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A Critical Analysis of Asylum - India's Asylum Policy and Rise of Seeker of Asylum in India and Its Relation to Citizenship (Amendment) Act (CAA) 2019

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ABSTRACT

This paper highlights the concept of asylum under International Law, types of asylum and the rights provided under various Declaration, protecting and promoting human rights of the refugees as well the situation of the asylum seekers and refugees. Moreover the paper shows the policy of Asylum in India, along with analysis of the recent controversial Act that is Citizenship (Amendment) Act 2019 and the impact of the enactment of the Act in Assam.

I. INTRODUCTION

Asylum refers the shelter or the protection provides to a political refugee from another state by a state which allows him on a request for providing shelter. Asylum includes the following ingredients like - a shelter that is considered more than a temporary refugees and a degree of active protection on the part of the authorities which have control over the territory of asylum.

II. DEFINITION

Asylum is defined as "the protection which a State grants on its territory or in some of her place under the control of certain of its origin to a person who comes to seek it "

Right to Asylum

The Universal Declaration of Human Rights contain provisions regarding the Right to asylum under Art 14 which states that Everyone has a right to seek and enjoy in other countries asylum from prosecution, in other word it can be referred that the Declaration provided recognition of the individual² seeking for right to asylum but it does not grant the exclusive right to receive asylum. And ultimately, the decision is upon the state where the individual is

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² Dr.S.K.Kapoor, International Law & Human Rights, Pg-367 (Dr.Nagendra Singh, Twentieth Edition, 2016)

seeking the right to grant shelter. Or not after considering several integral or domestic issues of state. Thus from the competence of the state to grant asylum given the fugitive alien to enjoy the hospitality of the State which grants him asylum, but the state granting asylum is required to place the individual under surveillance, or even to train him accordingly somewhere so that he can adjust to the new place.

Another declaration. Namely United Nations Declaration on Territorial Asylum was adopted by ³the UN General Assembly in 1967. This declaration also contains. Provisions which is called on Government to avoid taking necessary measures that are rejecting at the frontier of persons seeking asylum. It is not binding upon the State to follow the provision compulsorily as it's a declaration which have absence of binding force, Then from 10th January 1977 to 4th February 1977 A conference took place United Nations Conference of Plenipotentiaries on Territorial Asylum in Geneva, Switzerland. It recommended that the UN General Assembly considered reconvening another session of the Conference. Then a group of legal experts prepared a draft by presenting it in the conference with the aim to implement the provision provided under Article 14 of the Universal Declaration of Human Rights 1948, but along with that also recommended that the State will not be bound by duty to grant the individuals asylum.⁴

III. TYPES OF ASYLUM

Asylum is broadly classified into two categories that includes 1) Territorial 2) Extra-territorial.

Territorial Asylum is an characteristic of territorial sovereignty of a state which is granted by a state in its own territory. As per the Convention on Territorial Asylum which was adopted by Caracas on 28th March, 1945, Each and every state has the right to permit any person into its territory and the state exercises this right in the existence of sovereignty of the state. Apart from that Article 1 of the Draft Declaration of Asylum which was adopted by the United Nations Human Rights Commission, states that the Asylum is granted to individual by a state in the exercise of his sovereignty, who is entitled to invoke Art 14 of the Universal Declaration of Human Rights and is given respect by rest of the states members.⁵

The General Assembly of the United Nations in a resolution which took place on 14th December 1967, made several recommendation regarding the issue asylum which are practised by the state. Following are the recommendation made -

⁴ Dr.S.K.Kapoor, International Law & Human Rights, Pg-367 (Dr.Nagendra Singh Twentieth Edition, 2016).

⁵ Ibid Pg- 367

- (1) In case a individual of any state applies or requests for asylum ,his request shouldn't be rejected or in case any person enters on the territory of another state for getting shelter ,the person shouldn't be expelled out from that state where a number of people are
- (2) requesting or seeking to provide asylum ,but the state concerned can reject their request on the ground of national security of his own countrymen.
- (3) When a state grants asylum to a group of people or an individual ,other States has the duty to respect it.
- (4) If there is a difficulty in providing asylum to fugitives ,the concerned state should take necessary measures with the feeling of international unity through the medium of individual state or the United Nations.
- (5) A state is free to exercise the right to grant asylum to the people of another State while his freedom to exercise the right is subject to several restrictions or are regulated accordingly through treatise.

