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Constitutional Validity of Assam Accord in Accordance with the Validity of Citizenship (Amendment) Act, 2019

JAYANTA BORUAH¹

ABSTRACT

Assam has always been facing the issue of illegal immigration since time immemorial. And this issue has always created huge tensions in establishing the law and order situation in the State. There are several examples of brutal incidents that are related to this issue like- the Nellie massacre in 1985, the Bodo-Muslim Conflict in 2012, and recently the protests against the Citizenship (Amendment) Act of 2019 (CAA) where again five Assamese people had to sacrifice their lives. In such a situation analysis of the existing Citizenship laws and their relevancy with the Assam Accord, which was signed after the brutal Nellie Massacre, becomes important for understanding the extent of conformity between the objectives of these laws and the demands of the local people from such laws. This Article has therefore focused on the Constitutional validity of the Assam Accord and the CAA of 2019 along with the conflict between the two and the impact of such laws on the issue of the Assamese people where the conclusion highlights the lacunas in both the legal documents along with the question that we as citizens of a democratic country must think for.

Keywords: *Assam; Assam Accord; Bangladeshis; Illegal Migrants; Citizenship (Amendment) Act; and Constitutional Validity*

I. INTRODUCTION

Assam, a land of scenic natural beauty with an ample amount of Natural Resources has always been a topic for discussion whenever the issue of illegal immigration appeared. The State witnessed a huge inflow of illegal migrants since the creation of Bangladesh due to several reasons out of which the sharing of the border of Assam with Bangladesh is the most crucial reason. The issue of illegal immigration became so high that the local Assamese community got threatened and vulnerable about losing their local and unique cultural identity and getting outnumbered in their own territory. These so-called illegal Bangladeshi migrants are alleged to have caused a serious threat to the availability of Natural Resources as well as

¹ Author is a Research Scholar, Former Assistant Professor of Law & Advocate in India.

the survival of the economic system of the State of Assam. This issue also emerged in the other parts of India like West Bengal, in general, and in the North-Eastern States, like Tripura in particular however in Assam the issue appeared to be the most serious one. The issue of such illegal immigration reached the epitome when the Assam Agitation was launched in 1979-1985 where approximately 2,191 alleged Bangladeshi migrants including mostly women and children were killed and burnt alive on February 18, 1983. This incident was named the Nellie Massacre which became one of the largest massacres in the history of Independent India. While on the other hand, 855 local Assamese people including students had sacrificed their lives in this movement who were later declared Assam Martyrs.² The movement was still on fire and was getting even more fueled up until the signing of the Assam Accord between the All Assam Students Union (AASU) and Assam Gana Sangram Parishad (AGSP) at one hand and the then Prime Minister, Rajiv Gandhi at the other hand. This Accord contained several provisions ensuring Constitutional and Legislative safeguards to the identity of local people of Assam for which after the signing of this treaty, peace resumed.³ However, the treaty could not solve the issue of illegal immigration to the State of Assam practically even though it was meant for that purpose only.

Recently, controversies relating to the issue of illegal immigrants reached a new height in Assam since a new Citizenship Act has been passed. The provisions of this new Act came in conflict with the pre-existing provisions from the Assam Accord. In simple words, this Act violated the Assam Accord by fixing the deadline for determining the illegal migrants and their citizenship is concerned. Strong resentments have been seen emerging amongst the Assamese community against this newly brought Act on Citizenship. The Act is alleged to have not only violated the provisions of the Assam Accord but has also been alleged to be unconstitutional. On the other hand, a question has again emerged regarding the Constitutional⁴ validity of the Assam Accord since now it is coming in conflict with a law passed by the Indian Parliament. As such several other questions have gained popularity amongst the researchers for verification like- whether the Assam Accord was Constitutionally valid? Whether the provisions of the Assam Accord should have been implemented at an early stage? Whether the newly brought Act has been able to recognize the uniqueness in the Foreigners issue in Assam? Whether this new Act on Citizenship conforms to the best interest

² Shorbori Purkayastha, Nellie Massacre- How Xenopjolia, Politics General Assam's Genocide, QUINT.COM (Jan 24, 2019, 10:13 AM) <https://www.thequint.com/explains/nellie-massacre-explained>.

