



Citizenship of India

In the run-up to the publication of the final [National Register of Citizens \(NRC\) in Assam](#), the Supreme Court, in August, 2019 rejected a plea to include those born in India between **after March 24, 1971 and before July 1, 1987** in NRC unless they had **ancestral links** to India.

- In any other Indian state, they would have been citizens by birth, but the **law is different for Assam**.
- In this context, citizenship has become the most talked about topic in the country.

National Register of Citizens (NRC)

- The National Register of Citizens, 1951 is a register prepared **after the conduct of the Census of 1951** in respect of each village, showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein.
- The NRC was published **only once in 1951**.
- The NRC of 1951 and the Electoral Roll of 1971 (up to midnight of 24 March 1971) are together called **Legacy Data**.
- Persons and their descendants whose names appeared in these documents are certified as Indian citizens.

How is Citizenship Defined?

- Citizenship signifies the **relationship between individual and state**.
- Like any other modern state, India has **two kinds of people—citizens and aliens**. Citizens are full members of the Indian State and owe allegiance to it. They enjoy **all civil and political rights**.
- Citizenship is an **idea of exclusion** as it excludes non-citizens.
- There are **two well-known principles** for the grant of citizenship:
 - While **'jus soli'** confers citizenship on the basis of place of birth, **'jus sanguinis'** gives recognition to blood ties.
 - From the time of the **Motilal Nehru Committee (1928)**, the Indian leadership was in favour of the enlightened concept of jus soli.
 - The **racial idea of jus sanguinis was also rejected by the Constituent Assembly** as it was against the Indian ethos.

Constitutional Provisions

- Citizenship is listed in the **Union List** under the Constitution and thus is under the **exclusive jurisdiction of Parliament**.
- The **Constitution does not define the term 'citizen'** but details of various categories of persons who are entitled to citizenship are given in **Part 2 (Articles 5 to 11)**.
- 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.

- **Article 5:** It provided for **citizenship on commencement of the Constitution.**
 - All those **domiciled and born in India** were given citizenship.
 - Even those who were domiciled but not born in India, but **either of whose parents was born in India**, were considered citizens.
 - Anyone who had been an **ordinary resident for more than five years**, too, was entitled to apply for citizenship.
- **Article 6:** It provided rights of citizenship of certain persons who have **migrated to India from Pakistan.**
 - Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India **before July 19, 1949**, would automatically become an Indian citizen if either of his parents or grandparents was born in India.
 - But those who entered India after this date needed to register themselves.
- **Article 7:** Provided Rights of citizenship of **certain migrants to Pakistan.**
 - Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net.
 - The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon.
- **Article 8:** Provided Rights of citizenship of certain **persons of Indian origin residing outside India.**
 - Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission.
- **Article 9:** Provided that if any person **voluntarily acquired the citizenship of a foreign State** will no longer be a citizen of India.
- **Article 10:** It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, **subject to the provisions of any law that may be made by Parliament**, continue to be such citizen.
- **Article 11:** It empowers **Parliament** to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.

Acts and Amendments

- The Citizenship Act, 1955 provides for the **acquisition and determination** of Indian citizenship.

Acquisition and Determination of Indian Citizenship

- There are **four ways** in which Indian citizenship can be acquired: **birth, descent, registration and naturalisation.** The provisions are listed under the **Citizenship Act, 1955.**
- **By Birth:**
 - Every person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of his/her parents.
 - Every person born in India between 01.07.1987 and 02.12.2004 is a citizen of India given either of his/her parents is a citizen of the country at the time of his/her birth.
 - Every person born in India on or after 3.12.2004 is a citizen of the country given both his/her parents are Indians or at least one parent is a citizen and the other is not an illegal migrant at the time of birth.
- **By Registration:** Citizenship can also be acquired by registration. Some of the mandatory rules are:
 - A person of **Indian origin** who has **been a resident of India for 7 years** before applying for registration.
 - A person of Indian origin who is a resident of any country outside undivided India.
 - A person **who is married to an Indian citizen** and is ordinarily **resident for 7 years**

before applying for registration.

- **Minor children** of persons who are **citizens of India**.

▪ **By Descent:**

- A person born outside India on or after January 26, 1950 is a citizen of India by descent if **his/her father was a citizen of India by birth**.
- A person born outside India on or after December 10, 1992, but before December 3, 2004 if either of his/her parent was a citizen of India by birth.
- If a person born outside India on or after December 3, 2004 has to acquire citizenship, his/her parents have to declare that the minor does not hold a passport of another country and his/her birth is registered at an Indian consulate within one year of birth.

▪ **By Naturalisation:**

- A person can acquire citizenship by naturalisation if **he/she is ordinarily resident of India for 12 years** (throughout 12 months preceding the date of application and 11 years in the aggregate) and fulfils all **qualifications in the third schedule** of the Citizenship Act.