Extra territorial or Dipomatic Asylum - Extra territorial asylum is provided by a nation outside its territory e.g -its embassy or public vessels.Moreover the extraterrestrial asylum is divided into various heads like -

- (a) Asylum in Foreign Embassies - International law does not give rights of a head of mission to grant asylum in the premises of the legation as such an initiative would prohibit the domestic laws taking its own steps and would lead to derogation from the sovereignty of the State where the legislation or mission us situated.
- (b) Asylum in Consular Premises - The general principles with regard to the elevation premises are used while granting asylum in Consular Premises.
- (c) Asylum in the Premises of International Institutions - International law does give recognition to the rule relating to providing the asylum to the refugees in the premises of International Institutions. However, the temporary asylum may be provided while there is instance or chances of danger of imminent violence.There is no general right to International Institutions to provide asylum or to reject the application seeking asylum in their premises to offenders a me against the territorial State.
- (d) Asylum in War ships - Such asylum may be granted to the political offenders and not provided to the person commuting ordinary crimes .Even many writers expressed their view stating that such fugitives⁶ should be handed over the police and some are

⁶ Id PG - 368-369

of the view that such asylum was granted where there are possibility of extreme danger to the life of the person concerned who was seeking asylum.

- (e) Asylum in Merchant Vessels - Such asylum can't be provided to the local offenders in the merchant vessels.⁷

IV. WHY INDIA IS HOME TO MILLIONS OF REFUGEES BUT DOESN'T HAVE A POLICY FOR THEM

There are many states which don't have any policy regulating the issues regarding refugees. They also haven't officially disclosed why there is no policy.

There were several reasons have been inferred to due to the peculiar South Asian behaviour in the past. Like, India's refusal or ignorance to accept the refugees could be characterized to the international community's response to its requirements of the call for helping as during managing with large section of people who had come here after leaving from Bangladesh in 1971.⁽⁶⁾

The 1947 population exchange

After the India's Partition took place in 1947 large number of people exchanges the nations of Bangladesh and India. Lakhs of people flees from Pakistan⁸ and then joined numerous refugee camps for which formed for providing shelter to them in Delhi, Bengal and Punjab moreover uncountable numbers of their future and prospects in a newly created nation which was now their home.

Then The United Nations' 1951 Refugee Convention, formed which is a International instrument, which was forked with the purpose to accord protection to people who were migrated in the after the end of World War II. The United Nations Convention's Euro-centric nature was clear with certain restrictions provided that was applied to the several incidents that were taking place in "Europe or elsewhere before 1 January 1951" moreover that also provided the refugee the status to someone "who has lost the protection of rights in their nation from where they belong. the 1951 Convention, was only applicable to people who had fled and left and then joined new States, a state-sponsored (or state-supported) persecution.

The Partition of India and the migration of 1947, while within the Convention's timeline, did not fall into the category of 'state-supported/sponsored persecution'. Ultimately the refugees were bound to do as a result of social persecution' and not 'state-sponsored persecution' or

⁷ Ibid

⁸ <https://www.google.com/amp/s/theprint.in/opinion/why-india-is-home-to-millions-of-refugees-but-doesnt-have-a-policy-for-them/341301/%3famp>

‘war’. Later on the attempt of both the nation India and Pakistan to change and add a more liberal meaning to the word ‘refugee’ so that to include internally displaced people or those migrated due to social rifts were not accepted at the international level. This led to the creation of an overall scepticism towards the 1951 Refugee Convention.⁹

V. EXPANDING THE CONVENTION

In 1967 the United Nations removed the date of 1 January 1951 in its ‘Protocol Relating to the Status of Refugees’ due to the adding of “new refugee situations that have arisen since the Refugee Convention was adopted.

