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# **Access to Justice for Women under Foreigner's Tribunal Act, 1946 in Assam**



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**Access to Justice for Women under  
Foreigner's Tribunal Act, 1946 in Assam**

**Nargis Choudhury**

**2023**



# Access to Justice for Women under Foreigner's Tribunal Act, 1946 in Assam

Nargis Choudhury \*

## Introduction

Justice for women is an essential element of any society's commitment to equity and human rights. While the fundamental principles of justice apply universally, the unique challenges and experiences faced by women create a need for gender-specific considerations. Women often encounter barriers rooted in bias within justice institutions, societal stigmatization, psychological trauma associated with seeking legal redress, and the absence of gender-sensitive procedures. These obstacles can hinder women from accessing the available avenues of justice and realizing their fundamental human rights.

In the context of Assam, a region with a long history of history with issues related to "illegal immigration," the access to justice for women is a topic of critical importance. Since India's independence, Assam has witnessed significant legal and policy interventions, starting with the Immigrants (Expulsion from Assam) Act of 1950. One of the pivotal developments in this ongoing narrative was the publication of the National Register of Citizens (NRC) in 2019, which excluded approximately 1.9 million people, many of whom are now at risk of statelessness. Alarming, the majority of those affected by this exclusion are women and children. The Foreigner Tribunals (FTs) in Assam, established to determine the status of suspected foreigners, play a crucial role in these proceedings. These tribunals operate under the Foreigners Act of 1946 and the Foreigners (Tribunal) Order of 1964, and they have been granted significant authority to adjudicate cases involving suspected foreigners, often behind closed doors. However, difficulties have arisen as FTs are known to reject several legal documents as evidence of Indian citizenship, issue ex-parte orders, and, at times, appear to make arbitrary decisions with political undertones. In the case of women, who are often illiterate or have relocated to different villages upon marriage before the age of 18, proving their paternal linkages can be particularly challenging. Their primary identification document, the voter list, often bears their husband's name, further complicating the process. Moreover, FTs tend to cast doubt on or dismiss most of the documents provided by women as unreliable or weak, exacerbating the hurdles they face. These systemic challenges disproportionately affect women and contradict India's constitutional commitment to ensuring the right to nationality, as outlined in international agreements to which India is a signatory. The circumstances that unjustly strip women of their identity and citizenship demand immediate attention.

Within this context, this research paper undertakes an in-depth exploration of the distinctive challenges that women face within the purview of the Foreigner Tribunals in Assam. Its objective is

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to shed light on the pivotal importance of instituting gender-sensitive legal procedures and championing extensive reforms that safeguard justice and equality for all.

## **Meaning of Access to Justice**

"Access to justice" is a core principle of law and human rights that ensures individuals have the capacity to effectively engage with the legal system to protect their rights, pursue legal solutions, and achieve fair dispute resolution. It encompasses various factors, including the physical availability of legal institutions, the affordability of legal services, the transparency and impartiality of legal processes, the provision of legal aid, the dissemination of legal knowledge, and the assurance of an unbiased and equitable legal system. This principle highlights the importance of not only having legal systems in place but also making them accessible and fair, allowing individuals from diverse backgrounds and circumstances to access legal remedies and contribute to a just and equitable society.

## **Meaning of Some Important Terminologies**

Doubtful Voter – A group of voters disenfranchised by the Election Commission of India in 1997.

Foreigner – A person who is not a citizen of India.

Irregular Immigrant – A person who entered India without a valid passport or documents and remained for more than the time allowed in India.

National Register of Citizens – A list of Indian citizens residing in Assam maintained file by the Indian government in accordance with Rule 4A of the Schedule to the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

## **Foreigner Tribunal**

The Foreigners Tribunals in India, established under the Foreigners (Tribunal) Order of 1964, serve as quasi-judicial bodies responsible for determining an individual's status as a foreigner. These tribunals are distinct from the Foreigners Act of 1946. In Assam, their inception began in 1964, with the establishment of four tribunals, which expanded to nine by 1968. Notably, there is no appeal process for their decisions. Operating in accordance with Section 6A of the Citizenship Act of 1955, these tribunals have played a vital role in citizenship determinations in Assam. Presently, there are approximately 100 Foreigners Tribunals operating in 31 districts in Assam, with plans to establish an additional 200. Cases concerning foreigners or individuals suspected of being illegal immigrants can be referred to the Foreigners Tribunals through three primary avenues:

- a. *Border Police*: The Border Police can initiate cases, often based on suspicions or investigations, and refer them to the Foreigners Tribunals for adjudication.
- b. *Election Commission of India*: The Election Commission may flag individuals as 'doubtful' or 'D' voters during electoral roll revisions, leading to their referral to the Foreigners Tribunals.
- c. *National Register of Citizens (NRC)*: The NRC process, which aims to create a register of genuine citizens, may identify individuals whose citizenship status is in question, leading to their cases being brought before the Foreigners Tribunals for determination.

