

# THE CITIZENSHIP (AMENDMENT) BILL, 1986—

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Now, we will resume discussion on the Citizenship (Amendment) Bill, 1986.

डा० बापू कालदास : (महाराष्ट्र) :  
उपसभाध्यक्ष महोदय, जो भारतीय नागरिकता संशोधन विधेयक 1986 इस सदन में राज्य गृह मंत्री जी ने प्रस्थापित किया है उसके समर्थन में कुछ विचार मैं आपके सामने रखना चाहता हूँ ।

एक बात पहले मैं स्पष्ट कर दूँ कि हम सब लोग इस देश को, भारत को कैसे धर्मशाला बनाने की इजाजत देना नहीं चाहते हैं । कोई आये, कोई अपनी पोटली रखे, जब चाहे तब आये, जब चाहे तब चला जाए । इस देश का कोई भी व्यक्ति इस बात को नहीं मानेगा कि लोगों के लिए स्वतंत्रता हो जिससे हमारे राष्ट्रवाद को, हमारी एकता को खतरा पैदा हो । यह बात कोई नहीं मानेगा । लेकिन जब हम इस विधेयक की तरफ देखते हैं तो मुझे लगता है कि यह आपका अकार्यक्षमता है और उसे जन्म देने वाली कार्यरता से भरा हुआ विधेयक है । आपने दो-तीन बातें इसमें लिखी हैं । आपने कहा कि श्रीलंका से लोग आए, आपने कहा बंगलादेश से लोग आए, अफ्रीकी राज्यों से लोग आए हैं । बात सही है लोग आए हैं । इससे और सवाल भी पैदा होते हैं । लेकिन बात यह है कि उन को रोकने के लिए आप को किसने रोका था । 1948 से लेकर आज तक कितने लोग आए इसका कोई अन्दाजा नहीं है । मैं आपको एक फिगर बताना चाहूँगा । लेकिन मैं यह जानना चाहता हूँ कि जो खुफिया तौर से इस देश में आ रहे हैं उनको रोकने के लिए आपको किसने रोका । आप रोक नहीं पाये यह आपकी अकार्यक्षमता है । इसलिए आप यहाँ 5 साल की जगह 6 साल और 6 साल की

जगह 10 साल वाली बात कर रहे हैं । ये जो क्लोजेज आपने दी हैं यह सिर्फ इसको कड़ा करने का प्रयास है । यह तभी हो सकता है जब आपके पास इम्प्लीमेंटेशन करने की ठीक से व्यवस्था हो । कितने लोग इस देश में आए 71 के बाद इसकी फिगर आपके पास नहीं है । जो आपके पास रजिस्ट्रार जनरल आफ इंडिया की फिगर है उसमें 71 तक देखने से पता लगता है कि आप के पास 9 लाख 25 हजार लोगों को संरक्षण मिला है । वह कहते हैं कि 2 लाख 50 हजार लोग रजिस्टर्ड पर्सनल इन द डिस्पलेस्ड पर्सनस कैम्पस, जो बेचारे बाहर से आए हुए हैं, निर्वासित बन कर इस देश में आए हैं और चार लाख वे रेफ्यूजीज हैं जिनको आपने शैल्टर दिया है । इनको संरक्षण दिया है । प्रोटेक्शन एंड शैल्टर दीज आर द टु वर्ड्स । जो बाहर से आए हैं और जिनको आपने संरक्षण दिया है ये हो गये कुल साढ़े 6 लाख और अब रह गये तीन लाख । हम को पता नहीं है 71 के बाद 86 तक की क्या हालत है इस देश में । बार-बार आप उनके आने की बात कहते हैं लेकिन इसके बारे में आपके पास न कोई सबूत है न कोई अन्दाजा है और न कोई स्टेटिक्स हैं लेकिन एक ऐसी हवा हम लोग तैयार कर रहे हैं कि जो इस देश में आए हुए हैं उनके लिए कोई सख्त कानून आप लोग लाना चाहते हैं । मैं यह कहना चाहता हूँ कि क्या इस कानून के जरिये आप इनको रोक सकते हैं ? क्योंकि इसका जो इलाज है, क्या आप उस इलाज को कर पाएंगे ? दूसरी बात जिसकी तरफ मैं आपका ध्यान दिलाना चाहता हूँ वह यह है कि जो भी लोग हमारे पास आए हैं, वे इनसेक्योरिटी के कारण खतरे के कारण आए हैं । उनकी संख्या लाखों में हो सकती है । हमारे देश में बंगलादेश से लोग आए हैं, श्रीलंका से आए हैं, और कुछ लोग अफ्रीका से भी आए हैं । वे लोग सब मजबूरी के कारण आए हैं । उनको वहाँ से निकाल दिया गया । युगांडा में जो एक व्यक्ति थे उनके राज्य में कौन रह

सकता था। वहां पर इनसेक्योरिटी हो गई थी, इसलिए लोग चले आए। मजबूरी के कारण आए। वहां जो अमानुषिक अत्याचार हुए, जो बर्बरता हुई, उसके कारण वे लोग यहां पर आए। जिस प्रकार से इजराइल से पलेस्टिनियन लोगों को भागना पड़ा, उसी प्रकार से ये लोग भी आए हैं।

Are you going to condemn them as infiltrators in this country or are you going to take all those who are genuine Indians and who are here because of the fact that they cannot stay in their own countries or places where they were staying earlier?

