

Policy WATCH

Volume IX, Issue 2
February 2020 New Delhi

RAJIV GANDHI INSTITUTE FOR CONTEMPORARY STUDIES

CONSTITUTIONAL VALUES AND DEMOCRATIC RIGHTS

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70th year of the Indian
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Editorial

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The Rajiv Gandhi Institute for Contemporary Studies (RGICS) works on five themes:

1. Constitutional Values and Democratic Institutions
2. Growth with Employment
3. Governance and Development
4. Environment, Natural Resources and Sustainability
5. India's Place in the World.

Under Constitutional Values and Democratic Institutions, there are three sub-themes:

- a. Justice, Liberty, Equality and Fraternity – rights and responsibilities
- b. Affirmative Action for Disadvantaged Groups
- c. Academia, Media and Civil Society as building blocks of democracy

In terms of outputs, the following are envisaged under each theme:

- Policy Observatory - A continuous watch of events, policy pronouncements and developments on each topic, with a quarterly summary of highlights to be published under Policy Watch.
- Policy Repertory - Occasional Papers, commissioned by outsiders, and Working Papers as well as Research Reports by staff Fellows.
- Policy Laboratory - action research projects, to the extent possible; else participant observation in “happenings”

This issue of Policy Watch observes the contemporary issue of Citizenship. This issue is conceptually important as being a citizen is essential before one can have any constitutional rights or participate in any democratic institutions through elections. And of course it is of contemporary importance because of the agitations around the country against the CAA.

This issue of Policy Watch begins with a graphic tracing the history of constitution making in India. This is courtesy the Constitutional and Civic Citizenship Project has been undertaken by the Centre for Law and Policy Research (CLPR), <https://www.constitutionofindia.net/>

The second article gives excerpts from the two and a half days of debates in the Constituent Assembly (from Aug 10th 1949, afternoon till 12th Aug 1949 end of the day), on Articles 5 and 6 in the Draft Constitution SDGs in South Asia, put together by Mr Vijay Mahajan, Director, RGICS, with the support of Ms Vinita Masih. The excerpts show the extreme divergence of views among the members, yet a very respectful and mutually accommodative manner of debating the issue threadbare from multiple stakeholders' points of view.

The next article is the transcript of a speech given by Mr Sanjay Hegde, Senior Advocate, Supreme Court of India, at the Jawahar Bhawan on 15th February, 2020. The talk was organized by SAHMAT, which has also organized an exhibition at the Jawahar Bhawan on 70 Years of the Constitution.

The third article is a photo essay using artworks in the exhibition, with text from a review of the Exhibition by the National Herald.

We hope you enjoy reading these articles. We look forward to your feedback.



History of Constitution Making in India

The Constitution of India
Bill (Unknown, 1895)

Indian Councils Act, 1909

The Congress-League
Scheme 1916 (INC & AIML)

Government of India Act,
1919

The Revolutionary
(Hindustan Socialist
Republican Association,
1925)

The Commonwealth of
India Bill (National
Convention, India, 1925)

Nehru Report (Motilal
Nehru, 1928)

Irwin Declaration (Lord
Irwin, 1929)

Declaration of Purna
Swaraj (Indian National
Congress, 1930)

Karachi Resolution (1931)

Poona Pact 1932 (B.R
Ambedkar and M.K
Gandhi)

Government of India Act
1935

Constitution of Free India :
A Draft (M.N. Roy, 1944)

Political Demands of
Scheduled Castes
(Scheduled Castes
Federation, 1944)

States and Minorities (Dr.
B.R. Ambedkar, 1945)

Gandhian Constitution for
Free India (Shriman
Narayan Agarwal, 1946)

Sapru Committee Report
(Sir Tej Bahadur Sapru,
1945)

Outline of a New
Constitution (B.N. Rau,
1946)

Cabinet Mission Plan
(Cabinet Mission, 1946)

Preliminary Notes on
Fundamental Rights 1946
(B.N. Rau)

Manipur State Constitution
Act, 1947

Indian Independence Act
1947 (UK Parliament)

Draft Constitution of the
Republic of India (Socialist
Party, 1948)

Draft Constitution of India,
1948

Courtesy: The Constitutional and Civic Citizenship Project has been undertaken by the Centre for Law and Policy Research (CLPR), <https://www.constitutionofindia.net/>

THE CONSTITUTION OF INDIA



Preamble.

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN DEMOCRATIC REPUBLIC** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

Constituent Assembly Debate on Articles 5 and 6 related to Citizenship: Some Interesting Excerpts

Mr Vijay Mahajan, Director, RGICS, with the support of Ms Vinita Masih[^]

Given the contemporary debate related to the Citizenship Amendment Act, 2020, it is educative to delve into the history of Citizenship in India. For this, we perused the debate on the topic in the Constituent Assembly of India, held from the afternoon of 10th August 1949 to 12th August 1949. We present some excerpts from the debate. The excerpts are selected to give the reader a flavour of the wide divergence of views among various members. Beginning with the presentation of the proposed amendments to the Articles 5 & 6 in the original draft, presented by Dr. Ambedkar, we include the interventions of Dr. P.S. Deshmukh, Mr. Naziruddin Ahmad, Shri Jaspat Roy Kapoor, Shri Brajeshwar Prasad, Sardar Bhopinder Singh Man, Mr. Mahboob Ali Sahib, Shri Jawaharlal Nehru, Maulana Mohd. Hifzur Rehman, Shri Rohini Kumar Chaudhuri, Shri N. Gopaldaswami Ayyangar and Shri Alladi Krishnaswami Ayyar. What is remarkable is that despite very significant divergence in their views, the members listened to each other with great degree of respect and civility.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 10th August 1949

Mr. President: We have now to take up articles 5 and 6 of the original draft. I find there is a veritable jungle, of amendments, something like 130 or 140 amendments, to these two articles. I suggest that the best course will be for Dr. Ambedkar to move the articles in the form in which he has finally framed them and I shall then take up the amendments to this amended draft....

The Honourable Dr. B. R. Ambedkar: Sir.... I move my amendment: "That for articles 5 and 6, the following articles be substituted:—

"5. At the date of commencement of this Constitution, every person who has his domicile in the territory in India and—

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement, Citizenship at the date of Commencement of this Constitution. shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

5-A. Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution if-

[^]Vinita Masih is Head, Knowledge Management, Rajiv Gandhi Foundation & RGICS

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration; and
- (ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

5-AA. Notwithstanding anything contained in articles 5 and 5-A of this Constitution a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.”

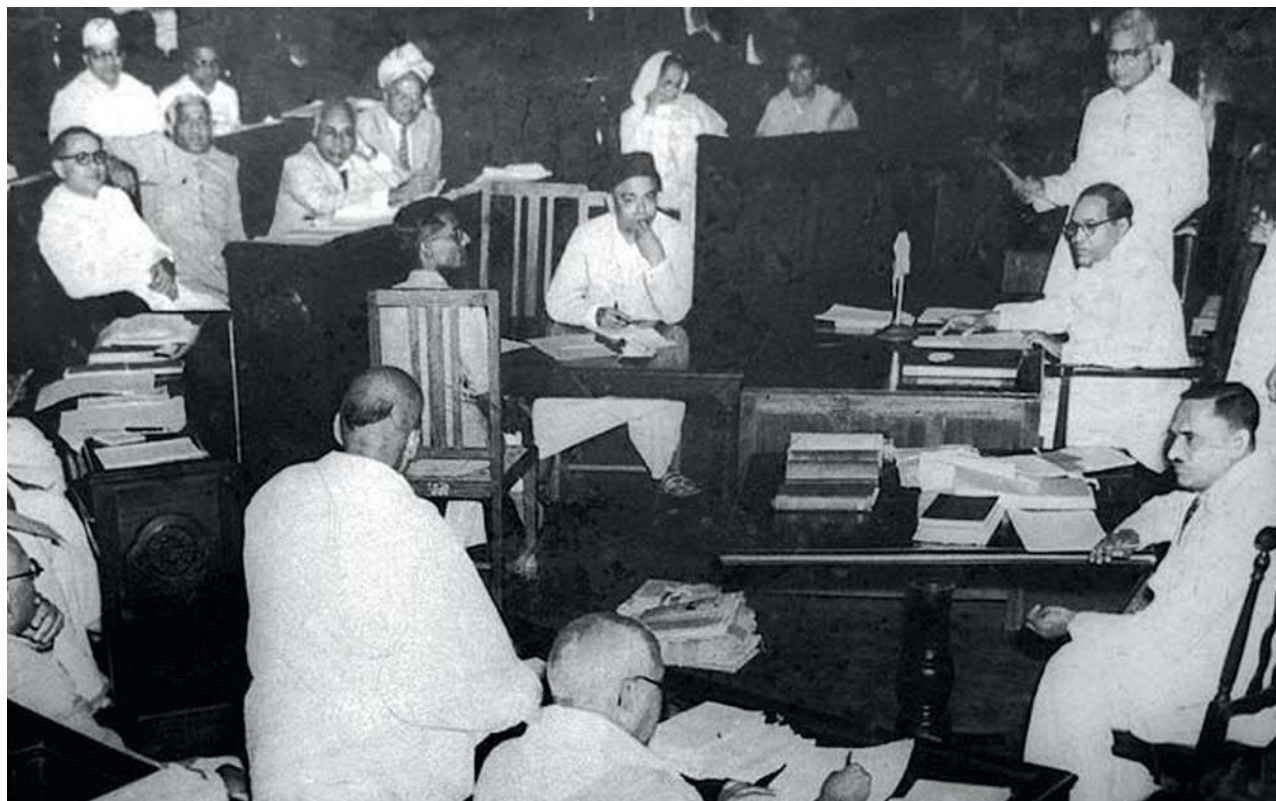
...Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, the amendment that has been moved is a last-minute consolidated amendment taken from several amendments in the printed amendments. Though in the profession of law for a very long time, I find it a bit confusing to follow how the scattered amendments have been consolidated and whether any departure has been made in the process. In trying to consolidate a large number of amendments and redrafting them, unconscious departures often happen. It is again extremely difficult for us to consider our own amendments as to whether they are accepted or whether they are rejected in the consolidated draft or if they are to be moved, if they are to be moved in an altered form just as a consequential measure. ... I submit, Sir, these amendments or this consolidated amendment amounts largely to an amendment in the Constitution itself or rather a large number of new amendments to the Constitution itself... We are departing from the Draft Constitution every day and today the departure is still more complete. I hope that there will be some limit to this migration from the original Draft Constitution.

I ask you, Sir, to consider whether these amendments introducing absolutely new clauses which amount to amending of the Constitution itself should be allowed at this stage, and if they are to be allowed whether it would not be proper to give us a consolidated amended draft which could be considered by the Members in order to see whether their own amendments really fit in into it or they require readjustment or fresh amendments. Sir, I ask you to consider the practical difficulties of the procedure. Clause 5 has been before the House for some time and amendments to amendments alone would now be regular, but every day new amendments and new ideas are coming in. Articles 5A, 5B and 5C are new. Article 5AA has been brought today and its proviso has come in by a different amendment. The explanation to article 5 is deleted today. These have been all put together in our ex tempore amendment. I do wish that the Constitution should be finished as quickly as possible; otherwise this taste for new changes would go on unabated. I ask you, Sir, to give us a ruling and to suggest a convenient method by which we can deal with the situation.

Mr. President: I have considerable sympathy with the honourable Member's objection that in this amendment new ideas have been brought in, but Members will remember that when this Constitution was taken up for discussion during the winter Session, these articles were over for further consideration and I suppose it was accepted that fresh amendments would be brought in. All those articles and those which were reached but not considered were held over to enable the Drafting Committee to reconsider the original draft and propose new drafts where necessary. In that

view, the Drafting Committee has considered that draft and has proposed new drafts, and they have suggested certain amendments to their own draft.

What Dr. Ambedkar has done is to put together all the amendments which they have proposed and he has read out a consolidated amendment. But I can fully appreciate the difficulties of Members when these various amendments are spread over a number of pages and a number of lists, and I would ask the Office to circulate to Members the consolidated amendment as proposed by Dr. Ambedkar... We might take up the consideration of the amendments as well as the draft as moved by Dr. Ambedkar tomorrow morning... If we take up all the other amendments, I think there will not be any end to them. First, let Dr. Ambedkar explain his proposition and then the other amendments may be moved.



The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because I feel that this is the draft which satisfies most people, if not all. Now, Sir, this article refers to, citizenship not in any general sense but to citizenship on the date of the commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads—

“Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.”

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of article 5 and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide ad hoc for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can, provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences. These five categories are:

- (1) Persons domiciled in India and born in India: In other words, who form the bulk of the population of India as defined by this Constitution;
- (2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India. The three other categories of people whom the Drafting Committee to bring within the ambit of this article are:
- (3) Persons who are residents in India but who have migrated to Pakistan;
- (4) Persons resident in Pakistan and who have migrated to India: and
- (5) Persons who or whose parents are born in India but are residing outside India.

These are the five categories of people who are covered by the provisions of this article. Now the first category of people viz., persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were born in the territory of India are dealt with in article, 5 Clauses (a) and (b). They will be citizens under those provisions if they satisfy the conditions laid down there.

The second class of people to whom I referred, viz., persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be a resident of India for five years. All these classes are subject to a general limitation, viz., that they have not voluntarily acquired the citizenship of any foreign State.

With regard to the last class, viz., persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5-B which refers to persons who or whose parents or whose grand-parents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India—they are called Indians abroad. The only limitation that has been imposed upon them is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them—one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These are as I said very simple matters. We now come to the two categories of persons who were residents in India who have migrated to Pakistan and those who were resident in Pakistan but have migrated to India.

The case of those who have migrated to India from Pakistan is dealt with in my article

5-A. The provisions of article 5-A are these—

Those persons who have come to India from Pakistan are divided into two categories—

- (a) those who have come before the 19th day of July 1948, and
- (b) those who have come from Pakistan to India after the 19th July 1948.

Those who have come before 19th July 1948, will automatically become the citizens of India.

With regard to those who have come after the, 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, viz., he again will be required to make

an application to an officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their acquisition of citizenship on the date commencement of the Constitution are put into two categories— those who have come before 19th July 1948, and those who have come afterwards. In the case of those who have come before the 19th July 1948 citizenship is automatic. No conditions, no procedure is laid down with regard to them. With regard to those who have come thereafter, certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government of India not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to become a citizen of India on the commencement of this Constitution.

This provision had to be introduced because the Government of India, in dealing with persons who left for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit System'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution. I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and I hope the House will be able to accept these amendments.

Shri B. M. Gupte (Bombay: General): Was the permit system brought in on 19th July 1948?

The Honourable Dr. B. R. Ambedkar: Yes, on the 19th July '48 there was an ordinance passed that no person shall come in unless he has a permit, and certain rules were framed by the Government of India under that on 19th July 1948, whereby they said a permit may be issued to any person coming from Pakistan to India specifically saying that he is entitled to come in. There are three kinds of permits, Temporary Permit, Permanent Permit and permit for resettlement or permanent return. It is only the last category of persons who have been permitted to come back with the express object of resettlement and permanent return, it is only those persons who are proposed to be included in this article, and no other.

