

CITIZENSHIP

To prepare for [INDIAN POLITY](#) for any competitive exam, aspirants have to know about Citizenship. It gives an idea of all the important topics for IAS Exam for the polity syllabus (GS-II.) Citizenship is extremely important for the UPSC exam. This is an essential portion of the polity. As IAS aspirants, you should be thorough with the Citizenship. Articles 5 to 11 of the Indian Constitution deal with citizenship. It can be acquired in five ways viz, Birth, Descent, Naturalisation, Registration and Incorporation of territory. Our constitution provides for Single Citizenship only. It enhances the feeling of fraternity and unity among the people of India.

MEANING AND SIGNIFICANCE

India has two kinds of people –

Citizens – Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights.

Aliens – Aliens are the citizens of some other state and do not enjoy all the civil and political rights.

Aliens categorise into two –

FRIENDLY ALIENS	ENEMY ALIENS
Friendly aliens are the subjects of those countries that have cordial relations with India.	Enemy aliens are the subjects of that country that is at war with India. They enjoy lesser rights than the friendly aliens. They do not enjoy protection against arrest and detention (Art. 22).

The citizens also owe certain duties towards the Indian State – paying taxes, respecting the national flag and national anthem, defending the country inter alia.

The Constitution confers the following rights and privileges only to citizens of India –

ARTICLES	EXPLANATIONS
Art. 15	Right against discrimination on grounds of religion, race, caste, sex or place of birth.
Art. 16	Right to equality of opportunity in the matter of public employment.
Art. 19	Right to freedom of speech and expression, assembly, association, movement, residence and profession.
Art. 29	Cultural rights
Art. 30	Educational rights
Right to vote	In elections to the Lok Sabha and state legislative assembly.
Right to contest	For the membership of the Parliament and the state legislature.

Eligibility to hold certain public offices	President, Vice-President of India, judges of the SC and the HC, Governor of states, Attorney General of India and Advocate General of states.
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In India both a citizen by birth as well as a naturalised citizen are eligible for the office of President while in USA, only a citizen by birth and not a naturalised citizen is eligible for the office of President.

CONSTITUTIONAL PROVISIONS

The Constitution deals with the citizenship from 5 to 11 under Part II.

It contains neither any permanent nor any elaborate provisions in this regard.

It only identifies the persons who became citizens of India at its commencement (January 26, 1950).

It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement.

It empowers the PARLIAMENT to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the Citizenship Act (1955), which has been amended from time to time.

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on January 26, 1950:

A person who had his domicile in India and also fulfilled any one of the three conditions –	<ol style="list-style-type: none"> 1. If he was born in India; or 2. If either of his parents was born in India; or 3. If he has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India.
A person who migrated to India from Pakistan became an Indian citizen if he or either of his parents or any of his grandparents was born in undivided India and also fulfilled any one of the two conditions –	<ol style="list-style-type: none"> 1. In case he migrated to India before July 19, 1948, he had been ordinarily resident in India since the date of his migration; or 2. In case he migrated to India on or after July 19, 1948, he had been registered as a citizen of India. But, a person could be so registered only if he had been resident in India for six months preceding the date of his application for registration.
A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing	<ol style="list-style-type: none"> 1. He has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his residence, whether before or after the

outside India shall become an Indian citizen if –	commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship.
A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen –	1. For this, he had to be resident in India for six months preceding the date of his application for registration .

To sum up, these provisions deal with the citizenship of –

persons domiciled in India;

persons migrated from Pakistan;

persons migrated to Pakistan but later returned; and

persons of Indian origin residing outside India.

The other constitutional provisions with respect to the citizenship are as follows:

No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state.

Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament.

Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

CITIZENSHIP ACT 1955

Anyone born in India on or after January 26, 1950 up till July 1, 1987 is an Indian citizen by birth.

Anyone born on or after July 1, 1987 but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is an Indian citizen at the time of his birth is an Indian citizen.

And anyone born after the commencement of the Citizenship (Amendment) Act, 2003 and both of whose parents are Indian citizens at the time of his birth is an Indian citizen.

The only exception to this was Assam where as per the 1985 Assam Accord foreigners who came to the state up to March 24, 1971 were to be regularised as Indian citizens.

Section 14A in the Citizenship Act of 1955 provides in sub-section (1) that “The Central Government may compulsorily register every citizen of India and issue national identity card to him”.

The procedure to prepare and maintain National Register of Indian Citizens (NRIC) is specified in the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 .

CITIZENSHIP ACT 1955

BY BIRTH

A person born in India on or after January 26, 1950 but before July 1, 1987 is a citizen of India by birth irrespective of the nationality of his parents.

A person born in India on or after July 1, 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth.

The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.

A person born in India on or after December 3, 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.

BY DESCENT

A person born outside India on or after January 26, 1950 but before December 10, 1992 is a citizen of India by descent, if his father was a citizen of India at the time of his birth.

A person born outside India on or after December 10, 1992 is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth.

A person born outside India on December 3, 2004 onwards shall not be a citizen of India by descent, unless 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. An application, for registration of the birth of a minor child, to an Indian consulate shall be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

A minor who is a citizen of India by virtue of descent and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of his attaining full age.

BY REGISTRATION

A person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;

A person of Indian origin who is ordinarily resident in any country or place outside undivided India;

A person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

Minor children of persons who are citizens of India;

A person of full age and capacity whose parents are registered as citizens of India;

A person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration;

GOI may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress. Every naturalised citizen must take an oath of allegiance to the Constitution of India.

A person of full age and capacity who has been registered as an overseas citizen of India cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

A person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the August 15, 1947.

NOTE – All the above categories of persons must take an oath of allegiance before they are registered as citizens of India.

BY NATURALISATION

The Central Government may grant a certificate of naturalisation to any person (not being an illegal migrant) if he possesses the following qualifications:

He is not a subject or citizen of any country where citizens of India are prevented from becoming subjects or citizens of that country by naturalisation;

He undertakes to renounce the citizenship of other country in the event of his application for Indian citizenship being accepted;

He has either resided in India or been in the service of a GoI or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

During the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a GoI, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven years;

He is of good character;

He has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution;

In the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a GoI or under an international organisation of which India is a member or under a society, company or body of persons established in India.

BY INCORPORATION OF TERRITORY

If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India. Such persons become the citizens of India from the notified date. For instance, when Pondicherry became a part of India, the GoI issued the Citizenship (Pondicherry) Order (1962), under the Citizenship Act (1955).

