RE-EXAMINING THE EVIDENTIARY ARCHITECTURE OF CITIZENSHIP IN INDIA: A DOCTRINAL STUDY IN THE LIGHT OF THE SPECIAL INTENSIVE REVISION OF ELECTORAL ROLLS AND THE MINISTRY OF EXTERNAL AFFAIRS' CLARIFICATION ON THE EVIDENTIARY STATUS OF THE PASSPORT

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ABSTRACT

Citizenship in India is a matter of constitutional status, yet Indian law has never settled the anterior question of how that status is to be proved once it is disputed. This paper examines the doctrinal architecture of Indian citizenship law under Part II of the Constitution, the Citizenship Act, 1955, and its amendments alongside two developments of 2025–26 that have exposed the fragility of that architecture: the Election Commission's Special Intensive Revision ("SIR") of electoral rolls in Bihar and West Bengal, and the Ministry of External Affairs' public clarification that an Indian passport is not, in law, proof of citizenship. Building on the Supreme Court's jurisprudence in Sarbananda Sonowal and the 2024 Constitution Bench verdict on Section 6A, the paper argues that India operates a citizenship regime with an inverted evidentiary structure: the burden of proving citizenship is cast upon the individual, while no single document has been designated as conclusive proof of the status the individual is asked to establish. The paper concludes with proposals for a coherent, rights respecting evidentiary framework.

Keywords: Citizenship, Constitutional Status, Special Intensive Revision, Electoral Rolls, Documentary Evidence, Rule of Law.

I. Introduction

The word "citizenship" denotes the juridical bond between an individual and the state, a bond that confers upon the individual the fullest measure of civil and political rights the state has to offer, and that simultaneously marks out the non-citizen as a subject of a lesser, more precarious legal order.[1] Every modern state must therefore answer two distinct questions: who is a citizen, and how is that status to be proved when it is called into question. Indian law has answered the first question, however imperfectly, through Part II of the Constitution and the Citizenship Act, 1955. It has never authoritatively answered the second.

This gap, long a matter of academic observation, became a matter of urgent public concern through 2025 and into 2026. The Election Commission of India's Special Intensive Revision of electoral rolls, launched in Bihar in June 2025 and extended to West Bengal thereafter, required electors to furnish documentary proof of eligibility, provoking prolonged litigation before the Supreme Court over which documents could and could not be relied upon.[2] The controversy sharpened further when, on Passport Seva Divas in June 2026, officials of the Ministry of External Affairs stated in a public briefing that the Indian passport is a travel document and not a document of citizenship, a statement made in direct response to queries about whether persons excluded from the Bihar rolls could rely on their passports to establish eligibility.[3] That statement, unremarkable as a matter of settled administrative law, was nonetheless startling to a public that had long treated the passport, a document issued exclusively to citizens under the Passports Act, 1967, as self-evidently probative of the very status it presupposes.

This paper undertakes a doctrinal examination of that apparent paradox. Part II traces the conceptual and constitutional foundations of Indian citizenship. Part III examines the statutory architecture of the Citizenship Act, 1955 and its narrowing amendments. Part IV analyses the

[1]Citizenship in the Indian constitutional scheme is best understood, as the framers themselves understood it, as a threshold concept: it is prior to, and a condition of, the enjoyment of political rights under Part XV of the Constitution and the fundamental rights confined to citizens under Part III, such as those in arts. 15, 16, 19 and 29.

[2]*Ass'n for Democratic Reforms* v. *Election Comm'n of India*, W.P. (Civil) No. 640 of 2025 (India) (pending); *see* Aadhaar Exclusion Is Absurd; SIR Leading to Disenfranchisement: ADR to Supreme Court in Bihar Electoral Roll Case, *Bar & Bench* (July 26, 2025), https://www.barandbench.com/news/litigation/aadhaar-exclusion-is-absurd-sir-leading-to-disenfranchisement-adr-to-supreme-court-in-bihar-electoral-roll-case (last visited Aug. 6, 2026).

[3]Passport 'Not a Document of Citizenship', Says MEA, *The Wire* (June 25, 2026), https://m.thewire.in/government/passport-not-a-document-of-citizenship-says-mea (last visited Aug. 6, 2026).

