



## CITIZENSHIP (AMENDMENT) BILL 2016:-A CRITIQUE

**Dr. Sandeep Kumar**

Assistant Professor, Himachal Pradesh University Institute of Legal Studies, Shimla, Himachal Pradesh, 171004

### ABSTRACT

Recent decision of the Government of India to grant citizenship to the illegal migrants belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian religious communities coming from Afghanistan, Bangladesh or Pakistan has generated a lot of debate. The Citizenship (Amendment) Bill, 2016 proposed to grant citizenship to illegal migrants of the aforesaid communities. The migrants shall be settled in State of Assam. The people of Assam are showing strong resistance against this decision of the Government based on several justifications. Similarly, the bill excludes certain categories of illegal migrants to seek citizenship which has raised several constitutional issues. In this background, the purpose of the paper is to evaluate the impacts of the amendment and its social and constitutional implications.

### KEYWORDS

Citizenship, Migrant, Constitution, Assam

### A. Introduction

Citizenship is one of the basic requirements of human beings to live and enjoy civil and political rights in a sovereign state. It is the citizenship that confers on an individual several social and economic benefits. A person who is a citizen of any nation is a legal resident of that country. Citizens are entitled to enjoy all rights and opportunities available to them. The importance of the citizenship itself lies in the fact that no country confers all rights equally on citizens and the non-citizens. Therefore, in order to take benefits of several social and economic rights, a person must seek citizenship of a nation in which he or she is willing to live in. A person having no citizenship can be termed as stateless. A person can acquire citizenship as per the norms of the country. Generally a person assumes citizenship automatically if he is born in certain country or his parents are citizens of that country or citizenship can be acquired by marriage. It can also be acquired by people as they move from one country to another, provided certain qualifications are met.

In India a person becomes a citizen of India if he or she fulfils any of the aforesaid conditions. Any persons from across the World can acquire Indian citizenship as per law and norms made time to time by the government of India. In India the acquisition of citizenship is governed by Indian Citizenship Act, 1955. There are several grounds mentioned in the Act for the acquiring Indian citizenship. However, recently the government of India has proposed certain amendments in the principal Act. The Citizenship (Amendment) Bill, 2016 proposed to amend the Citizenship Act. As per the proposed amendments, the illegal migrants belonging to the *Hindu, Sikh, Buddhist, Jain, Parsi or Christian* religious communities coming from Afghanistan, Bangladesh or Pakistan shall be granted Indian citizenship. The Bill created panic in state of Assam because it has been proposed that the migrants from these countries will be given Indian citizenship and would be settled in State of Assam. This decision of the govt. has received strong resentment from the people of Assam.

Having this background in mind the objective of the present paper is to analysis the proposed Citizenship (Amendment) Bill, 2016. The paper would evaluate the Amendments made along with the provisions of the principal Citizenship Act, 1955. The paper would also evaluate the impacts of this bill on the people of Assam. But before moving ahead, it is desirable here to locate the origin and roots of the citizenship in pre and post Constitution phase in India for clear understanding of the concept.

### B. Concept of Indian Citizenship

Till 1947 India remained under the British Rule. During this period all Indians were British subjects. Even after independence and before commencement of the Constitution of India, the Indians were British subjects by virtue of Section 18 (3) of the Indian

Independence Act, 1947, unless they already had acquired citizenship of United kingdom or any other country. On commencement of the Indian Constitution, the Indians ceased to be British subjects.

The Constitution of India provided for Citizenship to Indians under Article 5 to 11 of the Constitution of India. By virtue of Article 11 of the Constitution the Parliament enacted the Citizenship Act, 1955. In the year 1961 India acquired certain territories such as as Goa, Daman and Diu, Dadra and Nagar Haveli, Pondicherry and Karaikal etc. In the year 1975 Sikkim was also merged with India and became a constituent state. In order to expressly provide the citizenship for people in these territories the Government of India issued the Goa, Daman and Diu (Citizenship) Order, 1962, Dadra and Nagar Haveli (Citizenship) Order, 1962 and Citizenship (Pondicherry) Order 1962, in exercise of its powers under section 7 of the Citizenship Act, 1955 and for Sikkim, the President of India extended the Citizenship act, 1955 and the relevant rules under Article 371-F(n) of the Constitution of India. The Citizenship Act which was enacted in the year 1955 was amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act, 1992, the Citizenship (Amendment) Act, 2003, The Citizenship (Amendment) Act, 2005 and Citizenship (Amendment) Act, 2015. Now the Government of India is ready to introduce certain amendments in this Act by The Citizenship (Amendment) Bill, 2016.

