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Citizenship Amendment Act

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ABSTRACT

India started to acknowledge that migration would be the biggest trigger in the near future during independence from 1947 to 1952. The leaders of the nation decided to give citizenship rights to the population in India according to law and constitution. So when the leaders of the nation decided that giving citizenship rights to the population in India would create a lot of dilemmas that is when they determined to introduce the “CITIZENSHIP AMENDMENT ACT 1955” in which population who migrated during the partition would be recognized as citizens or immigrants but this legislation was not fruitful so the bill was amended. The recent “CITIZENSHIP AMENDMENT ACT 2019” was the latest amendment made to the CAA 1955 bill, CAA 2019 is called to be unconstitutional as it only allows population flew from Pakistan, Bangladesh and Afghanistan to India who belong to Hindu, Sikh, Jain, Parsi, Christian, and Buddhist and who came before 31 Dec 2014, excluding Muslims. CAA 2019 is causing suggestive pressure of proof that should be prove that they are the citizens of India and also affecting India’s foreign relations across the globe. This paper also explains about how the CAA 2019 is discriminatory in nature and how the legislation is affecting the fundamental rights of a person and the national security of the country.

I. INTRODUCTION

The Citizenship Act 1955 accommodates five steps to attain Indian Citizenship, via- Birth, Registration, Naturalisation, Descent and Embodiment of some territory into India. Border migration of population has happened between India and its territories, Pakistan, Afghanistan, and Bangladesh during this period. Trillions of Citizens of united India belonging to different religions of Pakistan and Bangladesh who lived in the parts when India was divided in 1947. The Constitution of Pakistan, Bangladesh and Afghanistan specify their state religion, Hindu, Sikh, Buddhist, Jain, Parsi and Christian population in those countries where led to persecution. During that phase people left to India for shelter and continued to reside there even after expiration or incomplete travel documents or no documents³.

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³ Dr. Narendra Nagarwal, *The Poisonous Law: The Citizenship Amendment Act 2019*, ResearchGate, Dec 2019.

The existing Citizenship Amendment Act 2019, pursues to allocate citizenship rights to religious minorities of fellow countries on the basis of religion, which is constitutionally impractical and also against the Article 14 of the Indian Constitution⁴. Migrants who came to India who fled to India from Pakistan, Afghanistan or Bangladesh who are associated to Hindu, Sikh, Buddhist, Jain, Parsi and Christian population without legal documents or expiration of documents are labelled as illegal migrants and ineligible to apply for Indian Citizenship.

II. HOW CAA IS VIOLATING THE INTERNATIONAL LAW:

The recent amendment in Citizenship Act 2019, has changed the meaning of illegal migrants. The Administration pursues to alter in order to promote to give citizenship rights to immigrants from Pakistan, Bangladesh and Afghanistan who are to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian, non-Muslim who migrated to India without legal transit documents or validity period of whose expiration of those documents during their stay in India⁵.

Under human rights treaties to which India is a party, the right to equity before the law and the right to non-discrimination, preserved but the rule of law principles and international law are contrary to CAA

According to Black Law Dictionary, the two laws; Municipal and International, the internal law of a nation, as disputed to international law. The Constitution of India, being municipal law of the nation is disputed to international law. When a municipal law opposes international law, it does not to portray the two laws as each other's rival, but it portrays as if both the laws are separate and should not interfere in each other's area. As both laws are not necessary and complementary to each other⁶.

The Indian Administration conveyed that the CAA is an internal issue, which does not need an interference of any foreign party as it is the matter of India's sovereignty. Despite the statement from the administration, professionals have warned that CAA along with National Register of Citizens which was planned is violating the international norms which especially rendering people stateless is a violation.

Constraining the discretionary denial of one's nationality under Article 15 of the Universal

⁴ INDIA CONST. art.14

⁵CAA in 'clear violation' of Indian Constitution and international human rights law:Amnesty, India News - Times of India, Feb 1, 2019.

⁶INDIA: CITIZENSHIP AMENDMENT ACT VIOLATES INTERNATIONAL LAW, INTERNATIONAL COMMISSION OF JURISTS, MARCH 10, 2020.

Declaration of Human Rights (UDHR)⁷. In 1948, the legal document was not binding when India signed UDHR. CAA exactly breaches the right to a nationality by putting aside the applicability of the document. The general non-discriminatory provisions under the ICCPR is at a great difference as Indian citizenship law is the *prima facie*. No state shall deny a person of guarantee rights without any injustice on the basis of particular grounds under Article 2(1). The CAA (present) perceives the couple of communities dependent on religion and permits them a favoured status identified with citizenship, the current bill unequivocally restricts Muslims from this structure, which is damaging of Article 2(1)⁸ that is separation dependent on religion⁹.

