

ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

ON LAW & MULTIDISCIPLINARY ISSUES

VOLUME I, ISSUE IV

JULY, 2020

Website - journal.lexresearchhub.com

Email - journal@lexresearchhub.com



DISCLAIMER

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Research Hub Journal On Law And Multidisciplinary Issues), an irrevocable, non exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of **Lex Research Hub Journal On Law And Multidisciplinary Issues** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Research Hub Journal On Law And Multidisciplinary Issues.

[© Lex Research Hub Journal On Law And Multidisciplinary Issues. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]

EDITORIAL BOARD

Editor-in-Chief

Mr. Shaikh Taj Mohammed

Ex- Judicial Officer (West Bengal), Honorary Director, MABIJS

Senior Editors

Dr. JadavKumer Pal

Deputy Chief Executive, Indian Statistical Institute

Dr. ParthaPratimMitra

Associate Professor, VIPS. Delhi

Dr. Pijush Sarkar

Advocate, Calcutta High Court

Associate Editors

Dr. Amitra Sudan Chakraborty

Assistant Professor, Glocal Law School

Dr. Sadhna Gupta (WBES)

Assistant professor of Law, Hooghly Mohsin Govt. College

Mr. KoushikBagchi

Assistant Professor of law, NUSRL, Ranchi

Assistant Editors

Mr. Rupam Lal Howlader

Assistant Professor in Law, Dr. Ambedkar Government Law College

Mr. Lalit Kumar Roy

Assistant Professor, Department of Law, University of GourBanga

Md. AammarZaki

Advocate, Calcutta High Court

ABOUT US

Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) is an Online Journal is quarterly, Peer Review, Academic Journal, published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essays in the field of Law and Multidisciplinary issues.

Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. **Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X)** welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

**THE CONCEPTUAL FRAMEWORK OF
CITIZENSHIP FROM THE COMMENCEMENT
OF CONSTITUTION TO
CITIZENSHIP(AMENDMENT) ACT, 2019**

Author –

Kaushal Kasliwal

Student(B.B.A.LLB)

Prestige Institute Of Management And Research Department Of Law, Indore

ABSTRACT

Citizenship is a status deriving a person as a member of a particular country. In this research article, we have studied about citizenship at the commencement of the constitution in which we have studied how our constitution framers have decided to grant citizenship to people at the time of commencement of the constitution, then we studied about Citizenship act 1955 which contains the right to prepare rules and regulations after the commencement of the constitution. This right is given under article 11 of the constitution. Then we have studied the concept of citizenship of a person covered by Assam accord 1985, then we have studied the concept of Overseas Citizenship of India. Then we have broadly analyzed the Citizenship (Amendment) Act, 2019. In which we have studied what is Citizenship (Amendment) Act,2019? then we have studied about issues raised after the passing of this act. At last, we studied how the government reacted towards these issues which were raised after the passing of this act.

Keywords - *Persecution, Illegal migrant, Amendment, Counsellor.*

INTRODUCTION

The partition of India and Pakistan took place in 1947 due to which many people migrated from one country to another country. This migration created a problem for India to decide who will qualify for citizenship in the country. Ascertain fundamental rights are available to citizens of the country only. So the constitution framers tackled with this problem in two-part, one part deals with the citizenship at the commencement of the constitution means it is a provision in the constitution which deals with the condition that who will qualify for Indian citizenship at the time of the commencement of constitution means on 26th January 1950. In another part they enacted the Indian citizenship act 1955 this part deals with the future aspect of citizenship means this act deals with the matter of citizenship after the commencement of the constitution. This act expressly empowers the union parliament to make laws concerning acquisition or termination of citizenship in India. This act has been amended from time to time according to the changing conditions and changing needs. One such amendment has been taken place in 2019 known as the citizenship amendment act 2019.

CITIZENSHIP OF INDIA AT THE COMMENCEMENT OF THE CONSTITUTION:

Who Will Be The Citizen Of India At The Commencement Of The Constitution?

A person at the commencement of the constitution could be a citizen of India in the following ways as defined in the constitution of India:-

1 By domicile

2 By migration

3 By registration

1. **Citizenship by domicile:** every person who has his domicile in the territory of India and¹
 - (a) Born in the territory of India.
 - (b) Either of whose parents were born in the territory of India.
 - (c) Who is ordinarily resident in the territory of India for not less than five years immediately preceding such commencement shall be a citizen of India.

