

DEPORTATIONS OF BENGALI-SPEAKING MUSLIMS
FROM MUMBAI

A FACT FINDING REPORT PRODUCED BY A JOINT TEAM FROM
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Introduction : A brief background to the problem.

In the month of July 1998, around 100 Bengali speaking Muslims mainly zari workers were picked up from various parts of Mumbai on the grounds of their being illegal Bangladeshi immigrants. The police rounded up these people from the localities of Rafiq Nagar in Chembur, Bengalipura in Wadala, as well as from basthis near Reay Road and Dockyard Road stations. This issue of illegal deportation received large scale coverage in the Indian press which highlighted not only the inhuman plight of faced by these deportees, but also the very questionable procedures followed by the concerned state agencies in determining the status of these groups.

In the Indian parliament the issue also generated heated discussion forcing the home minister to make a statement on the issue. According to Mr. L.K. Advani 3 batches of Bangladeshi immigrants were caught and put on the Kurla - Howrah express to be sent to Benapole border. The deportation of illegal immigrants by the Maharashtra state government was in keeping with the procedures and the laws pertaining to deportation, In the light of the Calcutta High Court orders releasing some of these deportees, the statement of the Home Minister is nothing short of contempt of Parliament.

The issue of illegal deportation has also sparked off a crises situation between the governments of Maharashtra and West Bengal. Highlighting the thin veil of civility which disguises chauvinisms - both regional and national. As of now the Calcutta high court besides releasing a number of these so called illegal deportees on grounds of them being Indian nationals the court has also granted an absolute stay on these deportations, pending its own judgment in this matter.

The problem of illegal Bangladeshi migrants in India goes back to the 1971 war with Pakistan which led to the creation of Bangladesh. It is during this period that a large number of Bangladeshis fled into India to escape the atrocities that were committed upon them by the Pakistan army. Following the liberation of east Pakistan and the creation of Bangladesh,

the issue of these Bangladeshis who had fled to India began to emerge as a matter of concern for the Indian government. At this time the Indian government acted on the issue of Bangladeshis by signing a treaty with the newly formed Bangladesh government which granted citizenship status to all Bangladeshis who came into India before 1971.

However, in 1989 the issue of these Bangladeshi immigrants came to be treated as a matter of national concern by the right wing Hindu nationalist party. In that year, a BJP MP from Mumbai raised the issue of the Bangladeshi immigrants in parliament arguing that they were a threat to national security. Further in 1993 a BJP rally led by Madanlal Khurana and B. L. Sharma in Delhi raised the issue of illegal immigrants under the banner 'citizens against infiltrators'. Later in their Calcutta Resolution the BJP proclaimed the issue of Bangladeshi immigrants are a national problem

In 1995 a fact finding report produced by Shama Dalwai and Irfan Engineer highlighted the plight of the Bangladeshi immigrants in the city of Mumbai. The report pointed out that Mumbai had an approximate population of around 20,000 Bangladeshi immigrants [on the higher side] admitting to the impossibility of a definitive figure, they argued that in no way could this figure touch 50,000 or even 3 lakhs as BJP sources were making it out to be. The report went on to highlight the severe economic and social hardships faced by this group of people. In their conclusion the authors argued that given their social and economic backwardness any attempt to treat such marginalized groups as threats to national security was not only a figment of populist right wing imagination but also a dangerous exercise that could only further vitiate communal politics within the larger society.

Further, from available records with the CID office in Mumbai as well as other newspaper sources Bangladeshi immigrants have been deported on a regular basis by the state government. However during the congress regime in Maharashtra till 1987 the figures rarely crossed 300 annually. It is only after 1987 that these figures begin to rise very sharply. [See report attached].

1982	98	83
1983	240	216
1984	193	178
1985	150	143
1986	307	279
1987	308	250
1988	453	449
1989	603	578
1990	750	714
1991	761	750
1992	673	595
1993	549	422
1994	489	340
1995	358	251
1996	871	746
1997	793	758
1998	701	564

note: figures for 1998 are upto the month of July.

The main issues taken up for investigation.

