

LAW COMMISSION OF INDIA

ONE HUNDRED SEVENTY FIFTH REPORT

ON

THE FOREIGNERS (AMENDMENT) BILL, 2000

SEPTEMBER, 2000



D.O.No.6(3)(56)/99-LC(LS)

Sept.21, 2000

Dear *Mr. Justice*,

I am forwarding herewith the One Hundred Seventy Fifth Report on "The Foreigners (Amendment) Bill, 2000".

2. The subject was taken up in pursuance to the reference made by the Government of India on 16th February, 1999. Prior to it, certain amendments were mooted in the Foreigners (Amendment) Bill, 1998 introduced in Rajya Sabha by the Home Minister, Shri L.K. Advani. The Parliamentary Standing Committee on Home Affairs felt that the Government should undertake an in-depth study regarding the efficacy of the proposed amendments in checking infiltration of foreigners from across the borders. The Committee favoured a holistic approach in dealing with the acute problem of infiltration. Various suggestions were made before it which included, *inter alia*, the desirability of summary trials, setting up of special courts, making grant of bail more difficult, etc. The matter was referred to the Law Commission for consideration.
3. The Commission has considered the relevant material including the reports and views of the States and Union Territories regarding their experience in implementation of the provisions of the Foreigners Act, 1946 and other cognate statutory enactments. While dealing with the issue, the Commission had to choose between two options which were available. The first was to recommend a comprehensive Act repealing the existing legislation and rules and orders etc. The second option was to recommend amendments to the existing legislative frame-work. Instead of codifying the entire law concerning the foreigners, the Commission chose the second option of recommending incorporation of new provisions in the Foreigners Act so as to make it effective enough to meet the main problem confronted by the country today, namely, illegal migration, without interfering with the existing legal frame-work. The Commission is of the view that the problem of illegal migration from neighbouring countries has to be tackled seriously by providing a machinery for effective and speedy detection of illegal entrants. The function of determining whether a person is an 'illegal entrant' or not is proposed to be entrusted to the Immigration Officers whose orders shall be appealable, to be heard and decided by an Immigration Tribunal, manned by a person who is or has been a District Judge or an Additional District Judge. The matters shall be decided by these

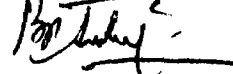
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functionaries according to the principles of natural justice. Besides, facilitation centres are also proposed to be provided for detaining the foreigners pending the determination of their status and pending their deportation. So far as the offences under the Act are concerned, they are proposed to be tried by the Immigration Court which would be a court of District & Sessions Judge to be specified by the appropriate Government, in each district. We have also recommended the repeal of The Immigrants (Expulsion from Assam) Act, 1950 and The Illegal Migrants (Determination by Tribunals) Act, 1983. In order to concretise our recommendations, we have annexed with the report the Foreigners (Amendment) Bill, 2000 incorporating the proposed provisions in the Foreigners Act, 1946.

4. The measures suggested by the Commission need to be implemented expeditiously to curb the menace of illegal migration in our country.

With regards,

Yours sincerely,



(Justice B.P. Jeevan Reddy)

Shri Arun Jaitley,
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REPORT ON THE PROPOSED FOREIGNERS (AMENDMENT) BILL, 2000

1. Reference to the Law Commission

Certain amendments to the Foreigners Act, 1946 were mooted by the Ministry of Home Affairs with a view to providing for classification of offences and making its penal provisions more deterrent. Keeping this in view, the Foreigners (Amendment) Bill, 1998 was introduced in Rajya Sabha on 28th July, 1998 by the Home Minister Shri L.K. Advani. It was then referred to the Parliamentary Standing Committee on Home Affairs which discussed the amendments at its meeting held on 10th September, 1998. The Committee felt that the Government should undertake an indepth study regarding the efficacy of the proposed amendments in checking infiltration of foreigners from across the borders. The Committee favoured holistic approach in dealing with the violations of the provisions of the Act specifically with a view to effectively deal with the problem of infiltration. Various suggestions which came up in the discussion, inter alia, included the desirability of summary trials, setting up of special courts, making grant of bail more difficult, etc. The suggestions made by it raised important questions of law which involved the national security interests. Consequently, on 30th September, 1998 the Minister of Home Affairs referred this matter to the Ministry of Law, Justice and Company Affairs for the consideration of the Law Commission. The

Ministry of Law, Department of Legal Affairs, referred the proposed amendments for the detailed examination by the Law Commission of India on 16 February, 1999.

The issue has attained importance and urgency in the context of the problem posed by illegal migration especially from across the borders and delicate security situation arising therefrom.

2. Problem of Illegal Migration

2.1 The entry of illegal migrants and other undesirable aliens into India has posed a grave threat not only to our democracy but also to the security of India, especially in the eastern part of the country and Jammu and Kashmir.

2.2 The problem has attained gigantic proportions as is evident from an estimated population of about 18 million foreigners living unauthorizedly in India. This has aggravated the employment situation and has distorted the electoral rolls in some States. The undesirable activities of foreigners include smuggling of narcotic drugs, spreading terrorism and other such activities. It is, therefore, of utmost importance to devise foolproof administrative measures such as border fencing, modernized electronic surveillance system as well as an effective legislation to deal with the menace.

2.3 The present study is aimed at examining the existing legislation and suggesting appropriate revision to deal with the issue more effectively.

3. Situational Review

3.1 The migration of people from one place to another has been an ongoing phenomenon since the dawn of civilization. India, being an ancient civilization, accepted new races and new people at various stages of history. Even the invaders made India their home and got submerged in the Indian society. Different people and different races lived together in peace and harmony for ages. The turmoil, however, began with the entry of the British, initially as traders and later on with their acquisition of political power in India.

3.1.1 The British needed cheap labour for their plantations and industrial establishments not only in India but in other parts of the world under their political authority. This they ensured through inter-country and intra-country migration of labour. It is on record that since 1920, they moved people to serve as labourers from eastern region of Bengal to Assam for developing their tea industries. Later, the political divide of the people on the basis of religion which ultimately led to

the Partition of the country resulted into the largest ever migratory movement in the world history.¹ India had to absorb the bulk of the migrants.

3.1.2. Partition was not the only event that resulted in large scale migration of population. Persecution of various sections of the people in the newly created State of Pakistan also resulted in the flow of people into India. Even after the formation of Bangladesh in 1971, the migration of people from the new State continued to the bordering states of India.

3.1.3 Infiltration also took place in 1948 from across the border into Jammu and Kashmir following the armed attack by Pakistan in the guise of 'raiders'. The developments in Tibet also resulted in exodus of a large number of people from Tibet and their migration to this country. A number of other events also led to the exodus of people from other countries to India, e.g., the Chinese aggression against India in 1962; the second attack by Pakistan in 1965; the insurgency in Sri Lanka resulting in migration of a large number of Sri Lankan Tamils to Tamil Nadu; the coming of many Afghans to India after the takeover of Afghanistan by Taliban and, recently, the infiltration into Kargil.

These events, in varying degrees, have been responsible for entry into India of foreigners as refugees and illegal migrants.²

3.2 Since the liberation of erstwhile East Pakistan, the influx of migrants from Bangladesh has remained unabated and has acquired frightening proportions. There is no realistic estimate of these migrants in India. In fact, no census has been carried out to determine their number. According to the Ministry of Home Affairs, the total number of Bangladeshis illegally residing in India is estimated at 15 to 18 million and every year at least 3.5 lac or more people are infiltrating into the country.³

3.2.1 On the basis of theoretical extrapolations the number of illegal migrants in border states has been estimated to be 5.4 million in West Bengal, 4 million in Assam, and 0.8 million in Tripura. It is evident that the number of such migrants is highest in the State of West Bengal. These migrants have spread out to other parts of the country. In Maharashtra, their number is estimated at 0.5 million, in Rajasthan, 0.5 million and, in Delhi, 0.3 million.⁴ These figures are mindboggling and alarming indeed. India with its own unmanageable population is hardly in a possession to take upon this additional burden.

3.3 It was agreed by the Government of India, as a matter of policy, that the Bangladeshis who entered India before 25 March 1971 would ultimately become Indian citizens (vide Indira-Mujib Agreement 1974 and the Assam Accord 1985). But all those who came on or after that date without valid travel documents or without lawful authority or overstayed after validly entering into India would be considered illegal migrants.

3.3.1 The number of Bangladeshis who entered India with valid travel documents and overstayed is also fairly large, for example, 10,24,322 Bangladeshis, who entered the State of West Bengal since 1972, have overstayed. The number of those intercepted at the border while crossing illegally into West Bengal during 1972-98 is 5,73,334⁵. The all India figures are much higher.

3.4 Causes of migration:- There is a variety of causes for such migration including economic and religious. The push factors on the other side of the border include steep and continuous increase in population, sharp deterioration in land-man ratio and low rates of economic growth, particularly in the agriculture sector. The pull factors on this side include ethnic, linguistic and religious proximity and kinship facilitating easy shelter to the migrants, porous and easily negotiable long border and better economic opportunities. The availability of cheap labour from across the border is another factor which has been encouraging illegal migration.⁶

3.5 One of the major causes of the aggravation of the problem of illegal migration, especially in the border states, has been the crisis of identity and absence of proper mechanism for the identification of illegal migrants. The available legal framework has failed to curb the illegal migration.

3.5.1 This apart, the illegal migrants continue to stay in India with impunity on account of rampant corruption in rank and file of the enforcement agencies. One of their prominent destinations is Mumbai.⁷

3.6 Another cause of illegal migration is the clandestine cross-border trade between India and Bangladesh which is estimated at \$ 5 billion. This is three times more than the official trade. The trade has created a network of agents and middlemen working in connivance with the authorities on both sides of the border. Thus strong vested interests also appear to be behind illegal migration. Further, the trade between two countries has the backdrop of cultural and ethnic ties.⁸

3.7 In most of the cases, the entry of migrants is surreptitious and they easily mingle with local population due to ethnic, linguistic, religious and physical similarities. Their identification is extremely difficult. This has resulted in alteration of demographic composition in the

border districts of several states.⁹ The bordering States have recorded a high rate of population growth. It has been reported that in the case of Assam, there is a higher percentage of rate of population growth in comparison to the national average.¹⁰

3.8 There is evidence that many of the illegal migrants have acquired ration cards, obtained various jobs and got enlisted in electoral rolls by suppressing their identities with the help of local touts, unscrupulous officials and politicians.¹¹

3.9 Impact of illegal migration:- The illegal migration has strained country's economy generally and especially of the border states.¹²

3.10 The illegal influx has assumed dangerous dimensions affecting the security of the nation as a whole and especially of the North-Eastern region because of its proximity with Bangladesh. There are reports of large scale clandestine movement and smuggling of all kinds of articles by such migrants.¹³

3.11. Local inhabitants of these bordering area are under constant fear of losing their identity as they have been reduced to a minority in their own State. This has given rise to various movements and violent agitations especially in the

North-Eastern areas.¹⁴ The problem has economic implications for the local people and security implications for the country as a whole.