The Assembly then adjourned till Nine of the Clock on Thursday, the 11th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 12th August 1949

...Mr. President: We shall now take up consideration of articles 5 and 6. I have been looking into the amendments of which notice has been given. A large number of the amendments relate to the original Draft, but quite a good number relate to the present Draft also. I think the consolidated form in which the proposition is now placed before the House meets the point of view of many of the amendments of which notice has been given. There are some which touch the details. I would ask honourable Members to confine their attention to only such of the amendments as are of substance and leave out the others.

With regard to the amendments relating to the original Draft I find there are some amendments which deal with matters altogether outside the Draft. For example, there is an amendment dealing with the status of women after marriage—whether they become citizens or not. There are others also which deal with the position of persons who are not born Indians or born of parents or grand-parents who were Indians. I think all these matters under the present Draft are left to be dealt with by Parliament in due course. I would, therefore suggest that amendments of this nature might also be left over to be dealt with by Parliament at a later stage and we might confine ourselves to the limited question of laying down the qualifications for citizenship on the day the Constitution comes into force.

Dr. Ambedkar drew the attention of the House to two important limitations. The first was that this Draft dealt with the limited question of citizenship on the day the Constitution comes into force. And the other point was that all other matters, including those which are dealt with by the present Draft, are left to be dealt with by Parliament as it considers fit. With these limitations in mind I think the discussion of these two articles can be curtailed to a considerable extent and the matter might be disposed of quickly. I would suggest to Members to bear these considerations in mind when moving their amendments. We shall now take up the amendments of which I have received notice and I will take them up in the order in which they are in the list of the current session.

Dr. P. S. Deshmukh: Sir, this article on the question of citizenship has been the most ill-fated article in the whole Constitution. This is the third time we are debating it. The first time it was you, Sir, who held the view which was upheld by the House that the definition was very-very unsatisfactory. It was then referred to a group of lawyers and I am sorry to say that they produced a definition by which all those persons who are in existence at the present time could not be included as Citizens of India. That had therefore to go back again and we have now a fresh definition which I may say at the very outset, is as unsatisfactory as the one which the House rejected and I will give very cogent reasons for that view of mine.

The Honourable Dr. Ambedkar admitted that this was a sort of a provisional definition and detailed legislation was going to be left to Parliament. I quite agree with the objective, but I am afraid that the definition and the article that he has suggested would make Indian citizenship the cheapest on earth... It is sufficient to say that every person, wherever domiciled in this territory of India shall be entitled to be called a citizen of India.

Secondly, all these sub-clauses of this article will make Indian citizenship very cheap. I am sure neither the Members of this House nor the people outside would like this to happen. The first requirement according to this article is domicile. After that, all that is necessary according to (a) is that he should be born in the territory of India. This has no relationship whatsoever to the parentage. A couple may be travelling in an aeroplane which halts at the port of Bombay for a couple of hours and if the lady happens to deliver a child there, irrespective of the nationality of the parents, the child would be entitled to be a citizen of India. I am sure this is not what at least many people would like to accept and provide for. Indian citizenship ought not to be made so very easy and cheap.

Then sub-clause (b) says "either of whose parents are born in the territory of India". This is still more strange. It is not necessary that the boy or the girl should be born on the Indian soil. It is sufficient not only if both the father and the mother have been born in India but if even one of them, happens to be born on the Indian soil as accidentally as I have already pointed out, viz., a lady delivering a child in the course of an air journey through India. Under the proposed sub-clause (a) the child would be entitled to claim Indian citizenship and under (b) even the son of that child (which happened to be born so accidentally) can claim the same important privilege without any restriction and without any additional qualification whatsoever. Nothing more is necessary except that they should acquire a domicile.

According to sub-clause (c) Indian citizenship is obtainable by any person "who has been ordinarily resident in the territory of India for not less than five years". This has also no reference to parentage, it has no reference to the nationality or the country to which they belong, it has no reference to the purpose for which the person chose to reside in this country for five years. For aught I know he might be a fifth columnist: he might have come here with the intention of sabotaging Indian independence; but the Drafting Committee provides that so long as he lives in this country for five years, he is entitled so be a citizen of India. The whole House and the whole country is aware of the

way in which Indian nationals are treated all over the world. They are aware of the kind of colour prejudice that used to be there in England, the kind of persecution through which Indian citizens are going even now in South Africa, how they are persecuted in Malaya and Burma, how they are looked down upon everywhere else in spite of the fact that India is an independent country.

The House is aware how it is not possible except for the merest handful to obtain citizenship in America, although they have spent their whole lives there. I have known of people who have been there in America and holding various offices for fifteen, twenty and twenty-five years and yet their application number for citizenship is probably 10,50,000th. There is no hope of such a person getting his citizenship until the 10,49,999th application is sanctioned. In America Indians can obtain citizenship at the rate of 116 or 118 per annum. That is the way in which other countries are safeguarding their own interests and restricting their citizenship. I can well understand, if India was a small country like Ireland or Canada (which are held out as models for our Constitution) that we want more people, no matter what their character is or what the country's interests are. But we are already troubled by our own overwhelming population.

Under the circumstances how is it that we are making Indian citizenship so ridiculously cheap? ...I had asked the Honourable Commerce Minister (when Mr. C. H. Bhabha was in charge) a question, when sitting in the other Chamber, as to whether there was any register of foreigners coming to India. He said "No". I asked if there were any rules and regulations governing the entry into the country of people from foreign countries and he said there were none. I have no doubt the situation continues very much the same today. Such is the administration that we have. Is it then wise that we should throw open our citizenship so indiscriminately? I do not side any ground whatsoever that we should do it, unless it is the specious, oft repeated and nauseating principle of secularity of the State. I think that we are going too far in this business of secularity. Does it mean that we must wipe out our own people that we must wipe them out in order to prove our secularity that we must wipe out Hindus and Sikhs under the name of secularity, that we must undermine everything that is sacred and dear to the Indians to prove that we are secular? I do not think that that is the meaning of secularity and if that is the meaning which people want to attach to that word "a secular state". I am sure the popularity of those who take that view will not last long in India. I submit therefore that this article is unsatisfactory and worthy of being discarded as we did the previous article, because there is nothing that is right in it. If really we want a tentative definition we can have it from other people, who are probably wiser than us and that should be quite enough for us.

...In addition to this I have proposed that there should be some responsibility which ought to be shared by everyone who claims to be a citizen of India and for that purpose I have proposed amendment No. 29 that 'Every citizen of India shall enjoy the protection of the Indian State in foreign countries; and (b) be bound to obey the laws of India, serve the interests of the Indian communities defend his country and pay all taxes'. I would not like to press this very much because even this it must be possible to include in the Naturalisation Act, when we pass it. You have also suggested, Sir, that all these might be left to Parliament. In view of that I would not mind withdrawing this amendment. But I would like to move my other amendments. If, however, my whole article is accepted, then there would be no need to move the other amendments which deal with the wording of the article as proposed. Otherwise it will be necessary that those words to which I have objected ought to be omitted.

Mr. Naziruddin Ahmad: ...With regard to this amendment, the first part the body of the proposed article 6 is more or less verbal, but the proviso is new and I 'have suggested it simply to obviate the difficulties which would attend to the amendment of the Constitution itself. We are providing some rules of citizenship in the Constitution. By article 6 we authorize the Parliament to make further laws lest it be said later on if the Parliament does so, it would have the effect of amending the Constitution itself, because it is quite conceivable that Parliament may make laws which will undo or at least modify clauses which are under consideration. That would involve the amendment of the Constitution itself. We have in a similar context taken care to provide that these amendments which are merely of a mechanical nature and not likely to go into the root of the Constitution may be done by Parliament and we have provided in those cases as a matter of caution that these amendments made by Parliament shall not be deemed to be amendments of this Constitution within article 304. So any possible controversy that the amendments are amendments of the Constitution itself would lead to almost an impasse by setting in motion the entire apparatus of amending the Constitution which

would be highly inconvenient. On a small matter like this the matter should be left entirely to Parliament without it being considered to be an amendment of the Constitution itself. These are my amendments...

Shri Jaspal Roy Kapoor: (United Provinces: General):...Sir, this article 5 which relates to the definition of citizenship has had rather a chequered history. The Drafting Committee has placed before us for but consideration various drafts from, time to time, each draft being supposed to be an improvement on the previous one, but every time that it came before us for scrutiny and consideration, it was found to be defective and not comprehensive enough, and, therefore, it had to be sent back to the Drafting Committee for being recast and improved upon. Even during this Session one amendment after another has been pouring in from the Drafting Committee until we have before us the Draft as has been moved by Dr. Ambedkar yesterday. Let us see whether even this Draft is satisfactory enough. I am afraid even this is not satisfactory and is not comprehensive enough.

First of all, we find that it confines itself to defining Citizenship at the date of commencement of Constitution and makes no provision for the acquisition of the right of citizenship subsequent to that date. Of course under article 5(c) the right acquired on the day of the commencement of this Constitution will continue to rest with the citizens even thereafter, but with all that it makes no provision for acquisition of the right of citizenship subsequent to that date. It has been conveniently left over to be dealt with by Parliament. Now, the date of commencement of the Constitution is going to be under the schedule which has been thought of at present as 26th January, 1950. So it means that 26th January 1950 is going to be the deadline by which the right of citizenship should be acquired and no provision has been made for the acquiring of this right subsequent to the midnight of 26th January 1950. I consider this to be rather a very unsatisfactory state of affairs.

I can quite appreciate the view that it may not be very easy today to make an exhaustive definition of citizenship. It may not be possible to envisage at this stage as to what possible qualifications should be provided for the acquisition of the right of citizenship, and it should be left to Parliament to make a very comprehensive definition of citizenship; but I see no reason why we should not make an attempt, when it is easy enough—according to me—to provide for acquisition of this right during the period intervening the date of commencement of this Constitution and the date on which the Parliament may enact any new Law on the subject. Is it not very unsatisfactory that we should make no provision for all those persons who may be born after midnight of 26th January 1950, and should we not make any provision for acquisition of the right by those who may have been domiciled in this country and sometime after January 1950 may be completing the period of five years of residence? That seems to be an obvious lacuna. Lacs of persons would continue to be considered as non-citizens of this country between the date of commencement of this Constitution and the date when the new law will be made by Parliament, and the brunt of this difficulty will be felt even by several members of this House who have been recently married including even Honourable Ministers who may have children born immediately after 26th January 1950 and who will find themselves in the very unhappy and uncomfortable position of being parents of children who are not citizens of this country.

...I do not think it will be open to Parliament to enact any law by virtue of the powers conferred on it by article 6, which is in contravention of the provisions of article 5B. 5B, is a definite article laying down the qualifications for citizenship in respect of the persons mentioned therein. A definite article conferring the right of citizenship under the Constitution cannot, I think, be tampered with by any subsequent law made by Parliament. Be that as it may, to avoid the possibility of any ambiguity it is necessary either to have these words both in articles 5B and 5C or not to have them in any one of them. Having them only in article 5C may lead to the presumption that 5C only is subject to the provisions of any subsequent law on the subject and article 5B is not subject to any such subsequent law. My submission with regard to the point that I had raised originally is that we should amend article 5 in such a manner as to cover the cases also of those persons who are newly born of Indian parents on Indian soil after the 26th January 1950. I see absolutely no difficulty in my suggestion being immediately accepted. Even if it is accepted article 5 would not become an absolutely permanent definition of citizenship: that can be amended, varied or altered under article 6, as has just been pointed out by Mr. T. T. Krishnamachari.

I only want that the lacuna that is there must be filled in. Let it not be said that the period immediately following the auspicious day of 26th January 1950 was so inauspicious that persons born in this country after that date and before the enactment of a new law was so unlucky that children born therein were not citizens of this land by birth. I therefore, suggest very seriously and respectfully that article 5 be amended in the way I have suggested. This can be done merely by incorporating the two words "and thereafter" after the words "At the date of commencement of this Constitution". The other point that I would like to refer to is regarding article 5A. This article relates to those persons who have migrated to India after the partition. They are to be "deemed to be citizens of India" I particularly object to the retention in this article of the words "deemed to be." The article reads like this: "Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution." I do not know with what particular object these words "deemed to be" have been incorporated herein.



This article relates to the acquisition of the right of citizenship by persons who have migrated into India. I do not see any reason why they should not be considered after having migrated into India as citizens of India as of right, and why it should be suggested that we are conferring on them this right by way of grace, as it were. It seems to me that it is likely to be felt very seriously and bitterly by those of our brethren who took all the trouble and who underwent all that misery and agony by migrating from Pakistan to this dear and sacred land of theirs. All the while that they were on their way to this land, they were thinking of this beloved country of theirs, pining and praying to reach our borders, and immediately on reaching those borders, with a great sense of relief they cried out "Jai Hind", a cry which touched every one of us. They had such tremendous loyalty and affection for this country. They were so, eager to rush to this country,

to offer their loyalty to it, and yet we say that we are conferring on them this right of citizenship more by way of grace than by way of right. I do not see any-reason for it, Sir. On the contrary, I see very great reason that these words must be deleted and satisfaction given to our refugee brethren. In matters like this, it is always best to act gracefully and to give a psychological satisfaction to our refugee brethren.

I would, therefore, respectfully and earnestly suggest that these words might be deleted, for nothing is to be lost by the deletion of these words, and much is to be gained. Similarly, Sir, in article 5-B these words 'deemed to be' may be deleted, though it is more necessary to delete these words in article 5-A than in article 5-B. Then I turn to amendment No. 124 which I have already read out. It says that in the proposed new article 5A, after the word "who" a comma and, the words 'on account of civil disturbances or the fear of such disturbances,' be inserted. So after the incorporation of these words, article 5A would read thus: "Notwithstanding anything contained in article 5 of this Constitution, a person who, on account of civil disturbances or fear of such disturbances, has migrated to the territory of India....."

Now, Sir, the object of this amendment of mine is to bring it in line with certain other legislation already in force: I mean the legislation relating to the evacuee property. We have, Sir, not only at the Centre but also in several of the provinces in the country— almost every other province, excepting West Bengal, Assam and probably Madras too— an Evacuee Property Ordinance in force. According to that Ordinance, an evacuee has been defined as one who has left a territory because of civil disturbances or because of fear of such disturbances. It appears to me very rational and reasonable, Sir, that in a provision like article 5A, we must say what are the particular reasons which are guiding us for making a provision like this?

We must make it known definitely here that it was not our intention to confer the right of citizenship on anybody who wanted to migrate to this country; but we want to confer this right on such persons because of certain reasons, the particular reason being that such persons found it difficult to stay in the place of their original domicile. We must lay it down definitely what are the reasons which are guiding us in making a provision as is contained in article 5A. I therefore think that the inclusion of the words which I have suggested is very necessary to make our intention very clear.