³ What is Assam Accord, THE HANS INDIA (Jan 26, 2019, 01:11 AM) <http://www.thehansindia.com/posts/index/Hans/2015-08-17/what-is-assam-accord/170588/amp?>.

⁴ Why Assam is protesting against Citizenship Amendment Bill, INDIA TODAY (Jan 22, 2019, 01:11 AM) <https://www.indiatoday.in/india-today-insight/story/why-assam-is-protesting-against-the-citizenship-amendment-bill-1626656-2019-12-09>.

of the people of Assam? Whether this Act is Constitutionally valid? And lastly, whether there is an alternative way to solve this issue permanently? This paper will therefore attempt to understand the existing situations relating to the issue of foreigners in Assam and the conflicting provisions between the Assam Accord and the new Citizenship Act to have answers to the above questions through the Doctrinal method of study.

II. ISSUES OF ILLEGAL IMMIGRATION IN ASSAM

Researches have shown that there has been a significant growth of population in the State of Assam wherein 2001-11 census it was recorded that the overall growth rate of population in India was 17.6% and in Assam, it was 16.93%.⁵ It was even found that the difference in the rate of population growth between Assam and India was -2.49% while the difference between the rates of estimated migrants between India and Assam was -0.56% as per the census of 1991-2001. The growth rate of the Muslim population in 2001 was 13.42% in India and Assam, it was 30.91%, while the growth rate of the Muslim population in India was 22.9% and in Assam, it was only 16.23% in 1991.⁶ All these facts prove that the population growth in Assam is not natural while it is mostly due to illegal immigration of Muslim Bangladeshis which has resulted in the huge difference between the parameters of population growth between the entire country and the State of Assam.

This issue has led to far-reaching consequences in the State of Assam since the local communities started facing an identity crisis. Assam is a land of huge cultural and linguistic diversities where almost more than 26 small and minor ethnic as well as racial communities were living in peace and harmony for ages. Most of these communities are not properly recognized in modern Indian literature as well as in other legal and extra-legal documents. As such the ever-increasing rates of illegal immigration into the State are suspected to create a huge loss to the identity of these minor groups or some extent might wipe out the entire Assamese community itself. There has also been an issue regarding the maintenance of law and order situations in the State, of which the biggest example is the Bodo-Muslim conflict in 2012 where almost 77 people lost their lives and thousands of families got displaced.⁷ Similarly, the depletion of Natural Resources is also alleged to have increased due to such a huge inflow of illegal migrants. The land under forest cover has decreased from 39% in 1951-52 to 30% now. According to the forest department officials, the forest dwellers at present

⁵ CMF, basic statistics relating to Indian Economy.

⁶ Hiranya K Nath & Suresh K Nath, *Illegal Migrants in Assam: Magnitude, Causes and Economic Challenges* (Jan 24, 2020, 11:11 AM) <http://ssrn.com/abstract=1750383>.

⁷ FP Staff, *Assam Violence Key Facts about the Bodo-Muslim Conflict*, FIRSTPOST (Jan 24, 2019, 01:15 AM) www.firstpost.com/india/assam-violence-5-key-facts-about-the-bodo-muslim-conflict-1507865.html.

seem to be mostly Non-Assamese in their appearances. Likewise, there is a decrease in every bit of Natural Resources particularly free land area. Further, these illegal migrants have occupied several areas of public properties of the local people illegally like vacant areas allotted to Satras (Traditional Prayer Halls of Assamese Community) and other temples.⁸

This issue has also raised concerns regarding the political rights of the local people since due to political nexus as well as vote bank policies, a majority of the illegal immigrants have been successful in possessing voting rights. They now possess mostly all valid documents for being identified as a citizen of India like- Voter ID Card, PAN Card, Rason Card, etc. which has made the determination of such illegal migrants for deportation merely impossible. Job opportunities to the local people, linguistic and cultural integrity, access to natural resources, etc. for the local people are now under serious threat due to such emerging issues related to illegal immigration in Assam.⁹

