Chapter 5

Managing Migration:
Issues and Policy Challenges
5. I Introduction

The south Asian region has been a major migrant sending and receiving zone. India being the largest has been receiving migrants and refugees from the neighbouring countries. There are two countries in South Asian region out of the top 10 that produce migrants; Bangladesh and Sri Lanka. Before partition the country was integrated and hence the movement was free. But the immediate decolonisation didn’t change the mind set of the people and they continued to migrate illegally even the border was demarcated. This is due to the cultural and ethnic affinities existed in the region. India being the largest and economically sound has become the destination of migrants from neighbouring countries. The politics has made the issue of migration complex and the migrants are dealt mostly with the domestic laws of the country. This chapter seeks to analyse the various laws and policies to deal with the migrants and refugees and their rehabilitation in India. A detailed analysis has made regarding the IMDT act dealing with migrants in Assam. Both the primary and secondary sources are used for analysing the issues related to it. Most of the primary sources are the text of the various acts, Parliament Debates, Assembly Debates etc.

5. II Migration Policy

Migration has always been a significant phenomenon across South Asian countries. It has been a witness of poignant accounts, and raised serious problematic issues. There are two countries in South Asian region out of the top 10 that produce migrants. These include Bangladesh with 4.1 million and Sri Lanka with 1.5 million (IOM 2003a: 6-8). The historic ties and links among the people in the region have accentuated large-scale movement of population. These movements of population have been found to be in various forms and dimensions ranging from voluntary to involuntary, internal to external, long-term to temporary (Haque 2005: 39-42). The South Asian countries feature prominently in the dynamics of migration in Asia and the largest migration occurred during the partition period between India and Pakistan in 1947 where about 30 million people moved from one part to another to either avoid prosecution or meeting basic needs. Since partition, people have crossed the borders of South Asian countries in search
of refuge. Almost every country in this region has produced and/or received migrants of various nature and form (Abrar 2001: 21-23).

India is the home to one of the largest migrant population in the world. Historically it is a refugee receiving country. The country shares long border with several neighbouring countries. The secular character of the state, historical ties, vast economic potential and some liberal aspects of neighbourhood policy in its overall foreign policy are some of the factors that have made India a safer place for migrants (Kumar 2001: 50-52). In the South Asian countries, there are three broad categories of migrants—Firstly, the state has been the main actor or repressive agent in forcing migrants as means of achieving cultural homogeneity or asserting the dominance of one ethnic community over another in socio-economic and political arenas and widely been adopted as politically popular policy. In other words, “they stem from officially instigated or organized state actions”. Secondly, governments have forced migrants as a means of dealing with political dissidents particularly hostile to the regime and class enemies. And thirdly, forced migration has been invariably used as part of a strategy to achieve a foreign policy objective (Lama 2000: 6).

The receiving states have become increasingly weary about the growing number of migrants due to the political and security conditions. The receiving states have also become cautious about the adverse impact of such migration in the economic, social and environmental consequences. Although the problems of population movement are grave in the region, the countries have not developed any formal structure to deal with the migrants and refugees and also not initiated any regional formula. The migrants and the refugees are subjected to the same laws as illegal aliens. As there is no refugee-specific law and migration policies, asylum seekers and refugees are dealt with ad hoc administrative arrangements which by their very nature can be arbitrary and discriminatory (Abrar 2001: 21-23).

International migration has now become a worldwide issue and has also emerged as a key foreign policy agenda of many countries. The large scale population movement across international boundaries, whether voluntary or forced, has appeared with increasingly
frequent agendas of foreign policy. The sweep of the issues involved in international migration differs across countries and the causes range from war and peace, economic and financial issues, race, ethnicity, state atrocities, etc. It is also important to know that only 10 percent of the total population moves across places. This phenomenon is spread only to a few countries of the world, where migrants choose their destination in small numbers. The integration of global economy, developed communications and transportation networks, the availability of rights and benefits to migrants, domestic debate about the costs and benefits of migration have made the debate on migration both interesting and far reaching. It has brought forward issues related to migration regulations, rights of migrants, closing down the borders and even the questioning of traditional humanitarian considerations. In other terms, international migration movements have become a larger issue particularly when there has been a steep rise of refugees and displaced people due to existence of conflict across countries (Conference Report 1994: 883-891).

Migration policy can be defined as any state's policy that deals with the transit of persons across its borders. It can range from allowing no migration or allowing all types of migration, including free movement of population between two countries. Basically a migration policy is often closely related with other policies such as tax, tariff and trade rules which determine what goods migrants may bring with them and what services they may perform while temporarily in the country. Sometime a migrant is allowed to remain and work within a region if they have a free population movement agreement. For instance, the European Union (EU) has few restrictions on migrants within the region. A migrant belonging to any signatory nation of the EU can move and work anywhere within the EU (GCIM 2005: 9-11).

How migration policies are designed depends on a range of issues and factors. An important aspect of migration policy is the treatment of migrants, refugees, more or less helpless or stateless people who throw themselves on the mercy of the state they enter, seeking refuge from poor treatment in their country of origin. At the same time, threat perception posed by migrants has also been an important factor in designing a domestic policy. Such threat perceptions, mainly related to the host and its citizens, could be
emanating from many factors of insecurity about underlying economic and social
conditions, fear of unemployment; claims for public expenditure; race and ethnicity
issues; and influence on cultural values. This is more so when the immigration flows are
seen as large, rapid, and uncontrolled and there is heavy concentrations of migrant groups
in particular regions, cities, or neighbourhoods. There have been serious concerns on
attributes like rapid ethnic and racial change in regions of settlement; views about
whether migrants are integrating; anxieties over illegal entry or residence; and whether
migrants are identified with violence, crime, terrorism, or drugs (Teitelbaum 1984: 429-
433).

5. III_Migration Policies during the British Period (1826-1947)

In the South Asian countries, there has been a lack of comprehensive policies to deal with
the migrants and the refugees. They are dealt with the domestic laws and regulations
(Khadria 2005: 1-4). During the British period, migration policies were formulated
largely to serve the colonial rule and exploitation. The British systematically organized
and allowed migration across the subcontinent to serve the colonial needs. For instance,
educated Bengalis were encouraged to engage in administrative work and the Nepalis
were recruited for defence purpose. It has already been discussed in the preceding
chapters that the migration of East Bengalis/Bangladeshis as well as Nepalis has its own
history. The large scale population movement in the subcontinent existed even before the
British annexation of India. After the annexation of Assam, the colonial rulers
systematically organized and hired people from across places. The British started
pursuing a policy of importing labourers across the subcontinent to meet the shortage of
labourers for their growing industries/agriculture productions (Weiner 1978: 88-90).

There are two particular phases of importing people from East Bengal into Assam; one is
from 1826 to 1905 and the other from 1905 to 1947. The policy during the first phase of
migration was mainly regulated to serve their basic purpose of exploiting resources. The
colonial powers entertained several policies to bring East Bengalis and Nepalis. Both
these communities of people were encouraged to migrate and take industrial as well as
agricultural activities. The East Bengalis being hard working were encouraged to settle
down in the agricultural lands (Das 1982: 25-26). On the other hand, Nepalis were encouraged by the British to be recruited in British Gorkha Army. These policies were being unique and were carried out to serve the colonial purpose. On the other hand the second phase of migration was initiated by the politicians and the ruling elites with an ambition to create vote bank. The Muslim League highly encouraged East Bengalis to migrate into Assam through several policies (Kansakar 1990: 8-10 & Subba 1990: 220-223).

After the annexation of Assam, the British saw immense fertile cultivable lands lying abundant with a few people to cultivate and contribute for its revenue and colonial expansion. Since 1838, the British started drawing up new wastelands for settlement rules and it continued. These abundant natural resources attracted colonial rulers to developing the tea and jute industry that generated employment opportunities. The Assamese people's trait that would work only during the seasons of cultivation and remain idle during the off seasons, made it very difficult for the British to get permanent labourers for other seasons of cultivation. The local labourers were also largely unskilled to support the administrative and machinery works. Hence they started importing people from other provinces (Barpujari 1963: 234-236). Sir Henry Cotton, the Chief Commissioner of Assam in 1902 said, "The millions of acres of uncultivable lands now lying waste represents millions of rupees which might be dug out of the soil, but are now allowed to lie down useless like the talents wrapped in a napkin" (Barpujari 2004: 50). The above mentioned economic alteration during the British period encouraged thousands of people from the Indian subcontinent to migrate into Assam.

The British regime followed the policy of importing labourers through a systematic way. They sought the help of recruiting agencies inside/outside the province. The recruiting agencies searched skilled as well as unskilled labourers within and outside the provinces but faced difficulties when they were not getting adequate number of skilled/unskilled labourers during the seasons. The agencies, finding it difficult to find out skilled labourers within the region, were compelled to import labourers from outside the provinces. British administrators preferred mostly the East Bengalis as they were being hard working and skilled. The British opened the labour importing policies in Bengal
province and the rulers opened the floodgates of migration to Assam – mainly to the Brahmaputra valley. The East Bengal peasants, from the neighbouring Mymensingh district migrated to Assam and settled down in the wasteland. Three classes of labourers were imported by the British regime; the tea plantation labourers, Amolas (Bureaucrats, clerk from Sylhet, Dacca, Mymansingh, Rampur and other districts of Bengal Presidency) and merchants and tradesmen (Marwaris) from Rajasthan and West Bengal. These people constituted a floating population in tea plantation areas and in small towns (Guha 1977: 254-255).

Thus began the process of importing peasants from East Bengal. The rulers also facilitated easy settlement rules and infrastructural development like the extension of railways from West Bengal to Assam. The East Bengali peasants entered Assam through the western and southern borders. The migrants, mostly Muslims spread all over Assam and also beyond to other Northeast states. The East Bengali peasants being hardy and desperate need of livelihood settled down in all available lands and even in stretches considered uncultivable and produced food grains (Neog 1984: 275-77; Barua 1984: 321-324).

Assam was a part of the Bengal province from 1826 to 1873 and during that period the British administration made a policy, to recruit educated Bengali people for government services in Assam as they did in the case of Orissa and Bihar. In the land revenue settlement work, men from Marwar and Sylhet were appointed in preference to the local Assamese gentry. Their migration helped to increase the quantum of colonial revenue and agricultural production. Most of the Bengali migrants were employed in the offices, schools, industries and tea gardens in Assam. During 1869, 22,800 people were imported by the administration in which 11,633 were employed in tea plantations as labourers. The administrative and economic consolidation in the early British rule in Assam during 1826-1870 followed importing of skilled labourers. Almost three lakh acres of wastelands were settled with planters mainly from the labourers in Assam alone. And the policies of settlements were made fee-simple or charged at normal rates, but at the same time land revenue on farmers were increased so as to encourage their transfer from subsistence farming to plantation (Barpujari 1963: 266-267).
The economic changes and development of tea industries remained most prime factors for the colonial administration to bring East Bengali people into Assam. The process of large scale labour recruitment from outside started in the early 1860s, and by 1872, the number of imported labourers during the said period was estimated at 40000. While during the same period, the total numbers of non-indigenous population including the migrants were estimated at some 80000 or so in a total population of 1.49 million. In 1881, the number of imported migrants appeared to have increased to about three lakhs in a population of 1.8 million. In 1901, the migrants or non-indigenous population appeared to have increased from less than one lakh in 1872 to anything between five and six lakhs. Meanwhile, the indigenous Assamese population which had been growing rapidly during 1872-81, remained almost static for the next twenty years. The large scale migration through the policy of importation by the British has witnessed two major demographic changes during the years of 1874-1905. First, in the ethnic composition of the population and a spatial distribution over the districts in the state changed and secondly, the non-indigenous elements came to constitute at least a quarter of the population of Assam proper in 1901 (Guha 1977: 39-40).

The first phase of migration or importation of people from East Bengal was mainly due to the economic necessities. But later, it was rather a political move and the political parties encouraged people to migrate so as to prepare for vote bank. Some political parties like the Muslim League, under the leadership of Syed Sadullah encouraged the East Bengalis to migrate through his policy of Grow More Food. Till independence, the Muslim League provided lands for the migrants for settlements and later by the Congress Party. Though the Congress Party opposed migration, they compromised for the purpose of vote bank (Dev & Lahiri 1985: 71-77).

During 1905, the Muslim peasants from East Bengal were encouraged to settle in the rural areas. In the Brahmaputra valley itself, the number of Muslim peasants increased from 9 percent in 1881 to 19 percent in 1931 and gradually it increased to 23 per cent by 1941 and remained same till 1951. The migrants’ first destination was the Goalpara district as it shares land border. The British administration also encouraged East Bengalis
• Immigrants Line: some areas were exclusively meant for the migrants – within this line land could be allotted to migrants only. And also there were areas in which a line drawn either on the map or on the ground, on the one side of which migrants could settle and on the other side of which their settlement was forbidden.

• Mixed Line: Some areas in which both indigenous people and migrants were free to settle (Report of the Line System Enquiry Committee 1938, Chapter – II: 3).

The Line system was introduced to restrict the settlement of East Bengali peasants on the plea that the identity and ethnicity of the Assamese people would remain undisturbed. The British administration first applied the system at Nowgong and later in the Kamrup and Darrang districts, mainly to prevent breach of peace on account of forcible occupation of land and grazing reserve (Dev & Lahiri 1985: 23). According to the colonization scheme, a small family was given 30 bighas of land. As a result of this, altogether 47,636 acres of land were settled with 1,619 Muslim and 441 Hindu families in the district of Nowgong up to March 1933. During the six years ending 1936, 59 grazing reserves were opened up for the settlement of the migrant peasants in the district of Nowgong alone. The number of East Bengali settlers, including children born after their arrival, increased from an estimated three lakhs in 1921 to over half a million in 1931. They were better cultivators and hence could offer higher and lucrative land prices to induce Assamese peasants to sell out portions of their land to them. Although the system succeeded in restricting large-scale migration, it was not fool-proof (Sarmah 1999: 23-24; Das 1982: 27; Dev & Lahiri 1985: 23-25).

The basic purpose of introduction of Line System was to isolate the migrants from local inhabitants by compelling the former to live and toil in particular segregated localities beyond which they were not allowed to settle. Under the Line System, a line was drawn in the districts in order to settle migrants in segregated areas specified for their exclusive settlements. However, this didn’t work. The line system in Assam triggered many problems. It altered the demographic pattern. Assamese people pressurised for strict implementation of Line System while the Bengalis asked for its abolition. Thus it led to the formation of Hockenhull Committee in 1937 to review the functioning of the Line
System. The findings of the committee revealed that the both Hindus and Muslims preferred immediate abolition of the Line System. But the views of the Assamese Muslims, according to the report, were divided on the issue; while Assamese Hindus strongly supported the Line System (Assam Legislative Assembly Debate, 1940, Vol. 1, Feb-March: 251). The Committee also made few startling revelations stating that in Barpeta subdivision the percentage of Muslims shot up from 0.1 percent to 49 percent during 1911-1938. Meanwhile, in Laharighat, Dhing and Juria units of Nowgong district, the average population increase was over 150 percent during the same period. The British decided to retain the line system by making changes and the revised system regularised the large scale encroachments which had taken place before April 1, 1937 (Gupta 1984: 104 & Singh 1990: 67-68).

An all party committee was also formed under the government initiative with A.W. Botham in the chair in 1928 to discuss Line System. The committee had nine members, including N.C. Bordoloi and Sadullah. Borodoloi's opinion was for settlement of land with the migrant peasants in definite areas with sufficient reservation of land for further expansion of indigenous population. In 1928, Bordoloi contrived a “compact colonization scheme” outside which migrants would not be allowed to settle in Assam and outlined land that would be left vacant to accommodate the future progeny of the Assamese people (Das 1982: 27; Guha 1977: 256-257; Singh 1990: 66).

The Muslim League was not happy with this proposed system and took the case to national leaders. Between 1930 and 1950, some 150800 acres were settled by the migrants (Annual Land Revenue Administration Report in Assam, as cited in Vaghaiwala 1951: 81). In 1937, Bordoloi, the first chief minister of Assam wrote to Rajendra Prasad, “If Karachi resolutions are literally interpreted, the immigrants have every right to acquire land, property etc... and there cannot be a line system. On the other hand, our people whether congressman or otherwise, all feel that adequate reservation must be there. We also wrote that in the coming years linguistic problems would become a source of constant friction resulting in violence, incendiaries and crimes of all kinds” (Guha 1977: 256-257). However, this resolution was not executed when Sadullah came into power after the resignation of congress coalition government. He considered that the
migrants were mostly landless – the only solution was to provide them with available lands (Singh 1990: 68-69; Dev & Lahiri 1985: 30-32, 39-40).

5. III.ii Sadulla’s Policy of Grow More Food

Political parties like the Muslim League also encouraged East Bengalis to migrate and settle and this was entirely for the purpose of vote banks during 1937. The real plan of the Muslim League of undivided India wanted Assam to be included in the framework within Pakistan. So the party encouraged Muslim peasants to migrate so as to imbalance the demographic composition of Assam with the political benefit to bring communal divide in Assam (Singh 1990: 69; Dev & Lahiri 1985: 39-41).

The formation of government by the Muslim League under the leadership of Sadullah after the elections of 1937 pursued a policy of patronizing Muslims migrants. The Sadullah government during that period allotted one lakh bighas of land for settling East Bengali peasants (Das 1982: 28). Sadullah argued in support of their settlement as they were mainly landless and according to him the only solution was to provide them with available waste lands. Exactly a year after its formation, the fourth Sadullah government adopted a new resolution on land development under the slogan of Grow More Food. The salient features of this resolution of 24th August 1938 were as follows: -

- Resumed distribution of wastelands in proportion to needs of different communities in Nowgong and de-reservation of select grazing reserves for that purpose, as per resolution of 21 June 1940.
- De-reservation of professional grazing reserves in Kamrup and Darrang if found surplus to actual requirements.
- Opening up of surplus reserves in all the submontane areas, and in Sivasagar and Lakhimpur, for settlement of landless indigenous people.

This in a way reflected a blatant pro-Muslim and pro-migrant policies of this government pursued under the slogan Grow More Food (Wavel 1943, as cited in Singh 1990: 70).
Lord Wavell, the then Viceroy, after observing the policies of Sadulla government, commented, "The chief political problem is the desire of the Muslim Ministers to increase this immigration into the uncultivated Government lands under the slogan of Grow more food but what they are really after is Grow more Muslims" (Assam Gazette, 1943, 25 August, cited in Alaka Sarmah 1999). Again due to the pro-Muslim stand, Sadulla was severely criticized by the public and was forced to resign on 12th December 1941. Robert Reid, the Governor of Assam, who took over the administration after Sadulla's exit brushed aside the decision of the Sadulla ministry on the ground that there were not enough waste lands in the Assam valley to accommodate further migrants (Sharma 1999: 22). This however was a temporary measure when the governor himself was keen on installing of a popular ministry to combat the mass upsurge of the Quit India Movement in 1942. Sadulla again came into power in 1943 and followed the same policy. This resulted in innumerable clashes between the indigenous population and the migrants during that period (AASU Memorandum to the Prime Minister of India 1980).

Some of the national and regional organizations like the Hindu Sabha, Assam Jatiya Mahasabha, Ahom Sabha, etc. have criticized the Sadullah's policy and viewed it as an insidious move to create a Pakistan in Assam. Some Assamese leaders on November 28, 1937, submitted a memorandum to Nehru in Rangia (Kamrup District) on behalf of Asomiya Samrakohini Sabha to look into the matter. Another memorandum was also submitted by the Asomiya Deka Dal, in which they demanded for the separation of Sylhet and Cachar from Assam and a total ban on government patronage of settling East Bengali migrants. Nehru justified the Assamese people's demand as legitimate but he also argued that the East Bengali migrants were also an economic necessity for the former. He stressed more on how to control and organize migration of East Bengalis. But some Congress leaders in Assam didn't support his argument. Nehru in a letter dated December 1, 1937 to Vishnu Ram Medhi, an Assamese leader who later became chief minister of Assam, showed concern about the seriousness of the problem and advocated a policy of restricted migration of East Bengalis in Assam. The government also came forward with a resolution on June 21, 1940 and decided to give lands to indigenous
landless people and also to those East Bengalis who migrated before 1938 (Das 1982: 27-28; Guha 1977: 64-65).

However, the Muslim League opposed the move and demanded unrestricted land settlements. The Bengal Legislative Council on July 16, 1943 passed a resolution asking the Indian Government to initiate immediate steps for removing all existing restrictions. However, the demand was not entertained and in 1946, a congress ministry headed by Gopinath Bordoloi started the policy of eviction of East Bengalis from Assam. The migrant problem during that period had become serious and chronic issue in provincial politics. After the Congress came into power, they started evicting migrants, which the Muslim League opposed and also made it an issue of politics (Das 1982: 28-29).

This generated much tension and made it difficult for Congress government to pursue the eviction policy. The visit of Md. Ali Jinnah to Guwahati and his remarks on the government policy of eviction that if the government didn’t immediately revise its policy and abandon this persecution, a situation might be created which would not be conducive to the well being of the people of Assam generated much chaos and tensions (Guha 1977: 65). The migration from East Bengal continued till 1947, even after the partition. The British administration followed a vigorous policy of hiring people for its economic needs and generating revenue out of it. But later, the issue became highly politicized and parties like the Muslim League and Congress started using these people as their vote banks (Phukan 1984: 6-8).

5. IV__Migration Policies: 1947 to 1955

The partition of the subcontinent in 1947 along religious grounds into India and Pakistan resulted in one of the largest and most rapid migrations of human history. An estimated 14.5 million people crossed borders within a span of four years. During the time of Independence, communal riots broke out in different parts of Pakistan and India. These communal riots had a great impact on the security of the minorities in the two newly created nations. Because of the brutal killings of the minorities by the majority community in both the countries, a huge number of Muslims migrated to Pakistan from...
India, and Hindus and Sikhs from Pakistan to India. Almost equal numbers of Hindus and Muslims migrated to India and Pakistan respectively in the midst of communal violence. It was thought that India and Pakistan were about to fight their second war in the first three years of their Independence (Bhardwaj 2008: 1-3).

The Indian government was aware of the large scale influx of population from Pakistan, especially the minority Hindus from Pakistan and it was also important to protect them on humanitarian grounds. At this crucial juncture, the Prime Minister of Pakistan, Liaquat Ali Khan, issued a statement emphasizing the need to sort out the problem of forced migrants in both the countries. He proposed a meeting with his Indian counterpart to determine how to put an end to the communal riots and the fear of war. At this crucial juncture an agreement came into being especially to protect the minorities. This is widely known as Nehru-Liaquat Ali Agreement of 1950 (Bhardwaj 2008: 1-10).

The agreement could be seen as part of migration policies of India as it widely dealt with the issues of forced migrants of both the countries. Apart from signing the agreement, the governments also undertook other measures and policies to deal with migrants during the period of 1947-1955. The Foreigners Act of 1946, though passed before Independence, has its relevance till date as the migrants are checked under this Act. Apart from that Assam Immigration Expulsion Act of 1950, the Passport Act of 1951 were the major Acts passed by the government to check migration. The Indo-Nepal Peace and Friendship Treaty of 1950 was also a move by the Government of India and Nepal to expedite the historical relation. Through this agreement both the governments ensured free movement of population between the two countries as there were considerable migration of Nepalis into India too (Ghosh 2004: 21, 27, 31).

