Assam NRC - Sanaullah's Case

What is the issue?

Upon the orders of the Gauhati High Court, Mohammad Sanaullah was recently released on bail from a detention camp in Assam.

What is the case about?

- According to the Assam Accord, individuals who entered Assam after March 24, 1971 are illegal immigrants.
- There are two parallel processes to establish citizenship:
    i. the Foreigners Tribunals operating under the Foreigners Act
    ii. the National Register of Citizens (NRC), which is under preparation
- These two processes are nominally and formally independent. But in practice, these two systems influence each other.
- People who have been declared as foreigners by the Foreigners Tribunals, and even their families, were dropped from the draft NRC.
- Mohammad Sanaullahhad been detained few days back after a Foreigners Tribunal had declared him an illegal immigrant.
- It was learnt that Mr. Sanaullah had served for three decades in the Indian Army.
- Following this, after a week of sustained public pressure, the Gauhati High Court's bail order has come.

What are the procedural contentions?

- In the intervening period of Sanaullah's release, a shocking number of irregularities surfaced.
- In its inquiry report, the Assam border police had written that Mr. Sanaullah was a 'labourer'.
- The three men who signed the case report claimed that the investigating officer had fabricated their signatures.
- The investigating officer himself admitted that it might have been an "administrative mix-up".
- Yet, it was on the basis of such disputable material that the Foreigners Tribunal concluded that Mr. Sanaullah was a "foreigner"and sent him off to a detention camp.
- [The Foreigners Tribunal is a quasi-judicial body expected to follow the rule

of law.]

What is the larger issue?

- Investigative journalists have revealed over the last few years that 'administrative errors' of this kind are the rule rather than the exception.
- Sometimes, such disputable materials lead to people being detained for 10 years or more.
- For these individuals, without the benefit of media scrutiny, there may be no bail; in other words, an endless detention.
- In most cases, the legally mandated initial inquiry before an individual is brought before a tribunal as a suspected "foreigner" does not happen; it did not happen for Mr. Sanaullah.
- **Foreigners Tribunals** themselves are only constrained by a very limited number of procedural safeguards.
- This has led to situations where Tribunals have issued notices to entire families, instead of just the suspected "foreigner".
- Additionally, reports show that Foreigners Tribunals habitually declare individuals to be "foreigners" on the basis of clerical errors in documents.
- These may include as small things as a spelling mistake, an inconsistency in age, and so on.
- The hardest hit by such irregularities are the vulnerable and the marginalised, who have limited documentation at the best of time.
- They are rarely in a position to correct errors across documents.
- On occasion, orders determining citizenship have been passed by tribunals without even assigning reasons, a basic element of the rule of law.
- In addition, a substantial number of individuals are sent to detention camps without being heard.
- In detention centres families are separated, and people are not allowed to move beyond narrow confined spaces for years on end.
- **NRC and Judiciary** - Driven by the Supreme Court, the NRC process has been defined by sealed covers and opaque proceedings.
- The Supreme Court developed a new method of ascertaining citizenship known as the "family tree method".
- This method was not debated or scrutinised publicly, and it is found that people from the hinterland were unaware of the method.
- Also, those who were aware had particular difficulties in putting together "family trees" of the kind that were required; the burden fell disproportionately upon women.
- Recently, a process allowed for individuals to file "objections" against people whose names had appeared in the draft NRC.
- On the basis of this, such people would be forced to once again prove their

citizenship.
- This had resulted in thousands of indiscriminate objections being filed, on a seemingly random basis, causing significant hardship and trauma to countless individuals.

What is the significance of Sanuallah's case?

- Citizenship issues are very elemental and important demanding careful implementation and necessary procedural safeguards.
- This is especially true as the consequences of being declared a non-citizen are grave.
- These may include disenfranchisement, exclusion from public services, incarceration in detention camps, statelessness, and deportation.
- Ensuring rule of law in such cases is of utmost importance.
- Given this, Mr. Sanuallah's case has brought the citizenship issue in Assam to the centre stage.
- It can prompt some urgent national introspection about a situation in which thousands of people languish in detention camps for years.
- It must serve as an urgent call for rethinking the National Register of Citizens.

What lies before the judiciary?

- In a process with such flaws, and where the consequences are so drastic, judiciary intervention is crucial.
- It is expected to fulfil its role of being the guardian of fundamental rights and the guarantor of the rule of law.
- In cases where the cost of error is so high, the supreme court should realize that it is not "speed" that matters, but the protection of rights.

Source: The Hindu

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