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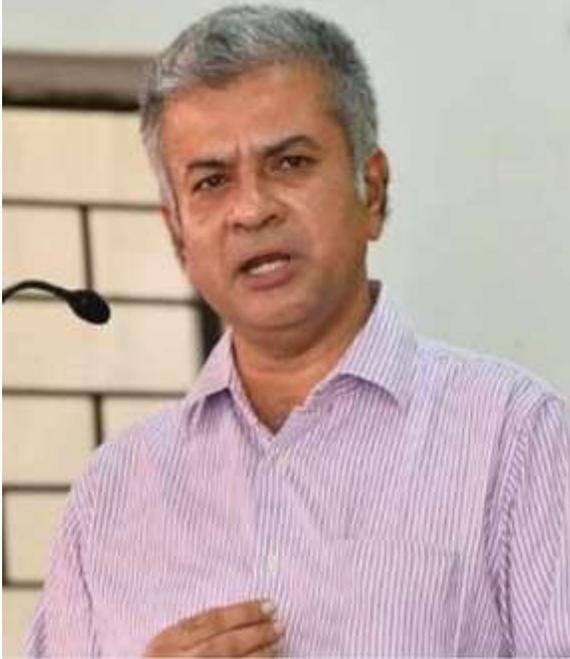
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LAW REGARDING NRC IN INDIA

AUTHORED BY - QUTE NARANG

1. INTRODUCTION

An individual residing in some specific nation, becomes the part of that nation because he resides over that place or it is his place of birth or through his descendants he acquires the membership or by the process of naturalisation he can have the membership of the nation. Through citizenship a person gets recognition under the customary law of any country. Even before the government, person can defend his rights because of the citizenship. There are different rules and regulations of every country to recognize and terminate a person as a citizen. If the person has a citizenship of various countries, it is termed as that he has multiple citizenship. Whereas a person is not a citizen of any country he is considered to be a stateless. In case the person's territorial status is not clear and he lives on the border that person will be deemed to be border lander. Synonyms of citizenship is the nationality and in almost all International instruments the term Nationality is used instead of citizenship. Citizenship defines who are legally residing in the territorial jurisdiction of any Nation¹. It becomes the responsibility of the State to protect the people living in the country and for that their proper record must be available with the State. Thus, National Register of Citizens and National Population Register concepts came into the picture for collecting data regarding the people who are the part of the country.

2. MEANING OF CITIZENSHIP

Citizen is an individual who because of his birth, parents' nationality or through naturalization commits himself to be loyal towards the country². Citizenship means the person's loyalty towards the government in return of what safeguard government is providing to him. Through the citizenship the person gets political as well as civil rights. The rights come with duties so, if rights are provided to the citizens, citizens are also duty bound towards the Government. The citizen is the person who lawfully belongs to the nation³. Citizenship status is conferred upon the person because he is the member

¹ Available at: <https://en.wikipedia.org/wiki/Citizenship> (last visited on April 20, 2024).

² Available at: <https://dictionary.law.com/Default.aspx?selected=194> (last visited on April 20, 2024).

³ Available at: <https://www.merriam-webster.com/words-at-play/what-is-the-difference-between-a-citizen-and-a-resident> (last visited on April 20, 2024).

of any specific Nation and because of his membership enjoy the rights provided by the government. Between the person and the state when there is some legal relationship then the person is protected by the state and in exchange the person is obliged⁴.

3. MEANING OF DOMICILE

Domicile is the place of living of the person⁵. The place where the person has his permanent residence and an individual has considerable link with the place, that place will be the domicile of that person⁶. In legal sense, person who is residing permanently in a specific area is granted the status of domicile of that particular jurisdiction. If the person did not intent to permanently leave the particular place and have maintained contacts with the place but have shifted somewhere else, even then person can remain the domicile of that particular jurisdiction⁷.

