

The Word 'Foreigner' U/S-2(a) Defined in 'The Foreigners Act'-1946 and Violation of Human Rights with Special Reference to the Foreigners Tribunal, Assam - A Contemporary Analytical Study

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Abstract—This research article aims to figure out the word 'Foreigner' defined u/s-2(a) of The Foreigners Act-1946. and violation of human rights with special reference to the Foreigner Tribunal, Assam..First of all, foreigner and illegal migrants are two important long pending issues of Assam agitation for detection, prosecution and deportation of the foreigners started in Assam from 1979 and ends on 1985. In 1947, partition of India perhaps raised the question of illegal migrants and foreigners issue in Assam from Bangladesh. Though All the peoples had conjointly fought against the British Government and all were Indian, but division in 1947 creates problem for the people of one another. Liberation of Bangladesh in 1971 creates more problems. At the time of 1971 India -Pakistan war, huge numbers of Bangladeshi refugees took shelter in Assam. But after liberation of Bangladesh many people did not return to Bangladesh, latter on some illegal migrants had also entered into Assam due to various reasons. For determination, adjudication and deportation of Foreigner, Foreigner's Tribunal are established only in Assam. But a ground research revealed that huge numbers of foreigners have been living in the state of West Bangle, Tripura, Orissa, Delhi and other part of India. For a foreigners free India, Foreigners Tribunal should establish in each and every states of India. But about 100 numbers of Foreigners Tribunal only in Assam is like laboratory and examination centre. preparation for establishment of another 1000 Foreigners Tribunal is going on. People of Assam genuinely demanding the preparation of a foreigners free NRC in Assam. Researcher makes an Endeavour to introduce those burning issues which are contemporary with an analytical view.

Introduction-

As per 'The Foreigners Act'- 1946, the word "foreigner" u/s-2 (a), means a person who is not a citizen of India.¹ From jurisprudential points of view for determination of foreigners from India, Government should set-up Foreigners tribunal in each and every states and union territories. So that possibility of shifting of dwelling of the foreigners and running away

from the trial can be stop. But ground research revealed that out of all states and union territories only in Assam there is about 100 foreigners tribunal has been adjudicating for determination of foreigner. Procedural lacuna indirectly allowed the suspected foreigners to escape to other states. It is also revealed that, some of the Indian citizens are declared foreigner just for their age discrepancy, Pen name, nick name, title and dwelling differences, some persons declared as foreigners whereas his/her fathers name is recorded in the NRC 1951 and voter list of 1966 but Tribunal Member did not believe linkage or relationship with the proceedee. Before declaring foreigner of any person, Without finding out the real address of the proceedee in the foreign country, passing opinion as foreigner how far legitimate disbelieving present documents and address of the proceedee merely on the mistake of spelling of the name of the parents, change in the nick name and surname and title is a vital questions. A common word 'projected father' sometimes becomes the vital ground of declaration.

Appointment of practicing lawyers having ten years experience² without holding any written examination perhaves creates another problem in the trial process. Scholarly thinking passes their opinion that the matter of citizenship is one of the important issues more important then a murder case, Pocso case or gang rape. so trial could have been done by the judicial magistrate. For coming to the batter conclusion. Another problem is that no district wise appellate authority is there, if any proceedee is declared as foreigner he or she has only option to file W.P (c) before the High court which is not possible for a poor and downtrodden people. Competent forum in every district could have been empowered as appellate

¹ .The foreigners Act 1946 section 2(a)

² .Advertisement ,dated Guwahati 21/06/2017.No.MC.XXXVII-13/2017/2687/R.Cell.

authority to reduce the harassment of proceedee and authority for which proper amendment is urgently required.

Whispering and criticism is going on about the investigating agencies and trial process of the tribunal that administration of justice are in question as per fair trial and natural justice.

Which become very clear in the case of Amir Hussain of Morigaon District who was send to the detention camp declaring as foreigner on-28-08-2018 by the FT NO- 3, Morigaon, Assam. in FT(c)=252/2015. On being aggrieved the person filed W.P (c)=6905/2018 before the Honourable Guwahati High Court wherein the order was set aside.

Nationwide criticism was there when a retired Army personnel Md, Sana ullah was arrested as Bangladeshi and send to the Goal Para Detention camp on-29-05-2019. The retired army person is getting pension from Indian army, and has been serving as Sub inspector in Assam police border wing .He filed a writ petition (c)=3617/2019 and I.A (c)=1877/2019 and Honourable High court was pleased to allow bail of the person. Even a army personnel after serving 30 years for the nation how reference was send to the tribunal and how tribunal declared him as foreigner raises thousand questions in respect of fait trial and natural justice.

