

‘UNTRUSTWORTHY AND UNBELIEVABLE’: WOMEN AND THE QUEST FOR CITIZENSHIP IN ASSAM

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Non-male people experience citizenship in ways that are not at par with those who are identified by the state as male. This gendered experience is replicated when it comes to establishing the existence of one's citizenship before a hostile state that is invested in propagating statelessness among certain communities. This paper uses the Indian State of Assam and the surrounding legal-bureaucratic endeavour to identify 'genuine' citizens as a case to explore how the experience of becoming stateless is inherently disadvantageous to women. Using the tools of feminist methodology, the specific challenges of women have been highlighted through a combination of case law discourse analysis and fieldwork.

TABLE OF CONTENTS

I	Introduction.....	236
II	Citizenship: the Insider, the Outsider.....	238
	A Citizenship and Sovereignty.....	239
	B Differential Citizenship.....	240
	C Gender and Statelessness.....	241
	D The Burdens of Proof.....	242
III	Citizenship in India and the Assam Story.....	244
	A India and the Construction of the Citizen.....	245
	B Assam: Snapshots from History.....	246
	1 Colonial Era.....	246
	2 Post-Colonial Era and the Development of the Legal Regime.....	247
	C The NRC.....	249
	D Women and the FT Process.....	250
	E The Pitfalls of the NRC: A Glimpse from the Ground.....	254
IV	Conclusion.....	257

I INTRODUCTION

For 64-year-old Sabjan Nessa, the notification is a jolt out of the ordinary. Her day-to-day existence is not without struggle; the life of a female daily wage worker in an underdeveloped part of India is not easy. She has spent her entire life in poverty, in two tiny villages in a single district. Yet, after all these years, a new

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threat is poised to strike at the very foundation of her existence. Sabjan has just received word that her citizenship is under question and will have to be proven. The Pandora's Box of bureaucracy is now open and an uncertain fate awaits her.

In 2019, the world bore witness to the debacle that was the *National Register of Citizens* ('NRC') in the Indian State of Assam. A documentary exercise to identify who belongs within the category of 'citizen', the NRC register excluded nearly two million people from its ambit, people who are now at risk of losing their citizenship.¹ Much has been written about the NRC process,² the administrative challenges around it and the fact that it threatens to put religious minorities at risk.³ There has been in depth scholarly analysis on the issue of 'foreigners' in Assam⁴ and how the existing system conspires to cast doubt over people's status as citizens.⁵ The issue has been framed as a question of migration, as well as one of statelessness, as it manifests among a marginalised population.⁶ This phenomenon highlights the crucial importance that a paper trail occupies in the elusive quest for citizenship, especially for populations that are at risk of statelessness.

However, as Deirdre Brennan demonstrates, a feminist methodology in statelessness studies is yet to emerge,⁷ especially in the context of this crisis. While gender issues have become a part of the statelessness discourse, the approach has largely been to compartmentalise gender issues as one of the multiple issues of statelessness, or what Brennan refers to as 'add women and stir'.⁸ A feminist analysis of statelessness entails looking at the structure that supports and propagates this phenomenon, and how it impacts vulnerable populations. Such an analysis must necessarily be intersectional, given that statelessness disproportionately affects people from ethnic or religious minorities.

In this paper, we have attempted to undertake such an analysis using the case of Assam. While there is robust literature around the question of illegal immigration in Assam, there is little scholarly work on the impact this issue has on the lives of women. A feminist analysis of this issue is valuable for two reasons. First, it contributes to the burgeoning scholarly research that is emerging on the gendered impact of statelessness. Second, a feminist standpoint may bring greater rigor and perspective to an issue that has so far been analysed as a 'neutral'

¹ Subasini Raj and Jeffrey Gettleman, 'A Mass Citizenship Check in India Leaves 2 Million People in Limbo', *The New York Times* (online, 31 August 2019) <<https://www.nytimes.com/2019/08/31/world/asia/india-muslim-citizen-list.html>>.

² See, eg, Dipendra Kumar Khanal, 'Issue of Bangladeshi Immigrants and the Importance of NRC in Assam' (2018) IV(1) *Mizoram University Journal of Humanities and Social Sciences* 12.

³ Press Trust of India, 'Assam NRC a Tool to Render Muslims Stateless: US Panel on Religious Freedom', *Business Standard India* (online, 16 November 2019) <https://www.business-standard.com/article/current-affairs/assam-nrc-a-tool-to-render-muslims-stateless-us-panel-on-religious-freedom-119111600636_1.html>.

⁴ Sanjib Baruah, *India against Itself: Assam and the Politics of Nationality* (University of Pennsylvania Press 1999).

⁵ Anupama Roy and Ujjwal Kumar Singh, 'The Ambivalence of Citizenship: The IMDT Act (1983) and the Politics of Forclusion in Assam' (2009) 41(1) *Critical Asian Studies* 37.

⁶ '125 Civil Society Organisations Condemn Mass Disenfranchisement in Assam', *Institute Statelessness and Inclusion* (Web Page) <<https://www.institutesi.org/news/cso-joint-statement-on-assam-nrc>>.

⁷ Deirdre Brennan, 'Feminist Foresight in Statelessness' (2020) 2(1) *The Statelessness and Citizenship Review* 43.

⁸ Deirdre Brennan, 'Statelessness and the Feminist Toolbox: Another Man-Made Problem with a Feminist Solution?' (2019) 24(2) *Tilburg Law Review* 170, 172.

political phenomenon. Through our research, we aim to centre the experiences of women as they navigate the precarious liminal zone between citizenship and statelessness.

This paper is structured into two parts. The first briefly examines the notion of citizenship and statelessness: how it is constructed and how it is gendered. We have attempted to understand how one is identified as a citizen, what a feminist conception of citizenship would look like and the kind of struggles women face in this process. The second part of the paper focuses on the way this phenomenon has unfolded in Assam. Through a historical analysis, we have sought to frame the issue in its proper context. We have scrutinised in detail the different legal hurdles that must be overcome in the journey to proving one's citizenship in India, with a special focus on the *NRC*. We seek to explore the relationship between bureaucracy and statelessness in terms of how the former places significant hurdles around acquiring and practicing full citizenship. Finally, we have carried out empirical research in two prongs. First, we have analysed case law around adjudication on women's citizenship. Second, we have interviewed both men and women who have undergone the citizenship identification process embodied in the *NRC*. Through our work, we aim to put forth a feminist analysis of the process of proving citizenship, and the structures that are actively contributing to statelessness with a special focus on Assam.

II CITIZENSHIP: THE INSIDER, THE OUTSIDER

Citizenship as a concept has recently emerged as the crux of social justice debate. Derived from the Latin '*civis*', it is a concept that is entrenched in notions of territoriality, marking a delineation between the 'entitled insider' and 'deprived outsider'.⁹ The term has come to denote the status of an individual as a member of a state's political community, whereby they can access the rights of political participation.¹⁰ The distinction between members and non-members divides the political community from within.¹¹ It has been given the status of a human right, preserved in multiple international human rights instruments, such as the *Universal Declaration of Human Rights*,¹² the *Convention on the Elimination of All Forms of Discrimination against Women*,¹³ and the *Convention on the Rights of the Child*.¹⁴

Citizenship speaks to the guarantee of specific rights, and added protections vested in all those who can claim membership.¹⁵ It provides the privilege of democratic participation in making decisions that affect political and social life.¹⁶

⁹ Julia Eckert, 'Introduction: Subjects of Citizenship' (2011) 15(3–4) *Citizenship Studies* 309, 311.

¹⁰ Ursula Vogel, 'Is Citizenship Gender-Specific?' in Michael Moran and Ursula Vogel (eds), *The Frontiers of Citizenship* (Palgrave Macmillan UK 1991) 58.

¹¹ *ibid.*

¹² *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 15.

¹³ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 9 ('CEDAW').

¹⁴ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 7.

¹⁵ Charles Tilly, *Coercion, Capital, and European States, AD 990–1992* (Blackwell 1990).

¹⁶ Richard Bellamy, *Citizenship: A Very Short Introduction* (Oxford University Press 2008) 25.

