

# CONSTITUTIONAL VALIDITY OF INNER LINE PERMIT SYSTEM IN NORTH-EAST INDIA

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## Introduction and Historical Background

The Inner Line Permit System was designed for frontier regions of the northeast for establishing peaceful administration and protection of the hilly tribal regions of Northeast states. The colonial establishment brought this system as a policy to exercise control on the northeast region more efficiently.<sup>1</sup> It was introduced on the grounds of protecting the ethnic community and customary practices of the indigenous groups to ensure safety and protect their livelihood from the illegal immigrants of neighbouring countries and to preserve their heritage.<sup>2</sup> Initially, it was brought in the hilly regions of Assam by restricting any form of economic activities, property transactions and settlement from outsiders in this region.<sup>3</sup>

There was major identity crisis in the northeast India which had caused large-scale migration that made the existing groups less in number.<sup>4</sup> There were political tension between the natives of the northeast region and the migrant population due to the economic development of the region since British Period. The Bengal Eastern Frontier Regulation, 1873 was basically brought by the Britishers with an intend to protect East India Company's commercial interest in the tea, oil and elephant trade from any other venture interfering, therefore the legislation prohibited 'British Subjects and other'. In 1950's provision under regulation Act, 1873 was later substituted to 'Indian Citizen'.<sup>5</sup> This regime was prevailed after post-independence in the form of colonial hangover. There have been massive agitation and politics on this issue due to armed insurgences and civil conflicts in the northeast to continue this practice<sup>6</sup>, very recently in Manipur, Meghalaya and

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<sup>1</sup> Inoune Kyoko and Sanjoy Hazarika, 'Integration of the North East: The State Formation Process', Sub-regional Relations in the eastern South Asia: with special focus on the North East Region, 2005.

<sup>2</sup> Ibid.

<sup>3</sup> Akshita Manjari Bhanjdeo, 'India and its Northeast Exception: From Frontier to Fore Front (2015) Senior Spring Projects, 2015

<sup>4</sup> B. P Singh, North-East India: Demography, Culture and Identity Crisis', Cambrigde University Press, 1987

<sup>5</sup> Akshita Manjari Bhanjdeo, 'India and its Northeast Exception: From Frontier to ForeFront (2015) Senior Spring Projects, 2015

<sup>6</sup> Taz Barua, 'Return of the Frontier: Understanding the Demands for the Inner Line in Northeast India', Sage Publication, 2017

Assam. This characterises the fact that they want to lead as an exterior identity of citizen which is distinct from the identity of rest of the citizens in the country.<sup>7</sup>

However, this regime has been looked upon as one of the factors of exclusion of the northeast states from the rest of the country. This system has been opposed as it brings the disconnect between the original rationale and the changing modern realities. The inner line system practice is the institutionalise form of policing on the practice and rights of citizenship in India.<sup>8</sup> The vision document of North East has given a signal that the practice of permit system will be eased to boost economic development and improve tourism in the northeast states.<sup>9</sup>

### **Inner Line Permit System in the North-East Region**

The Inner Line Permit is a document that provides permission to India Citizen to visit or stay in the areas of north eastern states from the state government for specified period of time.<sup>10</sup> Earlier this regime was applicable to states such as Arunachal Pradesh, Mizoram and Nagaland, but under the recent Presidential order, it has been made applicable to the state of Manipur.<sup>11</sup>

Inner Line regime is regulated under the Bengal Eastern Frontier Regulation Act, 1873. Section 2 of the Act prescribes the 'Inner Line' regime applicable to states and it empowers the state government to cancel and prohibit any citizen of India who have exceeded the limitations of permit.<sup>12</sup> Further section 3 of the Act deals with conviction by Magistrate and punishment for one year along with fine.<sup>13</sup> Section 7 of the Act prohibits buying and selling of land by persons other than the native of that place.<sup>14</sup> Under the Adaptation of Laws (Amendment) Order, 2019, the Inner Line Permit System has been extended to states of Manipur, Arunachal Pradesh, Mizoram and Nagaland and it has been replaced with the districts mentioned in the preamble of the BEFR Act, 1873.<sup>15</sup>

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<sup>7</sup> Ibid.

