

**COMMITTEE
ON
GOVERNMENT ASSURANCES
(2005-2006)**

FOURTEENTH LOK SABHA

NINTH REPORT

[AMENDMENT OF FOREIGN CONTRIBUTION
(REGULATION) ACT, 1976, AMENDMENT OF PROTECTION
OF HUMAN RIGHTS ACT, 1993 AND ACTIVITIES OF
PAKISTANI AND BANGLADESHI NATIONALS]

(Presented to Lok Sabha on)



**LOK SABHA SECRETARIAT
NEW DELHI**

January, 2006 / 1927 (Saka)

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COMPOSITION OF THE COMMITTEE ON GOVERNMENT ASSURANCES*
(2005-2006)

Shri Harin Pathak - CHAIRMAN

MEMBERS

2. Shri Rashid J.M.Aaron
3. Shri Yogi Aditya Nath
4. Shri Anandrao Vithoba Adsul
5. Shri Ajit Singh
6. Shri Jigajinagi Ramesh Chandappa
7. Shri Biren Singh Engti
8. Shri Mohan Jena
9. Shri Sunil Khan
10. Shri Rasheed Masood
11. Shri Kailash Meghwal
12. Shri A. Venkatesh Naik
13. Shri M. Shivanna
14. Shri Aruna Kumar Vundavalli
15. Shri Kailash Nath Singh Yadav

SECRETARIAT

- | | | | |
|----|---------------------|---|-----------------|
| 1. | Shri John Joseph | - | Secretary |
| 2. | Shri P. Sreedharan | - | Joint Secretary |
| 3. | Shri T.K. Mukherjee | - | Director |
| 4. | Shri K. Jena | - | Under Secretary |

-
- The Committee was constituted on 7 August 2005 vide Para No.1484 of Lok Sabha Bulletin Part-II dated 5 August 2005.

INTRODUCTION

I, the Chairman of the Committee on Government Assurances, having been authorized by the Committee to submit the Report on their behalf, present this Ninth Report of the Committee on Government Assurances.

2. The Committee (2005-2006) was constituted on 7 August 2005.

3. The Committee (2004-2005) at their sitting held on 06 July 2005 took oral evidence of the representatives of the Ministry of Home Affairs in connection with the assurances given in reply to various SQs and USQs regarding Amendment of the Foreign Contribution (Regulation) Act, 1976, Amendment of Protection of Human Rights Act, 1993 and Activities of Pakistani and Bangladesh Nationals.

4. At their sitting held on 31 January 2006, the Committee (2005-2006) considered and adopted their Ninth Report. The Minutes of the sitting of the Committee form part of this Report. (Appendix)

5. For facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the Report.

6. The Committee wish to express their thanks to the officials of the Ministry of Home Affairs for their co-operation. The Committee also accord appreciation to the Secretariat staff/officers for the services rendered by them to the Committee in the finalisation of this report.

NEW DELHI;

31 January 2006

11 Magha 1927 (Saka)

HARIN PATHAK
CHAIRMAN

COMMITTEE ON GOVERNMENT ASSURANCES

REPORT

CHAPTER-I

AMENDMENT OF FOREIGN CONTRIBUTION (REGULATION) ACT, 1976

I. Introductory

1.1 The Foreign Contribution (Regulation) Act, 1976 is an Act to regulate the acceptance and utilization of foreign contributions/donations or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organizations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic. It is basically an act to ensure that the integrity of Indian institutions and persons is maintained and that they are not unduly influenced by foreign donations to the prejudice of India's interests. The Act extends to the whole of India, and it also applies to-(i) citizens of India outside India and (ii) associations, branches or subsidiaries, outside India of companies or bodies corporate, registered or incorporated in India.

II. Government Assurances for Amendment of Foreign Contribution (Regulation) Act, 1976.

1.2 On 28 August 1987, Shri Braja Mohan Mohanty, MP addressed the following USQ No. 5295 for answer by the Minister of Home Affairs:-

- (a) whether several Indian organizations had received contribution of more than Rs.500 crore from abroad last year;**
- (b) if so, whether some of the organizations are linked with political parties and communal organizations of the country;**
- (c) whether the Foreign Contribution (Regulation) Act is not adequate to follow up the utilization of funds from foreign countries; and**
- (d) if so, the reaction of Government thereto?**

1.3 The then Minister of State in the Ministry of Home Affairs (Shri P. Chidambaram) gave the following reply:-

- (a): Total amount of foreign contribution reported to have been received by different organizations during 1984 is Rs.253 crore. The figures for the year 1985 is under computerisation. The estimated figure for 1986 is approximately Rs.400 crore.**
- (b) Organisations known to have links with political parties have been notified as organizations of a political nature not being a political party under Section 5(1) of the FC (R) Act. Those organizations which are known to have links with communal organizations, are not granted registration under the Act, and hence they cannot accept foreign contribution without obtaining prior permission from the Central Government.**
- (c) & (d):The present Act does not provide punishment for misutilisation. The amendment of the Act is under consideration.**

1.4 On 18 November 1987, S/Shri Lakshman Mallick, R.M. Bhoje, Sri Hari Rao and Narsing Suryavansi, MPs addressed the following USQ No. 1703 for answer by the Minister of Home Affairs:-

- (a) whether there is any proposal under consideration of Government for an action plan to fight communalism envisaging steps (i) to curb the growing influence of fundamentalist and religious forces, (ii) to evolve a conduct for political parties, (iii) to regulate foreign contributions and (iv) to devise more effective preventive measures; and**
- (b) if so, the details thereof?**

1.5 The then Minister of State in the Ministry of Home Affairs (Shri P. Chidambaram) gave the following reply:-

- (a) & (b): No new action plan to curb communalism in the country has yet been finalised. Some amendments to the Foreign Contribution (Regulation) Act are under consideration.**

1.6 On 11 May 1988, S/Shri Ajoy Biswas and Zainal Abedin, MPs addressed the following USQ No. 1042 for answer by the Minister of Home Affairs:-

- (a) whether there has been a deluge of foreign funds in the country in the name of voluntary organizations since 1983 inspite of the provision of the Foreign Contribution (Regulation) Act, 1976:**
- (b) if so, the reasons therefor;**
- (c) whether there are any lacuna in the said Act; and**
- (d) if so, whether the Act is proposed to be amended?**

1.7 The then Minister of State in the Ministry of Personnel, Public Grievances and Pensions and Minister of State in the Ministry of Home Affairs (Shri P. Chidambaram) gave the following reply:-

(a) and (b): There has been increasing trend in the receipt of foreign contribution during certain years since 1983 as reported by the Associations covered under the Foreign Contribution (Regulation) Act, 1976 which was enacted to 'regulate' *inter alia* acceptance and utilization of foreign contribution. The upward trend is due to the increase in the number of reporting associations.

(c) and (d): The Foreign Contribution (Regulation) Act, 1976 has been thoroughly reviewed and its amendment is being considered.

