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# Multi-dimensional Approach to the Constitutional Validity of the Citizenship Amendment Act, 2019 and its relation with NRC and Assam Accord

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## ABSTRACT

*The chief intrinsic of the Citizenship Amendment Act, 2019 is to provide citizenship status to the Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have absconded from the neighboring countries such as Bangladesh, Pakistan and Afghanistan into the Indian Territory before 31st December 2019 as a result of religious persecution but excludes Muslim refugees from the above mentioned countries. As the Citizenship Amendment act does not treat the Muslims equally with their counterparts Hindus, Sikhs, Buddhists, Christians, Parsis and Jains under the equal circumstance of religious persecution and segregation of the Muslims from the same is irrational and absurd because the taxonomy fashioned by the Citizenship Amendment Act exclusively on religion is perverse and hence the differentia formed by the Act is one which is not based on a reasonable nexus thereby violating Article 14. When the recipient of the law is pedestal on religious hounding then parting out Muslims who are religiously victimized entails that they would be kept back in incarceration centers in contrast to their Hindu, Muslim, Buddhists, Sikhs and Jains from the aforesaid countries consequently constricting their right to life and personal liberty on the basis of an unfair procedure and violating Article 21. Furthermore as the Act discriminates the Muslim refugees in relation to granting them citizenship rights solely on the basis of their religion it casts an attack on the well cherished principle of secularism and thereby contravenes the basic structure and the principle of constitutional morality enshrined under the Constitution. In acquiesce to the Citizenship Amendment Act the cutoff date for persons pertaining to the six abovementioned religious groups asserting citizenship in India is 31st December 2014 which collides with the NRC cutoff date of 24th March 1971 consequently rendering the gross calisthenics of NRC in Assam futile.*

## I. INTRODUCTION

The Citizenship Amendment Bill received approbation from the President on December 12,

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2019, transmuted it into an act. The chief intrinsic of the Act is to confer citizenship status to the Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have eluded from the neighboring countries such as Bangladesh, Pakistan and Afghanistan into the Indian Territory before 31<sup>st</sup> December 2014 because of religious persecution. In the light of preponderance of expostulations against the Citizenship Amendment Act by different universities, Muslim organizations as well as general masses it requires an unflustered analysis.

## **II. DOES THE CITIZENSHIP AMENDMENT ACT CONTRAVENE ARTICLE 14 OF THE INDIAN CONSTITUTION?**

Article 14 states, “*The State shall not deny to any person equality before law or equal protection of laws within the territory of India.*” It denotes non existence of any special prerogative in predilection of some persons and equal subservient of all classes to the conventional law.

### **(A) AMBIT OF ARTICLE 14 SHIELDS BOTH CITIZENS AS WELL AS ALIENS**

In *Natural Resources Allocations, In Re Special Reference No 1 of 2012*<sup>3</sup> it was held that the underlying object of Article 14 is to secure to all persons, citizens or non citizens, the equality of status and opportunity referred to in the preamble of our constitution. Also in *Chiranjit Lal Chowdhary v. Union of India*<sup>4</sup> it was held that the fortification of Article 14 amplifies to both citizens and aliens and to natural as well as legal persons. Equality before law is warranted to all without reverence to race, colour, religion, sex or nationality. Thus it is appertaining to prognostic that although the Citizenship Amendment Act caters citizenship rights only to Hindus, Sikhs, Buddhists, Christians and Jains who have absconded from Bangladesh, Pakistan and Afghanistan and penetrated the Indian territory before 31<sup>st</sup> December 2014 owing to religious persecution but the vindication of Article 14 augments to all the aliens including the Muslims of these nations.

### **(B) ARTICLE 14 CONNOTES EQUALITY OF TREATMENT IN EQUAL CIRCUMSTANCES WHICH IS NOT SUFFICED BY CITIZENSHIP AMENDMENT ACT**

The tenet under Article 14 is that like should be treated alike and not that unlike should be treated alike.<sup>5</sup> Equality before the law signifies that amidst equals the law should be equal and equally accorded. The doctrine of equality before law is a necessary corollary of rule of law which pervades the Indian Constitution.<sup>6</sup> In the case of *John Vallamatom v. Union of*

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<sup>3</sup> (2012)10 SCC 1(77)

<sup>4</sup> AIR 1951 SC 41

<sup>5</sup> V.N. Shukla on The Constitution of India, P. 27 (5<sup>th</sup> Edition)

