

Citizenship In India

Niharika Prajapati

Abstract

A citizen is a legally recognized subject or national of a state. Citizen is a native or naturalized person who owes allegiance to a government and is entitled to protection from it.¹

Citizenship signifies the relation between the state and an individual. It is a legal status of a person being a member of the sovereign state. Citizens are members of the State and they enjoy all civil and political rights.

India has a single citizenship unlike USA. Thus, in India any person, who is deemed to be a citizen, shall be a citizen of the sovereign state of India.

This article briefly defines citizenship and describes the Constitutional and Statutory provisions related to it. It also discusses the burning issues of the Citizenship (Amendment) Act, 2019 (CAA) and the National Register of Citizenship (NRC) and why was it so opposed by a large number of people as soon as it came into effect.

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I. Citizenship

The Constitution of India dedicates a whole chapter to citizenship.² Although the Constitution does not specifically define “citizen”, it clearly determines who can be a citizen of India with respect to commencement of the Constitution. According to the provision, a citizen of India shall be one who has domicile in the territory of India and who is either born in India or either of his parents was born in India or who has been ordinarily a citizen of India for not less than five years immediately before the commencement of the Constitution.³

The Constitution also provides of citizenship of migrants from Pakistan after partition subject to conditions that he or either of his parents or grandparents was born in India as defined under the Government of India Act, 1935 and if such person has migrated before 19th July 1948, he has ordinarily been residing in India since such migration, or if such person has migrated after the said date, he has been duly registered as a citizen.⁴

At the same time excludes the persons who have migrated to Pakistan after 1st March 1947.⁵ Even such persons who are of Indian origin and residing outside India may be deemed to be citizens if registered as the same by the diplomatic or consular representative of India.⁶

A person shall not be deemed to be an Indian citizen if such person voluntarily acquires citizenship of any foreign state.⁷

Citizenship is a subject under the Union List of the Seventh Schedule of the Constitution of India and hence the Parliament has exclusive jurisdiction over the citizenship law in India. Article 11 of the Constitution empowers the Parliament to make provisions with respect to acquisition and termination of citizenship and all matters relating to it.

II. The Citizenship Act, 1955

The Citizenship Act, 1955 provides for the acquisition and determination of Indian citizenship. It was enacted on 30th December, 1955. According to the Act, citizenship in India can be acquired in the following ways:-

1. By birth
2. By descent
3. By registration
4. By naturalization
5. By incorporation of territory

CITIZENSHIP BY BIRTH- Every person born in India on or after 26th January, 1950 but before 1st July, 1987 or on or after 1st July 1987 but before commencement of the Citizenship (Amendment) Act, 2003 where either of

¹ <https://www.merriam-webster.com/dictionary/citizen>

² Chapter II of the Constitution of India

³ Article 5 of the Constitution of India

⁴ Article 6 of the Constitution of India

⁵ Article 7 of the Constitution of India

⁶ Article 8 of the Constitution of India

⁷ Article 9 of the Constitution of India

his parents is a citizen of India at the time of his birth or on or after the commencement of the Citizenship (Amendment) Act, 2003 where either both his parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth.⁸

CITIZENSHIP BY DESCENT- Any person who is born outside India on or after 26th January 1950 but before 10th December, 1992 and his father is a citizen of India at the time of his birth or who is born on or after 10th December, 1992 and either of his parents is a citizen of India at the time of his birth subject to conditions that if such parent is also a citizen by descent, the person will not be considered a citizen unless his birth is registered at an Indian consulate within one year or such parent is in a service under the Government of India.⁹

CITIZENSHIP BY REGISTRATION- The following persons may be registered as a citizen of India on application made in this behalf, subject to the condition that he is not an illegal migrant:-

1. Any person of Indian origin who is ordinarily resident in India for at least seven years before making such application.
2. Any person of Indian origin who is ordinarily resident in any country or place outside undivided India.
3. Any person who is married to a citizen of India and is ordinarily resident in India for seven years before making such application.
4. Any minor children of persons who are citizens of India.
5. A person of full age and capacity whose parents are registered as citizens of India after residing in India for not less than seven years and being of Indian origin or have been granted a certificate of naturalization by the Central Government.
6. Any person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making such application.
7. Any person of full age and capacity who has been registered as an Overseas Citizen of India for five years and who is ordinarily resident in India for twelve months before making such application.¹⁰

For the purpose of registration, an oath of allegiance specified in the Second Schedule has to be taken by the applicant and only then will such applicant be registered as a Citizen of India.