While during the Prime Ministerhip of Pandit Jawaharlal Nehru, did not signed the Refugee Convention 1951 and the 1967 Protocol relating to Status of Refugees due to the fear of international criticism and irrelevant intrusion and interference in internal matter of the state. The Refugee Convention needs the signatory nation in order to come up with the minimum requirements of hospitality and housing towards those it accepts as refugees. Failure to provide the minimum criteria continues to attract a lot of international criticism for host nations even today.¹⁰

The porous nature of borders in South Asia, continuous demographic changes, poverty, resource crunch, and internal political discontent made changes for India to follow up the Protocol relating to Status of Women. Myron Weiner, A politicalist has reiterated that signing the 1951 Refugee Convention or its Protocol relating to Status of Refugees would referred that international scrutiny of India’s internal security, would be allowed for maintaining the political stability and international relations’.¹¹

The 1971 exodus

In 1971, about 10 million people have applied in India for seeking refugee. The military repression in then-East Pakistan led to an estimated 10 million people seeking refuge in India by the end of 1971. It created a drastic situation in India, where it was considered that international supports would be required to settle and manage the massive refugee who are arriving and prepare for their repatriation. The Indira Gandhi government was ultimately getting concerned¹² regarding the drain of resources by refugees. The problem was compounded with a large number of refugees housed in 330 camps across Assam, Tripura

⁹ <https://www.google.com/amp/s/theprint.in/opinion/why-india-is-home-to-millions-of-refugees-but-doesnt-have-a-policy-for-them/341301/%3famp>.

¹⁰ Ibid

¹¹ Ibid

and Meghalaya. The camps held in Tripura given shelter to about nine lakh refugees against an indigenous population of 15 lakh.

In May 1971, Hindustan Standard reported that a large number of migrants or refugees are suffering from infectious diseases. Some 626 doctors and 60 refugee doctors are trying to cure and handle the degrading situation, with the help of 800 paramedical personnel.

The Permanent Representative of India at the United Nations, Samar Sen, urged for the requirements of international aid to the refugees. Moreover in May 1971, the United Nations High Commissioner for Refugees (UNHCR), Sadruddin Aga Khan stated it would not be possible for the UN to bear and provide care and find for complete medical facilities.

In spite of that an appeal for aid was made which helped for about US\$70 million. Then Aga Khan and then-UN Secretary-General U Thant decided that the UNHCR should act as the 'focal point' for the coordination of all UN assistance.¹³

Sadruddin Aga Khan's visit to East Pakistan on the insistence of General Yaya Khan, and due to the lack of assistance provided for the refugees led that Indira Gandhi and the Congress party highly suspicious of the 'neutral' operations of the UN, making the Indian stance towards the International Refugee Regime even more sceptical.¹⁴

In 1971, later on, the repatriation operation and those others who have initiated in 1973 and 1974, were conducted with the UNHCR, headquartered in Dhaka, Bangladesh.

VI. NO LAW FOR REFUGEES IN INDIA AND THE CITIZENSHIP (AMENDMENT) ACT DOES NOT FILL THE GAP

The Citizenship Amendment Act enacted for the humanitarian concerns as that will help the refuge to people fleeing religious persecution.

Provided that the aid is available to Hindus, Buddhists, Parsis, Sikhs, Jains and Christians coming from countries like Pakistan, Afghanistan and Bangladesh. Those undocumented migrants from the mentioned communities will be avail for citizenship under the Act. But that thing is that Muslims, of certain castes are intolerably facing religious persecution in these countries are not considered. And the refugees from Myanmar, large number of Rohingya people who fled ethnic cleansing, and Sri Lanka, where thousands of Tamil refugees were forced out by civil war.

¹³ ibid

¹⁴ ibid

United States President Donald Trump's banned Muslims to allow them as refugees. An order was signed when Trump came into power, he had even rejected even the arrival of the people into US from war-torn Syria, Iran, Iraq, Yemen, Somalia, Libya and Sudan. Moreover as per the US refugee policy and international commitments, it prohibits the entry of refugees or migrants to the nation and finally towards resettlement.