Without clear-cut policy and extradition policy with foreign country particularly with Bangladesh, confining the declared foreigner for never ending process in the detention camp is the violation of human rights .there must be a clear norms regarding deportation to reunion with the family members of every detenuue. Detention for unlimited period without deportation is a big lacuna of the prosecution.

FOREIGNERS ISSUES----

‘Citizenship’ and ‘foreigner’ is the matter which is in the central list, and definitely both the issues are national issue. National security and safety is depending upon the issues. Foreigners in Assam Gujarat, Delhi, Punjab Kerala, Bihar, Andhra Pradesh, West Bangle, Orissa or Tripura has the same importance.

A ground research reveals that for determination of foreigners from India, steps were never taken into consideration throughout India which could make India Foreigners free. Rather only the state of Assam has been taken as a laboratory and confined the most important national issues (foreigner) into a state only (Assam). Its jurisdiction narrowed down only into the soil of Assam.

An Analytical study forward its criticism that-- Huge numbers of doubtful citizen has been living in the state of –Orissa, West Bangle and Tripura. But entire burden shifted to the people of Assam. Discrimination of foreigners as if foreigner living in the state other then Assam has no importance hence they have been living without prosecution till date, even some of the states has no foreigners tribunal also to deal with the matters of foreigners. Determination, prosecution and deportation of the foreigners from Assam will be valueless if

the foreigners could use all other states as hiding hole. And even Foreigners of Assam realizing the initiation of prosecution against them could shift / change or hide in any state as he or she thinks secure place in such a situation implementation of The Foreigners Act 1946 will be violated and actual motto of the legislation will not be materialized.

In respect of global foreigners act-- Australia enacted –The Migration Act-1958, wherein under section 188 burden of prove is on the shoulder of the proceedee. **America** enacted “ Immigration and Nationality Act- wherein under section 29 a proceedee has to prove the burden against him. **Canada** enacted – “The immigration and refugee protection Act – 2001. wherein a proceedee has to prove the burden against him .

United states Supreme court in -- i) Fong Yue Ting Vs United States ³ andii) Chae Chan Ping vs United States 1930 Us- 581 held in the both cases that--- “The Govt. of each state has always the rights to compel foreigners to go away.”⁴

Some of the important case law related to foreigners issues already decided by the Supreme Court of India are as follows-

Hans Mullar Of Nurenburg vs superintendent, Presidency... decided on- 23rd February 1955. AIR 1955,367⁵ Held that-- Power of the government of India to expel foreigners is absolute and unlimited and there is no provision in the constitution fettering this discretion ‘‘

Mr. Louis De Raedt &Ors Vs Union of India and ors decided on- 24th July 1991 AIR,1991. 1886 Held that --‘‘ The fundamental rights of the foreigners is confined to article 21 and does not include the rights to reside and settle in the country.’’⁶

The Union of India & others Vs Ghaus Mohammad, AIR 1961SC-1526- Onus of proving that he is not a foreigner lies upon him.⁷

Masud Khan vs State of Uttar Pradesh SSC (1974),3 469 – Held that, Burden lies on the proceedee .⁸

Sarbananda sonowal vs union of India & Anr decided on- 12 July 2005.- Held that,Illegal migration is creating external aggression and internal disturbance. The Illegal Migrant (Determination by Tribunal) Act- 1983 is ultra-virus the constitution of India and are accordingly struck down. . The Illegal Migrant (Determination by Tribunal) Rules – 1984 is also ultra virus and are struck down.⁹

Sarbananda sonowal vs union of India & Anr decided on- 5 th December 2006. SCC, 2007,174, Held that, the Foreigners (Tribunals) amendment order, 2006 is hereby

³ .Fong Yue Ting Vs Unitedstates

⁴ .Chae chan ping vs United states 1930 us-581.

⁵ .Hans mullar Of Nurenburg vs Superindent, Presidency.. 1955AIR1955 ,367.

⁶ .Louis De Raedt vs Union of India 1991(3)SCC 554.

⁷ . Union of India vs Ghous Mohammad AIR 1961Sc 1526.

⁸ .Masud Khan vs state of uttar Pradesh 1974 Sec 469.