3.12 Failure of agencies in checking the menace:- The Border Security Force (BSF), which is primarily responsible for guarding our borders, has not been effective in preventing infiltration across the border. The concerned agencies required to process the cases of alleged illegal migrants encounter numerous difficulties. When police tries to collect evidence, people who are illegal migrants move to another location or disappear.

3.13 The Mobile Task Force, sanctioned by the Central Government for States to detect and push the migrants back, is reported to be too meagre to deal with the problem.¹⁵

3.14 Sometime back, the Chief Minister of West Bengal also brought out the issue of continuous infiltration of Bangladeshis into West Bengal and felt that Indira-Mujib Agreement had not been implemented in full. He, however, expressed his reservations with respect to forcible deportation.

3.15 The Foreigners Act, 1946, is the main legislation which governs entry into, and departure of foreigners from, India. The powers to identify, detect and deport illegal migrants residing in various parts of the country have been

delegated under this Act to the State Governments and Union territory Administrations. In the State of Assam, detection of such persons, who entered India on or after 25 March 1971, is being done by the tribunals established under the Illegal Migrants (Determination by Tribunals) Act, 1983 (hereinafter referred to as the IMDT Act). Recently however, the Central Govt. appears to have entertained service doubts regarding the validity of this act on the ground that it has been enforced only in the State of Assam.

3.16 The Central Government has issued instructions to the State Governments and Union territory Administrations to speed up the process of identification and deportation of illegal migrants. It has also taken measures to supplement the efforts of State Governments, such as the strengthening of Border Security Force, construction of border roads, fencing and mechanized riverine patrolling, etc. Despite these measures, the problem of illegal migration continues unabated.

4. Recommendations of the Estimates Committee

4.1 In 1992, the Estimates Committee of Parliament considered the issue of illegal immigration and made following recommendations:-

(i) Relevant provisions of the Foreigners Act, 1946 and the Passports Act, 1967 be harmonised. Both the Acts made provisions relating to departure of foreigners but the punishment for the violation of provisions relating to departure was much less in the latter.

(ii) There should be deterrent punishment for violation of the provisions of the law and the offences should be made non-bailable.

(iii) There should be consultation with States having responsibility to administer relevant laws in order to ensure their enforcement and uniform application through out the country.

(iv) Indian citizens hosting or receiving foreigners should be made accountable for their overstay in the country.

(v) There should be periodic review of the enforcement mechanism under the Foreigners Act.

(vi) Special passport arrangements with Bangladesh and Sri Lanka should periodically be reviewed.

(vii) Separate system of passports for Bangladesh, Sri Lanka and Pakistan should be scrapped.

(viii) After completion of the sentence by the convicted foreigner, his case should be proceeded with for immediate deportation.

4.2 There was no concrete action on the Estimates Committee report for some years but in 1998 it found echo in the deliberations of the Parliamentary Standing Committee for Ministry of Home Affairs when it was considering the Foreigners (Amendment) Bill, 1998.

5. Conference of Chief Ministers and Chief Secretaries

A Conference of Chief Ministers and Chief Secretaries held in 1992 took serious note of the problem of illegal migration and suggested the enactment of a special legislation to solve it.

6. Report of the Governor of Assam on Illegal Migration

6.1 Recently, on 8 November, 1998 the Governor of Assam, taking into account the dangers posed by the continuing silent "demographic invasion" due to large scale illegal migration from Bangladesh and after having discussed the problem with a cross-section of people in Assam, as also the Indian High Commissioner at Dhaka, submitted his report to the President of India titled "Report on Illegal Migration into Assam".¹²

The report has traced the history of migration from Bangladesh, took into consideration the present realities and made recommendations for future strategy to tackle the menace in an effective manner.

6.2 The Governor has especially highlighted, in the report, the dangerous dimensions of the unprecedented migration of Bangladeshis to Assam and drew the attention of the Centre to the security threats to the North-Eastern region arising out of such migration as also of the strategic and economic consequences flowing from the same.

6.3 He has also pointed out the failure of the IMDT Act in identifying such migrants as also of the Assam Accord to drive them out of Assam. As regards the IMDT Act, he has noted that crores of rupees had been spent on identification followed by a meagre figure of deportation and found continuation of the said Act as a wasteful exercise.

6.4 Recommendations: Apart from recommending an improved border management including fencing, lighting, registration of country boats plying in the border rivers, adequate speed boats for the riverine sector and socio-economic development of Bangladesh aiming particularly at the improvement of women's lot, the report of the Governor of Assam (supra) recommends the following measures:

(i) Promotion of awareness about the illegal migration to Assam being not only a threat to the identity of local people but also a grave threat to our national security.

(ii) Provision of multipurpose photo-identity cards to all Indian nationals giving top priority to the border districts.

(iii) Provision for the registration of births and deaths and its scrupulous implementation.

(iv) Provision for the National Register of Citizens, updated and computerised and maintenance of a separate register of stateless persons.

(v) Making of maximum efforts to stem the tide of illegal migrants hereinafter and deportation of those who came after 24 March 1971 till date.

(vi) Repeal of the IMDT Act, which has proved to be an exercise in futility.

(vii) The deportation of millions of Bangladeshis illegally staying in India is no more a practical proposition because unilateral action on the part of India cannot alone achieve any result. A new legislation is, therefore, needed to ensure a just, fair, practical and expeditious approach to the

detection of illegal migrants and to declare them as stateless persons without voting rights and without right to acquire immovable property.

7. PUBLIC INTEREST LITIGATION

7.1 A petition in the nature of a public interest litigation (PIL) was filed in the Supreme Court by All India Lawyers' Forum for Civil Liberties on 4 February, 1998 seeking directions to the Union of India to make adequate arrangements for the return of Bangladesh nationals illegally residing in India, to check their further infiltration, to officially declare them as "Bangladesh Nationals" as also to properly identify them and the land purchased and jobs occupied by them as well as their bank accounts. The State of West Bengal was also made a party.¹⁷

7.2 The Union of India and the State of West Bengal were directed by the Supreme Court to file status reports regarding Bangladeshi migrants illegally staying in India. The other North-Eastern States were also directed by the court to do so. The Supreme Court expressed serious concern about the infiltration from Bangladesh and the presence of infiltrators in certain regions of the country and hoped that the Union of India and bordering States would take effective steps to check infiltration and deport illegal infiltrators.

7.3. Status Report filed by the Union of India in the Supreme Court

(i) The status report submitted by the Union of India in the above case paints a grim picture of the illegal migrants from Bangladesh in various parts of India, especially in West Bengal and some North-Eastern States.

(ii) It brings out the magnitude and gravity of the problem of illegal migration from Bangladesh, causes for the same as also its impact, especially on the security of India.

(iii) It enumerates measures taken by the Government of India to curb the menace of infiltration. These include delegation of powers under the Foreigners Act to identify, detect and deport illegal migrants to State Governments and Union territory Administrations and issuance of instructions to them to speed up the process of identification and deportation; the strengthening of the BSF, construction of border roads and fencing, sanction of posts under the Prevention of Infiltration of Foreigners/Mobile Task Force Schemes, mechanized riverine patrolling in certain parts of the country and diplomatic initiatives.

(iv) It also brings out the following ground level arrangements arrived at between the Border Security Force (BSF) and Bangladesh Rifles (BDR) in respect of handing over of illegal migrants:

(a) Persons convicted by courts would be accepted on the basis of verification of nationality by the respective prescribed authorities.

(b) Persons apprehended in the process of inadvertent or deliberate border crossing would be accepted immediately on the basis of disclosures. After verification, they would be accepted within three days.

(c) All other categories of illegal entrants would be handed over within 7-15 days depending on the place of arrest and place of claimed domicile after required verification.

(v) There is a proposal to issue multipurpose national identity cards to all citizens of India of the age of 14 years and above. Those below 14 would separately be registered under the Registration of Births and Deaths Act, 1969, and their names included in father's/mother's cards. Separate colour cards would be issued to non-citizens. The main idea behind this scheme is to stop illegal migration and to identify and easily trace illegal migrants. The scheme envisages a National Registry having on-line access to data from all the districts of the country.

(vi) In 1997, instructions were issued on the deportation of illegal migrants from Bangladesh which are as follows:

(a) The nationals of Bangladesh intercepted at the border, while crossing into India unauthorisedly, would immediately be sent back by BSF;

(b) Nationals, detected as unauthorisedly living in India, would be deported after they are served deportation order by the competent authority of the concerned State Government.

These instructions were reviewed in 1998 by the Government of India and the following decisions were communicated to the State Governments and the Union territory Administrations for compliance.

(a) While identifying and detecting such migrants, the State Governments would send details of residential address etc. claimed by the suspect to the Government of the concerned State (of which he claims to be a resident, being an Indian national) for verification and report within 30 days.

(b) During this period, the competent authority will ensure his detention (by obtaining permission of the court, if necessary) for deportation.

(c) If no report is received within this period, the competent authority would take action to deport illegal migrant.

(d) Advance information about the movement of deportees under the police escort from one State to another would be given by the State from where they are being sent to the concerned State police.

7.4 Status Report by the State of West Bengal

(i) The Status Report filed by the State of West Bengal also brings out the magnitude and the causes of the problem of illegal migration.

(ii) The report indicates that it is a gigantic task to detect and convict illegal migrants. Despite the number of measures being taken by the Union of India at different levels to prevent influx of illegal migrants, the magnitude of the problem requires more concerted efforts for border management.

(iii) It is impossible to prosecute all migrants and secure a conviction in respect of each one under the Foreigners Act. Thereafter, to push them back is all the more difficult keeping in view the international law and conventions. The Union Government may possibly need to enter into an

international agreement with the Government of Bangladesh for simplifying the procedure governing repatriation of Bangladeshi nationals who are illegally staying in India.

8. Existing Legal Framework

The existing legislation governing the entry into, stay in, and departure of foreigners from, India are the Foreigners Act, 1946, the Passport (Entry into India) Act, 1920, and the Registration of Foreigners Act, 1939. The Immigrants (Expulsion from Assam) Act, 1950 and the Illegal Migrants (Determination by Tribunals) Act, 1983, were enacted, especially to control the unabated influx of illegal migrants to the North-Eastern region. In addition, there are cognate Acts as well having some bearing on the subject, namely, the Indian Citizenship Act, 1955, and the Indian Passports Act, 1967.

8.1 The Principal Act dealing with this subject is the Foreigners Act, 1946. It was enacted, for the first time, in 1864 to enable the Government to prevent the subjects of foreign states from residing or sojourning in, or passing through or travelling in, British India without its consent. This Act made it obligatory on every foreigner to report his arrival in India in certain cases and not to travel in India without a licence which was to be granted by the the Governer-General of India or any of the Local Governments or

the officers authorised by them so to do. It empowered the Governor-General of India in Council to order removal of any foreigner from British India. The Local Governments were also empowered to make similar orders with reference to any foreigner staying within the jurisdiction of such Governments. The Act provided that, if any foreigner, who had been ordered to remove himself from British India or therefrom by a particular route, neglected or refused so to do or after having been removed, wilfully returned back without a licence, then he might be apprehended or detained in custody and discharged upon such terms and conditions as the Governor-General of India or the Local Government deemed sufficient for peace and security of British India and of the neighbouring States.