Then, Sir, I have one thing more to say with regard to another amendment which has been moved by Shri T. T. Krishnamachari—that is amendment No. 131.... I say it is obnoxious even to this extent that Dr. Ambedkar did not originally consider it necessary and advisable and proper to associate, himself with this amendment. Why is it, Sir, that I consider it obnoxious? It says that those persons who migrated from India to Pakistan if, after 19th July 1948 they came back to India after obtaining a valid permit from our Embassy or High Commissioner, it should be open to them to get themselves registered as citizens of this country. It is a serious matter of principle. Once a person has migrated to Pakistan and transferred his loyalty from India to Pakistan, his migration is complete. He has definitely made up his mind at that time to kick this country and let it go to its own fate, and he went away to the newly created Pakistan, where he would put in his best efforts to make it a free progressive and prosperous state. We have no grudge against them.

Shri Brajeshwar Prasad (Bihar: General): May I ask my honourable Friend whether it is true that all those persons who fled over to Pakistan did so with the intention of permanently settling down there and owing allegiance to that State? Is it not a fact that they fled in panic?

Shri Jaspal Roy Kapoor: My honourable Friend Mr. Brajeshwar Prasad even today, on the 11th August 1949, doubts as to what was really the intention of those persons who migrated to Pakistan. I do not want to refer to this unpleasant subject, because the sooner we forget the bitterness of the past the better. But do we not know that Muslim Leaguers wanted division of the country and exchange of population, and that the number of persons belonging to the Muslim League was tremendously large? To our misfortune, only a handful of nationalist Muslims were opposed to the idea of Pakistan. The vast majority of the Muslims and most certainly those of them who went away to Pakistan immediately after Partition had certainly the intention of permanently residing in Pakistan. May be that some of them or quite a good number of them went to Pakistan at that particular time because of the disturbances here: but has my honourable Friend any doubt that even if there were no disturbances, many of them, almost all of them, would have gone away to Pakistan, because they were themselves demanding that there should be a transfer of population?.....

...Shri Jaspal Roy Kapoor: ...What I was submitting is that those persons who went away to Pakistan went definitely with the intention of settling down there permanently. They gave up their loyalty to this country and they gave their allegiance to the new country of Pakistan. Their migration was therefore complete and absolute and, therefore, the right of citizenship which they had before their migration is eliminated altogether. There have been cases of a large number of government employees, both in the higher and lower posts and particularly in the railways, who had opted of their own free will for Pakistan, even before Partition had taken place; and quite a large number of them, particularly railway employees, after going over to Pakistan came back to India finding that they had no scope for a decent existence in Pakistan, after obtaining valid permits. Could it be said in their case, as Mr. Brajeshwar Prasad is contending, that they had left this territory because of fear of disturbances?

...While on the one hand we confer on them the right of citizenship, the property which they had left behind at the time of migration will continue to be evacuee property. You will perhaps treat the question with fairness and generosity, and I agree that it must be treated with fairness and generosity, because every great nation must always adopt that attitude. With that attitude of fairness and generosity, I am afraid it will be well-nigh impossible for you to say to them that "Though we adopt you as citizens of this country, yet we would treat your property which you had left behind at the time of migration as evacuee property." That may not be possible and, therefore, property worth crores of rupees will be going out of your hands. I need not elaborate this point because the implications of this are very clear to every one of us and more particularly to those who are responsible for sponsoring this amendment. I would only say one word. While it is good to be generous, generosity loses much of its virtue when it is at the cost of others, because this generosity will be at the cost of nobody else but ultimately perhaps at the cost of our refugee brethren. Eventually it may or may not be so we do not know, but we will very much regret it, if that becomes the position. It is the refugees who are going to benefit from all such property and if we are going to make a free gift of all this property to those who migrated but have come back it is the refugees who are going to suffer and none else. I would, therefore beg of Mr. T. T. Krishnamachari and also Mr. Gopalaswami Ayyangar not to press this amendment...

...The Assembly then adjourned till Nine of the Clock on Friday, the 12th August 1949.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 12th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Sardar Bhopinder Singh Man (East Punjab: Sikh): Sir, in the 'definition of citizenship' which covers fairly extensive ground the view-point of Hindu and Sikh refugees has been met to some extent by the Drafting Committee whom I congratulate on that account. But, as usual, a weak sort of secularism has crept in and an unfair partiality has been shown to those who least deserve it. I was saying that the Hindu and Sikh refugees' view-point has been met to some extent, but not wholly. I do not understand why the 19th July 1948 has been prescribed for the purpose of citizenship. These unfortunate refugees could not have foreseen this date; otherwise they would have invited Pakistan knife, earlier so that they might have come here earlier and acquired citizenship rights. It will be very cruel to shut our borders to those who are victimised after the 19th July 1948. They are as much sons of the soil as anyone else.

This political mishap was not of their own seeking and now it will be very cruel to place these political impediments in their way and debar them from coming over to Bharat Mata. Our demand is that any person, who because of communal riots in Pakistan has come over to India and stays here at the commencement of this Constitution, should automatically be considered as a citizen of India and should on no account be made to go to a registering authority and plead before him and establish a qualification of six months domicile to claim rights of citizenship. There may be victims of communal frenzy in our neighbouring State hereafter; it is not only a possibility but a great probability in the present circumstances. Any failure of the evacuee property talks may lead to a flare-up against Hindus and Sikhs in Pakistan, and we must have a clause that these people will in no case be debarred from coming over and becoming citizens of this Union.

Article 5-AA lays down in the beginning. "Notwithstanding anything contained in 5 and 5-A, a person who has after 1st of March 1947 migrated from the territory of India to the territory now included Pakistan shall not be deemed to be a citizen of India."

The purpose of this clause will be completely nullified, because we who are refugees, due to this exchange of population which necessarily involves exchange of property, will be put to serious trouble. This securing of permit from the Deputy High Commissioner's office, I can assure you, is a cheap affair in its actual working. Besides these permits when they were issued, they were issued for various other purposes commercial trade, visiting, purposes etc. and never at any rate for citizenship. We should not give citizenship merely on the ground that a person is in a position to produce this permit, which he can secure from the Deputy High Commissioner's office somehow or other. I feel that if at all the permit system was intended to confer benefits of citizenship, then a particular authority specifically constituted for that purpose should have been there and that authority should have realized at the time of giving the permit the implication that this is not simply a permit to enable a person to visit India for trade or commerce but, that it will entail along with it citizenship rights also.

Apart from that, let us see how this will adversely affect evacuee property. Very recently an Ordinance has been promulgated throughout India that the property of a person who has migrated to Pakistan after March 1947 will accrue to the Custodian-General of India and that property will be, to that extent, for the benefit of the rehabilitation of refugees. The Indian Government is already short of property as it is and it is unable to solve the rehabilitation problem. The difference of property left by Indian nationals in Pakistan and the one left behind by Muslims, in India—this difference of property cannot be bridged. Pakistan has not given you a satisfactory answer how it is going to re-pay that difference. Naturally, our policy should have been to narrow down this difference of property. This clause, instead of narrowing down that difference, will widen it. Thus, while on the one hand we are unable to help refugees, on the other hand we are showing concession after concession to those people who least deserve it. I am told that these permits will be granted only in very rare cases. I am told that only 3,000 of them have been granted. Now, I do not know how much property will be restored back to those people who will come under this permit system—may be a crore or may be much less—a few lakhs. My point is this: that this property which will eventually go to these permit-holders will go out of the evacuee property and out of the hands of the Custodian-General and the very purpose of the Ordinance which you recently promulgated will be defeated.

The securing of a chance permit from the Deputy High Commissioner's office or any other authority should not carry with it such a prize thing as citizenship of India, or that the holders be considered to be sons of Bharat Mata. I will cite one instance. Meos from Gurgaon, Bharatpur and Alwar not very long time ago, on the instigation of the Muslim League, demanded Meostan and they were involved in very serious rioting against the Hindus—their neighbours at the time of freedom. Right in 1947 a serious riot was going on by these Meos against their Hindu neighbours. These Meos, under this very lax permit system, are returning and demanding their property. On the one hand, we are short of property and on the other hand, concessions are being given to them. This is secularism no doubt, but a very one-sided and undesirable type of secularism which goes invariably against and to the prejudice of Sikh and Hindu refugees.

I do not want to give rights of citizenship to those who so flagrantly dishonoured the integrity of India not so long ago. Yesterday Mr. Sidhva gave an argument that this proviso will not only cover Muslims who had gone to Pakistan and will return later on, but also other nationals, e.g., Christians. But may I inform him that there is not a single Christian living in India who has gone over to Pakistan and who will come back later on? It is only certain Christians now finding themselves living in a theocratic State and finding things were uncomfortable that will come in. It is not the case of those Christians who are gone over and then will come back, whereas this proviso relates to those people who were once nationals of India but at the inauguration of Pakistan went over to Pakistan for the love of it. I certainly grudge this right and concession being given to those people who had flagrantly violated and dishonoured the integrity of India, but, however, if Mr. T.T. Krishnamachari, or the Chairman of the Drafting Committee, or better still, Mr. Ayyangar who daily

carries on such protracted, patient and fruitless negotiations with Pakistan, can promise to us a certain strip of Pakistan territory to India in lieu of this increase of population and release of property, I will certainly not press my amendment.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim):

... I do not see any reason why, we should make mention of displaced persons from India to Pakistan who might return. The other qualifications are there. In this respect I submit that it must be noted that persons who migrated from one Dominion to another whether it is from Pakistan to India or India to Pakistan did so under very peculiar and tragic circumstances. If persons migrated from Pakistan to India, as has been suggested in many amendments, they did so on account of disturbances, civil disturbances or fear of disturbances. What applies to them might equally apply to persons who migrated from India to Pakistan. I do not see any reason why we should make such an invidious distinction.

Sir, now I would like to refer to two or three points discussed yesterday. Yesterday the discussion centered round two topics. The first was that the definition of citizenship was too easy and cheap, and Dr. Deshmukh even said that it was ridiculously cheap. Another Member remarked that it was commonplace and easy. Those were the remarks made by some honourable Members. It was Dr. Deshmukh who said if a foreign lady visiting India gives birth to a child say, in Bombay, her child will be eligible for citizenship of India. Such an interpretation, making the provision look ridiculous, is correct. The condition of domicile is very important. Domicile in the Indian territory is a prerequisite for citizenship. The other conditions are that the claimant or his parents should have been born in India and been here for five years. Therefore the interpretation put upon the provision by Dr. Deshmukh is not at all correct. In support of his observations he quoted the instances of the United States of America, Australia and South Africa. He said. "Look at those countries. They do not give citizenship rights to Indians even when they have been in those countries for thirty or thirty-five years."



May I put him the question whether we should follow their examples? Can we with any reason or pretence tell these persons: "Look here, you have not given citizenship right to Indians living in your countries for decades?" Can we complain against them if we are going to deny them citizenship rights here? Let us not follow those bad examples. There are persons in India owning dual citizenship. We in India are having dual citizenship. Whether it is possible or not, shall we now follow these retrograde countries like Australia in the matter of conferring citizenship rights and say that citizenship will not be available except on very very strict conditions? It is very strange that Dr. Deshmukh should contemplate giving citizenship rights only to persons who are Hindus or Sikhs by religion. He characterised the

provision in the article granting citizenship rights as ridiculously cheap. I would say on the other hand that his conception is ridiculous. Therefore let us not follow the example of those countries which we are condemning everywhere, not only here but also in the United Nations and complaining that although Indians have been living in those countries they have not been granted citizenship rights there. Now, Sir, my view is that I should congratulate the Drafting Committee for having brought out this article in this form. My criticism with regard to it is that it is not complete. In the first place, it does not deal with case, of person who might claim citizenship after the passing of this Constitution till such time as Parliament decides the question. ...I ask, why-? Why do you want a certificate? You have stated that if a person is born in India as defined in the 1935 Act he is a citizen of India. Why do you want a certificate from him when, he returns to India?

...The question of a person who migrates from Pakistan to India is a very touchy question.

People have become excited over it and also sentimental and aggressive. It is all unnecessary for us. Let us calmly consider this matter. What is the difference between a person who has gone away, to Pakistan under the same and similar circumstances as those which compelled persons remaining in Pakistan to migrate to India? I can understand the cases, where people went away to Pakistan or came back to India in order that they might live in Pakistan or Hindustan. There may be instances where for reasons of service, persons who are employed in the provinces of Pakistan coming back to India. There are cases of that kind. Sir, it is correct that when partition took place, when the June 3rd Agreement was entered into by both parties, it was expected that the minorities would remain where they were in the two Dominions and safeguards would be given to them. That was the honest expectation, that was the honest undertaking, but what happened was that after the transfer of power there was a holocaust, there were disturbances there were tragedies which compelled persons to migrate. Now, Sir, when these were the circumstances, is there any justification for us to draw any distinction— I would go to the length of saying any discrimination—between those persons who migrated to India and those who migrated to Pakistan under—the same circumstances?

Let us not forget what during his life-time Mahatma Gandhi was preaching. What did he say? He invited the persons who had gone to Pakistan to return to their homeland. So, Sir, let us look at this matter calmly. I know there are many persons who are affected in this Assembly, who have lost their houses, who have lost their property, who have lost their professions, their status, everything. I know they are really affected. They are really touchy about this matter, but let us calmly think, over these matters. Let it not be said that because certain Members of this Assembly were hard hit on account of the Partition and were in a very-bad mood, in their bad mood they have passed this article 5-AA. So far as it goes it is tolerable, as, if a person wants to resettle, he can make a citizen; but the real point is about those people who come back—I do not know whether people are coming back. I am very much surprised to hear that such persons who are coming back may be traitors. The arm of the law should be so strong, that it must be able to get at any man who becomes a traitor.

What would you do if one of your men becomes a traitor, a Communist and tries to overthrow the Government? So, to say those people coming to India might become traitors and therefore they should not be allowed to come back, that is no reason at all. With this temperament you will never become strong. That kind of psychology should be shunned, must be got rid of. Moreover, we are only legislating for the present. Parliament may in its discretion, if it thinks it to be necessary, deprive any person of his citizenship and expel him. Parliament is supreme in this matter. Therefore I do not see any reason why you should make a distinction between persons, who go from here to Pakistan and persons who come from Pakistan.

This is based on pure sentiment and does not inspire confidence not only among those persons but also amongst others. I would conclude by saying, let us consider this matter calmly and if we think that Mahatma Gandhi's teachings were correct, let us not go against his teachings and legislate like this, making a distinction between these two sets of people.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Sir, I wish to support the proposals made by Dr. Ambedkar as well as the amendment which Mr. Gopalaswami Ayyangar has proposed. All these articles relating to citizenship have probably received far more thought and consideration during the last few months than any other article contained in this Constitution. Now, these difficulties have arisen from two factors. One was of course, the partition of

the country. The other was the presence of a large number of Indians abroad, and it was difficult to decide about these Indians whether they should be considered as our citizens or not, and ultimately these articles were drafted with a view to providing for these two difficulties.