It further provides an unqualified right to remain in one's country.¹⁷ It becomes the gateway to multiple other basic rights vested upon people by a country, such as education, healthcare, employment and welfare.¹⁸ When the legal bond tying a person to a state falters, the spectrum of rights they enjoy diminishes significantly.¹⁹

A *Citizenship and Sovereignty*

Citizenship as a concept has been considered, with little challenge, the domain of the nation-state. A person is a citizen, provided they meet certain criteria that the state lays down. Famously, Arendt proclaimed that a citizen '... is by definition a citizen among citizens of a country among countries. His rights and duties must be defined and limited, not only by those of his fellow citizens, but also by the boundaries of a territory.'²⁰ It is the state which reserves the right to determine who is allowed entry into this exclusive club.²¹ Thus, the right to citizenship mandates a reciprocal duty to provide it on the part of a sovereign state.²² In recent years, a school of argument has arisen which posits that rights ought to be made available regardless of where one is born or lives. Laura van Waas has suggested that the introduction of the international regime of human rights through the implementation of the *Universal Declaration of Human Rights* has led to a situation where rights are denationalised; people can now lay claim to rights merely by virtue of belonging to the human race.²³ Most human rights norms are applicable to all people, regardless of their nationality or their statelessness.²⁴ The *International Covenant on Civil and Political Rights* ('ICCPR'), for instance, creates the duty to guarantee rights to all persons under state jurisdiction, regardless of their nationality or citizenship status.²⁵ Regardless of this idea increasingly taking root, it cannot be denied that most states view non-citizens as being precluded from exercising rights. For instance, equality before the law and equal protection before the law are fundamental human rights, but discrimination between citizens and non-citizens in the application of these rights is permitted in multiple jurisdictions.²⁶

¹⁷ *ibid* 24.

¹⁸ Indira Goris, Julia Harrington and Sebastian Köhn, 'Statelessness: What It Is and Why It Matters' 32 *Forced Migration Review* 4.

¹⁹ *Statelessness: An Analytical Framework for Prevention, Reduction and Protection* (Report, UNHCR 2008) iv <<https://www.unhcr.org/en-in/protection/statelessness/49a271752/statelessness-analytical-framework-prevention-reduction-protection.html>>.

²⁰ Hannah Arendt, *Men in Dark Times* (Houghton Mifflin Harcourt 1970) 81.

²¹ Kristy A Belton, 'The Neglected Non-Citizen: Statelessness and Liberal Political Theory' (2011) 7(1) *Journal of Global Ethics* 59, 61.

²² Matthew J Gibney, 'Statelessness and the Right to Citizenship' (2009) 32 *Forced Migration Review* 50.

²³ Laura Van Waas, 'Nationality and Rights' in Brad K Blitz and Maureen Lynch (eds), *Statelessness and Citizenship: A Comparative Study on the Benefits of Nationality* (Edward Elgar Publishing 2011) 23, 24–25.

²⁴ Laura Van Waas, 'Addressing the Human Rights Impact of Statelessness in the EU's External Action' (European Parliament 2014) 13 <<https://www.refworld.org/docid/5513e2934.html>>.

²⁵ Brad K Blitz and Maureen Lynch *Statelessness and the Benefits of Citizenship: A Comparative Study* (Study, Geneva Academy of International Humanitarian Law and Human Rights and International Observatory on Statelessness 2009) 13.

²⁶ Van Waas (n 23) 27–28.

The exercise of this sovereignty has also led to situations where states have been able to use their powers to exclude those whom they consider undesirable. Noora A Lori uses the term ‘precarious citizenship’ to describe people who are unable to acquire full citizenship rights, and instead live in a liminal, ad hoc space.²⁷ She proposes that there are certain populations who are rendered precarious by virtue of being unrecognised by the states they live in.²⁸ This leads to a lack of ‘permanent and secure’ citizenship rights for significant sections of the population, who are rendered ‘invisible in the state’s legal self-image’.²⁹

B Differential Citizenship

The fundamental premise of citizenship is equality; once one is a citizen, their membership in society is theoretically equal to that of everyone else.³⁰ However, such formal equality is rarely realised, with distinctions in rights being based on property ownership, race, ethnicity and, pertinently, gender. It is gender that is of importance to this analysis. The idea of ‘universal’ citizenship, as per Ruth Lister, is false and privileges the male.³¹ Citizenship has evolved around a strong patriarchal construct. The aspirations to equality before the eyes of the state that characterise citizenship have historically been denied to women and other marginalised genders.³² Many aspects of citizenship were not extended to women for a significant period.³³ Patriarchal structures ensured that most women did not have access to features of political or civil citizenship. The rights to vote, own property, sign contracts, freedom of residence and labour, etc have not been universally made available to women in most cultures.³⁴ Citizenship is an exercise in participating in the public sphere. However, since women have historically been outside that space and relegated to the private sphere, they have been considered an inferior class. This renders them unfit for ‘male’ citizenship.³⁵ Moreover, even after women were granted political rights, the extension of citizenship to women has not occurred in the same measure — this phenomenon has occurred because of conditions determined by men. As an illustrative example, even today women remain underrepresented and discriminated against in educational institutions, workplaces and public positions such as elected bodies.³⁶ Citizenship, in theory and in practice, has therefore evolved in a way that integrally and systematically excludes women. Given their ‘primary orientation to the care of children, husbands, and elderly relatives’,³⁷ women do not experience political or social

²⁷ Noora A Lori, ‘Statelessness, “In-Between” Statuses, and Precarious Citizenship’ in Ayelet Shachar, Rainer Bauböck, Irene Bloemraad, and Maarten Vink (ed), *The Oxford Handbook of Citizenship* (2017) 744.

²⁸ *ibid.*

²⁹ *ibid* 748.

³⁰ TH Marshall and Thomas Bottomore, *Citizenship and Social Class*, vol 2 (Pluto Press 1992) 6–8.

³¹ Ruth Lister, ‘Citizenship and Gender’ in Edwin Amenta, Kate Nash and Alan Scott (eds) *The Wiley-Blackwell Companion to Political Sociology* (Wiley-Blackwell 2012) 372, 374–75.

³² Eckert (n 9) 311; Sylvia Walby, ‘Is Citizenship Gendered?’ (1994) 28(2) *Sociology* 379, 380–81.

³³ Walby (n 32) 380–81.

³⁴ *ibid.*

³⁵ Lister (n 31) 373–74.

³⁶ Linda C McClain and Joanna L Grossman, *Gender Equality: Dimensions of Women’s Equal Citizenship* (Cambridge University Press 2009) 5–6.

³⁷ Walby (n 32) 386.

citizenship in the same way as men. A vision for feminist citizenship mandates practices that are political, participatory and democratic, which allow people to engage actively in making decisions that affect their own lives.³⁸

Citizenship is not merely about occupying political space — the Marshallian construction of female citizenship is contingent upon involving women in political life and improving their lives in the workplace.³⁹ This does not account for citizenship in the private realm. As Raia Prokhovnik states, dominant liberal notions of citizenship see citizenship as universal in terms of providing access to certain rights; in contrast, those who cannot access those rights fall to the margin of the 'other'.⁴⁰ Feminist scholars suggest that in analysing questions of citizenship, membership must include elements of activities that are not traditionally seen as 'political'.⁴¹ This discourse has also been expanded to incorporate elements of queer theory. David T Evans uses the term 'sexual citizenship' to describe the insertion of sexual politics within the dominant understanding of citizenship.⁴² This school of thought, in the words of Thomas McGee, conflates citizenship with 'broader notions of membership, participation and belonging [rather] than the strict legal definition of being formally recognised as a citizen of a particular state'.⁴³

The realm of citizenship is, therefore, not neutral or objective. To counter this notion, we have adopted a feminist standpoint in our research. We wish to investigate the 'lives of marginal and oppressed groups and their histories'⁴⁴ to lay bare the entrenched structures of the patriarchy.⁴⁵ The principles informing feminist standpoint theory are very relevant here; namely, that on account of their multiple marginalisations, women's lived experiences of citizenship are vastly different from that of their male counterparts.⁴⁶ We attempt to understand how the performance of citizenship manifests for women when their very citizenship itself is at stake. We investigate the question of statelessness in this context.

C *Gender and Statelessness*

With respect to statelessness, discrimination on grounds of gender can be direct or indirect. As far as the international legal regime is concerned, neither of the two statelessness conventions refer to gender in their text. Tang Lay Lee points out that feminist critiques of citizenship assume that women have citizenship by

³⁸ Mary G Dietz, 'Context Is All: Feminism and Theories of Citizenship' (1987) 116(4) *Daedalus* 1, 13–14.