<sup>6</sup> Ashutosh Gupta v. State of Rajasthan, AIR 2002 SC 1533

*India*<sup>7</sup> the Hon'ble Supreme Court has held that all persons in similar circumstances shall be treated alike both in the privileges and liabilities imposed under law. Also in the case of *Gauri Shankar v. Union of India*<sup>8</sup> it was stated that the principle of equality of law means that the law should deal alike with all in one class; that there should be an equality of treatment under equal circumstances. It means that equals should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike. Furthermore in the landmark case of *State of West Bengal v. Anwar Ali Sarkar*<sup>9</sup> the Supreme Court has cited that all persons correspondingly circumstanced shall be treated similarly both in the predilections conferred and liabilities imposed by the laws. The Apex court further delineated that equal law should be applied to all in the same situation, and there should be no bigotry amidst one person and another and as regards the subject matter of the legislation their position is same. Adducing the above judgments in the texture of Citizenship Amendment Act if a Hindu, Buddhist, Christian, Sikh, Parsi or Jain had invaded the Indian territory before 31<sup>st</sup> December 2014 from Bangladesh, Pakistan or Afghanistan due to religious persecution then such a person will be entitled to apply for citizenship in India but on the antagonistic if a Muslim had penetrated the Indian territory before 31<sup>st</sup> December 2014 from Bangladesh, Pakistan or Afghanistan owing to religious persecution then such a person will not be capable to apply for citizenship in India inspite of the fact that circumstances of both the above classes of persons are the same. This is a blatant desecration of the mandate laid down by the Supreme Court in *John Vallamatom v. Union of India, Gauri Shankar v. Union of India and State of West Bengal v. Anwar Ali Sarkar* which stated that all persons correspondingly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws because the Citizenship Amendment Act, 2019 bestows the predilection of granting citizenship rights to Hindus, Sikhs, Buddhists, Christians and Jains who have fled from the neighboring countries such as Bangladesh, Pakistan and Afghanistan and pervaded the Indian territory before 31<sup>st</sup> December 2019 as a consequence of religious persecution but bars out the Muslims.

**(C) CITIZENSHIP AMENDMENT ACT DOES NOT SATIATE THE TWIN TESTS OF INTELLIGIBLE DIFFERENTIA AND REASONABLE NEXUS UNDER ARTICLE 14 AND IS THEREFORE ARBITRARY**

*Article 14* avows reasonable classification. Classification to be reasonable should fulfill.

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<sup>7</sup> AIR 2003 SC 2902.

<sup>8</sup> (1994) 6 SCC 349.

<sup>9</sup> AIR 1952 SC 75

Tests such as:

1. It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.<sup>10</sup>
2. The differentia adopted as the basis of classification must have a *rational or reasonable nexus* with the object sought to be achieved by the statute in question.<sup>11</sup>

In *Maneka Gandhi v. Union of India*<sup>12</sup> it was held that Article 14 smacks at arbitrariness in State action and ensures equality of treatment. In the case of *K. Thimappa v. Chairman, Central Board of Directors, SBI*<sup>13</sup> it was stated that the classification under Article 14 must be founded on an intelligible differentia which distinguishes between persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the entity sought to be achieved by the Act. It is to be taken under consideration that the discrepancy created by the Citizenship Amendment act to bestow citizenship rights to Hindus, Sikhs, Buddhists, Christians and Jains who have eluded from the neighboring countries such as Bangladesh, Pakistan and Afghanistan and pervaded the Indian territory before 31<sup>st</sup> December 2014 as a result of religious hounding and segregation of the Muslims from the same is irrational, illogical and absurd. This is because the taxonomy fashioned by the Citizenship Amendment Act exclusively on the foundation of religion is perverse. If the intrinsic of the Act is to shelter minorities who facade religious persecution from neighboring countries of India then it is an astounding fact that it utterly overlooks the Ahmadiya and Shia Muslims who countenance religious harring in Pakistan, Rohingyas and Hindus in Myanmar and Christian Tamils in Sri Lanka. Additionally in the case of *R.D Shetty v. Airport Authority*<sup>14</sup> the Supreme Court cited that when the classification is not reasonable and does not gratify the two stipulations of intelligible differentia and reasonable nexus the impugned legislation or executive action would manifestly be capricious and the guarantee of equality in Article 14 would be scuttled. On both of the grounds the Citizenship Amendment Act drastically fails as not only does it assort numerous illegal immigrants on the foundation of

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<sup>10</sup>BudhanChowdhary v. State of Bihar, (1955) I.S.C.R. 1461.