⁹ .Sarbananda sonowal vs Union of India & Anr(2005)5 .SCC 665

quashed and directed the respondents to implement the directions forthwith issued by the court in Sonowal-1, Court also directed the union of India to constitute sufficient numbers of tribunal under 1964 order to effectively deal with the cases of foreigners who have illegally come from Bangladesh or are residing in Assam. Be implemented within a period of four months.¹⁰

Moslem Mondal & others vs union of India and others decided on 01/02/2010. GLJ,2010, Vol-2, page-1- Held that—Burden of prove is on the proceedee to establish that he is not a foreigner. but tribunal is required to give person concern reasonable opportunity of making representation and producing evidence in support of his case. The foreigner Act - 1946 and its rules and orders are the guiding principles throughout India for the matters related to the foreigner.¹¹

Recently Supreme court of India has passed a direction to the Government of India to formulate relevant law in respect of the declared foreigners of Assam without detaining them in different detention camp and not deporting them to the country where his family belongs. After concluding and pronouncement of judgment Prolong detention is violation of human rights. Rights to meet family members or reunion with the family members is one of the fundamental rights under universal declaration of human rights declared in 10th December 1948. But ground research revealed that hundreds of the foreigners have been detaining since long in the detention camp without giving them scope to meet their family.

As per interpretation of statues foreigners issue is totally different with that illegal migrants. Foreigners are to prosecuted as per "The Foreigners Act- 1946. And The Foreigner Rules 1964 And Foreigners tribunal should take a judicial view that whether the proceedee is a person who is not a citizen of India. But a person who born in India, brought up in India, whose parents are Indian, took education in India even stayed twenty five or thirty years in India is Indian citizen by birth as per section 3 of the citizenship Act -1955. Tribunal sometimes doubted the pen name, nick name sur name and title of the proceedee or his / her father and mother's such name. Age variation or prove of linkage certificate are also considered. Due the age variation and nick name discrepancy, Tribunal dispose of the case holding that proceedee has adopted a projected father.

Addressing a press meet on 12-02-2017 retired Justice Razinder Shachar makes allegation upon the Government that- in respect of foreigner Tribunal notice, those are issued without prescriber norm to a particular community. He also make objection that- Citizenship amendment considering

religion is also ultra virus of the constitution of India. He also criticized the eviction drive of the government

ILLEGAL MIGRANTS -- Illegal migrant means a foreigner who enters into other country without a valid passport or other travel document and such other documents or authority as may be prescribed by or under any law in that behalf : or with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time. Assam accord was signed on 15th August 1985. In pursuance of this accord section 6A was inserted in the Citizenship Act in 1985. To deal with the foreigners issue three important guidelines are framed-

a). All foreigners who came to Assam prior to 1-1-1966 shall be regularized.

b). Foreigners who came to Assam after 1-1-1966 and upto 24th March-1971 shall be detected as foreigner and their name will be deleted from the electoral roll for ten years. Such person will be required to register themselves before the Registration officer of the respective district in accordance with the provision of the Registration of Foreigners Act- 1939 and Registration of Foreigners Rules-1939. On expiry of ten years their names shall be restored.

c). Foreigners who came to Assam on or after 25th March 1971 shall be detected, deleted and expelled as per provision of law.

On 8th November 1998 Lieutenant General S.K Sinha the then Governor of Assam in his report submitted to the President of India has clearly stated that-unabated influx of illegal migrants of Bangladesh into Assam has lead to a perceptible change in the demographic pattern of the state and has reduced the Assamese people into minority in their own state. From the report it is very clear that state of Assam has been facing external aggression and internal disturbance. Questions arises how many people from which border entered in Assam, when and how entered into Assam. How the foreigner enters into Assam as Border Security forces performs 24X7 duties. Why such persons were not deter in the border. why police fails to register any case under proper section of law and arrested them for violation of passport act. How far our border is save.

In March 1992 the Ministry of Home affairs (MHA) revealed that till 1991 more then 7 lakh Bangladeshis were identified as staying illegally in different border states of the country .The break-up of the data being -- West Bangle-2,40,446. Assam- 1,35,656. Meghalaya - 14,68. Tripura- 29,382 (1983---91) and Mizoram- 3,18,731. on May 6, 1997, Mr, Inderjit Gupta the then home Minister of India, stated in the parliament that there 10 million illegal migrants from B August 10/ 1998 issue of the India Today magazine gave the details of illegal migrants who are residing different sates of India - West Bangle- 5.4 million. Assam- 4 million, Tripura – 0.8 million. Bihar- 0.5 million. Maharastra- 0.5 million. Rajasthat- 0.5 million, Delhi- 0.3 million. A total of 10. 3 million.

