

Contested Citizenship in Assam:

People's Tribunal on Constitutional Processes and Human Cost

7TH & 8TH September | Indian Society of International Law, Bhagwandas Road, New Delhi

Members of the Jury - *Justice (Rt) Madan Lokur, Justice (Rt) Kurien Joseph, Justice (Rt)*

AP Shah, Ambassador Deb Mukharji, Ms. Githa Hariharan, Dr. Syeda Hameed, Prof.

Monirul Hussain and Dr. Faizan Mustafa.

Interim Jury Report

The members of this tribunal have heard the views and experiences of people excluded from the National Register of Citizens in Assam, and of various leading experts. We all agree that the NRC has spawned a humanitarian crisis. We worry because there are no signs of this crisis abating. Large numbers of minorities in Assam, whether religious, linguistic or ethnic, have lived with the fear of being told that they don't belong in this country. They may, at any time, be marked doubtful voters (D), and prevented from exercising their franchise. A local border police constable can again, at any time, accuse them with being foreigners and refer their cases to a detention centre. Even after the final register, there are many demands for selective reverification.

In the course of the proceedings of this tribunal, the jury heard about the circumstances creating and enabling the NRC process; and the role of the government and the Supreme Court in this exercise. The tribunal also took note of the Centre's proposed Citizenship Amendment Bill, along with the Foreigners Tribunal Amendment Order, 2019, and the proposed extension of NRC and tribunals across the country.

The jury heard testimonies on the burdens placed on millions of impoverished and unlettered people:

- the burden of proof was shifted to the residents to prove that they were citizens,
- documents related to birth, schooling and landownership, which impoverished and unlettered rural residents anywhere would find hard to muster, were insisted upon.
- Even when documents were produced, they were often refused for discrepancies, in the English-language spelling of Bengali names, or in age.

The People's Tribunal decided not to focus on questions of the claims of illegal immigration, and the legitimacy of the demand for an NRC in Assam. It would not be fair for us to pass any judgment on these questions without listening carefully to the people of various ethnic and linguistic backgrounds in Assam.

The jury reflected on four questions:

1. Has the NRC process been in conformity with the constitution?

- The NRC process can be divided into two parts. The first is the judgment of the Supreme Court in *Sarbananda Sonowal v Union of India*; and the second is the Supreme Court's role in "overseeing" the NRC process between 2013 – 2019. Both phases raise important constitutional concerns.
- In *Sarbananda Sonowal v Union of India*, the Supreme Court relied upon unverified – and now disproved – data to hold that migration amounted to "external aggression" upon India. It then invoked Article 355 of the Constitution to strike down legislation that would have placed the burden in a foreigner's case upon the State. The Court thus established a *constitutional requirement* that the burden would always lie upon the individual accused of being a foreigner.
- The second phase has also raised serious constitutional issues. These include:
 - extensive use of sealed covers to determine the methods to establish legacies (family tree) under the NRC
 - the Court itself undertaking what is essentially an administrative process i.e. the preparation of the NRC list. When the courts "take charge" of such processes, the system of remedies is virtually taken away;
- Foreigners Tribunals were created by an executive order of the Ministry of Home Affairs. Cases then referred to the Foreigners Tribunals – by the Assam Border Police Force as well as the Election Commission – have been processed in an arbitrary manner without prior investigation or grounds for making such reference. The verification forms were often empty with just names and addresses. No grounds were furnished.
- Tribunals do not function independently and are not free from executive influence. Tenure and salaries are decided by the government, keeping the members under the supervision and control of the appointing authority. Also, two third of cases decided

by Tribunals are by ex parte orders and, most often, the main grounds are not mentioned in the notice sent by the Foreigners Tribunals to the suspected persons.

2. What has been the role of the judiciary in upholding constitutional processes and morality?

- The judgement in the case of *Sarbananda Sonowal* erroneously equated migration with “external aggression” or invasion which, in effect, dehumanised migrants and infringed their rights to personal liberty and dignity. External aggression and internal disturbance thus became a narrative and influenced all subsequent proceedings under The Foreigners Act.
- Judicial orders have set difficult conditions for release from detention camps – conditions that cannot be met by marginalised and vulnerable people.
- Despite the scale of the exercise, the judiciary’s insistence on setting deadlines has increased the pressure on both the process and the people involved.

3. What was the humanitarian crisis?

- **Historical, political and social complexities:** The need of Assamese people for linguistic and cultural security has been pitted against the human tragedy that has unfolded in the last two decades. The jury does empathize with the angst of the people of Assam but find it difficult to justify the human cost against this angst.
- **Ongoing anxiety:** Large numbers of people were asked to appear before the verification officers in faraway places multiple times to prove their citizenship credentials. In most cases, the verifications were held outside the home district. The people living in areas like char (River Island) suffered most.
- **Suicide:** The fear of getting excluded from the NRC, being declared as foreigner and finally being sent to detention centre, has created a situation of permanent paranoia among the vulnerable communities, especially Bengal origin Assamese Muslim and Bengali Hindus living in the state of Assam. This fear has created anxiety and pushed many people to suicide.
- **Disproportionate burden on vulnerable groups:** Women and children have borne a higher burden in the course of the process. Since underage marriage is common in the region, women become voters only after marriage. The documents have husbands’ names and may not help establish legacy. In most cases, women do not have any

papers such as those related to land, birth or school. Women arbitrarily declared as foreigners and detained across detention centres in the state of Assam suffer disproportionately. In addition to the loss of citizenship, this also curtails their right to dignity, access to privacy and personal hygiene.

- **Loss of Livelihood:** A large number of poor and impoverished migrant labourers work in construction sites, as domestic help, or are involved in rag picking in various cities outside Assam. Since they were required to return for the NRC process and were also subjected to its arbitrary mechanisms, their livelihoods have been severely affected.
- **Violation of Child Rights:** The NRC process has affected children's overall well being. In many cases children, born to single mothers/victims of polygamy, were not mentioned in the family tree. This has often led to their exclusion from the final NRC, and made them vulnerable to detention.

4. The implications of extending NRC to the rest of the country:

- The central government has issued two notifications, both of which have the potential of increasing vulnerability. On 30th May 2019, the Ministry of Home Affairs issued an order that decentralized the power of establishing foreigners' tribunals. Prior to this order, only the central government could institute tribunals that had the jurisdiction to determine the citizenship of individuals under the Foreigners (Tribunals) Order, 1964. After 30th May, even the state government, UT administration, district collector or magistrate can exercise this power. Thus the order permits various levels of government to set up tribunals in every corner of the country. This order could foment social strife and alter India's constitutional arrangements. Moreover, this order was passed without public debate or discussion in Parliament.
- Under the second notification issued on 31st July 2019, the central government instructed the Registrar General of India (RGI) to update the 'National Population Register' (NPR) from April to September 2020. NPR has been defined in Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 as "the register containing details of persons usually residing in a village or rural area or town or ward or demarcated area...within a ward in a town or urban area."

- Neither of these two notifications formally initiates an all-India NRC. But they lay down the groundwork for such an exercise.
- The NPR notification must be seen in the context of other legal provisions, and the possibility of its abuse. Its three-stage process could allow collection and maintenance of sensitive and unprotected data and, possibly, be used to target vulnerable individuals and groups. The National Population Register also violates the right to privacy.

In sum, the jury would like to emphasise that in the context of Assam – as well as in the context of the entire country – **citizenship, as the right to have rights**, is one of the most basic, fundamental human rights in modern societies.