SPECIAL PROVISIONS AS TO CITIZENSHIP OF PERSONS COVERED BY THE ASSAM ACCORD, 1985

The Citizenship (Amendment) Act, 1985, added the following special provisions as to citizenship of persons covered by the Assam Accord (which related to the foreigners' issue):

All persons of Indian origin who came to Assam before the January 1, 1966 from Bangladesh and who have been ordinarily residents in Assam since the date of their entry into Assam shall be deemed to be citizens of India as from the January 1, 1966.

Every person of Indian origin who came to Assam on or after the January 1, 1966 but before the March 25, 1971 from Bangladesh and who has been ordinarily resident in Assam since the date of his entry into Assam and who has been detected to be a foreigner shall register himself. Such a registered person 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 of detection as a foreigner. But, in the intervening period of ten years, he shall have the same rights and obligations as a citizen of India, excepting the right to vote.

LOSS OF CITIZENSHIP

The Citizenship Act (1955) prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution

By Renunciation

Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship.

Upon the registration of that declaration, that person ceases to be a citizen of India.

However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.

Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship.

However, when such a child attains the age of eighteen, he may resume Indian citizenship.

By Termination

When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically

The Constitution of India, like Canada, has introduced the system of single citizenship and provided uniform rights (barring some exceptions) for the people of India to promote the feeling of fraternity and unity among them and to build an integrated Indian nation.

This provision, however, does not apply during a war in which India is engaged.

By Deprivation

It is a compulsory termination of Indian citizenship by the Central government, if:

the citizen has obtained the citizenship by fraud;

the citizen has shown disloyalty to the Constitution of India;

the citizen has unlawfully traded or communicated with the enemy during a war;

the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years;

the citizen has been ordinarily resident out of India for seven years continuously.

RATIONALE BEHIND SINGLE CITIZENSHIP

Indian Constitution is federal and envisages a dual polity (Centre and states), but it provides for only a single citizenship – the Indian citizenship.

The citizens in India owe allegiance only to the Union. There is no separate state citizenship (unlike USA which adopts dual citizenship)

In USA, each person is not only a citizen of USA but also of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights – national government and state government.

This system creates the problem of discrimination. A state may discriminate in favour of its citizens in matters like right to vote, right to hold public offices, right to practice professions etc.

Problem of discrimination avoided in the system of single citizenship of India.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them.

However, this general rule of absence of discrimination is subject to some following exceptions–

The Parliament (under Art. 16) can prescribe residence within a state or UT as a condition for certain employments or appointments in that state or union territory, or local authority or other authority within that state or UT.

The Constitution (under Art. 15) prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth only and not on the ground of residence. State can provide special benefits or give preference to its residents in matters that do not come within the purview of the rights given by the Constitution to the Indian citizens.

The freedom of movement and residence (Art. 19) is subjected to the protection of interests of any schedule tribe. This is done to protect the distinctive culture, for any state except Andhra Pradesh and Telangana.

Prior 2019, the legislature of the erstwhile state of Jammu and Kashmir was empowered to (based on 35-A):

define the persons who are permanent residents of the state;

confer any special rights and privileges on such permanent residents as respects:

employment under the state government;

acquisition of immovable property in the state;

settlement in the state; and

right to scholarships and such other forms of aid provided by the government.

In 2019, this special status was abolished by a new presidential order known as “The Constitution (Application to Jammu and Kashmir) Order, 2019”. This order superseded the earlier 1954 order.

Despite this, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes.

The cherished goal of the founding fathers and the Constitution-makers to build an united and integrated Indian nation has not been fully realised.

RATIONALE BEHIND SINGLE CITIZENSHIP

The Diaspora encompasses a group of people who can either trace their origins to India or who are Indian citizens living abroad, either temporarily or permanently.

It includes Non-Resident Indians (NRIs), Persons of Indian Origin (PIOs) and Overseas Citizens of India (OCI).

PIO and OCI card holders were merged under OCI category in 2015.

Indian example of large scale migration began during the British rule as indentured labourers to former colonies like Fiji, Kenya and Malaysia, known as Girmitiya people.

Today the Indian diaspora numbers over 20 million, reflecting the full multiplicity, variety of the rich social, ethnic and cultural tapestry of the land of its origin.

OVERSEAS CITIZENSHIP OF INDIA (OCI)

CONTEXT – Recently, government held that Overseas Citizen of India (OCI) card holders do not enjoy fundamental rights guaranteed by the Constitution.

A person with OCI status is not an Indian citizen. The person does not have voting rights in India, nor can contest elections or hold any constitutional office.

ABOUT OCI SCHEME

OCI Scheme was introduced by amending the Citizenship Act, 1955 in August 2005.

OCI card was conceptualised to give a foreign citizen of Indian origin almost a citizen-like status.

A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at any time after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 is eligible for registration as OCI.

Minor children of such person are also eligible for OCI.

However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

OCIs enjoys all financial, recreational and other facilities that are available to NRIs.

OCI have been granted statutory rights under the Citizenship Act, 1955. Therefore, the nature of right granted depends on policy of Central government.

A registered OCI is granted multiple entry, multipurpose, life-long visa for visiting India.

OCI is entitled to general parity with Non- Resident Indians (NRIs) in respect of all facilities available to them in economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

A registered OCI is exempted from registration with Foreign Regional Registration Officer (FRRO) or Foreign Registration Officer for any length of stay in India.

WHAT ARE THE ADDITIONAL BENEFITS OF OCI?

Apart from the benefits of PIO, the OCI can attain Indian citizenship and then live in India for a period of one year including short breaks, if they remain an OCI for 5 years.

Both OCI and PIO cannot vote, hold a government job or purchase agricultural or farmland. They also cannot run for public office or travel to restricted areas without permission.

An OCI cards holder can open special bank accounts in India just like NRIs and make investments.

They can also buy non-farm property and exercise ownership rights.

They can apply for a driver's license and PAN card.

They get the same economic, financial and educational benefits like NRIs and they can also adopt children.

NON-RESIDENTIAL INDIANS (NRI)

An Indian citizen who is ordinarily residing outside India and holds an Indian Passport.

A person is considered NRI if She is not in India for 182 days or more during the financial year
Or;

If he/she is in India for less than 365 days during the 4 years preceding that year and less than 60 days in that year.

PIO

There are over 30 million overseas Indians living abroad and the remittance of close to 70 billion dollars annually by overseas Indians (one of the largest in the world)

A Person of Indian Origin (PIO) means a foreign citizen (except a national of Pakistan, Afghanistan, Bangladesh, China, Iran, Bhutan, Sri Lanka and Nepal)

Who at any time held an Indian passport or

Who or either of their parents/ grandparents/ great grandparents were born and permanently resident in India as defined in Government of India Act, 1935 and other territories that became part of India thereafter or

Who is a spouse of a citizen of India or a PIO.