Personally I think that the provision made has been on the whole very satisfactory. Inevitably no provision could be made, which provided for every possibility and provided for every case with justice and without any error being committed. We have millions of people in foreign parts and other countries. Some of those may be taken to be foreign nationals, although they are Indians in origin. Others still consider themselves to some extent as Indians and yet they have also got some kind of local nationality too, like for instance, in Malaya, Singapore, Fiji and Mauritius. If you deprive them of their local nationality, they become aliens there. So, all these difficulties, arise and you will see that in this resolution we have tried to provide for them for the time being, leaving the choice to them and also leaving it to our Consul—Generals there to register their names. It is not automatic. Our representatives can, if they know the applicants to be qualified for Indian citizenship, register their names.

Now I find that most of the arguments have taken place in regard to people who are the victims in some way or other of partition. I do not think it is possible for you to draft anything, whatever meticulous care you might exercise which could fit in with a very difficult and complicated situation that has arisen, namely the partition. One has inevitably to do something which involves the greatest amount of justice to our people and which is the most practical solution of the problem. You cannot in any such provision lay down more or less whom you like and whom you dislike; you have to lay down certain principles, but any principles that you may lay down is likely not to fit in with a number of cases. It cannot be helped in any event. Therefore you see that the principle fixed fits with a vast majority of cases, even though a very small number does not wholly fit in, and there may be some kind of difficulty in dealing with them.

I think the drafters of these proposals have succeeded in a remarkable measure in producing something which really deals with 99.9 per cent. of cases with justice and practical common sense; may be some people may not come in. As a matter of fact even in dealing with naturalization proceedings, it is very, difficult to be dead sure about each individual and you may or you may not be taking all of them. But the chief objection, so far as I can see, has been to the amendment that Mr. Gopaldaswami Ayyangar has moved to the effect that people who have returned here permanently and in possession of permanent permits shall be deemed to be citizens of India. They are rejected and presumably their presence is objected to because it is thought that they might take possession of some evacuee property which is thus far being considered as an evacuee property and thereby lessen the share of our refugees or displaced persons, who would otherwise take possession of it.

Now, I think there is a great deal of misunderstanding about this matter. Our general rule as you will see in regard to these partition consequences, is that we accept practically without demur or enquiry that great wave of migration which came from Pakistan to India. We accept them as citizens up to some time, in July 1948. It is possible, of course that in the course of that year many wrong persons came over, whom we might not accept as citizens if we examine each one of them; but it is impossible to examine hundreds of thousands of such cases and we accept the whole lot. After July 1948, that is about a year ago, we put in some kind of enquiry and a magistrate who normally has prima facie evidence will register them; otherwise he will enquire further and ultimately not register or he will reject. Now all these rules naturally apply to Hindus, Muslims and Sikhs or Christians or anybody else. You cannot have rules for Hindus, for Muslims or for Christians only.

It is absurd on the face of it; but in effect we say that we allow the first year's migration and obviously that huge migration, was as a migration of Hindus and Sikhs from Pakistan. The others hardly come into the picture at all. It is possible that later, because of this permit system, some non-Hindus and non-Sikhs came in. How did they come in? How many came in? There are three types of permits, I am told. One is purely a temporary permit for a month or two, and whatever the period may be, a man comes and he has got to go back during that period. This does not come into the picture. The other type is a permit, not permanent but something like a permanent permit, which does not entitle a man to settle here, but entitles him to come here repeatedly on business. He comes and goes and he has a continuing permit. I may say; that, of course, does not come into the picture. The third type of permit is a permit given to a person to come here for permanent stay, that is return to Indian and settle down here.

Now, in the case of all these permits a great deal of care has been taken in the past before issuing them. In the case of those permits which are meant for permanent return to India and settling here again, a very great deal of care has been taken. The local officials of the place where the man came from and where he wants to go back are addressed; the local government is addressed, and it is only when sufficient reason is found by the local officials and the local Government that our High Commissioner in Karachi or Lahore, as the case may be, issues that kind of permit.

Shri Gopikrishna Vijayavargiya (Madhya Bharat): What is the number of such permits?

The Honourable Shri Jawaharlal Nehru: I have not got the numbers with me but just before I came here, I asked Mr. Gopalaswami Ayyangar; he did not know the exact figures and very roughly it may be 2,000 or 3,000. Now, normally speaking these permits are issued to two types of persons. Of course, there may be others but generally the types of persons to whom these are given are these. One is usually when a family has been split up, when

a part of the family has always remained here, a bit of it has gone away, the husband has remained here but has sent his wife and children away because of trouble etc.; he thought it safer or whatever the reason, he continued to stay here while his wife and children want to come back, we have allowed them to come back where it is established that they will remain here throughout. Normally it is applied to cases of families being split up when we felt assured that the family has been here and have no intention of going away and owing to some extraordinary circumstances, a bit of that family went away and has wanted to come back. It is more or less such general principles which have been examined and the local government and the local officials have recommended that this should be done and it has been done. That is the main case.

Then there are a number of cases of those people whom you might call the Nationalist Muslims, those people who I had absolutely no desire to go away but who were simply pushed out by circumstances, who were driven out by circumstances and who having gone to the other side saw that they had no place there at all, because the other side did not like them at all; they considered them as opponents and enemies and made their lives miserable and right through from the beginning they expressed a desire to come back and some of them have come back. My point is that the number of cases involved considering everything, is an insignificant number, a small number. Each individual case, each single case has been examined by the local officials of the place where that man hails from; the local government, having examined, have come to a certain decision and allowed that permit to be given. Now, it just does not very much matter whether you pass this clause or not. Government having come to a decision, any person after he has returned he is here; and having come here, he gets such rights and privileges, and all these naturally flow as a consequence of that Government's decision. It is merely clarifying matters. It does not make any rule.

Suppose a question arose in regard to a very little or an insignificant property is concerned, not only because the principles involved; but also because a certain family or a part of a family was split up but otherwise here held on to the property, so that the family that came back came to the property which is being held by the other members of the family and no new property is involved. No new property is involved and if some new property is involved, it is infinitesimal. It makes no great difference to anybody. From a person coming here after full enquiry and permission by the Government, after getting a permit, etc., certain consequences flow even in regard to property. If these consequences flow, if he is entitled to certain property, it is because he is a citizen of India and the local Government has decided, whether it is the East Punjab Government or the Delhi Government or the U.P. Government. You do not stop them by not having this amendment or by having it. You can stop them, of course, by passing a law as a sovereign assembly. It is open to you to do that; but it does not follow from this.

I would beg of you to consider how in a case like this, where after—due enquiry Government consider that justice demands, that the rules and conventions demand that certain steps should be taken in regard to an individual,—I do not myself see how—without upsetting every canon of justice and equity, you can go behind that. You may, of course, challenge a particular case, go into it and show that the decision is wrong and upset it, but you cannot attack it on 'Some kind of principle'.

One word has been thrown about a lot. I should like to register my strong protest against that word. I want the House to examine the word carefully and it is that this Government goes in for a policy of appeasement, appeasement of Pakistan, appeasement of Muslims, appeasement of this and that. I want to know clearly what that word means. Do the honourable Members who talk of appeasement think that some kind of rule should be applied when dealing with these people which has nothing to do with justice or equity? I want a clear answer to that. If so, I would only plead for appeasement. This Government will not go by hair's breadth to the right or to left from what they consider to be the right way of dealing, with the situation, justice to the individual or the group.

Another word is thrown up a good deal, this secular State business. May be beg with all humility those gentlemen who use this word often to consult some dictionary before they use it? It is brought in at every conceivable step and at every conceivable stage. I just do not understand it. It has a great deal of importance, no doubt. But, it is brought in all contexts, as if by saying that we are a secular State we have done something amazingly generous, given something out of our pocket to the rest of the world, something which we ought not to have done, so on and so forth. We have only done something which every country does except a very few misguided and backward countries in the world. Let us not refer to that word in the sense that we have done something very mighty.

I do not just understand how anybody possibly argue against the amendment that Mr. Gopalaswami Ayyangar has brought forward. To argue against that amendment is to argue definitely for in justice, definitely for discrimination, for not doing something which after full enquiry has been found to be rightly done, and for doing something which from the practical point of view of numbers or property, has no consequence. It is just dust in the pan. In order to satisfy yourself about that little thing, because your sense of property is so keen, because your vested interest is so keen that you do not wish one-millionth part of certain aggression of property to go outside the pool, or because of some other reason, you wish to upset the rule which we have tried to base on certain principles, on a certain sense of equity and justice. It will not be a good thing. I appeal to the House to consider that whether you pass this amendment of Mr. Gopalaswami Ayyangar or not, the fact remains that this policy of the Government has to be pursued and there is no way out without upsetting every assurance and every obligation on the part of the Government every permit that has been issued after due enquiry.

Again, so far as this matter is concerned, please remember that the whole permit system was started sometime in July 1948, that is to say after large-scale migration was over completely. To that period, from July 1948 up till now, this amendment refers to in a particular way, that is to say, it refers to them in the sense that each such person will have to go to a District Magistrate or some like official and register himself. He cannot automatically become a citizen. He has, to go there and produce some kind of prima facie etc., so that there is a further sitting. He has to pass through another sieve. If he passes, well and good; if not, he can be rejected even at this stage. The proposals put forward before the House in Mr. Gopalaswami Ayyangar's amendment are eminently just and right and meet a very complicated situation in as practical a way as possible.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, after the lucid exposition of the subject by Dr. Ambedkar in his introductory remarks and the very clear statement of policy and principles by the Prime Minister, I do not propose to take the time of the House with a long speech. I may explain briefly what I consider to be the main principle, of the articles that have been placed before the House. The object of these articles is not to place before the House anything like a code of nationality law. That has never been done in any State at the ushering in of a Constitution. A few principles have no doubt been laid down in the United States Constitution but there is hardly any Constitution in the world in which a detailed attempt has been made in regard to the nationality law in the Constitution. But, as we have come to the conclusion that our Constitution is to be a republican constitution and provision is made throughout the Constitution for election to the Houses of Parliament and to the various assemblies in the units, and for rights being exercised by citizens, it is necessary to have some provision as to citizenship at the commencement of the Constitution. Otherwise, there will be difficulties connected with the holding of particular offices, and even in the starting of representative institutions in the country under the republican constitution. The articles dealing with citizenship are, therefore, subject to any future nationality or citizenship law that may be passed by Parliament.

Parliament has absolutely a free hand in enacting any law as to nationality or citizenship suited to the conditions of our country. It is not to be imagined that in a Constitution dealing with several subjects it is possible to deal with all the complicated problems that arise out of citizenship. The question has been raised regarding what is to be the status of married women, what is to be the status of infants or in regard to double nationality and so on. It is impossible in the very nature of things to provide for all those contingencies in the Constitution as made by us.

...I shall just briefly refer to the principles underlying each one of these articles. As against article 5(1) a point has been made by some of the speakers that it concedes the right of citizenship to every person who is born in the territory of India and that is rather an anomalous principle. I am afraid the critics have not taken into account that our article is much stricter, for example, than the Constitution of the United States. Under the Constitution of the United States if any person is born in the United States he would be treated as a citizen of the United States irrespective of colour or of race.

Difficulty has arisen only with regard to naturalisation law. We have added a further Qualification viz., that the person must have a permanent home in India. I am paraphrasing the word 'domicile' into 'permanent home' as a convenient phrase. Then clause (c) of article 5 takes notes of the peculiar position of this country. There are outlying tracts in India like Goa, French Settlements and other places from where people have come to India and have settled down in this country, regarding India as a permanent home, and they have contributed to the richness of the life in this country. They have assisted commerce and they have regarded themselves as citizens of India. Therefore to provide for those classes of cases it is stated in clause (c) that if a person is continuously resident for a period of five years and he has also his domicile under the opening part of article 5, he would be treated as a citizen of this country. Then towards the end it is stated that 'he shall not have voluntarily acquired the citizenship of any foreign State. If a citizenship is cast upon a person irrespective of his volition or his will, he is not to lose the rights of citizenship in this country but if on the other hand he has voluntarily acquired the citizenship of another State, then he cannot claim the right of citizenship in this country. That is the object of the latter part of article 5. ...As has been pointed out by the Prime Minister...it is not possible to satisfy everyone, and it is not possible to arrive at a formula which will satisfy everyone affected. With these words, I support the articles as placed by Dr. Ambedkar and also the amendments moved by my Friends Shri Gopalaswami Ayyangar and Shri T.T. Krishnamachari.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, Sir, I rise to support the articles moved by Dr. Ambedkar; and I want especially to accord my hearty approval to the proviso moved by Shri T.T. Krishnamachari and accepted by Dr. Ambedkar now and which has been incorporated in the articles moved by Dr. Ambedkar. This article and especially that proviso is a tribute to the memory of the great Mahatma who worked for the establishment of good relations between Hindus and Muslims. Sir, the proviso invites all the Muslims who left this country, to come back and settle in this country, except those who are agent provocateurs, spies, fifth columnists and adventurers. I wish the proviso had been more wide.

I wish all the people of Pakistan should be invited to come and stay in this country, if they so like. And why do I say so? I am not an idealist. I say this because we are wedded to this principle, to this doctrine, to this ideal. Long before Mahatma Gandhi came into politics centuries before recorded history, Hindus and Muslims in this country were one. We were talking, during the time of Mahatma Gandhi that we are blood-brothers. May I know if after partition, these blood-brothers have become strangers and aliens? Sir, it has been an artificial partition. I think that the mischief of partition should not be allowed to spread beyond the legal fact of partition. I stand for common citizenship of all the peoples of Asia, and as a preliminary step, I want that the establishment of a common citizenship between India and Pakistan is of vital importance for the peace and progress of Asia as a whole.

Sir, the proviso has been attacked by Shri Jaspat Roy Kapoor on the ground that it will provide an opportunity for spies and adventurers to come to this country. But my view is that Muslims of this country are as loyal to the State as Hindus. On the other hand, I agree with the statement made by the Prime Minister at a different place that the security of India today is menaced not by Muslims but by Hindus. Another point that was raised by my Friend Shri Jaspat Roy Kapoor

was that we must have proper regard for the economic consequences of the proviso. I wish this argument had not been raised.

We are not a nation of shopkeepers; we cannot dethrone God and worship Mammon. Whatever the economic consequences may be we want to stand on certain principles. It is only by a strict adherence to certain moral principles that nations progress. The material development of life is no index to progress and civilization. I do not think it is politics or statesmanship to subordinate sound political principles to cheap economics. I see no reason why a Muslim who is a citizen of this country should be deprived of his citizenship at the commencement of this Constitution, specially when we are inviting Hindus who have come to India from Pakistan to become citizens of this country. People who have never been in India but have always lived in the Punjab and on the frontier have come and become citizens of this State; why cannot a Muhammadan of the frontier be so when we have always said that we are one?

It has also been asserted that it was the fact of partition that was responsible for mass migration. I do not agree with that proposition. The late lamented Mr. Jinnah stood for the principle of exchange of population. We disagreed. The implication of our rejection of that demand was that the fact of partition would have no bearing on the question of loyalty of Muslims of this country. Partition or no partition, the Muhammadan will remain loyal to this country. That was the meaning of the rejection of the demand of Mr. Jinnah. And how can we say that the fact of partition was responsible for mass migration? It must be realised that it was the riots and the disturbances in certain parts of the country which were responsible for mass migration. Even now the relations between the two Governments have not become stabilised; and it is only with the establishment of good relations between the two States that there can be security and people who belonged to this country and were citizens of this country would come back and settle in this country.

