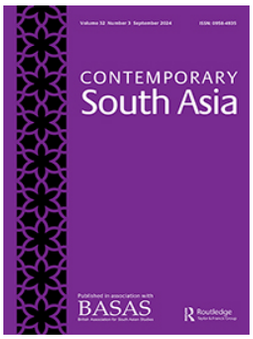

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Beyond papers: understanding the making of citizenship in the Foreigners' Tribunals of Assam

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ABSTRACT

This paper questions the hyper fixation on papers in producing citizens or proving citizenship, arguing that not papers but the agglomeration of legal, bureaucratic and social processes produce citizenship in Assam's Foreigners' Tribunals (FTs). Based on ethnographic fieldwork with members (presiding over cases), lawyers, border police officials and victims of citizenship examination processes, this paper shows that citizenship cannot be easily proved or disproved based on the possession or absence of papers, as the 'truth' about one's citizenship is produced equally outside these courts. One's citizenship status inside the court depends on a series of procedural, documentary and certificatory correlations accompanied by social performances (testimonies from family and community members). This is contingent on the truth produced outside through the suspicion of being a 'foreigner', easily cast in terms of one's physical appearance, social class, religion and language. Community structures outside courts also enable certain groups to be documented easily, aiding the production of the legal truth required inside for establishing citizenship status. Therefore, the way suspicion is informed and legal technicalities are deployed to generate information and knowledge along with the role of family and community social networks all contribute towards establishing one as a citizen or a 'foreigner'.

KEYWORDS

Citizenship; Foreigners' Tribunals; Assam; illegal immigration; law and legal anthropology; ethnography of courtrooms

Introduction

One day in court, I overheard one lawyer advising the other, 'Take longer and be declared an Indian citizen or take two days and get declared a foreigner!' This exchange summarises my experience of the Foreigners' Tribunals (FTs) in Assam. Contrary to some popular academic and state discourses, which inform us that papers produce citizens (Sadiq 2009), I show in this article how one's citizenship status is not reliant on papers alone – their presence or even absence. I argue that it is less about having the 'right' set of papers than about the ability to prove the contents of these papers following a series of procedural and bureaucratic dictates – various checks and balances on paper – and the performativity attached to people and papers in a trial.

I suggest that focusing too much on the primacy of papers is misleading, as proving Indian citizenship in FTs is more about securing the right witnesses, a correct testimony and counterfoils of official documents, and is effectively embedded in kinship and family networks. Class composition and kinship and community networks are equally important factors that can make securing

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citizenship claims easier for some. Similarly, some bodies are more prone to coming under suspicion for being 'foreign', as suspicion is located outside of paper and heavily cast in language, phonetics, physical appearance, dressing habits, demeanour etc.

I argue first that the state's and people's hyper fixation on papers has privileged them, while my fieldwork suggests that having more papers does not improve people's chances of gaining citizenship. Most cases fail because people are unable to prove papers' contents, not because they do not possess them. Second, citizens are made and unmade not so much by papers but by an agglomeration of different processes. Third, documents are not objectively read but mostly while keeping in mind who produces them, and their reading is also influenced by the performance of the social inside the courtroom. The social is reinforced by keeping a traditional understanding of family, gender and community in place, be it through gendered tracing of ancestry or bearing witness to the truth inside the courtroom. This extends to relying on community forms of association for proving or disproving papers in- and outside the courtroom. Fourth, while people may have papers, the truth about their citizenship may not be produced inside the courtroom. I argue that class composition, kinship and community networks are equally important in the production of truths of citizenship, and not papers alone.

In the popular imagination, the illegal immigrant or 'foreigner' from Bangladesh to India is a Bangladeshi Muslim man.[1] In Assam, however, the 'foreigner' resembles the working-class *lungi*-wearing 'Miya' Muslims and Bengali-speaking men and women of the state.[2] This suspicion is tied to the political history of Assam and its fight against the *bohiragoto*, the *bidexi*, or 'the outsider'. The term 'outsider' is shifting and identified with different groups at different points in time, such as Bengalis, Biharis, Nepalis and Marwaris. However, political and social prejudice has historically fixated on certain communities, seen as 'more' outsider than the others, from the 'land-encroaching' poor Muslim migrant peasants of East Bengal of the colonial period (Baruah 1999; Guha 1976) to the middle-class educated Bengali Hindu *babus* or clerks of the British capitalist era (Nag 1990).

The movement for the preservation of Assamese language and culture against the outsider in Assam began with the language movement in the 1960s, followed by demands for revised electoral rolls leading to organised opposition to state elections in 1979. This gave way to the Assam movement (1979–1985) strengthening demands to turn Assam into an exclusive homeland for the Assamese. It ended with the signing of the Assam Accord and the cut-off year for being eligible for Indian citizenship set as 1971. This created a graded and differentiated system of citizenship, categorising foreigners based on the date they had entered India, and legitimised the status of many immigrants who came before 1966. Those who had migrated between 1966 and 1971 could stay, provided they officially registered as foreigners. All those who migrated thereafter were simply illegal immigrants (Roy 2010).

In this sense, legal forms of citizenship in the state and culturally based notions of belonging existed in parallel. The imagination of the immigrant today is of the working-class migrant Muslim who comes to the cities to work as a daily wage labourer on construction sites, in coal and brick factories, on railway stations, bus stops, rickshaw stations etc. According to the border police (a sub-unit of the Assam state police tasked with patrolling and investigating such cases) that I interviewed, men were more likely to have to appear in court for being 'foreigners' than women, as they were more often found on patrolled streets and underpasses than women, who mostly work as housekeepers.