मुझे डर यह लगता है कि इन लोगों को व्यर्थ में परेशानी का सामना न करना पड़े। मैं श्री चिदम्बरम् जी से कहना चाहता हूं कि आसाम के संबंध में जब चर्चा हो रही थी, फारनर्स की बात चल रही थी तो वह हम जानते हैं कि हजारों की संख्या में शिकायतें आई थीं क्योंकि जिन लोगों को अधिकार दिये गये थे वे करप्ट हो गये थे। एक केस के बारे में मैं जानता हूं। वहां पर एक महिला थी।

She is a civil Administrative Officer in Assam. Her husband was there and she was not treated as an Indian citizen. I know of a case which had been brought to the notice of the Home Minister at that time by my very senior colleague in the other House.

He has to prove that they are his parents

इसलिए मैं कहता हूं कि इसमें कुछ खतरा लगता है। अभी जो इंडियन सिटिजन हैं, हो सकता है उनको भी आप खतरे में डाल दें। मुझे यह डर इसलिए लगता है कि वेरिफिकेशन के बक्त यह समस्या हो सकती है। मान लीजिये किसी का बच्चा वेरिफिकेशन के समय होता है तो वे क्या करें? उनको उसका रजिस्ट्रेशन कराना पड़ेगा।

and that both of them were from India. 1565 RS—9

इंडिया में होते हुए भी, इंडियन सिटिजन होते हुए भी उनको परेशानी हो सकती है।

You will have more Stateless\* people in this country than what you are having today.

अब जितने भी देशविहीन लोग हिन्दुस्तान में हैं, उनकी संख्या कई गुना होगी और अब उनकी संख्या और भी ज्यादा बढ़ जाएगी, ऐसा मुझे लगता है। इन सब बातों के लिए मैं आपका समय ज्यादा नहीं लेना चाहता हूं क्योंकि मुझे भी कभी-कभी इस स्थान पर बैठना पड़ता है। मैं चाहता हूं कि आप ऐसी व्यवस्था करें जिससे लोगों को किसी प्रकार की परेशानी न हो। मुझे खुद लगता है कि इससे कुछ लोगों के लिए कठिनाई पैदा हो सकती है।

Are you under the pressure of chauvinistic elements in this country? Are you under the pressure of violence or these terrorists or under whatever is going on in this country or are you thinking of something which can be called partisan?

मैं यह चाहता हूं कि जो शोविनिस्ट्स हैं, जो संकीर्णवादी मत वाले हैं, वे एलीमेंट्स जो देश में ऐसा माहौल न पैदा करें जिसमें अन्य लोगों को परेशानी पैदा हो जाए। मैं यह भी चाहता हूं कि इसके कारण किसी प्रकार की विक्ल लोगों के लिए पैदा न हो।

My request to you is this: Don't have a policy in which you will have to think in terms of politics. Don't think in terms of politics. Don't surrender to the forces of violence. Please do not cultivate the forces of chauvinism in this country.. Thank you very much.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL): Now, Mr. Bir but Pratap Singh.

SHRI BIR BHADRA PRATAP SINGH (Uttar Pradesh); Mr. Vice-Chairman, Sir. I expected Mr. Kaldate, when he was trying to make such a practical approach to the problem, to feel that we would not leave him in the lurch.

Sir, he has a great apprehension which he has expressed that such a law will create Statelessness. Certain CPI(M) Members also said that it is inhuman and it is this and that. All those big principles he mentioned. But the reasons he has given are wrong. I say that the amendment will in a way curtail the possibilities of statelessness. If we stick to the 1955 Act then according to the provisions of that 1955 Act the possibilities of creation of statelessness were more. Now by this amendment those possibilities are removed. If the law takes away the possibilities or the uncertainties, then the chances of statelessness are curtailed. This is my contention whereas the argument in converse is not correct. I tell you why. Mr. Bapu Kaldate made a suggestion or gave an example. A citizen of country X and a citizen of country Y produce a child in India. I am giving you a practical proposition. The question is whether that child should have citizenship of the three countries simultaneously or not. If you make a law that the child by his mere birth gets citizenship of this country, then there is the possibility of his getting citizenship in three countries. Therefore, why not modify that law so that the problem of not only double but multiple citizenship could be solved? Therefore, my contention is that this amendment is more practicable.

