



Redefining Citizenship in India: The Implications of the Citizenship Amendment Act, 2019

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ABSTRACT

Citizenship constitutes the central feature in the constitution of nation-states. Citizen requires nationality for his or her concrete identity to a nation. When any one loses citizenship he or she may be suspected or treated as refugee, criminal or even terrorist. Constitution defines citizenship and also provides guidelines to include or exclude citizenship. Indian Constitution provides a secular and humanitarian approach for citizenship. Problem of infiltrators and refugees is addressed by the government now and then. Sometimes, party ideologies are overweighed and the spirit of the Constitution is set aside by way of amendments. It became reality in 2019 when the BJP government passed the Citizenship Amendment Bill. Several people, parties and countries expressed dissatisfaction over the amendment as it selectively include or exclude people for citizenship. This paper explores the issue of citizenship with historical touch and discusses the gap and possible solution.

Keywords: Constitution, citizenship, amendment, sovereignty, India, refugee, discrimination

INTRODUCTION

The idea of citizenship for the independent India has arrived after a long deliberation. Though India is known as Bharat, people never lived in a territory as demarcated now. Besides, several kingdoms existed and the people were divided over territories, perhaps they had similarities culturally, even linguistically. Under Hindu rulers, same linguistic groups lived in different territorial kingdoms. Invasion of Muslim rulers attempted to consolidate the fragmented territories into a bigger kingdom. Later, the British rule further consolidated for expanding their colonial imperialism. During the freedom movement, Indian nationalism came to forefront to unite the people. Gradually, the two-nation theory was put forth which justified the

belief that Hindus and Muslims were two different nations, who could not live in one country. The two-state solution was rejected by the Congress leaders, who favoured a united India based on composite national identity.[1] With the historical experience, the Constituent Assembly deliberated in length to define citizenship for the independent India.

EVOLUTION OF INDIAN CITIZENSHIP

The Government of India Act 1858 established the British Raj and formally brought the majority of Indians under British imperial rule. Indians under the British Raj generally fell into two categories: Indians resident and born in British India came under the direct dominion of and bore allegiance to the British Crown,

and held the status of British subject.[2] The concept of Indian citizenship did not exist prior to November 26, 1949, when the Constituent Assembly adopted the Constitution of India, bringing into force at once the provisions relating to citizenship. As British India was at that time under the Crown, its people were British subjects and their national status and rights of citizenship were governed by the British Nationality Acts passed by the Parliament of the United Kingdom from time to time.[3] The subject of citizenship was one of the first matters to engage the attention of the Constituent Assembly. The citizenship provisions took nearly two years to reach the stage of finality. A number of drafts were considered by several committees and sub-committees. As the chairman of the drafting committee observed later, no other article in the draft constitution except one gave 'such a headache' as the provision on citizenship. He said, 'I do not know how many drafts were prepared and how many drafts were destroyed.' [4]

INDIAN CONSTITUTION AND CITIZENSHIP

The Constitution of India came into force in 1950 guaranteed citizenship to all of the country's residents at the commencement of the constitution, and made no distinction on the basis of religion. The Constitution of India defines Indian citizenship and explains its conditions from article 5 to 11 in Part II. The Constitution defines citizenship at the commencement of the Constitution through Article (5) states that "every person who has his domicile in the territory of India and (a) who was born in the territory of India; or (b) either of whose parents was born in the territory of India; or (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India." It also states the Rights of citizenship of certain persons who have migrated to India from Pakistan at the commencement of the Constitution in Article (6) if he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 and in the case where such person has so migrated before the nineteenth day of July, 1948.[5]

About the Rights of citizenship of certain migrants to Pakistan, it is said in Article(7) and the rights of citizenship of certain persons of Indian origin residing outside India, it is said in Article (8).[6] The Constitution

also speaks about the persons voluntarily acquiring citizenship of a foreign State not to be citizens as well. It says in Article (9) that "no person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State."The issue of continuance of the rights of citizenship is also stated in article (10) that "every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen." Article (11) empowers the Parliament to regulate the right of citizenship by law. In other words, "Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship." [7]The Part II of the Constitution speaking about the citizenship is never amended in the past. The Congress never attempted to redefine citizenship keeping the multicultural features of India. Only the Citizenship Act was amended for the first time in 1985.

AMENDMENTS TO CITIZENSHIP ACTS

For the first time, India passed the Citizenship Act in 1955. The Act provided two means for foreigners to acquire Indian citizenship. People from undivided India were given a means of registration after seven years of residency in India. Those from other countries were given a means of naturalisation after twelve years of residency in India.[8] In 1961, India acquired the territories of Goa, Daman and Diu and Dadra and Nagar Haveli which were under the territories of Portugal. Earlier, the French territories of Puducherry, Karaikal, Mahé, and Yanam were acquired under treaty of cession with France in 1954. Sikkim was also merged with India and became a constituent state in 1975.

