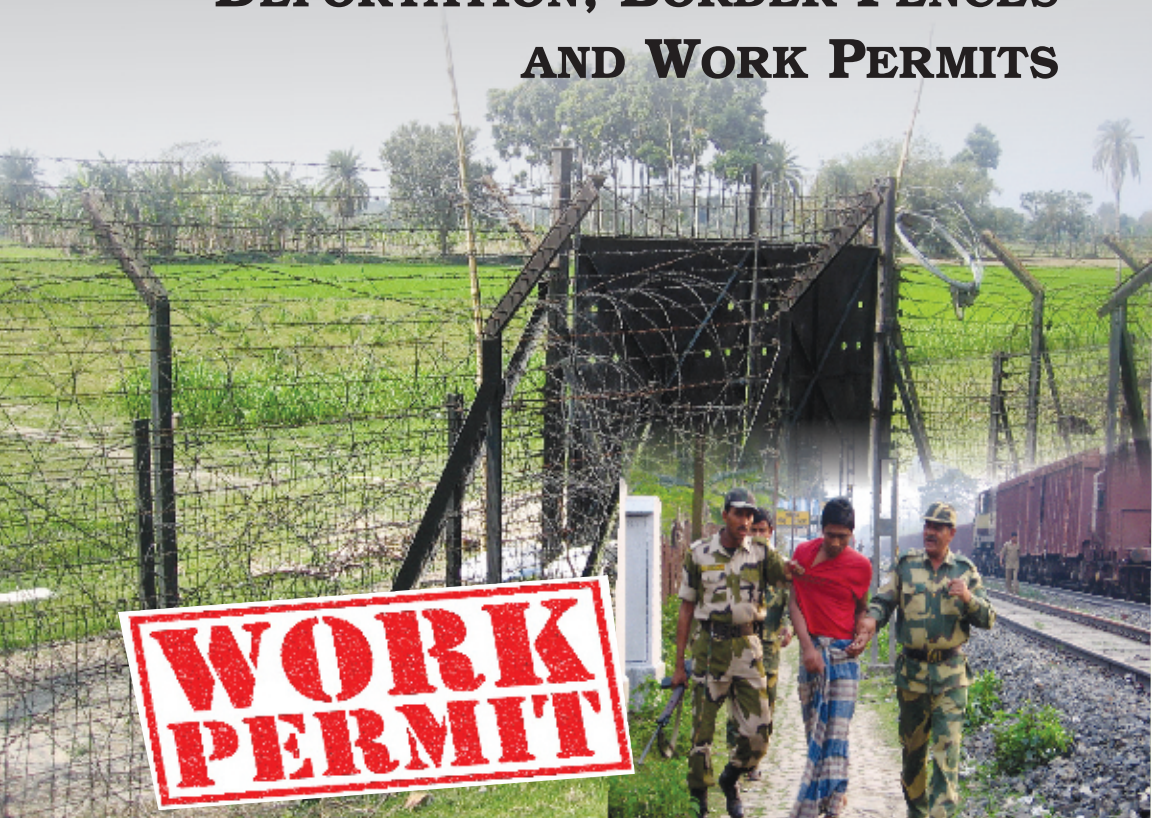


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No. 56 December 2016

ILLEGAL MIGRATION FROM BANGLADESH

DEPORTATION, BORDER FENCES AND WORK PERMITS



PUSHPITA DAS

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Illegal Migration From Bangladesh

Deportation, Border Fences and Work Permits

Pushpita Das



INSTITUTE FOR DEFENCE
STUDIES & ANALYSES

रक्षा अध्ययन एवं विश्लेषण संस्थान

Cover Illustration : The Cover depicts Border Fence along India-Bangladesh Border and a Bangladeshi being apprehended by BSF personal after illegally crossing into India. Cover Photograph courtesy the author. Work Permit picture source : <http://baraboo.com/wp-content/uploads/2016/06/work-permit.jpg>

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ABBREVIATIONS

AAGSP	All Assam Gana Sangram Parishad
AASU	All Assam Students' Union
AGSP	Assam Gana Sangram Parishad
ATTF	All Tripura Tiger Force
BGB	Border Guards Bangladesh
BJP	Bharatiya Janata Party
BNP	Bangladesh National Party
BoPs	Border Outposts
BSF	Border Security Force
CPI-M	Communist Party of India-Marxist
DACA	Deferred Action for Childhood Arrivals
DAPA	Deferred Action for Parental Accountability
DCs	Deputy Commissioners
DHS	Department of Homeland Security
EU	European Union
FRG	Federal Republic of Germany
GDP	Gross Domestic Product
GDR	German Democratic Republic
HUJI	Harkat-ul-Jihad-al-Islami
IMDT Act	Illegal Migrants (Determination by Tribunals) Act
INS	Immigration and Naturalization Service

IOM	International Organization on Migration
IRCA	Immigration Reforms and Control Act
ISI	Inter-Services Intelligence
JMB	Jamaatul Mujahideen Bangladesh
KLO	Kamtapur Liberation Army
LAW	Legally Authorised Workers
MHA	Ministry of Home Affairs
MULFA	Muslim United Liberation Front of Assam
MULTA	Muslim United Liberation Tigers of Assam
NDA	National Democratic Alliance
NICS	National Identity Card Scheme
NLFT	National Liberation Front of Tripura
NPR	National Population Register
NRC	National Register of Citizens
PIF	Prevention of Infiltration of Foreigners
PIP	Prevention of Infiltration into India of Pakistani Nationals
RSS	Rashtriya Swayamsevak Sangh
SAW	Special Agricultural Workers
SOPs	Standard Operating Procedures
SPs	Superintendents of Police
SSP	Sipah-i-Sahaba Pakistan
ST	Scheduled Tribe

TNV	Tripura National Volunteers
TUJS	Tripura Upajati Juba Samiti
UIDAI	Unique Identification Authority of India
ULFA	United Liberation Front of Assam
UN	United Nations
US	United States
VHP	Vishwa Hindu Parishad

Introduction

The history of the world is the history of migration. Migration has taken place since time immemorial and will continue in future. People have migrated to distant lands in search of food, shelter, freedom, security and better lifestyle, and in the process have made an impact on the socio-economic, cultural as well as the political fabric of their destinations. While on the one hand this impact on the receiving country has been positive, on the other hand it has sown the seeds of discontent among the locals. In other words, although migrants have enriched the cultural, social and economic aspects of their “new homes” with their skills, industry and dedication, their relative prosperity has fuelled resentment among the locals. This resentment has led to intense competition between the migrants and the natives for resources; but whenever this competition has been politicised, it has led to demands for preservation of local identity and power, which in turn has fuelled violence and political disturbance and jeopardised the internal security of the country. Consequently, migration has come to be increasingly regarded by the elites of the receiving country as a threat to the greater political and societal integration, and therefore a security risk. As countries try to restrict the influx of people into their territory, migration gets closely linked with border control, terrorism and criminality, resulting in its securitisation.¹

India is often described as a land of migrants, which over centuries has attracted streams of immigrants from different races and cultures and assimilated them to build a composite civilisation. Paradoxically, immigration, while enriching the land with modern innovations and industries, has also been a source of conflict. India too has experienced

¹ Jef Huysmans, “The European Union and the Securitization of Migration”, *Journal of Common Market Studies*, Vol. 38, No. 5, December 2000, p. 762.

intermittent conflict arising out of competition over resources between local population and immigrants. In contemporary times, the country has witnessed large-scale immigration from its neighbouring countries. While some these immigrants are refugees fleeing political and religious repressions back home, others are economic migrants escaping gruelling poverty and a bleak future. India has been a generous host to all these immigrants but large-scale, undocumented immigration from Bangladesh has become a source of conflict and tensions in the receiving states. The magnitude of immigration has been too huge and protest against it too violent, making infiltration, as illegal migration is termed officially, one of the most politically contentious issues in India since independence.

Out-migration from the plains of East Bengal into India did take place during the colonial times too, but the partitioning of the Indian subcontinent and the subsequent cycle of violence and counter-violence in 1950 triggered a massive movement of people across the borders of the newly created India and Pakistan. The influx of the Hindu refugees from East Bengal into West Bengal, Assam and Tripura created a crisis for India both internally as well as externally. Externally, Pakistani establishment's apparent reluctance to stop atrocities against its minorities by its majority population and prevent outflow of the Hindus across the border into India brought the bilateral relations to the brink of war. Pakistan's cavalier attitude towards the crisis generated a heated debate in the Indian Parliament where politicians from all spectrum pressed Nehru to "act decisively" against Pakistan. Some of them proposed large-scale exchange of population between East and West Bengal; and others suggested that since the Hindus coming to India were larger in proportion compared to the Muslims going to East Bengal, Pakistan should be forced to cede territory to India.²

Pushed by domestic political pressure and exasperated by Pakistan's rebuff to his overtures, Nehru threatened use of force. He even

² Srinath Raghavan, *War and Peace in Modern India: A Strategic History of the Nehru Years*, Ranikhet: Permanent Black, 2010, p. 157.

mobilised troops in March 1950 to compel Pakistan to act against the perpetrators of communal violence in East Bengal.³ The bilateral crisis was finally diffused when Liaquat Ali Khan agreed to meet Nehru in Delhi and the Nehru–Liaquat Pact was signed in April 1950. The pact stated that India and Pakistan would accord equality of citizenship to their minorities, the rights of the refugees over immovable properties would be safeguarded and the culprits of communal violence would be punished.⁴

Inside India, the mass migration from East Pakistan into India was considered as “homecoming” by the national leadership, but at the local level the situation was deteriorating gradually as more and more migrants started pouring in. The atrocities against the Hindus in East Bengal resulted in widespread communal riots in West Bengal thereby disturbing societal harmony. In Assam and Tripura, the overwhelming in-migration of refugees intensified the simmering tensions against the Bengali migrants among the local population. The liberation of Bangladesh in 1971, and India’s acceptance to absorb all illegal migrants from East Pakistan who had migrated before March 24, 1971, introduced a period of lull in the charged up atmosphere. The calm was however short-lived as Bangladeshis (both Hindus and Muslims) continued to enter India illegally till mid-1970s. As a result, intolerance against illegal migrants once again flared up in Assam and Tripura leading to insurgent movements. During the same time, policymakers at the national level understood the full impact of illegal migration as the census report of 1981 revealed that population in the eight border districts of West Bengal and six districts of Bihar had increased by 150 per cent.⁵ The unprecedented increase in population in a single decade was attributed to the massive infiltration from Bangladesh.

³ Ibid., pp. 162–67.

⁴ *Agreement between the Governments of India and Pakistan Regarding Security and Rights of Minorities (Nehru–Liaquat Agreement)*, April 8, 1950, New Delhi, available at <http://www.commonlii.org/in/other/treaties/INTSer/1950/9.html>, accessed on December 23, 2015.

⁵ Avtar Singh Bhasin, *India–Bangladesh Relations, Vol. 1*, New Delhi: Geetika Publishers, 2003, p. xc.

Illegal migration from Bangladesh, which was hitherto seen as a regional problem and therefore a peripheral issue, was catapulted to the national level in the late 1980s when the Bharatiya Janata Party (BJP) and its allies decided to politicise the issue to polarise Hindu votes. Extreme politicisation of the issue resulted in its securitisation when Bangladeshi illegal migrants were presented as an existential threat to the society, culture, economy and polity of the country. Incidentally, the securitisation of the illegal migration in India drew inspiration from the unfolding events in the international arena which brought the issue of migration and its resultant impact on the receiving countries under sharp focus. The end of Cold War and the break-up of the communist block had triggered large-scale movement of people from communist countries to the West, leading to growing concerns in the host countries about the security repercussions of receiving refugees and migrants. Attitudes against immigrants in host countries further hardened at the turn of the twenty-first century. Growing Islamic fundamentalism and its association with international terrorism propelled countries, world over, to tighten their borders against immigrants and asylum seekers.

In India too, the securitisation of the issue of illegal migration brought it under the rubric of national security and the irregular crossing of the international border by the migrants was viewed as the loss of control of the Indian state over its borders and a challenge its sovereignty. Consequently, successive governments in New Delhi tried various measures not only to prevent Bangladeshi migrants from illegally crossing the border but also to ensure that they do not find shelter in India. The failure of the Indian government in tackling illegal migration effectively kept the issue simmering for decades. Political parties belonging to various ideologies have been exploiting this issue to garner votes, especially during elections. The most recent examples being during the national as well as state elections. During the build-up to the Lok Sabha elections in 2014, Narendra Modi, displaying his strong stance, declared that illegal migrants will have to pack their bags and leave after he wins the elections.⁶ The issue was raked up yet again in 2016,

⁶ “Modi: Bangladeshi Immigrants must Pack”, *Dhaka Tribune*, April 28, 2014, available at <http://archive.dhakatribune.com/south-asia/2014/apr/28/narendra-modi-come-may-16-bangladeshi-immigrants-must-pack>, accessed on June 16, 2016.

on the eve of the West Bengal and Assam elections, when the BJP declared that once elected to power, they would ensure that illegal migrants are evicted from the states and the local people given their due.⁷

Rationale of the Study

Scholarly works on the issue of illegal migration are substantial, but most of them deal with the reasons for migration and its impact on the society and polity of the receiving states. Amalendu Guha's seminal work⁸ provides an impressive background to the issue of illegal migration by providing a historical analysis of the immigration issue, and the rise of Assamese nationalism and its complex ethnic politics. Sanjib Baruah, in his work,⁹ focuses on the social, economic, cultural and political consequences of immigration from Bangladesh to Assam, and on how it has contributed to the mobilisation of Assamese identity and formation of a distinct Assamese micro-nationalism or sub-nationalism. Sanjoy Hazarika's book¹⁰ is similar to Baruah's. Based on his trips to the border belt of Assam and Bangladesh, and interviews with migrants, Hazarika analyses the reasons for illegal migration and how it has contributed to the rise of Assamese militant nationalism and insurgencies in the state. He also goes a step further and suggests a

⁷ "Assamese People to Get Due Rights if Illegal Migrants are Driven Out, Says Sonowal", *The Times of India*, May 23, 2016, New Delhi, available at <http://timesofindia.indiatimes.com/elections-2016/assam-elections-2016/news/Assamese-people-to-get-due-rights-if-illegal-migrants-are-driven-out-says-Sonowal/articleshow/52405667.cms>, accessed on June 16, 2016.

⁸ Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle & Electoral Politics in Assam 1826–1947*, New Delhi: Tulika Books, 2006.

⁹ Sanjib Baruah, "Immigration, Ethnic Conflict, and Political Turmoil—Assam, 1979–1985", *Asian Survey*, Vol. 26, No. 11, November 1986, pp. 1184–206; also, see Sanjib Baruah, *India against Itself: Assam and the Politics of Nationality*, New Delhi: Oxford University Press, 1999.

¹⁰ Sanjoy Hazarika, *Rites of Passage: Border Crossings, Imagined Homeland, India's East and Bangladesh*, New Delhi: Penguin Books, 2000; see also Sanjoy Hazarika, "Revisiting the Migration Debate: Congress, Opposition and Reality", in Suman Gupta, Tapan Basu and Subarno Chattarji (eds), *Globalisation in India: Contents and Discontents*, Delhi: Dorling Kindersley India, 2010.

limited set of recommendations, including giving work permits and temporary amnesty to the illegal migrants. Uddipana Goswami's work¹¹ also traces the history and process of migration into Assam and discusses the process of assimilation of the legal settlers into the Assamese mainstream and the conflicts it has brought about.

Ranabir Samaddar's book¹² concentrates on migrants rather than on the issue of illegal migration and has a number of micro-studies of villages, towns and lives of individuals to highlight their plight. Samaddar argues that if Hindus are treated as refugees and given protection so should be the Muslim migrants who are also forced to leave their home under economic distress. He suggests a South Asian protocol and covenant to protect the rights of refugees from different regions as a possible solution. Chandan Nandy's scholarly work,¹³ based on extensive fieldwork, similarly traces the processes and reasons for illegal migration from Bangladesh. He argues that one of the most important "pull" factors for the illegal migrants is the political patronage extended to them in India. He views illegal migration from the prism of partition and argues that the incessant illegal migration is leading to conflicts.

Willem van Schendel¹⁴ has taken a more holistic approach to explain the historical and contemporary causes of immigration from Bangladesh to both West Bengal and Assam. He has given a voice to the Bangladeshi borderlanders by narrating their daily travails of living near an international border, including their counter-strategies of defiance as well as ignorance of the border between India and Bangladesh. B.B. Kumar's edited compendium¹⁵ brings together a series of discussions

¹¹ Uddipana Goswami, "Miya or Axamiya? Migration and Politics of Assimilation in Assam", *Journal of Social and Policy Sciences*, Vol. 1, No. 1, December 16, 2010, pp. 3–36.

¹² Ranabir Samaddar, *The Marginal Nation: Transborder Migration from Bangladesh to West Bengal*, New Delhi: Sage, 1999.

¹³ Chandan Nandy, "Illegal Migration from Bangladesh to India: The Emerging Conflicts", Mellon–MIT Foundation on NGOs and Forced Migration, November 30, 2005.

¹⁴ Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia*, London: Anthem Press, 2005.

¹⁵ B.B. Kumar (ed.), *Illegal Migration from Bangladesh*, Delhi: Astha Bharati, 2006.

and suggestions on the reasons and the extent of illegal migration. It also discusses, in detail, the changing demographic profile of the receiving states and the negative consequences of illegal migration on the security of the country.

Anand Kumar¹⁶ argues that if the internal politics and economic deprivations in Bangladesh are responsible for pushing people out of that country, then lenient and permissive attitude of the Indian policymakers towards illegal Bangladeshi migrants is equally responsible for the problem that the country is grappling with. He asserts that illegal migration poses a threat to the country because the issue has not been adequately securitised. In contrast, Priyanka Updhyaya¹⁷ asserts that while the Indian state had taken the large-scale influx of illegal migrants from East Pakistan and later Bangladesh in its stride, the India–Pakistan war and the growing Islamisation of Bangladesh compelled it to become “hostile to the presence of unauthorized Bangladeshi migrants on Indian soil”. He argues that securitisation of the issue resulted in militarisation of the international border which has inflicted untold miseries on the poor people and therefore, a humanitarian approach to deal with illegal migration is required. Similar work by Josy Joseph¹⁸ examines the securitisation of illegal migration from Bangladesh by various actors and the influences of political ideologies on the Indian state’s response to illegal migration. He also argues that desecuritisation of the issue is necessary to find a lasting solution to the problem.

Outline of the Monograph

Drawing from the debates and discussions on the concept of securitisation of illegal migration from Bangladesh, this monograph

¹⁶ Anand Kumar, “Illegal Bangladeshi Migration to India: Impact on Internal Security”, *Strategic Analysis*, Vol. 35, No. 1, January–March 2010, pp. 106–19.

¹⁷ Priyanka Updhyaya, “Securitization Matrix in South Asia: Bangladeshi Migrants as Enemy Alien”, in Mely Caballero-Anthony, Ralf Emmers and Amitav Acharya (eds.), *Non-traditional Security in Asia: Dilemmas in Securitization*, Aldershot: Ashgate, 2006, pp. 13–39.

¹⁸ Josy Joseph, “Securitization of Illegal Migration of Bangladeshis to India”, IDSS Working Paper No. 100, Singapore, January 2006, pp. i–28.

discusses, in detail, the events and processes which led the policymakers to view illegal migrants through the prism of security. In this respect, the study attempts to provide the government's perspective on the infiltration/illegal migration, and also analyses various measures that the Indian government has taken over the years to tackle the problem. It also analyses, in detail, the proposed solutions, such as issuance of work permits and granting of amnesty to the illegal migrants.

Accordingly the monograph is divided into four chapters. Chapter 1 discusses the trends, patterns and reasons of illegal migration from Bangladesh. It also includes official estimates of illegal migrants undertaken over several years. Chapter 2 analyses the socio-economic and political impact of the presence of a large number of illegal migrants on the receiving societies. It also discusses and analyses the process of politicisation and securitisation of illegal migration by the political parties. Chapter 3 studies various measures undertaken by the Indian government to tackle the problem of illegal migration over the years, and also analyses the reasons behind its failure to effectively prevent illegal migration. Chapter 4 critically analyses the twin proposals of work permit and temporary amnesty for the illegal Bangladeshi migrants as possible solutions to the problem. In order to gain a better understanding of the implications of these proposals, the chapter brings forth debates and experiences of select countries which have implemented guest worker schemes as well as granted amnesty to illegal migrants. The monograph concludes by forwarding a few recommendations.

Illegal Migration Trends, Patterns, Estimates and Reasons

India has been witnessing immigration since independence. People who have faced religious and political persecution, economic and social discrimination, cultural repression and curbs on personal freedom have made India their home. Many others have entered India to escape abject poverty and economic stagnation in their country, and to build a better future for themselves. Of all kinds of migration, illegal migration from Bangladesh has become the most volatile and contentious issue in Indian polity today because of the socio-political conflicts it has brought in its wake. Before discussing the adverse consequences, it is important to study the trends, magnitude and the reasons behind the undocumented movement of Bangladeshis into India in order to understand the problem better.

The trend of migration from the East Bengal plains has its roots in colonial times. After the conquest of Assam in 1826, the British started establishing their control over the territory and exploiting its vast natural resources. Expansion of their administration in Assam required large numbers of petty officials, which they fulfilled by recruiting educated Bengalis as clerks in the bureaucracy.¹ They also opened up vacancies for teachers and other professions, which were largely taken up by people from Bengal. The discovery of tea in Assam resulted in peopling the state with tribals brought in from Chhotanagpur Plateau to work as labourers in the large British-owned tea estates. The British also

¹ *White Paper on Foreigners' Issue*, Home and Political Department, Government of Assam, October 20, 2012, p. 5.

opened up the vast and hitherto unexploited land for cultivation and encouraged peasants from densely populated provinces of undivided Bengal, especially Mymensingh, Bogra, Rangpur and Pabna, to migrate and settle in Assam.²

Like Assam, Tripura also witnessed large-scale migration from Bengal due to promotional migration policy of the rajas of Tripura. By virtue of their long and close association with Bengal, the rajas of Tripura were impressed with the intellectual and economic development of it and desired to replicate the same system in Tripura. The rajas invited educated Bengalis to help modernise their principality by organising the administration. They also encouraged the East Bengali agriculturists to cultivate the forested tracts of Tripura to boost revenue generation in the state for which they doled out land on easy terms under the “junglabadi” system.³ Under the system, cultivable waste and forested land were leased out to the settlers; though initially free, after a period of three to four years a nominal rent of 2 or 3 annas was collected.⁴ Thus, lured by a respected and brighter future in Tripura, educated youths as well as uneducated peasants started arriving in Tripura.

Trends of Migration during British Raj

Goalpara in lower Assam, where abundant cultivable land was available, was perhaps the first district where peasants from East Bengal settled. To encourage cultivation in Goalpara, the British had readily granted land tenure to new settlers, who were also exempted from paying rent in the first two or three years so as to enable them to settle conveniently.⁵ Pushed by the repressive zamindari system in Bengal and pulled by the

² Ibid.

³ Subir Bhaumik, “Disaster in Tripura”, *Seminar*, 2005, available at <http://www.india-seminar.com/2002/510/510%20subir%20bhaumik.htm>, accessed on January 23, 2015.

⁴ Bani Prassana Misra, *Socioeconomic Adjustments of the Tribals: Case-Study of Tripura Jhumias*, New Delhi: People’s Publishing House, 1976, p. 25.

⁵ W.W. Hunter, *A Statistical Account of Assam, Vol. I*, London: Trubner & Co., 1879, p. 64.

attraction of tilling their own land, agriculturists from East Bengal started to stream into Assam from the early years of the twentieth century. Connectivity provided by extension of railway from Bengal into Assam and the merger of Goalpara district with East Bengal following the partition of Bengal provided further impetus for peasants to migrate.⁶

The steady trickle of migrants soon became a torrent as both the government as well as the earlier settlers encouraged and welcomed new immigrants. The successive censuses correctly captured the phenomenon. For example, the 1911 census recorded 51,000 persons (predominantly Muslims) as born in East Bengal settled in Goalpara as against 3,000 persons in the rest of Assam. By 1921, their number had increased to 1,41,000 in Goalpara and 1,17,000 in the rest of Assam.⁷ In fact, the proportion of Muslims to the rest of population had been increasing steadily since 1881. In that year, the Muslims accounted for a mere 9 per cent but increased to 19 per cent in 1931 and to 23 per cent in 1941.⁸ More particularly, by 1941, the Muslim population outnumbered the Hindu population by 1,62,000 in the Goalpara district.⁹ Similarly, in the Barpeta subdivision, the Muslims grew from 0.1 per cent in 1911 to 49 per cent in 1941.

Tripura also witnessed large migration of Bengali population from the first decade of the twentieth century. The number of immigrants from Bengal was a little over 40,000 in 1901, but in the subsequent decades, the trend of migrants settling in Tripura started increasingly and by 1931, it rose to more than 1 lakh.¹⁰ Thus, as a result of large-scale

⁶ Uddipana Goswami, "Miya or Axamiya? Migration and Politics of Assimilation in Assam", *Journal of Social and Policy Sciences*, Vol. 1, No. 1, December 16, 2010, pp. 7–8.

⁷ *Ibid.*, p. 9.

⁸ Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle & Electoral Politics in Assam 1826–1947*, New Delhi: Tulika Books, 2006, p. 209.

⁹ *White Paper on Foreigners' Issue*, n. 1, p. 8.

¹⁰ Nilanjan De, "Bengali Immigration and Renovation of the Administrative Structure of Tripura: An Analytical Study", *International Journal of Research in Social Sciences*, Vol. 2, No. 3, August 2012, pp. 130–31, available at http://www.ijmra.us/project%20doc/IJRSS_AUGUST2012/IJMRA-RSS1429.pdf, accessed on January 23, 2015.

immigration while Assam's population grew by 103.51 per cent, Tripura registered a population increase of 195.28 per cent as against the national average of 33.67 per cent between 1901 and 1941.¹¹

Trends and Patterns Post-Independence

The independence of the country in 1947 was preceded by intense violence between the Hindus and the Muslims, and led to the partitioning of the Indian subcontinent into two dominions—India and Pakistan—on religious grounds. Creation of India and Pakistan meant that the movement of people which was hitherto taking place between two provinces and was legal became movement between countries and was therefore illegal. Despite the partition, the trend of migration of people from East Bengal into India in search of economic opportunities, which started in the first few years of the twentieth century, continued. This trend was further amplified by the inflow of the Hindu refugees who were fleeing communal riots and religious persecution.

