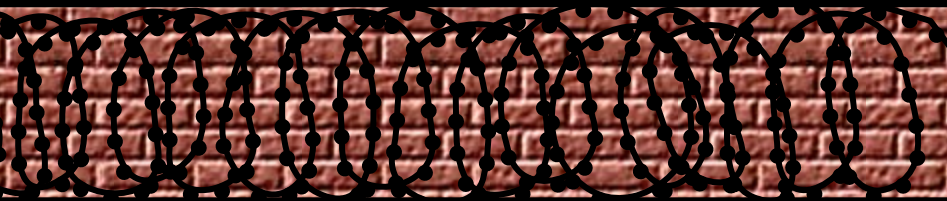


Democracy, Citizens
and Migrants
Nationalism in the era of Globalization



Delhi 2005

**Democracy, Citizens, and Migrants
Nationalism in the era of Globalisation**

Citizens' Campaign for Preserving Democracy

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Citizens' Campaign for Preserving Democracy

India's democratic institutions were painstakingly built over long years of the national movement for Independence. With far-sighted vision, and a modern, secular world-view, an attempt was made to build structures that would balance each other and provide justice to all citizens. Within this world-view were constituted, not only the legislature, executive, and judiciary, but also various autonomous commissions and tribunals and media institutions. In addition, scope was provided for the functioning of citizens and civil society groups and democratic people's movements.

For over three decades these institutions survived as a framework within which working people could struggle for a better life. By end of the 1970s, however, the dominant social classes and their representatives had begun to intervene. By turn of the century, these vested interests had dismantled or distorted most democratic institutions in pursuance of their sectarian agenda. Debate over substantive issues had ceased in Parliament, the executive had become a pliable instrument in the hands of the ruling elite, the judiciary often departed from the spirit of the Indian Constitution, and the media frequently functioned as a partisan instrument. Emergent communal, neo-liberal, and 'free market' forces have further intensified these trends.

The rising tide of fundamentalist forces all over the world has contributed significantly to the erosion of democratic traditions in the name of 'freedom' and 'security'. Fear and paranoia are being instigated and manipulated to subdue societies into obedience and conformity. Cherished ideals of liberty and social and political equality are being undermined. We believe it to be the responsibility of citizens to resist the onslaught of reactionary and anti-democratic forces and to contribute what they can to preserve, protect, and strengthen democracy. The Citizens' Campaign for Preserving Democracy is, hopefully, one of the many emergent initiatives in this direction within the Indian polity.

We have been working in different areas of concern: with political prisoners, for victims of communal atrocities, and against the oppression of minorities, women, and the so-called lower castes. Recently, we have tried to bring to public attention the propensity of the state to declare certain sections of society as outside the pale of citizenship. Our investigations over the last few months in Delhi, into the issue of the purported "Bangladeshi" have revealed that there has been extensive violation of the rule of law in this matter. Right from round-up and arrest, to the supposed 'hearing' and deportation, no lawful procedure is being followed by the authorities. The entire process contributes to and manifests the criminalisation and communalisation of the state and the corruption of its legal and juridical institutions. It is not only the human rights of "illegal migrants" that is under threat at present.

All marginalised groups, as well as large sections of the informal working class, are being pushed to the edges of society. Much of this is being done in the name of ‘protecting the environment’ or ‘beautifying the landscape’ or ‘preserving our heritage’. There is at work a systematic process to disenfranchise the poor so that they have no voice in democratic governance or decision making or constitute a part of the ‘political’ landscape any more. The Citizens’ Campaign for Preserving Democracy pledges itself to the struggle to preserve, protect, and strengthen India’s democratic traditions.

The Political Economy of Migration

Human history is, in some senses, about the movement of people in search of making their own history. For centuries, people have moved from one place to the other. Driven by want, needs, aspirations, and dreams, they have overcome enormous odds posed by geography and climate to reach and inhabit the farthest corners of the planet. The world as we know it today owes a great deal to the creative energy unleashed by experiential learning, assimilation, and invention during the course of this movement. The last few centuries of modern and transnational development have witnessed how people have, either voluntarily or through coercion, broken old ties and relationships and tried to put down new roots. This has also been interpreted as a search for “freedom”: freedom to move, to seek opportunity, to make one’s fortune.

On one hand, modern (or capitalist) development has given birth to the modern nation state, with its attendant ideologies of democracy and development, whose basic thrust is to homogenise markets and reproduce conditions for the free accumulation and expansion of capital. On the other hand, it has simultaneously moved to restrict the free movement of labour across the political boundaries of nation states. Thus, an entire edifice of legal and constitutional frameworks has been created, aimed at regulation, surveillance and disciplining of the movement of people across borders. This has created two separate, but closely linked, registers of legal and illegal mobility – both located within the fabric of democracy.

Over the past few decades, this process has intensified. As disparities of incomes and opportunities increase, many more people leave their traditional boundaries to seek better livelihoods. Whether it is IT professionals from South Asia seeking to enter the USA, or Turkish peasants searching for menial jobs in Europe, people are leaving their “homes” in ever increasing numbers for whatever opportunities that exist elsewhere. However, this free movement of people is treated differentially by governments – some are welcomed; others are dealt with harshly. It is in this context, that this report deals with the specific issue of “illegal” immigration into India, policies that are being made to ostensibly address the problem, and the actual manner in which it is affecting large sections of people, who may or may not be immigrants.