³⁹ Raia Prokhovnik, 'Public and Private Citizenship: From Gender Invisibility to Feminist Inclusiveness' (1998) 60 *Feminist Review* 84, 86.

⁴⁰ *ibid.*

⁴¹ *ibid* 86–87.

⁴² David T Evans, 'Sexual Citizenship' in George Ritzer (ed), *The Blackwell Encyclopedia of Sociology* (John Wiley & Sons 2007) 1.

⁴³ Thomas McGee, "'Rainbow Statelessness": Between Sexual Citizenship and Legal Theory: Exploring the Statelessness-LGBTIQ+ Nexus' (2020) 2(1) *Statelessness & Citizenship Review* 64, 67.

⁴⁴ Rutvica Andrijasevic, 'Acts of Citizenship as Methodology' in Engin F Isin and Michael Saward (eds), *Enacting European Citizenship* (Cambridge University Press Cambridge 2013) 49.

⁴⁵ Susan Hekman, 'Truth and Method: Feminist Standpoint Theory Revisited' (1997) 22(2) *Signs: Journal of Women in Culture and Society* 341, 343–44.

⁴⁶ Mary E Swigonski, 'The Logic of Feminist Standpoint Theory for Social Work Research' (1994) 39(4) *Social Work* 387, 390–91.

default.⁴⁷ The space of statelessness does not always encompass gender analysis.⁴⁸ This is a false assumption — there are currently over 50 countries where there are discriminatory nationality laws against women, with broad and devastating consequences.⁴⁹ However, in this paper, we choose to focus on indirect discrimination.

Allison J Petrozziello points out that there are indirect forms of gender discrimination in nationality laws that play out among populations whose citizenship status is under contestation.⁵⁰ Her ethnographic work in the Dominican Republic examines the creation of statelessness among Haitian immigrants in the country. Whether such migration was a result of economic necessity or trafficking, finding and maintaining documentation was a significant challenge for Haitian women.⁵¹ The governments did not recognise the need for granting proper identification papers to such immigrant women.⁵² State policy in the Dominican Republic imposes a separate birth registration process for foreign mothers, including undocumented Dominican women of Haitian descent who give birth in the country.⁵³ Gender discrimination becomes a tool to limit access to nationality. Spelling errors made by bureaucrats also become obstacles in the way of proper identity documents being generated and can often constitute sufficient grounds for investigation.⁵⁴ Without a Dominican identity card, women are not permitted to get a Dominican birth certificate registered for their children.⁵⁵ Moreover, Dominican fathers are not permitted the right to pass on their nationality in practice to their children if the mother is undocumented.⁵⁶ In this case, therefore, child statelessness is the most serious outcome of indirect discriminatory practices.

D The Burdens of Proof

Lori has argued that states have created ‘identity management infrastructures’, and in doing so, created a category of marginalised citizens.⁵⁷ Thus, it is not sufficient to have citizenship; citizenship is only of value to the extent that it can be proven. In most states, citizenship is zealously guarded, and its value is protected — this leads to a focus on identification and proving citizenship.⁵⁸ Documentation is one of the most critical markers of such identification. If we consider citizenship as a form of membership, as discussed above, documentation may be equated to the

⁴⁷ Lay Lee Tang, *Statelessness, Human Rights and Gender: Irregular Migrant Workers from Burma in Thailand* (Brill 2005) 11.

⁴⁸ *ibid.*

⁴⁹ Laura van Waas, Zahra Albarazi and Deirdre Brennan, ‘Gender Discrimination in Nationality Laws: Human Rights Pathways to Gender Neutrality’ in Niamh Reilly *International Human Rights of Women* (Springer Nature eReference 2019) 195–96.

⁵⁰ Allison J Petrozziello, ‘(Re)Producing Statelessness via Indirect Gender Discrimination: Descendants of Haitian Migrants in the Dominican Republic’ (2019) 57(1) *International Migration* 213, 214.

⁵¹ *ibid* 217–18.

⁵² *ibid* 219.

⁵³ *ibid* 216–17.

⁵⁴ *ibid* 220.

⁵⁵ *ibid* 221.

⁵⁶ *ibid* 221–22.

⁵⁷ Lori (n 27) 743.

⁵⁸ D Carolina Nunez, ‘Citizenship Gaps’ (2018) 54(2) *Tulsa Law Review* 301, 306.

gatekeeper.⁵⁹ Vasudha Chhotray and Fiona McConnell describe identity documents as ‘... a particular mode of writing the history of the State and its technologies of rule’.⁶⁰ This is indicative of the fact that the right to documentation can only be accessed upon the fulfilment of criteria that the state explicitly sets out. Around 1.1 billion people worldwide are stranded in a grey zone — they have a technical claim to membership through *jus soli* or *jus sanguinis*, but are unable to prove their identity.⁶¹ The implications of this are dire — it gets in the way of full enjoyment of rights and welfare schemes from the state, and make it difficult to move from one state jurisdiction to the next.⁶² Hunter suggests that the category of confirmed citizens who are unable to access rights due to a lack of documentation are ‘effectively’ stateless persons.⁶³

There is a significant chunk of the population who are not registered at birth — around 30% of the world’s population remains without birth registration.⁶⁴ This is exacerbated by demographic indicators. For instance, low-income families and ethnic minorities have tenuous relationships with the state and are inhibited by the bureaucratic hurdles to be overcome in order to achieve registration.⁶⁵ Data shows that one in three persons in low-income countries are unable to procure an ID due to the lack of necessary documentation.⁶⁶ Wealth can influence access to services, leaving those who are better off inside these countries with greater documentary certainty.

The process of acquiring documents is also acutely gendered. Work cards and national IDs are more likely to be acquired by men simply because they have greater access to public spaces, as specified. Gender inequalities get in the way of marginalised women acquiring civil registration and national IDs.⁶⁷ In lower-income countries, for instance, 44 per cent of women do not have IDs because of legal barriers to access.⁶⁸ These legal norms can often be reflective of cultural norms around the role of women in society. Unsurprisingly, it is seen that the lack of ID is concentrated among women with low levels of education and rural

⁵⁹ Kathryn Takabvirwa, ‘Whose Identity [Document] Is It?’ (MA Thesis, University of the Witwatersrand, 2010) 12
<<https://pdfs.semanticscholar.org/0a19/3dafb750c93194ace8b210a9a25e46418fd3.pdf>>.

⁶⁰ Vasudha Chhotray and Fiona McConnell, ‘Certifications of Citizenship: The History, Politics and Materiality of Identity Documents in South Asian States and Diasporas’ (2018) 26(2) *Contemporary South Asia* 111.

⁶¹ World Bank, ‘1.1 Billion “Invisible” People without ID Are Priority for New High Level Advisory Council on Identification for Development’, *The World Bank* (Press Release, 12 October 2017) <<https://www.worldbank.org/en/news/press-release/2017/10/12/11-billion-invisible-people-without-id-are-priority-for-new-high-level-advisory-council-on-identification-for-development>>; Wendy Hunter, ‘Undocumented Nationals: Between Statelessness and Citizenship’ in Melani Cammett and Ben Ross Schneider (eds), *Elements in the Politics of Development* (Cambridge University Press 2019).

⁶² Hunter (n 61) 1–2.

⁶³ *ibid.*

⁶⁴ ‘Completeness of Birth Registration (%)’, *The World Bank* (Web Page, 2020) <<https://data.worldbank.org/indicator/SP.REG.BRTH.ZS>>.

⁶⁵ Hunter (n 61) 9–12.

⁶⁶ *Global ID Coverage, Barriers, and Use by the Numbers: An In-Depth Look at the 2017 ID4D-Findex Survey* (Report, The World Bank 2019) <<https://openknowledge.worldbank.org/handle/10986/33430>> (‘ID4D-Findex Survey Report’).

⁶⁷ Mayra Buvinic and Eleanor Carey, ‘Leaving No One Behind: CRVS, Gender and the SDGs’ (Centre d’excellence sur les systèmes ESEC 2019) 3.