Assam paradigm- Section 6A, the *Sonowal Case*, and the 2024 Constitution Bench verdict, as the fullest judicial engagement to date with the burden of proving citizenship. Part V turns to the immediate occasion for this study: the evidentiary crisis exposed by the SIR litigation and the MEA's clarification on the passport. Part VI offers a constitutional critique centred on due process and the risk of statelessness, and Part VII proposes a framework for reform.

II. Conceptual and Constitutional Foundations of Citizenship

A. Jus Soli and Jus Sanguinis: Comparative constitutional practice recognises two principal bases for the conferment of citizenship: jus soli, under which citizenship follows from the fact of birth within the territory of the state, and jus sanguinis, under which citizenship follows from descent, irrespective of the place of birth. The Motilal Nehru Committee of 1928 had already signalled a preference for the inclusive, territorial principle, and the Constituent Assembly, debating the citizenship provisions on 10, 11 and 12 August 1949, firmly declined to found Indian citizenship on notions of blood or race, regarding such a foundation as antithetical to the pluralist self-conception of the new republic.[4] The Constitution, as adopted, therefore rests substantially on jus soli, tempered by descent-based provisions for the diaspora and for those displaced by Partition.

B. Part II of the Constitution: Articles 5 to 11: Citizenship is a Union subject, falling within Entry 17 of the Union List and thus within the exclusive legislative competence of Parliament.[5] Uniquely among the provisions of the Constitution, arts. 5 to 11 were brought into force on 26 November 1949, the date of the Constitution's adoption, rather than on 26 January 1950, the date of its general commencement, a sequencing that reflects the framers' anxiety to settle, without delay, the class of persons entitled to participate in the constitutional order about to be inaugurated.[6] Article 5 conferred citizenship at the commencement of the Constitution on persons domiciled in Indian territory who were born in India, or either of whose parents was born in India, or who had been ordinarily resident for not less than five years. Article 6 extended citizenship to migrants from Pakistan who entered India before 19 July 1949, subject to conditions of parental or grandparental birth in India and required those who entered thereafter to register. Article 7 dealt more restrictively with persons who had migrated to Pakistan after

[4]Constituent Assembly Debates (Aug. 10–12, 1949). On the framers' rejection of a race- or religion-based conception of citizenship in favour of a territorial and residence-based one, *see generally* Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford Univ. Press 1966).
[5]The Constitution of India, sched. 7, list I, entry 17; *see also* art. 11.
[6]The Constitution of India, art. 394 (proviso).

1 March 1947 but subsequently returned to India on resettlement or permanent return permits. Article 8 extended citizenship, by registration with an Indian diplomatic mission, to persons of Indian origin resident outside undivided India. Article 9 provided that voluntary acquisition of the citizenship of a foreign state operates automatically to terminate Indian citizenship, thereby excluding dual citizenship. Article 10 preserved continuity of citizenship subject to parliamentary law, and art. 11 vested in Parliament plenary power to legislate on acquisition and termination of citizenship and all matters incidental thereto.[7]

It is a matter of some doctrinal significance that the Constitution, having gone to considerable lengths to specify the classes of persons entitled to citizenship at its commencement, nowhere prescribes the mode of proof by which membership of any of those classes is to be established. That silence was perhaps unremarkable in 1950, when the administrative state possessed neither the documentary infrastructure nor the occasion to demand proof of citizenship from the ordinary resident. It has become considerably more consequential in an age of biometric identification, digital electoral rolls and mass documentary verification exercises.

III. The Citizenship Act, 1955 and The Narrowing of Jus Soli

Parliament, exercising the power conferred by art. 11, enacted the Citizenship Act, 1955, which today provides the operative law governing acquisition and loss of citizenship. The Act recognises four modes of acquisition; birth, descent, registration and naturalisation, and does not, as a general matter, permit dual citizenship.[8]

A. Modes of Acquisition: Section 3, governing citizenship by birth, has itself been the principal site of the Act's progressive narrowing. As originally enacted, and consistently with the constitutional preference for jus soli, every person born in India was a citizen by birth, without reference to the nationality or status of the parents.[9] Citizenship by registration under s. 5 is available, subject to prescribed conditions, to persons of Indian origin resident in India or abroad, to spouses of Indian citizens, and to minor children of citizens. Citizenship by descent under s. 4 extends to persons born outside India to an Indian citizen, subject to conditions of registration that have themselves been tightened over time. Naturalisation under s. 6, read with the Third Schedule, requires twelve years of ordinary residence, eleven in the