During 2016, even the Indian Government stated that "there is no national law on refugees at present to protect their basic human rights which they acquire by virtue of being human. The Ministry of Home Affairs formed the Standard Operating Procedures in order to deal with foreign nationals in India, who are seeking shelter as refugees."¹⁵

How many refugees are currently living in India?

Based on the data collected and reported the Ministry stated that the home ministry found after examination that about 2,89,394 stateless persons were living in India from December 31, 2014.

And maximum are of from Bangladesh, which consists of almost 1,03,817 individuals, followed by Sri Lanka, at 1,02,467, Tibet, at 58,155.¹⁶

VII. UNSEEN 2019 - THE RISE OF ASYLUM SEEKERS

In a case Sanjeev Kumar who had completed masters in physical education, besides that he had a job where he got salary of ₹20,000 he says How do you support a family in that? Moreover once, he heard of a "travel agent" from Haryana, who could help him get a job in foreign countries. First, he would have to fly to Ecuador, then walk and ride into Central America and Mexico, and finally, sneak into the US. Once there, he would get a job at a gas station or a grocery store and earn up to ₹3 lakh a month. Later on he would be provided the American citizenship by the agents and he could visit his family after that. It seems risky. What would happen if he was¹⁷ caught by the border police? Then, the agent stated to request for seeking asylum. The US as a signatory to the 1951 Refugee Convention, wouldn't be able to deport him without hearing once and giving the individual an opportunity.

As per the provision of the Convention "asylum seeker", is defined as the who is persecuted on grounds of race, religion, nationality, political opinion, or membership of a particular social group. Besides that as per UN High Commissioner for Refugees (UNHCR),

¹⁵ <https://www.google.com/amp/s/amp.scroll.in/article/946220/no-law-for-refugees-in-india-and-the-citizenship-bill-does-not-fill-the-gap>

¹⁶ <https://www.google.com/amp/s/amp.scroll.in/article/946220/no-law-for-refugees-in-india-and-the-citizenship-bill-does-not-fill-the-gap>

In 2018 there were 3.5 million asylum seekers where about 70.8 million individuals have displaced worldwide .While most of the people arrived from war-torn regions of Africa and some areas of South America.

But his father was against that and stated that the agent would rip him off.Later on, Kumar borrowed money from his family, local moneylender etc in order to purchase for one-way trip to the US. But after a few days during the beginning of his travel from Ecuador, he was robbed at gunpoint, moreover he had lost his passport as it was stolen by robberies .At the Mexico-California border, officials from the US immigration and customs department (ICE) detained him on the ground of illegally entering a state.He told whatever the agent had told him .After even than he was detained and his application was rejected and he had realized where he had done mistake as over Ninety-five per cent of Indians who were detained had a story similar to him .But the thing is that most of them were forced to go as they couldn't find a job in India. In its written replies to questions raised in Parliament, the MEA stated that the Indian Government considers that asylum-seekers, during seeking for asylum to a foreign government, denigrate the system in India in order to get personal gains, inspire of knowing that India, is a democratic country, which provides system for every individual so that he can redress grievances lawfully.¹⁸

Hostility and inhospitality

Even if some of the people seek asylum for "personal gains", there are numbers of people who seems to be able to emancipate the hostile living conditions in India,moreover if the numbers of successful asylum applications are anything to go by. While the UNHCR doesn't make records of allowing of the asylum applications, the US department of homeland security stated based on a review that in 2015-2017 almost 1,600 of 17,000 Indians have secured asylum in the US. That's about 10% of all Indian applicants.¹⁹

An asylum seeker Narengbam Samarjit, who is the owner of Manipur-based SALAI HOLDINGS Pvt. Ltd., Samarjit entered into the field of politics and then he set up the North East India Development Party (NEIDP) in 2015.Later on in the parliamentary election of 2019, he changed into a vocal critic of India, and reiterated that the Union government was violating the special powers granted to Manipur by putting an undue influence in Manipur.Then he flew outside India .He surfaced in London in October and made the declaration that he had received asylum in UK. Addressing a press conference, Samarjit