⁶⁸ *ID4D-Findex Survey Report* (n 66).

women.⁶⁹ The 1954 *Convention Relating to the Status of Stateless Persons* extends the right of documentation to stateless persons, by providing that identity papers as well as travel documents must be issued to stateless persons in the country who do not possess such documentation.⁷⁰ However, given that few countries have ratified this convention, most stateless people do not possess requisite documentation, which renders it difficult for them to access social services.⁷¹ Further, in interactions with the bureaucratic state, women are treated differently and undergo additional layers of exclusions.⁷² Ethnographic research reveals that the entire process of applying for documentation and paperwork reflect relations of production and domination, with women and ethnic minorities, inter alia, at a significant disadvantage.⁷³ Moreover, the gendered nature of how women interact with the bureaucracy intersects with other aspects of one's identity.⁷⁴

In brief, while the exercise of citizenship is rendered unequal by virtue of one's gender, proving the existence of such citizenship is much more complicated for women by virtue of existing structural inequalities. This is exacerbated if the woman in question is from a rural or low-income background. Therefore, Sabjan Nessa's case is the manifestation of marginalisation. She stands at the nexus of these multiple exclusions as she sets out on her journey to prove her citizenship. The story begins several years before she receives her notice, in a remote corner of the State of Assam in northeast India. In the following part, we argue that the citizenship exercise in Assam is based on a heteropatriarchal, majoritarian construct, which pushes women towards increasingly precarious status in terms of their citizenship.

III CITIZENSHIP IN INDIA AND THE ASSAM STORY

Assam has borders contiguous with China, Myanmar and Bangladesh. The river Brahmaputra acts as a border between the Southwestern part of the State and Bangladesh. Numerous parts of the border are interspersed with the river and riverine islands called *chars*, leading to the creation of a perforated connection with the rest of the country.⁷⁵ Owing to a contentious history of migration from neighbouring Bangladesh, there have been multiple attempts over the years to identify the body of the 'other' and ostracise them.⁷⁶ This has led to a phenomenon where citizenship rights are being stripped from erstwhile nationals suspected of being migrants. In this part, we examine the framework defining citizenship in legal terms in India and take a closer look at the contextual development of the citizenship debate in the State of Assam. This background is key to understanding

⁶⁹ *ibid.*

⁷⁰ *Convention Relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) arts 27–28.

⁷¹ David S Weissbrodt and Clay Collins, 'The Human Rights of Stateless Persons' (2006) 28 *Human Rights Quarterly* 245, 265–66.

⁷² Grace Carswell, Thomas Chambers and Geert De Neve, 'Waiting for the State: Gender, Citizenship and Everyday Encounters with Bureaucracy in India' (2019) 37(4) *Environment and Planning C: Politics and Space* 597, 598.

⁷³ *ibid* 599–600.

⁷⁴ *ibid* 599.

⁷⁵ Rafiul Ahmed, 'Anxiety, Violence and the Postcolonial State: Understanding the "Anti-Bangladeshi" Rage in Assam, India' (2014) 19(1) *Perceptions: Journal of International Affairs* 55, 57.

⁷⁶ Navine Murshid, 'Assam and the Foreigner Within' (2016) 56:3 *Asian Survey* 581.

the way in which history continues to influence claims and contestations around citizenship to this date.

A *India and the Construction of the Citizen*

The notion of the 'outsider' in India was laid down during the colonial era, ie, in 1946 by virtue of the *Foreigners Act, 1946* ('*Foreigners Act*').⁷⁷ Section 2(a) of the *Foreigners Act* defines a foreigner as a person who is not an Indian citizen.⁷⁸ The Act empowers the government to inquire into the nationality of any person.⁷⁹

The *Constitution of India* provides guidelines for citizenship only relevant to the era of the Partition in 1947–1950 and leaves it to the state to formulate further rules.⁸⁰ To this end, in 1955, the government enacted the *Citizenship Act, 1955* ('*Citizenship Act*') to provide for the distinct modes of acquisition and termination of citizenship. The various modes of acquisition of citizenship are described in ss 3–7 where it mentions that citizenship can be obtained 'by birth'⁸¹, 'by descent'⁸², 'by registration'⁸³, 'by naturalisation'⁸⁴ and 'by incorporation of a territory'⁸⁵. An amendment introduced in 2003 provided that if one of the parents of a person born in India after 2003 is an illegal immigrant, then that person would not be able to acquire citizenship through birth.⁸⁶ The amendment inserted a definition of 'illegal migrant' under s 2(b) as a 'foreigner who has come to India devoid of necessary travel documentation or passport as required by the authorities concerned'.⁸⁷

The *Citizenship Act* provides for deprivation of citizenship as well. Citizenship can only be stripped away in very specific cases, for instance, if it has been obtained by fraud, or if there is proven disloyalty towards the state.⁸⁸ Here it is important to note that in the international framework, countries can denaturalise and deport nationals under specific contexts.⁸⁹ The 1961 *Convention on the Reduction of Statelessness* prohibits deprivation of citizenship if it renders one stateless, but allows it in certain circumstances.⁹⁰ These are extremely narrow grounds, and are exercised sparsely, given that depriving citizens of citizenship is a discriminatory practice that creates a category of second-class citizens.⁹¹ The exercise of this legislation becomes crucial to understanding the current crisis of citizenship in Assam.

⁷⁷ *Foreigners Act, 1946*, Act No 31 of 1946 (India) (*Foreigners Act, 1946*).

⁷⁸ *ibid* s 2(a).

⁷⁹ *ibid* s 8.

⁸⁰ *Constitution of India 1950* art 11.

⁸¹ *Citizenship Act, 1955*, Act No 57 of 1955 (India) s 3 ('*Indian Citizenship Act*').

⁸² *ibid* s 4.

⁸³ *ibid* s 5.

⁸⁴ *ibid* s 6.

⁸⁵ *ibid* s 7.

⁸⁶ *Citizenship Amendment Act 1986*, Act No 51 of 1986 (India).

⁸⁷ *Indian Citizenship Act* (n 81) s 2(b).

⁸⁸ *ibid* s 10.

⁸⁹ Weissbrodt and Collins (n 71) 260–61.

⁹⁰ *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 185 (entered into force 13 December 1975) art 8.

⁹¹ Weissbrodt and Collins (n 71) 260–61.

B *Assam: Snapshots from History*

The question of whose presence is legitimate in the State of Assam has been a contested one since the 19th Century. A closer look entails deconstructing the evolution of the issue across multiple historical stages.

1 *Colonial Era*

As an outcome of colonial socio-economic policies, the Assam region began to bear witness to waves of immigration in the 19th Century.⁹² Assam bordered the Bengal province and as a part of new administrative changes introduced by the British, Hindu Bengali elites were brought into the newly annexed state to carry out administrative tasks.⁹³ Bengali was designated as the official language in the region, and the native Assamese language was projected as being a mere dialect of Bengali.⁹⁴ These changes led to resentment among the local population, which was directed towards the hegemonic Bengali population.⁹⁵

The discovery of tea and oil in the region led to the flow of migratory populations to work on tea gardens and oil fields. ‘The stout and hardy Muslim cultivators of East Bengal were considered to be the most eligible for the job’, Bodhi Sattwa Kar writes.⁹⁶ Apart from the elite capture of bureaucratic positions, in the 1900s there was also an influx of Muslims who came in from the East Bengal region, who cleared and settled forest lands for cultivation.⁹⁷ CS Mullan, the superintendent of the census operations in 1931, used the term ‘invasion’ to describe the migration of Muslim peasants to Assam, and, in florid prose, pronounced a dire verdict — ‘Wheresoever the carcasses, there will the vultures be gathered together — where there is waste land thither flock the *Mymensinghias*’.⁹⁸ *Mymensinghias* is a term used to denote Muslims from East Bengal. This was beginning of the rise of regionalist sentiments among the indigenous population, a sentiment that is popularly captured by the phrase ‘*Jatitabaad*’. Baruah uses the term ‘sub-nationalism’ to define the political scenario of Assam during that time by denoting that ‘Assamese micro-nationalism began in the middle of the nineteenth century as an assertion of the autonomy and distinctiveness of Assamese language and culture against the British colonial view of Assam as a periphery of Bengal’.⁹⁹ This project of sub-nationalism took seed and continues to influence political thought in the state to this date.

⁹² See, eg, Chetna Sharma, ‘Citizenship Amendment Bill 2016: Continuities and Contestations with Special Reference to Politics in Assam, India’ (2019) 20(4) *Asian Ethnicity* 522, 529.

⁹³ *ibid.*

⁹⁴ Navine Murshid, ‘Assam and the Foreigner Within’ (2016) 56(3) *Asian Survey* 581, 590.

