

## Traversing the Pathways of Citizenship: A Voyage of Contemporary Legal Regime of India

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### *Abstract*

*Citizenship being an indivisible integral of any democratic set warrants a holistic and comprehensive approach. India being a largest democracy of the world has adopted accommodative approach towards its citizenship. Moreover, the constitutional protection conferred upon the citizens and non-citizens have concretized the polity of India. On the backdrop of this, citizenship has been clearly discussed under the constitutional mandate. India as a nation has its citizenship underpinnings traced through prolonged British rule. Since the modern India has been largely unified due to British rule, the constituent assembly while making of the Constitution of India has laboriously deliberated upon nuances of citizenship of India. At the same time, international perspectives on citizenships have also enabled the India to cope up with changing geo-politico-economic scenario of the world. By virtue of constitutional mandate, India has been committed to draw policies having consonance with international legal regime; nevertheless, state sovereignty and the battle of government and public interest has generated a radical wave of discontent towards latest legal development in India pertaining citizenship. Present article takes a cross-section of historical development of citizenship law in India. It also assesses the constitutional mandate and various legal nuances on the touchstone of international legal forefront. On this backdrop present article also analyses the latest development of citizenship law of India, and lately amended bills on the citizenship. The contemporary socio-politico discourse on citizenship laws and National Citizenship Register has also been addressed hereunder. Ultimately, the article encapsulates contemporary development of citizenship regime of India while drawing critical appraisal of public opinion. The governmental as well as social measures having consonance with latest citizenship amendments in India have also been examined on the yardstick of judicial and juristic touchstone. To that effect, article highlights an emerging issue belonging to the India's Constitution and governance.*

**Keywords:** Citizenship, Democracy, Constitution of India, Domicile, Constituent Assembly

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## I. Introduction

Indubitably, the bedrock of any nation is its population. No wonder, some of the leading democracies of the world have begun their constitutions with the phrase, “We, the people”.<sup>2</sup> Perhaps, this trend of keeping ‘people’ at the forefront of the polity is quintessential in every successful democratic set-up in the world. To that effect, when at the one hand nations are denoted with the phrases like territory, country, motherland etc, on the other hand the people in the nations are also addressed with various phrases such as population, citizens etc. Thus, it becomes imperative to trace the element that formulates a nation from a territory and a citizen from the population. Certainly, some organic ideology gives effect to this phenomenon which grants a decisive pedestal to the nation and its citizens. Thus, in the wake of contemporary issues of citizenship in India, it becomes imperative to trace down the underpinnings of the citizenship into the porches of constitutional mandate. To that effect, the people of India form the Democracy by actively participating in the governance of the Government.<sup>3</sup>

Its pertinent that, citizenship is the basic building block of political order. It conflates the right to reside and move about within a given territory and, the obligation to defend these very same rights.<sup>4</sup> In a democratic polity, the role of the Citizens is vital enough as it determines the quality of that Nation. Citizenship also is viewed as a legal connect between the State and the individual. Citizens are bound to follow Fundamental Duties and the State has to protect the individuals. To that effect, as stated earlier the Preamble of the Constitution of India precedes with the words “We the people of India” which itself implies the concept of Citizenship.

The source of the Constitution of India thus, invariably is the people residing within the territory of India. The people of India form the democracy by actively

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<sup>2</sup> The Constitution of India, 1950, The Constitution of the United States of America

<sup>3</sup> SUBHAS C KASHYAP, CITIZENS AND THE CONSTITUTION, (CITIZENSHIP VALUES UNDER THE CONSTITUTION) 125, (Publication Division, Ministry of Information and Broadcasting Government of India, ISBN 978-81-230-2851-4)

<sup>4</sup> The project on ‘citizenship as cultural and conceptual flow’ forms part of a larger project on Asia and Europe in a Global context: Shifting asymmetries in cultural flows’ supported by the German Research Foundation (DFG).

participating in the governance of the Government. The citizenship conferred by the Constitution of India thus renders the constitutional protection, rights and privileges to everyone who falls under the purview of citizenship. It also conflates the right to reside and move about within a given territory and, the obligation to defend these very same rights. Citizenship is the relationship between an individual and a state to which the individual owes loyalty and in turn is entitled to its protection. Citizenship is the status of freedom which comes at the cost of certain responsibilities. Citizens of any particular country are entitled to certain rights, duties, and responsibilities which may not be available or only be partly available to aliens or other persons living in that country, without being its citizens.

