with it as a result of legal usage over the years. When we use a word which has come to represent a concept or idea, for conveying a different concept or idea, it is easy for the mind to slide into an assumption that the verbal identity is accompanied in all its sequences by identity of meaning. The concept of domicile if used for a purpose other than its legitimate purpose may give rise to lethal radiations which may in the long run tend to break up the unity and integrity of the country. We would, therefore, strongly urge upon the State Governments to exercise this wrong use of the expression 'domicile' from the rules regulating admissions to their educational institutions and particularly medical colleges and to desist from introducing and maintaining domiciliary requirement as a condition of eligibility for such admissions."

From the above judgment, it is understood that the intention of the person to reside in that particular State needs to be established.

13. I have also perused the letter bearing reference No. POL.97/74/174, dated Shillong the 10th June (year not clear) issued by the Government of Meghalaya, Political Department. Para 2 and 3 of the said Notification is reproduced herein below:

"2. For purposes of issue of Permanent Residence Certificate a person may be deemed to be a permanent resident of the district if he has been residing continuously therein for a period not less than 12 (twelve) years either in his own house or in a rented house and has decided to stay permanently in that district. Merely having landed property in that district will not entitle a person to P.R.C. unless he has been actually and continuously living in the district. The fact of continuous residence may be proved by circumstantial evidence such as payment of electricity bills, municipality or local committee taxes, house rent payment receipts, certificate from local headman etc., besides information obtained through normal administrative channels".

"3. While a person shall not be deemed to be a permanent resident of a district merely by reason of his having resided therein in connection with his civil or military service or in exercise of any profession or calling yet a person would be entitled to P.R.C. if either (1) he has been residing in the district continuously for a period not less than 12 (twelve) years in connection with his civil and military service and has decided to stay in the district permanently after his retirement or (2) he has been residing in the district continuously for not less than 12 (twelve) years in connection with a profession or calling and by the nature of profession or calling or investment in it, it could safely be inferred that he intends to reside permanently in the district, and (3) all persons serving in connection with the affairs of the Government of Meghalaya, Government or semi-Government Corporations and autonomous bodies who are not on contract service, contingency work or work-charged staff etc., and who are on regular employment though temporary and in whose case it can be safely inferred that he will reside permanently in Meghalaya.

On reading para 2 and 3 of the said Notification, it appears that for purposes of issue of PRC a person may be deemed to be a permanent resident if he has been continuously residing for a period not less than 12(twelve) years either in his own house or rented house and has decided to stay permanently. On perusal of the said Notification bearing No. POL.422/76/55, dated Shillong the 13th January, 1995 and Notification

No. POL. 97/74/174, dated Shillong the 10th June (year not clear) is in itself self contradictory and not in consonance with the guidelines given by the Hon'ble Apex Court as well as by this Court in the judgment passed in the case of ***Rabbe Alam vrs. State of Meghalaya & Ors reported in (2017) 1 MJ 128*** para 6 and 7 has already laid down the procedures to be followed while granting domicile certificate. After analysis of the judgment of the Hon'ble Apex Court as well as the judgment passed by this Court quoted above, I am of the considered view that a person residing in the State of Meghalaya permanently or atleast for the last five years has got every right to apply for the domicile certificate and his domicile certificate to be issued at the line and tune as observed in para 6 and 7 of the judgment passed by this Court. However, there will be an exception in case of a person who comes on transfer to serve the State. In his case, five years will not be taken into consideration, he can apply for the domicile certificate prior to five years also. In case of PRC, I make it clear that a person residing permanently in the State of Meghalaya for the last 12(twelve) years and when he has an intention to reside here permanently, he should be granted PRC without any further question. However, if any doubt arises, the Deputy Commissioner may ask for a Police verification to determine how long he has been staying in this State and PRC cannot be issued only for education purpose but it should be applicable for all purposes. I make it further clear that domicile certificate or PRC is not meant only for joining the Army or Paramilitary Force or Education purposes, it is to be granted for all purposes.

On perusal of para 8 of the affidavit-in-opposition filed by the Government it appears that it is confusing and contradictory as the

Government is not in favour of issuing Domicile Certificate which is not tenable in the eye of law.

14. For the reasons discussed above, I do not agree with the Notification No. POL.422/76/55, dated Shillong the 13th January, 1995 and Notification No. POL. 97/74/174, dated Shillong the 10th June (year not clear) which are hereby set aside and Government of Meghalaya is directed to follow the guidelines given by this Court in the case of ***Rabbe Alam vrs. State of Meghalaya & Ors reported in (2017) 1 MJ 128*** para 6 and 7 in respect of domicile certificate and PRC.

Before I part with this case record, I request and direct Ms. A.Paul, Assistant Solicitor General, Government of India to take the copy of the judgment and order and hand over the same latest by 11-12-2018 to the Hon'ble Prime Minister, Hon'ble Home Minister and Hon'ble Law Minister for their perusal and necessary steps to bring a law to safeguard the interest of the Hindus, Sikhs, Jains, Buddhist, Christians, Parsis, Khasis, Jaintias and Garos who have already come to India and who are yet to come from Pakistan, Bangladesh and Afghanistan as well as persons of Indian origin who are residing abroad taking their historical background as discussed and quoted above. This Court expects that Government of India will take care of this judgment in the historical background and save this country and its people. Accordingly, Writ Petition No. 448 of 2018 is allowed.

Assistant Solicitor General, Government of India is further directed to bring the receipt copy for file. Registry is directed to send the copy of this judgment and order to His Excellency, the Governor of Meghalaya by

Special Messenger and also to the Hon'ble Prime Minister, Hon'ble Home Minister, Hon'ble Law Minister and the Hon'ble Chief Minister of West Bengal immediately .

15. With this observation and direction, the matter stands disposed of.

(S.R.Sen)
JUDGE

Meghalaya
10.12.2018
"S.Rynjah PS"