4. MEANING OF NATIONAL REGISTER OF CITIZENS

The people who have acquired an Indian citizenship legally their record is kept officially in the form of National Register of Citizens hereinafter read as National Register of Citizens. Each and every particular regarding an individual is entered in the National Register of Citizens. These particulars are such as name, address, sex, marital status. The list of citizens that is made officially is known as National Register of Citizens⁸. The maintenance of this register was made compulsory by the Citizenship (Amendment) Act, 2003⁹. The reason behind the preparation of National Register of Citizens was to demarcate between the persons who have acquired citizenship legally and those who are the illegal migrants in the country. Process of preparation of National Register of Citizens have been mentioned under Rule 4 of the Rules, 2003¹⁰. This rule provides the way of collection of the data for the preparation of National Register of Citizens and also who will responsible for the collection of the data¹¹. National Register of Citizens is the kind of the register maintained for keeping the record of its citizens. The Citizenship Act, 2003 mandate the registration of every citizen and also

⁴ Available at: <https://legal-dictionary.thefreedictionary.com/citizenship> (last visited on April 20, 2024).

⁵ Available at: <https://dictionary.cambridge.org/dictionary/english/domicile> (last visited on April 20, 2024).

⁶ Available at: <https://www.lexico.com/definition/domicile> (last visited on April 20, 2024).

⁷ Available at: [https://en.wikipedia.org/wiki/Domicile_\(law\)](https://en.wikipedia.org/wiki/Domicile_(law)) (last visited on April 20, 2024).

⁸ Available at: <https://countercurrents.org/2020/01/what-is-caa-npr-nrc-what-is-its-impact-on-indian-citizens> (last visited on April 20, 2024).

⁹ The Citizenship (Amendment) Act, 2003 (Act 6 of 2004).

¹⁰ The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

¹¹ Available at: https://en.wikipedia.org/wiki/National_Register_of_Citizens (last visited on April 20, 2024).

under the Act it is mandatory to issue National identity card to every citizen, so for that purpose maintenance of National Register of Citizens becomes essential.

5. MEANING OF NATIONAL POPULATION REGISTER

National Population Register hereinafter read as NPR is the collection of data regarding the demographic details of the person who is residing in the country. The citizen must register himself in the National Population Register¹². Demographic details in the National Population Register includes the birthdate, marital status, place of birth, gender, spouse name, address etc. of the Indian citizens and foreigners usually residing in India. Citizen must provide the true data for the preparation of National Population Register. Person usually residing in the country means he has been living in the country from the last 6 months and also have an intention to stay in India for next 6 months¹³. The National Population Register is maintained at local level Sub District level, district level, state level and also at National level. National Population Register is the collection of details regarding the person who is usually residing in the India.

The concept of National Population Register is different from census¹⁴. Census is a collection of information of the people living in India regarding their economic activity, literacy, education, household facilities, demographic features etc. Where National Population Register only deals with the demographic particulars of the person. Census is collected to check the development of the country in the past and on the basis of it to plan the future strategies for the upliftment of the economy of the country. On the other hand, National Population Register is just to make an estimate regarding the population of the country.

6. HISTORICAL DEVELOPMENT OF CITIZENSHIP

LAWS IN INDIA

(i) Governance of Indian Citizens during Colonial Period

India was earlier controlled by the East India Company from the year 1757 to 1858 and at that time

¹² Available at: <https://www.jagranjosh.com/general-knowledge/what-is-national-population-register-npr-1577195345-1> (last visited on April 20, 2024).

¹³ Available at: <https://censusindia.gov.in/2011-Common/IntroductionToNpr.html> (last visited on April 20, 2024).

¹⁴ Available at: <https://www.news18.com/news/india/what-is-npr-is-it-linked-to-nrc-all-you-need-to-know-about-the-exercise-2461799.html> (last visited on April 20, 2024).

