



CITIZENSHIP AND STATELESSNESS IS THE HUMAN RIGHT ISSUES

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Before we proceed to discuss the problem of citizenship, we have to make a distinction between the term "Nation", Nationality, citizen and domicile. The term "Nation" has a reference to race of a particular area because the body of an Individual gain physical changes according to place of domicile due to living in a geographical area, for example, the skin colour height and language of American continent differs from the persons having their abode in China or Burma. Thus, the persons having common skin colour, dialect or language, living habits begin to call themselves as one nation. The religion also plays a great role to form a nation for example Jews, Greeks, Romans, Hindus and Muslims. This concept of "nation" acquired a legal recognition after formation of League of Nations, and United Nations Organization (UNO), because the unit to constitute a league of Nation or the United Nations organization, is the geographical areas claiming themselves to be a political entity and the person domiciled in these political areas were known to be a national of that territory. These territories have been named as country with substituted unique name, for the purpose of identity e.g., U.K. France, China, Indonesia etc.

According to Starks international law, Nationality is the most frequent and sometimes the only link between an individual and a state ensuring that, effect be given to those individual rights and obligations at international law. The stark has referred to a judgment of British- Mexican claims commission In Re Lynch:-

"A man's nationality forms a continuing state of things and not a physical fact which occurs at, a particular moment. A man's nationality is a continuing legal relationship between the sovereign state on the one hand and the citizen on the other. The fundamental basis of a man's nationality is his membership, on an independent political community. The legal relationship, involves rights and corresponding duties upon both-on the part of the citizen, no less than, on the part of the state".

Thus, citizenship is a legal status of an individual about his relation with a sovereign nation recognized as a State. The term "nationality", at present, has got a reference to "citizenship" of State. The term "citizenship" and "Nationality" are used as interchangeable term, because normally the persons belonging to one state belong to one distinct race. In its legal aspect, the term citizenship is something different from Nationality. In its strict sense, a sovereign recognised state may confer the status of citizenship on an individual, on the principle of "Jus Soli" or "Jus Sanguinis" or by direct conferment of status of citizenship.

INTERNATIONAL IMPORTANCE OF NATIONALITY

In the International field, the term "citizenship" has got various important incidents: --

1. The person holding a diplomatic status of a country are entitled to get protection in a foreign country because it is a vital function of a sovereign state to protect its citizens.
2. The "state" shall become responsible to other state for acts of its citizen



3. The paragraph 4 of Article 12 of international covenant on civil and political rights of 1966 provides "No one shall be arbitrarily deprived of the right to enter his own country".
4. The nationality imports allegiance and the state can ask its subjects/citizen to perform military service.
5. In the absence of any binding treaty, the state can refuse to extradite its own nationals to another state, requesting such surrender.
6. State can exercise criminal or other jurisdiction on the basis of nationality.

A nationality can be acquired by birth (Jus Soli) or by nationality of parents (Jus Sanguinis) or according to both. Besides nationality can be confirmed, on basis of long stay, by official grant by the concerned sovereign state. The inhalations of a subjugated or conquered or ceded territory may assume, the nationality of the conquering state or the state to which territory is ceded.

In the aforesaid process some persons acquire double nationality and, on the other hand, some persons become stateless. In the recent years "statelessness" has become a major problem of international law, Considering the acuteness and urgency of the situation, the united nation has inserted the article 15 in the Universal Declaration of Human rights of December 1948,¹ which provides "Everyone has a right to a nationality" and "no one shall be arbitrarily deprived of his nationality". The statelessness "may arise due to municipal nationality laws, through changes of Sovereignty over the territory or through denationalization by the state of nationality.

Several steps are being taken by the UNO to abolish statelessness. In this respect, a convention relating to the status of stateless person signed at New York on 28th September 1951 which conferred important benefit to a statelessness person.² Thereafter a convention on the reduction of statelessness, adopted at New York on 20 August 1961.

The person, who are turned stateless either for leaving their country due to political reasons or who have been turned stateless due to municipal laws become a refugee in that country. Such person can seek Asylum in the same country or in some other neighboring country.

CITIZENSHIP IN INDIA

The constitution of India has specifically provided in, its part II, Article 5³ as follows:

"5. Citizenship at the commencement of the constitution: - At the commencement his constitution every person, who has his domicile in the territory of India and

(A) Who was born in the territory of India, or

(B) Either of whose parents was born in the territory of India, or

(C) Who has been ordinary resident in the territory of India for not less than five years immediately preceding such commencement, shall be citizen of India.