Maulana Mohd. Hifzur Rehaman (United Provinces: Muslim): Mr. President Sir, article 5 as amended by Dr. Ambedkar is before us in its present form. So far as I have seen and examined it I understand that sufficient efforts 'have been made to explain at considerable length the rights of citizenship which are due to a person in the capacity of a citizen. Two things have been kept in view. On one hand provision has been made that a citizen should be entitled to those rights which are due to him as a citizen. On the other hand the other thing 'has also been kept in view and it has been considered that in case any person tries to become a citizen by unlawful means, necessary safeguards must be provided against that. I think this step is praiseworthy and to me it appears desirable. In this connection the principle and policy which have been laid out by honourable the Prime Minister and honourable Shri Gopalaswami Ayyangar gives us great satisfaction.

In spite of this I feel the absence of two things and I desire to draw the attention of the House towards these. Of course details are not available regarding those people who have come with permanent permits. But it has also been explained now that those people who have come with permanent permits will be regarded as citizen in a certain way. The other thing which deserves our attention is that perhaps in the date which has been mentioned here no notice has been taken of the notification of the Government of India in which from time to time the government offered facilities to those coming from Pakistan. In article 5 three or four clauses have been made which do not impose restrictions and conditions, and these have been accepted and these four classes will be considered as citizens in this way. Further in 5A where it has been laid down as to who else will be considered as citizen, it has been said that those people who have come before 19th July, 1948, will be regarded as citizens. But those who have come later on have got to get themselves registered by applying. The condition of registration has been made necessary here.

... You know well that thousands of men have come back to Indian Union by now. A large number of them had come back soon after the disturbances. Of course there are people also who came back rather late, because they had difficulties in getting their permits. They were obliged to come late, for the simple reason that they could not get their permits in time. We have had experience that those persons who after coming back from Pakistan applied to the local officials for their permanent residence in Indian Union, and cancellation of their permit under the notification of the Government of India, were not made permanent residents and their permits were not cancelled within the fixed period. It is our experience that the administration often creates such difficulties. Such people were assured in various ways

by the District Magistrates concerned that their cases were under inquiry and that their applications were with the police for investigation and after receiving the report they would be informed about the acceptance or rejection of their applications.

But what came out was this, that even after the lapse of three or four months they did not receive any reply. And when the Government of India issued another notification then the District Magistrates of various Provinces, without informing such persons about the acceptance or rejection of their applications, asked them to go back in view of the said notification. In this way the applications of those persons were rejected, who had come here with one, two or three months permit for the purpose of acquiring permanent citizenship: and instead of granting or rejecting their request, they were asked to go back at once. By doing so, not hundreds but thousands of people were put to difficulties and these people were not given even ten or fifteen days time. The result of this was that many persons in U.P., East Punjab and other Provinces were arrested on the ground that they were going back after the expiry of the fixed period. In fact no action was taken on the applications of those persons who had come here to acquire the right of citizenship and had stayed here for two or three months. At last Government of India issued another notification. And after that these applicants were referred to this notification and were asked to go back. They requested for ten or fifteen days time, but they were not given even that much time. And anyone who over stayed with a view to repeat the request was sent to jail. Some persons are still locked up in jails. ...I consider it against justice and I think that it would create good many difficulties for thousands of bona fide citizens. By giving them permanent permits you have allowed them to come and live here.

But in this Constitution which you are framing here, you are forcing them to apply for registration. On these applications local officials would make enquiry and after that they would tell them whether they are fit to be registered as citizens or not. Do you know that thousands of Meos who had left their houses on account of the disturbances have come back? If they are treated like that, would it be fair? For this, reason it ought to be clarified in 5-AA, and the condition for registration should be so fixed that local officials may not have the power to cancel it. After this article has been promulgated and this principle has been accepted a declaration, in most clear terms, should be made, and a notification issued to the effect that no registration would be cancelled. This formality would have to be undergone only for the sake of compliance with the rules. They should get them registered as they have come afterwards, but it, in that, a loop-hole for making an enquiry about them is left, then I am totally against it. Surely, it needs to be amended and revised to afford an opportunity to those people, who were residing here but due to disturbed conditions had gone away and have now returned back not to dispose of their property etc., but to settle down here again. All sorts of facilities in this respect should be given to the poor, to the Meos, and to those, who were residing in different parts of India.

These will include not only Muslims, but non-Muslims also-like Christians. If that is not done, then they would have to face many difficulties, they will have to suffer at the hands of local officials. Hence, I want that it should contain these two amendments to the article 5 A which should be so amended that the last date fixed by the Government notification, i.e., 19th July, should be changed to September 11, 1948. Though this chance makes a difference of only a month or a month and a half yet that would enable thousands of people to acquire the rights of citizenship, which they ought to get....

Mr. President: I may inform Members that I propose to close the discussion of these articles at a quarter past twelve, when I would call upon Dr. Ambedkar to reply and then the amendments will be put to vote.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, it is rather unfortunate for me that I should have come to speak at a moment when the debate has been raised to a very high level by my honourable Friends, Shri Brajeshwar Prasad and Pandit Hirday Nath Kunzru. They were speaking in terms of Hindu-Muslim unity. Indo-Pakistan unity and all the rest of it. But, I am here to state some plain facts without any fear, and without any desire for favour. I would ask the honourable Members of this House to judge for themselves after hearing the facts whether we have to support the amendment of Pandit Thakur Das Bhargava or not. The same amendment was also tabled by my honourable Friend Mr. Jhunjhunwala, (he spoke on it 'yesterday') and was tabled by me who is supposed to represent the Assamese Hindus, by my Honourable Friend Mr. Basu Matari who represents the tribal people in Assam and by my Friend Mr.

Laskar, who represents the Bengal Scheduled Castes of Assam. These are the three different groups of persons who have supported Pandit Bhargava. I would, therefore, once more request the House to consider carefully the actual facts, not merely suppositions, not merely theories or, wish as to how certain things ought to be done and to decide for themselves whether to support this amendment or the amendment of Dr. Ambedkar.

By this amendment, I want citizenship rights for those persons—I am particularly concerned with Assam—who had come from East Bengal because they found things impossible for them there. It may be argued in a narrow way that very one who has come from East Bengal was not really actuated by fear or disturbance or actually living in a place where disturbance had taken place. Can anyone imagine for a moment that there is no fear of disturbance in the winds of these East Bengal people who had come over to West Bengal or Assam? Was there any sense of security in their minds? Has that sense of Security, now after a period of two years, been enhanced by the fact that Pakistan has been converted into a theocratic State?

.. Secondly... I want citizenship rights to this class of people, who have originally belonged to Sylhet in the province of Assam, who, long before the partition, have come to the Assam Valley as a citizen of that province and are staying in the present province of Assam. I ask, have they got citizenship or not? These people belonged to the, province of Assam, Sylhet. They had come to Assam on some business or other; they had come as government servants or as employees of businessmen. They had not migrated; no question of migration arose at that time. They had come on business; they are now in Assam; they want to be in Assam. Have they got citizenship rights or not? I want citizenship rights for them. I want to make it perfectly clear that I want citizenship-rights for those people of East Bengal who had gone over to West Bengal or Assam out of fear of disturbance in the future or from a sense of insecurity and also for those people who have come over from Sylhet, who at the time of coming had no fear of disturbance or anything of that kind, but who, on account of fear of disturbances now have decided to live here.

At the same time, I also have the temerity, to say in this House that I would exclude those persons who came only three years ago, who set up the civil disobedience movement forcibly occupied land which was not meant for them, and forced the benevolent and benign Government to have recourse to the military to keep peace in the province I should be the last person to say, and I hope everyone has honestly acknowledged that, that class of persons should be any mean be granted citizenship rights in the province. I also make it quite plain that. I desire to exclude those persons who surreptitiously introduced themselves into my province and who now having mixed themselves with their own brethren, now desire to have citizenship rights, not out of any sense of insecurity on their part, in their own provinces but with a desire to exploit more from that province of Assam. I desire to exclude these people because they had not long ago set up the struggle for Pakistan, they had not long before taken an active part in compelling the politicians of India to agree for Partition; they have their own property and are living peacefully on their own property; not only that, they have brought about such a state of things that they have been able to purchase property for mere nothing, property which belongs to the minority who had come out of fear.

Shri Mahavir Tyagi (United Provinces: General): What is their number, please?

Shri Rohini Kumar Chaudhuri: I do not know. I would ask then honourable Member to listen to me. I am making things quite plain for myself. There need not be any doubt or interruption of my speech. I want make it quite clear that I do not want citizenship rights to be granted to those people who are not enjoying their own property, but enjoying the property of the minority community who have come away, in some places paying nothing and in other cases paying only a nominal price. I do not want these persons to get citizenship rights at all. I do not know how you have framed this amendment; how defective is the amendment of Pandit Thakur Das Bhargava or how beautiful is the amendment of Dr. Ambedkar. I do not want to waste the time of the House by an interpretation of that. I only want that those classes of persons whom I have mentioned should be included and should get citizenship rights and those classes, of persons whom I want to exclude should not get rights of citizenship. If you adjust them in the light of the facts that I have mentioned, let me see after going through them whether these conditions are satisfied or not. It all depends upon the definition of the word 'migration'. Migration has been defined just now by my Friend who had preceded me. He said,

migration means that a person leaves a particular place, having disposed of or having abandoned property which he has and has come and lived in some other place with a view to live there. If that definition is correct, as I am constrained to think that it is correct, if you read Dr. Ambedkar's amendment, you will find exactly that what I want shall not take place and what somebody else, wants will take place.

Now if you define the word migration, according to Dictionary it means mere moving from one place to the other or in the case of birds it is moving times of season from one place to the other. But to my mind the definition which has been given by Mr. Kunzru is the most reasonable definition. If you act upon that you will find the people from Sylhet when it was in the province of Assam and those who came to Assam either as Government servant or businessmen they had not migrated in the sense the word is understood. Therefore they will not fall under the definition of Dr. Ambedkar. They will be automatically excluded. It is for this reason that Pandit Bhargava has given this amendment that those people who were domiciled in India under the Government of India Act 1935 would automatically be included as citizens if they are prevented from going back now for fear. Those people who went to Assam for service or business long before Partition, they cannot be said to have migrated. Now they are unable to go back to their own homes for fear of disturbance. If they remain they will not get the citizenship rights under Dr. Ambedkar's amendments. Even as things stand at present they do not get admission for their children in the colleges as they do not fulfil certain conditions re domicile of the Province. In order to be domiciled in a province they have to live there for ten years and have their own house and land. What will be their condition now? If under this definition they would not get citizenship either, what will be their position? Unless Dr. Ambedkar assures us on the authority of his knowledge of English words and English legal phraseology that the 'migration' will include also such persons, then I submit that this amendment of Pandit Bhargava will have to be accepted.

Many persons belonging to Pakistan are coming who have no insecurity there and who can have their vocation and service. I am stating only facts. What is the position of minorities in East Bengal? They cannot get any Government Service. No person of minority community holds even a junior post there. Go to Assam and you will find high positions like the Secretary of Finance Education etc. are held by minorities. Take the case of business organisations and insurance companies in East Bengal. Many insurance companies have closed their branches there and come away to India, and so where is the vocation for these minorities? Even doctors have been denied patronage. Even permits by which the majority of business is done are not given to the members of minority community in East Bengal. Then, what is the reason why the people of that majority community in East Bengal who have all these advantages should come to Assam? The reason is to exploit and get some advantages. Are you going to encourage this? You will be surprised to learn that the Government of Assam have requested the Government of India to give them the authority to issue permits to restrict such entries, but they have been denied. I stand corrected if my information is wrong. Honourable Friend Pandit Kunzru and other honourable Members of this House must have read in newspapers that in a meeting of the Muslim League at Dacca it was said with some, regret—I hope it was with some real regret that about three lakhs of Muslims had migrated from East Bengal on account of some economic difficulty. Now, you imagine, if three lacs is the figure which is given by the Muslim League in East Bengal, what must have been the real figure of people who have been infiltrating like this. Every province would like to be prosperous but it should not be at the cost of other persons. If you wish to govern a province properly, you should always try to see that the balance of the population is not so much disturbed and you, should see that you do not give citizenship to persons whose presence in that province would be undesirable and prejudicial to the interests of the Dominion of India. That is the test I would apply to these cases.

The main condition which ought to be accepted to draw up an article of this kind is absolutely wasted if you are going to give citizenship right to each and everybody irrespective of the fact whether they are likely to be good citizens or not. Sir, I have said things quite frankly, and I know some honourable Members will be dissatisfied with me. But I have no doubt at all in my mind that the people of all communities in my province, including Muslims who belong to Assam, will absolutely agree with me. Muslims who have made Assam their home will agree with me. But people who have newly come there, expecting to be in a position to create a barrier to the proper and smooth administration of that province, I know, will resent the remarks which I have made. I quite see that I am subjected to a lot of misunderstanding. Some people have interpreted the amendment which I have tabled as an amendment which aims against the entry of Bengalee

Hindus into Assam. That is the interpretation which some friends of mine have unfortunately put on the amendment.

I may also remind you that in my own province a number of no-confidence resolutions have been passed against me, because as the adviser of the refugees I had advocated the cause of East Bengal Hindu refugees. And it will be of interest to note that most of these people who have no-confidence in me belong to ladies' associations. Of course my honourable Friend Dr. Ambedkar will say that I should not worry, because women will always be woman: and I also console myself with that thought. I have never been a persona grata with the women of this country or with the women of any country; and at this age I can very easily endure the ordeal of being not a persona grata with the ladies section of the people of this country. But leaving aside the ladies organisations, I only wish that the reasonable men should consider this question in proper perspective. That is my purpose. I will be satisfied if reasonable men support me. If they support Pandit Thakur Das Bhargava, not only will the welfare of my province be safeguarded, not only will the interest of East Bengal refugees be safeguarded but also ultimately it will be to the general welfare of India. You will have a province which will be absolutely loyal, which will be absolutely faithful to the government of the Province and which will be unanimously faithful to the Dominion of India. If you do not accept Pandit Thakur Das Bhargava's amendment, and if you do not bring in any other amendment to the same effect, you will expose your frontier; you will expose that province and that province will become a source of great danger to you. Already I have been to Cachar and I have seen in that district, from which crossing the Barak river you come into India, there is trouble; and if this amendment of Dr. Ambedkar is accepted, this district of Cachar will be entirely one district of Pakistan, and who will be responsible for giving one district which should have been kept in our province and which was retained after a good deal of fight but which will be sent to Pakistan? It will be this amendment moved by Dr. Ambedkar.

The Honourable Shri N. Gopaldaswami Ayyangar (Madras: General): Sir, I do not think I would make a speech covering all the draft articles on this question of citizenship. They have been dealt with very fully by various speakers already. I would confine myself, only to two particular questions that have been the subject of much discussion in the course of this debate. The first thing that I would take up is the question of persons who migrated from India to Pakistan and subsequently changed their mind and applied for coming back to India, to their own old homes and lands, whether in cases of that description, they should be treated on the same footing as persons who have merely migrated from Pakistan to India...