III. BACKGROUND OF ASSAM ACCORD

Although the issue of illegal immigration in the State of Assam is assumed to have emerged after the independence of Bangladesh, such issues have a very long history. It is estimated that this issue has begun in 1920 when a huge influx of illegal migrants came from East Bengal who encroached on the lands reserved for grazing in Assam. The communal policies initiated by the then leader of the Assam Provincial Muslim League, S. M. Sadullah further aggravated the issue. There was a rapid increase in the inflow of Muslim population in the State while in 1940, East Pakistan was created. All these led to serious tensions in the minds of the local tribal communities in Assam. The first recorded huge scale migration to Assam from East Pakistan took place in October 1946 after the Noakhali Riots. By May 1949 the number of illegal migrants rose to 2,74,456 and from 1948 to 1971 this migration continued from East Pakistan.¹⁰ This made the local Students' Leaders rise in protest for the identification and deportation of illegal migrants from the State of Assam. In 1978 the death of Hiralal Patwaring and the increase of the names of foreigners in the electoral lists for the elections added fuel to the fire amongst a few of the concerned sections of the Assamese

⁸ J Das & D Talukdar, Socio-Economic and Political Consequences of Illegal Migrant into Assam from Bangladesh, *Jour. Tour. & Hosp* (2016 (Jan 21, 2019, 10:15 PM)) <https://www.omicsonline.org/pdfdownload.php?download=open-access/socioeconomic-and-political-consequences-of-illegal-migration-into-assam-from-bangladesh-2167-0269-1000202.pdf&aid=69610>.

⁹ Jiaur Rahman, Socio-Economical and Political Consequences of Illegal Migration into Assam from Bangladesh, *ABHIPEDIA* (Jan 25, 2019, 11:18 PM) <https://abhikipedia.abhimanu.com/Article/State/NTEwNAEEQQVVEEQVV/Socio-Economic-and-Political-Consequence-of-Illegal-Migration-into-Assam-from-Bangladesh-Assam-State>.

¹⁰ Dr. Kastubh Deka, Bengali Muslim who migrated to Assam in 1871 are not 'Illegal Bangladeshis', *SCROL.IN* (Jan 27, 2019, 01:11 AM) <https://scroll.in/article/664077/bengali-muslims-who-migrated-to-assam-in-1871-are-not-illegal-bangladeshis>.

community who were mostly students. They demanded postponing elections until the names of such foreigners were deleted. But it was not done for which the Assam Movement popularly known as Assam Agitation was initiated at an All Assam level.¹¹

In this movement, thousands of students and local Assamese people from across the State participated under the banner of AASU and AGSP. The student organization initially resorted to non-violent means of protest where AASU along with AGSP declared the closure of all educational institutions as well as State and Central Government offices in November 1979 and restricted all candidates from filing nominations for contesting the upcoming elections. The State on the other hand deployed forces for curbing the protests initiated by AASU and AGSP. On December 10, 1979, which was the last date for filing nominations, a Statewide bandh was declared by AASU. In the Barpeta district, a Police force led by UK PS Gill attacked a group of AASU members who were demonstrating protests for restricting Begam Abida Ahmed from filing nominations for contesting elections. In the attack, one Barpeta Student Union leader named Khargeswar Talukdar was brutally beaten up to death by the Police force, who was later declared as the First Martyr of the Assam Movement. While on October 7, 1982, another member of the Student's Union named Anil Bora was beaten up to death when he was leading a procession from Nagaon district to Hojai in support of a Bandh declared by AASU, by those who opposed the Bandh and supported Bangladeshi immigrants. All these led to serious resentment amongst the Student members and soon turned the non-violent protests into a violent massacre known as a Nellie Massacre on February 18, 1983, where the local Assamese people killed around 2,191 suspected illegal migrants in 14 villages of the Nagaon district. At the same time, 855 supporters of Assam Agitation also had to sacrifice their lives, who were later declared respectfully as Martyrs of Assam since this movement forced the then Prime Minister of India, Rajiv Gandhi to come to Assam and to sign a Memorandum of Settlement with AASU and AGSP which later came to be known as Assam Accord. The first four clauses of the Assam Accord even mention the willingness of both the Central Government and AASU/AGSP for resolving the issue and to work out a solution including giving constitutional as well as legal protection to the Assamese Community by eliminating the issue of Foreigners from the land.¹²

¹¹ Sukanya Iyer, Must Read: NRC for India- A Paradigm Shift from Vote Bank Politics to 'India for Indians', FEARLESSINDIAN (Jun 12, 2020, 01:12 AM) <https://thefearlessindian.in/must-read-nrc-india-paradigm-shift-vote-bank-politics-india-indians/>.

