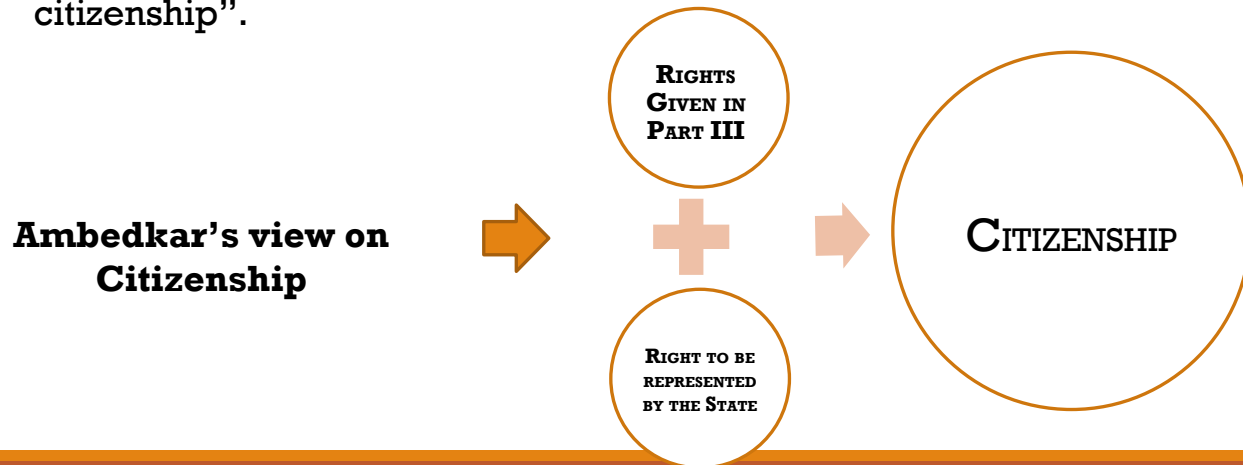


CITIZENSHIP AMENDMENT BILL, 2016

DOMESTIC LAW WITH A RELIGIOUS MARKER

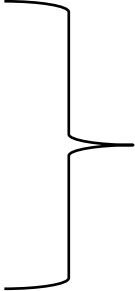
UNDERSTANDING THE CONCEPT OF CITIZENSHIP

Ever since Independence, citizenship and immigration laws have been delicate subjects with respect to the Indian paradigm. While discussing the provisions relating to citizenship in the draft Constitution, Dr Ambedkar remarked, “I do not think that any other article has given the Drafting Committee such a headache as this particular article of citizenship”.



MAIN FEATURES OF THE CITIZENSHIP AMENDMENT BILL, 2016

- Firstly, Hindus, Sikhs, Jains, Buddhists, Christians, and Parsis coming from Afghanistan, Pakistan and Bangladesh would not be treated as illegal immigrants, thus making them eligible for citizenship.
- Secondly, it reduces the time required for naturalisation for these communities from the current twelve years to seven years.



*Communally
motivated
humanitarianism?*

SPIRIT OF THE BILL

The Bill, in spirit, addresses refugees, people who are forced to move out of a well-founded fear for their lives, and not immigrants, people who voluntarily move often seeking economic opportunities.



National spirit to give shelter and refuge is noble. Indeed, India has had a long history of hosting the victims of persecution. Be it the Zoroastrians in the 12th century, or more recently, the Tibetans, India has always shown humanity and generosity in opening her arms for people seeking refuge.

DOMINANCE OF RELIGION ON CITIZENSHIP

“We have a responsibility towards Hindus who are harassed and suffer in other countries. India is the only place for them. We will have to accommodate them here.”



V/S

“Bill is a gross transgression of the idea of India as envisaged by our founding fathers. The Indian idea, he said, is that people that are different in all respects come together and rally around the Indian democracy.”



LOOPHOLES

In the present form, the Citizenship Amendment Bill, 2016 is unworthy of becoming an Act because there should be no politics in the passing of legislations that bypass the democratic ideals of India.