## Context/Background

The post-colonial evolution of citizenship in India, as guided by the Citizenship Act of 1955, has witnessed a transformation from an inclusive *jus soli* conception to a more exclusionary *jus sanguinis* model. Initially, India embraced a vision of citizenship based on *jus soli*, where anyone born within its territory, regardless of religious, ethnic, or cultural background, was considered part of the political community. However, starting in the 1980s, driven by concerns over alleged large-scale 'illegal migration' from Bangladesh along the eastern border, a shift towards a more exclusionary definition of citizenship took root.

In regions like Assam, disputes over who qualifies as an Indian citizen have significantly shaped the current citizenship discourse and an ongoing crisis. The shadow of 'illegal migrants' became the central issue in identity formation in Assam. The Assam Accord of 1985, meant to conclude the anti-foreigner agitation and address the prolonged issue of 'foreigners' in Assam, unintentionally escalated the situation into a complex crisis.

The Assam Accord, a tripartite political agreement between local organizations leading the Assam movement and provincial and central governments, outlined specific criteria for citizenship. It categorized migrants based on their arrival dates before 1966, between 1966 and midnight on March 24, 1971, and after that date, designating them as citizens, potential citizens with specific conditions, or illegal immigrants, respectively. This Accord set the stage for an expanded discourse on immigration that extended into the realm of citizenship, carrying national and state-level implications. It promised a new direction in the understanding of citizenship and paved the way for redefining 'citizens' while simultaneously facilitating new applications of the 'foreigner' category in Assam. These 'foreigners' primarily consisted of people of Bangladeshi origin with Bengali ethnicity, predominantly Hindus and Muslims.

The Assam Accord, a crucial development in the ongoing citizenship discourse of India, bears significant historical significance. This Memorandum of Settlement (MoS) was signed in New Delhi on August 15, 1985, in the presence of then-Prime Minister Rajiv Gandhi, where government of India representatives and Assam Movement leaders came to an agreement. The provisions of the Assam Accord outlined a process for identifying and deporting individuals who had entered Assam after the specific cut-off date, which was March 24, 1971. Central to the Accord were key demands, which included the updating of the 1951 National Register of Citizens (NRC), the reinforcement of the border with Bangladesh through barbed wire fencing, and the expulsion of unauthorized immigrants who had arrived in Assam after March 21, 1971.

In order to implement the Assam Accord, Section 6A was incorporated into the Citizenship Act, a provision that is exclusively applicable within the state of Assam. It is important to note that this particular provision has faced constitutional challenges, with critics arguing that it infringes upon the right to equality as guaranteed under Article 14 and the right to life and personal liberty, protected by Article 21 of the Indian Constitution. These rights are safeguarded not only for Indian citizens but for all individuals within the nation's jurisdiction. The debate over Section 6A of the constitution shows how complicated and disputed the citizenship problem is in Assam and the broader legal framework.

In Assam, multiple parallel processes have been used to distinguish citizens from so-called 'illegal' or undocumented migrants. This includes the National Register of Citizens (NRC), detection of foreigners by the border police force based on suspicion or complaints, and the identification of 'doubtful' (D) voters by the electoral commission. The introduction of 'D-voters' marked a transition from merely detecting 'foreigners' to casting doubts on the citizenship status of certain individuals.

Crucially, all these processes are subject to similar mechanisms involving the Foreigners Tribunals (FTs). Although other processes have been in place for a considerable time, the ongoing NRC update process was conducted under the direct supervision of the highest judicial body, the Supreme Court of India.

The publication of the final NRC list on August 31, 2019, resulted in the exclusion of 1.9 million individuals, many of whom belonged to linguistic and religious minority groups, potentially rendering them stateless. This disproportionately affected Bengali-speaking Hindus and Muslims, with the latter's situation further complicated by their exclusion from the Citizenship Amendment Act (CAA) of 2019.