Then there is another problem put forward and I think the Minister has correctly appreciated it. My criticism of this Bill rather was that it is a mixture of both stringency and liberalism. But that is the need of the time. It is a realistic approach to the problem. When Pandit Gobind Ballabh Pant initiated the Bill in 1955 probably at that time we had a population half of what we have today. And more and more people are likely to come to India in spite of our poverty, in spite of development being very slow, in spite

of less industrialisation, but because of many other things. And we must not forget that lots of people have migrated from this country also to other parts of the world, say, African countries. It has been mentioned that for whatever reason when Gandhiji went to South Africa, two shiploads of people were stranded at the port in South Africa, and there was agitation in South Africa that Gandhiji had come with such a big population to capture their place. Yet they had gone to those countries and settled there. Time and again many of our migrants, many from my region, have gone and have become Prime Minister and other Ministers when they went there. Likewise, a lot of people have also gone to the Far-East countries. A lot of people are going to the Middle-East and are settling there. Now, if the international situation is such that they are forced to revert back, then naturally the population will jump from 70 crores to much larger. What will be the actual situation then? Therefore, I think our Opposition friends must foresee and analyse the situation and adopt a realistic approach and then advance their criticism. I was hurriedly reading some of the points raised in the other House also in the debate. The question is a country with a very liberal citizenship is bound to attract people but in attracting people, the problems of the country also grow. Therefore, the Minister has done well, he has liberalised it and said instead of "whoever is a resident of this country for six months before registering himself, the amendment is "if they have remained here for five years then they are entitled to get the citizenship". I think that this is too liberal an approach. In the present circumstances, because of various reasons, people from all over the world are rushing to this country. It has been noticed that we are the biggest transit point of smugglers. People come here for all purposes and they acquire the citizenship. It is good that the provision of six months has been done away with and it has been extended to five years. But that is also short. But, why do people come? Nationality and citizenship must be two different questions. Citizenship has always been passing with one fundamental concept that they must have

an intention to stay permanently in the country. People come here for six months and after the exigency requirement they stay for six years and acquire the citizenship and do all sorts of nefarious things and go back. I am not talking of Assam alone of the influx of people there. I am taking of the situation in Sri Lanka. People are coming to Tamil Nadu. When we take some stringent action against them, when we went to throw them out, precisely that is what they want. And that is the game of the Mossad operating; in Sri Lanka. They wanted that let there be disturbances in India. And for that the Tamil origin people in Sri Lanka must be attacked. When they will be attacked, they will run back to India, they will instigate others in India to rise against their own Government. This was the simple game. And when we take some stringent action against these leaders here, then our House also raises the voice that this will be a kind of step which we should not take. But the situation remains the same. Those foreign powers, those who want to destabilise our country, they keep on taking such stringent measures against their own people in their own country so that they migrate from there and create problems here. Therefore, let us live with reality. Let us realise the provisions of this Bill which I feel in some respects is still very liberal because it has not become so stringent which is the need of the hour. Let us not quote that it was done in 1955. Since then the situation has changed. And because we are a matured democracy, we are growing powerful and we are gathering resources and we are progressing and becoming more and more self-reliant and we are not kneeling down to anybody's pressure, those who do not like us 'will take all such measures to destabilise us. Therefore, this analogy of 1955 should not be applied here. In 1985 there was another Bill. Now it is 1986. Between 1985 and 1986 the international situation so warranted that the hon. Minister, I should! say, has to come forward with a Bill. He has come forward with a less stringent measure on the question of citizenship. We should have been more strict on that. Who says that we do not welcome people? When somebody was thrust

upon us, we welcome it. At the time of the Bangladesh war, we maintained a large number of people in this country and we have fed them and afterwards we said that you please take them back to your country. But these forces do not allow us. I have always contended that if a fraction of that population is transferred to America, America will become poorer tomorrow. And yet this country is facing such a massive population. Why do you want that by making our laws so liberal, by making citizenship so liberal, you want to get more and more people here in India? Why do you propose a situation in which you say that let us have a multiple citizenship in this country? I think, that is not a correct approach. The Bill which has been moved should have been more strict on this question. Even in the Assam Accord what has happened? We have given them all rights, excepting the voting right for ten years. So excepting the denial of voting right, all other rights have been given to them and it is in accordance with the policy of the Accord. And there is nothing wrong about that. Let us judge their intentions. If the sole point for conferment of citizenship is to see that a person has genuine intention to remain in this country, then we welcome this Bill. We have made a provision in this Act in certain cases for five years and in certain cases it may be ten years, but that is only to judge the genuine desire of the persons concerned to stay here and not to simply come and go, as Dr. Bapu Kaldate put it. with their *ghatri*. For that purpose we will not allow this country to be utilised. For that purpose we will not allow our laws to be misused by them.

With these words, Sir, I support the Bill and I expect that on this question the arguments advanced by the other side will not be given much weight because "they were not tenable, because they were flimsy. What is inhuman in it? He quoted the example of that Palestinian case. Do you want that we should make our laws so vague that such problems should arise in this country? Should we allow six lakhs or 10 lakhs to come here and become stateless and then we should create a separate colony for them.

[Shri Bir Bahadur Pratap Singh]

So, Sir, while making our laws, we should see that they are made more definite, more concrete and more precise and we should avoid the situation that we want to avoid.