¹² Ibid.

IV. ANALYSIS OF THE PROVISIONS RELATING TO ILLEGAL IMMIGRATION IN ASSAM ACCORD

Clause 5 of Assam Accord deals with the Foreigners issue where Clause 5.1 provided that January 1, 1966 shall be the base date and year for deletion of the names of Foreigners from the electoral rolls; Clause 5.2 provided that those who came to Assam before the said date and have their names registered in the electoral rolls shall be regularized; Clause 5.3 provided that those Foreigners who came to Assam after the said date but before March 24, 1971 and have their names in the electoral rolls shall be treated according to the provisions of Foreigners Act of 1946 and Foreigners (Tribunals) Order 1964; Clause 5.4 provided that the names of the above Foreigners shall be deleted from the electoral rolls and they shall register themselves in the Registering Offices within the respective districts as per the provisions of Registration of Foreigners Act and its Rules 1939; Clause 5.5 made the Government responsible to take suitable measures for maintaining the above said purpose; Clause 5.7 provided that all those who were earlier expelled but subsequently entered Assam illegally shall be again expelled; Clause 5.8 provided for detecting, deleting and taking practical steps for expelling those Foreigners who entered Assam after March 25, 1971; and Clause 5.9 made the Government responsible to consider certain difficulties as highlighted by AASU/AGSP while implementing the Illegal Migrants (Determination by Tribunals) Act 1983.¹³

The Accord further provided for several more provisions like giving Constitutional and Legal safeguards for protecting the identity, culture. Languages, etc. of the Assamese Community; speedy measures are to be taken by the Government for boosting up the economic development of the region where national level institutions are to be set up for promoting educational developments; citizenship certificates were to be issued only by the Authorities of the Central Government; special considerations will be given to the complaints made by AASU/AGSP regarding irregular issuance of Indian Citizenship Certificates (ICC); to secure the international borders of the State of Assam; to regularly maintain the registration of births and deaths; to strictly enforce the laws relating to restriction on acquisition of land by Foreigners, etc.¹⁴

As per implementation of this Accord is concerned, Clause 5.1 has already been complied with and is in practice; Clause 5.2 has been implemented; regarding Clause 5.3 a total of

¹³ Assam Accord and its Clauses, Government of Assam, Implementation of Accord (Jun 10, 2020, 02:20 AM) <https://assamaccord.assam.gov.in/portlets/assam-accord-and-its-clauses>.

¹⁴ Ibid.

75,489 people were held as Foreigners till 31st March 2016 out of which 33,186 were declared to be Foreigners from 1966-71 while 42,303 were held to be Foreigners of post-1971. Amongst them 14,198 people registered their names with their respective Foreigners Registering Officers; as regards Clause 5.4 out of 33,015 Foreigners from 1966-71, 13,931 people registered themselves with the Registering Officers; under Clause 5.5 Government had shown interest in taking suitable steps for the purposes determined in the Clause; for Clause 5.6, steps were being taken; under Clause 5.7 around 1432 re-infiltrators were detected and deported from 1986-2014. After the invalidation of the IM(DT) Act by the Supreme Court, the following Acts are used for detection and deportation of illegal migrants from the State of Assam, via- the Foreigners Act and its Rules of 1956; The Passport Act of 1920; the Immigration (Expulsion from Assam) Act, 1950; and the Citizenship Act 1955. To further implement the provisions of this Act the Citizenship Act was amended and a new Section via, Section 6A was inserted into the Act which legally validated Clause 5 of the Assam Accord.¹⁵

Even several other initiatives were also taken by the Government to give effect to the other provisions of the Assam Accord, like the establishment of Srimanta Sankardeva Kalakshetra; Jyoti Chitaban Film Studio Scheme was implemented by investing 8.79 crores; and several other initiatives were taken for boosting up economic, educational and other infrastructural developments in the State of Assam.¹⁶

V. ARGUMENTS FOR AND AGAINST CONSTITUTIONAL VALIDITY OF ASSAM ACCORD

Although the signing of the Assam Accord was held to be a great success for the Assamese community, it had led to severe doubts regarding its validity amongst the minds of many scholars and also amongst those who were always against this Accord. The Constitutional validity of the Assam Accord along with Section 6A of Citizenship (Amendment) Act 1955 was challenged before the Supreme Court of India for the first time by Assam Sammilita Mahasangha on the grounds of them being against the general Rule of Uniformity as regards the determination of citizenship is concerned since Assam Accord as well as Section 6A of CAA 1955 made separate provisions for deterring citizenship in Assam with the rest part of India which was alleged to be discriminatory.¹⁷ Moreover, it was also alleged that AASU being a non-registered organization was not in a capacity to give effect to a Memorandum of

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Assam Sanmilita Mahasangha v. Union of India, WP(C) 562/2012.

