

# Citizenship and the Constitution: Legal Reflections on Identity and Inclusion in India

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## Abstract

India is a multifaceted legal and socio-political construct that intersects with questions of identity, belonging, and inclusion. Grounded in constitutional principles and evolving statutory frameworks, the law of citizenship has undergone significant transformations since independence, reflecting the nation's ongoing struggle to balance sovereign authority with individual rights. This paper critically examines the constitutional provisions and legislative developments related to citizenship in India, with particular focus on the Citizenship Act, 1955 and its amendments, including the controversial Citizenship Amendment Act, 2019. By analyzing landmark judgments and contemporary debates surrounding mechanisms like the National Register of Citizens (NRC) and National Population Register (NPR), the study assesses the impact of citizenship laws on marginalized communities and the democratic fabric of the country.

**Keywords:** Citizenship, Constitution of India, Identity, Inclusion, Citizenship Amendment Act 2019, NRC, NPR, Secularism, Statelessness, Constitutional Morality.

## 1. Introduction

Citizenship defines the legal and political relationship between the individual and the State, encompassing both rights and responsibilities. In India, this relationship is constitutionally anchored and reflective of the country's commitment to democracy, secularism, and equality. The legal framework governing citizenship has undergone significant evolution—from accommodating the historical aftermath of Partition to addressing contemporary challenges of identity, migration, and national security. The introduction of the Citizenship Amendment Act, 2019 (CAA), alongside proposed mechanisms like the National Register of Citizens (NRC) and National Population Register (NPR), has brought citizenship discourse to the forefront, raising critical questions about inclusion, exclusion, and constitutional morality. This paper seeks to analyze the trajectory of citizenship laws in India and their intersection with democratic values and human rights, with a focus on legal interpretation and implications for marginalized communities.

### • Legal significance of the Concept :

Citizenship is a legal status that determines the rights, duties, and identity of individuals within the Indian State. It forms the basis for participation in the political process (such as voting and contesting elections), access to certain fundamental rights, and protection under the law.

## 2. Historical Perspective

Various scholars and authors have given their views over the traces and roots of Citizenship :

- **Romila Thapar** (Historian)-In her studies on early Indian polity, Thapar highlights how ancient Indian societies—particularly during the Mauryan and Gupta periods—exhibited early forms of civic identity. Though not 'citizenship' in the modern sense, subjects often had clearly defined roles, obligations, and rights within local communities and kingdoms. (Romila Thapar, *Early India: From the Origins to AD 1300*).
- **Niraja Gopal Jayal** (Political Scientist)- Jayal's work "*Citizenship and Its Discontents traces the historical evolution of citizenship in India*"—from ancient times, through colonial interpretations (like the British Indian subject), to the making of the modern constitutional citizen. She argues that Indian citizenship has always been contested—legally and socially. (Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History*).
- **B.R. Ambedkar** (Constitutional Architect)- Ambedkar's speeches and writings are foundational. He emphasized a vision of citizenship that was rooted in equality and justice, particularly for marginalized communities. He saw citizenship not only as legal status but also as a social revolution. (B.R. Ambedkar, *Annihilation of Caste; Constituent Assembly Debates* (especially Nov 25, 1949)).

The idea of citizenship in India emerged from a tumultuous historical context. The traumatic Partition of 1947, accompanied by large-scale displacement and communal violence, necessitated the immediate legal demarcation of who would be considered a citizen of the newly independent nation. During the Constituent Assembly Debates, leaders like Dr. B.R. Ambedkar, Jawaharlal Nehru, and Aladi Krishnaswami Ayyar grappled with competing visions of citizenship—universalism versus conditionality, religious identity versus territorial loyalty.<sup>1</sup>

Part II (Articles 5–11) of the Constitution of India was drafted as a temporary provision to determine citizenship at the time of commencement of the Constitution. It categorized persons based on domicile, migration from Pakistan, and registration. The framers resisted the idea of religion-based citizenship, favoring a secular and territorial model.<sup>2</sup> However, the legacy of Partition continues to influence India's citizenship policies and practices.

## 3. Legal Framework on Citizenship in India

### ● Part II of the Constitution (Articles 5 to 11):

Deals with citizenship at the commencement of the Constitution (26 January 1950).

### ● The Citizenship Act, 1955 (as amended):

Governs acquisition, termination, and deprivation of Indian citizenship.