[7]The Constitution of India, arts. 5–11.
[8]Citizenship Act, No. 57 of 1955, §§ 3–6 (India).
[9]Citizenship Act, No. 57 of 1955, § 3 (India) (as originally enacted).

aggregate during the preceding fourteen years, and continuously for the twelve months immediately preceding the application, together with satisfaction of the qualifications prescribed in the Third Schedule.[10]

B. The 1986, 2003 and 2019 Amendments: The Citizenship (Amendment) Act, 1986 introduced the first material qualification to the jus soli principle: a person born in India on or after 1 July 1987 would be a citizen by birth only if either parent was an Indian citizen at the time of birth.[11] The Citizenship (Amendment) Act, 2003, enacted on the government's own account, in view of continuing concern over unauthorised migration from Bangladesh, tightened the birth criterion further: a person born on or after 3 December 2004 would be a citizen only if both parents were citizens, or one parent was a citizen and the other was not, at the time of the child's birth, an illegal migrant.[12] The cumulative effect of the 1986 and 2003 amendments has been to move Indian law substantially away from unconditional jus soli and towards a hybrid regime in which the fact of birth in India is, for persons born after 1987, no longer sufficient by itself. However, it must be supplemented by proof of a parent's citizenship status, a requirement that cannot always be discharged for want of any document designed for that specific purpose.

The Citizenship (Amendment) Act, 2019 took a different track, creating an expedited path to naturalisation, reducing the residence requirement from eleven to five years, for six specified religious communities (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) who had entered India from Pakistan, Bangladesh or Afghanistan on or before 31 December 2014, and exempting such persons from the Passport Act, 1920 and the Foreigners Act, 1946.[13] The Act's express exclusion of Muslim migrants from the same three countries has been the subject of continuing constitutional challenge on grounds of Art. 14, and is noted here not to reargue that controversy but to observe that the CAA compounds, rather than resolves, the evidentiary difficulty that is this paper's principal concern: it creates a fast track to citizenship for a defined class without addressing how that class, or any other, is to prove the antecedent facts; country

[10]Citizenship Act, No. 57 of 1955, § 6 & sched. 3 (India).
[11]Citizenship (Amendment) Act, No. 65 of 1986, § 2 (India) (amending § 3 of the Citizenship Act, No. 57 of 1955).
[12]Citizenship (Amendment) Act, No. 6 of 2004, § 3 (India) (amending § 3 of the Citizenship Act, No. 57 of 1955). The same amendment inserted the definition of "illegal migrant" in § 2(1)(b) and barred illegal migrants from acquiring citizenship by registration or naturalisation.
[13]Citizenship (Amendment) Act, No. 47 of 2019, § 2 (India) (inserting proviso to § 2(1)(b) of the Citizenship Act, No. 57 of 1955); id. § 4 (inserting § 6B).

of origin, date of entry, religious identity, upon which eligibility depends.

Running alongside the Citizenship Act is s. 9 of the Foreigners Act, 1946, which casts upon any person whose status as a foreigner is in question the burden of proving that they are not a foreigner.[14] The interaction of this reverse-burden provision with the increasingly demanding birth-based tests of the Citizenship Act, 1955 is central to the analysis that follows, since it means that an individual may be called upon, often decades after the relevant facts arose, to affirmatively prove a parent's citizenship status at a moment in time for which no document was created, retained, or required to be retained.