### (a) Citizenship within Constitution of India

Articles 5 to 11 enshrined in the Part II of the Constitution of India contain the law pertaining to the citizenship. The Article 5 provides for citizenship by domicile. To claim citizenship under this article there are two conditions. Firstly, at the time of the commencement of the Constitution, he must have his domicile in India. Secondly, such person must fulfil any one of the following three conditions (a) he was born in the territory of India, or (b) either of his parents was born in the territory of India, or (c) he has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement of the Constitution of India.

Article 6 further grants citizenship to persons who migrated from Pakistan to the present India before the commencement of the Constitution of India, whereas Article 7 confers citizenship on those persons who migrated to Pakistan after announcement of Independence but later returned back to India. But citizenship by virtue of Article 6 was available only after following certain conditions of registration. These two provisions were definitely having religious attachments. The Article 6 provided shelter to Hindus who migrated from Pakistan whereas Article 7 provided shelter to Muslims who went to Pakistan but returned later on. Article 8 provided for citizenship to those persons whose parents

or grandparents were born in India, but are resident of abroad. Such persons will be citizens of India if they have been registered so by the diplomatic or consular representative of India in that country concerned. The Article 9 provides that any person who acquired the citizenship of any other country will not be entitled to the citizenship of India. Article 10 says that all citizens shall continue to be citizens of India, whereas the Article 11 confers power to make rules regarding citizenship on the Parliament. In fact the Parliament has power to make rules regarding citizenship, naturalisation and aliens.

### C. The Citizenship Act, 1955

The makers of our constitution did not give a complete code of citizenship and left modification and regulation of citizenship rights to the Parliament. Therefore, in the year 1955 by virtue of Article 11 of the Constitution the Parliament passed a comprehensive law for dealing with citizenship. The main objective of the Act is to provide for the attainment and termination of Indian citizenship. The provisions of the Act may be broadly divided into three parts i.e. acquisition of citizenship, termination of citizenship and supplemental provisions. The Act provides five modes of acquiring the citizenship of India. The modes are acquisition of citizenship by birth, descent, Registration, **naturalisation and by incorporation of territory. The Act also provided for loss of citizenship by renunciation<sup>2</sup>, termination<sup>3</sup> and deprivation.**

This Act was amended for the very first time with the help of the Citizenship (Amendment) Act 1986. It provided that any person who was born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act i.e. on 1 July 1987, is a citizen of India by birth. In the year 1992 with the help of the Citizenship (Amendment) Act 1992, the law of citizenship by descent was altered. Now it provided that a person born after 26 January 1950 but before the commencement of the Act shall be a citizen of India if the father is Indian at the time of birth; after the commencement of the Act, the person shall be Indian if either of the parents is Indian.

The Citizenship Act was again amended by the Citizenship (Amendment) Act, 2003. It provided that a person born in India on or after 1 July 1987 is a citizen of India, if, either parent was a citizen of India at the time of the birth. Those born in India on or after 3 December 2004 will be considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth. It also provided that from 3<sup>rd</sup> December, 2004 onwards, persons born outside India shall not be considered citizens of India unless their birth is registered at an Indian consulate within one year of the date of birth. In certain circumstances it is possible to register after one year with the permission of the Government of India. The application for registration of the birth of a child must be made to an Indian consulate and must be accompanied by an undertaking in writing from the parents of the child that he or she does not hold the passport of another country. This Act was again amended by Citizenship (Amendment) Act, 2005. But this time no major changes were brought in this act except that in place of two years mentioned in Section 5 the words one year were inserted. Now it made clear that before making application for citizenship a person must be residing within the territory of India for a minimum period of one year. It will be pertinent to mention here that a person who is residing in India for last 11 years can apply for citizenship of India.

### D. The Citizenship Amendment Bill, 2016

The Ministry of Home Affairs, Govt. of India, drafted the Citizenship (Amendment) Bill, 2016 on July 19, 2016. This Bill seeks to amend the principal Citizenship Act of 1955. This Bill has now been referred to a joint Parliamentary committee of both the houses, under the chairmanship of Dr. Satyapal Singh for examination and presenting a report to the parliament after considering the views and suggestions of individuals and associations/bodies concerned. This Bill seeks to allow illegal migrants belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or

Christian religious communities coming from Afghanistan, Bangladesh or Pakistan to not be imprisoned or deported. Under the Bill, such persons shall not be treated as illegal immigrants for the purpose of the Citizenship Act. It also provides that the minimum years of residency in India to apply for citizenship shall be reduced from at least 11 to six years for these migrants. Which means the Hindus from Afghanistan, Bangladesh or Pakistan who cross the borders illegally can claim Indian citizenship after six years. Interestingly this Bill, however, does not extend to illegal Muslim, Jews, Bahais etc. migrants.