¹⁰ Sarbananda sonowal vs Union of India & (2006). SCC 174

¹¹ . Moslem Mondal & others vs union of India and others decided on 01/02/2010. GLJ,2010, Vol-2, page-1

Demand for update of NRC in Assam as per Assam Accord is a long pending and very important issues since long. National register of Citizen is a national registration document which in general terminology denotes registration of the citizen throughout whole country. But it is going on in Assam only how a national register confined in a particular regional .

Article 11 of the constitution of India empowers parliament of India to regulate the rights of citizenship by law. And under sub section (1) and(3) of section 18 of the citizenship Act-1955 central Government makes –“ The Citizenship (Registration Of Citizens and issue f National Identity Card) Rules- 2003. Generally NRC is govern under section 3 and 4 of this Rules but in respect of Assam there is a special provision in the rules. Section 4 A was inserted in the year 2009 by way of The citizenship (Registration of citizens and issue of National Identity card) Amendment Rules- 2009 apply to the state of Assam.

Process of receiving application for NRC ends on- 31st August/2015. Throughout Assam a total 3.29 crore application was received. And on31st December/2017 total 1.90 crore persons names were published as part draft. Complete draft was published on- 30July 2018 containing the name of 2,89,83,677 leaving a total of 40,70,707 names 37,59,30 names have been rejected and 2,48,077 names were kept on hold. Supreme court of India passed a direction to the State coordinator NRC, Assam Pratick Hajela to publish final NRC for Assam on-31-07-2019.

HUMAN RIGHTS IN ASSAM-----

All human beings are born free and equal in dignity and rights which is known to all. But rhetoric in respect of superiority and omnipotence of one’s own religion on being hurt of other’s sentiments is the core causes of all societal unrest. Human rights are sine qua non of humanity which are unanimously accepted by the universal community ,should not only be written somewhere in the books, its ground implementation are expected through all stakeholders .Human rights are moral claims which are inalienable and inherent in all human individuals by virtue of their humanity alone. Brutal killing of on by a mob breaking the gate of government jail, and Barbaric killing of Nilotpal Borua and Abhijit Sarma are the heartbreaking human rights violation in the human history.

Article 15 (I) of the constitution of India reads that “, State shall not discriminate against any citizen on grounds only of religion, race, cast, sex place of birth or any of them.”

The ancient Indian History reveals that human rights thinking starts form vedic period as a source of justice and equality. Which even prohibits the use of weapons in war which could destroy the entire humanity, The king should protect and support all his subjects without any discrimination in the same manner as the earth supports all living ,*in the happiness of the subject lies the* .

The basic thesis of human rights is tolerance .Humanity knows no religion, no culture, no sex, and no place of birth .My

religion is the best other’s are valueless, is the worst thesis and thinking in the world for which humanity suffers a lot. It is also the core of all problems in the society. Leaders of the human and spiritual world should respect humanity not religion they should respect all religion. **Religion is religion when it united humanity religion is not religion when it divides humanity.**

According to The Protection of Human Rights Act 1993 udder article 2(1) (d) Human Rights means ‘ the rights relating to life, liberty. equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by the courts in India. Supreme court of India in the following human rights case decided humanitarian views-

National Human Rights commission of India vs State of Arunachal Pradesh & Anr decided on- 9th January 1996. AIR,234 SCC (1) 742 Held that --- Though All Arunachal Pradesh Students Union raised objection that, the settlement of chakmas in large numbers in the state would disturb its ethnic balance and destroy its culture and identity. But the Government had already sanctioned rehabilitation assistance @ 4,200/ per family. The Supreme Court Of India directed by way of writ of Mandamus That the State of Arunachal Pradesh shall ensure the life and personal liberty of every chakma residing within the state. Quit notice issued by AAPSU should be dealt with in accordance with law, Registration of Chakmas are to be made. And nobody shall evict the Chakmas. Judgment and order of the apex court is based on humanitarian view.¹²

In Assam the condition of Detention camp for detaining declared foreigners by the Foreigner’s Tribunal is not as per norms ,which is alleged by Horsh Mander, Special observer, National Human Rights Commission Of India. Mander was also given the charge of special observer of Minority and Communal riots affairs. He has visited the detention camp of Assam and submitted reports to National Human rights commission wherein he alleged that norms of human rights are not followed in those detention camps of Assam. The condition of the detention camps is very poor as per version of Horsh Mander.. The authentic report prepared and submitted by Horsh Mander was not a Obiter –dictum. After receiving the reports, the National Human rights Commission of India took no follow up action for which Horsh Mander resigned from his post on 14th June 2018.