SHRI YALLA SESI BHUSHANA RAO (Andhra Pradesh): Mr. Vice-Chairman, Sir, the Home Minister has introduced the Bill out of frustration. The Government lacks imagination. It is the failure of the Government that made this Bill to come to this House. And now they are asking us to pass this Bill. The Government never thought of this magnitude, I know when India got freedom, there was partition, there was mass migration and there was confusion. Afterwards the Government never thought of this clandestine entry by people from other countries, *i. e.*, foreign countries. So, they have no policy as far as our country is concerned. There is no register of births maintained. There is no registration of foreign citizens. They have never thought of all these things. Now a problem has arisen with] a serious magnitude in so many States. Even now with this complexity of the problem<sup>1</sup> the Government has not thought it fit to think over it and bring forward a comprehensive Bill. They have not pondered over it calmly taking the conscious opinion of the country and the nation into consideration as a whole. Anyhow, the Government has to tackle the question of clandestine entry with a strong hand. They are not even able to stop the terrorists coming from Pakistan. That is the position today. As far as the North-East India is concerned, there is large scale migration of foreigners into Assam, Tripura and Sikkim etc. There is a fond hope that what the Government says comes true namely that they are building roads, erecting fences and they will stop the migration but there is no evidence to show that the migration has been checked. Unless some strong steps with imaginative ideas are taken, whatever We may do, the Bill will have no meaning at all. So, Sir, there is need for a conscious thinking as far as having the law, relating to citizenship are concerned. Take, for instance, the case of

Kashmir problem. When the Kashmir conflict is there, a lot of people from, occupied Kashmir, they are Indian citizens, have been coming to Jammu for the last 30 years. But they have no voting rights. They are agitating. They are agitating and the Government is not thinking at all about their grave problem. They are definitely Indian citizens of occupied Kashmir. Why can't we give voting rights to them and redress their grievances? If we sleep like that, there is another problem raising its head in India and that is the problem of Gorkhaland. They may invite some migrants and they may also agitate in a different fashion. Already the country is in a secessionist mood in some parts of the country. So, we think a severe hand is necessary to curb the influx of foreigners. This is the main aim of this Bill, or the Act. I request the Government to think over in that way and see that any clandestine entry into the country is curbed at all costs. It is a national question. There need not be any thinking in a partisan manner. India has yet to emerge to a structure of value system needed for this concept of citizenship<sup>^</sup> apart from religious or caste or region-wise. So I suggest to the Home Minister to think over it and bring a more comprehensive Bill, as more thinking is necessary in this matter. Therefore, with mixed feelings, I would say some strong action is necessary to prevent any type of infiltration into this country by the foreigners.

SHRIMATI JAYANTHI NATRAIAN (Tamil Nadu): I rise to support the Bill. Citizenship is not just a state of mind, nor is it a matter of right. It is not a state of attitude nor is it set of ideas, and least of all, is citizenship an accident of birth. A learned writers' talk on international law defined citizenship as follows;

"A person's nationality is a continuing state of thing, and not a physical fact which occurs at a particular moment. It is a continuing legal relationship between the sovereign State on the one hand and the citizen on the other. The fundamental, basis, for a

man's nationality is his membership of an independent political community. This legal relationship involves rights and corresponding duties on both, the part of the citizen, no less than on the part of the State. "

Therefore, citizenship is a set of duties and obligations and rights that accrue between the citizens on the one hand and a sovereign State on the other. It is a legal relationship; it is a two-way bilateral relationship, and if history is examined, it will be clear that allegiance to the State, allegiance to a sovereign State to which a citizen owes his citizenship is the most important concept of citizenship.

With your permission, if I may read from the Encyclopaedia Americana, "Citizenship is a relationship between an individual and a state involving the individual's full political membership in the state and his permanent allegiance to it. Other persons may be subject to the authority of the state and may even owe it allegiance, but the citizen has duties, rights, responsibilities toward its citizens, which also are permanent and on which the citizen may normally rely. The allegiance of a citizen to his country is most fundamental political loyalty. In a pluralistic society this can coexist with a variety of other loyalties, including those to family, church, private groups and organisations, political and social ideals, and even to subordinate political institutions or international organisations. Each of these may lead to conflict with one's national allegiance, but does not necessarily do so, "

Therefore citizenship involved a very serious concept of all allegiance and **right** from the time when the origin of the citizenship came about in ancient times, it was conferred upon a very special group of citizens who enjoyed a special privilege and a special protection from the State. In ancient Rome, citizenship was conferred only upon the native Romans and it was never conferred upon the people of territories which were conquered by the Romans and the natives of Rome enjoyed

very special powers in ancient Rome, and the story is that St. Paul who was the citizen of Rome refused to be tried by Palestine and demanded that he be taken back to Rome for a trial.

Citizenship law in India, in free India, was the offspring of extremely troubled and turbulent times. We all know that our country was divided as a result of partition, they laid a particular emphasis at the point of time when our Constitution came into existence. The emphasis shifted slightly when the Citizenship Act was passed in 1955 and both these concepts were in response to the needs of those times.