PIO category was merged with OCI category in 2015.

NRIs	PIOs	OCIs
Who has temporarily emigrated to another country for six months.	First implemented in 2002 as a benefit to foreign nationals who could establish at least a third generation tie to Indian origin	Implemented in 2005, carried more benefits than the PIO card, and is valid for the holder's lifetime. In 2015, the PIO scheme was withdrawn by the Government of India and was merged with the OCI.
A Non-Resident Indian (NRI) is a citizen of India whereas PIOs and OCI card holders are not citizens, but are people who want to stay connected and involved with India more closely.		

WHAT WERE THE BENEFITS OF PIO?

A PIO cardholder doesn't need a visa to visit India.

The holder also doesn't require a student or employment visa to acquire employment or academic opportunities in India.

The holder was exempted from registering at the foreigner regional registration office (FRRO) during the duration of stay in India.

The holder also enjoys parity with NRIs in concern to economic, financial and educational matters like property transfer or acquisition, holding, disposal, investment, admission of children in educational institutions under general category quota for NRIs.

Separate immigration counters are provided at all International airports.

DIFFERENCE BETWEEN PIO AND OCI

DIFFERENCE BETWEEN PIO AND OCI		
PARAMETERS	Person of Indian Origin (PIO Card Holder)	Overseas citizens of India (OCI)
Who	A person registered as PIO card holder under the Ministry of Home Affairs' scheme dated 19-08-2002.	A person registered as Overseas Citizen of India (OCI) under the Citizenship Act, 1955. The OCI scheme is operational from 02-12-2005.
Eligibility	<p>§ Who at any time held an Indian passport; or</p> <p>§ He or either of his parents or grandparents or great grandparents was born in and was permanently resident in India as defined in the GoI Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka; or</p> <p>§ He is a spouse of a citizen of India or a person of Indian origin as Mentioned above.</p>	<p>A foreign national who –</p> <p>§ Was eligible to become a citizen of India on 26-01-1950; or</p> <p>§ Was a citizen of India on or at any time after 26-01-1950; or</p> <p>§ Belonged to a territory that became part of India after 15-08-1947; or</p> <p>§ His/her children and grandchildren; or</p> <p>§ minor children of such person. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.</p>
Which nationals are eligible	PIOs of all countries <u>except</u> Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka.	PIOs of all countries <u>except</u> Pakistan and Bangladesh.
What benefits one entitled to?	<p>§ Shall not require a separate visa to visit India.</p> <p>§ Will be exempt from the requirements of registration if his/her stay on any single visit in India does not exceed 180 days. In the event of</p>	<p>§ A multiple entry, multi-purpose lifelong visa for visiting India.</p> <p>§ Exemption from registration with local police Authority for any length of stay in India.</p> <p>§ Parity with NRIs in respect of economic, financial and educational fields except in</p>

	<p>continuous stay in India exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned FRRO/FRO.</p> <p>§ Parity with NRIs in respect of all facilities available to the latter in the economic, financial and educational fields except in matters relating to the acquisition of agricultural / plantation properties.</p> <p>§ No parity shall be allowed in the sphere of political rights.</p>	<p>relation to the acquisition of agricultural or plantation properties.</p> <p>§ No parity shall be allowed in the sphere of political rights.</p>
Does he/she require visa for visiting India?	Can visit India without visa for 15 years from the date of issue of PIO card.	Can visit India without visa for life long.
Is he required to register with local police authorities in India?	Yes – one time when the stay in India exceeds 180 days for the first time.	No
What activities can be taken under in India?	All activities except mountaineering, missionary, research work and visiting protected / restricted areas which require specific permit.	All activities except mountaineering, missionary, research work and visiting protected / restricted areas which require specific permit.
How can one acquire Indian?	He/she has to reside in India for minimum 7 years before making application for granting Indian citizenship.	He/she may be granted Indian citizenship after 5 years from date of registration provided he/she stays for one year in India before making application.
Can it be cancelled?	Yes – on certain grounds	Yes – on certain grounds.

IMPORTANCE OF OVERSEAS INDIAN CITIZENS (OCI)

One of the greatest benefits of engaging with the 30-million-strong Indian diaspora has been in terms of remittances.

Remittances close to 69 billion dollar make an invaluable contribution by aiding in socio-economic development, poverty reduction and changes in consumption behaviour in rural areas.

NRI's are more prone to donating to domestic charities because of the strong cultural and emotional feelings that they nurse.

Diaspora acts as 'agents of change' facilitating and enhancing investment, accelerating industrial development, and boosting international trade and tourism.

Another tangible long-term advantage in nurturing ties with an active Diaspora is an accelerated technological sector.

A less tangible but important advantage in having a large emigrant group is "diaspora diplomacy" and they act as "bridge-builders" between their home and adopted countries.

Indo-US Civil Nuclear Deal is a case in point, as ethnic Indians in United States successfully lobbied for clinching of the N-deal.

The migration of less-skilled labour (especially to West Asia) has also helped in bringing down disguised unemployment in India.

Migration of skilled labours to foreign countries and their eventual success bolstered the nation's image.

Diaspora's motives to invest in India are in contrast to non-diaspora FDI. Their investments are long lasting as many of them wish to establish a long-term base in India.

CHALLENGES TO OVERSEAS INDIAN CITIZENS

Outside India

Rising incidence of hate speech and crimes against Indian Diaspora by the locals due to racism, communalism emboldened by coming of nationalist and ultra nationalist governments to power in many countries.

Increasing anti-globalization – Fear of losing jobs and educational opportunities to outsiders has resulted in stricter visa rules in many countries including USA, Australia etc.

Sectarian crisis, increasing terrorist activities and war in the Middle East countries (Yemen, Oman, Libya, Syria etc) leave our diaspora vulnerable to attacks.

Adverse local laws to encourage more employment from locals such as Nitaqat Law of Saudi Arabia (mandates one local to be hired in place of 10 migrants) has adversely affected prospects of the Indian working class in Saudi Arabia.

In India

Out Migration results in substantial drop in the supply of professionals for running institutions and organisations in India.

Remittances are not always used for beneficial purposes. For instance, India faced problems due to foreign funding for extremist movements like the Khalistan movement.

The NRIs are not allowed to set up their firms directly in India due to which India is not able to take the advantage of their entrepreneurial skills.

E-Migrate system and the Minimum Referral Wages policy have been detrimental to India as companies now find it easier to hire labour from countries like Bangladesh and Pakistan.

Poor schemes coupled with ineffectual implementation hinder the Diasporas' contribution towards the growth of India.

WAY FORWARD

India should formalise a rotation program wherein top NRI scientists, engineers, doctors, managers and professionals serve Indian public sector organizations for a brief period, lending their expertise, similar to VAJRA Scheme.