The unrelenting migration from East Bengal/East Pakistan (later Bangladesh) into Assam, Tripura and West Bengal was clearly brought out in the census data on population growth of these bordering states. For example, in the first three decades after independence, Assam registered an overall population growth of around 35–36 per cent, way ahead of the national average of around 21–25 per cent, indicating a rise of population through migration.¹² In his report of 1963, the Registrar General of Census had put the number of such “infiltrates” into Assam at 2,20,691. The genocide perpetrated by the military junta in East Pakistan and the subsequent War of Liberation in 1971 triggered

¹¹ Jogesh Ch. Bhuyan, “Illegal Migration from Bangladesh and the Demographic Change in the North-East Region”, in B.B. Kumar (ed.), *Illegal Migration from Bangladesh*, Delhi: Astha Bharati, 2006, p. 79.

¹² Between 1951–61, 1961–71 and 1971–81, the population of India grew from 21.64 per cent to 24.80 per cent to 24.66 per cent. “Size, Growth Rate and Distribution of Population”, in *Census of India*, 2011, available at http://censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter3.pdf, accessed on January 27, 2015.

yet another massive inflow of refugees into India. It was estimated that close to 10 million people from East Pakistan had entered India.¹³

To make matters worse, most of the migrants who were deported from Assam in the 1960s re-entered the country. This trend was reflected in the census figures of 1971 for Assam, which revealed an increase of 820,000 Muslims—424,000 more than that could be accounted through natural increase.¹⁴ The steady rise of Muslim population in the state from 24.68 per cent in 1951 to 28.43 per cent in 1991 to 34.2 per cent in 2011 is also taken as an indication of large-scale migration from Bangladesh,¹⁵ an assertion further reinforced by the increase of Muslim population in the bordering districts of Goalpara, Nowgong and Cachar, from 42.94 per cent, 34.18 per cent and 38.49 per cent in 1951 to 51.31 per cent, 38.42 per cent and 45.47 per cent respectively in 2001.¹⁶

Post-independence, Tripura also witnessed massive inflow of people from East Pakistan, a majority of whom were Hindus. As a result, in the first decade after independence, the state's population increased from 6.39 lakhs to 11.42 lakhs, registering a growth of 78.71 per cent, which was highest in the country. In the subsequent three decades, the population growth rate continued to hover around 30–35 per cent.

¹³ *Seventy Third Report of the Committee on Petitions*, Rajya Sabha, New Delhi, March 22, 1982, p. 4.

¹⁴ Myron Weiner, "The Political Demography of Assam's Anti-immigrant Movement", *Population and Development Review*, Vol. 9, No. 2, June 1983, p. 285.

¹⁵ According to the white paper on illegal migration, it is believed that illegal migrants coming from Bangladesh have been exclusively Muslims; see *White Paper on Foreigners' Issue*, n. 1; "Census 2011: Assam Records the Highest Rise in Muslim Population", *The Times of India*, New Delhi, January 22, 2015, available at <http://timesofindia.indiatimes.com/india/Census-2011-Assam-records-highest-rise-in-Muslim-population/articleshow/45972566.cms>, accessed on January 27, 2015.

¹⁶ *White Paper on Foreigners' Issue*, n. 1, p. 45. The district-wise census data on religion have not been released. Assam, however, registered an increase of 34.22 per cent. "Assam Population 2011", available at <http://www.census2011.co.in/census/state/assam.html>, accessed on January 27, 2016.

The share of tribal population in the state, on the other hand, decreased from 53.16 per cent in 1941 to 31.50 per cent in 1961, which further decreased to 28 per cent in 1981.¹⁷

Similarly in West Bengal, the census estimated that between 1951 and 1961, approximately 4.5 lakh migrants from East Pakistan, mostly Hindus, entered the state.¹⁸ As a result, the population of the Hindus in the state registered a marginal increase from 78.45 per cent in 1951 to 78.80 per cent in 1961. Since the 1960s, the population of the Hindus in the state has been steadily declining. The proportion of Muslims, on the other hand, registered an increase of 0.46 per cent in 1971, which grew further to 5 per cent in 2001. Between 1991 and 2001, North 24 Parganas, Murshidabad and Malda, bordering Bangladesh, registered a population rise of 22.64 per cent, 23.70 per cent and 24.77 per cent respectively—a growth rate which was higher than the state’s average of 17.84 per cent. On the whole, between 1951 and 2001, while the growth rate of Hindus was 198.54 per cent, the Muslims recorded a growth rate of 310.93 per cent. This significant upswing in population growth of the Muslims in the state is attributed to illegal migration from Bangladesh.¹⁹

While the three states of Assam, Tripura and West Bengal received the bulk of illegal migrants from East Pakistan (later Bangladesh) in the initial decades of independence, in the later years, the other states of the North-East also started registering their presence. For example, Nagaland recorded the highest rate of population growth in India, from 56.08 per cent in 1981–91 to 64.41 per cent in 1991–2001, with Dimapur bordering Assam recording an exceptionally high rate of

¹⁷ Subir Bhaumik, *Insurgent Crossfire: Northeast India*, New Delhi: Lancer Publishers, 1996, p. 78.

¹⁸ Government of Assam, “Infiltration and Deportation of Pakistanis”, Directorate of Information and Public Relations Press Note No. 137, July 27, 1965, Shillong, available at <http://online.assam.gov.in/documents/218410/316853/Annexure-2-17A-except-9-and-12.pdf>, accessed on January 28, 2015.

¹⁹ Bimal Pramanik, “Illegal Migration from Bangladesh: A Case Study of West Bengal”, in Kumar (ed.), *Illegal Migration from Bangladesh*, n. 11, p. 140.

population growth. This rise in population has been attributed to the illegal influx of Bangladeshi migrants into the state.²⁰ Likewise, Arunachal Pradesh, Meghalaya and Mizoram also registered substantial population growth rates in the past three decades, which was above the national average.

If an increase in the Muslim populations is to be taken as an indicator for illegal migration from Bangladesh, in almost all the north-eastern states of India, barring few exceptions such as Manipur, Muslim population has shown a substantial growth. For instance, in Mizoram, between 1981 and 1991, the Muslim population grew by 105.8 per cent as compared to 42.89 per cent for the Christians. Similarly, Muslim population registered a growth of 135.01 per cent during the same decade in Arunachal Pradesh. In the subsequent decade, Muslim population grew by 122.54 per cent in Mizoram and 73.40 per cent in Arunachal Pradesh. Meghalaya also registered 61.35 per cent growth in its Muslim population compared to 42.31 per cent for Christians.²¹

Significantly, since 2001, all the states in north-east India started recording low population growth. For instance, in Assam, the decadal population growth rate declined from 18.90 per cent to 16.90 per cent in 2011, that is, 0.6 per cent below the national average of 17.50 per cent. Arunachal Pradesh's population growth rate declined from 27 per cent in 2001 to 25.90 per cent in 2011. Similarly, Meghalaya's population growth rate reduced from 30 per cent to 27.80 per cent in the same decade. Interestingly, Nagaland registered a negative growth rate of -0.50 per cent in 2011 from 64 per cent in 2001.²² As mentioned earlier, in absence of any authentic official data on the number of illegal

²⁰ M. Amarjeet Singh, "Illegal Migration into Northeast India: The Case of Nagaland", IDSA Occasional Paper No. 8, November 2009, p. 18.

²¹ "State/UT Population and Percentage Distribution of Population by Religion in Census 1991–2001", available at <http://socialjustice.nic.in/pdf/tab102.pdf>, accessed on April 23, 2015.

²² "Size, Growth Rate and Distribution of Population", n. 12.

migrants, the census data on population growth rate have always been presented as an indicator of the large-scale illegal migration from Bangladesh into India, especially in the North-East. But in the light of reducing population growth in the north-eastern states, as apparent from the census data, political parties espousing the cause of the illegal migrants argue that illegal migration from Bangladesh is a phenomenon of the past and no such movement of people from Bangladesh is taking place at present. This argument is, however, contested by an empirical survey which was conducted in Karbi Anglong district close to Dimapur. The survey revealed that unauthorised colonies have come up in the area in recent years and 26 per cent of the settlers in these colonies are illegal migrants who entered India in the late 1980s and the early 1990s. In addition, a number of squatter colonies populated by Bengali Muslims have also come up in the urban centres of Assam, as well as in the rest of India, indicating the steady illegal inflow of Bangladeshis.²³

Meanwhile, the saturation of Assam, West Bengal and other north-eastern states by the illegal migrants from Bangladesh resulted in paucity of land for cultivation as well as low skilled and unskilled jobs in these states. These factors pushed the new arrivals to other urban centres of India, such as Delhi, Mumbai, Bengaluru, Ahmedabad and Chennai. Thus, these cities started witnessing their surroundings being inhabited by undocumented Bangladeshis and their unskilled labour markets being populated by these foreigners. The resultant protests and agitations against illegal migration forced the city law enforcement agencies to deport the undocumented Bangladeshis. For example, the Gujarat Police identified and deported 440 Bangladeshis who were illegally staying in Ahmedabad since 2009.²⁴ The Delhi Police claimed to have deported

²³ “We are in Denial, but Bangladeshis are still Flooding India’s Northeast”, *rediff.com*, March 12, 2014, available at <http://www.rediff.com/news/column/bangladeshis-are-still-flooding-indias-northeast/20140321.htm>, accessed on April 24, 2015.

²⁴ “Be Right Back: Bangladeshi Deportees Show Stoic Resolve”, *The Times of India*, Ahmedabad, January 29, 2013, available at <http://timesofindia.indiatimes.com/city/ahmedabad/Be-right-back-Bangladeshi-deportees-show-stoic-resolve/articleshow/18230619.cms>, accessed on April 23, 2015.

more than 45,000 Bangladeshis who were illegally staying in the national capital since 1991.²⁵ The Mumbai Police, in 1998, tried to deport illegal Bangladeshi migrants, but met with resistance in Kolkata.²⁶

The trend of movement of Bangladeshi migrants to the rest of India, which was increasingly noticed in late 1980s, has increased in the last two decades. According to the media quoting Uttar Pradesh officials, in 2010, approximately 8,500 Bangladeshis were illegally staying in the state, of which 6,000 were living in Meerut, 1,800 in Lucknow and 350 in NOIDA.²⁷ Katihar, Kishanganj and Purnea districts of Bihar have also recorded illegal presence of Bangladeshis. In July 2013, 6,000 persons were accused of being Bangladeshis in the state and were handed over notices to prove their Indian citizenship or leave India.²⁸ In the same year, the Odisha government identified nearly 4,000 Bangladeshis in the state.²⁹ These were alleged staying in the districts of Kendrapara, Jagatsinghpur, Malkangiri and Bhadrak. Presence of Bangladeshi has also been observed in coastal states of the country, such as Gujarat, Karnataka, Tamil Nadu and Kerala.

²⁵ “Over 40 K Illegal Bangladeshi Migrants Deported: FRRO to Court”, *Business Standard*, New Delhi, August 20, 2013, available at http://www.business-standard.com/article/pti-stories/over-45k-illegal-bangladeshi-migrants-deported-frro-to-court-113082000822_1.html, accessed on January 30, 2015.

²⁶ “Political Pawns”, *India Today*, August 10, 1998, available at <http://indiatoday.intoday.in/story/shiv-sena-bjp-govt-launches-operation-in-mumbai-to-push-illegal-bangladeshi-immigrants-back/1/264716.html>, accessed on January 28, 2015).

²⁷ “Nearly 8500 Bangladeshis Living Illegally in Uttar Pradesh”, *dna*, Lucknow, June 11, 2010, available at <http://www.dnaindia.com/india/report-nearly-8500-bangladeshis-living-illegally-in-uttar-pradesh-1395139>, accessed on April 23, 2015.

²⁸ “Bihar: Borderline Cases”, *India Today*, July 13, 2012, available at <http://indiatoday.intoday.in/story/nw-bihar-sees-agitation-against-illegal-immigrants-from-bangladesh/1/372111.html>, accessed on April 23, 2015.

²⁹ “Government Identifies 3,987 Bangladeshi Infiltrators in Odisha”, *The Economic Times*, Bhubaneswar, March 18, 2013, available at http://articles.economictimes.indiatimes.com/2013-03-18/news/37814738_1_infiltrators-bangladeshi-nationals-minister-naveen-patnaik, accessed on April 23, 2015.

Estimates of Illegal Migrants in India

While it is an established fact that illegal migration from Bangladesh has been taking place unabated over the decades, there are no authentic official statistics to ascertain the actual number of illegal migrants in India. One of the frequent refrains of the Government of India on the lack of data on illegal migration is that since illegal migrants enter the country clandestinely and surreptitiously, it is impossible to have data on Bangladeshis illegally staying in various parts of the country.³⁰ Nonetheless, the Government of India has periodically provided statistics on the estimated number of illegal migrants in India. For example, in March 1992, the Ministry of Home Affairs (MHA) revealed that till 1991, more than 7 lakh Bangladeshis were identified as staying illegally in different border states of the country. The break-up of the data being: West Bengal, 2,40,446; Assam, 1,35,656; Meghalaya, 14,268; Tripura, 29,382 (1983–91); and Mizoram, 3,18,731.³¹ On May 6, 1997, Mr Inderjit Gupta, the then Home Minister of India, stated in the Parliament that there were 10 million illegal migrants from Bangladesh residing in India. Quoting MHA/Intelligence Bureau sources, the August 10, 1998 issue of the *India Today* magazine gave the details as follows: West Bengal, 5.4 million; Assam, 4 million; Tripura, 0.8 million; Bihar, 0.5 million; Maharashtra, 0.5 million; Rajasthan, 0.5 million; Delhi, 0.3 million—a total of 10.83 million.³²

The Task Force on Border Management, in 2001, quoted the figure on illegal migrants as 15 million.³³ In 2004, Shri Sriprakash Jaiswal, the Minister of State for Home Affairs, stated in Rajya Sabha that as on December 2001, an estimated 12 million illegal Bangladeshi migrants

³⁰ “Infiltration of Bangladeshis in India”, Unstarred Question No. 2968, Rajya Sabha, August 6, 2014.

³¹ “Internal Note Prepared by the Home Ministry, Government of India, March 1992”, in Kumar (ed.), *Illegal Migration from Bangladesh*, n. 11, pp. 243–57.

³² “Political Pawns”, n. 26.

³³ “Reforming the National Security System”, Recommendations of the Group of Ministers, New Delhi, February 2001, p. 60.

were staying in the country, including 5 million in Assam and 5.7 million in West Bengal.³⁴ The statement was later withdrawn. Crossing the border illegally and entering India surreptitiously is not the only way in which undocumented Bangladeshi nationals settle down in the country; a large number of Bangladeshis arrive with valid documents but do not return and continue to reside in India illegally. According to the government data, between 1972 and 1997, a total of 9,91,031 Bangladeshis entered India with valid documents but did not return.³⁵ The latest data on such visa violators, as on December 31, 2012, reveal that 16,350 Bangladeshis who came on valid travel documents were overstaying in India.³⁶

Reasons for Illegal Migration

The reasons for a person to either migrate voluntarily or being forced to leave his home are complex and intertwined. Social, political, economic and environmental compulsions back home, or even personal whims, could affect a person to cross the borders and settle in a new country. In the case of Bangladesh, a host of political and economic factors, such as political upheaval, religious persecution, social insecurity, economic stagnation and absence of job opportunities, demographic pressures and environmental crises, have pushed its nationals to leave their homes and migrate to India. At the same time, availability of land, better economic opportunities, education and health facilities and a similar cultural landscape have attracted these migrants to settle in India.

³⁴ “Lots of Bangla Migrants, How Many We don’t Know: Jaiswal”, *The Economic Times*, New Delhi, February 20, 2009, available at http://articles.economicstimes.indiatimes.com/2009-02-20/news/27638067_1_bangladeshi-infiltrators-illegal-bangladeshi-migrants-border-districts, accessed on January 28, 2015.

³⁵ “Writ Petition (Civil) No. 125 of 1998, All Indian Lawyers Forum for Civil Liberties (AILFCL) & Another Vs. Union of India and Others, Counter Affidavit on behalf of the Respondent No. 3”, in Kumar (ed.), *Illegal Migration from Bangladesh*, n. 11, pp. 140, 271.

³⁶ “Infiltration of Bangladeshis in India”, n. 30.

Political Factors

Political factors have been one of the major reasons in forcing the Bangladeshi Hindus out of the country and into India.³⁷ The movement of the Hindus from East Bengal happened in waves and coincided with communal riots of the 1950s and 1960s. The riots of January 1950 in Khulna district were perhaps one of the worst cases of state-orchestrated persecution against the Hindu minority in East Pakistan. Thousands of Hindus were killed in the riots and lakhs fled to India. In fact, in just three months, starting from May to July 1950, 7.5 lakh Hindus refugees took shelter in West Bengal.³⁸

The forced migration of the Hindus from East Pakistan into India continued throughout the 1950s. According to MHA data, between 1946 and March 1958, 41.17 lakh migrants had come to India, out of which 32.32 lakh were settled in West Bengal.³⁹ The riots of 1964 and the India–Pakistan War of 1965 yet again resulted in the out-migration of large numbers of Hindus from East Pakistan. Another massive out-migration from East Pakistan was triggered in 1971 when the Pakistani military establishment tried to suppress Bengali nationalism through brutal military force. An estimated 10 million persons, including 6.7 million Hindus, were forced to take refuge in India.⁴⁰

Besides riots and war, discriminatory land laws were another manifestation of the state repression against the religious minorities. A series of property laws enacted since 1947, such as the East Bengal Requisition of Property Act of 1948, the East Bengal Evacuees (Administration of Immovable Property) Act of 1951 and the East

³⁷ Pranati Datta, “Push–Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study”, *The Qualitative Report*, Vol. 9, No. 2, June 2004, p. 348.

³⁸ Verinder Grover and Ranjana Arora (eds.), *Partition of India: Indo-Pak War and the UNO*, New Delhi: Deep & Deep Publications, 1999, p. 53.

³⁹ Government of India, *Annual Report 2014–15*, New Delhi: Ministry of Home Affairs, 2015, p. 236.

⁴⁰ Meghna Guhathakurta, “Amidst the Winds of Change: The Hindu Minority in Bangladesh”, in Tanweer Fazal (ed.), *Minority Nationalisms in South Asia, South Asian Culture and History*, New York: Routledge, 2013, p. 128.

Pakistan Disturbed Persons Rehabilitation Ordinance of 1964, created ways for the state to intervene, manage and even transfer property of persons displaced by communal riots. These laws were further manipulated by vested interest groups and corrupt administrators to dispossess and alienate the Hindus from their own land and property.⁴¹

The emergence of Bangladesh in 1971 as an independent country, with secularism as one of the pillars of the constitution, did not change the fate of the Hindus in that country. In fact, with each succeeding year, the Bangladeshi political regime was growing more hostile to the minority communities. To begin with, immediately after the liberation of Bangladesh, the government promulgated the Bangladesh Vesting of Property and Assets Order in March 1972, which stated that the property left by the Pakistanis and other displaced people should be considered as one segment. In 1976, the government repealed the previous Act only to consolidate it even more by taking over all rights to administer, manage, dispose and transfer such properties.⁴² These laws paved four ways by which a person was dispossessed from his property and forced to migrate: first, forced occupation; second, leasing out of the said property by the government to the third party; third, nominal occupation but legal alienation; and fourth, extreme feeling of insecurity regarding loss of property.⁴³ According to one estimate, between 1965 and 2006, approximately 1.2 million Hindu households or 6 million Hindus were directly and severely affected by the Enemy/Vested Property Act and lost 2.6 million acres of their land.⁴⁴

⁴¹ Ibid., p. 131.

⁴² Abdul Barkat, "Political Economy of Deprivation of Hindu Minority in Bangladesh: Living with the Vested Property Act", in Abhijit Dasgupta, Masahiko Togawa and Abdul Barkat (eds.), *Minorities and the State: Changing Social and Political Landscape of Bengal*, New Delhi: Sage, 2011, p. 93.

⁴³ Ranabir Samaddar, *The Marginal Nation: Transborder Migration from Bangladesh to West Bengal*, New Delhi: Sage, 1999, p. 93.

⁴⁴ Barkat, "Political Economy of Deprivation of Hindu Minority in Bangladesh", n. 42, p. 104.

The post-1975 Islamisation of the constitution by the military regimes of General Zia and General Ershad increased anxieties among the Hindu population in Bangladesh. The declaration of Islam as the state religion in 1988 emboldened the communal forces and Islam became an important political factor.⁴⁵ The concept of an “Islamic State” found positive response from the general populace and helped in the rise of religious fundamentalism.⁴⁶ The widespread communal violence and destruction and desecration of temples in 1989, 1990 and 1992 as a reaction to Ram Janmabhoomi–Babri Masjid issue in India are cases in point. Ushering in of democracy in Bangladesh did not help either as the Bangladesh National Party (BNP) and its ally, Jamaat-e-Islami, continued to harass the Hindus branding them as Awami League sympathisers. Post-election violence, especially in 1991, 2001 and 2014, targeting the Hindus became the norm. Rise of Islamic terrorist groups such as the Harkat-ul-Jihad-al-Islami (HUJI), during this time, further exacerbated the atmosphere of fear and hostility in Bangladesh as these groups attacked religious minorities, secular intellectuals and journalists.⁴⁷

This forced emigration of Hindus gave birth to the phenomenon of “missing Hindu population” in Bangladesh. It is estimated that the size of the “missing Hindu population” was 705 persons per day during 1964–71; 521 persons per day during 1971–81; 438 persons per day during 1981–91; and 767 persons per day during 1991–2001. Consequently, the estimated total number of Hindus missing between 1964 and 2001 in Bangladesh was 8.1 million.⁴⁸ This fact is also

⁴⁵ Bertil Lintner, “Religious Extremism and Nationalism in Bangladesh”, in Satu P. Limaye, Mohan Malik and Robert G. Wirsing (eds.), *Religious Radicalism and Security in South Asia*, Honolulu: Asia-Pacific Center for Security Studies, 2004, pp. 414–16.

⁴⁶ Samir Kalra, “Diminishing Hindu Population in Bangladesh from the Perspective of Ethnic Cleansing: A Conscious Unawareness?”, *The Haf Blog*, January 6, 2015, available at <http://hafsite.org/blog/diminishing-hindu-population-in-bangladesh-from-the-perspective-of-ethnic-cleansing-a-conscious-unawareness/>, accessed on December 18, 2015.

⁴⁷ Lintner, “Religious Extremism and Nationalism in Bangladesh”, n. 45, p. 416.

⁴⁸ Bimal Pramanik, “Infiltration from Bangladesh: A Critical Analysis”, *Dialogue*, Vol. 10, No. 2, 2008, available at http://www.asthabharati.org/Dia_Oct%2008/B.%20Pram.htm, accessed on December 18, 2015.

corroborated by the sustained drop in the proportion of Hindu population in East Pakistan (later Bangladesh) since the 1940s, as recorded by successive censuses in Bangladesh. In 1941, the census recorded 28 per cent of the people of districts that became East Pakistan as Hindus. In 1951, the share dropped to 22 per cent and in 1961, it was 18.50 per cent. The out-migration of Hindus continued even after the creation of Bangladesh, which was reflected in the first Census of Bangladesh in 1974. The census data revealed that the proportion of Hindus had further reduced to 13.5 per cent and it went on to fall in three subsequent censuses: 12.2 per cent in 1981; 10.5 per cent in 1981; and 9.5 per cent in 2001. The current share of the Hindu population in Bangladesh is 9.64 per cent registering a marginal increase.

Economic Factors

While political factors have been largely responsible for driving the Hindus out of East Pakistan (later Bangladesh), a number of economic factors have also forced Bangladeshi nationals, both Hindus and Muslims, to abandon their home and illegally migrate to India. Land alienation and absence of economic opportunities in Bangladesh are the twin factors propelling illegal migration from that country into India. While Enemy/Vested Property Act is responsible for dispossessing a large numbers of Hindus of their ancestral property in Bangladesh, growing population pressure and environmental disasters are equally responsible for land alienation among the Hindus and the Muslims in Bangladesh. Growing population creates greater demands on resources such as land, food, energy, water and forest products, and their consequent overuse results in deterioration of quality. This process, in turn, encourages inequality in resource distribution among the rich and poor as the rich corner them and deny the poor their share. The shifting of resources in the favour of the rich pushes the poor to greater misery triggering out-migration.⁴⁹

⁴⁹ Thomas F. Homer-Dixon, "Environmental Scarcities and Violent Conflict: Evidence from Cases", *International Security*, Vol. 19, No. 1, Summer 1994, pp. 9–10.

Bangladesh is an agriculture-based economy with approximately 60 per cent of its land under agriculture.⁵⁰ The agriculture sector contributes about 17 per cent to the country's gross domestic product (GDP) and employs more than 45 per cent of the total labour force.⁵¹ While net cropping, gross cropping and multiple cropping areas have increased over the years, the total population in the country has also increased substantially. The population of Bangladesh has grown over the decades from 70.88 million in 1974 to 159.80 million in 2011. The growing demand of the ever-increasing population of Bangladesh for more food has created pressure on the agricultural land. Increasing intensity of cropping to meet the growing demand for food has resulted in depriving the soil of much-needed organic matter leading to degraded land and lower productivity. In fact, agricultural production is already reaching saturation and the agricultural sector is finding it impossible to absorb further increases in rural labour force thereby forcing rural residents to out-migrate.

Analysts have argued that more than population pressure, it is “agricultural impasse” caused by factors such as smaller landholdings, lack of access to water for irrigation, traditional agricultural practices and fluctuations in main crop which is inducing migration from rural areas of Bangladesh to either urban areas or across the border into India.⁵² It is noteworthy that Bangladesh is one of the densely populated countries in the world with 1,015 persons per sq km.⁵³ As a result of increasing man to land ratio, the farmlands are getting fragmented into smaller landholdings. Presently, 84.30 per cent of the total farm holdings

⁵⁰ Md. Hasibur Rahman, “Agricultural Land Use and Land Susceptibility in Bangladesh: An Overview”, available at <http://globalcommunitywebnet.com/GlobalFiles/agriculturallanduse.pdf>, accessed on December 18, 2015.