The Case of India

While administrative, political, and ideological (often physical as well) assaults against illegal immigrants are visible in many parts of the world, the obsession of the Indian State with the so-called “Bangladeshi” immigrants calls for special attention. Claimed to be numbering anything between 20 to 30 million, they have

been portrayed as “the biggest threat to national security” and a breeding ground for “subversive and terrorist activities”. The incessant propaganda to this effect has persuaded many to believe that elections in India are decided not by government policies, programmes, and performance, but by the operation of the invisible ‘foreign hand’, executed through millions of “Bangladeshis” staying illegally in India. Consequently, the solution to the problem of national security has been sought in the summary deportation of all of them. In this manner, a threat to democracy has been invented to subvert democracy itself!

Bangladesh is one of the poorest countries in the world, and shares a border of over 6000 kms with relatively affluent India. Consequently, there has been an influx of poor and destitute economic refugees from Bangladesh to India, many of them dating back to the war of liberation of Bangladesh. But putting their numbers at 20-30 million is a case of wild speculation, with an extra-ordinary margin of error of 10 million. There is no clear basis for these calculations and certainly, no factual evidence in the demographic and electoral reality of India. Yet successive Indian governments continue to pursue aggressive policies aimed at this vulnerable section. The exaggerated space being accorded to Bangladeshi immigrants and their role in damaging national security has now become a central theme in public discourse. But what is really happening at the ground level?

The crackdown on Bangladeshi immigrants started in earnest in 1993 when the government announced ‘Operation Pushback’ to identify, round up, and deport all such people from the country. However, the Bangladeshi government was not ready to own these people. So deportation effectively meant leaving people in ‘no-man’s-land’ with the Indian Border Security Force (BSF) aiming their guns at them from one side and Bangladesh security force (BDR) from the other. A decade later, the intensity and magnitude of such attacks intensified and was officially inserted into the project of hegemonic and majoritarian nationalism. Thus, increasingly, we have stories like the following:

There is confusion among the people identified by the Orissa government as Bangladeshi infiltrators in Kendrapara district. ‘Quit India’ notices have been served on nearly 700 of the 1,551 people identified. The common refrain in the villages under Mahakalapada block of the district is: “We are all Indians. We will not leave”.

They are supposed to quit the country within 30 days of receiving the notice. Otherwise they will be arrested under the Foreigners’ Act, 1946 and handed over to the Border Security Force for deportation on the India-Bangladesh border, according to officials.

“Why are they asking us to go? Where’ll we go? This has been our home

for all these years,” says an old woman in Ramnagar village. The area, where people used to fish and cultivate cashew, is reeling under the shock of the development.

(Source: www.inhome.rediff.com/news/2005/jan/20orissa.htm)

Experience from various parts of the country, where these drives have been undertaken, has shown that the whole process, starting from identification of Bangladeshis to their eventual deportation, is fraught with arbitrariness, corruption, and communal and class biases.

The Drive in Delhi

Starting from ‘Operation Push Back’ in 1993, thousands of Bengali-speaking Muslims have been picked up from various working class settlements all over Delhi and forcibly pushed inside Bangladesh. It has never been clearly established whether these persons were actually from Bangladesh or not. Many recent examples from various parts of Delhi have come to light that Indian citizens from West Bengal and Assam, working as rag pickers in Delhi, were being routinely arrested on the charge of being illegal immigrants. An association of concerned citizens, voluntary groups, activists, and lawyers then decided to examine the process of deportation of people to Bangladesh, and a systematic study was conducted between August and December 2004.

The study team consisted of members of Chintan Environmental Research and Action Group, Bal Vikas Dhara, Aashray Adhikar Abhiyan, Aman Trust, and Hazards Centre. During the study, over 50 persons were interviewed and fifteen detailed case studies prepared (see Annexure 1). The study team visited the respective police stations, the Foreigners Regional Registration Office, and the place of detention to record the processes of arrest, documentation, nationality determination, detention, and deportation. Some cases were individually followed up within the limitations of the team’s capacities. In addition, considerable research was undertaken into the national and international laws governing citizenship, immigration, and deportation. This report details the observations and conclusions of the study.

Identification of Bangladeshis

The Action Plan drawn up in May 1993 by the Government of the National Capital Territory of Delhi (GNCTD) for the deportation of illegal migrants, vests the local police with the job of detection and identification of illegal migrants. The local police, already over-burdened, undertakes this task through a network of local

informers, often from within the communities that are targeted, who provide information about suspected illegal migrants. Thus, at the very outset, the Action Plan lies enmeshed in a system that easily lends itself to corruption and manipulation.

The interviews undertaken by the team clearly indicate that these Informers wield considerable clout in the locality and all Bengali-speaking Muslims are required to keep them in good humour. Failure to meet the Informer's demands - for money or otherwise - could mean loss of nationality. The findings also revealed that, in practice, identification by the Informer was the first and final determination of nationality. The police relied solely and absolutely on the Informer's word. All pleas and submission of proof by the detainees - of authoritative documents issued by agencies of Delhi Government or the Union Government - invariably fell on deaf ears.

It was also seen that there was no scrutiny or enquiry undertaken when documentary proof was submitted. These could range from ration card, election card, school certificate, affidavit from the village panchayat, to certificates from the MLA or MP. In a few cases, these documents were torn up by the state authorities, on the specious grounds that they were false and fabricated. Thus, it can be concluded that the Government of India has delegated its sovereign function of identification and deportation of illegal migrants, in the interests of national security, to a few assorted "Informers".

