
CITIZENSHIP IN CONTENTION: AN EXPLORATION OF CAA

Swagat Kumar Tripathy, SoA National Institute of Law, Bhubaneswar

ABSTRACT

The Citizenship Amendment Act stirred potential debate over its implications for integrity, secularism, and the constitutional framework. Accelerated citizenship by naturalization for people of particular religions from the three neighboring countries raised alarms of discrimination, arbitrariness, and fear for the secular foundation of India's democracy. The journey of the secular citizenship act to the amendment act of 2019 underscores the challenges of religious freedom and equality. Various protests have erupted nation-wide, with the Supreme Court weighing in on its legality. The government's reasons and defenses as to historical migration patterns and the need for protection of the persecuted minorities fueled other contentions. The combination of CAA and NRC intensifies the unpredictable future of statelessness. Amidst the pending cases, the future of CAA remains uncertain.

Keywords: illegal migrants, religious persecution, statelessness, accelerated citizenship, secularity, equality

Introduction:

Mahatma Gandhi once said, "The strength of Indian civilization lies in its inclusivity, irrespective of any differences." The land of culture, India, embodies within itself various religions, languages, and cultures, yet unity and integrity are other characteristics of this land, which are possible because the Indian Constitution contains provisions like equal protection of the law, various freedoms and liberties with reasonable restrictions, and secularism. But recent developments in the recognition of citizenship in India became a matter of deliberation after the passing of the Citizenship Amendment Act of 2019. The expedited citizenship, which is to be available to some particular religions, which are religious minorities in India's neighboring countries, created a perspective that it may put the basic principles of secularism and unity at stake, which leads to nationalism.

What is citizenship? Why is it necessary?

In a layman's sense Citizenship is the nexus between the individual and the country; this invaluable status protects the person from statelessness. Citizenship denotes the membership of an individual in a political community.¹ It is a bundle of rights that includes civil, political, as well as social rights. The Right of liberty and freedom of speech and expression, which are rights enforceable against the states, comes under the civil right. The Right to vote, or the right to be a part of a political party, is political right, whereas social rights revolve around the exchange of social and cultural heritage. The concept of citizenship and modes of acquiring it was mentioned in the Constitution and in the Citizenship act of 1955. The Constitution talks about who are the citizens and who are qualified to be the citizens of India at its commencement and it empowers the parliament to make laws for the citizenship and mode of acquiring it in subsequent time.² And now an amendment to this act came by the act of 2019.

Journey of Citizenship Legislations

During the passage of this bill, Amit Saha, i.e., the Home Minister, referred to the Nehru Liaquat Pact, which was signed in April 1950, which was the result of the large-scale migration of many to West Bengal due to the communal violence in Dacca. This pact ensures the protection of fundamental rights and the right to equality of the citizens and aims to restore

¹ T.H. Marshall.

² The Constitution of India, art.11.

confidence among the citizens in those areas from which the people were migrated. Amit Shah referred to this pact in the context that the minorities in Pakistan were not protected as per this pact, so there is a need for the amendment, but whether it was relevant or not is still questionable. After 1950, the migration of people across the border continued to happen, and it took 5 years of deliberation by the parliament to make laws in this regard. Finally, in 1955, the Citizenship Act of 1955 came. The clear reading of this provision denotes that the whole act is drafted in the vision of the constitution makers. Parliament only recognised citizenship by birth³ but at that time, there was also no religion-based classification of the people in the mode of acquiring citizenship. The constitution also provides additional domicile requirements, but the Act of 1955 did not put forth any such additional conditions apart from the *jus soli* principle under Section 3. Later on, in the 1970s, there was an exodus of approximately 1.8 million people from Bangladesh to Assam within a span of 10 years, which led to agitation among students. The Assam Accord was entered into between the All Assam Students Union (AASU) and the government, and the government undertakes to protect and promote the linguistic identity, cultural heritage, and societal heritage of the Assamese people through law-making, administrative, and constitutional measures.⁴ And S.6A was inserted in the act of 1955 as per which those who entered Assam after 25th March 1971 were not considered as Citizens. By the amendment of 2019 the issue raised in Assam that it will under Assam Accord which object was to safeguard the identity of the region against infiltration.

Another amendment was brought in the act of 1955 where significant changes were made as per which the citizenship is granted only on the basis of *Jus Soli* principle were narrowed down because the exodus results in hampering the limited resources of the country.

Amendment made to S. 3 as per which people were divided into two classes as to those who were born before and after the commencement of this amendment and those who were born after the commencement, for them, another condition was that from both of the parents, one of them must be a citizen at the time of birth. As per the Amendment of 2003, another class was added, according to which people born after this enactment can only acquire citizenship if both of their parents were citizens or one of the parents is a citizen and the other is not an illegal migrant. Then the rule of 2004 came, which empowered the district collectors to register the individuals as citizens to persons having Pakistani citizenship but who are Hindu minorities

³ Principle of Jus Soli, regardless of citizenship of parents, grants citizenship by birth.

