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THE CITIZENSHIP AMENDMENT BILL AND NORTHEAST POLITICS, CONSTITUTIONAL VALIDITY OF CAA

“An individual has not started living until he can rise above the narrow confines of his individualistic concerns to the broader concerns of all humanity”- Martin Luther King Jr

INTRODUCTION

India, being a secular country has gazed for its peace and unity worldwide. Every citizen in this country is bestowed with rights which give them immense freedom. Though politically tried to be separated many times, we stood as one in humanity which has maintained the beauty of the country. But in the past few years, certain happening of the events has divided the country into two sects. Citizenship Amendment Act, 2019 is one of them.

The division is not mainly between certain groups or sects, it is between the acceptors and non-acceptors of the government policies and norms. India is the country of youth and is the building block of new ideologies every single day. These ideologies most of the time stands contrary to the government, due to which country faces the situation of chaos and dissonance. The question that arises in this situation, is the dissonance which the country is facing due to the implementation of the Act is correct?

In the last few months, the public order and morality have been completely neglected by the Indian citizens. There were various misconceptions that these protestors held. The media played their important part in bringing out these misconceptions before the general public. Now, let us see how the Act is merely a medium to upraise the humanity and not a mode to create discrimination.

THE CITIZENSHIP AMENDMENT ACT

The Citizenship Amendment Bill was first introduced in 2016 in the Lok Sabha by amending the Citizenship Act of 1955, then the bill was referred to a Joint Parliamentary Committee, who submitted their report on January 7, 2019. The bill was sent back to the Lok Sabha on January 8, 2019, which lapsed due to the dissolution of the 16th Lok Sabha.

Minister of Home Affairs Mr. Amit Shah, on 9 December 2019, in the 17th Lok Sabha introduced the bill again and was later passed on 10 December 2019. The Rajya Sabha also passed the bill on 11th December. The Citizenship Amendment Act, 2019 passed in the Indian parliament to provide a path for the illegal Hindu, Sikh, Buddhist, Jain, Parsee, and Christian immigrants who were religious minorities in their countries and fled India due to the persecution that they faced in their country which is Pakistan, Bangladesh, and Afghanistan, on or before 31st December 2014.

The Citizenship Act, 1955 allows citizenship through naturalization by fulfilling certain requirements. One of the major requirements is that any individual will be considered eligible for citizenship if he or she has resided in India or under the service of the central government during the last 12 months and at least 11 of the previous 14 years in aggregate.

The Amended Act of 2019, relaxes the number of years of residency for illegal migrants i.e. for Hindu, Sikh, Buddhist, Jain, Parsee, and Christian, from 12 years to five years.

NEED TO BRING SUCH AN AMENDMENT

The Citizenship Amended Act 2019, aims to make changes not only in the Citizenship Act, 1955 but also in the Passport Act and the Foreigners Act. If the illegal immigrants belong to religious minority communities from three neighboring states, i.e. Bangladesh, Pakistan and Afghanistan, the Act will grant the illegal non-Muslim migrants the status of legal migrants despite them having come to India without valid documents and permission.

Historical Background:

The government in its support stated about Nehru-Liaquat Pact¹. The agreement was between the Government of India and Pakistan regarding Security and Rights of Minorities that was signed in Delhi in 1950 between the Prime Ministers of India and Pakistan, Jawaharlal Nehru and Liaquat Ali Khan respectively. The need for such pact was felt by minorities in both countries following Partition, which was accompanied by massive communal rioting. There was an immediate exodus of Hindus from East Pakistan (which later sought Independence as Bangladesh) and Muslims from West Bengal. The exodus of minorities, i.e. Hindus, Sikhs, Jains and Buddhists in Pakistan, and Muslims in India led to a serious refugee crisis in 1950.

