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Supreme Court Reaffirms Constitutional Due Process in Citizenship Determination While Strengthening the Accountability of Foreigners Tribunals

Published On: 18-07-2026

Recent Developments:

- The **Supreme Court**, in **Sabitri Dey @ Swasthi Dey v. Union of India (2026)**, set aside 27 judgments of the **Gauhati High Court**, in which several individuals had been declared foreigners on the basis of the opinions rendered by the **Foreigners Tribunals**.
- The **Supreme Court** directed **fresh adjudication** in all the cases and clarified that the determination of citizenship or foreigner status must strictly conform to **constitutional due process**, **fair hearing**, **reasoned decision-making**, and the **principles of natural justice**.
- The Court further observed that a declaration of a person as a foreigner may lead to serious consequences such as **detention**, **deportation**, and even **statelessness**. Therefore, such determination must always be made through a legally valid and evidence-based process.

Background of the Case:

Facts of the Case:

- The dispute originated from proceedings initiated before the **Illegal Migrants (Determination) Tribunal** in **1997**, where **Sabitri Dey** and her husband were declared illegal migrants after they remained absent during the proceedings.
- The petitioners contended that they had no knowledge of the proceedings, had not been duly served with notice, and that the Tribunal's decision was primarily based on **hearsay evidence**.
- Thereafter, they approached the **Gauhati High Court** in **2019**. However, the High Court dismissed their petition in **2020** on the ground of inordinate delay.
- The petitioners subsequently approached the **Supreme Court**, contending that they had been denied a **fair hearing** and that their **constitutional rights** had been violated.

Supreme Court's Judgment:

Key Observations:

- The **Supreme Court** held that proceedings under the **Foreigners Act, 1946** cannot be conducted in a **mechanical**, **one-sided**, or **non-reasoned** manner.
- A person cannot be declared a foreigner merely because he or she failed to appear before the Tribunal.
- The Court clarified that although the law places the burden of proving citizenship upon the proceedee, this does not absolve the Tribunal of its responsibility to independently and objectively examine the evidence produced by the State.
- Before declaring any individual a foreigner, the Tribunal must carefully evaluate the available evidence, examine the relevant facts, apply the applicable law, and record a **reasoned and well-founded decision**.

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Constitutional Principles Reaffirmed:

- **Article 14** guarantees **equality before the law** and **equal protection of the laws** to every person. These constitutional protections are available not only to citizens but also to foreigners, unless the Constitution expressly provides otherwise.
- **Article 21** protects the **life and personal liberty** of every person and mandates that no individual can be deprived of liberty except through a **fair, just, and reasonable legal procedure**.
- The Court observed that questions relating to citizenship directly affect an individual's **legal identity, personal liberty, and fundamental rights**. Therefore, such determination cannot be reduced to a mere procedural formality.

Standards Prescribed for Foreigners Tribunals:

- Proper and effective notice of the proceedings must be served upon the concerned individual.
- Every person must be provided a genuine and meaningful opportunity to produce documents, evidence, and witnesses in support of his or her case.
- The principal grounds forming the basis of the reference must be clearly disclosed to the concerned individual.
- The evidence produced by the State must be independently examined and cannot be accepted as correct merely because it has been produced by the authorities.
- Every order declaring a person to be a foreigner must be **reasoned, well-founded**, and demonstrably based upon **judicial application of mind**.

Immediate Impact of the Judgment:

Impact on Citizenship Determination:

- The judgment makes compliance with **constitutional due process** even more essential in proceedings relating to citizenship determination.
- Orders passed by the **Foreigners Tribunals** will now be required to clearly record the **evidence, legal analysis, and reasoned conclusions** supporting their findings.
- The practice of declaring individuals as foreigners solely on the basis of their absence from the proceedings is likely to be effectively curtailed.

Impact on Individual Rights:

- Individuals involved in citizenship disputes will receive stronger protection of their right to a **fair hearing**.
- The likelihood of arbitrary **ex parte declarations** is expected to reduce significantly.
- The judgment strengthens the protection of the **Rule of Law**, the **principles of natural justice**, and **human dignity** in proceedings relating to citizenship determination.

Legal Framework Governing Citizenship Determination:

Foreigners Act, 1946:

- The **Foreigners Act, 1946** is the principal legislation governing the **entry, stay, movement, registration, and departure** of foreigners in India.
- Under **Section 9** of the Act, where the citizenship of a person is in dispute, the burden lies upon that individual to establish that he or she is an Indian citizen and not a foreigner.
- The Act provides the primary legal framework for the identification, regulation, and legal action relating to foreigners in India.

Immigration and Foreigners Act, 2025:

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- The **Immigration and Foreigners Act, 2025** consolidates various laws relating to the **entry, visa, registration, immigration management, stay, deportation**, and other related matters concerning foreigners into a single legal framework.
- The Act aims to strengthen **national security, border management, effective immigration administration**, and the regulation of foreigners in India.