Based on the information and the magnitude of the problem highlighted in the previous section, a fact finding team consisting of 11 members from CPDR Mumbai, EKTA Mumbai, and WRAG Mumbai visited the locality of Bengalipura in Wadala east and Ektanagar in Dockyard road on 16th and 17th August 1998 to record the statements of the various deportees and their relatives affected by this illegal deportation. The team also met police officials at Antop Hill police station as well as officials at the CID office IB section to record their version in this matter. Finally, members of the team also met the concerned magistrate [37th court] in this connection and discussed with him the case of illegal deportations.

The major issues of critical concern investigated by the fact finding team in this report includes :

A] The basis on which these Bengali speaking Muslims were identified as Bangladeshis and whether they were given a fair opportunity to prove their citizenship.

B] The manner in which most of these arrests were and are being conducted, and the mental and the physical trauma they are put through in the process of being deported.

C] The complete absence of a procedure as laid down by law , in the absence of which this entire activity of deportation is not only replete with subjective consideration but also susceptible to the charge of being politically motivated against Bengali speaking Muslims from various districts of West Bengal.

Observations and findings.

Bengalipura is a small basti with a population of about 8,000 households situated along the harbour line railway tracks in Vadala east. Most of the families residing here are traditional zari workers the majority of whom are Muslims though there are some Hindu zari workers as well . Even though this is an old slum, very little has been done over the past three decades to improve the civic amenities for its residents. The living conditions within the basti are nothing short of squalid. With the monsoons flooding up the entire basti and the complete absence of any effective drainage, not only is the struggle for survival very acute here, it is also compounded by the threat of disease and epidemics. For these zari workers of Bengalipura their lives are very hard and to make matters worse, their businesses being affected after the 1993 riots; have also not recovered since and consequently many of the families have left the basti to return back to their native places in West Bengal.

While most of the zari workers we spoke to were 4th std pass from the local school in their respective villages, Illiteracy was also widespread amongst the people here. Combined with their economic and social conditions, as well as the larger hostile political situation, most of the people of this community become susceptible to various forms of victimization of which the illegal deportation is perhaps the most critical one . Thus their inability to deal with the issue of illegal deportation is not surprising. On the one hand they spend a lot of effort and time in acquiring these documents and on the other they fail in their efforts to prove the validity of these documents to the police and other concerned authorities of the law. Time and again, using the clout of the 1946

foreigners Act, these people are called upon to prove their Indian identity. When documents are provided as evidence of such a proof, they are promptly turned down on grounds that these are either fake, and falsified, or in most instances they are insufficient.

Whether under the previous Congress government or the present Sena/BJP government; the exercise of illegal deportation continues, the difference according to. The residents we spoke to however observed a qualitative difference in the treatment meted out to them under both governments. During the Congress rule their documents could help get them their release. Under the present government this is becoming more and more difficult and what is worse, is that, they now believe that because of their class background and an already constructed Muslim identity by populist right wing politics in the city, since 1992, they are being selectively targeted as a community.

This perception of the residents of Bengalipura in the context of Mumbai is not unfounded. There is enough evidence to show that at different times in its chequered and violent political history the Shiv Sena had targeted various communities within the city on one pretext or another. Whether it was the South Indians or the Gujratis and now the Muslims; the Bengali speaking Muslims of Bengalipura know fully well the political motivations that underlie this issue of illegal deportation.

The fact finding team recorded the statements of a number of individuals who in one way or another are the victims of this illegal deportation. The statements were provided either by the victims themselves or by their close relatives. They are self explanatory and bring out the other side of the issue highlighting the complete travesty of the State's claim to deport illegal Bangladeshi immigrants. Given the paucity of time at our disposal, we have only been able to take at random the cases of people who came and spoke to us. It is our firm belief that such cases as are recorded here below are much more widespread and that there may be many who did not want to speak up for fear of reprisals.

The people's version :

Cases from Bengalipura at Wadala

Case 1- Abor Ali's family has been staying in Bengalipura for the past 4 years and have been zari workers. They come from Sadal , P.S. Khargram . Dst Murshidabad West Bengal. They have a ration card and a letter certifying their domicile from the Sadal Gram Panchayat. But they were identified as Bangladeshi citizen; not once three times in the past. This time the CID [IB section] police were determined to deport them and therefore decided to ignore all forms of identification.