5. IV.i_The Foreigners Act, 1946

Though the Foreigners Act was passed in 1946, this has been widely been applied to detect and determine an illegal migrant or a foreigner. The Foreigners Act confers the Union Government certain powers in respect of foreigners. The Union Government is expedient to provide certain powers in respect of the entry of foreigners into India, their
presence therein and their departure therefrom. According to the Act, "a foreigner is defined as a person who is not a citizen of India". The Union Government, under Section 3(2) of the Foreigners Act, 1946 has been empowered to make provisions for prohibiting, regulating or restricting the entry of foreigners into India or continued presence. The Union Government has been conferred power to make provisions with respect to all foreigners for prohibiting, regulating or restricting their whereabouts in India. Any police officer may take such steps and use force as may be in his opinion, be reasonably necessary for securing compliance with any order made. The power conferred by this section shall be deemed to confer upon any person a right of access to any land or other property whatsoever (The Foreigners Act 1946).

According to subsection (1) of section 8 of the Foreigners Act 1946, 'Determination of Nationality', "When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be, ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected: Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognized as entitled to protection by the Government of the country whose nationality he has so acquired." Subsection (2) states: "A decision as to nationality given under subsection (1) shall be final and shall not be called in question in any Court: Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision" (The Foreigners Act 1946, Act No. 31 of 1946, 23 November, 1946).

The section 9 of the Act imposes the burden of proof on the person concerned, notwithstanding anything contained in the Indian Evidence Act, 1872. Section 11 of the Act empowers police officers to take necessary actions whatsoever (The Foreigners Act 1946, Act No. 31 of 1946, 23 November, 1946). None of these provisions were then
made use of in the unprecedented migration. It is alleged that there was hardly any machinery to keep track of the Pakistani Muslim migrants, most of who eventually settled in the state posing themselves as Indian nationals with the support of their friends and relations.

This coupled with the influx of Hindu refugee's created and unprecedented problem in Assam. The attempts to regulate the influx of Pakistani migrants included the introduction of the passport-cum-visa system in October 1952. But the provision of Foreigners Act 1946 and the rules made thereunder were not applicable to the citizens of Pakistan and hence they were not required to get registered. Presently, all the Indian states follow the provisions of the Foreigners Act, 1946 to detect and deport a foreigner and migrants. In the cities like Delhi, Mumbai, a migrant, especially the Bangladeshi is charged under the relevant provisions of the Passport Act/Rules 1967 and of the Foreigners Act, and produced before a metropolitan magistrate who gives sufficient opportunity to such persons for producing proof of nationality. It is only in cases where no such evidence is produced to the satisfaction of the Court, the Court grants permission to the competent authority for deportation of such migrants. The competent authority then issues the deportation order under Section 3(2) (c) of the Foreigners Act and the migrant or a foreigner is deported according to that order (Parliament of India Debate, Lok Sabha, July 28, 1998).

It is alleged that the Foreigners Act, 1946, provides unbridled powers to the police to detect and deport illegal migrant or a foreigner. A migrant once arrested under this Act is hardly left with any scope for him to appeal to the court for protection. There are no such provisions for others under the Foreigners Act, 1946, to appeal against a determination of nationality by the prescribed authority under Section 8. It denies the judicial remedy against a decision taken by the authority. This Act gave virtually unbridled powers to the authorities, mainly the police, to designate any person as a foreigner, and detain and deport him. Anyone disputing his designation as a foreigner had no recourse under the Act to a judicial body (Section 8, The Foreigners Act 1946, Act No. 31 of 1946, 23 November, 1946)
5. IV.ii The Immigrants (Expulsion from Assam) Act, 1950

The influx of East Bengalis into Assam has continued unabated and the Assamese people began to view it as a serious threat to their economic, cultural and political identity. After independence, the impact of Assam’s local resistance against the East Bengalis had been felt by the Union Government. As a sequel to this the Indian Parliament officially acknowledged the problem by passing the Immigrants (Expulsion from Assam) Act on 1st March, 1950, empowering the Union Government to detect and deport the East Bengalis (Bhagaiwala 1951: 77-78; Sharmah 1999: 31). In the statement of objects and reasons of the Bill presented to Parliament it was stated, “During the last few months, a serious situation has arisen in Assam due to migration from East Bengal. Such large migration is disturbing the economy of the state, besides giving rise to a serious law and order problem. The bill seeks to confer necessary powers on the Union Government to deal with the situation” (Assam Gazette 1951: 997-999).

The section 1 of the Act introduces it and views its applicability to all over India. The important provisions of the Act as enacted by the Parliament of India are the following:

“Section – 2: If the Central Government is of opinion that any person or class of persons, having been ordinarily resident in any place outside India, has or have, whether before or after the commencement of this Act, come into Assam and that the stay of such person or class of persons in Assam is detrimental to the interests of the general public or any section thereof or of any Scheduled Tribe in Assam, the Central Government may by order –

“(a) direct such persons or class of persons to remove himself or themselves from India or Assam within such time and by such route as may be specified in the order; and (b) give such further directions in regard to his or their removal from India or Assam as it my consider necessary or expedient: Provided that nothing in this section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or has left his place of residence in such area and who has been subsequently residing in Assam.
"Section – 3: The Central Government may, by notification in the official Gazette, direct that the powers and duties conferred or imposed on it by Section 2 shall, subject to such conditions, if any, as may be specified in the notification, be exercised or discharged also by-

"(a) any officer subordinate to the Central Government; (b) the Government of Assam, Meghalaya or any officer subordinate to that Government.

"Section – 4: Any authority empowered by or in pursuance of the provisions of this Act to exercise any power may, in addition to any other action expressly provided for in this Act, take or cause to be taken such steps, and use or cause to be used such force, as may in its opinion be reasonably necessary for the effective exercise of such power.

"Section – 5: Any person who-

"(a) contravenes or attempts to contravene or abets the contravention of any other made under section 2, or (b) fails to comply with any direction given by any such order, or (c) harbours any person who has contravened any order made under section 2 or has failed to comply with any direction given by any such order shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.

"Section – 6: No. suit, prosecution or other legal proceedings shall lie against any person for anything which in good faith is done or intended to be done under this Act.

"Section – 7: In this Act, except in section 3, references to Assam shall be construed as including also a reference to the State of Meghalaya and Nagaland and the Union territories of Arunachal Pradesh and Mizoram [The Immigrants (Expulsion from Assam) Act 1950, (Act X of 1950)]."

The provision of the Act clearly says that those displaced people due to the communal conflict or civil disturbances in the neighbouring country, especially in East Pakistan are excluded and the Act is not applied to them. It means any forced migrants from East
Pakistan are not subjected to any harassment by the authorities in Indian side of the border (Sharmah 1999: 31-32). The Immigrants (Expulsion from Assam) Act has not provided any safeguard to the migrants residing in Assam. Rather it has put their safety, security and existence in the state under constant threat of being tampered. Some of the Assamese leaders criticized the Act by viewing that it makes a distinction between Hindus and Muslims (Das 1982: 55-60). The Act, however, was only on paper, but on the ground the influx of population was actually picking up yet again. By the early 1960s, a new wave of migration took place despite the legislation. And the Act has never been a hindering factor for migrants to cross the border in search of better economic security.

However, the Muslims were subjected to large-scale deportation from Assam to Bangladesh. Prafulla Kumar Mahanta, who was leading the Assam Movement (1979-1985) while commenting on the Act, observes (1986) “It is not at all difficult to read the Act between the lines. It is religion oriented. The Act openly encouraged free entry into Assam of a particular religion or community on the pretext of victims of disturbances in East Pakistan. It can undoubtedly be said that this Act was largely responsible for the alarming population growth during the decades 1951-1961 and 1961-1971. In secular India, the Hindu East Pakistanis were permitted to settle as refugees and Muslim East Pakistanis were thrown out” (Rahman 2005). However, the statement of Mahanta doesn’t entirely justify the provisions of the Act. If he was in support of not throwing out the Muslims from East Pakistan, the Assam Agitation would not have occurred. Though the Act was passed empowering the government to expel foreign migrants from Assam, it was not taken seriously and was not implemented. Subsequently on 17th September 1957, the Act was amended and certain clauses were repealed. The Chief Minister Bishnuram Medhi had advocated action against the infiltrators of East Pakistan. However, there is hardly any evidence to show that he succeeded in this. After some time Medhi resigned and Bimala Prasad Chaliha became the Chief Minister of Assam (Das 1982: 55-60).

5. IV.iii_ The Passport Act, 1951

The Government of India again in 1951 passed The Passport Act, 1951 and a large number of Muslims from East Pakistan came to India with the help of the Act for a
period of six months. About 2 lakh passports were issued at that time but even after the expiry, these people never returned back and also the Government of India never saw fit to deport the expired passport holders (Das 1982: 56). The Government of India decreed by letter no. F9/7/60-I dated July 21, 1960, ordered that those East Pakistanis who have been staying in Assam without travel documents for a long time shouldn't normally be disturbed except those that were found to be at security risk (Das 1982: 55-60).

However, the Congress Party in Assam continued to be concerned about the impact of migration. The Assam Congress Committee dated June 27, 1962, had drawn pointed attention of the Prime Minister on the issue. Jawaharlal Nehru on June 27, 1962, acknowledged about the infiltration by Pakistanis, which has been continuing since 1949. Nehru stated: “I believe that much of this infiltration took place in the first five years of independence when the border was not adequately guarded. Probably it will be difficult now to deal with illegal migrants who came before 1952; we might therefore fix 1952 as the date of inquiry” (Das 1982: 55-60).

5. IV.v_ The Nehru - Liaquat Ali Pact, 1950

Apart from the above-mentioned legal measures initiated by the government to look into the migration issue, India and Pakistan soon after the partition also undertook measures to protect the minorities. Both the governments were worried about the minorities in either side. The issue of displaced minorities in India and Pakistan was a daunting task for the governments. This was more so in their resettlement. The agreement provided “bill of rights” to the minorities of India and Pakistan aiming at addressing three particular issues; firstly, to alleviate the fears of the religious minorities on both the sides, secondly, to promote communal peace and thirdly, to create an atmosphere in which the two countries could resolve their other differences. According to the agreement, both India and Pakistan governments agreed that each shall ensure to the minorities throughout its territories, complete equality of citizenship, irrespective of religion, and a full sense of security in respect of life, culture, property and personal honour. The pact guaranteed the fundamental human rights of the minorities such as freedom of movement, speech, occupation and worship. The pact also provided for the minorities to participate in the
public life of their country, to hold political or other offices and to serve in their country's civil and armed forces.\(^1\)

The following is the main statement of the Agreement:

“(A) The Governments of India and Pakistan solemnly agree that each shall ensure to the minorities throughout its territory complete equality of citizenship irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech, and worship subject to law and morality. Members of the minorities shall have equal opportunity with members of the majority community to participate in the public life of their country, to hold political or other office, and to serve in their country's civil and armed forces. Both Governments declare these rights to be fundamental and undertake to enforce them effectively. The Prime Minister of India has drawn attention to the fact that these rights are guaranteed to all minorities in India by its Constitution. The Prime Minister of Pakistan has pointed out that similar provision exists in the objective Resolution adopted by the Constituent Assembly of Pakistan. It is the policy of both Governments that the enjoyment of these democratic rights shall be assured to all their nationals without distinction.

“Both Governments wish to emphasise that all allegiance and loyalty of the minorities is to the State of which they are citizens, and that, it is to the Government of their own state that they should look for the redress of their grievances.

“(B) In respect of migrants from East Bengal, West Bengal, Assam and Tripura, where communal disturbances have recently occurred, it is agreed between the two Governments:

“(i) That there shall be freedom of movement and protection in transit.

“(ii) That there shall be freedom to remove as much of his movable personal effects and household goods as a migrant may wish to take with him. Movable property shall include

personal jewellery. The maximum cash allowed to each adult migrant shall be Rs. 150/- and to each migrant child Rs. 75/-" (Nehru-Liaquat Ali Khan Agreement April 8, 1950).

The division of the country shattered the fabric of the society and communal violence induced large-scale displacements. And it was the responsibility of the government to ensure the safety of the people irrespective of their religion. This agreement provided life to the displaced people (Gupta 1984: 109-111).

5. IV.vi Rehabilitation of Migrants

Due to the partition, a large number of people from East Pakistan migrated to the Indian Border States, especially in the eastern parts of India, i.e. West Bengal, Assam and Tripura. According to the Annual Report, Ministry of Rehabilitation (1958: 1-2), "the total number of displaced persons from East Pakistan by 31st March, 1958, was estimated about 41.17 lakh. The Ministry of Rehabilitation made an assessment of the displaced persons from East Pakistan in early 1957 and revealed that over 97 percent of the displaced persons were concentrated only in the three eastern states i.e., West Bengal, Assam and Tripura." The assessment report revealed that these states had reached the saturation point and could not accommodate any subsequent migrants in their respective states for rehabilitation. The gravity of the problem was discussed by the National Development Council (NDC) at its meeting held on the 3rd June 1957. The Council accepted the suggestion of the Union Rehabilitation Minister to set up a committee of Chief Ministers of the states concerned under the chairmanship of the Union Home Minister for allotting quotas of displaced persons for settlement by the states which would be responsible for formulating schemes for their settlement (MOLR 1958: 3-6).

Among the three above-mentioned states, the concentration of migrants was largest in West Bengal and was the largest recipient of East Pakistani migrants due to her physical and cultural proximity. An estimate shows that 73 percent of the total migrants from East Pakistan were concentrated in West Bengal (Dasgupta 2001: 100-102; MOR 1959: 8-9). The concentration of refugees was so high in West Bengal that they constituted at one

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2 Ibid.
time nearly one-tenth of the total population. As the migrants kept on pouring into West Bengal, there was crisis of land for resettlement of migrants. The state government has termed it as the level of saturation point and revealed that it is no longer in a position to receive any fresh migrants. The West Bengal Government maintained that the refugees were not its sole responsibility but rather a burden, and demanded for rehabilitation of these migrants in other states too. However, there were not many states in the Indian union willing to host the Bengali speaking refugees. Apart from the above-mentioned three states, other states were also chosen to rehabilitate migrants (Das 2003: 106-151).

For resettling migrants in other states of India and consequent to the decisions of the NDC as mentioned above, a meeting of the Chief Ministers of seven states and the rehabilitation ministers were held under the Chairmanship of Union Home Minister at Calcutta on 21st January, 1958. Some of the CMs present offered some areas for utilizing for the purpose of settling the displaced people, and it was agreed that the state concerned would undertake a comprehensive survey to explore the possibility of making available lands for the resettlement. There were problems of rehabilitation of displaced people from East Pakistan in some other states due to the prevailing economic conditions and the consequent unemployment problem. The ministers assembled at the Darjeeling conference also considered the policies that should be adopted with regard to the future migrants from East Pakistan. It was observed that the existing resources of the country would have to be used for providing rehabilitation assistance to them. To achieve this objective, it was considered necessary that the present size of the problem should not be allowed to grow indefinitely, and that a dateline should be fixed after which the migrants should not be entitled to receive relief or rehabilitation assistance (MOLR 1958: 5).

According to the Annual Report, Ministry of Rehabilitation, a scheme for opening of a camp for 5000 persons at Rudrapur in Nainital area in Uttar Pradesh was sanctioned. A total number of 5000 displaced persons were moved from the existing camp population in West Bengal and were rehabilitated in Nainital Terai colonization area. The Government of Orissa was also asked to formulate schemes for opening up camp for rehabilitating another 5000 displaced persons from West Bengal. The Ministry also asked to open up advance camps in Madhya Pradesh, Rajasthan and Bombay. The Ministry of
Rehabilitation also asked to locate more lands for rehabilitation purpose in other states. The Ministry also sanctioned 25 schemes covering an area of 10,771 acres at a cost of Rs. 94.66 lakhs for the rehabilitation of 2,347 families in Bihar, Orissa and Uttar Pradesh. Altogether 64 schemes were sanctioned in states other than Assam, West Bengal and Tripura. They provided for 6,834 families and are estimated to cost Rs. 3.07 crores.

During the year under review, 902 displaced families were moved from camps to rehabilitation sites in Bihar, 603 in Madhya Pradesh, 209 in Orissa and 89 in UP. In addition, 1,955 families were moved from camps to rehabilitation colonies in Tripura where schemes for 8,305 families covering an area of 23,543 acres have been sanctioned since October, 1956 at a cost of Rs. 1.92 crores. In Assam reclamation of 4,780 acres of land in Cachar district was started by the central tractor organization (MOR 1959: 5-10).

As per the Annual Report, Ministry of Rehabilitation (1958: 2-3), "Manipur had about 2,000 displaced East Bengali migrants. In UP, there were about 6,000 displaced persons from East Pakistan; 4,000 of them had been rehabilitated in the Nainital Terai colonization colony. In Orissa, there were about 12,000 displaced East Pakistani people of whom 5,500 were settled in rehabilitated colonies. Again, there were about 67,000 displaced persons in Bihar, and 48,900 of them received rehabilitation assistance. Of the remaining, about 17,500 were in the Bettiah camp and about 600 in homes and infirmaries in the state."

About 30,000 families of displaced persons from East Pakistan were rehabilitated during the year 1958 raising the total number of displaced families so far settled to 5.76 lakhs. Till about the end of 1956, the population in camps had been continuously going up. However, the admissions on account of new migrants invariably were exceeding the dispersals for rehabilitation. During 1956 there was a net addition of about 1 lakh persons in the population of camps in the eastern zone. Only about 20,000 displaced persons from camps were dispersed to rehabilitation sites during that year. During 1957, whereas only about 8,300 persons were admitted, about 35,000 were dispersed to the rehabilitation sites. The number of camp inmates was reduced by a gross figure of 63,700 persons of whom over 50,080 were dispersed to the rehabilitation sites in the various states of India. This included over 5,000 persons dispersed from camps in West Bengal to other states for
rehabilitation. Some displaced persons were also discharged from camps as they had been found ineligible as a result of screening (MOR 1959: 5-6).

There has been shift in policy of rehabilitating of East Pakistanis by the Government of India after the year of 1958. This signified a very important step in the process of developmental policy and programmes to meet the challenge. The activities were characterized by a shift in the emphasis from ‘relief’ to ‘rehabilitation’. There has also been also a re-orientation in the policy of planning and implementation of rehabilitation schemes in general and an attempt was made to integrate the rehabilitation schemes with the development plans of the states concerned. The Dandakaranya project and the Rehabilitation Industries Corporation came into being for resettlement of migrants (MOR 1959: 1-2).

The government gave much importance on developing agriculture on scientific lines for the purpose of resettling East Pakistani migrants. Migrants were also rehabilitated in small scale industries. In the field of Industries, special efforts were made by the government to encourage industrialists to expand their existing industries to set up new industrial units solely for the purpose of giving employment to the displaced people. However, the result was not satisfactory. And accordingly the government decided to form Rehabilitation Industries Corporation to set up industries on small as well as medium scale in both private and public sectors to create avenues of employment for the displaced people from East Pakistan in the eastern sector (MOR 1959:3-4).

As mentioned above that there have been attempts to integrate the schemes of rehabilitation for displaced persons with the general plans of development of the country as a whole and particularly with the development plans with the state concerned. For that reason, the government sanctioned land schemes in West Bengal, such as the development of Herobhanga area in the Sundarbans, the char land of the river Teesta in North Bengal and Danga lands in Midnapore district for the promotion of sisal and sabai grass plantation. To this may be added the schemes of setting up poultry and duckery farms at Calcutta and Gobardanga and loan assistance to the state government for development of transport. All these schemes form part of the general developmental
plans of West Bengal. Attention was focused during 1958 on measures to reduce as far as possible and eliminate expenditure which created no tangible assets either in the shape of productive enterprise or human advancement. Requirements of economy also compelled measures for elimination of waste in all fields of activities (MOR 1959: 4).

The state of West Bengal received a largest number of East Pakistani migrants. The state during 1958 had 31.63 lakhs displaced population; 2.10 lakhs were in camps, 54,000 in homes/infirmaries. And the remaining 28.99 lakhs, approximately two-third of the displaced population received rehabilitation assistance in one form or other. The reports of the rehabilitation Ministry stated that about 8 to 9 lakhs displaced persons were scattered in the state and were reported to have received no rehabilitation assistance. (MOLR 1958: 2-3; MOR 1959: 5-7).

The total number of displaced population in Assam was 4.87 lakh persons or 1.28 lakh families. The bulk of the migrants, i.e., 1.08 lakh families or about 84 percent of the total had migrated to the state by December, 1952. About 75,000 displaced families in Assam have received rehabilitation assistance in one form or another by the end of the 1957-58 financial year. During 1958-59, rehabilitation assistance was sanctioned to about another 9,000 persons. Many of the displaced persons from East Pakistan in Assam, who have not received any rehabilitation assistance, have by and large rehabilitated themselves (MOR 1959: 7).

In Tripura, there were 3.74 lakh displaced persons comprising 83,000 families, of whom about 7,500 families or (32,000 persons) were in relief camps and about 3,000 persons in homes and infirmaries at the end of 1957. The rehabilitation of displaced persons in Tripura had presented a very difficult problem as the state has small territory with an area of about 4,200 square miles, most of which suffers from geographical handicaps. The numbers of displaced people in Tripura mentioned above was nearly equal to the non-displaced population in the state. In spite of these factors, substantial progress of rehabilitation was made during the year 1958 and about 16,500 persons were dispersed from camps to rehabilitation sites (MOR 1959: 8).
In Manipur, the problem of rehabilitation of displaced persons, whom counted about 2,000 people were rehabilitated. In Bihar, there were 67,000 displaced people from East Pakistan, i.e., about 14,500 families. Of them 8500 were dispersed to the rehabilitation sites earlier, and about 2,000 were moved to the rehabilitation sites during 1956-57; and 1,200 families were dispersed to the rehabilitation sites from the Bettiah camp during 1958. Of the families present in the Bettiah camp, about 55 percent were agriculturalists and 45 percent non-agriculturalists. The problem of rehabilitating 1,300 non-agriculturalist families remained (MOLR 1958: 2; MOR 1959: 6).

There were 12,000 displaced persons from East Pakistan in Orissa and 11,000 of them were already rehabilitated. The remaining 1,000 persons (i.e., about 250 families) were in the Charbatia camp and they were in process of rehabilitation. In UP, there were about 6,000 displaced persons from East Pakistan and they had already been rehabilitated. The UP government agreed to arrange for the rehabilitation of another 15,000 persons, i.e., about 3,000 families, in the state who would be dispersed from the camps in west Bengal. Schemes for the rehabilitation of about 2,000 families had already been sanctioned and were being implemented. In Madhya Pradesh, 1,534 families had so far been moved to the rehabilitation sites of which about 930 were dispersed during 1958. Another batch of about 475 families was expected to be moved to the state from camps in West Bengal for rehabilitation during 1959. In Rajasthan, 232 families were rehabilitated in 1958. Provision for rehabilitation of 430 more families existed in the schemes already sanctioned (MOLR 1958: 2-3).

