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LEGISLATIVE ANALYSIS OF THE CITIZENSHIP ACT 1955- Sejal Tiwari¹**ABSTRACT**

Citizenship is the foremost legal status that a country recognises under its law irrespective of caste, race, age, sex or religion. Followed by which the basic rights are enjoyed by the citizens of the state. Indian citizenship laws have evolved through British Raj and territorial acquisitions. After independence The Citizenship Act 1955 has been amended time and again to resolve the errors and flaws in the legislation. The recent 2019 amendment brought an uproar in the nation and was termed as “Anti-Muslim” which has been later deliberated in the article.

This article reflects on the evolution of the Act, the amendments that have been made, judicial retort and the critical appraisal of the same.

HISTORICAL EVOLUTION AND OBJECTIVE

With India's independence and partition in 1947, rose the issue of citizenship. The demarcation of the border was not clear, the atrocities were at surge. People were confused and so were the politicians. This led to questions about a person's nationality and citizenship. Citizenship in India had been intensely marked by colonial rule and fall-outs. India's existing legal citizenship framework has been unable to transcend the shackles of its colonial past. It is necessary to investigate the historical backdrop of citizenship law in order to obtain a better grasp of the current regime and comprehend the history of citizenship law. The growth of citizenship legislation in India may be traced over two main time periods: colonial rule and post-independence. The tragic period of India's independence requires special attention because of its ongoing effects on post-independence citizenship policy while being transformed by demographic and political shifts. During the British era, although no comprehensive citizenship statute existed, the relevant legal instruments in this period were

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the **Regulating Act of 1773**² and the **Charter of 1774**. Both instruments were applicable to British subjects but the status of native Indians and the nature of their rights and responsibilities were ambiguous. The **British Nationality and Status of Aliens Act, 1914**³, replaced the common law concept of nationality with a codified one, and was the first citizenship law in the British era. It defined the term British subject to include two classes of people: natural born British subjects and those who had obtained certificates of naturalisation from colonial authorities.

Post-Independence, it was firstly the Indian Constitution that dealt with Citizenship under **Part II - Article 5, 6, 7, 8, 9 and 11**. As previously stated, the constitutional provisions were only intended to determine citizenship at the time of the Constitution's inception. The Citizenship Act of 1955 established the substantive framework for citizenship, which was adopted by Parliament in line with the authorities stated in Article 11 of the Constitution⁴.

While the Constitution addressed citizenship at the time of its adoption, the Citizenship Act of 1955 attempted to define the substantive bounds of citizenship after the Constitution's adoption. The nation was already recovering from the partition and developing itself in different domains, the influx of people — both illegal immigrants and refugees, was not restricted to Pakistan only after the Partition. People from Nepal, Sri Lanka and Bangladesh moved in huge numbers to the Indian states of Assam, Tamil Nadu and Arunachal Pradesh. According to figures provided to the Prime Minister in the Memorandum of the All-India Assam Student Union, Assam's population increased by up to 34.95 percent and only an increase in illegal immigration could account for this exponential surge. It was high time for the nation to render Fundamental Rights to the citizens of the nation following the path of democracy, for which imparting citizenship was significant.

Till then, the Constitution's citizenship provisions were not comprehensive, but

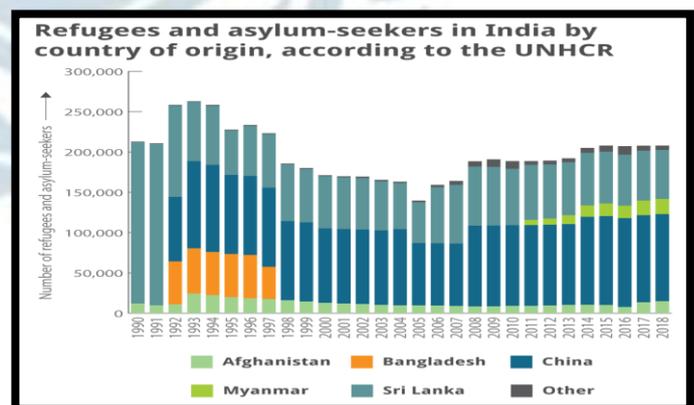


Image 1: Influx of Refugees from Neighbouring Countries to India.

². Regulating Act of 1773, 13 Geo. 3 c. 63

³. British Nationality and Status of Aliens Act, 1914, 4 & 5 GEO. 5, CH. 17

⁴. Constitution of India, Art. 11

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rather fragmented and skeletal. These sections were primarily concerned with identifying who were the citizens of India at the time of the Constitution's adoption, but they do not address the issue of citizenship acquisition beyond that date.

CRITICAL APPRAISAL

The Act played a really important after Independence, as the constitution had no clear statues for Citizenship apart from Part II stated in Indian Constitution. To some extent, the 1955 Act did address the relevant issue post-independence by granting the citizens significant political and civil rights. Although the Act itself was flawed at many ends and needed detailed examination. The Citizenship Act of 1955 attempted to define the substantive parameters of citizenship following the adoption of the Constitution, but the Act's provisions have been made retroactively applicable in several cases. This is where the oddity begins. These clauses are retroactively effective as of January 1950, but the Constitution's citizenship-related clauses state to begin in November 1949. In the interval between November 1949 and January 1950, this anomaly produces a position of citizenship indeterminacy. The Central Government's unlimited power, as guaranteed by the 1955 Act clauses, pose problematic questions regarding the application of natural justice principles. For example, the Central Government examining its own decisions as an appellate authority may allow prejudice to come in, prejudice that will go unchecked because the Government's judgement is final. Furthermore, instructions issued without justification violate the idea of justice by allowing potential arbitrariness to flourish. A plaintiff in the Bombay High Court addressed the subject of undermining natural justice norms.⁵ The plaintiff was arguing that there were no provisions for pre-decisional hearings and that orders were issued without explanation. The court that heard the case concluded that legislative purpose should be accorded respect, which means that if the Parliament allows for the application of natural justice principles in a legislation, such principles should be implemented.

