



**THE CITIZENSHIP (AMENDMENT) BILL 2016 AND SOUTH ASIAN
REFUGEES**

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Abstract

Citizenship is the one of the basic weapon of human being to live life with dignity in any nation. A person who is citizen of any country is entitled to enjoy civil and political right in sovereign state. Therefore, in order to take benefits of several, social and economic rights a person must seek citizenship of nation in which he is willing to live in. Recently, A new Citizenship (Amendment) Bill 2016, introduced in the Indian parliament proposed easing the path to citizenship for Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians fleeing persecution in Afghanistan, Pakistan, and Bangladesh. In omitting Muslims, Jews, Bahais etc migrants and other south Asian Refugees from this provision, however, the bill has stimulated religious and ethnic tensions in India and South Asian Refugees. This bill gives preference to Hindu refugees over Muslim refugees and other South Asian Refugees migrating in India which is unconstitutional as the preamble of the Indian constitution confirms India as secular state. The most notable criticism of proposed Citizenship (Amendment) Bill 2016, is whole contradictory with Humanitarian refugees policy .one hand the bill provides for an opportunity to a particular community to seek citizenship of India but other hand this bill discriminates & exclude other communities like Muslims, Jews, Bahais etc migrants.

In this context the purpose of this paper to enumerate the impacts of the amendment and it's social and constitutional ramification.

Keywords: *Constitution, Citizenship, Secularism, South Asian Refugees*

A. Introduction

India is a land of religions, languages and customs. Therefore India is a multi religious and multi cultural country from its known history. The number of invasions and incursions from Aryans to Mughals added to religious, cultural and linguistic pluralism. British colonialism also contributed to its cultural and religious multiplicity. Indian society is like rainy clouds with many tributaries and the winds blows on and on. Hence, Indian society is very rich, and well known for wisdom and great thoughts. Secularism is an important aspect of Indian society, for which it is also well-known in the world."Sarva Dharma Sama Bhava" is an Indian concept embodying the equality of all religions. The concept was embraced

by Ramakrishna and Vivekananda,^[1] as well as Gandhi. The concept is one of the key tenets of secularism in India, wherein there is not a separation of church and state, but an attempt by the state to embrace all religions.¹

Emperor Ashoka was the first great emperor to announce, as early as third century B.C. that, the state would not prosecute any religious sect. He pleaded for restraint of criticism of other religious sects. He asked people to become perfect in the scriptures of other religions. The leading lights of these movements were Khwaja Moinuddin Chisti, Baba Farid, Sant Kabir Das, Guru Nanak Dev, Saint Tukaram and Mira Bai. They contributed to the development of a composite culture in such a manner that nobody dares to challenge them. The remarks of Guru Nanak, when he says, “There is no Hindu and no Musalman as there is any distinction between man and man”. The Mughal emperor the great **Akbar** also to a great extent promoted the policy of toleration of different religions.²

B. Constitutional and Legislative provision of Citizenship in India

For the better appreciation of the concept of citizenship it is essential to find the meanings of citizenship. In general sense, citizen means a person who is the member of the state and who enjoys social and political rights. In our country an adult of twenty-one years of age enjoys, regardless of the distinction of caste, color and creed, education, property and residence, etc. The Constitution of India provides for a single citizenship for the entire country. The provisions relating to citizenship at the commencement of the Constitution are contained in Articles 5 to 11 in Part II of the Constitution of India. Article -5 provides citizenship by domicile. To claim citizenship under this Article there are two conditions.

1) At the time of commencement of the constitution he must have his domicile in India. In India a person becomes a citizen of India if he or she fulfils of the following conditions mentioned Article 5 to 11 of the Indian constitution.³

2) such person must fulfilled any one of the following three condition a. he was born in the territory of India, or b. either of his parents was born in territory of India or c. he has been ordinarily resident in the territory of India for not less than five year immediately preceding such commencement of the constitution of India Articles 6 and 7 deal with two categories of

¹ Md Musa Ali, Secularism In India: Concepts, Historical Perspective And Challenges Asia Pacific Journal of Research Vol: I. Issue XXIV, February 2015 ISSN: 2320-5504, E-ISSN-2347-4793 pp 119-124.

² Ibid

³ Dr. Sandeep Kumar, CITIZENSHIP (AMENDMENT) BILL 2016 :- A CRITIQUE, Indian Journal of Research, Volume 6, Issue -2 February -2017 ISSN -2250-1991, PP 227 -229



persons, namely, those who were residents in India but had migrated to Pakistan and those who were residents in Pakistan but migrated to India.

- Article 8 provided for citizenship to those certain persons of Indian origin but residing outside India
- **Article 9** of the Constitution, provides that any person who voluntarily acquires the citizenship of any foreign State, will not be entitled to the citizenship of India.
- Article 10 says that all citizens shall continue to be citizen of India. Indian nationality law largely follows the jus sanguine (citizenship by right of blood) as opposed to the jus soli (citizenship by right of birth within the territory).
- Whereas Article 11 confers power to make rules regarding citizenship on the Parliament. In fact the parliament has power to make rules regarding citizenship, Naturalization and Aliens.

By virtue of above mentioned Article the Parliament passed a comprehensive law in the year of 1955 for dealing with citizenship which is known as The Citizenship Act 1955. This Act provides acquisition and determination of citizenship.

C. Acquisition of Indian Citizenship as per Citizenship Act 1955:-Indian Citizenship can be acquired under the following ways:

- (1) Citizenship at the commencement of the constitution of India
- (2) Citizenship by birth: – This provision has different clauses for different periods
- (3) Citizenship by descent
- (4) Citizenship by registration
- (5) Citizenship by naturalization.

Persons domiciled in the territory of India as on 26 November 1949 automatically became Indian citizens by virtue of operation of the relevant provisions of the Indian Constitution coming into force. (Citizenship at the commencement of the constitution of India.)

Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth. [Citizenship by birth]

A person born in India on or after 1 July 1987 is a citizen of India if either parent was a citizen of India at the time of the birth. [Citizenship by birth]

Those born in India on or after 3 December 2004 are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth. [Citizenship by birth].⁴

⁸ www.wikipedia.com

Termination of Indian Citizenship as per Citizenship Act 1955:- One can lose citizenship of India in three ways – Renunciation, Termination and Deprivation.

Though This Act was amended in several times but the latest proposed amendment bill of 2016 is being faced huge criticism .Before on criticism of proposed bill,⁵ 2016 it is mandate to discuss the concise proposed provision of the bill 2016.

D. The citizenship Amendment Bill, 2016

The Bill was introduced in Lok Sabha on July 19, 2016, and referred to a Joint Parliamentary Committee on August 12, 2016. The report is expected on the last day of the first week of the Winter Session, 2016.

- **Highlights of the Bill**

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 naturalization 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 and Analysis**

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).

E. Evaluation Of South Asian Refugees

“There is no greater sorrow on earth than the loss of one’s native land?” by Euripides, The word refugee is a concept as well as a system. There are refugees suffers from hunger, fight for their lives or for their freedom from their own governments, from natural disaster or from man’s inhumanity to man. Today, there are millions of such people, from a variety of national backgrounds, on all populated continents. The South Asian region hosts the largest number of refugees on the globe. Such as South Asia such as South Asia such as Bhutanese,

⁵ Chaturvedi Anviti, Legislative Brief the Citizenship (Amendment) Bill, 2016, Institute for Policy Research StudiesvPRS Legislative Research Available at <http://www.prsindia.org/uploads/media/Citizenship/Legislative%20Brief%20Citizenship%20Amendment%20Bill%202016.dt> September 27, 2016.



Burmese, Bangladeshi migrants, Bihari Muslims and Sri Lanka. In all countries of the region, political violence and developmental policies have created huge numbers of internally displaced persons and stateless Persons. These issues are wrapped up in *Missing boundaries* in all countries of the region, political violence and developmental policies have created huge numbers of internally displaced persons and stateless persons. These issues are lost in high wall of *boundaries*.⁶

F. Criticism of the Bill

The bill has been criticized on the basis of “Humanitarian” grounds.⁷ The most notable criticism of the bill in these entire scheme Muslim migrants would not be entitled to the benefit of such a law if it was passed. The bill aims to save minorities from violence and profanity laws in Pakistan, Bangladesh, and Afghanistan. The bill is the only seek to help Hindus, Sikhs, Buddhists, Jains , Parsis , And Christians from Muslim countries . But the Muslim minority communities completely ignored. The citizenship (amendment) bill also fails on the doctrine of international refugee law. The purpose and object of the bill is to provide shelter to neglected, religiously persecuted people.⁸

1. Contradiction with the basic principle of preamble

The preamble of Indian constitution secures JUSTICE, LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; but the Citizenship (Amendment) Bill 2016 contradict these basic principle enshrine in the preamble and cause threat to unity and integrity of India.⁹

2. Against the principle of Secularism

From its inception India is constitutionally secular state but this proposed amendment tries to bring India into Hindu Rastra through the backdoor of this entire Scheme.¹⁰

3. Infringement of constitutional right (Article-14 right to Equality)

The most significant damage of this amendment is that it appears to breach of constitutional provision, which are unbiased as to the identity of citizens. The Right to equality in Article-14 provides constitutional “right of equal protection of law” and

⁶ R. Ramasubramanian, *Missing Boundaries: Refugees, Migrants, Stateless and Internally Displaced Persons in South Asia*, cited from <http://www.ipcs.org/books-review/south-asia/missing-boundaries-refugees-migrants-stateless-and-internally-displaced-persons-in-183.html>

⁷ <http://www.wionews.com/south-Asia/citizenship-amendment-bill-2016-the-politics-of-humanity-8293>

⁸ Ibid

⁹ https://en.wikipedia.org/wiki/Preamble_to_the_Constitution_of_India dt24/04/2017

¹⁰ <http://thehindu.com/news/national/citizenship-amendment-bill-communally-motivated/article15007768> accessed on dt 11/04/2017

“equality before Law” to all irrespective of their nationality or citizenship but this Bill make clear discrimination between specific communities to seek Citizenship of India.

4. Peril to Honor and Unity of India

The preamble of Indian Constitution imposes commitment to government of India to preserve and safeguard the unity and integrity of India. But the amendment bill turmoil in **Assam** which is the complete manipulation with the honor and unity of India. So Assam Accord is the strong reason of protest against this bill behind the government decision. The citizenship amendment Bill 2016 has not been sitting well with the Assamese as it contradicts the Assam Accords of 1985, which clearly states that legal migrants heading in from Bangladesh after March 25, 1971, would be deported.¹¹

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G. Findings

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H. Conclusion and Suggestion

The proposed citizenship amendment bill is fully impractical and suffers from illusionary perception of Indian identity but it is facing protest because this bill is based on purely on religious basis. Today, India needs to make a policy for refugees which must be based on justice, equality and on humanitarian basis. The policy should be framed with the following issues’

1. There should be a provision of Identification of refugees on humanitarian grounds.
2. The Application for refugee status should be easily accessible and preferably provided along with social Identification number.
3. The Registration of new –arrival refugees and renewal of refugee certificate should be an easy and short process.
4. There should be provisions for residence permits along with basic rights like healthcare sanitation, housing, employment opportunities and education opportunities for children.

⁹⁹<http://indiatoday.intoday.in/story/citizenship-amendment-bill-2016-assam-illegal-migrants-protests> on dt 27/04/2017