

The Citizenship (Amendment) Act 2019: The Conflicting Law

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Abstract

Concept of Citizenship is generally related with the nation and its residents. Citizens are protected by the sovereign state and they also enjoy the certain rights as well as they have also duties towards their state. All over the world every nation has their own rules and criteria for the Citizenship.

In India there is concept of single citizenship which is different from the dual citizenship. At the time of partition and after that, large number of Hindus and Muslims migrated to and from Pakistan. Therefore, it was the need of the time to respond the situation created by lots of migrants. Simultaneously, many people who were living abroad applied for Indian Citizenship because now they had decided to live in newly freed country. All these factors had made the matter of citizenship very complicated. In spite of citizens we found the other people who were treated as an illegal migrant. These illegal migrants are not treated at par with citizens. In India Citizenship regulated by the Citizenship Act 1955. This Act of 1955 provides five different ways to acquire citizenship in India those are by Birth, by Descent, by Registration, by Naturalisation and by incorporating into the territory of India. Further this Act was amended in 2004 and Once again, this Act was amended in 2019 but in this amendment illegal migrant from six different religions such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan to eligible for citizenship in India. This amendment resulted into various agitations and protest against the Government because the Muslim migrant were not included in it. In this research paper author would like to overview the Act with its pros and cons.

Keywords: Citizenship, Religion, Protest.

Introduction

The Citizenship Act, 1955 standardizes who can acquire citizenship and on what basis and grounds a person can acquire. If a person born in India, by descent or resided in India for a prescribed time etc. then he may acquire citizenship in India. Basically Citizenship constitutes the indispensable foundational principle of democratic polity. According to Merriam-Webster Dictionary, a citizen means a person owing allegiance to and entitled to the protection of a sovereign state. The population of the state is divided into two classes i.e citizens and aliens. The question of citizenship became particularly important at the time of the making of our constitution because the constitution sought to confer certain rights and privileges upon those who were entitled to Indian citizenship while they were to be denied to 'aliens'. Therefore, citizens of India have certain rights under the Constitution which aliens shall not have.¹ The Constitution simply describes² the classes of persons who would be deemed to be the citizens of India at the date of the commencement of the Constitution and left the entire law of citizenship to be regulated by some future law made by parliament.³

On the other hand, there was a provision in the Act of 1955 that illegal migrants were prohibited from acquiring Indian Citizenship. The illegal migrant is the one who enters the country without valid documents like passport, visa etc. and if enters with valid documents then stay for longer time than permitted.⁴ These migrants got imprisoned or deported under various legislations like Foreigner's Act, 1946, Passport (Entry into India) Act, 1920. These Acts empowers the Central Government to regulate the entry and exit of illegal migrants within the India. Then in 2015, 2016 Indian Central Government issued notifications where certain groups

of illegal migrants are exempted from falling into the provisions of above mentioned Acts of 1920 and 1946. 5

Aim of the Study

Recently in India there was controversy on the Citizenship (Amendment) Act, 2019. Therefore, author tried to explain the objective of the Act and its impact on the society.

Review of Literature

Hilal Ahmad (2019) this research paper explained that The Citizen Amendment Act 2019 is the politically motivated phenomenon that offer citizenship to non-Muslim community from three Muslim majority countries (Afghanistan, Bangladesh and Pakistan). This research work pointed out that Indian polity is experiencing Hindutav Constitutionalism. Further this also draws a conclusion that the politically motivated ambiguities that have been arising in the Citizen laws since 1980's are now the reality of the present and explained that how the majoritarianism using democratic institutions against the secular character of the Constitution.

Narender Nagarwal (2019) this research work is criticizing the Citizen Amendment Bill that this bill is against the fundamental values and basic structure of the constitution by offering citizenship to non-Muslim communities. The bill is fundamentally impractically because it is basis only on the religion that is in contradiction with Articles 14, 21, 29, 30, 51C and 253.

Ram Madhav (2019) this research article generally focused on the need of the solution of illegal immigration to India since independence. Further the article explained that refugees have been continuously coming to India since long time. India responding in responsible manner but this time Govt. is trying to give constitutional status by giving them Citizenship. The article explains that the Act is not against the secularism because it offering persecuting minorities in the three countries.

Economic and Politically Weekly (2019) this research paper explains that authoritarian attitude in India and this is against the minority. The paper argued that India is facing the problem of identity crisis and identity based politics which is not healthy for the Indian democracy. The Indian politics and society are experiencing a new kind of politics that is going to divide the country on the communal lines. The Citizen Amendment Act is the propaganda of the government to find out the issue on this.