¹⁸ <https://www.google.com/amp/s/www.livemint.com/mint-lounge/features/unseen-2019-the-rise-of-the-indian-asylum-seekers/amp-11577462139760.html>

¹⁹ *ibid*

claimed he was setting up a Manipur "government-in-exile" and whose purpose would be working to secure the constitutional rights of his home state. Then his bank accounts were blocked and frozen moreover he was charged with the offence of waging war against the state and the National Investigation Agency (NIA) had looked upon the case. He was removed from the post of President by NEIDP and SALAI HOLDINGS. Samarjit stated he had received number of threatening by phone as well as in written form after he started criticizing the Indian government. The NIA had also harassed him. In fact, he had filed police complaints because he was threatened to provide money.. Moreover he has urged security guards but the government said they didn't have enough personnel. Later on ,Meghachandra Singh, superintendent of police in West Imphal, refused his claims.

Applying for seeking asylum by the refugees has become difficult .In 2018 A budget review made by the European Union made an announcement regarding the budget of around ₹279,000 crore now which is to be used for managing the border as well as deployment of an additional 10,000 personnel around European borders. Amnesty International has explained the policy of Australia regarding the migrants and asylum seekers as a "calculated system of neglect and cruelty". Many people died during trying to sneak into the UK hiding in the freezer compartments of lorries, in order to avoid British border guards.

Based on survey it was found many officials had violated the human rights of the asylum seekers. Earlier Ajay Kumar is reported to have gone on a hunger strike with A few others protesting against the El Paso detainee processing centre in the US, and against the conditions at the facility

VIII. STRATEGY AND ACTIVITIES OF UNHCR

India is neither the member to the 1951 Refugee Convention nor its 1967 Protocol and In Fact it does not have a national laws regulating protecting the refugees basic human rights. Provided it granted asylum to a many refugees from other States and follows the UNHCR's mandate for other nationals, mainly from Afghanistan and Myanmar. Moreover by adopting the UNHCR documentation, the Indian Government is following its principles .But Indian Government still concerns about security of the people of the nation and which had more restrictive impact on asylum space in the country. Due to the mixed migration flows ,it had complicated the identification and protection of refugees in a state and UNHCR has changed in certain areas and increased its registration activities in order to support and manage the situation. While during the absence of a domestic law or any administrative framework, UNHCR, made refugee status determination (RSD) for asylum-seekers from non-

neighbouring countries and Myanmar. UNHCR is also there in Chennai, Tamil Nadu in order to aid the voluntary repatriation of Sri Lankan refugees. As India has a large number of refugees, no accurate determination of the numbers are available. UNHCR is continuously working to find out the stateless groups. Different standards of protection and assistance among refugee groups were provided by the Government of India in its attempt to solve the refugee issues. Tibetans and Sri Lankan refugees are protected and aided properly by the Indian Government, while UNHCR is attempting to involve with groups arriving from other countries (notably Afghanistan and Myanmar). Holders of documentation provided by UNHCR are able to obtain temporary residence permits. UNHCR is working with the objective to provide protection and assistance to all refugees and asylum-seekers in India, and to preserve protection space and develop a partnership with the Government at the national and international level. Furthermore, it would work to minimize the gap in services between refugees and asylum-seekers, so that the Asylum seekers would have access to all programmes, other than those where direct cash benefits are there and some livelihood activities. Refugees and asylum-seekers would be encouraged to use of public health services and

education services providing while UNHCR will take necessary measures in order to help overcome any barriers to access. Efforts will be made in order to meet the requirements of people with specific needs and strengthening livelihood opportunities through a community-based approach.

