

DEMOCRACY **Under Detention** **Horrors of**



FROM ASSAM

After the publication of Final NRC on 31 August 2019 United Against Hate Fact Finding Team visited Assam from 5th September to 8th September, 2019 to make an on the spot assessment of developments post NRC publication. During the visit to the state the Fact Finding Team met several people who have been directly impacted with NRC, lawyers, members of civil society and other stakeholders to make their assessment.

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Introduction

India is not just a nation but an idea - an idea where many differences coexist as a diversity not as division, where its people not geography that define its border. The first line of the Indian constitution - "We, the People of India"- encapsulates the spirit and history of India. Waves of people and culture came here and became part of the journey called India.

Today this idea of India is under siege. The National Register of Citizens or NRC for the first time in the Indian history is questioning "We the people". Linguistic and religious diversities are being looked at from the narrow prism of nationalism and national interest.

This mindset is dehumanizing a whole mass of humanity thereby raising a very basic question where this democracy is heading to. A nation is known not known for its wealth but its values and civilizational assets.

We are staring at an unprecedented humanitarian crisis in Assam with more than 19 lakh people (1.9 million) being declared stateless citizens, hundreds of hapless people are living in subhuman conditions in the six detention centres and thousands are existing with the stigma of D voters or Doubtful voters, who are denied their basic democratic rights.

Not only that Assam government is building seven new detention centres in different parts of the state to house its own people who have been declared stateless. The irony is that some of the workers employed in building the detention centre if Goalpara district of Assam are not in the final list of the NRC and they might end up being the first guests in the detention centre.

As the world's biggest democracy and torchbearer of democracy in the developing countries is India aping Myanmar? The Southeast Asian nation persecuted Rohingya community and drove at least one million people out of the country. Today they are living as stateless citizens in Bangladesh's Cox Bazar area in a very pathetic condition without any hope for the future.

Almost the same future awaits to thousands of people in Assam who have been declared stateless. A civil society that builds detention centres to house hapless poor people can certainly be not a role model for other nations and neighbours.

The myth of Bangladeshi immigrants settling in Assam has long been in the making. For generations Bengali speaking population - mostly Muslims - have lived with the stigma of a foreigner. They have always been seen with suspicion because they speak a different language and dress differently. The chauvinism reflected in the violent Assam Movement of 1980s that claimed many lives in its six years of existence.

Bengali speaking Hindu or Muslims define their identity linguistically. However, with the advent of the Bhartiya Janata Party government in Delhi and Assam there is a systematic attempt to polarize the linguistic group in the name of religion. By floating the idea of Citizenship Amendment Bill, whereby Hindus from Bangladesh, Afghanistan and Pakistan would be given the status of citizenship, Narendra Modi government has created a new faultlines in the Assamese society. The faultline is already visible with Muslims feeling left out and on their own in the battle to register their citizenship. Tension is palpable on the faces of those Muslims who have been left out from the final list of the NRC but no such anxiety is discernible among Hindus because they feel that the government will bail them out.

A society riven with so many fault lines cannot live in peace. Discontentment brews radicalism and chaos in the society. Systematic and political marginalization of one religious and linguistic group lead to turmoil in the society.

If we don't forsake the mindset that directs the NRC then we are heading towards unchartered territory where only chaos and unrest rule.

Foreigners Tribunal (FT) was set up with a specific purpose of locating foreign nationals and give them chance to prove their credentials. But the FT is acting like a political agent of the ruling party executing a specific task of declaring as many Bengali speaking people, mostly Muslims, foreigners as possible. In this political project a section of the judiciary and bureaucracy is also acting as hand in glove. More than 57% of people who have been declared foreigners have been declared in absentia. Some have all the papers still they are not considered.

Nazi Germany sold the idea of development and benefit of muscular nationalism to the people of Deutschland. Germany still lives with the guilt of trusting Hitler and his words. History therefore has a lesson for India.

India is known for its democracy, its liberal values and secular spirit. It aspires to be a leader and international player, it wants its voice to be heard in the larger world.

Rising economy and strong defence force are not the only selling point, the world respects this South Asian republic for its moral values, it's liberal philosophy and diversity.

A governing party cannot hijack the conscience of the nation and make people prisoner of its own paranoia. The humanitarian crisis in Assam is manufactured and it has torn apart the moral fabric of the nation. The pain is visible among the civil society of Assam which said that Assam is not xenophobic community. Nevertheless, the civil society needs to assert itself and should not become an agent provocateur for the government's narrative.

What is happening in Assam today diminishes India as a democratic and secular nation. Unprecedented humanitarian crisis that India has created in the form of stateless citizens lowers the country's international stature and standing. Question marks are being raised about the role different wings of democracy played in creating this crisis. There is however a hope that judiciary will intervene and hold the country from going into a precipice.

India cannot be India without its idea.

Making Sense of NRC: Background and its Journey

National Register of Citizenship or NRC is a byproduct of the Assam agitation that started in late 1970s.

The agitation started in 1979 with the specific aim of weeding out outsiders or illegal infiltrators from the state of Assam. However, the narrative changed gradually and instead of outsiders demand was raised to expel foreigners, that is, Nepali and Bangladeshis. Later the word foreigner was replaced by Bangladeshis-

both Hindu and Muslim. With time perception changed and it is Bengali speaking Assamese Muslims who were regarded as real infiltrators.

The Assam Movement came to an end with the signing of the Assam Accord in 1985 between the centre, Assam government and the agitating students. The Accord promised to update the NRC and it was decided that 25 March 1971 would be the cut off date- anyone who has entered India after that would be declared a foreigner.

However, the NRC was a non starter right from the beginning. The Asom Gana Parishad (AGP), the new political party that emerged from the ashes of the Assam Movement formed the government in Dispur twice between 1985 to 1989 and 1996 to 2001. The AGP, the torchbearer of the movement, did not make any move to implement the NRC.

The Tarun Gogoi government in 2010 made first serious and systematic attempt to detect foreigners by updating the National Register. It launched a Pilot Project in two circles of Kamrup and Barpeta districts. However, strong local resistance and mob attack at the office of the Deputy Commissioner of Barpeta led to the cancellation of the initiative. In retaliatory police firing four persons lost their lives.

