

Letter dated 4-1-2021 addressed to NHRC on violation of human rights of detainees under the the Foreigners (Tribunals For Assam) Order, 2006.

E A S Sarma
4-40-4/1 Gokhale Road
Maharanipeta
Visakhapatnam 530002
Mobile: 91-9866021646
Email: eassarma@gmail.com

To

Secretary
National Human Rights Commission (NHRC)
N.Delhi

Sir,

I refer to the distressing news report (<https://indianexpress.com/article/north-east-india/assam/assam-nrc-detention-centre-7128303/>) on how four members of a rickshaw puller's family in Assam, unable to secure ready legal assistance, suffered gross violation of their basic human rights, when they were erroneously called "foreigners" in Assam under the Foreigners Tribunal Act, 1941, Foreigners Tribunal Order, 1964 and the Foreigners (Tribunals For Assam) Order, 2006.

I have also enclosed here a copy of the news report for your ready reference. The faces of the two children in the picture should shake the nation's conscience.

This is the case of Mohammad Nur Hussain, 34, a rickshaw puller in Guwahati who hails from Lawdong village in Assam's Udalguri district, his wife Sahera Begum, 26, and their two minor children (Ages 7 & 5 years). In June, 2019, on a false charge that they were "foreigners", under the Foreigners (Tribunals For Assam) Order, 2006, Hussain's family was sent to a detention centre in Goalpara district in Assam.

According to the news report, while the names of Hussain's grandparents feature in the [National Register of Citizens \(NRC\)](#) of 1951, his father's name, along with that of his grandparents, was in the 1965 voters' list. Begum's father too had appeared in NRC 1951 and the voter list of 1966, and the family has land documents dating back to 1958-59, all prior to the cut-off date to identify an Indian citizen in Assam, that is, March 24, 1971.

The police started subjecting them to harassment in the name of interrogation of a "foreigner". On detention in June, 2019, since there was no one to look after their children, they were forced to take them to the detention centre. They could not argue their case as they did not understand the implications of the so-called Foreigners Act nor could they get access to the necessary legal help, as they could not afford it. As a result, the family had to remain in detention till the end of 2020. In other words, for no fault of theirs, they had to undergo illegal detention for one and a half years. Their children had no access to education and were subject to the trauma of spending their formative years in incarceration.

As a concerned citizen, I feel that this case typifies the kind of gross human rights violations that innocent citizens are being subjected to in the guise of enforcement of the Foreigners Act. In this case, not only there has been a violation of the fundamental rights of all the four members of the family but also a specific violation of the rights of the two minor children.

No doubt the legal proceedings culminated thankfully in the family getting declared as "Indians" but who will compensate them for the loss of their freedoms, violation of their right to life (Article 21) and the trauma undergone by the two minor children?

Should the State's investigating officers be exonerated in this case as it is their unwillingness to elicit documents from the family that led them into taking such a draconian measure? Should not "jail" be an exception rather than a rule in such cases?

Should the burden of proving that they are not foreigners rest on them or on the State?

This instance perhaps represents only the tip of the widespread violation of human rights across the State. An independent investigation will alone reveal the magnitude and the nature of such violations.

I appeal to the NHRC to intervene in getting this specific case investigated thoroughly so that the questions posed above may get satisfactory answers and Hussain's family gets duly compensated.

Also, it is equally desirable that NHRC orders an independent investigation into similar cases of illegal detention in Assam, orders the release of all illegally detained families and ensures that they are duly compensated.

It is also perhaps time to revisit the Foreigners Act, amend the regressive provisions under which innocent citizens are detained and introduce more benign, humanitarian safeguards.

In my view, the kind of illegal detention of innocent citizens, as it has happened in the case of Mohammad Nur Hussain, owes its genesis to the frenzy unleashed by some unethical senior political leaders in their anxiety to get electoral mileage. Those political leaders too need to be brought to book urgently, as otherwise their irresponsible statements will further trigger more such detentions, that tear apart the secular fabric of the society.

Regards,

Yours sincerely,

E A S Sarma
Former Secretary to GOI
Visakhapatnam
4-1-2021

Letter dated 16-1-2021 addressed to NHRC on violation of human rights of detainees under the the Foreigners (Tribunals For Assam) Order, 2006.

