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A Critical Analysis of the Citizenship Amendment Act 2019

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ABSTRACT

Citizenship is a dynamic concept, which changes with the social, political, economic, geographical as well as climatic changes. Therefore, the change in the law of citizenship is always attracting importance in the discourse of law. Relating to the Indian perspective, the Constitution of India provides a basic framework with regard to the peculiar situation prevailing at the time of commencement of the Constitution. The constitution was drafted at a time which witnessed the independence of the country which gave birth of two nation India and Pakistan on the basis of religion. The situation of turmoil of migration of people from one part to another part of the newly born countries on the consideration of religion had been prevailing in that time. This situation and other usual situations are addressed by the Constitution. However the Constitution under article 11 empowers the parliament to make laws on citizenship to address the issue of citizenship which arises thereafter. Accordingly the Citizenship Act 1955 was enacted by the Parliament which not only defines Indian citizenship but at the same time discuss the ground of termination, renunciation and deprivation of the same. The Citizenship Act 1955 has brought certain new changes by the Citizenship Amendment Act 2019. This amendment has caught serious controversy because of the reason that it considers citizenship on religious basis which is against the secular fabric of our Constitution. But the analysis of the controversy of 2019 amendment is not the objective of this paper, rather this paper focus on the analysis of the newly inserted provisions in the amendment. The amendment provided for citizenship to the people coming from Afghanistan, Pakistan and Bangladesh belonging to the community of Hindu, Sikh, Buddhist, Jain, Parsi, Christian and who came to India before 31st December 2014.

Keywords: *Domicile, Naturalization, Citizenship, Assam Accord, Afghanistan, Pakistan.*

I. INTRODUCTION

There are two types of people in a country one is citizen to whom all the civil as well as political rights are bestowed and another is alien are deprived of all such rights. Citizens are the political member of a state and they compose the state. The legal relationship between the citizen and the state is called citizenship. As the Constitution of India bestowed certain right only upon the

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citizen, therefore it has given special importance to citizenship. Whereas the non-citizen or the alien are not only deprived of these rights but also they have certain disabilities. Some fundamental rights under article 15, 16, 19 are available to the citizen only. Citizen are eligible to acquire certain offices such as the President under Art 58(1)(a), Vice President under Art 66(3)(a), Judge of the Supreme Court under Art 124(3), Judge of the High Court under Art 217(2), Attorney General under Art 76(2), Governor of the State under Art 157, Advocate General under Art 165. The right to cast vote and contest in the election also available to the citizen only under Art 326, Art 84 and Art 191(d). All this are denied to the non-citizen and they are also deprived of the procedural protection from arrest under Art 22(1)-(2). The citizenship is not dealt comprehensively by the Constitution of India which only outlines the person who is deemed to be the citizen of India at the commencement of the constitution. However, it empowers the Parliament to make law on citizenship to deal with the situation after the commencement of the Constitution under Art 11. Therefore the Parliament enacted the Citizenship Act 1955 (Act 57 of 1955) as a comprehensive and permanent law which deals with the acquisition, termination and renouncing the citizenship of India².

The new amendment to the Citizenship Act which came in the year 2019, brings a new provision as Section 6B. This is a special provision because it provides citizenship only to the people who came to India from Afghanistan, Bangladesh and Pakistan and who are by religion Hindu, Sikh, Buddhist, Jain, Parsis and Christian. This section preceded by the Section 6A which is also special in nature. This Section 6A requires a mention in this regard because it is also a special provision which gives citizenship to the people who migrated to the state of Assam from Bangladesh. The state of Assam has a peculiar geographical relation with Bangladesh. Some parts of Bangladesh which is called the district of Sylhet were earlier part of the state of Assam. The language of the people of Bangladesh which is Bengali is widely spoken by a large population of the state of Assam and Tripura who are residing in the bordering area of Bangladesh³. But still the situation is not so like Assam. A brief discussion of the issue of migration in Assam and Tripura at the same time on the special provision under Section 6A of the Citizenship Act 1955 inserted by the 1985 amendment for the people of Assam is required to be discussed here as well.

II. ASSAM AGITATION AND CITIZENSHIP

The state of Assam witnessed a wide agitation in the name of detection and deportation of the

²Chapter 7, Citizenship, Introduction to the Constitution of India, Basu Durga Das, p-74, Edn 19th 2007, WADHWA NAGPUR.

³ https://en.wikipedia.org/wiki/1947_Sylhet_referendum, visited August 26, 2024

illegal immigrant in the state⁴. The agitation was started mainly by the students (All Assam Student Union) which is also supported by the other organization as All Assam Gana Sangram Parishad. The main reason of the agitation is the increase of illegal migrant population of Bengali speaking people from Bangladesh. It started in 1979 and people supported and participated in the agitation which many places became violent and caused the death of the people. The Government of India in order to curve the agitation draws a compromise with the leader of the agitation which is known as the Assam Accord. According to the terms of the negotiation, the Section 6A was incorporated in the Citizenship Act 1955 which is a special provision for the state of Assam. Under this section, citizenship is provided to the person of Indian origin who entered into the territory of Assam before the 1st January 1996 from Bangladesh and resided there. Those who entered into Assam after 1st January 1996 but before 25th day of march 1971, their name shall be deleted from the electoral roll and shall be considered to be the citizen of India after expiry of 10 years from the date on which he has been detected as foreigners.