Indians were the British subjects and were governed by the regulating act of 1773 and the charter of 1774. But there was no clarity regarding the natives of India and about their rights and duties. After 1858 the Crown got the sovereignty under the Government of India Act 1858 and the administration of East India Company got over. In the concept of British nationality the most important change that took place was in the year 1914¹⁵. In that the difference was marked between the British subjects naturally born and the persons certified to be the British nationals by way of naturalization. The difference between the rights and immunities of European British subjects and Indian natives can be seen very clearly.

(ii) Governance of Indian Citizens after Partition

The major development that took place in India regarding the citizenship. When India and Pakistan became two different States after partition there was a migration of millions of people. For them the citizenship Act 1955 was passed. The next major step taken in the citizenship law was in the year 1986 to tackle with the problem of agitation in Assam politics. Next major development took place in the year of 2003 for granting Overseas citizenship of India to the people of Indian Origin. The next development can be witnessed in the year 2019 which paved the way for citizenship on the basis of religion¹⁶.

The country faced the major problem after the partition because before the partition there was no Indian citizenship and the people of India by British subject. Another problem came into picture when the abducted women came to India to join their families and when the persons who were in Pakistan came back to India. So to resolve the issue the constituent assembly inserted a separate Part for the citizenship in the Indian Constitution. Article 5 to 11 in the Part II of the Constitution deals with the matters of citizenship.

Parliament exercised the power conferred on it under Article 11 of the Constitution and enacted The Citizenship Act 1955 to deal with the situations arose after the commencement of the Constitution¹⁷. By enacting The Citizenship (Amendment) Act, 1986 if a person wants to acquire citizenship by birth then either parent of child must have Indian citizenship. By this concept the birthright citizenship of

¹⁵ The passage of the British nationality and status of Aliens Act, 1914

¹⁶ 46 *Economic and Political Weekly* 28 (2011).

¹⁷ *Ibid.*

person has been restricted. By 2003 amendment to The Citizenship Act the person shall not be an illegal migrant if you want to acquire the citizenship through the process of naturalization or registration. If any child wants to acquire Indian citizenship by birth can't do so if either parent is an illegal immigrant.

The 2019 amendment of the citizenship act speaks about granting of citizenship to the persons belonging to the religious minorities in the country of Afghanistan Bangladesh and Pakistan and migrated to India on or before 31st December 2014. These religious minorities cover Hindu, Sikh, Buddhist, Jain, Parsi and Christian religions. The Assam Accord has been violated by this Act and this Act also infringing the right to equality of the Muslim community.

7. HISTORICAL BACKGROUND OF NCR

During the period of 1826 to 1947 there was the massive transfer of people after Yandabo treaty (signed on 24 February 1826) and the colonial Assam came under the British control. The authorities which were liberal supported the transfer of farmers to Assam. Even after partition people were free to migrate to India from Pakistan and vice versa till 19th July 1948. It was the time when Ordinance known as Influx from West Pakistan (Control) Ordinance, 1948 was passed regarding West Pakistan migrants. Afterwards 19th July 1948 was considered as the cut-off date for providing citizenship to the persons who came to India from Pakistan under Indian Constitution i.e. after 26th January, 1950.

After the end of 1947 civil war between India and Pakistan, the people continued to migrate from Pakistan to India and most of them entered into the Assam. So, in 1950 the Immigrants (Expulsion from Assam) Act, 1950 was passed to expel the refugees from Bangladesh, earlier known as East Pakistan, who have entered Assam after India Pakistan partition. The Act¹⁸ came into force on 1st March 1950. Under this Act, it became necessary to expel the immigrants entered into the state illegally. To recognise the lawful citizens and illegal immigrants the census was conducted in Assam in the year 1951 and on the basis of that census National Register of Citizens was prepared. This was the first National Register of Citizens prepared in the country.

In the year 1955 The Citizenship Act, 1955¹⁹ was enforced which provide the rules for acquisition of

¹⁸ Immigrants (Expulsion from Assam) Act, 1950.

