

# FAQ on Citizenship Amendment Bill

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The relationship between a State and its subjects is determined by the idea of Citizenship. The Right to Citizenship is basically a right that facilitates one to get other rights. Nowadays Indian Citizenship has become an important subject of our public discourse as the Parliament has amended the Citizenship Act, 1955. The purpose of this amendment is to provide citizenship to Hindu, Sikh, Buddhist, Jain, Christian and Parsi minorities from Pakistan, Bangladesh and Afghanistan, as they are subjected to persecution owing to their religious affiliation. Questions have been raised as to the constitutionality of this amendment, whereby it is claimed to be arbitrary, discriminatory and against the secular character of the Indian State. Now in order to evaluate the merits of these questions, clarify the myth that is being propagated against the amendment and trace the legality & legitimacy of the same, we are answering a few questions-

## 1. How India defines its Citizens and what is the political, constitutional & legal background to the criteria of Indian citizenship?

- In order to understand the idea of Indian Citizenship we will have to go back to the Constituent Assembly. It was almost impossible for the framers of the Indian Constitution to draft provisions for Citizenship amidst the inflow of refugees from East & West Pakistan. It is pertinent to mention here that the demand of citizenship for Hindus & Sikhs as their natural homeland was raised vociferously in the Assembly, however it was vetoed by Pt. Nehru on his idea of secularism. Interestingly, Dr. Ambedkar refrained from outrightly rejecting this demand before Nehru took the floor.
- However because the situation at that time was not conducive enough to finalize the Citizenship provisions, the Indian State relied on Article 11 in Part II of Constitution which specifically empowers the Parliament to frame a detailed framework for Indian Citizenship. With that mandate, Citizenship Act, 1955 saw the light of the day. Therefore, it is wrong to say that Parliament has no right to bring any change in the criteria of Citizenship which is contrary to the intentions of Constitution makers. The truth is that the Constituent Assembly never finalized the criteria for Citizenship, rather the Parliament has been empowered by the Constitution itself to take a final call as to the criteria of Indian Citizenship.

## 2. Why is this Citizenship Amendment Bill necessary?

- India was partitioned on the basis of religion and the religious minorities left in the East and West Pakistan (Islamic majority states) continued to face consistent persecution on the basis of religion since the very beginning. During the partition, our nation gave a commitment to these minorities that India will protect their lives and liberties in case their parent countries fail to give them safety as per the obligation under Nehru-Liaquat Pact. Hence, to protect the human rights of these persecuted classes of Pakistanis, Bangladeshis and Afghanis, this Bill was necessary and give them citizenship rights in India where they are living as illegal migrants for decades.

## 3. What is the present Amendment all about? What does it entail and what are its consequences?

There are five categories for granting Citizenship to any Indian Citizen by 1955 Act; Birth, Descent, Naturalization, Registration and on Acquisition of any territory by India. This Amendment in Citizenship Act mainly proposes amendment for granting Citizenship by the process of Naturalisation-

- Clause 2 of the Bill amends the Citizenship Act, 1955 to an effect that now any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of the Citizenship Act.

- Clause 3 of the Bill inserts a new Section 6B to the Citizenship Act, 1955; it provides for granting citizenship certificate by Naturalisation for the persons protected under clause 2 of the Bill and under Section 6B (2) such persons shall be deemed to be citizens of India from the date of their entry into Indian territory.
- The new Section 6B (4) of the amended Act further provides that the above said Clause 2 of the Bill shall not apply to the tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under “The Inner Line” notified under the Bengal Eastern Frontier Regulation, 1873.
- Clause 6 of the Bill further amends the Third Schedule to the Act, which provides for qualification for naturalization under Section 6(1) of the Act. It deals with the fresh application for citizenship by naturalisation and in the present case for the persecuted minorities from the three Muslim-majority Countries. It provides that for the persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be “not less than five years”, which was earlier “not less than eleven years”.
- So, the persecuted minorities from the three Islamic countries are now entitled for Citizenship under Section 6B of the Act who have entered into India on or before 31st December, 2014 and will not be considered as illegal migrant under the Act and will get citizenship from the retrospective date of their entry into India. However, if the said class of persons entered into India after 31st December, 2014, they will be eligible for the Citizenship under Section 6 of the Act read with Third Schedule of the Act, which provides for their residence for at least 5 years in India, which was earlier 11 years, as of people from other countries before making application for citizenship by naturalization.

