



National Register for Citizens and Beyond

*Digvijay Rewatkar**

Introduction

The National Register for Citizens (NRC) has been a contentious issue in Assam politics since the Assam Accord of 1985. However, it was only in 2014 that the Supreme Court in its judgement in the case of *All Assam Ahom Association & Ors. v. Union of India*¹ directed the Central Government and the Government of Assam to undertake the NRC exercise under its supervision. The NRC is largely a domestic issue, but its potential international dimensions have not been assessed especially when the Supreme Court has directed the central government to engage with Bangladesh on the issue of deportation of those detected as foreigners. This paper assesses the viability of deportation as a solution in the context of India-Bangladesh relations.

The Creation of Affective Borders

The population exchange post-partition on the Eastern borders of India continued for a longer duration than on the Western borders and was more incomplete.² Even though the arrival of people from erstwhile East Pakistan was seen as a homecoming of sorts, with the creation of Bangladesh immigrants found it increasingly difficult to establish their credentials in India as national identities became territorial and more entrenched in the minds of people. These identities were further consolidated by the limited legal and spatial understanding of the government, in so far as they required the refugees to hold temporary residence permits.³ This split the narrative around the issue of immigration in Assam into two i.e. of 'coming home' post-partition and that of 'infiltration' post-1971. The former was largely seen as an organic process of migration after the partition, whereas the migration post-1971 was considered mainly economic in nature. This led to the creation of 'affective borders' between people which created the space for the narrative of infiltration.⁴

The basis of the opposition to migration in Assam is demographic and economic.⁵ In effect, the trajectory of the current anti-foreigner movement in Assam has its genesis in the discourses that surrounded the 1971 refugee influx. The fears of a demographic shift were further confirmed by the 1981 census, according to which, the population of Assam grew by 36.3 per cent as against the national average of 24.7 per cent especially when the natural increase of population in 1970-72 and 1976-78 was 0.5 per cent and 1.2 per cent respectively less than the national average.⁶ This indicated that the in-migration in Assam from 1971-81 was of the order of 1.8 million.⁷

To address the issue of irregular migration requires a multi-pronged strategy, however, the policy imperatives remain very elemental i.e. detection, interception, detention and deportation or naturalisation of irregular or illegal migrants. The NRC exercise is fundamentally an exercise of detecting foreigners with its legal basis in the Assam Accord of 1985 where it was agreed that the State shall strive to detect, delete and deport illegal migrants entering Assam after 25 March 1971.⁸ However, any such exercise must also strive to vindicate the rights enshrined in the constitution for both, citizens and non-citizens.

Status of persons excluded from the NRC

The movement of people from Bangladesh to the bordering states of India is mainly driven by push factors which can be attributed to the lack of employment opportunities, disproportionate land-to-person ratio, persecution of religious minorities etc. On the other hand, cultural similarity coupled with possible employment opportunities, relatives in India and availability of arable land operate as some of the pull factors for the migrants.⁹ These push-pull factors often lead to irregular migration across porous and difficult to patrol terrestrial and riverine borders. Thus, having migrated into India irregularly the NRC exercise raises questions pertaining to their legal status in India.

It is necessary to highlight that the purpose of the NRC is to identify Indian citizens only and not the original inhabitants of Assam.¹⁰ Accordingly, it categorises the residents of Assam into two. Firstly, persons who have a legacy of residence in Assam through names on the electoral lists prior to 25 March 1971 or on the National Register for Citizens of 1951 or are descendents of such persons.¹¹ Secondly, if the person concerned did not reside in Assam prior to 25 March 1971, then the verification of citizenship is done through inter-state correspondences.¹² The natural corollary is that, those not included in the NRC would be considered as foreigners¹³ i.e. persons who are not Indian citizens.¹⁴

In a situation where foreigners are detected living irregularly in a State, the host State often seeks to deport them to their State of nationality and such recipient State accepts the re-entry of its nationals.¹⁵ However, in the event the alleged State of nationality refuses to recognise them as citizens and in absence of a clear path to their status in the host State, the person(s) being so detected run the risk of becoming stateless. Therefore, it becomes necessary to assess the

viability of the two possibilities in this situation i.e. deportation to Bangladesh or rendering them stateless.

