

# LOK SABHA

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## STUDY GUIDE

**Agenda:** THE CITIZENSHIP  
AMENDMENT BILL, AND DISCUSSING  
THE VIOLATIONS OF ARTICLE 14.

## LETTER FROM THE EXECUTIVE BOARD

It gives us immense pleasure to welcome you in the 'Lok Sabha' Committee which is to be simulated at LITMUN 2019.

We welcome you all and congratulate you on being a part of this committee. The committee would focus on political intellect and analytical application and strategic application of thoughts in resolving impending politically and socially sensitive issues and discussions on forming future policies for the nation on the said agenda. Kindly note, we are not looking statements that would be a copy paste of what the leader/portfolio you are representing have already stated; instead we seek an understanding of the issue from you, while knowing and understanding your impending political and ideological limitations as well as an understanding of the immediate and long-term consequences of your statements, actions and solutions. Your political identity is an integral part of the purpose of the committee and we look forward to your portfolio representation.

This Introductory guide is as abstract as possible and would just give you a basic perspective on what you can expect from the committee and areas wherein which your research should be focused at this given point in time. Given, the political nature of this committee, your presence of mind and politico-analytical aptitude is something which we as the executive board would be looking to test. That being said, kindly do not limit your research to the areas highlighted further but ensure that you logically deduce and push your research to areas associated with the issues mentioned.

Additionally, you would be receiving a Rules of Procedure guide that would help you understand the functioning of this committee, if not then you will be briefed about the same before the committee commences.

Regards,  
Executive Board Member

Note:

1. This background guide should be used as an introductory guide only, no reference to be made from the same. Neither this BG should be used as a source to prove statistical data.
2. Chits written prior to the commencement of this committee isn't allowed and only chits provided by the Organising Team will be considered.

## **About the Agenda**

Constitution of India did not arrange lasting laws for citizenship and put this onus on parliament. Utilizing the forces of article 10 and 11, the parliament established Citizenship Act 1955, which has been amended. This act makes reference to four manners by which an individual might be Indian native viz. by birth, by descent, by enlistment and by naturalization. Citizenship by birth and descent are called natural citizens. Outline of these arrangement are as follows:

### **Citizenship by Birth**

Every person born in India on or after Jan 26, 1950 is a citizen of India provided his/her father is not an enemy alien or representative of a diplomatic mission.

### **Citizenship by Descent**

A person born outside India on or after Jan 26, 1950 shall be a citizen of India by descent if his father or mother is a citizen of India at the time of his birth; provided such birth is registered in any of Indian consulates.

### **Citizenship by Registration**

A person can acquire citizenship by registering himself or herself with prescribed authority. Such categories of persons are:

- Persons of Indian origin residing outside the territories of undivided India
- Those persons of Indian origin who are ordinarily residents in India and have been so resident for 6 months immediately before making application for registration
- Women who are married to citizens of India
- Children of Indian citizens
- Adult citizens of commonwealth country or republic of Ireland

### **Citizenship by Naturalization**

A foreign citizen not covered by any of the above methods can get Indian citizenship on application of Naturalisation to the Government of India; with the following conditions:

- Belongs to a country where the citizens of India are allowed to become subjects or citizens of that country by naturalization.
- Renounces the citizenship of his country and intimated the renunciation to the Government of India.
- Has been residing in India or serving the government for 12 months before the date of making application for naturalization.
- Possess a good character
- Posses working knowledge of Indian Languages
- Intends to reside in India after naturalization.

Further, Government of India can waive any or all of the above conditions in case of a person who has rendered distinguished service in the cause of Philosophy, science, literature, arts, world peace etc.

The other two avenues are those of **Citizenship by incorporating a new territory** and **Commonwealth Citizenship**.

The Citizenship Act envisages three situations under which a citizen of India may lose his Indian nationality. These are by **Renunciation, Termination and Deprivation**.

With regards to the Citizenship Amendment Bill of 2016, following are the highlights and key issues:

## Highlights

- The Bill amends the Citizenship Act, 1955 to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship.
- Under the Act, one of the requirements for citizenship by naturalisation is that the applicant must have resided in India during the last 12 months, and for 11 of the previous 14 years. The Bill relaxes this 11-year requirement to six years for persons belonging to the same six religions and three countries.
- The Bill provides that the registration of Overseas Citizen of India (OCI) cardholders may be cancelled if they violate any law.

## Key Issues

- The Bill makes illegal migrants eligible for citizenship on the basis of religion. This may violate Article 14 of the Constitution which guarantees right to equality.
- The Bill allows cancellation of OCI registration for violation of any law. This is a wide ground that may cover a range of violations, including minor offences (eg. parking in a no parking zone).

