

CONSTITUTIONAL POLITICS OF INDIAN CITIZENSHIP

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ABSTRACT

Citizenship like human rights has universal appeal consisting both individual and collective elements. While citizenship bestows upon an individual certain rights, it entails certain duties and obligations too. Indian citizenship is moulded by the experiences of its colonial past and the bloody partition that followed independence. The rules of gaining citizenship were amended from time to time to meet the demands of the various circumstances that unfolded. One of the major issues was the flow of migrants following partition both from the eastern and western borders and the continued migration from East Pakistan even after the creation of Bangladesh. The Citizenship Acts that followed, especially in the case of Assam, which has been a victim of illegal migration for more than four decades, has created a lot of internal tensions and conflicts and

dissatisfaction with the incumbent governments. The issue remains unsolved. There are groups of people who are aspirants of citizenship in India. The issue of refugee is not very clear in the Indian constitution to which the central government has responded to in a number of ways.

This paper attempts to study the constitutional character of the Indian citizenship from time to time and the resultant implications.

Key words: *Citizenship, migrants, partition, illegal migration, refugee*

Introduction

Before diving into the significance of being a citizen (Indian context), one must question when someone actually feels like being a citizen? This question is not cliché or amateur in Indian context. People were not familiar with the feeling or importance of

being a citizen because they were deprived of their political rights by the colonisers. Therefore, the enigma of the first general elections (1951-52) reflects historical (in this context colonial history) and political significance. Even today the conscious feeling of being a citizen is sparked when one gets to vote for the first time. Therefore, voting plays a very important role in establishing the validity of one being a citizen. Democratic elections were made a fundamental rupture of independent India to bring the feeling of decision making power among the people who were subjugated to colonial terms for more than 200 years. The introduction of universal adult suffrage overturned the political practice of limited franchise in British India. The then political leaders took a humongous risk to allow adult suffrage to the huge mass of illiterate population so that they can portray a sovereign nation and a democratic political community in the minds of the people.

Independent India adopted the system of representative institutions through democratic elections. Elections were to be free and fair in order to avoid any coercion among voters who are the actual decision makers. Right to vote alone doesn't embody citizenship. The right to contest elections and the right to form associations are the

basic and important tenants of citizenship. Citizenship didn't occur in a day or remained stagnant over time. It developed through a series of historical experiences and had changed its discourses over time and space. Political rights, for example, are an integral part of the modern day citizenship. Early citizenship was limited in terms of political rights to those who had power and property or belonged to a certain class of the society. Modern day citizenship is undoubtedly linked to the aspect of equal political rights. However it alone should not to be equated with democratic citizenship. Democratic citizenship embodies a lot of other components. A citizen bears not only equal political rights but civil, social and cultural rights as well. Citizenship embodies the principle of being equals which is a result of long struggles throughout history for recognizing the worth and dignity of every individual and expansion of certain specific rights. However, the principle of equality might be just an ideal condition of citizenship because individuals and societies at large are characterized by unequal socio-economic status and hierarchies.

Citizenship in technical terms is a formal and a legal bearing where the individual is protected and rights are guaranteed under the constitution. It gives a legal status of

being a member of a nation-state. But the idea and character of citizenship goes much beyond the formal legal framework and raises concerns regarding the socio-economic inequalities and hierarchies in the society in terms of class, caste, gender etc.

In a society which is full of inequalities, citizenship might become an area of contest, where the structural forces of the society do exist in conflicting interests and relationship. Citizenship though bounded by the rules and order of the constitution, the norms might need to be flexible enough to respond to the changing contexts and experiences of practicing citizenship. The Indian government tried innovating the norms and principles of citizenship rights by introducing the Citizenship Amendment Bill in Assam that faced huge mass protests headed by political leaders, social activists, intellectuals and student organisations.

Only political practice of citizenship, which is territory specific, does not alone give validation to the understanding of citizenship. According to T.H Marshall, the equality of rights and duties are only for those who bear the status of a citizen. This makes the distinction between citizens and non-citizens. Therefore, the idea of citizenship as universal and egalitarian is

debatable because it is an exclusionary concept. It draws a line between insiders and outsiders. The condition of the refugees around the world and the detected Bangladeshi migrants are that of non-citizens and hence no equality of rights and duties. The condition of the migrants in Assam is different from the stateless that have been fleeing civil wars for years. Upendra Baxi regards citizenship as a condition of hierarchical inequalities where there are a huge number of excluded citizens. He calls them 'subject', 'insurgent', and 'gendered citizens'. On the other hand the opposite of them are the elite class that are the privileged citizens enjoying the benefits of rights and duties. He calls them 'super citizens' and 'negotiating citizens'. The elite sections are backed by law and have the power to negotiate those laws. On the other hand the subjects or the insurgents are the large number of impoverished people to whom the law applies negotiated by the elites.

