

Classes 2 and 3 - Citizenship

A Preview of the Hand-outs of Class 2 - CITIZENSHIP

Class 2 List of Topics

1. Philosophical basis of Citizenship
2. Important terms
3. PIO vs. OCI
4. OCI vs. NRI
5. Assam issue- NRC
6. IMDT act 1983
7. Foreigners Tribunals
8. Detention Centres

Class 3 List of Topics

1. Provisions of Citizenship Act 1955 and various amendments
2. CAA
 - Provisions
 - Criticisms
 - Clash with Assam Accord
3. Inner Line Permit, Restricted Area Permit and Protected Area Permit
4. NPR
5. NRC
6. Census
7. Comparative perspective on NPR, NRC and Census

Class 2

Philosophical Basis and History

- Citizenship is a modern political phenomenon.
- Treaty of Westphalia signed in 1648-Nation state as an idea came into existence
- With the emergence of nationalism – Citizenship gets its validity.
- It existed during Greek times as well. For Greeks participation in public life was **Citizenship**

How is Citizenship linked with Nation-State?

- Citizenship as an idea has two dimensions – Legal and Political.
 1. Legal aspect is linked to State.
 2. Political aspect is associated with Nation.

Meaning of Legal Aspects - Constitution and other Laws governing Citizenship in a country. It speaks of mechanism to acquire or terminate Citizenship

- Citizenship in Constitution of India - Articles 5 to 11 at the time of commencement of constitution.
- After that Citizenship takes care by Citizenship Act 1955

Political: Refers to the notional aspects like relationship between a Citizen and the Nation

- Speaks of political participation.
- Citizens' criticism/support to government policies.

Citizenship- Rights and Duties

- Citizenship is associated with 2 diametrically opposite ideas-Rights and Duties which act as the faces of the coin of Citizenship hence Rights and Duties are correlative.

Note: In India Rights and Duties are not co-relative.

Rights- Citizens and Aliens

- Differentiates Citizens and Aliens in India
- FR under Articles 15, 16, 19, 29 and 30 are guaranteed to Citizens these rights are given.
- Right to vote, Right to contest election, Right to hold certain offices. (These Rights are not given to Aliens)

Aliens and Types

- Enemy Aliens– not guaranteed any kind of rights
Ex: Pakistan, China
- Friendly Aliens– guaranteed certain rights.

Important Terms Related to Citizenship

- Citizens
- Aliens - Friendly and Enemy
- Domicile
- Resident
- Non-Resident
- Persons of Indian origin
- OCI – Overseas Citizens of India
- Illegal migrants
- Asylee

- Refugees
- Stateless Persons

Definitions

1. Domicile:

- Determined on basis of residence, property. Has the intention of residing

2. Resident:

- Residing continuously for 182 days in last fiscal year . Linked with National Population Register

3. Non Resident Indian

- Citizen of India not a resident of India
- Not residing for continuously 182 days for last fiscal year

4. PIOs: Persons of Indian origin

- Citizens of other country but they have an Indian origin.
Ex: V.S Naipaul
- Either of parents born in undivided India or any territory acquired after independence.
- PIO card holder – valid for 15 years
- Visa free entry
- Restrictions – after 6 months renewed permission
- PIO's can become OCIs now under OCI Scheme 2004
- Can become Citizens through Registration

5. OCIs- Overseas Citizens of India

- He is treated on par with NRI in some cases
- Gets rights in education and in fields of economy. (Buying land)
- Education for children.
- Residence without re- registration hassles
- Visa free entry lifetime.

These also constitute the difference between OCI and PIO

Dual Citizenship

OCIs are some kind of a Dual Citizenship though it is a misnomer to use dual Citizens for them

- Indians cannot acquire citizenship in other countries
- Foreign citizens can acquire Indian Citizenship.

PIO vs. NRI

- No voting Rights
- PIO can get citizenship by Registration after residing for 7 years. NRIs are Citizens

Registration

- Marriage cases
- Minor children

OCIs NRI

- NRIs have full voting rights for all Lok Sabha, Rajya Sabha and Legislative Assembly/Council elections. OCI holders cannot vote in any elections.
- NRIs can stand for public office. OCI holders cannot.
- NRIs can purchase agricultural land. OCI holders cannot.
- NRIs can conduct research work without any prior permission. OCI holders must get prior permission from the local Foreigners Regional Registration Officers (FRRO).

- NRIs can pay the same rate as other resident Indians when they visit national parks and monuments and can renew their Indian passport at any Indian mission overseas or in India.