...Mr. President: * [We have already devoted more than nine hours to a discussion of this question.] ... I do not think any useful purpose will be served by further speeches. The amendments are all there before the Members; they are free to vote in favour of any amendment they like.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, it has not been possible for me to note down every point that has been made by those who have criticised the draft articles which I have moved. I do not think it is necessary to pursue every line of criticism. It is enough if I take the more substantial points and meet them. My Friend, Dr. Deshmukh said that by the draft articles we had made our citizenship a very cheap one. I should have thought that if he was aware of the rules which govern the law of citizenship, he would have realised that our citizenship is no cheaper than would have been made by laws laid down by other countries... The points of criticism with which I am mostly concerned are those which have been levelled against those parts of the articles which relate to immigrants from Pakistan to India and to immigrants from India to Pakistan.

With regard to the first part of the provisions which relate to immigrants coming from Pakistan to India, the criticism has mainly come from the representatives of Assam particularly as voiced by my Friend Mr. Rohini Kumar Chaudhuri. If I understood him correctly his contention was that these articles relating to immigrants from Pakistan to India have left the gate open both for Bengalis as well as Muslims coming from East Bengal into Assam and either disturbing their economy or disturbing the balance of communal Proportions in that Province. I think, Sir he has, entirely misunderstood the purport of the articles which deal with immigrants from Pakistan to India. If he will read the provisions again, he will find that it is only with regard to those who have entered Assam before 19th July 1948, that they have been declared

automatically so to say, citizens of Assam if they have resided within the territory of India. But with regard to those who, have entered Assam, whether they are Hindu Bengalees or whether they are Muslims, after the 19th July 1948, he will find that citizenship is not an automatic business at all.

There are three conditions laid down for persons who have entered Assam after the 19th July 1948. The first condition is that such a person must make an application for citizenship. He must prove that he has resided in Assam for six months and, thirdly, there is a very severe condition, namely that he must be registered by, an officer appointed by the Government of the Dominion of India. I would like to state very categorically that this registration power is a plenary power. The mere fact that a man has made an application, the mere fact that he has resided for six months in Assam, would not involve any responsibility or duty or obligation on the registering officer to register him. Notwithstanding that there is an application, notwithstanding that he has resided for six months, the officer will still have enough discretion left in him to decide whether he should be registered or he should not be registered. In other words, the officer would be entitled to examine, on such material as he may have before him, the purport for which he has come, such as whether he has come with a bona fide motive of becoming a permanent citizen of India or whether he has come with any other purpose.

...I should like, therefore, to re-state what the articles say. According to the provisions which relate to those who are immigrants from India to Pakistan, anyone who has left India after the first March 1947, barring one small exception, has been declared not to be citizens of India. That, I think, has got to be understood very carefully. It is a general and universal proposition which we have enunciated. It is necessary to enunciate this proposition, because on the rule of International Law that birth confers domicile, a person has not to acquire what is called domicile of origin by any special effort either by application or by some other method or by some kind of a grace. The origin of domicile goes with birth. It was felt that those persons who left India, but who were born in India, notwithstanding that they went to Pakistan, might, on the basis of the rule of international Law, still claim that their domicile of origin is intact. In order that they should not have any such defence, it is thought wise to make it absolutely clear that anyone who has gone to Pakistan after the 1st March—you all know that we have taken 1st March very deliberately, because that was the date when the disturbances started and the exodus began and we thought that there would be no violation of any principle of International justice if we presumed that any man who, as a result of the disturbances went to Pakistan with the intention of residing permanently there, loses his right of citizenship in India. It is to provide for these two things that we converted this natural assumption into a rule of law and laid down that anyone who has gone to Pakistan after 1st March shall not be entitled to say that he still has a domicile in India.

According to article 5 where domicile is an essential ingredient in citizenship, those persons having gone to Pakistan lost their domicile and their citizenship. Now I come to an exception. There are people who, having left India for Pakistan, have subsequently returned to India. Well, there again our rule is that anyone who returns to India is not to be deemed a citizen unless he satisfies certain special circumstances. Going to Pakistan and returning to India does not make any alteration in the general rule we have laid down, namely that such a person shall not be a citizen. The exception is this: as my honourable Friend Shri N. Gopaldaswami Ayyangar said, in the course of the negotiations between the two Governments, the Government of India and the Government of Pakistan, they came to some arrangement whereby the Government of India agreed to permit certain persons who went from India to Pakistan to return to India and allowed them to return not merely as temporary travellers or as merchants or for some other purpose of a temporary character to visit a sick relation, but expressly permitted them to return to India and to settle permanently and to remain in India permanently. We have got such persons in India now. The question therefore is whether the rule which I have said we have enunciated in this article, not to permit anyone who has gone from India to Pakistan after the 1st March 1947, should have an exception or not. It was felt, and speaking for myself I submit very rightly felt that when a Government has given an undertaking to a person to permit him to return to his old domicile and to settle there permanently, it would not be right to take away from that person the eligibility to become a citizen...

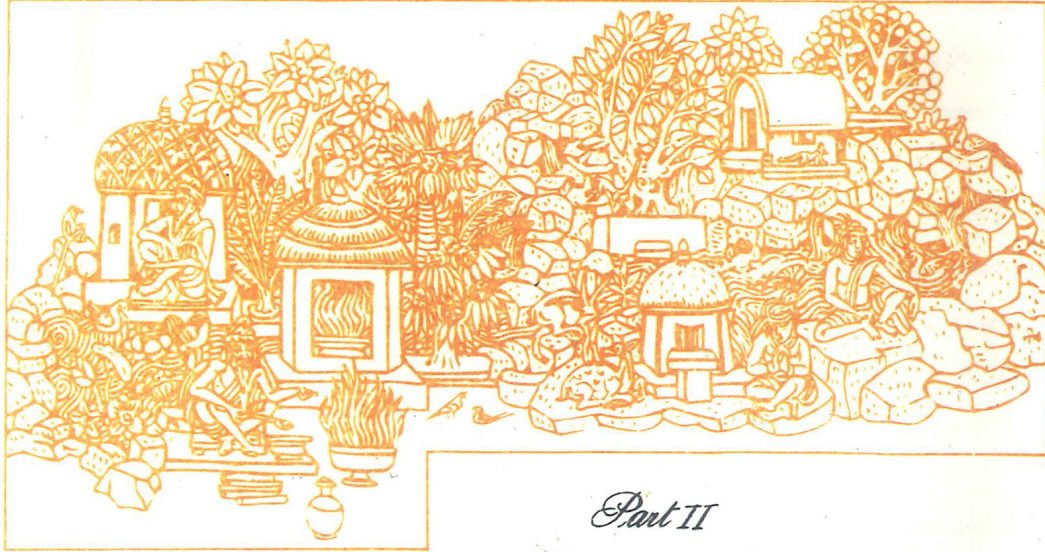
Mr. President: Now, I will have to put the various amendments to the vote. It is somewhat difficult to decide the order in which these amendments should be taken up...

The Honourable Dr. B. R. Ambedkar: Let all of them be withdrawn...

Mr. President: I will put the amendments to the vote in the order in which they were moved by the various speakers and if any honourable Member wishes to withdraw any amendment, he may express his desire to that effect...

[At the end of nearly two and a half days of spirited discussion, all the 21 amendments proposed by various members were negatived by the Constituent Assembly and the draft of Articles 5 and 6 was adopted as proposed by Dr Ambedkar was adopted. Ed.]





Part II Citizenship

Citizenship at the commencement of the Constitution.

5. At the commencement of this Constitution, every person who has his domicile in the territory of India and—

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement,

shall be a citizen of India.

Rights of citizenship of certain persons who have migrated to India from Pakistan.

6. Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
- (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been

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registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Rights of citizenship of certain migrants to Pakistan.

7. Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Rights of citizenship of certain persons of Indian origin residing outside India.

8. Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Persons voluntarily acquiring citizenship of a foreign State not to be citizens.

9. No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

*Continuance of the
rights of citizenship.*

10. Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

*Parliament to regulate
the right of citizenship
by law.*

11. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

70 Years of Citizenship and the Constitution:¹

Sanjay Hegde, Senior Advocate, Supreme Court of India

Three score and ten years ago, we the people of India, made a tryst with our Constitution. Now the time has come, when we are called upon to redeem our pledge, maybe not wholly or in full measure but possibly very substantially. Today I cannot help but recall, the bleak prognostications were offered as we in 1950, set out upon our journey of citizenship. Winston Churchill on 20th September 1947 had warned “How can you suppose that the thousand-year gulf which yawns between Moslem and Hindu will be bridged in 14 months? The Indian parties and political classes do not represent the Indian masses. No arrangement can be made about all the great common services. All will be the preparation for the ensuing Civil War. In handing over the government of India to the so-called political classes you are handing over to men of straw of whom in a few years, no trace will remain”

Churchill may have had reasons for his pessimism. We Indians after all had no experience of being citizens. We had all along been subjects of various Rajahs, Nawabs or of the British King Emperor. We were now being called upon now to be citizens of an independent republic. Having fought for freedom from British rule, and having secured it, we had begun the task of independently governing ourselves under a constitution. We entrusted the task to a Constituent Assembly, whose debates continue to illuminate and enlighten us even today.

The constituent assembly laboured hard from 9th December 1946 to 26th November 1949 to produce a document that did not meet with immediate universal acclaim. Mr K Hanumanthayya expressing his disappointment about the lack of indigeneity in the Indian Constitution said- “we wanted the music of Veena or Sitar, but here we have the music of an English band”. Nevertheless a mammoth task had been accomplished. As Dr Ambedkar narrated -“The Draft Constitution as prepared by the Constitutional Adviser as a text for the Draft Committee to work upon consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the total number of amendments actually moved in the House was 2,473.”

The President of the Constituent Assembly, Dr Rajendra Prasad prophesied at its birth, “Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provisions in it which appear to some to be objectionable from one

¹This was the second in a series of lectures on Seventy Years of the Constitution organized by SAHMAT at the Jawahar Bhawan, space courtesy the Rajiv Gandhi Foundation.



point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them.”

Seventy years after these words of warning, we are now engaged in a great constitutional conversation about citizenship, which is being fought out on the streets, through ballot boxes and in the courts. This conversation has come about with varying ideas of citizenship all contending in the marketplace of ideas. There are those who think that they have a first right on citizenship of this country; a right which may extend to even defining the rights of those who are not exactly like them. There are others who dare to assert at long last, that they will not be treated unequally in the matter of citizenship. There are also those who still cannot fathom what the fuss is all about.



Dr. Babasaheb Ambedkar, chairman of the Drafting Committee, presenting the final draft of the Indian Constitution to Dr. Rajendra Prasad
PC-Wikimedia Commons

Citizenship is simply the right to have rights. Only a citizen can assert some rights against all, including the state. The loss of citizenship or a state of statelessness, often renders the individual remediless against state or private action. In western thought, the roots of citizenship go back to the city states of ancient Greece. Aristotle’s Politics talks about the nature of citizenship in Athens. The passage reads- “It must be admitted that we cannot consider all those to be citizens who are necessary to the existence of the state; for example, children are not citizens equally with grown-up men, who are citizens absolutely, but children, not being grown up, are only citizens on a certain assumption. Nay, in ancient times, and among some nations the artisan class were slaves or foreigners, and therefore the majority of them are so now. The best form of state will not admit them to citizenship; but if they are admitted, then our definition of the virtue of a citizen will not apply to every citizen nor to every free man as such, but only to those who are freed from necessary services. The necessary people are either slaves who minister to the wants of individuals, or mechanics and laborers who are the servants of the community.” Thus Ancient Greece had different kinds of citizens and only a full citizen would be able to participate in day to day happenings of the state as a male, a patriarch and a warrior. The Roman Republic after the collapse of the old monarchy had a few families ruling them and they were called patricians. The rest

of the citizens were called plebians. The first roman law code, Twelve Tables, had separate laws for these two classes. With the tag of citizenship came certain rights but that too was restricted to certain citizens and not all. Women were always outcast from participating in the Roman Republic.

Thus Ancient Rome and Greece had citizenships not dissimilar to the Indian situation about which Dr B R Ambedkar warned, - “..On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.”

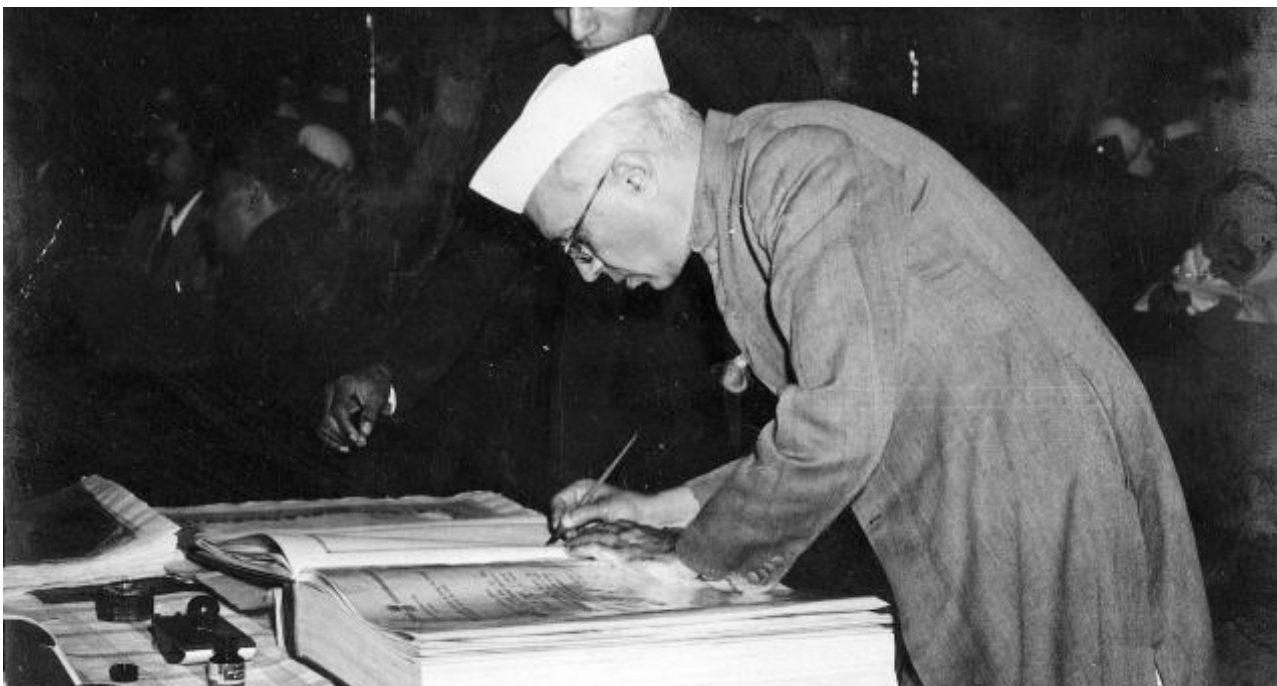
Let us now turn to how the Constituent assembly debated questions of citizenship on three days i.e. 10th August, 11th August and 12th August 1949. The idea behind adding citizenship was not in any general sense but citizenship on the date of commencement of the Constitution. It was not the object of the assembly to lay down a permanent definition of citizenship. Future Parliaments were to have full power to make laws on the question. Echoes of the communally charged atmosphere of the Partition resounded in the assembly as it debated what eventually got enacted as Article 7. Though the markers of religious difference were not openly displayed, they are easily recognisable in the debates on Articles 6 and 7 of the Constitution. Article 6 was obviously unexceptionable as it guaranteed rights of citizenship for what were largely Hindu migrants from Pakistan, commonly described in the discourse of the time as refugees.

