

1. Do you think the Citizenship Amendment Act violates the basic structure of secularism? Critically examine.

Introduction

The Indian parliament has passed the Citizenship Amendment Act amid claims that it is violative of the secularism principle of Indian constitution. This Act amends the 1955 Citizenship Act and seeks to amend the definition of illegal immigrant for Hindu, Sikh, Parsi, Buddhist and Christian immigrants from Pakistan, Afghanistan and Bangladesh, who have lived in India without documentation. They will be granted fast track Indian citizenship in six years instead of standard 11 years.

Body

- Citizenship in India is currently covered under two legislations: Part II of the Constitution of India, 1950 and the Citizenship Act, 1955. However, neither of these legislations have defined citizenship clearly and only provide the prerequisites for a “natural” person to acquire Indian citizenship.
- Citizenship is a complex term, enshrined within which are the ideas of nationality, assumed as ethnicity; and domicile is understood as permanent residence. In India, however, the courts are inclined towards pegging citizenship as an extended arm of domiciliation. The Supreme Court of India, in *Star Trading Corporation v Commercial Tax Officer* (1963), has stated, in no uncertain terms, that nationality and citizenship are not interchangeable terms.
- The theory of “basic structure” states that the Constitution contains certain characteristics that cannot be taken away by any legislation; for example, judicial review, free and fair elections, welfare state. These form the cornerstone of the governance of a country. Therefore, any legislation that fails the test of “basic structure” is unconstitutional. Secularism is a basic structure, as has been reiterated by the Supreme Court in *S R Bommai v Union of India* (1994). It has also been incorporated in the Preamble to the Constitution, which serves as the guiding light to interpreting the Constitution.
- As understood in the Indian context, secularism means “sarva dharma samabhav.” This means that all religions are equal in the eyes of law and that the State shall not propagate or endorse one particular religion. This philosophy is also enshrined in the Preamble and in Articles 26 to 29 of the Constitution.
- The preamble begins with the values of sovereignty, socialism, democracy and republicanism that are the very foundations of India. Subsequently it secures for its citizens’ social economic and political justice, ‘liberty of thought, expression, belief, faith and worship’ and ‘equality of status and of opportunity’
- The opponents of the new law argue that it breaches the Fundamental Right to Equality stated by Article 14, because it violates the principle of “equality

before the law” and the “equal protection of laws” assured to all individuals, including non-citizens. Naturalisation and citizenship in the name of the religion, they say, is total discrimination and against the basic structure of the humanitarian and secular Constitution of India.

- The decision to grant citizenship based on religion goes against the letter and spirit of the Constitution. In northeastern states, which share a history of ethnic cleansing of minorities, the act is having damning repercussions. The new citizenship act will deepen the old fault lines in Assam, both religious and linguistic.
- Finally, the CAA denies the value of community as it violates fraternal bonds between communities: a public good recognised by Ambedkar and the Supreme Court in decisions on secularism.

But at the same time, proponents of CAA consider it as not violative of the secularism doctrine under the following grounds:

- There has been much ado about the amendment to the Citizenship Act. It has been attacked as unconstitutional. At first blush the law may appear to be discriminatory and unconstitutional, but such a charge does not stand closer scrutiny. The amendment essentially seeks to facilitate religious minorities in the named countries that have a state religion acquire Indian citizenship.
- Ever since the failure of the Liaquat-Nehru pact of 1950, various leaders, cutting across the ideological spectrum, have demanded the grant of citizenship to religious minorities from Pakistan and Bangladesh, who mostly belong to the Dalit castes.
- CAA did not "change the criteria of citizenship in any way; merely providing a special expedited redress, under special circumstances, for minorities fleeing religious persecution from three specific countries i.e. Pakistan, Bangladesh and Afghanistan
- It does not in any way prevent Ahmadis, Hazaras, Baloch or any other denominations and ethnicity, from these same three countries, seeking citizenship through regular processes
- The seemingly contradictory demands of legislative specialisation and constitutional generality have been resolved by the doctrine of reasonable classification. It is one that includes all persons who are similarly situated with respect to the purpose of the law. In the present case there is a reasonable, valid classification of persons of religious minorities in the three-named theocratic states who came to India before a cut-off date.

Conclusion

There is more rhetoric than legal reasoning in the contention that the law is against secularism and infringes the Constitution’s basic structure. As Legislature is an inclusive body, and is representative of the will of the people, it should have no biases and try its utmost to provide justice and liberty to all. Further, although the

legislature consists of political parties, there should be no politics in the passing of legislations that bypass the democratic ideals of India.

2. What are your views on the idea of a nationwide NRC exercise? Will it not flare up communal tensions? Share your views.