UNHCR used to form the promotional and advocacy activities with other authorities, as well as the civil society, academic institutions and other stakeholders in order to encourage the recognition and development of domestic refugee legislation, and would take part in arranging the daily protection requirements of refugees and asylum-seekers. Refugees will be assisted to repatriate and the Resettlement would address the protection requirements that should be provided and cannot be met in India, and refugees would be given assistance for naturalization. The lack of a national refugee protection framework is an obstacle to providing effective refugee protection. Due to limitations in understanding the conditions of refugees it can result in hostile attitudes toward persons of concern. With the increasing number of asylum-seekers from Afghanistan and Myanmar in the last three years has ended up the protection space. Against the broader background of difficult socio-economic conditions for large segments of India's population, a rise in racism and xenophobia have undermined the tradition of tolerance in India. With the taking measures to combat terrorism and to maintain the security of the state leading to have a negative effect on refugees and

asylum-seekers, who are already in difficult situation to stay in a country. Through its limited presence in New Delhi and Chennai, UNHCR is making its complete attention on addressing refugee and statelessness challenges in those, albeit significant, areas. In Tamil Nadu, UNHCR's absence from the camps limits the extent of the support it can provide for repatriation. Elsewhere UNHCR must rely on Indian civil society to monitor refugee-related developments. UNHCR used to work together with the Government of India, that includes basically, the Ministry of External Affairs and the Ministry of Home Affairs, including police authorities. Its civil society partners include the Mahanirban Calcutta Research Group, The Other Media, and academia.

In Fact UNHCR participates in the UNDAF process, particularly the clusters on gender, education, HIV and AIDS and disaster management

IX. INDIA'S ASYLUM POLICY - WHAT IT IS ,WHO IT APPLIES TO ?

Who is an asylum seeker, and how is he different from a refugee?

According to the UNHCR, the UN refugee agency, asylum seekers are those people who have taken international protection and who has not yet considered as refugees ,irrespective of when they may have been lodged. India has huge number of refugee populations in South Asia, but till no uniform legislation has passed governing the issues of refugees. In Fact the term 'refugee' is not mentioned in any national law. Moreover, India is not a party to the

²⁰1951 United Nations Refugee Convention on the Status of Refugees, or its 1967 Protocol that stipulates the rights and services host states must provide refugees.

The Passport (Entry of India) Act, 1920, The Passport Act, 1967, The Registration of Foreigners Act, 1939, The Foreigners Act, 1946, and The Foreigners Order, 1948, are taken into consideration by the Indian authorities while making the entry of refugees and asylum seekers.

India does, however, have an informal refugee regime broadly in line with international instruments. While it has no formal asylum policy, the government decides on granting asylum on an ad hoc and case-to-case basis.

In 2015, Congress MP Shashi Tharoor introduced a Private Member's Bill called the Asylum Bill, 2015, in order to provide for the setting up of a legal framework or guidelines to combine as well as to harmonise India's refugee policies. The Bill is not yet came into force and not enacted.

CASE OF BALOCH LEADER BRAHUMDAGH BUGTI

The son of the slain Baloch leader Akbar Bugti left Pakistan and moved to Afghanistan in 2006 and then he moved to Switzerland in 2010. He was there in Geneva and was seeking asylum which is still pending in Switzerland. He is in desire to seek for the political asylum in India which, he hopes will provide him way to travel and lobby for the Baloch cause at international fora. Once after applying for the asylum, the matter will be conferred to the Ministry of Home Affairs, by the Ministry of External Affairs and he which would then process the request. While the government takes a favourable decision, Bugti could be granted a long-term visa that would be required to be renewed annually. Another case is of the Exiled Bangladeshi writer Taslima Nasreen, who left Bangladesh in 1994 due to the threats from people of Bangladesh for alleged blasphemy, and she has been given an Indian visa continuously since 2004.