India should aggressively court NRIs to invest in India — especially for projects which focus on rural development — by offering attractive interest rates on deposits.

India can open a separate Minister-of-State level department for NRI administration – similar to the Veterans' Administration in the US.

Social media tools have made it easy and inexpensive for Indian Diaspora to stay in touch with family and friends back home, and their link to India has never been stronger.

It is time that the Indian government leveraged this strong bond for the greater good of the nation.

NATIONAL REGISTER OF CITIZENS (NRC)

Purpose of NRC : To separate “illegal” immigrants from “legitimate” residents of Assam.

Nodal Agency for NRC : Registrar General and Census Commissioner India.

Context – Recently, the Government of India has signalled its intent of not carrying out a nationwide National Register of Citizens (NRC).

About NRC

It is a list of all bona fide Indian citizens of Assam, the only state with such a document. Other states such as Tripura are also demanding for NRC.

The National Register of Citizens is a list of all the legal citizens of the country, with necessary documents.

In 2014, the Supreme Court asked the state government to update the 1951 NRC in a time-bound manner. Present exercise is being conducted under the supervision of the Supreme Court.

Earlier, following the Supreme Court's order, the Government conducted the NRC updating exercise in Assam and as a result over 19 lakh applicants failed to make it to the NRC list.

It will include persons whose names appear in any of the electoral rolls upto the midnight of 24th March, 1971 or National Register of Citizens, 1951 and their descendants.

The Assam is the only exception to provisions of citizenship act 1955, where as per the 1985 Assam Accord foreigners who came to the state up to March 24, 1971 were to be regularised as Indian citizens.

The process of verification involved house-to-house field verification, determination of authenticity of documents, family tree investigations in order to rule out bogus claims of parenthood, and linkages and separate hearings for married women.

To implement Citizenship Amendment Act, 2019, citizens and illegal migrants have to be identified. So, a National Register Citizens (NRC) is the necessary first step.

To prove their or their ancestors' presence before 1971, applicants in Assam had to produce any one of 14 possible documents:

1951 NRC; or

Electoral roll(s) up to March 24, 1971; or

Anyone of 12 other kinds of papers, such as land & tenancy records; citizenship papers; passport; Board/University certificate.

ASSAM ACCORD (1985) AND NRC IN ASSAM

It was a Memorandum of Settlement signed between representatives of the GoI and the leaders of the Assam Movement in New Delhi on 15 August 1985.

The Citizenship Act of 1955 was amended after the Assam Accord as per which –

All those foreigners who had entered Assam between 1951 and 1961 were to be given full citizenship, including the right to vote;

Those who had done so after 1971 were to be deported;

Also, the entrants between 1961 and 1971 were to be denied voting rights for ten years but would enjoy all other rights of citizenship.

NRC was updated in Assam as per Assam Accord. NRC is unique to Assam.

WHAT NEXT FOR EXCLUDED PEOPLES?

Assam government has assured people that those who find their names missing from the final NRC will not immediately be termed “foreigners” or illegal immigrants.

Such people will be allowed to register protests with the Foreigners Tribunal. They can approach the High Court or even the Supreme Court for further appeal in the matter.

The State government will also provide legal aid to the poor who find their names missing from the list.

Under the Foreigners Act of 1946, the burden of proving whether an individual is a citizen or not, lies upon the individual applicant and not on the state.

IMPACT OF NRC

An updated NRC is likely to put an end to speculations about the actual number of illegal migrants in Assam in particular and the country in general.

It will provide a verified dataset to carry out meaningful debates and implement calibrated policy

Publication of an updated NRC is expected to deter future migrants from Bangladesh from entering Assam illegally.

The publication of the draft NRC has already created a perception that staying in Assam without valid documentation will attract detention/jail term and deportation.

More importantly, illegal migrants may find it even more difficult to procure Indian identity documents and avail all the rights and benefits due to all Indian citizens.

Inclusion of their names in the NRC will provide respite to all those Bengali speaking people in Assam who have been, hitherto, suspected as being Bangladeshis.

CHALLENGES

Flawed Process – People who found themselves on the first list didn't find their names in the second. Even the family of a former President of India, ex-army men's did not mention on the list.

Parallel processes of NRC, the voters list of the Election Commission, and the Foreigners' Tribunals have led to utter chaos, as none of these agencies are sharing information with each other.

Draft provides a window for re-verification, due to large number of people being excluded from the list, it will be very difficult to physically verify all of them.

Since such 'non citizens' can resort to judicial relief to claim their citizenship, it can lead to overburdening of judiciary which already reels under large number of pending cases.

There is uncertainty about the future of those left out from the list.

Dhaka has never accepted that they are its citizens or that there is a problem of illegal immigration. In the absence of a formal agreement, India cannot forcibly push the illegal migrants back into Bangladesh.

Moreover, this issue has potential to jeopardise relations with Dhaka. Such an attempt would not only damage bilateral relations but also dent the country's image internationally.

Apart from deportation, the other option is large scale detention camps – which is an unlikely option for a civilised democracy like India.

Another option is instituting work permits, which would give them limited legal rights to work but ensure they have no political voice. However, it is not clear what will be the fate of children of such individuals.

With no end to uncertainty, NRC seems to be a “process without an end.”

WAY FORWARD

India, as a country which follows the ideology of ‘Vasudhaiva Kutumbakam’, should not be hasty in taking decisions that can disenfranchise her citizens – contradicting its centuries followed values.

The need of the hour is that Union Government should clearly chart out the course of action regarding the fate of excluded people from final NRC data and political parties should refrain from coloring the entire NRC process through electoral prospects that may snowball in to communal violence.

There is a need for a robust mechanism of legal support for the four million who have to prove their citizenship to India with their limited means.

DOUBTFUL OR D-VOTERS

Doubtful or D-voters are those who are disenfranchised by the government on the account of their alleged lack of proper citizenship credentials and their inclusion will depend on decision of the Foreigners Tribunal.

FOREIGNERS TRIBUNALS

CONTEXT – Recently, Foreigners (Tribunals) Order, 1964 was amended to empower district magistrates in all States and Union Territories to set up Foreigners tribunals.

About Foreigners tribunals

These were established through Foreigners (Tribunal) Order, 1964 of Ministry of Home Affairs under Foreigners Act, 1946.

They were setup to decide whether a person staying illegally in India is a foreigner or not as per Foreigners Act.

Recent amended order, also empowers individuals to approach the Tribunals. Earlier, only the State administration could move the Tribunal against a suspect.

CENSUS (DECENNIAL)

The census provides information on size, distribution and socio-economic, demographic and other characteristics of the country's population.