# **Analysis of the aforementioned**

(as per PRS India)

## **Definition of illegal migrants**

The Citizenship Act, 1955 prohibits illegal migrants from acquiring Indian citizenship. The Bill amends the Act to provide that the following minority groups will not be treated as illegal migrants: Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. However, 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.

## **Citizenship by naturalization**

The 1955 Act allows a person to apply for citizenship by naturalisation if he meets certain qualifications. One of these is that the person must have resided in India or served the central government for a certain period of time: (i) for the 12 months immediately preceding the application for citizenship, and (ii) for 11 of the 14 years preceding the 12-month period. For people belonging to the same six religions and three countries, the Bill relaxes the 11-year requirement to six years.

## **Cancellation of registration of Overseas Citizen of India cardholder**

The 1955 Act provides that the central government may cancel registration of OCIs on certain grounds, including: (i) if the OCI had registered through fraud, or (ii) if within five years of registration, the OCI was sentenced to imprisonment for two years or more.

The Bill adds one more ground for cancelling registration, that is, if the OCI has violated any law in the country.

## **Whether differentiating on grounds of religion is a violation of Article 14**

The Bill provides that illegal migrants belonging to specified minority communities from Afghanistan, Bangladesh or Pakistan will not be treated as illegal migrants under the Act, making them eligible for Indian citizenship. These minority communities are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. This implies that illegal migrants from these countries who are Muslims, other minorities who do not belong to the above groups (eg. Jews), or Atheists who do not identify with a religious group will not be eligible for citizenship.

The question is whether this provision violates the right to equality guaranteed under Article 14 of the Constitution because it provides differential treatment to illegal migrants on the basis of their religion. Article 14 guarantees equality to all persons, citizens and foreigners. It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose. The Statement of Objects and Reasons of the Bill does not explain the rationale behind differentiating between illegal migrants on the basis of the religion they belong to.

## Wide ground for cancelling OCI registration

Under the 1955 Act, an Overseas Citizen of India (OCI) cardholder's registration may be cancelled if he violates a law for which he is: (i) sentenced to imprisonment for two years or more, and (ii) within five years of his OCI registration. The Bill adds another ground for cancelling OCI registration, which is violation of any law of the country by an OCI. This means that even offences with: (i) lesser penalties, or (ii) which have been committed after five years of registration could be covered under the Bill. This makes the earlier provision redundant. This provision also grants the central government wide discretion to cancel OCI registration for a range of violations. This will include serious offences like murder, as well as minor offences like violation of a traffic law (such as parking in a no-parking zone or jumping a red light). The question is whether minor violations should result in cancellation of OCI registration, which may require an OCI who is staying in India to leave the country.

Refer to:

- Section 2(1)(b) of the Citizenship Act, 1955.
- G.S.R. 685 (E) and G.S.R. 686 (E), Gazette of India, September 7, 2015; G.S.R. 702(E) and G.S.R. 703(E), Gazette of India, July 18, 2016.
- State of West Bengal vs Anwar Ali Sarkar, AIR 1952 SC 75.

## Contentions

Opponents of the bill note that the issue here isn't with the adaptability of the principles, however the relevance of the revisions on simply religious lines. The Citizenship Act of 1955 denies citizenship rights to any illegal immigrant, whereby an 'illegal immigrant' is characterized as an individual who (i) enters India without a valid passport or with forged documents, or (ii) who stays in the country beyond the visa permit.

The proposed Bill changes this definition to prohibit "minority-religious people" – explicitly Hindus, Sikhs, Jains, Parsis and Christians – from "Muslim-dominated countries" – explicitly Afghanistan, Bangladesh and Pakistan – from the ambit of being an "illegal immigrant". The Bill further reduces the requirement of 11 years to gain "citizenship by naturalization" to just six years of ordinary residence for such settlers. to put it boldly, this implies a Hindu from Pakistan can cross the border illegally and basically guarantee Indian citizenship following six years.