1.8 On 11 May 1988, Shri V. Sobhanadreeswara Rao, MP addressed the following USQ No. 1043 for answer by the Minister of Home Affairs:-

- (a) the number of voluntary organisations receiving funds from abroad in Andhra Pradesh;**
- (b) the purpose for which such organizations are receiving funds from abroad; and**
- (c) the amount of funds received by these organizations during the last three years and its break up organisation-wise?**

1.9 The then Minister of State in the Ministry of Personnel, Public Grievances and Pensions and Minister of State in the Ministry of Home Affairs (Shri P. Chidambaram) gave the following reply: -

- (a) 1264 Organisations have been registered upto 31.12.1987 in Andhra Pradesh to receive foreign contribution under the Foreign contribution (Regulation) Act, 1976;**

- (b) Government have identified 23 broad categories of purposes for which most of the foreign contributions are received by the various organizations. A copy of list of categories is given in the statement below:**
- (c) A large number of organizations in Andhra Pradesh are reporting receipt of foreign contribution. In view of the voluminous nature of this information, it is not feasible to furnish the details. If information regarding any particular organization is required, the same can be furnished.**

1.10 On 3 April 1989, Prof. Ramkrishna More, MP addressed the following USQ No. 4540 for answer by the Minister of Home Affairs:-

- (a) whether Government are contemplating to amend the Foreign Contribution (Regulations) Act, 1976;**
- (b) if so, the salient features of the amendments proposed;**
- (c) whether Government also propose to liberalise the procedure regarding receipt of foreign contributions by voluntary trusts/associations engaged in supplementing Government's 20-Point Programme for the welfare of the poor people; and**
- (d) if so, the details thereof and when a final decision is likely to be taken?**

1.11 The then Minister of State in the Ministry of Personnel, Public Grievances and Pensions and the Minister of State in the Ministry of Home Affairs (Shri P. Chidambaram) gave the following reply:-

- (a) to (d): Yes, Sir. The proposal for amendment of the Foreign Contribution (Regulation) Act, 1976 is under consideration and a Bill for the purpose will be brought before the Parliament as soon as necessary formalities are completed.**

1.12 On 24 July 1989, Shri M.V. Chandrasekhara Murthy, MP addressed the following USQ No. 987 for answer by the Minister of Home Affairs:-

- (a) whether Government have undertaken a review of the Foreign Contribution (Regulation) Act, 1976 recently; if so, the details thereof;**

- (b) whether Government have held discussions or it is proposed to hold discussions with representatives of voluntary associations/organizations engaged in the welfare of poor people and other development activities with the help of foreign contributions received by them from abroad under the said Act to seek their views;**
- (c) if so, a brief resume of the discussions held and the outcome thereof; and**
- (d) whether any new guidelines have been/are being issued under the said Act; and if so, the details thereof?**

1.13 The then Minister of State in the Ministry Personnel, Public Grievances and Pensions and Minister of State in the Ministry of Home Affairs (Shri P. Chidambaram) gave the following reply:-

- (a) Yes, Sir.
The details are being worked out, which will be disclosed at the time of the introduction of the Bill.**
- (b) No, Sir.**
- (c) Question does not arise.**
- (d) No, Sir. However, the rules under the Act will be reviewed as and when the Act is amended.**

1.14 On 7 August 1989, Shri T. Basheer, MP addressed the following SQ No. 289 for answer by the Minister of Home Affairs:-

- (a) whether the inflow of foreign contribution into the country has increased during the last few years; and**
- (b) the amount of such money received during the last three years; year-wise?**

1.15 The then Minister of Home Affairs (Shri Buta Singh) gave the following reply:-

- (a) 'Yes Sir'.**
- (b) Date relating to the receipt of foreign contribution during the last three years as reported by the associations is as follows:-**

Year	<u>Amount of Foreign Contribution Received in (crores)</u>
1985	317.51
1986	438.27

**1987
1988**

**516.10
under compilation.**

1.16 During the course of Supplementary Shri T. Basheer, MP asked the following Question:-

"Is it a fact that the present statute in this regard is inadequate to check and monitor the receipt and utilization of funds by various organisations. If so, does Govt. propose to bring a new law regarding this for facing such a situation."

1.17 The then Minister of Home Affairs (Shri Buta Singh) stated that

"the present statute is inadequate in some respects but a draft amendment Bill has been prepared. I hope that it should be possible to introduce it in this session. But I am afraid, it will not be possible to introduce it in this Session. I hope that the Govt. will be able to finalise the amendment Bill and bring it up before Parliament."

1.18 On 29 July 1993, Shri Shravan Kumar Patel, MP addressed the following USQ No.882 for answer by the Minister of Home Affairs:-

- (a) whether the Government propose to amend the Foreign Contribution (Regulation) Act, 1976 to make it more stringent and effective;**
- (b) if so, the details thereof; and**
- (c) the time by which a legislation is likely to be introduced in the Parliament?**

1.19 The then Minister of State in the Ministry of Home Affairs (Shri Rajesh Pilot) gave the following reply:-

(a): Yes, Sir.

(b) and (c): The proposals are being finalised and the amendment bill would be introduced in Parliament as early as possible.

1.20 On 3 March 1994, Shri Chitta Basu, MP addressed the following USQ No.1456 for answer by the Minister of Home Affairs:-

(a) whether the Government propose to amend the Foreign Contribution (Regulation) Act, 1976 to make it more effective and stringent; and

(b) if so, the details thereof?

1.21 The then Minister of State in the Ministry of Home Affairs (Shri Rajesh Pilot) gave the following reply:-

(a): Yes, Sir.

(b): The proposals are being finalised and the amendment bill would be introduced in Parliament as early as possible.

1.22 On 21 November 2000, Dr. Jaswant Singh Yadav, S/Shri Naresh Puglia, M.V. Chandrashekhara Murthy and Jai Prakash, MPs addressed the following USQ No.381 for answer by the Minister of Home Affairs:-

(a) whether the Government are aware of the fact that anti-national activities are being undertaken with the grant received by the Non-Government Organisations;

(b) if so, the details in this regard;

(c) the steps being taken by the Government to check such undesirable activities;

(d) whether the Union Government propose to enact a new legislation to regularize the use of foreign contributions by NGOs and other institutions in the country; and

(e) if so, the details thereof?

1.23 The then Minister of State in the Ministry of Home Affairs (Ch. Vidyasagar Rao) gave the following reply:-

(a) to (c): Reports about the misutilisation of foreign contribution by voluntary associations, whenever received, are enquired into and action taken against the concerned associations under the relevant provisions of Foreign Contribution (Regulation) Act, 1976. The action includes, prohibiting the association from accepting any foreign contribution, freezing of its bank accounts and prosecution in a court of law.

(d) & (e): The Government is currently engaged in an exercise to finalise the changes required in the law governing the receipt and utilization of foreign contribution by voluntary associations.

1.24 On 19 March 2002, S/Shri K. Yerrannaidu and Brahma Nand Mandal, MP addressed the following SQ No.223 for answer by the Minister of Home Affairs:-

- (a) whether the Government have carried out any survey regarding foreign funding to madarsas in border areas of the country as reported in the Hindustan Times dated February 24, 2002;**
- (b) if so, the facts in this regard and the outcome of survey;**
- (c) whether theses madarsas are financed by Karachi based trust which has not followed the legal procedures specified under the Foreign contribution Regulation Act;**
- (d) if so, the number of madarsas found illegally receiving foreign assistance, State-wise;**
- (e) the names of the countries providing assistance to these madarsas; and the steps taken by the Government in this regard ?**

1.25 The then Minister of State in the Ministry of Home Affairs (Shri Ch. Vidyasagar Rao) gave the following reply:-

- (a) to (f) A statement is laid on the Table of the House.**

STATEMENT REFERRED TO IN REPLY TO LOK SABHA STARRED QUESTION NO. 223 FOR 19TH MARCH 2002 REGARDING FOREIGN FUNDING TO MADARSAS

- (a) No. Sir.**
- (b) & (c) Do not arise.**
- (d) to (f) Experience shows that the foreign Contribution (Regulation) Act, 1976 [FCRA] in its present form, lacks adequate safeguards to check the receipt and utilization of foreign contribution by the recipient organizations.**

In order to strengthen the law regulating flow and utilization of foreign contribution, a proposal to enact a new legislation, replacing the existing FCRA, is receiving the Government's attention.

1.26 On 16 December 2003, Shri Khagen Das , MP addressed the following USQ No.2045 for answer by the Minister of Home Affairs:-

- (a) whether it is a fact that the Government propose to amend certain provisions of the Foreign Contribution Regulation Act (FCRA);**
- (b) if so, the details thereof; and**
- (c) the time by which it is likely to be amended?**

1.27 The then Minister of State in the Ministry of Home Affairs (Shri Swami Chinmayanand) gave the following reply:-

(a), (b) & (c): Government is considering certain changes in the law governing the receipt and utilization of foreign contribution by voluntary organizations to remove shortcomings noticed in the present law.