⁹⁵ *ibid.*

⁹⁶ Bodhi Sattwa Kar, ‘British Colonial Policy of Immigration in Assam (1826–1910)’ (2012) 1(1) *Pratidhwani-A Journal of Humanities and Social Science* 219.

⁹⁷ Sharma (n 92) 529.

⁹⁸ Ahmed (n 75) 61–2.

⁹⁹ Sanjib Baruah ‘“Ethnic” Conflict as a State–Society Struggle: The Poetics and Politics of Assamese Micro-Nationalism’ (1994) 28(3) *Modern Asian Studies* 649, 654.

2 *Post-Colonial Era and the Development of the Legal Regime*

The Partition of the subcontinent created nearly 12,000,000 refugees without having a proper law in place to resettle them.¹⁰⁰ Since the Partition was based on religious difference, it escalated tensions between the two new nations.¹⁰¹

The year 1950 saw the genesis of the *Immigrant (Expulsion from Assam) Act, 1950* (*‘Immigrant Act’*), which created a vague category of immigrants who ordinarily reside outside of India, who came into Assam and whose stay was ‘detrimental to the interests of the general public of India’.¹⁰² This was seen as a clear attempt to drive out Muslims from certain districts of Assam. In the wake of such expulsion, and Partition-related violence, the *Nehru-Liaquat Ali Agreement* was formulated in 1950, which, among others, gave minority migrants the right to freedom of movement and entrenched ‘protection in transit’.¹⁰³ Thus, those expelled were legally allowed to return. The turmoil of the Partition era was the impetus behind the creation of the first National Register of Citizens in 1951.¹⁰⁴ This was a secret document generated from the Census, outlining the names of households comprising Indian nationals. It was not publicly available and was prepared by the census enumerators.¹⁰⁵ There was no space for objections to be filed in the case of exclusions; indeed, most people did not even know whether their names were included. This document identified those eligible to vote in the upcoming elections.¹⁰⁶

The ‘50s and ‘60s were also the era of the *Bongal Kheda* (Chase Bengalis) movement, which aimed to oust Bengali residents of the state, culminating in the displacement of nearly half a million Bengalis from the Brahmaputra Valley.¹⁰⁷ The Bengali community thus continued to be the target of resentment in the Assamese discourse. In 1971, the war for the creation of Bangladesh led to the flow of a massive refugee population into the state.¹⁰⁸ This set the stage for the events of the Assam Agitation. In 1978, India’s highest electoral authority, the Chief Electoral Commissioner, cautioned against the inclusion of foreign nationals in the electoral rolls, issuing ominous warnings about the large-scale takeover of the population by foreigners.¹⁰⁹

The six-year long Assam Agitation, which broke out in 1979, was fuelled by these sentiments. That year, protests were sparked over an alleged inclusion of the

¹⁰⁰ Vazira Fazila-Yacoobali, ‘A Rite of Passage: The Partition of History and the Dawn of Pakistan’ (1999) 1(1) *Interventions: International Journal of Postcolonial Studies* 183, 185.

¹⁰¹ Sanjib Baruah, ‘The Partition’s Long Shadow: The Ambiguities of Citizenship in Assam, India’ (2009) 13(6) *Citizenship Studies* 593, 596, 601.

¹⁰² *Immigrants (Expulsion from Assam) Act, 1950*, Act No 10 of 1950, s 2 (India).

¹⁰³ *Agreement between the Governments of India and Pakistan Regarding Security and Rights of Minorities (Nehru-Liaquat Agreement)*, India-Pakistan, 1 India BTA 243 (signed and entered into force 8 April 1950).

¹⁰⁴ Ipsita Chakravarty, ‘Why Did Assam Prepare the 1951 NRC, Which Has Become a Touchstone for Citizenship Today?’, *Scroll.in* (online, 27 July 2019) <<https://scroll.in/article/931879/why-did-assam-prepare-the-1951-nrc-which-has-become-a-touchstone-for-citizenship-today>>.

¹⁰⁵ Anil Roychoudhury, ‘National Register of Citizens, 1951’ (1981) 16(8) *Economic and Political Weekly* 267, 267.

¹⁰⁶ Regina Menachery Paulose, ‘A New Dawn? Statelessness and Assam’ (2019) 7(1) *Groningen Journal of International Law* 99, 99.

¹⁰⁷ Subir Bhaumik ‘Challenges Ahead’ in Samir Kumar Das (ed), *Blisters on their Feet: Tales of Internally Displaced Persons in India’s North East* (SAGE Publications 2008) 298, 303.

¹⁰⁸ Murshid (n 94) 593.

¹⁰⁹ Baruah (n 99) 599.

names of non-citizens on the electoral rolls for a parliamentary by-election. The aim was to articulate an Assamese identity against the demonised entity represented by the body of the illegal immigrant.¹¹⁰ The dominant narrative was built around the perceived threat to the very existence of Assamese autochthony.

The six-year-long movement finally resulted in the signing of the *Assam Accord* on 15 August 1985 in the presence of the leaders of the two pivotal bodies of the movement — the All Assam Students Union and the Asom Gana Sangram Parishad — along with the then Prime Minister, Shri Rajiv Gandhi. This accord is critical to the citizenship issue in the state. The *Assam Accord* created the foundation for the insertion of s 6A through the *Citizenship Amendment Act, 1986* which established the entire timeline for the National Register of Citizens. According to the terms of the *Accord*, 1966 was set as the base year for detecting and deleting foreigners from the electoral rolls.¹¹¹ Those who were found to have entered the State between 1966 and 1971 were to be deleted from the electoral rolls and were required to register themselves before the Registration Officers of their respective districts. This category of people was to be reinstated on the rolls after ten years had passed. Foreigners who came to Assam after 25 March 1971 were to be detected and deported according to the provisions of the law.¹¹² After the signing of the *Assam Accord*, the *Citizenship Amendment Act* of 1986 came into place, which included s 6A, providing the entire timeline for the identification of a genuine citizen in context of Assam. Section 6A codified the timeline agreed upon in the *Assam Accord*. The 24th of March 1971 is therefore regarded as the cut-off date for identifying genuine Indian citizens in the State of Assam.

The Assam movement laid the foundations for the legal and socio-political changes that were to emerge over the course of time. Chetna Sharma postulates that ‘defining an “immigrant” or an “indigenous” community in fixed terms in a demographically fluid zone like Assam is a complicated exercise’.¹¹³ Despite this, there has been consistent fearmongering based on oversimplifications among the political class in Assam around the issue of migrants. SK Sinha, the former Governor of Assam, described the problem with dramatic flair — ‘as a result of population movement from Bangladesh, the spectre looms large of the indigenous people of Assam being reduced to a minority in their home state’.¹¹⁴ It is this fear that informed the agitation and it is this fear that continues to rise to the fore.

In 1997, a new category of citizens was carved out — that of the vilified D Voter.¹¹⁵ The Election Commission of India, together with the ruling government of Assam at the time, came up with the idea of demarcating suspected immigrants from Bangladesh as lesser citizens.¹¹⁶ To be a D Voter means that one is disenfranchised — an innocuous D, for ‘doubtful’ is stamped next to their name

¹¹⁰ Ahmed (n 75) 56.

¹¹¹ *Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord)*, signed 15 August 1985 (Memorandum of Settlement) cl 5.1 <https://peacemaker.un.org/sites/peacemaker.un.org/files/IN_850815_Assam%20Accord.pdf>.

¹¹² *ibid* cl 5.8.

¹¹³ Sharma (n 92) 530.

¹¹⁴ SK Sinha, *Report on Illegal Migration to Assam* (Report, 1998) <https://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm>.

¹¹⁵ Nazimuddin Siddique, ‘Discourse of Doubt’ (2019) 54(10) *Economic & Political Weekly* 25.

¹¹⁶ *ibid*.

in the voter list, and with one bureaucratic motion, their rights are deprived.¹¹⁷ Individuals are marked as D Voters arbitrarily with no logic or inquiry and the status can only be changed through extensive litigation before special bodies called the Foreigners Tribunals.¹¹⁸ The notification Sabjan Nessa received informed her of the dreaded 'D' next to her name. The onus is now on her to show that she is truly a citizen.

