

CITIZENSHIP LAWS OF INDIA WITH A CRITICAL ANALYSIS OF THE CITIZENSHIP (AMENDMENT) ACT, 2019 AND THE NATIONAL REGISTER OF CITIZENS

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ABSTRACT

The concept of citizenship includes a set of rights and duties for an individual. Citizenship provides an identity, bestows a status, and gives a notion of certainty to an individual. There have been lot of debates regarding the grant of citizenship to immigrants and refugees. Different nations have different laws in this regard. The Citizenship Act of India, 1955 has undergone many amendments and some of them have sparked debates and discussions. The Citizenship (Amendment) Act of 2019 has sparked country-wide protests in India and has been criticised for the overt use of religion as a criterion for the citizenship laws. The declaration by the Home Ministry of India about the country-wide application of the National Register of Citizens has also not been well-received on the grounds of its poor results in the state of Assam. In this paper, the researcher has examined the controversial provisions of the Citizenship (Amendment) Act, 2019. The researcher has further examined the origins and the challenges posed by the National Register of Citizens in Assam. This paper also deals with the connections between the aforementioned amendment act and the aforementioned citizen register as well as the National Population Register. The researcher concludes that the Citizenship Amendment Act, 2019 is flawed and the model of National Register of Citizens has to be improved. The researcher has given some suggestions for the improvement of the situation.

Keywords: Citizenship, amendment, registry, religion, controversial, flawed.

INTRODUCTION

‘Citizenship is what makes a republic, monarchies can do without it’. Active citizenship is more than political participation within the existing framework of laws and institutions and includes critical protests that question the founding framework.ⁱ Etymologically, citizen is one who lives in a city and citizenship is the status of the citizen, a symbol that gives recognition that a citizen is the resident of the city.ⁱⁱ The one end of citizenship is the set of rights enjoyed by the individual and the other is the set of duties one has to perform. Citizenship implies the membership of the state, bestows a status, and grants recognition but with these, it demands participation in the activities of the state.ⁱⁱⁱ

In India, the citizenship is conferred by the virtue of Part II of the Indian Constitution. Every person who has his domicile in territory of India and who was born in India, or either of whose parents was born in India, or who were resident in India five years prior to commencement of the Constitution, is a citizen of India.^{iv} The legislation dealing with this matter is The Citizenship Act of 1955. This act provides various modes of acquisition of Indian citizenship, deals with termination of Indian citizenship to a person, the citizenship certificates to be provided by the government etc.

The current Indian nationality law largely follows *jus sanguinis* (citizenship by descent) as opposed to *jus soli* (citizenship by right of birth within the territory).^v The Citizenship act has been amended in 1986, 1992, 2003, 2005, 2015, and most recently in 2019. The 1986 amendment restricted the citizenship by birth to require at least one parent to be an Indian citizen.^{vi} The 2003 amendment further restricted this aspect by requiring that a parent cannot be an illegal immigrant {Sec. 3 (c) (ii)}. This amendment also mandated the construction of National Register of Citizens by the Indian government {Sec. 12}.

The 2019 amendment has sparked a lot of controversy in India. It is contended that religion has been overtly used as a criterion under Indian citizenship laws. During the discussions over the Citizenship (Amendment) Act 2019 {hereinafter CAA}, the declaration of Home Ministry of India to start a nationwide National Register of Citizens (hereinafter NRC) has sparked many debates which stem from NRC’s poor record in the state of Assam. The researcher has focussed on the issues arising out of CAA, the problems of NRC in Assam, and a brief description of the NPR. The purpose is to examine the validity and practicality of these laws. It can be

hypothesised that the current amendment to the citizenship laws of India is flawed and has to be changed immediately for maintaining the secular nature of the Indian republic.

THE DISPUTED PROVISIONS OF CAA, 2019

The Sec. 2 of CAA 2019 amends the 1955 Citizenship Act for giving eligibility to illegal migrants who are Hindus, Sikhs, Budhhists, Jains, Parsis, and Christians from Pakistan, Afghanistan, and Bangladesh, and who entered India on or before 31st December, 2014 {Proviso to Sec. 2 (1) (b) of 1955 Citizenship Act). As per sec. 3 of the CAA 2019, the Central government is empowered to provide certificate of naturalisation to the abovementioned categories of people coming from the three aforementioned countries and the period of naturalisation for those categories is relaxed from 11 years to 5 years.

The tribal areas of Assam, Meghalaya, and Tripura as well as areas regulated through the Inner Line Permit, including Arunachal Pradesh, Mizoram, and Nagaland are excluded from the purview of this act.^{vii}

ISSUES REGARDING THE CAA, 2019

- The amendment was made to protect the victims of religious persecution. But there is no mention about the Muslim community in the act. Ironically, the three countries- Pakistan, Afghanistan, and Bangladesh that the act focuses upon are Muslim-majority countries. Privileging only a specific form of persecution i.e. the religious persecution over all other forms of persecution of minorities is arbitrary and discriminatory. For example- Ahmadi and Shia Muslims face religious persecution in Pakistan or Hazara (Shia) Muslims from Afghanistan are equally persecuted in consonance with these communities. There is violation of article 14 of the Indian Constitution.^{viii}
- No concern is there about the victims of religious prosecution in countries other than the three aforesaid countries.
- The areas of North-East India included under the purview of the act (Large areas of Assam, Meghalaya, and Tripura) poses the danger of massive influx of the immigrants which may alter the demographic and cultural uniqueness of the areas.^{ix}

CAA, 2019 has made 4 classifications, namely^x:-

- (i) Between Muslim and non- Muslim migrants from Pakistan, Afghanistan, and Bangladesh.
- (ii) Between migrants from the three aforesaid countries and those from other nations.
- (iii) Between victims of religious persecution and other forms of persecution.
- (iv) Illegal migrants entering India on/before 30th Dec. 2014 and those entering after that.

