

THE DEMOGRAPHIC CRISIS IN SOUTH- EAST ASIA AND THE CITIZENSHIP (AMENDMENT) BILL, 2016

Sumit Agarwala* & Shilpy**

Nationality is the legal statuses of member whose acts, decisions are all condescend through the legal concept of nation state representing them. It can be acquired either by birth, naturalization, resumption, subjugation, cession, etc. Though often nationality and citizenship are considered to be similar of each other and used interchanging but there is difference between both the concepts. Citizenship denotes the relations the relations between the nation and the individual legally. It is the prime affair of the state's law. Citizens enjoy complete political rights in a state. It is feasible that all the citizens can possess the nationality of a state but it is not mandatory that all the nationals are the citizens of that state. There are problems in regard to admission of refugees and to the standard of treatment accorded to them. State have a tendency to view asylum and the refugee concept in a restrictive manner and to measures of 'deterrence' including unjustified detention of refugees.

Additionally, there is intractable problem of violations of the physical safety of refugees through armed attacks on refugee camps and settlements, forced conscription, piracy attacks on failure of passing ships to rescue asylum-seekers in distress on high seas. Understanding the problem of refugees and citizenship, it becomes very important in context of South- East Asia, since the past decades, it has witnessed huge turmoil across the borders on the lines of ethnicity, loyalty and religion while the persecution of the people of Bangladesh (the then East Pakistan) was on the ground of ethnicity and that of people of Tibet was on the loyalty. At the same time, a less observed yet a brewing problem pertain to the 'Rohingyas' of Myanmar.

India being at the advantageous position both economically as well as geographically becomes an sitting duck for the people seeking refuge which in turn over a period of time has led to demographic identity crisis like e.g., in the state of Assam, Tripura, West Bengal etc. but there is another side of the coin that being, the Hindus, Sikhs, Parsis, etc, residing in Pakistan and Bangladesh are facing tormented harassment and persecution. As a result of

* *Faculty Member(Law) @ Amity Law School, Amity University Haryana, Gurgaon*

** *Student @ Amity Law School, Amity University Haryana, Gurgaon*

which, they see India as their only ray of hope which a large number of them arriving in India and later refusing to go back. India feels obliged to them both on Humanitarian as well as Historical Ancestral Background. In order to help them, The Citizenship (Amendment) Bill, 2016 was passed to streamline the process of or granting Citizenship in conformity with Part-II (Citizenship) of the Constitution.

Nationality and citizenship both are one of the basic necessities of human being belonging to any cultural state or nation to enjoy certain kind of civil, social or political rights. It also confers economic and cultural rights to them. Though both the concepts are totally but they are very often used as each other's place. Nationality may be defined as the legal status of membership of the collectively of individuals whose act, decisions and policy are vouchsafed through the legal concept of the state representing those individuals. It is a bond which unites a person to a given state which constitutes his or her allegiance to a state which gives him a sense of protection of that state and also subjected to certain obligations by that state over him. By nationality, we mean the legal relationship which exists between a person and a state. Citizenship, on the other hand denotes the relation between an individual and the state law. One may say that Nationality is a bunch of civil and political rights a person acquire in any state whereas Citizenship rights are the sole concern of state laws. It is possible that all the citizens may possess the nationality of an exacting state but it is not necessary that all the residing nationals may be the citizen of that exacting state. Citizenship is a legal connotation of a person's relation with his state. The value of Citizenship lies in the fact that no State confers all civil and political rights to its entire population. Therefore, in order to enjoy these rights, one must acquire Citizenship of that State, civil and political citizens unlike citizens. Articles 15, 16, 19, 29, 30 etc. are available to Citizens only whereas the population of a state is divided into two classes- Citizens and Aliens. Aliens do not enjoy Articles 14 and 21 are available to aliens also. The Constitution does not lay down permanent or comprehensive provision relating to Citizenship in India.

In Indian context, Article 11 of the Constitution expressly confers upon legislature to make provisions regarding the Citizenship of nationals. Parliament, in exercise of the power conferred by the Constitution, has passed the Citizenship Act, 1955, making provision for acquisition and termination of the Citizenship. The Act provides for the acquisition of the Indian Citizenship by following 5 ways, i.e., birth, descent, registration, naturalization and incorporation of territory. The Act also provided for loss of Citizenship by renunciation,

termination and deprivation. The Act was amended certain times and the recent development is The Citizenship (Amendment) Bill, 2016. As per the New Amendment, the illegal migrants belonging to Hindu, Parsi, Jain, Sikh, Buddhist and Christian communities belonging from Pakistan, Bangladesh, Afghanistan shall be granted the Indian Citizenship.