Introduction

NRC The National Register of Citizens (NRC) is a register of Indian citizens and was prepared in 1951, following the census of 1951. At present, only Assam has such a register.

Purpose: To separate “illegal” immigrants and deport them.

Nodal Agency: Registrar General and Census Commissioner India.

Body

Census and National Population Register is counting residents while the proposed NRC will count citizens. Its objective is to weed out non-citizens and deport them to their countries of origin or put them in detention camps.

Views on the idea of a nationwide NRC exercise

- It puts an entire population under suspicion of alienage. Under the foreigners’ Act 1946, the burden of proof rests on the individual charged with being a foreigner. Moreover, Citizenship Act provides no mechanism for identifying aliens. With that justification can a state that does not have the ability to detect aliens or even to secure its borders against illegal immigrants, set out to find aliens by elimination? Elimination method is not the right approach.
- **Cost of Authentication:** Preparation of a countrywide NRC requires lot of resources. The Assam NRC is reported to have costed Rs 1600 crores. To prepare a countrywide NRC we need an estimated outlay of Rs 4.26 lakh crore. It would also need deployment of 1.33 crore officials when total number of government employees in India was 2.9 crore in 2011-12.
- **Lot of time to prepare it:** It is a regressive exercise and will take lot of time to prepare it.
- **Building new detention centers** that will be needed to incarcerate the excluded people.
- **Panic among people:** The necessary documents required to be included in NRC has created panic and fear in Assam and many committed suicides as they were not having the documents to prove their citizenship even when their ancestors have been living here for hundreds of years. If NRC done at national level it would have graver ramifications.
- **Flawed Process** - People who found themselves on the first list in Assam NRC, that was released on January 1, 2018, didn’t find their names in the second. Even the family of a former President of India did not mention on the list.

- Since such ‘non citizens’ can resort to judicial relief to substantiate their citizenship claim, it can lead to overburdening of judiciary which already reels under large number of pending cases.
- **Federal Imperative of seeking the consent of state governments:** Many states in northeast are erupting in protest against NRC. It is a federal issue and requires consultations between states and the centre and it cannot be done on the whims of a particular political party that comes to party.
- With no end to uncertainty, NRC seems to be a process without an end.

Fraying communal tension or plural social fabric of this nation:

If the NRC carves out paths to statelessness for groups that are disfavoured, the citizenship Amendment Bill creates paths to citizenship for preferred groups. The implicit assumption in the NRC is that the infiltrators are Bangladeshis Muslims who must be disenfranchised as they have illegally acquired the citizenship. The citizenship Amendment Bill on the other hand promises citizenship to migrants belonging to all groups except Muslims – who will be eligible for fast-track citizenship because they are persecuted minorities in Afghanistan, Pakistan and Bangladesh. However, it does not offer the same to the victims of sectarian religious persecution in neighbouring countries, such as the Ahmadiyas or the Rohingyas. It is a hypocrisy on part of the state.

Conclusion

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 Central Government should appoint a National Immigration Commission to frame a National Migration Policy and a National Refugee Policy. The Commission should examine ways of strengthening the Foreigners Act 1946, as well as feasibility of Identity Cards for both citizens and non-citizens and Work Permits for migrants.

3. Why is India’s northeast a complex regional challenge for the Indian state?

Analyse.

Introduction

“India will be successful when the North East develops at par with the other developed states of India” – Narendra Modi.

India’s North Eastern region includes 8 states covering 8% of the country’s landmass and 4% of the national population representing one of the diverse cultures in the country.

Body

Why northeast is a complex regional challenge?

The northeast has several constraints which are acting as hindrance to the regional development and mainstreaming of the society. They are:

- Historical reason:
 - British policy of north eastern states virtually disconnecting them from the mainland.
 - Partition blow to the northeast: creation of East Pakistan resulted in
 - Virtual disconnection of the northeastern region from the rest of India connected through a narrow Siliguri corridor.
 - Loss of natural sea route through the port of Chittagong restricting the economic activities.
- Geographical challenges:
 - About 99% of the region has international border along Bangladesh, Myanmar, China and Bhutan which create complications in international diplomacy.
 - Over 70% of the region is forest area which makes the economic development difficult. Further, the region is host to an overwhelming tribal population ranging from 19% in Assam to 94% in Mizoram.
 - The region is predominantly hilly in all the states except Assam. This creates difficulty in utilization of natural resources.
- Cultural/societal challenges:
 - The region has over 160 scheduled tribes and over other tribal and sub-tribal communities and groups. The varied culture creates alienation from the mainland and hinder development.
 - The region is predominantly rural with around 84% of the population living in the rural areas.
 - The presence of different ethnicities has made it difficult to cater the demands clamoring for recognition of their distinctive identity.
 - Though the literacy rate is high, the employability is low. High dependency on agriculture has also resulted in low per capita income.
 - Different ethnic groups have caused conflicts and insurgency due to tribal rivalry, migration, control over local resources and so on. E.g. inter-tribal conflict between Kukis and Nagas, insurgent groups like NSCN etc.,
- Resentment to the central government: Economy depend on the patronage of the central government resulting in lack of economic activities. Also, the deployment of the armed forces has caused phycological resentment in the society.