While the impact of these developments has been severe, marked by human rights abuses, arbitrary arrests of alleged 'illegal migrants,' and even suicides, women, especially married women, are at a heightened risk of becoming stateless along with their children. This heightened risk is compounded by the 2004 amendment to the Citizenship Act of 1955, which imposes specific conditions for a child's birthright citizenship. This provision necessitates that one of the child's parents must be an Indian citizen at the time of birth, and the other parent must not be an illegal migrant. The consequences of these legal and policy changes are far-reaching, particularly for women, as they navigate the complex terrain of citizenship and identity in Assam.

## **Shifting the Burden of Proof**

In 2005, a pivotal Supreme Court decision in Assam that repealed the previous Illegal Migrants (Determination by Tribunal) Act of 1983 and reversed the burden of proof for citizenship, transferring the onus from state authorities to residents. As a result, individuals in Assam must now furnish substantial documentation to confirm their Indian citizenship before the Foreigner Tribunals. This shift has far-reaching consequences, particularly concerning access to justice, and poses distinct challenges, particularly for women, who often face difficulties in providing the necessary evidence to establish their citizenship.

## **Access to Justice and Constitution of India**

Access to justice is a fundamental cornerstone of the Constitution of India, which enshrines principles of social, political, and economic justice. The preamble of the Constitution sets the stage by guaranteeing social, economic, and political justice for all Indian citizens. This is reinforced by Article 14, which mandates that the State shall not discriminate against any person within its territory, ensuring equal protection under the law. The concept of "equal protection of laws" underscores that every individual in India is entitled to the protection of all statutory laws, with no exceptions. Article 21 further accentuates access to justice by emphasizing due process. Additionally, Article 22(1) and Article 22(2) provide constitutional provisions for those arrested and detained at police stations, ensuring their right to seek relief by filing written petitions and applying to the Supreme Court to uphold the fundamental rights guaranteed under Article 32 of the Constitution.

The Constitution of India emphasizes the perpetual right of the Supreme Court to administer "complete justice," as highlighted in Article 142. The provisions of the Indian Constitution underscore equal rights and opportunities for legal defense for all individuals in the country, striving to achieve true equality. In line with the universal human rights protection system, effective and fair access to justice is recognized as an essential right. Equality, as per the Indian Constitution, cannot be achieved without upholding the right to life and the prohibition of



discrimination. The Constitution pledges to establish an efficient procedure and ensure the fundamental right to access Indian courts through Article 32 and 226. These provisions empower individuals to approach the Supreme Court directly under Article 32 and the High Court under Article 226 for cases involving violations of fundamental rights and other essential issues, eliminating the need to navigate lower courts. Legal aid plays a pivotal role in facilitating access to justice, and the Supreme Court has consistently supported and acted to advance this fundamental right, reinforcing the Constitution's provisions.

The Constitution of India includes specific provisions regarding equal justice. Article 13 addresses laws inconsistent with or derogatory to fundamental rights, Article 14 guarantees equal treatment and equality before the law, Article 15 prohibits discrimination against women and children irrespective of gender, and Article 21 extends protection to life and personal liberty, encompassing the right to access courts and seek judicial redress in all matters. Article 30A emphasizes access to courts and tribunals and the importance of speedy justice. Within Article 14, essential principles of natural justice are incorporated, including "Nemo Judex in Causa Sua" (one cannot be the judge of their own cause) and "Audi Alteram Partem" (hearing the other party or providing an opportunity for a fair hearing before issuing an order). Upholding these principles is crucial to maintaining justice, and any deviation from them renders government decisions invalid, as they become unjust and discriminatory, in violation of Article 14.

While the Indian Constitution and various judicial decisions have established strong pillars for access to justice for all citizens, the reality falls short of this ideal. Injustice and human rights violations remain prevalent due to numerous obstacles and shortcomings within the justice system. Challenges such as economic and social barriers, lack of access to legal information, limited awareness, gender discrimination, illiteracy, and poverty hinder access to justice. Additionally, inadequate protection for women, children, and transgender individuals further illustrates the ineffective access to courts and justice, highlighting the need for comprehensive reforms and efforts to bridge these gaps.