Under this Act, the migrants of these religions from these three countries will not be imprisoned or deported and also not to be treated as illegal migrants for the purpose of Indian Citizenship. It has also been provided by the Act that the minimum years for residence in India for acquisition of Indian Citizenship are reduced to 7 years from 12 years for these migrants. That means the Hindus, Parsis, etc., from Pakistan, Bangladesh, and Afghanistan who entered in India illegally and unlawfully can claim for Indian Citizenship after residing for 6 years in India. The Citizenship Act of 1955 restricts the Citizenship to the “illegal migrants”. The objects of the Amendment are to relax the rules regarding the Citizenship for minority community from these countries. The other object is that many persons from abovementioned communities are unable to prove their Indian origin, therefore, they are further required to apply by the process of naturalization which requires minimum 12 years of residence in India and this bill reduced it to 6 years. The last aim of the bill is to regulate the Citizenship of Overseas Citizen of India (OCI), which means their registration of OCI can be cancelled on violation of law.

The instruments for the international protection of refugees are the U.N. Convention of 1951 relating to status of refugees and protocol of 1967. So far the convention has been signed by the 147 countries and India is not a signatory to this convention and protocol has been signed by 138 countries and India is also not a party to this protocol. The convention is based on two principles-(i) non- discrimination based on race, religion or country or origin amongst countries, (ii) non-discrimination, as far as possible between nationals and refugees. The problem of refugee is due to turmoil in the country of their origin due to war, internal disturbances, ethnic cleansing, etc. In recent times, the number of countries which are undergoing internal instability have grown up due to these reasons which gave birth to vast number of refugees and in order to escape from these differences, these people search for safer zones. There is difference between the treatment of refugees and standard of living accorded to them in various countries. State have a tendency to view asylum and the refugee concept in a restrictive manner and to measures of ‘deterrence’ including unjustified detention of refugees. Additionally, there is intractable problem of violations of the physical

safety of refugees through armed attacks on refugee camps and settlements, forced conscription, piracy attacks on failure of passing ships to rescue asylum-seekers in distress on high seas.

Historically, the Hindus from Pakistan and Bangladesh are part of undivided Indian Subcontinent and get shifted to Pakistan and Bangladesh after partition of India. They have their inherited roots with Hindus of this country. But Hindus in these countries are persecuted and suppressed as major population of both the countries are not Hindus. The 'Hindus' in these countries are forced to convert their religion and are also harassed physically, socially and culturally. As a result of this persecution, number of minorities groups like Hindus, Jains, Sikhs, etc., migrated illegally to India as refugees in states like Assam, Tripura, West Bengal from Bangladesh and to other parts like northern and western regions of the country from Pakistan. India being neighbor of these countries is at the crucial position and an asylum for them. Small populations of Muslims live near Myanmar's border with Bangladesh. These people, known as 'Rohingya', have been singled out for persecution by the authoritarian government there in recent years, and many have fled the country, seeking asylum in Bangladesh or other parts of Southeast Asia. Violence directed against religious minority groups continues to upshot in the loss of thousands of lives and property, but the religious animosity, criminal intent, or property disputes are often unclear. Religious minorities' communities are exposed due to their comparatively limited sway with political elites. Like many citizens, they are often unwilling to seek recourse from a fraudulent and ineffective criminal justice system. Police are often ineffective in maintaining law and order and are sometimes slow to assist religious minorities. This promotes an atmosphere of impunity for actions of violence and offences against them. Religion becomes a modus operandi to gain political interest then the true wisdom of democracy turns into a mere oratory or more or less goes back into the prehistoric concept of 'Papacy' or 'Papal Authority' as propounded by Plato's nationhood under the 'Philosopher King'.

However, this type of bill is unprecedented. This Citizenship (Amendment) Bill, 2016 is a step from India to help those refugees and to relax the rules regarding attainment of Indian Citizenship for their betterment. It is a way to provide shelter to them and to remove the position of Statelessness and the tag of refugees from them. Being a Secular country, India never objectified religion as a source for any law but this is truly a humanitarian approach to tackle and counter the issue of refugees.