## II. Citizenship in India: A Precursor

A comprehensive account of citizenship in India, pulling together the ideological and epistemological differences that underpin it is beyond the remit of this essay. The limitation of space rules out a comprehensive documentation of the evolution of citizenship in India in terms of the interaction of indigenous categories and imported notions of citizenship and their functional correspondence with the liberal theories. Instead, my intention here is to focus on three analytical strands that underpin it. The first two evolution and involution conceptualize citizenship in terms that are indigenous and uniquely accessible to India's society and history. The first approach holds citizenship to be a seamless flow, connecting the premodern past with the present. Essential to this approach is the continuous existence of Bharat, a mythical-historical territory, a traditional name for India.<sup>5</sup> Unlike evolution, involution puts the onus of citizenship on ethnicity rather than territory and accounts for the development of different strands of citizenships in terms of the moral communities that underpin them. The third approach of 'rational construction' holds the creation of '*Nagariks*' the vernacular Hindi term used in the Constitution for the citizen as the main task of the state, and goes on to devise the legislative methods for the purpose of fulfilling this goal. It concentrates on a number of selected, salient aspects of the problem. These include the

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<sup>5</sup>Subrata K. Mitra, *Citizenship in India Evolution, Involution and Rational Construction*, 155 (Jan 20 , 2021, 9:29 PM) <https://www.researchgate.net/publication/302417401>

ontological depth and institutional stretch of citizenship, the interaction of colonial rule and Indian society, the delineation of the salient features of citizenship in India's Constitution once colonial rule came to an end through the transfer of power in 1947, the subsequent interaction of traditional society and the modern post-colonial state, and finally, an empirical measurement of citizenship in India.

The concept of citizenship was first introduced in Greece and it was generally applied to those who had some property to own. However, it did not extend to women, slaves or even people belonging to the lower sections of the society. Citizens in a Greek city-state could vote, had to pay taxes and were liable to provide service in the military if or when necessary. Apart from Greeks, the Romans first used citizenship as a device to maintain a difference between the residents of Rome and the people whose territories Rome had conquered. As the Roman Empire kept flourishing, the Romans started granting citizenship to their allies throughout Italy and then to people belonging to other Roman provinces. From 212 CE, citizenship was being granted to anyone who was a free inhabitant of the Empire. Once a person was given Roman citizenship, he got many important legal privileges within the Roman Empire.<sup>6</sup>

As far as India is concerned, the concept of Citizenship came into existence with the augmentation of the Constitution of India after its adoption on 26<sup>th</sup> November 1949. Prior to that people residing in India were subject to British Crown and persons belonging to Princely states were British protected persons.<sup>7</sup>

Apparently, the Constituent Assembly, which drafted the Constitution of India, had rejected a move to define citizenship on religious lines. This article intends to examine the views expressed by the members of Constituent Assembly in that regard.

In consonance with this, to comprehend citizenship it's imperative to understand the term 'Domicile'. Citizenship can be denoted by domicile but it can't be vice versa. One of the various factors to determine citizenship is domicile. Domicile connotes permanent residency which means intention to reside for indefinite

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<sup>6</sup> Ibid

<sup>7</sup> Heater, Derek, *A Brief History of Citizenship*, New York City: New York University Press 157, ISBN 0-8147-3671-8.

period. Membership of the community is the crux of the notion of citizenship along with territory connect.