Abor Ali sheikh, aged 57 years along with his son, a pregnant daughter and her husband were picked up at 2 am on the 4th of July by the CID (Special branch) on grounds of their being Bangladeshi. They were produced in court that same morning and the magistrate remanded them to 10 days custody in Agripada jail during which time, they had to submit the proof of their Indian citizenship. The next hearing was scheduled for 17th July.

But on the 14th itself they were again picked up alongwith 21 other residents of Bengalipura, dispatched to Kurla station to board the Kurla-Howrah Express. The deportees were allowed to take no belongings and money from their homes and when relatives offered monetary help; they were denied this assistance. At the time of boarding the train each adult member was given a sum of 12 rupees. One whole compartment converted into a lock up was used to herd these people for the rest of the journey without food and water for almost 2 days. Three children suffered the same treatment . From Howrah to Sealdah they were taken by train and from there to Bongaon. From there, to Benapole at the Indian border, the Maharashtra police handed them over to the BSF. They were told that in case anyone asked them about their identity they were to say that they were Bangladeshi citizens .

It was at this point that they were given for the first time some rice and dal. Their first meal in three days ! On the 17th night the BSF released them pointing towards the forest and said that was the way to Bangladesh. It rained all night , and the condition of the pregnant daughter worsened . Of the 21 about 10 managed to find their way back to reach an Indian village; here again they were harassed by local goondas, from here they came by train to Ranaghat and from there by bus to their native village Shankarpur in Murshidabad and with the monetary assistance of relatives there, some of them returned back to Mumbai

Case 2-Sahur Amin Sheikh is a resident of Bengalipura for the last 26 years. He was also picked up on the 4th morning around 3.00 a.m on grounds of his being a Bangladeshi. He had with him his school leaving certificate, and a letter from the local MP of his constituency certifying his Indian domicile. affidavit from Shibramchak gram panchayat, P.S. Uluberia, Howrah district. He also has land ownership pattas back in his village. He was picked up twice earlier on in 1994, at that time the gram panchayat certificate held by him brought him release. This time however these papers were not considered valid proof .

During the period of his remand his younger brother sent an affidavit from Shibramchak gram panchayat, P.S. Uluberia, Howrah district. Proving his Indian domicile. The document could not be produced in court on the 17th as the entire group was deported on the 14th July. Further, the police also accused him of having a Bangladeshi wife, despite his refutations to the contrary the police [IB section] refused to believe him. On the contrary one of the officials on duty sarcastically suggested to him that he needn't make a fuss, he could go visit Bangladesh for free.

Case 3- Chandan Mandal, a Hindu resident of Bengalipura; is 18 years old and comes from Dhulasimla village in P.S.Uluberia, district Howrah . He was picked up on the 22nd July at 3.00a.m and kept in the Agripada jail in remand custody for a period of 21 days . later on 12th August he was shifted to Byculla jail where an error in the jail record gave his name as Ujjal Mandal. His elder brother went back to their village and collected all the necessary documents and certificates as proof of Indian citizenship. However the police refused to accept this as evidence as it was in the name of Chandan Mandal. Instead they wants proof of ownership of land or any other immovable property in the name of Ujjal Mandal. Chandan is still in jail. According to the local people of Bengalipura, there are some 126 cases of individuals still languishing in remand custody in various jails.

Case 4-Lalchand Sabdar Ali Sardar and his mother were picked up on the 18th July . He has a passport giving Indian domicile and an address in the 24 Parganas . He also has a ration card from the same place . His brother who recounted this for us says that these according to the police were not sufficient proof . Lalchand is still languishing in the Byculla jail and his mother in Kalyan jail.

Case 5- Fakir Jayfaenisa has a ration card, an election identity card, birth certificates of her children and her husband's passport. She is languishing in the Kalyan jail since July 98. Her husband is an asthma patient and during this period of her remand custody his health has rapidly deteriorated for lack of attention and care.

