

Impact of Citizenship Act on Immigration-A Study with Special Reference to Indian Perspective

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ABSTRACT

This research is analysis the effect of Citizenship Act on Immigration. After The new Citizenship Amendment Act 2019, changing the position of the Assamese status, This Act provides the full freedom to those people who are identified to deportation from the NRC. Now they can get citizenship easily.

This Act only add to 6 communities to give the Citizenship and exclude one Communities from three countries. But this Act create confusion whether the Act pass the tests of classification or not, here we are finding the answer of all problems. what is right of immigrants to make the Citizen by this Act.

Keywords: -Art 14, Citizenship Amendment Act 2019, illegal immigrants, migration, Citizens, Assamese, Indian Constitution etc.

INTRODUCTION

The Citizenship of a person in India govern under article 5 to 11 of the Indian Constitution.

Under Article 11 parliament has a power to make law regarding acquisition and termination of Citizenship and all other matters relating to the Citizenship. The citizenship Act 1955 was the outcome of article 11 of the Indian constitution to make the law related to the Citizenship.³

This Act has Amended several times as 1986 ,1992, 2003 and 2015.

Recently this Act is introduced by the name of new Amendment of Citizenship Act 2019 which create controversy though out the India.

The person who voluntary obtain citizenship of any other country, he shall not be Indian citizen so long ⁴

There are two important terms here-

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³ M.P. Jain, Indian constitution Law 840 (LexisNexis, 8th edn. ,2019).

⁴ The Constitution of India, Art 9

1. The Citizenship acquired by the right of blood .it is also called jus sanguinis.
 - 2 The Citizenship acquired by right of birth with in the territory. it is also called as jus soli.
- Jus sanguinis is largely followed in India to get the citizenship.

The Act of the parliament of United Kingdom was The Government of India Act 1858.

Afterward a bill was introduced to move the control of government of India from East India company to the crown.

In the beginning, there were two sections -

The person who born in British India and also the Indian resident came under the Direct predominance to the British crown.

The person who is Indian resident and born in a princely state under the British government. India was recognised as the independence superiority of India.

OBJECTIVES

There are many goals which mentioned here as:

1. Legality of the Citizenship Amendment act 2019 under constitution of India.
2. Determine the effect on Assamese by Assam accord 1985 which was introduced to identification and deportation of persons who had entered in Assam after prescribed time and recent scenario afterward introduction of the New Citizenship Act 2019.
3. An Analysis the concept of immigration with the effect of Citizenship Acts .

METHODOLOGY

This paper is based on Doctrinal research and it also comes under secondary source, where all material are collected with the help of text books, cases, report committees, statutes and judgements. The doctrinal research fall upon these sources where the researcher can conduct his study through legal reasoning.

AMENDMENTS OF CITIZENSHIP ACT 1955⁵

Citizenship Amendment Act incorporates major Amendments in years such as 1986,1992 ,2003 2005,2016,2019.

Before an Amendment of Citizenship Act 1986, the act says that if any person take birth in India he will be liable to get Indian citizenship but after the Amendment of 1986 act ,changed this provision and it said that the person birth should be in India but as well as his\ her one parents should be an Indian to acquire Indian citizenship.⁶

⁵ J N Pandey, Constitutional Law of India 46, (Central Law Agency, Allahabad 52nd edn. ,2015)

⁶ *Ibid*

Before 1992

If any person wants Indian citizenship then his\her father should be an Indian citizen and mother has no role in it.

When Amendment of Citizenship Act 1992 ended the discrimination against women and says that child's or the parents should be Indian citizen it can be mother or it can be father.

In the Amendment Act of 2003, the illegal immigrant definition was introduced, through this define the Amendment Act 2019 is in mess.

The Amendment Act of 2003 stopped the illegal immigrants acquiring Indian citizenship by the process of registration and Naturalization.

The Act of 2005 known for its major changes in the provision of Overseas Indian Citizenship.

In the case of *Mohammad Hassan Jafari Naeimi v. union of India and ors.*⁷ court held that the four illegal migrants who had entered into the country have a passport, Aadhaar card or birth certificate, were not sufficient to recognised their citizenship. it is necessary to get the citizenship for them that their parents were born in India.