1.28 The Ministry of Home Affairs sought extension of time on several occasions for fulfillment of the aforesaid assurances as the Amendment in the Foreign Contribution (Regulation) Act, 1976 could not be made due to various reasons. There was inordinate delay in the fulfillment of the assurances. In order to know the reasons for such delay in the fulfillment of the assurances, the Committee took oral evidence of the representatives of the Ministry of Home Affairs on 6 July 2005.

1.29 The Committee desired to know the major shortcomings noticed in the Act. In reply the Ministry in a written note stated that following major shortcomings have been noticed in the Act :-

- (i) Centralized management of the Act at all India level is becoming increasingly difficult due to large number of organizations seeking registration/prior permission;
- (ii) There is no provision for regional offices;
- (iii) The present system of granting prior permission/registration is time consuming;
- (iv) Large amount of foreign funds received by organizations in the country remain unreported;

- (v) Banks are unable to prevent acceptance and utilization of foreign contributions in contravention of the provisions of the Act; and
- (vi) Administrative support is inadequate to cope with the task in hand.

1.30 The Committee then desired to know as to how these shortcomings would be overcome. In reply the Ministry in a written note stated that the Ministry considered various alternatives to increase the effectiveness in implementation of the law regulating the acceptance and utilisation of foreign contributions in the country. It was felt that decentralized administrative structure by setting up of five regional offices under the administrative control of Ministry of Home Affairs would bring effectiveness and efficiency in ensuring better management of the law.

1.31 On being asked about the measures that had been taken during the intervening period to achieve the primary objectives of the Act. The Ministry stated in a written note that the Ministry of Home Affairs (Foreigners Division) has over the years taken the following steps to ensure smoother and quicker clearances under the present Act and to achieve transparency in the functioning of FCRA wing-

- The FCRA Act and the Rules and different forms prescribed under the rules for applying for permission and for filing the annual return are now available on the website of the Ministry of Home Affairs for benefit of stakeholders.
- Following charters and materials have been placed in the web-site for information and guidance of all the stakeholders-
 - (i) Charter for associations applying for prior permission or registration under FCRA;
 - (ii) Charter for associations which have been granted prior permission or registration under FCRA;

- (iii) Charter for banks for complying with the provisions of FCRA;
- (iv) Charter for the Chartered Accountants for complying with the provisions of FCRA;
- (v) Grounds for rejection of the applications for grant of prior permission/registration under FCRA;
- (vi) Common grounds for rejection of applications;
- (vii) Illustrative activities permitted to be carried out by associations having different nature;
- (viii) List of multilateral agencies exempted from the provisions of the Act for facilitating the organizations to receive foreign contribution from these agencies without obtaining either registration or prior permission of the Central Govt; and
- (ix) Brief statistics about receipt and utilization of Foreign Contribution.

1.32 It was also stated that in order to further speed up the process of grant of registration or prior permission, a provision for a recommendation certificate from the concerned Collector of District or Ministry/Department of the Central Government or Department of the State Government has been made in the application forms. If application is received with this recommendation, the case is referred for post enquiry by security agencies after granting registration/prior permission. This has substantially reduced the time taken in granting the requisite permission in cases where this recommendation certificate accompanies an application.

1.33 On being asked whether the Foreign Contribution (Regulation) Act, 1976 has become outdated, the Ministry in a written reply stated that the Foreign contribution (Regulation) Act, 1976 has not become outdated. However, with large-scale increase in the number of

registered organisation under the Act, increased volume of inflow of foreign contributions and experience in handling the cases with existing laid down procedures for grant of registration, inspection, monitoring etc., certain lacunae and difficulties in the operation of the Act have come to Government's notice which can be attended to through a new legislation replacing the present Act.

1.34 The Committee desired to know about the reasons for delay in bringing the amendment in the Act. The Ministry stated in a written note that between 1988 and 2005, the proposal to amend the Foreign Contribution (Regulation) Act, 1976 / enactment of a new law was placed before the Cabinet on four occasions-in 1988, 1989, 2001 and 2005. In 1988, the Cabinet referred the proposal to the CoS. In 1989 and 2001, the Cabinet deferred the proposal and in June, 2005, the Cabinet has referred the proposal to the Group of Ministers for their consideration. As soon as the GoM recommends the draft Bill, approval of the Cabinet will be obtained for introduction of the Bill in the Parliament.

1.35 In this context during oral evidence the representative of the Ministry of Home Affairs stated: -

"You are absolutely right that they have been pending since 1987. This is an Act in which public is tremendously interested with the result that every time we have taken the amendments to this Act to the Cabinet, they have been returned to us. It has happened twice. It has been returned twice saying that no decisions have been taken as probably some interests of certain groups are not looked after by these amendments. So, they were returned. Again, after consulting those interested groups including having a seminar recently and seeking the views of all the chartered accountants and other voluntary organizations, these amendments have been made and have been placed before the Cabinet a few days ago. It was placed on the 23rd June. The Cabinet, after thoroughly deliberating the amendments, has decided to go into more details of scrutiny and has referred to the Group of Ministers to examine them. Now the Group of Ministers are going to examine these amendments. We will seek their guidance and we are hopeful to convince them. The next process, is that the recommendations of the Group of Ministers will go back to the Cabinet and then before the Parliament for approval. In one way, I am glad to announce that we have taken it to the final stage which we have done on our own. Now it is up to the Government to take a view at the highest level. I am sure that we will be able to come up with our final views before Parliament. I would be grateful if some more

time is given because circumstances are beyond our control as far as these amendments are concerned”.

1.36 When asked as to how the Government now propose to bring forth amendments to the Act, the representative of the Ministry stated:-

“Sir, the pending assurances are from 1987 onwards. The last amendment to the FCR Act was carried out in the year 1985. Since then Members of Parliament have been agitating on different issues. The whole act needs to be replaced by the new Act. Assurances were given in the House that a new Act will be enacted to replace this and to make it more practical. Accordingly, this matter was discussed in various inter-Ministerial Committees. It was discussed in the Estimates Committee. It was discussed in different forums and consultations were held with different stakeholders. After all these efforts, in November 2001, for the first time a consolidated Bill was prepared and that was placed before the cabinet. The cabinet deferred the Bill because it found that there were certain lacunae in the Bill. It was not able to meet the aspirations of different stakeholders. Further consultations were held with different Ministries, Planning Commission and other stakeholders. Again in March, 2005, this Bill was sent to the Cabinet Secretariat for approval of the Cabinet. Again the Cabinet Secretariat made an observation that we should also consult the Ministry of Overseas Indian Affairs. Accordingly they were consulted and in June 2005 we placed it before the Cabinet. On 23rd June, Cabinet has given the direction that this should be deliberated upon by the Group of Ministers. For your information I would like to submit that on 24th and 25th June a National Seminar was held. This Act came into force in August 1976, almost 29 years back. Since then this is the first time we had a National Seminar on the FCR Act. Almost all the stakeholders attended that. More than 200 NGOs and more than 200 Chartered Accountants representing different organizations came from different parts of the country. Then there were representatives from bankers, from donor organizations, from embassies, High commissioners and academicians. Surprisingly, that was a large turnout in the paid seminar. We had it in our website. It was organized in collaboration with the Institute of Chartered Accountants of India. So. With their website we got representations from academicians from universities and colleges. So, for two days we held detailed discussions in this seminar. After this various decisions were taken regarding the existing Act to make it more practical. Certain suggestions came which we moved to the Ministry of Law for seeking their opinion so that we can incorporate them in the new law. There was a request that we should place the Bill on the website. For your information I would like to submit that we have already placed the new Bill for the comments of different stakeholders, may be NGOs, may be donors, may be chartered Accountants or whosoever is engaged in the implementation of FCR Act. Earlier the focus was on regulation. Earlier we were insistent on regulation. Now, the focus has changed from regulation to management. I do not know finally what the name of the Bill would be. But the Bill which was presented to the Cabinet was FCMC Bill, that is Foreign Contribution management and Control Bill 2005. So, the focus is on management rather than on regulation. The earlier Act did not have some provisions regarding certain things. For example, if you find any organisation engaged in anti-national activities or such activities which are not conducive to our