Central Government is empowered to order registration of any person who has renounced or has been deprived of his Indian citizenship or the same has been terminated.

CITIZENSHIP BY NATURALIZATION- For a grant of certificate of citizenship of India by naturalization, any person of full age and capacity, may apply to the Central Government.¹¹ The qualifications for naturalization are as follows:-

1. The applicant must not be a citizen of any country where citizens of India are prevented by law from becoming citizens of that country by naturalization.
2. He is a citizen of any country.
3. He has either resided in India or been in service of a Government in India or partly the other, throughout the period of twelve months immediately preceding the date of such application.
4. During the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years.
5. He is of good character.
6. He has an adequate knowledge of a language specified in the Eighth schedule of the Constitution of India.
7. In the event of a certificate of naturalization being granted to him, he intends to reside in India, or to enter into, or continue in, service under a Government in India or under an international organization of which India is a member or under a society, company or body of persons established in India.¹²

CITIZENSHIP BY INCORPORATION OF TERRITORY- In case any territory becomes a part of India, the Central Government is empowered to specify the persons who shall be citizens of India.¹³

The Act provides for registration of overseas citizens of India, i.e. any person who is a citizen of another country but either was a citizen or was eligible to be a citizen of India on or after the commencement of

⁸ Section 3 of the Citizenship Act, 1955

⁹ Section 4 of the Citizenship Act, 1955

¹⁰ Section 5 of the Citizenship Act, 1955

¹¹ Section 6 of the Citizenship Act, 1955

¹² Third Schedule of the Citizenship Act, 1955

¹³ Section 7 of the Citizenship Act, 1955

the Constitution, or belonged to a territory that became a part of India after independence or who is a child or grandchild of such a citizen, may be registered as an overseas citizen of India.¹⁴ The rights of such citizens shall be determined by the Central Government. Such citizenship may also be renounced or cancelled.

The act also provides termination of citizenship in various ways like renunciation, termination and deprivation.

The Citizenship Act, 1955 has been amended several times in 1986, 1992, 2003, 2005, 2015 and most recently in 2019.

- The Amendment of 1986 restricted the Indian citizenship to those born in India prior to 1987 to either a mother or a father who was an Indian citizen. The Citizenship (Amendment) Act of 1986 effectively blocked jus soli citizenship to the children of couples who were both illegal aliens and to second-generation refugees from citizenship rights in India.¹⁵
- The Amendment of 1992 came with a view to eliminate discrimination against women in the matter of citizenship and their children, according to which, a person born outside India would be deemed to be an Indian citizen if either of his/her parents were Indian.¹⁶
- The Amendment of 2003 introduced and defined the notion of “illegal migrant”. It made illegal immigrants ineligible for citizenship by registration or by naturalization and disallowed citizenship by birth for children born in India if either parent is an illegal immigrant. It also introduced the notion of Overseas Citizen of India.¹⁷
- The Amendment of 2005 amended the provision relating to Overseas Citizen to expand its scope.¹⁸
- The Amendment of 2015 was also mainly in relation to Overseas Citizen schemes. It gave power to the Union Government to cancel the Overseas Citizen of India Card in certain cases.¹⁹
- The Amendment of 2019 made migrants, who had entered India by 31 December 2014, and had suffered "religious persecution or fear of religious persecution" in their country of origin, eligible for citizenship.²⁰

III. Citizenship (Amendment) Act, 2019 (CAA)

The Citizenship (Amendment) Act, 2019 was passed by the Parliament on December 11, 2019. The 2019 CAA amended the Citizenship Act of 1955 allowing Indian citizenship for Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities who fled from the neighboring Muslim majority countries of Pakistan, Bangladesh and Afghanistan before December 2014 due to "religious persecution or fear of religious persecution". However, the Act excludes Muslims.²¹ Under CAA 2019 amendment, migrants who entered India by December 31, 2014, and had suffered "religious persecution or fear of religious persecution" in their country of origin, were made eligible for citizenship by the new law. These types of migrants will be granted fast track Indian citizenship in six years. The amendment also relaxed the residence requirement for naturalization of these migrants from eleven years to five.

The CAA includes a clause that allows the government to revoke people' Overseas Citizens of India cards—an immigration status that allows foreigners of Indian ancestry to live and work freely in India—if they breach any laws, whether major or minor.

