

CITIZENSHIP

Articles 5-11 under Part II of the Constitution deal with provisions related to Citizenship at commencement of Constitution:

The Oxford Dictionary defines a citizen as:

- a) A legally recognized subject or national of a state or commonwealth
- b) An inhabitant of a town or city. The term citizen has an urban origin. It has been derived from the Anglo-Norman word 'citizen' and French 'citizen '. This is based on the Latin civitas, meaning people united in a city or community. The expansion and development of citizenship has been closely linked to the growth of cities and the emergence of the nation state.

MEANING AND SIGNIFICANCE

- The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):
 - i. Right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
 - ii. Right to equality of opportunity in the matter of public employment (Article 16).
 - iii. Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
 - iv. Cultural and educational rights (Articles 29 and 30).
 - v. Right to vote in elections to the Lok Sabha and state legislative assembly.

MEANING AND SIGNIFICANCE

- vi. Right to contest for the membership of the Parliament and the state legislature.
- vii. Eligibility to hold certain public offices, that is, President of India, Vice-President of India, judges of the Supreme Court and the high courts, governor of states, attorney general of India and advocate general of states.
- Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and so on.
- In India, both a citizen by birth as well as a naturalised citizen are eligible for the office of President while in USA, only a citizen by birth and not a naturalised citizen is eligible for the office of President.

CONSTITUTIONAL PROVISIONS

- Constitution only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950). It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement. It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the **Citizenship Act, 1955**, which has been amended in 1986, 1992, 2003, 2005 and 2015 and 2019.
- According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on 26 January 1950:
 - A person who had his domicile in India and also fulfilled any one of the three conditions, viz., if he was born in India; or if either of his parents was born in India; or if he has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India (**Article 5**).

CONSTITUTIONAL PROVISIONS

- A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he migrated to India before July 19, 1948, he had been ordinarily resident in India since the date of his migration; or in case he migrated to India on or after July 19, 1948, he had been registered as a citizen of India. But, a person could be so registered only if he had been resident in India for six months preceding the date of his application for registration (**Article 6**).
- A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he had to be resident in India for six months preceding the date of his application for registration (**Article 7**).
- A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the commencement of the Constitution. Thus, this provision covers overseas Indians who may want to acquire Indian citizenship (**Article 8**)

- No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state (**Article 9**).
- Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament (**Article 10**).
- Parliament shall have the power to make any provision with respect to acquisition & termination of citizenship and all other matters relating to citizenship (**Article 11**).

MODES OF ACQUIRING CITIZENSHIP

- **Citizenship by Birth:** Prior to 1 July 1987, any person born in India was a citizen of India by birth. A person born in India on or after 1 July 1987 was 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 3rd December 2004 are considered citizens of India only if both of their 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 their birth.
- **Citizenship by Descent:** A person born outside India on or after 26 January 1950 but before 10 December 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth.

A person born outside India on or after 10 December 1992, is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.

MODES OF ACQUIRING CITIZENSHIP

From 3 December, 2004, a person born outside India shall not be a citizen of India unless his birth is registered at an Indian consulate within one year of the date of birth, or with the permission of the Central Government after the expiry of the one year period. An application, for registration of the birth of a minor child, must be made to an Indian consulate and must be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

- **Citizenship by Registration:** The Central Government may, on an application, register as a citizen of India under section 5 of the Citizenship Act 1955 any person (not being an illegal migrant) if he belongs to any of the following categories:

MODES OF ACQUIRING CITIZENSHIP

- a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
- b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- d) minor children of persons who are citizens of India;
- e) a person of full age whose parents are registered as citizens of India by ordinary residence in India for 7 years;
- f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

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g. a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for two years before making an application for registration.

- **Citizenship by Naturalization:** Citizenship of India by naturalization can be acquired by a foreigner who is ordinarily resident in India for twelve years (continuously for the twelve months preceding the date of application and for eleven years in the aggregate in the fourteen years preceding the twelve months).
- **Citizenship by Incorporation of Territory:** If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date. For example, when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order, 1962, under the Citizenship Act, 1955.

LOSS OF CITIZENSHIP

The Citizenship Act, 1955, prescribes three ways of losing citizenship viz, renunciation, termination and deprivation:

- **By Renunciation:** Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon the registration of that declaration, that person ceases to be a citizen of India.
- Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen, he may resume Indian citizenship.
- **By Termination:** When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates.
- **By Deprivation:** It is a compulsory termination of Indian citizenship by the Central government, if:

LOSS OF CITIZENSHIP

- the citizen has obtained the citizenship by fraud.
- the citizen has shown disloyalty to Constitution of India:
- the citizen has unlawfully traded or communicated with the enemy during a war;
- the citizen has, within 5 years after registration or naturalisation, been imprisoned in any country for 2 years;
- the citizen has been ordinarily resident out of India for seven years continuously.

Recently, the Parliament passed the Citizenship (Amendment) Bill 2019 which received the President's assent to become an Act.

THE CITIZENSHIP (AMENDMENT) ACT, 2019

- The Citizenship Act, 1955 provides various ways in which citizenship may be acquired. It provides for citizenship by birth, descent, registration, and naturalisation and by incorporation of the territory into India.
- In addition, it regulates the registration of Overseas Citizen of India Cardholders (OCIs) and their rights. An OCI is entitled to some benefits such as a multiple-entry, multipurpose lifelong visa to visit India.
- An illegal migrant is prohibited from acquiring Indian citizenship. An illegal immigrant is a foreigner who either enters India illegally, i.e., without valid travel documents, like a visa and passport, or enters India legally, but stays beyond the time period permitted in their travel documents. An illegal migrant can be prosecuted in India and deported or imprisoned.
- In September 2015 and July 2016, the government exempted certain groups of illegal migrants from being imprisoned or deported. These are illegal migrants who came into India from Afghanistan, Bangladesh, or Pakistan on or before December 31, 2014, and belong to the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian religious communities.

