

INDIA'S CONTRIBUTION TO THE WORLD'S IMMIGRANT DIASPORA

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LEGAL CRISIS

On July 30, 2018, the publication of the final draft¹ of the National Register of Citizens² (NRC) for the North-Eastern State of Assam left 4.07³ million people outside the purview of Indian citizenship, which potentially can be a humanitarian crisis post December, 31, 2018, when the Home Ministry of India shall declare the final NRC List⁴. Allegedly, nothing shy of this 4.07⁵ million are illegal immigrants from Bangladesh, holding majority population in 14 out of 33 districts in the Assam⁶.

BACKGROUND

In 1971⁷, Bangladesh⁸ gained independence from Pakistan. The War of Independence, spurring genocide and rape led to an estimated influx of 7 million⁹ Bangladeshis into India, particularly in the border-adjointing states of West Bengal and Assam until 1983. The Parliament thereafter

¹ Available at <http://www.nrcassam.nic.in/timelines-chart.html>, Government of Assam, Office of the State Coordinator of National Registration (NRC) Assam.

² Available at <http://www.nrcassam.nic.in/what-nrc.html>

³ The Assam Tribune, Newspaper published from Guwahati and Dibrugarh, Published on July, 31, 2018, Tuesday.

⁴ Available at <https://nenow.in/north-east-news/final-nrc-list-december-31-home-ministry.html>

⁵ Citizenship and Its Discontents, An Indian History, Niraja Gopal Jayal, Harvard University Press Cambridge, Massachusetts & London, England, 2013, Pg. 5.

⁶ Brahma Committee Report on Protection of Land Rights of The Indigenous People of Assam, clause 1.3 & clause 11.1

⁷ December, 16, 1971

⁸ Erstwhile East Pakistan, <http://www.bbs.gov.bd>

⁹ Citizenship and Its Discontents, An Indian History, Niraja Gopal Jayal, Harvard University Press Cambridge, Massachusetts & London, England, 2013, Pg. 66.

enacted the Illegal Migrants (Determination by Tribunals) Act, 1983 with the purpose and objective of detecting illegal immigrants and expelling them from Assam. This legislation was a lateral shift from the Foreigners Act, 1946 applicable to all other Indian States¹⁰.

Simultaneously, an internal agitation, infamously known as the Assam Movement, led to grave political instability leading to enforcement of President's Rule¹¹ in the state. In magnitude, series of rioting and protests claimed lives of 2191 suspected immigrants and 855 protestors¹². The outrage was primarily due to a dramatic increase of voters in the municipality's voters list¹³, illegally granting citizenship rights to foreign migrants and posing irreversible threat to the indigenous Assamese population.

THE ASSAM ACCORD

In 1985, the agitation was called-off pursuant to signing of the Assam Accord¹⁴ between the Government and agitation leaders. Amidst constitutional and statutory challenges, lack of international agreements, national commitments and humanitarian considerations; the Assam Accord was incorporated as Section 6A of the Citizenship Act, 1955 classifying such illegal immigrants into three classes: citizens, foreigners and Illegal immigrants. Immigrants entering Assam prior to 1966¹⁵, were to be regularised as citizens, persons entering between 1966¹⁶ and 1971¹⁷ were to be identified, removed from electoral rolls and registered as foreigners, and, persons entering after 1971¹⁸ were to be detected, deleted from electoral rolls and thereafter expelled.

¹⁰ Writ Petition (Civil) 131 of 2000, Supreme Court, Sarbananda Sonowal vs Union Of India & Anr, decide on 12.07.2005, para 45.

¹¹ Enforced between 12 December, 1979-6 December, 1980, 30 June, 1981-13 January, 1982 & 19 March, 1982-27 February, 1983.

¹² Nellie Massacre

¹³ 1978 By-Election, Mangaldoi Lok Sabha Constituency, Assam.

¹⁴ Available at <https://assamaccord.assam.gov.in/portlets/assam-accord-and-its-clauses>

¹⁵ January, 01, 1966

¹⁶ *Ibid*

¹⁷ March, 24, 1971 (official date, End of Bangladesh Libertarian War)

¹⁸ *Ibid*

In effect, the Illegal Migrants Tribunal as established under the Illegal Migrants (Determination by Tribunals) Act, 1983 was to function in pursuance to Section 6A of the Citizenship Act, 1955, detecting and deporting illegal immigrants.

LEGAL PIT-FALL

On July 12, 2005, after more two decades of functioning of Illegal Migrants Tribunal the Supreme Court of India struck down¹⁹ the Illegal Migrants (Determination by Tribunals) Act, 1983 as unconstitutional²⁰ and transferred all pending cases to the Foreigners Tribunal established under the Foreigners Act, 1946. [Differential treatment within Immigrant society residing in Assam to remaining states of India was the underlying ratio of unconstitutionality. Legal sanctum was backed by officially admitted figure of 1481²¹ illegal immigrants who were physically expelled from Indian Territory. As held, the primary reason of failure of the repealed Act was that it reversed the burden of proof from the individual to the State, thus, making the tribunals more onerous opposing its own objective.]