IV. The Assam Paradigm: Section 6A and The Limits of Proof

A. The Assam Accord and Section 6A: Assam's experience is the fullest laboratory India possesses for the problem of proving citizenship at scale. Large-scale migration from erstwhile East Pakistan, and after 1971 from Bangladesh, precipitated the six-year Assam Movement (1979–1985), led by the All-Assam Students' Union, demanding the updating of the National Register of Citizens and the detection and deportation of migrants who had entered after 1951. The movement culminated in the Assam Accord of 1985, which fixed 25 March 1971, the eve of the Bangladesh Liberation War, as the operative cut-off date, a date later than the general Partition-era cut-off of 19 July 1949 prescribed by arts. 5 and 6 of the Constitution.[15] To give the Accord statutory effect, Parliament inserted s. 6A into the Citizenship Act, 1955, a provision applicable exclusively to Assam. Section 6A deems persons of Indian origin who entered Assam before 1 January 1966 to be citizens; treats those who entered between that date and 25 March 1971 as entitled to citizenship after ten years' residence following detection as a foreigner, with voting rights withheld during the interim period; and leaves those who entered after 25 March 1971 outside the scheme altogether, exposed to detection and deportation as illegal migrants under the general law.[16]

B. Sarbananda Sonowal and the Reverse Burden: The machinery for detecting illegal migrants in Assam was, for two decades, distinct from that applicable elsewhere in India. The Illegal Migrants (Determination by Tribunals) Act, 1983 ("the IMDT Act") applied only in Assam and, unlike s. 9 of the Foreigners Act, 1946, cast the burden of proving foreigner status

[14]Foreigners Act, No. 31 of 1946, § 9 (India).
[15]Assam Accord, 1985, cl. 5 (India). On the political background, *see* the Supreme Court's own summary in *Assam Sanmilita Mahasangha v. Union of India*, (2015) 3 S.C.C. 1 (India).
[16]Citizenship Act, No. 57 of 1955, § 6A (India) (inserted by the Citizenship (Amendment) Act, 1985).

upon the state rather than upon the individual. In Sarbananda Sonowal v. Union of India, a three-judge bench of the Supreme Court struck down the IMDT Act as unconstitutional, holding that its procedural design made the detection and deportation of illegal migrants in Assam so onerous as to render the exercise practically ineffective, and that this geographically confined dilution of the ordinary reverse-burden rule offended Art. 14.[17] The Court directed that the general regime under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964, under which the individual bears the burden of proving citizenship, be extended to Assam. When the Union government sought, through subordinate legislation, to create a substitute regime exempting Assam from the 1964 Order, the Court struck that measure down as well, in what is conventionally cited as Sonowal (II), reaffirming that the ordinary reverse-burden standard could not be diluted for Assam by administrative device.[18]

The doctrinal significance of the *Sonowal* lies less in its outcome than in what it leaves unaddressed. The Court insisted, correctly as a matter of constitutional equality, that the burden of disproving foreigner status must fall uniformly upon the individual across India. It did not, and was not asked to, specify what documents would suffice to discharge that burden. The reverse burden was thus reinstated in its full rigour without any corresponding clarification of the evidentiary means by which an individual, often a person of limited means and documentation in a border state, could discharge it.

C. The 2024 Constitution Bench Verdict: The constitutionality of s. 6A itself was challenged on the footing that a differential cut-off date for Assam, later than that fixed by Arts. 5 and 6 for the rest of the country, violated Arts. 14, 29 and 355. A two-judge bench referred the matter to a Constitution Bench in 2014.[19] A five-judge bench, by a majority of four to one, upheld s. 6A on 17 October 2024. Chief Justice D.Y. Chandrachud, writing for himself, and Justice Surya Kant, writing for himself and Justices M.M. Sundresh and Manoj Misra, held that Parliament possessed the legislative competence under Art. 11 to prescribe a special regime for Assam, that the 25 March 1971 cut-off was a rational marker, corresponding to the launch of Operation Searchlight and the consequent shift in the character of migration from Partition-driven to war-driven, and that s. 6A was consistent with, rather than repugnant to, the constitutional scheme reflected in Arts. 6 and 7. Justice J.B. Pardiwala dissented, holding that s. 6A's open-ended,

[17] *Sarbananda Sonowal v. Union of India*, (2005) 5 S.C.C. 665 (India).
[18] *Sarbananda Sonowal (2) v. Union of India*, (2007) 1 S.C.C. 174 (India).
[19] *Assam Sanmilita Mahasangha v. Union of India*, *supra* note 15.

non-self-executing character rendered it manifestly arbitrary and temporally unreasonable.[20]

For present purposes, the significance of the 2024 verdict is again more structural than substantive. The Court's task was to determine the constitutional validity of a classificatory scheme, who counts as eligible for the s. 6A pathway to citizenship and it discharged that task with characteristic rigour. It was not, however, called upon to prescribe how an individual claiming the benefit of s. 6A, or resisting exclusion from the electoral rolls or the National Register of Citizens on the ground of being a post-1971 entrant, is to establish the date of their family's entry into Assam. That evidentiary question, left open in Sonowal two decades earlier, remains open after the 2024 verdict as well, and it is precisely this gap that the SIR litigation of 2025–26 has forced into public view, this time not merely in Assam but in Bihar and West Bengal.