Case 6- Ayesha bi Abdul Rashid, 60 years of age, was picked up along with her son on the 18th July after 2 policemen broke her door and dragged her away from her home at 3.00a.m in the morning. At the CID office her son was released, but her own evidence was rejected. She was seriously ill and taken to the Cama hospital, where she was administered glucose drips and injections. The conditions of her hospitalization only further traumatized her, her requests for home cooked food were denied, her son and husband were not allowed to either meet her or talk to her. Later she was placed in remand custody at Kalyan jail and kept there till 11th August 98. She has proofs of domicile in Mumbai for over a period of 53 years.

Case 7- Sheikh Sabir Ali is 22 years old zari worker. He was picked up on the 6th July at 3.00 a.m by the police along with his brother Nizam Ali Sheikh and remanded to the Arthur Road jail on grounds of his being a Bangladeshi. He is critically ill and is languishing in the jail.

Case 8- Ashgar Ali Mallick hails from the village Pachla in Howrah district and has been staying in Bengalipura for the past 10 years. On July 12th at 3.30 am, he along with four other youths all in their early twenties were picked up from outside his home. 33 people in all were picked up from Bengalipura that night. Of this entire group there were only 2 men and 3 women were Bangladeshi. In the morning, they were produced in court and later in the evening, they were taken to Azad Maidan police station. Bablu Sheikh, a relative of Ashgar Ali Mallick went to the police station with all the required papers but he was abused by the police and asked to leave. They told him that all the documents were fake and instead they demanded 500 rupees for Ashgars release.

Cases from Ekta Nagar at Dockyard Road.

Case 9 : Marina Sardar aged 23 yrs was picked up by the S. B. 1 C.I.D. along with her brother-in-law Mostafa Sardar aged 24 years. They had come to Mumbai in 1997 and belong to village Nirman P. S. Swarupnagar,

district North 24 paraganas. Marina's husband Mazakker Sardar, is a construction worker who had thought of coming to Mumbai to earn enough for the family. On the 16 of July at 3 a.m, two vans came with around 10 plain clothesmen from S.B.1 and took them away, refusing to accept the few valid documents they had.

At around 9a.m, Mostafa Sardar was let free considering his documents but money was demanded for the release of Marina , which her husband refused. At 11 a.m, she was produced before the Magistrate but no questions were asked and if they wanted to speak, they were intimidated by the police. From the court, Marina was taken to the Agripada police station where she faced some form of sexual harassment which her husband refused to elaborate. Rupees 100 was demanded from Mazakker Marina's husband whenever he visited her in jail. On the 4 of August, Marina had to appear in court and then she was taken to Arthur Road jail where she remains. Mazakker has got an affidavit from his village and also a letter from an MLA Mostafa Bin Quasem from his district.

Case 10: Argina bibi aged 50 years and her son Alamgir aged 24 years, were taken away by the S.B.1 on the 20 of July at 6 a.m. They are from the village Nimabakhua in district Birbhum, West Bengal. Rehan Ali aged 24 years, Argina bibi's son-in-law, told us that the authorities want documents dated before 1947 and all the relevant documents they have procured are not being considered. On the 20th July, Argina bibi and Alamgir were produced in court and taken away to Agripada jail from here, they were taken away to Arthur road jail on the 3 August. Bail is being denied to them but, an enquiry has been sent to their village and the results are awaited.

Case 11 : Anwara Sheikh aged 24 years and her husband Ismail Sheikh aged 35 years, were picked from their residence at 3 a.m. on the 20 of July. Asma who is 22years old , is Anwara's sister, tells us that their documents were not accepted by the C.I.D. Anwara works as a domestic servant and Ismail was working as a carpenter. On that day, both husband and wife were produced in court and taken away to Agripada jail where, Ismail was subjected to physical torture. Their documents like land record and school leaving certificates came from their home town but were not accepted. Whenever their relatives came to see them, 100 rupees were demanded. From Agripada jail, they were taken to Arthur road jail on the 3 of Aug. An enquiry has been made from their home town but no news . has arrived and they are still languishing in Jail.

Case 12 : Nazir Hussain Sheikh aged 18 years, was orphaned in childhood and came to Mumbai a year back to live with his chacha and is working as a helper in construction work. He is from village Konutuya in district Birbhum West Bengal. On the 16 of July, he was picked up by the C.I.D. at 3 a.m. and taken to court the following morning at 11a.m. from there he was put into Agripada jail for 19 days. Here, he was beaten with sticks and kicked. His Uncle had to part with rupees 100 to meet him. In the meantime, his papers came from his village but this evidence was not accepted by the police. Instead, on 4 August he was taken to Arthur road jail for 9 days and then taken to Byculla jail where he stayed for another 5 days. He was finally released when his Uncle who was working under an M.L.A Mr. Basir Patel of Mohammed Ali was able to get him to visit the jail authorities and thus he was freed.