X. THE LEGAL POSITION IN THE CASE OF TIBETAN REFUGEES AND TAMIL REFUGEES FROM SRI LANKA

The Tibetans who came in India along with Dalai Lama in 1959 were considered as refugees and were provided asylum. They were provided land to stay and were given the facility of housing which was later on stopped for the refugees and granting of the Registration Certificate (RC) that permitted them to enjoy the privileges of an Indian citizen like other common citizens of India except the right to vote and work for the government. The RC is a basic essential for the Identity Certificate (IC), which is necessary for any international travel or movements outside. An IC is generally issued to Tibetans who are living in India, from the Regional Passport Office situated in Delhi, on the recommendation of the Bureau of His Holiness the Dalai Lama (HHDL), New Delhi.(22)

The Sri Lankan Tamil refugees are divided or classified as camp refugees and another one is non-camp refugees, which is formed based on the socio-economic parameters. They cannot exercise the right to cast vote or own land in India, but are allowed to own cattle as well as to purchase materials for domestic requirements. Sri Lankan Tamil refugees are granted the individual and family identity cards with details of names of family members, age, relationship, gender, date and location of when they came in India, education and their erstwhile address in Sri Lanka. They are also given refugee certificates by the revenue inspector of their camp, which is the basically required for their return to Sri Lanka.

XI. WHAT RELAXATION ARE GRANTED TO THE REFUGEES OF AFGHANISTAN, PAKISTAN AND BANGLADESH?

In July 2016, the government had provided many of facilities in order to reduce the difficulties which are being faced by minorities of Afghanistan, Bangladesh and Pakistan like Hindus, Sikhs, Buddhists, Jains, Parsis and Christians by providing way to stay in India on Long Term Visas. They were allowed to open bank accounts, New lands or properties like house for settling. Themselves and suitable accommodation for carrying out self-employment, take self-employment, and obtain driving licences, PAN cards and Aadhar numbers. Certain facilities provided to them includes-The movement of such persons within the state or Union Territory where they resides, the transfer of visa papers from one state to another, and the dismissal of penalty due to non-extension of short-term or long-term visas on time.

During the September 2015, the arrival of Hindus, Sikhs, Christians, Jains, Parsis and Buddhists from Pakistan and Bangladesh in India due to the fear of being subject to religious persecution, either without valid documents or with documents whose validity had since expired, had been timely regulated by the Government's approach. The Indian government has decided to exclude the minorities of Bangladesh and Pakistani who entered India on or before December 31, 2014, as per the provisions of rules made under the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946, in regard to their entry and stay in India without such documents, or after the expiry of those documents.

XII. CITIZENSHIP AMENDMENT ACT 2019

As per Section 2 of the Act, whoever belongs to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, and have entered into India on or before the 31st day of December, 2014 and who has not allowed by the Central Government of India by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or under the provisions of the Foreigners Act, 1946 shall not be considered as illegal migrant for the purposes of this Act moreover.

As per Sec 3. After section 6A of the principal Act, the new section that'll be added are :

'6B. (1) The Central Government or any authority may, provide along with the restrictions and manner as may be prescribed, on an application made in this behalf, provide a certificate of registration or of naturalisation certificate to the person belonging from that minority groups of neighboring countries like Afghanistan, Pakistan and Bangladesh.

(2) the qualifications for claiming naturalisation certificate as per under the provisions of the Third Schedule, the person who has received the certificate of registration or naturalisation under sub-section (1) shall be considered and deemed to be a citizen of India when he has entered into the nation India

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding which is still pending against a person who is a minority of the neighbouring countries under this section in matter related to illegal migration or citizenship shall stand abated on the ground of granting him the citizenship

However such person shall not be disqualified for making application for citizenship as provided under the section only due to the reason that the proceeding is pending against him and the Central Government or authority or any person in his behalf shall not refuse to grant citizenship and his application on the ground that if he is otherwise found qualified for grant of citizenship under this section:

Moreover the person who makes the application seeking the citizenship in India under this section shall not be deprived of his rights and privileges or in other words can't be rejected to which he was

entitled on the date of receipt of his application due to presenting such application.

(4) Moreover the section shall not be applied to the tribal areas of Assam, Meghalaya, Mizoram or Tripura as provided under the Sixth Schedule to the Constitution and the areas under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.

As per Section 4. In section 7D of the principal Act, provides that certain clauses will be added - (da) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or under any law other than this Act for certain period

may be specified by the Central Government in the notification published in the Official Gazette; or

(ii) after clause (f), certain proviso shall be inserted, namely:—

However no order under this section shall be passed unless the Outsider of India Cardholder has been given an opportunity of being heard.