<sup>8</sup> Sanjib Baruah, 'Dividing Line', Indian Express article (2014), accessed on 14<sup>th</sup> April, 2020.

<sup>9</sup> Ministry of Development of North Eastern Region, 'Vision Document', 2015.

<sup>10</sup> Bengal Eastern Frontier Regulation Act, of 1873

<sup>11</sup> Adaptation of Laws (Amendment) Order, 2019

<sup>12</sup> Section 2 of the Bengal Eastern Frontier Regulation, 1873

<sup>13</sup> Section 3 of the Bengal Eastern Frontier Regulation, 1873

<sup>14</sup> Section 7 of the Bengal Eastern Frontier Regulation, 1873

<sup>15</sup> Adaptation of Laws (Amendment) Order, 2019

Under the Regulation Act, the respective states have issued guidelines for application of permit, where the eligibility, documents required, list of exempted individuals and grounds for rejection and issuing authority is mentioned. The application process has been simplified by making it available online.<sup>16</sup> Manipur had enacted Inner Line Permit Guidelines, 2019 after the Presidential order was issued, in exercise of power conferred under section 3 and section 4 of the Regulation Act. As per the guidelines, there exists four types of permit which are special category permit, regular permit, temporary permit and labour permit and the issuing authority for permits is home department and district Commissioners. The permit can be issued online.<sup>17</sup> Mizoram had also enacted the guidelines for the enforcement of Inner Line Permit regulation, the rules try to distinguish the indigenous persons and non-indigenous persons, and it also mentions list of exempted individuals.<sup>18</sup>

The provision for Inner Line System is applicable only to Indian Citizen as per the Bengal Eastern Frontier Regulation, 1873, whereas the Foreigners (Non-citizens of India) require the Protected Area Permit, as per Foreigners (Protected Areas) Orders, 1958.<sup>19</sup> Under this Order, all areas and states mentioned under the 'Inner line' and international borders are considered as protected areas. The protected areas include the state of Himachal Pradesh, Jammu and Kashmir, Manipur, Mizoram, Nagaland, Rajasthan, Sikkim, Uttarakhand where foreigners are not allowed, except only in extraordinary situation which can be justifiable to the Government.<sup>20</sup>

### **Inner Line Permit System and Citizenship Amendment Act, 2019**

The recent amendment to citizenship Act under section 2 allows minorities such as Hindu, Buddhist, Sikh, Jain persecuted in the states of Afghanistan, Bangladesh and Pakistan to acquire citizenship in India.<sup>21</sup> Further, Section 6B (4) of the Act prohibits these minorities from residing in India with an exception to establish that minorities from these countries will not be allowed to reside in Assam, Meghalaya, Mizoram or Tripura and Inner Line Permit regions. Interestingly, Section 6B (4) of the Citizenship Act was introduced just a day before the amendment was made

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<sup>16</sup> 'Nagaland CM launches Online ILP for Tourist', accessed on 15<sup>th</sup> April, 2020, <https://www.sentinelassam.com/north-east-india-news/nagaland-news/nagaland-cm-neiphiu-rho-launched-online-ilp-for-tourists/>

<sup>17</sup> Manipur Inner Line Permit Guidelines, 2019

<sup>18</sup> Mizoram Guidelines for enforcement of Inner Line Permit Regulation, 2014.

<sup>19</sup> Foreigners (Protected Areas) Orders 1958

<sup>20</sup> Ibid.

<sup>21</sup> Section 2 of the Citizenship Amendment Act 2019

to Regulation Act of 1873<sup>22</sup> to execute Inner Line Permit regime in Manipur. This provision clearly lays down the exception and prohibition similar to any other citizen except non-tribal regions in the northeast.