V. The Evidentiary Crisis: Aadhaar, SIR and Passport

A. Aadhaar: Identity Without Citizenship: The Aadhaar scheme, adopted as an instrument of identity verification for the delivery of subsidies and services, was from its inception designed to establish identity and residence, not citizenship. The Supreme Court, upholding the Aadhaar Act, 2016 in Justice K.S. Puttaswamy v. Union of India, proceeded on the basis that Aadhaar enrolment is open to any resident of India, including non-citizens who satisfy the residence threshold under the Aadhaar Act, a design feature that necessarily disqualifies the Aadhaar number from serving as proof of citizenship, however useful it may be as proof of identity or residence.[21] This distinction, settled as a matter of statutory design well before the events examined here, is the doctrinal premise on which the Election Commission built its position during the Bihar SIR litigation.

B. The Special Intensive Revision, 2025–26: On 24 June 2025 the Election Commission of India ordered a Special Intensive Revision of electoral rolls in Bihar, ahead of the state's Assembly elections, requiring electors to file fresh enumeration forms supported by one of eleven specified documents. Aadhaar, the most widely held identity document in the state, was initially excluded from that list, the Commission's stated reason being that Aadhaar could itself be obtained on the basis of fraudulent underlying documentation and was, in any event, not

[20] *In re Section 6A of the Citizenship Act 1955*, 2024 SCC OnLine SC 2880 (India) (Oct. 17, 2024).
[21] *K.S. Puttaswamy v. Union of India*, (2019) 1 S.C.C. 1 (India); *see also* Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, § 3 (India) (conferring an entitlement to enrolment upon "every resident," a category not coextensive with citizenship).

probative of citizenship.[22] A batch of petitions, filed by the Association for Democratic Reforms, the Peoples' Union for Civil Liberties, and several political actors including a Member of Parliament from the Rashtriya Janata Dal and a Member of Parliament from the Trinamool Congress challenged the exercise before the Supreme Court, principally on the ground that the compressed timeline and the exclusion of commonly held documents risked large-scale disenfranchisement of persons who were, in substance, eligible electors.[23]

The draft electoral roll published on 1 August 2025 omitted approximately sixty-five lakh persons from the earlier list, prompting the Court to direct the Commission to publish district-wise, searchable lists of the omitted electors, together with the stated reason for each omission.[24] On 8 September 2025 the Court directed the Commission to accept Aadhaar as a twelfth document for the limited purpose of establishing identity, while expressly clarifying consistently with *Puttaswamy* that Aadhaar would not thereby become proof of citizenship.[25] When the Commission's continued reluctance to give full effect to that direction was challenged afresh, the Court, in remarks by Justice Surya Kant, observed that every one of the eleven originally accepted documents, including the ration card and the driving licence was equally susceptible to forgery, so that Aadhaar's exclusion on that ground alone could not be sustained.[26] The SIR exercise was subsequently extended to West Bengal, where it proceeded, on the Commission's own account to the Court, in a considerably more fraught atmosphere, marked by allegations of intimidation of booth-level officers and by continuing supervisory intervention from the Supreme Court, including the deputation of serving and retired judicial officers to adjudicate the very large number of contested entries.[27]