8.1.1 Two more laws were enacted in 1939. One was the Registration of Foreigners Act, 1939, still in force, and the other was the Foreigners Ordinance, 1939 promulgated to meet the emergency arising out of the Second World War. The Ordinance provided for the imposition of restrictions on the entry of foreigners into, their presence in, and their departure from, British India. It was replaced by the Foreigners Act, 1940. Section 1(3) of the Act provided that it would remain in force during the continuance of and for a

period of six months thereafter. It expired on 30 September, 1946. The Foreigners Act, 1946, was enacted on the expiry of the Act of 1940.

8.1.2 The Foreigners Act, 1946, was amended five times twice in 1947 and also in 1951, 1957 and 1962 each. The amendment of 1947 was the result of the transfer of power from Britishers to Dominion Government and the Partition of the country. The amendment of 1951 was made as a result of the incorporation of Hyderabad into Indian Union. The free entry of nationals of certain Commonwealth countries was facilitated by the amendment in 1957.

8.1.3 The Act is a small legislation, consisting of just 15 sections after the repeal of sections 10 and 17 respectively. It was enacted with the objective to confer on the Government certain powers with respect to the entry of foreigners into, their presence in, and their departure from, India. The Act was applicable to the whole of the country. The relevant provisions of the Act are as follows:

(1) The Central Government is empowered under section 3(1) to prohibit, regulate or restrict the entry into, departure from, or presence in, India of all or any class or description of foreigners and to make specific orders under section 3(2) with respect to specific matters, such as, the proof of identity of a foreigner, his photograph, specimen signature

and medical examination; prohibition of association with certain persons or engagement in certain activities and prohibition to possess certain articles; the regulation of conduct of foreigners in particular matters; and the execution of bond for due observance of specified restrictions or conditions; their arrest, detention or confinement.

(ii) Section 3A confers power on the Central Government to exempt citizens of the Commonwealth countries and other foreigners from the application of the Act in certain cases specified in its order. It further empowers the Government to apply, by order, the Act to foreigners only in certain circumstances or subject to specified exceptions, modifications or conditions.

(iii) Section 4(1) confers powers on the Central Government to issue orders laying down conditions as to the maintenance, discipline and punishment of offences and breaches of discipline in respect of a foreigner (internee) who has been ordered to be detained or confined under section 3(2)(g). Under section 4(2), it can also require a foreigner on parole to reside in a specified place and to observe the said conditions.

(iv) Section 4(3) prohibits any person from knowingly assisting such an internee or a foreigner on parole to escape from custody or knowingly harbouring such a foreigner. It further prohibits any person from preventing arrest of escaped internee or a foreigner on parole.

(v) The Government may regulate by order under section 4(4) the access to, and the conduct of a person in, places where internees or foreigners on parole are detained or restricted as also to regulate the despatch or conveyance of prescribed articles from outside to such a person.

(vi) Section 5 prohibits a foreigner who enters India from changing his name or using any name for any purpose other than the name by which he was known immediately before he entered India.

(vii) Section 6 casts an obligation on the master of any vessel or pilot of an aircraft coming to, or going from, India to furnish information in respect of foreigners whether as passengers or as members of the crew to the prescribed authority, any District Magistrate or any Commissioner of Police in the prescribed manner. The section further empowers the authorities to direct the master of a vessel or pilot of an aircraft to provide accommodation on the vessel or aircraft for removal of any foreigner who enters India in contravention of the provisions of the Act or who has been ordered under this Act not to remain in India.

(viii) Hotel keepers and others are required under section 7 to furnish particulars of the foreigners accommodated in their premises, to maintain record of such information and to keep it open to inspection by any police officer or any person authorised by the District Magistrate.

(ix) Under section 7A, the prescribed authority has the power to control places frequented by foreigners.

(x) The determination of nationality in the case of a foreigner, who is recognized as a national of more than one country or where his nationality is uncertain, is dealt with under section 8. The prescribed authority may treat him, in the former case, as the national of the country with which he appears to be most closely connected, for the time being, in interest or sympathy and in the latter case, as the national of the country with which he was last so connected.

The decision of the prescribed authority as to the nationality of the above persons is final and conclusive and not justiciable in any court. However, it can be revised by the Central Government suo motu or on an application made by the foreigner concerned.

(xi) Apart from determination of nationality, if a question arises whether any person is or is not a foreigner of a particular class, the onus of proving the same lies on such person under section 9.

(xii) Under section 11, any authority empowered by the Act to give any direction or to exercise any other power may, in addition, take reasonably necessary steps or use reasonably necessary force to secure the compliance of such direction or to prevent breach of such direction or order or to ensure the effective exercise of such power. Such a power is also exercisable by any police officer.

Such authority or the police officer has been given the right of access to any land or other property while exercising the aforesaid powers.

(xiii) Any authority exercising powers under the Act is competent under section 12 to delegate the same, conditionally or otherwise, to a subordinate authority.

(xiv) The contravention of the provisions of the Act is an offence under section 14. The term "contravention" has been given a very wide scope under section 13. This section provides that any person who attempts to contravene, abets or attempts to abet or does any act preparatory to a contravention of such provisions, orders or directions given under any order, or fails to comply with such directions is deemed to contravene the provisions of the Act.

(xv) Section 14 prescribes punishment up to five years' imprisonment and fine for contravention of the provisions of the Act or, any order made under it or any direction given in

pursuance of the Act or such order. The section also provides for the forfeiture of bond if a person has executed it under section 3(2) of the Act and makes him liable to pay the penalty or satisfy the court otherwise.

8.2 A number of orders have been issued by the Central Government in exercise of the powers conferred by sections 3, 3A, 4 and 8 of the Act. They are as follows:

8.2.1 The Foreigners Order, 1948, made under section 3 of the Foreigners Act, 1946 provides for the appointment of a "civil authority" by the Central Government and confers on such authority numerous powers, e.g., the power to grant permission to enter or to depart from India; the power to examine foreigners who want to enter or to depart from India, the power to require the master of a vessel or pilot of an aircraft to remove a foreigner who has entered India without permission; the power to permit a foreigner to reside in a prohibited place; the power to declare, with the prior sanction of the Central Government, any area to be a protected area and to prohibit, inter alia, any foreigner from entering that area; the power to permit a foreigner to undertake employment or enter certain undertakings; the power to impose restrictions on movement of foreigners and the power to close clubs and restaurants to foreigners under certain circumstances.

Other provisions of the Order relate to the grant of a special permit to land to seamen and crew of an aircraft, restrictions on certain activities like production of a film, mountaineering expeditions; removal of foreigners from cantonments areas and expenses on deportation.

The "civil authority" has been defined under the Order to mean an authority which may be appointed by the Central Government in that behalf for such an area.

8.2.2 The Foreigners (Exemption) Order, 1957 was made under section 3A of the Act to exempt citizens of some Commonwealth countries and other persons from application of this Act and the Foreigners Order but rescinded with effect from 18 June, 1984.

8.2.3 The Foreigners (Protected Areas) Order, 1958, made under section 3, restricts the entry of foreigners into protected areas.

8.2.4 The Foreigners (Restriction on Movements) Order, 1960, made under section 3, restricts the entry into, or departure of Chinese nationals (including indigenous inhabitants of the Tibet region of China) in India.

8.2.5 The Foreigners (Restriction on Activities) Order, 1962, made under section 3, prohibits foreigners (other than nationals of Bhutan and Nepal) from taking photographs etc. in certain areas in the state of West Bengal without the permission of the civil authority.

8.2.6 The Foreigners (Internment) Order, 1962, made under sections 3, 4 and 8, provides for arrest and internment of nationals of Pakistan and certain other countries at war with India or which assist such countries as also other foreigners assisting such countries.

8.2.7 The Foreigners (Restriction on Chinese Nationals) Order, 1962, made under section 3, prohibits Chinese nationals from absenting themselves from their registered residences without permission or leaving India by air or sea except from the ports at Bombay, Calcutta, Madras and New Delhi.

8.2.8 The Foreigners (Restricted Areas) Order, 1963, made under section 3, restricts the entry of foreigners except the specified ones into restricted areas without the permission of prescribed authorities.

8.2.9 The Internees (Discipline and Offences) Order, 1963, made under section 4, prescribes penalties for offences committed by an internee against internment camp discipline as also procedure for dealing with other criminal offences.

8.2.10 The Foreigners (Tribunals) Order, 1964, made under section 3, empowers the Central Government to constitute a tribunal and refer to it for its opinion the question whether a person is or is not a foreigner.

8.2.11 The Foreigners (Restriction on Pakistani Nationals) Order, 1965, made under section 3, prohibits a Pakistani national from leaving his registered place without permission of the civil authority concerned.

8.2.12 The Foreigners (Restriction on Residence) Order, 1968, made under section 3, prohibits a foreigner (other than a foreigner who is a member of a foreign diplomatic mission, consular post or trade mission or member of his family or in employment of such foreigner) from staying or residing in any premises occupied by a diplomatic mission or consular post or trade mission in India without the written permission of the civil authority.

8.2.13 The Foreigners (Report to Police) Order, 1971, made under section 3, casts an obligation on a householder or any other person to report to the police about the arrival or presence of a foreigner in his household or other premises.

8.2.14 The Foreigners (Restriction on Pakistani Nationals) Order, 1971, made under section 3, prohibited a Pakistani national from leaving or absenting himself from his place of residence without prior permission. The Order was rescinded in 1978.

8.2.15 The Foreigners (Proof of Identity) Orders of 1983, 1985, 1986, 1987, 1988 and 1991, were made under section 3, for short durations requiring the foreigners to carry their travel documents, certificates of registration and residential permits with them at all times and to produce the same on demand.

8.3. The Immigrants (Expulsion from Assam) Act, 1950- This Act was enacted to deal with the serious economic as well as law and order problems created in the State of Assam as a result of a large scale migration from erstwhile East Pakistan (now Bangladesh).

(i) The Act conferred powers on the Central Government to order expulsion of certain migrants from Assam who, being ordinarily residents of any place outside India, had come to Assam before or after 1 March, 1950, and their stay in the opinion of the Central Government was considered detrimental to the interest of general public of India or of any section thereof or of any Scheduled Tribe in Assam. However, those

who migrated on account of civil disturbances or for the fear of the same were exempted from the application of this provision.

(ii) The Act empowered the Central Government, under section 2, to direct such persons to remove themselves from India or Assam within such time and through such route as specified in the order and to give such necessary directions for their removal.

(iii) The authorities empowered under the Act may, in addition, under section 4, take such steps and use such force as is reasonably necessary for the exercise of such powers.