The committee's decision of sending the refugees to an area called Dandakaranya consisting of the districts of Koraput and Kalahandi in Orissa and the district of Bastar in Madhya Pradesh was soon accompanied by the institution of the Dandakaranya Development Authority (DDA) that was given the overall responsibility of developing the area by 31st December, 1959. A total of 830 families comprising 3,550 persons reached Dandakaranya from different relief camps of West Bengal and Bihar. Within the Dandakaranya area four resettlement zones were earmarked at Umerkote, Malkangiri, Parankote and Bastar. While 40 to 60 households were herded together in each village, each zone in turn was composed of tens of such villages separated from each other by a
few miles on an otherwise inaccessible, infertile, and rocky terrain. The refugees – mostly belonging to lower castes such as Namasudras and Poundra Kshatriyas with an agricultural background – were sent to Raipur by special trains from where they were taken to the Mana transit camp (MOR 1959: 7-8).

5. IV.vii India-Nepal Peace and Friendship Treaty

Apart from the above mentioned policies, Government of India and Nepal also signed a Treaty widely known as Indo-Nepal Peace and Friendship Treaty of 1950. Apart from the problem of forced migrants and other influx from West and East Pakistan, there also has been continued unabated migration of Nepalis since the days of the British rule. As discussed earlier, the Nepalis were recruited in the British army. The recruiting camps were organized in the Border States which further triggered migration of Nepalis into India and other Northeast states in search of employment (Kansakar 1990: 11-12).

In the midst of such migration and a historical tie up with Nepal and also considering the other security factors, Indo-Nepal Peace and Friendship Treaty was signed in 1950. The Treaty provided free movement of population between the two countries through a proper mechanism. The treaty has made some specific provisions through which the people from both the countries can settle and do business. The Treaty of Peace and Friendship encapsulates a holistic approach of security that takes into consideration both internal and external dimensions of threats perceived from the neighbouring countries. The two countries, bound through socio-cultural and economic ties, ensured Nepal’s socio-economic progress and stability considering India’s security interests in the South Asian region (Nayak 2010: 580-583). The various provisions of the Treaty are the following:

"Article-1: There shall be everlasting peace and friendship between the Government of India and the Government of Nepal. The two Governments agree mutually to acknowledge and respect the complete sovereignty, territorial integrity and independence of each other.

354
"Article-2: The two Governments hereby undertake to inform each other of any serious friction or misunderstanding with any neighbouring State likely to cause any breach in the friendly relations subsisting between the two Governments.

"Article-3: In order to establish and maintain the relations referred to in Article 1 the two Governments agree to continue diplomatic relations with each other by means of representatives with such staff as is necessary for the due performance of their functions. The representatives and such of their staff as may be agreed upon shall enjoy such diplomatic privileges and immunities as are customarily granted by international law on a reciprocal basis: Provided that in no case shall these be less than those granted to persons of a similar status of any other State having diplomatic relations with either Government.

"Article-4: The two Governments agree to appoint Consuls-General, Consuls, Vice-Consuls and other consular agents, who shall reside in towns, ports and other places in each other's territory as may be agreed to. Consuls-General, Consuls, Vice-Consuls and consular agents shall be provided with executors or other valid authorization of their appointment. Such executor or authorization is liable to be withdrawn by the country which issued it, if considered necessary. The reasons for the withdrawal shall be indicated wherever possible. The persons mentioned above shall enjoy on a reciprocal basis all the rights, privileges, exemptions and immunities that are accorded to persons of corresponding status of any other State.

"Article-5: The Government of Nepal shall be free to import, from or through the territory of India, arms, ammunition or warlike material and equipment necessary for the security of Nepal. The procedure for giving effect to this arrangement shall be worked out by the two Governments acting in consultation.

"Article-6: Each Government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development.
“Article-7: The Governments of India and Nepal agree to grant, on a reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement that privileges of a similar nature.

“Article-8: So far as matters dealt with herein are concerned, this Treaty cancels all previous treaties, agreements, and engagements entered into on behalf of India between the British Government and the Government of Nepal.

“Article-9: This Treaty shall come into force from the date of signature by both Governments.

“Article-10: The Treaty shall remain in force until it is terminated by either party by giving one year’s notice” (Indo-Nepal Treaty of Peace and Friendship 1950).3

The treaty envisages the citizen’s right of residence, ownership or property, participation in trade and other commercial activities in each other’s country. The provisions contained under the pact are more favourable to Nepal as people could enter India unhindered in search of better opportunities and sustaining livelihood. There was also an exchange of letters along with the treaty which explicitly states that “it may be necessary for some time to come to offer the Nepalese nationals in India protection from unrestricted competition”. This was done basically to protect the interests of the Nepali people migrating to India. The Nepal government also agreed to grant preferences to Indian nationals in various development projects related to natural resources. There is controversy regarding the provision of unrestricted movement of population. Several academicians and foreign policy experts from Nepal have raised voice against the treaty. They are of the view that due to presence of huge resources in Nepal, so many Indians would swamp Nepal (Deka et al. 2008: 39-42).

5. V. Migration Policies: 1955 to 1965

In this period the Government of India followed two particular policies to deal with the East Bengali migrants. One is the Prevention of Infiltration from Pakistan to Assam adopted in 1964 and the other is the Foreigners Tribunal Act promulgated in the same year. The minority communities faced communal flagrance as a result of which thousands of migrants fled to Indian Border States, particularly to Assam and West Bengal. The government sheltered the migrants and the also provided migration certificates (Neog 1984: 284; Barooah 1984: 292).

The migration of East Bengalis into Assam created much hue and cry among the political parties. Congress Party was in support of expulsion of migrants from Assam. To prevent influx and initiate deportation Government of India introduced the Prevention of Infiltration from Pakistan to Assam (PIP) in 1964. It aimed at preventing the influx and expulsion of Pakistanis (East Pakistanis also). The National Register of Citizens of 1951 was the basis for identification of the migrants according to the provisions of the PIP plan. This register was available to the political parties and bureaucrats for identifying and deporting migrants. Under the PIP, 200 border posts were built at the cost of Rs. 6,000 each and 1,500 police personnel were deployed to prevent such infiltration. This was vigorously implemented by Bimala Prasad Chaliha, the then Chief Minister of Assam. In the first three years of the implementation of Act, 2,40,000 infiltrators were identified and 1,90,000 were deported. Between 1967 and 1970, only 20,800 infiltrators were detected and a smaller number was deported. The politics of vote bank and appeasement of minorities by the Congress Party seemed to have started at this stage when Chaliha was prevented to implement the PIP in Assam (Barooah 1984: 292; Sanjaya 1980: 11).

A section of the Congress Party treated the minority as their vote bank; so they refused to take any action which affected the interest of the minorities and started putting pressure on Chaliha. Devakanta Baruah, a Congress Party member, in his statement revealed that the party has to depend on Muslims and tea garden labourers for vote. He viewed: "so long as Alis and Coolies are with the Congress party it did not care for anybody" (Singh
1984: 91). Chaliha's relentless implementation of the PIP came under attack when 27 Members of the Legislative Assembly (a large number of them were Muslims) of his own Congress Party protested and some of the Muslim League MLAs also put pressure on Chaliha to go slow with PIP. The Congress MLAs who were opposing argued that the minorities in Assam would be alienated if the government implemented this Act and would therefore be difficult to win 1972 elections. The Chief Minister Chaliha had a difficult situation. His party had 71 MLAs and there were 54 MLAs in the opposition. If 17 MLAs of his party would withdraw their support, it would have fallen (Singh 1990: 166; Das 1982: 58).

The PIP Act was criticized due to its non-secular character. The Hindus were considered refugees while Muslims were considered illegal aliens. The 1964 law did not make any such distinction. The 1964 law raised a special border police force of about 2,000 men and 159 towers were built along the Indo-Pakistan border, besides six passport checking centres. This was first among a series of securitization steps initiated by the Union Government. Internal political compulsions forced Assam's Congress government to put in cold storage the 1964 PIP law because the party survived on the support of elected Muslim MLAs. By then the illegal aliens had also managed to enter the voters' list of India using fraudulent documents which were available cheap (Hazarika 2000: 60; Singh 1990: 163-167).

On 1st May 1962, the Union Home Minister Lal Bahadur Shastri declared in the informal consultative committee meeting of Parliament for Home Affairs that the Union Government agreed to take measures to check the influx of illegal entrants in Assam. The government proposed some measures to prevent infiltration that included increasing the number of border check posts, strengthening the existing check posts and the delegation of full powers, under the Foreigners Act of 1946, to the Superintendent of Police and Magistrates in the border districts for deportation of Pakistani infiltrators. The members of the committee also suggested for deterrent and exemplary punishment for the illegal migrants (APCC 1962, cited in Sharma 1999: 32-33). However, no effective measures were probably taken, because on 19th March 1964, the Assam Congress Parliamentary Party submitted a memorandum to Gulzarilal Nanda, the then Home Minister of India.
The party in the memorandum stated that there has been large scale infiltration of Pakistani nationals who are illegally staying without being detected. The Congress Parliamentary Party suggested, “Indian and Pakistan border must be completely sealed and the area to such a depth as may be necessary from the border should be cleared. All weather road communication should be constructed for speedy movement of troops and for patrolling the border. The border check posts of the B.S.F should also be increased to minimize the distance from one post to another” (APCC 1964).

It is clear that despite the apathy shown by the national leadership, the Congress Party in Assam continued to feel the necessity of checking infiltration. The party seemed to have given considerable importance to the matter. The then Home Minister, Gulzarilal Nanda, was quite aware of large scale infiltrations into the state. He had visited some places of tension and held personal enquiries of some incidents perpetrated by these people in those places and had found these to be true. He had suggested and ordered some remedial measures. Police was given some substantial powers to detect and prosecute foreign infiltrators and some tribunals were constituted for their trial and deportation. The then Chief Minister, Chaliha, set up tribunals for detection and deportation of foreigners. Kidwai had himself admitted “that the way the migrants came to Assam, it will take the government about thirty years to get rid of lakhs of these people who were there in the state” (Sharmah 1999: 33-34). The number of these foreigners will not remain constant and there will also be further infiltration of similar type. Government of India’s awareness of the problem was also reflected in a brochure published by the Government of India. The brochure stated:

“Long before the cry of partition was heard in united India, the slow but steady encroachment of Assam and Tripura by migrants from areas now in East Pakistan was already in progress. Partition did not assuage the land hunger in East Pakistan. The new international boundary was not physically marked on the ground, was largely unguarded and virtually unpatrolled. Thus the traditional migration from East Bengal continued even though a new political frontier had come into being, with East Pakistan on one side and the Indian territory of Assam, Tripura and West Bengal on the other” (MEA 1963: 15).
The Minister of State in the Ministry of Labour, Employment and Rehabilitation, Bhagwat Jha Azad, in the Lok Sabha debate stated, "during 1968, on an average 394 migrants entered Assam from East Pakistan every month. During the six month ending on 29 December 1968, 2,098 migrants came to Assam from East Pakistan. The Government of Assam decided to rehabilitate 12,000 families of the new migrants, i.e. those who came over to Assam from 1 January 1964 onwards. Arrangements were made for the rehabilitation of those who are in excess of the quota 12,000 outside Assam. Regarding those who came recently, it was decided that after necessary screening, these people should be sent to Mana Relief Camp in Madhya Pradesh" (Parliament of India Debate, Lok Sabha, 17-21 February 1969: 107). Minister's statement shows that India has been considerate to the migrants who came even after 1964.

5. V.i__Foreigners Tribunal order, 1964

To check illegal entry and determination of foreigner, the Union Government introduces the Foreigner's Tribunal Order, 1964. The Government in the exercise of the powers conferred by section 3 of the Foreigners Act, 1946, the Union Government introduced the Foreigners Tribunal Order of 1964. By this order the Government could constitute tribunals to check whether a person is a foreigner or not within the meaning of the Foreigners Act 1946 (31 of the 1946). Through this order, tribunals were constituted. The tribunal consisted of number of persons having judicial experience. The tribunal consisted of two or more members, among one of them was appointed as the chairman thereof (Foreigners Tribunal Order 1964). According to the provisions,
summoning and enforcing the attendance of any person and examining his oath, requiring the discovery and production of any document and issuing commissions for the examination of any witness. The Centre on February 10, 2006 amended the Foreigners (Tribunal) Order, 1964 by an order called the 'Foreigners (Tribunal) Amendment Order, 2006'. As per the Order, it was applicable only to Assam and not to the rest of the country” (Foreigners Tribunal Order 1964: 1-3)4.

5. V.ii Flight of Chakma People to India

The Government of Pakistan’s decision to construct hydro-electric dam on the Karnafulli River in Rangamati between 1957 and 1962, for harnessing water resources of the Chittagong, under the financial and technical assistance of USA displaced thousands of Chakma people. The construction of the dam created a huge lake at the north and east of the dam at a place called Kaptai. The total cost of the project was Rs. 2.4 million. The dam, in fact, submerged an area of about 400 square miles including 54,000 acres of cultivable land making up 40 percent of the district’s total acreage. About 90 miles of government’s road and 10 square miles of reserve forests also went beneath the water. And again it displaced more than 100000 Chakma people. The poor rehabilitation policies of the government compelled them to migrate. In 1964, nearly 40,000 Chakma hill people, direct victims of the Kaptai dam and subsequent communal violence, crossed over to Indian border state of Tripura and then to Arunachal Pradesh (Ahmed 2002-2003: 1-20).

In 1964, the Government of India granted migration certificates to approximately 35,000 Chakmas and 1,000 Hajongs. The migrants were settled by the Government of India in the erstwhile North East Frontier Agency, an area that comprises the present-day districts of Lohit, Changlang and Papumpare in Arunachal Pradesh. These certificates indicated legal entry into India and the willingness of the Government of India to accept the migrants as future citizens. Additionally, under the Indira-Mujib Agreement of 1972, it was determined that India and not Bangladesh would be responsible for all migrants who

entered India before 25 March 1971 (APHRN 2001). On 9 January 1996, the Supreme Court of India, ruling in the case of National Human Rights Commission vs. State of Arunachal Pradesh & Air, directed the Government of Arunachal Pradesh to ensure protection of the life and personal liberty of Chakmas resident in the state, and to process their applications for citizenship in accordance with law (IDMC 2006: 85).

According to the Supreme Court of India ruling (National Human Rights Commission vs. State of Arunachal Pradesh & Air on 9 January 1996: 9-10), "the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of para-military or police force, and if additional forces are considered necessary to carry out this direction, the first respondent will request the second respondent, the Union of India, to provide such additional force, and the second respondent shall provide such additional force as is necessary to protect the lives and liberty of the Chakmas; (2) except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein."

The Supreme Court's judgement was followed by a positive decision by the Delhi High Court. In the case of People's Union for Civil Liberties and Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh vs. Election Commission of India and others, the Delhi High Court ruled in favour of registering Chakmas and Hajongs as voters in Arunachal Pradesh. However, these court directives have been ignored by the government of Arunachal Pradesh (National Human Rights Commission vs State of Arunachal Pradesh & Air, 1996; APHRN 2001).

5. V.iii__Communal Disturbances in East Bengal and Influx of People into India: Government Response

During the wake of communal disturbances in East Bengal, a huge influx of minority communities occurred into Indian Border States. Basically the Hindus and Christians migrated from the Mymensingh district of East Bengal into the Garo Hills district. It is
known that the exodus from East Bengal into Assam began on January 18, 1964 and the total number of refugees including men, women and children who took refuge was estimated at about 52238. Out of this, an estimated 35000 were Christian families who belonged to the Garo tribe. The basic reason for such exodus of the minority community from East Pakistan was due to the large scale looting, arson, kidnapping and forcible occupation of their lands by the members of the majority community with the connivance of the Pakistan police and the village defence corps known as Ansars (Parliament of India Debate, Rajya Sabha, March 2, 1964: 2668-2669).

The Assam government and the Garo Hills district administration were highly aware of such influx. According to an Italian correspondence the figures that he had collected on the basis of identification cards, filled up by the refugees themselves, on their arrival in their camps, twenty thousand of the Garos were Roman Catholics. Two of the American missionaries stated that fifteen thousands of the refugees were Baptists. The refugees revealed that the East Pakistan rifles had opened fire on the batch of the defenceless Garo population and were forced to flee into Assam on February 6, 1964. The others who continued to cross the border and kept migrating into Assam consisted of the Hajong, Banai, Koche, Rajbonshi and Dalu tribes. All the refugees who crossed into the Garo Hills district were from the five thanas of Naltabari, Sribordi, Halvaghat, Durgapur and Kamlakanda in the Mymansingh district of East Pakistan. Meanwhile, the government of India in their note dated February 13, 1964, presented to the Pakistan High Commission in New Delhi and protested to the Government of Pakistan about the shooting of the hapless refugees fleeing from persecution in East Pakistan. Though Pakistan did not acknowledge the occurrence of this barbarous Act, the Pakistan Foreign Minister had to contradict the reported statement of Khan A. Sabur Khan, Pakistan Central Minster of communications that, there is “no truth Indian press reports that Christians living in East Pakistan had started fleeing” by admitting in Dacca in February 26, ‘that some exodus’ of Christians from Mymensingh district of East Pakistan into Assam had taken place regretted on behalf of his government that this “unfortunate exodus” is due to “acts of high handedness” by Muslims. The President of Pakistan also admitted the flight of large
numbers of Christians from Mymensingh district to India (Parliament of India Debate, Rajya Sabha, March 2, 1964: 2669-2672).

In a question by A.D. Mani, "what is the policy of the government in regard to these Christians refugees? If they don't want to go back because they are subjected to harassment, is it the policy of the government of India to welcome them here and to rehabilitate them within the resources available to the Indian government?" Responding to this question, Laxmi Menon, mentioned about the rehabilitation of these migrants and stated that the Government of India takes the issue as a national problem and assured about the efforts that to be made to rehabilitate these persons who migrated into Assam (Parliament of India Debate, Rajya Sabha, March 2, 1964: 2668-2672).

During a discussion on the influx of East Bengalis into India on 11 February 1964, in the Lok Sabha, Gulzarilal Nanda stated, "that the situation arising out of the communal disturbances in East Pakistan resulting in heavy loss of life and property of the members of minority community and their influx to India and consequential disturbances in West Bengal be taken into consideration" (Parliament of India Debate, Lok Sabha, February 12, 1964: 303-304). H N Mukherjee in his discussion viewed, "the government should take adequate measures to compel the Pakistan government to respect the rights of the minority community in East Pakistan. He also urged the government to allow the migration of minorities to enable all those to come over from East Pakistan. He proposed to rehabilitate about one and half million refugees who had earlier come over from East Pakistan. He also asked the government to curb reactionary communal forces in India who, by advocating a policy of retaliation against the Muslim minority in India as a reply to Pakistani oppression of the Hindus, strike at the root of India's secular and democratic principles" (Parliament of India Debate, Lok Sabha, February 12, 1964: 306)

Mati Renuka Roy also suggested the government to lift all the restrictions on the migration of East Bengali Hindu minority population. Other members like, Brij Raj Singh asked the government to take effective steps to fulfil the solemn assurances given to the minority in the East Pakistan at the time of creation of Pakistan (through Liaquat-Nehru pact). This assurance included that the life, property and honour of Hindus left there will
be protected and they will be ensured equal treatment. Following suggestions were given by him:–

a. Ensure safe transit to the intending Hindu migrating to India
b. Remove all restrictions on the entry of Hindus from East Pakistan to West Bengal
c. Educate and mobilize the world opinion against the persistent genocide of Hindu minority in East Pakistan, whose number has been reduced from 16 million to 9 million (Parliament of India Debate, Lok Sabha, February 12, 1964: 307-308).

Nanda, the then Home Minister in his speech said,

"the question is what can be done? It was expected that the Hindus in East Pakistan will leave with equal rights, equal status and equal security and safety. If Pakistan fails to discharge its responsibilities, those Hindus in East Pakistan don’t cease to be the nationals of Pakistan. That one thing must be very clear. However, much we may grieve over their fate, that fact can not be ignored that they are the responsibility of Pakistan. Pakistan is failing in its responsibility and on human considerations we have to do something about it, because as I said we can’t take purely the legal and constitutional view. We can’t shut our eyes to the fact that they are the people who were part of ourselves, with whom we have ties of blood and who are our relations and friends, these who live there. We can’t turn our face against their sufferings the torture of their bodies and spirit and all that they are undergoing there. We can’t do that. Therefore instinctively our hearts turn to them and it is a question of human impulse. We want to do our best. We can’t help doing that. But there it is we want to give them whatever succours, we might like to send them. We are faced with the situation that there is compassion. That is a word which separates us from them; they are on the other side of the barrier and we hear their cries for help. But our hands can’t reach there. What else we can we do? That is the question. There is the human obligation. Somebody has taken objection to the word compassion. That is a word which has been used in the Nehru Liaquat Ali pact. The human obligation is there. We emphasize the responsibility of Pakistan to look after their protection, relive and rehabilitation.
and it is for them take back those people who have been affected and who are in
camps to their homes. And give them relief and rehabilitation we welcome that.
We will be very happy if they do that. If they don’t do that, if they are nor able to
give them the new start, if they don’t feel secured, if they find it impossible to
breath the air of security in their country and they feel that they must live it then
we cant bar their way. We have no heart to tell them, ‘you go on staying there and
be butchered.’ We can’t just see that they are perishing in the flames of communal
fire and let them perished” (Parliament of India Debate, Lok Sabha, February 13,
1964: 531-546).

Nanda, on behalf of the government proposed for liberalizing the migration restrictions.
The government agreed to grant migration certificates to all the migrants and the
relaxation for granting of migration certificates also made. The Government of India for
the purpose of granting migration certificates made the provisions little relaxed. To get a
migration certificate an income tax clearance certificate and some municipal certificates
were required from those coming at the border. As the migrant did not have any
certificates to show as the people were fleeing because of insecurity Nanda said,

“unattached women and widows with no livelihood in Pakistan” they
would also be included for the provision of the migration certificates. Some of the
member during the discussion also urged the Home Minister to provide migration
certificates to all of the displaced people from East Pakistan and they argued for
imposing no restriction on migration of these people to India. The government of
India provided migration certificates irrespective of people migrating from East
Pakistan. Nanda in his speech said, “this is what we can do on our side; we can
make arrangements for their relief, we can receive them and make it easier for
them, so far as we are concerned, so that they can have the migration certificates
and we simplify whatever the procedure are and make them quicker. All these are
being done and then we can take them to wherever they can be resettled. This is a
difficult task (Parliament of India Debate, Lok Sabha, February 13, 1964: 531-
576).

