

Executive Summary

India – Bangladesh enclaves: Age-old sufferings and absence of citizenry rights

After 68 years of independence, prime ministers of India and Bangladesh signed the “Land Boundary Agreement”. On 7th May 2015, the parliament of India made 119th constitutional amendment to pave the way for citizenry rights of the erstwhile enclave dwellers. On 31st July 2015, the 119th Amendment of Indian Constitution has been legalized. The standing committee of Indian Parliament made specific observations and recommendations of rehabilitations and compensation to solve the age old sufferings of enclave dwellers.¹ After 31st July 2015, it was aspired that the painful scenario would be changed and the enclave dwellers would get citizenry of the countries of their wish. But more than year has passed of the signing of the treaty; the situation is going even worse.²

Background

1. Enclaves were situated in two neighbouring countries; each another. 51 Bangladeshi enclaves are situated in India and 111 Indian enclaves are situated in Bangladesh (As per government record). From August 1947, Independence of India and Pakistan, the enclave dwellers could not cross the enclave as they were treated as foreigner. After signing of the treaty, those 51 Bangladeshi enclaves (precisely the lands) are being included in Indian Territory and the land of 111 Indian Enclaves are included in Bangladesh. So by the signing of the treaty, land was transferred between the two countries.³
2. After 31st July 2015, governments of two countries organized one joint survey at erstwhile enclaves situated at two neighboring countries. On that survey the people from enclaves were asked about their choices for citizenship. Before 2015, on 2011 a similar joint head counting was done at enclaves in both sides. Government officials who were responsible of survey on 2015 just copied the list which was made on 2011. Obviously many names were absent and also curtailed their legitimate right to enlist their names in 2015 joint headcount.⁴ Till date government did not publish the list at any public domain.

¹ https://en.wikipedia.org/wiki/India%E2%80%93Bangladesh_enclaves

² <http://indianexpress.com/article/india/india-news-india/india-bangladesh-land-agreement-enclave-dwellers-one-year-in-india-2959104/>

³ <http://mea.gov.in/press-releases.htm?dtl/25565/Exchange+of+enclaves+between+India+and+Bangladesh>

⁴ <http://hcidhaka.gov.in/pdf/PR-I.pdf>

3. The people from Bangladeshi enclaves inside India confirmed their wish to stay in India in future and also a large section of erstwhile enclave dwellers of Indian enclaves situated in Bangladesh shown their aspiration to settle at India. On first week of November 2015, 938 people from Bangladesh came to India by the government of India and they were settled at 3 temporary rehabilitation camp situated at Dinhata, Mekhliganj and Haldibari in the district Cooch Behar. But apart from this many erstwhile enclave dwellers from different erstwhile Indian enclaves situated in Bangladesh opined to settle in India and made requisite application to the Indian High Commission at Bangladesh and District Magistrate of Cooch Behar. Their only fault was that, they failed to make their application during stipulated time due to various reasons.
4. During this political settlement and signing of accord, the Indian Government stated that people who will come to India as per their choice will get permanent rehabilitation and being duly compensated but these people came on first week of November 2015 and still living at dilapidated rehabilitation camps without basic amenities and total mismanagement. ⁵
5. The scenario of the enclave dwellers at erstwhile Bangladeshi enclaves is different. Before the treaty, the dwellers possessed their land but after the treaty those lands become in government's possession. As per governmental commitment they would have to distribute the land after checking the related documents of possession. Till date, no such process to provide their title of land has been initiated by the government. ⁶

India and Bangladesh has a long drawn international border, the major portion of this international border is with Indian state of West Bengal. The border in actual term is not a natural one.

India- Bangladesh border- persistent violence and marginalisation

- 1) The livelihood option is shrinking in both sides of the border as overwhelming majority of the populace are agrarian and agriculture is no more a better financial proposition, driving the populace for better options in cities and metropolises, the transition of human being is not less than

⁵ http://www.business-standard.com/article/news-ians/gung-ho-over-first-vote-bengal-s-enclave-dwellers-also-cry-out-for-facilities-116050300738_1.html

⁶ <http://www.migrationpolicy.org/article/india-and-bangladesh-swap-territory-citizens-landmark-enclave-exchange>

forced migration and it is a reality for the populace of both the sides of the border.⁷ The day to day lives of the people are with fear and deprivation with minimum guarantee for livelihood. In Indian part of the border majority of the people are living in penury without or minimum administrative or governmental deliverance.⁸ The poor irrigation facilities, continuous river erosion and other repeated calamities in various part of this border which is unattended by the civil and state authorities put the populace in distress. This entire context has further aggravated by the poor administrative inputs for betterment of the lives of the people.

