Citizenship (Amendment) Bill, 2019

Why in news?

- The Citizenship (Amendment) Bill, 2019 was recently passed in the Parliament and has received President's assent.
- Granting citizenship to illegal migrants and amendments to OCI provisions are the two major aspects in the Bill.

What are the earlier provisions on illegal migrants?

- The Citizenship Act, 1955 regulates who may acquire Indian citizenship and on what grounds.
- A person may become an Indian citizen if they are born in India or have Indian parentage or have resided in the country for a period of time, etc.
- However, illegal migrants are prohibited from acquiring Indian citizenship.
- An illegal migrant is a foreigner who:
    i. enters the country without valid travel documents, like a passport and visa, (or)
    ii. enters with valid documents, but stays beyond the permitted time period
- Illegal migrants may be imprisoned or deported under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920.

What are the key provisions of the Bill?

- The 2019 Bill amends the Citizenship Act, 1955.
- **Illegal migrants** - The Bill provides that illegal migrants who fulfill 4 conditions will not be treated as illegal migrants under the Act.
- The conditions are:
    1. they are Hindus, Sikhs, Buddhists, Jains, Parsis or Christians
    2. they are from Afghanistan, Bangladesh or Pakistan
    3. they entered India on or before December 31, 2014
    4. they are not in certain tribal areas of Assam, Meghalaya, Mizoram, or Tripura included in the Sixth Schedule to the Constitution, or areas under the "Inner Line" permit, i.e., Arunachal Pradesh, Mizoram, and Nagaland
- In essence, it seeks to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and

Pakistan, eligible for citizenship.
- It exempts certain areas in the North-East from this provision.
- **OCI** - A foreigner may register as an OCI under the 1955 Act if they are of Indian origin (e.g., former citizen of India or their descendants) or the spouse of a person of Indian origin.
- This will entitle them to benefits such as the right to travel to India, and to work and study in the country.
- The Bill makes amendments to provisions related to OCI (Overseas Citizen of India) cardholders.
- It amends the Act to allow cancellation of OCI registration if the person has violated any law notified by the central government.

What are the contentious issues in the Bill?

- The Bill provides differential treatment to illegal migrants on the basis of -
    1. their country of origin
    2. religion
    3. date of entry into India
    4. place of residence in India
- The question is whether this provision violates the right to equality under Article 14 of the Constitution.
- Article 14 guarantees equality to all persons, including citizens and foreigners.
- It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose.
- It is contentious if the differentiating factors in the Bill serve a reasonable purpose.
- **Religion** - The Bill classifies migrants based on religious persecution of certain minorities in Pakistan, Afghanistan and Bangladesh.
- There are other religious minorities too in these countries, who face religious persecution.
- They may have well illegally migrated to India.
- E.g., over the years, there have been reports of persecution of Ahmadiyya Muslims in Pakistan (who are considered non-Muslims in that country)
- The other such fact is the murder of atheists in Bangladesh.
- So, it is unclear why illegal migrants from only six specified religious minorities have been included in the Bill.
- **Date of entry** - It is also unclear why there is a differential treatment of migrants based on their date of entry (December 31, 2014) into India.
- **North-East** - The Bill excludes illegal migrants residing in areas covered by the Sixth Schedule.
- The purpose behind the enactment of the Sixth Schedule was to aid in the

development of tribal areas through autonomous councils.

- The objective is to protect the indigenous population in these areas from exploitation and preserving their distinct social customs.
- The Bill also excludes the Inner Line Permit areas.
- Inner Line regulates the entry of persons, including Indian citizens, into Arunachal Pradesh, Mizoram and Nagaland.
- If an illegal migrant residing in these areas acquires citizenship, s/he would be subject to the same restrictions in these areas, as are applicable to other Indian citizens.
- So, it is unclear why the Bill excludes illegal migrants residing in these areas.
- **Cancelling OCI registration** - The 1955 Act provides that the central government may cancel the registration of OCIs on various grounds.
- The Bill adds one more ground for cancelling, i.e., if the OCI has violated any law notified by the central government.
- Here, giving the central government the power to prescribe the list of laws may amount to an excessive delegation of powers by the legislature.
- The Supreme Court has held that while delegating powers to an executive authority, the legislature must prescribe a policy, standard, or rule for their guidance.
- This is to set limits on the authority's powers and not give them arbitrary discretion to decide how to frame the rules.
- But, the Bill does not provide any guidance on the nature of laws which the central government may notify.
- So, the powers given to the executive may go beyond the permissible limits of valid delegation.

Is the Statement of Objects and Reasons in the Bill (SoR) justifiable?

- The SoR says that India has had historic migration of people with Afghanistan, Pakistan and Bangladesh.
- These countries have a state religion, and so it has resulted in religious persecution of minority groups.
- The SoR thus reasons that millions of citizens of undivided India were living in Pakistan and Bangladesh.
- However, no reason has been provided to explain the inclusion of Afghanistan.
- Further, it is not clear why migrants from these countries are differentiated from migrants from other neighbouring countries.
- These include Sri Lanka (Buddhist state religion) and Myanmar (primacy to Buddhism).
- Sri Lanka has, notably, had a history of persecution of a linguistic minority in the country, the Tamil Eelams.

- Similarly, India shares a border with Myanmar, which has had a history of persecution of a religious minority, the Rohingya Muslims.
- Over the years, there have been reports of both Tamil Eelams and Rohingya Muslims fleeing persecution from their respective countries and seeking refuge in India.
- The Bill's stated objective is to provide citizenship to migrants escaping from religious persecution.
- So, it is not clear why illegal migrants belonging to religious minorities from these countries have been excluded from the Bill.

Source: PRS India

