



Proposed amendment in citizenship and the south Asian refugee

Radhe Shyam¹, Gita NR²

¹ Assistant Professor, AMP Govt. Law College, Rajkot, Gujarat, India

² Assistant Professor, H.M. Patel Mahila Law College, Junagadh, Gujarat, India

Abstract

Secularity is not absence of all religion moreover greater respect of every religion. State shall conduct his business without any discrimination on the basis of religion is the bedrock of Indian Constitution as well as sprit of Indian great glory historic ideals along with concept of secularism same as propounded by Indian Apex Court in S. R. Bommai Case.

The proposed amendment in Citizenship Act 1955 provides some relief to the Asian refugee who are belong to the particular religion and exclude the some other person who does not constitute the same.

This paper try to find the answer in multifold aspect; one is, the proposed amendment against the concept of Secularism; second is, the amendment proposed by Indian Parliament against the spirit of Indian Constitution and finally test the proposed amendment in the light of International Convention relating to the Status of Refugee 1951.

Keywords: discrimination, citizenship, secularism

Introduction

The legal status of refugees in India is governed mainly by the Foreigners Act, 1946 ^[2] and the Citizenship Act 1955 ^[3]. These Acts do not distinguish refugees fleeing persecution from other foreigners; they apply to all non-citizens equally. Under the Acts it is a criminal offence to be without valid travel or residence documents. These provisions render refugees liable to deportation and detention. Under the existing provisions of the proposed amendment, persons belonging to the minority communities, such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have either entered into India without valid travel documents or the validity of their documents have expired are regarded as illegal migrants and hence ineligible to apply for Indian citizenship. It is proposed to make them eligible for applying for Indian citizenship

Under the very act, all the religious minority community from the defined neighbor country, will not be considered and indulged as illegal immigrants. Muslims, on the other hand, are not being exempted from being regarded as a threat to the security of the nations.

For the minorities mentioned above – the residence period in India will be six years. Also, illegal immigrants would be permitted to apply for citizenship without having shown valid documents.

Refugee populations in India do not fall under the UNHCR's mandate, but are nonetheless considered refugees by the government. At present, there are over 150,000 Tibetans and 90,000 Sri Lankans who have fled violence and persecution and sought refuge in India. These groups are accommodated and assisted in accessing education, healthcare, employment and residence to varying degrees ^[4].

On July 19, 2016, the government introduced a Bill to amend certain provisions of the Citizenship Act, 1955 ^[5]. The Bill has

now been referred to the joint select committee of Parliament. The object of the proposed Bill is to enable Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who have fled to India from Pakistan, Afghanistan and Bangladesh without valid travel documents, or those whose valid documents have expired in recent years, to acquire Indian citizenship by the process of naturalisation. Under the Bill, such persons shall not be treated as illegal immigrants for the purpose of the Citizenship Act. In another amendment, the aggregate period of residential qualification for the process of citizenship by naturalisation of such persons is proposed to be reduced from 11 years to six years. A large number of people who would otherwise be illegal immigrants can now heave a sigh of relief if the Bill goes through as they would be eligible to become citizens of the country.

The proposed bill and Asian refugee

The Citizenship (Amendment) Bill, 2016 ^[6], owes its genesis to the assurance given by the Prime Minister that Hindus from these three countries who have sought asylum in India would be conferred Indian citizenship. But since singling out Hindus alone could be discriminatory, the Bill has extended the right to acquire citizenship to other religious minorities living in the three countries.

The issue was discussed threadbare at a high-level meeting chaired by home minister Rajnath Singh and attended by foreign secretary S Jaishankar besides others.

There are thousands of Hindus and Sikhs who have entered India after facing religious persecution in countries like Pakistan, Bangladesh and Afghanistan without any valid document. These refugees have been facing difficulty in getting Long Term Visa (LTV) or Citizenship and the existing law does not allow anyone granting Indian nationality if he or she can not show proof of documents on country of birth.

“Hence, the government plans to amend the Citizenship Act so that such refugees could be granted LTV and citizenship without any hindrance,” a home ministry official said. In its election manifesto before the 2014 Lok Sabha elections, the BJP had declared India as “a natural home for persecuted Hindus” who “shall be welcome to seek refuge”. Prime Minister Narendra Modi, during the campaigning in 2014 had made a distinction between Hindu and Muslim refugees from Bangladesh and arguing that the former should be accommodated. Ever since the Modi government came to power, several concessions have been offered to the persecuted Hindus and Sikhs of the neighbouring countries that include issuing Long Term Visa, allowing such people to buy residential properties, procuring PAN cards, Aadhar card, driving licence, opening bank accounts, lowering of visa fees besides others. Besides, the home ministry also organised special camps at district level in Gujarat, Madhya Pradesh, Rajasthan, Uttar Pradesh, Karnataka, Maharashtra, Andhra Pradesh, Haryana and NCT of Delhi for granting LTV and citizenships. Children of refugees on LTV are allowed to take admission in schools/ colleges/ universities/ technical and professional institutions under foreigner quota without permission from the state government/UT administration.

Though India has not enacted a national refugee law, the three principles underlying India’s treatment of refugees was spelt out in Parliament by Jawaharlal Nehru in 1959 with reference to Tibetan refugees. They include: refugees will be accorded a humane welcome; the refugee issue is a bilateral issue; and the refugees should return to their homeland once normalcy returns there

The proposed Bill recognises and protects the rights of refugees and represents a welcome change in India’s refugee policy. But it would have been appropriate if the Bill had used the term “persecuted minorities” instead of listing out non-Muslim minorities in three countries. To give an example, the Ahmadiyyas are not considered Muslims in Pakistan and are subject to many acts of discrimination. Other groups include members of the Rohingyas, who being Muslims are subjected to discrimination in Myanmar and have fled to India. Such a gesture would also have been in conformity with the spirit of religious and linguistic rights of minorities guaranteed under our Constitution. Unfortunately the Bill does not take note of the refugees in India from among the Muslim community who have fled due to persecution and singles them out on the basis of religion, thereby being discriminatory.