### **Analysing Constitutional Validity of Inner Line Permit System**

The judiciary will have to decide whether the practice of inner line permit is creating obstacles in the practice of citizenship or such practice is reasonable. Inner line permit prima facie seems discriminatory on the grounds of article 14, 19 and 21 of the Constitution and there has been a genuine debate surrounded on permit systems that it is not in conformity with the rights guaranteed under the constitution since it tries to prohibit citizens from travelling without any form permission and their right to reside anywhere in the country. The freedom to reside and settle in any parts of the India has been guaranteed under Article 19(1)(d) of the Constitution.<sup>23</sup> Although, neither this right is absolute nor unconditional. Moreover, this provision is subject to reasonable restriction in the interest of the general public. This exception of reasonable restriction depends upon substantive and procedural reasonableness.

Perhaps, the Inner Line Permit restriction is certainly prohibiting all Indian citizen from their right to movement or to reside but It does not explicitly mention any class of citizen. Therefore, constitutionally, the restriction imposed is not arbitrary, uncertain, vague or unnecessarily discriminatory. The expression in the interest of general public does not necessarily mean in the interest of entire public but it means interest of the section of public and thus including law which is limitedly affecting a particular local area or legislation for the interest of general public. Any form of reasonable restriction should have the balance between the rights of the citizen and the restriction imposed for administrative purposes.<sup>24</sup>

The object under which the ILP was brought was to conserve and protect its own distinct culture. Article 29 on the protection in the minorities is primarily a legislation for minority but it clearly mentions ‘any section of citizens ‘to preserve its cultural.<sup>25</sup> It emphasizes any section of the citizens residing in any place, having distinct language, script or culture has the right to protect and

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<sup>22</sup> Adaptation of Laws (Amendment) Order, 2019

<sup>23</sup> Article 19 (1) (d) of the Constitution of India

<sup>24</sup> M.P Jain, ‘Indian Constitutional Law’, 7th Edition, Lexis Nexis, 2010

<sup>25</sup> Article 29 (1) of the Constitution of India

conserve the same. Moreover, it was clearly mentioned in the Sarbanada Sonowal Case<sup>26</sup> that article 29 (1) has been conferred to all section of citizens and any form of invasion would be ultra-vires. Further India is a signatory to Indigenous and Tribal Peoples Convention, 1989 that envisages the need for respect, promote and inherent the right of indigenous people. The state has the responsibility to protect such rights of the indigenous groups. Most importantly, Certain autonomy has been given the Northeast states in the form of Sixth Schedule for managing the administration of tribal areas in the states of Assam, Tripura, Meghalaya, Mizoram and to safeguard their rights, which displays the fact that northeast states have been governed differently in law and policy.<sup>27</sup>

### Case Law

In the case of *Committee for Citizenship Rights of Chakmas of Arunachal Pradesh v. State of Arunachal Pradesh*<sup>28</sup>, a writ was filed under Article 32 of the Constitution, seeking directions from the Supreme Court regarding the citizenship of the Chakma and Hajong refugees, it was contended by the petitioners that in the *NHRC v. Arunachal Pradesh case*<sup>29</sup>, the rights were acknowledged, however, no substantial action was taken to grant citizenship. The Court in this case relied on the *Arunchal Pradesh Students Union (Aapsu) v. Election Commission*<sup>30</sup> where it was contented that the provisions of law in terms of lack of Inner Line Permit have been violated, however, the court stated in this case that residents of Arunchal Pradesh would not require the Inner Line Permit and would otherwise allowed to be settled. It was held that since the Government of India has granted them the citizenship, it stands recognised through judiciary that they need not require to obtain Inner line permit as they are already settled in the state of Arunachal Pradesh.<sup>31</sup>