### (a) Objects of the Amendment Act

As per the statement of object and reasons mentioned in the Bill the amendment has been proposed to make eligible the abovementioned persons of minority community for applying for Indian Citizenship since their presence in India is illegal hence they are ineligible to apply for the same. The other object is that so many persons including the aforesaid minority are unable to produce proof of their Indian origin; hence they have to apply for citizenship by naturalisation under Section 6 of the Act, which requires a minimum residency of 12 years. Therefore, the amendment proposes to reduce this period to 7 years. Lastly the Bill aims at registration of Overseas Citizen of India (in short OCI) cardholders may be cancelled if they violate any law.

### E. Criticism of the Bill

The bill has been criticised by legal luminaries, academicians and several political leaders. There have been several reasons behind opposition of these proposed amendments. Moreover, if people would be settled in state of Assam or in any other part of the country there is probability for disruption of law and order because people of that State may oppose this decision of the government. Some of the major grounds and reasons of criticism of the Bill are as follows.

### (a) Threat to Unity and Integrity of India

The preamble of the Indian Constitution imposes obligations upon government of India to preserve and defend the unity and integrity of India. But the amendment proposed in the Bill may create chaos in Assam which may distort the unity and integrity of India. The people of Assam had reason to oppose this decision of the government. The reason is that this Bill contradicts the Assam Accord of 1985. As per this accord, all illegal migrants heading in from Bangladesh after March 25, 1971, would be deported. This accord was signed between the Government of India and Assam Government on one side and All Assam Students Union, All Assam Gana Sangram Parishad on the other side. This Accord ended a six years long mass movement demanding the deportation of illegal immigrants because these immigrants were threatening the culture, identity and above all the economic future of people of Assam. It is worthy to mention here that Section 6A was inserted into the Citizenship Act, 1955 that provides for special provisions as to citizenship of persons covered by the Assam Accord. Thus the Bill definitely goes against the settled terms of Assam Accord.

### (b) Violation of Constitutional right to equality

Article 14 of Indian Constitution guarantees right to equality to all. The protection of this right is available to all irrespective of their nationality and citizenship. But the Bill goes against the well settled principle of reasonable classification enshrined in the Article 14 of the Indian Constitution. The Bill provides for an opportunity to a particular community to seek citizenship of India and denies the same to the other communities despite of the fact that the fundamental right of equal treatment is available to each and every person whether citizen or non-citizen.

### (c) Against Secularism

India is a secular state. The grant of citizenship on the basis of religion goes against the settled principle of secularism in India. Although the term religion is not explicit in the text but it is deeply embedded in it.

### (d) Constitutional Issues

It is also true that the Government of a State shall always try to

protect the interest of its own people. Therefore in an over populated country like ours granting citizenship to outsiders will affect the culture, identity and the economic growth of citizens. Thus the question of violation of Article 21 will arise. But at the same time it is also a reality that Article 21 can be claimed by any person. Here the question is that of humanity in general. But providing citizenship to foreigners will definitely curtail the facilities of existing Indian citizens.

#### **(e) Vague procedure to cancel OCI registration**

The Bill allows cancellation of OCI registration for violation of any law. But the offences covered under this have not been mentioned, hence, OCI can be cancelled for petty offences like parking in a no parking zone.

#### **F. Conclusion and Suggestions**

The foregoing discussion makes it amply clear that the Government of India is trying to confer citizenship on foreigners on the basis of religious pretext. The proposed amendment is unprecedented. Till date religion has never been identified in the citizenship law as a ground for distinguishing between citizens and non-citizens. It is against the principle of secularism. If India is really interested to remain secular then this Bill shall not be passed in the present objectives. Similarly in order to avoid burden of foreigners on the limited resources of our country, better it would be to avoid such amendments but if this Bill is truly a humanitarian move there the benefits under the bill should be conferred to all religious communities. The government of India should not forget the philosophy of India and Indian saints and sages that the principle of *vasudev kutumbkam* which means that the entire world should be treated like a family. It leaves no scope for discrimination to the government.

#### **References:**

1. H.M. Seervai, Constitutional Law of India (4<sup>th</sup> edn., 2002).
2. M.P. Jain "Indian Constitutional law," (5<sup>th</sup> edn., 2003)
3. S.K. Kapoor " International Law and Human Rights (17<sup>th</sup> edn., 2009)