During 1980s, the violent Assam movement against all migrants from Bangladesh triggered revisions to the Citizenship Act. The Citizenship Act was first amended in 1985 after the Assam Accord was signed, wherein the Indian government of Prime Minister Rajiv Gandhi agreed to identify foreign citizens, remove them from the electoral rolls, and expel them from the country. The Citizenship Act was further amended in 1992, 2003, 2005 and 2015. The Citizenship (Amendment) Act, 2003

passed by the NDA-BJP government added the concept of 'illegal immigrants' to the Act, making them ineligible to apply for citizenship and declaring their children also as illegal immigrants.[9] Illegal immigrants were defined as citizens of other countries who entered India without valid travel documents, or who remained in the country beyond the period permitted by their travel documents. They can be deported or jailed. The 2003 amendment also mandated the Government of India to create and maintain a National Register of Citizens. The bill was supported by the Indian National Congress, as well as the CPI and CPM. During the parliamentary debate on the amendment, the leader of opposition, Manmohan Singh, stated that refugees belonging to minority communities in Bangladesh and other countries had faced persecution, and requested that the government's approach to granting them citizenship be made more liberal.[10]

The BJP government introduced a bill to amend the citizenship law in 2016, which would have made non-Muslim migrants from Pakistan, Afghanistan, and Bangladesh eligible for Indian citizenship. Although the bill was passed by the Lok Sabha, it was delayed in the Rajya Sabha, following widespread political opposition and protests in north-east India. The Bill was introduced in Lok Sabha on 19 July 2016 as the Citizenship (Amendment) Bill, 2016. It was referred to the Joint parliamentary committee on 12 August 2016. The Committee submitted its report on 7 January 2019 to Parliament. The Bill was taken into consideration and passed by Lok Sabha on 8 January 2019. It was pending for consideration and passing by the Rajya Sabha. The Bill became lapsed as the 16th Lok Sabha dissolved for forthcoming elections. After the formation of 17th Lok Sabha, the BJP passed the Citizenship (Amendment) Bill, 2019.

CITIZENSHIP AMENDMENT BILL 2019

The Lok Sabha election manifesto 2019 declares, "We are committed to the enactment of the Citizenship Amendment Bill for the protection of individuals of religious minority communities from neighbouring countries escaping persecution. We will make all efforts to clarify the issues to the sections of population from the North-eastern states who have expressed apprehensions regarding the legislation. We reiterate

our commitment to protect the linguistic, cultural and social identity of the people of Northeast. Hindus, Jains, Buddhists and Sikhs escaping persecution from India's neighbouring countries will be given citizenship in India." [11] Citizenship Amendment Bill 2019 was introduced by BJP government on 9 December 2019 and passed on 10 December 2019. With the majority of members supported the Bill only 80 members opposed. The Bill was passed by the Rajya Sabha on 11 December 2019 with 125 votes in favour and 105 votes against it. Those voted in favour included Janata Dal (United), AIADMK, Biju Janata Dal, TDP and YSR Congress Party.[12]

The Citizenship (Amendment) Act, 2019 amended the Citizenship Act, 1955 by inserting a new section 6B with four clauses. The Act paves the way for providing Indian citizenship for persecuted religious minorities from Afghanistan, Bangladesh and Pakistan who are Hindus, Sikhs, Buddhists, Jains, Parsis or Christians, and arrived in India before the end of December 2014. However, the Act does not grant such eligibility to Muslims from those countries where Muslims constitute majority. The act was the first time that religion had been overtly used as a criterion for citizenship under Indian law.[13] The NRC has only been implemented for the state of Assam, but the BJP has promised its implementation for the whole of India in its 2019 election manifesto. The NRC registers all the legal citizens and it implies that the people who are left out can be recognized as illegal immigrants. The experience with Assam NRC shows that many people were declared "foreigners" because their documents were deemed insufficient. Muslim leaders have interpreted the CAA-NRC that the Muslims in the country would be targeted by considering documents as insufficient as potential foreigners, leaving out all non-Muslims. The Home Minister Amit Shah offered reassurance that no Indian citizen needs to worry. "We will make special provisions to ensure that no Indian citizen from minority communities is victimised in the NRC process." [14]

OPPOSITION AND PROTESTS

The amendment has been criticised as discriminating on the basis of religion, particularly for excluding Muslims. The Office of the United Nations High Commissioner for Human Rights (OHCHR) called it

fundamentally discriminatory, while India's goal of protecting persecuted groups is welcome. Critics express concerns that the bill would be used, along with the NRC, to render many Muslim citizens stateless, as they may be unable to meet stringent birth or identity proof requirements. They are also concerned with the exclusion of persecuted religious minorities from other regions such as Tibet, Sri Lanka and Myanmar. The BJP government said that since Pakistan, Afghanistan and Bangladesh have Islam as their state religion, it is unlikely that Muslims would face religious persecution. Large-scale protests happened after passing of the Act. Assam and other north-eastern states witnessed violent demonstrations against the bill over fears that granting Indian citizenship to refugees and immigrants will cause a loss of their political rights, culture and land rights and motivate further migration from Bangladesh. In other parts of India, protesters said that the bill discriminated against Muslims, and demanded that Indian citizenship be granted to Muslim refugees and immigrants as well. Major protests against the Act were held by students at Aligarh Muslim University and Jamia Millia Islamia. Some states, especially, West Bengal announced that they would not implement the Act. In response, the Union Home Ministry said that states lack the legal power to stop the implementation of the CAA.[15]