Thus, most of the person, who are domiciled in any part of India, they become citizen of India under this Article 5 of the constitution India.

The Article 10⁴ of the constitution provided as under, "Every person who is or deemed to be citizen of India under any of the forgoing provisions of this part shall, subject to the provisions of any law, that may be made by parliament continue to be such citizen". But there is a regularity clause in Article 11⁵ of the constitution which runs to say as under:

"Article 11: parliament to regulate the right of citizenship by law: - Nothing in the foregoing provisions of this part shall derogate from the power of parliament to make any provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship".



Perhaps in the exercise of powers, under Article 11 of the constitution, the parliament has passed the citizenship Act 1955.

By Section 18, of the citizenship Act 1955, the Central government is authorized to frame the rules to carry out the purpose of the Act.

The Act, as originally passed by the parliament was a legislation of normal nature except the section 16⁶ of the Act related to Delegation to power. The delegation of power is a normal functionary of the government but at the time of such delegations, the Central Government is supposed to take such measures, so that an innocent citizen is not put to face any illegal or improper hardship.

In this respect it may be pointed out that there is always a possibility of harassment and extortion, by subordinate authorities, by misinterpreting the provisions of law and is, likely, to put an innocent citizen to unnecessary litigation.

The citizenship Act has undergone several amendments which are as under: --

1. Citizenship (Amendment) Act 1957 which came in force w.e.f. 27.12.1957
2. The repealing and amendment Act 1960 (w.e.f. 16.12.1960) Act no. 58 of 1960)
3. The citizenship (Amendment) Act 1985 (w.e.f. 7.12.1985)
4. The delegated legislation provisions (Amendment) Act 1985 (Act no.4 of 1986), w.e.f. 15.05.1986
5. The citizenship (Amendment) Act 1986 (Act no. 51 of 1986) w.e.f. 01.07.1987
6. The citizenship (Amendment) Act 1992 (Act no 39 of 1992) w.e.f. 10.12.1992
7. The citizenship (Amendment) Act 2003 (Act no 06 of 2003) w.e.f. 03.12.2003
8. The citizenship (Amendment) Act 2005 (Act no 32 of 2005) w.e.f. 28.06.2005
9. The citizenship (Amendment) Act 2015 (Act no.01 of 2015) w.e.f. 26.01.2015
10. The citizenship (Amendment) Act 2019 (Act no.47 of 2019)

The above amendments, show that the original citizenship Act 1955 has been materially changed in its spirit and still it does not fulfill the intents of constitution. The Article 5 of the constitution has declared the citizenship by domicile. The framer of the constitution was aware of the fact, that majority of the Indian population is illiterate and is so poor that they cannot approach the authorities for the issue of registration of the birth of a child. Considering this fact, the provisions of Article 5(c) provided that a person will become a citizen of India, if he is domiciled in India for a period of five years prior the commencement of constitution.

No doubt, a power was conferred on the parliament to lay down the law relating to citizenship but there was no intention, of framers of the constitution, to divest in-disguise any person of his citizenship conferred by part II of the constitution. However, the citizenship Act has been amended in such a way that persons who are otherwise a citizen of India, but by executive will, they may be deprived of his/her citizenship. The citizenship (Amendment) Act 2003⁷ has been passed in such a way that no reasonable prudent person could guess the propose of the amendment bill. By this act, the definition of "illegal migrant" has been added in the Citizenship Act 1955 to fulfill the demand of Assamees leaders. The leaders of Assam agitation were opposed to the person professing Islam in any form and domiciled in Assam. The Central Government has defined in para (a) of sub-section 1 of section 2 of the Act that government of India means the "Central Government" or "a State Government". This definition has opened a door for providing two citizenships at a time, one, by Central Government and second by State Government. Thus, this provision is in contrast with the of provision of Article 19(1)(d)⁸ of the constitution.



