

# The impact of precarious citizenship on Indian minority groups

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## Table of contents

Introduction	2
1. Institutional abuses	3
2. Lack of access to justice	5
3. Social and economic marginalisation	6
Conclusion	9
Bibliography	10

## Table of graphics and images

Graphic 1: Children under 5 who have a birth certificate according to their parent's wealth....	5
Graphic 2: Individuals who do not have access to ration-cards.....	7
Image 1: Moinul Haque death's.....	8

It is through citizenship that a person can enjoy and enforce fundamental rights and other legal rights conferred by the Constitution and other statutes, without which a person cannot lead a meaningful life with dignity. (Gauhati High Court, *Khadiza Begum*, 2019).

## Introduction

The Indian Constitution protects the rights of minorities through diverse Articles: 15 (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth), 16 (equality of opportunity in matters of public employment), 25 (freedom of conscience and free profession, practice and propagation of religion), 26 (freedom to manage religious affairs), 27 (freedom as to payment of taxes for promotion of any particular religion), 28 (freedom as to attendance at religious instruction or religious worship in certain educational institutions), 29 (protection of interests of minorities), and 30 (right of minorities to establish and administer educational institutions). However, it does not define the term minority nor provide elements which elaborate a test determining whether a specific group is a minority. The Indian Supreme Court has therefore through its rulings established that a minority is when a community is “numerically less than 50%” of the total population (Supreme Court of India, *Re Kerala Educational Bill*, 1958, para.30). Consequently, a minority is a group of individuals who are numerically smaller than the majority in a defined geographical area.

On 11 March 2024 the current Indian government announced the implementation of the Citizenship Amendment Act. This Act, passed in 2019, amended the 1955 Citizenship Act and aimed to give access to Indian citizenship to undocumented immigrants from Pakistan, Bangladesh and Afghanistan from specific religious groups: Hindu, Sikh, Buddhist, Jain, Parsi and Christian (Section 2(1)(b), Citizenship (Amendment) Act, 2019). The Act was perceived as discriminatory as it granted citizenship on religious grounds. Yet, for the current government, it is only about offering a “shelter” to individuals who have suffered persecution (N. Henry, K. Armstrong, 2024). The Citizenship Amendment Act is held to go against the core international conventions that India has ratified but more importantly against the fundamentals of secularism proclaimed in the Indian Constitution Preamble (Constitution of India) and protected by the Indian Supreme Court through its rulings. Whilst the international community focused mainly on the direct impact of the Citizenship Amendment Act on India’s democratic principles, it side-lined the link between the Citizenship Amendment Act and the National Register of Citizens.

The National Register of Citizens, an official record of legal Indian citizens, has been a subject of intense debate, particularly in the context of the Citizenship Amendment Act. In 2014, the Supreme Court of India ordered that the National Register of Citizens be updated in all parts of Assam in accordance with the Citizenship Act, 1955, and the Citizenship Rules, 2003 (Supreme Court of India, *Assam Sanmilita Mahasangha*, 2014). The latest iteration of the National Register of Citizens, published in 2019, aimed to update the earlier 1951 version, which was notably incomplete, especially in Muslim-majority districts, and primarily focused on documenting citizens and their possessions. The compilation of the National Register of Citizens added further complexity to the discussions surrounding the Citizenship Amendment Act. According to Home Minister Amit Shah, the NRC's primary objective was to identify and expel individuals who had infiltrated the country before 2004 (The Indian Express, 2019). In Assam, when the list was initially published in 2018, out of the 33 million individuals who had submitted documents, around 4 million (12%) were not included (R. Mohan, 2019; A. Saikia, 2018). The final publication of the NRC in 2019 saw the exclusion of 1.9 million individuals, of which 5.56 lakhs were Hindus and 11 lakhs Muslims. This revelation added to objections that formal rejection slips were not issued to the people excluded from the NRC despite the Registrar General of India telling the state NRC coordinator to do so. Without the rejection slips, people cannot approach the Foreigner's Tribunals to make their case of being Indians. This has fueled concerns about the NRC process and its potential impact on various communities. Such procedural irregularities have led to questions being raised about the fairness and transparency of the process, as well as the potential for disenfranchisement and loss of citizenship for a significant number of individuals. The exclusion of individuals from the National Register of Citizens has not only sparked discussions about their legal status but also highlights the complexities and challenges associated with determining citizenship in a diverse nation like India.