⁵¹ Government of Bangladesh, *Year Book of Agricultural Statistics—2013*, 25th Series, April 2015, Dhaka: Bangladesh Bureau of Statistics, p. 3, available at <http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/LatestReports/AgriYearbook-2013.pdf>, accessed on December 18, 2015.

⁵² Samaddar, *The Marginal Nation*, n. 43, pp. 155–57.

⁵³ *Population and Housing Census of 2011*, , available at http://203.112.218.66/WebTestApplication/userfiles/Image/Census2011/Bangladesh_glance.pdf, accessed on December 18, 2015.

in Bangladesh are small holdings,⁵⁴ with 51.70 per cent comprising holdings below 1 acre. Small landholding results in smaller agricultural outputs, which cannot sustain a family the year round. The situation is further aggravated by seasonal floods and droughts, which results in scarcity and famine condition triggering out-migration. One of the most glaring examples of such migration is the floods of July 1974 which “aggravated conditions of scarcity and hardship” for the poor and landless resulting in migration of thousands of Bangladeshis into neighbouring states of India, particularly West Bengal. Between July 1974 and March 1975, approximately 39,000 Bangladeshis who were trying to enter India were intercepted at the border by the Border Security Force (BSF).⁵⁵

Another factor for large-scale emigration from Bangladesh is a lack of adequate job opportunities. Bangladesh has been low on industrialisation index with industrial sector contributing 29.61 per cent of the GDP.⁵⁶ Industrialisation is essential for a country as it contributes to poverty alleviation through employment and income generation, provides consumer goods and capital goods and increases the GDP of the country. Bangladesh has a higher proportion of working-age population, with the labour force increasing at the rate of 3.39 per cent per annum.⁵⁷ Industrialisation in the country has, however, not been able to keep pace with the growing labour force and as a result, the unemployment rate stood at 4.50 per cent in 2010.⁵⁸ The working-age people who are unable to find jobs in the country look outside for employment opportunities.

⁵⁴ Government of Bangladesh, *Year Book of Agricultural Statistics—2013*, n. 51, p. 259.

⁵⁵ “Reported Recent Influx of Refugees from Bangladesh into the Eastern Parts of the Country”, Rajya Sabha, New Delhi, May 9, 195, in Avtar Singh Bhasin, *India–Bangladesh Relations, Vol. I*, New Delhi: Geetika Publications, 2005, p. 2390.

⁵⁶ “Bangladesh Agriculture’s Contribution to GDP Drops”, *bdnews.com*, Dhaka, March 2, 2015, available at <http://bdnews24.com/economy/2015/03/02/bangladesh-agricultures-contribution-to-gdp-drops>, accessed on December 18, 2015.

⁵⁷ Government of Bangladesh, *Report on Labour Force Survey 2010*, Dhaka: Bangladesh Bureau of Statistics, Ministry of Planning, August 2011, p. 6.

⁵⁸ *Ibid.*

Lack of job opportunities in the country has induced the Bangladesh government to devise programmes to send its working population abroad after equipping them with some skills. Today, lakhs of Bangladeshis are employed in low-skilled jobs in a number of countries. Consequently, worker's remittances comprise the second highest source of foreign exchange earnings of Bangladesh after the garment industry. Interestingly, the country does not seem to have any employment generation scheme for the unskilled labourers who, because of lack of employment opportunities in their country, are forced to cross into India illegally for better avenues. It must be noted that almost all the migrants who cross over into India clandestinely are unskilled or low skilled, and their movement into India is therefore not a response to labour demands in India but more a migration for survival.

Thus, illegal migration from Bangladesh is rather a "self-rescue" migration,⁵⁹ that is, fleeing from poverty, hunger, political and religious persecution, governmental apathy and a dark future in Bangladesh, than a response to a demand for labour in India as argued by many of the scholars and analysts. The migrants prefer to travel to India as it is cheaper for them to cross the border and they are assured of a job. They also prefer to cross it clandestinely because it costs them less than to procure passports and visas, which are costly and do not guarantee a long-term stay in India.⁶⁰ The work profile of the illegal migrants also reinforces that most of Bangladeshis who migrate take up any job that they can lay their hands on. As a result, almost all of them work as agricultural labourers, construction workers, rickshaw pullers, hawkers, weavers, domestic helpers, ragpickers and scavengers.

One of the negative fallouts of this migration for survival is the increasing trend of human trafficking. In the recent decades, trafficking

⁵⁹ Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia*, London: Anthem Press, 2005, p. 211.

⁶⁰ *Labour Migration Trends and Patterns: Bangladesh, India and Nepal, 2013*, Nepal: The Asia Foundation, 2013, p. 46, available at <https://asiafoundation.org/resources/pdfs/LabourMigrationTrendsandPatternsBangladeshIndiaandNepal2013.pdf>, accessed on December 21, 2015.

of women and human smuggling have become quite rampant across the India–Bangladesh border. Poverty and hunger forces either the parents to sell the girls to traffickers or the girls themselves leave home and fall prey to traffickers. Most women also leave home to escape from domestic violence and torture. It is estimated that 10,000–15,000 girls and women are trafficked through the border into India every year.⁶¹

Facilitating Factors

Several factors influence the decision of a person or a community to migrate. These are age, gender, a sense of impending calamity in the home country, availability of land, adequate economic opportunities, a sense of security attached to the intended area of migration and family and kinship networks. In the case of Bangladeshi migrants, while religious persecution, economic deprivation and non-availability of economic opportunities have forced people to migrate illegally to India, factors such as a porous and easy negotiable border, social networks and vested political interests have facilitated in their clandestine journey across the border and permanent settlement in India.

India shares a 4,096.70 km long and porous international border with Bangladesh. The border traverses a range of natural and cultural landscapes, which pose a challenge to its effective management. The terrain along the border is a mix of hilly and jungle tracks, plains, rivers and low-lying land. This diverse mix of topographical features makes the border extremely porous.⁶² The riverine borders are particularly vulnerable to infiltration as it is almost impossible to guard every stretch of the border. There are numerous illegal border crossing points, known

⁶¹ *Combating Trafficking of Women and Children in South Asia*, Regional Synthesis Paper for Bangladesh, India and Nepal, April 2003, p. 24, available at <http://www.adb.org/sites/default/files/publication/30364/combating-trafficking-south-asia-paper.pdf>, accessed on December 21, 2015.

⁶² Pushpita Das, “India–Bangladesh Border Management: A Review of Government’s Response”, *Strategic Analysis*, Vol. 32, No. 3, May–June 2008, p. 369.

as “*ghats*”, along the riverine border providing easy ingress.⁶³ The “*chars*” formed on the river beds also are vulnerable to infiltration as they act as springboards for the illegal migrants to access the Indian mainland.

Furthermore, the flat and fertile land along the border supports dense human settlements right up to the border. There are more than a hundred villages located right along the zero line, with many houses opening into Bangladesh. The ethnic composition of the people is similar on both sides of the border and it is quite difficult to differentiate between the citizens of India and Bangladesh. Traditional transborder ethnic and socio-cultural ties continue even today. The social networks established between the old immigrants and new immigrants over decades is extremely vital for the clandestine movement of people across the border as “it determines who enters from which area to whom and for what kind of job”.⁶⁴ The *matbars* or the rich landlords who have migrated to India at an earlier time are the main source for food and shelter to the new migrants. In course of time, they help the migrant find a job and even provide him/her with the required official documents to settle permanently in India.⁶⁵

While a porous border and social networks lower the cost of irregular migration for the potential illegal migrants, vested interests within India make their stay in this country more attractive. The BSF personnel have been notorious for demanding money from Bangladeshi migrants to look the other way when these undocumented migrants cross the international border. The border-guarding personnel also collude with the smugglers and touts for economic benefits. It is a known fact that each tout or smuggler is “assigned specific patches along the border, locally called the *ghats*, to facilitate border crossings by prospective immigrants and smugglers”.⁶⁶ These smugglers, known locally as *dalals*,

⁶³ Samaddar, *The Marginal Nation*, n. 43, pp. 121–22.

⁶⁴ *Ibid.*, p. 75.

⁶⁵ *Ibid.*, p. 145.

⁶⁶ Chandan Nandy, “Illegal Migration from Bangladesh to India: The Emerging Conflict”, Mellon–MIT Foundation on NGOs and Forced Migration, November 20, 2005, p. 85.

charge a sum of Bangladesh Taka 3,000–5,000 from the prospective migrants to facilitate clandestine border crossings, arrange for food and shelter and provide employment to them. The money which is collected is then shared equally among the border-guarding forces of India and Bangladesh and the *dalals*.⁶⁷ According to one *dalal*, “transfers and postings of high officials in the Indian border guard had a direct bearing on the flow and pattern of irregular migration”.⁶⁸ Most of the *dalals* are labour contractors who lure Bangladeshis from their villages, smuggle them to India with promises of good jobs and retain 10–20 per cent of their wages.⁶⁹

Political patronage given to illegal migrant is yet another factor which has encouraged millions of undocumented Bangladeshis to settle in India illegally. Political parties have always exploited the vulnerability of the illegal migrants for their own vested interests and benefits. In the pre-independence era, the Muslim League government of Saadullah encouraged thousands of Muslims from East Bengal to settle in Assam with the objective of transforming the demography of Assam and making it a Muslim-majority province which could be claimed by Pakistan.⁷⁰ Post-independence, the situation did not change much. Although there were periodic demands for the expulsion of illegal migrants, the process of detection and deportation itself was not robust enough and crumbled under political pressures. In fact, efforts to deport illegal migrants encountered protests from political parties, who blamed the executive for harassing Indian Muslims in the garb of expelling Bangladeshis staying illegally in the country.⁷¹

The main reason that the political parties protect the illegal migrants is that they consider the illegal migrants as potential vote banks that need

⁶⁷ *Labour Migration Trends and Patterns: Bangladesh, India and Nepal, 2013*, n. 60, p. 47.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, p. 51.

⁷⁰ Sanjoy Hazarika, *Strangers of the Mist: Tales of War and Peace in India's Northeast*, New Delhi: Penguin, 1994, pp. 56–57.

⁷¹ *Ibid.*

to be nurtured and sustained. For this purpose, they have facilitated the stay of the illegal migrants in India by providing them with fake voter identity cards and ration cards, which establish that they are Indian citizens with voting rights. And whenever there has been a demand to deport the illegal migrants, politicians of almost all affiliations have protest against it. In fact, the then Chief Minister of West Bengal, Shri Jyoti Basu, even claimed that there are no illegal migrants in his state.

The massive inflow of Bangladeshi citizens (erstwhile East Bengal/ East Pakistan) into Assam, West Bengal and Tripura, and subsequently to rest of India, has been a recurring security concern plaguing the country since independence. Such a huge influx of illegal migrants has had grave consequences on the socio-cultural, economic and political life of the receiving states. Highlighting the adverse consequences of the huge influx of illegal migration, the Supreme Court of India, while striking down the illegal migrants (Determination by Tribunals) Act, 1983 on July 12, 2005, pronounced that Assam faced “external aggression” and “internal disturbance” because of massive influx of illegal Bangladeshi migrants as enjoined in Article 355 of the Constitution of India.⁷²

On December 17, 2014, the Honourable Court observed that illegal migration has resulted in “periodic clashes between the citizens of India and migrants”, leading to loss of life and property, and thereby violating the constitutional rights of the Assamese people. It reaffirmed that illegal migration had eroded the cultural way of life of the Assamese people as they were being swamped by the illegal migrants who had no right to be in India.⁷³ The next chapter discusses various internal

⁷² Writ Petition (civil) No. 131 of 2000, *Sarbananda Sonowal vs Union of India & Anr.*, July 12, 2005, Supreme Court of India, p. 34, available at <http://judis.nic.in>, accessed on December 18, 2014.

⁷³ Writ Petition (civil) No. 562 of 2012, *Assam Sanmilita Mahasangha & Ors. vs Union of India & Ors.* with Writ Petition (civil) No. 274 of 2009, *Assam Publics Works & Ors. vs Union of India & Ors.* with Writ Petition (civil) No. 876 of 2014, *All Assam Ahom Association & Ors. vs Union of India*, December 17, 2014, Supreme Court of India, p. 33, available at supremecourtfindia.nic.in/outtoday/wpc_562_2012.pdf, accessed on December 21, 2014.

security threats and challenges that India has been grappling with as a result of large-scale illegal migration from Bangladesh. It also analyses whether the issue of illegal migration is merely politicised in India or it is securitised for the Union government to take “extraordinary” measures to tackle the problem.

Impact on Internal Security and the Securitisation

Migration into a region has always altered the socio-economic and cultural fabric of the receiving society. The impact of illegal migration from Bangladesh on India's security can be identified through two indicators. First, conflict over scarce resources, economic opportunities and cultural dominance ensues between the locals and migrants, along with the resultant political instability caused by the mobilisation of popular perception against the migrants by the elites to grab political power. In Assam and Tripura, resistance to Bengali migrants had both socio-economic and cultural dimensions, which was politically mobilised and which brought forth the issue of ethnicity and migration to the fore.¹ Second, the rule of law and integrity of the country are undermined by the illegal migrants engaged in illegal and anti-national activities, such as entering the country clandestinely, fraudulently acquiring identity cards, exercising voting rights in India despite being a Bangladeshi and resorting to transborder smuggling and other crimes.

In case of Assam, the monopoly of the Bengali Hindu migrants in administrative services and other professions, along with the imposition of Bengali as the official language, was resented by the Assamese since the colonial times. Added to this was the fear of losing their land to the "land hungry Mymensinghians" and becoming a minority in their own land.² After independence when the Assamese elite came to power, they asserted their cultural dominance by making Assamese the state's official language and by preferring Assamese locals in administrative

¹ Myron Weiner, "The Political Demography of Assam's Anti-immigrant Movement", *Population and Development Review*, Vol. 9, No. 2, June 1983, pp. 283–84.

² Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle & Electoral Politics in Assam 1826–1947*, New Delhi: Tulika Books, 2006, p. 213.

and other professions, which brought them in direct conflict with the Bengalis.

Throughout the 1960s, both the communities clashed with each other—sometimes violently—over the issue of official language. The imposition of Assamese language also did not go down well with the hill tribes, who, fearing that their cultural identity will be compromised, vehemently opposed it and agitated for the creation of newer states within Assam.³ In 1972, a major “language riot” took place over the issue of making Assamese the only medium of instruction in state colleges.⁴ Importantly, all these clashes were between Assamese Hindus and Bengali Hindus, and did not involve the Bengali Muslim migrants who decided to side with the Assamese in their efforts to assert their cultural supremacy.⁵

This cosy relationship was broken in the late 1970s, when the “anti-foreigner” agitation against the illegal migrants rocked Assam. The trigger for the widespread protests was the discovery of more than 45,000 illegal names in the electoral rolls of the Mangaldoi constituency. This revelation fomented the already simmering discontentment in the general populace against the large number of Bangladeshis illegally residing in the state.⁶ The Assamese feared that if Bengali Hindus and Bengali Muslims joined hands, they could be politically outnumbered, and so demanded that not only the names of the Bengali Hindus and the Bengali Muslims be deleted from the voter’s list but also the foreigners be expelled. The decline of Assamese-speaking population between 1961 and 1971, as recorded in the 1971 population census, further increased their anxieties.⁷

³ Udayan Misra, *North-East India: Quest for Identity: A Collection of Essays on Socio-political Topics*, New Delhi: Omsons Publications, 1988.

⁴ Nabanipa Bhattacharjee, “Language of Love and Death: Fifty Years of Assam’s Language Movement”, *Mainstream*, Vol. I, No. 9, February 22, 2012, available at <http://www.mainstreamweekly.net/article3269.html>, accessed on January 29, 2015.

⁵ Weiner, “The Political Demography of Assam’s Anti-immigrant Movement”, n. 1, p. 285.

⁶ *Seventy Third Report of the Committee on Petitions*, Rajya Sabha, March 22, 1982, New Delhi, p. 4.

⁷ Weiner, “The Political Demography of Assam’s Anti-immigrant Movement”, n. 1, p. 286.

When the Union government and the agitating Assamese leaders could not arrive at a consensus for determining who was an Indian citizen, the All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) started a statewide agitation known as the "Assam Movement/Anti-foreigner Movement" in 1979. The agitation did not remain confined to the Bangladeshis but included Nepalis too who had settled in the state since long.⁸ Soon, the Anti-foreigner Movement turned violent and numerous ethnic riots broke out in the state, the most brutal being the Nellie massacre where a large number of Muslims were killed by the Lalung tribesmen. The magnitude of the movement was so intense and widespread that it crippled Assam's economy as well the administrative machinery. It also took an anti-India and secessionist hue, with some members of the Jatiyatabadi Dal and the Purbanchaliya Lok Parishad secretly advocating secession of the entire North-East from India. More importantly, the agitation spilled over its borders into the adjoining states of Manipur, Meghalaya and Tripura where Bengalis, Biharis and Nepalis were attacked in the name of "foreigners". Thus, the entire north-east India was set aflame by agitations by the locals against migrants from within the country as well as across the border.

The "Assam Movement" ended after six years with the signing of a tripartite agreement between the AASU, the AAGSP, the Assam government and the central government on August 15, 1985. Unfortunately, agitations against illegal Bangladeshis did not stop. In fact, the peace accord sowed the seeds for further and more intense separatist movements in the state. The United Liberation Front of Assam (ULFA), which was formed months ahead of the Assam agitation in 1979, became a leading separatist organisation, with an agenda to "cleanse the Assamese society by driving away the foreigners (read Bangladeshis) by force". Interestingly, the ULFA changed its anti-

⁸ "1979–1985: The Foreign National Movement", All Assam Students' Union, available at http://www.aasu.org.in/contribution/activities/foreign_movement.html, accessed on January 29, 2015.

Bangladeshi rhetoric in the 1990s when its cadres found shelter in Bangladesh following military operations against them in Assam. It started praising the “contribution” of the Bengalis–Hindus and Muslims alike—in the growth and development of Assam,⁹ only to revert to its earlier anti-illegal migration stance once again after being chased out of Bangladesh in the late 2000s.¹⁰

The Bodo insurgency, which began as a reaction to the “Assamese domination” after the Assam Accord,¹¹ and which continues to rage even after signing of two peace accords in 1993 and 2003, has periodically targeted Muslims, perceived as Bangladeshis, in lower Assam. The violence against the Muslims, in particular, stems from their fear of being rendered a minority in their own area given the perceived rapid rise of Muslim population. Bodo militants also believe that Muslim settlers support illegal migrants who continue to arrive through the riverine areas and encroach upon land belonging to their community, thus justifying retaliation.¹² Although the Bodo organisations have a history of attacking the Muslim settlers since the 1950s, the episodes of violence against Muslims in 2012¹³ and again in 2014 have been particularly intense. A major fallout of these attacks was the mobilisation of the Muslim community and revenge attacks on people from the North-East in the rest of India.¹⁴

⁹ Subir Bhaumik, “Ethnicity, Ideology and Religion: Separatist Movements in India’s Northeast”, in Satu P. Limaye, Mohan Malik and Robert G. Wirsing (eds), *Religious Radicalism and Security in South Asia*, Honolulu: Asia-Pacific Center for Security Studies, 2004, p. 228.

¹⁰ “ULFA Threatens to Use Arms against Illegal Migrants from Bangladesh”, *rediff.com*, July 28, 2014, available at <http://www.rediff.com/news/report/ulfa-threatens-to-use-arms-against-illegal-migrants-from-bangladesh/20140728.htm>, accessed on January 30, 2015.

¹¹ Sudhir Jacob George, “The Bodo Movement in Assam: Unrest to Accord”, *Asian Survey*, Vol. 34, No. 10, October 1994, p. 883.

¹² “Assam Violence: 5 Key Facts about Bodo–Muslim Conflict”, *First Post*, May 4, 2014, available at <http://www.firstpost.com/india/assam-violence-5-key-facts-about-the-bodo-muslim-conflict-1507865.html>, accessed on January 30, 2015.

¹³ “A Timeline of Bodo–Muslim Violence in Assam”, *First Post*, July 26, 2012, available at <http://www.firstpost.com/india/a-timeline-of-bodo-muslim-violence-in-assam-391475.html>, accessed on January 30, 2015.

¹⁴ “Fear of Reprisals Forces Assamese Exodus”, *India Today*, September 3, 2012, available at <http://indiatoday.intoday.in/story/workers-from-assam-fear-for-their-lives-flee-mumbai-bangalore/1/214582.html>, accessed on April 24, 2015.

The persistent attacks against the Muslims perceived as illegal migrants in Assam has given way to radicalisation within certain sections of the Muslim community with the formation of militant organisations, such as the Muslim United Liberation Tigers of Assam (MULTA) and the Muslim United Liberation Front of Assam (MULFA), professing jihad against India to avenge the attacks.¹⁵ The arrest of some of the MULTA cadres and their subsequent confessions have revealed that they had received training at the al-Qaeda and Taliban camps. These confessions have also disclosed their close links with Pakistan's Inter-Services Intelligence (ISI) and Sunni radical groups, such as Sipah-i-Sahaba Pakistan (SSP), HUJI and Islamic Shashantantra Andolan.¹⁶ The participation of MULTA in the Bangladesh Islamic Manch, which proclaimed that they will work towards the merger of Muslim-dominated areas in Assam and Arakan with Bangladesh, has reinforced the fear expressed by generations of Assamese that the influx of Bengalis Muslims in Assam is a design to merge Assam with Bangladesh and create Greater Pakistan/Bangladesh.¹⁷ The formation of the "al-Qaeda in the subcontinent" to wage jihad in India and the mention of Assam as one of their target areas has also raised alarm among the intelligence and security establishments in India. It is speculated that given the periodic attacks on the Muslims in Assam, militant Muslim organisations in the state might become affiliates to the new outfit and threaten the integrity of the country.¹⁸ These events signify that the issue of illegal migration in the state is not going to die down and will continue to pose a challenge to the country's internal security.

¹⁵ "Muslim United Liberation Tigers of Assam", *South Asia Terrorism Portal*, available at http://www.satp.org/satporgtp/countries/india/states/assam/terrorist_outfits/MULTA.htm, accessed on February 9, 2015.

¹⁶ Bhaumik, "Ethnicity, Ideology and Religion: Separatist Movements in India's Northeast", n. 9, p. 243.

¹⁷ Ibid.

¹⁸ "Al Qaeda Trying to Enter Assam, says Chief Minister Tarun Gogoi", *The Indian Express*, Guwahati, September 20, 2014, available at <http://indianexpress.com/article/india/india-others/al-qaeda-trying-to-enter-assam-says-chief-minister-tarun-gogoi/>, accessed on February 9, 2015.

Another state where resistance to illegal migration from East Pakistan (later Bangladesh) morphed into a full-fledged insurgency is Tripura, where the tribal community has been reduced to a minority because of the large-scale influx of Bengalis. The tribal community has been resisting the settlement of Bengalis from East Bengal/Pakistan, and later Bangladesh, in their land since independence. The first anti-Bengali and anti-refugee political group called Seng-krak was established in 1947 itself.¹⁹ Sang-krak, along with a clutch of tribal organisations, carried out a large number of violent protests against the Bengali settler throughout the 1950s and 1960s, forcing the Tripura government to enact laws against land alienation of the tribal population of the state. Resentment against the Bengali migrants, however, did not abate and tribal organisations, such as the Tripura Upajati Juba Samiti (TUJS), Tripura Sena and East India Tribal Union, agitated over a number of issues to assert their identity and demanded land rights for tribals and Kokhorok as the state official language.²⁰

It was, actually, the formation of the Tripura National Volunteers (TNV) in 1978 that transformed their political agitation into an insurgent movement.²¹ The intensified attacks against the Bengalis brought them in direct conflict with “Amra Bangali”, a radical organisation formed by the Bengalis to counter violence against them by the tribal militants. The clashes between these two organisations led to widespread violence in the state throughout the 1980s. Although the TNV reached a political settlement with the Union and state governments in 1988, militancy did not subside in Tripura. The signing of the peace accord was immediately followed by formation of two new militant organisations—

¹⁹ Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia*, London: Anthem Press, 2005, p. 195.

²⁰ For details, see Subir Bhaumik, *Insurgent Crossfire: North-East India*, New Delhi: Lancer, 1996, p. 86.

²¹ Bhaumik, “Ethnicity, Ideology and Religion: Separatist Movements in India’s Northeast”, n. 9, p. 231.

the National Liberation Front of Tripura (NLFT) and the All Tripura Tiger Force (ATTF)²²—in 1989 and 1990 respectively. These organisations continue to struggle against the Indian state even today, albeit in a feeble manner.

Interestingly, West Bengal, which received most of the illegal migrants, did not witness any intolerance leading to socio-political agitation against them. This could be because both the host population and the immigrants belong to the same ethnic and linguistic background. Similarity of language and culture generated a feeling of “oneness” among the local people and induced them to sympathise with the tribulations of the immigrants. This cultural similarity also helped the illegal migrants to mingle freely with the local population and merge with them seamlessly. Yet another contributory factor to the absence of political opposition to illegal migration in the state was the patronage that the ruling party had given to the immigrants from Bangladesh. In a survey carried out by intelligence agencies in West Bengal, it was revealed that a number of local and state-level Communist Party of India-Marxist (CPI-M) politicians had been providing citizenship documents to the illegal migrants from Bangladesh to make them their captive vote bank.²³

The political patronage extended to illegal migrants helped successive streams of migrants to cross the border easily, find shelter and jobs in India, and finally settle down permanently. One of the fallouts of large-scale illegal migration of Bangladeshis has been that the border areas, especially in West Bengal and Assam, which earlier had a mixed composition of population, that is, both Hindus and Muslims cohabited, are giving way to new settlements based on exclusive religious

²² The leader of ATTF, Ranjit Debbarma, was arrested in February 2013. For details, see “Tripura Rebel Chief Detained under NSA”, *The Hindu*, Agartala, February 9, 2013, available at <http://www.thehindu.com/news/national/other-states/tripura-rebel-chief-detained-under-nsa/article4394376.ece>, accessed on January 30, 2015.