### ● Citizenship Amendment Acts (CAA):

Particularly the CAA 2003 (introduced the concept of the National Register of Citizens) and CAA 2019 (amended provisions for naturalization based on religion and country of origin).

### 3.1 Constitutional Provisions (Articles 5–11):-

Article 5: Citizenship by domicile.

Article 6: Citizenship rights of migrants from Pakistan.

Article 7: Rights of persons who migrated to Pakistan and returned.

Article 8: Citizenship rights of Indians abroad.

Article 9: No dual citizenship for those acquiring citizenship of another country.

Article 10: Continuance of rights.

Article 11: Parliament's power to make laws on citizenship.

- These provisions laid the foundation, but were transitional in nature. Article 11 enabled the legislature to frame a detailed and permanent citizenship law.<sup>3</sup>

### 3.2 The Citizenship Act, 1955 and its Amendments

- The Citizenship Act, 1955 governs acquisition and termination of citizenship in India.<sup>4</sup> The Act provides for five modes of acquiring citizenship:

By birth

By descent

By registration

By naturalisation

By incorporation of territory

### 3.3 Subsequent amendments have reshaped the law:

- 1986 Amendment: Restricted citizenship by birth, requiring at least one parent to be an Indian citizen.
- 2003 Amendment: Introduced the concept of the NRC and added further restrictions.<sup>5</sup>
- 2019 Amendment (CAA): Fast-tracked citizenship for non-Muslim migrants from Pakistan, Afghanistan, and Bangladesh who entered India before December 31, 2014, excluding Muslims.<sup>6</sup>
- The 2019 amendment sparked widespread national and international criticism for allegedly violating the secular ethos of the Constitution and discriminating on religious grounds.<sup>7</sup>

### 3.4 Citizenship Amendment Act 2019:

The Indian Constitution does not declare citizenship as a fundamental right, but it is closely intertwined with constitutional identity, particularly through:

Article 14: Right to Equality

Article 15: Prohibition of discrimination

Article 21: Right to Life and Liberty

Although Part II (Articles 5–11) deals with citizenship, Article 11 grants Parliament the power to make laws regarding acquisition and termination of citizenship. Hence, judicial review typically focuses on whether these laws conform to the Constitution. The CAA, 2019 amended the Citizenship Act, 1955 to provide a pathway to Indian citizenship for Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan, Afghanistan, and Bangladesh who entered India before 31 December 2014. It excludes Muslims, which triggered nationwide protests and legal challenges. The act is seen as violative of Article 14 (equality before the law) and secularism, a basic structure of the Constitution.

## 4. NRC and NPR: Legal Mechanisms and Constitutional Concerns

The National Register of Citizens (NRC) is an official record of legal citizens. Initially created in Assam under Supreme Court monitoring, it aimed to identify illegal immigrants.<sup>8</sup> However, over 1.9 million people were excluded from the final list in 2019, many of whom were poor, illiterate, or lacked documentation, leading to a crisis of statelessness.<sup>9</sup>

The National Population Register (NPR), introduced under the Citizenship Rules, 2003, is a database of usual residents.<sup>10</sup> Though claimed to be a population enumeration exercise, NPR is seen as a precursor to

NRC, raising concerns over data collection, surveillance, and misuse.

#### 4.1 National Register of Citizenship (NRC)

- Origin: First implemented in Assam in 1951 following the Indo-Pak partition.
- Purpose: Identify illegal immigrants post-partition, particularly from East Pakistan (now Bangladesh).
- Recent Developments: The Supreme Court of India mandated an NRC update in Assam, culminating in a final list in 2019 that excluded over 1.9 million residents.

#### 4.2 National Population Register (NPR)

- Origin: Introduced under the Citizenship Act of 1955 and the Citizenship Rules, 2003.
- Purpose: Collect demographic and biometric data of residents to build a comprehensive identity database.
- Execution: Linked with the Census, the NPR was last updated in 2010, with another update proposed alongside the 2021 Census (postponed due to COVID-19).

**4.3 NRC:** Backed by the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

**4.4 NPR:** Anchored in the same Citizenship Rules but intended as a precursor to NRC, not a citizenship test per se.

**4.5 Concerns:** Ambiguity in implementation has led to fears that NPR could be a step toward nationwide NRC, raising constitutional issues around Article 14 (equality), Article 21 (right to life), and Article 15 (non-discrimination).

**4.6 Critics** argue that when combined with CAA, these mechanisms create a triad of exclusion:

- NPR as data source,
- NRC as a filtering tool,
- CAA as a selective inclusion mechanism.