THE CITIZENSHIP (REGISTRATION OF CITIZEN AND ISSUE OF NATIONAL IDENTITY CARDS) RULE 2003

As per Rules 2003, the District Magistrate of concerned District has been declared as "District registrar of Indian citizens" under rule 2(f) of the rules. The Rule 2(h) of the rules has created an authority, known as "Local Registrar of citizens Registration. The rule runs to say as under: - "Local Registrar of Citizen registration" means a local officer or a revenue officer, appointed by the State Government at the lowest geographical jurisdiction, that is to say, of a village or rural area or town, or ward or demarcated area (demarcated by "Registrar-General" of citizen Registration) within a ward or town or urban area, who shall function as local registrar for the purpose of preparation of local register of citizens. Here it is to be pointed out that these revenue authorities have already got a bad reputation of corruption and harassment of public. It may be point out that the people of Uttar Pradesh have experienced a lot of harassment and extortion in the consolidation proceedings, undertaken under U.P. consolidation of holding Act.

Here it is also important to draw attention to the fact that Registration of births has been made compulsory by the Registration of Birth and Death Act 1969 read with U.P. Registration of Birth and Death Rules-2002.

Prior to the enforcement of Registration of Birth and Deaths Act 1969, The Births, Death and Marriage Registration Act 1886⁹, under this Act registration of birth was Compulsory for Christian and Parsies only.

The preamble of the Act no. 06 of 1886 run to say as under:

"An Act to provide for "Voluntarily Registration" of certain birth and death".

In the year 2009, the Rule 6A was added in the citizenship rules of 2003 by GSR 803(E) Dated 9/11/2009 and the process to prepare a National Register of Citizens was enforced in the state of Assam. But the purpose of Assamees leaders was frustrated because a population of about 19 lacs was declared as illegal migrants out of which, 13 lacs of persons were Hindu Baudh, Sikh, Jains, Parsi or Christian. Consequently, a proviso to section 2(1)(b)¹⁰ of was added by the citizenship (Amendment) Act 2019¹¹ in order to confer the citizenship rights to specified class of persons named therein.

The persons of Assam state, who have been declared to be "illegal migrants" under section 2(1)(b) of the Act of 1955. They may become Stateless. They have been so treated because their name and the name of their father does not stand in the register of birth prepared under Birth, Deaths and Marriage Registration Act 1886, or the Birth and Death Act 1969 though they are having their domicile in India prior to the coming into force of the Registration of Berth and Death Act 1969. In any case, if their birth is not supported by proper documents. The authorities should have considered other factors as follows-

In order to hold a person domiciled in India and to be treated "an internee" within the meaning of section 4 of Foreigner Act 1946 the competent authority should have collected the evidence or should have given opportunity to lead evidence that the concerned person has violated the provisions of Passport (entry into India) Act 1920 or the provisions of Passport (entry into India) Act 1920 or not. The entire problem in respect of citizenship issue in Assam arose because the executive authorities worked in a mechanical way to insist for the production of birth certificate which had never been issued within the meaning of Section 8¹², Section 11¹³ and Section 12¹⁴ of Registration of Birth and Death Act 1969. Moreover, the person violating the provision of Section 8, Section 11, Section 12 Registration of birth and death Act 1969, were the parents or the hospital authorities within the



meaning of section 23¹⁵ of the Registration of birth and deaths Act 1969. But the revenue authorities, vested with powers to decide the citizenship under the Registration of citizens and issue of -National identity cards Rule 2003, have punished the child, for the violation of law committed by parents or hospital authorities as required by the provisions of Section 8, Section 11, Section 12 of the Act of 1969. The complaints have been heard that the concerned revenue authorities did not consider the secondary evidence, in respect of birth or domicile for the reasons best known to them.

In the result, the above discussion gives an indication that the Central government is supposed to take steps that the law and rules under citizenship (registration of citizens and issue of identity cards) Rule 2003 are amended suitably so that the concerned authorities may not misuse the authority for corrupt purposes. The Central Government may consider the fact that the registration of birth or death was voluntary act till the promulgation of Registration of birth, and deaths Act 1969. The secondary evidence in the form of certificate issued by public representative like, Village Pradhan, M.L.A., M.P. members of municipality (sabhashad) or block level members, extract of revenue record like khatauni, kishan bahi, caste certificate, educational certificate, extract of Parivar Register containing the details of nationality/ domicile should be allowed as a proof of birth, as well as of domicile.