<sup>11</sup>LaxmiKhandsari v. State of Uttar Pradesh, AIR 1981 SC 873,891; (1981) 2 SCC 600; State of Haryana v. Jai Singh, (2003) 9 SCC 114; AIR 2003 SC 1696; Welfare Asson, ARP v. Ranjit P. Gohil, (2003) 9 SCC 358; (2004) 1 SCC 369; AIR 2003 SC 3057; Javed v. State of Haryana, (2003) 8 SCC 369; AIR 2003 SC 3057.

<sup>12</sup> AIR 1978 SC 597

<sup>13</sup> AIR 2001 SC 467

<sup>14</sup> AIR 1979 SC 1628

religion but it also does so for the reasons that have no basis in the law itself. Several illegal immigrants should not be considered more equal than others and hence the differentia formed by the Act is one which is not based on a reasonable nexus.

Hence it is congruous to state that the Citizenship Amendment Act, 2019 infringes Article 14 of the Indian Constitution because it does not treat Muslims and individuals from other religions such as Hindus, Buddhists, Christians, Sikhs and Jains equally under the equal circumstance of religious persecution and does not gratify the two tests of intelligible differentia and reasonable nexus that embodies under Article 14 as it capriciously discriminates with Muslims with regard to conferring them citizenship rights exclusively on the ground of their religion.

### **III. DOES THE CITIZENSHIP AMENDMENT ACT ABRIDGE ARTICLE 21 OF THE INDIAN CONSTITUTION?**

Article 21 states, “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”

#### **(A) AMBIT OF ARTICLE 21 ENCOMPASSES ALL ALIENS INCLUDING MUSLIM REFUGEES FROM OTHER COUNTRIES**

In *National Human Rights Commission v. State of Arunachal Pradesh* the Supreme Court held that the right to life and personal liberty also extends to non citizens. Also in *Wong Yang Sung v. McGrath*<sup>15</sup> the Supreme Court construed the term the term “statute” as including the broader concept of law and thus extended procedural safeguards to an alien in deportation proceedings. Thus it is apposite to prognostic that all the non citizens including the Muslim refugees are entitled to the protection under Article 21.

#### **(B) PROCEDURE ESTABLISHED BY CITIZENSHIP AMENDMENT ACT CAPRICIOUSLY BEREAVES MUSLIMS REFUGEES WHO ACCOST RELIGIOUS PERSECUTION OF THE TUTELAGE UNDER ARTICLE 21**

Right to life interpolates the right to live with human dignity. It encompasses all those slants of human life which make it substantial and sentient. Before a person is deprived of his life and personal liberty the procedure established by law must be strictly followed<sup>16</sup> and must not be departed from to the disadvantage of the person affected.<sup>17</sup> This right is not only

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<sup>15</sup> 339 U.S. 33 (1950)

<sup>16</sup> *Makhan Singh Tarsikka v. State of Punjab*, 1952 SCR 368: AIR 1952 SC 27.

<sup>17</sup> *Naranjan Singh Nathawan v. State of Punjab*, AIR 1952 SC 106: 1952 SCR 395.

a shield against executive action unsupported by law,<sup>18</sup> rather its ambit stretches up to the dimension of legislation.<sup>19</sup>In *Bachan Singh v. State of Punjab*<sup>20</sup> it was cited that while prescribing a procedure for depriving a person of his personal liberty, it must conform to a procedure which is reasonable, fair and just. Leading a quality life by the people is the essence of Article 21.<sup>21</sup> The provision within its sweep not only embraces the physical existence but also covers quality of life.<sup>22</sup> Any legislation made in contravention of this predominant right must be declared as *ultra vires*.<sup>23</sup> The validity of a statute under Article 21 must be tested with reference to Article 14.<sup>24</sup> The expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights.<sup>25</sup> Personal liberty as protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the authorities to show that the impugned exclusion or termination meticulously accords with the procedure established by law.<sup>26</sup> Under Article 21 a person can be deprived of his life and personal liberty according to the procedure established by law but the procedure established by law should be just, fair and reasonable. A certain sort of individuals can neither be picked for exclusive treatment nor inequitable treatment. On the other hand a persnickety scrutiny of the Citizenship Amendment Act unfolds that the Muslims of the above mentioned countries are being picked out for a bigoted treatment that is partisan, unjustifiable and arbitrary. When the recipient of the law is pedestal on religious hounding then every such person have to be considered as equals. Parting out Muslims who are religiously victimized entails that such human being would be kept back in incarceration centers consequently constricting their right to life and personal liberty while their counterpart Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have absconded from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan and

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<sup>18</sup> A.K. Gopalan v. State of Madras, 1950 SCR 88: AIR 1950 SC 27.