In 2013 the Supreme Court in a landmark decision mandated the central and the state government to complete the updation of the NRC. The bench of Justice Ranjan Gogoi and Rohinton Fali Nariman took this decision in response to a writ petition filed by Assam Public Works and Sanmilita Mahasangha.

From 2013 the NRC became a Supreme Court monitored exercise and the apex court laid down some guidelines.

New Political Development

Within a year of the apex court's ruling Bhartiya Janata Party (BJP) came to power in Delhi in May 2014 and subsequently captured Assam two years later.

With this the NRC assumed a communal colour and the message went that it's the Muslims who are at the receiving end of the whole exercise. The BJP's open declaration of altering the Citizenship Act of 1956 and giving Hindus immigrants refugee status left no one in doubt what is the intention of the ruling party.

Publication of the final NRC

After six years of intense exercise the final NRC was published on August 31, 2019.

A total of 3,30,27,661 (Three crore thirty lakh twenty seven thousand six hundred and sixty one) persons applied to the registering authority through 68,37,660 application forms and out of which 3,11,21,004 (3 crore, 11 lakh 21 thousand and four) persons were found eligible for inclusion in the NRC list, leaving out 19,06,657 (19 lakh 6 thousand and six fifty seven) persons.

In the absence of community wise break up it is not clear which linguistic and religious groups have borne the brunt of exclusion in the final NRC.

However, there seems to be common consensus that out of 19 lakh (1.9 million) not less than half are Hindus.

Does the NRC final list bring the debate on illegal immigrants some kind of closure?

If the reactions of the different groups are anything to go by the NRC seems to have failed to douse the fire started by the Assam agitation. On the contrary it has accentuated the societal and religious fault lines.

The Assam Public Works, one of the main petitioners is not happy with the NRC, so is the ruling BJP, AGP and the Assamese in general.

Muslims in general seem to have got a big sense of relief. They feel a sense of vindication after decades of psychological persecution that they faced in the name of being a foreigner.

Those Muslims who have been left out of the list are really tense. They are preparing themselves to appeal to the Foreigners Tribunal. They feel that there is no one to fight their battle.

Hindus, on the contrary, who have been left out are worried but they are not tense. They are more relaxed compared to their Muslim counterparts. They feel that the carrot of the Citizenship Amendment Bill (CAB) that the BJP has offered them will bail them out.

Small Nepalese community too is unhappy. Talking to Fact Finding Team Prem Tamang of All Assam Gorkha Students Union said that 1 Lakh people of Nepali speaking Assamese have been excluded in NRC and about 20000 have been declared without any investigation. The community is in no mood to appeal to the Foreigners' Tribunal. They say they have genuine papers and the government should set up a special tribunal to dispose of the cases whose names are missing.



The Fact Finding team met Banai and Hojung communities in the Goalpara districts. Many names are missing from the NRC list. The majority of the people belonging to the communities are daily wage earner and at a loss to explain the reason why their names have been left out.

It was tragic to see two young girls from Hajang community working at the construction site of a detention centres in the Goalpara district. They told us that they don't have any option but to work as a daily wager and they might land in the same detention centre if they fail to convince the Foreigners' Tribunal.

The big question that the NRC poses is : can India afford to have so many people as stateless citizens? Why a civil and democratic society needs a detention centre to house so called illegal immigrants?

We don't want to question the very idea of NRC but we need to challenge many prejudices, perceptions and myths that went into the creation of the NRC. It has been very dehumanizing experience for many.

The protagonists of the Assam Movement cannot claim that the NRC has achieved the goal the agitation aimed at. The famous demand for the three Ds- detection, deletion and deportation- remain unattained. The NRC has in fact added complexities to the problem.

Assamese academician Sanjiv Baruah says that "popular protest movements — like revolutions — it seems, can also end by devouring their own children".

Our research and discussions with the cross sections of the Assamese society reveal some glaring lacunas in the way the whole NRC process was conducted.

Most of the Muslims who have been left out are illiterate and the procedure of filling the NRC was so complicated that it was difficult for common people to grasp what was being asked. It was not people friendly.

Administrative process was so complicated that it was very difficult even for the people with all the documents in hand to register themselves in NRC.

Around 50000 government officers were in the NRC exercise but majority of them were from the targeted Hindu Bengali or Muslim Bengali community. On top of that hostile executives with prejudiced mindset made the job more difficult.

There were many procedural lapses with the Application Receipt Number (ARN) at many places showing wrong entry.

Delayed and non receipt of notices also caused great confusion. There are many cases when notice to appear before the NRC reached the concerned persons quite late in the day. As a result the concerned persons could not reach the NRC office located hundreds of kilometres away on time.

Some facts

There are 34% Muslims in Assam (11 million). Only 15 lakh (1.5 million) are Assamese speaking and rest are Bengali speaking. Assamese Muslims claim Assamese as their mother tongue but the Bengali Hindus claim Bengali as their mother tongue. Generally Bangla speaking Muslims claim Assamese as their mother tongue because of education in Assamese medium schools.

Observations:

The way the whole exercise of the NRC was conducted in the last five years it smacks of a mindset. It was designed to fix certain targets. This becomes all the more clear when we look at the functioning of the NRC, the operation of the Foreigners Tribunals (FT), the composition of the FTs, biases of the judiciary and the administrative machinery.

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Foreigners Tribunal (FT)

As the name suggests Foreigners Tribunal or FT as it is popularly known is a tribunal- a quasi judicial body which has been specifically set up to decide who is a foreigner and who is not. It does not have power to grant citizenship.

For many in the present day Assam the word FT creates a deep sense of panic and anxiety.

The FT gained notoriety after the NRC process kicked in in 2013 and with time, as our fact finding team will show, the tribunal represents all the ills that the NRC suffers from. The tribunal has become not a place for justice but a place for persecution.

Background

At the height of the Assam Movement the Indira Gandhi government enacted the Illegal Migrants (Determination by Tribunal) Act or IMDT Act in 1983 in order to provide special protections against undue harassment to the “minorities” affected by the Assam agitation. The Act described the procedures to detect illegal immigrants from Bangladesh and expel them from Assam. The Act was exclusively meant for Assam and it made it difficult to deport illegal immigrants from Assam.

The Act was however struck down by the Supreme Court of India in 2005 on the grounds that “it has created the biggest hurdle and is the main impediment or barrier in the identification and deportation of illegal migrants”.