Detention and Arrest

The study revealed that the raids, detention and arrests were conducted in marked contrast to the provisions laid down by the Supreme Court and the Constitution. The guidelines issued by the Supreme Court in its landmark judgment in 1997, in *D.K. Basu v State of W.B.*, regarding arrest, were observed only in their breach. Even if the citizenship of the persons being arrested and detained is uncertain, they still enjoy the protection of the Fundamental Rights enshrined in Article 14 and 21, which provide that no person shall be deprived of life or personal liberty except according to procedure established by law, and was upheld by the Supreme Court (in *Chairman, Rly. Board v Chandrima Das* [(2000)2 SCC 465]). But, in direct contravention of the law, the raids included swoops on the so-called illegal migrants in the dead of night and rounding up of men, women and children from their *bastis*. People were not even given enough time to get dressed properly or collect their documents. During other times, families, including minors, caught in the raid were forced to face the situation alone, without being re-united with their families.

While the Government's own Action Plan requires that the local police records the statements of two independent witnesses, none of the people interviewed during

the course of the study had ever seen the police secure this corroborative evidence. On the contrary, many complained of being beaten and threatened when they began to plead their case. The SHO and ACP then routinely signed these poorly prepared cases. All pleas and entreaties of the detainees for a hearing were effectively silenced by physical assaults and verbal abuse.

Legality and Illegality

The issue of identity should be ideally settled by documentary proof. However, in discussions with the police and other agencies, it emerged that commonly used documents - like Electoral Identity Cards, Ration cards, School Certificates, and Certificates from MLAs and Gram Panchayats were not accepted. Informally, the study team was told that only documents showing proof of ownership of land are admissible. Given the economic status of those arrested and the fact that, in India, more and more migrants to Indian metros are landless labour, unable to eke out a living from daily wages, this is an unrealistic demand and cannot be met. Not just by “Bangladeshis”, but even by most Indians. It is strange that the Indian Government is reluctant to accept other documents issued by its own departments.

One of the most common faces of corruption in India is bribery and it is present during the process of identifying and deporting supposed “illegal migrants” as well. Interviews with those who were set free reveal that identification also operates as a function of payment. Those who had the financial means to offer and pay bribes, were usually set free, regardless of any other proof. Interviewees recounted how those unable to pay bribes were detained and then (presumably) sent ahead. A rough calculation based on an average amount of Rs 1000 paid per individual to be freed suggests that there are considerable sums to be made, including the amounts extorted by the Informer. Conferring arbitrary and extra-ordinary powers on the police, as has been done by the government Action Plan, has led to inbuilt abuse within the deportation process. It is apparent that the government Action Plan confers extraordinary and arbitrary powers on the police. The emergent abuse is inevitable, as it is inherent in the very mechanics of the law, policy and procedure followed.

The Foreigners Regional Registration Office

As per the Action Plan, the Foreigners Regional Registration Office (FRRO)/civil authority acts as the coordinating agency. The Notification issued by the Delhi Administration in pursuance of its power under Section 3 of the Foreigners Act, 1946, empowers the FRRO to scrutinise the proposals for deportation, and satisfy itself of their illegal status by providing the concerned person with a hearing (*see*

Annexure 2). However, the study team did not observe the detainees being produced before the FRRO on any occasion during its visits over 3 months to the FRRO's office, although some ragpickers mentioned that they were sometimes briefly produced before the FRRO. The team noted that while the police vans with the alleged illegal migrants waited in the compound of the FRRO office at Rama Krishna Puram (see photograph on back cover), their papers were taken in and duly signed by the FRRO, and a Leave India Notice issued under the Foreigners Act. It may be pointed out that with a senior police officer, of the rank of DCP, discharging the duty of the FRRO in Delhi, the basic constitutional principle of separation of powers stands seriously undermined.

The Place of Detention

Those arrested on suspicion of being Bangladeshis are detained by the orders of the FRRO, at a place of detention near Shastri Nagar Metro station. This is, in fact, a Night Shelter or *Ren Baseraa*, and a *Baraat Ghar* (Wedding Hall), which have been occupied by the Task Force and converted into a place of detention. It is a double storey building, on a plot of land roughly about 10 meters x 20 meters (see photograph on back cover). The building bears the following information, displayed prominently on its front façade:

Slum & J.J. Vibhag
Baraat Ghar (Bhoo Tal)
Ren Baseraa (Pratham Tal)

Two armed police constables guard the gate, with more police personnel inside. The first floor of the *Ren Baseraa* is being used for residential purposes by the Task Force.

From the accounts of some detainees, it was learnt that the conditions of detention fall far below the prescribed national and international standards:

- In violation of national and international rules, both men and women detainees are kept together in captivity on the ground floor, i.e. the *Baraat Ghar*.
- The basic amenities provided here are woefully inadequate. There are only two toilets in the building, one of which is used exclusively by the police staff, and the other is shared by male and female detainees, in violation of their right to privacy.
- Even to use the toilet facility detainees have to seek prior permission, which is refused sometimes. Examples of police reaction in this case include asking the detainees why they eat/drink such copious amounts that result in their having to use the toilet repeatedly.

- Items of necessity, such as blankets, are inadequate. According to one narrative, a woman detainee, who had two children, asked for an extra blanket because one blanket was not enough for them. Not only was she refused the extra blanket, but was also slapped across the face for her audacity. Other items of necessity, such as milk for the children, have to be bought from the police at excessive rates.
- No regular visitation rights are available for the relatives of the detainees.
- Detainees are not allowed to offer prayers (*namaaz*), in direct violation of Fundamental Rights (Article 25, Constitution of India, that guarantees freedom to profess and practice religion).
- Detainees are forced to perform odd jobs for the police, like washing their motorcycles, sweeping the floor, cleaning toilets etc., which will attract Section 374 of the Indian Penal Code that proscribes unlawful forced labour.
- The team also heard several complaints of detainees being physically assaulted by the police. Slaps, kicks, and punches were part of the treatment meted out to detainees. Degrading forms of punishment, like forcing detainees to squat in the *murga* position, were routinely reported.