(iv) Under section 5 of the Act, contravention, attempt to contravene or abetting contravention of any order made under section 2 of the Act has been made punishable with imprisonment up to three years and fine. However, persons acting in good faith have been exempted from prosecution or other legal proceedings instituted under the Act.

(v) The Act was adapted by the State of Nagaland with necessary amendments in 1962 and extended to the State of Meghalaya in 1969.

8.4 The Illegal Migrants (Determination by Tribunals) Act, 1983 - It was enacted to make special provisions for the speedy detection, by a judicial process, of foreigners who

entered India on or after 25 March 1971 without a valid passport and other travel documents so as to enable the Central Government to expel illegal migrants from India as well as to protect genuine citizens of India.

The Act, preceded by an ordinance, was deemed to have come into force, in Assam on 15 October, 1983. The Government is, however, empowered to apply the Act in different States through notifications. Somehow, the Government confined it to Assam only which was badly affected by illegal migrants.

(i) Section 5 of the Act empowered the Central Government to establish as many tribunals for this purpose as were necessary for the purpose.

(ii) If any question arises as to whether any person is or is not an illegal migrant, the Central Government may, under section 8, refer the same for decision to the tribunal within the territorial limits of whose jurisdiction the place of residence of the person named in such reference, is situated. The Central Government can make such reference on the representation made by any person against whom any order under the Foreigners Act requiring him not to remain in India has been passed, or on the application of any other person. Thus, any private person can also make an application to the tribunal for deciding as to whether the person named in the application, is or is not an illegal migrant.

(iii) Under section 9, the tribunal has the powers of a civil court in regard to summoning and examining of witnesses, discovery and production of any document, reception of evidence on affidavit, requisitioning of public records from any court or office and issuing of any commission for the examination of witnesses.

(iv) The Act requires that the person named in the reference be given sufficient opportunity to make his representation. Section 13 mandates the tribunal to expeditiously conclude the reference or the application within a period of six months from the date of service of copy of such reference/application.

(v) The Central Government or any person named in the reference or the applicant, if not satisfied with any order of the tribunal, may appeal to the appellate tribunal known as Illegal Migrants (Determination) Appellate Tribunal, established by the Central Government by virtue of section 15 of the Act.

(vi) The Central Government is empowered to direct removal of the persons identified as illegal migrants from India within specified time.

The police officers not below the rank of a superintendent of police have been given powers to ensure compliance of such orders and even arrest the defaulters.

(vii) In pursuance of the provisions of the Act, the Central Government established 16 Tribunals and one Appellate Tribunal in Assam. Out of 16 Tribunals, only five are functional and the rest are virtually non-functional because of the paucity of funds and resources. The Tribunals had taken cognizance of about 23,976 cases and identified 9,599 migrants as illegal, out of them only 1,454 could be deported over a period of 15 years.¹⁸ These figures indicate that the tribunals could not achieve the purpose for which they were established. The entire process to identify foreigners is time consuming and impractical. Therefore, illegal migration continues unabated.

9. Case-Law

9.1 Most of the cases which cropped up under the Foreigners Act during the period from 1950 to 1970 relate to the determination of the question whether a person concerned was a foreigner.¹⁹ The determination of this question became simpler after the 1957 amendment of the Foreigners Act, 1946 saying that a foreigner meant a person who was not a citizen of India. In Fateh Mohd. v. Delhi Administration,²⁰ the apex court said that the appellant was certainly not a foreigner when he entered India under the pre-1957 amendment of the definition of the foreigner. However, he was a foreigner under the amended definition and committed a breach of an order served on him after the amended definition came to

hold the field. The appellant had, therefore, committed an offence within the meaning of section 14 of the Act by disobeying the directions given to him by the Delhi Administration.

In State of Andhra Pradesh v. Abdul Khader,²¹ the Supreme Court observed that there could be no conviction under the Foreigners Act unless it could be held on the evidence that the respondent was a foreigner, i.e., a person who was not an Indian citizen.

In State of Bombay v. Ibrahim,²² the Bombay High Court observed that a person who, having been originally a British subject, entered India under a passport issued by a foreign country and under a visa obtained by him claiming that he was a national of a foreign country and desired to visit India for a limited period was not a citizen of India under the amended definition clause of the Act.

In Abdul Aleem v. State of Andhra Pradesh,²³ the High Court observed that what was essential for the applicability of section 3 of the Foreigners Act, 1946, was that a person should be a foreigner on the date the order under that section was made. The date of his entry into India was irrelevant for the consideration of the question arising under section 3(2)(c) of the Foreigners Act.

9.2 In the following cases the Courts have interpreted the object and scope of the Act.

In Bawalkhan v. B.C.Shah,²⁴ the Bombay High Court referring to the object of the Act observed thus:

[F]rom S.3 ... the object of the Act appears to be provide for prescribing, regulating and restricting amongst other things the presence and continued presence of a foreigner in India. What appears to have been intended is to confer power on the executive authority to prescribe and specify conditions for continuance of a foreigner in India. Extremely wide kind of or unlimited restrictions and prohibitions and regulations can be validly prescribed and specified. The Legislature intended to give widest possible powers to the government for obvious reasons. A foreigner is not entitled to any guarantee or fundamental rights as a citizen is entitled to under the Constitution. A foreigner can be dangerous to security of India. His presence may be undesirable for security of India. His presence may be undesirable for any reason of any kind and it appears to have been intended by the Legislature to leave the whole matter of the foreigner's presence in India to the executive discretion of the Government. The provisions of S.3 make this object of the Act abundantly clear.

The Madras High Court in Gilles Pfeiffer v. Union of India²⁵ held that the petitioner, being a foreigner, had no fundamental rights under article 19(1)(e). The Act of 1946 vests the Central Government with absolute and unfettered discretion and unrestricted right to expel a foreigner. Once his application for extension of stay in India had been rejected, he would have no right to claim to stay in the country, much less a fundamental right. Further, the impugned

order under section 3 was not vitiated on the ground that either it was not a reasoned order or one passed in violation of the principles of natural justice.

The Kerala High Court explained the scope of the Act in B.S,Ultrich v. District Collector²⁶ and observed as follows:

[T]here is nothing either in the long title of the preamble of the Act to anyway indicate that it is only intended to operate as against the voluntary entry, voluntary presence and voluntary departure of foreigners. Whatever may be the circumstances under which a foreigner comes to India, once he is present in India, the civil authority has got ample jurisdiction to take action under the Foreigners Order read with the Foreigners Act.

9.3 Two cases in which the courts held that there was no excessive delegation of power under section 3, are the following:

In Khalil Ahmad v. State of Uttar Pradesh,²⁷ the High Court held that the legislature had clearly specified the matters in respect of which orders could be made under section 3 by the Central Government. It was only a piece of conditional legislation and, consequently, the power conferred on the Central Government could not be said to be in excess of section 3 of the Act.

In A.H.Magermans v. S.K.Ghose,²⁸ the Calcutta High Court observed:

[T]he legislature has indicated both in the preamble and in Section 3 and in ... section 3A, the principle and policy of the legislation. The standards and the criteria on which the power is to be exercised have been clearly defined. The Court is not kept guessing either with regard to the object or ... the policy of the legislation. What has been left with the executive, is not any determination with regard to

policy or principle; but the application of the principles to individual cases. That being so, it cannot be held that there has been excessive delegation of powers under the Foreigners Act, 1948 in favour of the executive.²⁹

9.4 The case law shows that the determination whether a person is a foreigner is a question of fact and this does not present any difficulty; that the widest possible powers have been conferred on the government to deal with foreigners whose presence may be a threat to the security of India; that foreigners do not enjoy certain fundamental rights guaranteed to citizens only; that the Act is intended to deal with all foreigners without any reference to any circumstances under which they may have come to India; and that the Act does not suffer from the vice of excessive delegation as the Legislature has clearly laid down the principles and policy of the legislation as well as the criteria and standards for determining the issue as is evident from the preamble and sections 3 and 3A aimed at guiding the executive while exercising powers under the Act.

9.5 It seems that not many cases have been decided by the appellate/higher courts under the Foreigners Act. Only two cases decided by High Courts which have been reported in All

India Reporter (AIR) during the last six years (1994-99) are Gilles Pfeiffer³⁰ and Fred Howard Haering v. State of Himachal Pradesh.³¹

In Fred Howard Haering case, the petitioner, a foreigner, had limited leave to enter or remain in India. He did not register himself as per the provisions of the Act of 1946 and the Registration of Foreigners Rules, 1939. He did not apply for the extension of his stay before the expiry of the period of visa. An order of deportation was, therefore, passed against him under section 3 of the Act. The Himachal Pradesh High Court held that there was no infirmity or irregularity in the order; also there was no violation of the principles of natural justice as there was nothing on which the petitioner was required to be heard.

9.6 These cases, on one hand, indicate that the judiciary has interpreted section 3 liberally in favour of the Government action taken under the Foreigners Act. On the other hand, these reflect that, in recent years, there has not been much litigation at the High Court or the apex Court levels. Hence, the case law may not be of much help in offering any guidelines.

9.7 In conclusion, despite various legal measures and some other steps such as the improved border management and setting up of the mobile task force, the problem does not show any sign of recession; rather it has aggravated.

10. The Foreigners (Amendment) Bill, 1998

10.1 The Statement of Objects and Reasons appended to the said Foreigners (Amendment) Bill, 1998 points out that the Foreigners Act, 1946 does not classify the violations of its provisions or orders or directions issued under it. It just prescribes a sentence of imprisonment up to five years and fine for the contravention of its provisions while the quantum of punishment for various offences is left to the discretion of the court. Moreover, the accused persons often managed to obtain bail under the provisions of the Code of Criminal Procedure, 1973 (CrPC) despite such cases being cognizable, non-bailable and triable by the first class magistrates under the Act. Keeping in view these deficiencies, the Bill seeks to achieve the following objectives:

- (i) to classify the offences,
- (ii) to provide punishment according to the gravity of the offence committed, and
- (iii) to enhance the punishment.

10.2 Provisions of the Bill

(i) The Foreigners (Amendment) Bill, 1998, proposes to substitute the original section 14 of the Foreigners Act, 1946, with sections 14, 14A and 14B. The proposed section 14 imposes penalty of imprisonment up to five years and fine on a

person who contravenes provisions of the parent Act or any order or direction under it, remains in India with or without valid passport exceeding the period of valid visa or violates the conditions of valid visa. It further provides for the forfeiture of the bond, if any, and also the payment of penalty by the person bound by the bond unless such person satisfies the court otherwise.

(ii) The proposed section 14A imposes a penalty of imprisonment up to eight years but not less than two years and fine up to Rs.50,000 but not less than Rs.10,000 on a person who enters into a restricted area without obtaining permission from the competent authority or who stays beyond the permitted period or enters into or stays in India without valid documents required under the provisions of any order made under the Act or directions given in pursuance of the order. It also provides for the forfeiture of bond executed by him for the due observance of any prescribed or specified restrictions in pursuance of the Act. Section 14B proposes to penalise those persons who abet any offence punishable under sections 14 and 14A, with the same punishment as the offence itself. 'Explanation' in section 14B clarifies that an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of an instigation, or in pursuance of the conspiracy, or with the aid which constituted the offence.