FT took over Illegal Migrant Determination Tribunals (IMDT) in 2005 and on top of the 11 existing IMDT 21 more were added. In 2009 another 4 were established and after the Supreme court order on the updation of the NRC in 2013 the government opened 64 more tribunals. Till the final NRC preparation 100 FTs have been working in different parts of the North Eastern state.

Who can head an FT

An advocate having at least 7 years of experience or a judge can head FT. The FT head is not officially called a judge but it has come to our notice that many FT members use judge’s sticker in their car. An FT head gets Rs 85,000 per month and a car.

After the final NRC list the Assam government has taken the total number of FTs to 221 to dispose of over 19 lakh (1.9 million) cases left out of the NRC.

The main difference between the FT and the IMDT is that in the former the burden of proof lies with the accused while in the latter the burden lies with the state. Moreover, under IMDT Act the cases have been adjudicated by district court and not by a quasi judicial body like FTs.

Our research on the functioning of the FTs raises lots of objections. We found lots of anomalies and clear bias in the way the FTs have been disposing of the cases.

In 1930s and 40s at the height of Nazi's barbarity towards Jews a German businessman Oskar Scindler saved hundreds of lives from the Hitler's criminality by employing them in his factories. He prepared the list to save lives. Scindler's list as we know it was meant to save lives and humanity.

FTs is doing the opposite - it is deliberately declaring even innocent people foreigners. It is working with an express purpose of declaring as many Bengali Hindus and Muslims foreigners as possible. They are not acting independently but acting as a political agent of the ruling party in Assam. Those whose list has more foreigners get an extension of the job after two years and those who don't are sidelined. This becomes apparent with the removal of 19 FT heads last year. They were removed because they were performing according to the mandate and judging cases after due diligence.

Elaboration

The head of the FTs or members are appointed on a contractual basis for two years. Their job renewal is in the hands of the executive.

According to data tabled in the Assam assembly recently the total number of cases that went to FTs since 2005 are 461305 in which 25934 have been disposed. Out of the disposed cases 103764 were declared foreigners. In 55% of cases, that is 57384, the FT has given ex parte judgement.

This raises a question how come majority of the decisions in the FT have been taken in the absence of the accused.

An individual whose case is rejected by the FT has to go to detention centre.

There are at present six detention centres inside the different jails of Assam where 1145 people have been living in subhuman conditions. Out of 1145 people in the detention centre 1005 are declared foreigners and 140 convicted foreigners. Because of the pathetic condition in the detention centre 25 people have lost their lives. Interestingly, the dead bodies of the declared foreigners were handed over to the Indian families. If they were Bangladeshis then their mortal remains should have gone to the other side of the border.

The fact finding team met one Bassu Ali in Goalpara district who has spent five years in detention centre and recently came out on bail.

"For two hundred people there are only two toilets that are unclean. It's the life of an animal inside the detention centre. I will now prefer committing suicide than going to detention centre now", said Ali.

The fact finding team got hold of some of the judgements of the FTs. In many cases there is no investigation done to ascertain whether the accused has valid documents or not. In the judgement copy

many pages go blank in the absence of the valid investigation. Still FTs think it fit to pass judgement and declare an individual a foreigner.

In one case the FT reversed its own judgement after declaring a person “not foreigner”. No rhyme and reason was given for this turnaround. This arbitrariness defines the functioning of the FTs.

According to the information given by the Assam assembly the Chief Minister holds meeting with FT heads without having any prior agenda.

The ruling BJP built up its anti Muslim bogey on the back of infiltration from Bangladesh. It came to power promising sending all the illegal immigrants out of the country. But the final NRC figure belies the hope of the ruling party and busts a long held myth that majority of the Bengali speaking Muslims living in Assam are foreigners.

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State Government Controls Foreign Tribunals:

Legality and mandate of the Foreigners Tribunals have been questioned by jurists and former judges which are constituted by the state Government of Assam on the basis of a notification issued by the Home Ministry of the Union of India under Article 258(1) of the Constitution of India. As former judge of the Supreme Court, Justice Gopala Gowda writes that ‘Foreigners (Tribunals) Order, 1964, was passed by the central Government in exercise of its powers under section 3 of the Foreigners Act, 1946, which is the pre-constitutional law’.

FTs are formed to dispose of cases brought by the police before it and supposed to function independent from the government but what the Fact Finding Team has discovered is just opposite to it.

Initially, serving or retired judicial officers like District, Sessions or Additional Judges were qualified to become members of FT and could continue till the age of 67 years. The notification to this effect was issued by Union Home Ministry in May, 2011.

But in 2015 the new notification has relaxed the qualification required to become a FT member and positions were opened for lawyers above 45 years of age with legal and practicing experience of 10 years. A committee appointed by Gauhati High Court monitors the functioning of the FTs but appointing authority is Home and Political Department of Assam Government. The power to evaluate performance, termination of contract and extension of contract after completion of contractual two years are rests with the state government.

In a reply to a question in State Assembly on 26-3-2018, Transport Minister, Chandra Mohan Patowary admitted on behalf of Minister of Home and Political Department Sarbananda Sonowal that Chief Minister of Assam held a meeting with FT members. The minister further admitted that since the FTs are under ‘control’ of political department there is no bar for Head of State Administration (Chief Minister) of holding meetings with FT members.

ASSAM LEGISLATIVE ASSEMBLY
UNSTARRED QUESTION NO.109
TO BE REPLIED ON : 29/07/2019

Sub. : Foreigner's Tribunal

Shri Aminul Islam, MLA :

Will the Minister of Home and Political be pleased to state :

- (a) Is it true that the Foreigner's Tribunals has been constituted under Political (B) Department ?
- (b) Is the Government aware that Foreigner's Tribunals are registering cases against genuine Indian Citizens without doing any investigation about their Citizenship ?
- (c) Is the Government aware that Foreigner's Tribunals are giving opinion that the persons had entered into Assam after 25-03-1971, without any proof of his/her entering into Assam ?
- (d) Will the Government take initiative to review the cases that have been declared as Foreigners with unfair intentions ?

ANSWER

Hon'ble Minister of Transport etc. Department Sri Chandra Mohan Patowary will reply on behalf of Hon'ble Minister of Home and Political Department Sri Sarbananda Sonowal.