## **Access to Justice and Legal Aid**

According to the 2018 National Human Rights Commission Report on Detention Camps, a significant number of individuals declared as "foreigners" asserted their Indian citizenship, but due to a lack of access to proper legal representation, they found themselves unable to access the courts, often facing ex-parte decrees. The inability to afford legal counsel further hindered their ability to present essential documentation to the tribunal. This situation highlights the constitutional obligation of the Government to establish a robust judicial infrastructure and facilitate access to justice, ensuring that every person can receive a prompt, cost-effective, and equitable trial. As per Article 39A, introduced by the 42nd Constitutional Amendment in 1976, which prioritizes a legal system promoting justice and fairness with equal opportunities, it's essential to provide free legal aid through appropriate legislation or schemes. Criticism has arisen regarding the Foreigners' Tribunals' ex-parte judgments, emphasizing the universal principle that everyone should have the chance to be heard.

## **Detention Centres in Assam**

Detention camps were established in response to an order by the Gauhati High Court in 2008, amidst ongoing concerns and political debates surrounding "illegal immigrants" in Assam. Under Section 4 of the Foreigners' Act, 1946, individuals declared as foreigners could be subjected to

detention. These detention facilities were progressively set up in Assam in 2010, 2012, 2014, and 2018. However, in practice, these camps led to prolonged incarceration for their occupants, resulting in delayed justice and imposing significant financial burdens on those who were often economically disadvantaged and lacked legal knowledge. It wasn't until 2018 that the judiciary began to acknowledge the hardships faced by detention camp inmates, when a social activist brought a case forward in the public interest. To be eligible for release after spending more than three years in these facilities, inmates were required to compromise their biometric data, furnish a security deposit of one lakh rupees, and secure assurances from two Indian nationals. Women detainees, in particular, faced added challenges due to the lack of comprehensive policies and regulations.

## **Experiences in Detention Camp**

The conditions in detention camps for women detainees are nothing short of horrifying, reflecting a bleak reality of suffering and deprivation. Many of these detainees, predominantly from underprivileged and marginalized backgrounds, suffer from illiteracy and poverty. Despite their deep roots in the country, possessing documentary evidence, and participating in historical events, they are unjustly treated as criminals within these camps, subjected to enduring and relentless hardship.

These camps serve as difficult spaces where the detained women experience immense distress. Families are only permitted to visit under strict conditions, and bringing food from home is prohibited. The camps are severely overcrowded, and a distressing feature is that both felons and alleged illegal migrants are subjected to the same treatment. Inhumane conditions prevail, with detainees being unable to leave even in cases of family members' deaths. Young male children are separated from their mothers and housed with criminal inmates. Basic amenities such as beds and pillows are denied, and inadequate medical facilities further exacerbate their suffering. The food served is of poor quality and insufficient, leading to severe deprivation. Pregnant women face particularly horrifying ordeals within these camps.

Another deeply concerning aspect is the lack of educational facilities for children in the detention camps. Some children have spent up to a decade without access to education, in direct violation of the Indian Constitution. The 86th Amendment to the Constitution of India mandates free and compulsory education for all children aged six to fourteen years. However, this fundamental right is denied to the children within the detention camps, depriving them of their constitutionally guaranteed basic rights.

Adding to the distress, families of detainees face significant challenges in visiting their loved ones. Many cannot afford the substantial travel distances, and corrupt correctional staff allegedly demand bribes from family members for visitation rights. These staff members have even established a black market within the detention facilities, exploiting the desperate detainees by selling essential items at exorbitant prices. The conditions within these camps are not only inhumane but also a stark violation of basic human rights and constitutional guarantees. Comprehensive reforms and humanitarian interventions are urgently needed to rectify these egregious violations and alleviate the suffering of women detainees and their families.

## **The Legal Evolution of Assam's Citizenship Framework: Supreme Court Cases**

In the complex landscape of citizenship and justice in Assam, the legal framework has undergone significant changes and challenges over the years. The Foreigners Act of 1946, originating in the post-World War II era, aimed to address the immediate expulsion of foreigners from India, but its

implications have extended far beyond that. Notably, its application in Assam was influenced by the landmark *Sarbananda Sonowal v. Union of India* case, where the former Assam Chief Minister, Sarbananda Sonowal, played a pivotal role.