Burden of Proof in Citizenship Determination:

Evolution of Judicial Approach:

- **Section 9** of the **Foreigners Act, 1946** introduced the principle of **reverse burden of proof**, under which the proceedee is required to establish that he or she is not a foreigner.
- The **Illegal Migrants (Determination by Tribunals) Act, 1983**, which was applicable only to **Assam**, shifted the burden of proof to the State or the complainant, making the identification and deportation of illegal migrants comparatively more difficult.
- In **State of Arunachal Pradesh v. Khudiram Chakma (1994)**, the **Supreme Court** held that the burden of establishing Indian citizenship rests upon the person claiming such citizenship.
- In **Sarbananda Sonowal v. Union of India (2005)**, the **Supreme Court** declared the **Illegal Migrants (Determination by Tribunals) Act, 1983** unconstitutional, restored the applicability of **Section 9 of the Foreigners Act, 1946**, and treated large-scale illegal migration as an issue connected with **Article 355** of the Constitution.
- The present judgment clarifies that even though the principle of **reverse burden of proof** applies, the Tribunal cannot declare a person to be a foreigner without independently and objectively examining the evidence produced by the State.

Foreigners Tribunals:

About:

- **Foreigners Tribunals** are **quasi-judicial bodies** constituted under the **Foreigners (Tribunals) Order, 1964**, issued under the provisions of the **Foreigners Act, 1946**.
- Their primary function is to determine whether a person is an Indian citizen or a foreigner.
- Although the legal framework applies throughout India, these Tribunals function predominantly in **Assam**, where a large number of citizenship disputes arise in connection with the **National Register of Citizens** and other administrative references.

Composition:

- Each Tribunal is headed by a member who may be a judicial officer, an experienced advocate, or a retired civil servant possessing judicial experience.

Powers:

- **Foreigners Tribunals** possess powers similar to those of a **civil court**, including the authority to summon witnesses, record evidence on oath, and require the production of documents.
- Under the **Immigration and Foreigners Order, 2025**, they have also been vested with additional powers to issue arrest warrants and pass detention-related orders wherever authorised by law.

Procedure:

- Upon receiving a reference from the competent authority, the Tribunal issues a proper notice to the concerned individual.
- The individual is provided an opportunity to produce documents, oral evidence, and other relevant material in support of his or her case.

- After examining all the available material, the Tribunal records a reasoned opinion as to whether the concerned individual is a foreigner.
- Where a person is declared to be a foreigner, he or she may be subjected to **detention, deportation**, or other lawful measures, subject to the availability of judicial remedies.

New Deportation Policy, 2026:

Key Features:

- The **Ministry of Home Affairs** has introduced the **New Deportation Policy, 2026** to establish a **uniform, time-bound, and coordinated framework** for the **identification, verification, detention, and deportation** of illegal migrants.
- The policy applies to illegal migrants, foreigners overstaying their visas, and individuals declared as foreigners by the **Foreigners Tribunals**.
- Every State and Union Territory is required to constitute **District-level Special Task Forces**, establish **Holding Centres**, and maintain biometric and demographic records through the **Foreigners Identification Portal**.
- The nationality verification of suspected foreign nationals is required to be completed within the prescribed time frame to facilitate the deportation process without unnecessary delay.

Objectives:

- To strengthen **national security** and **border management**.
- To improve coordination among various law enforcement agencies.
- To ensure greater **transparency, uniformity, and accountability** in the deportation process.
- To make the identification and verification of foreign nationals more effective and time-bound.

Evolution of India's Citizenship Framework:

Constitutional Foundation:

- **Articles 5 to 11** of the Constitution laid down the basic provisions relating to citizenship at the commencement of the Constitution and empowered Parliament to enact detailed legislation on citizenship.

Citizenship Act, 1955:

- The **Citizenship Act, 1955** is the principal legislation governing the acquisition, termination, and other matters relating to Indian citizenship.
- Under the Act, citizenship may be acquired through **birth, descent, registration, naturalisation, and incorporation of territory**.

Shift from Jus Soli to Jus Sanguinis:

- Between **26 January 1950** and **1 July 1987**, every person born in India was regarded as an Indian citizen irrespective of the nationality of his or her parents.
- The **Citizenship (Amendment) Act, 1986** introduced the requirement that at least one parent must be an Indian citizen for acquiring citizenship by birth, thereby initiating the shift from the **principle of Jus Soli** towards the **principle of Jus Sanguinis**.
- The **Citizenship (Amendment) Act, 2003** further tightened the provisions by requiring that one parent must be an Indian citizen and the other must not be an illegal migrant.
- The same amendment also provided the statutory basis for the **National Register of Citizens** and the concept of the **Overseas Citizen of India**.