III. JUDICIAL RESPONSE TO SECTION 6A OF THE CITIZENSHIP ACT 1955

The constitutional validity of the provision was tested by filling a writ petition by the Assam Sanmilita Mahasangha⁵ before a division bench before the Supreme Court. The petitioner challenge the constitutionality of the provision that it violate Article 6, 7, 14, 29 and 355 of the Constitution. The division bench refers the writ petition to a constitution bench of the Supreme Court. The five judge bench of the Supreme Court constituted by DY Chandrachud CJI, Justice Surya Kant, Justice JB Pardiwala, Justice MM Sundresh and Justice Manoj Misra decided with 4:1 majority upholding the constitutional validity of the Section 6A of the Citizenship Act stating that this provision in no way violate Article 6, 7, 14, 29 and 355 of the Constitution.

IV. SITUATION IN TRIPURA

The issue of migration is also there in the state of Tripura. The history of bengali population in Tripura is very old that the instance if which is found in the *Rajmala*. It stated that that Maharaja Ratna Manikya brought 4000 Bengali to settle to the state. The ruler adopted Bengali as their official language. There were dearth of skilled people in the state, therefore the king patronage the migration of skilled Bengali population as teachers, lawyers, doctors, priest, bureaucrats⁶. However, The tribal population once was majority in Tripura which now reduce

⁴ <https://www.jstor.org/stable/41855074>

⁵ Assam Sanmilita Mahasangha v. Union of India, 2 (2015) 3 SCC 1

⁶ Ghoshal Anindita, Changing Mentality of the Bengali Refugees: The Story of Tripura (1946-1971), http://www.mcrg.ac.in/rw%20files/rw39_40/2.pdf, Retrieved 3 August 2024.

to minority. This is due to the migration of Bengali population from the Chakla Roshonabad (District of Comilla) area of East Pakistan. During the partition of the country, the Hindu Bengali population of Chakla Roshonabad area migrated to Tripura and the ruler of Tripura also provided shelter to them. This migration raises the Bengali population of the state. During the liberation of Bangladesh also there is an influx of refugee from Bangladesh to Tripura. They settled in the state for one year and after the war is over they again back to their home land. But many of the refugees settle here for good. This is also reflected in the report of the census that during 1971-81, there is a huge growth of population of the state of Tripura. However in 1986 a large population of Chakma migrated from the Chitagang Hill Track to Tripura. They stayed there from 1986 to 1996, and then they back to their home land. But during that time many of the chakma refugees settled permanently in Tripura. These entire incidents raise agitation among the indigenous tribal population in Tripura. There is demand of their separate home land many insurgent group were formed. In 1980 riot broke between Bengali and tribal population and many people were killed. In 1988 negotiation taken place between the insurgent group and the government⁷.

V. ANALYSIS OF THE NEW PROVISIONS INSERTED UNDER CITIZENSHIP AMENDMENT ACT 2019

At the beginning, the Act amended the definition of Illegal Immigrant in section 2(b) which hitherto state that only the person who entered into the territory of India without valid passport or travel document or whose passport or travel document has been expired are Illegal Immigrant⁸. The amendment Act inserted a proviso to the last part of the section stating that the person of Hindu, Sikh, Buddhist, Jain, Parsi and Christian and came from Afghanistan, Pakistan and Bangladesh on or before the 31st December, 2014, they are now exempted and shall not be considered as Illegal migrant⁹.

The amendment Act also inserted a new provision as section 6B under which the people who come from Afghanistan, Pakistan and Bangladesh belonging to the community of Hindu, Sikh, Buddhist, Jain, Parsi and Christian can acquire citizenship. These people have to make application to the authority established by the central Government and if they satisfy the conditions of *registration* specify in the section 5 of the Act or if they fulfill the qualification of *naturalization* provided in the Third Schedule of the Act. If the person concern granted the citizenship under the Act then all the proceeding pending against him regarding illegal

⁷https://www.ide.go.jp/library/English/Publish/Reports/Jrp/pdf/133_11.pdf, Retrieved 3 August 2024.

⁸ See section 2 (1) (b) of the Citizenship Act 1955

⁹ See section 2 (1) (b) of the Citizenship Act 1955, inserted by the 2019 amendment (Act 47 of 2019)

migration shall be abated, that mean all such proceeding shall be dismissed on the acquiring citizenship. Section 6B however, state that any such pending proceeding regarding illegal migration shall not be a ground for prohibiting the person to file an application for acquiring citizenship under section 6B and he will continue all the rights and privileges hitherto available to him pending the proceeding¹⁰.