While these cases in their own way bring out various facets of the three issues that the fact finding team set about to investigate, The following points need to be highlighted about the general practice of illegal deportation and the manner in which it occurs :

* Every instance of arrests made by the police especially those of the CID involves an overt attempt to terrorize and intimidate the individuals concerned. The arrests are always made in the late hours of the night. In certain cases individuals are forcibly brought out of their residence by breaking down the door. While in custody they are harassed and beaten up, women arrestees even complain of sexual harassment and molestation while in custody. Individuals arrested are always told what to say and threatened with severe consequences should they decide to act otherwise.

* No amount of documentary evidence provided by those arrested seems to be sufficient as far as the police and the courts are concerned. Not only is such evidence summarily declared false, the arrested do not even get a fair trial from the courts as they are often deported even before such a trial can take place.

* In terms of evidence most of the residents have pointed out that the police asked them to produce evidence of immovable property like land-holdings. The residents point out that even if they do have such land-holdings in their native-place, very often these holdings are not on their name but on their father's name. One more piece of evidence often asked

for by the police is the birth certificate. Here again the residents point out that in their native-place they were all born in their homes and not in hospitals. In many instances their births too have not been registered and they believe they cannot be held responsible for a state machinery that is unable to perform such functions effectively.

* The relatives of those placed under remand custody uniformly complain of their having to part with Rs. 100 to the jail authorities everytime they want to visit their family members in Jail. Such a practice is not only illegal, it is nothing short of extortion by State officials.

* The conditions under which they are deported are against all civilized norms of a democratic society. Not only are these conditions inhuman and barbaric, they are in violation of both Indian and International law.

The Police Version.

The state police have a ready definition for these residents of Bengalipura. According to Mr. Narayan Paule, police officer at Antop Hill police station, who spoke to members of the fact finding team on 16th August, - all of these Muslims are Bangladeshis and all of them are thieves and criminals and therefore need to be thrown out of the country.

This makes the police and especially those of the CID SB (I) section before whom they are brought for interrogation, suspect all forms of documentary evidence of their Indian citizenship. Hence ration cards, birth certificates, school leaving certificates, and even passports they claim, can be faked or bought for a small amount of money. It must be also noted that Mr. Paule himself admitted that they carry out verification of passport application before passports are issued. Election cards are anyway made for everyone during elections.

Mr. Paule even went on to explain to the fact finding team how these fraudulent practices of manipulating names can be done. He himself though had found no such instance of malpractice amongst those being illegally deported. According to him it was the enmity amongst neighbours that made one of them come and inform on the other of being a Bangladeshi. He also admitted to the fact that the local police and the CID SB(I) had no communication with each other on this matter of deportation. The basis on which the CID SB(I) gets its information therefore becomes very questionable. The reality then is that the local police have already

decided not to accept any documentary proof, and under the Hindu right government this seems to fit well with their conception of Muslims as aliens, as anti-nationals, as Bangladeshis.

With the SB(I) branch at the CID office the version had the dressing of officialdom. D.C.P Mr R.M Kedari who met members of the fact finding team on 18-8-98. 4.10 p.m. was completely adamant that the entire procedure was guided by the rule of law. According to him the deportation procedure has been going on since the year 1982. He emphasised to the team that his job is merely to implement the procedure laid down in such cases and not be concerned whether about the fairness of the procedure. Documents are checked before taking the suspected immigrants and again at the branch office, they are interrogated. Laws of deportation of the Government 1946 and the 1950 passport entry to India are followed.