¹Prabhash K Dutta, *What is Nehru-Liaquat pact that Amit Shah referred to defend Citizenship Amendment Bill?* INDIA TODAY (December 10, 2019), <https://www.indiatoday.in/news-analysis/story/nehru-liaquat-pact-that-amit-shah-referred-to-defend-citizenship-bill-1627036-2019-12-10> (Last visited on 11/04/2020)

The essence of the Nehru-Liaquat pact was:

- refugees were to be allowed to return to dispose of their property without being molested or harmed.
- Returns were to be made related to looted property and women
- forced conversions were not recognized;
- the rights of the minority were confirmed
- The Governments of India and Pakistan agreed upon ensuring all the rights, to the minorities within its territory, the right of citizenship, irrespective of their religion, a full sense of security of their life, culture, property and personal honour, freedom of movement within the country and freedom of occupation, speech and worship, subject to law and morality.
- Equal opportunities to the minorities to participate in the public affairs of their country, to hold political or other offices, and to serve in their country's civil and armed forces. These rights were declared to be fundamental and undertaken to enforce them effectively.

The partition between India and Pakistan on religious lines in 1947, made millions of citizens' of undivided India belonging to various faiths stay in Pakistan and Bangladesh. The specific state religion is provided in the constitutions of Pakistan, Afghanistan, and Bangladesh. As a result, minorities in these countries belonging to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian communities have faced religious persecution. The fear of persecution where the right to practice, profess and propagate individual's religion has been obstructed and restricted, compelled people to migrate and seek shelter, which becomes illegal when their travel documents expire or they have incomplete or no documents.

THE FLAWS THAT ARE CLAIMED UNDER THE ACT

The most awaited debate regarding the Act was the word "religious persecution". The question that people seek is there is no mentioning of the word religious persecution in the Act. Though the operative part of the Act does not include any reference to the term, the word has preconditioned applicability.

The proviso which is added to the definition of the parent Act, exclude persons belonging to the communities it seeks to protect from the definition of 'illegal migrant':

“... exempted by the Central Government by or under clause (c) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder...”²

The Passport Act, 1920 and the Foreigners Act, 1946, which deal with the identification and deportation of the person in the absence of a valid visa or right to remain in India, also can create certain exceptions.

In 2015 and 2016, the central government introduced new exceptions for Hindus, Sikhs, Buddhists, Jains, Parsis or Christians from Afghanistan, Bangladesh or Pakistan “who fear religious persecution or who suffered religious persecution”.

Therefore, refereeing to the two Acts is the preconditions for not being considered an illegal migrant and the presence of the word ‘religious persecution’ the Act.

THE EFFECT OF THE AMENDED ACT ON THE CITIZEN AND INDIAN STATES

The implementation of the Act leads to mass protests, especially in the north-eastern states. The concern of the northeast states is the fear of demographic change from illegal Bangladeshi immigrants, which triggered deep anxieties among the north-eastern people and also the loss of livelihood opportunities, and erosion of the indigenous culture.

The Act appears to violate the Assam Accord³, both in letter and spirit.

· The Assam Accord, signed between the then Prime Minister Rajiv Gandhi and the All Assam Students’ Union (AASU), on March 24, 1971, as the cutoff date for foreign immigrants. Those illegally entering Assam after this date were to be detected and deported, irrespective of their religion.

The major issue of the north-eastern people is that there can also rise an economic problem. When an immigrant from Bangladesh will start staying legally in Assam and North East, the pressure will be first shown on the principal economic resources.

· Since these will be legitimate citizens, there will also be more people joining the queue of jobs hopefully that can potentially lower opportunities for the indigenous and the locals. The political rights will be infringed as illegal immigrants, will eventually become legitimate citizens of the country and, will be determining the political future of the state.

²Citizenship Amendment Act, 2019

³Part II(A) The Assam Gazette, June 23, 1999 (313)

Concerning the North Eastern state the government responded that the Citizenship Amendment Act does not dilute the sanctity of the Assam Accord as far as the cutoff date of March 24, 1971, stipulated for the detection/deportation of illegal immigrants is concerned.

The Act is not Assam-centric. It applies to the whole of India and not against the National Register of Citizens (NRC), which is being updated to protect indigenous communities from illegal immigrants.

The Act restricts itself to a particular date and benefits under the amended Act will be availed by only those who migrated on or before 31 December 2014.

EXCEPTION:⁴

- The Act adds that the provisions on citizenship for illegal migrants will not apply to *the tribal areas of Assam, Meghalaya, Mizoram, and Tripura*, as included in the Sixth Schedule of the Constitution.
- These tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.
- It will also not apply to the areas under the inner line permit under the Bengal Eastern Frontier Regulation, 1873.