- 2) The problem related with demarcation of border is one of the major issue to reckon with, and people has to cross over the fence or border out post to reach their agrarian fields for harvesting and cultivation, in few cases even they have to cross the fences and posts to attend nature's calls.⁹ While during this they have to mortgage their citizenship identities to posted personnel of BSF. The administration or BSF are deciding the timings for entry and exit from their own land. The whole bordering roads is generally propagated as the property of the bordering guards; the guards restricting movements of bonafide citizenry, making obscene remarks to womenfolk and school going girls and nevertheless suspicious about the whole gentry as smugglers or subversives. The government is whimsically promulgating the section 144 of Criminal Procedure Code continuously throughout the border for last five decades. This administrative act is infringing the constitutional guarantee of free movement of the citizen of India.¹⁰
- 3) The presence of Border Security Force is another context of Indo Bangladesh border; the socio-lingual and cultural character of the BSF are totally different from the citizen living along the border. The positioning and stationing of the BSF in close proximity of the civil inhabitation are creating difficulties to civil life. Moreover in few places they have been stationed few kilometres inside the actual border. The contextual part of the economic reality of unfeeling by the government machinery aggravated with stationing of unsympathetic force within the close proximity of civil

⁷ <http://www.firstpost.com/politics/migration-a-humanitarian-issue-highly-politicised-in-west-bengal-2729700.html>

⁸ <http://indiatoday.intoday.in/story/india-bangladesh-borders-narendra-modi-sheikh-hasina-land-boundary-no-mans-land/1/444635.html>

⁹ <http://www.merg.ac.in/PP36.pdf>

¹⁰ http://www.idsa.in/system/files/book/book_IndiasBorderManagement.pdf

inhabitation create many social and other forms of malice. Although, a miniscule section of the populace are indulged with illegal and illegitimate acts of smuggling and other activities; BSF makes it a point to justify their regular subjugation and inhumane torture. The evident forms of human rights violations are extra judicial killings and intense physical torture but the hidden issues of their arrogant acts and behaviour only can match foreign invaders in nature.¹¹ In an attempt to improve border security and halt the tide of illegal trade that sometimes includes narcotics and weapons, the Indian government beefed up the BSF presence along the Bangladeshi border. Their methods have been universally violent and disproportional to the threat they face; anybody caught outside after dark in the border area is liable to be shot on sight. Over the past decade, over 1000 Indian and Bangladeshi citizens have been killed in the border areas by the BSF.¹² BSF personnel have no respect for basic human rights.¹³ They routinely make a mockery out of the right to life, the right to free movement and the right to due process. The BSF has apparently allotted itself the role of judge and executioner when it comes to dealing with legal or illegal movements of the bordering populace, regularly expressing the belief that they have the right to kill criminals at the border. Along the Bangladeshi border, the BSF is tasked primarily with combating smuggling and preventing illegal migration from Bangladesh.¹⁴ Instead of upholding their responsibility to protect Indian citizens, the BSF is operating a campaign of systematic killing and torture against smugglers and innocent people alike, turning the border into one of the world's most dangerous¹⁵

4) The arrogant band of regimented force is not accountable to civil society, in various purposes not even to civil administration and judiciary, though enjoying the ultimate impunity regardless to their involvements with illegal activities.¹⁶¹⁷ To run their illegal acts they connived with local police, custom and excise and these administrative bodies in return shut their eyes in cases of BSF atrocities. The continuance of killings and physical intimidation has crossed every limit of illegalities and most shocking

¹¹ <https://www.hrw.org/report/2010/12/09/trigger-happy/excessive-use-force-indian-troops-bangladesh-border>

¹² <https://www.theguardian.com/commentisfree/libertycentral/2011/jan/23/india-bangladesh-border-shoot-to-kill-policy>

¹³ https://www.youtube.com/watch?v=Y5DcwKO8p_4

¹⁴ <http://indiatoday.intoday.in/story/bsf-turns-blind-eye-to-porous-india-bangladesh-border/1/656692.html>

¹⁵ <https://www.youtube.com/watch?v=wiBFpm0byEw>

¹⁶ <http://www.thedailystar.net/country/felani-killing-justice-denied-border-killings-continue-198391>

¹⁷ <http://bdnews24.com/bangladesh/2015/08/31/felani-murder-india-s-national-human-rights-commission-recommends-compensation>

experience is that the lower judiciary, human rights institutions and other stakeholders are keeping either intentional mum over the issue or acting on behalf of the BSF.