national interest, then you could not suspend them or cancel their registration. The utmost punishment that was possible was that you could put them under prior permission. So, every time they have to receive foreign funds, they have to come to the Home Ministry for seeking the prior permission. For your information, I would like to submit that there are two kinds of modes. One is prior permission and the other is registration. Registration is an open-ended process wherein once you are granted registration, then you can receive foreign funds. The only obligation on the part of NGO is that at the end of the year, before 31st July, like we submit our income-tax returns similarly these NGOs will have to submit their FC3 returns. The second mode is prior permission where the NGO is new organisation which has not been there for more than three years or which has not spent certain sum, just to prove that they have got the capacity to utilize the funds for the causes or for the objectives for which they are working. So, for that they are granted prior permission under section 6 (1) (a). These two modes are there. In the new Bill we have provided for this. But at the same time if somebody commits an offence there is a provision for suspension, there is a provision for cancellation, there is a provision for, after an inquiry, for confiscating the assets which have been created through foreign contribution. Now, it is all centralized. In 1976 when this Act came into force we had hardly few hundred organizations. Now, the number has gone to over 30,000. Every year 2000 to 3,000 registrations are being granted. 500 or 600 prior permissions are being granted. So, this has become so voluminous and spreadover all over the country. So, it has become very difficult. There is a wing of the FCR which takes care of inquiry which goes into the field, inquires into the matter and takes action. They also scrutinize the returns. It is not possible to do this efficiently all over the country. So, the new Bill envisages decentralized administrative structure wherein we have five regional offices. It will be given powers for grant of registration, for grant of prior permission except in certain cases, like in cases where tribal areas are involved or cases which have been specifically mentioned by the Central Government through its order. But for certain restrictions, they will be granted all the powers for scrutiny for registration, for prior permission, for inquiry etc. this is another thing. So many other provisions of the earlier Act have become redundant. Under the existing Act, if I receive anything more than Rs. 8,000 from my own relative—the Indian Diaspora has grown to the size of 2.5 crore — it is an offence. He will have to seek the prior permission of the Home Ministry. It is such a big work. In the present Bill we have proposed that there should not be any limit because people can send money to their children or to their relatives. So, that limit should not be there.”

1.37 On being asked about the punishment in case of failure to seek necessary permission from the Ministry of Home Affairs, the representative of the Ministry stated:-

“The punishment can go up to five years of imprisonment and any amount of fine if you go to the court of law. But it is not being implemented. It is not practical.”

1.38 When asked to state whether Government was the only authority or anybody can go and complain and prosecute, the representative of the Ministry stated:-

"Sir, one can complain and a case will be lodged. FIR has to be there in that. There are various provisions which have become impractical over the years. All these things have been removed. So, the idea is to make it more transparent, more administratively feasible and more efficient and see that this Act is implemented with the proper spirit. Our national policy is not to seek foreign funds. But at the same time if the foreign funds are coming, that should be utilized for the purposes or for the objectives for which this fund has come. It should not be diverted for the personal purpose or for anything which is not in the national interest."

1.39 When asked to state as to how it is ensured that the funds received from abroad are properly utilized particularly in the absence of provision of punishment for misutilisation, the Ministry in a written note stated that every association registered under the Act or granted prior permission to receive foreign contribution is to file an annual return in FC-3 form, duly certified by a chartered accountant, with the Ministry. The return contains information about the amount of foreign contribution received during the year and the manner of its utilisation. The return is to be filed within four months of the close of the financial year. Even a 'nil' return is mandatory. Monitoring of the foreign contribution received by an association is done by the Ministry through scrutiny of the annual FC-3 Returns, balance sheets, Income & Expenditure Accounts, Receipt & Payment Accounts and Schedule of Assets created out of foreign contribution etc. submitted by the associations, duly certified by the Chartered Accountant. If the scrutiny of the annual return reveals any violation of FCRA by the association, an inspection of the accounts of the association is carried out by officers of MHA and, based on the inspection report, if any violation comes to the notice, punitive action is taken against the association by placing that in prohibited/prior permission category or freezing its bank accounts. In more serious violations, where funds are found to be misutilised for personal gain, the matter is referred to CBI for further investigation and legal action.

1.40 When asked about the checks and balances derived to curb misutilisation the Ministry in a written note stated that the Foreign Contribution (Regulation) Act, 1976 contains a

number of provisions under which, the Central Government can initiate action against an association which is receiving foreign contribution and is found indulging in activities that are likely to affect prejudicially. In view of the above, various provisions exist in the Foreign Contribution (Regulation) Act, 1976 for conducting enquiries/investigations against NGOs suspected of diversion of funds. As regards providing leads on the sources of fund flow from abroad, R&AW is consulted in all the cases where prior permission is sought by the associations for receiving foreign contribution amounting to more than Rs. one crore or if the merit of the case so deserves. However, some of other stringent measures like suspension/cancellation of association's registration/prior permission, action against Banks for non compliance of provisions under the Act etc. are not available in the present Act.

1.41 In this context during evidence the representative of the Ministry stated as follows:-

"Definitely, Sir. For misutilization of funds, there is a provision for confiscation of assets. We can suspend the organization for six months. Sometimes, the complaint may not be right. If after an inquiry we find out that it is a false complaint, then there is a provision for cancellation. It can be outright cancellation. The penalties have also been increased. So, there are various deterrents for the checks and balances for them. As regards organization-on the positive side-if somebody is working in Chennai, he will not have to come all the way to Delhi to pursue these things. This is due to the decentralization of administrative structure. We have provided for the database. A countrywide database should be there. That will make things much more simplified and transparent for the organization. In fact, we shared these aspects of the Bill with the NGOs and the Chartered Accountants during the Seminar. They were extremely happy that one of the major irritants under the existing Act was that they are allowed to carry out all their transactions in only a bank account. An organization based in Delhi, which has got centres in other parts of the country, has to work in one account. Now, under the existing legislation, one can receive in one bank account but where utilization is concerned, one can have as many accounts one requires. With the current day banking where so much innovation has come in banking system, we can track where the funds are being utilized. At the end of the year, we have to have a Chartered Accountant's complete audited account placed before us in the FC-3 Returns.

1.42 The Committee desired to know whether in the proposed Bill the above points have been incorporated in the new Bill the representative of the Ministry replied in affirmative.

OBSERVATIONS/RECOMMENDATIONS

1.43 The Committee note that the Lok Sabha was assured way back in the year 1987 in reply to USQ No. 5295 dated 28 August 1987 that amendments to the Foreign Contribution (Regulation) Act, 1976 (FCRA) were under consideration of the Government. The assurance was reiterated a number of times thereafter.

1.44 The Committee note that subsequent to the assurance initially made in Lok Sabha, between 1988 and 2005 the proposal to amend the FCRA enactment of a new law was placed before the Cabinet on four occasions in 1988, 1989, 2001 and 2005. In 1988 the Cabinet referred the proposal to the Committee of Secretaries, in 1989 and 2001 the Cabinet deferred the proposal and in June, 2005 the Cabinet referred the proposal to the Group of Ministers for consideration. Thus, the assurance still remains unfulfilled.