Key Provisions of the Amendment Act

- The Bill amends the Act to provide that the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who entered India on or before December 31, 2014, will not be treated as illegal migrants.
- In order to get this benefit, they must have also been exempted from the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 by the central government.
- The 1920 Act mandates foreigners to carry passport, while the 1946 Act regulates the entry and departure of foreigners in India.
- **Citizenship by registration or naturalisation:** The Act allows a person to apply for citizenship by registration or naturalisation if the person meets certain qualifications. For instance, if a person resides in India for a year and if one of his parents is a former Indian citizen, he may apply for citizenship by registration.

- To obtain citizenship by naturalisation, one of the qualifications is that the person must have resided in India or have been in the service of the central government for at least 11 years before applying for citizenship.
- The Bill creates an exception for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, with regard to this qualification. For these groups of persons, the 11 years' requirement will be reduced to five years.
- On acquiring citizenship:
 - i. such persons will 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.

Applicability of the Amended Act

- These provisions on citizenship for illegal migrants will not apply to the tribal areas of Assam, Meghalaya, Mizoram, and Tripura, 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.
- Further, it will not apply to the “Inner Line” areas notified under the Bengal Eastern Frontier Regulation, 1873. In these areas, visits by Indians are regulated through the Inner Line Permit.
- Currently, this permit system is applicable to Arunachal Pradesh, Mizoram, and Nagaland. Manipur has also been brought under the Inner Line Permit (ILP) regime through a Gazette Notification on the same day the bill was passed in the parliament.

- **Cancellation of registration of OCIs:** The Act provides that the central government may cancel the registration of OCIs on certain grounds. These include:
 - (i) if the OCI has registered through fraud, or
 - (ii) if, within five years of registration, the OCI has been sentenced to imprisonment for two years or more, or
 - (iii) if it becomes necessary in the interest of sovereignty and security of India.
- The Bill adds one more ground for cancelling the registration that is if the OCI has violated the provisions of the Act or of any other law as notified by the central government. The orders for cancellation of OCI should not be passed till the OCI cardholder is given an opportunity to be heard.

Concerns against the Amendment Act

Issues in the North-East:

- It contradicts the Assam Accord of 1985, which states that illegal migrants, irrespective of religion, heading in from Bangladesh after March 25, 1971, would be deported.
- Critics further argue that the extensive exercise of updating the National Register of Citizens (NRC) will become Null and Void due to this Amendment act.
- There are an estimated 20 million illegal Bangladeshi migrants in Assam and they have inalienably altered the demography of the state, besides putting a severe strain on the state's resources and economy.
- Critics argue that it is violative of Article 14 of the Constitution (which guarantees the right to equality and applicable to both the citizens and foreigners) and the principle of secularism enshrined in the preamble of the constitution.

- India has several other refugees that include Tamils from Sri Lanka and Hindu Rohingya from Myanmar. They are not covered under the Act.
- It will be difficult for the government to differentiate between illegal migrants and those persecuted.
- The Bill throws the light on the religious oppression that has happened and is happening in these three countries and thus, may worsen our bilateral ties with them.
- It provides wide discretion to the government to cancel OCI registrations for both major offences like murder, as well as minor offences like parking in a no-parking zone or jumping a red light.

Government's Stand

- The government has clarified that Pakistan, Afghanistan and Bangladesh are Islamic republics where Muslims are in majority hence, they cannot be treated as persecuted minorities.
- According to the government, this Bill aims at granting rather than taking away someone's citizenship.
- It has assured that the government will examine the application from any other community on a case to case basis.
- This Bill will come as a big boon to all those people who have been the victims of Partition and the subsequent conversion of the three countries into theocratic Islamic republics.
- Government has cited that the partition of India on religious lines and subsequent failure of the Nehru-Liaquat pact of 1950 in protecting the rights and dignity of the minorities in Pakistan and Bangladesh as the reasons for bringing this Bill.

- After Independence, not once but twice, India conceded that the minorities in its neighbourhood are its responsibility. First, immediately after Partition and again during the Indira-Mujib Pact in 1972 when India had agreed to absorb over 1.2 million refugees. It is a historical fact that on both occasions, it was only the Hindus, Sikhs, Buddhists and Christians who had come over to Indian side.
- Regarding questions of not including minorities from Sri Lanka, Myanmar, etc., the Government clarified that the process of awarding citizenship to refugees has been undertaken by different governments in the past on case to case basis from time to time, on “reasonable qualifications to Article 14”. This time the case of refugees fleeing religious persecution from these three countries has been considered through this Bill.
- In January 2019, Government had notified the High-Level Committee (HLC) for implementation of Clause 6 of Assam Accord and urged the Committee to submit its report at the earliest to the Central Government for effective steps to be taken to fulfil the provisions of the Accord.

- The government thus has assured the people of Assam that their linguistic, cultural and social identity would be preserved.

Conclusion

- The onus is now on the Supreme Court, being the Guardian of the Constitution, to interpret the provisions of the Act and test its Constitutionality that whether the "classification" done in the Act is "reasonable" or not if tested against Article 14.
- India has a civilization duty to protect those who are prosecuted in its neighbourhood. But, the methods must be in accordance with the spirit of the Constitution.
- Further, the people of the North-East should be engaged more constructively to convince them that the linguistic, cultural and social identity of the people of the region would be preserved.

Thank You!