Mr Punjabrao Deshmukh from Vidarbha, a barrister and an untouchability fighter, thought that the provisions in the draft articles made Indian citizenship, the cheapest citizenship on Earth. Mr Deshmukh thought that Indian citizenship was being given too easily. His grouse was with citizenship by birth. According to him, If the draft Article was to be accepted, even a child born of a lady while she was transiting through the Bombay port would get citizenship.

He asked for at least two amendments. First, just being born in India shouldn't be sufficient, the child should be born to Indian parents. Next, all Hindus and Sikhs, residing anywhere in the world should be entitled to Indian citizenship. He said “I do not cite any ground whatsoever that we should do it, unless it is the specious, oft-repeated and nauseating principle of secularity of the State. I think that we are going too far in this business of secularity. Does it mean that we must wipe out our own people, that we must wipe them out in order to prove our secularity, that we must wipe out Hindus and Sikhs under the name of secularity, that we must undermine everything that is sacred and dear to the Indians to prove that we are secular?” Mr Deshmukh emphasised on the fact that Pakistan was formed on the basis of religion and all Muslims have an exclusive place for themselves, so accordingly he suggested that only Hindus and Sikhs should be entitled to return as citizens of India.

Pandit Thakurdas Bhargava who was also a lawyer from the Punjab, had a slightly different take. He said “If a Muslim comes to India and bears allegiance to India and loves India as we love her, I have nothing but love for that man. But even after the partition for reasons best known to themselves many Mussalmans have come to Assam with a view to make a Muslim majority in that province for election purposes and not to live in Assam as citizens of India. My humble submission is that those persons have come here for a purpose which is certainly not very justifiable. Those who have come here on account of disturbances in Pakistan or fear of disturbances there certainly they must get an asylum in India. If any nationalist Mussalman who is afraid of the Muslims of East Pakistan or West Pakistan comes to India he certainly should be welcomed. It is our duty to see that he is protected. We will treat him as our brother and a bona fide national of India. In regard to those others who have not come here on account of disturbances, we should not allow them to become citizens of India, if we can help it.”

Mr Rustom K Sidhva a Parsi originally from Karachi, who represented the Central provinces, felt that there were communities other than Hindus and Sikhs that need to be addressed, such as Parsis. He insisted that the articles did not have any mention of any community per se. Mr Mehboob Ali Baig Saab Bahadur said “the interpretation put upon the provision by Dr. Deshmukh is not at all correct. In support of his observations he quoted the instances of the United States of America, Australia and South Africa. He said, “Look at those countries. They do not give citizenship rights to Indians even when they have been in those countries for thirty or thirty-five years.” May I put him the question whether we should follow their examples? Can we with any reason or pretence tell these persons: “Look here, you have not given citizenship right to Indians living in your countries for decades?” Can we complain against them if we are going to deny them citizenship rights here? Let us not follow those bad examples. Whether it is possible or not, shall we now follow these retrograde countries like Australia in the matter of conferring citizenship rights and say that citizenship will not be available except on very very strict conditions? It is very strange that Dr. Deshmukh should contemplate giving citizenship rights only to persons who are Hindus or Sikhs by religion. He characterised the provision in the article granting citizenship rights as ridiculously cheap. I would say on the other hand that his conception is ridiculous. Therefore, let us not follow the example of those countries which we are condemning everywhere, not only here but also in the United Nations and complaining that although Indians have been living in those countries they have not been



Jawaharlal Nehru signing Indian Constitution | PC-Wikimedia Commons

granted citizenship rights there.”

Pandit Nehru opposed religion based citizenship saying “One has inevitably to do something which involves the greatest amount of justice to our people and which is the most practical solution of the problem. You cannot in any such provision lay down more or less whom you like and whom you dislike; you have to lay down certain principles, but any principles that you may lay down is likely not to fit in with a number of cases. It cannot be helped in any event. Therefore, you see that the principle fixed fits with a vast majority of cases, even though a very small number does not wholly fit in, and there may be some kind of difficulty in dealing with them.”

Mr Alladi Krishnaswami Iyer of the drafting committee said “We are plighted to the principles of a secular State. We may make a distinction between people who have voluntarily and deliberately chosen another country as their home and those who want to retain their connection with this country. But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another sect of persons, having regard to our commitments and the formulation of our policy on various occasions.”

Mr Brajeshwar Prasad said “I wish all the people of Pakistan should be invited to come and stay in this country, if they so like. And why do I say so? I am not an idealist. I say this because we are wedded to this principle, to this doctrine, to this ideal. Long before Mahatma Gandhi came into politics centuries before recorded history. Hindus and Muslims in this country were one. We were talking, during the time of Mahatma Gandhi that we are blood-brothers. May I know if after partition, these blood-brothers have become strangers and aliens? Sir, it has been an artificial partition. I think that the mischief of partition should not be allowed to spread beyond the legal fact of partition. I stand for common citizenship of all the peoples of Asia, and as a preliminary step, I want that the establishment of a common citizenship between India and Pakistan is of vital importance for the peace and progress of Asia as a whole.”

The debates thus were heated and had gone on for more than nine hours, over three days. Some members had also suggested that further debate was required. The members finally came to a consensus that future Parliaments would have the ultimate power to legislate on these questions. Any defects that experience disclosed could thus be rectified at a later date. The constitutional provisions were only meant to determine citizenship at the time of commencement of the Constitution.

The transitional citizenship clauses were the most complex for the draftsmen to pen down. They had been sent back on two previous occasions. Therefore at the commencement of the constitution, persons who had been born in India, or either of whose parents were born in India, or who had ordinarily been resident for five preceding years, or those who had come over from Pakistan were granted Indian citizenship. Article 11, enabled future Parliaments to make provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

The substantive framework for citizenship was put in place by the Citizenship Act of 1955, which was enacted by the first Parliament in accordance with the powers set out in Article 11. Under the Citizenship Act, Citizenship can be acquired by birth, by descent, by registration or by naturalisation. Subsequently, rules regarding citizenship were formulated. Currently, the Citizenship Rules of 2009 supplement the act.

Another act which impacts the discussion on citizenship is the Foreigners Act of 1946, which is a pre-constitutional act. It was passed shortly after the Second World War, during which the colonial administration was in perpetual fear of German or Japanese infiltrators and spies, spreading disaffection among the natives. The act provides for measures including detention of foreigners and the rules provide for tribunals to determine questions of nationality. Its most significant provision is Section 9, which casts “the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description,upon such person.” Thus if a person is alleged to be a foreigner, the burden is upon him or her to prove that he or she is in fact a citizen and not a foreigner. This act, has had a devastating effect upon the poor without documents especially in the context of Assam’s citizenship crisis to which I shall now advert.

Assam and the northeast have had a convoluted history and geography which have impacted India, its neighbors and their inhabitants. The Ahoms are but one of the ethnicities that have made the Brahmaputra valley, their home. The first Ahom ruler Sutapa, is said to have come from Yunan in China in the beginning of the 13th century. The areas around the modern state of Assam were ceded to the British by the Burmese under the treaty of Yandbo in 1826. These fertile but sparsely populated areas, were over the years occupied by tea gardens and farms, which attracted peasants from the Bengali parts of British India. Assam was incorporated into Bengal and after the partition of Bengal, for a brief period between 1905 and 1911, ruled from Dacca. In 1912 it again became a separate province. At the time of independence, it had a very mixed population and some of its districts had a Muslim majority. The Sylhet district of Assam province, held a referendum and opted to join East Pakistan. Some districts with substantial Muslim populations like Dhubri, opted to remain in India relying upon promises made by Lokbandhu Gopinath Bordoloi.

However with all this mixed history and mixed populations, questions of Citizenship of the newly independent countries of India and Pakistan had to be determined, with people still crossing and returning over porous borders. At this stage by a secret administrative exercise, a National Register of Citizens for Assam was drawn up in 1951. The

register was not complete in some districts, nor was it drawn up as a fully determinative exercise. When Pakistan broke up over the language question, the bloody crackdown by the Pakistani army led to a huge refugee influx into India, especially the states of Assam, Tripura and West Bengal. After the war ended, under the Indira-Mujib pact, Bangladesh agreed to take back those who had migrated after March 25th 1971, while India agreed to retain those who had entered prior to that date. While Tripura and West Bengal endured the refugee influx, the native Ahoms in Assam, viewed it as an accretion to the traditional Congress votebank of Ali, Coolie, Bengali. In a 1978 bye election to the Lok-Sabha from Mangaldoi, an unprecedented increase in the number of Muslim names in the voters list sparked off protests from the All Assam Students Union. Resultantly the Assam agitation against foreigners was sparked off. The agitation had its apogee in the Nellie Massacre on 18th February 1983, when over two thousand men, women and infants were killed. The massacre led to large scale detentions of the movement's leaders, which only ended with the Assam Accord of 1985.



PC- Google Images

Under the accord post 1971 migrants were to be deported after determination by Special tribunals and those who had migrated between 1966 to 1971, were to be disenfranchised for a period of ten years.

This accord allowed relative peace to return to Assam and paved the way for the Assamese student leaders Prafulla Mohanta and Bhriгу Phukan into power, as Chief Minister and cabinet minister respectively. As long as the Ahom Gana Parishad remained in power, expulsion of aliens remained only a desirable consummation devoutly to be wished for. As the Congress came back into power and regained it for three terms, the ethnic cauldron began to simmer. The then AASU student leader Sarabananda Sonowal, got the Illegal Migrants Determination Tribunals, struck down by the Supreme Court in 2005, on the ground that casting the burden on the accuser to prove that the respondent was a foreigner, was unworkable and arbitrary. The effect of this striking down, was that questions of determination of nationality went to the Foreigners tribunal, under the foreigners act, where the burden was not on the accuser, but on the respondent.

The resultant effect, has been huge human misery among the poor and the undocumented. An enumerator of the election commission, (normally a lower level government servant), who came across a non-Assamese speaking family, headed by Mr X who was wearing suspect clothing, marked the voter as doubtful and may have made a reference to the Illegal Migrants Determination Tribunal, which may have sent a notice. That notice may or may not have been served. The matter would have been transferred to the Foreigners tribunals after the IMDTs were wound up. Many years later, these tribunals would proceed ex-parte to rule that Mr. X could not prove his citizenship and hence was a foreigner liable to be deported and in the meanwhile to be detained till such deportation was carried out. The

orders of the tribunal, could be challenged in Writ Courts, but the Gauhati High Court and often the Supreme Court, had an unblemished record of not interfering by citing the limitations of writ jurisdiction, which could not get into questions of fact.

Into this toxic mess, another bad idea took root. It was argued by some, that if only the 1951 NRC, was updated, to take into account those who could trace their ancestry to those on that list, the new list would reveal undoubted citizens, because those who failed to prove ancestry would be either illegal immigrants from Bangladesh or internal migrants from India. The Congress Government of Tarun Gogoi, started a pilot project in a few districts, but had to abandon it in the face of local resistance. In 2013, a Supreme Court Bench headed by Justice Ranjan Gogoi, directed the state of Assam to update the the 1951 NRC by the 1st of January 2016. The judgment in the Assam Sanmalita Mahasangh verges on xenophobia when it asks a Constitution Bench to determine if “an influx of illegal migrants into a State of India constitute “external aggression” and/or “internal disturbance”? Does the expression “State” occurring in this Article refer only to a territorial region or does it also include the people living in the State, which would include their culture and identity?”.

The Supreme Court, then went on a continued exercise of micro-managing the task of updating the 1951 NRC of Assam and did allow extensions for completion of the exercise. When the final updated NRC was released on August 31st 2019, around 19 lakh applicants did not find their names on it. The majority of exclusions, nearly 11 lakh names were not Muslim. These figures must be looked at in the context of, what the Supreme Court itself had relied upon in its judgment in Assam Sanmalita Case. It records - “On 14th July, 2004, in response to an unstarred question pertaining to deportation of illegal Bangladeshi migrants, the Minister of State, Home Affairs, submitted a statement to Parliament indicating therein that the estimated number of illegal Bangladeshi immigrants into India as on 31st December, 2001 was 1.20 crores, out of which 50 lakhs were in Assam.”.

The NRC updating exercise has now become like Wordsworth’s Lucy, A list with “none to praise and very few to love”. The question is what is to be done with those who do not figure in the list. Mass deportation is not possible. No country will be willing to reclaim nearly two million people, most of whom who were not born anywhere else but India. Does the state of Assam detain them, or does the centre provide a path to citizenship, for all or some. It is in this context that the Citizenship Amendment Act of 2019 and the opposition thereto must be seen.

At this stage, the CAA of 2003 during the earlier NDA regime must be looked at. It was passed with the support of several opposition parties. The Bill was discussed more as a ‘Dual Citizenship Bill’ for the introduction of the idea of the Overseas Citizen of India. But the CAA 2003, introduced a new term called ‘illegal migrant’ - a foreigner who had entered India without a valid passport or visa, or had overstayed his visa. So now a Foreigner had two subsets - the illegal migrants and the other foreigners. CAA 2003 also introduced one more change. It said that those classified as illegal migrants could never become citizens of India and What’s more, the children born from the a union of a citizen and an illegal migrant could never get citizenship. The CAA 2003 also introduced another a Nationwide Register of Citizens. Another introduction in 2003 was the National Population Register which was not in the Amendment Act, but was provided in the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

At this juncture it is difficult to say why these amendments were necessitated, when Citizenship by registration or naturalisation were not by right, but were discretionary. The government always had the discretion to allow or not, any application for citizenship by registration or naturalisation. However, with the blanket demonization of ‘Foreigners without papers’ in CAA 2003, India effectively made it impossible for any foreigner living without papers in India for whatever reason – fleeing persecution, economic opportunities or otherwise – to apply for citizenship. A further crisis was a created by which children born out of the union of an Indian citizen and a ‘foreigner without papers’ could also not apply for citizenship.

After the BJP came into power again in 2014, they set out to correct their mistake made in CAA 2003. They opened up Long term Visas for those non-Muslims fleeing Pakistan and who entered India before December 2014.

