

Stateless in Assam

On the second day of January this year, hidden in the midst of the extensive coverage about the first draft of the National Register of Citizens (NRC) being made public, there was a small item in Assam newspapers. Hanif Khan, 40, was found hanging from a tree near his home in Kashipur in the district of Cachar. Khan committed suicide on finding that his name did not appear on the draft NRC. His wife Raksa said her husband was extremely anxious about the whole NRC business. He and his family, he feared, would be promptly arrested and deported to Bangladesh if their names do not appear on it.

Our public officials have repeatedly reiterated their commitment to ensure that the final NRC will be accurate. But there is enormous uncertainty about the fate of those whose names will not be on it. In effect, they would be legally declared non-citizens — even stateless — and their numbers are likely to be in thousands. Their likely fate has not drawn much public attention.

The Supreme Court's December 2014 directive that set the ball rolling on the NRC process, however, did concern itself with this issue. Deportation in today's world is not a unilateral matter; it has to follow international protocol. The Court's two-judge bench asked the Assam and central governments about the procedures for deporting an unauthorised person from Bangladesh after a Foreigners Tribunal makes such a determination. In written affidavits they outlined the cumbersome process. At the end of it, only "persons whose nationalities are confirmed by the Bangladesh authorities" can be repatriated, and the numbers are tiny. That year "the nationality of 32 Bangladeshi nationals who were in the detention centres/jails in Assam were confirmed by the Bangladesh authorities and they have been repatriated". The Supreme Court therefore directed "the Union of India to enter into necessary discussions with the Government of Bangladesh to streamline the procedure of deportation."

There is no evidence that anything has happened on this score. The issue was not discussed either during Prime Minister [Narendra Modi](#)'s visit to Bangladesh in 2015 or during the Bangladesh Prime Minister Sheikh Hasina's visit to India in April last year. As recently as October 2017, Bangladesh Information Minister Hasanul Haq Inu told an Indian journalist that in the past 30 years there has been no unauthorised migration from Bangladesh to Assam. He emphasised that no Indian government has ever complained of this. While issues such as terrorism, smuggling, drug and human trafficking are routinely discussed and the two governments have agreed on the modalities of cooperation on those matters, illegal migration has never featured in official discussions between the two governments.

In the unlikely event that India ever chooses to discuss deportation with Bangladesh, what exactly would be the nature of the discussion?

One way in which governments act on deportation is to sign bilateral agreements for the readmission of nationals of the relevant country. There are bilateral agreements between countries like Germany and Vietnam, Italy and Algeria, the United Kingdom and Algeria, Morocco and Spain and between the European Union and non-member countries in Eastern Europe and the Western Balkans. The EU also has a readmission agreement with Pakistan. In March 2016, the EU and Turkey signed an agreement that provides for "rapid return of all migrants not in need of international protection crossing from Turkey to Greece and to take back all irregular migrants intercepted in Turkish waters". The EU has also made a controversial arrangement with Libya that has reduced the flow of migrants in exchange for substantial amounts of money.

Readmission agreements, however, do not always produce results, or at least the level of cooperation is less than what the deporting country expects. Among the incentives offered to sign

readmission agreements are special trade concessions, increased development aid, preferential entry quotas for legal economic migrants, and technical cooperation and assistance in border management. In the case of European countries, a special political and economic relationship with the EU, and in the case of countries in Eastern Europe and the Western Balkans, the prospect of accession into the EU are among the incentives offered. Even the deportation of large numbers of unauthorised immigrants under the Obama and the Trump administrations have been expensive. According to one estimate, the US pays Mexico \$1,000 for each person who is deported. While Mexico officially disputes this, the US Congress allocates funds to Mexico for the purpose of the interdiction and deportation of unauthorised migrants.

To take back one's own nationals may be an obligation under customary international law but in practice, it is not an easy matter. The costs and benefits for a country deporting an unauthorised migrant and the country readmitting the person are asymmetric. In crude financial terms, if the country of origin gains from remittances from expatriates, it has no interest in cooperating with the destination country in their deportation. But more importantly, signing a readmission agreement with an economically more powerful country is unlikely to be popular domestically. Almost all these cost-benefit calculations would apply if India and Bangladesh were to enter into a discussion of a bilateral readmission agreement.

It is extremely unlikely however, that in the foreseeable future, the Modi government on any other government in New Delhi would bring up the matter of deportation with Bangladesh. The "neighborhood first" policy of the Modi government has a far more pressing foreign policy goal: To stop China's growing influence in the region. Foreign Secretary S. Jaishankar cites Bangladesh as the prime example of the "neighbourhood first" policy yielding good results for both parties. To bring up the question of deportation would amount to throwing a monkey wrench into this delicate diplomatic relationship.

If there is no chance of India approaching the issue of deportation with Bangladesh, what is the likely fate of those not included in Assam's NRC? If Parliament passes the Citizenship Amendment Bill, those who are Hindu, Sikh, Buddhist, Jain, Parsi or Christian would have a different fate from the rest since these groups "shall not be treated as illegal migrants", according to that law.

From the perspective of the rest of those whose names will not appear in the NRC, the most significant development to watch is probably in the area of detention policy. Assam now has six detention camps for housing unauthorised non-citizens inside jail premises in Goalpara, Kokrajhar, Silchar, Dibrugarh, Jorhat and Tezpur. There are plans to build the first ever full-fledged foreigners' detention centre in the state. The Assam government has allotted 20 bighas of land in Dakurbhita area in Goalpara district for constructing this centre.

It is only to be expected that the government would now focus on detention. Deportation practices have long been part of a wider set of carceral institutions that include detention centres, refugee camps, and waiting zones to house people in a legal limbo — between being deportable and not being actually deported — in effect, people who are stateless. The political condition of a stateless person, as political theorist Hannah Arendt had memorably pointed out, is much worse than that of a prisoner. The person loses more than his or her freedom. A stateless person is no longer part of a legal and political order; he or she loses the "right to have rights". A stateless person, wrote Arendt, represents "a new kind of human being — the kind that are put in concentration camps by their foes and in internment camps by their friends."

Hanif Khan did not have to read Arendt to imagine his and his family's fate once the NRC effectively declares him stateless.

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