C *The NRC*

The events and legislative changes described in the previous part finally culminated in the demand for a stringent tool to codify who amounted to a citizen. This was the National Register of Citizens. The *NRC* is a form of citizenship identifier, aimed at screening illegal migrants and deporting them to their 'homelands'. The *NRC* has been defined as a 'register containing details of Indian citizens living in India and outside India'.¹¹⁹ In 2009, a petition called for an update to this list, which was taken up by the Supreme Court of India.¹²⁰

Inclusion in the *NRC* is essentially a documentary exercise based on the notion of lineage. The documents needed to get a person's name enlisted in the *NRC* require that a relationship be established with any member of their family who settled in Assam prior to the cut off year.¹²¹ Not surprisingly, this lineage requirement has strong patriarchal connotations. In multiple cases women were unable to prove that they were related to their parents, since most of their documents are usually in the name of the husband.¹²² This challenge is aggravated in context of child marriages, which are common; Assam bears the dubious distinction of having the highest number of child marriages in the country.¹²³ Marriage to a citizen is not considered sufficient grounds — *jus soli* principles make it imperative that a link to the parents be proven. Women also move into their marital homes, and as a result leave their original constituencies, which

¹¹⁷ *ibid.*

¹¹⁸ *ibid* 25–26.

¹¹⁹ *Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003*, GSR 937(E) r 2(k) (India). The National Register of Citizens is divided into state, district, sub-district and local registers and consists of the

name, parents' name, sex, date of birth, place of birth, residential address (present and permanent), marital status — If every married, name of the spouse, visible identification mark, date of registration of citizen, serial number of registration, and National Identity Number.

¹²⁰ *Assam Sanmilita Mahasangha and Ors v Union of India* [2015] 3 SCC 1 20 (b) (Supreme Court of India) 12 [20].

¹²¹ 'What Are the Admissible Document?', *Government of Assam, Office of the State Coordinator of National Registration (NRC) Assam* (Web Page) <<http://nrcassam.nic.in/admin-documents.html>>. These include 1. 1951 NRC 2. Any electoral rolls up to 24 March 1971. 3. Land and Tenancy records 4. Citizenship Certificate 5. Permanent Residential Certificate 6. Refugee registration certificate 7. Passport 8. Life Insurance Corporation certificate 9. Any government issued license or certificate 10. Government service or employment certificate 11. Bank or post office accounts 12. Birth certificate 13. Board or university educational certificate 14. Court records or proceedings. The rules provide that married women, who are expected to face challenges in proving their lineage, can produce a certificate issued by the Circle Officer or a Gram Panchayat Secretary along with a ration card issued before 25 March 1971.

¹²² Siddique (n 115) 26.

¹²³ 'Smriti Irani: 501 Child Marriages Reported in India in 2018; Maximum in Assam', *Pune Mirror* (20 March 2020) <<https://punemirror.indiatimes.com/news/india/smriti-irani-501-child-marriages-reported-in-india-in-2018-maximum-in-assam/articleshow/74731949.cms>>.

makes tracing their parental lineage more difficult.¹²⁴ Being largely illiterate, they also did not possess state-issued educational documents that could have been used to prove their citizenship.¹²⁵ Thus, the rigid bureaucratic regime of the *NRC* served to disadvantage those who were most vulnerable.

After a series of delays, the final *NRC* was released on 31 August 2019. The outcomes of the *NRC* process are well known — 1.9 million people have been left off the list.¹²⁶ Most of the people excluded are from the most vulnerable socio-economic and religious groups of society and have suffered the brunt of the failure to present documentary evidence.¹²⁷ They now await an ambiguous fate since the entire appeals process has not begun. The next step in their journey will bring them face-to-face with the Foreigners Tribunal ('FT').

D Women and the FT Process

Foreigners Tribunals are instrumental in determining the status of a person as a foreigner or a citizen. The FT is a quasi-judicial body and was set up by an executive order in 1964. It operates on the principle outlined in India's *Foreigners Act*, imposing the burden of proof on the person suspected of being a foreigner.¹²⁸ They have the power to determine their own procedure and are expected to operate as civil courts.¹²⁹ The FT process begins with a reference made by the police or the election authorities identifying a person as a suspect. That person is then served a notice and must defend their case before the Tribunal. Two prongs may be used to prove cases before the FTs — documentary evidence and oral depositions by witnesses. There is no appeals process and any challenges to the orders of the FT must be made before the High Court.¹³⁰ Once a person is declared as a foreigner, they face the prospect of detention in one of the state's six detention centres, living in deplorable conditions without basic rights.¹³¹

The FT system has been extensively critiqued. First, they are created not by legislative process, but through executive order.¹³² Appointments to the tribunal are made by the executive, which is indicative of the latter's influence, with no clear definitions on who can be a member; often persons without experience in adjudication are elected to these bodies with inadequate training.¹³³ Second, the FT members receive incentives based on how many persons they declare as

¹²⁴ Siddique (n 115) 26.

¹²⁵ *ibid.*

¹²⁶ Helen Regan and Manveena Suri, '1.9 Million Excluded from Indian Citizenship List in Assam', *CNN* (online, 31 August 2019) <<https://www.cnn.com/2019/08/30/asia/assam-national-register-india-intl-hnk/index.html>>.

¹²⁷ Puja Changoiwala, 'India's Muslims Are Terrified of Being Deported', *Foreign Policy* (online, 21 February 2020) <<https://foreignpolicy.com/2020/02/21/india-muslims-deported-terrified-citizenship-amendment-act-caa/>>.

¹²⁸ *Foreigners Act, 1946* (n 77), s 9.

¹²⁹ *Foreigners (Tribunals) Order, 1964* (India) GSR 1401 of 1964, s 4.

¹³⁰ 'Interview with Aman Wadud', *Parichay — The Blog* (Blog Post, 5 October 2020) <<https://parichayblog.org/2020/10/05/interview-with-aman-wadud/>> ('Interview with Aman Wadud').

¹³¹ 'Harsh Mander's Full Report to NHRC', *Deccan Herald* (online, 13 October 2018) <<https://www.deccanherald.com/national/top-national-stories/harsh-manders-full-report-nhrc-678127.html>>.

¹³² Talha Abdul Rahman, 'Identifying the "Outsider": An Assessment of Foreigner Tribunals in the Indian State of Assam' (2020) 2(1) *Statelessness & Citizenship Review* 112, 123.

¹³³ *ibid* 126–29.

foreigners.¹³⁴ These factors combine to make the functioning of these tribunals extremely arbitrary. Until 2019, around 117,000 persons had been declared as foreigners in the state.¹³⁵

Robust evidence does not exist currently with respect to the gender composition of the FTs. However, based on an interview with an experienced lawyer on the ground, we found that most of the members are male, but a not-insignificant number are women.¹³⁶ Future research would require data on the gender and ethnic composition of the members of the FT as well, which may help in substantiating the claim that heteronormative majoritarian patriarchy is reflected in the way in which FTs are constructed.

We sought to take a closer look at how these challenges were manifesting as women interacted with the legal regime around citizenship. To this end, we scrutinised 15 randomly selected orders passed by the FTs to determine the citizenship of women. The cases were selected from FTs across several districts. Given that FTs do not publish their cases publicly, we relied on materials we collected from a local lawyer. We positioned case law as ethnographic source material and were able to draw several inferences from these texts. We identified the petitioners as women by the designation 'W/O' next to their names, which stands for 'Wife of'. In each of these orders, the petitioner's claim to citizenship was denied. The addresses mentioned on the case files reveal that all these women whose citizenship is under challenge are from underdeveloped rural areas. Most tellingly, we were able to analyse the kind of documents that were produced by women to prove citizenship, and the grounds that were used to dismiss their citizenship documents.

Type of document	Number of Cases	Grounds for rejection
Land records	7	1. Damage 2. Issuing authority not produced to testify 3. Documents were issued post 1971 4. Woman did not know the details of the document 5. Name of siblings mentioned on the document but not named in oral evidence
Marriage Certificate	5	1. Issuing authority not produced to testify 2. Marriage registered years after the fact 3. Spelling discrepancy

¹³⁴ Sagar, 'How Assam's Foreigners Tribunals, Aided by the High Court, Function like Kangaroo Courts and Persecute Its Minorities', *The Caravan* (online, 6 November 2019) <<https://caravanmagazine.in/law/assam-foreigners-tribunals-function-like-kangaroo-courts-persecute-minorities>>.

¹³⁵ '1.17 Lakh People Declared as Foreigners by Tribunals in Assam', *The Economic Times* (online, 16 July 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/1-17-lakh-people-declared-as-foreigners-by-tribunals-in-assam/articleshow/70244101.cms>>.