The discussion with respect to drafting of Article 5 of the Constitution took place in Constituent Assembly on 10-12 August 1949. The Article 5, as we see today, was introduced by Dr. B.R. Ambedkar himself. Article 5 of the Constitution of India, as it reads now, provides that, at the date of commencement of this Constitution, every person who has his domicile in the territory in India and - (a) who was born in the territory of India; or (b) either of whose parents was born in the territory of India; or (c) who has been ordinarily residence in the territory of India for not less than five years immediately preceding the date of such commencement, shall be a citizen of India.<sup>8</sup> with this regard, the modern thinkers agree that the history of citizenship is complex with no single definition predominating.<sup>9</sup> It is hard to isolate what citizenship means without reference to other terms such as [nationalism](#), [civil society](#), and [democracy](#).<sup>10</sup> According to one view, citizenship as a subject of study is undergoing transformation, with increased interest while the meaning of the term continues to shift.<sup>11</sup> There is agreement citizenship which is culture-specific. In a way it is a function of each political culture.

Whilst discussing the international perspective on the citizenship, its pertinent to note that, India has always been known to provide refuge to persecuted people from all over the world irrespective of their ethnicities or faith. As per the UNHCR, there were almost 2,07,070 people which were of concern in India in

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<sup>8</sup> Ashok Kini, *When Constituent Assembly Defeated A Move To Define Citizenship On Religious Lines*, Live Law, (Jan 22, 2021 1:00 PM) <https://www.livelaw.in/top-stories/when-constituent-assembly-rejected-a-move-to-define-citizenship-on-religious-lines-150826?infinitemscroll=1>

<sup>9</sup> Kostakopoulou, Dora, *The Future Governance of Citizenship*, United States and Canada: Cambridge University Press ISBN 9781139472449,13, 195(2019)

<sup>10</sup> Hebert (editor), Yvonne M. *Citizenship in transformation in Canada*. chapters by Veronica Strong-Boag, Yvonne Hebert, Lori Wilkinson. Toronto: University of Toronto Press. ISBN 0-8020-0850-X, 3-5

<sup>11</sup> Gross, Feliks, *Citizenship and ethnicity: the growth and development of a democratic multithnic institution*, Westport, Connecticut: Greenwood Press xi-xiii, 4. ISBN 0-313-30932-9.

the year 2018. Out of these people, 1,95,891 were refugees while 11,957 were seekers of asylum. More pertinently, India is not a party to the United Nations Refugee Convention on the Status of Refugees. Neither is it a signatory to its additional Protocols. Nevertheless, India was a participant in the Global Summit on Refugees. It also took part in the New York Declaration for Refugees and Migrants in the year 2016. Any issues arising due to refugees or asylum seekers are dealt in India as per the Passport (Entry of India) Act 1921, Passport Act 1967, Registration of Foreigners Act 1939, Foreigners Act 1946, Foreigners Order 1948, etc.

As far as legal sanctity of the citizenship is concerned, the right to a nationality is of paramount importance to the realization of other fundamental human rights. Possession of a nationality carries with it the diplomatic protection of the country of nationality and is also often a legal or practical requirement for the exercise of fundamental rights. Consequently, the right to a nationality has been described as the “right to have rights.” [Trop v. Dulles](#)<sup>12</sup>. Individuals who lack a nationality or an effective citizenship are therefore among the world’s most vulnerable to human rights violations.

At global forefront of the legal regimes, the recognition of the importance of having a nationality is unequivocally well-known. Moreover, a number of regional and international human rights instruments include the right to a nationality. **Article 15** of the [Universal Declaration of Human Rights](#),<sup>13</sup> The right to a nationality is often articulated through protection of the rights of children and the principle of non-discrimination. For example, **Article 7** of the [Convention on the Rights of the Child](#) states that every child has the right to acquire a nationality, while **Article 5** of the [Convention on the Elimination of All Forms of Racial Discrimination](#) requires States to “prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights the right to nationality.”