The Right to Shelter

The misuse of the Night Shelter and baraat ghar as a place of detention constitutes a very grave infringement of public policy and State obligations. Night Shelters are provided under Section 43(1) of the Delhi Municipal Corporation Act, 1957, that defines discretionary functions of the Corporation thus: “*Subject to any general or special order of the Government from time to time the Corporation may provide either wholly or in part for all or any of the following matters, namely:- (l) the construction and maintenance of - ... (vi) shelters for the destitute and disabled persons, ...*”.

This provision is actually in partial fulfilment of the State’s obligation to provide shelter to the homeless. The Government of India has, from time to time, reaffirmed its commitment to realize the rights set out in relevant international instruments and documents relating to education, food, shelter, employment, health, and information, particularly in order to assist people living in poverty. Yet, adequate shelter is little more than words for vast numbers of India’s poor. They have no proper homes, so they are forced to live on the streets or in the jhuggis of major cities, at the mercy of any official or unofficial power that decides to move them on.

The Supreme Court has elaborated at great length on the right to adequate housing, shelter and livelihood as part of the all-encompassing Right to Life under Article

21 of the Constitution in the landmark case of *Olga Tellis v. Bombay Municipal Corporation (BMC)*, as also in some of the judgements following *Olga Tellis*. Currently there are only 12 such Night Shelters all over Delhi, woefully inadequate to cater to the burgeoning number of homeless people in the Capital. In such a situation the diversion of the Slum & JJ (Jhuggi-Jhopdi) Vibhag's unit, that should otherwise be made available as a Night Shelter or a Wedding Hall, as a detention centre is indeed illegal, unlawful, unconstitutional, and unjust.

Deportation to the Border

From the FRRO the arrested persons are taken to the MCD Ren Baseraa, where the police are waiting for them. They are kept at the Ren Baseraa until there are sufficient numbers to fill a railway bogie. Subsequently, they are taken to the Old Delhi railway station in closed vehicles and put aboard a train. The Delhi police accompany them to Malda station in West Bengal, from where they are transferred to a Border Security Force (BSF) camp. Diplomatic Protocol requires that when deportation takes place, the Embassy or High Commission or any other representative of the State of the country of origin of the deportee be informed about the decision. This has not been undertaken, resulting in a breach of international protocol.

Since the required procedure has not been followed, care has to be taken by the BSF that their counterparts in Bangladesh (BDR) do not know that the deportees are being pushed across the border. Hence, the deportees have to be released in batches of two, and that too in the middle of the night. Thus, it may take several days for the entire lot of deportees to be evacuated from the BSF camp, and during the entire time armed guards are deployed to ensure that the people remain concealed within the camp. The people, both men and women, remain completely at the mercy and whims of the guards. Several incidents of rape, sexual harassment, and physical violence have been reported by those who have somehow returned from the border.

When the people are forced across the border, all their possessions are taken away along with any signs that may point to their Indian origin. If they have any money, that too is taken away. If there is a sympathetic BSF jawan, he may exchange Indian rupees for some Bangladeshi money. When there is sufficient inducement, the jawan may even tell the deportee to come back when the police have gone so that he/she can re-enter India. But the general trend appears to be to forcibly push the people into No-Man's Land, regardless of the weather, the condition of the people, and the terrain (jungle or river). They are warned that if they turn back they will be shot as infiltrators. As parting advice, they are also cautioned to tell the Bangladeshi Rifles, if they are caught across the border, that they are returning

from some work or wedding from a particular village. Thus, poor people, deliberately bereft of identity and citizenship, have no option but to again take the path of illegality merely in order to survive.

Violation of Rights at all Stages

Pursuant to an order of the Delhi High Court in Chetan Dutt vs Union of India, (3710/2001, writ petition still pending) the Home Ministry formulated a further Action Plan on May 1, 2002 to expeditiously detect and deport illegal Bangladeshi nationals from Delhi. As per this Plan, the Commissioner, Delhi Police is required to set up 10 Task Forces to identify the illegal migrants. Each Task Force is assigned a quota of identifying 100 illegal migrants daily and this number is to be increased later. Every alternate day at least 50-70 persons are to be sent by train from Delhi to Howrah for deportation. This Task Force functions under a Monitoring Cell, in the Home Department of the GNCTD, and reports to a high powered Nodal Authority constituted by the Home Ministry. This Nodal Authority, in turn, is required to submit monthly reports to the Delhi High Court.

It is indeed ironical that while the Delhi High Court is monitoring the functioning of the agencies engaged with the detection and deportation of Bangladesh migrants, there is blatant infringement of Fundamental Rights guaranteed by the Constitution, gross violation of international human rights, and systematic derogation from due process of law and principles of natural justice, which the Court is mandated to uphold and protect. The target quota system has given a further impetus to corruption and coercion at the level of the local police.

Using the by now familiar rhetoric of “national security”, the cardinal principles of natural justice are subverted. Thus, no fair and objective inquiry is held in Delhi to establish that the person arrested is a foreign national. The basis on which a person is held to be a Bangladeshi is never communicated to him and he/she is never given a chance to rebut such findings. The right to fair hearing/trial is an essential ingredient of the principle of natural justice. Under the current law and Action Plan however the deportation order is passed without any hearing and without disclosing the reasons which led to the conclusion that he/she is a foreign national. This is then detrimental not only to the process, but to the economically disadvantaged Indian Muslim population too.

