

After page 4

Some accepted verbal explanations for variations in age or spellings of names on documents. Others declared people foreigners on the basis of what defendants called clerical errors.

Colin Gonsalves, a lawyer and the founder of the New Delhi-based Human Rights Law Network, said the tribunals force "poor and desperate people" to hunt down "documents of ancient vintage."

People cobble together what they can. Many Indians do not have birth certificates, so they apply for copies of voter rolls that show their grandfather's name, or bring proof of farm loans or government relief payments that are decades old. Elderly relatives come to testify on their behalf.

But still, many are declared "foreigners" because their paperwork is deemed insufficient, or because their documents have inconsistencies. And

Ministry of Home Affairs asserted that Foreigners Tribunals provide "adequate opportunity" to accused individuals, and ex parte orders are issued only if the individuals do not access these opportunities. Anyone who's not satisfied with the outcome may also take their case to the Gauhati High Court. Moreover, the spokesperson added, "It is incorrect to say that working of (Foreigners Tribunals) is flawed. These do function as per the procedures laid down and as per rules." Assam's Home and Political Department, also called the Assam home ministry, declined to comment on the workings of the tribunals and whether there is bias in the system. The prime minister's office did not respond to multiple requests for comment.

INSIDE THE TRIBUNALS

At noon on a muggy June day, nine families had gathered outside the Hajo Foreigners Tribunal. The half-constructed building in Kamrup had four small usable rooms and no seating for visitors.



Guwahati, the capital city of Assam.

PHOTOS: SAHIBA CHAWDHARY

witness testimony is not weighted heavily.

"Sadly, because witnesses are grandmothers, neighbours or uncles, they tend to be from the same Bengali community [and] they are already mistrusted," said a Gauhati lawyer who requested anonymity because he feared retaliation against his family. "Many tribunal members"—the term for the lawyers who preside over the tribunals—"don't find their documents authentic or their word credible."

Those under trial said the rules were unclear and that there was little clarity on why they were suspected in the first place—or what would happen to them if they were declared illegal immigrants. Even if they were ultimately judged to be Indians, while fighting for citizenship many could not vote or get food rations, loans, or jobs, and many spent money they didn't have on lawyers.

A spokesperson for the national

A woman used a motorbike seat as a desk as she slowly etched her name in Assamese on a sheaf of documents.

A village headman who was there to give his eighth testimony for people in his village—"I know this person, she lives in my village, she is Indian"—frantically searched his record book for a name.

In the garden outside, Ayesha fixed her pink sari and patted her hair. She went over the details in Assamese with her lawyer in preparation for cross-examination. Switching to Bengali, she asked her nervous husband and older brother to recall dates and events from the past 50 years. "I am confident, there is nothing to fear," she reassured them. "We are only going to say the truth."

Ayesha, whose name has been changed to protect her identity, was issued a summons alleging she illegally entered India after March 1971. But she was born in Assam in 1979, Ayesha says, holding

out documents that prove an entire life in India: school, a master's degree, marriage, and children.

Her cross-examination lasted about 15 minutes. Indians draw citizenship from their parents, so Ayesha had submitted voter lists with her father's name and address on them from before 1971. This would establish that he was Indian.

Next, she had to prove that she was her father's daughter. "I went to school, so I had a school certificate that mentioned my father," she said. Her father had passed away years ago, so her brother served as a witness. But when the judge questioned him, the elderly farmer could not recall where their father had cast his first vote, Ayesha said.

She said the tribunal member had also asked Ayesha why she had not registered to vote until she was 26.

"Ayesha's is a good case, I know it," said Zakir Hussain, the Gauhati-based senior lawyer representing her. "But they are always under the apprehension that 'I may be arrested at any time'."

Women, who made up about a quarter of those on trial, often face special challenges gathering enough evidence.

In rural areas, especially in the Muslim community, "there is a tendency to marry daughters off very early, as teenagers, before the age of voting," said Hussain. "Most women in these parts do not go to school either, so their only official record is the voter list or ration card, in which they appear with their husband." They end up with no official document linking them to their parents.

Women can produce certificates from headmen of their father's and husband's villages vouching for their birth and marriage. But these certificates are admissible only if the headman brings a record of the life events for his entire village. More than 71 percent of women in Kamrup's tribunals were declared foreigners; a headman not having sufficient record-keeping was often the reason given.

Ayesha's case is pending, but her education may be what saves her. Having gone to school provided crucial documentation. It also gave Ayesha the ability to understand and the confidence to face the tribunal.

Later that week Ayesha asked her lawyer to help three other women from her village. Her illiterate neighbour Laili was barely able to hold her voter certificate the right way up. "Everyone is poor," Ayesha said.

The tribunal system confounds most people. One tribunal analysed accepted a card issued by the income tax department as evidence, while another considered that suspicious. One tribunal considered an ancestor's name in the NRC from 1951 valid, while another said a census document was not legal evidence.

Ayesha's lawyer, Hussain, said there should be a standard practice, but in reality, "all judges are not the same."

The members who declare people nationals or foreigners are, unlike in other Indian courts, not actually judges. It used to be that only serving and retired judges presided over the tribunals. But when 36 courts mushroomed to 100 in 2015, the Supreme Court approved the government's request to fill vacancies with lawyers who have at least 10 years' experience.

Continued to page 6