While moving the Citizenship Bill, 1955, the then Minister, Shri G. B. Pant said—I quote;

"The question of citizenship affects every person living in our land and it also has a bearing on other countries and still more so on the persons in those countries who owe their origin to India. All rights, if they are not the creatures of the status of citizenship, are in a way associated with it. Civic rights flow from this perennial fountain. So long as we were under foreign rule, we had hardly any law of citizenship. The British law was supposed to govern the people residing in our country. They had all liabilities and obligations, but hardly any rights and privileges. "

He also said;

"We are today working for peace in the world. We have built a stature for ourselves and for our country by our attitude towards world problems. In the circumstances, it would be at our attitude towards these basic problems, if we allowed everyone who is born in this country to acquire the right of citizenship. But it is not altogether an instinct of pious virtue that actuates me to say so. We have our own nationals, many more in other lands than they have in our country. About fifty lakhs of our people are distributed all over the globe. It is

[Shrimati Jayanthi Natarajan]

to our interest that liberal provisions in this regard should be made in all countries. So, if we give asylum to a few, we will be preparing the moral ground for similar treatment for millions of people abroad in other count-tries.

. "Looking it therefore even from the selfish point of view it is to our advantage and to our interest to have such a provision.

Therefore, Sir, as I said, at the time when the Citizenship Act was enacted, a very liberal attitude was adopted towards the concept of citizenship. If you go through the debates at that time, you will find that the entire focus of the discussion at that time was on the question of protecting the Indians abroad and ensuring fair and equitable treatment to them. It was in this regard that a open house of policy was adopted. There was also the question of Commonwealth Citizenship, the question of world citizenship, of national borders and national loyalties being insignificant. These were larger concepts adopted at the time when the Citizenship Bill was passed.

The main features of the Bill as passed at that time were: citizenship can be acquired by various ways, by birth, by descent, by registration, by naturalisation and by annexation of territory. Citizenship can be lost by automatic termination, by renunciation by the citizen and also a very important provision of deprivation of citizenship under which the State took action against any individual who was guilty of some treasonous act or some act prejudicial to the country. After going through a particular process, a person was deprived of his citizenship of the country. Now, there is a very important angle because in this part of the Act, which deals with the deprivation of citizenship, no citizen Sir, who is a

citizen by birth under the original Act, - can be deprived of his citizenship according to the scheme of the Act of 1955. This is a very important provision because we then face a situation where a citizen by naturalisation or a citizen by registration can be deprived of his citizenship by following a particular procedure. But a citizen of India by birth cannot be deprived of his citizenship under any law known in the present Act. Therefore, if we conceive of a situation where a person comes into India with an idea of making some political or economic gain or for tilting our communal vote bank, if a child is born in this country and the child acquires citizenship of India by birth and goes back, there is no way by which this child who is not domiciled or permanently resident in India can be deprived of the rights and obligations of Indian citizenship. It is in this background that I would urge this House to consider the present Act.

The present Bill brings about three very important changes in the Act as it stands. The first point on which I wish to comment is, that clause in section 3 where citizenship of India is acquired merely by birth, regardless of whether the parents of the child are citizens of this country or not. This has been changed so that only if either parent of the child is a citizen of India, the child acquires citizenship by birth. The other provisions are obviously liberal and cannot be opposed at all. Where a woman is married to an Indian citizen acquires citizenship of India. This has been changed to include both man and woman. The word 'woman' is replaced by the word 'persons'. The third is, the period of domicile has been raised, as the previous speakers referred to.

Sir, I wish to concentrate, as I said, on the first provision which is that a citizenship is not acquired by birth alone. I do not see how anybody could oppose this Bill, this particular amendment. We are the representatives of the people, we reflect their needs and aspirations, we have to accept that times change, societies change and we have to be sensitive to the needs and aspirations of the people. If we are

not, then legislation is going to be petrified at a point of time and there will be time when we will be obsolete and no longer relevant. Once we accept that we have to be sensitive to the needs at a particular time, then we have to come to the next concept because the greatest needs at to day's Point of time is that sovereignty, unity and integrity of our country is at stake. There can be no debate about it and I do not think there is any debate about it. As citizens of India, it is our paramount duty to protect and promote the integrity and sovereignty of our State and as Members of this august House the duty cast upon us is even greater. There is no doubt about the concept of citizenship implies *jus soli*, which is citizenship by birth, and *jus sanguinis* which is citizenship by descent, depending upon which country adopts a particular type of citizenship. There is a problem by which certain persons may be rendered stateless and statelessness is a serious human problem, a human rights problem. But I say that regardless of whether statelessness is a human problem, it is far more important for us to protect the interest of our country, to promote the sovereignty, and the question of statelessness can only take the second place to the present needs that we face today.

