

CONCEPT OF CITIZENSHIP IN INDIA

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ABSTRACT

Citizenship is the status of an individual recognized as a member of the state under the law. The 1955 Citizenship Act and its amendments, however, deal with citizenship acquisition and termination. In addition, the Constitution also granted citizenship privileges to Indian Overseas Citizen, Non-Resident Indians, and Indian Origin Persons.

Keywords: Citizenship, International Legal framework.

INTRODUCTION

The Citizenship Act in 1955 states that there was a legal vacuum, while the nationality framework was being formulated, the people who had been moving across the borders between India and Pakistan had to be taken into consideration, and hence the Citizenship Act came into force, their citizenship status was determined by “intent” and followed by attributions of legality and illegality.

CONCEPT OF CITIZENSHIP IN INDIA

The Constitutional provisions concerning the citizenship have appeared relatively inclusive and consider peoples freedom of choice post partition. The constitution of India was the first legal instrument that laid down who is deemed to be a citizen of India. Article 5 of the Constitution of India is titled as Citizenship at the Commencement of Constitution lays down an overarching provision who is citizen of India, It provides that any person, who was or either of whose parents were, born in the territory of India or who has been ordinarily resident in India for at least five years before the commencement of the Constitution, shall be deemed to be a citizen of India. Further as per Article 11 of the Constitution of India the government has the power to make laws for acquisition and termination, pursuant to which the Citizenship Act was enacted. Hence in India the right to grant and take away the Citizenship completely lies with the government.[1]

The citizenship can be acquired through five ways.

- 1) By birth
- 2) By descent
- 3) By registration
- 4) By naturalization
- 5) By incorporation of new territory

Sec 3 of the Citizenship Act provides for the ascription of citizenship via jus soli if both or one of the parents is an Indian citizen, as long as the other is not an irregular migrant. As per Sec 13 of the Citizenship Act, it is a supplemental provision which deals with the power of the Central government to issue a certificate of citizenship to such person in respect of whom a doubt exists about his/her citizenship of India.

The government of India has also issued the Adhar ID which records the personal biometric data, including the fingerprints and eye scans this is one of the measures to provide an identity to a person. India has also enacted the Foreigner Act, 1946 it is the primary law to regulate the entry, presence and departure of foreigners from India. A foreigner is defined under Section 2(3) (a) of the Foreigners Act defines as – a person who is not a citizen of India. The Passports Act, 1967 governs the issuance and withdrawal of passports to Indian citizens as well as “other persons”, but the act fails to explain it. It also deals with all the Indian laws relating to nationality for it only recognizes a category of persons by the term “stateless”, for issuance of certificate of identity. Article 28 of the Convention Relating to Status of Stateless Person is reflected in the form of issuance of identity certificates.[2]

INTERNATIONAL LEGAL FRAMEWORK APPLICABLE TO INDIA

Customary practices of international law, is based on the principle of non-refoulement with regard to refugees and stateless persons making it non-derogable in nature. Even the significant body of international law has elaborated the principle of non-discrimination which prohibits discrimination on the basics of race, ethnicity and related criteria. India has widened the scope of protection from the idea of compassion to rights, this has triggered the prohibition of nationality based discrimination and has been further encouraged by the advocacy efforts of international organisations, non-governmental actors and particular states. The persistence of statelessness is a

complex matter that underlines the centrality of effective protection, there is a growing pressure from international organization to monitor them.[3]

Following are the International legal instruments which are applicable to India:

- 1) Universal Declaration of Human Rights, 1948, Article 15.
- 2) Convention Relating to the Status of Stateless Person, 1954
- 3) Convention on the Reduction of Statelessness, 1961
- 4) International Covenant on Civil and Political Rights, 1966, Article 24
- 5) Convention on the Rights of the Child, 1989, Article 7

India is acceded to all of the above conventions and has made legal integration of these in the national laws.

CONCLUSION

In my opinion the Indian legal framework is granting citizenship in line with the concerns of statelessness, however there are no measures being taken to reduce statelessness. Current legislations is inconclusive in nature ambiguous to the citizens and non-citizens.

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