1.45 The Committee's examination of the subject has revealed that the FCRA is suffering from several shortcomings. These included difficulties in the centralized management of the Act at the all-India level due to the increase in the number of organizations seeking registration/prior permission, absence of provision for setting up of regional offices, the time-consuming system of grant of permission/registration, large amount of funds received by organizations in the country remaining unreported, inability of the banks to prevent acceptance and utilization of foreign contribution which are in contravention of FCRA, lack of adequate administrative support, etc. Evidently, these difficulties in the implementation of the Act warranted urgent and effective remedial action. Unfortunately, the Ministry's approach in the matter was not only half-hearted but also casual. From the chronology of events reported, the Committee note

that the proposals for incorporating amendments to FCRA shuttled between various wings of the Government till 1996 without getting a concrete shape. In the year 1997, it was observed by the Ministry that the aspect relating to utilisation/misutilisation of funds required a further review. Again, the proposals went through various organs of the Government without obtaining any conclusive result. Thus, the shortcomings/inadequacies in FCRA remained unremedied over a very long period. All these clearly show the lack of seriousness on the part of the Ministry in dealing with an issue of such seriousness having socio-economic repercussions in the whole country. The Committee cannot but express their unhappiness over the same.

1.46 During examination, the Committee were informed that the Ministry had taken some steps to ensure smoother and quicker clearances under the Act and to achieve transparency in the functioning of FCRA. According to the Ministry, these included placing the provisions of FCRA rules, prescribed forms, etc. for information and guidance of all the stake holders on the website of the Ministry, prescribing provision in the application form for a recommendation certificate from the collector of the District or Ministry/Department of the Central Government/State Government concerned and making provisions facilitating immediate acceptance of foreign assistance for providing relief to the victims of disasters, etc. The Committee cannot remain satisfied with these steps. These steps, no doubt, will enable quicker disposal of registration formalities or grant of permission. But, they hardly provide any tangible help to the Ministry in checking receipt of unreported funds, in ensuring utilization of money received or in regulating the receipt of funds by the banks or in decentralizing the management

of the Act. In other words, the inadequacies/short-comings in the administration of the Act, particularly from the point of view of receipt and utilization of funds still remain uncorrected and unattended, which is a matter of serious concern to the Committee. The Committee are of the opinion that in view of the admitted large-scale increase in the number of organizations registered under the Act and the volume of inflow of foreign contributions, there is an imperative need for making the law in relation to receipt/acceptance and utilization of foreign contributions in the country more effective by appropriate amendments. They, therefore, strongly recommend that keeping in view the lacunae and difficulties in the operation of the FCRA, the proposed legislation be expedited and the assurance repeatedly given to the House during the last two decades should be fulfilled without any further loss of time.

CHAPTER-II

AMENDMENT OF PROTECTION OF HUMAN RIGHTS ACT, 1993

I. Introductory

2.1 The National Human Rights Commission (NHRC) was set up in October, 1993 under the Protection of Human Rights Act, 1993. The NHRC consists of a Chairperson, who has been a Chief Justice of Supreme Court, one member who is, or has been the Chief Justice of a High Court and two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. In addition, the Chairpersons of three other Commissions, viz. the National Commission for Scheduled Caste and Scheduled Tribes, the national Commission for Minorities and the National Commission for Women are deemed members. The functions of the commission include, inter-alia, inquiring into complaints of violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant and making suitable recommendations for initiation of proceedings for prosecution or such other action as the Commission may deem fit, reviewing the safeguards provided for under the Constitution or any law for the time being in force for the protection of human rights and studying treaties and other international instruments on human rights and making recommendations thereof, undertaking and promoting research in the field of human rights; spreading human rights literacy among various section of society; encouraging the efforts of non-governmental organizations and institutions working in the field of human rights and such other functions as it may consider necessary for the promotion of human rights.

II. Government Assurances for Amendment of Protection Human Rights Act, 1993.

2.2 On 25 July 2000, Shri Mohd. Shahabuddin, MP addressed the following USQ No. 307 for answer by the Minister of Home Affairs:-

- (a) whether the Government have received any recommendation from the National Human Rights Commission with regard to empowering the Commission to remove the hindrance being faced in dealing with the infringement of civil liberty;**
- (b) if so, the reaction of the Government thereto;**
- (c) whether all the States have set up Human Rights Commission in their States;**
- (d) if so, the details in this regard; and**
- (e) if not, the steps taken by the Government in this regard?**

2.3 The then Minister of State in the Ministry of Home Affairs (Ch. Vidyasagar Rao) gave the following reply:-

(a)&(b): National Human rights Commission has sent a proposal suggesting amendments in various sections of the Protection of Human Rights Act, 1993. The proposal received from the Commission is being examined.

(c),(d)&(e): As per available information, the State Governments of Assam, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Manipur, Punjab, Rajasthan, Tamil Nadu, West Bengal and Bihar have set up State Human Rights Commissions(SHRC) in their respective Status. State Governments of Maharashtra and Uttar Pradesh have also decided to set up a State Commission. The Union Government has been writing to the State Governments which have not yet set up State Commissions, from time to time, to expedite their decision.

2.4 On 25 July 2000, S/Shri M.V.V.S Murthi, Shivaji Mane, Ram Mohan Gadde and Jai Prakash, MPs addressed the following USQ No. 383 for answer by the Minister of Home Affairs:-

- (a) whether the National Human Rights Commission's proposal to amend the Human Rights Act, 1993 to make it more viable is pending before the Government;**
- (b) if so, the details and the reasons therefor;**
- (c) the details of the areas that need amendments in the NHRC Act; and**
- (d) the time by which it is likely to be amended?**

2.5 The then Minister of State in the Ministry of Home Affairs (Ch. Vidyasagar Rao) gave the following reply:-

(a) to (d): National Human Rights Commission has sent a proposal suggesting amendments in various sections of the Protection of Human Rights Act, 1993. The proposed amendments relate to structure and powers of the Commission, constitution of State Human Rights Commission, transfer of complaints/inquiries to State Commissions etc.

The proposal received from the Commission is being examined by the Government. As the proposal would require inter-action with various Ministries/Departments of the Central Government and State Governments, no specific time frame can be indicated.

2.6 On 19 December 2000, Shri G. M. Banatwalla, MP addressed the following USQ No.4577 for answer by the Minister of Home Affairs:-

- (a) whether the National Human Rights Commission has recommended that its jurisdiction be extended to abuse of human rights by the military and the para-military forces;**
- (b) if so, the details thereof; and**
- (c) the action taken by the Government thereon?**

2.7 The then Minister of State in the Ministry of Home Affairs (Ch. Vidyasagar Rao) gave the following:-

(a) to (c): The National Human Rights Commission has suggested an amendment in Section 2(1) (a) of the PHR Act, 1993, to enable the Commission to enquire into the complaints of human rights violations by the para-military forces. The proposal received from the Commission is under examination.

2.8 On 4 December 2001, Col. (Retd.) Sona Ram Choudhary, MP addressed the following USQ No.2309 for answer by the Minister of Home Affairs:-

- (a) whether attention of Government has been drawn to the news-item captioned "Home Ministry hampering NHRC work" appearing in the Times of India dated October 26, 2001;**
- (b) if so, facts of the matter reported therein;**
- (c) the reaction of the Government thereto;**

(d) whether the Government is not willing to grant independence to NHRC which the Paris Principle of 1991 deemed imperative for its effective governance; and

(e) if so, the reasons therefor?

2.9 The then Minister of State in the Ministry of Home Affairs (Ch. Vidyasagar Rao) gave the following reply:-

(a): Yes, Sir.

(b) to (e): It is not correct to say as stated in the news item that the Home Ministry is hampering the work of the NHRC. The Government does not interfere in the performance of the functions assigned to NHRC under the Protection of Human Rights Act, 1993. The NHRC enjoys independence and autonomy for carrying out the task assigned to it under the Act.

The NHRC has, however, sent a proposal suggesting a number of amendments in various sections of the Protection of Human Rights Act, 1993. This proposal is being examined by the Government.

2.10 On 4 March 2003, Shri V.S. Sivakumar, MP addressed the following USQ No. 2010 for answer by the Minister of Home Affairs:-

(a) whether Justice Ahmedi former Chief Justice of India has recommended amendments in the working of NHRC by modifying the Human Rights Act 1993;

(b) if so, the details thereof; and

(c) the action taken by the Government thereon?

