

CITIZENSHIP UNDER THE CITIZENSHIP ACT, 1955

Sasankajyoti Sharma*

INTRODUCTION

All of us are perhaps aware of the Shaheen Bagh protests in 2019 against CAA (i.e., the Citizenship (Amendment) Act, 2019), and NRC (i.e., the National Register of Citizens). In a similar manner, during the period from 1979 to 1985, there was an uprising in Assam demanding the government to detect, disenfranchise, and deport illegal migrants in Assam. This article is a humble attempt to portray light through an analysis of a part of the legal mechanism involved in acquiring citizenship of India as per the will of the democratic process by the people of India and the continuous endeavor involved towards the maintenance of humanity and social order guaranteed by the Constitution of India. No provision in respect of the acquisition of citizenship in India after the commencement of the Constitution of India which got commenced on 26th January 1950, has been embodied in it. However, Article 11 of the Constitution empowers the Indian Parliament to make a law for creating provisions in respect of the acquisition, termination, and other related matters of citizenship in India. Now, the practical aspects and lacunas in respect of the application of Sections 3 (1), & 6A of the Citizenship Act, 1955, for acquiring citizenship in India are primarily discussed and analyzed in the following lines.

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CITIZENSHIP BY BIRTH OR CITIZENSHIP U/S 3(1) OF THE ACT (57 OF 1955):

Sub-Section:3(1) of the Citizenship Act, 1955:

This sub-section says, “Except as provided in subsection (2), every person born in India, -

- (a) on or after the 26th day of January 1950, but, before the 1st day of July 1987;
- (b) on or after the 1st day of July 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;
- (c) on or after the commencement of the Citizenship (Amendment) Act, 2003, where –
 - (i) both of his parents are citizens of India; or

*LAW PROFESSIONAL IN ASSAM.

- (ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth,

shall be a citizen of India by birth.”

Interpretation of Sub-Section:3(1) of the Act:

If a person is suspected and alleged to be an illegal migrant in India by the competent authority (i.e., the Government of India), then he or she shall have to prove, as the onus to prove lies on him or her in view of the mandate u/s 9 of the Foreigners Act, 1946, either his place of birth as India, both of his or her parents as citizens of India at the time of his birth, or one of his or her parents is a citizen of India and the other is not an illegal migrant at the time of his or her birth, depending on the condition that ‘he’ in the Act represents both he or she, in order to substantiate his or her claim that he or she is a citizen of India before the competent authority.

Who is an Illegal Migrant?

Section:2(1)(b) of the Citizenship Act, 1955, interprets “Illegal Migrant” in this Act, unless the context otherwise requires, as “a foreigner who entered into India –

- (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or
- (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time.”

Section:9 of the Foreigners Act, 1946:

This section says, “If in any case not falling under Section:8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may, shall notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.”

Practical aspects:

In order to substantiate his or her claim that he or she is a citizen of India by birth, the suspected and alleged illegal migrant without having a valid document like a passport or other travel document, produces documents like a birth certificate, school certificate, pan card, aadhaar card, ration card, employment card, elector photo identity card, and/or voter list predominantly as documentary evidence before the competent authority, in the event of he or she having or not having his or her paternal and/or maternal relative(s) as eye witness or witnesses in respect of his or her birth. In this respect, it can be pointed out that except birth certificate which is considered reliable, in law, if issued by the Registrar, Birth & Death, and which contains specifically a statement of “place of birth”, no other above-mentioned/produced documents are considered reliable in evidence for the presumption of the “place of birth” of a person, as because these documents do not contain a statement specifically in respect of the place of birth. So, a suspected illegal migrant who does not possess a birth certificate in respect of his or her birth finds it impossible to prove his or her place of birth in India, if other evidence like eyewitnesses in the form of his or her parents, or paternal or maternal proximate relatives are unavailable to him or her.