The case, filed to repeal the Illegal Migrants (Determination by Tribunal) Act of 1983 and the Foreigners Act of 1946 applied in Assam, brought to the forefront the contentious issue of illegal immigration. The Indian government's introduction of the IMDT Act in the context of the Assam Accord sought to address this specific concern, but it was soon criticized for alleged arbitrariness and bias towards Assamese citizens. Subsequently, a momentous judgment declared the IMDT Act invalid, citing violations of Articles 14 and 355 of the Indian Constitution.

This significant legal development prompted the replacement of the Tribunals established under the IMDT Act with Foreigners Tribunals to adjudicate claims of doubtful citizenship in Assam. As a result, the burden of proof shifted to the residents of Assam, necessitating them to present comprehensive documentation to establish their Indian citizenship. This legal transformation did not occur without controversy, as it raised concerns and contradictions, notably conflicting with earlier Supreme Court rulings.

The implications of these legal intricacies have had a profound impact on the people of Assam, gradually shaping the rights of its citizens. The subsequent cases, including *Assam Sanbmilita Mahasangha v. Union of India*, further underscored the relevance of the Sarbananda Sonowal case and reinforced the need to update the National Register of Citizens (NRC).

## Challenges/Hurdles in Access to Justice

Globally, women encounter persistent barriers to equitable access to justice due to entrenched violence, discrimination, and societal perceptions. Achieving a comprehensive understanding of how culture, politics, and economics influence women's access to justice necessitates surpassing legislative constraints. Relying solely on protective laws, legal aid, and adjudication processes is inadequate. The central challenge lies in addressing the prevailing perception of women as inferior and subservient, often overlooked in a legal framework underestimating the severity of violence against women. Responses to their experiences remain confined within legal requirements, disregarding their fundamental concerns about gaining access to cultural, political, and economic resources necessary for empowerment. This issue is especially evident in cases involving foreigner tribunals, where women encounter significant hurdles in pursuing justice for citizenship-related matters.

This issue is particularly pronounced in Assam, especially in cases involving foreigner tribunals, where women face substantial hurdles when seeking justice for citizenship-related matters. Discriminatory laws and practices, deeply rooted gender biases, limited awareness of legal rights, restricted access to education, and economic vulnerabilities all contribute to the formidable barriers that women encounter in accessing justice in the region.

In the following sections, the most significant hurdles that obstruct access to justice are discussed, with a particular focus on the distinct challenges faced by women in Assam.

- a) **Discriminatory Laws and Practices:** Women encounter legal and cultural obstacles that perpetuate discrimination and hinder their access to justice. These discriminatory laws and practices create significant barriers in citizenship-related matters. Stringent citizenship verification processes disproportionately affect women, imposing significant challenges on their legal status. The challenges they encounter in asserting their citizenship rights include a lack of information, inadequate supporting documents, the necessity to pay unofficial fees to

immigration officials, and inaccuracies in official data entry, such as name errors. The Foreigners' Act has shifted the burden of proof onto the individual, necessitating that she prove her non-foreigner status. This reversal places a substantial burden on individuals, demanding an extensive array of documented evidence to substantiate their citizenship claims.

- b) **Gender Discrimination:** Globally, gender discrimination within legal systems often hinders women's exercise of their legal rights. In the context of Assam's citizenship rights, women face unique challenges in proving their familial relationships. The process for the National Register of Citizens (NRC) heavily relies on documentation, which is particularly problematic in communities where women are often married off before the age of 18. Consequently, women may possess documents proving their marital connections but struggle to establish links to their parents. Many women who marry early must rely on Gaon Panchayat documents to assert their permanent residency rights, which does not align with the realities of India's social and cultural practices. This system, coupled with inherent biases, further marginalizes women and adversely affects their prospects for acquiring nationality in Assam.
- c) **Patriarchy:** Patriarchy has long hindered women's access to citizenship and justice, denying them fundamental rights and subjecting them to societal marginalization. Historically, women were excluded from various aspects of citizenship, denying them political and civil rights. In many societies, women faced limitations on voting, property ownership, contract signing, and employment, persistently tethered to male identities as sisters, wives, or daughters. Despite the citizenship that should empower them (e.g., through Aadhaar Cards), women in Assam faced obstacles during the NRC process designed to address illegal immigration. Burdened by the obligation to prove their citizenship, women grappled with a system reliant on written documentation, which significantly favoured men. In Assam, women's submissions of documents were consistently met with a high degree of doubt and suspicion by authorities. This systemic gender bias further hindered their access to justice and the process of verifying their citizenship under FT.
- d) **Deprived of Education, Awareness and Legal Information:** The vast majority of Assam's population, particularly women and marginalized communities, faces a severe lack of education and legal awareness. This critical deficit hinders their ability to navigate the complex bureaucratic processes and gather the necessary documents required for citizenship verification. Given that the burden of proving citizenship now falls on the individual, the importance of legal literacy becomes even more pronounced in ensuring a fair and just resolution. Furthermore, the absence of legal information renders these vulnerable groups susceptible to exploitation by corrupt officials who demand unofficial fees and engage in fraudulent practices. Without proper knowledge, individuals often find themselves unable to access legal aid or pro bono legal services that could alleviate their plight.
- e) **Economically Vulnerabilities:** The economic hurdles in accessing justice under the Foreigner Tribunal Act in Assam represent a significant obstacle, particularly for women and marginalized communities. The financial burden associated with legal proceedings, including legal representation, documentation, and court fees, is often challenging for those facing economic hardships. These disparities not only worsen existing social inequalities but also limit marginalized individuals' ability to engage with the legal system effectively. To ensure a more