²³ For further reading on CPI-M’s patronage of illegal migrants from Bangladesh, read Chandan Nandy, “Illegal Migration from Bangladesh to India: The Emerging Conflicts”, Mellon–MIT Foundation on NGOs and Forced Migration, November 2005, p. 129.

identities.²⁴ In fact, the peopling of the border belt by Bangladeshi illegal migrants has led to the Hindu inhabitants migrating further into the interior of the state and the Muslims migrants gradually filling up the vacant space. In a number of cases, it has been observed that much of the migration is forced as Muslim migrants, who have become demographically preponderant in the border region, use force and intimidation to evict the Hindus.²⁵ Thus, a wide section of border is inhabited by a people having identical ethnic, linguistic, cultural and religious background.²⁶

Another outcome of the large-scale settlement of illegal migrants is that a number of mosques and madrasas have come up to cater to the needs of the migrant population in these areas. The construction of mosques and madrasas demonstrates the cultural and religious assertion by the illegal migrants who are overwhelmingly Muslims. The locals, especially the Hindus, believe that these mosques and madrasas, funded by money from Saudi Arabia, Kuwait, Bangladesh, etc., propagate anti-Hindu and anti-India sentiments. It is believed that these activities are conducted by Jamaat-e-Islami members who clandestinely cross over from Bangladesh.²⁷ These developments have created resentment against the illegal migrants among the local population, who feel that they are getting marginalised in their own land.

Commenting on the attacks on the United States (US) Consulate in 2002, Budhhadeb Bhattacharya, the then Chief Minister of West Bengal, linked illegal migration to the alleged anti-India activities of the ISI and its nexus with insurgent groups such as the Kamtapur Liberation Army

²⁴ Ranabir Samaddar, *The Marginal Nation: Transborder Migration from Bangladesh to West Bengal*, New Delhi: Sage, 1999, p. 133.

²⁵ Bimal Pramanik, "Infiltration from Bangladesh: A Critical Analysis", *Dialogue*, Vol. 10, No. 2, 2008, available at http://www.asthabharati.org/Dia_Oct%2008/B.%20Pram.htm, accessed on December 28, 2015.

²⁶ Ibid.

²⁷ Nandy, "Illegal Migration from Bangladesh to India: The Emerging Conflicts", n. 23, pp. 172–73.

(KLO) and the ULFA, all of which operate from bases in Bangladesh. He also highlighted the threat from mushrooming madrasas and mosques in the border belt and said that these were being exploited by the ISI to teach jihad against India.

The fact that the mosques are fast becoming centres for indoctrination and recruitment of terror operatives and modules for terrorist operations was proven by the bomb blast in Burdwan on October 2, 2014. The ensuing investigations revealed that some of these madrasas and mosques, such as the Simulia mosque, are indeed disseminating religious hatred and intolerance.²⁸ Incidentally, many of these seminaries have Bangladeshi teachers who have acquired Indian citizenship fraudulently.²⁹ These teachers highlight the alleged atrocities on Indian Muslims through videos and other provocative materials in order to alienate and radicalise the students. The arrest of a Jamaatul Mujahideen Bangladesh (JMB) operative from Assam revealed that the top JMB leaders had visited one madrasa in Nalbari to conduct motivational training for the youths to join the outfit with the objective of creating terror modules in Assam and West Bengal, which have fairly large concentrations of Bangladeshi illegal immigrants.³⁰ Although the Burdwan blasts and the subsequent investigations have revealed that the terrorists and their ideologues were exploiting the vast pool of illegal Bangladeshi migrants in the border areas to target their own country, it does not mean that these terror operatives would not join hands with their Indian counterparts in future to attack India. It is needless to underline that the Indian security and intelligence agencies have to remain alert for any eventuality in the future.

²⁸ “NIA Makes First Arrest in Bardhaman Blast Probe”, *The Times of India*, Bardhaman/Birbhum, October 16, 2014, available at <http://timesofindia.indiatimes.com/india/NIA-makes-first-arrest-in-Bardhaman-blast-probe/articleshow/44831211.cms>, accessed on December 28, 2015.

²⁹ “Bangladeshi Instructors Indoctrinating Young Muslims in Madrassas: Study”, *The Times of India*, New Delhi, November 12, 2014, available at <http://timesofindia.indiatimes.com/india/Bangladeshi-instructors-indoctrinating-young-Muslims-in-madrassas-Study/articleshow/45126069.cms>, accessed on December 28, 2015.

³⁰ “Burdwan Blast: JMB Tried to Induct Boys from Assam Madrasa to Create Modules”, *The Indian Express*, Guwahati, December 7, 2014, available at <http://indianexpress.com/article/india/india-others/burdwan-blast-probe-key-suspect-shahnoor-alam-arrested/>, accessed on December 28, 2015.

Elsewhere in the country, intermittent protests against Bangladeshis by some political parties have been recorded, especially in the urban centres. In most of the cases, the political parties accuse the illegal migrants of taking away jobs from the local communities. The local political elites and the media also paint them as criminals and delinquents contributing to the rise of crime levels in the cities and brand them as a societal and cultural danger. News reports have periodically highlighted the involvement of Bangladeshis in criminal activities such as robberies, murder and dacoity, reifying the image of the migrants as criminals.³¹ Passions against illegal migrants are also whipped up by alleging that their presence strains scarce civic amenities, thereby depriving genuine citizens of their rightful share in the resources. Swayed by such persistent political pronouncements, the city dwellers demand the deportation of the illegal migrants—demands which have been complied by the city authorities, sometimes successfully and sometimes not.

As stated earlier, the presence of a large number of illegal migrants in the border areas has created a 5–10 km zone peopled by Bangladeshis, and therefore has blurred the international border—making it a breeding ground for criminals and anti-national elements. Lax law enforcement, corrupt and indifferent administration, pervasive underdevelopment and lack of economic opportunities also substantially contribute towards aggravating the situation. The mafias operating in these grey zones solicit the illegal migrants to act as their couriers, who happily collude with them in turn for easy money or a hassle-free stay in India. They smuggle cattle, consumer items, drugs and narcotics, arms as well as human beings across the border through the well-established smuggling networks.³² While efforts to curtail these criminal activities by the BSF

³¹ “Bangladeshi Criminal Gangs New Challenge for Delhi Police”, *Yahoo! News*, New Delhi, July 22, 2013, available at <https://in.news.yahoo.com/bangladeshi-criminal-gangs-challenge-delhi-police-103908012.html>, accessed on January 30, 2015; “Bangladeshi Migrants behind Mumbai’s Rising Crime Graph: Shiv Sena”, *ibnlive*, Mumbai, August 23, 2013, available at <http://ibnlive.in.com/news/bangladeshi-migrants-behind-mumbais-rising-crime-graph-shiv-sena/416478-3-237.html>, accessed on January 30, 2015.

³² Nandy, “Illegal Migration from Bangladesh to India: The Emerging Conflicts”, n. 23, pp. 140–41. Also, see van Schendel, *The Bengal Borderland*, n. 19, pp. 226–29.

and the state police have often been met with violence,³³ the fact is also true that controls at the border are reduced because of the complicity and connivance of the border guards. As mentioned earlier, it has been well established that some BSF personnel allow the Bangladeshis to enter into India after accepting bribes ranging from Rs 500 to Rs 3,000 per person.³⁴

Securitisation of Illegal Migration

Before discussing the means and methods that the Indian government has undertaken over the decades to tackle the issue of illegal migration, it is important to discuss whether the issue of infiltration or illegal migration from Bangladesh has been securitised in India or is it merely politicised? An answer to this question would provide a better understanding of the imperatives that have shaped the Indian government's response to the issue of illegal migration from Bangladesh and the corrective measures it has employed from time to time to tackle the problem.

Politicisation and securitisation essentially constitute a continuum. When an issue is politicised, "it is part of public policy requiring government decision and resource allocations, or more rarely, some other form of communal governance".³⁵ On the other hand, when an issue is securitised, "it is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of the

³³ Shikha Bose, "Victims of a Security Dilemma: Chakmas and Refugees from Bangladesh", in S.D. Muni and Lok Raj Baral (eds), *Refugees and Regional Security in South Asia*, Colombo: Regional Centre for Strategic Studies, 1996, p. 117.

³⁴ "Paid Bribe to BSF Man to Enter India, Says Nun Rape Accused", *The Indian Express*, Ludhiana, April 4, 2015, available at <http://indianexpress.com/article/cities/kolkata/paid-bribe-to-bsf-man-to-enter-india-says-nun-rape-accused/>, accessed on April 24, 2015. Also, see "We Bribed BSF Jawan to Enter India: SIMI Suspects", *The Times of India*, Mumbai, August 16, 2006, available at <http://timesofindia.indiatimes.com/india/We-bribed-BSF-jawan-to-enter-India-SIMI-suspects/articleshow/1896365.cms>, accessed on April 24, 2015.

³⁵ Barry Buzan, Ole Waever and Jaap De Wilde, *Security: A New Framework for Analysis*, London: Lynne Rienner Publishers, 1998, p. 23.

political procedure”.³⁶ Securitisation involves consensus and shared understanding of that particular phenomenon or power which poses an existential threat and demands or legitimises extraordinary measures to tackle the issue. Every securitisation act involves political decisions. It is, however, not always necessary that the state alone can politicise or securitise an issue; social entities can raise the issue to the level of general consideration.³⁷

As regards infiltration or illegal migration from Bangladesh into India is concerned, the issue underwent a gradual process of transformation from politicisation to securitisation over a span of decades. In the initial years after independence, undocumented migration from Pakistan was tolerated, even welcomed, because it was seen as part of the dominant narrative of “homecoming”.³⁸ The partitioning of the Indian subcontinent into Muslim Pakistan and secular India resulted in a forced as well as a voluntary migration of approximately 14 million Hindus and Muslims across the borders.³⁹ As a part of this population exchange, substantial number of Hindus migrated from East Pakistan to the border states of West Bengal, Assam, Meghalaya and Tripura in the first decade after independence.⁴⁰ These people were seen as victims of religious persecution and therefore, treated as “sons and daughters of the nation coming home”.⁴¹

Later on, as more and more migrants continued to pour into these border states, and as competition between the local people and migrants for land and other scarce resources started, the mood of accommodation gave way to hostility. Thus, while the Muslim migrants

³⁶ Ibid., pp. 23–24.

³⁷ Ibid.

³⁸ Van Schendel, *The Bengal Borderland*, n. 19, p. 192.

³⁹ “Rupture in South Asia”, in *The State of World Refugees 2000: Fifty Years of Humanitarian Action*, United Nations High Commission for Refugees, January 1, 2000, p. 59.

⁴⁰ About 41.17 lakh people came from East Pakistan between 1946 and March 1958. Government of India, *Annual Report 2014–15*, New Delhi: Ministry of Home Affairs, 2015, p. 236.

⁴¹ Van Schendel, *The Bengal Borderland*, n. 19, p. 193

were not at all welcomed, resentment against the Hindu migrants was also growing manifold. The intense competition and conflict over control of the socio-political, economic and administrative spheres in the receiving states, especially in Assam and Tripura, gradually changed the narrative of “homecoming” to infiltration. The fact that the ethnic and religious composition of the migrants was quite different from the local population further exacerbated the atmosphere of intolerance. In fact, it also created a divergence of opinion between the central and the state leaderships. While the central leadership was still accommodative to the migrants, the state leadership was up in arms against them. For instance, when Gopinath Bordoloi’s government mulled over placing restrictions on the unauthorised movement of people across the international border with East Pakistan in Assam, the Union government was of the opinion that since the restrictions were intended to be reciprocal, they would put the Hindus in East Pakistan in a disadvantageous position.⁴²

The revelation of the 1961 population census, that a large number of East Pakistanis, mostly Muslims, had entered Assam illegally, hardened the state government’s stand even further. In 1962, the Assam Pradesh Congress Committee adopted a resolution stating that it was “of conformed opinion that the infiltration of Pakistani nationals without valid travel documents into Assam is likely to endanger the security of the country”.⁴³ In other words, the local leaders of Assam were interpreting illegal migration from East Pakistan as an existential threat to their society. Consequently, much of their political capital was spent on clashing with the Bengalis over gaining control over the political, administrative and economic spheres. Incidentally, this was also the time when the word infiltration entered the national lexicon when

⁴² Government of Assam, “Annexure 4—Infiltration and Deportation of Pakistanis”, Directorate of Information of Information and Public Relations, Press Note No. 137, Shillong, July 27, 1965, in *White Paper on Foreigners’ Issue*, Home and Political Department, Government of Assam, October 20, 2012, p. 56.

⁴³ Prafulla Kumar Mahanta, *The Tussle between the Citizens and Foreigners in Assam*, New Delhi: Vikas, 1986, p. 86.

references to undocumented migration from East Pakistan were made in the Parliament.⁴⁴ Deteriorating relations with Pakistan in the mid-1960s also forced the Indian government to harden its position on migration from East Pakistan. Subsequently, on the directives of the central government, massive drives against illegal migrants were launched by the Assam government throughout the 1960s.

The issue of illegal migration, till then, remained largely politicised as a major angst of the Assamese people was removed by making Assamese the state official language, thereby eliminating their fear of being overshadowed by an alien language. This argument is substantiated by the fact that the political parties also arrived at a tacit understanding that they would not rake up the “explosive” issue.⁴⁵ It was in the late 1970s that the issue was securitised when “an ad hoc coalition of a few regional political and cultural organizations headed by AASU and AGSP, sponsored a campaign drawing attention to the problem of illegal immigration into the state, mostly from Bangladesh”.⁴⁶ These groups fomented the fear of being “swamped by foreign nationals” and articulated the narrative of change in the demographic profile of the state because of unhindered and large-scale infiltration. The AASU and Assam Gana Sangram Parishad (AGSP) presented illegal migrants from Bangladesh as an existential threat to the Assamese identity and economic well-being of the Assamese people. The rhetoric against illegal migration by the AASU and the AGSP was only a politicising move, but the issue was finally securitised when the Assamese masses

⁴⁴ Van Schendel, *The Bengal Borderland*, n. 19, p. 195.

⁴⁵ Sanjib Baruah, “Immigration, Ethnic Conflict, and Political Turmoil—Assam, 1979–1985”, *Asian Survey*, Vol. 26, No. 11, November 1986, pp. 1190–191.

⁴⁶ *Ibid.*, p. 1184.

⁴⁷ Sujata Ramachandran, “Of Boundaries and Border Crossings”, *Interventions: International Journal of Postcolonial Studies*, Vol. 1, No. 2, 1999, p. 239.

⁴⁸ Priyanka Upadhyaya, “Securitization Matrix in South Asia: Bangladeshi Migrants as Enemy Alien”, in Mely Caballero-Anthony, Ralf Emmers and Amitav Acharya (eds), *Non-traditional Security in Asia: Dilemmas in Securitisation*, Aldershot: Ashgate, 2006, pp. 25–27.

overwhelmingly accepted this rhetoric and demanded extraordinary measures to prevent the illegal migrants from entering their state from across the international border.

Eventually, the anti-foreigners issue moved from the border states of the North-East to the national arena during the late 1980s with the emergence of majoritarian Hindu nationalism. The Hindu right political parties and groups—the Bharatiya Janata Party (BJP), Rashtriya Swayamsevak Sangh (RSS) and Vishwa Hindu Parishad (VHP)—espousing the Hindu ideology, tried to elicit the solidarity of the Hindu community by reiterating the vulnerability of the Hindu space.⁴⁷ Threats to the Hindu *rashtra* were identified; and among others, the “silent demographic invasion” of the Bangladeshi nationals. Thus, illegal migrants from Bangladesh, most of whom were Muslims, became the rallying point against which the BJP and its allies tried to mobilise the Hindu votes. Through sustained rhetoric of “demographic aggression” by the “infiltrators” and “demand of Lebensraum by the Muslim Bangladeshis”, the Hindu right was successful in presenting illegal migration from Bangladesh as a threat to national security.⁴⁸

In fact, by criticising the establishment of being complicit to the infiltration, the BJP and its allies goaded the Union government to undertake “extraordinary” measures to check unauthorised border crossings. Singed by such strident criticism, the Narasimha Rao government formulated an “Action Plan” of detection, identification and deportation of infiltrators from Bangladesh.⁴⁹ While the central government hesitated in implementing the plan, the BJP-led state governments in Delhi and Maharashtra launched special drives in the early 1990s to detect and deport Bangladeshi infiltrators.

The rhetoric of demographic invasion from Bangladesh became so powerful that it forced the central government as well as a few state

⁴⁹ Sujata Ramachandran, “‘Operation Pushback’: Sangh Parivar, State, Slums, and Surreptitious Bangladeshis in New Delhi”, *Economic and Political Weekly*, Vol. 38, No. 7, February 15–21, 2003, p. 638.

governments to change their narratives. Acknowledging the adverse consequences of illegal migration, the Union Minister of State P.M. Saeed said in Lok Sabha in August 1995, “there has been continuous influx of Bangladeshi nationals into India for a variety of reasons, including religious and economic considerations. The demographic composition of the border areas has been altered with new entrants flooding the areas and the local migrating into the interior.”⁵⁰ Even the West Bengal government—which had hitherto denied any illegal migration into the state—finally accepted, under intense pressure from local people, that large-scale migration had indeed taken place in West Bengal.⁵¹

Besides political parties and pressure groups, officials and judiciary also started endorsing the argument that illegal migration does pose a threat to the national security. S.K. Sinha, the Governor of Assam, painted an alarming picture where the indigenous Assamese were being reduced to a minority with their political, economic and cultural survival being jeopardised because of the migration of Bangladeshi nationals. He also warned that once the foreigners are in majority, they will demand the creation of Greater Bangladesh by merging the border belts of Assam with Bangladesh and that international Islamic fundamentalism would be the driving force.⁵² The Group of Ministers Report of 2001 states that because of large-scale illegal migration from Bangladesh, “demographic changes have been brought about in the border belts of West Bengal, several districts of Bihar, Assam, Tripura, and Meghalaya”.⁵³ The report goes on to say that “the massive illegal

⁵⁰ Avtar Singh Bhasin, *India–Bangladesh Relations, Vol. 1*, New Delhi: Geetika Publishers, 2003, p. xciv.

⁵¹ Upadhyaya, “Securitization Matrix in South Asia: Bangladeshi Migrants as Enemy Alien”, n. 48, p. 29.

⁵² S.K. Sinha, *Report on Illegal Migration into Assam*, Raj Bhavan, Guwahati, November 8, 1998, available at http://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm#PREVENTING INFILTRATION, accessed on December 16, 2015.

⁵³ *Reforming National Security System*, Recommendation of the Group of Ministers, February 2001, p. 60.

immigration poses a grave danger to our security, social harmony and economic well-being”.⁵⁴ Echoing similar sentiments, the Delhi High Court averred that the influx of Bangladeshi nationals, who have illegally migrated, poses a threat to the integrity and security of India.⁵⁵

Given the unabated flow of illegal migrants from Bangladesh since independence and given that the issue is being debated and discussed as a threat to national security, the Government of India has undertaken a number of measures to check illegal migration from across the border from Bangladesh. The next chapter analyses the measures implemented to stop illegal migrants, as well as the circumstances which have shaped the government’s decision to implement particular measures and their outcomes.

⁵⁴ Ibid.

⁵⁵ Verdict of Delhi High Court, Writ Petition (Crl.) 677/2008, Razia Begum & Ors. vs. State & Ors, August 12, 2008, available at <http://indiankanoon.org/doc/50020865/>, accessed on December 16, 2015.

Tackling the Problem Government's Response

Land alienation among the indigenous groups in the migrant-receiving border states, growing resentment against the Bengali migrants, polarisation of the society along communal lines, politicisation and securitisation of the issue of infiltration/illegal migration, growing societal intolerance and subsequent violence were some of the major challenges that Indian state had to grapple with as a consequence of continuous illegal migration in the country. Since the threats and challenges to the stability and security of the country as a result of illegal migration were varied, the state response to them was also a mix of targeted interventions. To begin with, one of the urgent issues that the government had to respond to, at the earliest, was the increasing land alienation among the local people, especially among the tribal people of Assam and Tripura. Legislations pertaining to land acquisition to provide tenancy rights to the indigenous people of Assam were therefore enacted to grant tenancy rights to the tribal population of the state and, at the same time, deny the illegal immigrants an incentive to cross the border into India and settle permanently.

The second set of measures was to identify and deport all the foreigners who had entered the country illegally after a stipulated date. For this purposes, a drive to detect and deport them was undertaken. Special programmes against illegal migration were launched and tribunals were set up to take cases relating to violation of the Foreigners Act of 1946. Despite the implementation of these measures, the flow of illegal migrants continued unabated. While political interference and half-hearted implementation of the measures by the executive were reasons for the grim situation, the Union government soon realised that all the measures were targeted against illegal migrants who had already entered the country.

No schemes or interventions were formulated for intercepting the illegal migrants at the international border itself to deter them from

crossing the border illegally. This lack of border controls was, in fact, facilitating many illegal migrants to re-enter the country even after being deported by the state police. Hence, tightening of the international borders against the unauthorised entry of persons from neighbouring countries was the third important measure that the Union government undertook. For the purpose of better border management, the strength of the border-guarding force was augmented, fences and roads were constructed along the border and a scheme of issuing identity cards to the border people was initiated.

The following sections discuss and analyse various sets of measures undertaken by the Union and the state governments and assess how far they were successful in preventing illegal migration from Bangladesh.

The Land Acquisition Acts

The issue of land alienation in Assam had emerged as a major problem during the colonial days when it was observed that immigrants from East Bengal were either granted tenancy rights by the administration or the immigrants themselves encroached upon forested land and reclaimed wasted land thereby divesting the tribals of their land. The tribal people, under the banner of Central Organisation of Assam Tribes, had agitated against the large-scale land transfer from the tribal peasants to the East Bengali immigrants and, in 1945, demanded that the Assam government should evict the migrants from East Bengal from the reserved forest and other areas, end all encouragement to migrate from East Bengal and redistribute land to the landless tribal people of the state.¹

After independence, keeping the concerns of the tribal population in mind, the Assam government amended that Assam Land Revenue Regulation of 1886 (the Assam Land and Revenue Regulation Amendment Act, 1947) and institutionalised the decision taken in 1946 to reserve land for the tribals by creating tribal belts and blocks.² Under

¹ Arupjyoti Saikia, *A Century of Protests: Peasant Politics in Assam since 1900*, Oxon: Routledge, 2014, p. 201.

² Chandan Kumar Sharma, "Tribal Land Alienation: Government's Role", *Economic and Political Weekly*, Vol. 36, No. 52, December 29, 2001–January 4, 2002, pp. 4793–94.

the Act, villages with 50 per cent or more of tribal population and backward communities were brought under the jurisdiction of the tribal belts and blocks, and in some instances, for the sake of geographical contiguity, even villages having less than 50 per cent of tribal population were clubbed with the reserved areas.³

Contrary to expectations, the initiative hardly addressed the problem of land alienation amongst the tribals as the lands earmarked for them were in remote and barren areas. Further, the interests of capitalists, tea plantations, landlords and non-tribals inhabiting the tribal land remained legally protected as they were granted permission to retain land in the tribal areas. Consequently, the tribals not only were deprived of land tenancy rights but were also compelled to migrate to remote and inhospitable areas of the state. In later years, the enactment of a couple of land acquisition acts—such as the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955 and the Assam Acquisition of Land for Flood Control and Prevention of Erosion (Validation) Act of 1959⁴—further added to the woes of the tribals in terms of land alienation.

Since these Acts permitted the Assam government to acquire land to resettle persons displaced by floods and earthquakes, it benefited the Bengali immigrants instead of the tribals because the Bengali immigrants were the ones who inhabited the low-lying areas, such as *chars* and *chaporis*, which got inundated during annual floods,⁵ and were settled in government-acquired land and given tenancy rights. Since these Acts did not address the land alienation grievances of the tribals, they were challenged in the court and once the Assam Land (Requisition and

³ Ibid.

⁴ For details, see “Introduction”, The Assam Land (Requisition and Acquisition) Act of 1964, Directorate of Land Requisition, Acquisition and Reforms, Government of Assam, Guwahati, March 27, 1991, p. i.

⁵ Arnab Pratim Dutta, “Land of Discord”, *Down to Earth*, August 31, 2012, available at <http://www.downtoearth.org.in/coverage/land-of-discord-38893>, accessed on December 10, 2015.

Acquisition) Act of 1964 was legislated, these Acts were repealed. Thus, because of faulty policies, vested political interests and bureaucratic apathy, legislations which could have discouraged further immigration from East Bengal/Pakistan by denying them rights to land in Assam ended up giving them land rights, thereby encouraging further illegal migration.

Immigrants (Expulsion from Assam) Act of 1950

The Constitution of India had fixed July 19, 1948 as the date for migrants from Pakistan to claim Indian citizenship, but this date could not be adhered to as post-partition communal riots in both the countries forced people to flee across the borders. Subsequently, a new date of December 31, 1950 was decided under the Nehru–Liaquat Pact, which was signed on April 8, 1950, to protect the rights of minorities to immovable property in each other's country.⁶ The pact facilitated the return of net 1,61,360 people into Assam and many more in West Bengal and Tripura.⁷

Meanwhile, detection and deportation of foreigners was being carried out in the border states according to the Immigrants (Expulsion from Assam) Act of 1950, which came into effect from March 1, 1950.⁸ The Act provided for expulsion of any person who had been residing outside India but had entered India before or after the enactment of the Act and whose presence was detrimental to the interest of the general public or any section of the Scheduled Tribe (ST). The Act, however, barred expulsion of refugees who had fled Pakistan because

⁶ Sanjib Baruah, *India against Itself: Assam and the Politics of Nationality*, New Delhi: Oxford University Press, 1999, p. 119. Also, see "Agreement between India and Pakistan on Minorities", in *White Paper on Foreigners' Issue*, Home and Political Department, Government of Assam, October 20, 2012, pp. 49–52.

⁷ *White Paper on Foreigners' Issue*, n. 6, p. 7.

⁸ Section 2 of the Immigrants (Expulsion from Assam) Act, 1950, Act No. 10 of 1950, March 1, 1950, available at <http://indiankanoon.org/doc/1523917/>, accessed on February 9, 2015.

of civil disturbances or fear of such disturbances.⁹ In addition, a National Register of Citizens (NRC), containing information for each individual such as the father's name or husband's name, nationality, sex, age, means of livelihood or occupation and house or holdings, was being prepared by the Assam government. The NRC was aimed to help identify and verify genuine Indian citizens and repatriate foreigners.