Contrary to the above, if a suspected illegal migrant or proceedee produces his or her birth certificate in support of his or her claim that he or she was born in India, then he or she has to prove the document as per law before the competent authority for its admissibility in law. Now, the question “Why and how to prove a birth certificate” is clarified in the Judgment reported in 2017 (5) GLT 836. When he or she fails to prove his or her birth certificate in the manner stated in the Judgment as a precedent, the conclusion follows that the proceedee or petitioner has failed to discharge his or her burden under section 9 of the Foreigners Act, 1946. Further in this regard, there is a suo moto provision for re-visiting or scrutiny of the orders passed by the competent authority in order to check the shortcomings in granting citizenship by birth to a proceedee. This procedure is repetitive but is done in the interest of the national security of India. In this context, reference can be drawn to the Judgment dtd.19/04/2018 passed by the Hon’ble Gauhati High Court in W.P.(C) 7339/2015 which relates to a number of petitions raising the contention that repetitive proceedings against a proceedee under the Foreigners Act, 1946, are hit by section 11 of the CPC.

CITIZENSHIP U/S 6A OF THE ACT (57 OF 1955) OR SPECIAL PROVISIONS AS TO CITIZENSHIP OF PERSONS COVERED BY THE ASSAM ACCORD:

Sub-Section: 6A(1) of the Citizenship Act, 1955:

This sub-section says, “For the purposes of this section,

- (a) “Assam” means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;
- (b) “detected to be a foreigner” means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;
- (c) “specified territory” means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;
- (d) a person shall be deemed to be of Indian origin if he or either of his parents or any of his grandparents was born in undivided India;
- (e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunal) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.”

Sub-Section: 6A(2) of the Citizenship Act, 1955:

This sub-section says, “Subject to the provisions of sub-section (6) and (7), all persons of Indian origin who came before the 1st day of January 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January 1966.”

Sub-Section: 6A(3) of the Citizenship Act 1955:

This sub-section says, “Subject to the provisions of sub-section (6) and (7), every person of Indian origin who -

- (a) came to Assam on or after the 1st day of January 1966 but before the 25th day of March 1971 from the specified territory; and
- (b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner,

shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.”

Sub-Section:6A(4) of the Citizenship Act, 1955:

This sub-section says, “A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.”

Sub-Section:6A(5) of the Citizenship Act, 1955:

This sub-section says, “A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.”

Sub-Section:6A(6) of the Citizenship Act, 1955:

This sub-section says, “Without prejudice to the provisions of section 8, -

- (a) if any person referred to in subsection (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;
- (b) if any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for the year or from the date on which he has been detected to be a foreigner, whichever, is later, a declaration that he does not wish to be

governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).”

Sub-Section:6A(7) of the Citizenship Act, 1955:

This sub-section says, “Nothing in sub-section (2) to (6) shall apply in relation to any person

- (a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, for the year is a citizen of India;
- (b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, for a year under the Foreigners Act, 1946 (31 of 1946).”

Sub-Section:6A(8) of the Citizenship Act, 1955:

This sub-section says, “Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.”

Practical Aspects and Lacunas of the Section:6A of the Act:

- (a) This section is the outcome of the Citizenship (Amendment) Act, 1985 and it creates three situations for a person who is suspected and alleged to be a foreigner without a valid travel document from the specified territory. These three situations are – i) a person entering India prior to 01/01/1966, ii) a person entering India on or between 01/01/1966 and 24/03/1971, or iii) a person entering India on or after 25/03/1971.
- (b) The applicability of this section is exclusive and is unaffected by any law for the time being in force as per section 6A(8) of the Act.
- (c) The primary focus of this section is on a situation where a person who was or is suspected and alleged to be a foreigner without a valid travel document from the specified territory during the period on or between 01/01/1966 and 24/03/1971 and who subsequently has proved or proves himself to be of Indian origin as per section:6A(1)(d) of the Act before the concerned Foreigners Tribunal, has been declared or is declared as a foreigner of on or between 01/01/1966 and 24/03/1971 without a valid travel document. For the purpose of applicability of section:6A(1)(d), he or she has to prove either, his or her place of birth in undivided India, his or her linkage with both parents who were born in undivided India,

or his or her linkage with any of his or her grandparents who were born in undivided India.

