

Who is an Indian citizen? How is it defined?

Writer - Faizan Mustafa (expert in constitutional law)

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"Citizenship can be determined by place of birth or by bloodline. There are cutoff dates for the country, which are different for Assam where the NRC is being prepared. A look at how the laws have evolved."

In the run-up to the publication of the final National Register of Citizens (NRC) in Assam, citizenship has become the most talked about topic in the country. The Assam government has been taking various steps in relation to those who will be left out of the NRC, while the Supreme Court last week rejected a plea to include those born in India between after March 24, 1971 and before July 1, 1987 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.

How is citizenship determined?

Citizenship signifies the relationship between individual and state. It begins and ends with state and law, and is thus about the state, not people. Citizenship is an idea of exclusion as it excludes non-citizens. There are two well-known principles for 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 rejected by the Constituent Assembly as it was against the Indian ethos.

Citizenship is in the Union List under the Constitution and thus under the exclusive jurisdiction of Parliament. The Constitution does not define the term 'citizen' but gives, in Articles 5 to 11, details of various categories of persons who are entitled to citizenship. 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. However, Article 11 itself confers wide powers on Parliament by laying down that "nothing in the foregoing provisions shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to citizenship". Thus Parliament can go against the citizenship provisions of the Constitution.

The Citizenship Act, 1955 was passed and has been amended four times — in 1986, 2003, 2005, and 2015. The Act empowers the government to determine the citizenship of persons in whose case it is in doubt. However, over the decades, 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 is not a foreigner.

So who is, or is not, a citizen of India?

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: 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: Even 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: 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.

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 as it 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 then NDA government 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.

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. While Section 6A was inserted in 1986 as a result of the Assam Accord, which has been discussed at length by the court, the court accepted the challenge to its constitutionality in 2014 and referred to the Constitution Bench 13 questions such as 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). But then, this provision was about citizenship on commencement of the Constitution.

National Citizenship Register of (NRC)

Why in discussion?

- The final draft of the National Register of Citizens was recently released in Assam. According to which there are 40 lakh people who have not got citizenship of India.
- Because they could not prove their identity at the moment and most of them are suspected to be illegal Bangladeshi. However, the problem of illegal Bangladeshis is not just in Assam. The central government has said that more than 20 million illegal Bangladeshis are in India.
- 3.29 crore people had applied to join NRC, out of which only 2.89 crore people were included in the final list released by NRC.

What is it?

- NRC is the register which contains the details of all Indian citizens. It was prepared after the 1951 census.
- The register contained details of all persons enumerated during that census.
- It only includes the names of Indians who have been living in Assam since before 25 March 1971. Those who reach the state after that will be sent back to Bangladesh.
- NRC is applicable only in those states from where citizens of other country enter India. Only the NRC report shows who is an Indian citizen and who is not.

Why only in Assam

- Assam is quite different compared to other states on the basis of citizenship. This is in view of the history of migration there. Assam was incorporated into the Bengal Presidency during the British rule.
- From 1826 to 1947, British officials continued to bring cheap laborers from other provinces for tea plantations. But after independence, there were a big phases of exodus twice.

- First, during the partition of India and Pakistan, from East Pakistan. Second, after it broke away from East Pakistan in 1971 to become Bangladesh.
- Between 1979 and 1985, this migration was fiercely opposed. It was headed by All Assam Students Union (AASU).
- For this reason, in 1985, the Rajiv Gandhi government entered into an Assam Accord Agreement with AASU and other organizations.
- It contained provisions to identify and repatriate illegal migrants. For this, Article 6A was added to the Citizenship Act, which made special provisions for Assam.

Who is considered a citizen of Assam

- Arrangements were made under certain special provisions to decide a legitimate citizen of Assam and the NRC was drafted on this basis.
- Under this, every person living in Assam before 1 January 1966 was considered a citizen of this place.
- From 1 January 1966 to 25 March 1971, foreigners who came to Assam became mandatory to register with the Foreigners Tribunal.
- They were given all the rights as citizens, but the condition of voting rights was given after 10 years.
- No migrant immigrating to Assam on or after 25 March 1971 was granted citizenship rights. Now applicants for NRC have to prove that they or their ancestors were citizens of Assam before this date.

Assam Accord

- On August 15, 1985, an agreement between the All Assam Students' Union and other organizations and the Government of India, known as the Assam Accord.
- According to this agreement, Hindu-Muslims who entered Assam after 25 March 1971 were to be identified and removed from the state.
- Under this agreement, citizens who came to Assam between 1961 and 1971 were given citizenship

and other rights, but they were not given the right to vote. Under this, special package was also given for the economic development of Assam.

- It was also decided that special laws and administrative measures will be taken to protect the cultural, social and linguistic identity of Assamese speaking people. The voter list was amended based on the Assam Accord.

Definition of nationality

- "A person's nationality reveals his or her birthplace, or what origin he/she is." Nationality assigns certain rights and duties to a person.
- A nation provides protection to its citizens from foreign invasion, in return for which it expects citizens to perform their duties towards the nation.

- According to international conventions, every sovereign country can decide according to the law of its country which person can become a member of that country.

Definition of citizenship

- A person's citizenship is given to him by the country's government when that person complies with the legal formalities.
- Thus on the basis of citizenship, the birth place of a person cannot be traced.

Expected Questions (Prelims Exams)

1. Consider the following statements -

- Citizenship is the subject under Concurrent List.
- Citizenship is included under articles 5 to 12 of the Constitution.

Which of the above statements is/are correct?

- (a) Only 1
- (b) Only 2
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Expected Questions (Mains Exams)

- Q. Explaining citizenship determination, Discuss the major provisions of National Register of citizenship. (250Words)**

Note: Answer of Prelims Expected Question given on 21 Aug. is 1 (a)