The Legal Regime

Admission, deportation, stay and control of movement of foreigners in India is governed by:

- Passport (Entry into India) Act, 1920,/ Rules 1950.
- Registration of Foreigners Act, 1939/ Rules.
- Foreigners Act, 1946, and subsequent orders issued from time to time.
- Indo - Bangladesh Visa Agreement, 1972.
- The Illegal Migrants (Determination by Tribunals) Act, 1983

The Central Government, under Section 3(2) of the Foreigners Act, 1946 is empowered to make provisions for prohibiting, regulating or restricting the entry of foreigners into India, or their departure therefrom or their presence or continued presence therein. The procedure provided by the Foreigners Act, 1946 and the Action Plan formulated by the Home Ministry for detection and deportation of illegal migrants from Bangladesh in Delhi, is prejudicial to the affected persons and in flagrant violation of Articles 14, 19, 21, and 22 of the Indian Constitution as well as the obligations of the Indian State towards International Conventions and Treaties, inter alia, UDHR, ICCPR, ICSECR, CEDAW, Convention on the Rights of the Child etc. (*see Annexure 3*).

The Foreigners Act, 1946, in a fundamental departure from liberal jurisprudence, reverses the burden of proof (Sec.9) and places the onus upon the person concerned to prove his citizenship (see Annexure 2). The police is not obliged to prove its case by the application of any basic standard of proof. It thus replaces the cardinal principle of presumption of innocence with the jurisprudence of suspicion. It would be pertinent to pause here and consider that in a country where a large number of people live and work as migrant workers, working in the burgeoning informal unorganised sector, driven by economic compulsions, it is extremely unlikely that they will hold any documents certifying them as citizens of India. The growing emphasis in Government policy on documentary proof of identity may eventually disenfranchise the poor, and, particularly, the Muslim minority.

There is no forum for appeal available under the Foreigners Act, 1946, against a determination of nationality by the prescribed authority under Sec.8, thus denying access to judicial remedy against a decision taken in the arbitrary manner described above. The situation is further aggravated by the fact that Sec. 15 of the Foreigners Act, 1946 provides protection against legal prosecutions to persons acting under this Act. This provision becomes more ominous, particularly when read in conjunction with Sec. 11(2), Foreigners Act, 1946, which authorises the police to use “reasonably necessary” power, in the discharge of its functions under this Act. It thus grants immunity from accountability and in that sense legalises human rights abuses.

Currently Pending Petitions

Several petitions are currently pending before the Courts, challenging the arrest, identification, and deportation process:

A.I. Lawyers Forum for Civil Liberties & Anr. vs. Union of India & Others
Writ Petition (Civil) No. 125 / 1998
Supreme Court of India

S. Sonaval vs. Union of India
Writ Petition (Civil) No. 131/ 2000
Supreme Court of India
[Seeking repeal of the IMDT Act, 1983]

Jamaith Ulema - E - Hind & Anr. vs. Union of India & Ors.
Writ Petition (Civil) No. 7/ 2001
Supreme Court of India
[Opposing the repeal of the IMDT Act, 1983]

Abu Hanif alias Millan Master vs. Police Commissioner of Delhi & Others
Special Leave Petition (Criminal) No.3778 / 2000
Supreme Court of India
[Quashing of order holding the Petitioner to be a foreign national]

Abu Hanif alias Millan Master vs. Union of India and Others
Civil Original Jurisdiction, Writ Petition (Civil) No.418 / 2001
Supreme Court of India
[Seeking the establishment of a tribunal and extension of IMDT Act, 1983, in Delhi]

Shekh Molla vs. S.H.O. Inderprastha Estate & Others
Criminal Writ No. 382 / 93
Delhi High Court
[Seeking compensation for illegal and unlawful deportation of 9 Indian citizens to Bangladesh]

Chetan Dutt vs. Union of India and Others
Civil Writ No. 3170 / 2001.
Delhi High Court
[Petition to take effective steps to check influx of and remove illegal Bangladesh migrants from Delhi]

Conclusion

It is true that the physical and cultural similarities of people living on either side of the border makes it difficult for the concerned authorities to distinguish between them. However instead of evolving a judicious mechanism to determine the same the Government has accorded legitimacy to an arbitrary and discriminatory procedure. The cumulative impact of this procedure is the systematic and targeted harassment and abuse of a specific religious and linguistic minority viz Bengali-speaking Muslims. In a polity where communal prejudice is increasingly manifest in various sections of both the public and government, this deportation drive, in the absence of necessary checks and balances, begins to acquire the colour of ethnic cleansing in contravention of the secular and plural foundations of Indian society.

The Central Government, under Section 3 of the Foreigners Act, 1946, had promulgated the Foreigners Tribunal Order, 1964 for the purpose of determining the question of nationality of a person. Under this Order the Central Government is required to constitute a Tribunal to give its opinion after giving a reasonable opportunity to the alleged illegal migrant to make a representation, produce evidence, and after considering such evidence the Tribunal is to pronounce its opinion. The Central Government, despite repeatedly expressing anxiety over the influx of illegal migrants from Bangladesh, has not constituted any Tribunal in Delhi, under the 1964 Order.