THE CONSTITUTIONAL VALIDITY OF THE ACT

Violation of Article 14:

The argument raised is whether the Act violates Article 14 of the Constitution, which guarantees the right to equality. Various critics stated that the amended Citizenship Act violates the very essence of the constitution, which is in the teeth of Article 14, which demands reasonable classification and non- arbitrariness in view to achieve rational and just object.

It is stated as unconstitutional from the very first draft of the bill which was presented in 2016. The reason stated for calling the Act unconstitutional is its consequential nature in Indian society because the amendment breaks the fundamental core principle of the Constitution which is, that citizenship is open to all without discrimination based on religion, language, race, ethnicity or gender.

The disapprobation of the Act is on the ground, that it violates the text of the constitution and also the basic structure which is the heart of the Indian constitution.

⁴Citizenship Amendment Act, 2019

The Union government says that the Act represents the 'reasonable classification' which is permissible under the Constitution. In the State of West Bengal v. Anwar Ali Sarkar, 1952⁵, the honourable Supreme Court interpreted the scope of Article 14, which guarantees equality before the law. The reasons of the government for the Amended Act of Citizenship, 2019 goes against the constitutional interpretation done by the Supreme Court since the 1950s and fundamentally misunderstands what the court stated in Anwar Ali Sarkar's case, "Article 14 does not insist that every piece of legislation must have universal application and it does not take away from the State the power to classify persons for legislation, but the classification must be rational and to satisfy this test:

- The classification must be founded on an intelligible differentia which distinguishes those that are grouped from others, and
- There should be rationality between the differentia and the object that the Act seeks to achieve."

The principle does not allow acceptance of any classification, due to which the Amended Act of 2019 fails. It selects certain illegal migrants based on religion, followed by the reasons which have no basis in the law itself. The issue does not confine here, the highlight of the text is only the religious persecution neglecting other persecutions. On this front, the CAA violates Article 14 of the Constitution.

The Act damage the essence of the basic structure by violating the theory of secularism. Since the Supreme Court identified certain basic features of the Constitution in Kesavananda Bharati vs the State of Kerala, 1974⁶, secularism has always been regarded as one of the core principles of the Constitution.

The meaning of secularism is discussed in the case of SR Bommai v Union of India, (1994)⁷. The court stated in this case: "One prominent thing is that whatever is the attitude of the State towards the religions, religious sects, and denominations, religion cannot be mixed with any secular activity of the State. The encroachment of religion into secular activities is strictly prohibited."

The grant of Citizenship under the CAA is discriminatory towards certain religions, races, castes, which is unacceptable. Though the majority of a nation is dominated by Hindus, but where people of every other religion in the world have readily found shelter and safety.

⁵1952 AIR 75, 1952 SCR 284

⁶AIR 1973 SC 1461

⁷ AIR 1994 SC 1918

The principle of secularism cannot be negotiated in this democratic country which is incredibly covered with its variants. The Act attacks on the principles of secularism, liberalism equity, and justice.

The Act is not violative of Article 14:⁸

The government assures that the Act abides by the rule of class legislation as the religious classification is not permitted. It is not violative of Article 14, the justiciability of citizenship or laws that regulate the entry of foreigners is often treated as a ‘sovereign space’ where the courts are reluctant to intervene.

In *Trump v Hawaii* No. 17-965, 585 U.S. (2018)⁹, the US Supreme Court upheld a travel ban from several Muslim countries holding that regulation of foreigners, including ingress is “fundamental sovereign attribute exercised by the government’s political departments largely immune from judicial control. Indian courts have generally followed similar reasoning in *David John Hopkins vs. Union of India* (1997)¹⁰, the Madras High Court held that the right of the Union to refuse citizenship is absolute and not fettered by the equal protection under Article 14¹¹.

Similarly, in *Louis De Raedt vs. Union of India* (1991)¹², the Supreme Court held that the right of a foreigner in India is confined to Article 21 and he cannot seek citizenship as a matter of right.