Nanda again in a discussion on the issue on ‘Communal Disturbance in East Pakistan’ in
the Lok Sabha viewed,

“The large scale exodus of East Pakistan was the inevitable consequences
of Pakistan’s irresponsible actions and it’s dis-inclination to accept its minimum
responsibility to create conditions to help restore the confidence of the minority community. Nevertheless the policy of the government of India was to treat the rehabilitation of the new migrants from Pakistan as a national problem. Instructions had already been issued to ease the conditions for the grant of migration certificates to intending Hindu migrants from East Pakistan to this country. In addition to the already existing normal categories qualifying for the issue of migration certificates, it was decided to include the following categories also to meet the realities of the present situation:-

a. Girls of marriageable age, unattached women and orphans who may have no sponsors in India as well as girls approaching marriageable age  
b. Family seriously affected due to arson, looting and killing  
c. Petty traders, who have lost their wherewithal as well as industrial labour, skilled or unskilled, who have been badly affected.  
d. Cases for deputy high commissioner discretion; this should also take care of border line cases.

In view of the very large number of applicants, the procedure for the issue of the certificates has also been shortened. As far as possible, it is the government intention to reduce to the minimum the period of uncertainty and hardship for the migrants coming in and for that purpose to draw up suitable plans and schemes for their resettlements. To consider certain practical questions arising out of these and to explore possibilities of obtaining land for the migrants, a meeting of the chief ministers of Andhra Pradesh, MP, Maharashtra, Orissa and west Bengal was called on February 8, 1964. The state governments concerned have assured us that they would take immediate steps to make available nearly two lakhs acres of land for the resettlements of migrant's family, both agriculturalists and non-agriculturalists. Members will appreciate that the various process connected with the development of the land, thus made available are bound to take times; however, efforts will be made to make the land ready for settlements as quickly as possible. Meanwhile, pressure would be maintained on Pakistan government to see reason and to follow internationally recognized canons of behaviour in respect of their duty towards the minorities” (Parliament of India Debate, Lok Sabha, February 11, 1964: 166-167).

5. V.iv__Rehabilitation of Migrants

The Government of India did not change the migration policy and entry into India from East Pakistan continued to be restricted to those holding the travel documents like migration certificates and passports. Those migrants who were having valid documents and who sought admission to relief camps were entitled to necessary relief materials. The government of India authorized the Border States; West Bengal, Assam and Tripura to accept the migrants at their discretion even those who were not having valid travel documents for relief and rehabilitation assistance, in deserving cases (MOLER 1969: 1).
The Ministry of Rehabilitation estimated about 11.14 lakh persons who migrated between 1-1-1964 and 25-3-1971, were known as the ‘new migrants’. It was considered that the West Bengal couldn’t absorb any such migrants as it is already been overpopulated. The government decided to resettle such new migrants in other states as joint camps were set up outside West Bengal. Even after that about 6 lakh displaced migrants from East Pakistan stayed back in West Bengal. Many of the new migrants were rehabilitated in various states including the Dandyakarnya project (MOELR 1973: 8-10).

According to the Ministry of Labour, Employment and Rehabilitation (1969:1),

"During the period of communal violence in East Pakistan in 1964, the Government of India issued migration certificates to the minority communities. The inter-departmental committee set up on the recommendations of the Estimates Committee with the representatives of the Ministry of External Affairs, Department of Rehabilitation and the Government of Assam, West Bengal and Tripura reviewed in November 1968, the system of issuing migration certificates to members of the minority communities from East Pakistan. The government considered the question of extending relief and rehabilitation assistance to genuine and deserving migrants, who may enter India without obtaining migration certificates because of the difficulty in securing such certificates due to disturbed conditions, distance of the Deputy High commissioner’s office from their residence, ignorance etc. The committee feels that the present policy regarding the entry of migrants into India from East Pakistan should continue and that once a migrant family not in possession of migration certificates, has been admitted to a relief camp by virtue of the discretion exercised as mentioned above, no discrimination should be made in granting relief and rehabilitation assistance to it vis-à-vis those who came with migration certificates and are admitted to camps. The committee has also recommended some minor procedural changes in regard to filling application form by an intending migrant and the issue of migration to him. In addition, it has recommended that the period of validity of migration certificates should be extended for one year” (MOELR 1969: 1).

5. V.iv.a Rehabilitation of New Migrants in Agriculture outside West Bengal and Dandyakarnya

The rehabilitation of migrants from East Pakistan was initiated by the government in various ways. According to the Annual Report of the Ministry of Labour and Rehabilitation (1984: 11), “Apart from small schemes in some states, the government of India started nine major rehabilitation projects – two in Maharashtra, one each in
Karnataka and Andhra Pradesh and five in Madhya Pradesh. These were set up for resettlement of new migrants in agricultural land. Apart from that the Dandyakarnya was also initiated by the government of India for the purpose of rehabilitating East Pakistani migrants in 1958. Resettlement on land in the eastern states/union territories viz. Arunachal Pradesh, Assam, Manipur, Meghalaya, Tripura, Bihar and Orissa was completed, while it is almost complete in Rajasthan, Andhra Pradesh, Maharashtra and Karnataka. The projects in the state of Andhra Pradesh and Maharashtra are normalized with effect from 1-4-1980. The question of normalization of the projects in Madhya Pradesh has also been taken up with the state governments concerned. Rehabilitation assistance was admissible to the new migrants. As on 15 March, 1969, there were only 14662 families residing in relief camps awaiting rehabilitation. These included 4330 families belonging to Permanent Liability Category.

5. V.iv.b__Rehabilitation of New Migrants in India

Among the new migrants, about six lakhs remained in West Bengal but the government declared them ineligible for any relief and rehabilitation benefits as the government decided not to settle any more migrants in the state (MOLR 1984: 10). According to the (MOELR 1969: 4), “In Assam, the number of new migrants from East Pakistan up to the end of December, 1968, was about 1.99 lakhs persons comprising about 44100 families. Around 28750 families sought admission in relief camps and 31 camps were opened in Assam. However, the number of camp families decreased and 18 camps were closed down by 1st March, 1969. During that time, 1236 families were considered to be under the PL category in these camps. The government also proposed to set up another two permanent liability home to accommodate those PL families. Up to 31st December, 1968, 9925 families – 7848 agriculturalists and 2077 non-agriculturalists – have been settled in various rehabilitation sites in Assam. Till the end of March, 1969 about Rs. 1181.65 lakhs have been spent in the state for the purpose of rehabilitation of new migrants.”

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5 Permanent Liability Category/Camps are defined as “amongst the refugee families that are admitted to camps, there are those whose members are either infirm or aged or otherwise incapacitated or consist of women who have no able bodied men to look after them. These constitute what is known as “Permanent Liability” of Government.
According to (MOELR 1969: 4-5), "In Tripura, up to the end of December, 1968, about 1.32 lakhs new migrants comprising nearly 29400 families have migrated into Tripura. About 947 families entered in relief camps that the government opened. The state had already reached a saturation point and no resettlement of new migrants was possible. There were 225 families in 2 relief camps in Tripura awaiting rehabilitation. Besides, there were 501 families of Permanent Liability Category in these camps and construction work of new PL home at Amtali, a suburb of Agartala was in progress. Some 5366 families – 5356 agriculturalists and 10 non-agriculturalists, came over to Tripura on exchange of their properties with the properties of Muslims who had migrated to Pakistan."

These families didn’t seek admission in relief camps. Up to 31st March, 1969 about Rs. 7.29 million had been spent in Tripura on relief and rehabilitation of new migrants. Meanwhile, there were about 16700 new migrants comprising 3718 families in Maharashtra. The government opened 4 relief camps to accommodate these migrants. The Maharashtra government also agreed to resettle 6000 new migrant agriculturalist families in the rehabilitation zone at Chanda. The state government also made available a net area of 33000 acres of land and up to the end of 1968, 23064 acres of land had been reclaimed. Till the end of December, 1968, 3304 families – 2951 agriculturalist and 353 non-agriculturalists – had been rehabilitated in Chanda area. About Rs.550.00 lakhs had so far been spent in Maharashtra on relief and rehabilitation of new migrants (MOELR 1969: 5).

In Madhya Pradesh, about 15300 persons, comprising 3411 families from East Pakistan were there and the government opened 19 relief camps to accommodate these migrants. Madhya Pradesh government agreed to rehabilitate about 4000 agriculturalists new migrant families in three rehabilitation zones at Betul, Panna and Sarguja. The state government provided a net area of 23300 acres of land, which were mostly forest land for the resettlement of new migrant’s families. Up to 31st December, 1968, a total area of 18184 acres of land had been reclaimed in these projects. By the end of December 1968, 3094 families – 2600 agriculturalists and 494 non-agriculturalists had been rehabilitated in these projects in Madhya Pradesh. About Rs. 498.57 lakhs had so far been spent in
Madhya Pradesh for relief and rehabilitation of the new migrants. 305 families in 10 relief camps in Madhya Pradesh were awaiting for rehabilitation. Besides, there were 12 families of PL category in the above camps. There were about 11400 new migrants from East Pakistan comprising 2541 families in NEFA. About 3000 new migrants' agriculturalist families including about 500 families from other areas were proposed to be rehabilitated in NEFA. Up to 31st December, 1968, 2541 new migrants' agriculturalist families had been rehabilitated there. About Rs. 85.48 lakhs had been spent by 31st march, 1969, in NEFA on relief and rehabilitation of new migrants (MOELR 1970: 7-8).

There were about 10300 new migrants from East Pakistan comprising 2280 families living in Bihar and for rehabilitation assistance; the government opened 3 relief camps. There were 87 families of PL category in the above camps. Till 31st December, 1968, 1216 families – 343 agriculturalists and 873 non-agriculturalists were rehabilitated in Bihar. A sum of Rs. 191.90 lakh had been spent in the state for relief and rehabilitation of the new migrants (MOELR 1970: 7).

In Andhra Pradesh there were about 4400 migrants from East Pakistan comprising 973 families and the state government opened 5 relief camps to accommodate these migrants. All the families in the camps were dispersed to rehabilitation sites at Isagaon and the camps were closed. About 6765 acres of land had been reclaimed and 973 families - 959 agriculturalists and 14 non-agriculturalists – rehabilitated in ten new villages. By 31st March, 1969 about Rs. 190.66 lakhs had been spent in Andhra Pradesh on relief and rehabilitation of the new migrants. Meanwhile, the population of new migrants from East Pakistan was about 6100 persons comprising 1350 families. The state government had opened 2 relief camps to accommodate these migrants. There are at present 490 families in one relief camp at Rudrapur in UP awaiting rehabilitation. Up to 31st December, 1968, 866 families – 762 agriculturalists and 104 non-agriculturalists – had been rehabilitated in UP in various rehabilitation colonies in Pilibhit, Kheri and Bareilly district. A sum of Rs. 249.76 lakhs had been spent by 31st March, 1969 in UP on relief and rehabilitation of the migrants. About 768 families had been settled in the districts of Nainatal, Kheri, Pilibhit, Bijnor, Bareilly, etc. another 71 families who were residing in relief camps were expected to be settled by 31st March, 1971. In Manipur, about 900 new migrants from East
Pakistan comprising 192 families had been rehabilitated in nine new villages in Manipur (MOELR 1969: 7-9).

The government made available 800 acres of land to the migrant families, of which 670 acres had been reclaimed by then and brought under cultivation. Up to 31st March, 1969, sums of Rs. 13.94 lakhs had been spent in Manipur on relief and rehabilitation of new migrants. In Orissa, there were about 2300 new migrants from East Pakistan comprising 523 families and the state government had opened 5 relief camps to accommodate these migrants. There were 188 families in 3 camps awaiting rehabilitation. Besides, there were 109 families of PL category in those camps. By the end of December, 1968, 226 non-agriculturalists families had been rehabilitated in Orissa. Till 31st March, 1969, a sum of Rs. 123.01 lakhs had been spent in Orissa on relief and rehabilitation of new migrants (MOELR 1970: 8-9).

Apart from the above mentioned resettlement of migrants in various states, as on 31st December, 1973, there were 27692 families (116110) of new migrants from former East Pakistan in 20 relief camps in various states. These camps were administered by the respective state governments within the framework of instructions issued by the department of rehabilitation from time to time. Out of this, 23086 families were rehabilitated families and 4606 were families of the PL category. Apart from these, there were 756 families in the worksite camps in Dandyakarnya project. The expenditure incurred by the state governments was reimbursed to them by the department of rehabilitation (MOELR 1973: 12-13).

During the period from 1-1-1964 to 31-12-1974, about 51707 families of new migrants from former East Pakistan were resettled in agricultural and non-agricultural occupations in various states, union territories and in Dandyakarnya. During the period from 1-4-1974 to 31-12-1974, 1152 agriculturalist families were moved to rehabilitation sites. Before the end of the current financial year, about 200 more agriculturalist families were expected to be moved to rehabilitation sites. In addition to the 6 agriculturalists projects started at Betul, Panna and Surguja in Madhya Pradesh, Chandrapur in Maharashtra, Isagaon in Andhra Pradesh and Sindhanur in Karnataka, another project in Bhandara had also been
started in 1974. The total number of families in position in these projects was 9953. The government of Maharashtra had in 1964 offered 36608 acres of cultivable land in Chanda district for resettlement of new migrants. The area reclaimed for resettlement of new migrants so far was 33956 acres. During 1974, 31 families were given rehabilitation assistance in this project. In consultation with the Maharashtra government, it had been decided to utilize 3400 acres of land for the resettlement of 600 new migrant families. Proposals for the resettlement of 400 families had been sanctioned in May, 1974, against which 370 families had been given rehabilitation assistance. Another 200 families were expected to be settled during 1975. The government of Madhya Pradesh had in 1964 offered 44208 acres of land in Betul district for the resettlement of new migrants, of which 36700 acres were released by the state forest department. Of the 14053 acres found suitable for agriculture, 13372 acres of land had been reclaimed. During 1974, 424 families were proposed to be resettled in the Betul project during 1975 and 183 families during 1976 (MOELR 1973: 13-15).

5. VI. Migrants Rehabilitated in Various Projects

The following organizations functioned under the department for implementing various rehabilitation schemes:

5. VI.i. Permanent Liability Category: During the period from 1-1-64 to 31-12-70 about 575 PL families were admitted to the existing homes run by the department of social welfare. In addition, the Department of Rehabilitation had taken up construction of new PL homes for the new migrants. By the end of December, 1973, 1578 families of new migrants had been accommodated in the new PL homes. In the wake of the emergence of the Republic of Bangladesh about 15500 families of migrants who had come to India prior to 25th March, 1971, left the camps and rehabilitation sites in India apparently with the intention of returning to their original lands. Many of these families came back to India. After verification to their previous stay in the camps/rehabilitation sites, 4344 families had been moved to Mana and 392 families to Dolariya camp in Madhya Pradesh. Besides, 507 families who had reached rehabilitation sites directly had
been moved to Mana at Basirhat in West Bengal. They were moved to Doloriya camp (MOELR 1973: 9-10).

5. VI.ii__Dandyakarnya Project: it was set up by the Government of India in 1958 for rehabilitation of displaced persons from East Pakistan in Dandyakarnya region. The DDA was responsible for planning and implementation of various resettlement and development programmes. The chief secretaries of West Bengal, Madhya Pradesh and Orissa and the representatives of the ministries of supply and rehabilitation, finance and home affairs were represented on the authority. The last batch of displaced persons numbering about 1900 families in Karmi Shibirs of the Dandyakarnya project had been taken to rehabilitation sites during the year. With this, the total number of families settled and in position in the project as on 31-12-81 were about 25000 families (MOELR 1982: 1-2).

5. VI.iii__Rehabilitation Industries Corporation LTD, Calcutta: This public sector undertaking was set up in 1959 for employment of displaced persons from East Pakistan. The corporation had advanced loans to private industrialists and co-operatives in return for employment of displaced persons. It had also set up 5 industrial estates, having 84 private industrial units. The corporation ran 14 industrial units of its own in small sector. Through these activities employment had been provided to about 5500 displaced persons. There was a part time chairman and eight official directors including the managing director on its board of directors. The governments had taken several measures during the year to revitalize this corporation which has been incurring losses for various reasons since inception (MOELR 1982: 3).

5. VII__Bangladesh Liberation of 1971 and Assam Movement

A major development took place in 1971, where Bangladesh came into existence with the help of India in their struggle for liberation. The then President, Mujibur Rahman and the Indian Prime Minister, Indira Gandhi concluded an agreement whereby Bangladesh would take back those who had migrated from East Bengal to India up to March 25, 1971. Nearly 10 million migrants crossed over the neighbouring Indian territories,
including Assam, to avoid the atrocities carried out by the Pakistani military. Nearly a million stayed in India and didn’t return back. There was also an implied assurance by Mujibur Rahman that henceforth the Hindu minority would have no occasion to leave their hearth and home to seek refuge in India. There was hope that further migration from East Pakistan, now turned into Bangladesh, would stop. The migration from Bangladesh to Assam and other Indian states didn’t cease in spite of Mujibur Rahman’s promise. With the birth of Bangladesh in 1971, many thought that there wouldn’t be any more movement of people (Ghosh 2004: 21-22 & Weiner 1993: 1740-41).

Bangladesh failed to shape up as a secular country, which would have given full guarantee to the fundamental rights of the Hindus and other minorities. In the initial years after independence of the country, the Indian government welcomed the refugees. But as days passed by, the government gradually stiffened its stand. However, the flow of migration seems unstoppable, by now, there some more than 10 million refugees/migrants from Bangladesh in India (Ghosh 2004: 84-86). During the Liberation war, millions of migrants took asylum in Assam resulting in economic crisis. India’s External Affairs Minister, Swaran Singh, told United Nations on December 12, 1972, “the economic implications of the number of refugees, which now stands at 10 million and the generated economic pressure on India, can be discerned from the fact that our Finance Minister has made two additional provisions of nearly 330 cores of rupees, or approximately $500 million, in our annual budget for the year 1971-72, which ends on 31 March 1972. A smaller State would have collapsed in the face of such an influx” (Hazarika 2000 & Joseph 2006: 11)

Swaran Singh while delivering the same speech said that the Government has to take care the social friction, the fear of epidemics and the possibilities of communal and other tensions. He also revealed that the migrants created incalculable hindrances to India’s economic development for years to come. According to him, the continuing exodus was a destructive obstacle to the very socio-political fabric of India. The concern expressed by Congress leader Swaran Singh at the UN was in fact shared by his party colleagues in Assam too. But due to the vote bank realities forced them to change their stand overnight (Joseph 2006: 11-12 & Das 1982: 61-62).
A rough estimate prepared by the AASU and endorsed by the Congress Party of Bangladeshi migrants were estimated to four million as against the Assam's own population of some 16 million. The last big wave of migration occurred in the wake of the Indo-Pak war of 1965 when thousands of Hindus fled their home and took shelter in eastern states, especially West Bengal and Assam. Even before the birth of Bangladesh, some ten million refugees trekked to India seeking shelter and about a million of them didn't return back. The unabated migration altered the demographic composition of Assam. The representatives of AASU and other allied parties met at Jorhat in July 1978 and prepared sixteen point agendas – demands, including the identification, deportation and prevention of further migration of Bangladeshis from Assam (AASU 1983: 5-7).

The government of India assured instructions to the Government of Assam (vide Government of India, Ministry of Home Affairs; letter no. 14081-06-75-III dated August 20, 1975 as cited in. Das 1982: 59) to implement a programme to detect the names of foreigners on the voter registration roles. The letter was not implemented by the Assam Government led by Sarat Sinha, because a compact bloc of 25 Muslim MLA threatened to withdraw their support from the ruling government. In Assam, the central as well as the state government have reduced the refugee issue of "citizenship" and "deportation of foreign nationals". The Government of Assam could do nothing in the next few months (Das 1982: 59-60 & AASU 1980: 4-6).

Up to these points the movement was confined mostly to the student community. As a result of these events, Atal Bihari Vajpayee, the then Minister of External Affairs and Shyamlal Shakhdher, the Chief Election Commissioner of India, made some very important statement. Shakhdher in the conference of the Chief Electorate Officer of the states, commented, "I would like to refer to the alarming situation in some states, specially in the Northeastern region, where from disturbing reports are coming regarding large scale inclusion of foreign nationals in the electoral rolls. In one case, (Assam), the population in 1971 recorded an increase as high as 34.98% over the 1961 figures and this increase was attributed to the influx of a very large number of persons from the neighbouring countries." Shakhdher proposed to the Home Ministry to introduce
identification cards to the Indian citizens in the Northeast region. The entire population of the region welcomes the proposal but it was not implemented. The foreigners lobby argued that it would create unnecessary harassment to the genuine Indian citizens (AAGSP 1980: 17-18).

Vajpayee, on August 21, 1978, while replying to a call attention motion in the Lok Sabha on the issue of influx of Bangladeshis into Assam commented: “If infiltration took place in any part of the country, whether it was Kashmir or Assam, the security of the whole nation was jeopardized and government won’t allow monetary considerations to stand in the way of safeguarding the security of the country............ this problem of infiltration is a recurring phenomenon and we must sit together and devise ways and means so that the northeastern region could be made secure and the people there should feel that their sorrows and worries are shared by the rest of the country.” Again on November 27, 1979, Vajpayee gave the following written reply to a question on the floor of the Parliament:

a. “It has come to the notice of the election commission from time to time that large scale inclusion of foreign nationals in the electorate rolls especially in the Northeastern region has been taking place.

b. In August 1975, the Ministry of Home Affairs instructed all the state governments and the administration of all the union territories that the state criminal investigation might be instructed to take immediate steps to check the electoral rolls and if they discover the names of foreigners in the rolls, that fact might be brought to the notice of the concerned electoral registration officer for getting such names deleted from the electoral rolls. The election commission has also issued instructions to the chief electoral officers of the state/union territories concerned that if it is found that a large number of foreigners have managed to get their names registered in the electoral rolls. Recourse should be to the provisions of section 22 of the representation of the People’s Act 1950, for getting the names of such persons deleted from the electoral rolls on the ground that they are not Indian citizens.” (Parliament of India Debate, Lok Sabha, November 27, 1979: 219-221)
The difficulties of the Assamese people on account of the presence of large number of foreigners became more and more acute. By 1979 they had run out of their patience and AASU launched massive movement to turn out the foreigners. They found that while checking up the electoral rolls that in a Lok Sabha bye election ordered in September 1979, from Mangoldoi, there were more than 45000 names of foreigners in a list of nearly 7 lakhs voters. The massive agitation across the state asked for identifying the huge number of foreigners and urged to deport them (Hazarika 1993: 54-56).