These classifications are discriminatory in nature and violate the equality clause within the Indian Constitution.

A BRIEF RECORD OF NRC IN ASSAM

The NRC, mandated by the 2003 amendment to the 1955 Citizenship Act, has a purpose to document all the legal citizens of India so that the illegal migrants can be identified and deported.^{xi} The Assam experience of the NRC has been bad with the reports about a large number of bona fide citizens having been left out of the NRC and no clarity about how many illegal immigrants were identified in the exercise, which essentially asked every resident to prove her Indian citizenship.^{xii}

The NRC traces its history back to the era of 1951 where the people belonging to the state had to prove that they lived in the state at that point of time or their names appeared in the electoral role before March 24, 1971. If they were able to prove any of these criteria, then they were deemed to be the “citizens of the country” unless they were declared to be a ‘foreigner’.^{xiii} The government marked these people as ‘doubtful voters’ and came up with Foreigner’s Tribunals (FTs) to determine their status.^{xiv} On 30th July, 2018, the NRC authority published the initial list of citizens which showed that about 4 million people had been excluded from citizenship and on August 31, 2019, the final list showed deprivation of citizenship of about 2 million people.^{xv}

Various challenges are there regarding the exercise of NRC and functioning of FTs in Assam. These are^{xvi}:-

- There is lack of proper training for the members of the tribunal. Appointed members often have negligible knowledge about the conditions in Assam. The extension of their tenure is basically on their performance i.e. the number of people they could declare as foreigners.
- Very less time for filing a petition and producing relevant documents is given to those declared as foreigners. However, the authorities take a lot of time in providing documents to the need people.
- The people are often declared foreigner on insufficient grounds, for example- a person was declared foreigner as he couldn't remember his grand-father's voting constituency.
- Even minor variance in age or name acts as a severe deterrent to those who claim to be the citizens of India.

The Illegal Migrants (Determination by Tribunals) Act came in 1983. Its purpose was to expedite the process of identification and deportation of illegal immigrants in Assam. The act shifted the burden of proof to prove a person as illegal immigrants upon the authorities and made certain other provisions that made the deportation of illegal immigrants difficult. The apex court struck down the act on grounds of violating articles 14 and 355 of the Constitution.^{xvii}

The aforesaid judgement's impact has to be recognized to acknowledge the impact of statelessness that can be created throughout the nation if NRC is applied in the current form.

WHAT IS NPR?

It is the register of usual residents in the country. Every usual citizen of India is to be mandatorily registered in the NPR. A usual resident is defined as a person who has resided in a local area for the past 6 months or more or a person who intends to reside in that area for the next 6 months or more. The objective of the NPR is to create a comprehensive identity database of every usual resident in the country. The database would contain demographic as well as biometric particulars.^{xviii}

CONNECTION BETWEEN CAA, NRC, AND NPR

The exclusion of Muslims as per the language of the CAA, 2019 raises the concern that it provides a shield to the non-Muslims who can claim to be victims of religious persecution but no such benefits are there for Muslims.^{xi} The Assam model of NRC has shown that even some minor lapses in documentation can lead to deprivation of citizenship. Muslims leaders have interpreted that the CAA-NRC package that Muslims can be targeted as foreigners by considering the documents as insufficient.^{xx}

Various states (non-BJP ruled) vehemently oppose NRC. The declaration of a nation-wide NRC has resulted in suspension of work of NPR in states like West Bengal and Kerala. The Registrar General of India shall act as the National Registration Authority and Citizen Registration. This means NPR data can be directly used in NRC. All depends how the government uses the NPR data.^{xxi}

SUGGESTIONS

- ❖ The Muslims are to be added in the categories of migrants in the CAA, 2019 and the other arbitrary classifications are to be removed.
- ❖ The model of NRC should be improved. The guidelines given by the Amnesty International India can be referred to.
- ❖ The life of refugees is often worse than animals due to lack of adequate resources. The development standards are to be improved for effective accommodation of refugees.

CONCLUSION

India contains a medley of religious and linguistic groups. Religion is an important source of group identity and social solidarity in India. The Indian Muslims have often been systematically marginalized and political parties often reassert the notion of secular polity as per relevant scenarios. The notion of secular polity, which is the bedrock of Indian Constitution, has been reasserted by political parties in relevant contexts. After going through the relevant provisions of the CAA, 2019 and its connections with the NRC and NPR, the researcher

concludes that the CAA, 2019 violates article 14 of the Indian Constitution as it does not fulfil the two conditions required to pass the test for permissible classification, namely: (1) the classification must be founded on an **intelligible differentia** which distinguishes persons/things grouped together from those left out, and (2) the differentia must have a **rational nexus** with **the object** that is to be achieved.^{xxii}

The researcher opines that the provisions of the CAA and declaration of country-wide adoption of a faulty model of NRC is another step in arbitrary marginalization of Indian Muslims. There already has been a lot of unrest in many places in India regarding the CAA, 2019. The government ought to amend or revoke the CAA, 2019, and in future, should take care of the fundamentals of constitution and secular nature of Indian Constitution before passing such laws.

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