Citizenship, as mentioned earlier, is territory based and hence practiced through the principles of the state. Marking the territorial boundaries and identifying the population within that demarcated boundary are important elements of statecraft. Identifying such a population is done through providing

various government documents such as voter id, driving license, passports etc. the government tries to build rapport with its citizens via such mechanisms. Modern day identification is more biometric and digitized. The government also tends to influence the practice of statecraft and hence citizenship according to its ideology and practices.

Defining Citizenship in India

Citizenship in India is concerned more with political identity owing to the political independence from the British. It was concerned with the territorial identity too owing to the partition and the demarcation of a new geographical India. Therefore, it automatically brings in the question of legal claims or who can claim that legality according to the terms of the newly adopted constitution. The constitutional status changed the status of the people of India from being subjects to being legal citizens of the nation-state. This helped the leaders to create an image of a one sovereign political community and the spirit of nationhood among the people. However, the constitution did not bother itself with defining “Citizenship” but it concerned itself with the question ‘Who is a citizen of India?’ The constitution deals with the citizenship by

birth and domicile in the Article 5 and regarding the complexity of the migrated population between India and Pakistan during partition is discussed in the articles 6 and 7.

Until the 1955 citizenship act by the Parliament, citizenship in India was discussed only in two terms- first, Independence and formation of the Indian state and second the response to the partition. But there has been a line of amendments in 1986 (following the Assam accord), 1992, 2003, 2005 and the most recent amendment in 2015. The layers of transitions from one act to the other can be identified, however understanding the relationship among them poses a challenge. Each transition is complicated because it might be a response to the changing nature and contexts or it might be a dictation of the ideologies of the changing governments and their political agendas. The amendment of 1955 is more inclusive in nature and more aligned towards the constitutional norms. It considered the evacuated and displaced persons, ones who returned from Pakistan and citizenship on the basis of birth. 1986 amendment was centred on specific concerns regarding the context of Assam which provided space for the articulation of difference. The amendment of 2003 is more

flexible and universal in the sense that it broke the tradition of territorial considerations for it introduced provisions for overseas citizen of India. This can be considered a contemporary moment of transnational citizenship. The 1986 amendment provided systems for detecting the foreigners in Assam where on the one hand some were deferred and others were labelled as illegal migrants. The 1986 changed the terms of citizenship by birth which was very inclusive of the 1955 act. The latter provided that any person born in India would be an Indian citizen but the former modified the terms by stating that anyone born in India would not automatically become Indian citizens until and unless either of their parent is a citizen of India at the time of birth. 2003 act mandated further modifications. It stated that a person by birth can become a citizen if both his/her parents are Indians or only one is Indian and the other should not be an illegal migrant. Thus, it shows that 2003 and 1986 acts gave priority to blood ties over ties to the place of birth and 2003 act by providing provisions of overseas citizens provided space for cultural ties.

The notion of citizenship in India at the commencement of the Constitution-

Indian constitution does not define the word citizen and rather addressed a question of who is a citizen of India? (Article 5 to 11). The question reflects the tensions and confusions and the context around Partition. Articles 5 to 7 largely talks about the people who migrated from Pakistan 1 March 1947 to 26th January 1950 i.e. just prior to independence till the commencement of the republic. Article 6 deals with the influx of migrants from west Pakistan before 19th July 1948 who automatically became citizens and those who came later had to give an application for being registered. Article 7 deals that any person who migrated to Pakistan after 1st March 1947 shall not be considered a citizen of India and he/she can migrate back on a permit of permanent resettlement. Article 8 provides that any person residing outside India can claim their Citizenship if they were born in India or if either of their grandparents is from India. However, any person who voluntarily has taken citizenship of a different nationality would no longer claim citizenship in India. Also those who migrated to Pakistan and already acquired Pakistani citizenship, he/she no longer can claim Indian citizenship.