ACQUISITION OF CITIZENSHIP

1.Citizenship by birth

The citizenship Act 1955 provides a person who has born in India shall be deemed to be a citizen of India at the commencement of the constitution on 26 January 1950 but before the beginning of the 1986 Act that person can acquire the citizenship by birth.it doesn't matter that his \her parents are Indian or non-Indians but this happened till 1987 only because around this time we realized that countries which our neighbour their citizens means the refugees and illegal immigrants who are coming to India while this time if their child take place in India then they are automatically eligible for Indian citizenship which is problematic issue so that's why after Amendment Act of 1986 ,the new time line was set up 1st July -3rd Dec 2003⁸.

According to this new time line whose ever is taking birth in India will get citizenship if their parent is an Indian but by this act the problem was not getting solved and

The new Act was introduced in 2003 which finally set this ,that if anybody is taking birth in India after 3rd Dec 2003 will get Indian Citizenship when his\her both parents are Indian or at least his\he any one parent must be an Indian and other, parents should not be an illegal immigrant .

Illegal immigrant defines under section 2(b)of citizenship Act 1955 it says that any traveller who comes to India without any valid passport and valid travel document.

⁷ (2006) 3 SCC 705

⁸ Sec 3, The Citizenship Act 1955

Or he is having valid passport but he has exceeded the permitted time limit to stay in India and any person found involve in all then this will be called as illegal Immigrants. Currently, the law of the land is this only if your birth place is India and both parents are Indian.

or one of the parents is Indian and other one is not an illegal immigrant then you will get citizenship by birth.

2.Citizenship by decent

Decent means the parents or Grandparents of any person is a Citizen of India at the time of his birth, section 4 says if anyone is taking birth outside India then also, he\she can acquire Indian citizenship by the help of their decent.

Major changes has been done in the section 4 ,After 26thjan 1950 ,whoever is taking birth outside India, they can get Indian citizenship if his \her father is an Indian citizen ,so by the reason of his father they were getting Indian citizenship but this was till 10 Dec 1992 because after that the amendment act of 1992 came into existence which says about gender neutrality .so this amendment act tells that after 10 Dec 1992 which ever person has taken birth outside India so this amendment because of their father or mother being Indian citizen he\she could get Indian citizenship but it was all till 3rd Dec 2004 only.

Again after the amendment which came and the current running law says that in 3rd Dec 2004 if any one's birth place is outside India then they will not get Indian citizenship as before under 1 year of that child's birth, their parents should go to that country to meet a Indian consulate and should register their child as Indian citizen by this undertaking that their child who is a minor doesn't has any other country's passport and currently this law only applies.⁹

3.Citizenship by registration

It says that the particular categories people if they can submit an application to the central government so they can also be registered as Indian citizens.

The term PIO is very important here means Person of Indian origin are those people whose birth or whose parents birth took place in undivided India means in British India.

Or whose parent's birth has been on that territory of India which has been included after 15 Aug 1947 like Sikkim and Pondicherry were part of India after the independence so all those people will be persons of Indian origin.

Categories of persons to get citizenship by registration -

- The person who is residing in India since last 7 years before making an application for registration or such person of Indian origin who is ordinarily resident in any country or place outside undivided India.

⁹ Sec 4, The Citizenship Act 1955

- Or such person who is married to Indian Citizen or minor children of Indian Citizens and a person of full age and capacity who is residing in any commonwealth country or in Republic of Ireland ¹⁰.

4. Citizenship by naturalization

The Citizenship Act 1955 says that if any person submits an application to the central government for the registration of the Citizenship then It is a duty of central government to register his\her Citizenship.

5. Citizenship by incorporation of territory

The provision says that if any foreign territory becomes the part of India then the government of India will specify that who will known as Indian citizens of that foreign territory ,like Pondicherry became the part of India ,then government of India issued an order to tell that who all be qualified to become the Indian Citizens

The NRI means non-resident Indian who is Indian citizen and has gone out from India or stay outside from India for the purpose of employment. Sec 2 of foreign exchange Management Act gives the definition of NRI ‘a person who is resident in India’ and also a person resident outside from India but this act does not define the correct meaning of NRI.