This imagination is further strengthened by the changing nature of the political state, with the right-wing Bharatiya Janata Party (BJP) forming the government at both the central and the state level, leading to a reformulation of national identities along religious lines through ethno-linguistic nationalism and plays a greater role in reinforcing the imagination of the infiltrator as Muslims. The hegemonic processes of Hindu nationalism have engaged in a public discourse on 'infiltration', reinforced by systematic campaigns of eviction which seek to identify and expel undocumented Bengali Muslim immigrants. Such a discourse also establishes the symbolic boundaries of inclusion and belonging, where Muslim citizens of India and Bangladeshi Muslim immigrants are positioned at the margins together, often outside the 'imagined nation' (Anderson 1983; Gillan 2002). The

publication of the National Register of Citizens (NRC) in August 2019 left out a considerable number of Bengali Hindus, along with Bengali Muslims. The controversial Citizenship Amendment Act (CAA), which has yet to come into effect in full force, would award citizenship to religious minorities such as Hindus from neighbouring countries and was seen as a move to rectify this 'wrong'. In this way, the call for controlling borders and 'illegal' immigration became closely intertwined with the Hindu nationalist call for citizenship as an exclusive right for Hindus in India.

Documents and citizenship

Research on citizenship in India has taken many forms. Scholars have studied citizenship and the existing debates around it largely centred around the history of partition (Chatterji 2007; Jayal 2013; Roy 2010; Zamindar 2007) and accounts of the violence of this political decision along with the radical reconfiguration of citizens based on their religious identity and community affiliation (Bhasin and Menon 1998; Butalia 1998; Das 2006; Pandey 2001). Others have looked at how the citizenship discourse in India has changed with laws becoming exclusionary over time, primarily owing to the legacy of the Partition (Roy 2010). This enabled the reproduction of religious identities through the formation of national identities (Pandey 1999).

However, in recent anthropological studies on citizenship, the salience of questions of belonging has enabled us to look at citizenship not as just a question of law and violence but has added an affective and intimate dimension to securing citizenship and recognition (Ghosh 2017; Ibrahim 2020; Raheja 2018; Sur 2021). It has also opened the processes through which citizens are said to be produced, through documentary practices, to scrutiny (Sadiq 2009). This paper aims to contribute to this area of anthropological scholarship by studying the ethnographic life of citizenship laws in the Indian state of Assam and showing how citizenship practices disenfranchise, while they purport to enfranchise. Citizenship is undone through both the legal rationalities of courtrooms and tribunals and affective forms of adjudication that exceed codified procedures.

Legal categories, such as foreigners and citizens, are not inherently natural. The state and the law play an ambiguous role in the production of what is called 'illegal' and facilitate its production in many ways (De Genova 2002; Foucault 1975; Jusionyte 2015; Roitman 2004). Law defines the parameters of its own operations, producing the conditions of possibility for 'legal' as well as 'illegal' practices. Borders, too, are not fixed but embodied and experienced differently based on who encounters them. They are not limited to territorial edges of the nation. Postcolonial local practices of borderlands have refused to restrict themselves to the dominant imagination of territorial nationalism (Cons 2016; Ghosh 2017; Reeves 2014; Sur 2021; Van Schendel 2004). Moreover, national territory and transgressions of borders ironically are predicated on the very recognition of territoriality that colonial rulers erected, which are dissonant with local spatial practices (Baruah 2008; Misra 2011). By locating suspicion of being a 'foreigner' in physical appearance, religion and language, these foreigner detection processes are implicated in the making of a prejudiced 'suspect' who tends to belong to certain communities and socio-economic classes (in this case working-class Bengali-speaking Muslims). This paper proposes to problematise the notion of 'illegality' associated with the popular imagination of immigration from Bangladesh to India, where the practice has been to call anyone without required documents illegal (sometimes even those with documents).

Documents and identity papers are an unreliable and opaque method of producing knowledge about people, as they obscure more than they reveal in their attempt to create 'legible' persons (Sriraman 2018). Literature on identity documents reveals how identity cards also produce their own forms of illegibility – it is possible to remain undetected not despite of identity documents but because one is able to manipulate them (Kelly 2008). This 'illegibility' of writing practices is also derived from the instability introduced by the possibilities of a gap between rule and its performance (Das 2004). The slippages between official truth and realities are characteristic of bureaucracy more generally (Tarlo 2001). Elsewhere, this illegibility is encountered through the 'signature of the state' tied to the technologies of writing, appearing in almost all written documents

and thereby simultaneously instituting the possibility of forgery, imitation and mimicry of its performances (Das 2004). Thus, the magic of the signature of the state creates an aura of legal operation even around seemingly 'illegal' acts, which then makes practically all forms of writing and documentation illegible (Das 2004).

Rather than create security through knowledge, identity documents produce new forms of racialised suspicion and insecurity. This uncertainty leads state officials to look beyond the documents to the bodies of the people that hold them – reading bodies for marks of suspicion and thereby feeding into racialised notions of danger along with cultural notions of belonging. The result is a racialised form of citizenship, where bodies, documents and legal status merge (Kelly 2008). Thus, when the threat is perceived to be elusive, the state takes preventative measures that involve the categorisation of whole populations. The default position then becomes that of suspicion, where racial and cultural markers can implicitly become grounds against which people have to prove their innocence (Eckert 2008).

Non-documentary forms of suspicion and detection of 'foreigners'

The task of detecting and deporting foreigners in Assam is delegated to the FTs. FTs are quasi-judicial institutions formed in the light of the Illegal Immigration Detection by Tribunals (IMDT) Act, 1983, where persons suspected to be 'illegal' under the Foreigners' Act of 1946 are tried. The Supreme Court of India scrapped the act in 2005, following a petition stating that it was discriminatory, as it exclusively applied to the state of Assam and the burden of proof was on the suing party, and not the person/persons suspected of being 'illegal'. But the tribunal remained, owing its establishment to the Foreigners' Tribunal Order of 1964. FTs are funded and run by the state government, and each FT decides its own procedure, which enables arbitrary decision-making (Rahman 2020).