¹³⁶ 'Interview with Aman Wadud' (n 130).

Educational document (school certificate, examination certificate etc)	3	1. Name of the father not present on document 2. Issued after 1971 and so invalid 3. Issuing authority was not present in the school at the same time as the woman 4. State emblem is embossed on document,¹³⁷ rendering it inadmissible
Gaonburah certificate ¹³⁸	10	1. Testimony by issuing authority not reliable 2. Testifying authority not produced 3. State emblem is embossed on document rendering it inadmissible 4. Document issued many years after the original reference was made and is thus negated 5. Negated by discrepancies in oral evidence 6. Certificate issued without any corresponding record
Electoral ID card	4	1. Evidence presented is dated post-1971
Electoral rolls	15	1. Unable to substantiate linkage with parents 2. Discrepancy in age/spelling 3. Mere submission of documents is not admissible as evidence 4. Names of other family members not found in the voter lists 5. Not proven in accordance with primary evidence¹³⁹
1951 <i>NRC</i>	5	1. Not admissible as proof of citizenship 2. Discrepancy in name
Affidavit clarifying discrepancy in spelling	1	1. Not considered sufficient evidence

¹³⁷ In contravention of the *State Emblem of India (Prohibition of Improper Use) Act 2005*, Act No 50 of 2005, s 3. This act prohibits the use of the state emblem by unauthorised persons, of whom the Gaonburah is one.

¹³⁸ The Gaonburah is the head of the local government in a village. Certificates issued by them are often presented as evidence of one's residence and paternity.

¹³⁹ That is, by verifying against the original roll.

The women in this limited sample were able to present multiple documents before the FT. Eight different types of documents were identified (see table above), which were submitted in different combinations in different cases. However, the court applied stringent standards and rejected each of these documents on various, often arbitrary, grounds. One of the most common documents presented is the certificate by the local government official called the *Gaonburah*. It was found that this document was rejected in several instances on account of the failure of the woman to produce the *Gaonburah* in question before the Court. This requirement has been upheld in the upper judiciary — in *Jalekha Khatoon v Union of India*,¹⁴⁰ the Gauhati High Court held that the production of the *Gaonburah* certificate, which is an admissible document, is not enough on its own to prove the citizenship of a woman; it must be corroborated through the testimony of the issuing authority. However, even this is not always fool proof; in one of the cases we examined, it was proven that the woman in question was linked to her father through the *Gaonburah*'s deposition. However, discounting this, the Court then went on to cast doubt on the question of whether her father was related in turn to his father, and on this basis dismissed her documents. Despite there being three witnesses to attest to her account, the Court held that, '... she [failed] to prove any vital document to prove her linkage that she is the granddaughter of Jel Haque, s/o Tofer Ali, the projected grandfather of the proceedee by any cogent oral or documentary evidence.'¹⁴¹ In summary, the process seems to be rife with inconsistencies, with no clarity on what direction the FT may take.

Voter lists, electoral ID cards and any documents issued post the cut-off date of 1971 are dismissed. The 1951 NRC data is not considered as admissible evidence. Given that most of these women are not educated, they are unable to produce educational documents to attest their claims. Moreover, it is not a stretch to assume that it would be difficult for women to produce the issuing authority for their marriage certificate *Gaonburah* certificate before the Court, given that women migrate on account of marriage or due to climatic factors.¹⁴² In all but one of the cases we examined, the land records were produced in the name of the father of the woman, which was not sufficient to prove her citizenship.

While we do not make the claim that these arbitrary dismissals exercised by the FT are solely based on gender, it is nonetheless clear that there are huge structural barriers for women to prove their identity before the adjudicatory bodies. Acquiring valid documentation, as discussed, presents a far more monumental challenge for women. The multiple intersections of identity work in tandem to disadvantage the body of women who undergo the legal process of citizenship in India. While the text of the judgments is careful to avoid reference to the religion or ethnic identity of the person in question, identity markers such as the surname point to the women being either Bengali or Muslim, or both. This is consistent

¹⁴⁰ *Jalekha Khatun v Union of India* [2019] WP(C) No 7919/2018, 2–3 (High Court of Gauhati).

¹⁴¹ *State of Assam v Hanufa Khatun* [2018] FT Case No 214/15 (Foreigners Tribunal 4th Goalpara).

¹⁴² Chandrani Sinha, 'Climate Refugees Stripped of Citizenship in Assam', *The Third Pole* (online, 8 August 2019) <<https://www.thethirdpole.net/2019/11/08/climate-refugees-stripped-of-citizenship-in-assam/>>.

with empirical findings that show that significantly more people from both these communities are tried and declared as foreigners.¹⁴³

It is pertinent to remember that there is little administrative clarity on what amounts to a proper document for purposes of proving one's citizenship.¹⁴⁴ As discussed in the previous part, gender interferes with women being able to navigate public spaces and acquire documents. The challenges of procuring documents for identification for low-income women highlighted earlier are applicable in the Assam context as well. Moreover, even in those instances where women are able to produce documents, the lack of access to education, legal awareness and finances places them at a significant disadvantage.¹⁴⁵ There is evidence to show that in many instances, women party to these cases rely heavily on support from their male family members in navigating this complex legal process.¹⁴⁶ In the absence of such support, their claims to citizenship can be further weakened. This heavy dependence on men may also reinforce the existing patriarchal power dynamic within the family.

Proving linkage with a parent who is a citizen lies at the heart of these adjudications. For men, common practice dictates that their documents present their father as a guardian; however, for married women, this position is filled by the husband, which renders most of their identity documentation worthless in the FT. The adjudication of the FTs is disconnected from these realities — they impose extraordinary standards of proof and are quick to dismiss the evidence that women can present. Thus, the FTs, as predominantly majoritarian hetero-patriarchal legal institutions, create the myth of the perfect litigant, which is an impossible standard that most women are unable to meet.

E *The Pitfalls of the NRC: A Glimpse from the Ground*

In furtherance of a feminist standpoint epistemology, we sought to focus on the lived experiences of the women to make our knowledge claims. We interviewed 30 women both before and after the publication of the final draft of the *NRC* in two districts of Assam, Darrang and Barpeta. The survey in Darrang was conducted on 27 June 2019, when the process of claims and verifications was in full swing. The Barpeta survey was conducted on 16 February 2020, after the publication of the final draft of the *NRC*, where two villages were covered as a part of the research. Purposive sampling was adopted in the selection of the sample. The questionnaires used consisted of both open-ended and close-ended questions for the stakeholders. A structured approach was adopted. We tried to gain a sense of the 'everyday life' of our respondents during the timeline of the *NRC*.

We found that in all the instances, women were put through immense inconveniences in the process of registering their citizenship. In Darrang, during the submission and registration process, the respondents pointed out the fact that

¹⁴³ Rohini Mohan, "Worse than a Death Sentence": Inside Assam's Sham Trials That Could Strip Millions of Citizenship', *Scroll.in* (online, 30 July 2019) <<https://scroll.in/article/932134/worse-than-a-death-sentence-inside-assams-sham-trials-that-could-strip-millions-of-citizenship>>.

¹⁴⁴ Manu Sebastian, 'Which Documents Prove Indian Citizenship?', *LiveLaw* (online, 21 February 2020) <<https://www.livelaw.in/columns/which-documents-prove-indian-citizenship-153027>>.

¹⁴⁵ 'Interview with Aman Wadud' (n 130).

¹⁴⁶ *ibid*.

no separate queues were available for women. Elderly and pregnant women, along with lactating mothers, had to stand in queues for hours to get their documents verified. In one case, four infants lost their lives in the heat while the mothers were forced to stand in queues. A respondent, aged 68 years, described her difficulties in travelling time and again to get her name verified. Her son was a daily wage labourer who accompanied her and exhausted almost all his savings. In describing her plight, she mentioned how the government officials were unhelpful and they received no aid or assistance from the non-governmental organisations. Another respondent, aged 38, recalled that she had to bring her 93-year-old ailing father to her registration, to establish his linkage with her before the authorities. A pregnant 27-year-old respondent pointed to the lack of proper sanitation and drinking water facilities. On observation, it was seen that a hand pump was installed for drinking water, two temporary toilets were constructed for use by both men and women and, for shade, a tarpaulin covered area was demarcated without benches or chairs. The other respondents focused on similar issues and also raised the concern about the notices not being served on time and the rampant corruption in the entire system.