STATELESSNESS

From above discussion, a person will may find that a large number of persons domiciled in Assam have got no proof of their birth in India and they are not registered in Register of Citizens. The Muslim population of the country is opposing to this amendment being violative of Article 14¹⁶ of the constitution of India, for its being discriminative on the ground of religion. In majority of cases, there are no details to show that they belong to a foreign country. So, they cannot be extradited out India. Thus, such persons will become stateless persons. After being declared as a stateless person, these persons will not be eligible to hold property within the territory of India nor they shall be entitled to any employment in any such area.

The citizenship (Amendment) Act 2019 will regularize the cases of persons who have migrated from Pakistan, Afghanistan, Bangladesh but it will not solve the problem of such Indians who will be turn stateless and to whom no country will like to accept e.g., persons of Tribal races, Girijans, nomadic persons.

As a humanitarian step it may be provided, by amending the law, that all such persons will be given a temporary citizenship for their life time, so that they may earn their livelihood and protect their property. The children of such persons, who take birth within the territory of India may be conferred with citizenship rights on the principle of "Jus-Soli". The temporary citizens may be deprived of the voting rights. It is a proper time to think over sympathetically on this burning problem of STATELESSNESS and find out the ways to solve it.

¹ Universal Declaration of Human Rights

² Starks, *International Law*, page 313

³ Article 5 of Constitution of India, 1949, Article 5 (Part II)

⁴ Article 10 of Constitution of India, 1949

⁵ Article 11 of the Constitution of India

⁶ The Citizenship Act, 1955: Section 16-delegation of power: - The Central government may by order, direct that any power which is conferred on it by any of the provisions of this Act, other than those of Section 10 and Section 18, shall in such circumstances and under such condition, if any, as may be specified in the order, be exercisable by such officer or authority as may be so Specified.



⁷ Act no. 06 of 2004

⁸ "All citizen shall have the right: -

(a) To move freely throughout the territory of India

(b) To reside and settle in any part of the territory of India"

⁹ Births, Death and Marriage Registration Act 1886

¹⁰ The Citizenship Act, 1955

¹¹ Act no. 47 of 2019

¹² **Births, Death and Marriage Act 1969, Section 8:** Persons required to register births and deaths.—(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16,— (a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e) the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period; (b) in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the medical officer in charge or any person authorised by him in this behalf; (c) in respect of births and deaths in a jail, the jailor in charge; (d) in respect of births and deaths in a choultry, chattram, hostel, Dharamsala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof; (e) in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere: Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid; (f) in any other place, such person as may be prescribed. (2) Notwithstanding anything contained in sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in clause (a) of sub-section (1) instead of the persons specified in that clause.

¹³ **Births, Death and Marriage Act 1969, Section 11:** Informant to sign the register. -Every person who has orally given to the Registrar any information required under this Act shall write in the register maintained in this behalf, his name, description and place of abode, and, if he cannot write, shall put his thumb mark in the register against his name, description and place of abode, the particulars being in such a case entered by the Registrar.

¹⁴ **Births, Death and Marriage Act 1969, Section 12:** Extracts of registration entries to be given to informant- The Registrar shall, as soon as the registration of a birth or death has been completed, give, free of charge, to the person who gives information under section 8 or section 9 and extract of the prescribed particulars under his hand from the register relating to such birth or death.

¹⁵ **Births, Death and Marriage Act 1969, Section 23:** Penalties. (1) Any person who—

(a) fails without reasonable cause to give any information which it is his duty to give under any of the provisions of sections 8 and 9; or (b) gives or causes to be given, for the purpose of being inserted in any register of births and deaths, any information which he knows or believes to be false regarding any of the particulars required to be known and registered; or (c) refuses to write his name, description and place of abode or to put his thumb mark in the register as required by section 11, shall be punishable with fine which may extend to fifty rupees. (2) Any Registrar or Sub-Registrar who neglects or refuses, without reasonable cause, to register any birth or death occurring in his jurisdiction or to submit any returns as required by sub-section (1) of section 19 shall be punishable with fine which may extend to fifty rupees. (3) Any medical practitioner who neglects or refuses to issue a certificate under sub-section (3) of section 10 and any person who neglects or refuses to deliver such certificate shall be punishable with fine which may extend to fifty rupees. (4) Any person who, without reasonable cause, contravenes any provision of this Act for the contravention of which no penalty is provided for in this section shall be punishable with fine which may extend to ten rupees. (5) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this section shall be tried summarily by a magistrate.

¹⁶ The Constitution of India, 1949, Article 14: Equality before law-The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.