

CITIZENSHIP (AMENDMENT) ACT, 2019: A CRITICAL ANALYSIS

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I. Background

Citizenship is termed to be broader concept of migration. Due the constitutional law reforms the long procedure is ascertained to the citizenship process. People migrate from one place to another and this has been in practice from time immemorial. Beginning from the of Stone ages till the modern times, migration has been part of the human cycle. People migrate for various reasons, being food, employment, shelter, geographical conditions so on and so forth. When people migrate from one place to another it does not end there, they have various obligations arising there from and therefore the institution of citizenship will help in assigning them their rights and duties after fulfilling the constitutional requirements.

Citizenship is a body that provides membership to a person to designate himself with a particular country². Every country has its own rules and regulations to govern the complexity of the Citizenship. It is through Citizenship that a person will be able to exercise his rights and duties, and will be able to avail benefits such as right to vote, employment opportunity, to travel and settle in any part of the country, to practise any kind of trade or business and so on. Without citizenship a person is termed to be 'Stateless person'³.

The increase in migration has led to various challenges which results in stricter immigration policies, making it difficult to obtain the citizenship of a country. Normally, citizenship is granted on the basis of Jus Sanguinis (citizenship by right of blood), Jus Soli (citizenship by right of birth within the territory), Jus matrimonii (citizenship granted through marriage) and Naturalisation. Some countries consider any one of these factors to provide citizenship, while some consider all the aspects in providing them the citizenship. In India Usually the citizenship is acquired by birth or if

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² Graziella Bertocchi and Chiara Strozzi, The Evolution of Citizenship Economic and Institutional Determinants, he Journal of Law & Economics, Vol. 53, pp. 95-136, 96(2010).

³ Dr. Sandeep Kumar, CITIZENSHIP (AMENDMENT) BILL 2016:-A CRITIQUE, INDIAN JOURNAL OF RESEARCH, Vol 6, pp.227-229, 227 (2017).

the parents belong to the particular country, or by marriage and if any person submits all the required documents and fulfils the required conditions then he might become the citizen of India⁴. But, one main problem that the country is facing now is that there are too many migrants who enter the country through the illegal means which is altering the demography of the country and also affect the cultural identity of the country⁵. To curb the problems of such immigration the government is trying to make the laws stringent and feasible to those enter with legal documents. Citizenship in India is governed by the Citizenship Act, 1955, which has been amended in the years 1986, 1992, 2003, 2005, 2015 and 2016 respectively. The citizenship bill, of 2019 was passed in the Lok Sabha on January as the Citizenship amendment bill 2019, which received the assent of the President to become an Act on 11 December, 2019.

II. Laws

The constitution of India provides for Citizenship under part II of the Constitution. The Articles 5 to 11 of the Constitution exclusively deals with who can be a citizen, and how can one attain citizenship in India and the rights of people who attained citizenship. By the virtue of Article 11 of the constitution the Citizenship Act, 1955 was enacted by the Indian Parliament. The Constitution of India provides certain civil rights to its citizens and these rights are also applicable to the non-citizens.

The constitution enshrines fundamental rights to its citizens and some of these fundamental rights are also enshrined to non-citizens except the enemies. Article 14 which provides for Equality before law and equal protection by law and it is provided to all irrespective of citizen or non-citizen, likewise the rights such as Protection in respect of conviction for offences under Article 20, Right to life and personal liberty under Article 21 and so on are provided to non-citizens as well. The Article 15 of the constitution which provides for non-discrimination of persons based religion, race, caste, sex and so on; this right is only granted to citizens, as there is always a bias towards citizens and this majorly follows the son of the soil theory. Article 16 of the Constitution is loosely based on Article 15 and there is certain preferences given to citizens when compared to non-citizens. Article 19 of the constitution, which deals the freedom of speech and expression which enables a citizen to

⁴ Shubham Choudhary, Constitutional Provisions to deal with Citizenship, *IPleaders*, September, 15 (2019), 9.01 pm, <https://blog.ipleaders.in/citizenship-in-india/>.

⁵ Smt. Saheli Naik, Illegal Migration - A Threat To India, *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, Vol 21, PP 17-20, 17(2016).

exercise his liberty without any restrictions from the government.. Though this right can be exercised with reasonable restrictions, it can be only granted to citizens and to non-citizens. Article 29 of the constitution provides for the protection language script and culture of minorities, this right is restricted to the citizens who are little in terms of quantity and not to non-citizens. Article 30 of the constitution provides for the right of minorities to establish and administer the educational institution, this right is only provided to the citizens and not the non-citizens.

The Foreigners Act⁶, 1946 provides for the powers of the Central government relating to matters of Foreigners in India. The Act defines the term Foreigner, and Section 8 and section 9 of the Act provides for the determination of the nationality of the foreigner and the onus to prove that a person is or is not a national of the country.

The Immigrants (Expulsion from Assam) Act⁷, 1950, is an Act passed by the government to expel the illegal migrants from the state of Assam and for the first time National register for citizen was created the details of the citizens was collected during the census to identify the illegal migrants. This was mainly to expel the illegal migrants as they were accumulating only in the parts of Assam as it was cheaper and economical to migrate to Assam.

The Passport Act⁸, 1967; a citizen cannot have dual citizenship in conformity to Article 9 of the Constitution, if a person has to acquire citizenship of another country then he must surrender his passport which is provided under Section 12 of the Passport Act. The passport Act regulates all the procedures relating to acquiring a passport.

The Citizenship Act, 1955, was enacted to acquire and provide for the Indian citizenship, it defines the terms illegal migrants, Indian Consulate, overseas citizens of India. It states as to how a person can acquire citizenship, termination of citizenship, obtaining National identity cards and other facilities. The Act denies citizenship to illegal migrants who enter the Indian territory without valid passport and legal documents and who resides in the country even after expiration of the Visa permit. This was further amended in many instances and a bill passed in 2019 and which received the assent of the president to become an Act.