DOMICILE: Domicile means the place where a person resides intending to remain there permanently and without any present intention to remove himself therefrom².

2. Citizenship by migration:

RIGHTS OF CITIZENSHIP OF MIGRANTS FROM PAKISTAN³-: Notwithstanding, in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this constitution if-

- (a) He or either of his parents or any grand-parents was born in India as defined in the government of India act, 1935 and
 - (i) in the case where such person has so migrated before the 19th July 1948, has ordinarily resident in the territory of India since the date of migration, or

¹INDIA CONST. art. 5.

² Narender Kumar, constitutional law of India 57 (10th ed, 2017).

³INDIA CONST. art. 6.

(ii) in the case where such person has so migrated on or after 19th day of July 1948, he has been registered as a citizen of India by an officer appointed by the government of the domain of India on an application made by him therefore to such officer before the commencement of this constitution in form and manner prescribed by the government. It is provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

(b) **RIGHTS OF CITIZENSHIP OF MIGRANTS TO PAKISTAN**⁴: Notwithstanding anything in articles 5 and 6 a person who after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India.

provided that nothing in this article shall apply to a person who after having so migrated to the territory now included in Pakistan has returned India under permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for purpose of clause(b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July 1948.

3. **CITIZENSHIP BY REGISTRATION**⁵: Notwithstanding anything in article 5, any person who or either of whose parents or any grandparents was born in India as defined in the government of India act 1935 and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by diplomatic or counsellor representative of India where he is for the time being residing on an application made by him therefore to such diplomatic or counselor representative, whether before or after the commencement of this constitution in the form and manner prescribed by the government of the domain of India or the Government of India.

⁴ INDIA CONST. art. 7.

⁵ INDIA CONST. art. 8.

INDIAN CITIZENSHIP ACT, 1955:

Constitution of India decides only that who will be the citizen of India at the time of commencement of constitution means on 26th January 1950. So to decide future perspective of citizenship parliament under article 11 of the constitution passed the citizenship act 1955. Article 11 of the constitution confers on the parliament, power of acquisition and loss, or termination of the citizenship. Indian Citizenship act 1955 considers five ways for the acquisition of citizenship and three ways for termination of citizenship.

ACQUISITION OF CITIZENSHIP:

1. Citizenship by birth⁶: (SECTION 3)

- (a) Every person born in India on or after 26th January 1950 but before 1st July 1987.
- (b) After the commencement of the citizenship amendment act 1986 either of whose parents is a citizen of India at the time of his birth, shall be a citizen of India.
- (c) the citizenship amendment act,2003 has amended section 3 in such a way that a person born in India on or after the commencement of this amendment act shall be a citizen of India by birth if at the time of his birth (i) both of his parents are citizens of India, or (ii) one of whose parent is a citizen of India and other is not an illegal migrant⁷.

2. Citizenship by descent⁸: (SECTION 4)

Section 4 of the citizenship act, 1955 provides that a person born outside India on or after 26th, January 1950, shall be a citizen of India by Descent, if, at the time his birth his father is a citizen of India.

However, if the father of such a person is himself a citizen of India by descent, then such person shall not be a citizen of India unless-

- (a) His birth is registered at Indian consulate, or
- (b) His father is, at the time of his birth, in the service under a government in India.

⁶ Dr. Rega Surya Rao, lectures on constitutional law 42 (2nd ed, 2016).

⁷ Illegal migrant means a foreigner who has entered into India without valid documents or authority as may be prescribed by or under any law in that behalf or having entered into India with such documents but remains therein beyond permitted period of time. See section 2(b) of citizenship act , 1955.

⁸ Narender Kumar, constitutional law of India 65(10th ed, 2017).

The birth of such a person can be registered with an Indian consulate, within one year of its occurrence or one year of the commencement of citizenship act, 1955, or within period extended by the government of India.

This section has been amended by the citizenship amendment act 1992 and 2003;

- (1) The citizenship amendment act, 1992 amended section 4 of the citizenship act, 1955 to effect that the words his father have been replaced by the word “either of his parents”. Thus, a person born outside India shall be a citizen of India if at the time of his birth either of his parents is a citizen of India;
- (2) The citizenship amendment act, 2003 has amended section 4 to the effect that the birth of such a person as aforesaid shall not be registered after the commencement of this amendment act unless the parents of such person declare, in such form and such manner as may be prescribed, that the minor does not hold the passport of another country. A minor who is a citizen of India under this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country, within six months of attaining full age.

