

The Foreigners (Tribunals for Assam) Order, 2006

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On Friday, 10 February 2006, the Ministry of Home Affairs published two notifications amending the Foreigners Tribunal Order of the Foreigners Act 1946, thereby, proving the argument stated by Dr D N Bezbaruah, the then editor of the *Sentinel* that to the Congress party, remaining in power was more important than the security and integrity of the country.¹ Why did the Government issue this order? And what are its implications?

The roots of this order lie in the liberation of Bangladesh, in which India had the lead role. After the liberation, in the historic meeting between Mrs Gandhi, the then Prime Minister of India and Sheikh Mujibur Rehman of Bangladesh, the latter told Mrs Gandhi that he would take back the refugees who had fled from the erstwhile East Pakistan after 25 March 1971. He, however, stated that he would not take back any one who had migrated to India before 25 March 1971; the date of creation of the Government of Bangladesh in exile in India. This meant that lakhs of Bengali Hindus and Muslims who had illegally migrated from East Pakistan into India from 1950, when India had become a Republic, till 25 March 1971 could not be detected and deported. Mrs Gandhi agreed, thereby, regularising at one stroke lakhs of illegal immigrants from East Pakistan.

The illegal migration from Bangladesh continued into Assam. The illegal migration had been so persistent that the Director of the Intelligence Bureau, B N Mallick had pointed out the dangers of this illegal migration of Bengali Muslims into Assam, West Bengal and Tripura, rendering some of the border districts into majority Bengali Muslim populations by 1961 itself. The Government of India had then instituted a Pakistan Infiltration Post scheme in the border states with East Pakistan. This had been functioning in Assam since the early 1960s. The cut-off year for detection of illegal migrants

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from East Pakistan was 1951 as per the provisions of the Citizenship Act of India. The National Register of Citizens was prepared on the basis of 1951 being the cut off year. And it was on the basis of this Register that detection and investigation of cases under the Foreigners Act was carried out.

After the liberation of Bangladesh, and the agreement between Mrs Gandhi and Sheikh Mujibur Rehman, about not taking back the people of East Pakistan who had illegally migrated into India between 1951 and 25 March 1971, there was the question of the cut off year. What was the legal basis for 25 March 1971? The Citizenship Act of India had 1951 after the creation of India into a Republic as the cut off year.

It was at this juncture that the sitting Member of Parliament (MP) from Mangaldoi constituency in Assam died. When the issue of a bi-election came up, the people of Mangaldoi and Assam represented to the Chief Election Commissioner (CEC) that the electoral rolls of Mangaldoi constituency should be revised as there were a number of foreigners in the constituency. After inquiries conducted, the CEC announced that the bi-election would be held only after the electoral rolls were revised, as there were a number of foreigners in the electorate. At this juncture the politicians took over. The Prime Minister, Morarji Desai, had to step down as some of his coalition partners decided to defect. Charan Singh became Prime Minister with Congress support. The Muslim lobby promptly pressurised the Congress to prevail on the CEC to conduct the polls in the Mangaldoi without revising the electoral rolls. The CEC under pressure from the Congress leadership wilted and announced tamely that he would conduct the elections in Mangaldoi on the basis of the 1976 electoral rolls. In Assam, the result of this turnaround was electric. The different groups who were agitating against foreigners in Assam, the All Assam Students Union (AASU), the Ahom Jatiyatabadi Yuba Chatra Parishad (AJYCP), the Ahom Sahitya Sabha combined to form the Gana Sangram Parishad and started the Foreigners Movement. This was a unique movement and resembled the disobedience of the Quit India Movement of 1942.

Meanwhile, from the time of the meeting between Indira Gandhi and Sheikh Mujibur Rehman, the issue of the cut off year was creating a lot of simmering debates. The foreigners agitation started

in 1979. During the agitation, the leaders of the AASU were continually pressurised to accept 1971 as the cut off year, but they refused to accept it. After four years of agitation, in which lakhs of people courted arrest and shook the whole state, the Central Government decided to force an election on Assam. This election of February 1983 was a farce. For the people of Assam it was a blood bath. More than four thousand people were killed in firings by the police and paramilitary forces on crowds agitating against the election. In Assam, from 2 February to 21 February 1983, the state was at war. In an atavistic frenzy, the Assamese caste Hindus and the Bengali Muslims and Hindus fought pitched battles in the dry paddy fields with spears, bows and arrows. When it ended on 21 February 1983 the youth of Assam had decided that they would have no option but to take to the gun. The United Liberation Front of Assam (ULFA) was born as a result of the blood bath of an election. They contacted the National Socialist Council of Nagaland (NSCN) in Dimapur, and soon the first cadres were on their way to the NSCN camp in the Sagaing Division of Burma for training.