In 2012, the constitutional validity of Section 6A of Citizenship Act, 1955, despite inordinate laches, was assailed before the Supreme Court which is still pending consideration²². The fundamental ground of challenge is that the Central Government cannot discriminately set a different cut-off date for citizenship specifically for the State of Assam. Currently, the NRC for Assam is being updated in force of Section 6A of Citizenship Act, 1955. Paradoxically, the Government tables The Citizenship (Amendment) Bill, 2016 which proposes to opportune minorities in neighbouring nations, primarily *Hindu*²³ illegal immigrants, to claim Indian citizenship by relaxing citizenship criterion, politicizing the issue on religious fractions. Amongst such considerations lies the fate of over 4 million illegal immigrants in Assam.

¹⁹ Writ Petition (Civil) 131 of 2000, Supreme Court, Sarbananda Sonowal vs Union Of India & Anr, decide on 12.07.2005, para 58.

²⁰ Article 14, Right to Equality, the Constitution of India, 1949.

²¹ Writ Petition (Civil) 131 of 2000, Supreme Court, Sarbananda Sonowal vs Union Of India & Anr, decide on 12.07.2005, para 39.

²² Writ Petition (Civil) 562 of 2012, Supreme Court, Assam Sangmilita Mahasangha & Ors vs. Union of India and Ors.

²³ Available at http://censusindia.gov.in/Census_And_You/religion.aspx

[Meanwhile, raging concerns of continuing influx of Bangladeshi immigrants are fuelling nationwide sentiments; also posing serious threat to national security. The reasons identified for this heavy influx are negotiable & porous borders, economic opportunities, ethnic proximity, kinship, natural calamities²⁴, religious & political encouragement and search for shelter, all aided by purchasable documentation²⁵. Recently, the nature of migration reflects a shift from immigrants to infiltrators due to exceeding involvement of Pakistan's ISI²⁶ supporting a new formed military movement in Assam, directed against the Government.²⁷]

SOLVING THE DEADLOCK: NATIONAL REFUGEE LAW

Unquestionably, the legal debate boils down to identification. India historically has neither been document friendly, nor has been maintenance of government data repositories. Purchasable identities and corruption seriously questions identity authentication. Illiteracy, poverty, recurring floods, dissipation of home land due to militant insurgencies further contribute to identification crisis. Overlooking identification, Bangladesh's constant denial of infiltration, lack of bilateral ties and inhumanly overcrowded detention camps, incubates its own costs and challenges. Putatively, the present NRC upgradation can incite another Rohingya²⁸ crisis in Bangladesh.

The most exigent need of the hour is to apace border fencing, supplemented with vigorous patrolling and updated surveillance technology. Simultaneously, identifying and eliminating brokers and agents facilitating entry and resettlement in India should be a prime priority. In reply to criminal atrocities like rioting, dacoity, encroachment, cattle trafficking, theft, rape and murder by infiltrators, the State police machinery aided by CRPF²⁹ and the Indian Army should enforce strict action against immigrants turned land mafias and militants; who have kept locals away from their mother land.

²⁴ National Disaster Management Authority, India; <https://ndma.gov.in/en/assam-sdma-office>.

²⁵ Available at <https://assam.gov.in/web/home-and-political-department/white-paper#21>

²⁶ Inter-Services Intelligence, Pakistan Government Agency.

²⁷ Writ Petition (Civil) 131 of 2000, Supreme Court, Sarbananda Sonowal vs Union Of India & Anr, decide on 12.07.2005, para 16.

²⁸ Available at <https://news.un.org/en/news/topic/migrants-and-refugees>

²⁹ Central Reserve Police Force, <https://www.crfp.gov.in>

Strong consideration over adopting and implementing a National Refugee Law, could proximately camouflage the delay and legal experimentation in dealing with illegal Bangladeshis in Assam. Further, reconsider signing the United Nations Convention Relating to Status of Refugee, 1951, alongside engaging with United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) for aid and advisory assistance. India agglomerating international support, can inclusively use South Asian Association for Regional Cooperation (SAARC) as a platform to pursue Bangladesh into modelling a practicable solution. Bangladesh and India are signatories to the South Asia Declaration on Refugees (SADR), providing a start point for international negotiations on immigration illegalities.

Domestically, the Asylum Bill, 2015 could be a base for enactments setting up a refugee regime in India; distinguishing a refugee from an illegal immigrant, against incompetence and shortcomings of Foreigner Act, 1946.

Post 2000, large scale immigration into India continues in search of better economic prospects and family affinity including rebellion recruits, who are not refugees under its accepted definition. Undeniably, common association in BIMSTEC³⁰ and IORA³¹ between the two nations, could assist discussions on economy and security in parallel. The immigration department can undertake to issue seasonal work permits for such immigrants seeking economic opportunities in India which could be strengthened by a stringent biometric database network.

Depolarizing and depoliticizing the issue, a national level screening committee could be devised, jointly governed by the State, Central and military, functioning under the supervision of the judiciary, making execution of the proposed framework infallible. The committee can seek empanelling officials from Bangladesh which will catalyse the desired objective.

³⁰ Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation

³¹ Indian Association Rim Association

The ideology is well put by Lord Denning, “In recent times England has been invaded not by enemies nor by friends but by those who seek England as a haven. In their own countries there are poverty, disease and no homes.”³² Can India do right with ‘people with no rights’?



³² The Due Process of Law, Rt. Hon. Lord Denning, Oxford University Press, Oxford, 2013, Pg. 155.