I

Then again there is no doubt that we have come a long way since independence. India is now a place where People aspire to live in because of the triumph of our traditions of democracy and of our economy which has come a long way. Therefore, I wish to place before this House certain alarming statistics which I read from the debates which had happened in the previous House. In 1962 some surveys were conducted where it was found, between 1951 and 1961 the population in East Pakistan came down by 32 lakhs and there was a corresponding increase in Assam, Bengal and Tripura by 33 lakhs. Then, in East Bengal, a particular district, a demographical absurdity occurred by which in the age group 0-14 there was 12 per cent increase; in the population, in the age group of 60 there was a 17 per cent increase in the population, but sur-

prisingly in the 'age group between 15 and 60 the population actually declined by 5.5 per cent, which was a demographical absurdity but a statistical fact. So, the demographers came to the conclusion that this was because those and normally migrated belonged to age groups 15 to 60. The facts speak for themselves and it is obvious that citizenship laws have to be tightened. It is not as if citizenship of a person who seriously intends to reside in India is being stopped, if the desire is there, any citizen can become a citizen of India by naturalisation after fulfilling certain qualifications. In 1929 the Harvard Research Draft on the law of nationality found that most of the countries in the world adopted a mixed principle of deciding what citizenship was, a principle mixed equally with *jus sanguinis* and if the emphasis at the time the Citizenship Act was enacted was on *jus soli*, the time has now come to shift that emphasis, so that the person who wants to become a citizen of India can be fully aware of his rights and obligations.

Article 11 of the Constitution of India gives plenary powers to the Parliament to enact legislation regarding citizenship. This is why I say that citizenship is not merely a matter of right but it is governed by the constitutional clauses. It also has, what is known as, *non-obstante clause*, which means, notwithstanding anything else in the Constitution, Parliament has the plenary power to legislate on the question of citizenship. Even at the time of the earlier debates, there was a good deal of dissent on the question of whether citizenship should be conferred by birth alone. In fact, it would read from a particular passage. A Member, who spoke at that time, Mr. R. C. Gupta, speaking on the Bill said, even if there is discrimination by denying citizenship by birth alone. "I shall go in for this kind of discrimination for obvious reasons, because; it is not in our national interest that these people, these alien people should get economic advantages or equal status. The problem is there because we have to liqui-



[Shrimati Jayanthi Natarajan]

date some of the inequalities that exist in the facts of life. I know many hon. Members would get up on that side of the House and unburden their catholic hearts and tell me: 'After all, we are all very good people, good Smaritans and so why should Britons living in India be discriminated against in this way?' I appreciate that kind of outlook and approach, if it is only a question of broadness, but we are here dealing with certain important and vital social facts. We are dealing with certain existing realities of our social life. I think we have to go through a period of discrimination, a period of preference for our own nationals before we can think in terms of such catholicism.

These words have far greater relevance today than they had on that day and they have a very vital bearing on our present circumstances.

In conclusion I would like to say that the provisions of the present Amendment Act are remarkably well balanced. Flexibility does not mean laxity. The provisions in the rules for registration and naturalisation have more than ample scope for anyone who really is interested in becoming a citizen to acquire citizenship. Citizenship obtained for purely economic and political purposes is the only evil that has been prevented. Though our compulsions have forced us to move away from an open house policy, at the same time, I reiterate, we will not allow any erosion of the liberal and secular values on which our democracy is based. Thank you.

SHRI JASWANT SINGH; (Rajasthan): Mr. Vice-Chairman, Sir, it is difficult for me to follow in the wake of such an eloquent and erudite speech of my charming friend and I would like to congratulate her.

SHRI Y. P. GOYAL: (Uttar Pradesh): She is a very renowned lawyer of Madras High Court.

SHRI JASWANT SINGH; Yes, I would like in all sincerity to congratulate her for possibly the finest presentation from the Treasury Benches on this particular measure.

SHRI VISHVJIT PRITHVUIT SINGH (Maharashtra): Sir, I propose a vote of thanks to Mr. Jaswant Singh Ji who has very kindly found at least some thing nice on this side.

SHRI J. P. GOYAL: We are always good to you, but you don't realise it.

SHRI JASWANT SINGH; I have some other surprises for you.

SHRI P. CHIDAMBARAM: Will you support our Bill?

SHRI JASWANT SINGH: Not only do I support the Bill, I welcome the measure and I compliment the Government for bringing forward this long overdue piece of legislation.

As the aspects of this legislation have been covered by previous speakers and I do not want to test the patience of the House by going into all those aspects all over again. The principle underlying this particular provision, as I see it, is easily stated. Citizenship of India is not and cannot be a casual assumption. It is a distinction and a privilege. It ought not to be routinely acquired on account of constitutional or legal lacunae or perfunctorily granted through questionable devices, of which examples abound and about which I will speak a little later.