As per Sec 5. In section 18 of the principal Act, certain provisions or clauses will be inserted "(eei) the conditions, restrictions and manner for providing the certificate of registration or

naturalisation under sub-section (1) of section 6B; shall be inserted, namely:—

'But the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the overall period of

residence or service of Government in India needed under this clause shall be not less than five years.

XIII. CITIZENSHIP AMENDMENT ACT 2019-WHY IS IT SEEN AS A PROBLEM

After the enactment of the Citizenship (Amendment) Act 2019 several protest started against the Act stating that it is unconstitutional as the Act seeks to amend the definition of illegal immigrant for Hindu, Sikh, Parsi, Buddhist and Christian immigrants from Pakistan, Afghanistan and Bangladesh, those who were staying in India without proper documentation. And they will receive the Indian citizenship in six years. As earlier there was requirement of at least 12 years of residence in order to receive naturalization certificate. At the first hearing on petitions challenging the CAA, the Apex Court in India refused to stay Act but asked the Centre to submit its response against the petitions that say it violates the Constitution. The petitioners say the Bill discriminates against Muslims and violates the right to equality as provided under Art 14 of the Constitution.

The Act applies to those people who were “forced or compelled to seek shelter in India due to religious persecution. Its purpose is to protect such people from proceedings of illegal migration. The cut-off date for citizenship is December 31, 2014 which means the person should have entered the country on or before that date. The citizenship of India, is granted either to people took birth in India or if they have resided in the country for at least 11 years.

Centre's logic behind the bill

As per the Centre, they say that minority groups have come escaping and struggling the religious persecution in Muslim-majority nations. However, the logic is not consistent as it does not protect all religious minorities, nor does it apply to all neighbours. The Ahmedia Muslim sect and even Shias face discrimination in Pakistan. Rohingya Muslims and Hindus face persecution in neighbouring Burma, and Hindu and Christian Tamils in neighbouring Sri Lanka. The government responds that Muslims can seek refuge in Islamic nations, but has not answered the other questions.

Some say it is like Partition, is that true?

The Bill would not have been come into existence if the Congress did not agree to Partition on the basis of religion. But, India was not formed on the basis of religion, Pakistan was.

Only the Muslim League and the Hindu Right formed the two nation theory of Hindu and Muslim nations, which ultimately led to Partition of countries. It is a secular state where the state has no religion of its own, where all citizens irrespective of caste, religion can enjoy full membership.

.How much of Northeast does the Act cover?

CAA won't apply to areas provided under the sixth schedule of the Indian Constitution which basically discusses autonomous tribal-dominated regions in Assam, Meghalaya, Tripura and Mizoram. The Act will also not be applicable to states which have the inner-line permit regime like Arunachal Pradesh, Nagaland and Mizoram.

Why is Assam angry about it?

Assam is one of the states from North East who are opposing and against the Act. Besides the rest of these North Eastern states are not included in the legislation, the protests and outrages originated due to the fear that illegal immigrants like Bengali Hindu migrants from Bangladesh, if given citizenship under CAA, it will threaten the cultural and linguistic identities of the state.

NRC-

The National Register of Citizens or NRC targeted illegal immigrants in Assam. As per NRC an individual has to prove that either they, or their forefathers were in Assam on or before March 24, 1971.

What is the Opposition's argument?

The CAA infringes the right of Muslim identity as it allows other minorities from the states like Afghanistan, Pakistan and Bangladesh who were subjected to religious persecution. It is trying to legally establish Muslims as second-class citizens of India by providing the rights and privileges to other communities and benches it violates the fundamental right under Article 14 of the Constitution. This basic structure of features of the Constitution can't be changed or amended by the Parliament.

XIV. CONCLUSION

To grant asylum to the seeker is ultimately upon the liberty of a state as well as the state has the liberty to refuse extradition or rendition of the individual at the request of other nations, and the main objective behind providing asylum is to accord protection to the refugee or person concerned and to bring under the jurisdiction of the granting State.