Settlement with the Central Government and the treaty was not even initially backed by the support of the Parliament of India. Upamanya Hazarika, a Supreme Court Advocate stated that this Accord will go against the interest of the Assamese local people since in a town called Barnyhat in Meghalaya which is on the border of Assam, a Bangladeshi immigrant will have to prove his/her residence before 1948 while after walking one km into Assam, the same Bangladeshi immigrant will require to prove his/her residence before 1971. This will increase the number of illegal immigrants in Assam.¹⁸

All these factors have created a reasonable doubt on the validity of the Assam Accord on one hand and the applicability of the adequate machinery for solving the issue of illegal immigration on the other hand.

VI. ANALYSIS OF THE CITIZENSHIP (AMENDMENT) ACT 2019

The new Amendment to the Citizenship Act made significant changes to the old law. By inserting subsection 2 after Clause (b) to Section 2, persons belonging to Hindu, Jain, Sikh, Buddhist Persian and Christian community who came from the countries of Pakistan, Bangladesh, or Afghanistan before 31st December 2014, and are exempted by the Central Government under the Passport Act 1920 and the Foreigners Act of 1946 shall not be treated as an illegal migrant. Even under Section 6B certificates of Registration or Naturalization were to be granted to the persons as mentioned under Clause b of subsection 2 of Section 1. This Act also made certain new provisions as regards exemption of certain class of Foreigners. However, the biggest change brought by this Act was that for the first time in India citizenship was provided to be decided based on Religion.

Conflicting Provisions between Assam Accord and Citizenship (Amendment) Act, 2019

After passing of the Act of 2019, it directly came in conflict with the provisions of the Assam Accord, since the Accord provided 25th March 1971 as the deadline for determining illegal migrants in the State of Assam while CAA of 2019 provided for 31st December 2014 as the deadline for determining citizenship. This led to the declaration of many existing illegal Bangladeshis as legal Assamese residents who were to be detected and deported under the Assam Accord. Thus, those persons who were illegal migrants under the Assam Accord were now given legal protection as citizens of India under the newly passed CAA, 2019.¹⁹

¹⁸ Rohit Prasad, Opinion: The time inconsistency of the Assam Accord, LIVEMINT (Jun 10, 2020, 03:12 AM) <https://www.livemint.com/Opinion/fV9Ns2Fa7clWcCexJ3NhAO/Opinion-The-time-inconsistency-of-the-Assam-Accord.html>.

¹⁹ Legal Validity of Assam Accord Questioned, ASSAM TRIBUNE (Jun 13, 2020, 01:12 AM) <http://www.assamtribune.com/scripts/detailsnew.asp?id=aug1310/at05>.

VII. ARGUMENTS FOR AND AGAINST CONSTITUTIONAL VALIDITY OF CITIZENSHIP (AMENDMENT) ACT 2019

The Act has always been supported by the Ruling BJP Party both at the Centre and the State since its inception. The Assam Cabinet Minister, Himanta Biswasarma clearly stated that it has always been the intention of the BJP Party to provide shelter to the minority Non-Muslim groups like- Hindus, Sikhs, Buddhists, etc. who faces ill-treatment in Islamic Countries like- Pakistan, Bangladesh, Afghanistan, etc. It is argued that many Islamic countries provide shelter to the minority Muslim communities from the Non-Muslim countries but there is only India to provide shelter to the minority Non-Muslim communities who face exploitation in the Islamic countries or who want to accept Indian citizenship. This Act is further supported on Humanitarian Grounds for protecting the interests of the Non-Muslim Minority Communities from exploitations in Islamic countries.²⁰