¹⁹ The Citizenship Act, 1955 (Act 57 of 1955).

citizenship of India through various modes. The modes mentioned under the citizenship act acquisition of citizenship by birth, descendants or by way of registration. In 1957 the Act²⁰ of the Year 1950 stood repealed. In 1960 in the Legislative Assembly of Assam bill was moved in regard to Assamese as the single official language.

Many illegal immigrants migrated to Assam were recorded in the census report of the Year 1961 by the registrar general. In 1964 Foreigners (Tribunal) Order²¹ was issued by the Central Government. In the year of 1964 and 1965 many people migrated from Bangladesh to India because the situation was not normal in that country. In 1965 the Central Government asked the Government of Assam to complete the National Register of Citizens judiciously and also asked for the issuance of national identity cards to the citizens of India to differentiate them from illegal immigrants. But in the year of 1965 the plan regarding issuance of identity cards was dropped.

In 1971 again there was a movement of people in Bangladesh because of riots and war over there. In 1976 through notification the central government gave direction to the Assam government that they shall not deport the persons entered the state from East Pakistan before 24th March of 1971. And these people were allowed to have the right of Indian citizenship. Detection of these people was done according to The Foreigners Act, 1946 and Foreigners (Tribunal) Order, 1964. The persons recognized as foreigners will not have right to participate in in voting or elections. These persons to get the recognition as an Indian citizen must have to get themselves registered according to The Registration of Foreigners Act 1939²² and the Rules of 1939²³ for the registration of foreigners will also be applicable upon them.

In the year 1979 the movement initiated in Assam against the foreigners. And it continued for six years under the leadership of All Assam Students' Union (AASU) and All Assam Gana Sangram Parishad (AAGSP). The role of this movement was finding out and deporting and disenfranchising the foreigners. On 18th January 1980, AASU first time asked from the central government for the updation of National Register of Citizens. In 1983 the Illegal Migrants (Determination by Tribunal)

²⁰ *Supra* note 18.

²¹ The Foreigners' Act, 1946 (Act 31 of 1946).

²² Act 16 of 1939

²³ The Registration of Foreigners Rules, 1939

Act, 1983 was passed for the recognition of the illegal immigrants by the Tribunal. In 1985 under Assam Accord it was decided to expel the foreigners migrated to Assam on or after 25th March 1971.

Again in 1990, AASU asked the government of Assam and Central Government to update National Register of Citizens. In 1997 the decision was taken by the election commission of India that if there is any doubt regarding the citizenship of a person 'D' (Doubtful) will be written after his name.

On 17th November 1999, first time the Central government decided for the updation of National Register of Citizens. In 2003 the amendment was passed in The Citizenship Act of 1955²⁴ and it was provided in the amendment that for being eligible for the citizenship by birth the parents of the child must not be an illegal immigrant. And it further provided that the decision will be taken by the local officers regarding entry of the name of the person in National Register of Citizens. In the same year The Citizenship Rules²⁵ were formed. Under these rules the country's Government was empowered to pass an order regarding the preparation of National Population Register forming the base for National Register of Citizens.

Supreme Court declared the Act²⁶ of 1983 as unconstitutional in the year 2005. In this year the meeting was held regarding the updation of National Register of Citizens of 1951 but it was of no worth. In 2006 the new Foreigners (Tribunal) Amendment Order was passed which exempted the state of Assam from the Foreigners (Tribunal) Order of 1964.

The case was filed in 2009 regarding the deletion of the names of foreigners from the electoral rolls and also for the update of National Register of Citizens. The very first attempt regarding the detection of the foreigners through the updation of National Register of Citizens in Assam was made through the pilot project in the year 2010. But this project existed only for a month. The next time the task for completing the updation of the National Register of Citizens was taken under the order passed by the Supreme Court of India in 2013. Registrar General of India passed the notification on 6th December 2013 regarding the updation of National Register of Citizens in Assam. The office of the state coordinator for National Register of Citizens was established. Again on 21st July 2015 the instructions

²⁴ *Supra* note 19.