- 5) The civil society is keeping their mum over the issue for similar reasons. The reality is that the BSF cannot be tried in civilian courts of law in normal circumstances and not accountable to human rights institutions and district administration provided them free hand for utter subjugation and torture among the people living along the border. Gathering evidences of their misdeeds are a difficult task as no one is willing to confront gun totting regimented law enforcing agency with a licence to kill.

Human Rights Institutions- limitations and flaws

Local-level oversight failures to address human rights abuses is the exact reason why the National and State level Human Rights Commissions were established by the Protection of Human Rights Act in 1993.¹⁸ These bodies are often cited by the Indian government as evidence that effective oversight mechanisms are in place. However, there are some severe limiting factors in the NHRC and SHRC structure which cast doubt on that claim: primarily, the HRCs have no powers to investigate any actions done by armed forces and paramilitary organizations including the BSF. Furthermore, the NHRC has been plagued since its inception with a staff that is too small to effectively deal with the volume of cases it receives. It is filled with former police and officers from Home Department who have not been properly sensitized to human rights issues and maintain close ties with the agencies they are responsible for regulating. Ineffective, partisan judges are intentionally appointed to the Commission's panel to prevent the NHRC from becoming a strong body.

Out of the 1233 complaints MASUM has filed, the NHRC has independently investigated only in two cases.

RECOMMENDATIONS TO GOVERNMENT OF INDIA

1. The Government of India must provide proper rehabilitation and due compensations to all enclave dwellers came from Bangladesh in accordance to the Standing Committee recommendation.
2. GOI must urgently provide land titles to the erstwhile Bangladeshi enclave dwellers of their own lands now settled in India.
3. All erstwhile enclave dwellers must be provided with citizenry identities and rights.

¹⁸ http://nhrc.nic.in/documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf

4. Repeal Armed Forces (Special Powers) Act, 1958; Unlawful Activities (Prevention) Act, 1967; National Investigative Agency Act, 2008 and sections 46 (2) & 197 of Code of Criminal Procedure 1973.
5. Ratify United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by passing necessary domestic legislation.
6. Sign and ratify Rome Statute of International Criminal Court, 2000 and implement subsequent legislation.
7. Repeal Article 22(4) of Constitution of India and abolish the act of arbitrary detention.
8. Strictly adhere to declaration on law enforcement officials and Basic Principles on the Use of Fire and fire arms of UN and NHRC guidelines on death in police action and necessary changes in criminal jurisprudence. The BSF must adhere to the principle of proportionality and lethal force may only be used as a very last resort in extreme circumstances.
9. In 2011, Government of India passed an order prohibiting the use of lethal weapons in the West Bengal and Bangladesh border.¹⁹ However, this order is not abided by the BSF officials in bordering areas, which must be rectified immediately.
10. Trials /investigations/ medical examinations/ post-mortem examinations in all custodial violence including death, fake encounters and torture in custody must be done by a special forensic agency under supervision of a judicial court/ commission in a fair manner. ²⁰
11. The Government of India must take adequate initiative to halt immediately without exception the incidents of torture, custodial death due to torture, custodial rape and extra judicial killings by the BSF ²¹
12. The GOI must undertake various sensitization and training programs for all the Government officials working in the border areas including the judiciary, police and BSF.
13. The GOI must direct all the Superintendent of Police of bordering districts with Bangladesh to take action/follow up complaints that have been filed by the victims in the light of the recent ruling of the Supreme Court on mandatory registering of FIRs in all complaints that make out a cognizable offence. (Lalita Kumari case) ²²

¹⁹ <http://economictimes.indiatimes.com/news/politics-and-nation/non-lethal-weapons-to-continue-at-indo-bangla-border-bsf-dg/articleshow/39540403.cms>

²⁰ <https://www.ammado.com/nonprofit/108433/articles/54604>

²¹ <http://www.redress.org/international-jurisdictions/submission-to-un-special-rapporteur-on-torture-on-west-bengal-india>