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<sup>12</sup> 356 U.S. 86, 101–02 (1958)

<sup>13</sup> “everyone has the right to a nationality” and that “[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

On account of deliberating upon the citizenship and its various perspectives, the issues and challenges of the statelessness of the people out not to be overlooked. Around the world, on the backdrop of many warfronts and imperialistic conquests, the issues of statelessness have come on the forefront. Despite recognition of the right to a nationality, there are currently at least **10 million people** who do not have a nationality and are therefore stateless. One of the earliest international efforts to address the issues of the statelessness includes the [1954 Convention relating to the Status of Stateless Persons](#) (1954 Statelessness Convention) was drafted in order to guarantee the protection of these individuals' fundamental rights. **Article 1(1)** of the 1954 Statelessness Convention defines a stateless person as **“a person who is not recognized as a national by any State under the operation of its law.”** This definition has subsequently become a part of customary international law.

The Constitution of India is the Grundnorm of all the laws in the Indian legal system; wherein the Part II of the Constitution of India is titled 'Citizenship' and its six provisions precede the important provisions relating to Fundamental Rights that are housed in the next part.<sup>14</sup> Here, it is pertinent to note that, Unlike other provisions of the Constitution, which came into being on January 26, 1950, these articles were enforced on November 26, 1949 itself, when the Constitution was adopted. The text of the Constitution of India, 1950 recognizes the importance of issues of citizenship by according a privileged space to them in the founding document. Under Articles 5, 6, 7, 8, 9, 10 and 11 of the Constitution of India which deals with the concept of citizenship and also the term citizenship entails the enjoyment of full membership of any State in which a citizen has civil and political rights.<sup>15</sup>

Apart from the constitutional mandate, there are other legislative provisions which deals with the citizenship. These legislative sources are as follows-

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<sup>14</sup>AshnaAshesh and ArunThiruvengadam, *Report on Citizenship Law India*, (Feb 2, 2021 8:00 PM)

[https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT\\_CR\\_2017\\_12.pdf?sequence=1](https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT_CR_2017_12.pdf?sequence=1)

<sup>15</sup> Indian Polity, *Citizenship of India*, (Feb 2, 2021 8:00 PM) <https://www.drishitias.com/to-the-points/Paper2/citizenship-of-india>, updated on 2<sup>nd</sup> September 2019

### III. The Citizenship Act, 1955<sup>16</sup>

The Citizenship Act of 1955 was the first legislation regarding citizenship in India. It has been amended in 1986, 1992, 2003, 2005, 2015 and currently is known as the Citizenship (Amendment) Act, (CAA) amended in December 2019. The amendment of 1986 specified that to acquire citizenship by birth, at least one of the parents had to be an Indian citizen. In 2003, this aspect became stricter and said that no parent could be an illegal immigrant. This amendment also spoke about the making of a National Register of Citizens by the government.

The current law of Indian nationality generally follows the concept of citizenship by descent instead of the concept of citizenship by right of birth within the territory- known as *jus sanguinis* and *jus soli* respectively.<sup>17</sup> After independence, India has incessantly faced the issues and challenges of the illegal immigrants from the cross-borders. Several states which share India's international border with other neighbouring countries have faced challenges of law and order as well as cross border illegal activities. Thus, India has gradually deployed a mechanism to deal with such challenges. However, although illegal immigrants under India's citizenship regime are to be denied rights, their detection played an indispensable role in identifying genuine citizens. It wasn't until the 1986 and 2003 amendments to the Act that India moved towards a more exclusionary *jus sanguinis* (right of blood) conception of citizenship.<sup>18</sup> In this regard, the Act of 2005 is a significant move.

#### A. Citizenship (Amendment) Act, 2005<sup>19</sup>

The Citizenship (Amendment) Act, 2005, expanded the scope of grant of OCI<sup>20</sup> for PIOs<sup>21</sup> of all countries except Pakistan as long as their home country allows

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<sup>16</sup> Act No. 57 of 1955

<sup>17</sup> Citizenship: Part II : (Articles 5-11), *Filed under: Indian Polity Notes*, (Feb 2, 2021 3:15 PM)[www.clearias.com](http://www.clearias.com)

<sup>18</sup> Aditya Sharma, *Birth, Descent, Origin and Now Religion: Becoming an Indian Under the Citizenship Act and Its Amendments*, (Feb 1, 2021 2:10 PM)<https://www.news18.com>, last updated on 9<sup>th</sup> December 2019

<sup>19</sup> Act 32 of 2005

<sup>20</sup> Overseas Citizenship of India

<sup>21</sup> Person of Indian Origin

dual citizenship under their local law in case it recognizes OCI as a second citizenship of India. In furtherance to this, the citizenship issues faced by India further lead to the amendments in the Citizenship Act, and one of such amendments in 2015 is significance in this regard.

