

Deportation of Illegal Immigrants: The Road Ahead



(Source: <https://www.bing.com>)

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Deportation of illegal Immigrants: The Road Ahead

Introduction

In 2016, BJP came to power in Assam riding on the promise of freeing the state of “illegal infiltration” and thereby protecting “jati, mati, bheti”(land, community, hearth).¹ Their major electoral plank was to seal the Bangladesh border and weed out the illegal immigrants according to the terms of the Assam Accord. This resonated with the Assamese who have witnessed protracted violence in their state from the late 1970s and throughout the 1980s in a bid to preserve the Assamese culture and language from ‘outsiders’. However, even though the ‘original inhabitant’ discourse and the fast tracked updation of the NRC helped BJP gain political mileage in the region, it comes at the cost of compromising the human rights of thousands of ‘doubtful citizens’. Updating a registry of citizens involving people of disputed nationalities is a task of immense magnitude and involves several complications and the executive mechanism for its implementation was far from reliable. The provisions for determining citizenship and nationality were vague and there was no distinguishing clause for mixed ethnicities. It has altered the internal dynamics within the Assamese society where religion became a key factor for deciding if a person is indigenous to the state, leaving Assamese Muslims feeling increasingly marginalized and threatened in their own homes.²

But most importantly, the government seems to have overlooked the process of deportation and repatriation that succeeds identification of infiltrators. As a result, thousands of people whose names have not been listed out in the NRC will face indefinite detention in the six detention centres set up across the state, rendering them effectively stateless and without any rights and protection from any country. India’s ad hoc policies of protection to stateless people and BJP’s arbitrary response to refugees will ensure that these detainees will be left to languish in these prisons indefinitely.

The legal quagmire of deportation

While the question of detection of illegal migrants and updation of NRC has been widely discussed and debated, it is clear that not enough deliberation has gone into designing an effective mechanism for the process of deportation. A person who is believed, or even proven in court, to be a national of another country can only be deported or repatriated to their home country when the country in question accepts him/her as its citizen. Though India and Bangladesh entered into an extradition treaty during the UPA II regime in 2013, expulsion of undocumented immigrants from Bangladesh allegedly residing in Assam has not been negotiated in bilateral talks. The bi-annual talks between the Border Security Force (BSF) and Border Guard Bangladesh have not flagged the issue of undocumented migration from across the border beyond the angle of narcotics and cattle smuggling.³ Infact, Bangladesh has consistently denied the influx. In 2014, the Supreme Court asked the Union of India to enter into necessary discussions with the government of Bangladesh to streamline the process of deporting illegal migrants. However, the state government has only set up more detention camps to accommodate the increasing number of persons declared as infiltrators by the Foreigners’ Tribunal. Most of the inmates languish in these centres for years without any attempt made to deport them, resulting in a clear violation of their human rights. In the years between 2006-2012, only 221 of the alleged 9801 illegal immigrants declared to be foreigners were evicted from the country while out of the 4022 who have been identified since May 2016 alone, only 30 has been repatriated.⁴

The Central Government is vested with powers to deport a foreign national illegally staying in the country under Section 3(2) (c) of the Foreigners Act, 1946. These powers to identify and deport illegally staying Bangladeshi Nationals have also been delegated to the State Governments/Union Territory Administrations. But such a provision has no practical relevance unless there is a bilateral treaty with the concerned country regarding the same. The security forces and border personnel have reportedly deported people by sending them across the border but it is often speculated that most of these people deported find an easy access back into the country because of the porous border and lack of security along it apart from fencing.⁵ This impediment to deportation raises the larger question of a porous international border which facilitates not only illegal immigration but also cross border terrorism and

¹<https://thewire.in/154572/assam-accord-illegal-infiltration-india-bangladesh/>

²https://idsa.in/issuebrief/PoliticsofIllegalImmigration_sspattanaik_160514

³<https://thewire.in/204928/policy-found-non-citizens-nrc-update-assam-still-undecided/>

⁴<https://economictimes.indiatimes.com/news/politics-and-nation/national-register-of-citizens-in-assam-issue-of-illegal-foreigners-continues-to-be-a-major-political-one/articleshow/47657561.cms>

⁵<http://pib.nic.in/newsite/PrintRelease.aspx?relid=107327>

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smuggling. The border, which according to the state and centre's claims, was supposed to be completely sealed by June 2016, still remains largely porous and easily accessible from the other side, thus defeating any attempt at ending immigration.