The process of identification and deportation of illegal migrants during the 1950s was ineffective because, first, passport and visa regulations between India and Pakistan came into operation only from October 1952. Second, Pakistan as a foreign country, and its nationals as foreigners, was not defined till 1957. It was only in January 1957 that Section 2(a) of the Foreigners Act of 1946 was amended to define a Pakistani national as a foreigner. So, in practice, the provisions of Foreigners Act of 1946 were not applicable to illegal migrants from East Pakistan. In addition, the Pakistani nationals were also not required to register themselves with the district magistrate if they entered India through valid visas.¹⁰ So, there were no means to trace a Pakistani national who had entered Indian through legal process but did not return to his/her country after the expiry of the visa duration.

Prevention of Infiltration of Foreigners Scheme

After the 1961 population census assessed that 2,20,691 illegal migrants had entered Assam, the Union government launched the Prevention of Infiltration into India of Pakistani Nationals (PIP) scheme in June 1962. The aim of the scheme was to deter the illegal entry of fresh migrants from East Pakistan by keeping a strict watch on the immigrant settlement colonies in the border districts of the states of Assam, West Bengal, Meghalaya and Tripura. In later years, the scheme was extended to few of the interior districts as well. Under the scheme, the police was vested with the responsibility of setting up observation posts in immigrant settlement areas so as to identify and deport any new migrant

⁹ *White Paper on Foreigners' Issue*, n. 6, p. 6.

¹⁰ *Ibid.*, pp. 7–8.

and act as a second line of defence along the international border. Border Police in Assam and Meghalaya and Mobile Task Forces in West Bengal and Tripura were constituted to carrying out the specific job of detection and deportation of illegal migrants.¹¹ This time around the detection and deportation of illegal migrants proved to be successful, which is evidenced by the fact that between 1961 and 1966, 1,78,952 migrants were either deported or induced to leave Assam.¹²

Soon after, however, some local political parties as well as other vested interest groups started opposing the process to deport illegal migrants by the state government by expressing sentiments that “they are our own people”. These vested interest groups also alleged that genuine Indian Muslims were being harassed by the police. Even Pakistan threatened to drag India to the United Nations (UN) if it did not stop “pushing Indian Muslims into Pakistan”. Under intense political pressure, the Union government took away the powers to deport from the deputy commissioners (DCs) and the superintendents of police (SPs) and vested it in the Foreigner’s Tribunals, which were established in September 1964.¹³

With the emergence of Bangladesh as a separate nation in 1971, the Indian government had to improvise the scheme. First, the scheme was renamed as Prevention of Infiltration of Foreigners (PIF). The scheme was, however, not implemented continuously but extended from time to time. However, with growing concerns that illegal migration from across the border had not abated even after the creation of Bangladesh, the Union government restored the power to evict Bangladeshis to the DCs and the SPs in 1976. They were, of course, instructed not to apprehend persons who had entered India before

¹¹ “Influx of Infiltrators, July 23, 1996, Lok Sabha”, in Avtar Singh Bhasin, *India–Bangladesh Relations, Vol. 1*, New Delhi: Geetika Publishers, 2003, p. 2573.

¹² *White Paper on Foreigners’ Issue*, n. 6, p. 8.

¹³ *Ibid.*, p. 15. Also, see K.P.S. Gill, “Illegal Infiltration in the North-East: India’s Internal Security Perspectives”, in B.B. Kumar (ed.), *Illegal Migration from Bangladesh*, Delhi: Astha Bharati, 2006, pp. 93–94.

March 25, 1971.¹⁴ Furthermore, in 1987, additional posts were sanctioned for police departments of the concerned states under the PIF scheme so that adequate manpower could be provided to apprehend illegal border crossers. For example, 3,153 posts for Assam,¹⁵ 165 posts for West Bengal, 144 posts for Tripura and 194 posts for Meghalaya in the police were sanctioned.¹⁶ The PIF scheme did achieve some success in detecting and deporting illegal migrants but did not deter the Bangladeshis from illegally crossing the border. The failure of the PIF scheme was primarily because of temporary nature of the scheme, manpower and infrastructure shortage and political pressures.

The Foreigner's Tribunals of 1964

Following intense political pressure against the detection and deportation process and to counter allegations of arbitrariness and harassment by the executive, the Union government created the Foreigner's Tribunals under Clause 2 of the Foreigners (Tribunal) Order on September 23, 1964. These tribunals had the power to take up cases to decide whether a person is foreigner or not, as specified in the Foreigners Act of 1946. The idea to appoint members with judicial background to the tribunal was to allow persons who were served "Quit India" notices to make representations to these tribunals and expect fair hearing of their cases. Accordingly, the process was relaxed so that the alleged infiltrator got enough time to challenge the police case in the tribunals if he desired to do so. The police was further instructed that suspected illegal migrants should not be harassed and a thorough probe against an infiltrator can be carried out only if it was ascertained that the person was an illegal

¹⁴ "Foreigners Act, 1946—delegation of powers under Section 3(2) thereof to civil authorities, February 17, 1976, Ministry of Home Affairs, Government of India", in *White Paper on Foreigners' Issue*, n. 6, pp. 64–65.

¹⁵ "Assam Accord", Unstarred Question No. 3403, Lok Sabha, March 17, 2015, available at <http://mha1.nic.in/par2013/par2015-pdfs/ls-170315/3403.pdf>, accessed on December 14, 2015.

¹⁶ "Annexure X—Internal Note Prepared by the Home Ministry, Government of India in March 1992", in Kumar (ed.), *Illegal Migration from Bangladesh*, n. 13, p. 259.

migrant. In 1964, four tribunals were constituted and 35,080 cases were referred to them.¹⁷ Between 1964 and 1968, few more tribunals were constituted but they were gradually wound up by 1973 as most of the infiltrators were successfully deported. The tribunals were again revived in July 1979 and 10 tribunals were set up to detect and deport illegal migrants.¹⁸

Like the PIF scheme, the Foreigner's Tribunals proved to be ineffective in deporting illegal migrants. One of the major reasons for their failure was the elaborate processes of detection of infiltrators, which caused excessive delays in identification and deportation of illegal migrants. Failure of the above-mentioned schemes in detection and deportation of illegal migrants also contributed towards an increasing trend of unauthorised crossing of the border from East Pakistan (later Bangladesh) as the illegal migrants realised that the chances of them getting deported back to their country were rare.

One of the obvious fallouts of the presence of a large number of illegal migrants was the politicisation of the issue in Assam, leading to the launching of anti-foreigners agitation targeting the illegal migrants in the late 1970s and early 1980s. In later years, there was increasing securitisation of the illegal migration issue, especially after the Assam agitation compelling the Indian government to undertake a series of extraordinary measures. In addition to legal provisions for detection and deportation of Bangladeshi nationals illegally residing in India, forcible deportation of illegal migrants, construction of border fences to stop unauthorised crossings at the border and issuance of multipurpose identity cards to identify Indian citizens were some of the "extraordinary" measures undertaken in response to the threat of illegal migration.¹⁹

¹⁷ *White Paper on Foreigners' Issue*, n. 6, p. 9.

¹⁸ *Ibid.*, p. 16.

¹⁹ "Influx of Infiltrators, July 23, 1996, Lok Sabha", n. 11, p. 2572.

Illegal Migrants (Determination by Tribunals) Act of 1983

The functioning of the Foreigner's Tribunals in Assam, set up under Foreigners Act of 1946, faced a lot of criticism from political parties and other groups. One of the allegations was that the Act gave unbridled powers to police who abused it to declare any person as foreigner (East Pakistani or Bangladeshi) and detain and deport him. Further, a person so accused did not have any legal recourse in these tribunals and had to prove that he was not a foreigner all by himself.²⁰ Many political parties espousing the cause of the minority community alleged that that genuine Indian Muslims were harassed and forced to flee in the name of deportation.²¹ Therefore, on December 25, 1983, the Union government enacted the Illegal Migrants (Determination by Tribunals) (IMDT) Act, which was aimed at addressing these complaints.

The IMDT Act provided for judicial tribunals to determine, "in a fair manner", whether a person was an illegal migrant or not so that the Government of India could expel him/her from the country because the continuance of such foreigners in the country was detrimental to the interests of the public.²² The Act provided for an administrative screening committee, which would examine the complaints under the Act and reject complaints found to be frivolous. Twenty tribunals were set up by the Assam government under the provisions of the Act and these tribunals took up cases regarding suspected illegal migrants entering into India after March 24, 1971. The Foreigner's Tribunals continued

²⁰ Prashant Bhushan, "An Unconscionable Judge", available at <http://bharatiyas.in/cjarold/files/AN%20UNCONSCIONABLE%20JUDGEMENT.pdf>, accessed on December 8, 2015.

²¹ Sanjoy Hazarika, *Rites of Passage: Border Crossings, Imagined Homelands, India's East and Bangladesh*, New Delhi: Penguin, Books, 2000, p. 70.

²² The Illegal Migrants (Determination by Tribunals) Act, 1983, Act No. 39 of 1983, December 25, 1983, available at <http://www.india-eu-migration.eu/media/legalmodule/Illegal%20Migrants%20Act%201983.pdf>, accessed on December 8, 2015.

to function along with IMDT tribunals and were entrusted with the responsibility to dispose cases of suspected Bangladeshis before March 24, 1971.²³

The IMDT Act was not without its faults. Critics described the Act as “toothless” as it failed to detect and deport illegal migrants effectively. One of the main reasons for its failure was that the Act gave right to a private person to lodge a complaint against someone about whom he had the information that the concerned person was an illegal migrant. The right was however limited by the provision that both the complainant and the person accused should reside under the same police station.²⁴ In addition, unlike the Foreigners Act of 1946, the onus of proving that a person is an illegal migrant was on the complainant instead of the accused. The reason for such a clause was ostensibly to discourage frivolous cases.²⁵ Given these issues, the functioning of the tribunals under the IMDT Act remained suboptimal. Till July 2005, of the 1,12,791 cases referred to the tribunals, 88,770 cases were pending and only 12,846 were declared as illegal migrants, of which 1,547 could be deported or pushed back across the border into Bangladesh.²⁶

In 2005, the Supreme Court struck down the IMDT Act describing it as *ultra vires*.²⁷ Following the judgement, all the IMDT tribunals and appellate tribunals ceased to function. All the pending cases were transferred to the existing Foreigner’s Tribunals of 1964. The Foreigners Tribunals Act of 1946 was amended in 2012, which provided that all cases were required to be disposed within 60 days from the day of reference received from competent authority. Thirty-six Foreigner’s

²³ *White Paper on Foreigners’ Issue*, n. 6, p. 16.

²⁴ *Ibid.*

²⁵ Hazarika, *Rites of Passage*, n. 21, p. 70.

²⁶ *White Paper on Foreigners’ Issue*, n. 6, p. 17.

²⁷ “IMDT Act is the Biggest Barrier to Deportation, says Supreme Court”, *The Hindu*, New Delhi, July 14, 2005, available at <http://www.thehindu.com/2005/07/14/stories/2005071405551200.htm>, accessed on February 9, 2015.

Tribunals were set up in Assam and 64 additional tribunals were sanctioned by the MHA to expedite pending cases.²⁸ The Foreigner's Tribunals have declared more than 38,000 persons as illegal Bangladeshi migrants in Assam since 1985, but the state administration faces problems in deporting them because most of the illegal migrants are either absconding or dead. A bigger problem is Bangladesh's constant refusal to acknowledge these illegal migrants as its citizens, thus stonewalling any meaningful cooperation to deport the illegal migrants back to their country.²⁹

This problem has arisen because India does not have any agreement with Bangladesh to deport its nationals who have illegally entered India. The only agreement that India has with Bangladesh is the repatriation of trafficking victims, which was arrived at following years of discussion and negotiations. For repatriation and rehabilitation of these victims, a task force was constituted between India and Bangladesh in 2009. Bangladesh accepts those Bangladeshis who are deported for violating visa norms and overstaying. A total of 18,532 Bangladeshi nationals, found to be overstaying in India between 2011 and 2013, have been deported.³⁰

“Operation Push Back”

One of the most controversial measures that the Union government had employed to tackle the problem of illegal migrants in the 1990s

²⁸ “Foreigner’s Tribunal”, Unstarred Question No. 4713, Lok Sabha, August 12, 2014, available at <http://mha1.nic.in/par2013/par2014-pdfs/ls-120814/LS%204713.pdf>, accessed on April 24, 2015.

²⁹ “Assam Police Seek Info from Public on Bangla Immigrants”, *The Indian Express*, Guwahati, April 23, 2015, available at <http://indianexpress.com/article/india/india-others/assam-police-seek-info-from-public-on-bangla-immigrants/> accessed on April 24, 2015.

³⁰ “SOP for Repatriation of Rescued Victims and Illegal Migrants”, Unstarred Question No. 721, Rajya Sabha, December 11, 2013, available at <http://mha1.nic.in/par2013/par2013-pdfs/rs-111213/721.pdf>, accessed on December 15, 2015; “SOP for Repatriation of Illegal Bangladeshi Immigrants”, *Press Information Bureau of India*, July 23, 2014, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=107327>, accessed on December 15, 2015.

was the forcible deportation of illegal migrants under “Operation Push Back”. Such an extreme measure was undertaken following growing apprehensions in the 1980s about relentless illegal migration from Bangladesh in various parts of the country. Various political parties, especially the BJP, had been vociferous about the adverse impact of their presence in the country. Taking cognizance of the growing disquiet against illegal migration, the then Prime Minister, Narasimha Rao, decided to take concrete action. In 1991, his government formulated “Operation Push Back” as part of an “Action Plan” against Bangladeshi illegally residing in India.³¹ The fundamental objective of “Operation Push Back” was to deter any potential Bangladeshi migrant from illegally crossing the border and settling in India. The Action Plan had three steps: (i) detection; (ii) identification; and (iii) deportation.³²

While “Operation Push Back” was to be implemented all over India, it was in New Delhi—the national capital territory—where most of the action took place. The first operation took place in September 1992, when 132 men, women and children from the slums of New Delhi were rounded up and deported to Bangladesh.³³ The authorities allegedly shaved off the heads of the deportees so that they could be easily recognised if they tried to sneak back into India immediately. Expectedly, Bangladesh decried Indian government’s “unilateral, illegal and unfortunate” action of forcibly pushing in Bengali-speaking Indian Muslims into Bangladesh. Even the West Bengal chief minister declared that his administration and party will not allow the alleged illegal migrants to be pushed through the state’s borders.³⁴ Under growing national and international pressure, the Indian government had to suspended “Operation Push Back” in November 1992.

³¹ Sujata Ramachandran, “‘Operation Pushback’: Sangh Parivar, State, Slums, and Surreptitious Bangladeshis in New Delhi”, *Economic and Political Weekly*, Vol. 38, No. 7, February 15–21, 2003, p. 638.

³² *Ibid.*, p. 639.

³³ “India Sends Bangladeshi Home”, *The Christian Science Monitor*, November 19, 1992, New Delhi, available at <http://www.csmonitor.com/1992/1118/18061.html>, accessed on December 15, 2015.

³⁴ Ramachandran, “‘Operation Pushback’”, n. 31, p. 324.

However, operations of similar nature, albeit under different names such as “Operation Flush Out”, were undertaken sporadically in later years.³⁵ More than 45,000 Bangladeshis were claimed to be deported under various operations conducted by the Delhi Police in the national capital since 1991.³⁶ Similarly, in the late 1990s, when the BJP–Shiv Sena combine was in power in Maharashtra, it launched several exercises to evict illegal Bangladeshi migrants from Mumbai. In one such operation, the Mumbai Police tried, unsuccessfully, to deport a group of 34 Bangladeshis but met with stiff resistance from Forward Bloc cadres in Kolkata, who “snatched away” the Bangladeshis from the Mumbai Police.³⁷ In 2005, again, 98 Bangladeshis were detained in Mumbai as part of “Operation Flush Out”.³⁸

Tighter Border Controls

The first step towards addressing the issue of illegal migration is not to allow persons to cross the international border without authorisation. For this purpose, border controls had to be made tighter to deter aliens from illegally crossing the borders. Towards this end, the Indian government implemented a series of schemes, such as augmenting the manpower of the border-guarding force, increasing the number of border outposts along the border, constructing fences and issuance of multiple identity cards to border population.

³⁵ Ibid., p. 325.

³⁶ “Over 40 K Illegal Bangladeshi Migrants Deported: FRRO to Court”, *Business Standard*, New Delhi, August 20, 2013, available at http://www.business-standard.com/article/pti-stories/over-45k-illegal-bangladeshi-migrants-deported-frro-to-court-113082000822_1.html, accessed on January 30, 2015.

³⁷ “Political Pawns”, *India Today*, August 10, 1998, available at <http://indiatoday.intoday.in/story/shiv-sena-bjp-govt-launches-operation-in-mumbai-to-push-illegal-bangladeshi-immigrants-back/1/264716.html>, accessed on December 15, 2015.

³⁸ “98 Illegal Bangladeshi Nationals Detained”, *DNA*, Mumbai, October 25, 2005, available at <http://www.dnaindia.com/mumbai/report-98-illegal-bangladeshi-nationals-detained-7109>, accessed on December 15, 2015.

Strengthening Border Surveillance

Despite experiencing continuous illegal migration, India's border with East Pakistan (later Bangladesh) had remained poorly guarded. While some efforts for strengthening border controls along the border were envisaged during the 1960s, no concrete steps were taken to secure the border against illegal migration. The diverse and difficult terrain, together with a lack of resources to raise adequate border-guarding forces and accompanying security infrastructure, contributed to the precarious situation. The fact that the Indian government did not perceive any conventional threat from Bangladesh was another reason for leaving the India–Bangladesh border poorly guarded. A gradual change in the perception of the policymakers towards the Bangladesh border started after certain events unfolded that threatened national security. Prominent of them being the Assam agitation, the Kargil War and a series of terrorists attacks in the country's hinterland. While the Assam agitation and the subsequent peace accord provided the framework to tighten border controls in Assam, the Kargil War highlighted the importance of an effective border management against infiltration, and the terrorist attacks in the country emphasised the urgency of stricter border controls to prevent the terrorists from sneaking in and out of the country unhindered.

Accordingly, the Government of India periodically started taking steps to strengthen border controls. To begin with, in January 1986, a 5-year expansion plan for the BSF was sanctioned by the Union government. Under this plan, the deployment pattern of the BSF was redesigned to increase the number of border outposts (BoPs) for a better surveillance of the border.³⁹ The BoPs are crucial components for border guarding as it is from these BoPs that patrol parties are regularly dispatched to keep a vigil along the border to detect and deter illegal crossings. The patrol parties also gather tactical intelligence about infiltrators and infiltration routes by studying the terrain of the border and interacting with the local people. Initially, the inter-BoP distance along the Indo-

³⁹ “Annexure X—Internal Note Prepared by the Home Ministry, Government of India in March 1992”, n. 13, p. 258.

Bangladesh border was approximately 9 km, making it extremely difficult to effectively man the border, but over the years, with increased deployment of the BSF personnel and establishment of 802 BoPs, it was reduced to an average distance of 4–4.5 km.⁴⁰ In 2009, the Union government approved a proposal to construct 383 additional BoPs to further reduce the inter-BoP distance to 3.5 km.⁴¹ The project was scheduled to be completed by 2013–14, but because of delays in land acquisition, clearances from various ministries and protests by local people, it could not be completed in the stipulated time.⁴²

Augmenting the presence of the BSF along the border to effectively man the border is another step towards better border surveillance. The Union government has increased the number of BSF battalions deployed along the border over the years. In 1991, 40 battalions of BSF were deployed along the Bangladesh border. In the next decade, the strength of the BSF was increased to 60 battalions and presently, 80 battalions of BSF are guarding the India–Bangladesh border. To guard the riverine stretches, which are most vulnerable to infiltration and smuggling, the water wing of the BSF has been strengthened with the deployment of additional floating BoPs. These floating BoPs are supported by fast patrol boats for inspection and interception along the riverine border.⁴³ To further strengthen patrolling in the creek areas of the Sunderbans, which is increasingly becoming prone to illegal migration and piracy, the Union government has sanctioned three more floating BoPs to be deployed there.⁴⁴ Various electronic devices, such

⁴⁰ Pushpita Das, “India–Bangladesh Border Management: A Review of the Government’s Response”, *Strategic Analysis*, Vol. 32, No. 3, May–June 2008, p. 374.

⁴¹ Government of India, *Annual Report 2014–15*, New Delhi: Ministry of Home Affairs, 2015, p. 31.

⁴² *Ibid.*, p. 32.

⁴³ “Floating Outposts Give BSF Strategic Edge”, *Business Standard*, February 23, 2015, Hasnabad, available at http://www.business-standard.com/article/news-ians/floating-outposts-give-bsf-strategic-edge-115022300623_1.html, accessed on December 15, 2015.

⁴⁴ “Government Sanctions 9 Floating Vessels for BSF along WB, Gujarat”, *DNA*, New Delhi, April 30, 2015, available at <http://www.dnaindia.com/india/report-government-sanctions-9-new-floating-vessels-for-bsf-along-wbgujarat-2082104>, accessed on December 15, 2015.

as hand-held thermal imaginaries, night vision goggles and direction finders, are also being used to enhance remote surveillance of the border.

In addition, the Indian government has also solicited the cooperation of the Bangladesh government to prevent illegal migration and other transborder crimes. As part of the Coordinated Border Management Plan, the BSF and its counterpart, the Border Guards Bangladesh (BGB), have identified 39 vulnerable stretches along the international border and conduct coordinated patrolling to enhance vigil along these stretches.⁴⁵ Furthermore, standard operating procedures (SOPs) for arrest of illegal migrants have also been finalised in 2009, which were revised in 2011 and again in February 2013. Under its provisions, infiltrators caught at the international border by the BSF are sent back immediately, and those who are arrested inside the country are deported to Bangladesh after taking legal action against them.⁴⁶

The India–Bangladesh Border Fence

Fences or barriers are described as “fortified boundaries” and are constructed for enhanced border controls.⁴⁷ They are asymmetrical physical barriers constructed not to completely stop the cross-border movement of illegal immigrants, insurgents, terrorists, smugglers and traffickers but to impose costs on the would-be infiltrators, and in so doing deter or impede infiltration.⁴⁸ The idea is that the fence will slow down the movement of the infiltrator, thus making it easy for the security forces to apprehend him. These fences are a combination of

⁴⁵ “B'desh No Longer has Rebel Training Camps”, *The Times of India*, Shillong, February 6, 2015, available at <http://timesofindia.indiatimes.com/city/guwahati/Bdesh-no-longer-has-rebel-training-camps/articleshow/46136666.cms>, accessed on February 10, 2015.

⁴⁶ “Illegal Migrants”, Unstarred Question No. 6211, Lok Sabha, May 5, 2015, available at <http://mha1.nic.in/par2013/par2015-pdfs/ls-050515/6211.pdf>, accessed on December 15, 2015.

⁴⁷ Ron E. Hassner and Jason Wittenberg, “Barriers to Entry: Who Builds Fortified Boundaries and Why?”, March 10, 2011, p. 2, available at <http://www.jasonwittenberg.org/wp-content/uploads/2013/05/Barriers-to-Entry.pdf>, accessed on December 3, 2015.

⁴⁸ Ibid.

obstructions, such as barbed wires, concrete walls and ditches, along with watch towers, sensors, cameras, and are patrolled by a semi-militarised force.⁴⁹

A country which builds fences along its borders tends to do so after perceiving such threats as illegal immigrants, smugglers, insurgents or terrorists entering its territory from the neighbouring country. More often than not countries construct border fences unilaterally in response to perceived threats because their neighbours are either unwilling to or incapable of stopping the egress of unwanted persons and goods from their territory.⁵⁰ Thus, countries who built fences have to brave protests from neighbours and affected parties as well as criticism from international community.

India is perhaps the first country which has built a border fence to prevent illegal migration. The idea of fencing the border with Bangladesh to stem the tide of illegal migrants was first put forward in January 1965. The proposal was to erect barbed wire fences along some vulnerable patches of the international border with the approval of the centre, but shortage of barbed wires and inability to clear a mile-deep area of habitation along the border prevented the fencing project from being implemented.⁵¹ The idea, however, did not fade away and resurfaced during the Assam agitation against foreigners. The widespread violence unleashed during the agitation, especially the Nellie massacre in February 1983, and repeated petitions by state representatives to build a fence along the Bangladesh border compelled the Union government to debate the possibility of fencing the country's international border with Bangladesh to prevent illegal migration. After much deliberation, the central government decided to start constructing the fence in April 1984. The commencement of work on the fencing infuriated Bangladesh, leading to clashes at the border. Subsequent firing

⁴⁹ Ibid., p. 6.

⁵⁰ Ibid., p. 7.

⁵¹ *White Paper on Foreigners' Issue*, n. 6, pp. 10–11.

by border security forces of both the countries resulted in the death of a few BSF personnel and members of survey team and as a result, the construction of the fences had to be suspended temporarily.⁵²

Border fencing as a potential tool to prevent illegal migration found mention a year later in the Assam Accord of 1985. Clause 9 of the Accord stipulated, “[T]he 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.”⁵³ It further stated that roads should be constructed to facilitate patrolling by the security forces and all effective measures should be undertaken “to prevent infiltrators crossing or attempting to cross the international border”.⁵⁴ Accordingly, the project for constructing fences and roads along vulnerable stretches of the border in Assam started in 1986.

Construction of fences along the India–Bangladesh border has not been easy. One of the major hurdles in the process has been the hostile attitude of Bangladesh. As mentioned earlier, Bangladesh had raised serious objections against India’s decision to build a fence along their mutual border. In August 1983, while interacting with Indian media persons, General Ershad said, “I do not accept this theory of infiltration. There is no reason either to have a wall or a fencing.”⁵⁵ He claimed that Bangladesh felt humiliated and belittled and expected to be consulted before the fencing was built.⁵⁶ Responding to Bangladesh’s protests, India initially declared that since the fences will be constructed on the Indian territory, there was no reason to “bilateralise” it. Later, in March 1983, India backtracked and sent its foreign minister to hold parleys with his Bangladesh counterpart, but Bangladesh remained

⁵² Partha S. Ghosh, *Cooperation and Conflict in South Asia*, Delhi: Manohar, 1989, p. 85.

⁵³ “The Assam Accord of 1985”, p. 2, available at [http://aasc.nic.in/acts%20and%20rules%20\(goa\)/Implementation%20of%20Assam%20Accord%20Deptt/Assam%20Accord.pdf](http://aasc.nic.in/acts%20and%20rules%20(goa)/Implementation%20of%20Assam%20Accord%20Deptt/Assam%20Accord.pdf). Accessed on December 5, 2015.

⁵⁴ Ibid.