Similarly, the Illegal Migrants (Determination by Tribunal) Act, 1983, also envisages the constitution of Tribunals, composed of judicial officers, to determine, in a fair manner, the question as to whether a person is an illegal migrant or not. But till date the IMDT Act has not been extended to Delhi. It is being alleged that, since this law adopts procedure grounded on principles of liberal jurisprudence and notions of natural justice, it has failed to get rid of the illegal Bangladeshi migrants. Hence, there is a growing chorus by right wing forces and the Home Ministry demanding the repeal of the IMDT Act and doing away with principles like the right to equal treatment before the law, right to fair trial, and the right to be deemed innocent until proved guilty. There are even petitions pending before the Supreme Court and the Delhi High Court seeking the repeal of this statute.

In the last two decades this kind of critique has captured the public imagination where, instead of examining the root problems of corruption, malafide, and bias that are eroding the system, the demand for efficacy is based on abandoning principles of natural justice and international standards of human rights. As in the case of draconian anti-terrorist laws, liberal principles of jurisprudence are projected as the hurdles that need to be discarded. To silence any criticism, the fear of national security and terrorist attacks is repeatedly raised. At the receiving end of

these arbitrary and illegal procedures are poor people, many of whom work as rag pickers and live a life of hardship and poverty. Their poverty and minority status makes them an easy prey for the police.

If democratic norms and procedures are to be preserved for the greater good of the nation and its citizens, it is crucial that citizens resist this vicious cycle of inventing imaginary enemies against whom the nation has to be made secure, in the process of which the ordinary citizen is made more insecure. Through this report, the Citizens Campaign for Preserving Democracy calls upon all concerned people to support all movements to construct a more humane and egalitarian society.

Demands

- All raids, arrests and detention to be strictly in accordance with the law and guidelines laid down by the Supreme Court of India
- Determination of nationality only through a fair enquiry in accordance with the principles of natural justice, conducted by a judicial tribunal as envisaged in the Illegal migrants (Determination by Tribunals) Act, 1983
- The Illegal Migrants (Determination by Tribunals) Act, 1983, to be extended to Delhi and other States
- That the Night Shelter and Wedding hall, at Shastri Nagar, Delhi, presently being misused as a place of detention be vacated immediately
- Establish and administer a Detention Centre in accordance with national and international standards
- That documents issued by State and Central Govt. agencies be regarded as valid documents of citizenship
- The excessive and arbitrary powers given to the Task Force (Police) by the Home Ministry's Action Plan, May 2002, to be withdrawn. All determination of nationality only through a legally constituted judicial Tribunal.
- Deportation from Indian territory to be in compliance with international law and diplomatic protocol.

Case Study
Jamal Wahid, s/o Syed Ghulam Ali *

Jamal Wahid, aged about 30 years, hails from West Bengal. He and his family, which includes, wife Sakia, and their two children - a two year old son, and an eight month old infant daughter - have been living in Nizamuddin Basti, Delhi for over 20 years. Following is an narrative of his arrest and detention, on 20th October 2004:

Arrest [October 20, 2004]

About 09:00 hours: In the morning, a group of 6-7 police from the Task Force accompanied by the local police stormed into Jamal's house and forcibly took him and his family away, accusing them of being Bangladeshis. None of the members of the raiding party wore police uniforms. Jamal protested and tried to show documentary proof of his Indian citizenship, but to no avail. Along with 9 other suspects, they were all taken to Nizamuddin Police Station, and then to the Human Resources Department (HRD) Cell, in Hauz Khas.

About 15:00 hours: In the afternoon, Jamal's father, Syed Ghulam Ali, in association with a Non-Governmental Organisation (NGO) and 2 Advocates, approached the HRD Cell. The Inspector, in-charge of the HRD Cell, justified Jamal and his family's arrest based on a claim that Jamal had admitted to being a Bangladeshi – a statement, it may be mentioned, that was made by him *in police custody*.

At 16:00 hours: Jamal was taken from the HRD Cell to Foreigners Regional Registration Office (FRRO) in Rama Krishna (RK) Puram, in a police van. He was searched while still seated in the police van, standing in the compound of the FRRO office. Any documents found on him were torn to pieces. Not once was he or any member of his family taken inside the FRRO building. No one was produced before the FRRO or any other member of the staff, and no questions regarding their nationality were asked of them. Only the papers of their arrest were taken inside the office and they returned with the seal and signature of the FRRO authorising their arrest, detention, and deportation as Bangladeshis.

At 17:00 hours: Jamal's father Syed Ghulam Ali, filed an application to the FRRO, giving documentary proof of his own place of origin within

India, namely Kolkata. He was informed that his application would be heard the next day at 10:00 hours. In the meanwhile, Jamal and family were driven away to be detained at *Slum & JJ Vibhag's Ren Baseraa/ Baraat Ghar* in Shahjadabad.

Later in the evening: Jamal's brother visited the detention centre, but was not allowed to meet Jamal, or even deliver items of clothing, particularly warm clothing for the small children.

Follow-up at HRD Cell [October 21 – November 01, 2004]

The next day, Syed Ghulam Ali's application was not heard or considered. Nonetheless, through informal, verbal orders, Syed Ghulam Ali was allowed to deliver items of necessities to Jamal. He was also informed that his application will be sent to the HRD Cell in Hauz Khas, for necessary action. From then on, Syed Ghulam Ali visited the HRD Cell daily, enquiring if his application had reached. There was no information available. On October 25, once again on informal orders, Syed Ghulam Ali was allowed to visit his son, who continued to be in detention with his wife and little children. On October 29, Syed Ghulam Ali was informed that a police team will visit Kolkata and verify documents submitted with his application.