M.P. Jain (2010) in his book gives the brief introduction to the Indian Constitution. It also talks about various aspects of Constitution by giving different comments and views. It talks about Fundamental Rights, Fundamental Duties and Directive Principles. There are number of cases on every point. For example Cases, where there have been rights to free and compulsory education, rights related to equality, inclusion and non-discrimination.

Citizenship Act 2019

Parliament enacted a legislation i.e the Citizenship Act, 1955 in which elaborate provisions for the acquisition and termination of citizenship. To get the complete picture of Indian Citizenship Act the

provisions of this Act are read with the provisions of Part II of the Constitution.6 Entry 17, list 1 of seventh Schedule also discusses about the Citizenship. It is found that massive illegal migration takes place from Bangladesh. therefore, the Act of 1955 was amended in 2004 i.e The Citizenship (Amendment) Act,2004 this amendment defined a notion of 'illegal migrant'7 under section 2(1)(b). According to this amendment illegal migrants were ineligible for citizenship by registration and by naturalisation. This definition of illegal migrants was already in 1955 Act but 2004 amendment disallows the citizenship by birth of children born in India if either parent is an illegal immigrant. This amendment also introduced the notion of Overseas Citizen of India for citizens of other countries who are of Indian origin. The Act also mandated the Government of India to Construct and maintain a National register of Citizens.8 Another amended was in 2005 this amendment introduced the concept of Overseas Citizenship of India which most people mistakenly refer to as dual citizenship.8

In the amendment of 2004, the notion of illegal migrants was added and they barred from becoming an Indian citizenship through registration9 or naturalisation10 The Foreigners Act and the Passport Act debar such a person and provide for putting an illegal migrant into jail or deportation. This Act was further amended in 2015 and an exception was made where the minority communities of Bangladesh, Pakistan and Afghanistan who were compelled to seek shelter in India due to religious persecution or fear of religious persecution they are not classified as an illegal migrant and remain eligible for citizenship. In 2016 The Citizenship Amendment Bill (CAA Bill) introduced to provide Indian citizenship to the illegal migrants who entered India on or before 31st December 2014.11 In 2019 the Citizenship (Amendment) Bill, is being introduced in Lok Sabha and then Government enacted the legislation the Citizenship Amendment Act, 2019 and this Act

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made there under, shall not be treated as illegal migrant for the purposes of this Act;".11 Section 6 B12 is also inserted and third schedule is also amended of the principal Act 195513. This Act also has certain exceptions such as The Act adds that the provisions on citizenship for illegal migrants will not apply to the tribal areas of Assam, Meghalaya, Mizoram, and Tripura, as included in the Sixth Schedule of the Constitution. There is also addition of provision related to OCI (Overseas Citizenship of India) Cardholder. They can get registered and can get the benefit to travel into India work here and can do study. But if they found violating any provisions then there OCI Registration gets cancelled.13

The legislation of 2019 applies to those who were “forced or compelled to seek shelter in India due to persecution on the ground of religion”. It aims to naturalization from 11 years to 5 years as a specific condition for applicants belonging to these six religions. As well as the cut-off date for citizenship is December 31, 2014, which means the applicant should have entered India on or before that date. This Act also says that on acquiring citizenship: Such persons shall be deemed to be citizens of India from the date of their entry into India, and all legal proceedings against them in respect of their illegal migration or citizenship will be closed. This Act also says people holding Overseas Citizen of India (OCI) cards – an immigration status permitting a foreign citizen of Indian origin to live and work in India indefinitely – can lose their status if they violate local laws for major and minor offences and violations. This act also contains certain exception such the provisions on citizenship for illegal migrants will not apply to the tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District. It will also not apply to the areas under the Inner Line Permit under the Bengal Eastern Frontier Regulation, 1873.

There is protest against the implementation of this Act on the ground that word religious persecution is not defined in the Act of 2019. Further in this amendment there is another opinion that only six communities are included and Muslim community is not in the list. This made this Amendment exclusionary, poisonous and discriminatory in nature. It is violating Article 14, 14 and Article 21, 15 of Indian Constitution which is available to all the persons.¹⁶ As Article 14 guarantees equality to all the persons, including citizens and foreigners. It authorizes laws to create difference among different groups of people only if it serves a reasonable purpose.¹⁷ But the question arises whether these differential factors of treating the illegal migrants differently could serve a reasonable purpose. Again, there is another issue that only three countries Afghanistan, Pakistan and Bangladesh are listed for the purpose of religious persecution.¹⁸ There is no reason why Afghanistan has been added to this unlike Pakistan and Bangladesh as there were lacs of citizens residing at the time of Undivided India. But also there is no valid point that why these migrants are being treated differently from neighbouring countries like Sri Lanka, Myanmar.¹⁹ This Act also protest on the ground that in north-east area because Most of them fear that if implemented, the Act will cause a rush of immigrants that may alter their demographic and linguistic and cultural uniqueness .the rest of the country in state of Kerala, west Bengal, Kerala, West Bengal and Delhi for excluding the Muslim from those six community and it is against the basic structure of constitution.