So, repeating my compliments and reiterating my support, I would like to utilize this occasion now to make a further appeal. All the various legal, constitutional, ethical, human aspects of this particular provision have been very ably covered by the previous speaker. In my submission I will cover some of those aspects which are directly related and some, with your indulgence, not so directly related. I would like to take just three examples because the examples of these States, to my mind, put across the problem that

we face on the total question of Indian citizenship as such very clearly. These three States are Assam, Jammu and Kash. mir and Rajasthan—Rajasthan, parochially, but very reasonably. Now, Sir, I had the privilege and great benefit of having been closely involved with all the troubles of that beautiful land of Assam for over four years. From about 1981 till the elections in Assam I was very closely involved with whatever was happening in Assam. I was involved with the tripartite discussions and I have found my involvement in Assam one of the most rewarding political experiences of my life. But this is not the occasion for reiterating all that has happened in Assam or all that continues to trouble the innards of Assam. The problem of Assam is the problem of the country. I do not want to, all over again, go into all the figures of illegal immigration that currently afflict that land.

Sir, the aspect which has a direct nexus with the present legislation and which is exemplified by the State of Assam might perhaps be answered by the honourable Minister of State if two of my queries are replied. First is, Sir; Parliament experimented with a questionable piece of legislation which is currently on our Statute Books. It never really worked and even then we had occasion to say that this is not an answer; this is a political sleight of hand, a subterfuge which will appear to provide a solution to the problems in Assam but will do nothing of the kind—and that is a legislation called the Illegal Immigrants (Determination) Tribunals Act. It was enacted in 1983. I have witnessed that what this particular legislation did was to give re-employment to near about 24 or 25 retired High Court Judges. Twenty-four or 25 retired High Court Judges were re-employed, and I don't think the number of illegal immigrants so detected by these Tribunals exceeds 10. Now this is an absurdity and, therefore, I would like to know what will be the status of this piece of legislation after the enactment of the Citizenship Act.

Secondly, another clarification again about Assam. Here I am faced with a dilemma. I am principally opposed to

any legislation which is retrospective in effect. I think retrospective legislation troubles us very greatly—the Finance Minister specializes in that—because all retrospective legislation, in principle, is bad. However, I am faced with a dilemma. I would like to share my dilemma with the honourable Minister of State because, whereas the provisions of this particular piece of legislation are going to be prospective, the problems of Assam are inherited, are retrospective. I am sure you have applied your mind to it. How are you going to reconcile this very great difficulty in the context of Assam? Jammu and Kashmir, Sir... I am sure; my esteemed colleague sitting next to me is going to be very upset that I should bring in controversial aspects of that state... (*Time bell rings*)... You want me to stop, Sir? I will not take too long.

THE VICE-CHAIRMAN (SHRI PAWAN KUMAR BANSAL); I am just cautioning you to be brief.

SHRI JASWANT SINGH; I will be very brief.

Sir, the Jammu and Kashmir Government in 1982 brought about a controversial piece of legislation called the Jammu and Kashmir Resettlement Bill. I do not want to go into the provisions of that Bill. In effect, what the provisions do is to refuse to recognise the irreversible consequences and the irrefutable logic of the partition of this land. The provisions can be best exemplified by my taking one or two minutes and giving an example of an actual incident that took place in Jammu. A lady who had migrated from Jammu and gone to Pakistan, decided to return to Jammu 35 years later. Her visa expired, and when that happened, the authorities naturally said, "Your visa has expired. Now you have to go." Upon that she took shelter under the Jammu and Kashmir Resettlement Act and said, "No. I do not have to go. I am a citizen here." The lower court upheld the viewpoint and said, "Yes, you went away to Pakistan 35 years ago. But there is such a thing as the Jammu & Kashmir Resettlement Bill, and it does permit you to keep on staying \* India."

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): I have a little explanation to offer to my hon. friend.

book of Jammu and Kashmir. It was enacted primarily under section 7 of the Constitution of India. But my hon. friend should know that under an agreement between the State of Jammu and Kashmir and the Central Government, this Resettlement Bill has been referred to the Supreme Court under article 43 of the Jammu and Kashmir Constitution. We are bound by the decision of the Supreme Court, whatever the Supreme Court decision will be in this regard will have to be acceptable to us.

SHRI JASWANT SINGH: Yes, admittedly so, Sir, 'I am reassured by the hon. Member's subscription to the rule of law. But the point remains nevertheless because now, currently we have a situation in which the Congress is in alliance with the National Conference in Jammu and Kashmir. They are in power there. Therefore, despite the fact that it is at present under investigation, scrutiny of the Supreme Court, the question nevertheless remains what the status will be; if the Supreme Court were to say that the Jammu Kashmir Assembly is well within its right to so enact and if Jammu and Kashmir is well within its rights to so enact, what then becomes the effect of this amendment, this provision about citizenship.

SHRI GHULAM RASOOL MATTO: Should we contravene the Constitution by enacting another law?

SHRI JASWANT SINGH: Therefore, I would request the hon. Minister of State to clarify this point.

About Rajasthan, Sir, I would request your indulgence because I will take *two* or three minutes. It is not often recognised that Rajasthan also faces this problem. Let me give an example. My

esteemed friend a little earlier spoke about the citizenship being taken away. "Deprivation" is the word she used. In 1965, and these are facts.

