

IMPLICATIONS OF SARBANANDA SONOWAL v. UNION OF INDIA, A.I.R. 2005 SC 2920: A CRITICAL REVIEW

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Abstract

The Sarbananda Sonowal case represents a significant legal milestone in India's struggle to address illegal immigration, particularly in Assam. This paper provides a comprehensive analysis of the case, focusing on the constitutional interpretation, the legality of state-specific legislation, and the central government's responsibility in combating illegal immigration. The judgment's implications for policy, legal frameworks, and socio-political dynamics are examined, with particular attention to its impact on Assam's demographic and security landscape. Criticisms and debates surrounding the judgment are also explored, shedding light on broader issues of constitutional principles, immigration policy, and social cohesion within India. In summary, this case serves as a crucial reference point for understanding the complexities and challenges associated with illegal immigration and constitutional validity in India.

Keywords: *Classification, external aggression, illegal immigration, IMDT Act, Right to equality.*

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BACKGROUND OF THE CASE

The case of *Sarbananda Sonowal v. Union of India and Another*¹ revolves around the legality of the Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act), particularly in the context of Assam, which has faced significant issues related to illegal immigration from Bangladesh for years. The IMDT Act, enacted in 1983 specifically for Assam to provide for detection and deportation of illegal immigrants. The act, though, faced severe backlash in Assam as it was seen to be unable to tackle the issue of illegal migration, and in 2005, it was challenged by Sarbananda Sonowal, who later went on to become the chief minister of Assam and a Union Minister as well. He argued that the Act facilitated illegal immigration by placing an undue burden of proof on the accusers, making it practically ineffective in addressing the issue. The petitioner further contended that the IMDT Act was discriminatory and ineffective in dealing with the influx of illegal immigrants into Assam. He argued that it violated the fundamental rights guaranteed under Articles 14 and 355 of the Indian Constitution.

THE JUDGMENT

The Supreme Court in *Sarbanda Sonowal v. Union of India* declared the IMDT Act, 1983, unconstitutional on account of the act's failure to control the large influx of immigrants into the state of Assam, which contravenes Article 355 of the Constitution. Basing the judgment on the governor's report of 1985, the court found the situation in Assam very concerning, which clearly indicated the complete failure of the central government in its duty to protect the state, which it is mandated to do under Article 355 of the Indian constitution. According to the governor's report, there was an unabated influx of illegal migration from Bangladesh into Assam, changing the state's demography inorganically. Illegal migration not only affects the demography of Assam but also has a dangerous effect on the country's national security. According to the governor's report, the unabated illegal immigration into Assam has led to an increase in uncontrolled population in Assam and the northeast and has the capability to sever the entire landmass of the northeast from India. The report, accompanied by affidavits and additional evidence, highlighted that millions of Bangladeshi individuals have unlawfully crossed the international border, resulting in the extensive occupation of land in Assam. In light of these findings, the Supreme Court concluded that Assam is undeniably experiencing "external aggression and internal disturbance" due to the significant influx of illegal migrants. Consequently, it emphasized that it is the responsibility of the Union to implement all necessary measures to safeguard Assam from such threats.

¹ Equivalent citations: AIR 2005 SUPREME COURT 2920, 2005 (5) SCC 665, 2005 AIR SCW 3393, 2005 (5) SLT 277, (2005) 32 ALLINDCAS 64 (SC), 2005 (5) SCALE 375, 2005 (32) ALLINDCAS 64, (2005) 32 OCR 1, (2005) 5 SUPREME 10, (2005) 5 SCALE 375

The judgment was also very critical of the fact that the act as legislation is very ineffective in combating the purpose of its enactment, and already existent legislation like the Foreigners Act and the Foreigners (Tribunals) Order, 1964 were far more effective in identification and deportation of foreigners as compared to IMDT Act. The court identified the IMDT Act and its associated regulations in Assam as the primary obstacle and the most significant hindrance in the identification and expulsion of illegal migrants. It noted that a majority of the investigations initiated under this act have resulted in no deportations, which stands in stark contrast to the outcomes observed under the Foreigners Act. The IMDT Act has also nullified the effect of legislation like the Passport Act because of the overriding effect of the IMDT Act.

The IMDT act was also found as violating article 14 of the constitution for failing to establish a reasonable nexus between the object of the act and the special classification that it creates which pertains to its application with regard to only the state of Assam and not outside of it. This conflict between the object and classification was based on the ineffectiveness of the IMDT act and therefore the Supreme Court found that it cannot permit such classification based on geography when the purpose of the legislation is getting diluted and in order to satisfy the test of Article 14, the geographical factor alone is not enough to uphold the classification. Hence, the court found the classification made by the IMDT Act is applicable only in Assam and has no rational nexus with the policy and object of the Act.