Citizenship (Amendment) Act, 2019:

- The Act introduced special provisions enabling eligible persons belonging to specified religious communities from **Pakistan, Bangladesh, and Afghanistan** to acquire Indian citizenship.
- It reduced the prescribed period of residence required for acquiring citizenship through **naturalisation** for eligible applicants.

Significance of the Judgment:

Constitutional Significance:

- The judgment reaffirms that **citizenship determination** is not merely an administrative exercise but a matter governed by **constitutional due process**, under which every individual must receive a **fair, just, and reasonable hearing**.
- The judgment clarifies that the **Rule of Law** is not confined to citizens alone, but that foreigners are also entitled to the constitutional protections available under **Article 14** and **Article 21**.
- The judgment further strengthens the indispensability of the **principles of natural justice** and **judicial application of mind** in all proceedings relating to citizenship determination.

Administrative Significance:

- Every order passed by a **Foreigners Tribunal** must contain clear and reasoned conclusions supported by **facts, evidence, and legal analysis**.
- The judgment highlights the need to improve the quality of investigation and collection of evidence before references are made to the Tribunals.
- It represents a significant step towards strengthening the **transparency, accountability, and credibility** of the **Foreigners Tribunals**.

Human Rights Significance:

- The judgment places an effective check on the arbitrary practice of declaring individuals as foreigners solely on the ground of their absence from the proceedings.
- The Court recognised that a declaration of a person as a foreigner may result in serious consequences such as **detention, deportation, and statelessness**. Therefore, every such determination must be founded upon adequate evidence and a legally valid procedure.
- The judgment seeks to maintain an appropriate balance between **national security** and **human dignity**.

Challenges:

Institutional Challenges:

- Delays in the disposal of citizenship disputes continue to leave many individuals in prolonged uncertainty.
- The quality of investigation and the reliability of records are not uniform across different cases, thereby affecting the adjudicatory process.
- Many economically and socially vulnerable individuals do not have access to effective legal assistance in citizenship proceedings.

Administrative Challenges:

- Verification of old records, land documents, and family records continues to remain difficult in many cases.
- Maintaining an appropriate balance between national security, prevention of illegal migration, and protection of individual rights remains a continuing administrative challenge.
- Comprehensive and updated digitisation of records relating to citizenship determination continues to be an important administrative requirement.

Way Forward:

Measures to Strengthen the Citizenship Determination System:

- Members of the **Foreigners Tribunals** should be provided with regular training on **constitutional principles**, **law of evidence**, and the **principles of natural justice**.
- Competent authorities should ensure a more scientific and impartial verification of facts and evidence before making references to the Tribunals.
- An effective **legal aid mechanism** should be developed for economically weaker persons involved in citizenship proceedings.
- Legacy records should be securely **digitised**, while ensuring **privacy** and the **protection of personal data**.
- The citizenship determination system should be made more transparent and accountable by maintaining a balanced approach between national security, humanitarian obligations, and constitutional rights.

Value Addition for UPSC:

Important Constitutional Provisions and Concepts:

- **Articles 5 to 11** lay down the basic constitutional provisions relating to citizenship at the commencement of the Constitution and empower Parliament to enact laws on citizenship.
- **Article 14** guarantees equality before the law and equal protection of the laws to every person.
- **Article 21** protects the life and personal liberty of every person and mandates that any deprivation of liberty must follow a **fair, just, and reasonable procedure**.
- **Article 355** casts a duty upon the Union to protect every State against **external aggression** and **internal disturbance**.
- The **Foreigners Act, 1946** is the principal legislation governing the entry, stay, and regulation of foreigners in India.
- The **Citizenship Act, 1955** constitutes the primary statutory framework governing the acquisition, termination, and other matters relating to Indian citizenship.
- The **National Register of Citizens (NRC)** aims to prepare a register of Indian citizens in accordance with the applicable legal provisions.
- The principle of **Jus Soli** refers to a system in which citizenship is primarily determined by the place of birth.
- The principle of **Jus Sanguinis** refers to a system in which citizenship is primarily determined by the citizenship or descent of one's parents.

UPSC Mains Analytical Perspective:

- Citizenship determination in a democratic State requires maintaining a balance between **national security**, **State sovereignty**, **human rights**, and **constitutional due process**.
- The judgment in **Sabitri Dey @ Swasthi Dey v. Union of India (2026)** reinforces the principle that **procedural fairness** is not merely a judicial formality but an indispensable component of the **Rule of Law**.
- The judgment makes it clear that **fair hearing**, **reasoned decision-making**, **independent evaluation of evidence**, and adherence to the **principles of natural justice** are mandatory constitutional obligations in all citizenship-related proceedings.
- The judgment is likely to serve as an important judicial precedent for future disputes concerning citizenship, illegal migration, and the functioning of **Foreigners Tribunals**, while further strengthening the principles of **constitutional accountability**, **judicial review**, and **human dignity**.