**4. \What exactly is the situation of religious minorities in Pakistan & Bangladesh, and is there any obligation on India to provide citizenship to them after 70 years of Partition?**

- We all know that the first Law Minister of India, Dr. B. R. Ambedkar was a Dalit, but very few of us know that the first Law Minister of Pakistan, Jogendra Nath Mandal, was also a Dalit. Mandal has also openly supported the cause of Pakistan and asked Schedule Caste communities to vote in favor of Muslim League during a referendum on Sylhet district in Assam. It was exactly after 6 months from Nehru-Liaquat Pact that the first Law Minister of Pakistan resigned from the Pakistan Cabinet on 8th October, 1950. His resignation letter is an account of extremely horrific violence unleashed on Non-Muslims in East & West Pakistan. Unfortunately, Mandal had to come back to India & he died in Indian state of West Bengal as a refugee. So in the event of Pakistan’s failure to honour the Nehru-Liaquat Pact, it is a Constitutional Obligation upon Indian State to give refuge to the victims of partition.

**5. Is there any substantial constitutional challenge to the Act & how?**

- Article 14 is the reservoir of Right to Equality enshrined in the Constitution. This does not mean that all general laws will be applicable to all sections of people. Article allows reasonable classification of groups or sections founded on intelligible differentia and such classification has a reasonable nexus with the object which it wants to achieve. The classification in Citizenship Amendment Bill is based on two factors
- Classification of countries i.e. from Afghanistan, Pakistan & Bangladesh Vs Rest of the countries
- Classification of people i.e. Hindu, Sikh, Jain, Buddhist, Parsis & Christians Vs Other sections of people

Now the basis of this intelligible differentia (classification) is “oppression” & “minorities”. Since these three countries embrace Islam as their state religion in one form or the other & are not secular, this perpetuates oppression of minorities. Therefore oppression & minorities both are sufficient grounds of intelligible differentia, and since Government wants to ensure the life and liberty of these oppressed minorities to be protected, providing them with Citizenship acts as a reasonable nexus with the object which this “classification” aims to achieve, thereby coming under the permissible category of reasonable classification. Arbitrariness doctrine revived in Shayara Bano case by Supreme Court has a standard of “unfair, unreasonable, discriminatory, not transparent, capricious, biased, with favoritism or nepotism”, for a legislation to be arbitrary and to be unconstitutional. Here in this case arbitrariness is not at all applicable as there exists a well-defined criteria of

minoritism & oppression for a reasonable classification as discussed above. The legislation, therefore, passes both tests of reasonable classification & non-arbitrariness.

**6. Whether this bill is really discriminating against a particular community, is it really Anti-Muslim?**

- For religious minorities, who are victims of oppression just because of their religious identity in their own countries, any action for their protection won't dent secularism in India, as the contrary is being claimed. It would rather uphold and strengthen our secularism which seeks to protect and promote the rights of every individual irrespective of his/her religion. The very purpose of this bill is to ensure well-being of minorities who are suffering religious persecution in these three countries viz Pakistan, Bangladesh and Afganistan. Since Muslims are neither minorities nor do they face persecution because of their religious affiliation in these countries, they are obviously not included here. It is important to note that the Citizenship Amendment Bill doesn't discriminate against the Indian Muslims who are its citizens, it only aims to protect those minorities who get persecuted in their home countries owing to their religious affiliation.
- Any foreigner of any religion from any country can apply for Indian citizenship if he/she is eligible to do so as per Section 6 of the Citizenship Act, 1955. The CAB does not change these provisions at all. It only provides for affirmative preference to the migrants of six minority communities from three countries to apply for Indian citizenship if they meet the given criteria.
- Secondly, if we were to provide Citizenship to all Pakistani and Bangladeshi citizens then Partition of the country where we gave 1/3rd of our land will become redundant. So, once a set of territory has already been given that too specifically on religious grounds, it doesn't make any sense to again give citizenship to those who chose Pakistan or Bangladesh as their homeland.