### **1. Institutional abuses**

The procedures which refer individuals to the Foreigners' Tribunals in Assam are marred by discriminatory practices that disproportionately target and marginalise minority groups, particularly Muslims and Bengali Hindus. These practices not only violate principles of due process and non-discrimination but also increases the vulnerability of these communities, hindering their ability to fully participate in various aspects of societal life.

One of the primary sources of discrimination stems from the actions of the Border Police, whose investigations and referrals form a significant portion of the cases brought before the Foreigners' Tribunals. The Border Police have been accused of implementing the spirit of the National Register of Citizens too zealously, often relying on arbitrary criteria such as physical appearance, attire, or accent, to identify suspected "illegal immigrants" (R. Mohan, 2019). This practice of "lookism," rooted in cultural prejudices and stereotypes, disproportionately targets marginalised individuals such as migrant workers and married women from rural areas, who furthermore, may not possess the required documentation. Furthermore, the Border Police have been criticized for failing to follow proper investigative procedures, abusing their powers, and subjecting individuals to arbitrary arrests and detentions. In fact, statistics are not available for Border Police practices. They do not have an obligation to release date or information concerning their functioning (I. Chakravarty, 2018).

Another form of abuses consists of designating certain individuals as "D" (doubtful or dubious) voters by the Election Commission of India. In 2019, the Lok Sabha underlined that 1.13 lakh individual labelled as D-voters in Assam (Azaad Awaaz, 41). This arbitrary classification, often based on names and without proper investigation, can lead to the loss of voting rights, removing therefore their fundamental right to participate in the democratic process, and referral to the Border Police for further inquiry. The Gauhati High Court argued that individuals' who have a case in front of the Foreigners' Tribunals, automatically become 'D' voters (Gauhati High Court, *Mamez Khatun*, 2015). Muslim, Bengali Hindu communities, local ethnic groups like the Rajbanshi and women, have been disproportionately affected by this system, facing harassment and potential deprivation of citizenship rights (N. Siddique, 2020, 3). 69% of the D-voters are women occupying geographical vulnerable position and thus lacking documentary evidence of their citizenship. Most of these women stay in the Brahmaputra region which are the most flood-affected areas. In fact, documentation poverty in India is a real issue and is the prime reason for the loss of citizenship. In a small survey made in Bongaigaon, on 1080 children, 70% of the children between 6 and 18 years old did not have a birth certificate (I.B, 2023, 130). Even if parents are part of the NRC, there is a risk of statelessness for these children. Birth registration and birth certification are essential pillars of the right to nationality. While the right to nationality is a universal right (Article 15 UDHR; Article 24§3 ICCPR; Article 7 CRC; Article 9 CERDW; Article 18§1-a Convention on the Rights of Persons with Disabilities; Article 5-d-iii ICERD; Article 29 International Convention on the Protection of

the Rights of All Migrant Workers and Members of Their Families 2003), its protection is still closely linked to individual economical wealth (graphic 1).

*Graphic 1: Children under 5 who have a birth certificate according to their parent's wealth*



Source: National Family Health Survey: 2015-2016' (Government of India, Ministry of Health and Family Welfare 2017) NFHS-4 39 •

Children born to parents designated as "illegal immigrants" or "D" voters face the risk of inheriting statelessness (Supreme Court of India, *Assam Public Works*, 2019), further entrenching the cycle of marginalization and oppression and violating international human rights conventions such as the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

## 2. Lack of access to justice

The situation in Assam regarding the deprivation of nationality process for suspected illegal immigrants is complex and raises serious concerns about the lack of access to justice and its detrimental impact on minority groups. Deprivation of citizenship and the constant threat of statelessness create a precarious existence for these communities. Without legal recognition as citizens, their hopes of outward mobility through participation in public life becomes tenuous, as they risk being viewed as outsiders or face potential restrictions on their movements and expressions of identity.

The legal proceedings before the 100 Foreigners' Tribunals, the tribunal which looks into individuals' nationality in Assam, are marred by various irregularities and violations of due process rights. One major issue is the widespread practice of *ex-parte* rulings, where individuals are declared foreigners in *absentia* without being properly notified or given the opportunity to present their case (Gauhati High Court, *State of Assam*, 2013). This practice is often justified by the authorities by citing absence or lack of updated records of the individuals, but it blatantly violates the right to a fair trial and the right to be heard. In the Hajo tribunal, in 2018, over a six month period, on 299 judgements, all the individuals were declared illegal

during an *ex-parte* ruling (R. Mohan, 2019). Furthermore, the appeals process against Foreigners' Tribunals rulings is severely restricted, with the High Court often unable to review the merits of the case, and only considering jurisdictional issues (I.Boutier, 2023, 189).