This has the potential to render large populations—particularly Muslims, women, and marginalized castes—stateless, despite long-standing ties to India.<sup>11</sup>

### 5. Judicial Interpretations and Constitutional Scrutiny

Indian courts have played a vital role in shaping the legal narrative on citizenship:

- *Berubari Union Case*, AIR 1960 SC 845: Clarified that Parliament alone had the power to legislate on citizenship under Article 11.
- *State of Arunachal Pradesh v. Khudiram Chakma*, (1994) Supp (1) SCC 615: Emphasized the equal treatment of citizens, regardless of ethnicity.
- *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665: Upheld the state's responsibility to combat illegal migration, calling it a threat to national integrity.
- *Tehseen S. Poonawalla v. Union of India*, (2018) 9 SCC 501: Addressed mob violence and the need to protect minority rights.

#### 5.1 Citizenship Amendment Act, 2019 (CAA) Challenges:

Several petitions challenging the constitutional validity of CAA are pending before the Supreme Court, arguing violation of Articles 14, 21, and the Basic Structure doctrine.<sup>12</sup> Key Questions before the court include:

1. Can religion be a valid ground for classification in granting citizenship?

2. Does the CAA violate the basic structure doctrine, especially secularism and equality?
3. What is the impact on children and minorities, particularly those born to undocumented or stateless persons?

Authors perspective over these questions is that

- From a liberal democratic perspective, the State is expected to maintain neutrality in matters of religion. Political philosophers like **John Rawls** have long argued that the legitimacy of laws in a pluralistic society depends on their public reasonableness—that is, their acceptability to all citizens regardless of personal belief. In this light, using religion as a basis for state classification (such as in granting or denying citizenship) violates the ideal of political liberalism. Citizenship is not merely a legal status; it is a symbol of equal moral worth. When religion becomes a filter, it undermines the secular identity of the State and the belief in universal human dignity.
- The Basic Structure Doctrine, developed in *Kesavananda Bharati v. State of Kerala* (1973), is not only a judicial tool but a moral compass for constitutional governance. Secularism and equality are not just procedural values; they are normative commitments that guide the State's treatment of individuals. The philosopher Ronald Dworkin emphasized that rights are “trumps” against the majority — meaning constitutional values exist precisely to limit majoritarian impulses. By selectively including only non-Muslim minorities from specific countries, the CAA appears to instantiate a preferential form of citizenship, which fragments the universalism of the Indian Constitution.
- The philosophical lens of justice as fairness demands special attention to the most vulnerable in society—children, minorities, the stateless. The denial of citizenship to children born to undocumented migrants—often due to no fault of their own—creates a “legal limbo”, making them citizens of nowhere. As Hannah Arendt warns in *The Origins of Totalitarianism*, “The right to have rights” is predicated upon the possession of a political identity, i.e., citizenship. The denial of this identity not only violates individual dignity but also erodes the moral legitimacy of the State itself.

## 6. Conclusion

Citizenship, in the modern philosophical tradition, is more than a legal entitlement—it is a moral claim to equality, dignity, and belonging. The philosophical concern with CAA and its surrounding policies lies not only in the legal exclusions it creates but in the symbolic exclusion of the “other”, which contradicts the ethical foundations of the Indian Republic.

Judicial responses so far have walked a tightrope between national security and constitutional morality, but a definitive constitutional adjudication on CAA's validity is awaited.

## 8. Footnotes

1. Constituent Assembly Debates, Vol. IX (1949), pp. 22–33.
2. Ibid.
3. M.P. Jain, *Indian Constitutional Law*, 8th edn. (LexisNexis, 2020) p. 116.
4. The Citizenship Act, 1955 (Act No. 57 of 1955).
5. Citizenship (Amendment) Act, 2003, No. 6 of 2004.
6. Citizenship (Amendment) Act, 2019, No. 47 of 2019.
7. Amnesty International, “India: CAA violates Constitution,” (2019), available at <https://www.amnesty.org> (last visited Jun. 10, 2025).

8. Assam Public Works v. Union of India, (2017) 9 SCC 237.
9. Human Rights Watch, "'Shoot the Traitors': Discrimination Against Muslims Under India's New Citizenship Policy," (2020).
10. Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.
11. Harsh Mander, Partition and Citizenship in India, (Orient BlackSwan, 2020).
12. Supreme Court of India, Writ Petition (Civil) No. 1474 of 2019 and connected matters (CAA Cases).