The word OCI means overseas citizens of India. Under the citizenship act 2005, the persons of Indian origin [PIO] now called as Overseas citizens of India.

IMMIGRATION

The word Immigration means the steps movement of people to live permanently in the foreign country. A person who live in the country without the official permission shall be treated as illegal immigrant. Immigration refers the mobility of people from one place to another for the intention of permanent settlement. Immigration laws are made by the government of India to the immigrated persons such as

The passport Act 1920

Under this act, the foreigner cannot enter in India without the visa and also prescribes specific documents for acceptance at the time of their valid travel for assent into the country.

The foreigners Act 1946

This act modulates the entry and accommodation of the foreigners within the Indian borders until leaving from the country.

The Registration of Foreigners Act ,1939

It necessary that some foreigners who stay past by their specified visa period must register with the Registration officer.¹¹

¹⁰ Sec 5, The Citizenship Act 1955

¹¹ Immigration laws and policies in India, available at: <https://vakilsearch.com>(Last Modified May 5,2020)

RECENT AMENDMENTS BY THE PARLIAMENT IN THE IMMIGRATION LAWS

Any tripper on an employment visa has a right to freedom to change his employer once they have come in India by requesting to the ministry of Home affair.

A dependent visa can be changed into an employment visa accepting the eligibility of x visa holder and employment status of the spouse. In the 2015, ordinance has passed in which the PIO and OCI are merged it means PIO now known as OCI.¹²

EFFECT OF CITIZENSHIP AMENDMENT ACT 2019 ON IMMIGRATION

Citizenship Amendment Act 2019, is recently introduced by the parliament to the benefit of minorities who are living outside from India but this act provides the citizenship only these communities who are Hindu, Sikhs Buddhists, Jain, parsis, Christians which comes from Afghanistan, Pakistan, Bangladesh.

In between 12th to 20th century, due to the religious persecution in Iran.

The parsis of Iran migrated at a large scale towards India. In 1947 partition happened between India and Pakistan due to which more than the crore people migrated to each other country by this partition in the Bangladesh freedom movement between 1960-1971.

In 1959-60 due China- Tibet war, many Tibetans migrated to India and due to Soviet -Afghan war and religious persecution over there, Afghans also migrated to India.

In between 1980-2000 due to Sri Lanka civil war, sri Lankan Tamils came here and during 2015- 17, also the Rohingyas of Myanmar transmigrated to India.

According to the census report of 2001 a huge number of migrants in India are from Bangladesh and Pakistan. there are 3 lakh 84 thousand migrants who came to India from Bangladesh. The main reason of this Immigration, is the fare of India from Bangladesh is very cheap.

According the report of Hindustan Report in 2011, about 13,000 illegal immigrants had come from Afghanistan and 7,700 from Pakistan.

Sarvananda sonowal vs union of India¹³The illegal Immigrant determination tribunal act 1983 was struck down by the supreme court and declared as unconstitutional. The sec 6A of the Citizenship Act 1955 in 2012 challenged by the Assam Sanmilita Mahasanga.

The issue of Citizenship in India is discussed in two places in constitution of India and Citizenship of India Act 1950 so the provision of the constitution. We helpful for our grandparents and fore fathers but the provision after 1950, who will known as Indian citizens after 1950. The main purpose of Citizenship Amendment Act 2019 to change the way of acquiring citizenship with different method.

¹² Amendments to the Citizenship Act 1955 And The concept of overseas citizens Of India Cardholder, available at: mondaq.com (Last Modified May 6,2020).

¹³ AIR 2005 SC 2920

Firstly, by changing the definition of illegal immigrant before Amendment of this Act. Illegal immigrant definition was, if any person who comes to India for living without having valid passport or having fraud document or stay beyond the permitted time period. He will be treated as illegal Immigrant.