- a. Yes, the Foreigners Tribunals have been constituted by Political (B) Department as per Foreigners (Tribunal) Order, 1964.
- b. It is not true that Foreigner's Tribunals are registering cases against genuine Indian citizens without doing any enquiry about their citizenship. The District Superintendent of Police (Border) after enquiry makes references against suspected foreign nationals and on receipt of such reference, the Foreigners Tribunals dispose the matter as per law.
- c. Foreigners Tribunals function as per procedure mentioned in Foreigners (Tribunals) Order, 1964. Persons aggrieved with opinion of Foreigners Tribunals can approach higher courts.
- d. The Foreigners Tribunals declare a person as foreigner (or otherwise) on the matter being referred to FT by State Authority i.e. the Superintendent of Police. On the other hand, the Superintendent of Police refers the case of a suspected foreigner to the Foreigners Tribunals if the SP, after enquiry is not satisfied about the Indian Citizenship of the person. Therefore, opinion of a Foreigners Tribunals that a person is foreigner is only an affirmation of the suspicion already held by SP.

As such, taking initiative to review the case doesn't arise. However, as already said at (c) above, person aggrieved with opinion of FT can approach higher courts.

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This 'control' of Foreign Tribunals was further exposed by 10 members of FT who petitioned the Gauhati High Court when they were not given extensions after the completion of two years contract.

These members have made scathing allegations of lack of fair play in assessment of their performance which according them was done at the end of two years term. The petition to the High Court mentioned that Government of Assam, Home and Political Department and Police Administration 'periodically discussed in the course of meetings of the Monitoring Committee with regard to the various aspects of the functioning of the Foreigner's Tribunals'.

Selective Termination of FT Members:

The performance assessment of FT members by the state government and policy of terminations and extensions of FT members smacks of a political agenda of the ruling BJP. The criteria of 'good performance' is simply as to how many citizens FTs are declaring as foreigners. The FT members who are less numbers applicants as foreigners are summarily dropped from the tribunals thus giving a clear message to existing members of FTs what they are supposed to do get another extension.

The performance of FT member in Dhubri district, Mr Kartik Roy who disposed 380 cases during his tenure and declared only 5 applicants as foreigners has been marked as 'not satisfactory' and his termination was recommended. In same period in 2017, in Dhubri another FT member Mr Naba Kr Barua who disposed of 321 cases and declared 240 applicants as foreigners has been recommended to retain with 'good' performance by the state government.

SL No.	District	F.T. No.	Name of F.T. Members	Total cases disposed since beginning	% age of disposal	Total Nos. of Foreigners declared	% of foreigners declared	Annexure-4	
								General views of the Govt. upon the Member	Whether may be considered for further retention or may be terminated
1	Dhubri	F. T. 3rd	Kartik Ch. Ray	380	25.92	5	1.32	Not satisfactory	may be terminated
2		F. T. 4th	Narayan Kr. Nath	460	15.85	159	34.57	good	may be retained
3		F. T. 5th	Abhijit Das	443	15.34	173	39.05	good	may be retained
4		F. T. 6th	Hemanta Mahanta	574	8.23	88	41.67	Need to improve	may be retained with warning
5		F. T. 7th	Naba Kr. Barua	321	27.25	240	74.77	good	may be retained
6		F. T. 8th	Dhiraj Kr. Saikia	345	23.63	142	41.16	good	may be retained
7		F. T. 9th	Junmoni Borah	300	18.40	76	25.33	good	may be retained
8		F. T. 10th	Kalpana Baruah	249	12.12	67	26.91	Need to improve	may be retained with warning
9	Goalpara	F. T. 3rd	Rama Kanta Khakhlary	626	33.91	98	15.65	good	may be retained
10		F. T. 4th	Ajay Phukan	239	10.15	150	59.38	good	may be retained
11		F. T. 5th	Bibhas Barman	468	28.02	48	10.26	Need to improve	may be retained with warning
12		F. T. 6th	Dilip Kr. Barman	485	26.30	21	4.33	Not satisfactory	may be terminated
13		F. T. 7th	Bhaba Kt. Hazarika	494	42.66	12	2.43	Not satisfactory	may be terminated
14	Bongaigaon	F. T. 8th	Kulendra Talukdar	326	24.96	25	7.67	Not satisfactory	may be terminated
15		F. T. 2nd	Nibedita Tamuli Nath	691	17.17	404	58.47	good	may be retained
16		F. T. 5th	Dwijen Ch. Dutta	548	12.47	8	1.46	Not satisfactory	may be terminated
17		F. T. 6th	Kamal Uddin Ahmed Choudhury	472	14.57	5	1.06	Not satisfactory	may be terminated
18		F. T. 7th	Nilay Kanti Ghose	485	19.29	4	0.82	Not satisfactory	may be terminated
19		F. T. 8th	Anurupa Dey	528	27.32	61	11.55	Need to improve	may be retained with warning
20		F. T. 10th	Navanita Mitra	263	11.17	6	2.28	Not satisfactory	may be terminated
21		F. T. 11th	Sachin Kr Sarma	238	9.09	78	32.77	Need to improve	may be retained with warning

Similarly, Mr Bibhas Barman, FT member of Goalpara district who declared 48 applicants as foreigners out of 468 has been recommended as ‘may be retained with warning’ with a remark ‘need to improve’. A clear message is sent by the state government as what needs to be improved by Mr Barman and what warning he must have been given for extension.

The cases of three FT members of Bongaigaon district, Dwijen Ch Dutta and Kamal Uddin Ahmed Chaudhury and Nilay Kanti Ghosh also fall in same category of ‘not satisfactory’ performance and recommendation of termination of contract. They have declared 8, 5 and 4 applicants as foreigners during their tenure. In the same district a fourth FT member Nibedita Tamuli Nath has been rewarded with recommendation to retain as out of 691 applicants she declared 404 as foreigners.

The full list of the 2017 performance assessment speaks volumes about the political agenda state government is pursuing and in process making the entire process and credibility of Foreign Tribunals questionable.

Questionable Functioning of FTs

Fact Finding Team interacted with many people, mostly poor, across districts whose claims of citizenship has been rejected by Foreign Tribunals. Their testimonies give clear indication that FTs are not functioning as independent tribunals and involving judicious and professional methods in disposing of cases brought before them.