equitable and inclusive justice system, addressing these economic challenges is a critical imperative, as they continue to obstruct the path to justice for many in Assam.

## High Court Cases and Impact on Women's Citizenship in Assam

High Court cases have had a profound impact on access to justice for women in Assam and their pursuit of Indian citizenship.

**a. Aktara Begum v. Union of India & Ors (2017):** In this case, the Gauhati High Court granted the Foreigners Tribunal the authority to initiate investigations into the citizenship status of an individual's extended family members after declaring them as foreigners. This decision raises significant concerns about mass statelessness and violates India's international obligations under the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Notably, the repercussions of such investigations do not apply in reverse; if an individual is deemed Indian, their family members are not automatically granted Indian citizenship. This ruling places an additional burden on individuals to secure their family's citizenship status, further complicating their access to justice.

**b. Amina Khatun v. Union of India (2018):** In this case, the Gauhati High Court determined that proceedings under the Foreigners Act and the Foreigners (Tribunals) Order are not of a civil nature. As a result, the principle of *res judicata*, which is essential for legal judgments' finality and preventing repeated legal proceedings from the same facts, does not apply to Foreigner Tribunal proceedings. This decision has significant implications for citizenship determination and security. *Res judicata*, codified under Section 11 of the Civil Procedure Code in India, is crucial in protecting individuals' citizenship rights and preventing harassment and discrimination. By excluding its application, this ruling not only restricts people's access to justice but also complicates their ability to fulfill their legal obligations in proving their Indian citizenship, creating a significant hurdle in their pursuit of justice.

## Cases from the Field



**Mrs. A.B and N.K** (a case in Morigaon, Assam): They were detained in 2010 following an investigation by the Foreigners Tribunal. Subsequently, they were sent to the Kokrajhar detention centre. Adding to their distress, Mrs. Begum's husband and son were also arrested and sent to a detention camp, fracturing their family. The daughter, merely 14 years old when detained, had to abandon her education, as no provisions for schooling existed in the detention camp. Their legal battle to establish their citizenship cost them over 1 Lakh rupees,

with financial assistance from neighbours. After enduring a decade of incarceration, the family now grapples with severe financial crisis and lingering mental trauma. This ordeal has left them

in a dire situation, with limited access to justice and the struggle to find a suitable future for their daughter.



**Mrs S.K (a case in Barpeta, Assam):** It is another tragic case the road ahead is an uphill struggle. Her situation as a 'D Voter' poses a constant threat, denying her inclusion in the NRC. Her legal battle is ongoing, carrying the risk of being labelled a foreigner and detained if she cannot meet the stringent documentary evidence requirements imposed by the Foreigners Tribunal system. Her husband faced a similar ordeal, marked as a 'D Voter' in 1997. He received a notice and was sent to a detention centre in 2011 but found relief when the High Court recognized him as an Indian citizen in 2013. In contrast, she received her notice in 2019 and has been dealing with her case at the Foreigners Tribunal for over three years. Every month, she must make a 10-kilometer journey to the police station for mandatory attendance. The

family faces added challenges as they care for two sons, one of whom suffers from mental disabilities, while remaining largely unaware of available legal aid. Their story highlights the struggles and complexities involved in accessing justice in the context of citizenship issues in Assam.