Now this Act wholly change the definition of illegal immigrants and says that before 31st December 2014 any people who has come to India by any ways from Bangladesh, Pakistan, Afghanistan and they belongs to these six communities -Hindus, Sikhs, Buddhists, Jains, parsis, Christians so these peoples will not be called as illegal immigrants.

Before the amendment of the Act ,the person who belongs to Pakistan and willing to take Indian citizenship for that he have to spend 11 years in India or have to do any government service and after that he will get Indian citizenship and this act changes the whole process and it says that ,if whoever belongs to these countries such as Pakistan ,Afghanistan and comes under 6 communities then it is mandatory him/her to spend only 5 years instead of 11 years to get the Indian citizenship.¹⁴

PROBLEM RELATED TO THIS ACT IN IMMIGRATION

Why the government has chosen these three countries and why only six communities from these countries and why excluded other neighbour countries and other communities and it is violation of Article 14.

Senior advocate Harish answering the question regarding this Act, He said that the main moto of this act is to enlarged the extensive of migration and relax to it so now how much it should be expanded and relaxed, it's a policy matter. ¹⁵

Government said Our neighbouring countries minorities are being tortured these 6 communities because these are Islamic countries and they are affected by religious persecution that's a reason to choose these three countries and there is a reasonable classification here. Discrimination of communities on the basis of reasonable classification can be possible.

These 6 communities are persecuted by our Neighbouring countries which belongs to Islam, here no any discrimination against Muslim can be possible so, no any violation of Article 14.

Article 14 of the Constitution is available to citizen as well as non-citizen, everyone will have a right to equality before law and equal protection of law.

The equality before law is the negative concept which means that there shall be absence of any special privileges for anyone.

Equal protection of laws is a positive concept which means the positive right and the state has ensure that everyone gets benefit of its laws in equal way.

In Equality before law ,here word is in generic sense it is taking of normative law but when talks about equal protection before law it is taking about law in the sense of specific laws so

¹⁴ Indian Citizenship Amendment Act 2019- The controversial Amendment, available at: mondaq.com (Last Modified May 7,2020)

¹⁵ Fail to understand why citizenship Act is discriminatory: Harish, available at: www.DefenceNews.in (Last modified on 8 May 2020).

citizenship amendment act is that special law and therefore equal protection of law is in question whether people come from Pakistan ,Bangladesh and Afghanistan , they belong to Islam are entitle to equal protection of laws with new amendment the answer seems to be no.¹⁶

Our law does accept god, has not created all of us equal. The demand for our legal system is not this that they come up with one law for every one- In fact the political parties and ideological group which talk about one law, one language, one religion, are not fully understanding the demands of our Constitution.

Our constitution talks of pluralism, It permits classification so there can be laws for different group and to that extend, the government is correct, universality of law that one law should apply to everyone is not the requirement of Article 14.¹⁷

The government is absolutely right and is entitle to make the classification and differences coming up with different laws so the differentiation and classification is permissible under article 14 but such classification has to satisfy three tests.

- 1.It must be reasonable classification.
- 2.It must be having rational or just object to achieve.
3. it must be Non-Arbitrary.

Kedarnath Singh vs state of Bihar¹⁸ Supreme court has also added the concept of arbitration or arbitrariness of any law violate the right to equality.

Mohammad Usman vs state of Andhra Pradesh ¹⁹It was held that the rule 5 of the Andhra Pradesh registration subordinate service special has struck down this rule on the ground that it is violate of article 14 of the constitution .the validity of any law is to be judge by assessing its over all a fact and not by picking of exceptional cases what has to see is whether after taking all aspects into consideration the classification is just .

CRITICISM

Nevertheless since Article 14 has been borrowed from the universal declaration of human right 1948 and India was one of the original party to UDHR ,It says every human being must be entitle to some inalienable in divisible rights and right to citizenship will be that fundamental right which is to be guaranteed to every human being by virtue of his human nature and character as a he\she or the third person since citizenship is a right so it cannot be denied name of differences religion, race ,caste sex, place of birth etc.