The government of India too, during later negotiations with the AASU-AAGSP representatives pointed out that they had to be accepted by India as refugees in terms of understanding the partition of the country, the subsequent international commitments and for humanitarian considerations. These points were reiterated by the Union Government in course of the prolonged negotiations with the student’s representatives. But the Assam Movement leaders, after they launched their agitation for expulsion of foreigners, didn’t accept the plea of the government for retention in the state of those of them as were refugees; for them “a foreigner is a foreigner” and until a foreigner was regularized as a citizen under the law of the land he was still a foreigner who should be detected and deported to Bangladesh, or at least dispersed from Assam to other states, so that other states too took a share of the burden of Assam (Deka 2004: 128-130 & Rajagopalan 2008: 19 & Das 1986: 15). Though the AASU and AAGSP would not discriminate between a Hindu and Muslim migrants, the Union Government wanted to honour its commitments made at the time of the partition and accept East Pakistan refugees, but questions were asked why after the division of India and Pakistan on the basis of the two nation theory, a large number of Muslims, probably larger in number than that of the Hindus, should migrate from East Pakistan into the neighbouring states of Assam, West Bengal and Tripura and especially to Assam (Kumar 1990: 206-208).

5. VIII_Regularization of Migrants

The Assam Movement ended with an agreement signed between the agitators and the Union Government widely known as Assam Accord in 1985. After the series of negotiations the leadership of the movement set up a cut off date for deportation of
Bangladeshi nationals from Assam. This cut off date and year also paved the way for regularization of migrants and granting of citizenship. The agreement mainly concentrated on the detection on the basis of the constitution and relevant laws, namely, the Citizenship Act of 1955, the Foreigners Act 1946 and the Passport Act 1952. In pursuance of this provision, the Citizenship Act, 1955 was amended by Act No.65 of 1985 and Section 6A was inserted with the heading “Special Provisions as to Citizenship of Persons covered by the Assam Accord.” It provides that the term “detected to be a foreigner” shall mean so detected under the Foreigners Act and the Foreigners (Tribunals) Order, 1964 framed there under (Sarbananda Sonowal vs Union Of India & Air on 12 July, 2005 & Hussain 2000: 109-111)

Under the said provision a person of Indian origin as defined under Section 6-A (3) who entered into Assam prior to 1st January, 1966 and has been resident in Assam since then is deemed to be a citizen of India. (Sarbananda Sonowal v. Union of India & Air [2005] INSC 338, 12 July 2005) Section 3 of the Citizenship Act, 1955 provides that every person born in India on or after the 26th day of January, 1950 but before 1st day of July 1987 shall be a citizen of India by birth. A person born on or after 1.7.1987 either of whose parents in a citizen of India at the time of his birth shall be a citizen of India by birth. A person however, shall not be such a citizen by virtue of this Section if at the time of his birth his father possesses such diplomatic immunity and is not a citizen of India, or his father is an enemy alien and the birth occurs in a place then under occupation by the enemy (The Citizenship Act 1955: 5-7).

Again the Assam Accord, on the issue of foreigners agreed to some important points. These included, the government has decided 1.1.1966 as the base data and year for the purpose of detection and deletion of foreigners. Most importantly, those migrants who migrated to Assam prior to 1.1.1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections shall be regularized, meaning thereby granted citizenship. Again the migrants, who came to Assam after 1.1.1966 (inclusive) and upto 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order 1964. Again the migrants who came to Assam on or after March 25, 1971 shall continue to be detected;
deleted and practical steps shall be taken to expel such foreigners. Over all those migrants who came before 25th March, 1971 are regularized and granted citizenship and they are bonafide citizens of India (Assam Accord 1985: 1-4).

5. IX IMDT Act: Success and Failure

After the signing of Assam Accord, the granting of citizenship of migrants were implemented under various provisions of the agreement. The migrants, who entered Assam after 25th March, 1971 continued to be dealt by the Act of Illegal Migrant Determination by Tribunal Act of 1983 (IMDT). Basically the Act was passed by the Parliament of India in 1983 for the purpose of detecting and deporting Bangladeshi nationals from Assam. During the conflict ridden period, a violent campaign was led against the Bangladeshi migrants where thousands of innocent lives were lost. In 1983, in the Nagaon district alone, 1700 people were massacred by the local population through an organised violence. The chain of violence continued. It took a toll of more than 3000 people-mostly Bengali Hindus and Muslims. Another massacre occurred at Chaulkhowa Chapori under Mangoldoi sub division in the Darrang district with an estimated 500 people killed (Assam Legislative Assembly Debate, September 21, 1983: 98-100).

Forcible deportation of people occurred and there had been reports of harassment of Indian nationalities belonging to the Muslim community. There were reports of pushing thousand of Bangladeshis along with some indigenous Muslims back to Bangladesh. It raised severe apprehension among the genuine citizens. Again it was felt that the Foreigners Act of 1946 was not an adequate option for the purpose of protecting the genuine Indian citizens. There are several cases of harassment of genuine Indian citizens and these is revealed through the Assam Legislative Assembly Debates and in fact, the members of the minority community in the Assembly pleaded for introducing an act like the IMDT. Abdul Latif meanwhile stating the same problem argued for establishing a tribunal for checking Bangladeshi migrants. He views, “the problem of Bangladeshi migrants and subsequent harassment of the Indian citizens must be dealt with through judicial arrangements. The government must think of tribunal or a judicial arrangement immediately. Police should not be given absolute power to tackle Bangladeshi migrants
and all the political parties must think of altogether. I also appeal the government to halt the process deportation as long as the tribunals are not constructed. The process should start only when the process of tribunal and judicial arrangement is completed. Only those migrants who came over to Assam only after 1971 must be deported” (Assam Legislative Assembly Debate 1979, I March, Vol. III, No.7: 130-132).

Nurul Huda in a discussion also commented, “Deporting Bangladeshi migrants we do not have any objection and problems and many MLA’s would agree to it unanimously. Foreigners may of Bangladesh, Pakistan and Nepal-deporting them we do not object. But the Indians should not be touched at all and the government has no right to do so” (Assam Legislative Assembly Debate 1979, 28 February, Vol. III, No. 6: 83-84). Md. Idriss while discussing the Governor’s address commented, 

"I can give several instances of harassment and deportation of Indian nationals in the name of foreigners questioning their citizenship and constitutional rights. Some of the instances are – Alaudding S/O Abdul Quddus, Habibur Rahman S/O late Rafiquel Haque of village singaria, P.O-Singariabazar, Dist-Cachar. They and their forefathers were born and brought up at the above address and are citizen of India by birth, were arrested by the Golaghat Police on 3.1.1979 and forced them to sign a repaired statement, while working under contractor Abdul Aziz and Syed abdul Hannan of Golaghat town. They were sent to the Jorhat police station on 4.1.1979 and were deported to Bangladesh via Mahisason Border outpost, Karimganj on 7-1-79 along with some other Indian citizen so arrested. The above mentioned persons returned back to India on 9-1-79 and made are presentation to the chief minister by post with a copy to A.M. Choudhury, MLA, Nishit Das, MLA stating the above facts. Above all there are lot many instances of deportation of Indian citizens. In Barpeta district alone many of them are deported to Bangladesh even after having their proper house, names in the NRC etc. the police personnel does not want to see the documents they have. What I observe some section of religious and linguistic minority communities’ people are targeted branded them as Bangladeshis and then deported completely ignoring their rights/privileges being an Indian citizen” (Assam Legislative Assembly Debate 1979, 28 February, Vol. III, No. 6: 62-66).

Md. Fakhrul Islam commented, “The objectives to check influx foreigner can be stated as ineffective, illegal and unconstitutional. No patriotic man in this country will differ that not a single foreign national should be allowed to remain here, at the same time not a single Indians should get harassed in suspicion of being a foreign national. Harassment is being done to Indian nationals and they were arrested at midnight and deported without
any proper judicial procedures and they were not given chances to produce their identity vis-à-vis the certificates. In the border area, policeman search from house to house at midnight. This policy should be withdrawn immediately. When a specific search is found to be true, only in such cases, they can be driven out. During the last 31 years of Congress regime this problem could not be solved, even the Janata government has done nothing in this direction (Assam Legislative Assembly Debate, 1979, 28 February, Vol. III, No. 6: 108-112). Further Fakhrul Islam urges the State Government to set up some machinery immediately by which all these cases can be subjected to judicial scrutiny. He adds, “There is the Indian passport act under which, if a man enters India from foreign country illegally, he can be arrested even by an SI and produced before a magistrate and if that person is found to have entered India illegally, he can also be imprisoned. There is also the foreigners act which has wide powers; under the same the state government is authorized by the centre and the state government in its turn can authorize some officers to deal with the infiltrators. Now to give this very dangerous weapons to an SI to deal with a great deal of caution is necessary because the power may be misused. The government should see that any power given is exercised with much care and caution that it is not misused. I see that the house has expressed great anxiety on this score” (Assam Legislative Assembly Debate, 1979, 28 February, Vol. III, No. 6: 122-123).

According to the Assam Governor’s Report (1998), “The proponents of IMDT maintain that unwarranted fears have been aroused about the large influx of population from Bangladesh when in actual fact their number is very small. They want to retain this Act at all costs. They feel that otherwise, the minorities would face great hardship and harassment. But in due practice, it is found that the act is helpful primarily to serve the interests of the Bangladeshi migrants. Thus the IMDT act aims at Detecting, Determining and Deporting an illegal migrant through a proper mechanism – that is through a tribunal.”

P. C Sethi, the then Home Minister in his speech in the Parliament, 1983, said, “the influx of foreigners into Assam and other parts of the eastern and Northeastern regions of the country has been a matter of concern. These migrants have remained in India without any lawful authority by exploiting the circumstances of migration and their ethnic similarities
and other connections with the people of India. The continuance of such migrants in India is detrimental to the interest of the public. The governments have been fully alive to the genuine concern of the people in this region, several measures have been initiated to deal with the problem of illegal migrants. Vigilance on the Indo-Bangladesh border has been intensified with a view to prevent illegal entry. A decision has been taken to erect barbed wire fencing along the Indo-Bangladesh border and to construct a broad jeepable road track along side the barbed wire fencing. It has also been decided that three additional battalion of BSF should be raised for strengthening the border outpost and opening the new ones where necessary” (Parliament of India Debate, Lok Sabha, December 14, 1983: 419-420).

The Union Government was also aware of the large scale migration of Bangladeshi nationals and was anxious to deal with those migrants. The detection and deportation of migrants has been a continuing process but the process of detection and deportation has been rather slow. The government was aware of such consensus about detection and deportation of entrants who came after 24th march 1971. After taking into account the need for speedy detection, protection of genuine citizen of India and public interest, the president promulgated on the 15th October 1983, the IMDT ordinance, 1983 to provide for the establishments of tribunals (Parliament of India Debate, Lok Sabha, December 14, 1983: 420-423).

P. C Sethi, in his discussion in the Parliament viewed, “the Union Government was thinking much earlier to bring the IMDT Act into force as there was consensus among the political parties and all other people concerned regarding the detection of the Bangladeshi migrants. Though the AASU was opposed to it, there was almost national consensus on the question of starting the work of detection of Bangladeshi migrants. The Union Government had decided to set up number of tribunals in October, for the purpose of detecting foreign nationals in Assam. The Union Government was blamed for delaying in implementing this Act for finding at least a partial solution to the vexed problem of foreign nationals in Assam” (Parliament of India Debate, Lok Sabha, December 14, 1983: 419-434).
Sethi in his discussion viewed, "In the context of the prolonged agitation in Assam, the need for vigorously implementing the detection and expulsion of migrants could not be overemphasized. It was expected that the measures, coupled with other steps taken by the government in dealing with the problem of migrants, will allay the fears in the minds of the people of Assam and create congenial atmosphere" (Parliament of India Debate, Lok Sabha, December 14, 1983: 419-434).

5. X__Major Clauses of the IMDT

There are some important clauses of the IMDT Act. The Section 2 of the IMDT act reads, "Application Nothing in this Act shall apply to or in relation to-- (a) any person who was in any State and who had been expelled from that State or India before the commencement of this Act in that State or in relation to whose expulsion from such State or India any order made before such commencement under any other law is in force; (b) any person detected as a foreigner at the time of his entry across any border of India; (c) any foreigner who, having entered into India under a valid passport or travel document, continued to remain therein after the expiry of the period for which he was authorised to remain in India under such passport or travel document." The Section 3 (b) of the IMDT act defines, "the ‘foreigner’ has the same meaning as in the Foreigners Act, 1946; (31 of 1946.) Section 3(c) “illegal migrant” means a person in respect of whom each of the following conditions is satisfied, namely: -- (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." The Section 8 (2) of the IMDT act reads, “Any person may make an application to the Tribunal, for its decision, as to whether the person whose name and other particulars are given in the application, is or is not an illegal migrant. Section 8 (3) “Provided that no such application shall be entertained by the Tribunal unless the person in relation to whom the application is made is found, or resides, within the jurisdiction of the same police station wherein the applicant has his place of residence.”
The section 10 of the IMDT act reads, "Procedure with respect to references under sub-section (1) of section 8. On receipt of a reference under sub-section (1) of section 8 or sub-section (1) of section 8A the Tribunal shall serve on the person named in such reference, a notice, accompanied by a copy of such reference, calling upon him to make, within a period of thirty days from the date of receipt of such notice, such representation with regard to the averments made in the reference, and to produce such evidence as he may think fit in support of his defence: Provided that if the Tribunal is satisfied that the person aforesaid was prevented by sufficient cause from making his representation and from producing evidence in support of his defence within the said period of thirty days, it may permit him to make his representation and to produce evidence in support of his defence, within such further period, not exceeding thirty days, as it may, by order, specify" [The Illegal Immigration (Determination by Tribunals) Act 1983].

5. X.i Features of the IMDT Act

The IMDT Act has some special characteristics and it is important to note. The salient features of the Act are discussed below:

- It excluded the migrants who entered India before March 25, 1971 from the illegal-migration accusation. And for post-1971 migrants too, the procedure for deporting was tough.
- The Act is alone applicable in Assam, it was not implemented in other states.
- It defines the expression, "illegal migrants" in terms of consensus.
- Under the act, tribunals are established to strengthen the process of detection in fair manner but in reality it is time consuming affair.
- The IMDT Act provides for two individuals living within a radius of 3 kilometers of a suspected illegal migrant to file a complaint accompanied with a deposit sum of Rs. 10. However, the 3 km restriction was modified and now complain can be made from within an area of police station.
- Under the Act, the burden of proving the citizenship or otherwise rested on the accuser and the police, not the accused; whereas under the Foreigners Act prevailing in the rest of the country the onus is on the accused.
• If a suspected illegal migrant is thus successfully accused, he was required by the Act to simply produce a ration card to prove his Indian citizenship.

• The Act also provided that ‘if the application is found frivolous or vexatious’ the Central Government may not accept it.

• Once the process of determination of illegal migrants over, the question of expulsion of such migrants would arise. Union Government may expel such illegal migrants, detection and expulsion of post 24th March, 1971 entrants (Extracted from the IMDT Act 1983)

There are certain ambiguities in the IMDT Act when it addresses the issue only of the illegal entrants from East Pakistan or Bangladesh. It doesn't take into consideration of other nationals, who had settled in Assam. The prominent among them are Nepali migrants staying over in Assam for decades. There were also apprehensions that this people of Nepali origin will also be included in the foreigner’s category and there was a demand for treating this Nepali origin people in a different footing. The agitating leaders also demanded for the deportation of Nepalis from Assam too through the provisions of the IMDT Act. And even if they are exempted from this, there was demand for another cut off date to be prescribed for the people of Nepali origin. P. K Kodiyan, through his Parliament of India Debate suggested considering either 1975 or 1976 as cut off year for the people of Nepali origin (Parliament of India Debate, Lok Sabha, December 14, 1983: 419-434).

5. XI__Functioning of the IMDT Tribunal, Detection and Deportation reality

This Act caters for an Appellant Tribunal of two retired High Court Judges, sixteen district Tribunals with two retired District/Additional District Judges with supporting staff. There were 16 IMDT tribunals across the state with an appellate court based in Guwahati. The tribunals were set up in Dibrugarh, Jorhat, North Lakhimpur, Dhemaji, Tezpur, Mangaldoi, Nagaon, Hojai, Nalbari, Barpeta, Dhubri, Goalpara, Kokrajhar,
Silchar, Karimganj and Diphu. However, in question with efficiency, the IMDT court has not been able to actively work.

Table 5.1
Assam: District-wise Cases Heard by the IMDT Courts during 1985 to 1.1.2003

<table>
<thead>
<tr>
<th>IMDT Tribunals</th>
<th>District wise</th>
<th>Total Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dhubri</td>
<td>Dhubri</td>
<td>1476</td>
</tr>
<tr>
<td>Kokrajhar</td>
<td>Kokrajhar</td>
<td>1371</td>
</tr>
<tr>
<td>Goalpara</td>
<td>Goalpara and Bongaigaon</td>
<td>1240</td>
</tr>
<tr>
<td>Barpeta</td>
<td>Barpeta</td>
<td>897</td>
</tr>
<tr>
<td>Nalbari</td>
<td>Nalbari, Kamrup and Guwahati city</td>
<td>550</td>
</tr>
<tr>
<td>Mangaldoi</td>
<td>Darrang</td>
<td>1525</td>
</tr>
<tr>
<td>Nagaon</td>
<td>Nagaon</td>
<td>1333</td>
</tr>
<tr>
<td>Tezpur</td>
<td>Sonitpur</td>
<td>1727</td>
</tr>
<tr>
<td>Silchar</td>
<td>Cachar a Hailakandi</td>
<td>834</td>
</tr>
<tr>
<td>Diphu</td>
<td>Karbi Anglong N.C. Hills</td>
<td>732</td>
</tr>
<tr>
<td>Karimganj</td>
<td>Karimganj</td>
<td>1042</td>
</tr>
<tr>
<td>Jorhat</td>
<td>Jorhat Sibasagar Golaghat</td>
<td>538 113 232</td>
</tr>
<tr>
<td>Lakhimpur</td>
<td>Lakhimpur</td>
<td>952</td>
</tr>
<tr>
<td>Dibrugarh</td>
<td>Dibrugarh Tinsukia</td>
<td>316 995</td>
</tr>
<tr>
<td>Hojai</td>
<td>Hojai sub-division (Nagaon District)</td>
<td>440</td>
</tr>
<tr>
<td>Dhemaji</td>
<td>Dhemaji</td>
<td>554</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>20297</td>
</tr>
</tbody>
</table>


However, the IMDT court was abolished through the Supreme Court judgment in 2005. The government of India re-established the tribunal across the state through amending the Foreigners Tribunal of 1964. All the staff and the judges who were working earlier in the IMDT tribunal are transferred to the Foreigners Tribunal. The number of persons detected and deported remains to be very low. According to the Assam Legislative Debate, the number of cases dealt with by the various 16 IMDT courts remains to be very

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6 Information collected personally from various Foreigner's Tribunal in Assam
low. The district wise cases heard by the IMDT court from 1985 to 1.1.2003 are shown in Table 5.1.

Table 5.1

Assam: Number of Detected/Deported Illegal Migrants since 1985 to 2005

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of persons declared as illegal migrants</th>
<th>Number of persons deported</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>423</td>
<td>21</td>
</tr>
<tr>
<td>1986</td>
<td>146</td>
<td>21</td>
</tr>
<tr>
<td>1987</td>
<td>186</td>
<td>114</td>
</tr>
<tr>
<td>1988</td>
<td>922</td>
<td>122</td>
</tr>
<tr>
<td>1989</td>
<td>2837</td>
<td>127</td>
</tr>
<tr>
<td>1990</td>
<td>2210</td>
<td>116</td>
</tr>
<tr>
<td>1991</td>
<td>1457</td>
<td>523</td>
</tr>
<tr>
<td>1992</td>
<td>341</td>
<td>523</td>
</tr>
<tr>
<td>1993</td>
<td>349</td>
<td>37</td>
</tr>
<tr>
<td>1994</td>
<td>55</td>
<td>67</td>
</tr>
<tr>
<td>1995</td>
<td>375</td>
<td>27</td>
</tr>
<tr>
<td>1996</td>
<td>75</td>
<td>31</td>
</tr>
<tr>
<td>1997</td>
<td>148</td>
<td>106</td>
</tr>
<tr>
<td>1998</td>
<td>84</td>
<td>5</td>
</tr>
<tr>
<td>1999</td>
<td>354</td>
<td>25</td>
</tr>
<tr>
<td>2000</td>
<td>241</td>
<td>12</td>
</tr>
<tr>
<td>2001</td>
<td>434</td>
<td>3</td>
</tr>
<tr>
<td>2002</td>
<td>669</td>
<td>6</td>
</tr>
<tr>
<td>2003</td>
<td>551</td>
<td>20</td>
</tr>
<tr>
<td>2004</td>
<td>558</td>
<td>15</td>
</tr>
<tr>
<td>2005 (upto 31st January)</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>12424</td>
<td>1538</td>
</tr>
</tbody>
</table>

Sources: Assam Legislative Assembly Debates, Official Report, Vol. No. 20, April 5, 2005, pp. 53-55

The Assam Accord Minister said that the government has been able to detect 1501 Bangladeshi migrants till 2003. In another question, Pabindra Deka on 11 March, 2003 asked about how many migrants have been deported from the state during the May 2001-January 2003 and where they belonged to. Apart from the above question he asked whether the Assam Government was aware of the intrusion of Bangladeshi migrants in the state, and if known what measures have been taken so far. Pankaj Bora, the Minister for Assam Accord replied, "The government has deported 664 migrants during the aforesaid period. The migrants were from Bangladesh and the government is fully aware
of it. The government has initiated fencing and a proposal for organizing a special reserved police battalion is under way to protect the border river areas to stop infiltration from Bangladesh. Apart from that active border security has been increased through the border” (Assam Legislative Assembly Debates, March 11, 2003: 51).

In a question by Rupan Singh Ranghang on 5th April, 2005, asked the then Assam Accord Minister to reply his questions about how many illegal migrants were detected and deported since 1885 to 2005 and how many illegal migrants have been detected and deported since 1985-91, 1991-96, 1996-2001, 2001-2005, 28th February Bhumidhar Barman, the Assam Accord Minister replied by saying that under the IMDT Act, 12424 (Table 5.II) people were identified as illegal migrants and 1538 people were deported since then (Assam Legislative Assembly Debate, April 5, 2005: 53-55).

Meanwhile, under the Foreigners Act of 1946 and Foreigners Tribunal Act of 1964, during the period of 1986 to 31st January, 2005, 29248 foreigners were identified by the Tribunal and 674 foreigners were charged with quit India notice. Table 5.III shows the number of persons declared foreigners under the Foreigners Tribunal Act. However, the success stories of the IMDT and the Foreigners Tribunal shows a big gap. Tables 5.II and 5.III reveal that the number of migrants/foreigners declared under the IMDT Act from 1985 to 2005 were only 12424. But the numbers of foreigners declared under the Foreigners Tribunal Act were 29248 from 1986 to 31st January 2005,. Thus the success stories of the IMDT in comparison with the Foreigners Tribunal are minimal. Table 5.IV shows the comparative assessment of the number of foreigners declared under the IMDT and the Foreigners Tribunal Act between 2001 and 2002. During the period 2001 and 2002, the numbers of identification of foreigners under the IMDT Act were 1049 only. Meanwhile, the numbers of identified foreigners under the Foreigners Tribunal were 3621 clearly showing the failure of the IMDT Act to detect and deport migrants from Assam (Assam Legislative Assembly Debate, August 5, 2003: 51).