UNREASONABLE CLASSIFICATION

The most glaring discrepancy in the bill is that it categorically states that religious minorities from Afghanistan, Pakistan and Bangladesh will no longer be treated as illegal immigrants. It specifically names six religions, that is, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. Muslims and Jews have been deliberately kept out of the ambit of this Bill. Even though some of these religions are minorities in India, it is notable that four of these six religions fall under the ambit of Hindu Personal Law. This Bill fails the test of reasonable classification as set out in Article 14 of the Constitution. The two-fold test relies on two principles, that is, reasonable classification and nexus between the object sought to be achieved and the legislation (*State of Madras v V G Row* 1952). If we test this Bill on reasonable classification, it fails, as the classification sought is to differentiate between persons who will be granted relaxation in the domiciliary requirement and those who will not, since, at present, it excludes illegal immigrants only on religious grounds, with no reasonable explanation. The next test is on the object sought to be achieved. Religion shouldn't be a determining factor here, as it has no rational nexus with the object that the Bill seeks to achieve, unless the object is to project India as a Hindu state.



CITIZENSHIP NOT DEFINED

This bill has come at a time when the entire world is plagued with ideas of nationality and ethnicity. Parliament could have introduced a Bill to remove doubts and bring clarity on the abstractions of citizenship, nationality and domiciliation. Unfortunately, this Bill makes no attempt to define any of these terms, leaving scope for ambiguity in interpretation. One of the main functions of the legislature is to codify laws to remove ambiguity. However, this Bill misses out on the opportunity to do so.



PASSED AS AN ORDINANCE

In my opinion, the substantive part of Article 123 is “immediate action required,” and the “Parliament not in session” bit, is a procedural portion. The primary function of the legislature is to make laws. An ordinance is also a law as contemplated under Article 13. This power, as provided under Article 123 is an extraordinary power of law-making given to the President in his executive capacity.

Considering that this Bill was not of pressing concern, there was no need to pass it by way of ordinance. Moreover, it is mandatory for an ordinance that has been passed to be discussed in the legislature on its resumption. This manner of issuing ordinances seems like a way to bypass the usual procedure of tabling and discussing of a Bill. This process, although not illegal, is unethical and amounts to skipping the line- which may be permissible in certain urgent matters, but definitely not in such ordinary ones.



APPEASEMENT POLITICS

Perhaps, the ordinance was passed in order to keep up a promise that our Prime Minister, Narendra Modi made during his visit to the United States (US) in November 2014, that the OCI and PIO cards will be merged into a single entity by 7th January 2015. Such prompt action on the part of any government is seldom seen. As on 9th January 2015, through a government notification, the status was changed and all PIO card holders were deemed to be OCI card holders; a move deemed favourable, in terms of economy. However, this seems like the appeasement of the Pravasi Bharatiyas, that is, Indians living in foreign countries, which reeks of vote bank politics. It is one thing to keep up poll promises, which is in no way a bad practice, and another to bypass graver issues of national importance, thereby trivialising matters like citizenship in a rushed manner to appeal to a certain section of voters.



CANCELLATION OF OCI STATUS

The Bill reads: “If the OCI cardholder has violated any of the provisions of this Act or provisions of any other law for the time being in force. The words, “any other law” give this provision a sweeping ambit. Something as trivial as a traffic violation could make OCIs liable to losing their status.” This poorly worded qualification threatens to take away OCI status at the slightest probability of misconduct.

THE DEBATE IS NOT OVER YET

Sir Muhammad Iqbal, the national poet of Pakistan, had wondered in his song, "*Saare Jahan Se Accha*", why is it that Indian attributes have survived when those of the Egyptian, Roman and Greek civilisations have not- '*Yunan o misr o roma sab mil gaye jahan se, Ab tak magar hai baqi nam o nishan hamara*'. Perhaps, we need to ask ourselves this question again, given that we see an onslaught on our idea of India.

The Bill must be seen in a positive light to the extent that it legalises the existence of these asylum seekers in India. However, just as suffering and cruelty are not partial to some, we must not be partial in our generosity.