**Mrs. A (A case in Bonda Colony, Guwahati, Assam):** Mrs. A, a 47-year-old resident of Bonda village in Guwahati, is deeply connected with her family's life. Born to a teenage mother, she grew up in the same village, where she now resides with her husband and their daughter and son. Her husband runs a small cloth store, managing their livelihood. In a family marked by unity, Mrs. A stands out as the sole individual designated as a 'D Voter.' Initially, she sought legal representation from a private lawyer, paying a monthly fee of 500 rupees. Later, she connected with a

dedicated human rights lawyer who has been guiding her case under pro bono, highlighting the importance of support and justice in the face of citizenship challenges.

## Conclusion

In conclusion, the Foreigner Tribunal Act in Assam has presented significant hurdles to women's access to justice. The processes of verifying and confirming citizenship in Assam have proven to be fraught with arbitrariness and an excessive reliance on documentary evidence. Unfortunately, these procedures have placed a disproportionately heavier burden on women, making it harder for them to secure their citizenship and access justice. Access to justice is a fundamental right that should empower individuals to assert their social, economic, cultural, political, and civil rights. Yet, women in Assam dealing with citizenship issues face considerable challenges compounded by gender disparities and economic inequities.

The legal requirement of proving citizenship based on ancestry and lineage is fundamentally patriarchal, making it a struggle for women to obtain the necessary documents due to limited education, resources, and access to legal representation. The complex and often opaque administration of the Foreigners Tribunal further obstructs their path, frequently presuming women as foreigners without adequate justification. This study underscores the hardships and suffering experienced by women endeavoring to secure their right to citizenship. It reveals a system that, despite evolving through the Assam Accord and subsequent changes to the Citizenship Act of 1955, remains fundamentally exclusionary. Changes in citizenship rules, transferring the onus of proof to citizens, the rejection of women's citizenship documents during the NRC updating process, and the functioning of the Foreigners Tribunals all stem from judicial processes and decisions, raising vital questions about the potential complicity of the judiciary in constructing and deconstructing Indian citizenship in Assam. The 1.9 million individuals excluded from the NRC now face the looming threat of statelessness and potential deprivation of rights for future generations, all while their access to justice remains severely restricted. To address these systemic injustices and ensure equitable access to justice for all, regardless of gender or socioeconomic status, comprehensive reforms and interventions are urgently needed. It is imperative to establish gender-responsive and fair procedures that protect women's citizenship rights, not only for their empowerment but also for upholding the principles of justice and equality enshrined in the Indian Constitution.

## Findings

The findings from the discussion highlight several critical aspects of the citizenship determination process and its impact on women in Assam:

- I. **Arbitrary Nature of Detentions:** The citizenship determination process in Assam often leads to arbitrary detentions of individuals solely based on suspicion, raising significant concerns regarding due process and human rights.
- II. **Disproportionate Impact on Women:** Women in Assam are disproportionately affected by the citizenship verification process, making them more vulnerable to potential statelessness due to gender and socioeconomic disparities.
- III. **Challenges in Document Acquisition:** Women face substantial challenges in acquiring the necessary citizenship documents, primarily stemming from limited education, resources, access to legal assistance, and systemic corruption and bureaucracy.
- IV. **Patriarchal Citizenship Requirement:** The requirement to demonstrate citizenship through ancestry and lineage in Assam is fundamentally patriarchal, creating additional hurdles for women in proving their citizenship.
- V. **Complex Administrative Hurdles:** The Foreigners Tribunal's administrative complexities further impede women's access to justice, as it often assumes their foreigner status with minimal justification, even when evidence is presented.
- VI. **Suffering and Harassment:** Women involved in the citizenship determination process often endure pain, harassment, and suffering as they struggle to protect their citizenship rights.
- VII. **Exclusionary Nature of the System:** The system established as a result of the Assam Accord and subsequent amendments to the Citizenship Act is fundamentally exclusionary, potentially leading to statelessness and rights deprivation for excluded individuals.
- VIII. **Judicial Complicity:** Questions of judicial complicity in the process of constructing and deconstructing Indian citizenship in Assam have started to surface, as citizenship rules have

shifted the burden of proof onto citizens, and the functioning of the Foreigner Tribunals remains contentious.