C. The MEA's Clarification on the Passport: It was against this backdrop that the Ministry

[22]*Bar & Bench*, *supra* note 2.
[23]*Ass'n for Democratic Reforms v. Election Comm'n of India*, W.P. (Civil) No. 640 of 2025 (India); Bihar SIR: 'Publication of Final Voters' List Won't Matter to Us if There's Illegality': Supreme Court Adjourns Hearing till Oct. 7, *LiveLaw* (Sept. 15, 2025), https://www.livelaw.in (last visited Aug. 6, 2026).
[24]Supreme Court Directs ECI to Publish List of 65 Lakh Omitted Voters, Accept Aadhaar as ID Proof: Three Days of Hearings Overviewed, *The Leaflet* (Aug. 14, 2025), https://theleaflet.in/leaflet-reports/supreme-court-directs-eci-to-publish-list-of-65-lakh-omitted-voters-accept-aadhar-as-id-proof-three-days-of-hearings-overviewed (last visited Aug. 6, 2026).
[25]Bihar Electoral Rolls: SC Orders Inclusion of Aadhaar Card as 12th Identity Proof, *The Leaflet* (Sept. 8, 2025), https://theleaflet.in/leaflet-reports/bihar-electoral-rolls-sc-orders-inclusion-of-aadhaar-card-as-12th-identity-proof (last visited Aug. 6, 2026).
[26]Bihar Electoral Rolls: Supreme Court Declines to Modify Order Allowing Aadhaar as Identity Proof in Bihar SIR, *The Leaflet* (Sept. 15, 2025), https://theleaflet.in/leaflet-reports/bihar-electoral-rolls-supreme-court-declines-to-modify-order-allowing-aadhaar-as-identity-proof-in-bihar-sir (last visited Aug. 6, 2026).
[27]West Bengal SIR Crippled by Threats, Violence; 2025 Electoral Rolls Questionable: ECI to Supreme Court, *Bar & Bench* (2026), https://www.barandbench.com (last visited Aug. 6, 2026); *see also* SC Directs Serving and Former District Judges to Assist EC in West Bengal's SIR of Electoral Rolls, *newsonair.gov.in* (Feb. 20, 2026).

of External Affairs, marking Passport Seva Divas on 24 June 2025, addressed a question that had arisen directly out of the SIR litigation: could a person excluded from the Bihar rolls rely on possession of a valid Indian passport to establish citizenship? Ministry officials answered that the passport is a travel document, issued under the Passports Act, 1967 to facilitate international travel and consular access, and is not a document of citizenship.[28] As a matter of statutory architecture, the position is unremarkable: the Passports Act requires the passport authority to be satisfied of an applicant's citizenship before issuing a passport, but the passport itself does not certify that determination to third parties in a manner intended to be treated as conclusive proof for all subsequent purposes, and the issuing authority retains a continuing power to revoke a passport obtained on the basis of false information.[29] The passport is, in this sense, a downstream document: its issuance presupposes a prior determination of citizenship made on the strength of other, more foundational proofs, and it cannot logically be more probative of citizenship than the material on which that prior determination rested.

What is doctrinally significant is not that this position was wrong, it was not, but that its public articulation in mid-2025 caused visible disquiet precisely because no alternative document has ever been authoritatively designated as the "root" proof of citizenship for the ordinary Indian resident. The Ministry's own guidance, reported contemporaneously, catalogued the array of commonly held documents; the Aadhaar card, the voter identification card, the PAN card, the ration card, the driving licence, each of which the guidance confirmed was probative of something other than citizenship: identity, residence, tax registration, welfare entitlement, or driving competence, but not nationality.[30] India, unlike jurisdictions that maintain a specific certificate of citizenship or a comprehensive civil registration system linking every birth to a citizenship determination, possesses no single, universally issued document whose function is to certify citizenship as such. The birth certificate, issued under the Registration of Births and Deaths Act, 1969, records the fact and place of birth but, given the post-1987 tightening of s. 3 of the Citizenship Act, does not by itself establish citizenship for anyone born after 1 July 1987, since the citizenship of at least one parent must independently be shown.[31]

[28] *The Wire*, *supra* note 3.
[29] Passports Act, 1967, §§ 6, 10 (India); *see also* Passport Not Proof of Citizenship Says MEA: What Documents Establish Indian Citizenship?, newspointapp.com (June 25, 2025), https://www.newspointapp.com/english/lifestyle/passport-not-proof-of-citizenship-mea-what-documents-establish-indian-citizenship (last visited Aug. 6, 2026).
[30] newspointapp.com, *supra* note 29.
[31] Registration of Births and Deaths Act, 1969 (India); Citizenship Act, No. 57 of 1955, § 3, as amended by the Citizenship (Amendment) Acts of 1986 and 2003 (India), discussed *supra* Part III.B.