**7. Whether it is for the first time that such a classification has been made and an action has been taken for such refugees?**

- No, it is not for the first time that such an exercise is taking place. It is pertinent to go back to 1950 when Jawaharlal Nehru was the Prime Minister and Dr. Ambedkar was the Law Minister, the cabinet passed a legislation called The Immigrants (Expulsion From Assam) Act, 1950. Two of the features of this Act included-
  01. To expel all those who entered into Assam illegally with ulterior motives
  02. Exclude from it those who came to India due to civil disturbances i.e. practically the Hindus/Sikhs who came due to riots (they were allowed to stay back in India).
- Secondly in 2003, the NDA Government led by Shri Atal Bihari Vajpayee gave special powers to some border districts of Rajasthan & Gujarat to take decisions as to granting citizenship to Hindu & Sikh refugees coming from Pakistan & Bangladesh. So, it is unfair to say that this is for the first time that such a measure has been taken. Atrocities in Pakistan especially after General Jia-Ul-Haq's regime and subsequent influx of refugees have been common phenomena which needed a permanent solution, and this Bill aims to address the same.

**8. Do the people persecuted in their home countries need to declare themselves as refugee upon their arrival in India and wait for five years to get citizenship according to the Bill?**

No, this Bill provides citizenship from a retrospective date, i.e. from the date of their entry into India and they don't have to declare themselves as refugee. There is no requirement for them to wait for 5 years to get citizenship under Section 6B of the Amended Act if they have entered into India before 31st December, 2014. Only to those persecuted class, as provided under Clause 2 of the Bill who have entered into India after 31st December, 2014, have to reside in India for minimum 5 years to get citizenship by naturalization under Section 6 of the Act, which was earlier 11 years.

**9. What about those who have come before 15th August 1947 into India from Pakistan or Bangladesh? Do they have to apply for the citizenship too under the new amendment?**

No, As per Article 6 of the Constitution of India those who have entered into India till 19th July, 1948 are already deemed Citizens of India. And those who have entered after 19th July, 1948 and before the commencement of the Constitution are also deemed citizens if they have already registered as a citizen of India

under Article 6 (b) (ii) of the Constitution. This Bill has nothing to do with those persons who entered India before 15th August, 1947.

**10. How to assess that the persecuted minority from these countries have entered before 31st December, 2014?**

It can be said in form of any documentary evidence as per the requirement under Section 6B of the Act. Such requirement is as per the third schedule of the Act.

**11. Why is there a cutoff date of 31st December, 2014 to make application under Section 6B of the Act?**

Because of the ceiling period of 5 years, it is necessary to make an application under Section 6 of the Act as per the Third Schedule of the Act. Till this particular date, these persecuted class satisfy the criteria under Third Schedule of the Act i.e 5 years of residence, which is necessary hence this cutoff date is fixed.

**12. How can one give the evidence of religious persecution to avail the benefit under the amended Act?**

It can be given in the form by declaration in the application so made under Section 6 or Section 6B of the Act and it nowhere requires any specific documentary evidence for religious persecution. Applicant has to only fulfill the criteria given under Schedule III of the Act.

**13. Whether those who are availing benefit under the welfare schemes of the government have to forgo such benefit after making the application to avail citizenship and during the pendency of the decision?**

No, as per the second proviso of Section 6B (3) of the amended Act they shall not be deprived of such rights and privileges.

**14. What happens to such persecuted minorities living in certain areas of the North East, where this Amendment is not applicable? From where can they get the benefit under this Amendment?**

This Amendment is not applicable to such people living in the tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873 to preserve their native and indigenous culture. However, such people living in these excluded areas can make an application from other areas of the country where this Amendment is applicable and shall receive the consequential rights attached with the citizenship from that place only.

**15. What will happen if such persons seeking benefit under this amendment are facing prosecution against themselves for illegally entering into India?**

It will not disqualify them if they are otherwise found qualified for the grant of citizenship under the scheme of the amended Act.

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