In this section, I discuss the first step in identifying a 'suspect', the role of the border police and FTs in locating them and how the process of 'foreigner' detection operates. 'Detection' or 'detectability' here signifies the possibility of identifying illegal immigrants among citizens, something very normalised and widely accepted as a social and political goal (Ghosh 2019). During my fieldwork (January–December 2019), Assam had 100 tribunals, with plans to add 200 more (their task will be to adjudicate cases of petitioners now left out of the NRC). There are two parallel processes through which people are booked as foreigners under the Foreigner's Act 1946. First, through the Election Commission, which began to identify 'D' (doubtful) voters in 1997, when it suspected that the electoral rolls displayed exaggerated numbers of voters. These cases were sent to the Electoral Registration Officer (ERO) who, if not satisfied with the documents, forwarded them to the Superintendent of Police (SP Border Unit), who then sent them to the FTs for their 'opinion'.

The second process involves the border police, tasked with the duty of patrolling and investigating and filing such cases to the FTs in their jurisdiction. Once the FT receives a report from the police, it issues a notice to the person concerned, which is delivered by border police of the local police station of the respective locality, town or village the person is said to belong to. The police retains a copy and another is sent to the FT confirming receipt by the person or their family. Often, due to the inability to track down the concerned person (who is then deemed 'untraceable'), notices were pasted in village schools and other community spaces for better visibility (Sur 2021). In practice, people found notices on trees or carelessly pasted over electric poles by the police, who then claimed to have served the notice by using the phrase *latkanjari* (meaning it should be considered served, no matter where or to whom) so the court may proceed with the trial. Inability to appear in court leads to such individuals being declared foreigners under *ex parte* judgment.

The border police responsible for serving these notices and conducting fair enquiries are most often critiqued for registering cases without any inquiry or call for documents. Often, aggrieved people in a trial expressed their anger and frustration with the police investigation process, their inadequate inquiry and the way these notices are served. Aggrieved persons are declared foreigners

without a trial or as much as a notice. Sometimes, even when the notice is served, it goes to the wrong person – people who share the same name, for instance. But since according to the court records, the person has received the notice, they must appear in court and submit a written statement mentioning their details and appeal in court to drop the case. This was expected even when the notice or case did not pertain to them. The court felt that it served them with a notice and provided them with time to gather documents and present their case. They could always approach the higher courts to revoke and contest the judgment, according to the FTs.

In my interactions with the border police, they explained how the entire detection process worked from their end. Apart from village surveys, the border police (a separate unit established in 1962) in every local police station also carries out spot surveys of crowded places, such as railway stations, bus stops, markets, construction sites and underpasses. According to them, men have more registered cases than women, as they are more likely to be on these streets and underpasses. The border police is also constantly on the lookout for people who have recently moved, those with no place to stay and those who appear to roam about without any purpose. In village areas, as little as a shiny tin roof was sufficient to create suspicion, as it hinted at new makeshift homes being built out from tin roofs by those who may have recently moved in.

Moreover, these suspicions were often located in language and phonetics and bodily and physical appearance (frequent references were made to *lungi* and skull cap). Such inferences are as much about religion and community forms of affiliation as they are about one's socio-economic class composition, not just in terms of where one can find 'foreigners' but also what kinds of occupations they would be engaged in, e.g., construction sites, coal and brick factories, railway stations, bus stops, rickshaw stations, etc. Most 'suspects' will be working as manual daily wage labourers in these places. Suspicion was understood in similar ways in the neighbourhood or locality where cases were filed by neighbours and landlords against tenants and those who would appear as new. These 'suspected' people were directly paid a visit by the border police to ask questions and check papers. Their details, signatures or thumb impressions were taken down in a set of forms, and they were given time to submit their documents at the police station.

However, in practice I saw that police reports of 'suspected' persons received by the FTs were the same, irrespective of whether the person in question could furnish documents supporting their claims to citizenship. These reports were often submitted to the FT under the guise of seeking an 'expert' opinion, despite it being clear at times that the person(s) in question was able to provide the necessary documents.

Finally, my fieldwork suggests that securing citizenship can be a more local and social phenomenon and escapes the state's monopoly on the process. 'Networks of complicity' (Sadiq 2009), based on kinship and ethnic networks which are believed to make citizenship documentation possible, deprivilege the sovereign state and its political authority as the sole provider of citizenship and membership of the nation-state. They also subvert legal immigration procedures and overturn the conventional understanding of citizenship and its boundaries, suggesting they could be more permeable than they were believed to be (Cons 2016; Reeves 2014; Van Schendel 2004).

The anxieties surrounding the supposed 'immigrant population' who can acquire documents and 'disappear' into the community have been actualised in certain bodies bearing specific cultural markers. This 'detection' is based on a non-documentary and 'common sense' knowledge of the 'outsider', on how they look, dress and speak, which is dispersed and widely shared across institutions such as the law and police and the larger dominant community of which they form a part.

While the understanding of territorial borders and their transgressions itself needs to be reimagined away from the hegemonic understanding of the centre and its peripheries (Misra 2011; Van Schendel 2004), people are randomly handed notices and made to appear in court to add to the growing numbers of suspects being caught, showing that the discourse has undergone a shift from searching the borders for trespassers to proactively making foreigners out of citizens across the state. This implies a considerable shift in how migrant illegality is imagined: from something

detectable in border regions to manufacturing evidence to make things 'detectable' even in sites far removed from the border, such as police stations and courtrooms (Ghosh 2019).

Field, fieldwork and method

The fieldwork for this research was conducted in 2019–2020, when much of India was rocked by agitations and mobilisation against the controversial CAA, which selectively criminalised immigration to India, and the equally controversial NRC, which launched an audit among the citizens of Assam to determine who qualified as an Indian citizen and who did not. My fieldwork was conducted inside four FTs in a city located in an urban district in Assam. I address the FTs as courts and use the words 'tribunals' and 'courts' interchangeably because this is how these terms are used in the field (among both litigants and court staff). While there is a legal distinction between courts and tribunals, my interlocutors referred to FTs as 'courts'. I do the same due to their court-like characteristics in following strict procedure. They mimic lower-level civil courts while also displaying provisions of criminal procedural law, such as allowing someone to be picked up directly from the court premises immediately after being declared a foreigner. Thus, the law bestows FTs and their 'opinions' with power equivalent to court judgements while deciding foreigner cases.