Thus, the terms and condition citizenship in India has its roots in the history of the

formation of the nation-state and drawing of the boundary of the subcontinent. The Partition created a base for the terms of citizenship during independence. The Partition was a catastrophic moment in history with unprecedented movement of people across borders, abduction and rape of child and women and mass murders. Subsequently, government on both sides tried to lay down procedures to recover then abducted women and children and eventually return to their own families on either sides. The process was complicated because a lot of forced marriages took place and some of the women who were detected as abducted refused to leave the side of the abductor. Recovered persons were entitled to constitutional safeguards under article 22. Some of the refugee people were of the view that the partition would bear the same consequences as the partition of Bengal in 1905 and they did not leave their homes to migrate permanently to India or to Pakistan. They thought that the partition would be a temporary phenomenon and would normalise soon. But things took unexpected turns. The unprecedented violence, massacres and repression led to migrate to India after the 1950 riots. The migration was huge particularly to Tripura and West Bengal. The Nehru Liaquat pact responding

to the violent partition stated that the refugees returning to East Pakistan would be returned their property if that happened by 31st December 1950. The Bangladesh war presented a same phenomenon of lakhs of migrating refugees and this time to the adjacent state of Assam. Both the government of Bangladesh and Assam assured that they will take measures to resettle the refugees. But this assurance did not stop the Bangladeshi people to return to their homes and flocks of them continued migrating even after the creation of new Bangladesh. This installed a sense of insecurity among the Assamese population in terms of demographic change, cultural infiltration, share of resources and language problems. The unease was basically economic and cultural. Assam was not ready to bear the burden of a huge foreign population. Throughout that decade Assam witnessed a huge movement claiming a distinctive Assamese identity and a differentiated citizenship. Some part of the movement was in terms of ethnicity while ULFA (United Liberated Front of Assam) laid their terms in resources and development. All this culminated in the form of crisis of citizenship in Assam. This laid the foundation for a confused relation between the state and the centre. The union

government tried to solve the issue or in other words minimise it through various pacts and accord and sometimes forced elections. There was a huge communal gap building up tensions between the Assamese and the Bodos, Bengalis as well as the tribals. Ultimately the Assam accord signed between the government and the leaders of the Assam movement which reinforced a hierarchical citizenship with Assamese at the top and the migrants as the outsiders.

Does the Parliament have the power to amend citizenship and in what terms?

The constitution of India by the Article 11 empowers the Parliament to regulate and determine the terms of citizenship. It is immune to make laws, determine and terminate matters related to citizenship. Following the powers, the Parliament enacted the 1955 Act defining the terms of acquiring citizenship. In fact the Act of 1986 was central to the issue of migrants regarding their illegal status or disqualification from being citizens.

The parliament introduced a sixth category of citizens which was to apply exclusively to the case of Assam. The Assamese case was indeed an exception. Sanjib Baruah describes most appropriately as the politics of 'nationalisation of space' and 'place

making' in which the 'national space' emerges as ordered, bounded and differentiated. Although there seemed to be negotiations between the state of Assam and the leaders of the movement with the centre, the centre assumed the authority over the final terms of defining citizenship in Assam. The problem of an ethnic Assamese identity was not taken seriously as a national concern and was left most of the anxiety to the Assamese population itself. The government tried to move away from the issue by merely authorizing some constitutional means such as the Disturbed Areas Act 1955, National Security Act 1980, and Armed forces Special Power Act 1958. But none of the measures proved to be useful for ameliorating the tensions in the region.

The Central government kept on retaining the central authority over the citizenship matter in Assam by introduction of the Illegal Migrants Determination Tribunal (IMDT) and the continued application of it. Under this act any person who entered India on 25th March or after that would be considered illegal provided they don't produce passport or any valid documents. But this Act did not necessarily identified high rates of illegal migrants and thus remained handicapped. The act was more concerned about the immigrants because it

focused on locus standi of the applicant identified as immigrant. Finally, the act was scrapped by the Supreme Court in 2005 and declared the act unconstitutional.