REPERCUSSIONS OF THE ACT

The fundamental criticism of the Act¹³ is that it is against Muslims and is targeting particular sects. The grant of citizenship based on religion violates the principles of the basic structure of our constitution, which lies in the concept of secularism, liberalism, equality, and justice. It fails to allow Shia, Balochi and Ahmadiyya Muslims in Pakistan and Hazaras in Afghanistan who also face persecution, to apply for citizenship. The Act does not extend to those persecuted from Myanmar and Sri Lanka, because of which Rohingya Muslims and Tamils are staying in the country as refugees. Jews and atheists are left out of the Act.

⁸*Citizenship Amendment Act, 2019*, THE BYJU’S, <https://byjus.com/free-ias-prep/citizenship-amendment-bill-2019/> (Last visited on 11/04/2020)

⁹MANU/USSC/0093/2018

¹⁰AIR 1997 Mad 366

¹¹The Constitution of India, 1949

¹²AIR 1991 SC 1886

¹³The Citizenship Amendment Act, 2019

The reason for specifically taking these three states mentioned in the ‘Statement of Objects and Reasons’ of the Act is that these countries constitutionally provide for a “state religion”; hence, the Act is to safeguard the “religious minorities” in these theocratic states where minorities suffer religious persecution. But the reasoning does not suffice when it comes to countries sharing borders with India such as Nepal, Bhutan, and Myanmar, which is excluded.

The above reasoning fails for Bhutan, which is a neighbour and constitutionally a religious state with the official religion is Vajrayana Buddhism. The minority missionaries are restricted from practicing and making a religious construction.

The Act aims at saving victims of religious persecution which is specifically classified. It provides benefits to sufferers of only religious persecution, but not of political persecution which is equally grave and exists in the world. The provisions of the CAA are set as an epitome of discrimination according to critics which might lead to a situation where a Rohingya who immigrated to save themselves from the harm caused to them in Myanmar will not be entitled under this Act, while an economic migrant from these countries belonging to the specified community will be granted citizenship.

Similarly, a Tamil from Jaffna escaping the atrocities in Sri Lanka will continue to be an “illegal migrant” and never be entitled to apply for citizenship by naturalization.

The Government Reply on all these Allegations:

The government alleges that the Ahmediyas and Rohingyas are not barred from seeking citizenship. They can still seek Indian citizenship through the process of naturalization (if they enter with valid travel documents) mentioned in the Citizenship Amendment Act, 1955 as India is bound by the principle of non-refoulment (even without acceding to the Refugee Convention 1951).

The Shias’ facing persecution seeks shelter in India, will be treated as refugees based on his merits. About Balochi refugees, Balochistan has long struggled to be independent of Pakistan and including Balochis’ in the CAA could be perceived as interference in Pakistan’s internal affairs. The government puts-forth that the Act does not restrict Muslims from these countries to seek Indian citizenship. It can be done through the provisions mentioned in the parent Act, as Adnan Sami, a renowned musician sought.

The minorities under the Amended Act of 2019 cannot seek citizenship unless they satisfy the requirements specified in the Third Schedule to the Citizenship Act, 1955, which is:

- the person seeking citizenship shall have a good character
- they should be physically residing in India.

An eminent lawyer and former Solicitor general, Harish Salve¹⁴, has stated that the Citizenship Amendment Act is not anti-Muslim. The countries specified under the Amended Act have a state religion and follow the Islamic rules. The citizens of these countries are identified based on Islam. The CAA is not meant to recognize state issues. Salve quoted, “a law that addresses one evil does not need to address all the evils in all countries” over the issue of Rohingyas. It is notable here that Myanmar, though a Buddhist majority nation, does not have a state religion and Myanmar does not feature in the CAA bill.

CONCLUSION

The parliament has absolute powers to make laws for the country when it comes to Citizenship. The allegations put forth by the opposition, other political parties, and the masses that it violates some of the basic features of the constitution like secularism and equality can be tackled by reaching the door of the apex court. The Supreme Court will be the final interpreter. If the Act violates the constitutional features and goes ultra-vires it will be struck down, if it is not we will continue to have the law.



¹⁴Lawyer Harish Salve Says CAA is Necessary, Says Citizenship Act Not against Muslims, News 18, (March 5, 2020, 8:18 PM), <https://www.news18.com/news/india/lawyer-harish-salve-says-caa-is-necessary-says-citizenship-act-not-against-muslims-2527331.html>