¹⁶ Editorial, "An Act that fails the Constitutional test" The Hindu, December 26,2019

¹⁷ Jacob weinrib "kant on Citizenship and universal independence" 33 Austl.J. Leg. Phil 1(2008)

¹⁸ AIR 1962 SC 955

¹⁹ AIR 1971 SCR 549

JURIST VIEWS

Immune Kant's concept is, we have equal cost as human being and therefore we must be equally treated. He stated that the philosophy of law creates an idea of state that is both universalistic and inclusive.²⁰ He commendation that, it is not the case that all who are free and equal under already existing public laws are to be held equal with respect to give these laws.

Ronald dworkin says that we are entitle to equal respect and concern therefore this Article 14 is assuming important in our today context because it seems that article 14 is violated by the new legislative proposal which exclude people who follow certain religions.

The court said that the equal protection was guaranteed by article 14 of the Indian Constitution does not mean that all the law must be in general character and universal in application and that the state it is no longer to have the power of distinguish and classifying persons or things for the purpose of legislation.

ASSAM ACCORD 1985

Assam accord was a memorandum of settlement signed by the government of India and Assam and all the Assam student's union and all Assam Gana Sangram parishad in new Delhi on august 15 ,1985

The signing of the accord led to the conclusion of a 6-year agitation that was launched by AASU in 1979, demanding the identified and deportation of illegal immigrant.

When the riots were started from 1920, many people had migrated from east Bengal to north east specially in Assam, that migrated people were acquiring all the sources of Assam, by this reason no. of refugees were increase and assumes population were decrease.

From 1948 India Pakistan partition to 1971 Bangladesh formation, many lakh people migrated to east India cities. after the independence at the time of state reorganisation the north east cities' people were worried about to their culture, language and tribal authenticity that's why like the Jammu and Kashmir, by the constitution provided that Assam has a special status instant six schedule, in a line permit with all other speciality²¹

In 1978 the MP of Assam Hiralal patwari had died ,because of this death ,re-election had conducted again by the state then the consequences of votes counting found that the no. of registered voters are increase rapidly means no. of refugees are more that's by cancelling the election to stop the illegal influx and to detain and deport the illegal Immigrant .

Irrespective of religion whether the person belongs to any religion if he entered in Assam after 24 march 1971 then that person cannot make a citizen and he shall be treated as illegal Immigrants.

²⁰ Lara Denis," Moral Goodness and Human Equality in Kant's Ethical theory ", The Palgrave Handbook of German Idealism, 2014

²¹ Editorial, "Assam in flux: Why the Citizenship (Amendment) Bill is so contentious "The Hindu, January 10,2020

In 1985, sec 6A of the citizenship Act ,1955 was introduced to the Assam Accord, this provision categorised illegal immigrant who came into Assam from Bangladesh into three classes.

The person who came into the state before 1966.

The person who came into the state between 1966 and 25th march 1971

The person who came into India after 25th march 1971.

Clause 6 of the Assam accord envisaged that the appropriate constitutional legislative and administrative safeguard shall be provided to protect preserve and promote the cultural, social, linguistic identity and heritage of the Assamese.

To fulfil the object of Assam, NRC was introduced ,in which 19 lakh illegal immigrants were found .but now after the introduction of Amendment Act 2019, it says the person who come from Bangladesh shall not scrutiny by 24 march 1971 to identify as a illegal immigrant ,they shall be screening from 31 Dec 2014 .The person who came before 31 Dec 2014 shall be treated as Indian citizen from Bangladesh ,Pakistan, and Afghanistan with in 6 communities exclude one community.²²

CONCLUSION

The person who are residing in the country without an official permission shall be treated as illegal immigrant, there are thousand people from Pakistan, Bangladesh, Afghanistan, china, Burma etc has come to India. According to the census reports of 2001, ,above 3 lakh people in India came from Bangladesh .This Act provide the free entry of those Hindu people who do not come under NRC are not entitle to get the citizenship and also this Act exclude the other countries where many communities face the religious persecution namely, Myanmar where Rohingyas Muslim and Sri Lanka where the Tamilian Hindus are facing the religious persecution.

²²*ibid*