SHRI PARVATHANENI UPENDRA (Andhra Pradesh) A point of order. Sir, Can the Deputy Chairman sit here. Nowhere it is done.

THE VICE-CHAIRMAN (SHRI. PAWAN KUMAR BANSAL); Sustained.

SHRI GHULAM RASOOL MATTO: The point of order sustained.

[The Deputy Chairman in the Chair].

SHRI JASWANT SINGH; Madam, I was on Rajasthan.. There are figures, facts which are easily established, and I am sure they are available with the Union Home Ministry. In 1965 following upon the war with Pakistan—I am caught between the anticipation of the Treasury Benches about a certain arrival and my wanting to put across the Rajasthan's problem...

THE DEPUTY CHAIRMAN; You can continue. No problem.

SHRI P. CHIDAMBARAM; You have still one minute. (*Interruptions*)

SHRI JASWANT SINGH: For me it is not a matter of as great an importance, as it is for you.

As I was saying, in 1965 following on<sup>1</sup> the war with Pakistan—these are easily verifiable facts established no doubt by the Union Home Ministry—about 27, 000 Indian citizens of Jaisalmer and Barmer districts chose to go to Pakistan. 27, 000 is a figure, which was stated then in the Rajasthan Assembly also. Not only did they choose to go to Pakistan during the war, but they also, in fact, aided and abetted the Pakistan forces in operations in Rajasthan in 1965. They were all declared as traitors. Their property was declared as evacuee property. The State Government took action up to this stage only. Thereafter, following the ceasefire, most of these 27, 000 people slowly

between 1965 and 1971 returned to India. Now, here is a very complex and very difficult and to my mind a very challenging problem that the Union Home Ministry has also... ~. (*Interrupts*)

[Mr. Charman in the 'Ch'airj \*

So, I would request the hon. Minister of State to please take into account these verifiable figures. Will you please investigate what is the status of these 27, 000 people, who left India voluntarily and went to Pakistan and today are continuing to claim the benefits of Indian citizenship. I had put it to you that it is these 27, 000 and odd who constitute the nucleus around which all the troubles of smuggling, illegal immigration, drug trafficking etc. are currently Being witnessed in Jaisalmer and Barmer.

The second aspect about Rajasthan is the Rajasthan Canal. Following the 1971 operations, we saw a similar manifestation. Again a certain number of Indian citizens chose to go away to Pakistan during the 1971 war. After hostilities had ceased and after a cease-fire had been declared, they claimed it as a right to come back to India and continue to enjoy the benefits of Indian citizenship. Not content with that, as Rajasthan Canal progressed into the Rajasthan desert, we found yet another manifestation around this nucleus of 27, 000 figure of post-1965 and some other indeterminate figure of post-1971. Claims started being made for allotment of land on Rajasthan Canal by these people who had left Rajasthan on two vital and crucial national emergency occasions. Therefore, I would like the hon. Minister of State to please share his thoughts with us on this particular aspect. Now, it is a parochial concern, no doubt; it relates only to Rajasthan, but there are security and other aspects. As I said, it is this nucleus which provides the base for all the smuggling drug traffic, illegal infiltration, that tension between India...

MR. CHAIRMAN: Mr. Jaswant Singh, you can continue afterwards. The Prime Minister will now make a statement.

#### STATEMENT BY PRIME MINISTER

Second Conference of SAARC Held on November 16 and 17, 1986. at.. Bangalore

THE PRIME MINISTER (SHRI RAJIV GANDHI): Mr. Chairman, Sir, the Second Summit of the South Asian Association for Regional Cooperation held in Bangalore on the 16th and 17th November, 1986, marked an important stage in the evolution of the world's largest and most recent regional association. Inaugurated on the auspicious occasion of Kartik Purnima and on the birth anniversaries of the Prophet Mohammad and Guru Nanak Devji, the Summit reaffirmed our faith in promoting the common good of our peoples through cooperative solutions to shared problems. Under the pioneering leadership of Bangladesh, SAARC has been nurtured from concept to reality in the first crucial year of its existence. During our Chairmanship we shall endeavour to consolidate these gains while giving new dimensions to interaction and enriching our cooperation with new content.

The areas of cooperation identified directly affect the lives and well-being of the majority of our peoples. They include agriculture, forestry, meteorology, natural disaster management, the upliftment of women and child development. We have also resolved to jointly combat the twin, often inter-related, evils of drug trafficking and terrorism. Our cooperation has been institutionalized with the decision to set up a permanent Secretariat in Kathmandu for monitoring and coordinating the implementation of programmes. The basic thrust of our effort is to Promote people-to-people contacts at all levels to cut through constraints and close the gap in our knowledge of each other.

At Nehru Nilayam in Nandi Hills, my colleagues and I identified further areas of possible cooperation for strengthening popular participation and interaction. These include radio and television programmes, tourism, the exchange of scholars, a regional documentation centre and an organized volunteers' ex-