⁵⁵ Ghosh, *Cooperation and Conflict in South Asia*, n. 52, p. 84.

⁵⁶ Ibid.

uncooperative.⁵⁷ Faced with Bangladesh's intransigence, India decided to unilaterally construct the fence in April 1984.

As expected, India continued to face stiff resistance from Bangladesh as it objected to the construction of fences on the grounds that the construction of any defensive structure within 150 yards of the international boundary is not permitted under guidelines agreed to in 1975, referring to the border fencing as a "military wire obstacle". India maintained that the fence is not a defensive structure as it cannot impede the movement of military vehicles. India also maintained that it is demolition of defensive structures and not construction of fences that forms part of 1975 guidelines. India further argued that the 1975 agreement provided for a stop to unauthorised immigration and smuggling and that the fence will help do both. India also faced stiff resistance from Bangladesh at 265 disputed spots as the security forces of both the countries differ on their perception of the location of the boundary.⁵⁸

Despite facing stiff opposition, India carried on with the project of building fences along the borders with Bangladesh. Construction of fences was undertaken in two phases, with Phase I sanctioned in 1987 and Phase II in 2000. Under Phase I, only 857 km (20 per cent) of the border was fenced because the decision was to fence the most vulnerable stretches of the border and not the entire border.⁵⁹ Accordingly, fences were constructed only in some patches along the international border in Assam, West Bengal and Meghalaya. But increasing cases of illegal migration, cross-border movement of insurgents and smuggling were reported and the Union government realised that piecemeal fencing will not resolve the problem as a substantial portion of the border remained vulnerable to infiltration by Bangladeshi nationals. Consequently, the High Level Empowered

⁵⁷ Bhasin, *India–Bangladesh Relations, Vol. 1*, n. 11, p. xcvi.

⁵⁸ Das, "India–Bangladesh Border Management: A Review of Government's Response", n. 40, p. 376.

⁵⁹ Government of India, *Annual Report 2000–2001*, New Delhi: Ministry of Home Affairs, 2001, p. 54.

Committee monitoring the implementation of Phase I of fencing, on October 14, 1999, approved a proposal for constructing additional 2,429.5 km of fences along the entire border.⁶⁰ On June 12, 2000, the Union government sanctioned Rs 1,335 crore for the construction of additional fences under Phase II.⁶¹ A proposal to re-erect the fences constructed during Phase I, which were damaged as a result of faulty construction designs, repeated submergence and vagaries of weather, was also approved. Accordingly, 861 km of new fences are being erected under Phase III. Of the total of 3,326.14 km of fences along the India–Bangladesh border, which was finally sanctioned, 2,828 km had been constructed by the end of 2014 and another 78.8 km will be completed by 2016. Of these, 1,874 km is illuminated with floodlights during night to provide better visibility of the border.⁶²

It is, however, important to note that the entire India–Bangladesh border cannot be fenced because the terrain—at places riverine, or hilly or marshy—does not permit the construction of fences. Moreover, building fences is not an easy task and is fraught with major hurdles. One of the biggest hurdles is delays in the acquisition of land. In addition, vested political interests, the lackadaisical and uncooperative attitude of state governments, stringent environmental laws, paucity of funds and protests by local people and unwillingness on their part to relocate have all contributed towards stalling the process of fencing.⁶³ Disputed and non-demarcated patches of the border and resistance from Bangladesh further complicated the fencing effort.

While fencing has been successful to some extent in preventing easy access, it has not altogether stopped people from illegally entering India.

⁶⁰ Government of India, *Annual Report 1999–2000*, New Delhi: Ministry of Home Affairs, 2000, p. 30.

⁶¹ n. 59, p. 55.

⁶² Government of India, *Annual Report 2014–15*, n. 41, pp. 32–33.

⁶³ Ibid. Pushpita Das, “Border Fencing Will Not Stop Illegal Migration”, *IDS A Comment*, December 26, 2014, available at http://www.idsa.in/idsacomments/BorderFencingWillNotStopIllegalMigration_pdas_261214, accessed on December 6, 2015.

This is because the migrants have devised means to surmount the fence or circumvent it. There are numerous reports of migrants either cutting the fences or placing wooden ladders and planks to climb over them. The unfortunate incident of Felani Khatun is a case in point. Migrants also exploit the poorly guarded Sunderbans and the sea route to enter India. Fences have also proven ineffective in areas where they cut through villages and houses because inhabitants of the houses and villages provide shelter to the illegal migrants. Thick forested tracts and marshy and low-lying areas, coupled with the faulty design and use of substandard material, have further reduced the effectiveness of fences.⁶⁴

That the fence was never meant to completely stop illegal migration all by itself was not lost on the policymakers. In fact, the Minister of External Affairs, Mr Jaswant Singh, had told the Rajya Sabha in March 2002:

The nature of the Indo-Bangladesh border is such that it is very difficult to fence the entire border. Out of 4000 km of the border, there is a proper fencing only in a fraction of it. A large part of this border is riverine, a large part of this border keeps changing as the rivers keep changing their course. On account of these various factors infiltration cannot be stopped simply by putting barbed wire fences on this very difficult terrain, on this very difficult border. There are complex social and economic reasons behind infiltration, the illegal infiltration from Bangladesh. There are economic factors; there are factors of land and unless all these are taken into account it will be impractical and unwise to address it in one particular manner.⁶⁵

Despite these shortcomings, the fence has proved to be effective in a number of ways. First of all, being a border obstacle, it has served the BSF and the border population well. By slowing down the movement

⁶⁴ Ibid.

⁶⁵ Bhasin, *India-Bangladesh Relations*, Vol. 1, n. 11, p. xcvi.

of the border crossers effectively, the fence has given enough time to the BSF personnel to intercept infiltrators and in the process, helped the BSF to control the movement of petty smugglers, illegal migrants, anti-national elements as well local people across the border. For the border population, the fence has acted as a security net as they can pursue their agricultural activities in peace and miscreants and criminals from neighbouring villages of Bangladesh now find it difficult to access their standing crops and forcibly harvest it. Fencing has also made it harder for the criminals to loot the property of the farmers and smuggle their cattle across the border.⁶⁶

Multipurpose Identity Card

In 1965, the Union government considered introducing a scheme of providing identity cards to the people residing along the India–Bangladesh border belt. The purpose was to identify and differentiate Indian citizens from foreigners. Persons who were issued identity cards were required to carry the cards voluntarily so that they could be easily identified as genuine citizens and not harassed by the police checking people against illegal migration. Incidentally, the proposal of issuing identity cards to border people was cancelled a year later after it was found that the proposal was not feasible.⁶⁷

The project of identity cards was again revived in 1991 when the Government of India approved a “scheme for issue of identity cards in the specified areas in the states of Assam, Mizoram, Tripura, and West Bengal to check illegal migration”.⁶⁸ The project was not, however, taken up in earnest for a long time as the administration concluded that “creating database of 1 billion people is a gigantic exercise”.⁶⁹ In 1999, the Union government commissioned a detailed feasibility study for

⁶⁶ Dr Surindur Singh, *Growth and Functional Dynamics of Border Security Force*, Jammu: Trikuta Radiant, 1998, pp. 309–10.

⁶⁷ *White Paper on Foreigners' Issue*, n. 6, pp. 10–11.

⁶⁸ Government of India, *Annual Report 1991–1992*, New Delhi: Ministry of Home Affairs, 1992, p. 13.

⁶⁹ Government of India, *Annual Report 1999–2000*, n. 60, p. 12.

implementing National Identity Card Scheme (NICS), which submitted its report in March 2000. Finally, in April 2003, the Union government launched a pilot project of granting multipurpose identity cards in “a few selected sub-districts of 13 States and Union territories, namely, Jammu & Kashmir, Gujarat, Uttranchal, Rajasthan, Uttar Pradesh, Assam, Andhra Pradesh, West Bengal, Tripura, Goa, Tamil Nadu, Pondicherry and Delhi covering a total population of 30.5 lakh”.⁷⁰ The project was completed in March 2009.⁷¹ Unfortunately, the project could not be implemented in Assam because the verification of citizens in the state had not been completed.⁷²

The NCIS envisages granting identity cards to all citizens above 18 years of age and continuous updating of the NRC by linking it up with the Births and Deaths system. To provide legal sanction for the project, the Citizenship Act, 1955 has been amended and a specific section (14A) on registration of citizens and issuing cards has been included in the Act. The section provides that the “Central Government may compulsorily register every citizen of India and issue National Identity Card to him.”⁷³ For implementing this scheme, the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 was notified on December 10, 2003.⁷⁴ Gaining from the experience of the pilot project, the Government of India decided to prepare a National Population Register (NPR) which would be the first step towards providing identity cards to all the citizens of India. In 2010, a project called “Aadhar” was launched to provide a unique identity number to each resident of India and the Unique Identification

⁷⁰ Government of India, *Annual Report 2003–2004*, New Delhi: Ministry of Home Affairs, 2004, p. 5.

⁷¹ Government of India, *Annual Report 2009–2010*, New Delhi: Ministry of Home Affairs, 2010, p. 177.

⁷² Government of India, *Annual Report 2006–2007*, New Delhi: Ministry of Home Affairs, 2007, p. 42.

⁷³ Government of India, *Annual Report 2014–15*, n. 41, p. 245.

⁷⁴ Government of India, *Annual Report 2003–2004*, n. 70, p. 6.

Authority of India (UIDAI) was set up to implement the project.⁷⁵ As of now, “the NPR data of more than 23.51 crore persons has been sent to UIDAI for de-duplication and generation of Aadhar number. Out of these, UIDAI has generated 19.67 crore Aadhar numbers.”⁷⁶

However, doubts have been cast on the effectiveness of these projects to differentiate between genuine citizens and illegal migrants. The slow pace of preparing the NPR for the whole country and upgradation the NRC in Assam have delayed the process of providing identity cards to the citizens of the country. Moreover, there are allegations that Aadhar cards are being indiscriminately issued to the residents, including the illegal migrants, without properly checking their antecedents, thereby creating a national security risk.⁷⁷

Conclusion

In sum, the different measures that the Indian government has undertaken to prevent illegal migration from Bangladesh have not been entirely successful. While legislations for addressing land alienation among tribals have been entirely ineffective, the schemes for detection and deportation of illegal migration did yield some positive results initially, but also failed once political pressure against them became intense. Similarly, the scheme to issue identity cards to citizens of India to differentiate them from illegal migrants has not taken off fully because of administrative and resource constraints. Increasing surveillance and border fences have helped in thwarting and deterring illegal migration to some extent, but again, corrupt BSF personnel, vested political and economic interests and ingenuity of the illegal migrants have reduced the effectiveness of border controls. Confronted with the fact that

⁷⁵ Government of India, *Annual Report 2009–2010*, n. 71, pp. 177–78.

⁷⁶ Government of India, *Annual Report 2014–15*, n. 41, p. 246.

⁷⁷ “Don’t Give Aadhar Cards to Illegal Immigrants: SC”, *The New Indian Express*, New Delhi, September 23, 2013, available at <http://www.newindianexpress.com/nation/Dont-give-Aadhar-card-to-illegal-immigrants-SC/2013/09/23/article1799563.ece>, accessed on December 23, 2015.

despite the employment of diverse measures, the Indian government has not been able to prevent the relentless illegal migration from Bangladesh, some analysts have suggested adopting schemes such as providing work permits and mass amnesties to resolve the problem. The following chapter will discuss these schemes and analyse the effectiveness of these two proposed schemes in stopping illegal migration from Bangladesh.

Work Permit and Mass Amnesty An Assessment

Analysts studying the subject of illegal migration have proposed issuing work permits¹ to Bangladeshis as a possible measure to prevent illegal migration from Bangladesh.² Arguments forwarded in favour of introducing a work permit scheme for Bangladeshis in India can be summed up under four strands. First, the large-scale illegal migration from Bangladesh is a response to the demand of labour in India. Proponents of work permits argue that India's relative prosperity has always generated a strong "pull factor" for the Bangladeshi citizens who are desperately looking for better economic opportunities across the border. With the liberalisation of the Indian economy and its steady and robust growth since the 1990s, this attraction has risen manifold. A growing economy, according to them, invariably leads to concomitant growth in employment opportunities as demand for labourers across the sectors, be it agriculture, construction, low-skilled industries or other services, rises. It is this demand for labour that is luring Bangladeshis to enter into India illegally and take up jobs here. By establishing this link between demand and supply, the pro-work permit advocates plead that the Indian policymakers should recognise this dynamics of labour market and labour flow and implement a prudent policy of issuing work permits to Bangladeshi migrants.

¹ A work permit is an official document that allows foreigners to live and work inside a country for a set period of time, ranging from a few months to few years.

² Sanjoy Hazarika, *Rites of Passage: Border Crossings, Imagined Homeland, India's East and Bangladesh*, New Delhi: Penguin Books, 2000, pp. 261–62. Also, see Bibek Debroy, "Work Permits for Bangladesh", *The Indian Express*, New Delhi, December 10, 2013, available at <http://archive.indianexpress.com/news/work-permits-for-bangladesh/720024/>, accessed on November 20, 2015; Sanjib Baruah, "Immigration, Ethnic Conflict, and Political Turmoil—Assam, 1979–1985", *Asian Survey*, Vol. 26, No. 11, November, 1986, p. 1206; and Bidisha Banerjee, "The Great Wall of India", *Slate*, December 10, 2010, available at http://www.slate.com/articles/health_and_science/green_room/2010/12/the_great_wall_of_india.single.html, accessed on November 20, 2015.

Second, work permit would provide a legal option to Bangladeshis entering India purely for economic reasons and would help them escape the ignominy of being termed as illegal migrants or infiltrators. It would also allow low-skilled labourers, a significant proportion of which are seasonal migrants engaged in agricultural sector in India, to return to Bangladesh with the assurance of re-entry in the next season. This would eliminate the root cause of protests against illegal migration from Bangladesh. Third, work permit will encourage skilled workers to migrate to India.³ Fourth, it would provide an opportunity for the Indian establishment to keep a tab on the number and kind of Bangladeshis entering India.

Detailing the criteria of the work permit programme, Sanjoy Hazarika, the foremost proponent of the idea, states that work permits should be issued to groups of 15–20 persons and not to individuals. These permits should be issued for a limited time period depending upon the nature of the work, and would be like passports having the details of individuals, employers and how long the group is going to stay in India. The validity of the permits could be extended for a period of two years. These workers will not enjoy any political rights such as right to vote, buy property or settle in India, but will have human rights and can approach courts and labour commissions in case their labour rights are violated.⁴ For smooth implementation of this programme, Hazarika emphasises the need for garnering political backing from all levels—centre, state, districts as well as panchayats. He further asserts that the cooperation of local politicians is a must because they are the ones who are providing patronage to the migrants in order to exploit them as captive vote banks.

While it is true that the Indian economy has been growing steadily over the decades, it is equally true that the growth has largely been a jobless growth. The Indian economy grew at the average rate of 5.7 per cent

³ n. 2.

⁴ Hazarika, *Rites of Passage*, n. 2, p. 261.

per annum during the 1980s, 6 per cent per annum during the 1990s and reached 7–8 per cent in the 2000s. Unfortunately, this growth in economy did not result in growth in employment. In fact, as figures reveal, employment growth rate decelerated over the decades. Employment growth rate was 2.44 per cent per annum during the decade of 1973–83 when the GDP grew at the rate of 4.7 per cent. It fell to 2.02 per cent in the next 10 years when GDP grew at 5 per cent; and further to 1.84 per cent per annum during 1993–2003 when GDP grew at 6.3 per cent. Employment growth registered a sharp rise at 2.81 per cent during 2000–05.⁵ This increase was because of rise in self-employment in unorganised sector and not because of demand-led employment growth.

The trend of decelerating employment growth and accelerated GDP growth was seen in the next four years (2005–09), that is, employment growth rate was 0.22 per cent, whereas GDP grew at 8–9 per cent.⁶ Since 2009, employment generation has been steeply declining in India. For example, while in 2009 12.56 lakh jobs were created in organised sector, in 2011, it fell to 9.30 lakh and further declined to 1.35 lakh jobs in 2015. Latest statistics released by the Bureau of Labour state that while no jobs were created in any sectors during quarter ending December 2015, eight labour-intensive sectors registered a decline of 20,000 jobs.⁷ In short, India has been experiencing a “jobless growth”. Many analysts have termed this growth as “capital intensive, not labour intensive”.⁸

⁵ T.S. Papola and Partha Pratim Sahu, “Growth and Structure of Employment in India: Long-term and Post-reform Performance and the Emerging Challenge”, Institute for Studies in Industrial Development, New Delhi, March 2012, p. 26, available at http://isidev.nic.in/pdf/ICSSR_TSP_PPS.pdf, accessed on June 17, 2016.

⁶ Ibid., p. 5.

⁷ “India’s Job Growth Lowest since 2009: Where are the Jobs PM Modi?”, *First Post*, New Delhi, April 16, 2016, available at <http://www.firstpost.com/business/where-are-the-jobs-mr-modi-2731002.html>, accessed on June 17, 2016.

⁸ Shweta Punj and M.G. Arun, “Where are the Jobs?”, *India Today*, April 20, 2016, available at <http://indiatoday.intoday.in/story/employment-scenario-job-crunch-jobless-growth-economy/1/647573.html>, accessed on June 17, 2016.

While employment generation in the organised sector has decelerated with the exception of information technology sector, the unorganised and informal sector has witnessed some growth in employment generation. The unorganised sector, which accounts for 50 per cent of the national product and 90 per cent of the workforce,⁹ is characterised by predominant unskilled nature of work, with employer's recruiting casual labourers, extreme poverty of the workers and unregulated work with loosely structured labour market.¹⁰ Here, agriculture continues to generate the maximum number of jobs in unorganised sector, accounting for 99.9 per cent of all the agricultural jobs.¹¹ Manufacturing is a close second with 87.7 per cent of jobs in unorganised manufacturing. Thus, agriculture and manufacturing together account for 98.2 per cent of the jobs in the unorganised or informal sector.¹²

Given that these jobs do not require any special skills, it can be assumed, in the absence of official data that demand for labour in this sector is attracting the unskilled illegal migrants from Bangladesh. However, India is a labour-surplus country with huge numbers being continuously added to the existing labour force every year. Under such circumstances, it is hard to accept that the available domestic labour pool is unable to fill the demand for labour and the country has to import foreign labour. In fact, majority of the Bangladeshis coming to India illegally are not responding to labour demand but are driven out of their country because of absence of livelihood opportunities. Once in India, they pick up odd jobs in cities and rural areas to escape poverty and

⁹ Government of India, *Report on Employment & Unemployment Survey, Vol. I, 2013–14*, Chandigarh: Ministry of Labour & Employment, Labour Bureau, 2015, p. 5, available at http://labour.gov.in/sites/default/files/Press_note_4th_EUS.pdf, accessed on June 17, 2016.

¹⁰ Barbara Harris-White and Nandini Gooptu, "Mapping India's World of Unorganised Labour", in Leo Panitch and Colin Leys (eds), *Socialist Register 2001: Working Classes, Global Realities*, London: The Merlin Press, 2000, p. 90.

¹¹ Government of India, *Report of the Committee on Unorganised Sector Statistics*, New Delhi: National Statistical Commission, February 2012, p. 28.

¹² Ibid.

starvation. These jobs, such as ragpicking, rickshaw pulling and domestic help, are menial in nature and do not have any express demand in the country; implying that the Indian economy would not be adversely affected if these services are not rendered.

At the same time, a sizeable number of Bangladeshis are believed to be also working as casual labourers in agriculture, construction and other allied sectors. Employers in India hiring illegal migrants argue that they are unable to get domestic labourers because local labourers are unwilling to take up these jobs. In reality, however, there is no lack of domestic labourers, but it is the employers who refuse to pay wages at the market rate. Instead, they hire these illegal migrants who are willing to work at lower wages and for long hours. Besides, the illegal status of the illegal migrants provides opportunities for the employers to exploit them. The employers take advantage of the vulnerability of the illegal migrants by paying wages below the market rates and forcing them to work and live under poor conditions.

Thus, by accepting to work for low wages and under deplorable conditions, these illegal migrants not only depress wages throughout the unorganised sector in the country but also discourage demands by domestic labourers for improvement of working and living conditions. More significantly, these illegal migrants, comprising substantially of unskilled labourers, compete for job with those sections of Indian workers who are unskilled, illiterate and insecure, thereby jeopardising their economic future and their very existence.

In sum, given that the Indian economy is not generating surplus employment resulting in demand for labour and given that the illegal Bangladeshi migrants are competing with poor and unskilled Indian workers as well as depressing wages in India, welcoming Bangladeshi workers into India would aggravate the economic well-being of the Indian workers and would prove harmful for the country in the long run. Therefore, the rationale for introducing work permit for Bangladeshis does not exist.

Furthermore, arguments for work permit are premised on the belief that the Bangladeshi workers entering India with work permits would willingly return to their country once the validity of the work permits expires. Assurance of guaranteed jobs in India would provide the

required incentive for them to go back. As stated earlier, illegal migration from Bangladesh is a “self-rescue” migration of people fleeing abject poverty in that country and looking for a better future in India. Therefore, in all probability, these migrants will be intensely reluctant to return to their country once their tenure gets over. Reluctance to return is also reinforced by the fact that wages for unskilled workers in India are not so high that the migrant workers can live off it for the rest of the year. Moreover, there is also no assured employment for migrant workers in their country for the intervening period till their re-recruitment in India. Experiences in many countries which had introduced guest workers programmes have shown that guest workers seldom return to their countries of origin after their permit expires because they are either unwilling to go back or the employers themselves retain them. This trend has resulted in the formulation of the aphorism, “there is nothing more permanent than temporary foreign workers”.¹³

Interestingly, an example of labour migration in Andaman and Nicobar Islands also reinforces this argument. Andaman and Nicobar Islands have always faced a shortage of labour and this demand has been met by importing labour from the Indian mainland. The trend of importing labour from the mainland picked up, however, during the post-tsunami rehabilitation and reconstruction work. Workers were brought in by local contractors in large numbers from the mainland, mainly from West Bengal. These workers were, in fact, Bangladeshi citizens who had entered India illegally. Though the stated policy is to send them back after a project is completed, the dearth of construction labourers has meant that instead of sending these workers back, contractors either retain them for other projects or they are transferred to another contractor for re-employment. In absence of compliance by the contractors or strict enforcement of the terms by officials, these migrants

¹³ Philip Martin, “There is Nothing More Permanent than Temporary Foreign Workers”, May 2001, available at <http://cis.org/TemporaryWorkers-Overstays>, accessed on October 20, 2015.

have continued to stay on the islands and are settled there permanently.¹⁴ If this is the reality, the argument that the migrant workers could be induced to go back does not any hold ground.

The argument that work permit would encourage skilled persons from Bangladesh to migrate also needs to be critically analysed. Studies suggest that income distribution in source and destination countries has a significant influence on migration. If the income distribution in the destination country is highly unequal, it would induce “positive selection” of migrant workers, that is, the migrant workers will be more educated and more skilled than local population. In contrast, if the income distribution is more equal in the destination country, it will propel “negative selection”, implying that migrant workers will be uneducated and low skilled.¹⁵ In the case of India and Bangladesh, income inequality in both the countries is more or less the same. According to the World Bank, Gini’s coefficient for income inequality for India was 0.32 and for Bangladesh, it was 0.31 in 2014.¹⁶ In such a scenario, it is difficult to conclude that India would be able to attract more skilled workers from Bangladesh. Furthermore, Bangladesh might not cooperate with India given that a policy of sending high-skilled workers to India instead of low-skilled workers will also not be in its economic interests.

In any case, the idea of issuing work permits to Bangladeshi migrants has, till date, received mixed reactions from the Indian government. The governments formed by the Congress and other parties have not entertained this proposal and therefore, there has been an absence of any statement on work permits by them during their tenure. In contrast, the BJP-led National Democratic Alliance (NDA) governments, which have been vociferously protesting against illegal migration from

¹⁴ Pushpita Das, “Securing Andaman and Nicobar Islands”, *Strategic Analysis*, Vol. 35, No. 3, 2011, p. 469.

¹⁵ Steven J. Gold and Stephanie J. Nawyn, *Routledge International Handbook of Migration Studies*, Oxon: Routledge, 2013, pp. 14–15.

¹⁶ “Bangladesh Doing Well in Tackling Inequality: WB”, *bdnews24.com*, December 9, 2014, available at <http://bdnews24.com/economy/2014/12/09/bangladesh-doing-well-in-tackling-inequality-wb>, accessed on July 20, 2016.

Bangladesh, appear to be positively inclined towards this. In May 2001, the then Prime Minister, Vajpayee, while speaking in a rally in Silchar, had declared, “The Centre is considering seriously the proposal to issue work permits to Bangladeshi migrants suspected to be foreigners but could not be evicted due to a host of legal and constitutional problems.”¹⁷

More recently, on the eve of Prime Minister Narendra Modi’s state visit to Bangladesh in June 2015, the media had speculated that the proposal of giving special permits to Bangladeshi nationals who want to work in India is in the offing. Apparently, the proposal was first mooted a year earlier during the visit of India’s Foreign Minister Sushma Swaraj to Dhaka.¹⁸ However, nothing regarding this issue was announced after the conclusion of the visit, highlighting the fact that Bangladesh may still continue to deny that Bangladeshis are illegally entering into India.

The proposal of issuing work permits to prevent illegal migrants from entering India illegally is not a new concept. Many countries such as the US, Germany, Spain and Italy have implemented guest programme schemes in various forms to fulfil labour shortages in their countries and, at the same time, prevent unauthorised entry of aliens and prevent them from settling down permanently. The following section is devoted to analysing the experiences of select countries in understanding the effectiveness of work permits as a measure to prevent illegal migration.

Guest Worker Programmes in Select Countries

The United States of America (US)

In the US, the guest worker programme was started to meet the demand for labour in the industrial and the agricultural sectors during

¹⁷ “Work Permits for Bangladeshi Migrants: PM”, *The Tribune*, May 7, 2001, Chandigarh, available at <http://www.tribuneindia.com/2001/20010507/main3.htm>, accessed on November 20, 2015.