India-Bangladesh dynamic

It is being reported that the State of nationality of the persons so detected is likely to be Bangladesh. Further, the NRC is a domestic exercise which has implications on India's international relations especially when the Supreme Court has directed the central government to enter into necessary discussions with Bangladesh.¹⁶ It must be noted that 4 million people have been excluded from the Final Draft of the NRC, and the deportation of such high numbers of declared foreigners after the final NRC could strain relations with Bangladesh. Alternatively, the declaring of millions as non-citizens and exposing them to the risk of statelessness may attract unwarranted international scrutiny. In this context, it is necessary to assess the likely impact such an event would have on the India-Bangladesh relations.

According to news reports, the issue of illegal migration has prominently featured in the domestic politics of Assam and in the North-East at large, but it had never been raised at a bilateral level in the past.¹⁷ Considering this, the Supreme Court of India in its order had directed the Central Government to enter into 'necessary discussions' with Bangladesh to find a way to streamline the process of deportation. However, if the statements of the Bangladeshi Information Minister are to be perused the Home Ministry seems to have assured its counterpart that the NRC is a purely internal issue and that detected foreigners would not be deported.¹⁸

Further, the General Elections in Bangladesh are due at the end of 2018 where the Bangladesh Nationalist Party (BNP) would be challenging the Sheikh Hasina led Awami League. The Sheikh Hasina led government has had a friendly stance towards India with increasing cooperation on combating terrorism, curbing cross-border movement of anti-India elements and curbing the activities of ISI among other things. Sheikh Hasina is already treading a fine line with the anti-incumbency and Rohingya crisis but, India would like to see her return to power in the interest of stable and friendly bilateral relations. Therefore, given these unaddressed issues with Bangladesh and the long-drawn nature of deportation process it could be difficult to reach an agreement with Bangladesh on the issue of deportation of detected foreigners, if pursued.

The Rohingya influx into Bangladesh also plays a role, it is estimated that 700,000 Rohingyas entered Bangladesh after a crackdown by the Tatmadaw (Myanmar Army) on the Rohingyas.¹⁹ Bangladesh on its part is hosting the Rohingya population, however, it remains a major cause of worry for the leadership.²⁰ Since then, Bangladesh, Myanmar and the United Nations High Commissioner for Refugees have entered into Memorandum of Understanding for repatriation but its realisation remains to be seen.²¹ It therefore seems unlikely that Bangladesh would be willing to allow additional millions to 're-enter' Bangladesh from India when it is struggling with the Rohingya migration.

Finally, the element of international scrutiny also needs to be factored in. The NRC process can lead to two possible outcomes i.e. deportation or statelessness, both of which will lead to intensive international scrutiny especially when the numbers involved are in millions. Further, the creation of new stateless persons would be antithetical to international law and the obligations subsisting under it.²² The UN Human Rights Special Rapporteurs have already written a letter to the Minister of External Affairs seeking clarity on issues pertaining to nationality, safeguards to prevent discrimination and for access to adequate remedy for those excluded from the NRC.²³

Any action that leads to additional distress in terms of irregular flow from Assam to Bangladesh could be perceived negatively by Bangladesh. Considering these factors, Indian government must carefully devise a mutually acceptable solution which does not hamper the bilateral relations of two friendly nations, if it were to pursue deportation. Given that Bangladesh is an important partner for India's deeper engagement and developmental plans in its North-Eastern states and for its Act East policy,²⁴ cooperation is of utmost importance. Considering all these factors, it could be argued that deportation and statelessness are untenable results of the exercise. It therefore appears that India stands to lose the least if it finds ways to naturalise and integrate those detected as foreigners in the final NRC.