A ground research revealed that in Assam, in maximum FT cases the proceeedee is neither a person that enters India without passport nor a person that enters India with passport but has been remaining beyond the permitted period of time. But he/ she born and brought up in India, took primary, his /her father, mother, grand fathers name enters in the NRC-1951, voter list of 1966, 1971 but due to illiteracy his/her parents, grand fathers or their own sur name, pen name, nick

¹² .National Human Rights commission of India vs State of Arunachal Pradesh & Anr decided on- 9th January 1996. AIR,234 SCC (1) 742

name, title or age difference becomes the cause of pronouncing them foreigner. In maximum cases tribunal keep aloof from directing elderly person of the village or area u/s-30 of the CPC (power to order discovery and the like) to appear and adduce evidence, which could be a help for comminf to a batter conclusion.

Kanak Sarma in his article—'Citizenship Bill :its constitutional validity'—writes in The Assam Tribune date-21/11/2018 page no-6, that- Thousands of people have been protesting against the proposal to grant Indian citizenship to the Hindu foreigners. Saying that it would threaten the very existence of the indigenous people of Assam. The bill however does not extend to illegal muslim migrants. But The Foreigners Act-1946 and Passport (Entry into India Act-1920, put forth the provision that the illegal migrants can be imprisoned or deported. Kanak Sarma in his article also writes that- while the bill is designed to grant citizenship to the non – Muslim refugees persecuted in the neighboring countries, NRC does not distinguish migrants on the basis of religion. It will consider excluding anyone who s not a genuine citizen of India, irrespective of his or her religion.¹³

Amnesty International hold a meeting at the New Delhi press club in Delhi on23-11-2018 wherein human rights worker Horsh Mander delivers his valuable speech about the violation of human rights in Assam. Mander particularly centralized his speech about the foreigners, detention camp for keeping foreigners, activities of border police and also the adjudication process of the foreigners tribunal in Assam. Mander told that in Assam target is given to the border police about leveling doubt full voters without doing any investigation .He told that article 21 of the constitution of India is not only applicable to the people of India but it is equally applicable for all people. But the rights are being violated in respect of the foreigners detaining in the detention camp of Assam, He also point out that as per international rule no foreigner can be kept in the detention camp more than Ninety days which is also violated by the authority. He also criticized that most of the declared foreigner have their all documents of Indian citizenship against whom ex-party order was passed which is done due to absence of non serving of the summons as per law.

Another human rights worker cum advocate Aman Wadud unfold that in the state of Assam in average 1,221 persons are being detected as foreigner per months., on that press meet it is also in discussion that, though most of the foreigners are from Bangladeshi origin yet no extradition treaty has been signed between the government of India and Bangladesh .After doing offence, acquisition, trial and declaration, execution is another fundamental process of judicial system. Which is totally absent in the process. Nobody have the rights to destroy human life detaining or confining in any place

without giving him the rights to meet with his family is the natural justice.¹⁴

CONCLUSION-

Every foreigner and illegal migrants who has been living in Assam illegally must be detected prosecuted and convicted as per provision of law without any discrimination of cast, creed and religion .And at the same time they must be deported as soon as possible without doing more expenditure upon them in the name of food, shelter, clothing ,medicine, their security ,infrastructure etc ,etc to save the nation from further deterioration of law and order condition. 'Be a human' was the appeal forwarded by Mahatma Gandhi the father of our nation. Universal Declaration of Human Rights 10th December/1948 and its provisions are on humanitarian angle. A country should govern not by man but by law is the real rule of law for protection and promotion of human rights.

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¹³ Kanak Sarma, Citizenship Bill: its constitutional validity, The Assam Tribune , Guwahati. November- 21, 2018 ,page no--6

¹⁴ .Protidin Sambad,(Reporter)," Horsh Mander in the meeting of Amnesty International"-Asomiya Protidin , Guwahati.November-24-11-2018 , page no-12