Role of International Relations:

Under customary law, a country is expected to accept its citizens and cooperate with the deporting country but that is hardly ever the case in practical scenarios where international politics almost always casts a shadow on potent domestic political issues. India has strategically avoided bringing the issue of migration to the table and the Bangladeshi government has even denied it, stating that while issues such as terrorism, smuggling, drug and human trafficking are routinely discussed and the two governments have agreed on the modalities of cooperation on those matters, illegal migration has never featured in official discussions between the two governments⁶. The issue was not approached either during Prime Minister Narendra Modi's visit to Bangladesh in 2015 or during the Bangladesh Prime Minister Sheikh Hasina's visit to India in April last year. The reasons behind this can be several, the most critical being that Bangladesh is at the forefront and a validation of the success of Mr Modi's 'neighbourhood first' policy.⁷ It is of immense strategic significance to India for various reasons including thwarting the security challenges arising due to terrorism, ensuring connectivity to the northeast and further to the ASEAN region as well as being a key gateway for India's sub regional initiatives in platforms such as BBIN (Bangladesh, Bhutan, India and Nepal cooperation) and BIMSTEC (Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation).⁸ Maintaining friendly relations is also crucial for cooperation in several other areas. In July 2014, New Delhi and Dhaka accepted the judgment of International Tribunal for the Law of the Sea and settled a long-standing maritime order dispute. In June 2015, when Modi visited Bangladesh, the two countries exchanged the instruments of ratification on the historic land boundary agreement. In April 2017, Prime Minister Sheikh Hasina visited India, during which India announced a new credit line of \$4.5 billion with an additional \$500 million for Bangladesh's defense hardware purchase. These developments outline the flourishing bilateral ties that successive governments have forged with Bangladesh.

However the real benefit of "neighbourhood first" approach is that Bangladesh has provided great strategic opportunity to change South Asia's geopolitical situation. After the unofficial blockade imposed on Nepal by the Indian government over exclusion of the Madhesi people in their constitution and the rising tensions in Doklam, China's presence and influence in the region has grown significantly and traces of its economic clout were evident in Nepal and Bhutan. China's ambitious BRI project to ensure greater presence in its neighbouring countries is seen as a threat to the precarious balance of bilateral relations India has established with its border states. China's growing negotiating powers with the South Asian countries threatens the role of India as a regional leader. To make a mark in the global stage, India first needs to establish itself in the region first and in the light of Nepal and Myanmar's increasing proximity to China and Indo-Pak relations reaching another low, Bangladesh is crucial for accomplishing this.

Despite growing cooperation, there are complications between the two countries often in the pursuit of national interest. Besides its close relationship with India, Prime Minister Sheikh Hasina is pursuing an independent foreign policy beneficial for her country's interests and has developed a close relationship with China economically and militarily.⁹ The long-pending deal on the sharing of waters of the Teesta River has received strong opposition from West Bengal CM Mamta Banerjee and is unlikely to be signed despite Bangladesh's insistence on the same. As general elections are due in Bangladesh in December 2018, the Hasina government would try to push the Teesta deal to deny the opposition parties a chance to play the anti-India card. In order to ensure that the India-friendly regime in Bangladesh comes back to power for another term, the Modi government will predictably keep negotiations limited to issues that will create a pro India narrative in the country in an attempt to ward off the possibility of a pro China government. With both countries adopting a discourse of nationalistic sentiments and narrowing the entire debate into a politicised domestic issue, the plight of immigrants detained in India appears to have taken a backseat.

Conclusion

Given the political salience and the reverberation it may have for Bangladeshi domestic politics and India's reluctance to antagonise the Bangladeshi government, there seems to be no immediate agenda to formally discuss the issue of deportation with Bangladesh. In the absence of bilateral agreement which lays down the procedure for deportation and given the position of the Bangladesh

⁶ Bangladesh Information Minister Hasanul Haq Inu told an Indian journalist that in the past 30 years there has been no unauthorised migration from Bangladesh to Assam