3. Citizenship by registration⁹: (SECTION 5)

- (1) Section 5 of the Citizenship Act, 1955 provides for the registration of certain categories of persons as citizens of India. This section lays down that the prescribed authority may, on an application made in this behalf, register as a citizen of India, any person, who is not a citizen under any provision of the constitution or by any other provisions of citizenship act 1955, as amended by the citizenship (Amendment) Act, 2003, and belongs to any of the following categories :
 - (a) persons of Indian origin who are ordinarily resident in India and have been so resident for five years immediately before making an application for registration;
 - (b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
 - (c) persons who are, or have been, married to a citizen of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration;

⁹ Dr. Rega Surya Rao, lectures on constitutional law 45-46 (2nd ed, 2016)

- (d) minor children of persons who are citizens of India, and
 - (e) persons of full age and capacity who are citizens of a country specified in the first schedule.
-
- (2) No person being of full age shall be registered as a citizen of India under subsection (1) until he has taken an oath of allegiance in the form specified in the second schedule.
 - (3) No person who has renounced, or has been deprived of, his Indian citizenship, or whose Indian citizenship has terminated, under this act shall be registered as a citizen of India under sub-section except by order of the central government.
 - (4) The central government may, if satisfied that special circumstances are justifying such registration, cause any minor to be registered as a citizen of India.
 - (5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of Article 6 or Article 8 of the constitution shall be deemed to be a citizen of India by registration as from the commencement of the constitution or the date on which he was so registered, whichever maybe later.

4 Citizenship by Naturalization¹⁰: (SECTION 6)

1. where an application is made in the prescribed manner by any person of full age and capacity who is not a citizen of a country specified in the first schedule for the grant of a certificate of naturalization to him, the central government may, if satisfied that the applicant is qualified for naturalization under the provision of the third schedule, grant the certificate of naturalization to him.

Provided that, if in the opinion of the central government the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the third schedule”.

5.Citizenship by Incorporation of Territory¹¹: (SECTION 7)

¹⁰ Dr. Rega Surya Rao, lectures on constitutional law 46 (2nd ed, 2016).

¹¹ Narender Kumar, constitutional law of India 68(10th ed, 2017).

“This section provides that if any territory, not being part of India, becomes part a part of the territory of India, the government of India may by order, notified in official gazette specify the persons, who are residents of such territory, to be citizens of India from the date to be specified in the order.

TERMINATION OF CITIZENSHIP:

1. By Renunciation of Indian Citizenship¹²: (SECTION 8)

1. If any citizen of India of full age and capacity, who is also a citizen or national of another country, makes in the prescribed manner a declaration renouncing his Indian citizenship, the declaration shall be registered by the prescribed authority, and upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, Registration thereof shall be withheld until the central government otherwise directs.

2. here a person ceases to be a citizen of India under subsection (1), every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

3. For this section, any woman who is or has been married shall be deemed to be of full age.

2. By Acquiring Citizenship of another Country¹³: (SECTION 9)

¹² Dr. Rega Surya Rao, lectures on constitutional law 48 (2nd ed, 2016).

¹³ Dr. Rega Surya Rao, lectures on constitutional law 49 (2nd ed, 2016).

1. Any citizen of India who voluntarily acquires the citizenship of another country shall upon such acquisition cease to be a citizen of India.

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the central government otherwise directs.

2. If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules evidence, as may be prescribed in this behalf.

DEPRIVATION OF CITIZENSHIP¹⁴: (SECTION 10)

This section provides that a citizen of India whether by naturalization or by registration or by domicile or by residence, may be deprived of his citizenship of India, by an order of the central government, if it is satisfied-

- a) That the registration or certificate of naturalization was obtained by him through fraud, false representation or concealment of a material fact or
- b) That he has shown himself, by act or speech, to be disloyal or disaffected towards the constitution of India; or
- c) That he, during a war in which India may be engaged, unlawfully traded or communicated with the enemy; or
- d) That within five years of his registration or naturalization, he has been sentenced to imprisonment for not less than two years; or
- e) That he has been ordinarily resident out of India for seven years continuously and during that period, he has neither been at any time, a student of an educational institution in a country outside India; nor, in the service of the government of India, or of an International organization of which India is a member nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

¹⁴ Narender Kumar, constitutional law of India 72-73(10th ed, 2017).