²² <http://supremecourtindia.nic.in/outtoday/wr68.pdf>

14. The NHRC must direct the authorities to register criminal cases in matters of BSF atrocities. Moreover, the compensation to be paid to the victims should be paid by the perpetrators.
15. Article 7 and Article 12 of the International Covenant on Civil and Political Rights (ICCPR) should be complied as India is a signatory to this particular convention and the government is morally and legally obliged to abide by them. These two articles deal with prohibition of torture and movements along the border respectively.
16. The law enforcement personnel who breach the NHRC guidelines on custodial death should not be promoted or awarded. Moreover, when a custodial death occurs in a particular area, the police officials of that area should not be allowed to investigate the case, the case should be directly handed over to any independent agency.^{23 24}
17. Utter poverty and the lack of livelihood options have forced people to resort to smuggling to feed their families. The Indian government must seriously address smuggling; it must address underdevelopment and create new livelihood options in bordering area.
18. BSF killings affect more than the deceased: they often take away the primary earner in the family. Efforts must be made to identify and support families who often fall into utter destitution.
19. The majority of local residents is Muslim, and believes this is the reason for government apathy towards them. A serious government inquiry into mass structural discrimination should be undertaken.
20. The BSF must stop interfering with the livelihood of border residents immediately. Inhibiting their right to free movement with outposts that are located too deep into Indian territory and are overly restrictive violates Article 19 of the Constitution of India and dramatically worsens many families economic situation. The BSF must respect the order passed by the MHA absolutely prohibiting the BSF from interfering with the livelihood of farmers and small businessmen in the border areas.
21. The BSF is a key element of the smuggling trade, and that a number of cases of torture and killing were related to BSF arguments with smugglers over illegal commissions. The BSF must make a serious and stringent effort to halt corruption among its ranks to diminish atrocities and inhibit smuggling.²⁵

²³ <http://nhrc.nic.in/Documents/sec-1.pdf>

²⁴ <http://nhrc.nic.in/documents/Death%20During%20the%20course%20of%20Police%20Action.pdf>

²⁵ <https://www.change.org/p/cattle-smuggling-from-west-bengal-to-bangladesh-across-indo-bangla-border-is-taking-new-routes-and-stop-cattle-smuggling-from-west-bengal-to-bangladesh-across-indo-bangla-border>

22. There are number of incidents of torture upon minors, smugglers and innocents alike. This is completely abhorrent and unacceptable. The BSF cannot treat minors as adults and any abuse against children regardless of the reason must be punished severely.
23. The BSF are responsible for the abysmal safety and security of women in the border areas. The chance of encountering a BSF jawan alone is a source of constant fear for women in the area. BSF personnel at outpost checkpoints constantly sexually harass women in the name of "security." Fear of the BSF is a partial reason for the extremely high rates of child marriages in the border areas. The daily atrocities against women cease immediately and be punished harshly.
24. The BSF plays a large role in the human trafficking trade. BSF connivance with human traffickers must be rooted out and harshly punished. ²⁶
25. Police inaction is rampant in bordering areas, as they are hand in glove with the BSF, allowing the BSF to hide their abuses in the police bureaucracy. Measures must be taken to break this unholy nexus. Nearly 100 reports filed before Murshidabad Judicial Magistrates, the police have failed to submit even one report. All cases of BSF or police abuses must be thoroughly investigated and properly documented.
26. Over 700 complaints before the NHRC in eight years have resulted in interim compensation of five lakh rupees to only 17 victims. But not in a single case has the NHRC recommended prosecution of the perpetrators. The NHRC must direct the authorities to register criminal cases in matters of BSF atrocities. It should direct that prosecution be initiated on behalf of the victims. Moreover, the compensation to be paid to the victims should be paid by the perpetrators.
27. The National Human Rights Commission and other about 175 human rights institutions in India are not following Paris Declaration 1993. The HRIs must involve the CSOs and work independently. Further, attacks on HRDs must be taken adequate and prompt care.
28. Human Rights Defenders at bordering areas are under constant threat. Steps must be taken at all levels of government to adequately protect and support human

²⁶ http://www.academia.edu/6737332/Study_on_Cross-border_trafficking_in_India_and_Bangladesh_for_Groupe_Developpement_2004-05