2.11 The then Minister of State in the Ministry of Home Affairs and Ministry of State in the Ministry of Personnel, Public Grievances and Pensions (Shri Harin Pathak) gave the following reply:-

(a): Yes, Sir.

(b) & (c): Based on the recommendations of Justice A.M. Ahmedi Committee, the National Human Rights Commission has suggested certain amendments to the Protection of Human Rights Act, 1993. The Government has initiated action in the matter.

2.12 The Ministry of Home Affairs sought extension of time on several occasions for fulfillment of the aforesaid assurances as the Amendment in Protection of Human Rights Act, 1993 could not be made due to various reasons. There was inordinate delay in the fulfillment of the assurances. In order to know the reasons for such delay in the fulfillment of the assurances, the Committee took evidence of the representatives of the Ministry of Home Affairs on 6 July 2005.

2.13 The Committee desired to know about the factors being taken into account in the proposed amendment in various provisions of the Protection of Human Rights Act. In reply the Ministry stated in a written note that factors like the objectives of the Protection of Human Rights Act, 1993, the role and character of Human Rights Institutions provided for under the Act, etc. are being taken into account while considering the proposed amendments.

2.14 In this context during evidence the representative of the Ministry stated:-

“The assurance has been given in the year 2000 in respect of the reference received from the National Human Rights Commission suggesting that certain amendments should be made to the Protection of Human Rights Act. Now, the proposed amendments have far-reaching implications. The suggestions included the areas like grant of powers to the Human Rights Commission to inquire into allegation of excesses by the Armed Forces. It also suggested, for example, that the NHRC should be given overall power of superintendence over the other State Human Rights Commissions, and similar other provisions. Since the proposed amendments were of far-reaching consequences, the MHA had set up an Inter-Ministerial team to go into the proposed amendment and make recommendations. This Committee had made certain recommendations which were considered by the Ministry. It was felt at that time that we should give another attempt to the proposed amendments to see how more we could accept than what was already being proposed. That took a little more time. Therefore, we came to a stage where only last year we were able to formalize our proposals. This was referred to the Ministry of Law which has now prepared the Bill. The draft Bill is ready and a draft Cabinet Note has been prepared. We are now in a position to send the draft Cabinet Note for consideration of the Cabinet.”

2.15 The representative of the Ministry in this context further stated:-

“While deliberating on this issue, the wider objectives of the Act were kept in view, what were the objectives when it was introduced. The National Human Rights

Commission was given a recommendatory role as per the provisions of the Act. There was a consideration why it was felt that the Commission should not be given the powers to inquire into the allegations against the Armed Forces. Because of the wider international scenario where there were vested groups which wanted to malign our Forces and file false allegations and issues like that which affect our security considerations, it was felt that these were the kinds of issues which would have to be gone into in depth. The proposals, which came to us, really sought to change the character of the functioning of the National Human Rights Commission from a recommendatory body to a parallel superintending body over the functioning of a State Human Rights Commission all over the country and to have direct powers to intervene into the allegations and to make recommendation etc. They were wider nature of recommendations. So, the character was proposed to be changed. We have to keep in mind the objectives of the setting up of the Human Rights Commission.”

2.16 On being asked about the reasons for delay for bringing of the amendment the Ministry in a written note stated that the amendments suggested by the NHRC are sensitive in nature and seek to alter the scope and character of the functioning of the human rights institutions established under its provisions. An Inter-Ministerial committee was set up to consider these suggestions. The process involved careful consideration of the proposed changes while maintaining a balance between the role of the executive and that of the watchdog institutions in the context of the PHR Act.

2.17 When asked to state whether the delay in the amendment of Human Rights Act, 1993 has hampered the smooth functioning of the NHRC and how will the proposed amendments help NHRC in achieving its objective more efficiently. In reply the Ministry in a written note stated that the number of complaints registered by the National Human Rights Commission has increased from 69,083 in 2001-02 to 72,990 in 2003-04, which would show that the existing Act is not an impediment to the effective functioning of the Commission. The Government is yet to finalize its views on the proposed amendments and therefore it would be premature to offer comments on the effectiveness of the proposed amendments at this stage.

2.18 The Committee desired to know the time by which the Government expect to bring the desired amendments in the Protection of Human Rights Act, 1993. The Ministry in a written note stated that the amendment Bill will be introduced in Parliament, after approval of the Cabinet at the earliest.

OBSERVATIONS/RECOMMENDATIONS

2.19 The Committee note that the Lok Sabha was assured in the year 2000 in reply to an Unstarred Question No. 307 dated 25 July 2000 that the National Human Rights Commission (NHRC) has sent a proposal suggesting amendments in various sections of the Protection of Human Rights Act, 1993. The proposal received from the Commission is being examined. The assurance was reiterated a number of times thereafter.

2.20 During evidence, the Committee were informed that the amendments suggested by the NHRC are sensitive in nature and seek to alter the scope and character of the functioning of the Human Rights institutions established under the provisions of the Protection of Human Rights Act, 1993. Some of the suggestions like grant of powers to the Human Rights Commission to inquire into allegations of excesses by the Armed Forces, power of superintendence over the State Human Rights Commissions have far reaching implications. The proposals will change the character of the functioning of the NHRC from a recommendatory body to a parallel superintending body over the functioning of State Human Rights Commissions in the country. The process involved careful consideration of the proposed changes while maintaining a balance between the role of the Executive and that of the watch dog institution in the context of the PHR Act. The Committee were also informed that the draft Bill and a draft Cabinet Note have also been prepared for consideration of the Cabinet. The Committee urge the Government to accord utmost priority to the matter keeping in view the increased number of complaints of human rights violations received by the NHRC and also to fulfil the pending assurances.

CHAPTER-III

ACTIVITIES OF PAKISTANI AND BANGLADESHI NATIONALS

3.1 On 14 December 2004, Prof. Vijay Kumar Malhotra and Shri Kashiram Rana, MPs addressed the following SQ No. 181 for answer by the Minister of Home Affairs:-

- (a) **whether the Government is aware that a large number of infiltrators crossed at various points along Indian Borders during 2004;**
- (b) **if so, the details thereof, border-wise;**
- (c) **the number of illegal migrants from various countries living in various States handed over to BSF for their deportation;**
- (d) **the number of such migrants who have been accepted by various countries;**
- (e) **the number of Pakistani and Bangladeshi nationals arrested in Delhi during 2004 till date and the charges under which they have been arrested;**
- (f) **whether the Government propose to enact a fresh Act in place of IMDT;**
- (g) **if so, the details thereof; and**
- (h) **the steps taken by the Government to check the infiltration and to deport infiltrators from the country?**

3.2 The then Minister of State in the Ministry of Home Affairs (Shri S. Regupathy) gave the following reply:-

(a) to (h): A statement is laid on the Table of the House.

STATEMENT REFERRED TO IN PARTS (a) TO (h) OF THE LOK SABHA STARRED QUESTION NO.181 FOR ANSWER ON 14TH DECEMBER, 2004 BY PROF. VIJAY KUMAR MALHOTRA AND SHRI KASHIRAM RANA MEMBERS OF PARLIAMENT REGARDING ACITIVITIES OF PAKISTANI AND BANGLADESHI NATIONALS.

(a) & (b): Yes Sir. As this activity takes place clandestinely, no specific details are available about the magnitude of the illegal immigration to India.

(c) & (d): It has not been possible to estimate with any degree of accuracy the exact number of illegal migrants from various countries living in various States. As and when illegal Immigrants are detected, they are deported under the laid

down procedure. During 2004 (uptil June 30, 2004), 11285 foreigners were deported to their respective countries.