VI. ANALYSIS OF SECTION 5 AND SECTION 6 OF THE CITIZENSHIP ACT 1955

The amendment Act categorically states that the citizenship shall be provided to these people under condition of registration provided in section 5 and naturalization under section 6, the qualification of naturalization provided in the third Schedule of the Act. To understand the procedure of acquisition of citizenship under section 6B of the Act, it is very necessary to discuss the provisions of registration and naturalization under section 5 and section 6 respectively. It is also important to state that acquisition of citizenship by registration and naturalization were there from the commencement of the Act in section 5 and section 6 respectively. There are certain conditions any one of which is to be satisfied by a person for acquisition of citizenship by registration. These conditions are mentioned in the section 5 sub-section (1) clause (a) to (g). According to these conditions, if the person is of Indian origin and ordinarily residing in India for seven years immediately preceding the date of application, any person of Indian origin who is ordinarily residing any country outside undivided India, any person who married to an Indian Citizen and who is residing in India for seven years immediately preceding the date of application, any minor children of an Indian citizen, any person of full age and capacity of a person who is a citizen of India by registration, any person of full age and capacity if any of his parents was earlier citizen of India after the independence of India and if he is residing in India for a period of one year immediately before the filing of the application, any person who has been an overseas citizen of India for last five years and is residing in India for one year before the filling of the application. If any person fulfills any of these conditions the he can acquire Indian citizenship under registration¹¹. It is worth mention here that the procedure of acquisition of citizenship under section 5 is available for the person who is of Indian origin, that mean who is born in India or his parents or grandparents born in India.

Section 6 of the Act provides another category of acquisition of citizenship which is available for any foreign nationals. This is called naturalization where any person except an illegal

¹⁰ See section 6B of the Citizenship Act 1955, inserted by the 2019 amendment (Act 47 of 2019)

¹¹ See section 5 (1) (a)-(g) of the Citizenship Act 1955

migrant can file application and if he satisfies the conditions mentioned in the Third Schedule, he can acquire citizenship¹². The conditions mentioned in the Third schedule are that if the person is not citizen of any country where Indian citizens are not given citizenship, that if the person undertakes to renounce the citizenship of his country, that the person either resided in India or in the service of the Government of India for a period of twelve months preceding the date of filling the application, that in preceding fourteen years before that twelve months as stated earlier condition, he resided in India for at least eleven years, that he is of good character, that he has knowledge of Indian language specified under Eighth Schedule of the Constitution, that if the he is given the citizenship the he will reside in India or the do service under Government of India¹³. These are the general conditions of acquisition of citizenship under naturalization which are available to any foreign nationals. However it is worthy of mention here that the residential status of eleven years out of last fourteen years before the one years of filling the application is relaxed in the amendment Act and reduced to five years. It mean that the person who came from Afghanistan, Pakistan and Bangladesh before 31st December 2014, the can file application for acquisition of citizenship under naturalization under section 6B if they reside in India for five years in last fourteen years preceding the one year of filing the application. However, the main proviso to the section 6 remain same and applicable which state that the government of India may relax the conditions for any person who has a great contribution in the field of science, philosophy, literature, world peace and human progress. But the section 6B which is inserted by the 2019 amendment Act is not at all applicable in the tribal areas of Assam, Meghalaya, Tripura and Mizoram. It means that the people who came to India from Afghanistan, Pakistan and Bangladesh before 31st December 2014 and who are belonging to the community Hindu, Sikh, Buddhist, Jain, Parsi and Christian are prohibited to settle down in any such tribal areas of Assam, Meghalaya, Tripura and Mizoram¹⁴.

VII. CONCLUSION

These are the changes brought by the Citizenship Amendment Act 2019 for the people who came to India from Afghanistan, Pakistan and Bangladesh before 31st December 2014 and who are belonging to the community Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities. After the analysis, now it is clear that these people are now exempted from the definition of Illegal migrant. If these people are of Indian origin then they have to apply to get citizenship by registration, in that case the condition any one of which is to be satisfy are the same as it

¹² See section 6 of the Citizenship Act 1955

¹³ See the Third Schedule of the Citizenship Act 1955

¹⁴ See Clause (4) of the Citizenship Act 1955, inserted by the 2019 amendment (Act 47 of 2019)

stand before the amendment. But if these people are not of Indian origin then they are to file application citizenship by naturalization and in that case the residential requirement reduce from eleven years to five years out of last fourteen years. The general procedures of acquisition of citizenship as stated in the provision of the Citizenship Act 1955, other than the section 6B, are also not very difficult but liberal. The main difficulty to be felt by foreign nationals who are not of Indian origin and who aspire to get Indian citizenship by naturalization is the clause (d) of the Third Schedule of the Act which state that the person is to have reside in the country for eleven years out of last fourteen years before the one years preceding the date of filing the application under section 6 of the Act.