Jaynath Sarmah asked the Assam Accord Minister about the approximate number of migrants in Assam, and what are the reasons behind such migrations, how many people have been declared as illegal migrants district wise and what steps the government has
taken so far to prevent illegal migration across border? Pankaj Bora, the Assam Accord Minister said that it would not be fair to tell the approximate number of illegal migrants as it is done through a judicial procedure. According to the Minister, the reasons behind these migrations are economic backwardness and they migrate only in search of economic opportunities.

Table 5.111
Detected and Deported under the Foreigners Act and Foreigners Tribunal Act

<table>
<thead>
<tr>
<th>Years</th>
<th>No. of persons declared foreigners</th>
<th>No. of persons deported by issuing quit India notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>509</td>
<td>6</td>
</tr>
<tr>
<td>1987</td>
<td>2186</td>
<td>5</td>
</tr>
<tr>
<td>1988</td>
<td>5054</td>
<td>13</td>
</tr>
<tr>
<td>1989</td>
<td>4600</td>
<td>21</td>
</tr>
<tr>
<td>1990</td>
<td>2452</td>
<td>88</td>
</tr>
<tr>
<td>1991</td>
<td>1520</td>
<td>101</td>
</tr>
<tr>
<td>1992</td>
<td>1183</td>
<td>63</td>
</tr>
<tr>
<td>1993</td>
<td>490</td>
<td>46</td>
</tr>
<tr>
<td>1994</td>
<td>318</td>
<td>24</td>
</tr>
<tr>
<td>1995</td>
<td>494</td>
<td>33</td>
</tr>
<tr>
<td>1996</td>
<td>377</td>
<td>35</td>
</tr>
<tr>
<td>1997</td>
<td>1092</td>
<td>46</td>
</tr>
<tr>
<td>1998</td>
<td>288</td>
<td>32</td>
</tr>
<tr>
<td>1999</td>
<td>3179</td>
<td>55</td>
</tr>
<tr>
<td>2000</td>
<td>1090</td>
<td>67</td>
</tr>
<tr>
<td>2001</td>
<td>1232</td>
<td>9</td>
</tr>
<tr>
<td>2002</td>
<td>2387</td>
<td>20</td>
</tr>
<tr>
<td>2003</td>
<td>687</td>
<td>3</td>
</tr>
<tr>
<td>2004</td>
<td>110</td>
<td>7</td>
</tr>
<tr>
<td>2005</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>(upto 31st January)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All total</td>
<td>29248</td>
<td>674</td>
</tr>
</tbody>
</table>


The government has approved funds for building 11 border outposts in the border, and among them six are already built in Karimganj and one in Dhubri district. Apart from that, fund has been already approved for building 31 border posts as 2nd line of defence to prevent infiltration. Currently, five each in the Dhubri and in Karimganj district are

390
working as 2nd line of defence. The BSF and the BDR are jointly carrying out vigilance across the border and they are also engaged in discussions regularly. Apart from that a section of Assam Police force has been deployed with the BSF to check passport and increase border vigilance. (Assam Legislative Assembly Debates, August 5, 2003: 132-133).

5. XII Cost of the IMDT Management

The Law Commission Report (2000), after studying the status report submitted by the Union Government and the state of West Bengal Government estimated that the number of Illegal migrants in border states are to be 5.4 million in West Bengal, 4 million in Assam, and 0.8 million in Tripura. According to the report, the number of such migrants is highest in the State of West Bengal. These migrants have spread out to other parts of the country. In Maharashtra, their number is estimated at 0.5 million, in Rajasthan, 0.5 million and, In Delhi, 0.3 million. India with Its own unmanageable population is hardly in a possession to take upon this additional burden. Now, if the IMDT has to deal with the 4 million illegal migrants in Assam, what would be the real cost for detecting, determining and deporting the migrants (Law Commission of India 2000: 9-10)

The tribunals set up under the IMDT Act in Assam are high cost ventures and millions of rupees have been spent in detecting, determining and deporting migrants. In our visit (from 15th June 25th June, 2009) to the Mongoldoi, Udalguri, Tezpur, Nagaon, Nalbari and Barpeta district Foreigners Tribunal and our discussions therein, the members and staff of the tribunal revealed that on an average 5 to 10 employees are appointed including the chief judge. The employees also revealed that they earlier worked in the IlMGT court and later transferred to the foreigner’s tribunal when the IMDT was scrapped.7

In the Mongoldoi Foreigners Tribunal, the chief judge, R N Saikia revealed that on an average there were 6 employees in each tribunal of IMDT earlier. So if we count the total

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7 In a discussion with Judges, Staff members of the Foreigners Tribunal in Assam from 15/06/09 to 25/06/09
number of employees of the IMDT court will be 96 to 100 persons based on separate salary structure. Saikia revealed that in Mongoldoi itself, during the IMDT court the total salary of the 6 staff and including the office maintenance expenditure will be around 75000 – 80000 per month. The other staff from the above mentioned tribunals expressed the same view. They also revealed that during the IMDT court time, the office was poorly maintained and there was lack of proper infrastructure. If we count the total expenditure for maintaining the entire IMDT courts including the salaries of all, (average 80000 per court) it will come around 80000 X 17 = 1360000\(^8\) almost 1.4 million per month with an estimated cost of Rs. 168 million per annum only for the salaries of the employees. Saikia also revealed that the maintenance of the office, vehicles, security for the judges is an extra cost. According to him, “the court hearing and process of determining is expensive, sometimes they have to be postponed as the accused don’t attend the court on due date, so a change of date occurs almost every hearing.”\(^9\)

Again according to the Assam Legislative Assembly Debates (March 11, 2003: 51), “the expenditure of the IMDT court legal procedure during 2001-2002, was Rs. 129 million. So the expenditure might be higher than what it was during 1985s and 1990s. The Assam Governor’s Report of 1998 views, “The Border organization of 4000 Policemen processes the cases of alleged illegal migrants. The efforts of these agencies maintained at a cost of hundreds of crores to the Exchequer, extending over a period of 15 years, has led to the identification of only 9,599 illegal migrants. Out of these only 1,454 could be deported. These statistics amply establish the futility of continuing with the IMDT Act in its present form” (Assam Governor’s Report 1998).

5. XIII Why IMDT failed

According to the Assam Governor’s Report (1998), “there are certain difficulties in executing various provisions of IMDT Act. Firstly, the tribunals have been starved of funds and resources and only five tribunals are functioning out of the sixteen district

\(^8\) 16 IMDT tribunal and an Appellate Court based in Guwahati

\(^9\) In a discussion with the Chief Judge, Foreigner’s Tribunal, Mangaldai, during Researcher’s field visit to Assam on 17/06/09
tribunals. Meanwhile, the remaining eleven tribunals have only one person each on the bench and as such are non-functional and apart from that the salaries and TA bills of the staff are not paid in time. Some of the essential facilities like the transport and telephone services are non-existent and funds are not available to buy even postage stamp. Apart from the above mentioned problems, the Border Organization, which is responsible for executing these cases, has been encountering many difficulties at every steps. A complaint when received or the Police initiate inquiry against a suspect, the suspected individual shifts to another location and it is not traceable. When the individual is available, he insists he is an Indian national and while the Police try to collect evidence, he often disappears. The process of absconding also occurs at two subsequent stages - before the case is heard by the Tribunal and during the 30 days period allowed to the person to appear to the higher tribunal or face expulsion. Under this Act, the Police do not have the powers of search, seizure or arrest as available under the Foreigners Act. During trial by Tribunals, prosecution witnesses do not appear because there is no provision for paying them their travelling expense”.

There has been a continuous demand for repealing the IMDT Act from some political parties. However this has met with strong opposition from the minority communities. The supporter views that the allegation of discriminatory provisions connected with this Act are not true and they want extending to other states also. These supporters argued that the Foreigners Act of 1946 is a legacy of the British era and were meant to deal with foreign national who were ethnically and culturally different from Indians. On the other hand, there should be separate legislation to deal with Bangladeshi migrants, who have ethnic, cultural, linguistic and religious affinities with Indian population. However, this argument doesn’t support the other migrants staying in India. Again it is argued that the number of migrants detected under the IMDT Act is not due to any infirmities of this Act or in the procedures being followed, but due to the very small numbers of illegal migrants in the country. However, this argument doesn’t support all available statistics and other indicators, establishing the presence of a very large number of Bangladeshi migrants. Meanwhile, the opponent demands its immediate repeal as it is highly discriminatory legislation applying only to Assam and not to any other State and argued that such
legislation should not have been on the statue of any sovereign state. According to them, it gives freedom to a foreigner to enter this country and allows the migrants to prove his nationality – that he is an illegal migrant - so that the concerned authority denies his citizenship (Assam Governor’s Report 1998 & Nayyar 2005).

Table 5.1V
District wise list of people declared as Foreigners under IMDT and Foreigners Tribunal Act in 2001 and 2002

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Dhubri</td>
<td>0</td>
<td>4</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Goalpara</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Kokrajhar</td>
<td>0</td>
<td>16</td>
<td>16</td>
<td>4</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td>Barpeta</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>20</td>
<td>4</td>
<td>24</td>
</tr>
<tr>
<td>Nalbari</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Guwahati City</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>9</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Kamrup</td>
<td>6</td>
<td>0</td>
<td>6</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Darrang</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sonitpur</td>
<td>0</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Lakhimpur</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>17</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>Dibrugarh</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>42</td>
<td>0</td>
<td>42</td>
</tr>
<tr>
<td>Sibasagar</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>22</td>
<td>0</td>
<td>22</td>
</tr>
<tr>
<td>Jorhat</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>17</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>Nagaon</td>
<td>372</td>
<td>589</td>
<td>961</td>
<td>449</td>
<td>1395</td>
<td>1844</td>
</tr>
<tr>
<td>Karbi Anglong</td>
<td>34</td>
<td>0</td>
<td>34</td>
<td>9</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>N.C. Hills</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Cachar</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Karimganj</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Golaghat</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bongaigaon</td>
<td>0</td>
<td>36</td>
<td>36</td>
<td>15</td>
<td>16</td>
<td>31</td>
</tr>
<tr>
<td>Morigaon</td>
<td>0</td>
<td>575</td>
<td>575</td>
<td>0</td>
<td>907</td>
<td>907</td>
</tr>
<tr>
<td>Hailakandi</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Dhemaji</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>55</td>
<td>55</td>
</tr>
<tr>
<td>Tinsukia</td>
<td>6</td>
<td>4</td>
<td>10</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>423</td>
<td>1232</td>
<td>1655</td>
<td>626</td>
<td>2389</td>
<td>3015</td>
</tr>
</tbody>
</table>

Under the Foreigners Act which applies to the rest of the country and which is in consonance with the practice followed the world over; it is for the foreigner to prove that he is an Indian national to claim Indian citizenship. The IMDT Act shifts the burden of proof on the complainant or the Police, to establish that the person complained against is a foreigner. (Governor's Report, 1998) In a Lok Sabha debate, Santosh Mohan Dev said, “This IMDT Act is an Act which is not only to detect, delist or deport foreigners, but it is also a safety valve to protect the real citizens of India who are subject to harassment by the police. In any part of the country, if there is a foreigner, he is covered by the Foreigners Act, 1946. As per the Foreigners Act, 1946, the onus is on the person on whom the allegation is made to prove that he is not a foreigner, that he is an Indian. But under the IMDT Act, if an allegation is brought by a third party or by the Government, it is also their duty to prove that person is a foreigner, that he has crossed over illegally, after 1971, without a passport, without a visa; or, if he had come in with a passport and a visa that he has been overstaying (Parliament of India Debate, Lok Sabha, November 26, 1996).

According to an advocate in the Nalbari Foreigners Tribunal, Prashant Medhi, revealed, “The process of determining a migrant starts after somebody make complaints. Determining a migrant goes through a long process of cross-checks of documents and the process is lengthy. Till the process of determining the status of a migrant is over, the migrant manages to get the necessary documents to prove his citizenship.” According to another advocate of the Guwahati High Court, Madan Deka,

"the IMDT act was passed during the time of Abdul Mahim Majumdar, the Law Minister in Assam during 1983, to maintain the vote bank policy of the Congress Party. The IMDT act has provided security for the migrants instead deporting them; they got rights to prove themselves as Indian citizens. The provision of the act was itself a faulty, the provisions of making complaints within three kilometer radius, or even from a police station is not conducive - inapplicable. There are some areas where the presence of migrants are very high and a non-migrants when he makes complaints he has to be within that ‘three kilometer radius or the same police station’ otherwise he can not make a complaint and also with his own expenses. And also if there is no local

10 In a discussion with advocate Prashant Medhi, Nalbari Foreigners Tribunal, 16/06/09, during a field visit to Assam.
inhabitants in some areas till 5 square kilometer radius, so no complaints can be made. Say for example, if there are large concentration of migrants (majority) in the char area, in some particular district, for e.g, Nagaon, Goalpara, Karimganj, Dhubri etc. those who will make complaints in the IMDT court, he is targeted and his security for life is at risk. Even if some people take initiative to make complaints from other areas, by making arrangements through changing address, his security is also at stake, he might be targeted. And even after that the determining process is lengthy where migrants get a chance to prepare their ration card, other identity card through scrupulous channels to prove their nationality."

He further stated that "one retired Judge Hiranya Bhatta first complaint against such loopholes of the IMDT act through a writ petition in the Guwahati High Court. Some others also followed. Actually the congress Party is still working in favour of migrants just for vote bank so the process of detecting, determining and deporting will be more complicated even in the foreigners Tribunal. The Foreigners Tribunal is nothing but an extension of the IMDT tribunal – the procedure is same and the fault systems of determining still persist and this is all for vote banks. There are also some other problem, once a person is determined and deported, he again comes back to the same place through same illegal means and channels. Some relatives of the migrants welcome new migrants and get married with their daughter with false address which also makes the process complicated. Its a very difficult problem, now a days the migrants determine the fate of 35 Legislative Assembly seats in Assam. There is so much of poverty in Bangladesh that people will move out for economic opportunities. But in case with Assam, we don’t have that kind of extreme poverty, so people from Bangladesh prefers to settle down in Assam."

When the court determines and declares a citizen illegal migrant, it is the duty of the police to deport the migrant. When discussed with a Police Officer, Border Branch, at the Darrang District Superintendent of Police office, he said,

"when court determines we serve a notice to an illegal migrant for a month to leave the country. If he doesn’t leave, we search him to arrest but the accused remains untraceable. Actually, the people living in that area helps the migrant to abscond or the migrant gets advance information of our presence. He then disappears or escapes but again comes back after the time of notice is over. We are not getting cases of IMDT since 2001 – rarely do we get."

The police officer also revealed that "to deport a person or an illegal migrant is also expensive and time consuming. The deportation of the migrant depends on the address of the deportee (In Bangladesh), whatever may be the nearest border outpost the police

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11 In a discussion with advocate Madan Chandra Deka, Guwahati High Court on 15/06/09, during a field visit to Assam.

12 Ibid.

13 In a discussion with Ratneswar Hazarika, Officer in Charge, Border Branch, Darrang District Superintendent of Police during Researchers field trip to Assam on 22/6/09
has to take them there accompanied by the two police personnel. From Darrang district the expenditure of travelling for the deportee depends, it costs around Rs. 350 for the migrants alone’. The Police Officer further said, “Deportation of illegal migrants depends on the number of days; we also have to provide food to migrants depending on the time of arrest and till the days of deporting. If a deportee is arrested on Thursday night it’s difficult to deport him on Friday, because we have to arrange everything for deportation. So we can start only on Saturday then again we have to wait/consult the BSF and BDR, then the process start. Thus the total cost of a deportee sometime cross more than Rs.1000-1200. The travelling/dearness allowances for the police are also an extra.”

5. XIV ___ Cases Related to the IMDT

There are some important cases dealing with the migrants under the IMDT that clearly shows the difficulties and other problems in dealing with migrants. As per the Md. Sahid Ali Fakir and Ors vs Union of India dated 2111/1992, views,

________ “the Gauhati High Court declared that based on one single witness a person can not be declared as illegal migrant. The state which initiates the case must have proper evidences against such person so as to declare him/her as illegal migrant. The Sonitpur (District) IMDT Tribunal declared Md. Sahid Ali as illegal Immigrant on the basis of one witness i.e. the police officer, on the basis of whose report the proceeding was initiated. The petitioner (Police Officer) examined three witnesses and filed and proved some documents. The learned tribunal by the judgment and order dated 17-2-86 passed in the I.M.D.T. Case No. 8 of 1985, held that the Md. Sahid Ali migrated to India (Assam) from Bangladesh in the year 1973 and therefore, were foreign nationality. The judgment observed that the Tribunal committed manifest error of law in placing entire burden on the petitioners to establish that they are citizens of India although it was for the State to discharge initial burden by providing cogent evidence that petitioners are not citizens of India and that the petitioners migrated in 1973 from Bangladesh. No evidence is adduced in support of the allegation except the hearsay evidence of the sole witness of the Inquiry Officer who deposed that he came to know from one Lihi Nath and Kinaram Nath of the locality that the petitioners migrated into India (Assam) in 1973. But, neither Lohit nor Kinaram has been examined. The Judgement revealed that the tribunal committed manifest errors of law apparent on the face of the record in placing burden on the petitioners to establish that they are citizens of India. When the State came with the complaint that the petitioners migrated into India in 1973, onus was on the complainant to prove the allegation” (Md. Sahid Ali Fakir And Ors. vs Union Of India (Uoi) And Air. on 21 January, 1992, AIR 1993 Gau 9).

________ Ibid
The judgment by the Gauhati High Court in *Md. Sahid Ali Fakir and Ors vs Union of India* dated 21/1/1992 stated,

"The burden is on the State to rebut the presumption by adducing cogent evidence and placing materials. Determination of such persons as foreign national and consequent deportation from his permanent residence with the members of his family and throwing them to unknown destination would naturally entail immense suffering. Before adjudging the person permanently residing in India (Assam) as foreign national, the Tribunal should be cautious, slow, retrospect and should make close scrutiny of the materials on records to see as to whether the State has been able to establish the case against such person with cogent, consistent and convincing evidence. Summary enquiry by the Tribunal is fraught with every possibility of adjudging a citizen as foreign national and subjecting him to deprivation of his fundamental right guaranteed under Article 21 and the right under Article 300A of the Constitution, without any authority of law. It is unsafe to adjudge a person residing permanently in India (Assam) as foreigner on the sole testimony of the Enquiry Officer" (Md. Sahid Ali Fakir And Ors. vs Union Of India (Uoi) And Air. on 21 January, 1992, AIR 1993 Gau 9)

In a judgment in the cases of Mahadev Haldar vs State Of Assam And Air on 6/8/2003. Mahadev Haldar was declared as illegal migrant by order dated 16.3.2002. Aggrieved by the said order the petitioner/appellant preferred an appeal to the Appellate Tribunal. The Appellate Tribunal dismissed the appeal. Against the order of the Appellate Tribunal a writ petition (WP C No. 6988/2002) was preferred before the Gauhati High Court. The High Court dismisses the writ petition and the present appeal. In the appeal preferred by the petitioner it is viewed,

"the petitioner/appellant was not given appropriate opportunity to defend himself and the proceedings taken up by the Tribunal are contrary to well established norms and legal procedure to be adopted while determining the question raised before it. It appears from the record that the petitioner/appellant was served with a notice issued by the Tribunal and date was fixed for 18.12.2001 for service report. On 18.12.2001 the Chairman was on leave and therefore the matter was adjourned to 28.1.2002. On 28.1.2002 petitioner/appellant submitted his written statement, which was kept on record and the matter was listed for 21.2.2002. On 21.2.2002 both the parties entered appearance before the Tribunal and the case was fixed for 16.3.2002 for State evidence with a direction to the State to take further steps. On 16.3.2002 when the matter was taken up the petitioner remained absent. The Tribunal examined one witness produced by the prosecution and passed order declaring the petitioner/appellant as illegal migrant who came to India after 25th March 1971. It appears from the order that there is no specific discussion on the evidence led by the prosecution and the Tribunal has
only from the evidence of State witness stated – ‘we are of the view that the O.P. Mahadev Hal dar is an illegal migrant who came to India after 25th March 1971.’ We find gross procedural irregularity in the proceeding taken up by the Tribunal in as much as the petitioner has not been given any opportunity to produce his evidence in defence. It is clear from the order dated 21.2.2002 that the matter was fixed on 16.3.2002 for evidence of the State only. The case was not fixed for evidence of the defence, thus at best the Tribunal could have proceeded ex-parte against the petitioner/apellant and examine the prosecution witness that what has been done in the present case, the Tribunal should have stopped at that. It could not have proceeded to decide the matter without affording any opportunity to the defence to lead its evidence. It is not a case where the date was fixed for evidence of both parties, nor was the appellant given any notice that he would be required to lead evidence on that date. When the appellant has filed his written statement before the Tribunal raising certain defence he is entitled to lead evidence on his defence. When the matter was not listed for evidence of defence the case could not have been closed, neither the final order could have been passed on that day. For the aforesaid reason we hold that the appellant was not given opportunity to defend himself and thus the order passed by the Tribunal on 16.3.2002 could not stand and is hereby set aside (Mahadev Hal dar vs State Of Assam And Anr. on 6 August, 2003, 3 GLR 586).

In Md. Sibar Uddin and Ors. vs Union Of India And Ors dated 29/3/1993, the Gauhati High Court in its Judgment revealed

"if a person claims that he is a citizen of India by virtue of entering into this country on or before 1st day of January, 1966 and on fulfilment of the conditions as laid down in Section 6A of the Citizenship Act he shall be deemed to be a citizen of India. But the section also provides that any person seeking registration under the said Section 6A, the opinion of the Tribunal constituted under Foreigners Order, 1964 shall be deemed to be the sufficient proof regarding registration. On the other hand if a foreigner enters India after 1-1-1966, but before 25-3-1971 his question has to be determined by the Tribunal constituted under the Act.” Basically the suit was laid by 4 plaintiffs praying for a decree for declaration that they are citizens of India and also for a permanent injunction restraining the defendants from deporting them from India. In the plaint it was argued that the plaintiff came to Assam from erstwhile East Pakistan with his father before 1940 and settled in village Uttar Mainabari, Police Station Bagbor, District Barpeta. But they were arrested for deporting on 11-2-1979 but somehow they could not be sent back to Bangladesh and thereafter they returned and filed the suit. By order dated 28-5-88, it was recorded by learned trial court that in the year 1978 plaintiffs were deported from India and they returned from Bangladesh boundary. According to learned trial court, in view of Sections 23 and 24 of the Illegal Migrants (Determination by Tribunals) Act, 1983 reading with Section 9, C.P.C. this suit is barred. The plaintiffs were directed to lay their suit before the Tribunal constituted under the above Act” (Md. Sibar Uddin And Ors. vs Union Of India (Uoi) And Ors. on 29 March, 1993, AIR 1995 Gau 44).
The judgment observed, "as in the case in hand a specific statement has been made in the plaint that the plaintiff No. 1 entered India with his father in the year 1940, the plaintiffs can be deported only after obtaining opinion of the Foreigners Tribunal constituted under the Foreigners Act, 1946 and if such an opinion is against the plaintiffs. Accordingly, if the concerned authority wants to deport the plaintiffs it may be done only after getting such an opinion from the Tribunal constituted under the Foreigners (Tribunals) Order 1964. If any such reference is made to the Tribunal, it shall be decided after issuing notice to the plaintiffs and giving them reasonable opportunity of being heard. Till the legal formalities are complied with the concerned authority shall not deport the plaintiffs from India" (Md. Sibar Uddin And Ors. vs Union Of India (Uoi) And Ors. on 29 March, 1993, AIR 1995 Gau 44).