D. The Structural Diagnosis: The pattern that emerges from Parts III to V of this paper is best described as an inversion. The ordinary evidentiary expectation in matters of legal status is that the state, having prescribed the criteria for a status, also prescribes or at least designates the means by which that status may be conclusively proved. Indian law does the first with considerable specificity; arts. 5 to 11, s. 3 as thrice amended, s. 6A for Assam, and has never done the second. Section 9 of the Foreigners Act, 1946 casts the burden of proof upon the individual claiming not to be a foreigner, and that reverse burden, having been reaffirmed as a matter of equal application across India in Sonowal, cannot lawfully be diluted for any region. Yet the class of documents by reference to which that burden might be discharged; Aadhaar, the voter card, the passport, the ration card, has been progressively and, in each instance correctly, declared non-probative of citizenship as such. The individual is thus asked to prove a fact for which the state has supplied criteria but no certificate**.**

VI. Constitutional Critique: Due Process and The Risk of Statelessness

A. The Reverse Burden Revisited: A reverse burden of proof is not, without more, constitutionally suspect; legislatures frequently allocate burdens of proof to the party best placed to discharge them, and an individual is ordinarily best placed to know and establish the facts of their own birth, parentage and residence. The difficulty in the Indian context is that the reverse burden operates in the absence of any correspondingly reliable means of discharge. Where an individual born, say, in 1990 in a border district is required to show that at least one parent was a citizen at the time of birth, and where no birth certificate, hospital record or parental citizenship certificate was created or preserved at the relevant time, a common enough circumstance in a country where universal birth registration is itself a comparatively recent achievement, the reverse burden operates less as an evidentiary allocation than as a near-irrebuttable presumption of exclusion for the undocumented poor.

B. Natural Justice in Mass Verification Exercises: The Supreme Court's interventions in the Bihar SIR litigation, directing publication of reasons for each of the sixty-five lakh omissions, directing that Aadhaar be accepted as an additional identity document, and refusing to permit the Commission to treat all eleven originally listed documents as inherently more reliable than Aadhar merely because Aadhaar had been publicly singled out, can be read as an application, in the electoral context, of familiar natural justice principles: that adverse action affecting a legal status should not be taken without notice, without an opportunity to be heard, and without

a reasoned basis capable of being tested.[32] These interventions are welcome, but they address the procedural fairness of the exercise of verification; they do not supply the missing substantive proof. A right to be heard is of limited value to a person who has no document capable of persuading the hearing officer, and the SIR proceedings in West Bengal, marked by very large numbers of contested "logical discrepancy" entries requiring adjudication by deputed judicial officers, illustrate the scale of the problem that the absence of a designated root document has produced.[33]

C. The Spectre of Statelessness: The gravest consequence of an evidentiary vacuum of this kind is the risk of statelessness, the production, through administrative exercise rather than considered legislative design, of persons who are excluded from the electoral rolls, or found ineligible under the National Register of Citizens process in Assam, or otherwise unable to establish citizenship, without any corresponding legal determination that they possess the nationality of another state. India is not a party to the 1954 Convention Relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness and possesses no domestic statutory mechanism for identifying or regularising the status of a person rendered stateless in fact by exclusion from citizenship documentation. The Constitution's own text offers only limited protection here: art. 21, as interpreted expansively by the Supreme Court to guarantee a dignified existence to "any person" and not merely to citizens, extends procedural and some substantive protection to persons pending determination of their status, but it does not resolve the underlying documentary deficit that produces the determination in the first place.

VII. Towards A Coherent Evidentiary Framework

Four modest but structurally significant reforms follow from the analysis above:

Firstly; Parliament or the Union executive should designate, by notification under the Citizenship Act, 1955, a hierarchy of documents for the specific purpose of establishing citizenship, distinct from the existing hierarchy of documents used for identity or residence verification. Such a notification would not itself resolve every hard case, but it would end the present practice of ad hoc, litigation-driven determinations, conducted piecemeal, document

[32] *See* discussion *supra* Part V.B and notes 24–26.
[33] Electoral Roll Verification in West Bengal: Legal and Administrative Challenges, Sanskriti IAS (2026); SC Directs Serving and Former District Judges to Assist EC in West Bengal's SIR of Electoral Rolls, newsonair.gov.in (Feb. 20, 2026).

by document, before the Supreme Court, of what does and does not count as proof of the status the Constitution and the Citizenship Act purport to define with precision.