Local Verification in Kolkata [November 02-06, 2004]

A police team from the HRD Cell made local enquiries in Kolkata and confirmed that Syed Ghulam Ali did indeed belong to Kolkata.

Inordinate delay [November 07-16, 2004]

It took 10 days for the verification report to travel a distance of roughly 10 kms from the HRD Cell to the FRRO office. During this entire period Jamal and his family continued to be in detention. Repeated attempts by Jamal's lawyers to seek an early consideration of the verification report by the FRRO, in view of the continued confinement and deprivation of liberty of Jamal and family was met with procedural and administrative delays.

Id [November 15, 2004]

Jamal and his family did not celebrate Id this year as they were incarcerated, gripped with the fear of deportation. No one in Syed Ghulam Ali's family bought new clothes or ate *sevain* on Id as they waited for the FRRO'S decision, on the basis of the verification report.

Verification in Delhi and Release [November 17, 2004]

At 12:00 hours, on November 17, 2004, another round of verification was carried out in Jamal's locality in Nizamuddin, where his Indian origin was once again confirmed. Jamal and his family were finally released at 16:30 hours.

Post-script

Jamal and his family were illegally detained for 29 days. After their release, Jamal and his wife Sakia described the cruel, inhuman, and degrading treatment meted out to them and their family. This included custodial violence, prohibition on offering prayers (*namaaz*), forced labour, poor quality of food, inadequate toilet facility, and humiliating forms of punishment. Jamal is now struggling to obtain a copy of his release order from the FRRO, as without it he is always vulnerable to police high-handedness and arrest again. The FRRO has informed him that there is no procedure for supplying him a copy of this order. The spectre of deportation to an alien land continues to haunt Jamal and Sakia.

** All names have been changed to protect privacy of those involved*

Annexure 1: Case Studies of Deportees
Names of all deportees have been kept confidential to prevent further harassment

Case No	From	Arrested	Police Station	Proofs shown	Detention	FRRO proceeding	Returned after	Bribes
1	Vasant Kunj	May 2004	Hauz Khas	Residential; Ration card		Deported	1 month	
2	Madanpur Khadar	June 25, 2004		Residential		Deported	Not yet	Rs 500
3	Nizamuddin	June 15, 2004, 6am	Nizamuddin		Unidentified; military camp	Deported	16 days	Rs 2000 to broker
4	Vasant Kunj	April 2003, 3am	Hauzkhas	Election I-card; Ration card; Village land title; GP certificate	Daryaganj for 4 days; BSF camp (WB)	Deported	1 month	
5	Vasant Kunj	April 2003, 3am	Hauzkhas	Election I-card; Ration card; Village land title; GP certificate	Daryaganj; BSF camp (WB)	Deported	6 months	
6	Vasant Kunj		Several	Parent's election cards; Father's GP certificate	BSF camp	Deported	4 days	
7	Vasant Kunj	July 22, 2004		School certificate		Returned from PS		Twice to police
8	Nizamuddin	July 8, 2004	Nizamuddin	Village ration card; Election I-card; Land title		Returned from PS		Rs 700 to police
9	Vasant Kunj	July 2003	Vasantkunj, Vasantvihar, & RK Puram	Ration card	Old Delhi Sewa Kutir	Deported	15 days	Rs 2000 to police
10	Nizamuddin	July 8, 2004	Nizamuddin & Hauzkhas	Not asked for	Daya Basti Ren Basera; Bihar Military Camp	Deported		
11	Vasant Kunj	March 24, 2004, 2am	Vasantkunj, Vasantvihar, RK Puram & Dayabasti Renbasera	Delhi I-card; Ration card; Passport				Rs 15000 to Party official
12	Vasant Kunj	March 3, 2004, 2am	Vasantkunj, Vasantvihar, RK Puram & Dayabasti Renbasera	Village ration card; Election I-card; GP certificate		Deported		To police
13	Vasant Kunj	April 21, 2004	Vasantkunj, Vasantvihar, RK Puram & Dayabasti Renbasera			Deported	1 month	To broker
14	Vasant Kunj	July 22, 2004	Vasantkunj, Vasantvihar & RK Puram	Ration card; Election I-card;	Old Delhi Sewa Kutir	Deported	Not yet	
15	Nizamuddin		Nizamuddin, Hauzkhas	Residential, Indian citizenship				

Annexure 2: Comparison of provisions of Foreigners/Migrants Acts

	Foreigners Act, 1946	Illegal Migrants (Determination by Tribunal) Act, 1983
Definition of “foreigner”/ “illegal migrant”	Section 3 (b): “foreigner” has the same meaning as in the Foreigners Act, 1946. Section 3 (c): “illegal migrant” means a person in respect of whom each of the following conditions is satisfied:- (i) he has entered into India on or after the 25th day of March, 1971; (ii) he is a foreigner; (iii) he has entered into India without being in possession of a valid passport or other travel document or any other lawful authority in that behalf.	Section 2 (a): “foreigner” means a person who is not a citizen of India. No definition of “illegal migrant”
Application	The whole of India.	Till now the Act has not been extended to other States except the State of Assam.
Burden of Proof	Section 9: the onus of proving that such person is not a foreigner shall lie upon the person. Section 4 of the Registration of Foreigners Act, 1939 provides similarly.	The person or Government making the reference has to discharge the burden before the Tribunal.
Determination of nationality	Power delegated vide notification by the Delhi Administration to the FRRO, to exercise power under Section 3. Detection and deportation also carried out in accordance with the Action Plan, 1993, of GNCTD and Action Plan 2002, of the Ministry of Home Affairs.	The question whether a person is or is not an illegal migrant, will be referred to a Tribunal for decision. This reference may be made by the Central Government or an application by a person. (Tribunal here means a Tribunal established under sub Section (1) of Section 5 of the IMDT.)
Nature of authority making the determination	The local Police and the FRRO/ Civil Authority, who is a police officer of the rank of a DCP discharging the function of the FRRO	Member of the Tribunal shall be a former District Judge or Additional District Judge. Appellate Tribunal, member shall be a former Judge of any High Court
Right to appeal	No provision	Section 14: The Central Government or any person named in a reference or an application, if he is not satisfied with any order made by a Tribunal, prefer an appeal to the Appellate Tribunal
Immunity for action taken in good faith	Section 15: “[n]o suit prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.” Section 7 of the Registration of Foreigners Act, 1939 is identically worded.	Section 26: “[n]o suit prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.”