Case of Omela Khatun, 40, resident of Mangaldai of district Darrang, is a classic example of arbitrary fashion FTs are functioning. SP of Darrang, Mangaldai filed a case against Omela Khatun in Foreign Tribunal (3rd) Darrang, Mangaldai, alleging her as foreign national. Omela Khatun presented testified herself before FT with relevant documents including voter list of her parents and grandparents who have been casting votes since 1966. After examining documents submitted by her and on basis of her oral submission before the tribunal the FT on 4-3-2015 declared Omela Khatun as Indian Citizen.



But in 2019 acting on a fresh complaint by police that Omela Khatun entered Assam after 25th March, 1971. Omela Khatun argued that she has been declared as ‘not foreigner’ back in 2015 and submitted documentary evidence again. On 18-7-2019 FT reversed its previous order by questioning her lineage and declared her as foreigner. Omela Khatun produced her PAN card with her father’s name Abdul Hai before Fact Finding Team and also the voter list of 1971 when her father was listed as voter in Dalgaon assembly constituency and electoral rolls of her from 1997 elections onwards.

Ex Parte Dismissal of Cases

Fact Finding Team found that large number of cases (55 per cent) have been decided by FTs ex parte or in absentia. As per media reports over 60,000 people have been declared foreigners ex parte since 1985. There is a section of floating population, mainly daily wagers, for employment related reasons. There has been instances that notices are either being sent to old addresses (native places) whereas 'opposite party' – against whom case has been filed is residing in his\her place of work. Often cases have been filed far off places making it difficult for people against whom cases have been filed to appear in FTs and defend themselves.

	Musstt. Asmul Begum, 45 yrs, W/o Md. Ayub Ali	Vill - Misamari, PS - Helem, Dist - Sonitpur	13-Sep-15	FT case No. 472/2009	628/16/3586 dtd 22-9-16	Ex parte
	Musstt. Kitab Jan, 53 yrs, W/o Lt. Mohammad Ali	Vill- Rature, PS - Bagaslin ,Dist- Dacca(B/D)	8-Feb-15	FT Case No. - 2148/1988	628/15/2881 8/9/2015	Contest
19	Nagaon Smti. Arati Das, 66 yrs W/o Nagen Das	Vill- Rawra, PS - Dapafarai ,Dist-Dacca (B/D)	8-Jul-15	FT Case No. - 212/2006	628/15/2881 8/9/2015	Ex-Parte
20	Nagaon Musstt. Kulsum Khatun @ Kulsum Bibi, 40 yrs, W/o	Vill & PS- Gauripur, Dist- Mymansingh(B/D)	8-Aug-15	FT Case No. - 227/2006	628/15/2881 8/9/2015	Contest
21	Nagaon Musstt. Rabia Khatun , 45 yrs, W/o Abdul	Vill- Dhankhali, PS- Tangail, Dist- Myanmansingh(B/D)	21-Aug-15	FT Case No. - 646/2007	628/15/2881 8/9/2015	Ex parte
22	Nagaon Musstt. Anowara Begum , 35 yrs, W/o Kasem Ali	Vill- Dhankhali, PS- Tangail, Dist- Myanmansingh(B/D)	21-Aug-15	FT Case No. - 40/2007	628/15/2881 8/9/2015	Ex parte
23	Nagaon (Minor) Umesh Salma , 6 Month, D/o Kasem Ali	Vill- Hangtang, PS- Samogurir, Dist- Nagaon	21-Aug-15	FT Case No. - 40/2007	628/15/2881 8/9/2015	Contest
24	Nagaon Maina Begum, 55 yrs, W/o Rajik Ali,	Vill- Kataigaon, PS & Dist -Nagaon	9-Mar-15	FT Case No. - 972/2011	628/16/3813 dtd 6-10-16	Contest
25	Nagaon Musstt Halima Khatun, 30 yrs, w/o Md. Lihamuddin	Vill - Patiachapori, PS Dhang, Dist - Nagaon	16-03-2011	WP (C) - 295/09	ADGP(B)/II(A) / 304/15/334 07-02-15	Ex parte
26	City Ghyt Musstt. Sona Khatun, 48 yrs, W/o Lt. Mujfer	Vill- Nizampur, PS- Fakirganj, Dist- Dhubri	21/8/2015	FT Kamrup (M)Case No. 416/2011		Ex parte
27	City Ghyt Musstt. Anowara Khatun, 32 yrs, W/o Ariful Jaman	Vill & PS - Baruhali, Dist: Tangail(B/D)	3-Jan-17	LTS. PS C/No 2191/2016, GR.C/No 9547/2016, US 14 F Act 1946	630/16/3812 Dtd 06-10-2016	Convicted
28	City Guwahati Smti Pabitra Bala Ray @ Pabitra, 38 yrs, D/o Fani	Vill. B.G Colony Pragjyotish Nagar, Dist. Kamrup (M)	10-05-2019	FTC/No. 119/2017		Ex-parte
29	City Guwahati Sri Budha Ray, 3 yrs, S/o Smti Pabitra Bala Ray	Vill. B.G Colony Pragjyotish Nagar, Dist. Kamrup (M)	10-05-2019	FTC/No. 119/2017		Ex-parte
30	City Guwahati Smti Lakhi Biswas @ Lakhi Namasudra, 60 yrs, W/o Sri	Vill. Panikhaiti, PS, Pragjyotishpur, Dist. Kamrup (M)	23/05/2019	FTC/No. 6926/2011		Ex-parte
31	City Guwahati Smti Maya Bakshi @ Das - 53 yrs, W/o Lt Gargeswar Das D/o Lt Kishor	Vill. B.G Tiniali No 2 Mathgharia, PS - Noonmati , Dist. Kamrup (M)	30-05-2019	FTC/No. 1648/2016		Contest
32	City Guwahati Smti Rina Das - 60 yrs, W/o Lt Milan Das	Vill. - Shivnagar Rly Line near Jatiya Vidyalya, PS - Noonmati , Dist. Kamrup (M)	03-06-2019	FTC/No. 739/2015		Ex-parte
33	City Guwahati Musst Phatema Khatun, 19 yrs, D/o Musst Moshima Khatun	Vill - Enyatpur , PS - Monrampur , Dist - Jassore (B/D)	03-06-2019	GRP case No 300/2018 U/S 14 F. Act 3 of PP Entry into India Act 1920		Convicted
34	City Guwahati Musst Mukta Begum - 20 yrs, W/o Md Barik	Vill - Mahammadpur Ward No 1. , PS - Mahammadpur , Dist - Dacca (B/D)	12-06-2019	Garchuk PS case No . 650/2018 U/S 14(A) (b) F Act under rule 3 of PP Entry into India Act 1920		Convicted

Case of Blank Police Reports

The manner in which police carry out investigation and building a case before FT is also questionable. The Fact Finding Team came to know about 133 cases where police have filed a blank report and FTs have rejected the citizenships without any investigation and giving opportunity to victims to defend their cases. The mandate to carry out investigation is given jurisdictional Superintendent Police but generally enquiries are being done at constable level and in a non professional way.