Prospective solutions

Having laid the status of persons and the India-Bangladesh dynamic on the issue of NRC, it is necessary to consider prospective solutions on NRC in these constrained circumstances. India is presented with an unprecedented opportunity to set a South Asian practice for South Asian problems especially when resolving the issue retrospectively seems impossible. Therefore looking at the problem prospectively, can the NRC be a beginning for better governance of migration in India and South Asia?

The major concern with respect to the issue of formulating an NRC is the lack of documents which exposes some people to the risk of statelessness despite having a legitimate claim over Indian nationality. Having detected those lacking necessary documents, a further assessment into their link with India and more specifically Assam can be undertaken. The positive impact of it would be to create a culture of being documented and makes it easier for Indian authorities for future stock taking besides their integration in the welfare structure. Thus, the problem can either be solved through the means discussed above, but at the risk of alienating Bangladesh, or through integrating these peoples within Assam.

A hindrance to this policy posturing of inclusion could be the fear of relegating the original inhabitants of Assam to a minority pursuant to the impending demographic shift.²⁵ Therefore, for a demographically complex state like Assam the general rule of political arrangement as commonly applicable to other states in India may not be ideal as a shift has the potential to disrupt the political system. In such a situation, some form of power sharing is necessary among which, territorial decentralization or electoral arrangement mechanisms may be

explored,²⁶ i.e. greater certainty can be ensured by reserving specific quotas of seat via a power sharing arrangement in the state assemblies.²⁷ Such a negotiated alternative electoral structure in Assam, can allow for a historic representation in the legislative assembly of Assam in the process ensuring that no community lives in the fear of losing its political capital in the State.

In order to maintain the sanctity of any such new electoral arrangements, immigration and refugee policies will have to be devised to bring more certainty. This should also be accompanied by an improvement in immigration infrastructure on the border along with cooperation of Bangladesh so as to bring a semblance of regularity to future immigration. Parallels can be drawn from the European Better Migration Management (BMM) project in the Horn of Africa wherein they are seeking to build strong partnership with participating countries and other actors in the region for better and regular migration. The implementation of this project is based on four components: Policy Harmonisation, Capacity-building, Protection and Awareness Raising.²⁸ A system of migration management akin to the BMM can be explored as it also complements the developmental projects of India in the region. However, considering the socio-economic realities and the huge demographic dividend of India, the policy makers will have to find ways to deal with irregular migration through better migration management via strengthening the immigration infrastructure and border patrolling.

Conclusion

Non-intervention in the migration situation in Assam is not an ideal policy stance, as it holds back not only the state but the entire region. The uncertainty of the situation hinders economic development and peace in the region which are central to achieving growth. The NRC exercise, in many ways is a necessary exercise as it creates an opportunity to reset the rules of migration. It not only provides an opportunity to tailor governance solutions which are more suited to the needs of an ethnically diverse state such as Assam, but also creates space for a better migration management system between Bangladesh and India given that deportation or statelessness seem unviable policy alternatives. Further, the solutions Indian policy makers devise for the issue of immigration can serve as a beacon for the region and can provide the necessary impetus to India's developmental aspirations in the region.

** Digvijay Rewatkar, Research Intern, Indian Council of World Affairs, New Delhi.
Disclaimer: The views expressed are that of the Researcher and not of the Council.*

Endnotes

¹ Writ Petition (Civil) No. 876 of 2014

² Willem Van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia*, (1st ed., Anthem Press 2004), p. 192.

³ Antara Dutta, *Refugees and borders in South Asia: The Great Exodus of 1971*, (1st ed., Routledge 2013), p. 62

⁴ *Ibid*

⁵ Governor of Assam, Report on Illegal Migration in Assam, Available at : http://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm, (Accessed on 6 September 2018)

⁶ Myron Weiner, *Political Demography of Assam's Anti-Immigrant Movement*, Population and Development Review, Vol. 9, No. 2, p. 286

⁷ *Ibid*

⁸ Assam Accord of 1985

⁹ Datta, P. (2004). Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study. Available at: <http://nsuworks.nova.edu/tqr/vol9/iss2/9>, The Qualitative Report, 9(2), 335-358.