A higher punishment prescribed in proposed sections 14A and 14B would consequently enable the courts of sessions to try the offences and provide an opportunity to State Governments to oppose bail applications under the Criminal Procedure Code (CrPC). The last two sections, namely, 14A and 14B contemplate minimum imprisonment and fine for entry into restricted areas and other areas and the abetment of this offence. The punishment by way of imprisonment and fine has also been enhanced to eight years with fine upto Rs.50,000/-.

**11 Parliamentary Standing Committee on Foreigners
(Amendment) Bill**

The Bill was referred to the Parliamentary Standing Committee for the Ministry of Home Affairs for critical analysis and suggestions. The Committee discussed the Bill at length on 10th September 1998 in the context of the existing problem of illegal migration into border areas.

11.1 Official presentation at the Standing Committee

(i) The official side highlighted the problem of illegal migration from neighbouring countries especially from Bangladesh (other countries being Pakistan, Sri Lanka, Myanmar and Tibet) and the presence of militants and other criminal elements carrying on clandestine activities. The officers

explained the framework of the existing Foreigners Act, 1946, previous amendments and pitfalls of the Act, namely, the lack of proper machinery for identification of illegal migrants, non-existence of classification of offences and offences being bailable.

(ii) The officers then dealt with the main features of the Amendment Bill which attempted a classification of offences as also prescribed a minimum and enhanced maximum punishment in certain cases thereby enabling the trial of serious offences by courts of session and rendering it imperative for the courts to issue notice to the prosecution in case there was a move for granting bail. In support, they cited the example of Pakistan where an illegal entrant was not granted bail till the trial was over. In their opinion, those who posed a potential threat to the security of the country should be severely dealt with. In their view, the proposed amendments in the law, would make it more effective and deterrent.

11.2 Discussion on the Bill in the Standing Committee

(i) There was unanimity among the members on the gravity of the problem posed by illegal migration to India. They were also unanimous on the fact that the existing law was quite inadequate to tackle the problem; that even the proposed amendment might not be sufficient, though desirable, to strengthen the parent legislation and that a more stringent legislation was needed to curb the menace which had become,

over the years, an all India feature. There was a specific suggestion for enacting a comprehensive legislation on this subject.

(ii) The members, however, felt that the law alone could, in no way, check the illegal infiltration but other measures like complete border fencing and strict vigil had to be strengthened. Some of the members felt that, in addition to this, identity cards had to be issued to citizens so as to easily identify non-citizens especially in view of ethnic and religious similarities which had made their identification difficult. This would greatly help solve the problem of illegal migration. However, one member suggested the creation of Indian National Security and Foreign National Detection Force to identify and sternly deal with the illegal foreign elements.

(iii) Some of the members suggested specific measures to strengthen the legal regime, for example, the terms "foreigner" and "citizen" should be precisely defined; summary trial through a reasonable, fair and efficient procedure should be provided wherein the burden of proof would lie on the accused; special courts to try offences under the Act should be established; and that all the offences should be made non-bailable under the Act. One member expressed the view that there should be no denial of bail but special courts may be given discretion to grant it in appropriate cases. They also pleaded for repeal of the IMDT Act.

(iv) Members also suggested harmonisation between the Passports Act and the Foreigners Act. Both the suggestions were picked up by the Home Secretary who agreed that there was a need to have a holistic view of the Foreigners Act in relation to the Citizenship Act and Passports Act and for the enactment of a comprehensive legislation.

11.3 The Committee could not take up the Bill for further consideration and formulate its recommendations as it became defunct on 26th April, 1999 on account of the dissolution of 12th Lok Sabha.

11.4 The new Committee after its constitution on 31st December, 1999 took up further consideration of the Bill on 7th February, 2000. The following views/suggestion emerged during the course of the meeting. (See pages 21-31 of the Report):-

- (i) The proposed amendment to Section 14 of the Act is not sufficient to achieve the object.
- (ii) Accused should not be granted bail till the trial is over
- (iii) Time frame should be prescribed for the trial of offences

- (iv) Burden of proof shall lie on the accused for all kinds of violations/contraventions including rules and orders of the act by amending Section 9 of the Act.
- (v) Offences under the act should be tried by special courts manned by the judges of the rank of sessions court
- (vi) The court should be empowered to order deportation of convicted foreigner while announcing punishment for him.

12. Views of the States and Union Territories

12.1 The Ministry of Home Affairs, Government of India, sought the views of State Governments and Union territory Administrations regarding the provisions of the Amendment Bill and their experience in the implementation of the provisions of the Foreigners Act, 1946, as also the difficulties encountered by them in the implementation process. For this purpose, the Ministry of Home Affairs addressed a questionnaire containing specific questions and called for the suggestions of the States and Union Territories. The questionnaire is appended at Anneuxre II. The responses thereto are given in a tabulated form at Annexur-III.

12.3 The States and Union territory Administrations, in their responses, though favoured the amendment Bill, expressed the necessity of the amendment of other provisions of the of the Act for they encountered numerous difficulties in implementing its provisions and made following suggestions with respect to the Foreigners Act.

(i) A provision should be made to enable temporary detention of foreigners by immigration authorities pending finalization of their verification.

(ii) Offences should be classified and punishments accordingly prescribed. The harbouring of foreigners or aiding or assisting them in obtaining ration cards, driving licences and citizenship as also in undertaking illegal activity should be made an offence.

(iii) Any act under section 4(3)(a) of the Act should be regarded as an act of abetment. This section prohibits every person from knowingly assisting an internee or a person on parole to escape from custody or a place earmarked for his residence or knowingly harbouring such an internee or person.

(iv) Special cells should be established for the purpose of speedy investigation.

(v) All offences under the Act should be tried by courts of session. Special courts should be established to try offences under the Foreigners Act on a day to day basis, completing the trial within 90 days. Some of the States wanted time-bound trial by courts of session.

(vi) There should be summary trial of all offences.

(vii) Foreigners contravening the provisions of the Act or those entering clandestinely should not be granted bail to prevent them from absconding. No anticipatory bail should be granted to foreigners.

(viii) There should be a provision for the verification of sureties offered by foreigners. Sureties should deposit the amount of bail in the court.

(ix) Lawyers should be held accountable for obtaining bail on forged documents.

(x) Stringent punishments should be provided for entry without documents and with forged documents, for carrying fake currency notes and indulging in terrorist activity as also for the contravention of orders issued under section 3 of the Foreigners Act, espionage activities and acts endangering the security of State.

(xi) There should be a provision to seize the property purchased by foreigners directly or benami especially on conviction.

(xii) The term "whoever" in proposed section 14B should be qualified by the terms 'an Indian or foreigner' so that Indian nationals resorting to the abetment of offences may be punished.

(xiii) There should be an instant deportation after the completion of sentence by the foreigner-convict because, during the intervening period, surveillance is very difficult.

(xiv) There should be special fund to meet the expense on deportation in cases where aliens do not have enough money to go back to their countries. This will prevent their going underground.

(xv) Courts should not grant stay on 'notice to leave India' issued to foreigners by the competent authority.

(xvi) The Probation of Offenders Act, 1958, should not be applicable to convict for offences under the Foreigners Act.

(xvii) The registration of tourists on arrival should be made compulsory. Currently, they are exempted from registration for a period of six months under the Registration of Foreigners Act 1939.

(xviii) Fine under section 5 of the Registration of Foreigners Act should be enhanced to Rs. 20,000 for foreigners and to Rs. 10,000 for Indians (The section provides imprisonment for a term which may extend to one year in case of foreigners).

12.2 Some States also expressed the need to strengthen the Passports Act, 1967, and suggested the following measures in this regard.

(i) Provision for Pre-verification of sponsors/referees before the grant of visa to foreigners.

(ii) Prohibition of granting of passport/visa to persons convicted under the Foreigners Act at least for five years.

(iii) Communication of Information regarding the issue of passport to a person to the District Superintendent of Police.

(iv) Enhancement of punishment under the Pasports Act, 1967 on the lines of one prescribed in the proposed section 14A of the Foreigners (Amendment Bill), 1998.

(v) Enhancement of penalty under rule 6 of the Rules made under the Passports (Entry into India) Act, 1920.

12.4 The need to strengthen the citizenship Act was pointed out by a number of States and the Union Territory Administrations. It was suggested that foreigners who are convicted should not be granted Indian citizenship under any circumstances.

13. The scheme of amendments proposed by the Law Commission

13.1 The Law Commission has considered the views expressed by the Ministry of Home Affairs, recommendations of the Estimates Committee of the Parliament and Conferences of Chief Ministers and Chief Secretaries, Report of the Governor of Assam on Illegal Immigration, the pleadings of the parties in the public interest litigation pending in the Supreme Court (including the Status Reports filed by the Union of India and the State of West Bengal therein), views of the states and Union Territory administrations regarding their experience in implementation of the provisions of the Foreigners Act, 1946 and all the other relevant material referred to hereinbefore. The Law Commission had to take a decision with respect to the shape of proposals to be framed by it. One idea was to go in for a comprehensive Act incorporating the features of the several existing Acts and of the Orders/Rules made thereunder. In short, the idea was to codify the entire law concerning the foreigners, which is now scattered in several enactments and Orders made thereunder, into one enactment. The other idea was to introduce provisions in the Foreigners Act effective

enough to meet the main problem faced by this country today, namely, illegal migration without interfering with the existing legal framework. On a consideration of all the pros and cons, the Commission has chosen to adopt the second alternative. The Foreigners Act was enacted in 1946. A large number of Orders (in exercise of the order-making power conferred by section 3 of the Act) have been issued from time to time, regulating various aspects concerning foreigners. Besides the Foreigners Act, there are two other Acts, namely, the Immigrants (Expulsion from Assam) Act, 1950 and the Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act), the former deals with expulsion of migrants from Assam and the latter exclusively deals with determination and deportation of illegal immigrants. There is the Registration of Foreigners Act, 1939, the Passport (Entry into India) Act, 1920 and the Passports Act, 1967. Codifying the provisions of all these Acts and of the Orders made thereunder would take a long time and there is always the problem of new provisions creating room for fresh litigation. The better course, we thought, was to leave the existing mechanism unaffected except insofar as it is inconsistent with the provisions now proposed by way of this Amendment Bill. Accordingly, the Commission has suggested insertion of certain definitions in section 2 and the insertion of new sections 7(B) to 7(U) in the Foreigners Act, 1946. These provisions shall have effect notwithstanding anything to the contrary in other enactments in force. We have defined the expression "illegal entrant", created a new category of officers called Immigration Officers

with a Chief Immigration Officer at the head and laid down their powers, duties and functions. We have also specified that certain classes of persons are not to be admitted into India even if they are holding a visa or other valid document in that behalf. The function of determining whether a person is an illegal entrant has been entrusted to the immigration officers. Their orders are made subject to an appeal to be heard and decided by an Immigration Tribunal, to be manned by a person who is or has been a district judge or an additional district judge. The immigration officers and the immigration tribunals shall decide the matters according to the principles of natural justice which necessarily means, after making such inquiry as may be called for in a given case. We have also provided for facilitation centres for detaining the foreigners pending the determination of their status and pending their deportation. So far as the offences under the Act are concerned, they are, of course, to be tried by Immigration Court. Immigration court is a court of District and Sessions Judge to be specified by the appropriate government in that behalf, in each district.