The issue of foreigners became a central theme in the electoral process in Assam. This was followed by the increased suspicion among the voters of Assam that foreigners might have got a place among the voters list. In 1979, All Assam Students Union (AASU) started a prolonged struggle on the issue led by Prafulla Kumar Mahanta and Bhriku Kumar Phukan. The movement got support from various regional parties and intellectual associations. They demanded the transparency of the voters list during elections. Consequently the elections were cancelled for 12 out of 14 Parliamentary seats and Assam remained underrepresented in the Parliament for a long time. Meantime, the state governments were also unstable and government got dissolved, President's rule was introduced in the state. The AASU and other associations completely discredited any further election notifications rendering that the all the voters in the list are not entitled. Several leaders of the forefront organisations and associations were arrested. Ultimately, the elections of 1983 brought Congress(I) to power and Hiteswar Saikia as the Chief Minister. But

it was decided that fresh elections would be held in 1985 with the newly revised voters list.

The amendment of 1986 introduced the sixth category of citizenship adding article 6A. This act laid down that (a) any person who came to Assam before 1st January 1966 (from Bangladesh) and had been residing since then would be considered citizens of Assam (b) persons of Indian origin who came to Assam before the same date as mentioned above would be a citizen of India. All the other persons who entered Assam after 25th March 1971 would be declared foreigner and would be deported.

As mentioned earlier the signing of the Assam accord created a hierarchical model of citizenship where the authentic Assamese people were declared ambivalent mostly by their linguistic identity and also their religion. The court in its judgement of 2005 not only declared the migrant as illegal but also specifically pointed out as Muslim. This gets automatically related to Islamic fundamentalism and the national security concerns. The court emphasized the demographic change in Assam not only in terms of linguistic change but the increasing number of Muslim population in the region. This supposedly will create problems not

only in Assam but India as a whole. The judgement reflects the nationalist elements which are basically Hindu Nationalism that poses a sense of suspicion towards the Bengali speaking Muslims in Assam and the rest of the country.

Deterritorialization by Act of 2003 or Artifice-

The Act of 2003 introduced OCI i.e. overseas Citizens of India. This introduced a transnational character of the Indian citizenship appealing to the Indian Diaspora overseas. By this act any person of Indian origin but a citizen of another country or a person who was a citizen of India before becoming a citizen of another country can get themselves registered under OCI. This shows a global character of the Indian citizenship along with globalisation of economy. The idea of strict territorial citizenship was no longer seen as progressive and relevant. It breaks the norms of usual citizenship which is exclusionary as it defines a definite territory bound nation and the population within it. This tends to break the rigidity of the boundaries and provide a fluid nature allowing more elements to come in. However, this category of citizenship seemed deceptive because the persons of Indian origin who opted out of

Indian citizenship continued. The act was supposedly a link or building of relationship with the vast number of Indian Diaspora worldwide. It tried to rebound a common identity to those Diaspora worldwide that speaks different languages and practice the native culture of the region they resided. The government tried to build a bridge with the Diaspora in terms of culture and emotions. It was felt that the persons of Indian origin naturally had a bond to their nation of originality. This set the basis and justifications for the dual citizenship.

This emotional and cultural endeavour seems ironic because the OCI was restricted to Europe, America and Australia. This seemed to be more of an economic than cultural ties. This was evident by the fact that Singhvi Committee set up SEZs where projects were to be undertaken specifically by the OCIs and the NRIs. LK Advani, the then Ministry of Home Affairs suggested to celebrate a day recalling them known as the Pravasi Bharatiya Diwas. This was during the BJP led NDA alliance. Even the opposition showed its welcome to the OCIs by stating that they are a big reservoir for India in terms of knowledge wealth and experience and India should maximise every possible benefits of the relationship with them.

One could become an OCI if (a) a person who was an Indian Citizen on 26th January 1950 (b) whose grandparent belonged to India during the above prescribed time (c) the ones who belonged to territory that became a part of India after Independence (d) those who are not citizens of Pakistan and Bangladesh. However, the rights of the overseas citizens were not without conditions. Those who are willing to are to be registered and they would not enjoy equal benefits in terms of public employment, voting rights, contesting elections, appointment as a judge to Supreme Court or High Court, appointment to public services etc. The Indian citizens who took foreign nationality were to surrender their Indian passports immediately. The 2003 Act was amended later in 2005 to cover various other countries except Pakistan and Bangladesh. This brought in huge amounts of foreign remittances, the highest recipient being Kerala. Important to mention is PM Modi's historic address to the Indian Diaspora in US in the Madison Square in New York City. This step was an extension of the initiation by the UPA government. In March 2015, the OCI was changed to Overseas Citizen of India Cardholder. The new amendment of 2015 allowed any minor citizens of Indian citizens living abroad and those foreigners

who get married to an Indian citizen living abroad or an overseas citizen of India were also eligible to be OCI cardholders.