"The Citizenship (Amendment) Bill also fails on the tenets of international refugee law. Although India is not a signatory to the 1951 UN Refugee Commission, granting refuge based on humanitarian considerations is arguably a norm of customary international law. There are two fallacies with the proposed law in this regard. First, the Bill terms minority religious people as migrants, when they are not migrants but refugees. The word migration refers to the voluntary movement of people, primarily for better economic prospects. In contrast, a refuge is an involuntary act of forced movement. The concerns of refugees are human rights and safety, not an economic advantage. The purpose and intention of the Bill, as stated by Raj Nath Singh, is to provide shelter to vulnerable, religiously persecuted people whose fundamental human rights are at risk. The correct terminology is important because the laws and policies for migrants and refugees are entirely different. Second, shelter to individuals of a select religion defeats not only

the intention but also the rationality of refugee policy. If the motive of the government is to protect religiously persecuted people in the neighbourhood, the question of why they are ignoring the Muslim community is inevitable. Muslims are considerably discriminated against and exploited in the neighbouring countries of China, Sri Lanka and Myanmar. Their demands for asylum in India have fallen on deaf ears. The 36,000 Rohingyas, Muslims from Myanmar who fled to India in the wake of 2015 insurgency is just one such example. The proposed act also violates India's long-standing refugee policy. Although India does not have a codified refugee policy, Jawaharlal Nehru listed the basic tenants of the scheme during the Tibetan refugee crisis. The new law will also act as a push to the movement of India's citizenship policy on *jus soli* to the racially manifested *jus sanguine* principle, something which was actively avoided by our constitution makers."

## **CITIZENSHIP AMMENDMENT BILL, 2016**

### **What is the Bill about?**

It aims to amend the Citizenship Act 1955 to allow Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Bangladesh, Afghanistan and Pakistan to apply for Indian citizenship. The present Citizenship Act allows an immigrant to apply for citizenship if s/he has lived in India for 12 months immediately before the application, and for 11 of the last 14 years. On July 19, 2016, the government introduced the Amendment Bill in Lok Sabha, relaxing the 11-year cutoff to six years out of 14, for immigrants of the six religions from the three countries. Also, in 2015 and 2016, the government passed two notifications exempting such immigrants from the Foreigners Act 1946 and the Passport (Entry into India) Act 1920 — which provide for deportation — and enabling them to continue living in India if they had arrived before December 31, 2014.

### **When did this idea gain stream?**

The BJP had promised to grant citizenship to Hindus persecuted in the neighboring countries during the 2014 General Election. In the party's election manifesto, the BJP had promised to welcome Hindu refugees and give shelter to them.

### **Who are illegal immigrants?**

According to the Citizenship Act, 1955, an illegal immigrant is one who enters India without a valid passport or with forged documents. Or, a person who stays beyond the visa permit.

### **What are the protests about?**

There have been two waves of protests, for or against the Citizenship (Amendment) Bill 2016. During and after the visit of a Joint Parliamentary Committee to Assam and Meghalaya (May 7-10) to collect feedback, the Brahmaputra Valley saw protests opposing the Bill while the Barak Valley saw counter-protests in the Bill's support.

### **What feedback did the JPC get?**

The JPC, comprising 16 members and headed by BJP MP Rajendra Agrawal, visited Guwahati (Brahmaputra Valley), Silchar (Barak Valley) and Shillong (Meghalaya). In Guwahati, 135 groups submitted memorandums — one was signed in blood — objecting to the Bill. In Silchar, hundreds of organisations pushed for the Bill. In Shillong, the Meghalaya Cabinet decided to oppose the Bill.

### **Why two stands in Assam?**

Opponents feel the Bill will aggravate the problem of illegal migration. Those in favor feel it will help end alienation of Bengali Hindus living in Assam, many of them in Barak Valley.

**BRAHMAPUTRA VALLEY:** The opponents stress Assam cannot accommodate any more immigrants and feel the Bill goes against the 1985 Assam Accord signed between the Rajiv Gandhi government and leaders of the Assam movement spearheaded by the All Assam Students' Union (AASU) against illegal Bangladeshi immigrants — irrespective of religion. Under the Accord, any person who came into Assam after midnight of March 24, 1971, would be identified as a foreigner. A non-obstante clause was inserted in the Citizenship Act 1955 under Section 6A. "This basically meant the cutoff date for citizenship to migrants in Assam was March 24, 1971, while for the rest of the country it was 1950," says Lurin Jyoti Gogoi, AASU general secretary.

**BARAK VALLEY:** The linguistic divide between the two regions can be traced back to 1947, when most parts of Bengali-speaking Sylhet joined East Pakistan, while one part was retained in India and is part of Barak Valley. Those pressing for the Bill express concern about "Partition victims" who have been displaced and persecuted. "Where will they go? No other country will give them shelter," says Haridas Dutta, general secretary of Nagorik Satro Rokhya Songram Parishad. "We want the six-year



naturalisation period to be relaxed to six months,” Dutta says.