In addition, the burden of proof placed on individuals to establish their citizenship, combined with the rejection of documentary evidence on flimsy grounds and the acceptance of illegally obtained documents, further erodes the fairness of the proceedings. The Human Rights Council did argue that the burden of proof lies with the States in cases of statelessness and deprivation or loss of nationality (Human Rights Council, 2013, 5). Yet, in Dhubri – West district – a state prosecutor argued that:

the burden of proof lies on the accused. He is given no chance to question the referral authorities, even if they have made out a wrong case against him (I. Chakravarty, 2018).

The burden of proof therefore lies on the residents of Assam, who must produce documents proving their Indian citizenship before the Tribunal.

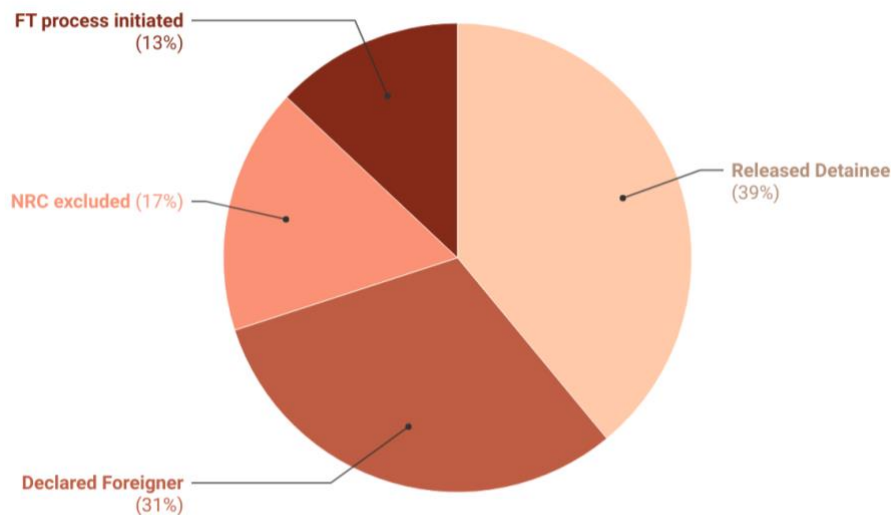
Poverty and socioeconomic factors also play a significant role in impeding access to justice. The majority of individuals appearing before the Foreigners' Tribunals are poor and vulnerable, and the costs associated with legal representation, travel, and documentation **is expensive**. Compounding these challenges, individuals often resort to borrowing funds to secure legal representation, further exacerbating their financial precarity. (R. Mohan, 2019). Individuals are forced to sell their animals and cattle, or even jewellery to reach the FT (A. Saha, 2021). Geographical barriers, coupled with the short notice periods given to individuals to appear before the tribunals (24 to 48h) (F. Mustafa, 2019), exacerbates the challenges in accessing justice. The cascading effect of declaring an individual a foreigner, which extends to their family members, also raises the risk of mass statelessness (Gauhati High Court, *Aktara Khatun*, 2017), violating international human rights conventions and principles.

The lack of access to justice in these proceedings not only undermines the right to a fair trial but also threatens the fundamental rights and dignity of minority groups in Assam. The failure to respect due process and the rule of law in the deprivation of nationality process perpetuates the marginalisation and vulnerability of these communities.

### 3. Social and economic marginalisation

The legal proceedings before the Foreigners' Tribunals in Assam carry severe and multifaceted implications for individuals, extending far beyond the immediate issue of citizenship status. During the pendency of these trials, individuals are subjected to a range of restrictions and deprivations that impact their ability to fully participate in the regular and diverse aspects of societal life. Individuals are no longer eligible to purchase foods at subsidised rates, cannot be beneficiary of the Arunodoi Scheme (monetary assistance to low-income individuals) (D. Mohan, 2023). Their marginalisation from state resources and resulting food precarity furthers aggravates the discrimination experienced by these individuals and accentuates their invisibility in the administrative institutions, providing these cards (graphic 2).