²⁵ The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

²⁶ The Illegal Migrants (Determination by Tribunal) Act, 1983.

were given by the Supreme Court so that the updation of National Register of Citizens goes on smoothly. In this year the process of updation began.

In 2016 the proposal for the bill to provide citizenship to the people belonging to the minorities, Hindu, Sikh, Parsi, Jain, Christian (non- muslim), from Pakistan Afghanistan and Bangladesh was brought forth. The drafts of National Register of Citizens were successively published on 31st December, 2017, on 30th July, 2018 and on 26th July, 2019. Finally, the National Register of Citizens was released on 31st August, 2019.

8. DOCUMENTS REQUIRED FOR NATIONAL REGISTER OF CITIZENS

The identity proof is needed for the registration of the person as Indian citizen under National Register of Citizens. The identity of the person can be proved by any of the document mentioned in two lists, List-I and List-II²⁷.

There are 14 documents that are specified in List-I²⁸. The person can prove his identity by any of the following documents depicting:

- The name of the person finds place in National Register of Citizens of 1951
- The person is enrolled in Electoral roll on or before 24th March, 1971
- Person has records of his land or records of tenancy over land
- Person has certified citizenship
- Person has the certificate of being the permanent resident of the country
- Person can prove his citizenship through license issued by the Government
- Person is the Government employee and has certificate of his job
- Person has account on his name in the bank or the post office
- Person's birth was registered in India and has certificate with regard to his birth
- Person has certificate of Board of Education or of University
- Person has records of court proceedings on his name

²⁷ Available at: <https://economictimes.indiatimes.com/news/et-explains/is-a-pan-india-nrc-possible-the-lesson-from-assam/articleshow/72454225.cms> (last visited on April 20, 2024).

²⁸ *Ibid.*

- Person has Indian Passport
- Person has his own LIC policy

The documents specified in the List-I shall be dated before 24th March, 1971. If the person does not have documents bearing his name dated before 24th March, 1971, then he can show any documents mentioned in List-I of any of his ascendants (up to the two generation) and for showing his connection with ascendants that person must have his own one of the following documents specified under List-II:

- His birth proof
- Document regarding land
- Certificate of Board of Education or of University
- Account in his name of the bank or the post office, his own LIC policy
- If the person is the married woman then he must have certificate in regard to this certified by the circle officer or gaon panchayat
- Showing enrolment of the person in Electoral roll
- Any other document of the person which has legal reliability

If the woman is married at some other place, she does not have any document specified under List-II through which she can prove her connection with the family, in that case the State has permitted her to show the following documents:

- Certificate, certified by the circle officer or gaon panchayat secretary. Certificate bearing the date after 24th March, 1971 is also allowed
- She can show the ration card bearing her name. but it must be of date prior or of 24th March, 1971²⁹.

9. INDIAN CITIZENSHIP LAWS³⁰

Article 5 to 11 of Part II of the Constitution of India deals with the matter related to the citizenship. Under Article 11 of the Constitution of India the Parliament has been empowered to enact the laws on citizenship. Parliament by exercising the power granted under Article 11 of the Constitution

²⁹ *Ibid.*

³⁰ Available at: <https://cjp.org.in/citizenship-laws-in-india-faqs/> (last visited on April 20, 2024).

legislated The Citizenship Act 1955³¹. This Act provides for the five modes of acquisition of Indian citizenship. According to the Act the citizenship can be acquired by birth, by descent, by registration, by naturalization, by acquisition of territory. This Act has been amended number of times such as in the year 1986, 1992, 2003, 2005, 2015 and 2019. The Amendment that brought National Register of Citizens into picture was of the year 2003. By way of 2003 amendment³², three concepts were introduced to the Act of 1955. These concepts were of illegal migrant, overseas citizenship and National Register of citizens. The illegal migrants of the persons who have migrated to India without legal documents or if have entered with legal documents but are staying in India for the longer time than permitted. The Citizenship Amendment Act of 2019³³ provide the exemptions to the illegal migrants and that is related to their residence. If the Illegal migrant want to acquire Indian citizenship, then he has to stay in India for the period only of 6 years whereas for the other foreigners this time period is of 11 years.