¹⁸ “PM Narendra Modi in Bangladesh: Special Permits for Bangladeshi Workers on the Table”, *The Indian Express*, Dhaka, June 6, 2015, available at <http://indianexpress.com/article/world/neighbours/modi-in-bangladesh-special-permits-for-bangladesh-workers-on-the-table/> accessed on November 20, 2015.

the two World Wars and the Korean conflict. The first guest worker programme, called the “Bracero Program”, was started in 1917 as one of the extreme policies of the National Defense Policy of the US.¹⁹ Under the programme, foreign workers from the Western hemisphere (read Mexico) were allowed to work in the agricultural fields and select non-farm sectors. At the same time, rules of the programme stipulated that the workers should return to their native country as soon as their contract in the US was over.

The objective was “to add workers to the labor force without adding permanent residents to the population”.²⁰ While the programme was able to fulfil the objective of supplying workers to the US industries and agriculture, it failed to send back the migrant workers to their country as the rules could not be enforced strictly. As a result, a large number of Mexicans stayed back in the US spawning illegal migration. Statistics reveal that between 1917 and 1922, 76,862 Mexican workers were admitted into the US; however, only 34,922 returned and the rest, accounting for more than 54 per cent of the migrant workers, remained in the US. There were also reports that many Mexican migrants were arriving in the US outside the programme as well.²¹

The second Bracero Program was started during the Second World War to fulfil the putative shortage of manpower in the farm sector caused by the war. In 1942, under pressure from growers, the US government signed a bilateral agreement with the Mexican government to bring Mexican labourers into the US. This agreement started the second Bracero Program. While the recruitment of Mexican workers should have stopped with the end of the war and the programme

¹⁹ Vernon M. Briggs Jr, “Guest Worker Program for the Skilled Workers: Lessons from the Past and Warnings for the Future”, Testimony before the Sub-Committee on Immigration and Border Security of the Judiciary Committee of the US Senate, February 5, 2004, available at cis.org/node/536, accessed on November 20, 2015.

²⁰ Martin, “There is Nothing More Permanent than Temporary Foreign Workers”, n. 13.

²¹ Briggs, “Guest Worker Program for the Skilled Workers”, n. 19.

should have expired, it continued in a new form (Public Law 78) for the next 22 years as growers continued to employ workers from Mexico.²²

Like its first edition, the second Bracero Program also stated that migrants were required to return after their contract was over. But, yet again, the US law enforcement agencies were not able to force the migrant workers to return to Mexico once their contract had expired. It is estimated that between 1942 and 1964, approximately 4.6 million Mexicans were admitted to do farm work.²³ Many Mexicans returned to their home country permanently when the programme was terminated in 1964, but about 1–2 million who had gained work experience in the US decided to stay back. Moreover, the Bracero Program could not prevent illegal migration as thousands of Mexicans continued to arrive in the US without valid documents for work in the farms outside the programme. In fact, over the years, the proportion of illegal migrants to the braceros increased substantially. In 1950, there were 458,215 illegal Mexicans and 67,500 braceros and by 1954, those numbers rose to 1,075,168 known undocumented aliens and only 309,033 braceros.²⁴ In total, 5.3 million Mexicans were apprehended at the US–Mexico border and half a million illegal Mexican immigrants entered the US during the 22 years of the Bracero Program.²⁵ Most of the 50,000–60,000 Mexicans who were illegally admitted every year got immigrant status because the US farmers offered them jobs.²⁶ Thus, while both the Bracero Programs helped the US to meet the demand

²² Kristi L. Morgan, “Evaluating Guest Worker Programs in the US: A Comparison of the Bracero Program and President Bush’s Proposed Immigration Reform Plan”, *Berkeley La Raza Law Journal*, Vol. 15, No. 2, 2004, p. 127.

²³ Martin, “There is Nothing More Permanent than Temporary Foreign Workers”, n. 13.

²⁴ Morgan, “Evaluating Guest Worker Programs in the US”, n. 22, p. 128.

²⁵ Martin, “There is Nothing More Permanent than Temporary Foreign Workers”, n. 13.

²⁶ Phillip L. Martin, *Promise Unfulfilled: Unions, Immigration and the Farm Workers*, Ithaca: Cornell University Press, 2003, p. 47.

for labour successfully, they also triggered the trend of illegal migration from Mexico because they created dependency for the Mexican workers in the US.²⁷

The Bracero Program, which was initiated following demands from the growers' lobby for farm workers, was finally terminated in 1964 after widespread criticism. Americans were appalled by the deplorable working conditions of the braceros. But more than the working conditions of the braceros, it was the adverse effect of the programme on the wages as well as the employment opportunities of domestic workers that outraged the local people who demanded that the programme be terminated.²⁸

Incidentally, the termination of the Bracero Program resulted in an overwhelming increase in illegal migration from Mexico in the 1970s. Acknowledging the problem as a major national concern, the US government toyed with the idea of restarting the guest worker programme to draw in the illegal migrants into legal channel, thus preventing illegal migration. However, taking into account the adverse consequences of the earlier two guest worker programmes, it constituted two commissions—the National Commission on Manpower Policy and the Commission on Immigration and Refugee Policy—in August and October 1978 respectively, to investigate the feasibility of introducing a guest worker programme as a measure to prevent illegal migration. Interestingly, both the commissions rejected the proposal of guest workers and forwarded following arguments against the guest workers programme:²⁹

1. A guest worker programme would not be a completely open programme and would have limits, such as who would be eligible for what kind of jobs and how long they could stay. The issue of who will enforce the terms and how capable such a body will be in performing the tasks remains unclear.

²⁷ Morgan, "Evaluating Guest Worker Programs in the US", n. 22.

²⁸ *Ibid.*, p. 129.

²⁹ Briggs, "Guest Worker Program for the Skilled Workers", n. 19.

2. It would make some economic sectors dependent on foreign workers.
3. Certain jobs would be identified with the foreigners which would effectively stigmatise such jobs.
4. Without strict enforcement of employers' sanctions against hiring other illegal immigrants, a temporary worker programme would stimulate new migration pressures in the long run.
5. Guest worker programme would depress wages for unskilled native labourers.
6. Foreign workers are often more exploitable than native labourers, particularly given the ability of employers to threaten deportation.
7. Presence of large numbers of guest workers in rural areas would increase the cost in housing, schooling and other basic infrastructure.
8. Guest worker programme would fail to reduce unauthorised migration as it is likely to encourage and exacerbate illegal movement that persists long after the programme ends. Guest workers often stay permanently and illegally in the country in violation of the conditions of their admission.

Despite the rejection of the guest worker programme, it has remained an attractive proposition for vested interest groups as well as policymakers in the US. For example, the powerful “growers’ lobby” in the US has been trying to introduce the programme at different times and in different formats. Many politicians—both Republicans and Democrats—have also been extending support for the programme. Their sole motive for supporting the guest worker programme is the hope that it will help them build constituencies that would support and vote for the values they stand for.³⁰

³⁰ Philip L. Martin and Michael S. Teitelbaum, “The Mirage of Mexican Guest Workers”, *Foreign Policy*, November/December 2001, available at <https://www.foreignaffairs.com/articles/mexico/2001-11-01/mirage-mexican-guest-workers>, accessed on November 23, 2015.

Over the years, successive attempts have been made to reinstitute the guest worker programme by the administration and by individual representatives/senators, but none succeeded because of the Bracero experience of substantial number of Mexican workers staying back. In 1996, two Californian Congressmen, Elton Gallegly and Richard Pombo, introduced a bill in the House of Representatives which called for an enlarged guest worker programme to be introduced.³¹ The Congressmen argued that a significant percentage of illegal immigrants are employed in the agricultural sector and a strict enforcement of rules against hiring unauthorised workers will lead to a shortage of labour. They also argued that the requirement of foreign workers arises because domestic workers either do not show up or work hard or stay with the employers.

The US labourers associations, on the other hand, argued that there is no shortage of workers in the country, but there is a shortfall of decent wages, benefits and working conditions. They asserted that growers prefer foreign workers because they can be held captive and paid lower wages.³² The labour and immigration departments also opposed the bill on the ground that they would have less control over the workers entering the US. Many experts and academics presented counter-arguments for recruiting foreign workers saying that the US farms can adjust to labour shortages by introducing mechanisation, as evidenced after the end of the Bracero Program.³³ Significantly, the Clinton administration opposed the bill arguing that it would increase illegal migration, reduce job opportunities for US workers and depress wages of native workers. Subsequently, the House, on March 21, 1996, rejected the bill by a 242–180 vote.³⁴

³¹ John Weber, *From South Texas to the Nation: The Exploitation of Mexican Labor in the Twentieth Century*, Chapel Hill: University of North Carolina Press, 2015, p. 183.

³² Martin, *Promise Unfulfilled*, n. 26.

³³ Ibid.

³⁴ “Congress Move to Curb Illegal Immigration”, *Migration News*, Vol. 3, No. 4, April 1996, available at <https://migration.ucdavis.edu/mn/more.php?id=916>, accessed on November 24, 2015.

President George W. Bush also attempted, unsuccessfully, to reintroduce the guest worker programme when, in January 2004, he presented the Fair and Secure Immigration Reform Bill. The bill proposed to “match willing foreign workers with willing U.S. employers when no Americans can be found to fill the jobs”.³⁵ Though the bill was passed by the Senate in May 2006, it was allowed to lapse as the House of Representatives did not take any action on it. Again in 2007, under the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007, an attempt was made to create a temporary workers programme in which workers were required to return after two years, apart from allowing millions of unauthorised immigrants to work legally. The bill, however, could not get any support from the Senate when it was put to vote on June 7, 2007 and was allowed to die.³⁶

President Obama attempted to revive the Immigration Reform Bill of 2007 by introducing a revised form of the bill, called the “Border Security, Economic Opportunity, and Immigration Modernization Act of 2013”, on April 17, 2013.³⁷ The bill proposed to create a new class of w-visas for low-skilled workers and a Bureau of Immigration and Market Research. According to the bill, these workers would be working in “registered positions” for “registered employers” who have paid a fee to the Bureau. The bill was passed by the Senate in June 2013, but no action was taken on it by the House of Representatives.³⁸

³⁵ “Fact Sheet: Fair and Secure Immigration Reform”, The White House, January 7, 2004, available at <http://2001-2009.state.gov/p/wha/rls/fs/28079.htm>, accessed on November 24, 2015.

³⁶ “Comprehensive Immigration Reform Act of 2007, S.1348 (proposed)”, Council for Foreign Relations, May 9, 2007, available at <http://www.cfr.org/immigration/comprehensive-immigration-reform-act-2007-s-1348-proposed/p13571>, accessed on November 24, 2015.

³⁷ “Bill Summary & Status, 113th Congress (2013–2014) S. 744 All Information”, The Library of Congress, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:SN00744:@@L&summ2=m&>, accessed on November 24, 2015.

³⁸ “Immigration”, The White House, available at <https://www.whitehouse.gov/issues/immigration>, accessed on November 24, 2015.

The main argument against these two bills was that importing migrant workers would diminish wages and employment opportunities for domestic workers. As the Bracero Program demonstrated, wages tended to either fall or stagnate in areas where braceros were employed. This phenomenon left the domestic workers with no choice but to accept lower wages. Furthermore, unskilled immigrants and high school dropout natives were “perfect substitutes” for each other and therefore, they directly competed for the same jobs.³⁹ Moreover, the domestic workers also lost their bargaining power because the surplus immigrant workers kept workers strikes and protests from generating lasting collective bargaining agreements. The long-term budgetary fallout of the guest worker programme was also seen as a huge cost that the US citizens had to bear in the long run. It was argued that guest workers, over the course of time, bring their families, relatives, friends, acquaintances, etc., to the host country. Many of them arrive unmarried but eventually marry US citizens and bear children. Settlement of these migrant workers along with their families and friends would invariably result in enormous costs which the citizens of the US had to bear.⁴⁰

Most importantly, it was argued that guest workers not only do not go back home but they also induce others to enter the US illegally. The Bracero Program demonstrated that despite inducements such as saving account provisions and family roots in Mexico, many braceros either abandoned their contracts and stayed back in the US or went back only to return to the US illegally.⁴¹ Networks established among the migrant workers and their families and friends back home also provided the required information about job opportunities in the US and means to reach the US, thus fuelling illegal migration. In January 2011, the Department of Homeland Security (DHS) had estimated that 11.5

³⁹ Mark Krikorian, “Flawed Assumptions Underlying Guestworker Programs”, Center for Immigration Studies, February 2004, pp. 3–4.

⁴⁰ Morgan, “Evaluating Guest Worker Programs in the US”, n. 22.

⁴¹ *Ibid.*, p. 138.

million unauthorised immigrants were residing in the US, of which 6.78 million (59 per cent) were from Mexico.⁴²

Germany

Germany (Federal Republic of Germany [FRG]) recruited low-skilled guest workers (*Gastarbeiter*) from abroad to meet the shortage of workers in the industrial sector during the 1950s.⁴³ The programme was promoted as temporary, mutual and beneficial, with the stipulation that under rotating labour markets, the guest workers would return to their home country after two years with enough savings and skills. The signing of an agreement with Italy on December 20, 1955 marked the first step by the German government towards admitting foreign workers in the country. In later years, Germany signed similar agreements with other countries: Spain and Greece in 1961; Turkey in 1961; Morocco in 1963; Portugal in 1964; Tunisia in 1965; and Yugoslavia in 1968.⁴⁴

Initially, guest workers were recruited from Italy and Yugoslavia but later, the bulk of the guest workers came from Turkey. Poverty, lack of job opportunities in their home country and an assurance of better wages pulled a number of people from the rural areas to avail the guest worker programme in Germany. By the 1970s, there were 2 million guest workers in Germany constituting 65 per cent of the 3 million foreigners in that country. The number of guest workers peaked

⁴² Michael Hoefler, Nancy Rytina and Bryan Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011", *Population Estimates*, March 2012, available at https://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2011_0.pdf, accessed on November 23, 2015.

⁴³ Cuneyd Dinc, "From 'Gastarbeiter' to People with Migration Background: A Critical Overview of German Migration Sociology", *Sosyoloji Dergisi*, Vol. 3, No. 22, 2011, p. 255.

⁴⁴ Heinz Fassmann, Ursula Reeger and Wiebke Sievers (eds), *Statistics and Reality: Concepts and Measurements of Migration in Europe*, Amsterdam: Amsterdam University Press, 2009, p. 132.

in 1973 at 2.6 million.⁴⁵ Between 1955 and 1973, Germany recruited approximately 14 million guest workers.⁴⁶

The profitable situation for guest workers did not last long and took a turn for the worse in the 1970s. The oil shock in 1973 and the subsequent slowing down of the German economy and increasing unemployment forced the German government to stop recruiting foreign workers from non-Economic Commission countries by the end of November 1973.⁴⁷ Though a majority of the guest workers had returned to their home country before 1973, around 2.7 million stayed back even after the termination of the guest worker programme. The main reasons that forced the guest workers to continue residing in Germany despite rising unemployment were: a ban on re-entry of these guest workers in Germany; and the knowledge that job prospects as well as social security for them back home are extremely bleak.⁴⁸ Thus, over time, these guest workers, who were brought in on a temporary basis, became permanent residents in Germany.

In addition, by the end of the 1960s and the early 1970s, there was a trend towards subsequent immigration of family members of the guest workers into Germany. This trend accelerated following the halt in fresh recruitments as the existing guest workers exercised their right to family reunification on the basis of living in Germany for long and invited their families to join them in Germany, despite efforts by the German government to send them back.⁴⁹ In their bid to stay back in

⁴⁵ Martin, “There is Nothing More Permanent than Temporary Foreign Workers”, n. 13.

⁴⁶ “History of the Guest Workers—Immigration of Foreign Workers”, German Mission in the United States, available at http://www.germany.info/Vertretung/usa/en/04_W__t__G/02/03/Feature__3.html, accessed on November 23, 2015.

⁴⁷ Jagdish N. Bhagwati, Klaus-Werner Schatz and Kar-yiu Wong, “The West German Gastarbeiter System of Immigration”, *European Economic Review*, Vol. 26, No. 3, 1984, p. 282.

⁴⁸ Fassmann et al. (eds), *Statistics and Reality*, n. 44.

⁴⁹ Daniel Gonzalez, “Guest Workers become Issue for Germany”, *The Arizona Republic*, Berlin, n.d., available at <http://www.azcentral.com/news/articles/global-immigration-germany.html>, accessed on November 24, 2015.

Germany as well as bring in their families, these guest workers were aided by the German Basic Law and Constitutional Courts which upheld the individual rights of the guest workers over state sovereignty and ruled in favour of the rights of the guest workers.⁵⁰ Consequently, the number of foreigners increased to 82 per cent between 1973 and 1999, while the number of foreign workers reduced to 23 per cent.⁵¹

The German Democratic Republic (GDR), similarly, employed a large number of low-skilled “contract workers” (*Vertragsarbeiter*) to work in their industries. These guest workers were allowed to stay in the country only for three years. In 1963, the GDR signed the first contract with Poland. These workers came from poorer socialist and communist countries, such as Vietnam, Cuba, Mozambique, Poland and Hungary.⁵² Their numbers were less in comparison to the FRG as much of the recruitment was made in the 1980s. By 1989, 91,000 contract workers lived in GDR, with 60,000 Vietnamese workers comprising the bulk of foreign workers. Workers from Mozambique were second largest at 15,000.⁵³ After the reunification of Germany in 1990, most of the contract workers were asked to leave Germany by the home country’s governments amidst rising intolerance against them. Only workers from Vietnam and Mozambique stayed back as their governments refused to take them back, compelling Germany to treat them as illegal migrants. However, by March 1990, the number of Vietnamese and Mozambique contact workers living in GDR had reduced to 21,000 and 2,800 respectively.⁵⁴

⁵⁰ Christian Joppke, “Why Liberal States Accept Unwanted Immigration”, *World Politics*, Vol. 50, No. 2, January 1998, p. 282.

⁵¹ Martin, “There is Nothing More Permanent than Temporary Foreign Workers”, n. 13.

⁵² Eva Kolinsky, “Former Contract Workers from Vietnam in Eastern Germany between State Socialism and Democracy 1989–1993”, *GFL Journal*, Vol. 2, No. 3, 2004, p. 84, available at <http://www.gfl-journal.de/3-2004/kolinsky.pdf>, accessed on November 26, 2015.

⁵³ Ibid.

⁵⁴ Ibid.

In 2000, Germany had 7.3 million foreign residents, which was ten times the number of 686,000 foreigners in 1960, when the guest worker programme started in earnest.⁵⁵ Six years later, in 2006, the Federal Statistics Office figures showed that in Germany, 15.3 million people, that is, 19 per cent of the total population, were of migrant background.⁵⁶ In 2013, their numbers rose to 16.5 million, comprising 20.5 per cent of the total population. The Turks comprise the largest segment of migrant population with 2.5 million people, followed by Italians, Greeks and Poles.⁵⁷ The German experience with guest workers is neatly captured in the aphorism of Max Frisch, “We asked for workers, and we got people”.⁵⁸

Spain

Traditionally a migrant-sending country, Spain became an immigrant-receiving country from the 1990s onwards.⁵⁹ Being economically and geographically proximate to the sender countries in North Africa, Spain was a transit stop for the migrants heading for northern European countries, such as France and Germany. The end of guest worker programmes in these countries and stricter border controls imposed against non-European Union (EU) countries meant that the migrants who were heading northwards in search of jobs were left stranded in Spain. Spain had also been liberal with admitting foreigners and until 1985, it followed an “open door” policy for immigrants as it was assumed that the migrants would live in Spain for a short while before they moved northwards into other parts of Europe. In fact, the immigrants were not required to get a visa to enter into Spain.⁶⁰ Even

⁵⁵ Martin, “There is Nothing More Permanent than Temporary Foreign Workers”, n. 13.

⁵⁶ Fassmann et al. (eds), *Statistics and Reality*, n. 44, p. 135.

⁵⁷ “History of the Guest Workers—Immigration of Foreign Workers”, n. 46.

⁵⁸ Martin, “There is Nothing More Permanent than Temporary Foreign Workers”, n. 13.

⁵⁹ Nieves Ortega Pérez, “Spain: Forging an Immigration Policy”, Migration Policy Institute, February 1, 2003, available at <http://www.migrationpolicy.org/article/spain-forging-immigration-policy>, accessed on November 26, 2015.

⁶⁰ Susan E. Mannon, Peggy Petrzela, Christy M. Glass and Claudia Radel, “Keeping Them in Their Place: Migrant Women Workers in Spain’s Strawberry Industry”, *International Journal of the Sociology of Agriculture and Food*, Vol. 19, No. 1, 2012, p. 87.

for the Moroccans and the Latin Americans, who form the largest segment of illegal migrants in Spain, visa restrictions were imposed only in 1991 and 1992 respectively.⁶¹

Furthermore, a series of incidents in the 1980s made Spain a net migrant-importing country. First, during the 1980s, Spain experienced a dramatic decline in its birth rate, making it a country with one of the lowest fertility rates in the world. Second, Spain joined the European Economic Community in 1985, and consequently experienced a major economic boom. As a result of the economic growth, industrial, construction and agricultural sectors in Spain experienced a surge in labour demand.⁶² At the same time, it was observed that Spain had a huge demand for low-skilled foreign workers as the native workers preferred to wait out for better job opportunities. Soon migrants from African countries, especially Morocco, started arriving in Spain in response to the demand for low-skilled workers.⁶³ To begin with, Spain did not issue any work permits to these migrant workers and they were let into the country without any documents. But soon it had to grapple with the problem of undocumented migrants in the country and the need to control it. Spain's accession to the Schengen Agreement in 1995 also created tempting opportunities for migrants from sub-Saharan Africa to enter the European mainland through the Spanish enclaves of Ceuta and Melilla.

To manage the problem of illegal migration as well as the demand for foreign workers, Spain introduced the temporary work permit system (*Contingente*) in 1993.⁶⁴ The *Contingente* system has two types of permits: “temporary permits”, which are issued for jobs with maximum

⁶¹ Susan F. Martin, Philip Martin and Patrick Weil, *Managing Migration: The Promise of Cooperation*, Oxford: Lexington Books, 2006, p. 129.

⁶² Ibid., pp. 86–87.

⁶³ Ibid.

⁶⁴ Ibid., p. 131.

duration of one year, and with the stipulation that the employers will maintain good working conditions for the workers and provide transportation for the workers from source country and back; and “stable permits”, which are issued for non-permanent jobs of one year duration.⁶⁵ Under this system, the Government of Spain fixed foreign labour quotas or *contingente* every year, which reflected the labour deficiency at the provincial levels. The purpose was to channel labour specifically to those areas which had a high labour demand. This system encouraged migrants, both documented and undocumented, living in Spain to apply for work permits and between 1994 and 1999, around 20,000–40,000 work permits were issued to migrants present in Spain.⁶⁶ Thus, instead of managing inflows of workers from source countries, the temporary work permit system functioned as a means for regularising the undocumented migrants residing in Spain.⁶⁷ Moroccan workers, who had become a sizeable migrant community in Spain, benefited the most from the system.

In 2000, Spain tried to overhaul its immigration policy by enacting a new immigration law. Consequently, it signed bilateral agreements with a number of countries who agreed to assist Spain in controlling illegal migration. In exchange, Spain assured to give preferential treatment in issuing temporary work permits to workers from these countries. In the years 2000 and 2001, Spain signed bilateral agreements with Morocco, Dominican Republic, Colombia, Ecuador, Romania and Poland to admit low-skilled workers to work in its agricultural and other sectors.⁶⁸ Unfortunately, the *Contingente* system did not prevent illegal migration into Spain. Despite the stipulation of the system that guest workers shall return home after the completion of the work and

⁶⁵ Organisation for Economic Cooperation and Development, *OCED Economic Surveys 2002–2003: Spain*, Paris: OECD, 2003, p. 140.

⁶⁶ *Ibid.*, p. 135.

⁶⁷ *Ibid.*

⁶⁸ Mannon et al., “Keeping Them in Their Place: Migrant Women Workers in Spain’s Strawberry Industry”, n. 60.

report to the Spanish consulate if they wish to return to Spain legally the next year, 40 per cent of the seasonal workers did not return to their home country and resettled in Spain as illegal migrants.⁶⁹ Studies conclude that there were about 900,000 irregular migrants in Spain before the regularisation of illegal migrants took place in 2005.⁷⁰

Summary

Guest worker programmes were initiated by countries to meet the demands of labour shortage at home by temporarily importing workers from abroad to avoid adding to the host population. These programmes entailed that governments take voluntary steps to induce and organise immigration of foreign workers, and often their families. Experiences in the countries initiating guest worker programmes have shown that these programmes were elaborate and extremely complex. One of the unintended consequences of these programmes was the presence of a large community of unintegrated and undesired population in the host countries.⁷¹ The failure of the concerned countries to plan for and carry out return of the migrants is the primary reason for the presence of large numbers of illegal migrants. When guest worker programmes were started, it was expected that the migrants would return after the work was completed, but, in reality, most of the migrants stayed back even if they faced widespread unemployment.⁷² Besides, a number of migrants had children who were either born or reared in the host country, who were even less

⁶⁹ Philip Martin, "Temporary Workers Program: US and Global Experiences", available at http://canada.metropolis.net/policypriority/migration_seminar/PhilipMartinsPaper_e.pdf, accessed on November 26, 2015.

⁷⁰ J. Arango and C. Finotelli, "Past and Future Challenges of a Southern European Migration Regime: The Spanish Case", IDEA Working Paper No. 8, May 2009, p. 15, available at http://www.idea6fp.uw.edu.pl/pliki/WP8_Spain.pdf, accessed on November 27, 2015.

⁷¹ Gary P. Freeman, "Can Liberal States Control Unwanted Migration?", *The Annals of American Academy of Political and Social Science*, Vol. 543, Strategies for Immigration Control: An International Comparison, July 1994, pp. 25–26.

⁷² Ibid.

likely to return. Governments' efforts to provide monetary inducements to the migrants to go back to their home countries did not succeed, as also their ability to forcibly evict the illegal migrants as they were constrained by political, legal and diplomatic considerations.⁷³

Guest worker programmes also do not help prevent illegal migration because studies have shown that instead of selecting workers who would migrate illegally, countries would like to push those workers who would not otherwise migrate through such schemes. The main reason behind this act is that the source country would not benefit significantly by substituting illegal with legal migrants.⁷⁴ Furthermore, illegal migration is individual centric and long term, whereas the guest worker programmes are temporary in nature and target groups of workers. If the guest worker programme was to target individuals, it would require information about the potential migrants from the source country, which is unlikely to come because while the intention of the host country is to draw in all or as many illegal migrants as possible under the guest worker scheme, the source country would push the migrants who would otherwise not migrate.⁷⁵

More significantly, guest worker programmes or work permit schemes introduce distortion and dependence in the domestic economies and labour markets.⁷⁶ The availability of foreign labourers encourages employers to make investments in areas that assume migrants would continue to be available for work. Simultaneously, it also dissuades the employers from carrying out innovations and introducing mechanisation and automation to eliminate labour shortages. Absence of innovation and mechanisation stagnates productivity, which, in turn, negatively impacts economic and wage growth.⁷⁷ Work permits also create

⁷³ Ibid.