There is a popular voice that the region cannot accept anymore new population from any other countries who might have entered India after 1971. In such case Government will have to spell out the actual number of such migrants, who have entered India before 1971 and projected migrants entered after that. The region has already witnessed several anti-migrants movement and militant upsurge against foreigners also in the recent past and therefore, if that Act comes into force and it is made automatically applicable in the NE region, then I am sure that it will draw wide spread reactions immediately. The NE regions is crying for withdrawal of that bill and deal the issue of rehabilitation of migrants on the humanitarian ground only granting them Refugee status. That will be also the best way to avoid unnecessary haziness in clarification of complicated constitutional aspects.

As the Article - 369 of the constitution provides ‘Temporary, Transitional and Special Provisions’ to the Parliament to make certain laws. Under that provision many special laws have been enacted for states in different manner. If the proposed amendment has become so imperative and obligatory for the Centre then new Act will have to create extra special condition in the provision that will provide power to the State Governments for ratification of any decision or Act of the centre with regard to rehabilitation of such migrants in the North Eastern States area, if when such situation arises. Further NE region has significant amount of Tribal Area or protected area in each and every states, where land laws are strictly protective for the tribal only. Such protective laws should specially be kept out of the ambit of the new law aiming at to uphold the constitutional responsibility of protecting indigenous tribal people.

Nowhere, in the Constitution of India the word secularism has properly been defined with its explicit meaning. Only in the 42nd Amendment of the constitution ^[7] in 1976, the term Secular was inserted in the Preamble. As per the constitution of India, has or had no state religion, it is only the census record that shows Hinduism as the religion of majority. The simple as well as the ordinary description of the Secularism is like that – ‘every religion should be treated equal before the law, no one should be discriminated on the basis of religion.’ But never in the history of free India Hinduism was declared as state religion. That speaks that the tradition of secularism itself is so strong in this country that compelled thinkers of the nation to insert the term in the Preamble after 29 years of Independence.

The Constitution has made the Parliament such a Supreme Body that under Article 368 the Parliament can bring amendment to any provisions of this constitution in exercise of its constituent power. Further, Parliament can frame any regulation and Act as per the requirement of the provisions of the constitution as amended. The democracy is a number game, if number supports then you can change provisions created by previous Governments of different parties. But Parliament also is not empowered to change its basic tenets like Preamble in totality and so the meaning of the term ‘Secular’ being a preamble word, cannot be altered or affected by any new general law unless there is constitutional review. But at the same the term Secularism does not restrict any religion from expanding its influence and also flourishing on their way. Any religious group of people, if they become stronger than any other group; can rule any state or country. So Hindu flourished to rule India, whether it is Congress, BJP, SP, BSP, DMK, AIADMK or Communists parties rule, ultimately Hindus are the masters of the Country since the beginning.

Under the existing provision of the Citizenship Act, 1955, persons belonging to minority communities like Hindus, Parsis, Christians, Jains, Sikhs and Buddhists, who have entered India from the Afganistan, Bangladesh and Pakistan without valid travel documents or validity of their documents got expired, are regarded as illegal. They are not eligible for applying for acquisition of Indian citizenship despite their willingness to stay in India. The new amendment will make them eligible for acquiring citizenship in India under that Act, even if their root of family were not of Indian origin. Under

section – 5 of the Act their citizenship will be denied if they fail to produce proof of their being Indian origin. As per section 6^[8], a person can acquire citizenship by way of naturalization where as the qualification, a person need to proof his or her residing in India for at least 12 years. Proposed Act will remove that hindrances, enable any non-Muslim resident to apply for citizenship if they are willing to stay in India. In the case of naturalization also the term of residing in India will be reduced to 7 years from the earlier 12 years. In Original provision of the constitution a person migrated to India, if he/she is born in India or his/her parents or any of his/her grandparents were born in India, could only acquire citizenship in this country.

Conclusion

By seeking to grant citizenship on the basis of religious ground, it is great violation of the Indian Constitution in strict sense but comprehensively it may justifies on the ground as those who included and who excluded in the proposed amendment has tangible differentia as they formed the minority group and majority group in their own countries respectively and protection of minority is guaranteed by Indian Constitution.

It is welcoming step by Indian parliament in the step towards easy access of refugee status despite of non signatory of International Convention relating to the Status of Refugee particularly in South Asia region. I hope in future after successful implementation of proposed amendment, it may extend to all person whether they are formed minority or majority group in their own countries.

References

1. Bommai v SR. Union of India ([1994] 2 SCR 644: AIR 1994 SC 1918: (1994)3 SCC1)
2. <https://india.gov.in/foreigners-act-1946-0>
3. <http://indiancitizenshiponline.nic.in/citizenshipact1.htm>
4. http://www.hrln.org/admin/issue/subpdf/Refugee_populations_in
5. <http://indiancitizenshiponline.nic.in/citizenshipact1.htm>
6. www.prsindia.org/billtrack/the-citizenship-amendment-bill-2016-4348
7. indiacode.nic.in/coiweb/amend/amend42.htm
8. <http://indiancitizenshiponline.nic.in/citizenshipact1.htm>