However, this Act is also challenged for being Constitutionally invalid since it is alleged to be against Article 14 of the Indian Constitution. This Act discriminates between Muslim and Non-Muslim communities for the sake of providing Citizenship. This Act is again challenged for being anti-secular while secularism is one of the Basic Structures of the Indian Constitution. This Act has also been criticized as “fundamentally discriminatory” by the Office of the United Nations High Commission for Human Rights. No doubt that India is a signatory of the United Nations Refugee Convention under which granting shelter to Refugees is a Customary International Law. But here both Non-Muslims or Muslim illegal immigrants are not Refugees since Refugees are forced to surrender their home state due to force or other sorts of compulsion while illegal immigrants are those who voluntarily enter the State boundaries for their selfish interests illegally. Thus, granting citizenship to illegal immigrants is like making illegal persons legal by changing the law which is against the very notion of Rule of Law. Further, the Act cannot even be defended on the ground of humanitarian considerations for granting citizenship to Non-Muslim minorities, and if such would have been the case then why the Act did not recognize the needs of Rohingyas and the Shia Islamic groups who are the major victims of exploitations across the Globe.²¹

²⁰ Ratnadip Choudhury, Assam Government calls for “Safeguard, Checks” in CAA implementation, NDTV (Jun 12, 2020, 02:34 AM) <https://www.ndtv.com/india-news/assam-government-calls-for-safeguards-checks-in-cao-implementation-2166135>.

²¹ Suhrith Pathasarathy, Why the CAA violates the Constitution?, THE INDIA FORUM (Jun 23, 2020: 02:12 AM) <https://www.theindiaforum.in/article/why-caa-violates-constitution>.

VIII. CITIZENSHIP (AMENDMENT) ACT 2019 AND THE SPECIAL SITUATIONS IN ASSAM

The situation in Assam is very unique as regards the implementation of CAA, 2019 is concerned, in comparison to the rest of the Country. The Assamese people under the leadership of AASU and several other organizations are protesting this Act neither because it is anti-secular nor because it is discriminatory. The reason behind the protest is very simple. It is because Assam has seen a history of struggle with the issue of illegal immigration since it was even during British Rule, at the end of the 19th Century, where Assamese people had to struggle and sacrifice their lives to protect their language and culture, not against any Muslim groups but against Hindu Bengalis and the movement was known as “Bhasa Andolon” which took place to avoid Bengali language being used as Official language in the land of Assam. Since then there has been a threat of losing identity for the Assamese locals from not only Muslim Bangladeshis but also from Hindu Bengalis. It has also been observed that the majority of the parts of Assam now comprise Bengali-speaking people and in such situations, this Act is likely to add fuel to the fire. Assam is a land of unity between Hindus and Muslims where communal riots had rarely taken place but such an Act is likely to create a platform for such communal riots in the State and the situation like Assam Agitation or Nellie Massacre might again take place in Assam.

IX. CONCLUSION

From the analysis of all the above facts and circumstances, it is clear that the newly passed CAA has violated the provisions of the Assam Accord. No matter whether the Assam Accord was Constitutionally valid or not but Section 6A of the previous Citizenship Act was fully valid and legal which also got contradicted by this said Act. The Constitutional validity of CAA, 2019 is also under-challenged on various grounds but for the people of Assam, security of their identity matters more than the Constitutionality of the said Act. It is however to be noted that the people of Assam will have to be vigilant enough from now onwards to protect the integrity of the State. However, this Act is not going to give shelter to any new illegal immigrants so therefore it can be expected that if this Act gets enforced then it might bring a permanent solution to this issue of illegal immigration forever. But again, a question arises that since now it is the Rule of BJP led Government who has always been in favor of Non-Muslim minority has successfully been able to pass this Act in the Parliament due to its overwhelming majority in both the Houses of the Legislature, but what will happen if some other Political Party gains the same strength tomorrow and brings an amendment to the same

Act for giving citizenship to Muslim illegal migrants and subsequently becomes successful in passing the Act? It is not about supporting Non-Muslims or Muslims for granting citizenship, the question is about the changing autonomy in the decision-making process who at their disposal are willing to play the game of granting citizenship to Foreigners for increasing their vote banks. The question is thus for the Indian citizens even though it is yet to be properly known who are Indian citizens, whether we shall allow the passing of such Act at the disposal of the Majority Party in the World's Largest Democratic Country or not?