¹⁰ *Kamalkhya Dey Purkayastha & Ors. v. Union of India*, Writ Petition (Civil) No. 1020 of 2017.

¹¹ Clause 2(3) of the Schedule (Special Provisions as the manner of Preparation of National register of Indian Citizens in state of Assam) to the Citizenship (Registration of Citizens and Issues of National Identity Cards) Rules, 2003.

¹² *Ibid* Clause 3(5)

¹³ *Ibid* Clause 3(2)

¹⁴ Section 2(a) of the Foreigners Act, 1946.

¹⁵ Article 12(4) of the International Covenant on Civil and Political Rights, 1976

¹⁶ *Supra* note i, p. 68.

¹⁷ Naveen Kapoor, Not correct to link illegal immigrants with us: Bangladesh, <https://www.aninews.in/news/world/asia/not-correct-to-link-illegal-immigrants-with-us-bangladesh201808010212470001/>, (Accessed on 23 August 2018) and Times News Network, Centre, State misled people on influx, <https://timesofindia.indiatimes.com/city/guwahati/centre-state-misled-people-on-influx/articleshow/59499714.cms>, (Accessed on 23 August 2018).

¹⁸ Kallol Bhattacharjee, 'Amit Shah's termite remark unwanted: Bangladesh Minister', Available at: <https://www.thehindu.com/news/national/amit-shahs-termite-remark-unwanted-bangladesh-minister/article25022118.ece>, (Accessed on 24 September 2018).

¹⁹ 'Situation Refugee Response In Bangladesh' Available at: https://data2.unhcr.org/en/situations/myanmar_refugees, (Accessed 21 August 2018).

²⁰ Gautam Sen, 'Fallout Of The Rohingya Issue On Bangladesh'S Domestic Politics | Institute For Defence Studies And Analyses' (*Idsa.in*, 2017), Available at: https://idsa.in/idsacomment/fallout-of-the-rohingya-issue-on-bangladesh-domestic-politics_gsen_031017, (Accessed on 17 August 2018).

²¹ Haroon Habib, Myanmar, Bangladesh sign agreement on Rohingya Muslims, 23 November 2017, Available at: <https://www.thehindu.com/news/international/myanmar-bangladesh-sign-agreement-on-rohingya/article20714515.ece> (Accessed on August 21, 2018).

²² Art. 15 of the Universal Declaration of Human Rights

²³ Letter by the Special Rapporteurs of the United Nations Human Rights Special Procedures on India's National Register for Citizens exercise, Available at: <https://www.ohchr.org/Documents/Issues/Racism/SR/Communications/OL-IND-13-2018.pdf>, (Accessed on 20 August 2018).

²⁴ Sanjay Kathuria, Bangladesh Vital to India's 'Act East' policy, Available at: <http://www.worldbank.org/en/news/opinion/2017/09/27/bangladesh-corridor-vital-indias-act-east-policy>, (Accessed on 23 August 2018)

²⁵ Sangeeta and Munindra Borah, 'Fertility and Population Growth in Assam', International Journal of Engineering Development and Research, Vol. 6 Issue 1.

²⁶ *Supra* note vi at p.1

²⁷ Rajat Sethi, Advisor to the CM of Manipur, Interaction on "*Citizenship Determination Processes in Assam: The National Register of Citizens (NRC) and Beyond*" at the Institute of Peace and Conflict Studies.

²⁸ 'Better Migration Management (BMM), Khartoum Process', Available at: <https://www.khartoumprocess.net/operations/39-better-migration-management-bmm>, (Accessed on 24 August 2018).