Conclusion

Thus, for the above reasons, even the steps taken by the successive governments have produced slow progress. Yet, the steps are being taken towards fast development of the region and integration with the rest of India.

Note: This is a paper 1 question. So, focus on society, geography, historical points. If one write more governance or security related arguments, they will get relatively lesser marks.

4. Elaborate upon the concept of 'social empowerment'. Is there a correlation between social and economic empowerment? Examine.

Introduction

Social empowerment is understood as the process of developing a sense of autonomy and self-confidence, and acting individually and collectively to change social relationships and the institutions and discourses that exclude poor people and keep them in poverty.

Body

The notion of empowerment entails numerous things including concepts of choice, liberty, agency, capacity, contribution, self-sufficiency, and increased resources among others.

This is to be done by adopting the approach of 'social justice' to ensure equal rights, access to benefits and resources and 'empowerment' to enable them to develop their potential and capacities as agents of social change, through the process of planned development.

Social empowerment is a means to build a socially just society. The holistic empowerment of all sections of the society is a necessary condition for the development of a country.

Correlation between social and economic empowerment

- Poor people's empowerment, and their ability to hold others to account, is strongly influenced by their individual assets such as land, housing, livestock, savings. Also important are people's collective assets and capabilities, such as voice, organisation, representation and identity.
- NSSO data reveals this correlation. Comparison of NSSO data (2011-12) the between Dalit and upper caste households –
 - In rural areas - expenditure gap - ~ 37
 - In urban areas- incomes gap ~ 65%
- Social empowerment leads to more accessibility to health, education, credit etc leading to better employment opportunity and hence economic empowerment.

However, there have been instances of no visible correlation between social and economic empowerment

- Female LFPR is declining despite higher growth, higher educational attainment, and higher age of marriage and declining fertility. Increased social empowerment did not lead to economic empowerment.
- Emergence of 'Dalit capitalism', higher percentage in administration, higher offices from lower class communities has not effectively increased the social status of lower caste. There is widespread discrimination as seen from temple entry restriction in various parts of the country.

Conclusion

Empowerment is a holistic concept. It cannot be seen as social, economic or political. Apart from creating enabling environment for individual growth and prosperity, there must be change in people's attitude to recognise everyone as equal. Then only substantive equality as envisaged by the constitution can be achieved.

5. What is your assessment of reservations in jobs and education as a tool of social empowerment? Substantiate your views.

Introduction

The objective of reservation as envisioned by the founding fathers of the Constitution was to ensure social justice and empowerment. It was important to undo the historical injustice done to SC/STs. Reservation was extended to other backward classes under the recommendation of the Mandal Commission.

Body

Assessment of reservations in jobs and education as a tool of social empowerment

- Government policy of reservation is based on the fact that economic backwardness is intricately linked with social backwardness. This is backed by NSSO data too. Comparison of NSSO data (2011-12) the between Dalit and upper caste households
 - In rural areas - expenditure gap - ~ 37
 - In urban areas- incomes gap ~ 65%
- Lack of education among SC/STs makes them uncompetitive at the entrance level. Hence reservation in educational institutions tries to bring parity.
- The Constitution (103rd Amendment) Act, 2019 for the very first time, economic class is constitutionally recognized as vulnerable section.
- Social deficiencies may exist beyond the concept of caste (Ram Singh case, 2015). This is recognised by the reservation policy.

However policy of reservation has been criticised on various ground

- Reservation is now being increasingly seen as the only tool available for upward social mobility.
- It perpetuates caste differentiation and encourages competition among communities at the expense of national unity.

- Only small new elite of educated Dalits, Adivasis, and OBCs benefit from reservations.
- Don't do enough to lift the mass of people out of poverty.
- Women's status has not substantially improved in the society due to patriarchy. India ranks 122th in WEF's Gender Gap Index.

Conclusion

The Constitution envisages not just a formal equality of opportunity but also the achievement of substantive equality. Reservation can be just one tool in this regard. However social empowerment and universal access to services like education and health is necessary to make the fruits of reservation reach the last man in society.