6. Asylees: Asylum seekers

- Usually a high profile individual having ideological difference with the state he resides or is a citizen of
- Asylum as a concept comes under UDHR – Union Declaration of Human Rights 1948
- India does not have a National Asylum Policy. It is decided case by case. National Asylum Policy was demanded recently. A bill also proposed by Mr. Shashi Tharoor

7. Refugee:

- A Refugee is usually a part of mass exodus. Refugees usually are those who face persecution threats on grounds like race, language, religion etc. (Environmental refugees not part of the convention)
- Governed and defined by convention called Geneva Convention on the Status relating to Refugees – 1951
- Tag of a refugee or asylum is determined case by case by the Ministry of Home Affairs and Ministry of External Affairs

Conceptually Asylee and Refugee are almost the same. They differ only in the governing instruments

8. Stateless persons

- Do not have citizenship of any country unlike an refugee or Asylee.
- Only Rights available stateless persons are Human Rights. A Human Right does not need a State for its existence

9. Illegal migrants and Foreigners

- Definition governed by Passport Act 1920 and Foreigners Act – 1946
- Illegal migrant a person having no valid passport or is staying in India beyond time mentioned in passport.

Class 3

Citizenship Act 1955

The Citizenship Act, 1955 regulates acquisition and determination of citizenship after commencement of the Constitution. It also contains provisions regarding registration of Overseas Citizens of India and their rights.

Important Provisions

The conditions and procedure for acquisition of Indian citizenship as per the provision of the Citizenship Act, 1955 are given below;

1. By Birth

A person born in India on or after 26th January 1950 but before 1st July, 1987 is citizen of India by birth **irrespective of the nationality** of his parents. If born on or after 1st July, 1987 but before 3rd December, 2004 is considered citizen of India by birth if **either of his parents** is a citizen of India at the time of his birth. If born in India on or after 3rd December, 2004 is considered citizen of India by birth **if both the parents are citizens of India.**

2. By Descent

A person **born outside India** on or after 26th January 1950 but before 10th December 1992

is a citizen of India by descent, **if his father was a citizen of India by birth at the time of his birth.**

A person born outside India on or after 10th December 1992 but before 3rd December, 2004, is considered as a citizen of India **if either of his parents was a citizen of India by birth** at the time of his birth. Provided such birth is registered at an Indian Consulate within one year from the date of birth.

A person born outside India on or after 3rd December, 2004 shall not be a citizen of India, unless the parents declare that the minor does not hold passport of another country and his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period.

3. By Registration

Persons of Indian origin who are **ordinarily resident in India** for **SEVEN YEARS before** making application (throughout the period of twelve months immediately before making application and for SIX YEARS in the aggregate in the EIGHT YEARS preceding the twelve months).

Any minor child can be registered as a citizen of India, if the Central Government is satisfied that there are special circumstances justifying such registration. Each case would be considered **on merits.**

4. **By Naturalisation**

Citizenship of India by naturalization **can be acquired by a foreigner (not illegal migrant)** who is **ordinarily resident in India for TWELVE YEARS** (throughout the period of twelve months immediately preceding the date of application and for ELEVEN YEARS in the aggregate in the FOURTEEN YEARS preceding the twelve months)

5. **By incorporating a new territory**

If a new territory becomes a part of India, the government of India specifies the persons of that territory shall be citizens of India.

How a person can lose Nationality?

The Citizenship Act envisages three situations under which a citizen of India may lose his Indian nationality. They are;

1. **By Renunciation:** If any citizen of India who is also a national of another country renounces his citizenship **through declaration** of in t he prescribed manner, he ceases to be Indian Citizen.
2. **By Termination:** Any person who acquired Indian Citizenship by naturalization, registration or otherwise, has **voluntarily acquired citizenship of another country** at any time between January 26, 1950 to December 30,1955, shall have ceased to be an Indian Citizen.
3. **Deprivation:** Section 10 of the Citizenship Act 1955 empowers the government to deprive a citizen of his citizenship **by issuing an order**. However this power may not be used in case of every citizen. It **applies only to those**, who acquired Indian Citizenship. This might be because of obtaining citizenship on false documentations etc.

CITIZENSHIP AMENDMENT ACT 2019

CAA aims

- With The Citizenship (Amendment) Bill, 2016, the government plans to change the definition of illegal migrants.
- The bill seeks to amend the Citizenship Act, 1955 to provide citizenship to illegal migrants, from Afghanistan, Bangladesh and Pakistan, who are of Hindu, Sikh, Buddhist, Jain, Parsi or Christian extraction
- The Bill also seeks to reduce the requirement of 11 years of continuous stay in the country to six years to obtain citizenship by naturalisation.

