

## CAUGHT IN A BUREAUCRATIC WEB

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

A file photo of an NRC centre in Assam, where people queue up to check their names on the draft list of the NRC in Nagaon district of Assam. | Photo Credit: [Reuters](#)

The Gauhati High Court declared Sahijuddin a foreigner on November 13, 2015. He had appealed to the High Court against an ex-parte order of the Foreigners Tribunal in Kokrajhar declaring him a foreigner. Mr. Sahijuddin was too poor to afford the services of a lawyer and was not represented before the Tribunal. The High Court found this reason unconvincing and stripped him of his citizenship without even examining the documents he possessed. Mr. Sahijuddin is one of 1.17 lakh people who were declared foreigners by Foreigners Tribunals (as on March 31, 2019), quasi-judicial bodies in Assam that decide questions of citizenship.

In this article, the authors discuss the problems with how appeals from Foreigners Tribunals cases are decided by the Gauhati High Court, based on an analysis of 787 such orders and judgments between 2010 and 2019.

Of the cases analysed, 41% of the appeals were from Morigaon, Barpeta, and Goalpara, none of which share a border with Bangladesh. Around 35% of these appeals were from ex-parte orders of Foreigners Tribunals i.e., without hearing the person accused of being a foreigner.

Unlike Mr. Sahijuddin, when Bhanu Biswas received a notice, he hired a lawyer and provided him with all the necessary documentation to prove his Indian citizenship before the Foreigners Tribunal. Mr. Biswas stopped following up with his lawyer after 2009. When the police came to his house to take him to a detention camp in May 2011, Mr. Biswas realised he had been declared a 'foreigner' through an ex-parte judgment in 2003. In a further twist, Mr. Biswas found out that his lawyer had died sometime in the two years prior to his arrest. He was subsequently declared a foreigner by the Gauhati High Court on September 22, 2015.

The burden of proof under the Foreigners Act, 1946 is on the person accused of being a foreigner. If the person accused does not appear before the Tribunal, they will be declared a foreigner without the state having to prove their case. In 99% of the appeals from ex-parte orders of the Foreigners Tribunals, the High Court agreed with the findings of the Tribunals. All the persons who appealed to the High Court had some form of documentation. Around 61% of them produced electoral rolls and 39% of them produced permanent residence certificates/certificates from the panchayat. In 66% of the cases, the Foreigners Tribunals found the documentation unsatisfactory. In 38% of the cases, documentation was rejected because spellings did not match and in 71% of them, the secondary evidence was deemed inadmissible. This means that where people had produced copies of documents, these were not certified copies or the person who had created the document could not certify its contents.

The process is particularly harsh on women. Women who do not have birth certificates and get married before registering as voters do not have any document linking them to their parents. The Supreme Court in *Rupajan Begum vs. Union of India* allowed a certificate from the gram panchayat secretary to be submitted as a link document to prove descent from a person who entered India before March 24, 1971. However, wherever this certificate is produced as evidence, the gram panchayat secretary needs to testify in person. This standard of proof is quite difficult to meet, given that gram panchayat secretaries change over time. In 99% of the cases where such a document was produced, the person was declared a foreigner.

Overall, in 97% of the appeals before the High Court, the person was declared a foreigner. In 15% of these cases, the High Court ordered deportation. Amongst the remaining cases, in 1%, the Court ordered that the person be sent to a detention centre, and in 80% of the cases, the Court did not specify what steps were to be taken. In a majority of cases, the High Court instructed the Border Police or the Foreigners Tribunal to “do the needful.” It is not clear what the Border Police or Foreigners Tribunals did thereafter. Although the Foreigners Act provides for a range of non-custodial options such as restrictions on residence, the prohibition of certain kinds of work, etc, the High Court appears to prefer detention and deportation.

The question of citizenship is nestled in a confusing tangle of documents, bureaucracy, and legal procedures which Foreigners Tribunals and the Gauhati High Court are tasked with resolving. In doing so, courts need to avoid an overly legalistic approach which ignores fundamental contradictions between lived experiences of identity documentation and evidentiary requirements.

*Leah Verghese and Shruthi Naik are with DAKSH, a nonprofit based in Bengaluru. The authors would like to thank their interns, Sahana R, Tanya Reddy, and Rasmiika Punnoose for their assistance*

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