Before making an order depriving a person of his Indian citizenship, the central government is to give him a written notice containing the grounds on which the order is proposed to be made. If the order is made on any of the above-mentioned grounds specified in (i) to (iv) clauses of Deprivation of citizenship, that person might have his case referred to a committee of inquiry. The government shall then refer a case to a committee of inquiry, consisting of a chairman and two other members. The chairman shall be a person, who has held any judicial office, within the territory of India for not less than 10 years. The committee of inquiry shall hold the inquiry and the central government shall ordinarily be guided by its report in making the order.

CITIZENSHIP OF PERSON COVERED BY

ASSAM ACCORD, 1985¹⁵:

The Citizenship (Amendment) Act, 1985 inserted section 6-A in the Citizenship Act, 1955 to give effect to the memorandum of the settlement relating to the foreigners in Assam. This section provides Citizenship of India for persons of Indian origin who have come to Assam before 1st January 1966.

Those, who came to Assam after 1st January 1966 but before 25th March 1971 and have been detected to be foreigners would have to register themselves. Such persons shall have the same rights and obligations as citizens of India. But such persons shall be deemed to be citizens of India for all purposes as from the date of expiry of a period of ten years from the date on which they have been detected to be foreigners.

OVERSEAS CITIZENSHIP OF INDIA¹⁶:

The Citizenship (Amendment) Act, 2003 provides for dual citizenship to persons of Indian origin residing in 16 countries. The act simplifies the procedure to facilitate the re-acquisition of Indian Citizenship by persons of full age, who are persons of Indian origin and former Indian Citizens, without having to forgo the citizenship of countries in which they live. As per the Act, the persons of Indian origin who seek dual Citizenship, would be allowed free movement

¹⁵ Narender Kumar, constitutional law of India 68-69(10th ed, 2017).

¹⁶ Narender Kumar, constitutional law of India 69-70(10th ed, 2017).

without visas, and be able to own properties, build or invest directly in the projects of the country. However, they will not have any political rights, will not be allowed to vote or run for office or take jobs in defense services.

The Citizenship (Amendment) Act, 2003, provides for registration of following persons as overseas citizens of India.

- (a) Any person of Indian origin of full age and capacity, who is a citizen of any country specified in the fourth schedule, to the Act;
- (b) Any person of full age and capacity who has obtained the Citizenship of a specified country on or after the commencement of the Amendment Act, 2003, and who was a citizen of India immediately before such commencement.
- (c) Any minor children of a person mentioned in the above categories (a) and (b).

The registration, as an overseas citizen of India, may be done by the central government, subject to such conditions and restrictions including the condition of reciprocity, as may be prescribed by the said government. The person so registered, shall be an overseas citizen of India from the date on which he is so registered.

No person, who has been deprived of his Indian citizenship under the citizenship(Amendment) Act, 2003 shall be so registered, except by an order of central government.

As regards the overseas citizen of India, section 7D of the Citizenship (Amendment) act, 2003, provides that the central government may, by order, cancel the registration of such a person, on any of the grounds mentioned in clauses (i) to (iv), above as also, if it is necessary to do so, in the interest of the sovereignty and integrity of India; friendly relations with any foreign country; or in the interests of the general public. An NRI'S. the name gets struck from Electoral roll if he stays outside India for more than six months at a stretch.

WHAT IS CITIZENSHIP (AMENDMENT) ACT, 2019?

Article 11 of the Constitution entitled Parliament to make rules related to Citizenship. So The Parliament used this power of Constitution and amended some provisions of The Citizenship Act, 1955 in Citizenship (Amendment) Act, 2019. The provisions which were Amended under Citizenship (Amendment) Act, 2019 were -:

1. This act amends the definition of illegal migrants defined in section 2(b) of the Citizenship Act, 1955 by making a change in definition. The change made in the definition is if the Person of Hindu, Sikh, Buddhist, Parsi, Jain, Christian community who migrates from these three countries named Afganistan, Bangladesh, Pakistan will not be called an illegal migrant.
2. Another Amendment made by this act is making a change in the period of acquiring Citizenship of India. Earlier for acquiring the citizenship of India person was supposed to reside in India for eleven years or had to work in government service for eleven years. But now the citizenship (amendment) act, 2019 amended the time limit of eleven years by reducing it to five years for the people belonging to Hindu, Sikh, Buddhist, Jain, Parsi, Christian community, and migrated from Bangladesh, Pakistan, Afganistan. Means now the people belonging to these six communities coming from these three countries can acquire citizenship in five years only. The time lime set for starting five years is 2014. This means people who are belonging to these categories who migrated in 2014 will get citizenship in 2019.
3. Another Amendment that was made was related to the Assam Accord. As Assam Accord -1985 which states that those people who came in Assam after 24th march 1971 will not be granted citizenship. To check the illegal immigrant means the people who migrated Assam after 24th march 1971 and leaving here illegally NRC was brought. But the citizenship(amendment) act, 2019 amended the provision of granting citizenship mentioned in Assam accord -1985 for Hindu, Sikh, Buddhist, Jain, Parsi, Christian community people who migrated from Pakistan, Afganistan, Bangladesh by changing the time limit of acquiring citizenship from 24th March 1971 to 2014.
4. Another amendment made by this act was Amending the Provisions of registration of overseas citizens of India. Earlier the government may cancel the persons overseas citizenship of India on various grounds specified in the Act. In the case of cancellation, the overseas citizen residing in the country has to leave the country. The Citizenship(Amendment) Act, 2019 added another ground for canceling the citizenship of an overseas citizen of India another ground is if any overseas citizen of India found to be violating any law notified by the central government than his citizenship will be canceled on this basis.

This act did not apply to tribal areas of Assam, Meghalaya, Mizoram, and Tripura is included in the sixth schedule to the constitution and this act also did not apply to the states regulated by the inner line permit under the Eastern Frontier Regulations 1873¹⁷.

WHAT WERE THE ISSUES AFTER PASSING OF THIS ACT?

Some people claiming passing of this act as a biased and unfair step of government as this act specifically focuses on people of only these six communities named Jain, Sikh, Parsi, Christian, and Hindu community who migrates specifically from these three countries named Bangladesh, Pakistan, Afganistan. So they claimed it is as a violation of Article 14 of the constitution which states the right to equality. So according to the people of other communities rather than these six communities who came from other countries rather than from these three countries others should also be focused.

The government also faced severe protests against the passing of this act.

Another challenge that the government faced was resentment in the Northeast as they were fearing that granting citizenship to foreign communities will undermine the ethnic communities living in these regions¹⁸.

WHAT WAS THE REACTION OF GOVERNMENT ISSUES RAISED?

Our government in parliament clarified that this act isn't unfair or biased the government clarified reason why they have chosen these people of this six communities coming from only this specific three countries as this three countries titled them as Islamic countries and there these communities people were in minority and were religiously persecuted¹⁹. So to protect

¹⁷Ministry of Home Affairs, The Citizenship(Amendment) Bill,2019, PRS LEGISLATIVE RESEARCH(Dec 09,2019,11.00), <https://www.prsindia.org/billtrack/citizenship-amendment-bill-2019#:~:text=In%202016%2C%20a%20Bill%20was,amend%20the%20Citizenship%20Act%2C%201955.&text=The%202019%20Bill%20seeks%20to,North%2DEast%20from%20this%20provision.>

¹⁸ Times of India, Citizenship(Amendment) Act 2019: why has it triggered protests, Times of India(Dec 17,2019,11:31) [https://timesofindia.indiatimes.com/india/what-is-citizenship-amendment-act-and-why-has-it-triggered-protests/articleshow/72759793.cms.](https://timesofindia.indiatimes.com/india/what-is-citizenship-amendment-act-and-why-has-it-triggered-protests/articleshow/72759793.cms)

¹⁹ When group does ill treatment with other group.

these communities people from their religious persecution these countries' government has chosen these communities in this act.

CONCLUSION AND SUGGESTION:

So the Citizenship(Amendment) Act, 2019 was a necessary and good step taken by the government of India to protect people of these six communities coming from these three countries from their religious persecution. But on the other hand there are more communities other than these six communities who were facing religious persecution in other than these three neighboring countries to whom also government should focus. I am on the suggestion that government at the time of implementing the policies and activities should also make a plan to educate the people about the plan, policies or Act which they are implementing as misinformation or inappropriate information related to the policies or actions of government can lead to internal disturbance in the country.