Provisions of the Act

- **Definition of illegal migrants:** The Act prohibits illegal migrants from acquiring Indian citizenship. It defines an illegal migrant as a foreigner: (i) who enters India without a valid passport or travel documents, or (ii) stays beyond the permitted time.
- The Bill amends the Act to provide that that the following groups of persons will not be treated as illegal migrants: (i) Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan before December, (ii) who have been exempted from provisions of the Passport (Entry into India) Act, 1920, and the

Foreigners Act, 1946 by the central government. The 1920 Act mandates foreigners to carry passport, while the 1946 Act regulates the entry and departure of foreigners in India.

On NATURALISATION

- Citizenship by Naturalisation: The Act allows a person to apply for citizenship by naturalisation, if the person meets certain qualifications. One of the qualifications is that the person must have resided in India or been in service of the central government for at least 11 years before applying for citizenship.
- The Bill creates an exception for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, with regard to this qualification. For these groups of persons, the 11 years' requirement will be reduced to six years.

On OCI

- Cancellation of Registration of OCIs: The Bill also makes amendments to provisions related to Overseas Citizen of India (OCI) cardholders. A foreigner may register as an OCI under the 1955 Act if they are of Indian origin (eg. former citizen of India or their descendants) or the spouse of a person of Indian origin. This will entitle them to benefits such as the right to travel to India, and to work and study in the country. The Bill amends the Act to allow cancellation of OCI registration if the person has violated any law.

EXCEPTION

- Further, the Bill adds that the provisions on citizenship for illegal migrants will not apply to the tribal areas of Assam, Meghalaya, Mizoram, or Tripura, as included in the Sixth Schedule to the Constitution. These tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District. It will also not apply to the areas under the Inner Line" under the Bengal Eastern Frontier Regulation, 1873. The Inner Line Permit regulates visit of Indians to Arunachal Pradesh, Mizoram, and Nagaland.

Note: ILP is now applicable to Manipur from Jan 1, 2020

Criticisms:

(It has many other criticisms. Detailed List of Criticisms and its Analysis will be done in class with Dictation)

1. Violates the principle of Secularism
2. Against Right to Equality under Article 15 – Political Right
3. Clashes with Assam accord: The Accord gives the deadline of 1971 for illegal migrants and also does not differentiate among religions. It constitutes a violation of federal pacts and federal provisions
4. OCI provisions can be misused

Inner Line Permit, Restricted Area Permit and Protected Area Permit

ILP

- The ILP is a temporary travel document an Indian citizen has to possess to enter 'protected' areas of the Northeast. The Central government issues the ILP under the Bengal Eastern Frontier Regulation, 1873, which restricted the entry of

'British subjects' or Indians into these areas primarily to protect the British interest in tea and oil. The restriction continued for 'Citizens of India' after Independence to protect tribal cultures in the north-eastern region and to regulate movement to certain areas near the international border. Apart from the entire State of Nagaland barring its commercial hub Dimapur, the ILP is applicable in Arunachal Pradesh and Mizoram.. Manipur is also included now

RAP

- Foreigners (Restricted Areas) order 1963
- Parts of Sikkim and Andaman and Nicobar Islands , Lakshwadeep

PAP

- Protected Area Permits The Protected Area Permits in India are in parts of Himachal Pradesh, Ladakh, Sikkim, Uttarakhand, Rajasthan and Arunachal Pradesh and other north eastern states
- Currently, only touristic visit is allowed through Protected Areas limits in India. Even a person from these protected areas who is married to a non-Indian cannot settle permanently in these areas
- Legislation The Foreign (Protected Areas) Order 1958 has guidelines about using the Protected areas and issued by MHA
- Countries allowed through travel agents: Bangladesh, Pakistan, China, Myanmar

Registration of Indigenous Inhabitants of Nagaland

- The Nagaland government is initiating an exercise to prepare a master list of all indigenous inhabitants of the State. This list, called the Register of Indigenous Inhabitants of Nagaland (RIIN), is seen as a localised version of the National Register of Citizens (NRC) that Assam began updating four years ago and is scheduled to complete by July 31.

RIIN and its preparation

- Civil society groups in Nagaland have often conducted house-to-house surveys for listing non-Naga and IBIs (Illegal Bangladeshi Immigrants). The RIIN will be the first official master list of Nagaland's indigenous inhabitants. Its objective, as stated in the Nagaland government's June 29 notification, is to prevent people from acquiring fake indigenous inhabitants' certificates.
- the RIIN will be finalised and hard copies placed in all villages and wards while electronic copies will be stored in the State Data Centre. Everyone figuring in RIIN will be issued a barcoded and numbered Indigenous Inhabitant Certificate (IIC). The process will be dovetailed with the online system of Inner Line Permit (ILP). No IIC will be issued after RIIN is finalised except to babies born to indigenous inhabitants of Nagaland.

Note: It is just a preview not the complete handout