Annexure 3: Human Rights Standards

International standards

<i>S. No</i>	<i>International Conventions or Declarations</i>	<i>Status related to India</i>
1	Universal Declaration of Human Rights, 1948	Customary International Law, binding
2	Convention Relating to the Status of the Refugees, 1951	Not signed
3	Convention Against Discrimination in Education, 1960	Not signed
4	International Convention on the Elimination of All Forms of Racial Discrimination, 1965	Signed and ratified, binding
5	International Covenant on Civil and Political Rights, 1966	Accession, binding
6	Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981	United Nations General Assembly Resolution*
7	Declaration on the Human Rights of Individuals who are not Nationals of the Country they live in, 1985	United Nations General Assembly Resolution*
8	Convention on the Rights of the Child, 1989	Accession, binding
9	International Convention on the Protection of the Rights of all Migrant Workers and the Members of Their Families, 1990	Not signed
10	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992	United Nations General Assembly Resolution*
11	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	Signed but not ratified*

Indian Constitutional standards

Fundamental Rights

<i>S No</i>	<i>Articles</i>	<i>Title</i>
1	Article 14	Equality before law.
2	Article 15	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
3	Article 19	Protection of certain rights regarding freedom of speech, movement, to reside and settle anywhere in India, etc.
4	Article 21	Protection of life and personal liberty.
5	Article 22	Protection against arrest and detention.
6	Article 25	Freedom of conscience and free profession, practice and propagation of religion.

*Directive Principles of State Policy**

<i>S. No.</i>	<i>Articles</i>	<i>Title</i>
1	Article 38	State to secure a social order for the promotion of welfare of the people.
2	Article 39	Certain principles of policy to be followed by the State.
3	Article 51	Promotion of international peace and security.

*** Not binding but recommendatory**

Citizens' Campaign for Preserving Democracy

Demands

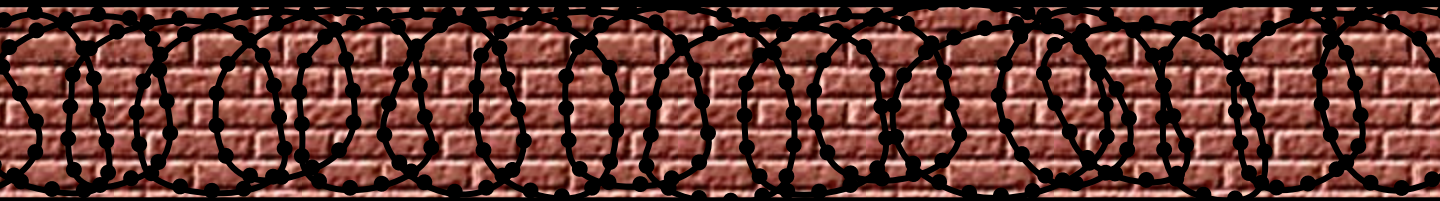
- All raids, arrests and detention to be strictly in accordance with the law and guidelines laid down by the Supreme Court of India
- Determination of nationality only through a fair enquiry in accordance with the principles of natural justice, conducted by a judicial tribunal as envisaged in the Illegal migrants (Determination by Tribunals) Act, 1983
- The Illegal Migrants (Determination by Tribunals) Act, 1983, to be extended to Delhi and other States
- That the Night Shelter and Wedding hall, at Shastri Nagar, Delhi, presently being misused as a place of detention be vacated immediately
- Establish and administer a Detention Centre in accordance with national and international standards
- That documents issued by State and Central Govt. agencies be regarded as valid documents of citizenship
- The excessive and arbitrary powers given to the Task Force (Police) by the Home Ministry's Action Plan, May 2002, to be withdrawn. All determination of nationality only through a legally constituted judicial Tribunal.
- Deportation from Indian territory to be in compliance with international law and diplomatic protocol.



Police van with the alleged illegal migrants waiting in the compound of the FRRO office at R. K. Puram, while their deportation papers are prepared inside, and a Leave India Notice issued under the Foreigners Act



Ren Basera / Baraat Ghar at Shahazada Bagh, (near Shastri Nagar Metro Station) that serves as a place for detaining alleged illegal migrants.



It is not only the human rights of “illegal migrants” that is under threat at present. All marginalised groups, as well as large sections of the informal working class, are being pushed to the edges of society. There is at work a systematic process to disenfranchise the poor so that they have no voice in democratic governance or decision making or constitute a part of the ‘political’ landscape any more. The Citizen’s Campaign for Preserving Democracy pledges itself to the struggle to preserve, protect, and strengthen India’s democratic traditions.