A systematic and modern population census, in its present form was conducted non synchronously between 1865 and 1872 in different parts of the country.

Decennial Population Census was started in 1872 under British Viceroy Lord Mayo

However, the first synchronous census in India was held in 1881. Since then, censuses have been undertaken uninterruptedly once every ten years.

India's last census was carried out in 2011 when the country's population stood at 121 crore. The Indian Census is one of the largest administrative exercises undertaken in the world.

CENSUS 2021

The Census Act, 1948 and the Census Rules, 1990 provide the legal framework for conduct of Census.

Census 2021 will be 16th Census in the country.

The Census 2021 will be conducted in 18 languages out of the 22 scheduled languages (under 8th schedule) and English, while Census 2011 was in 16 of the 22 scheduled languages declared at that time.

The option of "Other" under the gender category will be changed to "Third Gender".

There were roughly 5 lakh people under "other" category in 2011.

The next census of India to be conducted in 2021 with March 1, 2021 as the reference date, except for the states of Jammu & Kashmir, Himachal Pradesh and Uttarakhand.

The Census data would be available by the year 2024-25.

NEW INITIATIVES TAKEN FOR THE CENSUS 2021

Use of Mobile App for the first time for data collection.

Facility of online self-enumeration for public during Population Enumeration phase.

Census Monitoring & Management Portal as a single source for all officers/ officials involved in Census activities to provide multi language support.

It also will introduce a code directory to streamline the process.

Entire process would be conducted digitally, as the and data crunching would be quicker.

HOW IS CENSUS DIFFERENT FROM NPR?

Census doesn't ask for individual identity details, and is a macro exercise. NPR collects identity details of every individual.

Census data is protected by a confidentiality clause. The government has committed that it will not reveal information received from an individual for the headcount.

Certain set of data from the Census 2011 is still being released.

ISSUE OF CASTE DATA COLLECTION

Earlier in 2018, the Ministry of Home Affairs had declared that the Other Backward Class (OBC) category would be included in the Census 2021.

However, the Registrar-General of India (RGI) has said that only SC/ST will be included as the unreliable nature of caste data collection decreases the credibility of the results. For instance, A person belonging to the Yadav caste writes Yadu, Yaduvanshi, etc. in the form. There is no standardisation. People sometimes even confuse caste with gotra.

The 2011 caste data, collected as part of the Socio Economic Caste Census (SECC), is yet to be released by the Centre.

Even a committee formed under former vice-chairman of NITI Aayog, Arvind Panagariya to find a way to publish the SECC-2011 data failed to provide any tangible outcome.

The last caste-based census was conducted by the British in 1931.

NATIONAL POPULATION REGISTAR (NPR)

CONTEXT – Recently, government has decided to prepare a National Population Register (NPR) by September 2020 to lay the foundation for rolling out a citizens' register across the country.

ABOUT NATIONAL POPULATION REGISTER (NPR)

A group of ministers created after the Kargil war recommended compulsory registration of all residents in India, to facilitate the preparation of a national register of citizens and curb illegal migration.

The NPR exercise aims to create a comprehensive identity database by collecting biometric and demographic details of every "usual resident" of India

In 2010 Registrar General of India collected data for a National Population Registry during Census 2011 enumeration. This data further updated in 2015.

NPR is a list of "usual residents of the country" is one who has been residing in a local area for at least the last six months, or intends to stay in a particular location for the next six months. (According to the Ministry of Home Affairs)

NPR is being prepared under provisions of the Citizenship Act 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003.

The Citizenship Act 1955 was amended in 2004 by inserting Section 14A which provides for the following: –

The Central Government may compulsorily register every citizen of India and issue National Identity Card.

The Central Government may maintain a National Register of Indian Citizens (NRIC) or National Register of Citizens (NRC). and for that purpose, establish a National Registration Authority (NRA).

Therefore, it is also compulsory for all usual residents to register under the NPR.

It will be conducted in conjunction with the first phase of the Census 2021, by the Office of the Registrar General of India (RGI) under the Home Ministry.

There is also a proposal to issue Resident Identity Cards (RIC) to all usual residents in the NPR of 18 years of age.

PREPARATION OF NATIONAL POPULATION REGISTER

NPR will be prepared at National à State à District à Sub-District à local (Village or Sub-Town) level under provisions of Citizenship Act 1955 and Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003

DATA COLLECTED IN NPR

The NPR will collect both demographic data and biometric

There are 15 different categories of demographic data, ranging from name and place of birth to education and occupation.

For biometric data it will depend on Aadhaar, for which it will seek Aadhaar details of the residents.

While registering with the NPR is mandatory, furnishing of additional data such as PAN, Aadhaar, driving licence and voter ID is voluntary.

NPR vs AADHAR

The data collected in NPR will be sent to UIDAI for de- duplication and issue of Aadhaar Number.

Only Assam will not be included, as it recently completed NRC.

Mandatory vs Voluntary à It is compulsory for all Indian residents to register with the NPR, while registration with the UIDAI is considered voluntary.

Number vs. Register à UID will issue a number, while the NPR is the prelude to the National Citizens Register. Thus, it is only a Register.

Authentication vs. Identification à The UID number will serve as an authenticator during transactions. The National Resident Card will signify resident status and citizenship.

UIDAI vs. RGI à The UIDAI is responsible for enrolling individuals in the UID scheme, and the RGI is responsible for enrolling individuals in the NPR scheme.

Door to door canvassing vs. centre enrollment à Individuals will have to go to an enrollment center and register for the UID, while the NPR will carry out part of the enrollment of individuals through door to door canvassing.

Prior documentation vs. census material à The UID will be based off of prior forms of documentation and identification, while the NPR will be based off of census information.

NPR DATA

NPR data was first collected in 2010 and West Bengal was one of the five States that used the requisite information for planning various beneficiary schemes.

NPR was updated in 2015 by seeding it with biometric details of Aadhaar.

Data under NPR was collected through door-to-door enumeration under various categories like age, marital status, place of birth, nationality (as declared), present and permanent residential address, occupation, activity and educational qualification.

Socio Economic Caste Census (SECC) is based on the NPR data.

Household wise NPR data was used in better targeting of schemes such as Ayushman Bharat, Jan Dhan Yojana, Prime Minister Awas Yojana, Ujjwala Yojana, Saubhagya etc

2011 caste data collected as part of SECC along with the Census data, is yet to be released by the Centre due to errors).

REGISTER GENERAL AND CENSUS COMMISSIONER OF INDIA

It is responsible for arranging, conducting and analysing results of demographic surveys of India including Census of India as well as Linguistic Survey of country.

It functions under Union Ministry of Home Affairs (MHA).