On my way to the court each day, I was greeted by the smell of burning oil lamps and *agarbattis* (incense sticks) offered in the small Shani *mandir* (temple) to the left of the main gate, where visitors, residents and sometimes lawyers would be seen praying. Shani, or the god of justice, deeds and retribution, is a popular deity in Hindu mythology who is often offered prayers to remove hardships and obstacles from life. I was told by a friend that it was not unusual to find a Shani temple outside a court. It is a common sight in other Indian cities as well. Courts are understood as conflict resolution spaces. The presence of this tiny temple infuses an everyday sense of sacrality and sacredness into this space and is believed to aid processes of justice-making.

The implication of sacredness was also present inside the courtroom, when I saw people removing their footwear at the door before entering the room with folded hands and a slightly bent posture, almost like they were entering a place of worship. It is not the location of the temple but the location of these courts that I found rather discreet. The four courts that I studied were all located within a residential complex for magistrates. One would not be aware of their existence unless one happened to work there or was being tried as a suspect. Their unusual presence within an otherwise seemingly residential space indicates the banality attached to the quest of designating foreigners, along with the urgency and immediacy with which these courtrooms must have had to be made available and brought into existence for the same purpose. Different kinds of spaces – institutional, residential and even religious – found a place in the same courtyard and blended into each other.

In terms of demographics, most people contesting FT cases belonged to the Bengali Muslim community. However, there was a sizeable population of Bengali Hindus as well, along with a small number of cases from the tribal communities, such as Hajongs and Koch Rajbonshis.[3] Occasionally I could spot one or two cases of Hindi-speaking people from the north Indian belt who had come to work in the region but were caught by the police and reported to the FT due to a lack of papers.

Using ethnography within the space of these courts enabled me to observe their day-to-day functioning and witness the movement of papers, conversations, and people first-hand without having to ask questions. As fascinating as my fieldwork experience has been, it was not without challenges. The ethnographer is equally under the gaze of the field they are studying. Entry and access to the FTs was surprisingly smooth, owing to my family's contacts in the legal profession in the city and my social background as an Assamese-speaking person born and raised in the same city and a researcher from a leading national institute in Delhi. However, nativity is not just one but a mix of identities. While my identity as an Assamese-speaking person and my female gender ensured my smooth entry and helped build friendships with the female staff of the court, the other part of

my identity (Muslim) led to different kinds of associations and disassociations within the same field. Doing ethnography in an institutional site often also meant negotiating between access and constraints, as the nature of the institution itself forbade and restricted certain forms of bonding.

Everyday making of the courts of citizenship

A regular day in the FT would begin when the court would sit, at around 11 am The noisy courtroom with lawyers fell silent as the 'member' entered the room and the court sat for the day, and each time the member left.[4] The act of presiding over the court means the court has 'risen' (*uthise*); similarly, it is 'falling' or has stepped down (*namise*) when adjourned. The member and the staff embody the court and the legitimacy and power associated with it. They are also commonly addressed as such, for instance, conversations between the staff, members and lawyers or their clients would always be in the third person, such as 'the court cannot accept the letter'. The use of passive voice made it seem as though the law speaks through the voice of the member and the staff and could not be attributed to just one person/s (Das 2019).

However, when the court conducted itself during examination of the suspect or their witnesses, it did so in the native language of the member and its staff (mostly Assamese Hindus). Assamese is also the official language of the Brahmaputra Valley, while Bengali is spoken in the Barak Valley of Assam.[5] While the legal arguments and minutes of the proceedings were often narrated and recorded in English or Assamese, neither of these languages were native to the persons who were being tried, most of whom spoke Bengali. The minutes of the proceedings were also mostly handwritten, in English or Assamese. Since the members and the government counsel or AGPs (Assistant Government Pleaders) all spoke Assamese and the petitioners were mostly Bengali-speaking, the latter would frequently require the help of lawyers to translate. Most lawyers were Bengali speakers too, as people often relied on their community networks to find lawyers who could assist them.

Inside the courtroom, the areas for the member, lawyers and persons on trial and their witnesses were clearly demarcated. Like in any other courtroom, the space earmarked for the member was on a slightly elevated platform. These courtrooms were tiny. Some could barely fit a chair for me to sit and listen to the cases. The architecture comprised the member's podium, a witness box, cupboards and racks of files and papers on all sides. Some had an arrangement of a desk and chairs for the staff and lawyers. Inside the court, I usually sat on one of the chairs reserved for the staff to listen to the proceedings under the solemn condition that I would only listen and not ask questions while the trial was going on. I obliged and began to observe and take notes on what unfolded inside those tiny courtrooms each day. I was often met with perplexed expressions from lawyers and court staff, who frequently wanted to know my exact purpose in that room and what it was that I strived to document by constantly scribbling in my diary.

The sense of time and movement around court spaces is experienced very differently by lawyers and litigants. I was told about the case of a rickshaw puller who was caught by the police while he was in the city and asked to provide his details. Seventeen years later, he was served a foreigner notice, but by then he had moved back to his village and barely had money to make ends meet. He paddled his rickshaw for days, travelling almost 200 km to appear in court. In the words of Shamshul, another rickshaw puller I interviewed, 'Each court hearing date feels no less than a *phaasi* order' (an order to be hanged). He expressed the hardships and fear people face to be able to appear before the tribunal.

Thus, court spaces are visibly divided by those who occupy these spaces – those who know what to do with the papers, such as the members and the lawyers, and those who do not. While the former were marked by their sense of urgency, purposefulness and immediacy as they hopped from one courtroom to the other and between other courts in the city, a litigant's time seemed unending, involving long periods of waiting with a lack of purpose due to their inability to understand the process and procedure they were a part of. The people I met in- and outside these spaces described these courtrooms and the law as a recourse as distant and unfamiliar. The disconnect felt with the

legal procedure and the inability to grasp it in the language it conducted itself in made people feel further removed from citizenship 'making' processes.

Courtrooms are architecturally designed to instil dignity and majesty that invite reverence but also constrain their access to ordinary people (Khorakiwala 2020). However, the haphazard way in which living quarters in a residential colony were transformed into FTs attaches a mundanity to the quest of designating foreigners. That, along with the urgency with which these spaces had to be made available and the secrecy of deciding such cases behind closed doors, where no one other than the staff and applicants are allowed, makes justice a hegemonic and private affair of the state.