⁶ THE FOREIGNERS ACT, 1946, ACT NO. 31 OF 1946.

⁷ THE IMMIGRANTS (EXPULSION FROM ASSAM) ACT, 1950.

⁸ THE PASSPORTS ACT, 1967, [Act No. 15 of 1967 dated 24th. June, 1967.

III. The Citizenship (Amendment) Act, 2019

Section 2 of the Act provides for the inclusion of a proviso clause in the Principle Act which states that the minority communities from Hindus, Christians, Sikhs, Buddhists, Jains and Parsis from Afghanistan, Pakistan and Bangladesh who were exempted from the Central Government or the Passport Act or the Foreigners Act, to be no longer treated as 'illegal migrants'. Yet another proviso is inserted in the same section which states that any proceeding pending on the above mentioned migrants to be abated and they were made eligible to apply for naturalisation under section 6 of the Principle Act.

Section 3 of the Act provides for the inclusion of a clause in to Section 7D of the principle Act as to the cancellation of the overseas citizenship if in case violated any provision of the Act or any other law in force and also inclusion of the proviso clause, which provides for the reasonable opportunity of Right to be heard to the overseas citizens.

Section 4 of the Act, provides for the inclusion of the proviso In the third schedule of the Principle Act, which provides then qualification for naturalisation and the clause reads as the minority community form Pakistan, Afghanistan and Bangladesh to have resided in India for 'not less than six years' instead of 'not less than eleven years'.

IV. Criticisms to the Act

The Act was mainly introduced to Amend the Citizenship Act, 1955 and to include certain provisions to make the law eligible for those minority communities to attain citizenship in the country, to make it easy for the migrants to apply for naturalisation to which they have to provide the proof of their residence in the Indian territory for not less than 11 years which is now reduced to 6 years and the cancellation of overseas cardholders to be cancelled for violation of any law in force. But, the Act is being criticised on various grounds which are being discussed further.

A. *National Security and Integrity*

The main Criticism here is that the Act is against the national security and integrity of India vested to us by the Preamble. The Act here is being criticised for not being secular and and is not in consonance with the principle of equality as it was laid down in the Preamble⁹. One of the main Contention here is that it disturbs the peace and unity of the people of Assam as it violates he

⁹ Supra note 2.

Assam Accord of 1985, which was signed between the Government of India, the Government of Assam and Student union and other unions of Assam which ended the 6 years of mass movement of which created unrest among the people.

B. Violation Article 14

Since the day of the bill being introduced in Lok Sabha, to it being enacted as an Act, one of the main grounds on which it is being criticised is that it being violative of Article 14, as there is equality as it being discriminative towards the immigrants. This is because it provides for Citizenship to certain religion and no mention of other religions and other persecuted group from other countries.

C. Violation of Secular Principle

India being a Secular country, has always welcomed different religions and cultures with open hands. But, according to the Act, this principle is violated, as the Act is said to have been providing Citizenship to certain religions mentioned and not considering others, this is widely being criticised.

These criticism are views of most of the people, while there are few who also support the Amended Act, this has been a major debate since the passing of the Act. Act is not discriminative nor violative of Constitutional provisions, it is not Anti-Muslims as many of them are claiming it to be. The Act is simply trying to protect the religiously persecuted minorities in those 3 countries mentioned in the Act. The Act is to bring back all those who being tortured and not given any benefits for for their minimal survival. Also the Act does not restrict others from getting naturalisation from the existing procedure. Eminent Jurist Harish Salve, is one among the few supports the Act, explains the Act not being discriminatory. He answered in the question of persecution of Muslim communities like Ahmeddiyas and the Shias and Sunnis, by stating that , “He said that the different sects of Islam have intra-religion problems and that the religion divides on the basis of who follow Islamic faith and those who follow non-Islamic faiths”¹⁰ . He further Answers the question of not mentioning the Tamil communities in Sri Lanka and the Rohingya's of Myanmar, by stating that they were not religiously persecuted in those countries, and that the county does not have state religion like Pakistan, Afghanistan and Bangladesh.

¹⁰ Harish Salve defends CAB, says bill not anti-Muslim, does not violate articles 14, 15 or 21 of the Indian constitution: Read details, OPIndia, (11 DEC, 2019, 9:25 PM) <https://www.opindia.com/2019/12/harish-salve-india-parliament-citizenship-amendment-bill-constitution-pakistan-bangladesh/>.

On the other hand, due to many migrants entering and settling in the states of Assam, Meghalaya, Tripura and Mizoram, it has become a major problem as its altering the demography of the States and also utilisation of resources which makes it difficult for the citizens to avail the benefits as they have to compete for the same¹¹. Due to uncontrolled migration employment opportunities are decreasing at a rapid speed. So, the Act, puts a cap on who can enter into India and has requested for the legal documents to prove that one avail citizenship in India.

V. Conclusion

The ongoing debate on whether or not the Citizenship (Amendment) Act, 2019 is a discriminative legislation is still continuing. There are still protests taking place in various parts of the Country against the Act being passed by the government. The Amendment Act in no way has not affected the people nor will it affect them in the future. People should at first make an attempt to understand the Act and then come up with the oppositions rather than falling into misconceptions without realising the reality of the Act. The Act is in no way stopping others from the obtaining the citizenship under the existing rules, rather it is simply putting a cap on people who are entering India with no proper documents and who are of the threat of altering the cultural identity and the demography of the Country. This is a way of filtering the people entering the country and ensuring that no threat is posed to any of the citizens.

¹¹ Supra note 4.