

A NATIONAL REGISTER OF EXCLUSION

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to The Preamble, Union & its Territories and The Citizenship

By requiring long-term residents of Assam to prove their citizenship by negotiating a thicket made up of bewildering and opaque rules and an uncaring bureaucracy, the Indian state has for the past two decades unleashed an unrelenting nightmare of wanton injustice on a massive swathe of its most vulnerable people.

The official presumption that they are foreigners has reduced several million of these highly impoverished, mostly rural, powerless and poorly lettered residents to a situation of helplessness and penury. It has also caused them abiding anxiety and uncertainty about their futures. They are required to persuade a variety of usually hostile officials that they are citizens, based on vintage documents which even urban, educated, middle-class citizens would find hard to muster. And even when one set of officials is finally satisfied, another set can question them. And sometimes the same official is free again to send them a notice, starting the frightening cycle afresh.

On February 2 and 3, I was in Guwahati listening to heart-breaking accounts from 53 people from 13 districts of Assam. This was as part of a people's tribunal on the National Register of Citizens (NRC), along with Justice Venkate Gopala Gowda, Colin Gonsalves, Monirul Hussain and Sanjoy Hazarika. What emerged were numbing stories of unyielding official bias and arbitrariness, of the denial of elementary "due process" and, above all, the complete absence of public compassion. Even old men frequently broke down as they spoke of all that they had endured.

It emerged that the names of many persons were dropped from the draft NRC only because of minor differences in the spelling of Bengali names in English in different documents. We encountered several instances where the variation of a single letter, for example between Omar and Onar, was enough to rule that a person is a foreigner. Likewise, the rural unlettered are typically vague about their dates of birth. A person could be excluded from citizenship if she told the tribunal that she was 40 when her documents recorded her to be 42.

Women are especially in danger of exclusion from the citizenship register. Typically, they have no birth certificates, are not sent to school, and are married before they become adults. Therefore, by the time their names first appear in voters' lists, these are in the villages where they live after marriage, which are different from those of their parents. They are told that they have no documents to prove that they are indeed the children of the people they claim are their parents. There were cases of being excluded from citizenship on this ground alone.

Impoverished migrant workers often travel to other districts of Assam in search of work, as construction workers, road-builders and coal-miners. In the districts to which they migrate, the local police frequently record their names as illegal immigrants from Bangladesh. The police then mark them out as illegal immigrants. They receive notices from foreigners' tribunals located in districts where they might have worked years earlier, far away from their home districts they have to travel to for every hearing, adding further to their costs.

The NRC is not the only institution through which the state challenges them to prove their citizenship. A second process began in the mid-1990s when the then Chief Election Commissioner T.N. Seshan, as a one-time measure, directed officials to identify "doubtful voters" by marking a "D" against their names on the voters' list. This would temporarily bar them

from voting or standing for elections, until an inquiry was completed.

But this temporary measure became permanent. The power was vested permanently with junior officials who could doubt the citizenship of any person at any time without assigning any reason. Those with the dreaded “D” beside their names had no recourse for appeal under the rules, with years passing without any inquiry. The “D” also debarred them from being included in the draft NRC.

A third process empowers the Assam Police to identify anyone it suspects to be a ‘foreigner’. Again, all that the police claim in most cases is that the person was unable to show them documents establishing his or her citizenship. People consistently deny that the police even asked them for documents. Why would they not show them these, when they all know the dangers of not allaying the suspicions of the police?

All cases referred by the police are heard by Foreigners’ Tribunals (FTs). Earlier, retired judges were appointed to these tribunals. The Bharatiya Janata Party government has appointed many lawyers (often members of the ruling party or the Rashtriya Swayamsevak Sangh) who have never been judges. There are now FTs in which not a single person has been declared an Indian citizen over several months. Many allege that both the police and presiding officers in FTs work to fulfil informal targets to declare people foreigners.

Even if a person finds her name in the NRC, the police can still refer her case to an FT; an election official can even deem her to be a “D”-voter. Article 20 of the Constitution includes as a fundamental right that “no person shall be prosecuted and punished for the same offence more than once”. But this principle has been waived for FTs. We found that even after an FT had confirmed a person to be an Indian citizen, another FT and often the same FT can again issue notice to the same person to prove her legitimate citizenship once more. A person is never allowed to feel secure that the state has finally accepted that she is an Indian citizen.

In this way, the sword permanently hangs low over their heads. Who will be challenged before which institution to prove that they are Indian citizens? Will they or their loved ones be stripped of their citizenship rights, and by processes that are opaque, unreasonable and discriminatory?

No person in any one of the testimonies that we heard was given legal aid by the state, which is bound to deploy lawyers paid by the state to fight their cases in the FTs and higher courts. People instead spoke of panic spending, of enormous amounts of money to pay lawyers, as well as for costs of travel of witnesses who they bring with them to testify in their favour. For this, they have had to sell all their assets or borrow from private moneylenders. The large majority of them are poorly educated and very impoverished, doing low-paid work such as drawing rickshaws, or working as domestic work or farm labour.

With the entire burden of proving citizenship on their shoulders and the arbitrary and opaque multiple forums to which they are summoned, people deprived of both education and resources are caught in a Kafkaesque bureaucratic maze from which they find it hard to emerge.

Trapped at the crossroads of history, their destinies depend on institutions that treat them with undisguised hostility and bias. There are indeed few parallels anywhere in the world of the state itself producing statelessness on the scale and in the manner that it is doing in Assam.

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