The making of citizenship through procedure and performance

Unlike other civil and criminal cases, where the burden of proving a crime lies with the prosecution, in the case of FTs under the Foreigner's Act 1946 the onus is on the litigant or 'procedee' to prove that they are a citizen, contrary to the previous IMDT Act of 1983.[6] After the tribunal issues a notice to the 'suspected' person, they should appear in court accompanied by a lawyer. This is followed by a series of procedures involving written statements, the filing of documentary evidence on affidavits along with submitting original documents for verification, the cross-examination of witnesses (family members and official witnesses), the presentation of arguments (written or verbal) and eventually the final order.[7]

Each of the four FTs I conducted fieldwork in used its own discretion for dealing with such cases. While some were satisfied with electoral voter list details linking the family tree from before 1971 to the present, which they referred to as 'linkage', others demanded land records (buying or selling) or revenue pay slips that hinted at the possession of land during that time as proof of residence (1971 or prior). These documents were at times accompanied by other forms of documentation, such as personal posted letters and receipts of things purchased during that time, ranging from radio sets to animals such as cows. All entries of cases were maintained in diaries, with 11–12 dairies being maintained by the staff at any point in time.

The final order of the FT is the verdict, referred to as the 'opinion of the tribunal', in which it clearly states the reasons for declaring one a citizen or a foreigner. Owing to its quasi-judicial and non-appellate character, FTs cannot issue judgments but only 'opinions', a personal reflection of what one believes to be true that is less binding. Foucault (1975) mentions how 'legal truth' had to be constructed in a manner that was complex and understood only by specialists, thereby reinforcing the principles of secrecy. In this regard, all forms of judging are well-founded opinions. The fact that FTs' opinions are less binding (as they can be contested in a higher court of law) contradicts the immediate power and authority they showcase on a daily basis. FTs can send someone to a detention centre straight from the court premises if they find their claim to Indian citizenship to be false or dubious and if the opinion is read out in the presence of the party. While the opinion can be challenged in a higher court, the person cannot appeal with fresh documents unless they applied for those during the FT trial and were unable to produce them at the time. In addition, there is no new query or examination of witnesses. Moreover, most people cannot afford to contest their cases. This means that FT opinions are final and their consequences 'real' in many ways.

Each of these stages takes months, and getting an opinion or order can sometimes take years. Much of this delay is due to the tedious process of looking for documents and the long time it takes lawyers or clients to file papers in court, apply for certified copies of voters' lists, send summons to officials to appear as witnesses and wait to hear back from them. For every hearing date, the person on trial must appear before the court and mark their attendance, or *hazira*, before it. If the person cannot make it, they have to mark their absence through a petition or 'prayer' to be excused.

The government prosecutor cross-examines not only the person on trial but also two of their immediate family members, who have to appear as *xakhi* or witnesses, along with one witness from the village (a neighbour or the village head or *panchayat* secretary) and one or more official

witnesses.[8] It is up to the litigant who they want to summon as official witness, depending on the document they wish to confirm the authenticity of: in the case of a school-leaving certificate, it could be the school headmaster or a revenue official to verify a land document. However, the court must summon them through letters. Unlike family witnesses, official witnesses cannot be personally persuaded to appear before the court to testify on a document and prove the contents of certificates, records and other documents issued by a government body. The official witness can report in person or write back to the court. However, things are different on the ground. People complained about how witnesses refused to cooperate and appear in court if they were not compensated financially.

Along with the performance of documents and simultaneous record-keeping, one must perform one's life story – what is inscribed on those papers and in the written statement. The oral narrative should tally with the written statement, substantiated by documentary evidence. In this light, cross-questioning of witnesses occupied a central position in my experience of the courtroom. While it essentially meant collecting oral evidence and testimonies, the performance had to cater to and match what was in the papers, apart from the papers matching each other. Moreover, like any other performance, witnesses had to be fluent in their testimonies, which had to be well-rehearsed so they would memorise names, dates etc. Once the written statement was filed and the family tree figured out, lawyers rehearsed them (once or twice) with their clients to avoid any mishaps during cross-examination. However, my experiences of the trials show that a good performance did not necessarily mean a quick recall of names, places and dates, and one with pauses was not necessarily a bad performance. Pausing while narrating one's life history appeared as natural in one instance but was most likely seen as a faux pas in another.

Once submitted to the court, the written statement cannot be changed. New information can be added but nothing that was submitted can be edited, removed, or changed. 'You cannot change the story', as the courts often claimed. There was also an insistence on keeping the story intact without any scope for confusion, doubt or loose ends. Litigants were encouraged to respond with 'I do not know' and told, 'If you do not remember the names, say "I have forgotten"', 'speak only if you remember it well'. Similarly, police messages from reports reading '*seems* to be Indian citizen' and 'nationality verification documents *seem* to be correct' became a matter of great deliberation in the court. The court said it was unclear what was meant by 'seems to be', which resulted in the rejection of the police report and orders for further investigation.

Thus, clarity was often defined by the exactness of words, without any scope for interpretation or vagueness. Similarly, an official witness became confused during an examination and admitted that a letter of residence to which he had come to testify were not verified and were provided by him only at the request of the procedee. The official looked nervous as he added that he normally did not follow a practice of issuing such letters. At this, the member stopped the witness from speaking, stating, 'the more you say, the more I write and the more difficult it is going to be for the case then'. He reiterated that one should know where to stop with the cross-questioning or it could result in 'unnecessary' information coming up, with consequences for the case. Therefore, precise, definitive answers without any loose ends, which would make it difficult to bind the case together, were emphasised. Anything that complicated the narrative was encouraged to be omitted. Here, it is less about the presence or absence of documents and papers. Rather, absence is more likely to be appreciated, and presence brings discomfort if it cannot be proved, disrupting the linearity and uniformity of the legal narrative.