DECODING THE JUDGMENT

The Supreme Court, in its judgment, struck down the legislation on the ground that it violated articles 14 and 355 of the Constitution. The basis of the judgment was that the act was discriminatory as it identified illegal migrants only in particular cases and also that under this act, it would be impossible for the state to ever identify a migrant and deport him or her. The court also pointed out that very few were deported under the act and, therefore, the act was not serving any purpose; hence, it favoured the application of the Foreigners Act as compared to this legislation. The Supreme Court said:

“It is far easier to secure the conviction of a person in a criminal trial where he may be awarded a capital punishment or imprisonment for life than to establish that a person is an illegal migrant on account of extremely difficult, cumbersome and time-consuming procedure laid down in the IMDT Act.”

The Supreme Court Equated Migration with ‘External Aggression’

Article 355 places a duty on the Union (central) government to protect every state in India against external aggression and internal disturbances. It ensures the integrity and stability of the country

by mandating the Union to intervene if any state is under threat from external aggression or internal turmoil. The court's conclusion was that the failure of the central government to effectively prevent illegal immigration, an area exclusively under its jurisdiction as per Article 355, signifies a breach of its constitutional obligation. Moreover, the legislation in question exacerbates this failure, necessitating its nullification. The other shocking part of the judgment was the court's myopic view of looking at migration through the lens of national security and external aggression. It based this interpretation on the cases from the United Kingdom, the United States of America and international law. It defined the term 'aggression' as an invasion of unarmed men in large proportion if it were to not only impair the economic and political well-being of the receiving state but to threaten its very existence. The court also based its findings on materials of former census official CS Mullan which can be argued to be of questionable legal material as these reports contained within themselves theories that argued that illegal immigration was the only reason behind problems like insurgency and ethnic conflict in Assam, making a ridiculous link between irregular migration with external aggression further arguing that this has lead, to the breaking down of the constitutional machinery in the state. The judgment also establishes that the court found legislation like Foreigner's Act, 1946 and the order issued through it as a better piece of legislation as compared to the IMDT Act which granted a number of rights to illegal immigrants even though the purpose of the act was to reduce illegal immigration which further establishes absence of any rational nexus with the policy and object for which the Act was drafted namely the purpose of expediting the process of identification and deportation of irregular immigrants.

This judgment has had an effect on subsequent judgments passed by the various courts which were influenced by this decision. For example, the 2014 case of *Assam Sanbmilita Mahasangha v. Union of India*² followed the same rationale used in the Sonowal judgment, including basing the decision on the same governor's report, which has highly objectionable terms in. The judgment affirmed the popular perception that Assam has a 'massive influx of illegal migrants' and 'invasion by land capturing immigrants consisting of Mohammedans from East Bengal which is the Present day Bangladesh'. A further consequence of Judicial involvement in enabling the present NRC finally culminated when the final data was published in its final report on 31 August 2019, which made nearly 20 lakh people of Assam stateless within a span of minutes.³ If you go by the opinion

² 2015 (3) SCC 1

³ BBC, 'Assam NRC: What next for 1.9 million 'stateless Indians?', BBC, Aug 31 2019

of many legal experts, the judgment by the Supreme Court in the Sonowal Case goes completely against the law laid down in the *S.R. Bommai v. Union of India*⁴. In Bommai's case, the Court declared:

"Article 355 is not an independent source of power for the centre to interfere with the state's functioning but is in the nature of justification for measures to be adopted under Articles 356 and 357 of the Constitution, with limited judicial review available".

The above principle was completely ignored in the Sonowal judgment as the judgment saw the power under 355 as an independent source power and this provision could be used as per the court by the states itself if the centre fails in its responsibility and order emergency at the local level and deal with it even though it's an exclusive domain of the central government.

Right to equality in the context of the Judgment

Article 14 guarantees the right to equality before the law and equal protection of the laws within the territory of India. In the context of the Sarbananda Sonowal case, Article 14 was invoked in relation to the identification and deportation of illegal immigrants from Bangladesh, particularly in the state of Assam. The case raised questions about the implementation of laws and policies aimed at detecting and deporting individuals who were deemed to be residing illegally in India. The court had to balance the state's interest in maintaining law and order, protecting the rights of indigenous communities, and addressing concerns related to illegal immigration against the fundamental rights guaranteed under Article 14, ensuring equality before the law.

The Supreme Court, in its judgment, held that the IMDT Act was unconstitutional as it created hurdles in the identification and deportation of illegal immigrants, thereby violating the principle of equality before the law enshrined in Article 14. The court's decision emphasized the importance of uniformity and consistency in the application of laws throughout the territory of India. Therefore, in the analysis of Article 14 in *Sarbananda Sonowal v. Union of India*, the court's ruling highlighted the need for laws and policies to be in accordance with constitutional principles, ensuring equality and non-discrimination for all individuals within the territory of India, regardless of their place of residence or origin.