13.2 At this stage the Commission thinks it necessary to refer to a particular aspect. According to the provisions of the Amendment Bill suggested by us herein, a "foreigner" means a person who is not a citizen of India - and "Citizen of India" as proposed in clause (aa) of the Bill is "a person who is a citizen of India within the meaning of and as provided in

Part II of the Constitution of India or the Citizenship Act, 1955". According to section 6-A of the Citizenship Act, 1955 (which section was introduced by Amending Act 65 of 1985 w.e.f. 7th December 1985), the position with respect to citizenship of persons covered by the Assam Accord is the following:

- a) "All persons of 'Indian Origin' who came before the first day of January 1966 to 'Assam' from the 'specified territory' (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of People held in 1967) and who have been ordinarily residents of Assam since the dates of their entry to Assam shall be deemed to be citizens of India as from the 1st January 1966." ('Indian origin' is defined in the said section in the following words "a person shall be deemed to be of Indian origin if he or either of his parents or any of his grandparents were born in undivided India.") ("Assam" in the said section means "the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985.")

- b) So far as persons of Indian origin who have come to 'Assam' on or after first day of 1966 but before the 25th day of March 1971, are concerned, the position is different. Where such person has been ordinarily

residing in "Assam" since the date of entry into Assam and has been detected to be a foreigner and has registered himself in accordance with the rules made by the Central Government in that behalf under section 18 of the Citizenship Act, with the prescribed authority, he acquires all the rights of Indian citizenship on the expiry of ten years from the date on which he was detected to be a foreigner. In other words, the position is that in case of a person of Indian origin who has entered "Assam" but has not been detected to be a foreigner and accordingly has not applied for registration, will not become a citizen of India irrespective of the length of his stay. (See sub-sections (3), (4) and (5) of section 6A of Citizenship Act).

c) It also follows from the above provisions that if a person who is not a citizen of India according to the provisions of the Constitution or the Citizenship Act, has entered the territories of India (except the territories included in "Assam"), he shall not be treated as a citizen of India, irrespective of the length of his stay in India.

d) The IMDT Act, 1983 is concerned only with a limited class of persons, i.e., "foreigners who migrated into India across the borders of the eastern and north-eastern regions of the country on and after the

25th day of March 1971." Such persons were sought to be identified and deported from India. This Act does not purport to nor can it be construed as conferring citizenship upon persons who have entered India before 25.3.1971. This Act is not indeed concerned with conferment of citizenship.

However, according to the Note furnished to us by the Home Ministry, "(2) According to Indira-Mujib Agreement 1974, all persons from erstwhile Pakistan who came to India before 25.3.1971 would continue to live in India and would ultimately become Indian citizens and those who had come to India on or before (after ?) 25.3.1971 without any valid travel document would be treated as illegal migrants and, therefore, have to be deported to Bangladesh subsequently". This note of the Home Ministry does not appear to correctly reflect the legal position as is evident from a perusal of the Constitution and the Citizenship Act. It is, however, a matter of policy for the government to decide whether the government wishes to treat all migrants, to territories of India except "Assam" from the territories which now constitute Bangladesh, prior to 25.3.1971 as illegal migrants or whether it would allow them to be treated as Indian citizens. Another policy decision which may have to be taken is what does the Central Government propose to do to those Bangladeshis (to use a convenient expression) who have entered "Assam" between 1.1.1966 and 25.3.1971 but who do not satisfy the requirements of

sub-section (3) of section 6-A of the Citizenship Act. Are they to be treated as "illegal entrants" or not and if the former, are they to be deported?

14. RECOMMENDATIONS

After considering the provisions of the existing legislations on the subject, we are of the considered view that the problem of illegal migration from neighbouring countries has to be tackled seriously by providing a machinery for effective and speedy detection of illegal entrants in the statute. In order to concretise our recommendations, we have drafted the Foreigners (Amendment) Bill, 2000 (Annexed as Annexure-I) to amend the Foreigners Act, 1946 by incorporating proposed provisions in the Foreigners Act, 1946. The radical proposals reflected in the Bill are as follows:

(i) The long title of the Bill provides for the regulation of entry into, stay in and departure from, India of foreigners and also to prevent their illegal migration from neighbouring countries and for matters connected therewith, incidental or ancillary thereto.

(ii) We propose to include various definitions, the important among them are 'foreigner', 'citizen of India', 'removal order' and 'deportation order'.

(iii) We have specifically included the definition of the term 'illegal entrant' in the definition clause so as to make it more explicit as to how a foreigner who entered into India is an illegal entrant.

(iv) A new definition has been included to define 'inadmissible class' which enlist the inadmissible classes of foreigners who are barred entry into India. Such classes are also enlisted in the immigration laws of other countries.

(v) Specific clause has been included in the Bill empowering the immigration officer to refuse permission to enter India if he belongs to an inadmissible class or fails to produce a valid passport or valid travel documents or is not able to establish his identity or nationality. This provision will enable the authorities at the entry point or port of entry to immediately deport the concerned foreigner, thereby avoiding the need to decide whether a foreigner is an illegal entrant or not through the processes of law.

(vi) In order to curb the menace of illegal immigration, violations of conditions of visa, etc., by a foreigner, we recommend for establishing a machinery consisting of Chief Immigration Officer and immigration officers to be appointed by the Central Government at the grass roots level which can speedily and promptly decide and act on the issues related to the subject. Firstly, at the entry point, immigration officers are proposed to be empowered

to examine foreigners seeking entry into India. Such examination would include whether a person possess passports or travel documents, whether he belongs to a inadmissilble class. If he is not in possession of such valid documents, the immigration officer is empowered to order immediate deportation or detain him in the facilitation centres pending enquiry or deportation. Secondly, the immigration officers are also proposed to be appointed for other areas in districts whenever or wherever necessary. The officers are empowered to detect whether a person is illegal entrant or not after holding an inquiry in the prescribed manner. If he determines a foreigner to be an illegal entrant, he can issue a removal order against which an appeal may be made within 15 days before the Immigration Tribunal proposed to be constituted by the Central Government. Such a tribunal shall be manned by a person of the rank of retired District Judge. Order of such a tribunal shall be final. If it upholds the removal orders passed by the immigration officer, such a foreigner will be deported. The immigration officers and the immigration tribunals shall decide the matters according to the principles of natural justice.

(vii) In order to speedily try an accused person alleged to have committed offence or offences under the Act, we recommend that sessions court of a district be designated as Immigration Court which may take cognizance of the complaints against the offenders. Some of new offences are proposed to be added to curb the menace of illegal migration.

(viii) We have also made provisions for transfer of cases now pending before the tribunals created under the IMDT Act, 1983 and of the cases pertaining to offences under the Foreigners Act pending in Criminal Courts, to the appropriate authorities/Tribunal/Court.

We recommend accordingly.



(MR. JUSTICE B.P. JEEVAN REDDY) (RETD.)

CHAIRMAN



(DR. N.M. GHATATE)

MEMBER



(SHRI T.K. VISWANATHAN)

MEMBER SECRETARY

DATED: SEPTEMBER 19, 2000

Annexure - I

THE FOREIGNERS (AMENDMENT) BILL, 2000

A

Bill

Further to amend the Foreigners Act, 1946

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:-

Short title and commencement.

1. (1) This Act may be called the Foreigners (Amendment) Act, 2000.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint .

Substitution of long title

2. In the Foreigners Act, 1946 (hereinafter referred to as the principal Act) for the long title, the following long title shall be substituted, namely:-

“An Act to provide for regulation of entry into, stay in, and departure from, India of foreigners and to prevent their illegal entry and immigration and for matters connected therewith or incidental thereto”

3. For section 2 of the principal Act, the following section shall be substituted, namely:-

2. (1) In this Act, unless the context otherwise requires ,--

(a) “Chief Immigration Officer” means the Chief Immigration officer appointed under sub-section (1) of section 7B;

(aa) “citizen of India” means a person who is a citizen of India within the meaning of and as provided in Part II of the Constitution of India or the Citizenship Act, 1955;

(b) “Deportation Order” means an order passed by the Immigration Officer under sub-section (1) of section 7-I, sub-section (2) of section 7-G, sub-section (6) of section 7-J or section 7S;

(c) "foreigner" means a person who is not a citizen of India :

(d) "illegal entrant" means a foreigner who, -

(i) has entered into India without a valid passport and visa or other travel document or permit; or

(ii) has entered India, whether with or without a valid passport and visa or other travel document entitling him to enter into India, through a place or a point which is not a designated point or port of entry into India; or

(iii) has stayed in India beyond the period specified in visa or other travel document or permit under which he had entered into India; or

(iv) has contravened any provision of any Act governing the entry, stay and departure of foreigners, or of any rule or order made under any such Act; or

(v) has been subjected to an order of removal or deportation under this Act or has entered India after having been deported from India;

(e) "Immigration Officer" means an Immigration Officer appointed under subsection (1) of section 7B;

(f) "Immigration Tribunal" means a tribunal established under section 7O;

(g) "inadmissible classes of persons" means classes of persons referred to in clauses (a) to (j) of section 7H;

(h) "permit" means a permit issued by the Central Government to any foreigner to reside in India for a particular purpose including employment in India;

(i) "prescribed" means prescribed by Orders or rules made by the Central Government under this Act;

(j) "Removal Order" means an order passed by the Immigration Officer under subsection (1) of section 7 M;

(k) "specified" means specified by direction of a prescribed authority.

(l) "travel document" means a travel document which is issued by or under the authority of the Central Government permitting any foreigner to enter India;

(2) Words and expressions used but not defined in this Act and defined in the Passport (Entry into India) Act, 1920 or the Registration of Foreigners Act, 1939 shall have the meanings respectively assigned to them in those Acts, Orders and rules made thereunder.

Insertion of new sections 7B to 7 U

3. After section 7A of the principal Act, the following sections shall be inserted, namely:-

Immigration Authorities

“7B. (1) The Central Government may, by notification, appoint a Chief Immigration Officer and as many Immigration Officers as it deems fit for the purposes of this Act.

(2) The Central Government may, by general or special order, define the area to which the authority of an Immigration Officer so appointed shall extend and, where two or more Immigration Officers are appointed for the same area, also provide, by such order, for the distribution and allocation of the work to be performed under this Act in relation to such area.

