

Dealing with illegal immigrants in Assam Understanding the Jurisprudence in past, present and future

- Introduction

Illegal immigration has been a perennial socio-political issue in Assam resulting spectrum of legislations, executive policies, judicial orders for detection and deportation of illegal immigrants since partition of 1947. Legislations enacted from time to time are reminiscent of colonial legal process based on the colonial understanding of 'alien'. This process bears reflection of dominant racial and cultural norms together with the claims of civilizational superiority of the 'Assamese'. Any non-conforming community to this criteria is regarded as 'outsider', an 'Other' [Bohiragoto in Assamese] and is subjected to persecution, censorship, social stigma, prolonged incarceration and virtual statelessness.

On August 31, 2019, the National Register of Citizens (NRC) Authority published the final list of Indian citizens living in Assam after a mammoth process. The list included 31 million applicants and excluded 1.9 million, mostly belonging to marginalized groups like religious and linguistic minorities, tribal, women, children and sexual minorities creating an imminent of statelessness if these population fail in the final legal battle before the judiciary. The NRC process is severely criticized as being inhumane where every citizen is a suspect until and unless proved otherwise. However, a close scrutiny of the legal standard setting reveals that the basic principles of due process, fairness and rule of law were not followed both by the legislature and the judiciary.

- Laws and their Flaws

The legislation dealing with the foreigners in India didn't shed its colonial root even after the independence in 1947. The principle of equal treatment and right to human dignity was often derailed for certain 'other' communities despite a written constitution and adoptions of international human rights treaties by the Government of India. The Foreigners Act, the primary legislation controls entry, stay and exit of foreigners was enacted in 1864 and underwent several amendments in 1939, 1940, 1946. Foreign Tribunal Order, set of rules to implement the Foreigners Act came into force in 1964. The Passport Act was enacted in 1920 and continues to be in force. The Citizenship Act initially enacted in 1955 has undergone several transformations with the latest one in 2019. The amendment of the Citizenship Act in 2003 declared that anyone born in India on or after January 26, 1950 and before July 1, 1987 would be Indian citizen whereas the 2019 amendment offered fast track citizenship applicants from Bangladesh, Pakistan and Afghanistan for four religious communities.

To deal with the illegal immigration, Assam has received special attention in law and policy since independence. Immigrants (expulsion from Assam) Act was passed in 1950. In 1951, the first National Register of Citizens was prepared in Assam to ascertain illegal immigrants from the then East Pakistan. Few reports also pointed out that peoples were forcefully deported to East Pakistan under a scheme called 'Prevention of Infiltration of Pakistan (PIP)' in 1960s. PIP was abandoned in 1969. Meanwhile Bangladesh won independence in 1971 and a new country was born.

This liberation war resulted into bloodshed, large number of refugee influx in Assam and its neighbouring states. A strong student movement for expulsion of illegal immigrants took place in Assam. Hundreds of people died including the worst massacre at Nellie village on 18 February, 1983 killing about two thousand people in day. The situation compelled the Government of India in 1985, to sign 'Assam accord' with the agitating groups. The state and central governments agreed to detect and deport illegal immigrant who entered the state of Assam after March 25, 1971. This Accord is the genesis of the updated national register of citizens (NRC) in Assam. Illegal Migrants (Determination by Tribunal) Act 1983, popularly known as IMDT Act was enacted in 1983. After being in force for nearly two decades, IMDT was struck down by the Supreme Court of India in 2005 on the ground of being unconstitutional. IMDT shifted the 'burden of proof' to the state where as the Foreigners Act leaves it upto the individual.

- Ambiguous, Unreasonable Administrative Measures

Among the executive actions, in 1962 the Assam Police established a Special Border Organization under PIP Scheme. Currently the Assam Police Border Organisation (APBO) has strength of 4000 personnel. APBO conducts surveys in the perceived infiltration prone districts, 'identifies' the suspected foreigners and registers cases called 'Reference Case' and forward to Foreigners' Tribunals. In 1997, the Election Commission (EC) too 'identified' several hundred thousand people as Doubtful voters and denied citizenship rights. Many Doubtful voters end up in detention camps notoriously called 'concentration camps'. Doubtful voters mostly belong to economically marginalized community like Muslims, Bengali Hindus, Koch Rajbangshis, Nepalis and others.