Other than violating the laws, the administration has been building detention centres which does divert the attention. So, people without documents or expired documents would not be sent to the neighbouring countries instantly. Therefore, they would be kept in the confinement place for uncertain time course, which correctly impacts the privilege to life (Article 6) and right to respect in detainment (Article 10) under ICCPR.

The organization can shield itself by utilizing the Article 12 is identified with opportunity and freedom development however is limited to unprecedented grounds and ought to satisfy the trial of remedy of law, legitimate point and need in an equitable society. However, the principle issue emerges when Article 12 (4) is utilized which characterizes that "nobody will be subjectively denied of the option to enter his own nation"¹⁰, this article suggests on huge removal to another nation. In any case, in this article, it doesn't show the distinction among residents and outsiders, which would indicate a relationship outskirts than nationality. Through this arrangement any individual who has been dwelling in the nation for long-term course than the individual is ensured under ICCPR. The United Nations Human Rights Committee (UNHRC) has given not many components which would help decide "one's own nation" i.e., family relations, language spoken, and the time course of living arrangement in the nation. At the point when this is being applied to India the populace would be expelled regardless of whether they are occupants for a very lengthy timespan whose progenitors who after the division of India and the 1971 Bangladesh War moved to India. Possibly they have lived for such a long time that they have strict and morally similitudes to Indian Communities, so considerably after not having the correct authoritative records, the connections to the strict and moral likenesses to the Indian Culture however dependent on the

⁷UDHR. art.15

⁸UDHR.art. 2, cl. 1

⁹Prabhash Ranjan, *CAA violates international customary law*, Hindustan Times, Dec 18, 2019.

¹⁰ICCPR. art.12, cl. 4

UNHRC grounds, India could completely be clarified as their "one's own nation". Along these lines, confinement and uprooting of populace is infringement of their privileges under the ICCPR¹¹.

III. RELIGIOUS TEST OF CAA:

An assumption has been built and spread across the world that Islamic countries have less non-Muslim population after the division. The present administration blames the before administration (Congress) that they have done the partition based on religion which is clearly not correct, but the administration ensured to give special provision for specially persecuted minorities barring Muslims. Different treatment shall be deemed not fundamental if it is based upon religion¹².

the present CAA allows citizenship for those who fled to India on or before December 31, 2014, who fled from Pakistan, Afghanistan, and Bangladesh who belong to groups of Hindus, Sikh, Jain, Parsi, Buddhist, and Christian refugees, but also it increases the current vulnerability of Indian Muslims.

IV. THE ILL EFFECT OF CAA ON INDIA:

Since, India's biggest move towards the Citizenship Amendment Act has created a lot of tension around the globe. United States has sincerely regret the decision of India in regard with CAA as it is discriminatory, divisionary and Anti-Muslim Act. Also, experts have suggested to analyse the counter balance sanctions against India if it is adopting the legislation for religious minorities from its neighbours and eliminates Muslims from a way to attain citizenship. After the U.S condemning India's legislation, Japan and Bangladesh have cancelled their visits to India because of the violent protest against the CAA.

The United Nations have also conveyed their disappointment with the legislation and has asked Indian Administration to review them immediately. UNHRC has said that the Citizenship Legislation is unconstitutional in nature for excluding the Muslims.

After the actions from various countries, India has been losing its closest and trusted allies on the global platforms. Experts have marked this legislation discriminatory and have compared this legislation to dishonourable Nuremberg Laws of Nazi Germany. Nuremberg Law

¹¹UNNATI GHIA, *SUDDENLY STATELESS: INTERNATIONAL LAW IMPLICATIONS OF INDIA'S NEW CITIZENSHIP LAW*, OPINIO JURIS, FEB 5, 2020.

¹² Dr Sandeep Singh and Mr. Jagmanjot Singh, *Political Subjectivity in Narratives Around India's Polarized 'Citizenship Amendment Bill'* – *Analysis*, Eurasia Review, Dec15, 2019.

demonstrate many of the racial theory's foundation of Nazi ideology¹³.

These laws uniquely give the legitimate and legal vindication for all around organized mistreatment of Jews people group in Germany who were the biggest strict minority network during the Nazi time under the headship of Hitler. The Indian citizenship enactment for example CAA together connected with the intolerable Nuremberg Laws yet for the most part adjust in points of interest yet not in spirit.

After India putting forward the legislation, foreign countries and foreign investments have been thinking twice to make any clinches India as a strong, balanced and practical democracy and rather re-join it with Pakistan.

V. NATIONAL SECURITY:

The conceivable terrorizing of diminishing association with bordering nations does not rule out after spread of CAA. Pakistan, Sri Lanka's partnership has certainly been harmed with India. The rising of strains among India and Pakistan, Sri Lanka which may lead Bangladesh to sidestep in SAARC domain as a trusted assistant of India.