Secondly; the birth registration system under the Registration of Births and Deaths Act, 1969 should be integrated, prospectively, with a parental-citizenship declaration recorded contemporaneously with birth registration, so that the evidentiary gap created by the 1986 and 2003 amendments to s. 3 does not continue to widen for every birth cohort that follows.

Thirdly; in any future mass verification exercise of the kind undertaken in Bihar and West Bengal, the burden-shifting logic of Sonowal should be read together with an affirmative obligation on the state to make available, and to publicise in advance, the complete and considered list of documents that will be treated as sufficient, so that the individual's opportunity to be heard is not rendered illusory by ex post facto changes to the evidentiary standard, a risk that materialised repeatedly during the Bihar proceedings as the Commission's list of acceptable documents was revised under judicial pressure over successive hearings.

Fourthly; and most fundamentally, India should consider a limited statutory mechanism, modelled on comparative practice, for the identification and regularisation of persons who, despite good-faith effort, are unable to establish citizenship and are equally unable to establish the nationality of any other state, not as an amnesty for irregular migration, a matter on which Parliament retains full policy latitude, but as a narrowly tailored safeguard against the production of a peculiarly modern, and peculiarly Indian, category: the citizen without a country.

VIII. Conclusion

The Constituent Assembly, debating Arts. 5 to 11 in August 1949, settled the question of *who* is a citizen with a deliberateness that still commands respect, rejecting descent and faith as organising principles and bringing those articles into force a full two months before the rest of the Constitution. It did not address *how* that status was to be shown, and the silence was then intelligible: the State had neither the documentary apparatus nor the occasion to interrogate the ordinary resident. The Special Intensive Revision in Bihar and West Bengal, and the Ministry's confirmation that the passport is a travel document and not a document of citizenship, did not create the difficulty this paper has traced. They made visible a gap that has widened since 1955, and which the Citizenship Act and its interpreters have left substantially untouched. India has

built, with considerable constitutional and statutory care, an elaborate law of who is a citizen. It has not built a corresponding law of how citizenship is to be shown. Until it does, every mass verification exercise, whether styled as an electoral roll revision, a National Register of Citizens, or any future successor, will continue to ask ordinary residents to produce a root document that Indian law has never created, and courts will continue to be called upon, case by case and document by document, to supply through interim orders what only considered legislative design can properly provide.

The incoherence lies not in any single rule but in their interaction. Section 9 of the Foreigners Act, 1946 places the burden of disproving foreigner status on the individual, and *Sonowal* and *Sonowal (2)* insisted, on Art. 14 reasoning that is difficult to fault, that this burden apply uniformly across the country. Simultaneously, the amendments of 1986 and 2003 converted citizenship by birth into a derivative claim: what must now be established is not the applicant's own birth but a parent's status at a moment that may lie four decades in the past, and for which no instrument was ever designed. Meanwhile, every document in general circulation has been held, correctly, to prove something else. *Puttaswamy* proceeded on the footing that Aadhaar attaches to residence; the Passports Act, 1967, by requiring satisfaction as to citizenship under s. 6 and preserving revocation under s. 10, confirms that the passport is downstream of a determination it does not itself certify; and the birth certificate under the Act of 1969 records the fact of birth, which since 1987 no longer settles the question. The reverse burden is thus reinstated in full rigour without any corresponding designation of the means of its discharge.

The consequence is a burden that falls regressively. Formally equal, it is discharged in an afternoon by the documented, and scarcely at all by the labourer in a border district whose birth was never registered anywhere. And because India is party to neither the 1954 nor the 1961 Statelessness Convention, and has built no domestic mechanism for identifying statelessness, failure does not produce an adverse finding, it produces a void, in which Article 21 shields the person while leaving his status permanently unresolved.

Citizenship under Part II of the Constitution is declared, not conferred by an officer's discretion. But a status that cannot be demonstrated when challenged is, in practice, held only at the sufferance of whoever chooses to challenge it. That distance between a right that is constitutionally settled and a status that remains practically unprovable, is the whole of the matter.