(3) The Central Government may, if satisfied that it is necessary so to do in public interest, authorize any person to perform all or any of the functions of an Immigration Officer under this Act.

(4) The Immigration Officers shall perform the functions assigned to them by or under this Act under the general superintendence and control of the Chief Immigration Officer.

(5) The Chief Immigration Officer may, in addition to the special functions assigned to him by or under this Act, perform all or any of the functions assigned to an Immigration Officer.

General Duties of Immigration Officers.

7C. Subject to the other provisions of this Act, every Immigration Officer shall, in addition to the duties assigned to him by or under this Act, –

- (a) prevent entry of foreigners into India without a valid passport and visa or a valid travel document or residence permit, as the case may be, permitting him to enter India;

(b) inspect for the purposes of clause (a), to such extent and in such manner, as may be prescribed, –

(i) any aircraft, ship or vehicle, or any other conveyance if he has reasons to believe that an illegal entrant is traveling therein;

(ii) any place or premises, if he has reason to believe that an illegal entrant is staying or hiding in that place or premises

Points or ports of entry

7D. (1) The Central Government shall notify, by a notification published in the Official Gazette, the designated points or ports of entry into India at such places as may be specified.

(2) A designated point or port of entry shall be manned by an Immigration Officer or such other Officers as may be specified by the Chief Immigration Officer.

Other Immigration Officers and staff.

7E. The Central Government may appoint such other officers and employees (hereinafter referred to as the officers and employees of Immigration respectively), as it may think fit, to assist the Chief Immigration Officer and the Immigration Officers in the performance of their duties under this Act.

Immigration Officers to be public servants.

7F. The Chief Immigration Officer and Immigration Officers, the officers and employees of Immigration shall be public servants within the meaning of section 21 of the Indian Penal Code.

Examination of persons disembarking in India

7G. (1) An Immigration Officer may examine any person who is disembarking or seeking to disembark in India or entering or seeking to enter into India for the purpose of determining whether he is a foreigner and if so whether he is in possession of valid passport and visa or other travel document or residence permit, as the case may be.

(2) Where the Immigration Officer, on examination of any person referred to in sub-section (1), is of opinion that such person is a foreigner and is not in possession of a valid passport and visa or a valid travel document or a residence permit shall refuse to grant him leave to enter India and order his deportation.

Persons belonging to certain classes not to be admitted

7.H. No foreigner shall be allowed to enter India notwithstanding the fact that such a foreigner is in possession of a valid passport, visa or other travel document or permit, if in the opinion of the Immigration Officer, he falls in any one of the following classes, namely:-

- (a) persons suffering from diseases or disabilities which are a danger to public health or safety and would result in excessive demands on health or social services in the country;
- (b) persons unable or unwilling to support themselves or the persons dependent on them;
- (c) persons who are convicts or hardened criminals and have committed offences or are likely to commit offences;
- (d) persons engaged in trafficking in narcotics and psychotropic substances;
- (e) persons engaged in planned and organized criminal activities;
- (f) persons who are members of organizations involved in espionage, subversion or terrorism;
- (g) persons who are believed to be members of organizations who have committed war crimes or crimes against humanity or genocide;
- (h) skilled and unskilled labour from neighbouring countries having no work permit;
- (i) foreigners previously deported from India on charges of misrepresentation to procure illegal entry into India; or
- (j) such other classes as may be notified by the Central Government by general or special order in the Official Gazette.

Persons refused entry to be deported

7.I (1) Where any person is refused entry into India under sub-section (2) of section 7G or section 7H, he shall be forthwith deported to the place from where he embarked or to a country or territory specified in sub-section (2) of section 7M, in accordance with the provisions of sub-section (2).

(2) Where a person arriving in India is refused leave to enter, an Immigration Officer may, -

- (a) give the captain of the ship or aircraft or any other mode of conveyance in which he arrives, directions requiring the captain to remove him from India in that ship or aircraft or conveyance as the case may be; or
- (b) give the owners or agents of that ship or aircraft or conveyance directions requiring them to remove him from India in any ship or aircraft or conveyance specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents -

Provided that where the Immigration Officer is of the opinion that it would not be suitable to give the direction of the nature contemplated by this sub-section, he shall make the arrangements to remove him from India to the place of embarkation or to a country or territory specified in sub-section (2) of section 7M at the cost of that person or where such person is not in a position to bear the cost the Central Government shall bear the same.

(3) A person in respect of whom directions are given under this section may be placed, under the authority of an Immigration Officer, on board any ship or aircraft in which he is to be removed in accordance with the said directions.

Detention pending examination of Foreigners while Disembarking in India

7-J .(1) Any person disembarking in India, may be detained under the authority of an Immigration Officer pending his examination and pending a decision to grant or refuse to grant leave to enter.

(2) A person in respect of whom directions may be given under sub-section (2) of section 7-I may be detained under the authority of an Immigration Officer pending the giving of directions and pending his removal in pursuance of any directions given.

(3) A person on board a ship or aircraft or other conveyance whose presence in India is required by law, may, under the authority of an Immigration Officer, be removed from the ship or aircraft or other conveyance for detention under this section.

(4) If an Immigration Officer so requires, master of a ship or pilot of an aircraft or a person in charge of any other conveyance shall prevent from disembarking in India any person who has arrived in India in the ship, aircraft or other conveyance.

(5) Where any person is refused entry under sub-section (4), the master of the ship or captain of an aircraft or the person in charge of other conveyance may detain such person in custody on board the ship or aircraft or conveyance, as the case may be.

(6) The Immigration Officer shall order immediate deportation of a foreigner to a country as specified in sub-section (2) of section 7M if the foreigner,-

(a) belongs to an inadmissible class; or

(b) has overstayed the period of his visa or permit unless granted extension by the authorities; or

(c) has contravened any of the provisions contained in this Act or the orders or rules made thereunder; or

(d) has completed his sentence for an offence under this Act or under any other law for the time being in force, relating to foreigners; or

(e) is, in the opinion of the Immigration Officer, a threat to the national security and his continued presence endangers the lives and safety of the people of India.

Facilitation Centres and Detention of Foreigners

7-K. (1) The Central Government shall establish or notify any place or centre as a facilitation centre for the purposes of this Act.

(2) Persons liable for detention under sub-sections (1) to (3) of section 7J may be detained, if so ordered by the Immigration Officer in facilitation centres or in such other places as the Central Government may, by order, direct.

(3) Where a person is detained under sub-section (1) of this section, an Immigration Officer, or any other person authorized by the Central Government, may take all such steps as may reasonably be necessary for photographing, measuring or otherwise identifying him.

Determination of question as to whether a person is an illegal entrant.

7-L. (1) If, on the basis of information received or otherwise, the Immigration Officer has reasonable grounds to believe that a person found residing within his jurisdiction is an illegal entrant, he shall record that fact giving reasons in support of such belief and shall call upon that person to show cause why he should not be declared to be an illegal entrant.

(2) For purposes of sub-section (1), the Immigration Officer shall conduct such enquiry as may be prescribed and may determine-

- (a) whether he is an illegal entrant,
- (b) his nationality,
- (c) the country from which he entered India,
- (d) the duration of his stay in India, and
- (e) such other particulars as may be prescribed.

(3) The Immigration Officer shall hold the enquiry in accordance with the principles of natural justice and in accordance with the procedure, if any, as may be prescribed by rules.

Removal Order

7-M. (1) Where the Immigration Officer determines that a person is an illegal entrant he shall issue an order for his immediate removal, subject, if any, to the order of an Immigration Tribunal made under section 7-P.

(2) The order of removal under sub-section (1) removal of an illegal entrant may be made to a country or territory specified in the order, being either ,-

- (a) a country of which he is a national or citizen; or
- (b) a country or territory in which he has obtained a passport or other document of identity; or
- (c) a country or territory in which he embarked for India; or
- (d) a country or territory to which there is reason to believe that he will be admitted.

Detention pending enquiry and pending deportation

7-N. (1) Every person in respect of whom an inquiry under section 7-L is pending and every person against whom an order of removal has been passed under section 7-M and who has filed an appeal under section 7-P, shall be detained in facilitation centres or at such other places as the Central Government may, by general or special order, specify:

Provided that no male below the age of 16 years or a female shall be detained under this section.

(2) The person referred to in sub-section (1) may be released by the Immigration Officer subject to observance and fulfilment of such conditions, as may be specified by him in that behalf, if the Immigration Officer is satisfied that such person will appear before him or any other authority under the Act, whenever called upon to do so.

Establishment of Immigration Tribunals:

7O. (1) The Central Government may, by notification, establish, for the purposes of hearing appeals from the Removal Orders passed by the Immigration Officer under section 7 M, as many Immigration Tribunals as it may deem necessary and the Tribunal shall sit at such places as may be designated by the Central Government or the State Government .

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the territorial limits within which, each such tribunal shall exercise its jurisdiction

(3) No person shall be appointed as a member of any such Tribunal unless he is or has been a District Judge or an Additional District Judge in any State.

(4) The Immigration Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908(5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government,, every Immigration Tribunal shall have the power to regulate its own procedure including the fixing of the places and times of its inquiry and deciding whether to sit in public or in private.

Appeal against Removal Order

7-P (1). Any person aggrieved by an order of removal passed by the Immigration Officer, may prefer an appeal to the Immigration Tribunal within fifteen days from the date of communication of such order.

(2) The Immigration Tribunal may, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it may think fit, confirming, modifying or annulling the order appealed against or may remand the case to the Immigration Officer who had passed such order with such directions to that Immigration Officer as the Immigration Tribunal may think fit, for fresh determination after taking additional evidence, if necessary.

(3) Every endeavour shall be made by the Immigration Tribunal to dispose of the appeal within thirty days from the date of filing of the appeal.

(4) Notwithstanding anything contained in the Code of Civil Procedure, or in any other law for the time being in force, an order passed by the Immigration Tribunal shall be final and shall not be questioned in any court of law.

(5) No civil court shall have jurisdiction to entertain a suit or other proceeding with respect to a matter within the jurisdiction of the Immigration Officer or the Immigration Tribunal and no injunction or any other order in respect of any action taken or orders passed by the Immigration Officer or an Immigration Tribunal in respect of such matter, shall be granted or made by any civil court.

Immigration Courts

7-Q. (1) The Chief Justice of the High Court shall designate one or more Sessions Courts in each district as Immigration Courts for the purpose of providing for speedy trial of offences committed under this Act.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, all offences committed under this Act shall be tried by the Immigration Courts on day to day basis.

(3) An Immigration Court may take cognizance of any offence under this Act without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence.

(4) Where an offence triable by the Immigration Court is punishable for a term not exceeding three years or with fine or with both, an Immigration Court may, notwithstanding anything contained in sub-section (1), or section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Immigration Court that the nature of the case is such that it is undesirable to try it in a summary way, the Immigration Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to an Immigration Court as they apply to in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for an Immigration Court to pass a sentence of imprisonment for a term not exceeding two years.