The post of the RGCC of India is usually held by a civil servant holding the rank of Joint Secretary to Government of India.

He heads the Census organisation (mentioned in entry 69 of seventh schedule of Constitution) which functions under the aegis of Union Ministry of Home Affairs (MHA).

CITIZENSHIP AMENDEMNT ACT 2019

Context – Citizenship Amendment Act (CAA), 2019 was recently enacted by the Parliament that seeks to amend the Citizenship Act, 1955.

BACKGROUND

11 of constitution empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Citizenship (Amendment) Act, 2003 provided that ‘illegal migrants’ will not be eligible to apply for citizenship by either registration or naturalisation.

Section 2(1)(b) of Citizenship Act, 1955 defines “illegal migrant” as a foreigner who: –

Enters the country without valid travel documents, like a passport and visa or

Enters with valid documents, but stays beyond the permitted time period.

KEY PROVISIONS OF THE CITIZENSHIP AMENDMENT ACT (CAA), 2019

The amendment provides that illegal migrants who fulfil four conditions will not be treated as illegal migrants under the Act. The conditions are: –

They are Hindus, Sikhs, Buddhists, Jains, Parsis or Christians – Total six communities barring Muslim community.

They are from Afghanistan, Bangladesh or Pakistan

They entered India on or before December 31, 2014

They are not in certain tribal areas included in Sixth Schedule to the Constitution (Assam, Meghalaya, Mizoram, or Tripura) or areas under the “Inner Line” permit (Arunachal Pradesh, Mizoram, and Nagaland à AMiN)

These tribal areas include Karbi-Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.

All legal proceedings against above category of migrants in respect of their illegal migration or citizenship will be closed.

The period of naturalisation has been reduced from 11 years to 5 years for above category of migrants.

CRITICAL ANALYSIS OF CAA 2019

ARGUMENTS AGAINST THE ACT

The fundamental criticism of the Bill has been that it specifically targets Muslims.

Critics argue that it is violative of Art. 14 (the right to equality) of the Constitution and the principle of secularism which has enshrined in preamble.

India has several other refugees that include Tamils from Sri Lanka and Hindu Rohingya from Myanmar. They are not covered under the Act.

Despite exemption granted to some regions in the North-eastern states, the prospect of citizenship for massive numbers of illegal Bangladeshi migrants has triggered deep anxieties in the states.

It will be difficult for the government to differentiate and delineation between illegal migrants and those persecuted.

ARGUMENTS IN FAVOUR

The government has clarified that Pakistan, Afghanistan and Bangladesh are Islamic republic where Muslims are in majority hence they cannot be treated as persecuted minorities. It has assured that the government will examine the application from any other community on a case to case basis.

This Bill will come as a big boon to all those people who have been the victims of Partition and the subsequent conversion of the three countries into theocratic Islamic republics.

Citing partition between India and Pakistan on religious lines in 1947, the government has argued that millions of citizens of undivided India belonging to various faiths were staying in Pakistan and Bangladesh from 1947.

The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries.

Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents.

After Independence, not once but twice, India conceded that the minorities in its neighbourhood is its responsibility.

First, immediately after Partition

Second during the Indira-Mujib Pact in 1972 when India had agreed to absorb over 1.2 million refugees. It is a historical fact that on both occasions, it was only the Hindus, Sikhs, Buddhists and Christians who had come over to Indian side.

GROUND FOR CANCELLING OCI REGISTRATION

The Citizenship amendment act 2019 provides that the central government may cancel registration of OCIs, if the OCI has violated Citizenship Act or any other law so notified by the central government. Also, the cardholder has to be given an opportunity to be heard.

The Act provides that the central government may cancel registration of OCIs on five ground-

Including registration through fraud

showing disaffection to the Constitution

engaging with the enemy during war

necessity in the interest of sovereignty of India, security of state or public interest

If within five years of registration the OCI has been sentenced to imprisonment for two years or more.

EXCEPTIONS TO CAA 2019

Under sub section 6B of Citizenship Amendment Act, says that “nothing in this section shall apply to-

Tribal area of Assam, Meghalaya, Mizoram or Tripura (AMTM) as included in the Sixth Schedule to the Constitution.

The area covered under ‘The Inner Line’ notified under the Bengal Eastern Frontier Regulation, 1873. (AMiN states – Arunachal Pradesh, Mizoram, and Nagaland)

SECTION-14A OF THE CITIZENSHIP ACT, 1955

Inserted by Citizenship (Amendment) Act, 2003.

Central Government may compulsorily register every citizen of India and issue national identity card to him.

Central Government may maintain a National Register of Indian Citizens (NRIC) and for that purpose establish a National Registration Authority (NRA)

Registrar General of India, appointed under Registration of Births and Deaths Act, 1969 shall act as the National Registration Authority.

NPR may have foreigners as well.

INDIAN ORIGIN TAMILS (IOT) AND ASSOCIATED ISSUES

The Citizenship Amendment Act was recently passed in India, in regards with offering citizenship to illegal migrants. In this connection, here is a look at the issue of the Sri Lankan Tamils, as they are excluded from the provisions of the CAA.

ABOUT INDIAN ORIGIN TAMILS (IoT)

Different from Sri Lankan Tamils who live predominantly in the North and East, the IoTs are descendants of indentured Tamil workers.

The British had shipped them to the island in the mid 19th century to work on tea estates in the five hill districts of the Central and Uva provinces.

These people now call themselves Malayaha (hill country) Tamils — because of the historical stigma attached to being “Indian” Tamils.

At the time of Sri Lanka’s independence, the IOTs numbered around 800,000.

They were the backbone of the tea industry, politically active, and keen to ensure their rights in independent Sri Lanka through strategic alliances with unions and left parties.

Determined to blunt their political rights, the ruling parties described IOTs as “birds of passage” with no loyalty to the country, as India’s fifth column in Sri Lanka, and as people who stole the locals’ jobs.

SRI LANKA’S 1948 CITIZENSHIP ACT

Sri Lanka’s 1948 Citizenship Act was the first in a series of divisive moves by the Sinhala rulers to consolidate their political base in the majority Sinhalese (Buddhist and Christian) community.

In 2008, the Supreme Court of India in the Baby Manji Yamada vs. Union of India case highlighted the lack of regulation for surrogacy in India.

It was aimed at excluding IOTs — then as now, the predominant workforce in the upcountry tea estates — whose numbers and growing association with leftist parties were proving to be politically inconvenient.

The IOTs that India accepted through the 1964 agreement were not “fleeing” Sri Lanka.

Those that remained, were stateless in Sri Lanka for decades until their status as citizens was settled ironically because the ruling party now wanted their votes.