It is important to add that anything that acts as a document is not sufficient until its contents are proven. To do this, one should find its receipt or mention in the government counterfoil. The court puts all documents without official authorities to testify to their veracity directly under 'objection'. In addition, merely appearing in court and testifying does not account for anything if it is not supported by copies of official logs about the record for which someone has been summoned. If it is not present in the counterfoil or the counterfoil does not exist, it puts the existence of the document itself into question.

Courtroom trials figure as the most prominent site in socio-legal studies, where one can see how evidence is procured and truth is extracted from the body (Lokaneeta 2020; Mulla 2014). Hence, what the court calls 'evidence' is not proof or a fact in itself but rather a process to prove or disprove the existence of a fact, achieved by building a paper trail and looking for correlations among papers, matching them with the performance of the narrative (Suresh 2019a, 2019b). The production of 'legal truth' in an FT trial is similarly contingent upon these series of procedures and documentary and certificatory practices, such as signatures, countersignatures, stamps and seals, that support the truth claims made by these documents. What the court claims as an objective truth about one's citizenship is an amalgamation of all these procedures, and possessing papers alone is in no way sufficient to prove it.

The making of the juridical through the social

While we have seen how the social is inscribed in the detection of particular bodies as 'foreigners', it is not limited to the pre-trial process. The social actively shapes the legal process and the making of citizenship in the FTs, whether through the tracing of descent or attesting to the truth as a witness. One's lineage in the written statement and documents is established through the father's line of descent, i.e., traced to one's father and then the father's father.[9] Voter lists establish the link between fathers and their wards. If one did not get to vote with one's father due to his early passing, it is traced through the paternal uncles, mother or older siblings to see if they at any point voted along with the father and then continued to vote alongside the person on trial.

Tracing patriliny seemed like a default method, but establishing descent proved to be disadvantageous for women from most communities, as they were often married off at an early age and found themselves voting only with their husband's families for the first time. Hence, if there was no voting record with the father or the natal family, establishing a documentary relationship with the father became an onerous legal task. In another case, a woman and her child had been separated from the husband for years and were forced to ask him and his family to provide them with documents and appear in court.

Similarly, many transgender people were left out of the NRC, primarily due to this. While most were disowned by their biological families, others had to enrol themselves as a gender they no longer identified with.[10] Traditional understandings of gender, family, caste and community were reified through such legal processes, and anything outside the conventional practice was labelled as 'difficult', such as when the family refused to acknowledge in their testimonies the existence of a trans person or a marriage without the approval of the family or outside their religion or caste group. Thus, law mimics and helps define the boundaries of traditional gender, kinship, class, marriage, family structures etc. and is defined by these institutions (Basu 2015; Baxi 2014).

In my experience of these trials, there was also an understanding of 'who is a good witness' to testify to the story the petitioner told the court. There was a strong insistence on and preference for immediate blood ties and (grand)parents as family witnesses. An elderly father was considered to have told the truth owing to his seniority and gender, while an elderly mother was thought to perhaps be telling the truth just to protect her son. Thus, the law enforces ideas of family discipline such as obedience, knowledge and respect being directly proportional to one's age and gender. The ontological association of ageing with speaking the truth contrasts with how ageing is frequently associated with forgetting in medical science. When it came to official and other village witnesses, the village *panchayat* secretary or fellow villagers who agreed to appear in court were expected to become familiar with the party's documents before appearing as a witness or attesting to any document they may have issued. They also had to show that they knew the person on trial as well as their (grand)parents and other details about the family and its origins.

However, people used similar tropes of familiarity and community outside the courtroom. In one case, an official witness was to arrive to verify the birth certificate of a man named Shankar. Shankar was a thirty-year-old father of two who ran a *nemu paani* (lemonade) stall outside a police station in the crowded bazaar area in the city. He received a notice in 2013 and had been a regular at the court

since then. Shankar's lawyer entered the courtroom and informed the court that the official witness had arrived, but he did not find Shankar's entry in his counterfoil. The lawyer insisted that since he had come all this way, he should appear in court anyway and say what he had to say. Meanwhile, the member, seeing the futility of the exercise, asked the lawyer why he was after the particular certificate the witness had come to testify to, stating that he should instead try getting another official witness to testify to Shankar's caste (OBC) certificate.[11] Shankar was a Koch Rajbonshi. The member stated that he would have a higher chance at winning the case if he could prove that he was a Koch Rajbonshi and was being wrongfully accused.

This conveniently overlooks the fact that Koch Rajbonshi and many other local tribes reside on both sides of the border. Their networks of kinship and community help people become documented also for cases after the 1971 cut-off year. The law, on the other hand, is premised on the imagination of the immigrant as belonging to a certain community alone, in this case Muslims. For communities such as the Koch Rajbonshis, their de facto recognition as legitimate citizens comes not just from their religion but also from their acceptance in the communities they settled in and by the bureaucratic Indian state, which enabled them to be 'documented' (Ghosh 2020). From procuring caste certificates to resident certificates acquired from *panchayat pradhans* (heads), which help acquire voter IDs and permanent account number (PAN) and Aadhar cards, the experience of being 'documented' is far more social than how it is imagined from above.

On this day, upon exiting the courtroom, the official witness asked Shankar's lawyer why he did not try to contact him before the trial (although this is prohibited). He added that he belonged to the same community of Koch Rajbonshi and would have helped, had he known about Shankar. I asked how, since the required record did not exist. He responded, 'In that case, I would have just not come here today. Yes, the document wouldn't have been proved but nor would it have been disproved. He still would have had a better chance without it.' Authority in such cases emerges through the routine actions of an office clerk and their file-managing work at the lowest level of the administrative hierarchy, whether it is about simply losing a file or deliberately misplacing it. The missing counterfoil or receipt affects a range of actions that ultimately decides the case. Such relationships within the community also invite us to look at the state beyond its topographic fixity and pay attention to its temporal nature, when the lower nodes of the vertically organised bureaucratic hierarchy gain influence at different points in time and may become an active site of decision-making (Ghertner 2017).