### **B. Citizenship (Amendment) Act, 2015<sup>22</sup>**

This amendment introduced the concept of an 'Overseas Citizen of India Cardholder' (an "OCC") that essentially replaces and merges together OCIs and PIOs. Persons of Indian Origin Card (PIO Card) was a form of identification issued to a Person of Indian Origin who held a passport in a country other than Afghanistan, Bangladesh, Bhutan, China, Iran, Nepal, Pakistan and Sri Lanka.

### **C. Citizenship (Amendment) Act, 2019 (CAA)<sup>23</sup>**

Now, the recently introduced Citizenship (Amendment) Act in 2019 provides access to Indian citizenship for religiously persecuted minorities, viz Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, from Afghanistan, Bangladesh and Pakistan, who have been victims of persecution or have a fear of persecution in their countries and have entered India on or before 31 December 2014. It was passed by both the houses of Parliament on 11 December 2019. However, as we all know, the introduction of this Act was subject to immense criticism and a number of protests were held saying that it is discriminatory as it leaves Muslims out. It is also criticized on the grounds that it violates the Assam Accord in which it had been promised that 1971 would be the cut-off date for those who had illegally migrated from Bangladesh.

The enactment of the Citizenship (Amendment) Act holds a lot of significance when it comes to altering the discourse surrounding the Centre and creating greater checks on its power.

The CAA, 2019, as mentioned previously, applies to illegal migrants from Pakistan, Bangladesh and Afghanistan who are Hindu, Sikh, Buddhist, Jain, Zoroastrian or Christian. The period of qualification for becoming an Indian

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<sup>22</sup> Bill No. 36 of 2015

<sup>23</sup> NO. 47 OF 2019

citizen for these people has been reduced from 11 years to 5 years, provided that these people have entered India on or before 31 December 2014<sup>24</sup>.

Thus, any person that qualifies this criterion need not produce any documents to prove his or her citizenship under the Act. The CAA will therefore prove beneficial to numerous people that previously were unable to provide the required documentation.

The Citizen Amendment Act, 2019 CAA of India has become a controversial legislative endeavour by the Government of India. This law can decisively change the definition of illegal immigrants. The government seeks to amend it in order to facilitate to grant citizenry rights to non-Muslims immigrants from Pakistan, Bangladesh and Afghanistan who are of Hindu, Sikh, Jain, Parsi, Buddhist and Christian extraction and who had migrated to India without valid travel documents or the validity period of whose documents had expired during their stay in India. These people were compelled to seek refuge in India owing to religious persecution or fear of religious persecution in their countries of origin.

Its pertinent that, the CAA has its own peculiar contradictions and a will have to be passed on the yardstick of strict judicial scrutiny. A nationwide protest and agitations have already paved its way against the CAA. Some of the issues on which this law is being questioned are, CAA classification is not reasonable as mandated to qualify Article 14 of the Indian Constitution. Moreover, the Article 3 of Convention on Torture, 1984 that prohibits parties from returning, extraditing, or refouling any person to a state where there are substantial grounds for believing that he would be in danger of being subjected to torture” which India has signed on 14 Oct 1997 is being grossly vitiated by current CAA footing of the government. Further, the Article 51(c) of the Indian Constitution which says to foster respect to international law and treaties...” read with Article 253 which talks about to give effect to international agreement also warrants that India should frame policies in tune with the international obligations. Various principles such as, jus cogens and obligatio erga omnes.<sup>25</sup> The Directive Principles of State Policy (DPSP) in Article 51 (c) protects the

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<sup>24</sup> THE CITIZENSHIP (AMENDMENT) ACT, 2019, NO. 47 OF 2019 (Feb 3, 2021, 3:30 PM) <http://egazette.nic.in/WriteReadData/2019/214646.pdf>

<sup>25</sup> towards all" or "towards everyone"

rights of the citizens and are fundamental in the governance of the country. It is hereby necessary to say that the basic feature of the constitution is to maintain harmony between fundamental rights.