He further pointed out that at present, 300 cases are pending with the magistrate, because they were challenged. 108 people are in the jail who were brought in 1998 and apart from this, 97 suspected were left off on checking all documents. On being asked as to why they come at the middle of night, to round up illegal immigrants, he said that it was the time we can be assured of their being at home. In admitting to such a response the ACP was also admitting to the fact that his own men were engaged in falsifying information in the FIRs. In most of these FIRs seen by the fact-finding teams the police falsely stated that the illegal immigrants were picked up in the morning and that too when they were loitering about in some public place. How trustworthy such a police force can be in providing and verifying information about these illegal deportees is a highly questionable matter.

Further when asked as to why the West Bengal police was not informed about the deportation, especially given the fact that so many of those arrested had evidence claiming domicile in some part of West Bengal, he replied that such a procedure is not required. The fact remains, that beyond stating that they follow procedures, the police were not able to explain what these procedures were and whether they were uniformly applicable. What made one set of documentary evidence valid and another invalid, or what distinguished one fake document from another, or why documents issued by one agency of the state machinery were not held as authentic by another agency of the same state machinery are matters on which the procedures concerning deportation were completely silent about.

The police told us that in every deportation there may be 1 or 2 genuine Indians sent back and this they could not prevent. However the present deportation shows that in the first batch of 21 deportees on the 14th July, there were about 3 to 4 Bangladeshis and the rest Bengali speaking Muslim Indians. This means that under the present government these Muslim Indians are also being deported!

It is both ironical and vindictive, that while on the one hand the state generates a bureaucratic structure for issuing out these documentary evidences thereby making these people run around to gather all possible proofs of their Indian identity, on the other hand they are picked up by another machinery of the state on grounds of their being non-Indians. This would mean that one department of the state machinery accuses the other of corruption and therefore will not accept the validity of documents issued by the other as legal proof. Therefore all evidences to the CID is false. In the case of the police this contradiction is even more glaring. Not only do the police summarily discard evidence provided by the deportees in the name of it being false, very often some of this information might itself be issued by the police in some other part of the country. Further given the behaviour of the police during the 1993 Mumbai riots and given the fact that the fact-finding team itself came upon cases where the police falsified information on reports submitted to the magistrates courts, their integrity and ability to perform such a task, without prejudice towards the deportees, is itself very questionable.

One is forced to note here that what is in question is a systemic crisis that has affected the entire Indian bureaucracy and the Bengali speaking Muslims, other political considerations aside, have become the unfortunate victims of such a breakdown of legitimacy within the bureaucracy as a whole.

The Magistrate's version :

The fact finding team also met the Additional Chief Metropolitan Magistrate of the 37th court which deals with matters of deportation. While team members were not allowed to record his statement, it was clear that the magistrate believed the entire procedure of deportation to be fair and just. He also mentioned the various acts [earlier cited] that governed court procedures. According to him in his brief duration of 10 months in this court he had deported more than 700 illegal immigrants.

Only 1 trial was conducted. Trials could not be held because many of the deportees could not be produced in court.

Ration cards, Passports, and other documentary evidence obtained in Mumbai were not considered and he would instruct the police to make their own investigations at the address in their native place in West Bengal as was given by the deportees. Evidence sought for was considered valid if it was shown to exist before 1971. He admitted however that there could be error on the part of police investigations resulting from incorrect information given by the deportees themselves. He was however, emphatic that the judicial procedure was fair and not politically motivated. He also admitted that the stay on deportation imposed by the Calcutta high court did not apply to his court as he had received no such information from his own superiors and as such the 37th court carried on its work of deportation as always.

What the magistrate's court however seemed unable to explain was the innumerable cases of deportees who were not able to get a fair trial, not only because they were deported before such a trial could take place, but also because of the fact that many of these deportees complained of intimidation by the police. Many of the people interviewed by us also admitted to the fact that even though they were brought in the presence of the magistrate, neither did he interrogate them nor were they allowed to speak for themselves. Further, seen in conjunction, the Magistrate's court and the police both working on deportation cases without any legally valid framework of procedures, can only create a situation which is arbitrary, against the course of natural justice and in the final analysis prejudiced against the deportees.

Legal Implications:

The issue of the illegal deportation of Bengali speaking Muslims highlights not only the complete arbitrariness of the procedures involved in deportation, It also raises larger questions concerning the very implementation of the laws pertaining to deportation of illegal immigrants. Deportation of foreign nationals has always been a matter entirely restricted within the purview of the central government. How a state government comes to perform such a role is itself questionable on closer scrutiny of the law. The laws dealing with citizenship and deportation in India are Citizenship Act 1955, Foreigners Act 1946 and the Passports Act 1967.