⁷⁴ Mohammad Amin and Aaditya Mattoo, "Can Guest Worker Schemes Reduce Illegal Migration?", World Bank Policy Research Paper 3828, February 2006, p. 14.

⁷⁵ Ibid., p. 32.

⁷⁶ Philip L. Martin, "Guest Worker Policies: An International Survey", in Ann Bernstein and Myron Weiner (eds), *Migration and Refugee Policies*, New York: Pinter, 1999, pp. 65–66.

⁷⁷ Ibid.

dependency for foreign workers in the host country in such a way that government pronouncements for termination of such schemes are met with vehement protests from employer groups, which argue that labour shortages will force them out of business and adversely affect the economy. Dependency is created among individuals, families and communities in the sender country as well, as they too need the earnings from abroad to sustain themselves. In the case of Bangladesh, as explained earlier, the country is hugely dependent on foreign remittances as it plays an important role in the country's economic development and poverty alleviation.⁷⁸

At present, most countries in the world have guest workers programmes, but almost all of them give preference only to high-skilled workers. Only developed countries such as Australia, Canada, the US, the EU and Gulf countries, that are facing labour shortages, have small numbers of programmes for low-skilled workers that limit their employment to specific sectors such as agriculture, horticulture and tourism.⁷⁹ Developing economies with surplus labour, such as China, Brazil and Mexico, are particularly strict on the import of low-skilled workers and, therefore, do not have any programme to admit them.⁸⁰

Granting Temporary Amnesties to Illegal Migrants

Yet another measure to resolve the issue of illegal migration is granting amnesty and citizenships to the illegal migrants. A number of countries across the world are facing the problem of illegal migration have adopted this measure with little or no success. In India, too, there are scholars and practitioners who have advocated these schemes as possible solutions. According to Sanjoy Hazarika, temporary amnesty could be

⁷⁸ Shiekh Abdur Rahim and Md. Asrafal Alam, "Foreign Remittance Income in Bangladesh: Opportunities and Challenges", *Asian Business Review*, Vol. 2, No. 4, 2013, p. 22.

⁷⁹ "Guest Worker Programs", The Law Library of Congress, February 2013, pp. 2–4, available at <http://www.loc.gov/law/help/guestworker/index.php>, accessed on November 27, 2015.

⁸⁰ Ibid.

given to all the Bangladeshis who have illegally entered India between 1971 and 1991 provided they declare their illegal status. These illegal migrants could be allowed to stay for a year to complete their process to return to Bangladesh. Once they return to their home country, they can be readmitted through work permits if they desire to work in India.⁸¹ The argument for such a move is to prevent further radicalisation and communalisation of the issue and to make the illegal migrants stakeholders in India's peace and prosperity.⁸²

However, the fact is, like the guest worker programmes, granting amnesty and citizenships does not help stem the tide of illegal migration, and this is evidenced by the case histories of the countries who have granted amnesties to their illegal migrants. European countries, such as Spain, Italy and Portugal, have been regularising illegal migrants since the 1970s. Between 1996 and 2007, these countries have regularised 5 million illegal migrants through various programmes. One of the reasons for such amnesty processes in these countries is the argument that Italy, Spain and Portugal do not possess the administrative capacities to admit large-scale legal migrants, nor do they have the wherewithal to effectively secure their borders against the illegal migrants entering their territories mostly from Africa.

Spain

In fact, between 1986 and 2002, Spain conducted four regularisations, in 1986, 1991, 1996 and 2000–02. According to the International Organization on Migration (IOM), since the mid-1980s, Spain alone has regularised 700,000 illegal migrants. Yet, in 2004, it had 800,000 illegal immigrants.⁸³ One of the reasons for this phenomenon, besides large-scale illegal migration, is the regularisation process which only makes the illegal immigrants legal workers with work permits but does not grant them citizenship. The aim of the regularisations was essentially

⁸¹ n. 2, p. 69.

⁸² Ibid.

⁸³ Martin et al., *Managing Migration*, n. 61, p. 130.

to pull out illegal migrants from Spanish black economy to over-ground sectors to generate more taxes, with the condition that they are employed and their employers pay taxes for social security. Towards this aim, the regularisation programmes were economic successes as they generated US\$ 123 million in tax returns and another US\$ 123 million in social security revenues. Granting amnesty, however, did not solve the problem of illegal migration. Instead it incentivised illegal border crossers and scores of migrants to continue to enter Spain illegally.⁸⁴ This is evidenced by reports of an increasing number of migrants being apprehended at the Spanish borders. In 2013, 7,472 persons were detained at the country's borders, and the number rose to 12,549 in 2014, a jump of nearly 70 per cent.⁸⁵

These regularisation processes, however, have not been welcomed by other rich European countries as they fear that this would have a spillover effect into their territories because the regularised migrants would upgrade their status as legal workers and migrate to their countries and take up employment. They further emphasise that such regularisation would attract more illegal migrants into Europe.⁸⁶ Fearing large-scale influx of illegal migrants from less developed countries into Europe, and consequently jeopardising the concept of free movement of labour in the Union, the EU, in 2008, persuaded its members to sign a pact agreeing not to hold such amnesties for illegal migrants. The pact, however, fell through soon after as, in 2009, Italy and Belgium regularised a number of illegal migrants.⁸⁷

⁸⁴ Ibid.

⁸⁵ "Illegal Immigration in Spain up 70 per cent in 2014", *The Telegraph*, Madrid, April 15, 2015, available at <http://www.telegraph.co.uk/news/worldnews/europe/spain/11539439/Illegal-immigration-in-Spain-up-70-per-cent-in-2014.html>, accessed on July 27, 2016.

⁸⁶ Dan Nowicki, "Spain has Granted Amnesty, but Not without Controversy", *The Arizona Republic*, available at <http://www.azcentral.com/news/articles/global-immigration-spain-amnesty.html>, accessed on November 27, 2015.

⁸⁷ Ibid.

The US

The US has also regularised illegal immigrants under the Immigration Reforms and Control Act (IRCA, aka the Simpson–Mazzoli Act) of 1986. The Act had two components: first, to legalise undocumented migrants present in the US; and second, to deter further immigration into the country. For legalisation of illegal migrants, the law stipulated that those illegal migrants who have stayed continuously in the US since January 1, 1972 would be given immediate citizenship. For the rest of the illegal immigrants, two programmes—the Legally Authorized Workers (LAW) programme and the Special Agricultural Workers (SAW) programme—were launched. Under the LAW, amnesty was granted to those undocumented immigrants who could prove that they were in the country prior to January 1, 1982. After 18 months when their applications were approved, these illegal migrants became legal permanent residents by fulfilling a few other requirements.

Under the SAW programme, illegal immigrants had to prove that they had worked in the US for 90 days during each of the previous three years to receive legal permanent resident status for two years.⁸⁸ Incidentally, surveys conducted in Mexico found that illegal migrants had resorted to widespread fraud while filling their applications as they did not meet the minimum criteria for amnesty.⁸⁹ This implies that many migrants may have crossed over after the IRCA was enacted in November 1986.

For deterring illegal migration, laws were passed to make the employers responsible for verifying and keeping records of the workers that they employed after November 1986. Employers' sanctions were imposed wherein employers found recruiting undocumented migrants would

⁸⁸ Pia M. Orrenius and Madeline Zavodny, "Do Amnesty Programs Reduce Undocumented Immigration? Evidence from IRCA", *Demography*, Vol. 40, No. 3, August 2003, pp. 438–39.

⁸⁹ Seventy-three per cent of LAW applications and 40 per cent of SAW applications were fraudulent; *ibid.*, p. 439.

have to pay hefty fines and face imprisonment. In addition, provisions were made to tighten control of the US borders by deploying more manpower and resources and strengthening border patrolling.

Mass amnesty process, which began in 1987 following the signing of the IRCA Bill by President Ronald Reagan in November 1986, thereby making it an Act, legalised over 2.7 million illegal migrants—two-thirds of who were Mexicans.⁹⁰ Contrary to the belief that naturalisation process would reduce illegal migrants in the US, it fuelled further illegal migration into the US. The Immigration and Naturalization Service (INS) data revealed that the amnesty programmes did not affect the trend of illegal migration because, in 1992, the US had an estimated 3.4 million unauthorised migrants. In addition, migrants continued crossing the border illegally, with a net inflow of 500,000 immigrants during the 1990s.⁹¹

Despite dismal outcomes, President George W. Bush tried twice, during his tenure, to introduce bills granting mass amnesties. The first attempt was in 2001, when Bush contemplated granting legal residence to 3–4 million illegal migrants—a move strongly supported by Mexican President Vicente Fox.⁹² The second attempt to introduce legalisation bill was made in 2004, but in both the cases he had to withdraw after a public backlash. Almost a decade later in June 2012, under Deferred Action for Childhood Arrivals (DACA) programme, President Obama granted a temporary two-year legal status and work permits to immigrants who were brought to the US illegally as children and who

⁹⁰ Fred Barnes, “The Amnesty Next Times”, *The Weekly Standard*, Vol. 18., No. 34, May 20, 2013, available at <http://www.weeklystandard.com/keyword/Simpson-Mazzoli>, accessed on November 27, 2015.

⁹¹ “Estimates of Unauthorized Immigrant Population Residing in the United States: 1990 to 2000”, Office of Policy Planning, US Immigration and Naturalization Service, available at https://www.dhs.gov/xlibrary/assets/statistics/publications/Ill_Report_1211.pdf, accessed on November 27, 2015.

⁹² Orrenius and Zavodny, “Do Amnesty Programs Reduce Undocumented Immigration?”, n. 88, p. 437.

attended school in the country. By June 2016, around 730,000 young unauthorised immigrants had been provided with two-year deferred action and work authorisation.⁹³

In 2014, Obama tried to expand the ambit of the existing DACA programme to include the parents of the US citizens and lawful permanent citizens under a programme called Deferred Action for Parental Accountability (DAPA). Towards this purpose, he announced two programmes under the “Immigration Accountability Executive Action” on November 20, 2014.⁹⁴ Unlike the earlier DACA programme, these two programmes were challenged by Texas and 25 other states in the court on the grounds that Texas would incur additional costs to issue drivers’ licences to immigrants granted deferred action and that the federal government had overstepped its bounds and contravened the Congress’s powers by rendering deferred action beneficiaries eligible to work.⁹⁵ The court issued an injunction preventing the government from implementing these programmes. Significantly, the Fifth Circuit Court of Appeals upheld the injunction arguing that states could not bear the costs by issuing licences⁹⁶ and the deadlock in

⁹³ Muzaffar Chishti and Faye Hipsman, “Supreme Court DAPA Ruling a Blow to Obama Administration, Moves Immigration Back to Political Realm”, Migration Policy Institute, June 29, 2016, available at <http://www.migrationpolicy.org/article/supreme-court-dapa-ruling-blow-obama-administration-moves-immigration-back-political-realm>, accessed on July 28, 2016. Also, see Mark Hugo Lopez and Jens Manuel Krogstad, “5 Facts about the Deferred Action for Childhood Arrivals Program”, Pew Research Center, August 15, 2014, available at <http://www.pewresearch.org/fact-tank/2014/08/15/5-facts-about-the-deferred-action-for-childhood-arrivals-program/>, accessed on November 27, 2015.

⁹⁴ “Understanding the Legal Challenges to Executive Action”, American Immigration Council, available at <http://www.immigrationpolicy.org/just-facts/understanding-legal-challenges-executive-action>, accessed on November 27, 2015.

⁹⁵ Lomi Kriel, “Supreme Court to Hear Texas’ Challenge to DAPA”, *Houston Chronicle*, April 17, 2016, available at <http://www.houstonchronicle.com/news/houston-texas/houston/article/Supreme-Court-to-hear-Texas-challenge-to-DAPA-7254118.php>, accessed on July 28, 2016.

⁹⁶ *Ibid.* Also, see “Immigration News: DAPA, DACA Expansion Blocked by Fifth Circuit Appeals Court”, *Latin Post*, November 10, 2015, available at <http://www.latinpost.com/articles/93527/20151110/immigration-news-dapa-daca-expansion-blocked-fifth-circuit-appeal-court.htm>, accessed on December 2, 2015.

the Supreme Court effectively blocked the implementation of Obama's amnesty programmes.⁹⁷ The strong reactions against Bush's and Obama's plans to grant amnesties to millions of illegal immigrants prove that there is a growing realisation in the US that granting temporary amnesties does not address the problem of illegal migration but encourages many migrants to cross the border illegally.

India

For its part, India had, in fact, granted permanent amnesty in 1971 to lakhs of East Bengalis/East Pakistanis who had crossed over to India during the 1950s and 1960s. The move was not initiated to curb illegal migration, but was more a friendly gesture to a new country. As part of extending all possible political and economic assistance to Bangladesh, India had agreed to Bangladesh's request that only those who entered India as refugees after its declaration of independence shall be repatriated to Bangladesh.⁹⁸ In other words, Bangladesh refused to accept those persons who entered India illegally prior to or on March 24, 1971 as its citizens. The Bangladeshi refusal to accept illegal entrants as its own citizens left India with no option but to agree to take the responsibility of the illegal migrants and grant them Indian citizenship. This regularisation of Bangladeshis illegally staying in India by the central government was later formalised in the Assam Accord of 1985.

The Assam Accord set "January 1, 1966 as the base date set for detection and deletion of foreigners".⁹⁹ The Accord declared that all persons

⁹⁷ "Supreme Court Tie Blocks Obama Immigration Plan", *The New York Times*, Washington, June 23, 2016, available at http://www.nytimes.com/2016/06/24/us/supreme-court-immigration-obama-dapa.html?_r=0, accessed on July 28, 2016.

⁹⁸ "Joint Communique Issued at the End of the Visit of the Prime Minister of Bangladesh Sheikh Mujibur Rahman to India, Calcutta, February 8, 1972", in Avtar Singh Bhasin, *India–Bangladesh Relations: Documents 1971–2002, Vol. I*, New Delhi: Geetika Publishers, 2003, p. 2651.

⁹⁹ "Problem of Foreigners in Assam", *Memorandum of Settlement*, p. 8, available at [http://aasc.nic.in/acts%20and%20rules%20\(goa\)/Implementation%20of%20Assam%20Accord%20Deptt/Assam%20Accord.pdf](http://aasc.nic.in/acts%20and%20rules%20(goa)/Implementation%20of%20Assam%20Accord%20Deptt/Assam%20Accord.pdf), accessed on December 8, 2015.

who came to Assam prior to January 1, 1966 and all those whose name appeared in the 1967 electoral list will be given Indian citizenship. The names of those persons who came between January 1, 1966 and March 24, 1971 will be deleted from the electoral list and they will be required to register themselves under the provisions of Registration of Foreigners Act, 1939 and Registration of Foreigners Rules, 1939. They will be granted full Indian citizenship with full voting rights after a gap of 10 years.¹⁰⁰ The provision to grant Indian citizenship to Bangladeshis who entered India before March 24, 1971 has now been challenged in the Supreme Court, which has referred the case to a five-member bench for final decision.¹⁰¹ As the history of Assam agitation shows, regularising lakhs of East Bengalis/Pakistanis did not result in addressing the issue of illegal migration. On the contrary, it acted as a catalyst for further unauthorised crossings into India. In fact, the Government of India realised as early as 1974 that illegal migration from Bangladesh had restarted. Statistics released by the Indian government revealed that between August 1974 and April 1975, 41,576 Bangladeshis were detected at the border and sent back. But between April and September 1974, 15,278 Bangladeshis crossed over to India and their numbers jumped to 38,445 in 1975.¹⁰²

Conclusion

From the discussion, it can be conclusively argued that neither issuing work permits nor granting mass amnesties to illegal migrants, as suggested by various analysts, would prevent migrants from Bangladesh to illegally enter India and settle here permanently. In fact, experiences of various countries who have implemented these two measures

¹⁰⁰ Ibid., pp. 8–9.

¹⁰¹ Writ Petition (civil) No. 562 of 2012, Assam Sanmilita Mahasangha & Ors. vs Union of India & Ors. with Writ Petition (civil) No. 274 of 2009, Assam Publics Works & Ors. vs Union of India & Ors. with Writ Petition (civil) No. 876 of 2014, All Assam Ahom Association & Ors. vs Union of India, December 17, 2014, Supreme Court of India, p. 33, available at supremecourtfindia.nic.in/outtoday/wpc_562_2012.pdf, accessed on December 21, 2014.

¹⁰² Bhasin, *India–Bangladesh Relations: Documents 1971–2002*, Vol. I, n. 98, p. xc.

showed that they have not been successful in preventing illegal migration into their territories. Various studies and statistics have proven that instead of preventing illegal migration, these programmes have, in reality, proved to be an incentive for migrants to cross the border illegally, find work and settle down in these economically developed countries. The Indian government, therefore, has to take into account the adverse consequences of issuing work permits or granting amnesties to illegal migrants before thinking about adopting and implementing these programmes.

Conclusion

Illegal migration from East Pakistan, later Bangladesh, into India has continued unabated since independence. It brought in its wake not only socio-economic and political turmoil in the migrant-receiving states but also strained bilateral relations. As lakhs of undocumented migrants fleeing either politico-religious persecution or economic deprivation in East Pakistan/Bangladesh crossed the border and settled in the border states of India, it created conflict between the host population and the immigrants. Competition over land, job opportunities and cultural supremacy between the natives and immigrants became more intense. The numerical preponderance of the illegal immigrants also resulted in altering the demographic profile of Tripura and many border districts of Assam and West Bengal. The loss of political power by the natives to the immigrants and the fear of being marginalised in their own territory fomented secessionist tendencies among the people in the border states, with ULFA and Bodo militant groups in Assam and TNV, NLFT and ATTF in Tripura emerging as major insurgent groups.

While the Indian government was still grappling with the insurgencies in the North-East, the BJP and its allies, emerging as a strong force at the centre, projected the issue of illegal migration as an existential threat to India. In an attempt to garner Hindu votes and establish itself as a “nationalist” party, the BJP portrayed the illegal migrants from Bangladesh as Muslims who are entering into India to take away jobs from the local people. The BJP also alleged that most of them had connections with Islamic fundamentalist organisations in Bangladesh and their motive was to create socio-political unrest in India and ultimately merge parts of Assam and West Bengal with Bangladesh to create “Greater Bangladesh”. Branding illegal migrants as a security threat also echoed the then worldwide trend of growing intolerance against migrants.

Given these challenges, the Government of India tried to contain illegal migration through a mix of laws and executive interventions aimed not only at expelling the foreigners from the country but also deterring potential migrants to cross the border illegally. Towards this end, detection, disenfranchisement and deportation of foreigners remained

the prominent scheme. Under this scheme, the illegal migrants were identified under the Foreigner's Act, their names deleted from electoral roles and then they were deported from India. While the aim and intent of the scheme was right, it could not achieve the desired results as a number of factors prevented its effective implementation. First, given the circumstances under which the people were fleeing their homes in East Pakistan and later Bangladesh, the central leadership adopted a more humane attitude towards them and despite pressure from the local leadership, instructed the state governments to be lenient towards those who have crossed the border irregularly.

Soon the state leadership realised that no matter how much they disliked the illegal migrants, their political survival hinged upon the votes cast in favour of them by these illegal migrants. So, they also started cultivating the leaders among the migrants and extended political patronage to the illegal migrants. These political parties not only provided the illegal migrants documents to prove their Indian citizenship and enlisted them in the electoral roles, but also protested vehemently alleging harassment towards the Indian Muslims whenever the police tried to evict the undocumented Bengalis. Such was the support for the illegal migrants amongst the politicians that they even enacted the IMDT Act, which made it impossible to carry on the process of detection and deportation of illegal migrants. The dismal record of the tribunals formed to evict undocumented Bangladeshis from Assam proves the point. Besides, Bangladesh's denial that its citizens had indeed migrated to India and were staying there illegally made deportation impossible. Bangladesh consistently maintained that the conditions of the Indian states bordering Bangladesh were no better than those in Bangladesh and therefore, the Bangladeshis did not have any reason to cross into those states. Whenever India tried to forcibly "push back" the illegal migrants, Bangladesh government refused to cooperate arguing that India was trying to "push in" Bengali-speaking Indian Muslims into the country.

The second most important measure that was undertaken to check illegal migration was strengthening border controls. For this purposes, the government augmented the strength of the BSF and constructed additional border check posts to keep a strict vigil along the border. The BSF personnel were also provided with state-of-the-art surveillance devices for enhancing their remote surveillance capabilities. In addition,

the Indian government decided to construct a barbed wire fence along the international border to deter as well as prevent Bangladeshis from crossing the border illegally. Despite stiff resistance from Bangladesh, India was able to fence a substantial section of the India–Bangladesh border. Border roads were also built for easy mobility of the border guards. The Union government also launched a scheme of providing identity cards to its citizens so that foreigners staying illegally in India could be easily identified and deported.

Doubts regarding the effectiveness of greater border control measures in preventing illegal migration have been raised periodically. It also has to be borne in mind that fencing, in itself, is a suboptimal measure because the illegal migrants have been able to circumvent the hurdle in various ways. In addition, government apathy at state level, local protests, difficult terrain and corruption have contributed in reducing the effectiveness of the fences. The dearth of authentic official data on the number of illegal border crossing makes it is near impossible to judge the outcome of these border control measures. But if the BSF apprehension figures over the years are to be taken as an indication of the trend, then it appears that the border fence, along with increased presence of border guards, has indeed increased the costs of illegal border crossings and lesser number of people are attempting to cross it illegally now. It is important to understand that border controls in an ongoing process. It will take a developing country like India huge amount of resources, time as well as determined political will to effectively manage its international borders.

Given that the issue of illegal migration has generated emotional and violent reactions in the country and given the fact that the Indian government has not been able to successfully check infiltration, many scholars and analysts have argued that it is time to desecuritize illegal migration. They emphasise that an overwhelming proportion of illegal migrants are economic migrants, who come to India to earn a living. By taking up unskilled jobs, these illegal migrants are not only fulfilling an existing local demand at a low cost but also contributing to the Indian economy meaningfully. Since these migrants remain focused on earning a decent livelihood, it is unlikely that they would indulge in terrorism and crime, which would bring attention to their status and deprive their community of a livelihood in India. This argument is

reinforced by the fact that despite visible discrimination, these illegal migrants, especially in the urban areas, have remained preoccupied with their niche occupations and have not forged links with other dispossessed lots and recent arrivals to organise rebellion against the state. Even in Assam, where there have been widespread riots against the migrants, there has been no major backlash against the Assamese community by the Bangladeshi migrants.

Against this background, a proposal for issuing work permits for the Bangladeshis who wish to work in India has been forwarded. The analysts argue that a work permit would provide the economic migrants respectability as legal workers in India and eliminate the root cause of political protests against them. Work permits would also reduce the cost of crossing the border irregularly for the migrants, who otherwise were giving out hefty amount to the smugglers. For the country, work permit would help ascertain the number of Bangladeshis actually crossing the border. The migrants would supply cheap labour and the country would economically benefit. The government of the day has bought into the argument and is seriously deliberating implementing the proposal for work permits.

However, before issuing work permits as a means to prevent illegal migration into India, a thorough assessment of the proposal has to be carried out. To begin with, it has to be conclusively established through meticulous survey that the illegal flow of migrants across the border from Bangladesh is truly a response to demand for labour in India. Countries which have active work permit programmes are the ones who face the problem of domestic labour. As far as India is concerned, it is a labour-surplus country, with 12 million youth entering the workforce every year; therefore, it is difficult to conclude that such a demand for labour exists in the country. If the demand for labour is not there, then issuing work permits to Bangladeshis would result in depressing wages in the unskilled labour markets in the country and will add to the existing societal hostility against illegal migration.

The fact that most of the Bangladeshi workers are engaged in unorganised sector and given that this sector is beyond the pale of government's purview, it would be difficult to generate data on the number of Bangladeshis actually employed in the country, thereby

defeating the purpose of keeping a tab on them. Furthermore, it is generally observed that most of the Bangladeshi citizens who have entered India have been either hounded out of the country by religious bigots or have lost all means to earn a livelihood. Under such conditions, almost all of them have come to India to settle in the country permanently. If this is the predominant template, then these illegal migrants cannot be categorised as seasonal workers and hence, providing work permits to them will not resolve the problem.

The way forward in managing the problem of illegal migration from Bangladesh is, first, to objectively assess the number of migrants illegally crossing the border as well as staying in the country and make such a database publicly accessible. This would free the issue from speculation and provide a clearer perspective on the problem. Second, borders have to be tightly controlled through a judicious mix of fences and better human and electronic surveillance. In this effort, support of the local people is also necessary. Third, serious and sincere efforts should be made to identify illegal migrants, who are not considered morally and legally entitled to stay in the host country, and arrange for their repatriation. For this purposes, Bangladesh has to be brought on board on this issue sooner or later by pursuing a vigorous diplomatic engagement. Lastly, India should put in place an immigration policy that would clearly state terms for granting citizenship and asylums and put to rest ambiguity, bureaucratic discretion and political calculations.

This monograph examines the Indian government's perspective on the issue of infiltration/illegal from Bangladesh. It analyses the socio-economic and political impact of the presence of a large number of illegal Bangladeshi migrants on the receiving societies within India. It also studies the process of politicisation and securitisation of illegal migration by the political parties, and analyses the events and actions which have shaped the Indian policymakers' attitude towards illegal migration. While critically evaluating the various measures taken by the government over the years to tackle the problem, the monograph also examines in details proposed solutions such as issuance of work permits and granting amnesty to the illegal migrants as measure to prevent illegal migration. In doing so, it brings forth the wider debates regarding work permits and amnesties, and studies the experiences of some select countries to judge the implications of such proposals. Based on these debates, the monograph argues that before considering proposals such as work permits, it has to be conclusively established that illegal migration occurs in response to demand for labour, otherwise it would result in depressing wages leading to greater hostilities against illegal migrants.



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