CONSEQUENCES OF ACQUIRING CITIZENSHIP- The Bill says that on acquiring citizenship:

- (i) Such persons shall be deemed to be citizens of India from the date of their entry into India, and
- (ii) All legal proceedings against them in respect of their illegal migration or citizenship will be closed.

EXCEPTION- Further, the Bill adds that the provisions on citizenship for illegal migrants will not apply to the tribal areas of Assam, Meghalaya, Mizoram, or Tripura, as included in the Sixth Schedule to the Constitution. These 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” under the Bengal Eastern Frontier Regulation, 1873. The Inner Line Permit regulates visit of Indians to Arunachal Pradesh, Mizoram, and Nagaland.

IV. CAA: The Burning Issue

The Citizenship (Amendment) Act (CAA) was passed by the Lok Sabha after midnight on December 10, 2019. Two days later, it was passed by the Rajya Sabha and became law after gaining the approval of

¹⁴ Section 7A of the Citizenship Act, 1955

¹⁵ Citizenship (Amendment) Act, 1986

¹⁶ Citizenship (Amendment) Act, 1992

¹⁷ Citizenship (Amendment) Act, 2003

¹⁸ Citizenship (Amendment) Act, 2005

¹⁹ Citizenship (Amendment) Act, 2015

²⁰ Citizenship (Amendment) Act, 2019

²¹The Gazette of India, ministry of law and justice, The Citizenship (Amendment)Act,2019

President of India. The CAA, a campaign promise of the ruling party BJP during both the 2014 and 2019 legislative elections, expedites the application and acquisition of Indian citizenship for non-Muslim immigrants from Muslim-majority Afghanistan, Bangladesh, and Pakistan. The rule basically offers persons from these nations' non-Muslim communities' refugee status within India while reserving the label of "illegal migrant" for Muslims only.²²

The CAA 2019 alters the Citizenship Act 1955 to offer Indian citizenship to a certain type of illegal immigrants.²³ The CAA provides Indian citizenship to immigrants who entered India on or before December 31, 2014, if they are Hindu, Sikh, Buddhist, Jain, Parsi, or Christian, face religious persecution, and are from Afghanistan, Bangladesh, or Pakistan. Furthermore, the Amending Act has been a source of contention among Indian citizens. The Indian Union Muslim League (IUML) approached the Honorable Supreme Court of India immediately after the law was approved, challenging the constitutional legitimacy of CAA 2019.²⁴

The Ministry of Home Affairs (MHA) recently failed to meet the deadline for notifying regulations under the CAA 2019.

The two parliamentary committees (committee on subordinate legislation) in the Lok Sabha and the Rajya Sabha had asked MHA to create the regulations that will regulate the CAA in the middle of CAA concerns and for more clarity. Legislation or sections of a law will not be enacted if the government does not adopt rules and regulations. In the lack of rules, the Benami Transactions Act of 1988 is an example of a comprehensive statute that remains unimplemented.

V. National Register Of Citizenship (NRC)

The NRC was only published once, in 1951. The NRC was initially adopted following the 1951 Census of India, and Assam was the first to update this NRC to include the names of individuals and their descendants whose names were successfully registered in the 1951 NRC or were located in any of the electoral registers till midnight on March 24, 1971. The primary goal of introducing and updating the NRC in Assam was to identify illegal immigrants who had fled to Assam from Bangladesh during the 1971 conflict with Pakistan.

Many people in Assam are concerned about huge infiltrations from the eastern border, which are undermining Assamese culture and changing the demography of the region. The goal of the NRC update is to identify illegal migrants who came to Assam from Bangladesh after March 24, 1971. It also tries to determine if the persons seeking for their names to be included in the NRC are real Assam citizens. One of the primary conditions for identification was that the applicant's family members' names appear in the 1951 NRC or the electoral rolls up until March 24, 1971.

Because of the immigration into Assam since 1950, the native residents have been fearful about losing their cultural identity and the demographics of the state. In the late 1970s, university students in Assam, along with the All-Assam Students' Union, launched the Assam Agitation, which demanded the discovery and expulsion of illegal migrants in the state. The unrest was violent, bringing the entire state to a halt.

ASSAM ACCORD, 1985

To bring peace to the state, the All-Assam Students Union (AASU), the All Assam Gana Sangram Parishad, and the then-Central Government led by Rajiv Gandhi signed the Assam Accord in 1985. The Assam Accord stated that every foreigner who arrived in Assam between 1951 and 1961 would be granted full citizenship, including the ability to vote. Foreigners who arrived in Assam between 1961 and 1971 will be granted full citizenship except for the ability to vote, which would be denied for ten years, and those who arrived after 1971 will be deported.