Subsequently they extended the facility of Long Term Visas for non-Muslims fleeing from Bangladesh and Afghanistan. The Union Home Ministry issued a notification, first exempting religious minorities fleeing persecution i.e. Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan and Bangladesh from having a passport as required by the Passport Rules. A subsequent notification included Afghanistan in the list of countries mentioned in the above notification. These notifications though discriminatory as they recognised only certain persecuted minorities went largely unnoticed. In 2016, a Bill reflecting this discrimination was introduced in Parliament, seeking exemption for Hindus, Buddhists, Jains, Sikhs, Christians, and Parsis from Pakistan, Bangladesh and, Afghanistan from being classified as 'illegal migrants'. Thus an attempt was made to apply the concept of 'illegal migrants' of CAA 2003 only to Muslim foreigners. The 2016 Bill however lapsed with Parliament's term.

The BJP's manifesto for the 2019 election contained the following paras under the heading 'Nation First'.

"12. We are committed to the enactment of the Citizenship Amendment Bill for the protection of individuals of religious minority communities from neighbouring countries escaping persecution. We will make all efforts to clarify the issues to the sections of population from the Northeastern states who have expressed apprehensions regarding the legislation. We reiterate our commitment to protect the linguistic, cultural and social identity of the people of the Northeast. Hindus, Jains, Buddhists and Sikhs escaping persecution from India's neighbouring countries will be given citizenship in India."

"There has been a huge change in the cultural and linguistic identity of some areas due to illegal immigration, resulting in an adverse impact on local people's livelihood and employment. We will expeditiously complete the National Register of Citizens process in these areas on priority. In future we will implement the NRC in a phased manner in other parts of the country."

Thus the BJP manifesto promised Citizenship to only Hindus, Sikhs, Buddhists, and Jains escaping persecution. The manifesto did not promise citizenship to similarly placed Christians and Parsis. Also the manifesto did not cherry pick specific countries from the neighbourhood to identify with persecution. A question is how other countries in the neighbourhood, especially Sri Lanka and Myanmar got excluded in the notifications and in CAA 2019. It may well be political compulsions or legal advice, that made 'Christians and Parsis' to be included in the notifications and in the CAA 2019.

So now we have gone over the full conspectus of circumstances, underlying the Citizenship Amendment Act of 2019 and the protests against it. The act deliberately sets to classify claims of citizenship, based upon the religion of the applicant. Hovering in the background, is the electoral promise to have a nationwide registration of citizens and population. Implicit in that promise, is the possibility of discriminating between citizens and the general population. Today as a republic, we are again questioning constitutional choices made by our founding fathers on secularism and on citizenship.

Citizenship of the United States of America, is often described by two culinary metaphors - the melting pot and the salad bowl. Into the melting pot, go a whole host of ingredients to melt into a compound American, whose ancestry can be one part Cherokee, one part African, two parts Chinese and four parts Ukrainian, or some other such composition. In a salad bowl, however the ingredients mix, but do not fuse. Hence we have Indian-Americans, Chinese Americans, Latino-Americans and what not. Whether salad bowl or melting pot, there is no doubt however that the vessel is all American. As Thomas Paine put it, "Our citizenship in the United States is our national character. Our citizenship in any particular state is only our local distinction. By the latter we are known at home, by the former to the world. Our great title is AMERICANS -- our inferior one varies with the place."

If we were to extend culinary metaphors to Indian Citizenship, my dish of choice would be the bhel-puri. That marvellous mixture, best had on a Bombay beach, has puffed rice (murmura), savoury crisp noodles (sev), fried crisp puris, chopped onions, coriander & spices all tossed together with a dressing of tamarind, mint and cilantro chutney. Each ingredient

is separate and distinct, can be singled out, picked up and separately consumed. However when these ingredients are mixed in the right proportions, and tossed in an overall common vinaigrette, the resultant mixture is an explosion of delight on the tongue and heart. The Bhelpuri that is India, has Maharashtrians, Gujaratis, Bengalis, Punjabis and many more, who are also Hindus, Muslims, Sikhs, Christians, Buddhists. An Indian's multiple markers of identity, often leave both majoritarian and minoritarian elements in the same individual. As a Kannadiga Hindu living in Delhi, I am part of a religious majority, and of a linguistic minority. Yet I am as wholly and fiercely Indian, as the most orthodox Pandit from Varanasi or Maulvi from Deoband, for whom Hindi is a shared majority language.

Over seven decades of a shared Constitution, cricket, Bollywood and a philosophy of "kindly adjust, we are like this only", has seen a stable nation emerge. India maybe an ancient civilisation, but as a modern republic it is barely seventy years old. For seventy years, this republic has trundled along on an implicit assumption of citizenship. If the



PC- Google Images

operation of a temporary or permanent brute majority in Parliament, enables the division of the general population into citizens and others on sufferance, a house divided against itself, will not long endure. It is upto us who cherish the Constitutional promise of liberty, equality and fraternity to step and defend those fraternal bonds that have kept us together.

On the streets of India, from Shaheen Bagh to Kerala's distant shores, citizens have stood up to redeem that pledge in the Indian Constitution's poetic preamble. Indians now seek to secure to all its citizens, "JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation.". These pledges cannot be redeemed if our citizenry is divided by rulers, into the rightful and the doubtful. Martin Luther King Jr, had dreamt that " one day this nation will rise up and live out the true meaning of its creed: - 'We hold these truths to be self-evident, that all men are created equal.'" Let Indians too dream on. Jai Hind.

Celebrate
Illuminate
Rejuvenate
Defend



To mark the seventieth anniversary of the adoption of the Indian Constitution

the **sahmat**
Constitution
of **at** **70**
India

संविधान

सहमत



Artists Respond

Jawahar Bhavan,
Dr. Rajendra Prasad Road

(opp. Shastri Bhavan) Metro: Central Secretariat

The Exhibition upholding the Constitution through Art with works by 50 artists will remain on display till 18 April, 2020. The exhibition is open from 11 am to 5 pm except on Sundays and national holidays

Space Courtesy: **Rajiv Gandhi Foundation**

Commemorating the 70th year of the Indian Constitution

SAHMAT has organised an art exhibition at the Jawahar Bhawan, curated by Aban Raza, (Space Courtesy: Rajiv Gandhi Foundation)

Open till 18th April 2020

(Mon to Fri, 10 am to 6 pm; Can be opened on Sat/Sun on request:

Please email: samvidhaan2020@gmail.com)

What can art do when horror comes calling? What can art do when civilization itself is lost? Brecht too had to confront this nihilistic question when he asked, "In the dark times, will there also be singing?" And the answer came jubilantly flying, "Yes, there will also be singing. about the dark times."

And so there's a flourishing rich treasure of hard-hitting People's art among us today which questions the racial, socio-political & cultural injustices, hatred, divisiveness and oppressive regimes.



When Art frees itself from the archaic corridors of institutions and their moribund academic pedagogy and intervenes social tension and reaches out to the masses, it becomes a resistance, protest or activist art.



I will not be a rhinoceros

Artist – Mad Paule



We too are witnessing a spurt of Resistance Art movement these days when our campuses are boiling against the divisive #CAA-#NRC.

We are Not Afraid

Artist – Agneya Singh

The ongoing State brutalities on the youth in the campuses all over the country have broken out a floodgate of sane voices of dissent and rebellion across the campuses and the youth today are painting their cities, towns and countrysides with the colours of inclusive India.

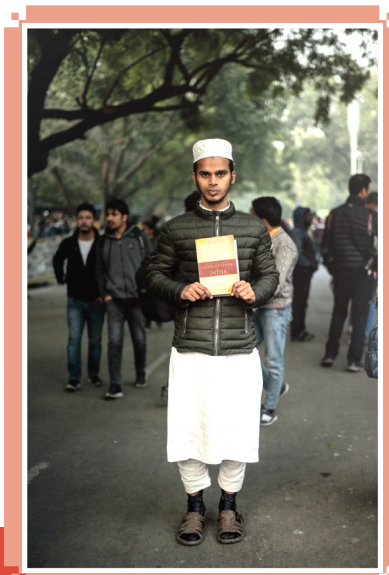
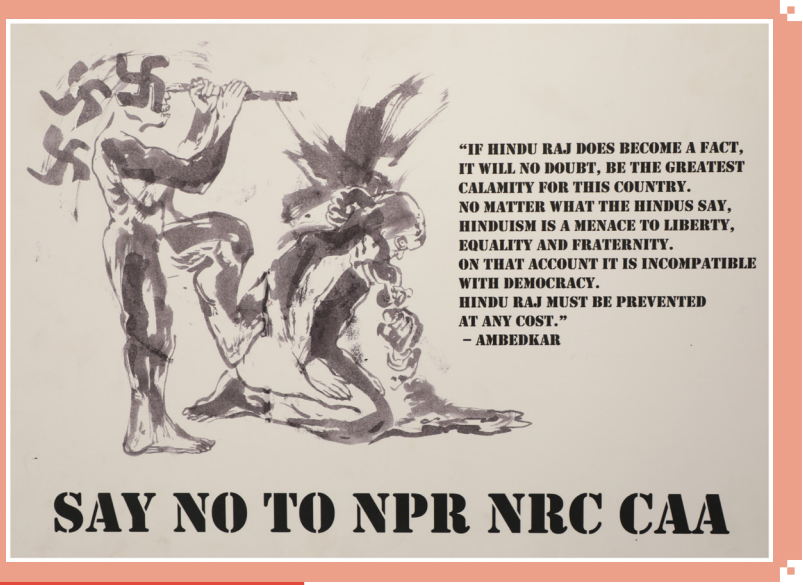


Photo credit – Vinit Gupta

From Jantar Mantar to JNU, AMU, Jamia to Shaheen Bagh to the various protest centres in all the major cities across the country, the aware and united youths today are enthusiastically painting their best ideas at public places, and thus venting their creativities, ideas, anger and angst in various art forms.



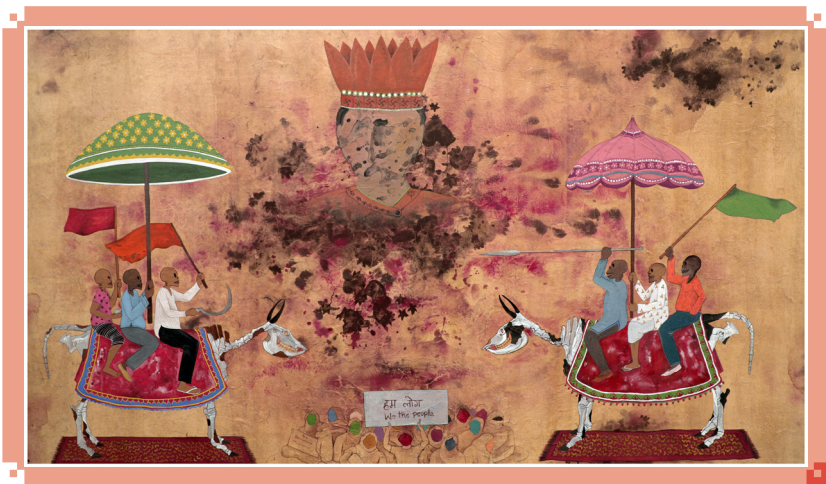
Untitled
Artist – Anupam Roy

Commemorating the 70th glorious year of the Constitution of India SAHMAT is organising an art exhibition, curated by Aban Raza at the Capital’s Jawahar Bhavan in which various kinds of socio-politically relevant artworks are on display for the public view.

From the controversial Kashmir imbroglio, Dalit students outcry in the campuses, Anti-CAA-NRC protest to the direct threat to the Constitution -- these artworks encompass the ongoing public outcry against the dictatorial ruling of the present regime.



I will never forget the day my breath started fading away...
Photo Credit – Sanna Irshad Mattoo



The exhibition seeks to capture the spirit of audacity, the possibilities for the future, and the dream of change through resistance that WE, THE PEOPLE OF INDIA have solemnly resolved to uphold.

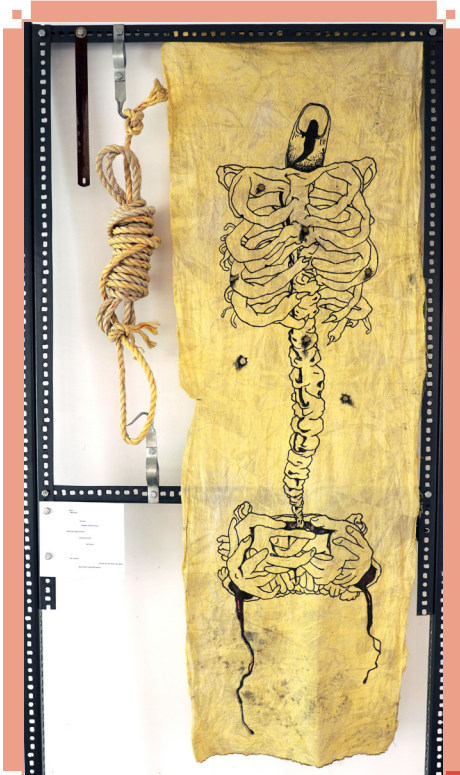
Inquilabi Ishtekbal
Artist – Khandakar Ohida

Let our works invoke the name of the Constitution and become a celebration of the idea of India that we cherish -- an idea that not just defines India today, but that will become a foundational pillar of a just society tomorrow.



Photo credit – Ram Rahman

“The purpose is to celebrate the 70th glorious year of our Constitution and illuminate minds, rejuvenate its supreme power and as there’s an imminent threat on it now, so defend its sanctity”



Most of the participating artists are from Delhi itself, students, professionals, amateur and activists whose artworks were invited and selected by a panel of experts at SAHMAT. It’s a culmination of more than 3 month-long active participation of these artists.

User Manual for the Largest Democracy

Artist - Jyothidas K.V.

Not everyone can face the public or media or make speeches. Art is another way in which we can express our views.



**Those who perform wuzu with blood,
what do they need ablutions for**
Artist – Mujtaba Rizvi

And we have found in the last 45 days that it does convey our message very powerfully and effectively,” says Preeti Singh, a participating artist who studied at College of Art, New Delhi



Hum Dekhengey
Artist – Adil Kalim

Photo Credit – Valay Singh



Preeti participated at both Jantar Mantar and Jamia protests. Another artist Hafsa from Jamia Millia Islamia who wore an aqua coloured hijab around her face, said, “Wherever I go, I am constantly asked questions about why I am in hijab.

When the protests started, I saw people painting banners and posters with popular lines and quotes of Faiz, Ghalib, Gandhi, Marx, Ambedkar etc.

I too was reminded of this popular couplet of Majaz, “Tere maathey pe ye aanchal bahut hi khoob hai lekin, Tu is aanchal ko ik parcham bana leti to achchha tha,” (This veil on your forehead is beautiful, but it would be even better if you transformed it into a majestic flag). It’s awe-inspiring and thus my calligraphic skills became a medium of expression on a broad banner”, says Hafsa.



Vehicle of Life

Artist – Simar Puneet



A paradox in itself, art can reflect beauty, speaking to our longing to experience it. At the same time, art can reflect the despotic and the revolting, either driving us away or charging powerful emotions in us.

Multiply Against Divisive Politics

Artist - Sameer Kulavoor

Art is a key element in contemporary social activism because more often than not, it takes visuals to get an important message across.



Hum Ek The – Rahenge

Artist – Parthiv Shah



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