Conclusion

The legitimacy, flexibility and power enjoyed by the FTs to execute arbitrariness in the name of judicial proceduralism and their lack of judicial autonomy from the executive (funded by the state's Home and Political Department) all raise serious questions about the nature of the institution and its decision-making capabilities (Rahman 2020). The way these FTs determine who is a 'foreigner' makes it look like the system is designed to exclude rather than facilitate citizenship. Through its ethnographic engagement with the FTs, however, this article takes a step back and critically looks at procedure and the process itself and how they are constructed. This approach destabilises the focus on documents and arbitrariness of the procedure and shifts attention to what constitutes legal procedure and how courts arrive at truths about citizenship.

The paper critically explores the documentary fetish of the current citizenship discourses in India. Documents are nothing in or by themselves, as they are read in relation to other sets of documents and to the state's counterfoil of the same document and through oral evidence and social performances to arrive at the truth to verify citizenship claims. In fact, documents may be responsible for the undoing of citizenship if their contents are not proven. The court and police read them through different social and procedural registers of correlation, which are largely based on an 'intuitive' rather than a documented sense of the self. Hence despite documents' lure and their affective power over both the state and its citizens, an ethnographic examination of the legal production of truth in Assam's FTs significantly alters the document centrism of the state.

This paper establishes how everyday construction of 'illegality' within the four walls of the FT is a product of selective detection and the various certificatory and juridical checks and balances of legal procedure. The failure to prove that a document is original by invoking the authority of a government official, the inability of a procedee or their witness to answer questions correctly in the manner expected by the court, or not knowing where to stop during questioning are sufficient to disapprove one's claims to citizenship. What to say, how much to say, and what not to say are all determined by the court in a bid to arrive at the truth. However, the same person could be acquitted and be declared an Indian citizen in another tribunal, as the procedural requirements vary across FTs.

Hence, nothing is inherent or natural about categories designed by law and the techniques and methods it uses to uncover the 'truth'. Legal truth itself is a production of such procedures and is shaped by hierarchies of class, ethnicity, language, religion, age, and gender. One's position in the social hierarchy plays a vital role in aiding the process of the documented citizen-self. Moreover, the way legal technicalities and role of social networks are deployed to generate or gather information and produce knowledge towards establishing the juridical truth in law allows us to rethink categories such as 'proof', 'evidence', 'documented', 'illegality' etc.

Notes

1. Image from an Outlook cover story in September 2012 titled 'The new enemy', as cited in https://kafila.online/2017/07/27/under-the-sign-of-security-why-the-bogey-of-the-illegal-bangladeshi-immigrant-is-so-powerful-across-urban-indian-homes-sahana-ghosh-rimple-mehta/.
2. 'Miya' is used as a derogatory term to imply Bengali Muslims migrants from the Mymensingh district of erstwhile East Bengal. However, poets and activists from the Bengali Muslim community today actively identify with term as an act of assertion and resistance, see https://sabrangindia.in/i-am-miya-reclaiming-identity-through-protest-poetry/.
3. Erstwhile tribes which converted to Hinduism; Hajongs practice a mix of Hinduism and the animistic beliefs specific to their tribe.
4. A 'member' of a tribunal presides over the cases in an FT. They could be a judicial magistrate, a retired judge or even a lawyer with as little as ten years of experience.
5. Assam is divided into three physiographic parts: the Brahmaputra Valley, the Barak Valley, and Central Assam and North Cachar Hills.
6. Under the IMDT Act, the onus of proving that a person was a foreigner was on the complainant, who had to support it by corroborating affidavits submitted by two more persons, accompanied by a fee of Rs 100, and by someone who resided within 3 km of the 'suspect' within the same territorial jurisdiction (Roy 2010).
7. A written statement is where one can narrate one's story, place of birth, the origins of one's parents or grandparents, their names, and all places where one has ever resided and moved from – names, dates, places, etc. in detail.
8. It is referred to as 'cross' or *zera* when the AGP does it and as 'query' when the questions are asked by the member in absence of an appointed AGP.
9. I was recently informed by a senior lawyer that lineage can also be established using maternal ancestry, but any attempts to do so were highly discouraged or considered only additional to establishing the paternal link, making patrilineal descent the default form of establishing descent.
10. Retrieved from https://thewire.in/rights/nrc-exclusions-assam-transgender
11. Other 'Backward' Caste is an administrative term and category used to classify castes which are socially and educationally backward.

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Notes on contributor

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Bibliography

Anderson, Benedict. 1983. *Imagined Community*. New York: Verso.

Baruah, Sanjib. 1999. *India Against Itself: Assam and the Politics of Nationality*. Philadelphia: University of Pennsylvania Press.

Baruah, Sanjib. 2008. "Territoriality, Indigeneity and Rights in North-East India." *Economic and Political Weekly* 43 (12–13): 15–19.

Basu, Srimati. 2015. *The Trouble with Marriage: Feminists Confront Law and Violence in India*. California: University of California Press.

Baxi, Pratiksha. 2014. *Public Secrets of Law: Rape Trials in India*. New Delhi: Oxford University Press.

Bhasin, K., and R. Menon. 1998. *Borders and Boundaries: Women in India's Partition*. New Delhi: Kali for Women.

Butalia, U. 1998. *The Other Side of Silence: Voices from the Partition of India*. New Delhi: Penguin Books.

Chatterji, Joya. 2007. *The Spoils of Partition, Bengal and India, 1947–1967*. Cambridge: Cambridge University Press.

Cons, Jason. 2016. *Sensitive Space: Fragmented Territory at the India-Bangladesh Border*. Seattle and London: University of Washington Press.

Das, Veena. 2004. "The Signature of the State: The Paradox of Illegibility." In *Anthropology in the Margins of the State*, edited by V. Das, and D. Poole, 225–252. New Delhi: Oxford University Press.

Das, Veena. 2006. *Life and Words: Violence and the Descent Into the Ordinary*. Berkeley: University of California Press.

Das, Veena. 2019. "A Child Disappears: Law in the Courts, law in the Interstices of Everyday Life." *Contributions to Indian Sociology* 53 (1): 97–132. https://doi.org/10.1177/0069966718812544.