E A S Sarma
4-40-4/1 Gokhale Road
Maharanipeta
Visakhapatnam 530002
Mobile: 91-9866021646
Email: eassarma@gmail.com

To

Secretary
National Human Rights Commission (NHRC)
N.Delhi

Sir,

Kindly refer to my attached letter dated 4-1-2021 on arbitrary detention of Mohammad Nur Hussain, 34, a rickshaw puller in Guwahati who hails from Lawdong village in Assam's Udalguri district, his wife Sahera Begum, 26, and their two minor children (Ages 7 & 5 years). In June, 2019, on a false charge that they were "foreigners", under the Foreigners (Tribunals For Assam) Order, 2006, Hussain's family was sent to a detention centre in Goalpara district in Assam.

According to the news report, the names of Hussain's grandparents feature in the [National Register of Citizens \(NRC\)](#) of 1951, his father's name, along with that of his grandparents, was in the 1965 voters' list. Begum's father too had appeared in NRC 1951 and the voter list of 1966, and the family has land documents dating back to 1958-59, all prior to the cut-off date to identify an Indian citizen in Assam, that is, March 24, 1971.

Apparently on a frivolous complaint, the police subjected them to harassment in the name of interrogation of a "foreigner". They detained the family in June, 2019. Since there was no one to look after their children, they were forced to take the children to the detention centre.

They could not argue their case as they did not understand the implications of the so-called Foreigners Act nor could they get access to affordable legal help. As a result, the family had to remain in detention till the end of 2020. In other words, for no fault of theirs, they had to undergo illegal detention for one and a half years. Their children had no access to education and were subject to the trauma of spending their formative years in incarceration.

This was a clear case of arbitrary detention violating the human rights of the family. It is also a case of gross violation of the rights of the two young children who too were subject to detention at a time when they ought to be free, attending a school and enjoying parental care. While the legal system did come to their rescue, the Assam government ought to acknowledge the arbitrariness of the detentions and compensate the family appropriately. Till date, there is no evidence of this. Those responsible for subjecting the family to harassment and trauma ought to be brought to book but there has been no action in that direction. Those who made such a frivolous complaint should also not be allowed to go scott free.

Against this background, in the letter dated 4-1-2021, I had appealed to NHRC to cause an independent investigation to determine the extent of violation of the human rights of each member of the family of Mohammad Nur Hussain, also order a more wide ranging investigation to ascertain as to how many such arbitrary detentions have taken place so far and how many innocent families are languishing in detention centres for want of legal help.

In this connection, I wish to bring to your attention an article (<https://scroll.in/article/983130/the-nrc-in-assam-doesnt-just-violate-human-rights-it-also-breaks-international-law>) which has highlighted the extensive nature of human rights violations taking place in Assam in the name of enforcement of the Foreigners (Tribunals For Assam) Order, 2006 and the rules and notifications relating to citizenship. In particular, the article highlights the manner in which the burden of proving one's citizenship has unduly fallen on the citizens, how cases are initiated on complaints by third parties, often complaints of a frivolous nature and how innocent citizens

unable to get adequate legal assistance are forced into detention camps in a highly arbitrary manner. The following portion of the article highlights the nature of the human rights violations:

“Binding international norms like the International Covenant on Civil and Political Rights prohibit arbitrary detention as a matter of right. Detention must have a legitimate purpose and be proportional in each case. Proportionality under international law and Indian Supreme Court’s judgements requires that detention must have a connection with its purpose and must be necessary. It follows from this that detention must be the measure of last resort and individual cases must be regularly reviewed”

The case of the arbitrary detention of Mohammad Nur Hussain and his family is not a solitary one. It represents thousands of such arbitrary detentions across the State, which call for an immediate intervention by the NHRC. Those arbitrarily detained need to be set free and all such arbitrary actions need to be stopped in the future. The burden for proving one's citizenship needs to be borne by the State, not the innocent citizens who have been residents of the country for a long time. Especially in the case of children in detention camps, they need to be shifted to residential educational institutions urgently to put an end to their trauma and give them an opportunity to grow with a sense of dignity and self-confidence.

May I once again appeal to the NHRC to intervene at the earliest?

Yours sincerely,

E A S Sarma

Former Secretary to Govt of India

Visakhapatnam

16-1-2021