In Barpeta, the families who were interviewed consisted of D Voters whose names were not included in the *NRC*, as upheld in the case of *Azizul Haque v Union of India*.¹⁴⁷ The first respondent was a widow with two married daughters. She was an elderly woman who could not afford to get an advocate to defend her case before the FT and highlighted her hardships while trying to earn a livelihood. The names of all her brothers were enlisted in the *NRC*, barring her because of her inability to prove lineage with her late father. The second respondent was a daily wage labourer and her deceased husband's name was enlisted as a D Voter, automatically rendering her sons the same. She had been fighting alone against the system to get the names of her sons regularised in the electoral rolls. The third respondent highlighted the rampant corruption prevalent in the electoral registration branches and the FTs. She was asked to furnish a sum of INR 15,000 to get her name enlisted on the electoral rolls, facilitating the inclusion of her name in the *NRC*. All the other respondents have also corroborated that there was corruption and presence of political pressure. The fourth respondent recalled how her neighbours were apprehensive of the fact that the family of the respondents would be taken to the detention centres which instilled fear among them. Another respondent showed us land records dating back to 1926 and rued the fact that despite having documents which date back to pre-independence times, their names were registered as D Voters. In conversation with a lady aged 87, it was known that her name was included in the 1951 *NRC*, yet the names of many of her family members were not included in the *NRC*. Overall, there was a significant lack of awareness around the citizenship rights among the people, which seems to have paved the way for exploitation by the bureaucracy.

We asked the respondents about the reactions elicited from the wider society around them. One respondent informed us that the persons from his village used to visit his family and discuss the potential fate they faced in the detention centre. Some respondents stated that the neighbours were the one who spread rumours about them being illegal migrants and subsequently cut-off ties with them. In contrast, the survey in the Kharupetia town field revealed that the respondents had received immense support from their neighbourhood and community at large who

¹⁴⁷ *Azizul Haque v Union of India* [2018] WP (C) No 3432 of 2018 (High Court of Gauhati).

collected funds to help them fight for their cause. Nonetheless, social stigma persists where people are called out as ‘Bangladeshis’ or as people who ‘entered Assam by crossing the fence’. The respondents believe that their dialect and attire are held against them and used to profile them as ‘illegal immigrants’.

These interviews illuminate the kinds of challenges that interfere with women accessing their right to be included in the *NRC*. The process itself was not friendly to women, speaking to the monumental challenges that women, especially pregnant or senior women, face in bureaucratic spaces. Dependency on male family members and unfamiliarity with administrative procedures impacted women attempting to get their names registered. The respondents also spoke to the differential treatment of the FT members towards male and female respondents. The FT members tended to ask more complicated questions of the women. A respondent reported that she was asked about the weather on her marriage day, the number of guests present and the address of those guests. FT members were reported to have ignored the claims of alleged foreigners. A male respondent spoke to the fact that that girls in his community were not allowed to get education, whereas boys had access to middle school education at the very least.

Due to the lack of income sources, navigating a corrupt system was rendered difficult for persons from lower economic strata. A respondent whose husband was a rickshaw-puller highlighted how he was targeted for not being able to bribe the local police personnel, which resulted in them receiving a notice to appear before the FT. A local social activist and a student leader corroborated this as being common practice in the state.¹⁴⁸ It would not be a stretch to state that these challenges would be harder for those women who did not have independent sources of income or support from male family members.

While we have looked at the experiences of women in this paper, it is worth considering the experiences of men as well. While treatment by government officials is the same for both genders, the women we surveyed struggled with an acute lack of awareness, access to legal aid and education. Men, on the other hand, were more aware and relatively more educated. This led to a slight divide in the level of harassment experienced by both genders. Men reported that they were more likely to attend meetings and awareness drives happening near their homes and thus are more likely to be able to stand up for themselves with proper arguments and avail of legal aid.

Finally, the exclusion of a woman’s name from the register has implications for the rest of the family — the chances are high that the rest of her family, especially her children, would be left out as well. Conversely, there does not seem to be any guarantee that the inclusion of her husband’s name would lead to her name being included. The difficulty in finding the perfect set of documents is revealed through these interviews.

In summary, the FT process, as well as the *NRC* process, seem to disproportionately affect members of ethno-religious minorities from lower-income backgrounds. The requirement of proving lineage is inherently patriarchal and puts an insurmountable barrier before women who may not have documentary proof of being their parents’ child. This adds to their pre-existing disadvantages, in terms of lack of access to the resources and skillsets necessary to navigating a complex bureaucracy.

¹⁴⁸ Interview with Ainuddin Ahmed, Working President of All Assam Minority Students Union (Padmini Baruah, telephone, 20 June 2020).

IV CONCLUSION

For Sabjan Nessa, the road ahead is an uphill struggle. Her status as a D Voter automatically bars her from being included in the *NRC*. Litigation is pending, and she may be declared a foreigner, and may even be detained, if she is not able to meet the high burden of documentary evidence mandated by the FT system. In a strange twist, she has already been declared a citizen by the FT once;¹⁴⁹ yet, that has not been enough to get her enrolled into the *NRC*, or have the 'D' removed from her name. Of her 12 siblings, she is the only one whose citizenship is under contestation, leading to a bizarre, yet not uncommon, situation where family members of citizens are somehow arbitrarily positioned as foreigners. When we spoke to her, she was distraught; her children were facing the same fate and were stigmatised in their community on account of their mother's doubtful status.

The evolution of citizenship as a right granted by the sovereign has conversely meant that the sovereign reserves the power to take this right away. Despite deprivation of citizenship being described as 'a form of punishment more primitive than torture',¹⁵⁰ in India, there has been little hesitation on the part of the authorities in taking away people's citizenship on flimsy grounds. The judicial process has been influenced by the contentious history of immigration and sub-nationalism in Assam and this influence is clearly visible in the large number of declared foreigners in the state. There is a tendency not to merely strip away the status of persons who have been residing in the country, but to also punish them through detention. Thus, in Assam, the negative consequences of statelessness are becoming increasingly visible.

An intersectional feminist lens is not just desirable, but critical in scrutinising the *NRC*–FT nexus in Assam. Identity politics frequently does away with the notion of intra-group differences.¹⁵¹ In examining statelessness from a gendered perspective, it is not enough to merely study its impacts on women — a comprehensive analysis must consider the influence of other structural aspects of their identity. In the case of Assam, gender and socio-economic status combine to create barriers for the women who are struggling with their citizenship status. The legal burden of proving citizenship through descent and lineage is inherently patriarchal. Moreover, the segment of women we have looked at find accessing documents difficult owing to their lack of awareness, education, resources and access to legal aid, coupled with corruption and lengthy bureaucracy. Even when they can amass documentation, the next hurdle in their way is the procedural maze of the FT, which presumes that they are foreigners with little basis. This combination of factors serves to push women from these communities on the path to statelessness. While the nationality laws of India are not ostensibly gender biased, there is undoubtedly indirect discrimination, the implications of which are felt not only by women, but also by their family.

Petrozziello posits that due to 'creation of temporary and ad hoc documentation procedures ... descendants of migrants slide further down the slippery slope of citizenship towards statelessness'.¹⁵² This is evident from the Assam example.

¹⁴⁹ *State of Assam v Sabjan Nessa* [2016] FT Case No 377/15 (Foreigners Tribunal 5th, Barpeta).

¹⁵⁰ *Albert L. Trop, Petitioner v John Foster Dulles, as Secretary of State of the United States and United States Department of State* [1958] 356 US 86, 20 (Supreme Court of the United States).

¹⁵¹ Kimberle Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43(6) *Stanford Law Review* 1241, 1242.

¹⁵² Petrozziello (n 50) 224.

While we wait for the *NRC* exclusion appeals to unfold, it is imperative that policy makers are alerted to the high risk of marginalisation that women face. India may not be a signatory to the statelessness conventions, but its actions are in contravention of its obligations under other human rights instruments, notably the *Convention on the Elimination of All Forms of Discrimination against Women*.¹⁵³ The Assam case requires our urgent attention — else we face the prospect of normalising the mass statelessness of half a million women, who have been citizens, but are arbitrarily at risk of deprivation of citizenship. We aspire for targeted steps to be taken to provide effective protection for this marginalised population, so that their rights and dignity are preserved in the true spirit of participatory democracy.

¹⁵³ *CEDAW* (n 13).