(e): 13 Pakistani and 127 Bangladeshi nationals have been arrested in Delhi in 2004 (uptil November 30, 2004). The Pakistani nationals have been arrested under Officials Secrets Act and under various sections of IPC. The Bangladeshi nationals have been arrested mainly for dacoity, robbery, burglary, murder and under NDPS Act, foreigner's Act and Arms Act.

(f): No, Sir.

(g): Does not arise.

(h): the following steps have been taken to check infiltration from across the border:

- (i) fencing and Flood-lighting along borders;
- (ii) round the clock surveillance of the border by patrolling, both day and night, operations and nakas/ambushes;
- (iii) conduct of special operation;
- (iv) plugging of reverine/creek gaps with improvised fence;
- (v) upgradation of intelligence network;
- (vi) use of night vision devices;
- (vii) establishment of floating BOPs, and
- (viii) modernization of Border Guarding Forces.

The powers available to Central Government under the Foreigners Act to identify, detect and deport illegal migrants/foreigners residing in various parts of the country have been delegated to the State Governments/UT Administrations. As regards the State of Assam, detection of illegal migrants is done under the provisions of Illegal Migrants (Determination by Tribunals) Act, 1983. The Central Government has also prescribed a special procedure for detection and deportation of illegal Bangladeshi.

3.3 During discussion Shri Vijay Kumar Malhotra, M.P. asked the following Supplementary

Question:-

"Whether the Government propose to prepare a National Register of Citizens?"

In reply the then Minister of Home Affairs (Shri Shivraj V. Patil) inter-alia stated that:-

"the proposal to prepare a National Register of Citizens and to issue Identity Cards is under consideration of the Government. For issuing Identity Cards some pilot projects are under consideration."

3.4 The above reply was treated as an assurance and was required to be fulfilled by the Ministry of Home Affairs within three months of the date of reply i.e. by 13 March 2005 but the Ministry could not fulfil the assurance. The Committee therefore decided to take oral evidence of the representative of the Ministry of Home Affairs on 6 July 2005.

3.5 The Committee desired to know the procedure laid down by the Government for detecting illegal migrants and also the number of such migrants detected and deported to their respective countries. In reply, the Ministry in a written note stated that powers have been entrusted under Section 3(2) (c) of the Foreigners Act, 1946 to the State Governments/UT Adms. for detection and deportation of all foreign nationals who are staying in India unauthorisedly. Besides, administrative instructions are also issued to them from time to time to launch special drives to detect and deport such foreign nationals staying illegally in the country.

3.6 A special procedure has been devised for deportation of illegally staying Bangladeshi nationals. According to the special procedure prescribed, the State Government sends the details of residential address etc. as claimed by the suspected persons to the concerned State Governments (where the said person claims to be an Indian) for verification and report within 30 days. During this period of 30 days the competent authority will ensure, by obtaining permission of the Court wherever necessary, the detention of such person to ensure physical availability at the time of deportation. If no report is received within this period, the competent authority may take necessary action to deport the suspected foreigner. Advance information about the movement of the deportees under police escort by one State to another State would be given by the state from which the deportees are being sent to the Home Secretary and Director General of State Police of the bordering State through which the deportation is to be effected. The deporting State will ascertain about the

residential address of the suspected person through the District Magistrates/District Collectors within 30 days period. The deportees from the States of Arunachal Pradesh, Nagaland and Tripura are sent to IG, BSF, Shillong and the IG, BSF, Tripura respectively. As regards the number of detected/deported illegal migrants, since this power has been delegated to the State Governments, the figures are not being centrally maintained. However, as per last compilation by Central foreigners Bureau, 38,005 illegal Bangladeshi migrants were deported during 2004.

3.7 The Committee were also informed that from 1999 to 2004; 14079, 6040, 7854, 5652, 18801 and 38005 Bangladesh nationals were deported. The numbers of Pakistani nationals deported during this period were 195, 108, 490, 67, 64 and 60 respectively.

3.8 On being asked about infiltration taking place clandestinely inspite of various measures taken by the Government, in a written reply the Ministry stated that with a view to checking infiltration and other illegal cross-border activities, the Government have taken a number of steps, which includes;

- (i) round the clock surveillance of the border by patrolling, both day and night, operations and nakas/ambushes;
- (ii) conduct of special operation;
- (iii) plugging of riverine/creek gaps with improvised fence;
- (iv) upgradation of intelligence net-work;
- (v) use of night vision devices;
- (vi) establishment of floating BOPs; and'
- (vii) modernization of BSF and other police force etc.

3.9 The Indo-Bangladesh border is 4096 kms long and is shared by the States of Assam, Tripura, Meghalaya, West Bengal and Mizoram. About 790 kms of border with Bangladesh is

in riverine area. The land border is also of porous in nature and characterized with thick vegetation in several parts. The fencing work all along the border is in progress and out of 3286 kms sanctioned, 1948 kms fence has been erected till 31st May, 2005. Besides 2770 kms out of 3663 kms border road has also been constructed. A pilot project of floodlighting in 277 kms stretch in West Bengal is under progress. The hurdles to speedy completion of the fencing work include;

- (a) resistance by Bangladesh Rifles to the construction of fencing within 150 yards from International border;
- (b) delay in land acquisition;
- (c) forest clearance;
- (d) limited working season due to heavy rain; and
- (e) difficult terrain.

3.10 The entire fencing project is expected to be completed by 2006. To ensure timely completion of the project, some Public Sector Undertaking viz. NBCC, NPCC, EPIL etc. have also been engaged in addition to the CPWD, BRO and State PWDs. The progress of these agencies is being monitored closely by way of review meetings etc. Once the fence, flood lighting and deployment of night-vision devices along the International border are completed, it is expected that the illegal infiltration from across the border would come down substantially.

3.11 Asked to State whether the Central Government monitors the action taken by the State Governments for deportation of illegal migrants, in a written reply the Ministry stated that powers for detection and deportation of all foreign nationals who are staying in India illegally have been delegated to the State Governments/UT Administration under Section 3(2) (c) of the Foreigners Act, 1946. Besides, State Governments and UT Administrations

are sensitized from time to time to launch special drives to detect and deport foreign nationals staying illegally in the country. Expenditure incurred by the States/UTs for this purpose is reimbursable by the Central Government. This indirectly serves as a monitoring system for the Central Government. Further, the figures of deportees are being compiled by Central Foreigners Bureau.

3.12 Asked to state about the progress the Government have made in the preparation of National register of citizens and issue of identity cards to the citizens of India, in a written reply, the Ministry stated that in order to create a system of individual identification of the citizens of the country, Government proposes to prepare a National Register of Indian citizens and issue Multipurpose National Identity Cards (MNICs) based on this register to the Indian citizens. The system not only envisages preparation of a National Register of Indian citizens and providing a unique National Identity Number to each citizen of the country but also calls for continuous updating of this register by linking to the system of registration of births and deaths under the Registration of Birth & Deaths Act, 1969 and also account for fresh registration of Indian citizens under other provisions of the Citizenship Act, 1955. The system further provides for complete computerization and linking of the Registers at the sub-district, district and the national level.