With this the amendments of 1986, 1992, 2003, 2005 and 2015 played a crucial role in rectifying such loopholes and flaws. But the bigger issue came up with the 2019 amendment with brought an uproar in the nation, the ascent of the President sparked widespread protests around the country, with many people losing their lives. Excluding Muslims from mentioned

⁵.Satish Nambiar v. Union of India, 2007(5) BomCR 247

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provision, led to heavy criticism as being "anti-Muslim". The statute stands to be in violation of Article 14 of the Constitution since it allows illegal immigrants to apply for citizenship based on their religion.



Images: Protests against Citizenship Amendment Act 2019 in Delhi.

AMENDMENTS TO THE ACT:

S. No.	Year of Amendment	Section Amended/ Inserted/ Omitted	Provision
1.	1985 (Act 65 of 1985)	Section 6A Inserted Section 18 (1) (ee)	Special provisions as to citizenship of persons covered by the Assam Accord.
2.	1986 (Act 4 of 1986)	Section 3 Amended Section 18 (4) substituted	At the time of birth either one of the parents has to be an Indian citizen for the person to become a citizen of India.
3.	1992 (Act 39 of 1992)	Section 4 (3), Section 8 (2) words substituted	Provides a person born outside India shall be a citizen of India by descent, on or after January 26, 1950, but before December 10, 1992, if his father is a citizen of India at the time of his birth. Also replaces references to "male persons" with "persons".

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4.	2003 (Act 6 of 2004)	First Schedule, Section 11 & 12 omitted, Section 2 (1) (b), Section 5 (1) substituted, Section 5 (6), Section 14A inserted	Introduced the notion of “illegal immigrants” and also mandated the Government of India to conduct a National Register of Citizens, also omitted first schedule- commonwealth countries’ citizenship clause. It also introduced several provisions for overseas citizens regarding their registration, rights in India. Inserted Section 14A that provided for conducting headcount of Indian citizens and preparation of the NRC.
5.	2005 (Act 32 of 2005)	Fourth Schedule omitted,	Introduced the concepts of Person of Indian Origin (PIO) and Overseas Citizen of India (OCI) and were granted limited citizenship rights
6.	2015(Act 1 of 2015)	Section 2 (1) (ee), Section 5 (1) (f) (g), Section 7A substituted, Section 5 (1A), Section 18 (2) (eea) inserted	Introduced the concept of an ‘Overseas Citizen of India Cardholder’ replaced and merged OCIs and PIOs.
7.	2019 Act 47 of 2019	Section 2 (1)(b) clause, Section 6A, Section 7D (da), Section 18 (1) (eei) inserted. Third Schedule (d) provision inserted.	Made it easier for non-Muslims to become citizens of India. Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who escaped religious persecution and arrived in India before December 31, 2014, will be eligible for Indian citizenship. The duration of residence in India for those seeking citizenship was reduced from 11 to 6 years.

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Table 1: Amendments to Citizenship Act 1955**JUDICIAL RESPONSE**

As the legislation came into effect many cases were filed with respect to ambiguity in provisions and its constitutional validity. In *Izhar Ahmad Khan vs Union of India*⁶, it was held that Citizenship is not a fundamental right, according to the court, and can be managed by the legislature. The court further noted that the petitioner's holding of a Pakistani passport demonstrates that he was a Pakistani citizen, and so he could not claim to be an Indian citizen.

In *Bhagwati Prasad Dixit v. Rajeev Gandhi*⁷, it was held by the Supreme Court that when an election petition before the High Court raises a concern about citizenship status, the High Court has no jurisdiction over the subject. Under Section 9(2) of the Citizenship Act of 1955⁸, the Court must follow the judgement of the relevant authorities.

140 pleas against Citizenship Amendment Act, 2019 were hang fired in Supreme Court which was heard by the three-judge bench comprising of Chief Justice S A Bobde and Justices B R Gavai and Surya Kant. Former Supreme court judge Justice Gopala Gowda also expressed that distinguishing between persons on the basis of religion in CAA 2019, as per the *Bommai*⁹ case, is unconstitutional.¹⁰ And in December 2019 Supreme Court had denied to stay the Citizenship Amendment Act, 2019, whereas many pleas are still to be heard.

CONCLUSION

After independence government brought up the Act with bonafide intention of disseminating rights to the citizens of India, with Judiciary playing a crucial role in the same. With time crucial amendments were made which were judicially and legislatively substantiated.

While the recent 2019 amendment has been questioned on its constitutionality of being anti-muslim, the government had backed its argument of neighbour countries being Islamic

⁶. *Izhar Ahmad Khan vs. Union of India* 1962 AIR 1052

⁷. *Bhagwati Prasad Dixit vs. Rajeev Gandhi* 1986 SCC (4) 78

⁸. The Citizenship Act, 1955, § 9(2), No. 57, Acts of Parliament, 1955 (India)

⁹. *S. R. Bommai v. Union of India*, [1994] 2 SCR 644

¹⁰. Mehal Jain, Citizenship Amendment Act(CAA) Is Unconstitutional Since It Distinguishes Between Persons On The Basis Of Religion: Justice Gopala Gowda, 21 MAR 2021, <https://www.livelaw.in/top-stories/supreme-court-justice-v-gopala-gowda-national-register-of-citizensnrc-citizenship-amendment-actcaa-171500>

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nations. The protests demand judicial review of such a legislation and hopes that shrewd political justifications prove to be anachronistic in the light of the progressive interpretations placed on the constitutional rights confined in Part III of the Constitution.



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