The Central Government had one more jolt for the Assamese people. Smarting from the spirit shown by the Assamese people, the Central Government legislated an act called the Illegal Migrant (Determination by Tribunal) Act (IMDT) in 1983, ostensibly to facilitate the detection of foreigners in Assam. This was a cruel joke on the Assamese people. The IMDT Act actually made it virtually impossible to detect a foreigner. Firstly, the Centre directed that the Foreigners Act would not apply in Assam. Under the IMDT Act, it was for the Police to prove that the suspect was a foreigner, not for the accused to show that he was an Indian. In all such Acts across the world, it is the suspect foreigner who has to prove that he is a national.

For 12 years there was no legal basis for making 1971 as the cut off year. Two years after the election and continual attrition on the leaders of the agitation in Assam, they finally decided to sign an accord with the Central Government. The Assam Accord was signed in 1985. Regrettably the leaders of the agitation who had stood off the blandishments of the Centre for years, succumbed to the lure of power and agreed to accept 1971 as the cut off year. The Citizenship Act of India was promptly amended and the cut off year was now shown as 1971 and not 1951, courtesy the Assam

Accord, 1985! The Government of India had finally found a way out of the impasse after keeping the issue hanging fire for 14 years!

Meanwhile, the IMDT Act had been challenged in a Public Interest Litigation (PIL) in the, Supreme Court. The court finally decided the case in 2005, after 22 long years, that the IMDT Act was unconstitutional and illegal and repealed it.

This was a serious blow to the Congress party, grievously affecting its vote bank in Assam and elsewhere. It was not long before the Congress party placed two amendments to the Foreigners Tribunals Order 1964 under the Foreigners Act on the table of Parliament. The first order amended the original order making it applicable to all states in India except Assam. The second amendment issued a new version of the Order applicable only to Assam. Herein it stated that the Central Government or any authority specified shall by order refer the question as to whether a person is or is not a foreigner to a Tribunal.

In the original order it was stated that the Central Government may by order refer the question as to whether a person is or is not a foreigner to the Tribunal.

The government of the day has brought back the very provisions of the IMDT Act that had been struck down by the Supreme Court. Regrettably, this step has been taken disregarding the security considerations of the country.

Today, there are several Islamic fundamentalist insurgent groups in Assam, all created with the help of the Directorate General Forces Intelligence (DGFI) of Bangladesh and the Pakistan Inter Services Intelligence (ISI). The main groups are the Muslim United Liberation Front of Assam (MULFA), the Muslim United Liberation Tigers of Assam (MULTA) and the Islamic Liberation Army of Assam. These insurgent groups are in the vanguard for lebensraum for Bangladesh. In August 1999, the Assam Police arrested four insurgents who had come from Pakistan by air to Dacca and crossed over illegally through the Karimganj border with a plan to sabotage installations in India. On interrogation, they confessed that the Harkat-ul-Jihad-e-Islami (HUJI), Bangladesh had recruited and sent a number of young Bengali Muslim immigrants from Assam to Pakistan for training in ISI sponsored camps of mujahideen. Based on this information, the Assam Police was able to arrest a

number of immigrant Bengali Muslims who had been trained in Pakistan. They also arrested one Muhammad Muslimideen, the Chief Organiser of the HUJI Bangladesh in India. They found that the *Naib Amir* of the HUJI in Assam Muhammad Fakhruddin from Goalpara in Assam was now based in Pakistan.²

What is interesting about these Islamic fundamentalist insurgent groups is that they have not done any operations till now. Interrogation and intelligence reports have revealed that they are in a phase of preparation. They are to recruit cadres, train them in Pakistan, stockpile arms and explosives and motivate the people for the coming insurgency. The target date is reported to be in 2015.

It is certain that severe communal rioting will break out in Assam, West Bengal and Tripura along the faultlines between the immigrant Muslims and the local people. The infamous election of 1983 was a forerunner for this prognosis. The sequel to this communal rioting will be the eruption of a Bengali Muslim insurrection spearheaded by the Bengali Muslim insurgent groups now embedded in Assam. And this will be an insurgency to attain a homeland for the immigrant Bengali Muslims in Assam.

References

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