3.13 In this context during evidence the representative of the Ministry stated:-

"The objective is that every person, every citizen of this country within the age group of 15 years and above should be given a unique identity number and identify card. The process involved, the software involved, the administration involved were so elaborate that it was decided that we must do a pilot project to learn all the processes as to how this would be done. So, with that and in view the Government decided that the pilot project should be implemented. We have taken up the pilot project. As you have rightly observed, nearly 88 per cent of the work in the field has been completed except in one State, Assam. As the hon. Members know, there has been a problem in Assam. The AASU have been opposing the implementation of this Act because they are afraid that under the clauses of the amendments to the Citizenship Act, the MNIC Scheme is being implemented. They feel that these clauses would give rights to certain people to become Indian Citizen who were not being given this right under the

Assam Accord. So, this is a perceived fear in their minds. That is why they are opposing it. They are not allowing this process to be completed. As far as we are concerned, the RGI, who is the nodal officer for this project, had gone Assam many times and had discussions with the officers as well as the members of the AASU. Efforts are on to convince them that this would be a step in the right direction and would not be a step which would help any undeserving person to get Indian citizenship. So, that effort is on. Except Assam, everywhere else, the project is advancing. There were glitches in the implementation of it. That was the idea of doing the pilot project. It is to see where the problem comes. Originally, when we planned, we had given six weeks' time for doing a particular thing, but while implementing it, we have realized the problems posed before us. It has taken six months' time to do that job which we were hoping that we would finish it in six weeks' time. Now, Sir, we have reached a stage when all the backroom work has been completed nearly. I would like to say that about 88 per cent of the work have been completed. Right now there are some soft issues which are under discussion. We have to decide about the format of the identity cards, the card number per se, what type of card we should have, what type of shape it should have, what type of scenery it should have and things like that. That National Institute of Designs is going into all these things. They have brought about one or two designs and they had an interaction with the hon. Minister, and he made certain suggestions. Back and forth, some advice is being given and some proper design is being selected. As regards the technical aspects of the card, like what security features it should have, what type of biometrics it should have, what type of information it should have, what should be the size of the chip inside the card, all that has been decided. As soon as this design is finalised by us, bidding will be done. Various companies are likely to come and bid for giving these 30 lakh cards to these people. Then, I would say the pilot project is complete. Once the pilot project is complete in all its facets, then a view would be taken by the Government to implement it all over the country. They will consider this matter and take a view on this. We will know exactly how much money it would cost and how much benefit it would give. Then all the aspects will be put before the Government and Government's view would be sought. We have not reached that stage as yet. It is because of the fact that the pilot project is not complete. I would like to submit this much, Sir."

OBSERVATIONS/RECOMMENDATIONS

3.14 From the information made available to them in the context of the assurance given to Lok Sabha in reply to S.Q.No. 181 dated 14 December 2004, the Committee note with concern that no specific details are available about the magnitude of the illegal migration to India. Infiltration is taking place clandestinely inspite of various measures taken by the Government such as round the clock surveillance of the border by patrolling both day and night, operations and nakas/ambushes, use of night vision devices, fencing of the border, etc. The Committee also note that during the years from 1999 to 2004, 14079, 6040, 7854, 5652, 18801 and 38005 Bangladeshi infiltrators were deported. The Committee further note that the number of deportees increased from 5652 in the year 2002 to 38005 in the year 2004. While the Committee appreciate that more people have been deported, the facts also clearly indicate the increase in the illegal infiltration of Bangladeshi nationals taking place in the country. Undoubtedly, the matter needs immediate and more focused attention of the Government. The Committee, therefore, urge the Government to introduce more effective, stringent and concrete steps to stop infiltration to the country.

3.15 The Committee are happy to note that the Project on fencing of the Indo-Bangladesh border is expected to be completed by 2006 and to ensure timely completion of the Project some Public Sector Undertakings have also been engaged in addition to CPWD, BRP and State PWDs. The Committee also note that the main hurdles to speedy completion of the fencing work are resistance by Bangladesh Rifles, delay in land acquisition and forest clearance. The Committee desire that all efforts should be made to overcome these difficulties and complete

the fencing work by 2006. The Committee would like to be apprised of the latest position of the Project.

3.16 The Committee have been informed that in order to create a system of individual identification of the citizens of the country, Government proposes to prepare a National Register of Indian citizens and issue Multipurpose National Identity Cards (MNICs) based on this register to the citizens. The system not only envisages preparation of a National Register of Indian citizens and providing a unique National Identity Number to each citizen of the country but also calls for continuous updating of this register by linking it to the system of registration of births and deaths under the Registration of Birth & Deaths Act, 1969 and also account for fresh registration of Indian citizens under other provisions of the Citizenship Act, 1955. The system further envisages complete computerization and linking of the Registers at the sub-district, district and the national level. To begin with, the Government has, on an experimental basis, initiated implementation of the system as a Pilot Project in certain selected districts of 13 States and Union territories. The Committee are of the view that the issuance of MNICs will help in identifying Indian citizens and also to locate the illegal migrants. However, keeping in view the problems faced by the Government and the citizens in areas like provision of Permanent Account Number (PAN), voter identity cards, etc. the committee hope that the issue of MNICs may not meet with the same fate. The Committee, therefore, recommend that the experiences from those instances and the Pilot Project should be analysed carefully before implementing the proposed MNIC scheme in the entire country.

NEW DELHI;

31 January 2006

11 Magha 1927 (Saka)

HARIN PATHAK

CHAIRMAN

COMMITTEE ON GOVERNMENT ASSURANCES

MINUTES

TWELFTH SITTING

Minutes of the sitting of the Committee on Government Assurances held on July 6, 2005 in Committee Room 'C', Parliament House Annexe, New Delhi.

The Committee sat on Wednesday, July 6, 2005 from 1100 hours to 1200 hours.

PRESENT

CHAIRMAN

Shri Harin Pathak

Members

2. Shri Anandrao Vithoba Adsul
3. Shri J.M. Aaroon Rashid
4. Shri Biren Singh Engti
5. Shri Ramesh Jigajinagi
6. Shri Sunil Khan
7. Shri Kailash Meghwal
8. Shri A. Venkatesh Naik
9. Shri Ajit Singh
10. Shri V. Aruna Kumar
11. Shri Kailash Nath Singh Yadav
12. Shri Mohan Jena

Secretariat

- | | | | |
|----|--------------------|---|-----------------|
| 1. | Shri P. Sreedharan | - | Joint Secretary |
| 2. | Shri A.K. Singh | - | Director |
| 3. | Shri K. Jena | - | Under Secretary |

Ministry of Home Affairs

1. Shri K.P. Singh, Special Secretary
2. Shri P. V. Bhide, AS (CS)

3. Shri A.K. Jain, JS (HR)
4. Shri H.S. Brahma, JS (BM)
5. Shri D.S. Mishra, JS (F)
6. Shri S.K. Chattopadhyay, JS (C&PG)

2. At the outset the Chairman welcomed the members as well as the witnesses to the sitting of the Committee. Thereafter the Committee took oral evidence of the representatives of the Ministry of Home Affairs regarding the pending assurances relating to Amendment of Foreign Contribution (Regulation) Act, 1976, Amendment of Human Rights Act, 1993 & Activities of Pakistani and Bangladeshi nationals.

4. The evidence was completed.
5. A verbatim record of the sitting has been kept.

The Committee then adjourned.

MINUTES
SIXTH SITTING

Minutes of the sitting of the Committee on Government Assurances (2005-2006) held on 31 January 2006 in Committee Room No. '62', Parliament House, New Delhi.

The Committee sat on Tuesday 31 January 2006 from 1100 hours to 1200 hours.

PRESENT

Shri Harin Pathak - **Chairman**

Members

2. Shri Anandrao Vithoba Adsul
3. Shri Biren Singh Engti
4. Shri Sunil Khan
5. Shri Kailash Meghwal
6. Shri M. Shivanna
7. Shri Kailash Nath Singh Yadav

Secretariat

- | | | | |
|----|---------------------|---|-----------------|
| 1. | Shri P. Sreedharan | - | Joint Secretary |
| 2. | Shri T.K. Mukherjee | - | Director |
| 3. | Shri K. Jena | - | Under Secretary |

1. At the outset, the Chairman welcomed the Members and wished them a happy and prosperous new year 2006 and also apprised about the agenda of the sitting. Thereafter, the Committee took up the Draft Ninth Report regarding Amendment of Foreign Contribution (Regulation) Act, 1976, Amendment of Protection of Human Rights Act, 1993 and Activities of Pakistani and Bangladeshi Nationals for consideration. After some discussion the

Committee adopted the same and authorized the Chairman to present the same to the House.

2. The Committee then considered the following fifteen memoranda:-

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XXXXXXXX

XXXXXXXX

XXXXXXXX

The Committee then adjourned.