But does the notion of dual citizenship have anything to do with dual loyalty? Are these people obliged to be loyal to both the nations and only the residing ones? Is this going to create a conflict between the cultural relationships between the respective countries? The then Pm Atal Behari Vajpayee said that Indian overseas should also have loyalty to the countries they live. The notion of dual citizenship allows the cardholder citizen to experience Tran's nationality without harming the basic relation with both the countries. It is feasible to inhabit two worlds simultaneously and yet respect their cultural coherence and integrity.

CONCLUSION

The changing guidelines of Indian Citizenship is not only situational (Partition) but socio-political as well. There have been debates along the fault lines (supposedly and allegedly) regarding the core elements of citizenship. The most recent and debatable being the Citizenship Amendment bill of 2016 seeking to provide Indian Citizenship to non-Muslims from Pakistan, Bangladesh and Afghanistan. The issue of citizenship

does not embody similar conflicts and experiences in all the regions of India. It is more region specific, especially in the North eastern region of the country, Assam being the hotspot for political and social implications. It might take ages and generations of political calculations to ground the issue. However, a proper defining of citizenship and drawing of a distinct line between citizens, refugees and migrants is needed for a kick-start.

REFERENCES

1. Zamser Ali, 'In-depth analysis of NRC co-ordinator, Prateek Hajela's affidavit reveals stand based on hypothesis', *Sabrang: Hate Hurts, Harmony works*, 31 October 2018, <https://sabrangindia.in>, (accessed 19 April 2019).
2. CJP Team, 'UN again raises concerns about 'Statelessness' and 'Exclusion' of minorities in Assam', *Sabrang: Hate Hurts, Harmony works*, 22 September 2018, <https://sabrangindia.in>, (accessed 19 April 2019).
3. Sabrangindia, 'Supreme Court says it will not extend final NRC deadline', *Sabrang: Hate Hurts, Harmony works*, 18 March 2019, <https://sabrangindia.in>, (accessed 19 April 2019).
4. Sabrangindia, 'SC denies permission to suspend NRC work for Elections in Assam', *Sabrang: Hate Hurts, Harmony works*, 5 February 2019, <https://sabrangindia.in>, (accessed 19 April 2019).
5. Sabrangindia, 'SC allows all 15 documents for NRC claims process, extends deadline', *Sabrang: Hate Hurts, Harmony works*, 1 November 2018, <https://sabrangindia.in>, (accessed 19 April 2019).
6. Talukdar Suprakash, 'how the BJP's Citizenship Amendment Bill, 2016 is drawing protests in Assam', *Sabrang: Hate Hurts, Harmony works*, 1 June 2018, <https://sabrangindia.in>, (accessed 19 April 2019).
7. Dutta Akhil Ranjan, 'Political Destiny of Immigrants in Assam: National Register of Citizens', *Economic and Political Weekly*, vol. LIII, no. 8, 2018, pp. 18-21.
8. Faulks K., *Citizenship*, London, Routledge, 2000.
9. Garg Sanjeeb, 'Revisiting the Nationality Question in Assam, the EPW 1980-81 Debate', *Economic and Political Weekly*, vol. LIII, no. 22, 2018, pp. 13-15.
10. Hazarika Sanjoy, 'Defining Citizenship: Assam on the edge again', *Economic and Political Weekly*, vol. LIII, no. 30, 2018, pp. 12-13.
11. Jayal Gopal Niraja, *Citizenship and its Discontents: an Indian History*, Ranikhet, Permanent Black, 2013.
12. Kumar Alok Prasanna, 'National Register of Citizens and the Supreme Court', *Economic and Political Weekly*, vol. LIII, no. 29, 2018, pp. 10-11.
13. Roy Anupama, 'Ambivalence of Citizenship in Assam', *Economic and Political Weekly*, vol. L1, no. 26 & 27, 2016, pp. 45-51.
14. Roy Anupama, *Citizenship in India*, Oxford, Oxford University Press, 2000.
15. Yasin A. and A Upadhyaya, *Human Rights*, New Delhi, Akansha Publishing House, 2006.