**D. National Population Register and National Register of Citizenship (NCR):**

After the enactment of the Citizenship (Amendment) Act in December 2019, two other acronyms have also been flashing in the news, namely NPR and NRC. NPR stands for National Population Register and NRC stands for National Register of Citizenship. These have been said to be linked with CAA. However, there has been a lot of confusion regarding the same. This confusion has been a reason for the discontent amongst the masses, which has led to protests and riots in various parts of the country. There have been various questions buzzing around regarding the NPR and NRC. The population is flummoxed whether these are going to be implemented, if yes, what is the reason for the same, whether both of these are linked, if yes, why and in what way, etc.

To understand the stance of the judiciary with respect to laws on citizenship in India, the researcher thinks that it is crucial to shed light on 'India's Asylum Policy'. In *NHRC v. State of Arunachal Pradesh*,<sup>26</sup> the Supreme Court did not allow the forceful expulsion of Chakma refugees from the state. It made a very liberal interpretation of the law and said there is a difference between refugees and foreigners as such. It also said that refugees deserve protection under the Right to Life guaranteed by Article 21 of the Indian Constitution.

In the recent times, there has been immense negative opinion against refugees in India. The Government keeps on introducing various policies to deal with issues related to refugees. It is very important and necessary to have a clear and efficient law for refugees to reduce the arising issues related to the same. This law should also uphold the democratic and constitutional morals of the country. There have been various cases wherein citizenship has been the subject matter. The researcher has mentioned a few cases in order to shed a light on the approach the judiciary has had with respect to various cases that had citizenship into question. In *Mohammad Salimullah v. Union of India*<sup>27</sup> the Supreme Court

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<sup>26</sup> 1996 AIR 1234, 1996 SCC (1) 742

<sup>27</sup> W. P. (C) NO. 793 OF 2017

reviewed the Union can deport Rohingya Refugees, which is a Muslim minority from Myanmar.

The petitioners claimed that this particular deportation that had been proposed violated the protection of Right to Equality guaranteed under Article 14, Right to Life and Personal Liberty guaranteed under Article 21 and also giving respect for international law and treaty obligations which is mentioned under Article 51(c)<sup>28</sup>. The petitioners also said that the deportation would be contradictory with the principle of 'Non-Refoulement'. Non- Refoulement is generally considered to be a part of Customary International law. This principle does not permit a country to send back asylum seekers or refugees to a country where they have faced or are susceptible to face persecution. This is seen as mandatory to all countries, even if they are not a signatory to the 1951 Refugee Convention.<sup>29</sup>

The Indian government maintained that the increasing numbers of Rohingya migrants could pose a danger to the national security and therefore, need to be deported. However, this particular exercise of deporting Rohingyas back to Myanmar could denote a certain change in the refugee policy of India, which could shift from being secular to being anti- Muslim.

This petition not only would decide the future or fate of around 40,000 Rohingyas in India but will also provide a clarity regarding the protection of fundamental rights of those who are not the citizens of India. It will also showcase how binding international norms are on customary laws.<sup>30</sup>

While dealing with this case, the court also referred to the judgement given in *Felix Stefan Kaye v Foreigners Regional Registration Office*<sup>31</sup> and said that the Central Government held 'implied powers' to give any kind of relaxation in

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<sup>28</sup> Foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration PART IVA FUNDAMENTAL DUTIES

<sup>29</sup> The principle of non-refoulement under international human rights law, (Feb 2, 2021, 12:30 PM)

<https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

<sup>30</sup> Id at 3

<sup>31</sup> W.P.(C) 2862/2018 and CM Nos.11574-576/2018

cases that were related to the Citizenship Act, 1955. While saying this, the court also added that granting citizenship was the discretion of the Government of India and that the Government has the power to consider such applications without taking their technical status into notice.