The legislation would cause ill effect to the business ties, exports, imports and medical tourism sphere and diplomatic relations with the neighbouring countries. The legitimate structure gave under the CAA to push their "own community" "Pakistan's ISI may manhandle it and would cause danger to the national security to India. India is under danger from neighbouring nations who may constrain their representatives for the well-being of "aggrieved small groups" of India mean to build the insight pavilion of ISI arrange in Sub-landmass of India.¹⁴.

The law is against the whole nation, and its execution may put national security under danger to arrangement of conceding citizenship to those from neighbouring nations undermines national security, as the passage of undesired components can't be precluded. Indeed, even solidified hoodlums and psychological militants can become residents of India and posture risks to the country's tranquillity and serenity.

To gain citizenship in India the inhabitants of India had to establish false assertion which was driven from the legislation. These people are Bengali Hindus are the people who were overlooked in the Assam NRC. Muslims who lived in Assam emigrated from Bangladesh are the people who encountered issues in proclaiming the citizenship. and they are the people

¹³Dr. Narendra Nagarwal, *Global Implications of India's Citizenship Amendment Act 2019*, ResearchGate, Dec 2019.

¹⁴VAIBHAV GANJAPURE, *CAA MAY PUT NATIONAL SECURITY UNDER THREAT*, INDIA NEWS - TIMES OF INDIA, JAN 26, 2020.

who have been residing in India for a long-time course. Assam's geographical condition, is closed by pores periphery with Bangladesh has allowed to settle as money related ousted individuals in Assam locale before opportunity and after the self-governance bigger piece of banished individuals who are Bengali Hindus from Assam. Indians are the banished competitors of NRC who do not have records, So to grant citizenship to a gigantic number of restricted people the CAA weight on first the citizenship searchers should report himself as an individual from demanding minority group who is either fled to India from Pakistan , Afghanistan or Bangladesh and beside make evident that he has been an overcomer of serious abuse in these nations. Till beginning end, all excused people were affirming that they belong to India in any case their name was forgotten in the NRC doesn't make them all belong to the category of untouchables. Their name has to be reminisced for NRC and to ensure that they belong to India and have all the right to have Indian citizenship they need to declare oneselves as unapproachable primarily, it is extraordinarily odd. This obliged trickiness by the State administration may make extra hard to miss concern as in why prohibited members prerequisite to appease fake affidavit/reports to view that they are outsiders so as to get Indian Citizenship from the administration when there are large number of Indian just like others. The pressure of removing, denying rights of the individuals, harassing at control target and state keep up exclusion may affect another controversy of disturbance, obstruction and forcing someone to consider or think radically of North East locale. In this way, it will when all is said in done be firmly imparted that started sort of CAA 2019, Both the Houses of Parliament have proceeded on 12 Dec 2019 is incredibly delicate for the country's standard personality since the legislation is contrary to the Constitution considering diversity, assembled collection, rights of the minorities and possibility of religion kind of centrenorms.¹⁵.

VI. CONCLUSION:

According to my views the Citizenship legislation is purely a biased segregation, anyway here by allocating demanded homeless people into non-Muslims and Muslims categories, the discredited legislation unequivocally and completely, attempts to love severe detachment into law, regardless of our enduring, standard secured ideology. Interim action of genuine pros to choose if the Bill which is drafted now an Act manhandles the sign of the constitution, it gives off an impression of being certain to us that it damages its spirit. For the boundsaccused above, we depend upon the snappy egression of this bill went to the court that it is unlawful

¹⁵Dr. Narendra Nagarwal, *The Poisonous Law: The Citizenship Amendment Act 2019*, ResearchGate, Dec 2019.

and gap as it harms the major foundation of the constitution of India for instance standard nature of the constitution. Four standards must not be missed in national administrative issues that likewise set up that outside relations and overall image of a nation are; Pluralism, Tolerance, Co-neariness and Secularism and all these are fundamental to worldwide agreement, security and achievement. The general liberal media has taken the tremendous extension threatening to CAA contradicts across India really and regularly circulating the disappointment across systems. The creating common division that additionally state bolstered joined with compromising relations with neighbouring countries are adequate to revive the separation point what's increasingly, potential results of experience with Pakistan and China in coming days. The South Asia can't shoulder the expense of any military or equipped conflict and to avoid any common conflict the significant obligation lies on India. A bit of the methods taken by the India in late past can possibly destabilize the serenity of South Asia. India must drop the chance of CAA and NRC that have been organized with a malignance against India's greatest minority for instance Muslims. History has seen that whoever disregarded minorities rights, human rights and rights to adjust and opportunity of its inhabitants had finished on astoundingly generous expense beforehand.