*Graphic 2: Individuals who do not have access to ration-cards*



Source: Marginalised and Impoverished in Assam Report, 2021, R2NC

The stigma associated with being labelled as "illegal immigrants" or "foreigners" can lead to social exclusion, mental distress, exclusion from family or clan networks, precarity, deterioration of physical health, **increase of child marriage**, or other indirect forms of social discrimination, alongside more overt restricted access to essential services such as education and healthcare. **Between 2015 and 2019, due to the National Register of Citizens, 31 cases of suicides were confirmed (National Campaign Against Torture, 2019, 51).**

The long-term consequences of being declared stateless by the Foreigners' Tribunals rulings can be dire, perpetuating a cycle of marginalisation and exclusion. Individuals face significant barriers in accessing employment, healthcare, and other vital social services, directly endangering their individual liberty and human dignity (Right to Nationality & Citizenship

Network, 2021, 4). The COVID-19 pandemic further amplified these vulnerabilities, with stateless individuals initially being excluded from vaccination efforts, underscoring their precarious existence at the fringes of society. Access to healthcare and social services is a basic human right, and the denial of these essential provisions threatens the well-being and development of individuals and communities alike.

It is important to recognise that the consequences of the Foreigners' Tribunals proceedings and the deprivation of citizenship transcend the immediate legal domain, reverberating across various facets of societal life. Addressing these injustices calls for a comprehensive approach that not only upholds due process and the rule of law, but also ensures the restoration of fundamental rights and the promotion of inclusivity and non-discrimination for all individuals, irrespective of their citizenship status.

From a general perspective, this atmosphere of a “witch hunt” has led to the intervention of other actors beside states institutions such as the media, leading to the development of hate speech towards minority groups in the region. On 23 September 2021, Moinul Haque, a Muslim resident of Assam, while protesting against forced evictions was killed. Indian police offer continued to physically assault his dead body and a government appointed photograph was seen jumping on his body (image 1). The coverage of this event by newspapers in Assam brought back to light the use of stereotypical and dehumanising languages such as "illegal" and "infiltrators" when referring to the Muslim community. This language directly fuelled hateful rhetoric on social media, particularly Twitter, where users made inflammatory statements: “he was an illegal squatter who came into India through illegal channels. Read the story again now”, “kick them out of India”, “They are attacking police in spite of the fact they are illegal migrants”.

*Image 1: Moinul Haque death's*





## Conclusion

The situation in India is not an isolated case of a nation deliberately stripping minorities of their nationality or citizenship status. The Assam case and India's approach are unique for two key reasons. Firstly, the central government has gradually delegated the power to determine Indian nationality to state governments. Secondly, multiple pieces of legislation – such as the Passport Act, Foreigners Act, Foreigners Tribunals Order, Registration of Foreigners Act, and the Citizenship Act – have created an interdependent and intricate citizenship regime.

It is striking that the Foreigners Tribunals have failed to account for missing documentation, especially in a country where uniform documentation has been and remains a challenge. This highlights the disconnect between this judicial process and the ground realities in the state. More importantly, it indicates that despite the judiciary's obligation to safeguard individual rights and influence state policy through its rulings, the Indian judicial system has fallen short in this regard.

The deprivation of nationality proceedings in Assam have erected formidable legal, administrative, and socioeconomic barriers that fundamentally impede the ability of minority groups to exercise their fundamental rights and freedoms but also constitute a direct assault on their human dignity and their very existence as full and equal members of society. This systematic disenfranchisement and marginalization of these communities represents a serious violation of fundamental human rights principles and undermines the very foundations of an inclusive, pluralistic, and democratic society. The legal deficiencies are aggravated by

administrative barriers rooted in opacity, lack of accountability, and disregard for established norms and procedures.

Compounding these legal and administrative barriers are the socioeconomic realities faced by the predominantly poor and vulnerable individuals subjected to these proceedings. Their living conditions aggravated by climatic disasters sometimes lead to forced migration and nomadism. Administrative procedures can subject them to prohibitive costs associated with legal representation, travel, and documentation. This is coupled with their geographic isolation and inadequate notice periods given by the tribunals, effectively denying meaningful access to justice for a significant portion of the affected population. This systematic exclusion perpetuates cycles of poverty, marginalisation, and disempowerment, entrenching the vulnerability of these communities. Economic opportunities are severely curtailed, perpetuating cycles of poverty and restricting their ability to contribute to the economic vitality of their communities. Perhaps most crucially, their disenfranchisement effectively silences their voices in the democratic processes and public life of the nation, undermining the principles of representation and political participation.

Failure to rectify these systemic injustices not only violates international human rights conventions but also undermines the very foundations of a just and inclusive society, where all individuals, regardless of their citizenship status, can participate and contribute to the vibrant tapestry of Assam's cultural, religious, social, economic, and public life.

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