De Genova, Nicholas. 2002. "Migrant "Illegality" and Deportability in Everyday Life." *Annual Review of Anthropology* 31 (1): 419–447. https://doi.org/10.1146/annurev.anthro.31.040402.085432.

Eckert, Julia. 2008. "Laws for Enemies." In *The Social Life of Anti-Terrorism Laws: The war on Terror and the Classifications of the "Dangerous Other"*, edited by J. M. Eckert, 7–32. Bielefeld: Transcript.

Foucault, Michel. 1975. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.

Ghertner, D. Asher. 2017. "When Is the State? Topology, Temporality, and the Navigation of Everyday State Space in Delhi." *Annals of the American Association of Geographers* 107 (3): 731–50.

Ghosh, Sahana. 2017. "Relative Intimacies: Belonging and Difference in Transnational Families." *Economic and Political Weekly* LII (15): 45–52.

Ghosh, Sahana. 2019. ""Everything Must Match": Detection, Deception, and Migrant Illegality in the India-Bangladesh Borderlands." *American Anthropologist* 121 (4): 870–883.

Ghosh, Sahana. 2020. Between Faith and Panic." *Journal of Political and Legal Anthropology Review*, Sept 7 issue. Retrieved from https://polarjournal.org/2020/09/07/between-faith-and-panic/.

Gillan, Michael. 2002. "Refugees or Infiltrators? The Bharatiya Janata Party and Illegal Migration from Bangladesh." *Asian Studies Review* 26 (1): 73–95.

Guha, Amalendu. 1976. "East Bengal Immigrants and Maulana Abdul Hamid Khan Bhasani in Assam Politics, 1928-47." *Indian Economic & Social History Review* 13 (4): 419–452. https://doi.org/10.1177/001946467601300401.

Ibrahim, Farhana. 2020. "'We got Citizenship but Nothing Else': Love, (be)Longing, and Betrayal in the Context of India's Citizenship Regime." *HAU Journal of Ethnographic Theory* 10 (3): 750–57.

Jayal, Niraja G. 2013. *Citizenship and its Discontents: An Indian History*. London: Harvard University Press.

Jusionyte, Ieva. 2015. "States of Camouflage." *Cultural Anthropology* 30 (1): 113–138. https://doi.org/10.14506/ca30.1.07.

Kelly, Tobais. 2008. "Documents, Security and Suspicion: The Social Production of Ignorance." In *The Social Life of Anti-Terrorism Laws: The war on Terror and the Classifications of the "Dangerous Other*, edited by J. M. Eckert, 109–30. Bielefeld: Transcript.

Khorakiwala, Rahela. 2020. *From the Colonial to the Contemporary: Images, Iconography, Memories, and Performances of Law in India's High Courts*. New Delhi: Bloomsbury Publishing India Pvt. Ltd.

Lokaneeta, Jinee. 2020. *The Truth Machines: Policing, Violence, and Scientific Interrogations in India*. Ann Arbor: University of Michigan Press.

Misra, Sanghamitra. 2011. *Becoming a Borderland: The Politics of Space and Identity in Colonial Northeastern India*. India: Routledge.

Mulla, Sameena. 2014. *The Violence of Care: Rape Victims, Forensic Nurses, and Sexual Assault Intervention*. New York: New York University Press.

Nag, Sajal. 1990. *Roots of Ethnic Conflict: Nationality Question in North-East India*. New Delhi: Manohar Publications.

Pandey, G. 1999. "Can a Muslim be an Indian?" *Comparative Studies in Society and History* 41 (4): 608–629. https://doi.org/10.1017/S0010417599003072.

Pandey, G. 2001. *Remembering Partition: Violence, Nationalism and History in India*. New Delhi: Cambridge University Press.

Raheja, Natasha. 2018. "Neither Here Nor There: Pakistani Hindu Refugee Claims at the Interface of the International and South Asian Refugee Regimes." *Journal of Refugee Studies* 31 (3): 334–352. https://doi.org/10.1093/jrs/fey013.

Rahman, Talha Abdul. 2020. "Identifying The 'Outsider': An Assessment Of Foreigner Tribunals In The Indian State Of Assam." *Statelessness & Citizenship Review* 2 (1), https://doi.org/10.35715/SCR2001.111.

Reeves, Madeleine. 2014. *Border Work: Spatial Lives of the State in Rural Central Asia*. New York: Cornell University Press.
Roitman, Janet. 2004. "Productivity in the Margins: The Constitution of State Power in the Chad Basin." In *Anthropology in the Margins of the State*, edited by V. Das, and D. Poole, 191–224. New Delhi: Oxford University Press.
Roy, Anupama. 2010. *Mapping Citizenship in India*. New Delhi: Oxford University Press.
Sadiq, Kamal. 2009. *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. New York: OUP.
Sriraman, Tarangini. 2018. *In Pursuit of Proof: A History of Identification Documents in India*. New Delhi: Oxford University Press.
Sur, Malini. 2021. *Jungle Passports: Fences, Mobility, and Citizenship at the Northeast India-Bangladesh Border*. Philadelphia: University of Pennsylvania Press.
Suresh, Mayur. 2019a. "The "Paper Case": Evidence and Narrative of a Terrorism Trial in Delhi." *Law & Society Review* 53 (1): 173–201.
Suresh, Mayur. 2019b. "The Social Life of Technicalities: 'terrorist' Lives in Delhi's Courts." *Contributions to Indian Sociology* 53 (1): 72–96. https://doi.org/10.1177/0069966718812523.
Tarlo, Emma. 2001. "Paper Truths: The Emergency and Slum Clearance Through Forgotten Files." In *The Everyday State in Modern India*, edited by C. J. Fuller, and Veronique Benei, 68–90. London: Hurst & Company.
Van Schendel, Willem. 2004. *The Bengal Borderland: Beyond State and Nation in South Asia*. London: Anthem.
Zamindar, Vazira. 2007. *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories*. New York: Columbia University Press.