Conclusion

This citizenship Act resulted in to various protest because there are other countries which are not included in it such as Sri Lanka has history of persecution of religious minority such as the Rohingya

protect such people from proceedings of illegal migration. This amendment relaxes the requirement of

Muslims and Tamil Elams they are fleeing and seeking shelter in India. This amendment mentioned only three countries but there are other communities in these countries such as Ahmadiyya Muslims in Pakistan and these are considered non-Muslims and are facing persecution further the Act of 1955 provide the Central Government to cancel registration of overseas Indian in various grounds it can be argued that it is excessive delegation of powers by legislature. Therefore, society has divided into two groups one groups opined that this amendment is against the rule of equality and destroying the basic structure of constitution and other group is in favour of this amendment. Various litigations have filed on this amendment and waiting for the view of Honourable Supreme court on this amendment.

References

1. *The Constitution of India, Article 15, 19,29, 30, 58(1)(a), 67(3)(a), 124(3), 217(2) 76(1), and 157 but the rights guaranteed by Article 14 and 21 are also available to aliens.*
2. *The Constitution of India, Part-II Article 5 to 11*
3. *Durga Das Basu, Introduction to the Constitution of India, 79 (22nd edition 2015)*
4. *Section 2(1)(b) of the Citizenship Act, 1955.*
5. *G.S.R. 685 (E) And G.S.R. 686(E), Gazette of India, <https://egazette.nic.in/WriteReadData/2015/165755.pdf>.*
6. *The Constitution of India, Article 5(a), (b)(c), 6,7 and 8*
7. *An illegal migrant in India is a foreigner who has entered India either without valid documents or who initially have a valid document, but has overstayed beyond the permitted time as per the provision of the amendment are not eligible for citizenship by registration or naturalisation. They are also liable to be imprisoned for 2-8 years and fined The National Register of citizens (NRC) is a register of all Indian Citizens whose creation is mandated in amendment Act 2004. Its purpose is to document all legal citizens of India so that the illegal migrants can be identified and deported. It has been implemented in Assam in 2013-2014 and Government is planning to implement it for the rest of the country in 2021*
8. *Id p82*
9. *The Citizenship Act, 1955 section 2 (1).*
10. *Where an application is made in the prescribed manner by any person of full age and capacity 3 [not being an illegal migrant] for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation.*
11. *The Citizenship Amendment Bill, 2016, https://www.prsindia.org/sites/default/files/bill_file_s/Joint%20committee%20report%20on%20citizenship%20bill.pdf.*
12. *Supranote 8, section 2*

13. 6B. (1) *The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2. Migrant should fulfilment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.*
14. *Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years".*
15. *Report of the Joint Committee on Citizenship (Amendment) Bill, 2016, Joint Parliamentary Committee, Lok Sabha 2019, https://www.prsindia.org/sites/default/files/bill_files/Joint%20committee%20report%20Citizenship%28A%29%20bill.pdf.*
16. *Article 14 of the Indian Constitution states that The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*
17. *Article 21 of the Indian Constitution states that there must be protection of life and personal liberty. No person shall be deprived of his life and personal liberty except according to the procedure established by the law.*
18. *The Poisons Law: The Citizenship Amendment Act 2019" https://www.researchgate.net/publication/337948797_The_Poisonous_Law_The_Citizenship_Amendment_ACT_2019 State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75*
19. *The Citizenship Amendment Act, 2019 Explained with Pros and ... <https://www.writinglaw.com/citizenship-amendment-act-2019-explained>*
20. *Article 9 of the Constitution of the Democratic Socialist Republic of Sri Lanka states that the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana while assuring to all religions the rights granted by Article 10 and 14 (1)(e).*
21. *Article 361 and 362 of the Republic of Myanmar states that it will recognize Christianity, Islam, Hinduism and great position to Buddhism as it is professed by Majority of the Union.*