The IMDT Act does not exclusively apply to any religious community. It is applicable as much to Bengali Hindus as to Bengali Muslims and in Assam no distinction has been made between Hindus and Muslims. Those migrants who came into Assam up to 24 March, 1971 have been given Indian citizenship, irrespective of the religious community to which they belong. According to the Assam Governor’s Report (1998), "even after granting citizenship, 18 percent of the total population comprises Bangladeshi migrants in 1991. However, the scope of harassment gets considerably reduced and the detecting, determining and deporting the post 1971 migrants became easier. But it’s too not happening and the IMDT Act is entirely failing in the state to detect the migrants. The migrants who came before 25th March, 1971, have been regularized and granted citizenship but the post 25th March, 1971 migrants continued to be treated as stateless citizens" (Assam Governor’s Report 1998 & Nayyar 2005).

There was demand for repeal of the IMDT Act from the AASU since the Act came into being. On 27 January 1990, the Union Home Secretary and the chief secretary of Assam signed a document setting a time frame for the implementation of the Assam Accord explicitly mentioning the decision for repeal of the IMDT Act to be taken by 28 February 1991. The AASU repeatedly called the government to take initiative for repealing and the assurance from the government continued (Assam Governor’s Report 1998) In 1997, the
Union Home Minister admitted that the Act’s results were extremely poor and he announced assurance for repealing the same. In another meeting between the representatives of the Union Government, Government of Assam and the AASU, assurance for repeal was given again. These administrative and political intrigues were shortened as the issue of repeal was pushed into the judicial domain in 2000 when Sarbananda Sonowal, a former AASU President, MLA and MP of the AGP, filed a writ petition for the Act’s repeal in the Supreme Court (Sarbananda Sonowal v. Union of India & Air [2005] INSC 338).

The petition stated, “IMDT Act is wholly arbitrary, unreasonable and discriminates against a class of citizens of India, making it impossible for citizens who are residents in Assam to secure the detection and deportation of foreigners” (Sarbananda Sonowal v. Union of India & Air [2005] INSC 338). However, the Supreme Court’s decision to declare the Act unconstitutional came in July 2005, almost five years after Sonowal filed writ petition. During the five year five counter affidavits were filed, three by the Union Government and two by the State Government. The counter affidavits filed by the state and union government following the changes in regimes and each affidavits rolls back the position articulated by the previous regime (Roy & Singh 2009: 49-50).

The government of Assam filed two affidavits, the first was during the AGP government in August 2000 in response of the Sonowal’s petition and the next was filed by the Congress government, who succeeded AGP, reversing the position taken by the first affidavit. From the Union Government’s side, the first affidavit was filed by the BJP – NDA government in July 2000 which was an immediate response to Sonowal’s petition. The second again filed by the BJP – NDA government was in response of the second affidavit filed by the Congress Government in Assam. The third additional affidavit was filed by the Congress – led UPA that succeeded the NDA in the Centre. The Centre – State politics is on its way, if the second additional affidavit by the NDA was more emphatatic than its first counter-affidavit in portraying the aggravated circumstances in Assam, necessitated by the reversal in the now Congress – led State government’s position, the UPA government’s affidavit totally reversed the Centres position to bring it in consonance with position articulated in the second affidavit by the state government in
Assam (Roy & Singh 2009: 48-49). The differences among the counter-affidavits can be described by the following Table 5.V.

**Table 5.V**

**Counter Affidavits and its Salient Features**

<table>
<thead>
<tr>
<th>Nature of Affidavit</th>
<th>Date</th>
<th>Filed by</th>
<th>Salient Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>First (Counter Affidavit)</td>
<td>18 July 2000</td>
<td>By the Central Government (BJP-led NDA)</td>
<td>• Filed in immediate response to Sonowal’s Affidavit</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Agreed with Sonowal’s petition on the IMDT Act being discriminatory for its application only in Assam</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• IMDT Act inefficient/inadequate</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• While Sonowal’s petition focussed on an effective legal resolution of the foreigners issue, the NDA government at the Centre emphasised demographic change in Assam, religious, economic reasons and implications and issue of National Security</td>
</tr>
<tr>
<td>First (Counter Affidavit)</td>
<td>28 Aug, 2000</td>
<td>By the (AGP) Government in Assam</td>
<td>• Filed in immediate response to Sonowal’s Petition</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• IMDT Act was discriminatory</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Focussed on change in demographic profile of Assam in particular the rise of Muslim population.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Drew for legitimacy on Assam Movement, its own role in it, the mass/popular basis of the movement</td>
</tr>
<tr>
<td>Second (Counter Affidavit)</td>
<td>8 Aug, 2001</td>
<td>By the (Congress) Government in Assam</td>
<td>• Filed by the new government in Assam after withdrawing the first affidavit to ‘correct’ the position taken by the previous AGP government</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Affidavit reversed the position taken by the AGP government in Assam on IMDT Act declaring that it was constitutional and there was no reason to scrap it.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Asserted claims to peoples support on the basis of its electoral victory and its manifesto pledging to save Indian citizens from unnecessary harassment in the name of detecting foreigners</td>
</tr>
<tr>
<td>Second (Additional Affidavit)</td>
<td></td>
<td>By the Central Government (BJP-led NDA)</td>
<td>• Filed in response to the changed affidavit filed by the Congress government in Assam</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Reiterated its earlier stand on IMDT Act, demographic change and national security</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Emphasised that the IMDT Act was in fact the single factor responsible for the aggravated situation in Assam</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• The continued application of the Act amounted to preferential protection of the Illegal migrants in Assam</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Exposes the ’duplicity’ in the Congress government’s position in the state by referring to the stand taken by the Congress’s on the issue in other forums and recommendations of the Law Commission</td>
</tr>
<tr>
<td>Third (Counter Affidavit)</td>
<td>24 Nov, 2004</td>
<td>By the Central Government (Congress-led UPA)</td>
<td>• Totally reversed the Centres position to bring it in consonance with the position articulated in the second affidavit by the state government in Assam</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• IMDT Act protective of genuine Indian citizens by enabling judicial scrutiny.</td>
</tr>
</tbody>
</table>

5. XV __ Supreme Court Judgement and Sonowal Affidavit

On July 12 2005, the Supreme Court of India, led by the chief justice, Lahoti and two other eminent justices, in a judgment declared the IMDT Act as null and void. In its judgments on the case Sarbananda Sonowal v. Union of India & Air [2005] INSC 338 (12 July 2005) declares, “This writ petition under Article 32 of the Constitution of India has been filed by way of public interest litigation for declaring certain provisions of the Illegal Migrants (Determination by Tribunals) Act, (Act No.39 of 1983) 1983 as ultra vires the Constitution of India, null and void and consequent declaration that the Foreigners Act, 1946 and the Rules made there under shall apply to the State of Assam.

The second prayer made is to declare the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires the Constitution of India and also under Section 28 of the aforesaid Act and, therefore, null and void. Some more relief’s have been claimed which will be referred to at the appropriate stage. The respondents to the writ petition are the Union of India and the State of Assam” (Sarbananda Sonowal v. Union of India & Air [2005] INSC 338, 12 July 2005).

According to the Sarbananda Sonowal v. Union of India & Air [2005] INSC 338, “The issues raised in the writ petition concern all residents in the State of Assam whose rights as citizens of India have been materially and gravely prejudiced by the operation of the Illegal Migrants (Determination by Tribunals) Act, 1983 (hereinafter referred to as “the IMDT Act”). The principal grievance petitioner, the IMDT Act is wholly arbitrary, unreasonable and discriminates against a class of citizens of India, making it impossible for citizens to secure the detection and deportation of migrants from Indian soil. The Foreigners Act, 1946, which applies all through out the country, but the IMDT Act which was enacted subsequently with the professed aim of making detection and deportation residing in Assam easier has completely failed. And even those provisions of the IMDT Act, which afford some measures of protection to some genuine Indian citizens against migrants, are not being properly enforced due to extraneous political considerations. However, the number of migrants, who surreptitiously entered Assam after 25th March, 1971, without possession of valid passport, travel documents continues to reside in Assam".
The main arguments of the petition are that the IMDT Act 1983 virtually gives migrants in the state preferential protection in a matter relating to the citizenship of India. Again the fears losing the identity of the Assamese people were stated in the argument by saying that “the prophecy that except Sivasagar district the Assamese people will not find themselves at home in Assam is becoming true”. Again the petitioner argues, “because of large-scale migrations from Bangladesh, the spectre looms large of the indigenous people of Assam being reduced to a minority in their home state, their cultural survival will be in jeopardy, their political control will be weakened, and their employment opportunities will be undermined.” It also argues that the silent and invidious demographic invasion of Assam may result in the loss of the geo-strategically vital districts of lower Assam. Influx of these illegal migrants is turning these districts into a Muslim majority region. A demand for merger with Bangladesh may be made. International Islamic fundamentalists may provide a driving force for this demand. Loss of lower Assam will sever the entire landmass of the northeast from the rest of India (Sarbananda Sonowal v. Union of India & Air [2005] INSC 338, 12 July 2005).

However, the process of detection and deportation under the IMDT Act has been extremely dismal. According to the information furnished by the Government of Assam, the progress in respect of detection/expulsion of illegal migrants (those who entered Assam on or after 25.3.1971 upto 30.4.2000) is as follows: (Bhusan 2005)

- Total number of enquiries initiated 3,10,759
- Total number of enquiries completed 3, 07,955
- Total number of enquiries referred to Screening Committee 3, 01,986
- Total number of enquiries made by the Screening Committee 2, 98,465
- Total number of enquiries referred to IM (DT) s 38,631
- Total number of enquiries disposed of by IM (DT) s 16,599
- Total number of persons declared as illegal migrants 10,015
- Total number of illegal migrants physically expelled 1,481
- Total number of illegal migrants to whom expulsion order served 5,733
- Total number of enquiries pending with Screening Committee 3,521

404
• Total number of enquiries pending with the Tribunal 22,072 (Sarbananda Sonowal v. Union of India & Air [2005] INSC 338, 12 July 2005).

According to the *Sarbananda Sonowal v. Union of India & Air [2005] INSC 338, 12 July 2005*, the decision made by the Supreme Court of India declares that the IMDT Act is null and void with the following directions:

1. The provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 are declared to be ultra vires the Constitution of India and are struck down.

2. The Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function.

3. All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made there under and the procedure prescribed under the Foreigners (Tribunals) Order, 1964.

4. It will be open to the authorities to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever.

5. All appeals pending before the Appellate Tribunal shall be deemed to have abated. And finally, the respondents are directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with cases of foreigners, who have illegally come from Bangladesh or are illegally residing in Assam (Sarbananda Sonowal v. Union of India & Air [2005] INSC 338, 12 July 2005).

Following the defeat of its stand in the Supreme Court Judgment, the Union Government UPA-led alliance set up a Group of Minister (GoM) to address the situation arising out of the scrapping of the Act. The ruling party - Home Minister, Shivraj Patil stated, “we will implement whatever the Supreme Court has observed... at the same time the government
will ensure justice to those who speak Bengali or are from a particular religion so that they are not harassed. We will keep both these aspects in mind in formulating policy.” In February 2006, the Congress led – UPA proposed that the Foreigners Act, which would now determine the ‘illegal migrant’, be modified to give a fair chance to prove their credentials (Roy & Singh 2009). On February 10, 2006, the Union Government issued a notification through Foreigners (Tribunal for Assam) order 2006 whereby the onus to prove that a particular person was a foreigner was put back on the complainant, a procedure that figured under the repealed IMDT Act (Rammohan 2007: 146-150). By passing the Foreigners (Tribunal for Assam) order, the central government directed to establish 32 tribunals in Assam for fair hearing of the cases. After the abolition of IMDT tribunals, all cases pending in the court were transferred to the newly created 32 tribunals under the Foreigner’s Tribunal. The newly created 32 tribunals scattered in various districts are shown in the Table 5.VI. This order again deeply imbricate in the state politics and this was a move largely to gain electoral benefits in Assam in the forthcoming State Assembly Election.

5. XVI__Politics of IMDT

The IMDT Act and the Bangladeshi migrant’s problem has become an issue of high level politics for most of the national as well as regional political parties. The political parties have been using the migrants for the purpose of election and vote banks. The Congress Party in Assam is accused of using Bangladeshi migrants as their vote bank and they have been always supporting the IMDT Act in the state. On the other hand, the AGP has been using this issue as their poll plank and they habitually raise this issue only during the election period. And importantly, even after coming to power twice in the state has not been able to abolish it. The BJP has given a communal colour to the issue, whereas they are ready to accept the Hindu Bangladeshi migrants but not the Muslim Bangladeshis (Assam Governor Report 1998 & Victor 2004).

Meanwhile, the Assam Pradesh Congress Committee, in its manifesto, reveals that the party is always determined to deport foreign nationals after detection through judicial process and as per provisions of the Assam Accord of 1985. The Congress Party favours
the continuation of the IMDT Act enacted in 1983 to check undue harassment of genuine Indian citizens in the name of foreigners. The Congress Party is committed to protect genuine Indian citizens from undue harassment. The party blames the AGP and BJP for its campaign against the IMDT for its political benefits and criticized for its demands for repeal of IMDT Act thereby sowing seeds of fear and anxiety among different communities of the State (APCC, Election Manifesto 2004: 15-16; APCC 2006: 18-20).

Table 5.VI

Foreigners Tribunal in Assam under Foreigners (Tribunal for Assam) order 2006 and Jurisdiction

<table>
<thead>
<tr>
<th>Name of the Foreigners Tribunal</th>
<th>Headquarters</th>
<th>Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dhubri-I</td>
<td>Dhubri District</td>
<td>Areas under Dhubri, Gouripur, South Salmara and Mankachar police station of Dhubri</td>
</tr>
<tr>
<td>Dhubri-II</td>
<td>- do-</td>
<td>Areas under Golakganj, Bilasipara, Bagaripuri and Chapar Police Station</td>
</tr>
<tr>
<td>Goalpara</td>
<td>Goalpara District</td>
<td>Goalpara District</td>
</tr>
<tr>
<td>Kokrajhar</td>
<td>Kokrajhar District</td>
<td>Kokrajhar District</td>
</tr>
<tr>
<td>Bongaigaon</td>
<td>Bongaigaon District</td>
<td>Bongaigaon and Chirang district</td>
</tr>
<tr>
<td>Barpeta –I</td>
<td>Barpeta district</td>
<td>Areas under Baghbor, Kalgachia police station</td>
</tr>
<tr>
<td>Barpeta –II</td>
<td>Barpeta district</td>
<td>Barpeta Road, Sarbhog, tarabari and Hauli police station under the barpeta district</td>
</tr>
<tr>
<td>Barpeta –III</td>
<td>Barpeta district</td>
<td>Under Patarkuchi, Sarthebari Police Station, Salbari, Gobardhana, Simla police station of Baska district</td>
</tr>
<tr>
<td>Nalbari</td>
<td>Nalbari district</td>
<td>Nalbari district and Goreswar, Tamulpur, Barama, Barbara, baganpara, Nagrijuli, Kumarikata, Masalpur police station under Baska district</td>
</tr>
<tr>
<td>Kamrup (Rural)</td>
<td>Kamrup District</td>
<td>Kamrup district</td>
</tr>
<tr>
<td>Kamrup (Metro)</td>
<td>Kamrup District</td>
<td>Kamrup district</td>
</tr>
<tr>
<td>Mangaldoi –I</td>
<td>Darrang District</td>
<td>Darrang District</td>
</tr>
<tr>
<td>Mangaldoi –II</td>
<td>Udalguri District</td>
<td>Udalguri District</td>
</tr>
<tr>
<td>Morigaon –I</td>
<td>Morigaon District</td>
<td>Jagiroad, Mayong and Dharamtul police station of Morigaon District</td>
</tr>
<tr>
<td>Morigaon –II</td>
<td>Marigaon District</td>
<td>Marigaon, Lahorighat, Nillirbhet, Moirabari police station</td>
</tr>
<tr>
<td>Nagaon- I</td>
<td>Nagaon District</td>
<td>Nagaon, Jajori, Dhing, Rupahi ghat, Juria, bardua, Raha, and</td>
</tr>
<tr>
<td>District</td>
<td>Police Stations</td>
<td></td>
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<td>--------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Nagaon II</td>
<td>Kaliabor, Samaguri, Jakhala Bandha, Uluani, Kachua and Khatuwali Police station</td>
<td></td>
</tr>
<tr>
<td>Hojai</td>
<td>Hojai, Lumding, Lanka, Murajhar, Jamunamukh, Dabaka and Kaki Police station of Nagaon district</td>
<td></td>
</tr>
<tr>
<td>Tezpur I</td>
<td>Tezpur, Dhekiajuli, Thelamara, Misamari &amp; Rangapara police station of Sonitpur district</td>
<td></td>
</tr>
<tr>
<td>Tezpur II</td>
<td>Jamuguri, Sootia, Biswanath Chariali, Behali, Halem &amp; Gohpur police station of Sonitpur district</td>
<td></td>
</tr>
<tr>
<td>North Lakhimpur I</td>
<td>North Lakhimpur, Bihpuria and Laluk Police station</td>
<td></td>
</tr>
<tr>
<td>North Lakhimpur II</td>
<td>Dhakuakhana, Ghilamara, Baginadi police station</td>
<td></td>
</tr>
<tr>
<td>Dhemaji</td>
<td>Dhemai district</td>
<td></td>
</tr>
<tr>
<td>Dibrugarh</td>
<td>Dibrugarh and Tinsukia District</td>
<td></td>
</tr>
<tr>
<td>Sivasagar</td>
<td>Sivasagar district</td>
<td></td>
</tr>
<tr>
<td>Jorhat</td>
<td>Jorhat district</td>
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<tr>
<td>Golaghat</td>
<td>Golaghat district</td>
<td></td>
</tr>
<tr>
<td>Diphu</td>
<td>Karbi Anglong &amp; N C Hills district</td>
<td></td>
</tr>
<tr>
<td>Silchar –I</td>
<td>Silchar, barkhola, Sonai police station of Cachar district</td>
<td></td>
</tr>
<tr>
<td>Silchar-II</td>
<td>Katigarh, dholai, Lakhipur, udarband, jirighat, Ghengen police station of cachar district</td>
<td></td>
</tr>
<tr>
<td>Karimganj –I</td>
<td>Badarpur, Palhentodi police station</td>
<td></td>
</tr>
<tr>
<td>Karimganj-II</td>
<td>Rotabari, Ramkrishna nagar of karimganj district of Hailakandi, Lala, katlichera, Algapur PS of Hailakandi district, and areas of Karimganj district &amp; not covered by Karimganj –I Foreigners tribunal and Hailakandi district</td>
<td></td>
</tr>
</tbody>
</table>

Sources: Data collected personally by visiting the Present Foreigners Tribunal, Darrang District in Assam on 16/06/09.

The Congress Party opposes the evil designs of BJP and AGP for repeal of the Act. The Election Manifesto (2004) views, “To effectively control cross border infiltration, the party favoured the distance between two BSF posts in the international border should be reduced to 4-5 Kilometer so that they can see each other and the party proposes to raise this issue properly. The Congress Party argues that in the Punjab sector along the international border permanent wall/fencing has been constructed and damaged portions are being repaired. However, according to the party, in case with Assam, this was not
done. The Congress Party also favours introducing a Multipurpose National Identity Card throughout Assam to detect migrants" (APCC, Election manifesto, 2004: 16-17).

The Communist Party of India (Marxist) accused the regional parties like AGP by saying, "It is extremely interesting to recall that those who had signed the Assam Agreement in August 1985 viz the leadership of AASU and AAGSP did not deem it necessary to protest or raise any objection to the provisions of IMDT Act 1983. On the contrary, they had virtually approved the Act." The CPI-M accused the AGP by saying that during the first five year tenure of AGP rule in Assam (1985-90), the same leadership who had led the violent Assam agitation during 1979-85, did not exhibit any seriousness to check the influx of Bangladeshis from across the porous border. The same party also didn't raise the shortcomings and inadequacy of the IMDT Act, which has the legislated for the purpose of identification, detection and deportation of the Bangladeshi migrants. The party didn't even exert pressure on the Government of India seal the international Assam-Bangladesh borders by erecting suitable fencing and adopting other necessary measures (CPI-M 2005a, 11 September, Peoples Democracy).

When the Assam Gana Parishad (AGP) lost voted out from power in 1991 Assembly Elections, and the Congress (I) catapulted to power in Assam as well as in the centre, the AGP and AASU started raising the slogan against the difficulties and problems of the IMDT Act in the matter of identifying, detecting and deporting the Bangladeshi migrants. And much later, they started claiming that the Foreigners Act 1946 was good enough for the purpose and that since IMDT Act was applicable to the state of Assam alone, it should be scrapped forthwith and further, since the Foreigner's Act 1946 was an all India Act and was applicable to the entire country, it should be made operative in the state of Assam too for the purpose of tackling the illegal migrants from Bangladesh (CPI-M 2005a, 11 September, Peoples Democracy).

The Communist Party of India (Marxist) views, "there is no authoritative assessment about the exact size of Bangladeshi migrants into states like Assam, West Bengal, Tripura etc. In Assam, the estimated number of such Bangladeshi migrants who have entered the state after March 25, 1971 varies from 6 lakhs to 70 to 80 lakhs. Moreover,
the apprehension expressed so far about the size of Muslim infiltration from Bangladesh to Assam is purely speculative because there is no proof or evidence to suggest that the majority of those who have entered Assam surreptitiously from Bangladesh belong to the Muslim community. In Assam, there are entry points in three border districts, viz Karimganj, Cachar and Dhubri which are utilized by the infiltrators to sneak into Assam. It is also not true, that the illegal migrants have occupied vast tracts of land in the borders or near the border which poses danger to national security because of the simple fact that the three borders between Bangladesh and Assam are being inhabited by genuine Indian citizens, both Hindus and Muslims for long years and the same borders are constantly checked and inspected by the BSF and it is inconceivable that new and fresh illegal migrants can settle down in such border areas” (CPI-M 2005b, 18 September, Peoples Democracy).