Special Provisions regarding Bail

7-R. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person who is accused of having committed an offence under this Act, and arrested by the police, shall be released on bail or on his own bond, unless –

(a) the public prosecutor is given an opportunity to oppose the application for such release, and

(b) where the public prosecutor opposes the application, the Immigration Court is satisfied that there are reasonable grounds for believing that he is not likely to abscond while on bail.

(2) The provisions of sub-section (1) shall not apply to a foreigner who has stayed in India beyond the period permitted in the visa or other travel document or permit under which he has entered India.

(3) The limitations on granting of bail specified in this section shall be in addition to the limitations under the Code of Criminal Procedure 1973 or any other law for the time being in force on granting of bail.

Deportation of illegal entrants

7-S. Where a Removal Order has been passed by an Immigration Officer or where no appeal has been filed before the Immigration Tribunal against the Removal Order passed by the Immigration Officer within the time specified in section 7-O, or where the appeal has been filed but has been dismissed, the Immigration Officer shall, deport the person in accordance with the order of removal or the appellate order, as the case may be.

Power to search, seize and detain persons, conveyance, etc.

7-T. All the powers for the time being conferred by the Customs Act, 1962, on officers of customs with regard to the searching and detention of persons, vessels or aircraft or any other conveyance, or seizure of any document or thing or arrest of any person or otherwise for the purpose of prevention or detection of any offence under that Act or for apprehending a person suspected to have committed any offence under that Act may be exercised by such officers, for the purpose of prevention or detection of any offence under this Act or for apprehending a person suspected to have committed any offence under this Act.

Authorities and officers to have certain powers of civil court.

7-U.(1) The Immigration Tribunal, the Chief Immigration Officer and the Immigration Officer shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Immigration Tribunal, the Chief Immigration Officer or an Immigration Officer shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Immigration Tribunal, the Chief Immigration Officer and every Immigration Officer shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

Insertion of new sections 12A and 12B

4. After section 12 of the principal Act, the following sections shall be inserted, namely:-

Prohibition of employing illegal entrants

"12A. No person shall knowingly employ or cause to be employed any illegal entrant.

Prohibition of harbouring illegal entrant

12B. No person shall knowingly harbour or shelter or cause to be harboured or sheltered any illegal entrant."

Substitution of new sections for section 14.

5. For section 14 of the principal Act, the following sections shall be substituted, namely:-

Penalty for the contravention of the provisions of the Act, etc.

"14. Whoever –

- (a) contravenes such of the provisions of this Act, or of any order made thereunder or any direction given in pursuance of this Act or such order, for contravention of which no specific punishment is provided under this Act; or
- (b) remains in India or in any area therein with or without a valid passport, exceeding the period for which the visa or other travel document or permit issued to him for such purpose is valid;
- (c) does any act in violation of the conditions of the visa or other travel document or permit issued to him for his entry and stay in India or any part therein; shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine, and if he has entered into bond in pursuance of clause (f) of sub-section (2) of sections 3, his bond shall be forfeited, and any person bound thereby

shall pay the penalty therefore or show cause to the satisfaction of the Immigration Court why such penalty should not be paid by him.

Penalty for entry in restricted areas, etc.

14A. Whoever –

- (a) enters into any area in India, which is restricted for his entry under any order made under this Act, or any direction given in pursuance thereof, without obtaining a requisite permit from the authority, notified by the Central Government in the Official Gazette, for this purpose, or remains in such area beyond the period specified in such permit for his stay; or
- (b) enters into or stays in any area in India without the valid documents required for such entry or for such stay, as the case may be, under the provisions of any order made under this Act or any direction given in pursuance thereof;

shall be punished with imprisonment for a term which shall not be less than two years, but may extend to eight years and shall also be liable to fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty therein, or show cause to the satisfaction of the Immigration Court why such penalty should not be paid by him.

Penalty for abetment.

14B. Whoever abets any offence punishable under section 14 or section 14A shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the offence.

Explanation.- For the purposes of this section.-

- (i) an act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or in pursuance of a conspiracy, or with the aid which constitutes the offence;
- (ii) the expression “abetment” shall have the same meaning as assigned to it under section 107 of the India Penal Code.”

Insertion of new section 15A

6. After section 15 of the principal Act, the following section shall be inserted, namely:-

Deportation to be without prejudice to any other action.

“15A. Any Deportation Order or Removal Order made under this Act shall be without prejudice to any other action which has been or which may be taken under this Act with respect to such contravention.”

Insertion of new section 16A

7. After section 16 of the principal Act, the following sections shall be inserted:

Power to make rules

16A.(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,-

- (a) the powers and duties of officers and employees appointed for the purposes of this Act and the terms and conditions of their service;
- (b) the manner in which enquiry required to be held under this Act may be held.”
- (c) any other matter which is required to be, or may be, prescribed.

Orders and rules to be laid before Parliament.

“16B. Every order and every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the order or the rule or both Houses agree that the order or the rule should not be made, the order or the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under the order or the rule.”

Repeal and transfer of Proceedings

8. (1) The Immigrants (Expulsion from Assam) Act 1950 and the Illegal Migrants (Determination by Tribunals) Act, 1983 are hereby repealed.

(2) On the repeal of the Illegal Migrants (Determination by Tribunals) Act, 1983 the Tribunals constituted under sub-section (1) of section 5 and the Appellate Tribunals constituted under sub-section (1) of section 15 of that Act shall stand dissolved and ,-

(a) all references pending before the Tribunals shall stand transferred to the respective Immigration Officers within the territorial limits of whose jurisdiction such Tribunals are situate;

(b) all appeals pending before the Appellate Tribunals shall stand transferred to the respective Immigration Tribunals within whose territorial jurisdiction such Appellate Tribunals are situate,

(c) the Appellate Tribunals and the Tribunals shall as soon as may be after such transfer forward the records of such proceedings or appeal pending before them to the concerned Immigration Officer or the Immigration Tribunal as the case may be.

(3) Any reference or appeal transferred under this section shall be dealt with by the Immigration Officer or the Immigration Tribunal as the case may be, in accordance with the provisions of the principal Act as amended by this Act.

Transfer of other cases

9. (1) With effect from the commencement of this Act all proceedings relating to offences committed under the principal Act pending before any court shall stand transferred to the Immigration Court within whose jurisdiction such court is situate.

(2) The court shall as soon as may be after such transfer forward the records of such proceedings pending before it to the Immigration Court.

ANNEXURE-II

QUESTIONNAIRE

The Ministry of Home Affairs addressed the following questions to the State Governments and Union territory Administrations.

(1) Whether the proposed amendment to section 14 which, inter alia, provides for higher punishment for serious offences consequently making them triable by the court of session and rendering the grant of bail more difficult, is sufficient? If not, suggestions with regard to the amendment of the said section may be spelt out.

(ii) Whether other provisions of the Act also need amendment to make it more purposeful and effective to deal with the problem of infiltration?

(iii) What has been your experience in the implementation of the Foreigners Act and what difficulties have you come across in this process?

(iv) Whether the proposed amendment would necessitate strengthening of Passports Act/Citizenship Act?

(v) Do you have any other suggestions to make?

ANNEXURE-III

Response of the States and Union territory
Administrations to the questionnaire in the tabulated form:

TABLE

S.No.	Responses	States	Union Territories
1 (a)	Amendment Bill sufficient	Goa, Haryana, West Bengal,	Chandigarh, Lakshdweep
(b)	Desirable	Madhya Pradesh, Orissa, Punjab Rajasthan, Tamil Nadu, Uttar Pradesh, Delhi	
2 (a)	Further amendment to other provisions of the Act necessary	Haryana, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh, Delhi	

(b)	No further amendment	Goa, Punjab	Chandigarh
3 (a)	Difficulties in implementing provisions of Foreigners Act felt	Goa, Haryana, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Delhi	
(b)	No difficulties	Punjab	Chandigarh, Lakshdweep
4 (a)	Strengthening of Passports Act needed	Goa, Haryana, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh, Tamil Nadu, West Bengal, Delhi	Chandigarh, Lakshdweep

- (b) Strengthening of Citizenship Act needed
Goa, Haryana, Madhya Pradesh, Orissa, Punjab, West Bengal, Delhi Chandigarh, Lakshdweep
- 5 (a) Special courts for trial of offences favoured
Haryana
- (b) Stringent bail provisions
Goa, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh, Tamil Nadu, West Bengal, Delhi

References

1. 18 million people crossed the artificially created border between India and Pakistan during 1946-47. See Savita Varde - Naqavi, "Uprooted and unwelcome", The Hindu (6th June, 1999).
2. See "Note on illegal migration from Bangladesh", Ministry of Home Affairs (Foreigners Division).
3. See "Influx and security" (the editorial) The Hindustan Times (19 December, 1998).
4. According to the 'Assam Accord', those Bangladeshi's who infiltrated between 1st January, 1966 to 25th March, 1971 were not to be deported rather given Indian citizenship after a lapse of 10 years.
5. See 'Status Report' submitted by the Union of India in All India Lawyers' Forum v. Union of India (W.P. No.125 of 1998).
6. See supra note 5.
7. See supra note 1.
8. Ibid.
9. See supra note 2.

10. See Report on "Illegal Migration into Assam" by Governor of Assam (1998). As per Report, the immigrants are, now, exclusively Muslim.
11. See supra note 5. The growth rate of electorate has reached a new high in the areas inhabited by migrants. The Statistics released by Election Department of West Bengal has shown a very high percentage of increase in the border districts of West Bengal. See, "Bengal sees more claimants for inclusion in voters' list : illegal immigrants may be cause", The Hindustan Times (4 June, 1999); Also "List revision rakes up infiltration issue", The Indian Express (3 June 1999).
12. The Chief Minister of West Bengal has observed that infiltration has put the economy of the State under strain. It has been specifically been reported in the case of Assam by the Governor about the serious economic consequences of the "perceptible change in the demographic pattern of the state."
13. See V.N. Gadgil "Internal Security at Danger Level", The Hindustan Times (25 October 1998).
14. AASU and AGP agitated and raised the issue of foreigners during 1980-85 in Assam.
15. See supra notes 10 and 12.

16. See supra note 12.
17. All India Lawyers' Forum v. Union of India (W.P. No.125 of 1998).
18. See supra note 12 at 31-32
19. e.g. Chhanga Khan v. the State of U.P., AIR 1956 All 69; Ms. Bashiran v. The State of Rajasthan, AIR 1957 Raj 348; Mohd. Hussain v. The State of Assam, AIR 1960 Assam 209.
20. AIR 1963 SC 1035.
21. AIR 1961 SC 1467.
22. AIR 1959 Bom.525.
23. AIR 1963 A.P.441.
24. AIR 1960 Bombay 27.
25. AIR 1996 Madras 322.
26. AIR 1960 Ker.177.
27. AIR 1962 All.383.
28. AIR 1966 Cal.552.
29. Id. at 558.
30. Supra note 25.
31. AIR 1996 HP 27.