It was also said that the Central Government would have to look into the unique situation the petitioners are facing. The undertaking that was given before the High Court of Madras which said that the applicants would not be sent back to Sri Lanka will also be considered.<sup>32</sup> Whereas the judiciary has dealt with the term migrants in the case of *KulathilMammu v State of Kerela*.<sup>33</sup> In this case, the term “migrated” was defined as the person voluntary and permanently leaving from India to Pakistan.<sup>34</sup> In the case of *EbrahimVazirMavat v State of Bombay*<sup>35</sup> the constitutional validity of the Influx from Pakistan Control Act, 1949 was in question. This Act said that when a person had the domicile of either India or Pakistan, he/ she can't enter the premises of the above stated countries without permission. And if any person goes against the rule then he would be convicted of the offence mentioned in the Act. According to Section 7, a person could be denied citizenship by the Central Government under certain grounds. It was held that removing a citizen from the country would lead to the deprivation of the right of citizenship as mentioned in Part II of the Constitution of India.<sup>36</sup> Thus, the problem of migrants and refugees has always been persistent in India. As seen in cases above, the Courts have interpreted the law based on the fact and circumstances of each individual case.

Here, its noteworthy that, whilst rolling out the amended law on citizenship, giving concession of six years for residence based only on religion is against the tenets of secularism. This should be dropped to stand the test of ‘basic structure doctrine’. India, as a country which follows the ideology of

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<sup>32</sup> Id

<sup>33</sup> LAWS(SC)-1966-3-3

<sup>34</sup> Diva Rai, *Know More about the Law related to Citizenship in India*, (Feb 3, 2021, 1:00 PM ) [blog.ipleaders.in](http://blog.ipleaders.in), updated on 19<sup>th</sup> October 2019

<sup>35</sup> 1954 AIR 229, 1954 SCR 933

<sup>36</sup>Subodh Asthana, *Citizenship in India*, (Feb 3, 2021, 1:30 PM ) [blog.ipleaders.in](http://blog.ipleaders.in), updated on 3<sup>rd</sup> August 2019

‘*VasudhaivaKutumbakam*’,<sup>37</sup> should not be hasty in taking decisions that can disenfranchise her citizens contradicting its centuries-followed values. The need of the hour is that the Union Government should clearly chart out the course of action regarding the fate of excluded people from final NRC of Assam and political parties should refrain from colouring the entire NRC process through electoral prospects that may snowball into communal violence.

#### IV. Concluding Remarks

An overly legal approach will only produce more tension, insecurity and anxiety.<sup>38</sup>

Ultimately, Citizenship by its very meaning constitutes the polity of a nation. The democratic country like India has successfully thrived post to its independence for almost 7 decades on the basis of its solid unity and integrity of the population. Even the history of India shows the antecedents of the welcoming of the foreigners and treating them with utmost respect and safety. This can be seen from the provisions of the Constitution of India; wherein certain rights are available to the ‘person’ which connotes citizens as well as non-citizens of India. Viz, Article 21.<sup>39</sup> At the same time, certain rights are exclusively conferred for the citizens of this country, so as to protect their person and property.<sup>40</sup> Thus, Constitution of has shown unique blend of adequate constitutional protection to the citizens and non-citizens within the territory of India. Here, it must be noted that, the recent amendments under the Citizenship Act has shown huge uproar in the political and social horizons of India, however, the spirit of democracy has always prevailed and guided the governmental policy issues. As rightly envisaged in the preamble of the Constitution of India, justice, liberty, equality is prevailed in India with special existence of the fraternity. Therefore, constitutional path to the citizenship is

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<sup>37</sup> Id

<sup>38</sup> Drishti, Citizenship of India (Jan 12, 2021, 5:20 PM) <https://www.drishtiiias.com/pdf/citizenship-of-india.pdf>

<sup>39</sup> Id

<sup>40</sup> Constitution of India Article 19

quite clear and it's the need of the time to strengthen the constitutional democracy of India.