- (d) Two conditions as per section 6A(2) of the Act are required to be satisfied by a person suspected and alleged to be a foreigner from the specified territory without a valid travel document for establishing his claim that he is a citizen of India –i) first, he or she who is of Indian origin of undivided India came before 01/01/1966 to Assam from the specified territory, and ii) secondly, he or she has been “ordinarily resident in Assam” as it existed prior to the commencement of the Citizenship (Amendment) Act, 1985, since the date of his or her entry in Assam. In this context, the Judgment reported in AIR 1994 SC 1961 can be referred to.
- (e) Now, the concept of “undivided India” provided in this section is quite unclear for a clear presumption of facts in respect of the place of birth of a person suspected to be a foreigner without a valid travel document from the specified territory.
- (f) Also, the concept of ‘ordinarily resident in Assam’ remains undefined in this section of the Act for the presumption of facts during the applicability of the law under this section.
- (g) Section 6A of the Act explicitly does not express any direction or is silent for a person detected to be a foreigner on or after 25/03/1971 from the specified territory without a valid travel document. This situation arises when a person’s citizenship is in question because of a suspicion that he or she entered or has entered into India from the specified territory on or after 25/0.3/1971 and he or she has failed or fails to prove that he or she has been or is of Indian origin as per section:6A(1)(d) of the Act.
- (h) In absence of a provision for a prescribed document or documents for claiming and proving one’s citizenship in India, a birth certificate in India appears to be the only document for substantiating one’s claim that he or she was born in India; however, this document is insufficient when his or her citizenship status is in question under this section, because at that point in time, he or she shall have to prove his or her linkage either with either parents or any of his or her grandparents along-with their place of birth in India or undivided India for substantiating his or her claim of Indian origin. This birth certificate issued to a person born in Assam has to be proved in accordance with law as per the provisions in the Registration of Births and Deaths Act, 1969 and the rules framed there-under (i.e., the Assam Registration of Births and Deaths Rules, 1990). Now, here-from it appears that a person born prior to the framing of the Assam Registration of Births and Deaths Rules, 1990, faces or will definitely face a problem in establishing his or her claim that he or she was born in Assam, which fact seems unaddressed.

- (i) There are a lot of instances where the opinions declaring a foreigner u/s 6A of the Act are hit by the right of citizenship u/s 3(1) of the Act surface now and often before the Bench creating a clash of law. To alleviate such an unhealthy legal atmosphere while granting justice in a democratic country like ours, we need to have a balanced and universal national law without compromising and diluting our national security.
- (j) Further, the fate of siblings while declaring a suspected foreigner living with his or her family in a village, as an illegal migrant and foreigner seem not addressed by the above-discussed law. That apart, the death of an under-trial suspected foreigner does not abate an allegation against his or her siblings. These points need to be addressed thoroughly in the Act to put an end to the confusion so created during its implementation.

CONCLUSION

Since time immemorial common people are continuously becoming the victim of religious hatred and persecution, economic exploitation, war, under-development, etc. due to the ruling economic and/or administrative powers to a region, and this results in migration of people in huge numbers from one place to another in search of peaceful living, and livelihood. Migration to India, specifically to Assam, is mostly due to these conditions from the neighbouring countries of India through the porous border at various points in time. This influx of foreigners as illegal migrants and refugees have increased the crime rate at various levels as well as raised a threat to or admonished the demography of Assam, and India as a whole. So, the government agencies while granting citizenship to these suspected people under the above-discussed laws need to be very cautious and elaborate.

REFERENCE

Book reference: Bare Act –The Citizenship Act, 1955, by Universal Law Publishing.