### **If the Bill is passed, how many stand to gain citizenship?**

Estimates vary. “Since 1971, there have been about 20 lakh Bengali Hindus living illegally in India. If the Bill is passed, an additional 1.70 crore Hindus living in Bangladesh, according to the Bangladesh Bureau of Statistics, 2015, will come into India and get citizenship,” says Akhil Gogoi, president, Krishak Mukti Sangram Samiti. He feels the cutoff of December 31, 2014, will not hold any currency.

BJP spokesperson Rajdeep Roy has a much lower estimate for displaced Bengali Hindus in Barak Valley. “Someone who has gone through both the Accord and the Bill will very well understand that the latter is defining only a subset of population who have all this while been termed ‘illegal immigrants’. As such, this is a very small set — it won’t be more than 10-15 lakh,” he says.

### **How are political parties and other organisations placed?**

The BJP is pushing for the Bill; its ally AGP opposes it, as do the Congress in Brahmaputra Valley and Badruddin Ajmal’s party, AIUDF. There is a geographical divide within parties, too. BJP women’s wing leader Mira Borthakur and MLA Atul Bora have opposed the Bill on social media. In the Congress, Barak Valley MLAs Kamalakhya Dey Purkayastha and Gautam Roy have welcomed it.

AASU, North East Students Organisation, Indigenous Forum Assam and Akhil Gogoi’s KMSS are opposing the Bill, while Dr Subramanian Swamy’s Virat Hindustan Sangam and Barak Valley local organisations are supporting it.

### **What is the government stand?**

While Chief Minister Sarbananda Sonowal has said he would step down if his government failed to protect the rights of Assam citizens, ministers including Himanta Biswa Sarma have said that the government would express its stand after publication of the updated National Register of Citizens next month.

### **Is the Bill connected to the NRC?**

Opponents feel it undermines the update process of the 1951 NRC, which, like the Assam Accord, too uses March 24, 1971, as a cutoff. The BJP disagrees. “Why should it affect the NRC, which will continue in its own pace?” says Rajdeep Roy. The NRC is at the centre of the geographical divide too. “Many Bengalis in Barak Valley are worried that they will not get a place in the

NRC,” says Samar Bijoy Chakraborty of the Barak Valley chapter of Virat Hindustan Sangam.

### **Will the Bill stand legal scrutiny?**

Those opposing it believe it will not. Says Kamal Nayan Choudhury, a senior advocate at Gauhati High Court: “The fundamental ground for opposition is the violation of the Article 14 (which states that there can be no discrimination between two religious groups). Also, according to Section 5 of the Citizenship Act 1955, people of undivided India are prohibited from acquiring citizenship in India.

Then how can the very same Act have a provision that grants citizenship (to them)?”

### **Other than Assam, what are the States likely to be affected?**

States sharing borders with Bangladesh, Pakistan and Afghanistan are likely to be affected.

The Meghalaya Democratic Alliance (MDA) government, an ally of the BJP, has opposed the Bill. Calling the bill "dangerous," the Meghalaya government said that they don't agree with the idea of non-Muslims acquiring citizenship after six years of living in the country.

## **NATIONAL REGISTER OF CITIZENS (NRC)**

The National Register of Citizens (NRC) is the register containing details of all Indian citizens. After conducting the Census of 1951, the National Register of Citizens (NRC) was prepared by recording particulars of all the persons enumerated during the 1951 Census.

### **NRC 1951-**

After the conduct of the Census of 1951, a National Register of Citizens (NRC) was prepared in respect of each village showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein, and in respect of each individual, the father's name/mother's name or husband's name, nationality, sex, age, marital status, educational qualification, means of livelihood or occupation and visible identification mark. This was done by copying out in registers the particulars recorded during the Census done in 1951. This NRC was prepared under a directive from the Ministry of Home affairs (MHA).

These registers covered each and every person enumerated during the Census of 1951 and were kept in the offices of Deputy Commissioners and Sub Divisional Officers according to instructions issued by the Government of India in 1951. Later these registers were transferred to the Police in the early 1960s.

### **WHY IS THE NRC BEING UPDATED NOW?**

Updating the NRC has been a decades-old demand, with various modalities and cut-off dates suggested over the years and many rounds of talks held. The All Assam Students' Union (AASU) and Assam Gana Parishad first raised the demand to update the NRC 1951 more than three decades ago. The organizations launched an aggressive anti-immigrants Movement.

Things began moving after a May 5, 2005, tripartite meeting among the Centre, Assam government and All Assam Students' Union. Chaired by then Prime Minister Manmohan Singh, the meeting decided to update the NRC.

The Supreme Court got involved in 2009 after an NGO, Assam Public Works, filed a writ petition for the deletion of illegal migrants' names from voter lists in Assam.