D Voter – The Half Citizen

In the vexed issue of Citizen Register a new phase began in 1985 after the signing of Assam Accord between Government of India and Leaders of Assam Movement. A series of intensive revision of electoral rolls was started by Election Commission with over 50 Lakh notices were sent to verify citizenship status. After revisions in 1989 and 1992 a new category D Voter or Doubtful Voter was created in 1997. Border Police of the state has been working with Election Commission in identification of D Voters since 1985. Once an individual is classified as D Voter his/her rights to cast vote and contest elections is suspended till the final verdict of Foreign Tribunal where D Voter cases are referred to.

As on December, 2017 there are 125333 D Voters in Assam out of which 77799 (62%) are women. Fact Finding team gathered that that majority of such D Voter belongs to religious and linguistic minorities. Fair chance to many who have been categorised as D Voter was not given to prove their eligibility.

Married Women are Biggest Sufferers:

Both in exclusion from NRC and in categorising as D Voter married women are the worst sufferers. Imrana Begam, daughter of sitting Congress MLA Illias Ali has been excluded from NRC while rest of members of parents and in laws have been included in the list. Imrana married to Mozammil Hoque of Kharupetia in the district and the couple lives in front of her father's house, tells Fact Finding Team that women in state get married in young age and female child in family is generally excluded in property share makes them difficult to prove family legacy, since surname changes after the marriage.



Detention Centres and Border Police:

Moment someone is categorised as D Voter or FT rejects the claim of citizenship sward of being sent to detention centre hangs over his head. There are total 1145 persons are living detention centres out of which 1005 are declared foreigners by FTs. These detention centres are housed in jails where detainees are living in sub human conditions. Fact Finding Team met one Bassu Ali who was kept in under detention

in 2015 and out on bail now. He told us that he was kept in cell with 50 people which had the capacity of not more than 20. There was hardly any space to sleep in that over crowded cell with unhygienic toilet.

The Fact Finding Team also went to Latakhat Village of Darang District to meet one khatar Ali who has been declared a foreigner. On getting the information about our vehicle entering the village he disappeared fearing Border Police will get hold of him. His wife Anwara Begum told us that her husband is not a D Voter and yet declared foreigner.

Villagers told us that Border Police comes twice or thrice day to village and often take away anyone who they feel as a suspect foreigner.

New Detention Centre: in Goalpara District a new detention centre is being constructed with a cost Rs 45 Cr. The capacity of this first detention centre would be 3000.

The Goalpara building is one of 11 such detention centers being planned in Assam's districts across the state. Currently, the state has six detention centers that are run out of district jails. This is the first time any state government in India has built an exclusive detention center to hold illegal immigrants. Irony is that Fact Finding Team met few such labourers who are involved in construction work who are also excluded in NRC and would be struggling hard to not come to the centre they are building as a detainee.



Testimonies:

Bassu Ali (39), Lakhipur, Parsim Kataudi

My name is Bassu Ali and I am lone bread earner of the family. One day Police called me with the name Bachchu Sheikh and framed in a false case. On 26 January 2014 police picked me up from my home. After a day in Police station I was sent to jail. I went to court for the hearing. There my lawyer told me to be there and go inside when someone calls you. The lawyer then disappeared. One officer called me in and asked as where I live. I told him that I live in Karbala. The officer said that he heard that I came from Bangladesh. After that I was sent to jail. I was not kept in detention centre but in a small cell with 50 people in jail where I used to get only 2 fit space to sleep. I will die, I will commit suicide but will never go there.

My father and mother are Indians – my who family belongs to this place. I have all the documents with me. But no one even want to see those documents. They say such documents are available at Pan shop. They say that I am a Bangladeshi. My lawyer also cheated me. My mother could not bear this and died. Bassu Ali is a daily wager and has to support a wife and two children. When he was in jail his mother used to run house by begging. Bassu who is out on bail has 1951 legacy certificate and Voter ID.



Prutima Banai (27), Goalpara

My case is going on in FT for last 6-7 months. I have been declared as D Voter despite having all documents with me. We are three brothers and four sisters and I am the lone D Voter in family. There is no D Voter in my in laws either – then why I am singled out. I have no idea as how why this has happened with me. In my village 12 people have been declared as D Voter of these 10 are women. I fear that any day I will be sent to detention centre.



Aqlima khatoon, Juri Gaon, Goalpara

I am poor woman and went to Tamil Nadu for work and could not cast my vote because of this. I am excluded from NRC and made D Voter just because of this. Now my case is going on in FT where it will be decided whether I am Indian or Bangladeshi. I have all the documents with me. I hope that I will get justice. I am an Indian and not a Bangladeshi.

Fazal Haque (71), Barvita, Barpeta

My name was there in 1951 NRC but now I have been made D Voter. My entire family is excluded in NRC this time. I have family of eight persons and have to come to Goalpara from Barpeta for this. My case is now pending with Foreign Tribunal. I am living in a fear as when police will get me and send to detention centre. My son is the only bread earner for the family. I am spending lots of money to fight our case but I will continue to fight till I get justice.

**Vinita Banai (45) Tinkonia Banaipara**

I have all papers with me and yet my name is not there. My son's name is there but mine is excluded. I am a daily wager and living in fear as to when I will be sent to jail. I have no money to fight my case.

**Renuka Banai (36), Tinkonia Banaipara**

We are six in our family and everybody's name has come except my husband's name. I fear that any day police will arrest him. He has all the papers with him – we will apply again with FT.

**Devbhoti Hajang (23), Tinkonia Banaipara**

My name hasn't come in NRC. I am a labourer and not going to work because of this. I have all the documents and will apply again. We are tribal and belong to Assam.

**Sipali Hajang, Pusimati**

My name hasn't come in NRC despite having complete papers. Sipali is a daily wage labourer at detention centre. I am afraid coming here but have no option but to work for money. I don't know they will keep me here or not.