ISSUES WITH THE ACT

This Act sharply delineated ethnic differences, and distorted the political system to weight it in favour the Sinhalese majority.

This created an intractable dynamic of ethnic outbidding between the two major Sinhalese-dominated parties to attract Sinhalese voters at the expense of the Sri Lankan Tamil minority.

This all directly or indirectly contributed to the latter’s alienation, support for secessionism, and the outbreak of ethnic violence and civil war in the 1970s and 1980s.

ISSUES FACED BY INDIAN ORIGIN TAMILS (IoT)

Exclusion from basic amenities and government schemes.

Religious persecution and ethnic conflicts and differentiation.

Exclusion and limited political and civil rights.

Harassment and perpetration of the crimes against them.

SURROGACY BILL 2019 AND INDIAN CITIZENSHIP

Commercial surrogacy, a practice also known as ‘Rent a Womb’, was legalised in India in the year 2002, in order to promote medical tourism. And soon, India became the hub of surrogacy. Driven by factors like low cost and the absence of a strict legislation, commercial surrogacy became a booming business in the country.

According to a 2012 study by the Confederation of Indian Industry, the size of India’s surrogate motherhood industry was \$2 billion a year.

However, the unregulated business of surrogacy led to concerns over the rampant exploitation of surrogate mothers as well as their children, prompting the need for a legislation to regulate surrogacy in the country.

The economic scale of surrogacy in India is unknown, but study backed by the United Nations in July 2012 estimated the business at more than \$400 million a year, with over 3,000 fertility clinics across India.

PROBLEMS ASSOCIATED WITH CROSS-BORDER SURROGACY

For cross border childless couples, not only do they have to cope up with the language barrier, they sometimes have to fight long legal battles to get their children.

Cross border surrogacy also leads to problems in citizenship, nationality, motherhood, parentage and rights of a child.

Children are at times denied nationality of the country of the intended parents.

Lack of an international law on surrogacy creates complications for surrogates as well as intending parents.

It is quite possible that there are different surrogacy laws in the home country and the country where the baby is born.

Many experts argue that an international agreement similar to the Hague adoption convention could provide consistency across countries thereby making the process more streamlined.

LAWS GOVERNING SURROGACY IN DIFFERENT COUNTRIES

While countries like Britain, America, Australia, the Netherlands and Denmark are among those where altruistic surrogacy is legal, countries such as France, Germany, Italy, Spain, Portugal and Bulgaria prohibit all forms of surrogacy.

Armenia, Georgia, Kazakhstan, Russia, Ukraine allow both altruistic and commercial surrogacy.

Kenya, Malaysia and Nigeria do not prohibit surrogacy but have no formal law to regulate the practice.

The Czech Republic, Colombia, Chile and Hungary are among countries with unregulated surrogacy.

Surrogacy is the practice whereby one woman carries the child for another with the intention that the child should be handed over after birth. Such a surrogacy arrangement may be altruistic or commercial in nature.

Altruistic surrogacy involves an arrangement where the couple does not pay the surrogate mother any compensation other than the medical and insurance expenses related to the pregnancy.

Commercial surrogacy includes compensation (in cash or kind) paid to the surrogate mother, which exceeds the reasonable medical expenses associated with the pregnancy.

PRECONDITIONS FOR ELIGIBILITY

The certificate of eligibility to the intending couple is issued upon fulfilment of the following conditions:

The couple being Indian citizens and married for at least five years;

between 23 to 50 years old (wife) and 26 to 55 years old (husband);

they do not have any surviving child (biological, adopted or surrogate); this would not include a child who is mentally or physically challenged or suffers from life-threatening disorder or fatal illness; and

other conditions that may be specified by regulations.

ELIGIBILITY CRITERIA FOR SURROGATE MOTHER

To obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to be:

a close relative of the intending couple;

a married woman having a child of her own;

25 to 35 years old;

a surrogate only once in her lifetime; and

possess a certificate of medical and psychological fitness for surrogacy.

Further, the surrogate mother cannot provide her own gametes for surrogacy.

ROHINGYA CRISIS AND INDIA

In January 2019, the UN High Commissioner for Refugees (UNHCR) called for a report from India on the deportation of a group of Rohingya refugees to Myanmar in October 2018.

India's repatriation of the refugees contravenes international principles on refugee law as well as domestic constitutional rights where deportation of refugees is considered as legally and morally problematic.

GLOBAL FRAMEWORK

Refugee law is a part of international human rights law –In order to address the problem of mass inter-state influx of refugees, a Conference of Plenipotentiaries of the UN adopted the Convention Relating to the Status of Refugees in 1951.

This was followed by the Protocol Relating to the Status of Refugees in 1967. One of the most significant features of the Convention is the principle of non-refoulement.

It is often argued that the principle does not bind India since it is a party to neither the 1951 Convention nor the Protocol. However, the prohibition of non-refoulement of refugees constitutes a norm of customary international law, which binds even non-parties to the Convention.

According to the Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations, UNHCR, 2007, the principle “is binding on all States, including those which have not yet become the party to the 1951 Convention and/or its 1967 Protocol.”

Article 14 of the Universal Declaration of Human Rights provides that everyone has the right to seek and enjoy in other countries asylum from persecution.

Article 51 of the Constitution imposes an obligation on the state to endeavor to promote international peace and security. Article 51(c) talks about the promotion of respect for international law and treaty obligations.

The Constitution conceives of incorporation of international law into the domestic realm. Thus the argument that the nation has not violated international obligations during the deportation is a mistaken one.

DOMESTIC RESPONSIBILITY

The chapter on fundamental rights in the Constitution differentiates citizens from persons. While all rights are available to citizens, persons including foreign citizens are entitled to the right to equality and the right to life, among others.

The Rohingya refugees, while under the jurisdiction of the national government, cannot be deprived of the right to life and personal liberty (Art.21)

In National Human Rights Commission v. State of Arunachal Pradesh (1996), the Supreme Court held: “Our Constitution confers... rights on every human being and certain other rights on citizens.

Every person is entitled to equality before the law and equal protection of the laws. Also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise...”

INDIA'S STANCE

India lacks specific legislation to address the problem of refugees, in spite of their increasing inflow.

The Foreigners Act, 1946, fails to address the peculiar problems faced by refugees as a class. It also gives unbridled power to the Central government to deport any foreign citizen.

Further, the Citizenship (Amendment) Bill of 2019 strikingly excludes Muslims from its purview and seeks to provide citizenship only to Hindu, Christian, Jain, Parsi, Sikh and Buddhist immigrants persecuted in Bangladesh, Pakistan, and Afghanistan. The majority of the Rohingya are Muslims.

