

ROLE OF CONSTITUTION IN SHAPING CITIZENSHIP LAW IN INDIA

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INTRODUCTION:-

Citizenship is the legal and political relationship between the individuals and the state, encompassing both right and responsibilities. In India, this relationship is constitutionally anchored and reflective of the country's commitment to democracy, secularism and equality. The legal framework governing citizenship has undergone significant evolution from accommodating the historical aftermath of partition to addressing contemporary challenges of identify, migration, and national security. The introduction of the Citizenship Amendment Act, 2019 (CAA), alongside proposed mechanisms like the National Register of Citizen (NRC) and National Population Register (NPR), has brought citizenship discourse to the forefront, raising critical question about inclusion, exclusion, and constitutional morality. This paper seeks to analyze the trajectory of citizenship law in India and their intersection with democratic value and human rights, with a focus on legal interpretation and implications for marginalized communities.

Legal Framework on Citizenship in India:-

- Part II of the Constitution (Article 5 to 11): Deals with citizenship at the commencement of the constitution (26 January 1950)
- The Citizenship Act, 1955 (as amended) Governs acquisition, termination, and deprivation of India citizenship.
- Citizenship Amendment Act (CAA): CAA 2003 and CAA 2019

Constitutional Provisions (Article 5-11):-

Article 5: **Citizenship by domicile.**

A person who is a native of India and fulfills any one of the three conditions. These conditions are:-

- If he was born in India, or
- One of his parents was born in India or
- Has been residing in India for five years before the commencement of the constitution.

Article 6: **Citizenship rights of migrants from Pakistan .**

A person who has migrated from Pakistan to India can become a citizen of India if either of his parents or grandparents were born in

undivided India and either of the following two conditions are fulfilled.

- If he migrated before 19th July, 1948 he must have ordinarily resided in India from the date of his migration; and
- If he migrated to India on or after 19th July 1948, he may be registered as a citizen of India, but such a person must have resided in India for six months to be registered.

Article 7: **Right of Persons who migrated to Pakistan and returned.**

A person who migrated from India to Pakistan after 1st March, 1947 but later returned to India for resettlement can become a citizen of India. He has to stay for six months after applying for registration.

Article 8: **Citizenship Right of Indians abroad**

A person whose parents or grandparents were born in undivided India but are living outside India can still become a citizen of India if he apply for registration as a citizen of India through diplomatic means or consular representation. The arrangement has been made for Indians living outside India to acquire Indian citizenship.

Article 9: No dual citizenship for those acquiring citizenship of another country.

A person who voluntarily acquired the citizenship of any other country shall not be a citizen of India or shall not be deemed to be a citizen of India.

Article 10: Continuance of rights.

Every person who is or is deemed to be a citizen of India if the Parliament makes any such law.

Article 11: Parliament's power to make law on citizenship.

The Parliament has right to make laws regarding the acquisition and termination of citizenship and all other matters relate to citizenship.

- These Provisions laid the foundations, but were transitional in nature. Article 11 enabled the legislature to frame a detailed and permanent citizenship law.

Citizenship Act, 1955 and its Amendment

Provides for acquisition and termination of citizenship after the commencement of the constitution. This act has been amended eight times so far.

Acquisition of Citizenship

The Citizenship Act, 1955 states five conditions for acquiring citizenship, such as birth, by descent, by registration by naturalization and by incorporation of territory.

By birth:-

- A person born in India on or after 26 January 1950 but before 1 July 1947 shall be a citizen of India irrespective of the nationality of his parents.
- A person born in India on or after 1 July shall be a citizen of India only if at the time of his birth either of his parents is a citizen of India.
- A person born in India after 1 December 2004, he shall be a citizen of India both or one of their parents is a citizen of India at the time of his birth.

By descent:-

- A person born outside India on or after 10 December 1992 can become a citizen of India

only if at the time of his birth either of his parents is a citizen of India.

- A person outside India after 3 December 2004 cannot become a citizen of India by descent if his birth has not been registered at the India consulate within 1 year of his birth or has not been registered after the said period with the consent of the central Government.

By registration:-

- A person of India origin who has resided in India for 7 years immediately preceding the application for citizenship.
- A person who is married to an India citizen and has been residing in India for 7 years immediately preceding the application for registration.
- Minor children of a citizen of India.

By naturalization:-

- he must have been residing of at least 12 months immediately preceding the date of application for citizenship.

Citizenship Amendment Act 2019:

The India constitution does not declare citizenship as a fundamental right, but it is closely intertwined with constitutional identity, particularly thought:

Article 14: Right to Equality.

Article 15: Prohibition of discrimination.

Article 16: Right to Life and Liberty.

NRC and NPR: Legal Mechanisms and Constitutional Concerns

The National Register of Citizens (NRC) is an official record of legal citizen. Initially created Assam under supreme court monitoring, it aim to identify illegal immigrants. However, over 1.9 million people were excluded from the final list in 2019, many of whom were poor, illiterate, or lacked documentation, leading to a crisis of statelessness.

The National Population Register (NPR), introduced under the citizenship rules, 2003, is a database of usual residents. Though claimed to be a population enumeration exercise, NPR is

seen as a precursor to NRC raising concerns over data collection, surveillance and misuse.

National Register of Citizenship (NRC)

Backed by the Citizenship Rules, 2003

origin: First implemented in Assam in 1951 following the indo- Pak partition.

Purpose: identify illegal immigrants post – partition, particularly from East Pakistan (now Bangladesh)

Recent Development: The S.court of India mandated an NRC update in Assam, culminating in a final list in 2019 that excluded over 1.9 million residents.

National Population Register (NPR)

- **Origin:** Introduce under the citizenship Act of 1955 and the citizenship rule, 2003.
- **Purpose:** Collect demographic and biometric data of residents to built a comprehensive identify database.
- **Execution** : Linked with the Census, the NPR was last update in 2010, with another update proposed alongside the 2021 census.

Conclusion

Citizenship, in the modern philosophical tradition, is more than a legal entitlement – it is a moral claim to equality, dignity, and belonging. The philosophical concern with CAA and its surrounding policies lies not only in the legal exclusions it create but in the symbolic exclusion of the “other” which judicial contradicts the ethical foundation of the Indian Republic.

Judicial response so far have walked a tightrope between national security and constitutional morality, but a definitive constitutional adjudication on CAA’s validity is awaited.