- IX. **Risk of Statelessness:** The 1.9 million individuals excluded from the National Register of Citizens (NRC) are at risk of statelessness, with limited access to justice and potential future rights deprivation for themselves and their future generations.

These findings underscore the urgent need for a more equitable, transparent, and gender-sensitive approach to citizenship determination in Assam to protect the rights of all individuals, particularly women, in the region.

## References

1. Amnesty International, Designed To Exclude: How India's Courts Are Allowing Foreigners' Tribunals To Render People Stateless In Assam (Rapport\_Inde, Year).
2. Anjuman Ara Begum, Irregular and Undocumented Immigrants in Assam: Understanding the Jurisprudence in Past, Present, and Future (Refugee Watch, Manirban Calcutta Research Group, 2020).
3. Dass Bidhayak, Women Worst Affected by Assam's NRC / Indian Citizenship Tests (Inclusive Citizenship & Human Rights, 2022).
4. Dr. Malik Shah Nawaz Ahmed and Dr. Khan Shaharyar Asaf, Future Of Citizenship Laws In India With Special Reference To Implementation Of NRC In Assam (An Open Access Journal from The Law Brigade Publishing Group, 2020).
5. Mohammad Iqbal Shah, A Study of Constitution of India and Women Empowerment (International Journal of Humanities and Social Science Research, 2021).
6. Mahak Jain, Access to Justice in India: A Critical Analysis (January 23, 2021), SSRN: link.
7. Amish Tandon, Indian Citizenship and Immigration Law (Niyogi Books, 2022).
8. Das Bidhayak, Women Worst Affected by Assam's NRC / Indian Citizenship Tests (Policy Brief 3, 2020, Inclusive Citizenship & Human Rights).
9. Tarunabh Khaitan, Discrimination (Max Planck Encyclopaedia of Comparative Constitutional Law, 2017).
10. Trisha Sabhapandit and Padmini Baruah, Untrustworthy And Unbelievable: Women And The Quest For Citizenship In Assam (Statelessness and Citizenship Review, 2021).
11. Amish Tandon, Indian Citizenship and Immigration Law (Niyogi Books, 2022).
12. Kanika Gauba and Anshuman Singh, Voter, Citizen, Enemy (Vol. LVII, No. 23, Economic and Political Weekly, 2017).
13. N.G. Jayal, Citizenship and Its Discontents: An Indian History (Harvard University Press, 2013).
14. A.B. Keith, A Constitutional History of India, 1600-1935 (Pacific Publications, 2010).
15. Mapping Citizenship in India (Oxford University Press, 2010).
16. Law of Citizenship and Aliens in India (Asia Publishing House, 1962).
17. Vivek Kumar, A Study of Refugees in India: The Legal Perspective (3 Int. J. of L. 93-98, 2017).
18. V.R. Krishna Iyer, Some Half-hidden Aspects of Indian Social Justice (Eastern Book Company, 1980).
19. Roma Mukherjee, Women, Law and Free Legal Aid in India (Deep and Deep Publications Pvt. Ltd., ISBN: 81-7629-098-X).
20. S. Muralidhar, Law, Poverty and Legal Aid: Access to Criminal Justice (Lexis Nexis Butterworths, 2004).
21. Nishar Ahmed Bhatt, Access to Justice in India (ISBN: 9798885464000).



## **Cases**

22. Writ Petition (Civil) 7339 of 2019, Gauhati High Court
23. Writ Petition (Civil) 260 of 2017, Gauhati High Court
24. S. R. Bommai v. Union of India ([1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1).
25. Satyadhan Ghosal v. Deorjin Debi, AIR 1960 SC 941, link.
26. Writ petition (Civil) 131 of 2002, Sarbananda Sonowal and Ors. Vs. Union of India and Ors
27. Assam Sanmilita Mahasangha & Ors vs Union Of India & Ors, WRIT PETITION (CIVIL) NO. 562 OF 2012

## **Statutes**

28. Constitution of India Act
29. The Foreigners Act, 1946, link.
30. Foreigners (Tribunal) Order, 1964
31. Citizenship Act, 1955
32. Article 1, United Nations Convention on Statelessness, 1954
33. Assam Accord, 1985
34. UNHCR (United Nations High Commissioner of Refugees. 2017)
35. Constitutional Amendment Act, 2019 & 2016

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