**Sarojini Hajang (30), Pusimatia**

Sarojini who is working as labourer at a detention centre also could not find her name in NRC. I know this centre is being made for D Voter. I have no idea whether this centre will be used to keep those who have been excluded from NRC. I am scared as I have no money and working here as a daily wager. I have two small children and a husband who has mental illness.

**Anwara Begum (29), Latakhat, Kherupetia**

Me and my husband has been declared as D Voter. It has been a year since he left home. I have no clue as how to run my house. I do household work for few in village to get food. I have three children. Youngest daughter is 7 year old and a son is 16. Eldest son is married. Three days ago my husband met an accident. Now he is out from hospital. My husband is Indian - I have full faith the we will get justice.

Pradip Kumar Saha (49), Ratonpatti, Kharupetia, Darrang

In 1979 elections I cast my vote. But in 2002 I was made D Voter. I approached the court (FT) and gave all documents and still my name is not there in NRC. We are a family of 22 and only eight got cleared in NRC and 14 members are excluded. My father is also kept out from NRC whereas he has passport issued in 1955. Government is saying CAB (Citizen Amendment Bill) will come. But how we trust politicians. They make tall promises and implement none. When this will happen I don't know.

**Omela Khatoon (48),**

First I get a D Voter notice – approached FT and my name got included. But in NRC my name is excluded. I have all the documents, my ancestors belonged to this place. I don't know why my name hasn't come while everybody in my family got included. Everybody says that police will get me arrested that's why I am not living in my home. I constantly live in this fear. I have to go to court frequently because of the. Lot's of money is being spent to fight court cases.

Azharuddin, (25), Karimganj

We have a family of 15 and everybody makes it to NRC except me. Imagine my father is bonafide citizen but I am not. I have all the documents with me. Now village people ridicule as how an educated person like me has been excluded.

Azharuddin is student of BSc

Conclusion:

The historic NRC exercise has already deeply impacted Assam's society and created scar on minds of large population of the state which will take generations to repair. There is widespread fear among the people about their future and status of citizenship. The objective of the NRC which is the culmination of Assam Movement and 1985 Accord was to identify illegal migrants after partition and mainly after creation of Bangladesh and to remove the stigma of being labelled as 'foreigner' among a section of society. But the process with which NRC was conducted, specially the functioning of Foreign Tribunals and by putting burden of proof on individuals to prove their existence in this country with meagre resources at hand. Poverty and illiteracy add to limitations of fighting the system flaws, complex process, demand of papers and legal jargon. The objective of NRC seems to have lost and resulted in a divided and scared society.

Now 1.9 million people of Assam facing statelessness have to defend themselves before Foreigners Tribunal with the burden to prove their citizenship on themselves. The objectivity and fairness with efficiency are minimum expectations from FTs. Ground situation and previous record as examined by the Fact Finding underlines that FTs have miles to go to ensure justice and fair play.

(16) Performance Appraisal of the newly appointed Members (Advocates) of New Foreigner's Tribunals as on 30.04.2017 (at the end of two years)

Sl. No.	District	F.T. No.	Name of F. T. Members	Total cases disposed since beginning	% age of disposal	Total Nos. of Foreigners declared	% of foreigners declared	General views of the Govt. upon the Member	Whether may be considered for further retention or may be terminated
1	Dhubri	F. T. 3rd	Kartik Ch. Ray	380	25.92	5	1.32	Not satisfactory	may be terminated
2		F. T. 4th	Narayan Kr. Nath	460	15.85	159	34.57	good	may be retained
3		F. T. 5th	Abhijit Das	443	15.34	173	39.05	good	may be retained
4		F. T. 6th	Hemanta Mahanta	574	8.23	88	41.67	Need to improve	may be retained with warning
5		F. T. 7th	Naba Kr. Barua	321	27.25	240	74.77	good	may be retained
6		F. T. 8th	Dhiraj Kr. Saikia	345	23.63	142	41.16	good	may be retained
7		F. T. 9th	Junmoni Borah	300	18.40	76	25.33	good	may be retained
8		F. T. 10th	Kalpana Baruah	249	12.12	67	26.91	Need to improve	may be retained with warning
9	Goalpara	F. T. 3rd	Rama Kanta Khakhlary	626	33.91	98	15.65	good	may be retained
10		F. T. 4th	Ajay Phukan	239	10.15	150	59.38	good	may be retained
11		F. T. 5th	Bibhas Barman	468	28.02	48	10.26	Need to improve	may be retained with warning
12		F. T. 6th	Dilip Kr. Barman	485	26.30	21	4.33	Not satisfactory	may be terminated
13		F. T. 7th	Bhaba Kr. Hazarika	494	42.66	12	2.43	Not satisfactory	may be terminated
14		F. T. 8th	Kulendra Talukdar	326	24.96	25	7.67	Not satisfactory	may be terminated
15	Borgaigaon	F. T. 2nd	Nibedita Tamuli Nath	691	17.17	404	58.47	good	may be retained
16		F. T. 5th	Dwijen Ch. Dutta	548	12.47	8	1.46	Not satisfactory	may be terminated
17		F. T. 6th	Kamal Uddin Ahmed Choudhury	472	14.57	5	1.06	Not satisfactory	may be terminated
18		F. T. 7th	Nilay Kanti Ghose	485	19.29	4	0.82	Not satisfactory	may be terminated
19		F. T. 8th	Anurupa Dey	528	27.32	61	11.55	Need to improve	may be retained with warning
20		F. T. 10th	Navanita Mitra	263	11.17	6	2.28	Not satisfactory	may be terminated
21		F. T. 11th	Sachin Kr. Sarma	238	9.09	78	32.77	Need to improve	may be retained with warning