Pilot projects for updating the NRC started in two blocks (in Kamrup and Barpeta districts) in June 2010 but were stopped the following month because of law-and- order problems. In July 2011, the state government set up a cabinet subcommittee to simplify the procedure.

In May 2013, the apex court directed the Centre to finalise the modalities by July 16, 2013. In 2014, the court directed the government to resume updating the NRC and has since been monitoring the process.

Distribution and receipt of filled-in NRC application forms began in 2015. Acceptance of applications ended on August 31, 2015. The verification process started on September 1, 2015. Post the Assam agitation against 'foreigners', and the subsequent Assam Accord signed in 1985 between the government of India and the All Assam Students Union, the Citizenship Act, 1955, was amended. All Indian- origin people, including from Bangladesh who entered Assam before January 1, 1966, were deemed as citizens; those who came between January 1, 1966 and March 25 1971 could get citizenship after registering themselves and living for 10 years; and those who entered after March 25, 1971 were to be deported.

### **IS NRC CREATING CONTROVERSY ?**

Maulana Syed Arshad Madani, the chief of Jamiat Ulema-e-Hind, has stoked controversy by stating that Assam will burn, there will be killings and retaliation if 50 lakh Muslims are left out in the ongoing Supreme Court-monitored updation of National Register of Citizens (NRC) 1951.

The National Human Rights Commission (NHRC) has issued a notice to the Chief Secretary of the Government of Assam after taking suo motu cognizance of the allegations about the harassment being meted out to people by the police in the name of verification of their nationality in the State.

Assam CM Sarbananda Sonowal recently updated Union Home minister Rajnath Singh about the progress of the NRC updation process. He has already issued a warning that anyone opposing the NRC updation process would be considered anti-national.

The final draft NRC was released on July 30, 2018. This means the NRC authority will publish another list, which will be final. It will be published only after resolving the claims and objections and making necessary corrections to misspelled names in the final draft NRC. The apex court will announce the date for publishing the final NRC.

### **THE "D-VOTERS"**

Out of the 40.07 lakh applicants who have been left out of the final draft NRC released, on Monday, 2.48 lakh applicants have been kept on hold including the D- Voters (doubtful voters who have been disenfranchised on account of failure to prove citizenship), descendants of D-voters and persons whose cases are pending

before the foreigners tribunal. The state however, has not revealed the reason for keeping others on hold.

If someone had applied but his/her name is not on the final draft NRC, then he/she can stake a claim for inclusion with the required documents as supporting evidence. Or If someone think that the names of ineligible people have been included in the final draft NRC, he/she can raise an objection and seek to have their names removed. Claim and objection forms will be available at the NRC Seva Kendras and can also be downloaded . Claims and objections can only be submitted physically at the NRC Seva Kendras and not online. Correction of names can be made through the Seva Kendras or online.

The process of filing claims and objections will start on 30 August, during which people whose names have been left out of the NRC Assam, can once again appeal to have their case reconsidered. Those left out are not yet being labelled as "foreigners" or being sent to detention centres. However, only those applicants who had submitted their applications in 2015 will be considered.

## **CONCLUSION**

The social life of Assam is in turmoil over Citizenship (Amendment) Bill 2016. The magnitude of the anxiety can be seen on the days Joint Parliamentary Committee (JPC) on the Bill visited Assam. Assam is always a sensitive space for ethno national questions. But the steering that swept the whole of state over this bill was not seen in the recent history of Assam. The anxious participation of people and organizations representing all communities in Assam on the days of public hearing at Guwahati and Silchar was really unprecedented. Though the JPC went back after the public hearing, actions and reactions over the Bill are still hitting the shores with same vibrancy. Innumerable organizations are unleashing agitation and mass campaigning programs. Artists, writers and literary figures are not confined to placing their response, but also coming to street in opposition of the Bill. Open opposition by 21 editors of regional electronic and print media groups is also a remarkable aspect. All these reactions have touched the masses and the Bill has become the centre of public debate all over the state.

## **EXTERNAL LINKS FOR FURTHER GUIDANCE**

1. <http://www.india-eu-migration.eu/media/legalmodule/Citizenship%20Act%201955.pdf>
2. <http://censusindia.gov.in/2011-Act&Rules/notifications/CitizenshipAct1955.pdf>
3. <https://www.epw.in/engage/article/why-the-citizenship-amendment-goes-against-the-basic-tenets-of-the-constitution>
4. <https://www.newsclick.in/citizenship-amendment-bill-assam-accord-and-people-assam>