Many complications developed during the Assam Accord's implementation due to significant legal issues. Many individuals were also slain following a mob attack on the Deputy Commissioner's office in Barpeta. An NGO named Assam Public Works petitioned the Supreme Court in 2009, requesting the identification and expulsion of illegal Bangladeshis in Assam. They also asked that their names be removed from the voter list.

The Supreme Court issued an order in 2013 requiring the completion of the NRC update by December 31st, 2017. Currently, the Supreme Court is in charge of overseeing the entire NRC update process. The NRC is updated in accordance with the Citizenship Act of 1955 and the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules of 2003.²⁵

²² United States Commission on International Religious Freedom, *The Citizenship (Amendment) Act in India* by Harrison Akins. https://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0_0.pdf

²³Section 2 of Citizenship Amendment Act, 1955

²⁴Indian Union Muslim League v. Union of India, WP (C) 1470/2019.

²⁵ Government of Assam, *Implementation of Assam Accord*

VI. Controversy Over CAA And NRC

It covers illegal immigrants who are forced to seek shelter in India due to persecution on the grounds of religion.

It sets 31st December 2014 as the cut-off date. This means the applicant should have entered India on or before the cut-off date to be eligible for the citizenship.

The news of passing the bill in the Lok Sabha came after the tweet of Mr. Amit Shah which reads as –

“We will ensure the implementation of NRC in the entire country. We will remove every single infiltrator from the country except Buddha, Hindus and Sikhs.” This controversial statement of Mr. Shah was about documenting the counting Indians to weed out undocumented citizens.²⁶ With the announcement of the final NRC on August 31, 2019 at 10 a.m. for the completion of the 1951 NRC update, several disputes arose, and some lawmakers openly criticized the document. According to sources, an Assam M.L.A. from the political party All India United Democratic Front (AIUDF) was discovered to be missing from the NRC. In this context, he stated that thousands of real Indians, particularly Bengali Hindus, were omitted off the final NRC list, although illegal aliens were included. The Supreme Court even denied re-verification of this draught list.

NRC IS NOT AN EXERCISE TO EXCLUDE MUSLIMS

Unofficial sources reveal that 1.3 million of the 1.9 million individuals removed from the NRC are Hindus and indigenous tribes of Assam. That explains why the BJP has refused to accept the NRC in Assam. A review of the 2003 rules for a national NRC finds that there is no provision that allows a legitimate Muslim citizen to be excluded from the NRC.

WHY IS ASSAM PROTESTING AGAINST CAA

Despite the fact that this Act includes refugees from three countries, the indigenous people of Assam are concerned that it would largely benefit illegal Bengali Hindu migrants from Bangladesh, who have established in significant numbers across the state. The Assamese are concerned that if Bangla-speaking Hindu immigrants from Bangladesh are allowed citizenship, they may outnumber Assamese-speaking inhabitants in the state. They use Tripura as an example, where Bengali-speaking Hindu migrants from Bangladesh now wield political power, pushing the native tribal people to the outskirts. In contrast to the rest of India, where many are questioning the exclusion of Muslims, the Assamese do not want immigration of any faith, Hindu or Muslim.

CAA EXCLUDES MUSLIMS

The CAA only applies to illegal Muslim immigration to India, not to legal Indian Muslim nationals. However, because the CAA would offer citizenship to non-Muslim illegal immigrants from three countries, only Muslim immigrants will be excluded from the NRC when it is implemented.

On paper, there is nothing wrong with numbering the country's legal citizens. However, if it is used as a foundation for discrimination or for other purposes, it becomes problematic. Furthermore, given the size of our population and other complexity, it will be a massive undertaking. This was clear in Assam, where even legitimate Indian nationals were supposedly rejected while numerous illegal migrants were purportedly included. Before embarking on this task, the government must also establish a policy for stateless persons. India does not yet have one, and the country cannot afford to hold illegal migrants in jail centers.

VII. Conclusion

The CAA would grant citizenship to non-Muslim illegal migrants from three countries who entered India before December 31, 2014. An honest NRC would bar illegal immigration of all religions. That, however, will be dependent on the government's will and a perfect structure, which will be a tremendous job for Amit Shah. There is nothing wrong with discovering illegal migrants, regardless of religion, but discriminating on the basis of religion is contrary to India's secular culture, especially because the CAA does not mention that it would protect persons who have faced religious persecution.

²⁶ Indiatoday.com