This limitation on the basis of religion fails to stand the test of equality under Art. 14 of the Constitution and offends secularism, a basic feature of the Constitution.

WAY FORWARD

Indian Judiciary is independent of executive and legislature. Therefore the Supreme Court has placed human rights at the center of Indian polity and has tried to turn them into tool of advocacy and instrument of fairness between communities as well as individuals guaranteeing them for protection through civil and criminal justice process. Above all strengthening the identity of the Indian state and society.

As per the devastated condition of Rohingyas, they should be provided with basic facilities of sanitation, proper drinking water, and medical facilities and gradually arrangements for their deportation should be made.

The right of living of any individual is a priority and cannot be abridged.

India hasn't ratified international convention validating refugee status in the country. However, India has done the best it can in the circumstances.

WAY FORWARD

It is a United Nations multilateral treaty that defines who is a refugee, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum.

It grants certain rights to people fleeing persecution because of race, religion, nationality, affiliation to a particular social group, or political opinion.

Cross-border displaced who have migrated due to climate change are not recognised as refugees under the 1951 Refugee Convention or its 1967 protocol, and thus do not qualify for protection under national or international legal frameworks for refugee protection.

India not a member to UN refugee convention neither to its 1967 protocol.

The Convention also provides for some visa-free travel for holders of travel documents issued under the convention.

The Convention builds on Article 14 of the 1948 Universal Declaration of Human Rights, which recognizes the right of persons to seek asylum from persecution in other countries.

The 1967 Protocol included refugees from all countries as opposed to the 1951 Convention that only included refugees from Europe.

Today, the 1951 United Nations Convention and the 1967 Protocol together remain the foundation of refugee protection, and their provisions are as relevant now as when they were drafted.

WHY WON'T INDIA SIGN THE CONVENTION OR THE PROTOCOL?

Reasons are chiefly security-related, borders in South Asia are extremely porous and any conflict can result in a mass movement of people.

India follows “Attithi Devo Bhava” and “Vasudhaiva Kutumbakam” in letter and spirit.

India is home to diverse groups of refugees, ranging from Buddhist Chakmas from the Chittagong of Bangladesh, to Bhutanese from Nepal, Muslim Rohinygas from Myanmar and small populations from Somalia, Sudan and other sub Saharan African countries.

At the time, UNHCR played a stellar role in helping devise India’s administrative response to the 9.8 million Hindu refugees who poured in from Bangladesh.

It also helped to mobilize huge international finances to pay for Indian bills (and it wasn’t even the West’s war).

In 2015, amid the biggest refugee crisis in the West since World War II, none of the reasons listed above justifies India’s continuing refusal to sign the Refugee Convention.

CENTRAL ADVERSE LIST

CONTEXT – Recently, Centre has removed names of 312 Sikh foreign nationals from its blacklist/the Central Adverse List.

ABOUT CENTRAL ADVERSE LIST

This list is maintained by Ministry of Home Affairs, that contains:

Names of individuals who supported the Khalistan movement in 1980s and 90s but left India to take asylum in foreign countries.

Names of those individuals who are suspected to have links with terrorist outfits or have violated visa norms in their previous visit to India.

Names of those persons who have indulged in criminal activities or have been accused of sexual crimes against children in their respective countries.

List is used by all Indian Missions and Consulates to stop the individuals named in it from entering India. This is done by not granting visa to such persons.

It is a step taken by the Indian government to maintain internal security.

Used to keep serious offenders outside India as somebody may commit a crime in his native nation and then apply for an Indian visa to escape prosecution.

List is maintained with inputs from all the state governments, central and state intelligence agencies.

DETENTION CENTRES

Assam has 6 detention centres.

They are run by Assam's home department with approval from the Ministry of Home Affairs (MHA).

FOREIGNER DETENTION CENTRE (FDC)

All set to become functional from January 1, 2020, on the outskirts of Bengaluru, Karnataka.

FDC coming up in the State is nationality-neutral and will act as a temporary detention home for foreign nationals illegally staying here and detained by police, till they are deported.

The powers to deport illegally staying foreign nationals have been entrusted under Article 258 (1) of the Constitution to state governments.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

Established in 1951 at Geneva, Switzerland to provide international protection for refugees and to seek durable solutions to their problems.

Competence of the High Commissioner extends to any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his or her nationality.

Refugees who are assisted by other United Nations agencies, or who have the same rights of obligations as nationals or their country of residence, are outside the mandate of UNHCR

GLOBAL MIGRATION REPORT 2020

Published by the International Organisation for Migration (IOM)

Top destination for migration remains the United States.

India continued to be the largest country of origin of international migrants followed by Mexico and China.

The top three remittance recipients were India, China and Mexico.

United States remained the top remittance-sending country followed by the United Arab Emirates and Saudi Arabia.

INTERNATIONAL ORGANISATION FOR MIGRATION (IOM)

IOM is an intergovernmental organization that provides services and advice concerning migration to governments and migrants, including refugees, internally displaced persons and migrant workers.

IOM was established in 1951 as Intergovernmental Committee for European Migration (ICEM) to help resettle people displaced by World War II.

It was granted Permanent Observer status to UN General Assembly (UNGA) in 1992.

Cooperation agreement between IOM and the UN was signed in 1996.

It has 166 member states, a further 8 states holding observer status and offices in over 100 countries.

India is a member of IOM.

Its headquarters is in Geneva, Switzerland.

UN considers IOM as an indispensable actor in the protection of migrants and displaced people and in areas of refugee resettlement and voluntary returns.

IOM works in four broad areas of migration management:

Migration and development,

Facilitating migration,

Regulating migration,

Forced migration.

PRAVASI BHARTIYA DIWAS

India every year celebrates its Pravasi Bhartiya Diwas on 9th January to commemorate return of its most iconic Pravasi M.K. Gandhi from Africa on 9th Jan 1915.

Pravasi Bharatiya Divas (PBD) is celebrated on 9th January every year to mark the contribution of Overseas Indian community in the development of India.

January 9 was chosen as the day to celebrate this occasion since it was on this day in 1915 that Mahatma Gandhi, the greatest Pravasi, returned to India from South Africa, led India's freedom struggle and changed the lives of Indians forever.

Significance – To remember the favors and contributions made by Non Resident Indians (NRIs) to the welfare and development of the nation.

The 15th PBD Convention was held from 21 to 23 January 2019 in Varanasi with Uttar Pradesh as the Partner State with Mr. Pravind Jugnauth, (Prime Minister Mauritius) as chief guest.

Over 7000 delegates participated in the 15th PBD.

PBD observed by à Ministry of External Affairs.

India had celebrated Mahatma Gandhi's 150th birth anniversary in the year 2019.