During the course of this investigations it has been brought to light that the Additional Chief Metropolitan Magistrate, Mumbai is passing orders for deportations of persons who are residents in Mumbai since the last several years merely on an investigation carried on by the CID S. B 1. The procedure followed is in absolute violation of the prevailing laws.

The persons alleged to be Bangladeshi have ample proof of their domicile in India such as Indian passport, ration card, names included in the electoral roles, land ownership documents etc. The Supreme Court and High Courts have held that an operative passport is a very strong piece of evidence of the nationality of a citizen of a State [AIR 1967 S.C.1836; AIR 1967 All. 565]. Issuings of passports and inclusion of names in the electoral roles takes place after a detailed enquiry conducted by the concerned government officials. Weightage is also to be given to other proofs such as ration card , birth certificate and oral evidence while determining the nationality of the individual [3 SCC 1995 101].

The Citizenship Act comes into play once an individual says that she/he posseses prima facie proof of citizenship. Under the Citizenship Act, the Central Government is the sole authority that can determine the status of a citizen and relinquish, terminate or deprive the individual of her/his citizenship. The procedure to be followed is laid down in detail on the Citizenship rules 1956. When the State complains that the individual is a foreigner, the onus is on the State to prove the allegation [AIR 1962 S. C. 1778; AIR 1993 Gau 9]. Therefore an individual who is in possession of the aforesaid prima facie evidence cannot be prosecuted under the Foreigners Act without an enquiry being conducted by the Central Government under the Citizenship Act.

In the event of an individual being deprived of her/his citizenship by the Central government under the Citizenship Act, action can be taken under the Foreigners Act.

The contention of the police that these documents relied upon are fabricated is unsubstantiated especially as these documents are issued by the Government authority after a detailed enquiry. In case of an allegation of any document being fabricated action under the relevant law is to be initiated and the allegation proved.

The investigation carried out by the police and the orders passed by the Additional Chief Metropolitan Magistrate are contrary to Article 21 and 300A of the constitution of India. On perusal of the law, it

is imperative that the Central Government conducts an inquiry into the status of an individual. The State machinery is deliberately circumventing the provision of the Citizenship Act so as to deprive the individual of an opportunity to be heard and produce relevant documents. The orders of deportation presently being passed are in absolute contravention of the principles of natural justice, the constitution of India and the prevailing laws.

Conclusion

What is particularly disturbing in the case of the Bengali speaking Muslims is that they are not only victims of social and economic deprivation and marginalization, they are in the main victims of a larger right wing communal conspiracy to engage in a veiled effort in the politics of exclusion so characteristic of the larger right-wing ideology of the governments both at the centre and the state.

Further, how come it is only the Bangladeshi immigrants who are targeted by the Indian State. What about the so many other immigrants from neighbouring countries? The fact of the matter is that the issue of illegal immigrants is a politically motivated issue that serves no larger national interests other than to heighten the sense of communal tension in Indian society and in the process give political mileage to fascist and communalist politics in the country.

That the agencies of the State should also be implicated in this issue is much less a political issue and more one to do with a general breakdown of legitimacy in the institutions of the State. Not only are these institutions becoming less and less transparent in their democratic practices, they are also becoming less and less accountable to the nation and its peoples.

The fact finding team demands that

*** The illegal deportation of Bengali speaking Muslims be immediately brought to a halt.**

*** That pending a full scale enquiry in the matter by an impartial body, all those deportees in remand custody be immediately released.**

*** That all cases of illegal Bangladeshi immigrants in India be taken up only after the Central government lays down a clear and transparent framework of procedures that will uniformly guide both the Police and the law courts in their dealing with cases of illegal immigrants.**

*** That the politicization of this illegal immigrants issue by various political parties be immediately called to halt in the larger secular and national interests of the country.**

*** That all those individuals and families who have faced the inhuman ordeal of deportation be compensated for by the Maharashtra government and those officials in the Police who have committed offenses under the law against these Bengali speaking Muslims be brought to justice.**