Though several sections of people opposed the Bill outside the parliament as well, the BJP government succeed in passing the Bill as it has majority. Protests continue even after passing of the Bill. The opposition is centred on the secular foundations of the Constitution and the Citizenship Act 1955. The Citizenship Act 1955 provides five ways of acquiring Indian citizenship, viz-Birth, Descent, Registration, Naturalisation and Incorporation of some territory into India. Shockingly the latest CAA seeks to grant citizenry rights to religious minorities of neighbouring countries on the basis of religion, which is fundamentally impractical and also against the Article 14 of the Indian Constitution. Moreover, the CAA also hits Preamble, Article 15, 25, 29 and 30 of the Indian Constitution besides Article 51C and Article 253 that makes an obligation to India to respect international law in its true spirit.

The protesters reiterated their stand that Muslims from Pakistan, Bangladesh and Afghanistan are not

offered eligibility for citizenship under the new Act. Critics have questioned the amendment that takes no cognisance of the persecuted Muslims of those countries. If the BJP government was concerned about religious persecution, it should have included Ahmadiyyas, a Muslim sect viciously hounded in Pakistan as heretics and the Hazaras, another Muslim sect who have been murdered by the Taliban in Afghanistan. The BJP government justified its stand that Pakistan, Afghanistan, and Bangladesh are Muslim-majority countries that have modified their constitutions in recent decades to declare Islam their official state religion. Therefore, according to the Indian government, Muslims in these Islamic countries are unlikely to face religious persecution. Hence, the Muslims cannot be treated as persecuted minorities in these Muslim-majority countries.[16] The Act does not include migrants from non-Muslim countries fleeing persecution to India, Rohingya Muslim refugees from Myanmar, Hindu refugees from Sri Lanka, and Buddhist refugees from Tibet. The Act does not mention Tamil refugees from Sri Lanka.[17] Prime Minister Narendra Modi said, "No Indian has anything to worry regarding this act. This act is only for those who have faced years of persecution outside and have no other place to go except India." [18]

Several opposition leaders and activists were detained. At the same time, the Akhil Bharatiya Vidyarthi Parishad (ABVP), the student wing of Rashtriya Swayamsevak Sangh (RSS) held rallies in support of the amended Citizenship Act. Rallies in support of the Amendment Act were led by BJP leaders in West Bengal, Kerala and Karnataka.[19] On the contrary, Jay Kholiya, ex-Member and Officer Bearer of ABVP Maharashtra had resigned from his office during these protests citing Ideological Differences. ABVP's National Executive Moon Talukdar also had joined Anti-CAA protests in Assam.[20]

The bill was opposed by the Indian National Congress, who said it would create communal tensions and polarise India.[21] The Chief Ministers of the Indian states of Madhya Pradesh, Chhattisgarh, West Bengal, Punjab, Kerala and Rajasthan and union territory of Puducherry, all led by non-BJP governments, said they will not implement the law.[22] The Prime Minister Modi stated on 21 December that the NRC had only been implemented in Assam to follow a directive

from the Supreme Court of India, and that there had been no decision taken to implement it nation-wide.[23]The Indian Union Muslim League and the royal family of Tripura also filed a petition in the Supreme Court against the bill.[24]There were more than hundred petitions filed against the Bill. But court declined to stay implementation of the Citizenship (Amendment) Act, 2019.[25]

CONCLUSION

Citizenship occupies a central place in nation state. Rights and privileges are specifically granted to citizens. Every nation has its treatment to non-citizens. Several nations keep humanitarian approach to refugees and non-citizens. They used to respect the international law. However, circumstances force them to adopt different approach of discrimination. The Constituent Assembly when it attempted to define citizenship, it adopts broad based linked to secularism. Even though the partition generated conflict and violence, the friendly approach to include other sections of people in its fold. Experienced with the pressures of repatriates and refugees from neighbouring countries, India used to follow humanitarian approach. However, the resistance over the approach of the BJP in bringing amendment to citizenship for inclusion and exclusion continues widely. The BJP already justified non-inclusion of Muslim refugees from Pakistan, Afghanistan and Bangladesh. At the same, when BJP is ready to grant citizenship to the Hindus, and Hindus converted to other sects from those countries, why not to the Tamils from Sri Lanka. For several years they live as refugees in India and afraid to go back, even if Rajapaksa promised. While several nations criticised the Act, and the non-BJP states in India decided not to implement the Act, it is the time to reconsider the Act listening to the amount of opposition.

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