- The Act does **not provide for dual citizenship or dual nationality**. It only allows citizenship for a person listed under the provisions above ie: by birth, descent, registration or naturalisation.

- The act has been **amended four times — in 1986, 2003, 2005, and 2015**.

- Through these amendments Parliament has narrowed down the wider and universal principles of citizenship based on the fact of birth.
- Moreover, the **Foreigners Act** places a heavy burden on the individual to prove that he/she is not a foreigner.
- **1986 amendment:** Unlike the constitutional provision and the original Citizenship Act that gave citizenship on the **principle of jus soli** to everyone born in India, the 1986 amendment to **Section 3** was less inclusive.

- The amendment has added the condition that those who were born in India on or after January 26, 1950 but before July 1, 1987, shall be Indian citizen.
- Those born after July 1, 1987 and before December 4, 2003, in addition to one's own birth in India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.

- **2003 amendment:** The amendment made the above condition more stringent, keeping in view **infiltration from Bangladesh**.

- Now the law requires that for those born on or after December 4, 2004, in addition to the fact of their own birth, both parents should be Indian citizens or one parent must be Indian citizen and other **should not be an illegal migrant**.

- With these restrictive amendments, India has almost moved towards the **narrow principle of jus sanguinis or blood relationship**.

- This lays down that an **illegal migrant cannot claim citizenship by naturalisation or registration** even if he has been a resident of India for seven years.

- **Citizenship (Amendment) Bill 2019:** The amendment proposes to **permit members of six communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians** from Pakistan, Bangladesh and Afghanistan — to continue to live in India if they entered India before December 31, 2014.

- It also reduces the requirement for citizenship from **11 years to just 5 years**.
- Two notifications also exempted these migrants from the Passport Act and Foreigners Act.
- A large number of organisations in Assam protested against this Bill as it may grant citizenship to **Bangladeshi Hindu illegal migrants**.
- The justification given for the bill is that Hindus and Buddhists are minorities in Bangladesh, and fled to India to avoid religious persecution, but Muslims are a majority in Bangladesh and so the same cannot be said about them.

Different Scenario in Assam

- Assam witnessed large-scale **illegal migration from erstwhile East Pakistan** and, after 1971, from present-day Bangladesh.
- This led to the six-year-long **Assam movement from 1979 to 1985**, for deporting illegal migrants.
- The All Assam Students' Union (AASU) led the movement that **demanding the updating of the NRC** and the deportation of all illegal migrants who had entered Assam after 1951.
- The Assam Movement against illegal immigration eventually led to the historic **Assam Accord of 1985**, signed by the Movement leaders and the Rajiv Gandhi government.
- It set March 25, 1971, as the **cut-off date** for the deportation of illegal migrants.
- Since the cut-off date prescribed under articles 5 and 6 of the Constitution was July 19, 1949 - to give force to the new date, an amendment was made to the Citizenship Act, 1955, and **a new section (6A) was introduced**.

Section 6A

- The section was **made applicable only to Assam**.
- It laid down that all persons of Indian origin who entered Assam before January 1, 1966 and have been ordinary residents will be deemed Indian citizens.
- Those who came after 1 January, 1966 but before March 25, 1971, and have been ordinary residents, will get **citizenship at the expiry of 10 years** from their detection as a foreigner.
- During this interim period, they will not have the **right to vote but can get an Indian passport**.
- In Assam Sanmilita Mahasangha (2014) where the constitutionality of the 1986 amendment was challenged (the Mahasangha argues that the cutoff year for Assam should be 1951 instead of 1971), the court referred the matter to the Constitution Bench.
 - To examine whether Section 6A is constitutional and valid though it prescribes a different cutoff date for Assam (1971) from the one prescribed in the Constitution for the rest of the country (1949).
- A five-judge Bench of the **Supreme Court is yet to examine the constitutionality of Section 6A** under which the current NRC has been prepared.
- Identification of foreigners as needed by Section 6A was to be done under the **Illegal Migrants (Determination by Tribunal) Act, (IMDT Act), 1983**, which was applicable only in Assam while the **Foreigners Act, 1946** was applicable in the rest of the country.
 - The provisions of the IMDT Act made it difficult to deport illegal immigrants.
 - On the petition of Sarbananda Sonowal (now the Chief Minister of Assam), the Act was held unconstitutional and struck down by the Supreme Court in 2005.
 - This was eventually replaced with the Foreigners (Tribunals for Assam) Order, 2006, which again was struck down in 2007.
 - In the IMDT case, the court considered classification based on geographical considerations to be a **violation of the right to equality under Article 14**.

Conclusion

- 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 **'Vasudhaiva Kutumbakam'**, 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**.
- An **overly legal approach will only produce more tension, insecurity and anxiety**.

Legal Insights

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