10. CONCLUSION

A person becomes a citizen of any Sovereign state through the citizenship³⁴. Being a member of any Sovereign state, the citizen gets some special rights in comparison to the other person. A person can become the citizen of any country by his birth, by blood relation, by naturalization etc. A person can become the citizen of more than one country but with the approval of Government of every country he wishes to be the citizen. Person can be the citizen of any country permanently or his citizenship can be taken away by different modes in different countries³⁵.

When the person is given rights, immunities is and is also bound by duties of the citizen ok, it means that he has been granted the citizenship. When the person is looked upon as a member of the country that means he has the citizenship of that country³⁶. In negative sense it means exclusion of people other than citizens. The basic principles behind the granting of Indian citizenship is 'jus soli' (confers citizenship on the basis of place of birth) and 'jus sanguinis' (Gives recognition to blood ties).

³¹ *Supra* note 19.

³² The Citizenship (Amendment) Act, 2003 (Act 6 of 2004)

³³ The Citizenship (Amendment) Act of 2019 (Act 47 of 2019).

³⁴ Available at: [https://en.wikipedia.org/wiki/Citizen_\(disambiguation\)](https://en.wikipedia.org/wiki/Citizen_(disambiguation)) (last visited on April 20, 2024).

³⁵ Available at: <https://simple.wikipedia.org/wiki/Citizenship> (last visited on April 20, 2024).

³⁶ Available at: <https://www.dictionary.com/browse/citizenship> (last visited on April 20, 2024).

Points in favour of National Register of Citizens:³⁷

1. For the security of the nation National Register of Citizens is essential as it helps to find out the genuine citizens of the country and those who are illegally residing in the country.
2. To safeguard itself the nation must have the knowledge about from whom it has threat and to whom it must protect. So, National Register of Citizens is the way to differentiate between both the categories.
3. National Register of Citizens is neutral. It has nothing to do with caste, religious faith, language or colour of the person.
4. Being the responsible nation, India must prepare National Register of Citizens.
5. Reading National Register of Citizens with Citizenship (Amendment) Act, 2019, only grant of citizenship through process of naturalization will not be allowed if person not covered under non-Muslim community of three nations, but the person will have the other ways for acquisition of Indian citizenship.

Negative Consequences of National Register of Citizens:

Those who will be deprived of citizenship on being declared the foreigner will be shifted to the detention centres. Basic welfare amenities such as right to vote, right to have property etc. will not be provided to them, in return they will face the poverty and because of poverty they will agree to work for wages lower than that are paid to Indian citizens³⁸. The rate of overall wages will lower down and it will directly impact the economy. On the other hand, unemployment among Indian citizens may also increase.

Suggestions:

1. The persons who are aggrieved by the National Register of Citizens record must be given an opportunity of proper hearing.
2. There must be the mechanism regarding Legal Aid to the persons who have limited means to show their Indian citizenship.
3. The systems used in National Register of Citizens for the collection of data, scanning, data verification or data digitization must be of high technology.

³⁷ Available at: <https://economictimes.indiatimes.com/blogs/et-commentary/caa-nrc-political-parties-must-come-together-in-larger-national-interest/> (last visited on April 20, 2024).

³⁸ <https://thewire.in/economy/all-india-nrc-costs> (last visited on April 20, 2020).

4. Help desks must be setup throughout the country for the public help when the process of National Register of Citizens updation to be there.
5. National security must be kept in view while updation of National Register of Citizens in the country.
6. National Register of Citizens updation must not be communal based.
7. Proper mechanism for redressal of the grievances of the aggrieved must be there.
8. There must be transparency while conducting the National Register of Citizens process.
9. The model for implementation of National Register of Citizens must work properly so that the Indian citizen does not face any difficulty.



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