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A Statement by the Asian Human Rights Commission

INDIA: Enclave dwellers continue to be neglected; the Indian State must prioritise and provide their entitlements

The plight of enclave dwellers and the status of enclaves in India is something that rarely catches the attention of the media and is therefore an issue that few know or understand. The history of enclaves in India, its origin and continued existence is complex and fascinating, [dating back to the 18th century](#). After Partition in 1947, the hurried redrawing of borders and demarcation of territories resulted in the enclaves being ignored, their fate to be decided many decades later. Enclaves are essentially parcels of land that are part of the territory of another country – in the context of this statement, Bangladesh – despite their geographic location being within Indian territory, primarily in Assam, Tripura, and West Bengal.

These enclaves have been the subject of diplomatic disputes between India and Bangladesh since the creation of the latter, and it was only in 2015, [when the Land Boundary Agreement came into effect](#), that the governments of both nations attempted to resolve the matter by transferring territorial sovereignty of the enclave to the nation in whose geographical boundary it existed. A total of 111 Indian enclaves within Bangladeshi territory were transferred to Bangladesh and a total of 51 Bangladeshi enclaves in India were transferred to India. Therefore, a number of Bangladeshi enclaves in Indian territory now officially became part of India, and the residents of the enclaves were given a choice of citizenship in either India or Bangladesh. It is estimated that, [at the time of the exchange](#), there were around 15,000 Bangladeshis living in India and around 53,000 Indians in Bangladesh. It was reported that all the Bangladeshis in India opted for Indian nationality while around 920 people from Bangladesh opted to be resettled in India.

In India, the residents of these enclaves have suffered greatly due to their peculiar status; the [Standing Committee on External Affairs in their report to the Lok Sabha](#) noted that they have long complained of lack of access to basic amenities and facilities, which had long been attributed to the complexities of administration in the enclaves. The same report has suggested that, by passing the requisite 119th Constitutional Amendment – mandated by the Supreme Court in the opinion of *In Re: Berubari* [AIR 1960 SC 845] – and by transferring the territories, these administrative issues too would recede, permitting residents to access rights available to them as Indian citizens. For decades, these people were rendered de facto stateless persons, without access to identity documents, ignored by the justice system, and treated like criminals when they cross borders without the requisite documents. Further, without access to basic amenities, they were forced to leave the enclaves to get them from shops outside – a complex, sorry existence, difficult to understand and one that most Indians have very little knowledge of.

Two years after the ratification of the Land Boundary Agreement, it appears that not much has changed for the residents of these enclaves. According to information received from AHRC's partner organisation, MASUM in West Bengal, residents of enclaves Jagatber-I, II, and III located in Cooch Behar in West Bengal have complained of lack of accessible drinking water, despite repeated promises from local administrative officials. In June 2017, officials from the Public Health Engineering (PHE) Department of Cooch Behar promised locals that a water tank would be constructed. Officials of the Gopalpur Panchayat also promised the owners of the land on which the tank was constructed that they would receive permanent jobs.

As recently as mid-August, it was found that the tank had been constructed so far from the locality that residents would not be able to access drinking water. A mass deputation was thus submitted to the District Magistrate of Cooch Behar on 16 August 2017 and complaints were lodged on 21 August at the Mathabanga Police Station. Mass memorandums were also submitted to the Panchayat and at the time of the release of this statement, the complaints have not been resolved, and residents continue to face issues relating to water supply.

These are not the only instances of violations of basic rights in the enclaves. There are reports of many residents wishing to relocate to Bangladesh, [due to the prolonged delay in providing them identity cards](#), which adversely impacted employment opportunities. [A survey of 23 formerly-Bangladeshi enclaves](#) in India has shown that the lack of infrastructure continues to plague the residents of these enclaves, most of whom are forced to venture outside to access jobs, shelter, and education. However, the lack of reservation in Indian schools, coupled with the lack of documentation, prevents them from easily enrolling their children in schools or getting skilled employment. MASUM has also complained about an enclave dweller who was arrested for violation under the Foreigners Act, in spite of having all the necessary identity documents. MASUM has also received information that some erstwhile enclave dwellers have been excluded from the headcounts conducted between 2011 and 2015, and in spite of repeated requests to rectify the mistake, this has not been

done thereby preventing them from living as full citizens of India. This and other similar cases show that for many, the Land Boundary Agreement remains as laudatory words on paper with no real change in their lives.

Part III of the Indian Constitution bestows certain inalienable rights on all citizens of India, in particular, the right to life and liberty under Article 21. The Supreme Court on more than one occasion has interpreted this to mean the right to basic amenities such as food and clean drinking water. In addition, Article 47 declares that the State should endeavour to improve the standard of living and public health.

By ignoring the residents of the enclave, the Government is derogating its duty towards people who have long been deprived of basic rights and amenities solely due to political bickering and decades long complacency. The Asian Human Rights Commission (AHRC) strongly condemns the neglectful attitude of the State towards the residents of the erstwhile enclaves. It is essential that all residents of these enclaves are immediately provided with access to drinking water and electricity, those wishing to remain in India are included in the headcount without further delay and any government officials who obstruct or delay the provision of the same, and harass the dwellers are strictly disciplined. A fact-finding mission to properly document the number of residents in the enclaves, and the extent to which the Land Boundary Agreement of 2015 has been implemented must commence at once, and the State must endeavour to immediately redress their grievances, and to provide compensation to affected persons as required.

[1] *Peoples Union for Civil Liberties (PUCL) v. Union of India & Ors.* W.P. (Civil) No. 196 / 2001

[2] See *Bandhua Mukti Morcha v. Union of India* AIR 1984 SC 802; the case held that citizens have the right to clean drinking water as part of the right to a clean environment.

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The Asian Human Rights Commission (AHRC) works towards the radical rethinking and fundamental redesigning of justice institutions in order to protect and promote human rights in Asia. Established in 1984, the Hong Kong based organisation is a Laureate of the Right Livelihood Award, 2014.

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