⁴ Assam Accord (1985) para 3.

and also to members of the minority Hindu community who are Pakistan Nationals. The passport rules were amended in 2015, which allow exemption from the passport requirement for a person who arrived before December 31, 2014, and who belongs to minorities communities in Bangladesh and Pakistan who took refuge in India for the reason of religious persecution and the consequences thereof.

So with the amendments to the Act of 1955, the exclusion of citizens increased throughout the years because of the increased number of illegal migrants. But narrowing down the people's participation in Indian politics through infiltration should be the method to avoid illegal migrants.

Citizenship (amendment) act of 2019

The government put the citizenship amendment bill in motion in 2016 and passed by house of people in January 2019 and in December 2019 in Council of States. Major change brought by this act, first attracts the eyes to the definition of the "illegal Migrants" '.

Position before amendment- the concept of illegal migrants were inserted in the year 2003 for the first time as per which when a person born in India but one of its parents is an illegal immigrant he will be excluded from the citizenship.⁵ Citizenship by way of registration is mentioned under S.5 as per which illegal migrants are not eligible to be the citizen of India by registration.⁶ An amendment was also made to S. 6 in such a way that illegal migrants are again exempt from citizenship by naturalization.

Position after 2019 Amendment: S. 2 (1-b) is inserted, which provides that a person who entered into India on or before December 31, 2014, and comes under the 6 minorities communities⁷ of Afghanistan, Bangladesh, and Pakistan, and as per S. 3 of the Passport Act and Foreigners Act or any of their rules, if any person is exempt, they will not be treated as illegal migrants. For certificates, a person qualified under S. 2 (1-b) can make an application to the Center or the authorities and such certificate of naturalization and registration makes the person the citizen of India from the date he entered the territory.⁸

⁵ The Citizenship act, 1955, S. 3 (c) (ii).

⁶ The Citizenship Act, 1955 s.5 (1) "...Any person not being an illegal migrant"

⁷ Hindu, Sikh, Jain, Chirstian, Buddhist, Parsi.

⁸ The Citizenship Act, 1955, s. 6B (2019).

Proviso added to S. 2(1-b) that all proceeding related to the illegal migration and citizenship against the person coming under S. 2(1-b) will be stand abetted because before the amendment person included in S. 2(1-b) were regarded as illegal migrants, may be cases regarding there migration is still pending in the courts or proceeding for citizenship is still pending in the court. This act also ensures that if any proceeding is pending relating to the illegal migration it will not disqualify such persons to be illegal migrants.⁹

Another major amendment to this act which is in limelite is the accelerated process of citizenship by Naturalisation. Generally the act says A person to be qualified for citizenship by Naturalisation as per which person must have been in service under the Government, or residues in India or both for not less than 11 years out of 14 years preceding the Mandatory residence period of 12 months before submission of the application. But the amendment provides that a person covered under S. 2(1-b) only 5 years of residence is required in place of the 11 years.

For what reasons and on what ground the bill of 2019 is represented?

While presenting the bill to the parliament and to the joint parliamentary committee, the ruling party pleaded that the transborder migration of people from the three neighboring countries mentioned above is not new but a historical fact. The six minority communities need special attention and care. Many people of Undivided India live in the three countries, each belonging to a different religion, and they were not able to prove their origin and had to wait for such a long period only to get citizenship by naturalization. In 2015's passport rules, only Pakistan and Bangladesh were there, but the government thinks that various disturbances have been made by the Taliban and other groups over the people of these minority communities by Pakistan, so as per the 2019 Amendment, Afghanistan was also included. But the question raised: if this reason is to protect the migrants who are in such a position under religious persecution, then why were Myanmar and Sri Lanka not added? The government pleaded that in December 2011, an SOP was issued for the protection of people who were the victims of such persecution¹⁰ and such refugees were dealt there under as it is.

⁹ The Citizenship Act, 1955, s. 6B (3) proviso (2019).

¹⁰ On the basis of sex, to the nation they belong to, the religion they follow, ethnic identity or belonging to a particular group which is either political or social, gender, and any other political views.

When question raised that this act violates the right of equality¹¹ and freedom to religion,¹² The home ministry countered that before the bill came into motion, views were gathered from the Ministry of Law and Justice, the Ministry of External Affairs and Overseas Indian Affairs, and the Secretariat, but such solicited mere opinion in no way justifies that the act is not against Articles . 14 and 25. Another view given by the Home Ministry is that they were given power under Article 11, which is a plenary power as to citizenship.