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Sl. No.	District	F.T. No.	Name of F. T. Members	Total cases disposed since beginning	% age of disposal	Total Nos. of Foreigners declared	% of foreigners declared	General views of the Govt. upon the Member	Whether may be considered for further retention or may be terminated
22	Nalbari	F. T. 2nd	Surajit Chakravarty	224	39.02	6	2.68	Not satisfactory	may be terminated
23		F. T. 3rd	Pranab Kr. Talukdar	456	15.39	141	30.92	good	may be retained
24		F. T. 4th	Bijoya Boiragi	476	73.46	91	19.12	good	may be retained
25	Kamrup (M)	F. T. 5th	Dhiman Talukdar	1468	46.60	309	21.05	good	may be retained
26		F. T. 3rd	Ashim Kr. Baruah	562	41.20	44	7.83	Not satisfactory	may be terminated
27	Kamrup (R)	F. T. 4th	Giti Kakati Das	438	29.42	38	8.68	Not satisfactory	may be terminated
28		F. T. 5th	Vacant	926	41.49	11	1.19	-	-
29	Mangaldoi	F. T. 4th	Babita Das	156	11.32	67	42.95	Not satisfactory	may be terminated
30		F. T. 5th	Deepak Bora	316	11.49	47	14.87	Need to improve	may be retained with warning
31	Morigaon	F. T. 3rd	Goutam Soren	393	17.99	861	219.08	good	may be retained
32		F. T. 4th	Jayanta Kr. Mishra	402	44.22	149	37.06	good	may be retained
33		F. T. 5th	Pranab Kr. Baruah	263	14.08	136	51.71	Need to improve	may be retained with warning
34	Nagaon	F. T. 4th	Arup Kr. Sharma	440	18.30	2	0.45	Not satisfactory	may be terminated
35		F. T. 5th	Vacant	328	11.52	30	9.15	-	-
36		F. T. 6th	Mamoni Rajkumari	621	23.01	50	8.05	Not satisfactory	may be terminated
37		F. T. 7th	Moonmoon Borah	401	27.30	273	68.08	good	may be retained
38		F. T. 8th	Subrat Bhuyan	439	18.75	43	9.79	Not satisfactory	may be terminated
39		F. T. 10th	Narendra Kr. Jha	687	41.81	452	65.79	good	may be retained
40		F. T. 4th	Mahendra Bora	514	11.99	123	35.11	good	may be retained

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Performance Appraisal of the newly appointed Members in Old Foreigner's Tribunals (Advocates) as on 30.04.2017 (at the end of two years)

Sl. No.	District	F.T. No.	Name of F. T. Members	Total cases disposed since beginning	% age of disposal	Total Nos. of Foreigners declared	% of foreigners declared	General views of the Govt. upon the Member	Whether may be considered for further retention or may be terminated
1	Dhubri	F.T. 1st	Dipenjyoti Duta	500	12.31	210	42.00	good	may be retained
2	Goalpara	F.T. 2nd	Navanita Baruah	491	22.74	166	33.81	improper conduct	may be terminated
3	Kokrajhar	Kokrajhar	Bikash Kumar	252	10.59	180	71.43	good	may be retained
4	Bongaigaon	F.T. 1st	Habibur Rahman	1090	34.28	304	27.89	good	may be retained
5	Barpeta	F.T. 3rd	Sheela Dey	1227	28.90	129	10.51	good	Her term already expired on 23/05/2017. She was given 1(one) year extension earlier.
6	Nalbari	F.T. 1st	K.K. Gupta	249	29.78	240	96.39	good	may be retained
7	Kamrup (R)	F.T. 1st	Ananta Ram Medhi	108	56.84	Nil	Nil	His performance in Dhing was good.	may be retained
8	Morigaon	F.T. 1st	Gautam Soren, I/C	188	11.76	649	345.21	good	may be retained
9	Nagaon	F.T. 2nd	Jilly Mahanta	249	9.45	61	24.50	good	may be retained
10	Lakhimpur	F.T. 2nd	Indranee Bordoloi	271	8.17	21	7.75	Not satisfactory	may be terminated
11	Jorhat	Jorhat	I.P. Barthakur	291	3.14	210	72.16	good	may be retained

Performance Appraisal of the newly appointed Members (AJS- retd.) of Old Foreigner's Tribunals as on 30.04.2017 (at the end of two years)

Sl. No.	District	F.T. No.	Name of F. T. Members	Total cases disposed since beginning	% age of disposal	Total Nos. of Foreigner's declared	% of foreigne rs declared	General views of the Govt. upon the Member	Whether may be considered for further retention or may be terminated
1	Morigaon	F.T. 2nd	Rita Bora Saikia	108	21.82	22	20.37	Joined late	term will end on 15/12/2017
2	Nagaon	F.T. 3rd	Arun Dutta	716	31.79	67	9.36	good	term will end on 24/06/2017
3	Lakhimpur	F.T. 1st	Tarkeswar Lohar	10963	88.91	1695	15.46	good	term will end on 24/06/2017
4	Hailakandi	Hailakandi	Pratap Ch. Das	229	99.00	58	25.33	good	term will end on 01/11/2017

(20)
Performance Appraisal of the newly appointed Members (AJS- retd.) of New Foreigner's Tribunals as on 30.04.2017 (at the end of two years)

Sl. No.	District	F.T. No.	Name of F. T. Members	Total cases disposed since beginning	% age of disposal	Total Nos. of Foreigner's declared	% of foreigne rs declared	General views of the Govt. upon the Member	Whether may be considered for further retention or may be terminated
1	Barpeta	F. T. 4th	Lal Chand Dey	272	17.67	9	3.31	Need to improve	Term already end on 01/01/2017. He may be warned
2		F. T. 9th	Rina Hazarika	61	2.85	23	37.70	Need to improve	Term will end on 01/11/2017. She may be warned
3	Kamrup (M)	F. T. 2nd	Lakheswar Hazarika	135	23.28	12	8.89	Need to improve	Term will end on 24/06/2017. He may be warned
4		F. T. 3rd	Dinesh Ch. Choudhury	212	36.93	3	1.42	Not satisfactory	Term will end on 24/06/2017. May not be extended
5	Kamrup (R)	F. T. 4th	Haresh Ch. Sarma	356	29.94	5	1.40	Not satisfactory	Term will end on 28/07/2017. May not be extended
6		F. T. 2nd	Minakshi Rongpi	881	17.65	23	2.61	Need to improve	Term will end on 24/06/2017. She may be warned
7	Nagaon	F. T. 9th	Ranima Gogoi	814	57.65	275	33.78	good	may be retained
8	Dhemaji	F. T. 3rd	Saiful Islam	321	17.41	146	45.48	good	may be retained
9	Udalguri	F. T. Udalguri	Hali Ram Basumatary	578	7.06	24	4.15	Need to improve	His term will expire on 01/11/2017. He may be warned.