The Criticism of the Judgment

The government passed the IMDT Act of 1983, to assuage the protestors, but the people in the state felt that the act went completely against the purpose for which the act was enacted. The

⁴ AIR 1994 SC 1918

IMDT, 1983 had a number of issues. Out of thirty tribunals provided in the act, only sixteen were approved, and out of that, only five were functional by the year 1998. The other criticism of the act was that it gave power to a third person to report illegal migrants against whom he had some information. The provision stated that both the person who is complaining and the accused against whom the complaint is lodged should reside at the same police station. But there were many progressive features within the IMDT Act, 1983 while dealing with illegal migration the State was under the obligation under the act to prove that a person was an illegal migrant, unlike the Foreigners Act this Act did not give the power to the state police to search and seizure and this lead to cases where people once they knew a process has been issued against them went missing or were untraceable. What the Supreme Court did was reverse the application of progressive legislation that could have served its purpose. The efficiency of law is not a ground for its validity, and therefore, that reasoning is flawed. Further what the judgment did was to retransfer the burden of proof on the illegal migrant who obviously is not able enough to defend himself against the mighty Indian state but that reason aside the basic rule of law principle where the prosecutor is not duty bound to establish but the defendant has to prove his innocence which goes against all legal principles.

It was imperative for the Supreme Court not only to assert a robust and unambiguous policy direction but also to ensure that it was firmly rooted in the constitutional principles and ideals envisioned by our founding fathers. Regrettably, it is argued that the Supreme Court, while accomplishing the former, did not base its decision on cogent legal or constitutional principles. This could have been achieved by (a) refraining from invoking Article 355; (b) employing Article 14 in a more nuanced and conceptually robust manner; (c) asserting that the rights to culture and language of the Assamese people as guaranteed under Articles 21 and 29(1) have been infringed; and (d) clearly demonstrating that the application of the Foreigners Act, 1946 does not violate the immigrants' right to life. The decision had significant ramifications, as it paved the way for stricter measures to address illegal immigration in Assam. Subsequently, the detection and deportation of illegal immigrants became governed by the provisions of the Foreigners Act, 1946, applicable throughout India, rather than the IMDT Act specific to Assam. Overall, the Sarbananda Sonowal case is crucial in the context of India's legal and political landscape, particularly regarding the issues of illegal immigration and the constitutional validity of legislation aimed at addressing such matters. The decision to strike down the IMDT Act and the subsequent measures taken to address illegal immigration in Assam have had long-term implications for the state's governance, security, and identity dynamics.

Implication of the judgment

The case of *Sarbananda Sonowal v. Union of India* holds significant implications within the legal and social context of India, particularly regarding issues of illegal immigration and constitutional validity. The case also involved a careful interpretation of constitutional provisions, particularly Articles 14 and 355 of the Indian Constitution. The Court's ruling that the Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act) violated these provisions set a precedent for future cases involving similar questions of constitutionality. The case further highlighted the complexities surrounding state-specific legislation and its compatibility with broader constitutional principles. The Court's decision underscored the importance of ensuring that state laws align with constitutional values and do not create discriminatory practices. The judgment underscored the central government's responsibility in tackling illegal immigration and ensuring the integrity and security of the nation's borders. It criticized the failure of the central government to effectively prevent illegal immigration and called for stringent measures to rectify this. *Beyond the legal realm, the case had significant policy implications for addressing the issue of illegal immigration in Assam and other regions facing similar challenges. It prompted policymakers to reconsider strategies and legislation aimed at tackling immigration issues while upholding constitutional rights and principles. The judgment influenced the legal framework governing immigration in India, particularly in the state of Assam. By striking down the IMDT Act, the Court paved the way for the application of the Foreigners Act, 1946, which provided a broader and more uniform approach to addressing issues of illegal immigration across the country. It also highlighted the severe impact of illegal immigration on Assam, particularly regarding demographic changes and the socio-political landscape of the state. The Court's decision recognized the gravity of the situation and emphasized the need for decisive action to address the issue. The case also had socio-political ramifications, particularly in the state of Assam, where illegal immigration has been a longstanding and contentious issue. The Court's decision provided clarity and direction in addressing public concerns about immigration, contributing to broader discussions on identity, citizenship, and regional autonomy.*

In summary, the implications of Sarbananda Sonowal v. Union of India extend beyond its immediate legal significance, touching upon broader issues of constitutional interpretation, immigration policy, and social cohesion within India. The case marked a significant turning point in India's legal and administrative approach to tackling illegal immigration, particularly in the context of Assam. It reflected the judiciary's role in upholding constitutional principles, addressing security concerns, and navigating complex socio-political realities. However, the case also raised questions about the effectiveness of legal interventions in addressing deeply entrenched issues of migration, identity, and governance.