The government took another view: the three neighboring states are not secular, which means they have their own state religion. But on the basis of this reason, if the questioned law has been drafted, why are Sri Lanka and Myanmar not included, as both countries have their own state religions too?

Constitutional integrity and legality of CAA:

The basic structure of the constitution and the fundamental rights are the most important parameters in order to check whether the law to be implemented is legitimate or not. The right to equality is provided under Art. 14. Advantage is given to the six minority communities through the accelerated process of citizenship by naturalization, excluding Muslims. On the basis of birth, descent, naturalization, and the process of registration, citizenship is granted under the Act of 1955, which makes illegal migrants ineligible for the same. Whenever class legislation is passed, the legislation to be legitimate under Art. 14 must meet two conditions: there must be a nexus between the object of the act and the differentiation made, and the differentiation must be reasonable. If the object sought by the government is to protect the victims of religious persecution, then there is no reason to exclude many communities from it; it also excludes the other countries except these three, and then it excludes other different forms of persecution and also excludes the people who entered India after the date mentioned.¹³ As discussed earlier, the religion-based classification was first introduced into the concept of citizenship. A right of citizenship, as mentioned in Art. 5-11, exclusion on ascriptive criteria, changes its direction from the idea of citizenship as a right.

¹¹ The Indian Constitution, Art. 14.

¹² The Indian Constitution, Art. 25.

¹³ Dr Abhinav Chandrachud, 'Secularism and the Citizenship Amendment Act' (2020) 4 Indian Law Rev.

Another point is that in the three neighboring countries, not only the six minority communities have become victims of religious persecution, but there are also some Muslim victims who are minority in number, like Ahmadiya in Pakistan, Hazara in Afghanistan, and Rohingya in Myanmar. Their citizenship by naturalization is not accelerated, and they have to wait for 11 years to be eligible to acquire Indian citizenship. Article 25 grants freedom of religion to all, regardless of whether he is a citizen of India or not. And the term “equally entitled to” in art. No differentiation can be made by the government on the basis of religion alone.

If CAA is followed by NRC:

the combined effect of both NRC and CAA will be hazardous. There is a fear among the excluded community that if the NRC, i.e., the National Register of Citizens, is followed, the excluded community of CAA will again be excluded because of a lack of evidence, and people will become stateless, as happened in Assam. If it becomes applicable throughout India, persons included under S. 2(1-b) will be protected as per CAA, but the excluded community will again be left out.

Response from different areas towards CAA:

The unreasonable religious-based classification led to various protests in different parts of India, mainly in institutions like Aligarh Muslim University and Jamia Millia Islamia. On the charges of hate speech and sedation, many JNU students were arrested. The Kerala government passed a resolution in December 2019 in order to scrap the CAA. A resolution requesting equality must be ensured for all people of all religions was passed in the Legislative Assembly of Punjab. As there is inclusion of 3 countries, only the Rajasthan legislative assembly also opposed the bill for the exclusion of other countries like Bhutan and Myanmar, followed by the state of West Bengal. The question raised is whether the states are empowered to pass such resolutions, and the SC held that such resolutions passed by the states are only advisory in nature, having no enforceability.¹⁴

A petition has been filed in the Supreme Court and seeks a suspension of the Citizenship Amendment Rules until the Apex Court adjudicates the constitutional validity of CAA 2019.

¹⁴ The Hindu, 'States can pass Resolutions against Central Laws: Supreme Court' (19 March 2021) <http://www.thehindu.com/news/national/states-can-pass-resolutions-against-central-laws-supremecourt/article34112706.ece/amp/> accessed 19 March 2021.

On March 11th, notification was made by Parliament as to the implementation of CAA 2019, 4 years after it was passed by Parliament. A total of 237 petitions relating to CAA are pending in the Supreme Court, among which 236 are against it, as mentioned by Advocate Ashwini Upadhyay. The Supreme Court has granted 3 weeks of time to center, and the hearing will be on April 9. CJI Chandrachud, Justice JB Pardiwala, and Manoj Mishara are going to preside over the matter.

Conclusion:

The Act of 2019 not only classified the people on the basis of religion but also gave various advantages to acquiring citizenship. The law relating to citizenship is the most important law of the land, as it ascertains the identity of a person, fixes a relationship between the country and the person, and provides it with civil, political, and social rights. The absence of any religion-based classification of citizenship in the constitution clearly shows the intention of the constitutional makers that our concept of citizenship must be just and fair, but amendments on the basis of religion depart from the intention of the constitutional makers. Religious freedom and equality are granted to all people, including non-citizens so the law relating to citizenship must be in conformity with the fundamental rights of Art. 14 and 25. So one of the alternative courses to CAA will be protection for all persecuted communities; specific mention of religion, countries, and cut-off dates must be removed, and protection should be given to victims of all types of persecution faced by anyone adhering to the right to equality and freedom of religion.