The Inner Line Permit system was challenged in the Supreme Court by the Petitioner Ashwini Kumar Upadhyaya stating that section 2, 3, and 4 of the Bengal Eastern Frontier Regulation, 1873 is kind of quasi-visa system within India which is arbitrary, unreasonable and violates Article 14,

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<sup>26</sup> Sarbananda Sonowal v. Union of India (2005) 5 SCC 665

<sup>27</sup> Sixth schedule of the Constitution of India

<sup>28</sup> Committee for Citizenship Rights of the Chakmas of Arunchal Pradesh v. State of Arunachal Pradesh (2016) 15 SCC 540

<sup>29</sup> NHRC v. Arunchal Pradesh (1996) 1 SCC 742

<sup>30</sup> Arunchal Pradesh Students Union (Aapsu) v. Election Commission PIL No. 52 of 2010 decided on 19-3-2013 (Gau)

<sup>31</sup> Committee for Citizenship Rights of the Chakmas of Arunchal Pradesh v. State of Arunachal Pradesh (2016) 15 SCC 540

15, 19 and 21 of the Constitution of India. The petitioners sought clarification from the court stating that Inner Line Permit to be only made applicable to foreign citizens. The petitioner further contended that since the Constitution guarantees free movement of Indian Citizens across country and it cannot deny rights to Indian Citizen visiting places, further, the petitioner substantiated the argument that Government of Nagaland considers people from other states as outsiders, which is discriminatory and moreover, the prevailing system is not applicable to states having similar situations and circumstances. The Supreme Court dismissed the plea and no judgment was passed.<sup>32</sup>

Recently, The Adaptation of Laws (Amendment) Order, 2019 was challenged in the supreme Court by the petitioners All Tai Ahom Students Union of Assam, stating that the order passed by the President of India was unconstitutional and they further demanded that the system of the Inner Line Permit should prevail in Assam, and by insulating most parts of Assam from the Inner Line Permit system, which in turn would have helped the state government of Assam to protect the indigenous people, hence, depriving the state from its applicability from section 6B (4) so that the Citizenship Amendment Act, 2019. It was contended that the Presidential Order passed under Article 372 (2) by virtue of Article 372 (3)(a) was unconstitutional. The case of Sarbananda Sonowal v. Union of India<sup>33</sup> was relied which stated that Article 29(1) confers a fundamental right on all sections of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own to conserve the same and any invasion of this right would be ultra-virus.

The petitioners contended that section 6B (4) of the Citizenship Act is to constitutionally protect indigenous community in the northeast states, except for Assam which has exposed to the threat of influx of migrants. The state has repeatedly faced ethnic clashes and violence leading to destruction of properties and loss of human lives, the state is unable to ensure the safety and security of the inhabitants casing infringement of Article 21 of the Constitution. However, the bench comprising of hon'ble Chief Justice S. A. Bobde, Justice AS Bopanna and Justice V.

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<sup>32</sup> Soibam Singh, 'Plea in Seek of protection for non-Nagas in Dimapur', accessed on 15<sup>th</sup> April, 2020, <https://www.thehindu.com/news/national/other-states/plea-in-sc-seeks-protection-for-non-nagas-in-dimapur/article28118917.ece>.

<sup>33</sup> Sarbananda Sonowal v. Union of India (2005) 5 SCC 665

Ramasubramaniam refused to stay the Presidential Order, moreover, it allowed the central government to relook on Presidential Order which excludes Assam.<sup>34</sup>

## Conclusion

The recent inclusion of Manipur for the Inner Line Permit, is the result of politics of indigeneity occurring in the northeast. The relevance of Inner Line Permit system is a serious concern for citizen of India. The differential requirement of the administration in the northeast states has persisted to the extent that they are sought through institutionalise mechanism such the system of Inner Line. The responsibility of bringing balance is on the government to protect the rights of indigenous tribes and to make economic developments in the northeast states. The Constitutional legality of the Inner Line Permit systems prevailing since colonial era must be decided by the judiciary.

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