The CPI-M through views, “The statement that unabated influx of Bangladesh migrants has perceptibly changed the demographic pattern of Assam adversely affecting its language, scripts and culture and that the local Assamese speaking people are in danger of being reduced to a minority in their own state, are not borne by facts. Because in spite of the fact that the increase of Muslim population in Assam during 1971-1991 has been recorded as 77.42 as against 41.89 for Hindus the overall growth of Muslim population between 1951-1991 has risen from 24.68 to 28.42 i.e. the increase in Muslim population in 40 years is 3.74 which cannot be called phenomenal. It should also be noted that during the period 1951-71, i.e. in 20 years, the increase in Hindu population in Assam was 70.88 as against 69.34 for Muslim i.e. almost identical” (CPI-M 2005b, 18 September, Peoples Democracy).

5. XVII_Government Initiatives to Stop Infiltration - Assam Accord Success Stories

Apart from the provisions of the foreigner’s issue, the other provision of the Assam Accord also initiates measures to stop migration. Under the provisions of the Assam Accord (1985) it agrees to safeguard the economic development and other measures to stop further infiltration. The Government also agreed to arrange for the issue of citizenship certificates. To prevent infiltration the international border shall be made
secure against future infiltration by erection of physical barriers like walls, barbed wire fencing and other obstacles at appropriate places. Patrolling by security forces on land and riverine routes all along the international border shall be adequately intensified. In order to further strengthen the security arrangements, to prevent effectively future infiltration, an adequate number of check posts shall be set up. Besides the arrangements mentioned above and keeping in view security considerations, a road all along the international border shall be constructed as to facilitate patrolling by security forces. Land between border and the road would be kept free of human habitation, wherever possible. Riverine patrolling along the international border would be intensified. All effective measures would be adopted to prevent infiltrators crossing or attempting to cross the international border (Assam Accord 1985 & MOHA 2006: 22-24).

The Government of India also held the fourth India-Bangladesh Home Secretary level talks in New Delhi in April 2000. The discussions covered various issues related to border management including, inter-alia, illegal cross border movement, security-related issues, trans-border crimes including smuggling of arms & explosives and trafficking in women and children, boundary matters and visa arrangements, etc. Both sides reiterated their resolve to extend the fullest co-operation to each other to prevent activities prejudicial to mutual interests. The Government of India has been regularly taking up the issue of illegal migrants with the Government of Bangladesh at political and diplomatic levels. Both sides have agreed to adhere to procedures agreed upon earlier in this regard. To prevent illegal border crossing, Government of India has also undertaken a series of steps internally to strengthen security at the border. These include raising of additional battalions of the Border Security Force, reduction of gaps between the border outposts, intensification of patrolling both on land and the riverine border, and construction of border roads and fencing (MOHA 2004).

On May 31, 2000 the Union Government holds tripartite talks on review of the implementation of the Assam Accord with the office bearers of AASU and the representatives of the government of Assam. The tripartite talks inter-alia focused on devising (a) effective border management for containing influx of migrants from Bangladesh; (b) strengthening of Prevention of Infiltration of Foreigners Scheme in
Assam; (c) consolidation of creation of second line of defence to check the migrants (d) expediting the raising of 2 Reserve Battalion in Assam, (e) facilitating the functioning of the Foreigners Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983, and (f) Preservation and updating of the National Register of Citizens (MOHA 2000).

The Govt. of Assam was urged upon to vigorously take follow-up action on the decisions taken in the meeting in a time bound manner. It was also assured that the Union Government will take all necessary measures to accelerate the socio-economic development of Assam. The Government of India have sanctioned the construction of balance 797 kms border roads and 2429 kms border fencing on the Indo-Bangladeshi border at a total cost of Rs. 1334 crores. Under this scheme, in Assam 77.5 km of road and 71.5 kms of fence have been sanctioned at a tentative cost of Rs. 167 crores (MOHA 2000).

The Government of India has taken various measures for fulfilling the implementation of the Assam Accord. On the issue of foreigners, the Indian Government has amended the Citizenship Act, 1955, Citizenship Rules, 1956 and Foreigners (tribunals) Order, 1964. Apart from those eleven Tribunals under the Foreigners (Tribunals) Order, 1964 have been created for Identifying foreigners of 1966-71 streams. So far 24,376 persons declared as foreigners by the Tribunals. The Indian government also sanctioned money for the creation of 1280 additional border posts under the prevention of Infiltration of Foreigners Scheme (MOHA 2000 & MOHA 2006: 22). Apart from the above mentioned success stories, a Sub-Committee involving representative of Ministry of Law & Justice, Ministry of Finance, Gqvt. of Assam, AASU has been constituted to examine the proposal submitted by AASU and Govt. of Assam under clause VI and VII of the Assam Accord. On the economic development front, Numaligarh Refinery was set up at a cost of Rs.2500 crores, in July, 1999 (MOHA 2000).

To prevent illegal migration across border, the Assam government has approved funds for building 11 border outposts (Table 5.VII) in the border, and among them six are already built in Karimganj and one in Dhubri district. Apart from that, required fund has
been already approved for building 31 border posts as 2nd line of defence to prevent infiltration. Currently, five in Dhubri district and five in Karimganj district are working as 2nd line of defence (Table 5.VIII). The Border Security Force (BSF) and the Bangladesh Rifle (BDR) are jointly carrying out vigilance in across the border and they are also engaged in discussions regularly. Apart from that a section of Assam Police force has been deployed with the BSF to check passport and increase border vigilance (Assam Legislative Assembly Debates 2003, Annexure- III: 9-10).

Table 5.VII

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<td>Gourjapsabari</td>
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<td>Kuwarighat</td>
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<td>Gangadhar River Bridge</td>
<td>Satyanyapur</td>
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Sarbananda Sonowal in his speech in the Assam Legislative Assembly asked the Minister of Assam Accord asked questions like - has the government taken any plan measures to pursue the clauses of Assam Accord in certain time of period? If any measures taken-what are these? What are the progress of identification and deportation of Foreigners according to the provisions of Assam Accord? Pankaj Bora, the Minister of Assam Accord replied, by saying that the state government is interested to take measures to work out the clauses of Assam Accord on time, but in some cases they government need to get permission from the centre. Nevertheless in some clauses certain schedules have been taken on time. According to Assam Accord provisions, 28848 foreigners have been identified under the Foreigners Act, 567 were deported as they have no registration and 25854 people who have re-entered Assam has been detected and send back again. (Assam Legislative Assembly Debates, August 5, 2003: 51)

As a policy measures and in order to prevent illegal infiltration and anti-national activities across border, the Government of India started constructing fencing. In the first phase of fencing in Indo-Bangladesh border started in 1989, 854.35 kilometers have been
erected as against the target of 857.37 kilometers. And in the second phase, government has approved additional fencing of 2429.5 kilometers (MOHA 2004: 57). The parliamentary debate sources revealed that the government also took initiative to effectively prevent infiltration from across the border. There has been a considerable reduction in the number of Bangladesh nationals attempting to enter into India clandestinely. According to the Government of Assam during 1980, 2154 infiltrators were detected and 2039 of this were sent back to their country of origin. The process of identification of foreigners is being hampered due to the continuing agitation in Assam (Parliament of India Debate, Lok Sabha, 25 February, 1981: 262-263).

To implement the Accord, the government is emphasizing on the implementation of economic and industrial development of Assam. With a view to prevent infiltration of Bangladeshi nationals into Assam and in pursuance of the Assam Accord, a project for construction of road/fencing along the Indo-Bangladesh border in the states of Assam, Meghalaya, Mizoram, Tripura, and West Bengal has been taken up since 1987. According to the Annual Report of the Ministry of Home Affairs (2010-11: 39-40), “in order to prevent illegal migration and other anti-national activities from across the Bangladesh border, Indian government have sanctioned construction of border roads and fencing in two phases. The total length of Indo-Bangladesh border to be fenced is 3436.59 km.; out of which 2735.12 km. of fencing has so far been completed. There have been some problems in construction of fencing in certain stretches on this border due to riverine/low lying areas, population within 150 yards of the border, pending land acquisition cases and protests by border population, led to delay in completion of the project. The balance work is under progress and the project is targeted to be completed by March, 2012. In addition 3580.20 km. of border patrol roads have also been constructed out of sanctioned length of about 4426.11 km.” Out of total 263 km Assam – Bangladesh border, 221.56 km. of fencing has so far been completed and another 42 km. is yet to fenced. Another 256.92 km. of border roads have so far been completed in Assam-Bangladesh border (MOHA 2010-2011: 39-40).

Though the Union and the State government implemented several policies to curb population influx from Bangladesh, it has not been successful. In most of the time the
political parties have always tried to exploit the grave issue only during the election time. Neither the Assam Gana Parishad nor the Congress Party is successful in resolving the problem. The issue only appears during the election days and other times it goes only cold. The AASU aligning with the AGP always raises slogans only during the election time. On the other hand the Congress Party uses Bangladeshis as their vote banks (Hussain 2003: 130-134). Now the Bangladeshis have spread across almost all over India. There are reports of thousands of Bangladeshi migrants staying most of the urban cities working as manual labourers. There are reports Bangladeshi nationals staying in Delhi, Mumbai Rajasthan etc. and we still lack of a proper migration policy so as how to handle these Bangladeshi nationals (CCPD 2005: 3-5).

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<th>Karimganj district</th>
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<td>Gangadhar River Bridge (Dhubri district)</td>
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5. XVIII. What Needs to be Done?

It's very difficult to suggest or workout policies to address the issue at national and regional level to address this issue. It needs political will among the political parties to address this issue. Since migration is a global phenomenon, it will continue to occur.
People will move in search for better opportunities. In case with the South Asian region, the movement of people will occur as there is cultural and geographical proximity, and in fact the continent was culturally, geographically integrated throughout centuries. During the field visit to Kathmandu and Dhaka, we spoke to several academicians, NGO workers, representatives of International organization and also high ranked retired government officials. They have their different opinions to address the issue of migration in the South Asian region. Many of the personalities whom we met suggested for regional economic integration and opening up the labour market in South Asian region. The lack of trust among the government and lack of political will is the major reasons for not working for a solution of migration issue.

Farooq Shobhan in Bangladesh and IOM country director, Rabab Fatima more or less agreeing to this suggested, "The economic integration in the South Asian region is essential and it should cover the integrated labour market, we should allow free movement of population in the region. To address this issue, we should work out a mutually acceptable system of work permit at regional level. So that people can go, work and come back rather than permanently settling in a particular location. And that is what the reason that created sensitivity in different parts of India and other areas. At the moment there are lots of Indians in Bangladesh without work permit. Our government should sit together and work out a mutually acceptable policy to address this population movement. We should also see the political and security aspects of this problem. I think these are the issue that should be the agenda of discussion with our government. And we had to find ways to deal with the problematic situation. Many of the issues also have to be addressed at a sub regional basis. The regional economic integration in South Asian region, which will promote trade, investment, labourers etc. can be addressed/covered under this. If we are moving at this direction then also we have to look the ways of political fallout of economic integration, this is the biggest challenge that we are facing at

\[ \text{15 The Summary of discussion with experts during field trip to both Nepal (18/04/09-7/5/09) and Bangladesh (19/05/09 - 5/06/09).} \]
Farooq Shobhan adds, "we know what the issues and problems are and should look at larger picture, if you and I don’t agree to this migration problems, it could be a conflictual issue very soon. We should first look at the problem, address the problem." Rabab Fatima added, "The politicians in all the South Asian countries agree about the problem of migration, but they don’t want to approach and resolve the problem. They disagree in their opinion and lack of trust among the countries still prevails. Once the economic integration of the South Asian region is achieved, the problem of managing migration would automatically resolve."  

In another discussion Rehman Shobhan commented, "Management of migration through integrating the labour market in South Asia will wipe away the migration as can go to another country for, work there and come back to their places of origin. If Bangladesh’s economy is better, then they won’t migrate. If you want less movement of population then ideally it would be achieved only when the countries are developed. Therefore, India should collaborate with Bangladesh and work out policies on both development and migration. We should also have a policy of guest worker status – work permit. Once you go work then you can also come back. Like people in Bangladesh will work in many seasons here and during off seasons they will cross the border work here and come back back. It is just all about naturally integrating the labour market in the South Asian region. All the countries in South Asian region should move forward with such policies. If you can not stop migration, you can not control them but you can integrate them through opening the economic/labour market. Instead of spending millions of rupees for identifying illegal migrants in Assam, they can invest money for trade and development. India should accelerate its investment in Bangladesh so that employment generation will occur here and then they will not migrate."  

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16 In a discussion with Farooq Shobhan, former Ambassador and President of Bangladesh Unnayan Parishad, on 4/06/09 and Rabab Fatima, the IOM country Director on 3/06/09 during Researchers field trip to Dhaka.  
17 Ibid.  
18 In a discussion with Rehman Shobhan, Director, Centre for Policy Dialogue, Dhaka on 4/06/09, during Researchers field trip to Dhaka.
Aminul Islam also suggested for regional economic integration in the South Asian region through which migration can be managed. People from the border areas, particularly from the Northeastern part of India and the neighbouring Bangladesh and also in India-Nepal border have to move longer even for basic health and educational purpose. They could approach the same in the bordering countries if they have such facilities instead of going to the far off places in their home country. If border is opened then the movement of population would have been much easier. Bangladesh has got a homeland but not much of job opportunities. Both India and Bangladesh can be benefited through economic development through investment and sharing of natural resources. Some united efforts in the South Asian region such as common market can reduce the poverty of people, which can stop migration\(^\text{19}\).

In another discussion Mujaffar Ahmed suggested for equitable economic development in both Bangladesh and India. Also integrated labour market is also an option to manage migration in the South Asian region. Social network plays an important role for migration of Bangladeshis into Assam and other parts of India. Even in Assam the same network exists for migration. So people will continue to migrate for economic reasons\(^\text{20}\). While Ameena Mohseen commented, "the problem of migration could have been addressed as per the political will. Migrants should be given work permit so that they can work and come back. If you open the border at certain points people can do trade and other business activities. They can move around and also have joint ventures at the community level, which can be initiated through track-II diplomacy. We should allow cultural exchanges in this region\(^\text{21}\)." Akmal Hussein, suggested to find out the causes first and address the same at the bilateral and regional level as all the issues are largely inter-

\(^{19}\) In a discussion with Aminul Islam, Assistant Country Director, UNDP, Dhaka, on 01/06/09, during Researchers field trip to Dhaka.

\(^{20}\) In a discussion with Mujaffar Ahmed, Department of Economics, University of Dhaka, Dhaka, on 02/06/09, during Researchers field trip to Dhaka.

\(^{21}\) In a discussion with Ameena Mohseen, Department of International Relation, Dhaka University, on 27/05/09, during field trip to Dhaka.
related. Government should try to work out a temporary work permit between India and Bangladesh.\textsuperscript{22}

Farooq in a discussion suggested, "Bangladeshi economy didn't grow at the rate which was expected to grow. Whereas the Indian economic growth has been growing pretty fast leaving a huge margin of difference with the neighbouring countries. This is one major factor of inter-country migration. If economic emancipation and political stability take place in Bangladesh, then migration will not happen. First, India should first pursue a strict border control policy to check movement of population, unless you stop it from there. Second, Bangladesh has to develop its economy and employment opportunities must be created. Thirdly, India has a role to play in developing Bangladesh economy. India should also ensure that her neighbour also grows and become economically strong. It's like if you are rich and your neighbours are poor, it will be a problem. People in search for opportunities will migrate. Like the ASEAN, all neighbouring countries are rich and there seems to be no political identity problem. The same way India can opt for that policy through developing the neighbouring country. India should also increase trade relation with Bangladesh. It is also true that if India does not play its role to make neighbouring economies strong, people will migrate. Indian economy should open her economy to the neighbours\textsuperscript{23}.

Chaitanya Mishra from Kathmandu commented, "If the Bangladesh's and Nepal's economies grow to the level of India, the number of migrants will be less. That something India should promote, look at the profits and benefits also but ensure the equitable growth in the neighbouring countries Bangladesh/Nepal through instruments like foreign aid, investment etc. It will help demographically and also it will benefit India. For instance, there will be more stake holders of Maruti/Tata in Dhaka and Kathmandu. India can also provide Bangladeshi migrants the status of guest workers through agreement at bilateral level. This is indeed helpful; people can come here for two years, work-earn and go back. This has been tried in some countries in Europe especially

\textsuperscript{22} In a discussion with Akmal Hussein, Department of International Relation, Dhaka University, on 27/05/09, during Researchers field trip to Dhaka.

\textsuperscript{23} In a discussion with Lt. Colonel Farooq, Bangladesh, during Researchers field trip to Dhaka on 4/06/09.
in Germany; the entire European Union is like that. But of course there are security reasons. There seems to be tight security yet people are crossing border through all available means.

Tasneem Siddique and C R Abrar viewed that desecuritisation of migration is indeed important in this region. They mention that migration shouldn’t be a security agenda. Abrar added, “It has to be in the realm of economics and market economy in the South Asian region. We should think of integrated economic system and it has been and so it is. You cannot stop migration, if you put restrictions this may not work. Instead of trying to stop it we should rather think the need of the population movement and work out why people move and find a solution to the problem. It has to be delinked from politics. Sometimes political parties for their vested interest provide these migrants with documents for vote bank purpose and secure their services. They therefore might develop a tendency to indulge in some illegal activities to get citizenship and in this process they become vulnerable. So the political parties, people and law enforcing agencies have to be sensitised. Work permit is an important issue that needs to be addressed at the local level. Bureaucratic settings in Delhi may not be able to assess and perceive the sensitivities involved. The understanding should be at cultural level in the country to address the problem and not so official level. More localized administration should work at local level as the movement is more localized now.

In a discussion with Intizah Ahmed viewed, “despite fencing the border, the movement across the border, can not be stopped, so its meaningless. The governments are not willing to sit down and talk on this sensitive issue, they want to keep it may be because it helps them to serve their vested interest. The fencing has worked with the West Pakistan border but not working in case with Bangladesh. Border can only work when people on both the countries take border as meaningful entity. In India-Bangladesh case, the government doesn’t take border to be effective. If we look at the informal trade,
smuggling and other things, it amounts to $2 billion annually. It means that there are families who are benfitting from it. Though there is fencing in the border the figure has not come down. The smuggling has not come down. If you want to stop migration or manage population movement and if fencing doesn't work then you have to develop the border. Again if there is 10% growth in either side of the border, that's all is required. It has happened in Canada – US border, the borders in these countries are like that. Otherwise it will be like US-Mexico border, even after providing high security, people are still migrating. So the same case with India, more corruption in the border areas from BSF & BDR. What we need to do is just develop the border and have an equitable growth which would generate employment approach and wont move. Instead of spending money in fencing, India could have developed the borders. People would have worked and go back. The misunderstanding and misconception prevailed among the neighbouring countries are the basic problem. Nepal’s Foreign Secretary, Gyan Chandra Acharya suggested, “Migration is inevitable in the globalized world and it can’t be stopped. We should be more concerned about the exploitation of migrants. This has to be reduced at every cost and that should be the state responsibility. If economic development occurs in the countries of origin, the migration will be less in numbers. Migration can’t be stopped and it’s also not the progressive way to look into the issue of creating barriers. Identify the factors of migration and accordingly work out how to get rid of. They migrate mostly for economic betterment, some are for greener pasture and that’s the way it has promoted social welfare in the society. Economic advancement always attracts people to migrate and this will continue. We should create opportunities. Equally serious is our concern about the safety of migrants. How they can be protected from unscrupulous people and middlemen, because of lack of information, knowledge etc need to be examined and addressed. Since Nepal and India have open border all these are not major concerns. Investment, transfer of

26 In a discussion with Imtiaz Ahmed, Department of International Relations, Dhaka University, on 2/06/09, during field trip to Dhaka.
technology to neighbouring countries also may help in managing migration. In fact it should be a part of the foreign policy\textsuperscript{27}.

Ganesh Gurung suggested, “Migration is a global phenomenon and almost 20 million people are moving. It is also very difficult to stop. Even the WTO has come with free flow of capital movement in the world. The problem has to be addressed at the place of origin. The issue has to be addressed in the source rather than in the destination. The issue of migration can also be addressed at the regional level like the SAARC and India should take the leading role. Those people who have already migrated to India from Bangladesh and Nepal should be protected through international tools. A free trade zone and an integrated market economy will help managing migration in the South Asian region\textsuperscript{28}.”

Shambhu Kumaran, a diplomat in Indian Embassy in Nepal commented, “The whole subcontinent is really divided up on various issues. There are large concentrations of Nepali population in India. In case with Bangladeshi migrants, it is relatively a newer phenomenon and the migration – volume is very high and rapid. There was almost 100 percent increase of population in Assam during 1951-1971 and it’s a complete state failure. The scale of migration is already immense. There is no clear effort and a serious policy to reverse the trend The AGP came to power on that plank and they confronted the reality and found it difficult. When the real politics starts and the political parties compromise. Therefore there is no credibility. One of the tenets of the centre-state relations has also been hampering the effort, for instance, law and order is a state subject but international border is a central subject.” Again, “We should essentially look at various short and long term options to resolve the problem. It is very difficult to control or regulate the border. Border regulation is not an option out right now. Immediate action has to be in terms of the state government concern; India is not concerned about Nepali settlement as we have provisions for the same. You can’t treat Nepalis in the same way as

\textsuperscript{27} In a discussion with Gyan Chandra Acharya, the present Foreign Secretary, Ministry of External Affairs, Nepal Government on 05/05/09, during field trip to Kathmandu.

\textsuperscript{28} In a discussion with Ganesh Gurung, Director, Nepal Institute for Development Studies (NIDS) on 22/04/09, during field visit to Kathmandu.
the Bangladeshis. The south Asian regime and cooperation initiatives can be helpful in controlling migration as the whole subcontinent is related. Some of the problem can be addressed at the regional level also. Again, we have very good understanding of the problem of migration but it has been abated by the political parties for vote banks and poorly planned bureaucracy. But obviously the attempts have to be made for changing this situation. Secondly, the entire economic needs of the region is must be addressed in a holistic manner. It should be more proactive and collaborative approach with Bangladesh to tackle the problem. The economic development on both sides is important. In fact, these are the compulsions in south Asia, vulnerable border regimes, most of our neighbours are in very dire economic situations. Some steps through assistance for economic development taken by India towards the neighbouring countries have been helpful. If you develop the origin source it could provide a long term solution. A clear state policy needs to be designed so that no further migration takes place across the border.29

Meanwhile, Govind Subedi viewed, “India should pursue a policy of strengthening economic development with the neighbouring countries. Same level of economic development in Nepal and Bangladesh is the best option topped by good cultural relations. Border management is essential for security purpose. It is essential to regulate border to control illegal trafficking, smuggling and other things.”30

Migration is a natural phenomenon, which can not be stopped unless there are economic opportunities at source. Desecuritisation of the migration is also essential to carry forward with other approaches. Labour market integration is another approach to deal with the problem. However the political will have to be a part of this process from all the countries.

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29 In a discussion with Shambhu Kumaran, First Secretary, Indian Embassy, Nepal on 28/04/09, during field trip to Kathmandu.

30 In a discussion with Govind Subedi, Lecturer, Central Department of Population Studies, Tribhuvan University, on 27/04/09, during field trip to Kathmandu.