⁷ <https://thediplomat.com/2017/12/grading-indias-neighborhood-diplomacy/>

⁸ <https://iapsdialogue.org/2017/09/21/bangladesh-in-modis-foreign-policy/>

⁹ <https://iapsdialogue.org/2017/09/21/bangladesh-in-modis-foreign-policy/>

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government on the issue, Indian border forces had often been left with no choice but to pursue the policy of push back and physically send them across the border. The success of this tactic however was limited as can be seen by the abysmal record of the number of people deported. Since the first list of NRC has been finalised and the second list likely to be announced soon, the question that should be raised is- what is the fate of those not included in the NRC? The government's announcement of acquiring land for building the first full fledged detention camp in Assam is suggestive of putting into practice a wider set of carceral institutions which comes at a huge economic cost to the country and will leave thousands in a legal limbo.¹⁰ Since there are no policy measures implemented to oversee the functioning of these centres and no guidelines on legal aid and repatriation for the inmates, most of them will be condemned to a life behind bars indefinitely

What complicates matters even further is the xenophobic narrative that is emerging around the entire issue of immigration which seeks to differentiate and divide on the basis of religion. If Parliament passes the Citizenship Amendment Bill, those who are Hindu, Sikh, Buddhist, Jain, Parsi or Christian would be termed a refugee, i.e, seeking refuge from persecution while the Muslims will continue to be treated as illegal immigrants, thus distorting the entire debate on illegal immigration. For now, for the people whose names have not appeared in the NRC, the reality will play out in terms of detention camps and long litigation suits, making it another humanitarian crisis in the region, a crisis created by an apathetic government and one that could have been averted by a more sensitive approach and a better understanding of the dynamics at play in the state. The least that a responsible democracy like India should ensure is that a political dialogue is initiated and the minimum policy interventions are made by the government to strictly monitor the functioning of these detention camps and a regular review of the basic human rights standards of the inmates till a permanent solution is negotiated.

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¹⁰<http://indianexpress.com/article/opinion/national-register-of-citizens-5030603/>

Headline

India's richest 1% corner 73% of wealth generation: Survey

The Indian Express, January 22, 2018

The recent Oxfam's survey shows that the richest 1 per cent in India cornered 73 per cent of the wealth generated in the country last year, presenting a worrying picture of rising income inequality. Besides, 67 crore Indians comprising the population's poorest half saw their wealth rise by just 1 per cent. This year's survey also showed that the wealth of India's richest 1 per cent increased by over Rs 20.9 lakh crore during 2017, an amount equivalent to total budget of the central government in 2017-18, Oxfam India said.

Read More: <http://indianexpress.com/article/india/indias-richest-1-corner-73-of-wealth-generation-survey-5034165/>

Date Accessed: 24 January, 2018

Economy

More Joblessness: ILO sees India's unemployment rate rising to 3.5% in 2018

(Somesh Jha, *Business Standard*, January 24, 2017)

In its latest report titled 'World Employment and Social Outlook: Trends 2018,' the International Labour Organisation has projected India's unemployment rate at 3.5 per cent for the years 2018 and 2019. Further, the number of people unemployed will increase to 18.6 million in 2018 and 18.9 million in 2019, against 18.3 million in 2017. Discussing the global picture, the ILO has stated that the global unemployment rate would see a dip from 5.6 per cent in 2017 to 5.5 per cent in 2018 and 2019. According to estimates, 2014 had witnessed a fall in the unemployment rate to 3.4 per cent in 2014 from the earlier 3.6 per cent in 2012. However, it rose to 3.5 per cent in 2015 and has remained unchanged since then.

Read more: http://www.business-standard.com/article/economy-policy/more-joblessness-ilo-sees-india-s-unemployment-rate-rising-to-3-5-in-2018-118012300389_1.html

Date accessed: 24.01.2018

Few Takers for Govt's National Career Service Portal

(Tina Edwin, *The Hindu Business Line*, January 17, 2018)

The National Career Service Portal, the government-run online job platform which was launched in July 2017, registered nearly four crore job seekers and over 15 lakh employers as of December 2017. However, the number of vacancies posted is close to just about eight lakhs. Data shows that of the 3.95 crore job seekers, about 65 per cent are men; over 46 per cent of those registered are in the 24-34 age group; nearly 24 per cent are in the 18-24 age group; and about 22 per cent are between 35 and 44 years old. Information and communication accounted for nearly 45 per cent of the total vacancies posted on the portal.

