Citizenship for Indian-origin Tamils

What is the issue?

1. The Supreme Court of India has posted the 232 petitions challenging the Citizenship (Amendment) Act (CAA) to be heard soon.
2. But, there is another issue linked to the subject - the unresolved status of Indian-origin Tamils who repatriated from Sri Lanka.

What is the plight of Indian-origin Tamils?

- Under the British colonial government, Indian-origin Tamils were brought in as **indentured labourers** to work in plantations.
- They remained mostly **legally undocumented and socially isolated** from the native Sri Lankan Tamil and Sinhalese communities due to the policies of the British.
- After 1947, Sri Lanka witnessed rising Sinhalese nationalism, leaving no room for their political and civil participation.
- They were denied citizenship rights and existed as a 'stateless' population, numbering close to 10 lakh by 1960.

What did the governments do?

- Under the bilateral Sirimavo-Shastri Pact (1964) and the Sirimavo-Gandhi Pact (1974), six lakh people along with their natural increase would be granted Indian citizenship upon their repatriation.
- Thus, the process of granting Indian-origin Tamils (who returned to India till around 1982) began.
- However, the Sri Lankan civil war resulted in a spike in Sri Lankan Tamils and Indian-origin Tamils together seeking asylum in India.
- This resulted in a Union Ministry of Home Affairs directive to stop the grant of citizenship to those who arrived in India after July 1983.
- Furthermore, the focus of the Indian and Tamil Nadu governments shifted to refugee welfare and rehabilitation.

Over the next 40 years, the legal destiny of Indian-origin Tamils has been largely intertwined with that of Sri Lankan Tamil refugees, and both cohorts have been relegated to 'refugee' status.

- This is because Indian-origin Tamils who arrived after 1983 came through unauthorised channels or without proper documentation, and came to be classified as 'illegal migrants' as per the CAA 2003.
- This classification has resulted in their statelessness and blocking of potential legal

pathways to citizenship.

What did the courts say?

- **In P. Ulaganathan vs Govt of India (2019)**, the Madurai bench of the Madras High Court recognised the distinction between Indian-origin Tamils and Sri Lankan Tamils.
- It held that a continuous period of statelessness of Indian-origin Tamils offends their fundamental right under Article 21 of the Constitution of India.
- It further held that the Union Government has implied powers to grant relaxation in conferring citizenship.
- **In Abirami S. vs The Union of India 2022**, the court held that statelessness is something to be avoided.
- The court held that the principles of the CAA, 2019, which relaxes the conditions for citizenship for Hindus from Afghanistan, Pakistan and Bangladesh, would also apply to Sri Lankan Tamil refugees.
- As such, these judgments have provided categorial judicial guidance to the Union of India on how to utilise an expanded and liberal interpretation of the CAA, 2019 to overcome statelessness.

What is the obligation for India?

- The situation of statelessness of Indian-origin Tamils is ‘de jure’, created from the failure in implementing the 1964 and 1974 pacts.
- De jure statelessness is recognised in international customary law. So, India has an obligation to remedy the situation.
- In the case of the Chakma refugees, the Supreme Court (2015) held that an undertaking made by the Government of India with respect to grant of citizenship inheres a right in the stateless or refugee population.
- As such, India has made repeated undertakings, through the 1964 and 1974 pacts, which have created a legitimate expectation among the Indian-origin Tamils and would entitle them to be granted citizenship.
- According to a recent report by the UN High Commission for Refugees, “Comprehensive Solutions Strategy for Sri Lankan Refugees”, there are around 29,500 Indian-origin Tamils currently living in India.

Any corrective legislative action by the Government of India to eliminate statelessness should necessarily include retroactive citizenship for Indian-origin Tamils.

Reference

The Hindu | A pathway to citizenship for Indian-origin Tamils



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