The National Register of Citizen (NRC) process is one of the most significant citizen identification process so far aiming to the detection of non-citizens. Started in 2015, the process was enormously heavy on exchequer and has already put millions of people at the risk of being stateless. NRC process forced nearly 33 million people of Assam to collect their legacy document, a digitized form of pre 1971 archival electoral roll document, to fill their application, submit 'acceptable' current documents to prove linkage with the 'legacy person', construct a water-tight 'family tree', attend several round of verifications processes on short notice, including the hearings for disposal of frivolous 'objections'. This process weakened the already economically marginalized population of the state of Assam. NRC process put stress on the legacy of the person rather than the person himself. Supreme Court of India, the highest body of judiciary for the first time significantly diluted the principle of 'separation of power', a basic structure of the Constitution, by assuming the direct supervisory role in detecting the non-citizen through the NRC Authority.

Role of judiciary was authoritarian before the NRC process. The Detention Centres, a transit facility for the declared or suspected foreigners is also result of the verdict of Judiciary. The Gauhati High Court in 2008, ordered establishment of these facilities. Detention centres came up in Assam in 2010, 2012, 2014 and 2018. These facilities in practice resulted in prolonged captivity, delayed justice and financial harassment of the victims. It was only when a social activist filed a public interest litigation, the judiciary took note of the sufferings of the inmates of the detention camp in 2018. As a consequence, detainees serving in the detention centres for more than three years are

made eligible for bail by compromising their bio-matric data and security of 1 lakh rupees along with two Indian national as guarantee. Only 65 detainees are reportedly bailed out so far under this process and another one thousand of them are waiting in 16 detention camps.

With the passing of Citizenship Amendment Act in 2019 (CAA), the issue of detection and deportation of foreigners has invalidated all the previous norms to deal with the illegal migrants. Illegal immigration of four religious groups has been decriminalized, exonerated and has commenced a new chapter of jurisprudence with the potential of impacting whole South Asia. Illegal immigrants of four religious groups became eligible for Indian citizenship under CAA. About 59 petitions challenging its constitutional validity is pending before the Supreme Court.

- Lack of South Asian Regional standards and the Future

Treatment of refugees, migrants and asylum seekers in South Asia remains a critical area of concern. The region lacks individual and collective response towards these issues unlike European Union. According to a World Bank Report¹, at present, South Asia is “one of the least integrated regions” in the world. As a consequence, despite being the recipient of large number of refugees, none of the South Asian countries are party to the International Refugee Convention of 1951. Bhutanese refugees in Nepal, Srilankan Tamils, Tibetans, Bru, Chakma, Afghan refugees in India, Rohingyas in Bangladesh etc hardly received the desired collective attention from South Asian countries. South Asia Association for Regional Cooperation (SAARC), the sole regional cooperation body hardly plays any role. Issues of forced migration and statelessness still lack a vision for sustainable policy development to prevent its recurrence. The case of Assam is a concrete example of it. A regional action to standardize the jurisprudence on issues of illegal immigration could prevent future situations like that of the Rohingyas.

The paper would discuss the above context with primary focus on the analysis of the laws, policies related to illegal immigration in Assam in particular and their rationale along with on ground experiences of the victims and their families.

Research methodology:

The research methodology will include first hand data collection through personal interviews, judicial and quasi-judicial case laws and documents, archived information, research publications etc. Primary focus will be the study of role of the experiences of the people along with the analysis of the role of Judiciary/Quasi-Judiciary and Administration and critical legal jurisprudence.

Tentative Timeline:

Task	Timeline
Conceptualisation and start of field visits	March- May, 2020
Submission of first drafts by the researcher	August, 2020
Review and finalization	October 2020

Budget

¹ <http://www.worldbank.org/en/programs/south-asia-regional-integration>

	Description	Total		
1	Honorarium, (Rs. 8000 for 9 months)	72, 000		
2	Travel costs for field trips (15 visits)	12,000		
3	Food and accommodation (15 days minimum) (Food: 1000 per day, accommodation 1000 per day)	30,000		
4	Insurance	6000		

Total budget: 120,000 [one lakh twenty thousand only]

Summary in 100 words

Illegal immigration has brought forces several legislations, judicial and executive actions in Assam since the partition of the sub continent in 1947. Legislations and policies adopted followed a colonial understanding of who is an 'alien' ignoring history of migration of different communities in South Asia and proved unfair for minority communities. The policies of detection and expulsion bear reflection of dominant racial and cultural norms together with the claims of civilizational superiority of the 'Assamese'. Any non-conforming community is subjected to persecution, censorship, social stigma, prolonged incarceration and virtual statelessness. South Asian countries lack regional cooperation and lacks collective agreements or policies for regional migration unlike the European system. Such lacunae risks the region of mass statelessness and recurrence of situation like that of Rohingya.

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