Read more: <http://www.thehindubusinessline.com/info-tech/few-takers-for-govts-national-career-service-portal/article10038047.ece>

Date accessed: 24.01.2018

Governance and Development

EDUCATION

Rural education survey: 37% students in two Punjab districts cannot name country's capital

Anju Agnihotri Chaba, *The Indian Express*, January 24, 2018

As per the 2017 Annual Status of Education Report -Rural (ASER), brought out by NGO Pratham, nearly 27 per cent rural students in the age group of 14-18 years in two districts of Punjab — 34 per cent students in Amritsar and 21 per cent in Bathinda cannot do basic arithmetic tasks, while 21 per cent cannot read an English sentence. Educationists said the survey revealed that primary school education was failing in the task of teaching basic reading, writing and arithmetic. Educationists said the survey revealed that primary school education was failing in the task of teaching basic reading, writing and arithmetic. For the first time ASER 2017 focused on 14 to 18 years old students, and the theme of the survey was “beyond basic”, to find out their general knowledge. The ASER surveys are being done since 2005-2006 by Pratham.

Read More: <http://indianexpress.com/article/education/rural-education-survey-37-students-in-two-punjab-districts-cannot-name-countrys-capital-5036985/>

Date Accessed: 24 January, 2018

TECHNOLOGY

Beijing's Trajectory in Science and Technology Shows India Is Far Behind in the Game

(Manoj Joshi, *The Wire*, January 23, 2018)

The author notes that compared to the investment on research and development by China and the United States, the sectors of science, technology and innovation in India present a dismal picture. In a recently released report by the US's National Science Foundation and National Science Board, Robert J. Samuelson notes that China, which is the 2nd largest spender in R&D after the US, is in the verge of becoming a “scientific and technical superpower.” Contrast this with India, where, according to the CAG's recently financial audit report, in 2016-17, against a total collection of ₹1,187.24 crore worth of R&D Cess, only ₹30.30 crore, viz 2.55 per cent, was given as grant to the Technology Development Board (TDB), which uses it to develop and commercialise indigenous technology.

Read more: <https://thewire.in/216576/china-watch-beijings-trajectory-science-technology-shows-india-far-behind-game/>

Date accessed: 24.01.2018

LAW AND JUSTICE

The Indian justice system is too slow, too complex and too costly, says new study

(Aarefa Johari, *Scroll.in*, January 24, 2018)

A 2017 study on access to justice in India conducted by non-profit organisation Daksh notes that the formal judicial system is not the most preferred form of conflict redressal for most Indians. In contrast to judicial mechanisms such as courts and police, most Indians, when faced with serious disputes, take recourse to family, friends, village elders, caste panchayats, etc. While 74% of the respondents said they would turn to friends and family for arbitration when faced with a dispute, and 49% said they would turn to

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village elders or other social/political leaders, 40% claimed they would not turn to the police for help, while 32% said they would not turn to lawyers.

Read more: <https://scroll.in/article/866158/the-indian-justice-system-is-too-slow-too-complex-and-too-costly-says-new-study>

Date accessed: 24.01.2018

Madhya Pradesh assembly passes bill awarding death for rape of girls aged 12 or less

(Milind Ghatwai, *The Indian Express*, December 4, 2017)

Following the NCRB report that revealed that Madhya Pradesh recorded the highest number of rape cases in the country, the state assembly unanimously passed to Bill that proposes death penalty or a minimum term of 14-year rigorous imprisonment or life imprisonment till death for raping girls aged 12 or less. The bill also proposes punishment for disrobing, stalking or sex on the pretext of marriage. It also increases the punishment for second and subsequent offences to a minimum jail term of seven to 10 years and a fine of Rs 1 lakh. Another provision of the amendment also proposes denial of bail to those accused of crimes punishable with seven or more years.

Read more: <http://indianexpress.com/article/india/madhya-pradesh-assembly-passes-bill-awarding-capital-punishment-to-rapist-of-girls-below-12-years-of-age-4967372/>

Date accessed: 4.12.2017

India and the World

India is among the least inclusive in G20 countries: WEF Report

Vandana Menon & Priyamvada Grover, *The Print*, January 28, 2018

India is the second least inclusive country among the G20 countries, 36 positions lower than China, according to a World Economic Forum (WEF) report. Among the G20 nations, India comes in at second to last, having been taken over by countries including Russia that stands at rank 19 and Brazil that ranks 37. South Africa, ranked at 69, is the only G20 nation that India has surpassed.

Read More: <https://theprint.in/2018/01/23/india-is-among-the-least-inclusive-in-g20-countries/>

Date Accessed: 24 January, 2018

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