<sup>19</sup> Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746: (1981) 1 SCC 608.

<sup>20</sup> AIR 1982 SC 1325: 1983 SCR (1) 145; Machhi Singh v. State of Punjab, AIR 1983 SC 957: 1983 SCR (3) 413; Laxman Naik v. State of Orissa, AIR 1995 SC 1387: (1994) 3 SCC 381; Gian Kaur v. State of Punjab, AIR 1996 SC 946: (1996) 2 SCC 648; Aruna Ramachandra Shanbaug v. Union of India, (2011) 15 SCC 480: 2012 AIR SCW 3786.

<sup>21</sup> Hinch Lal Tiwary v. Kamla Devi, (2001) 6 SCC 496: AIR 2001 SC 3215; Anwar v. State of J&K, (1970) 2 SCWR 276 (279): AIR 1971 SC 337: (1971) 3 SCC 104; National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742: AIR 1996 SC 1234; Louis De Raedt v. Union of India, (1991) 3 SCC 554; State of Arunachal Pradesh v. Khudiram Chakma, 1994 Supp. (1) SCC 615; State of Maharashtra v. Prabhakar Pandurang Sanzgiri, AIR 1966 SC 424 (426): 1966 (1) SCR 702.

<sup>22</sup> In re Noise Pollution (V), (2005) 5 SCC 733: AIR 2005 SC 3136; In re Noise Pollution (VI), (2005) 8 SCC 794.

<sup>23</sup> Confederation of Ex-Servicemen Associations v. Union of India, (2006) 8 SCC 399: AIR 2006 SC 2945.

<sup>24</sup> Reliance Energy Ltd. v. Maharashtra State Road Development Corporation Ltd., (2007) 8 SCC 1, 21: (2007) 11 JT 1.

<sup>25</sup> Rustom Cavaajee Cooper v. Union of India, AIR 1970 SC 1318: (1970) Ker LT 354: 1970 Cur LJ 576.

<sup>26</sup> Union of India v. Chhaya Ghoshal, (2005) 10 SCC 97: AIR 2005 SC 428: 2004 AIR SCW 6999.

penetrated the Indian territory before 31<sup>st</sup> December 2014 owing to religious harrying would be entitled to acquire citizenship in India. Moreover the Supreme Court in the case of *Olga Tellis & Ors v. Bombay Municipal Corporation & Ors*<sup>27</sup> has held that procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it.

Thus, from the aforesaid discussion it is germane to prognosticate that the Citizenship Amendment Act palpably contravenes Article 21 of the Indian Constitution as it unduly curtails the right to life and personal liberty of Muslim refugees who mug religious persecution by refuting them citizenship rights and excluding them from the ambit of this Act.

#### **IV. DOES THE CITIZENSHIP AMENDMENT ACT SCUTTLE THE BASIC STRUCTURE OF THE CONSTITUTION AND THE PRINCIPLE OF CONSTITUTIONAL MORALITY?**

##### **(A) CITIZENSHIP AMENDMENT ACT IS AN INCURSION ON THE BASIC FEATURE OF SECULARISM OF THE CONSTITUTION**

The Supreme Court interpreted the basic structure doctrine in the momentous case of *Keshavananda Bharati v. State of Kerala*<sup>28</sup> and held that the Parliament by virtue of its amending power under Article 368 of the Indian Constitution cannot change the basic the features of the Preamble. The amending power cannot be interpreted so as to change the Constitution in such a way that it ceases to be 'Sovereign Socialist Secular Democratic Republic'. Moreover in *S.R. Bommai v. Union of India*<sup>29</sup> the Supreme Court has stated that secularism is an element of the basic structure of the constitution. From the aforesaid judgments of the Supreme Court it is incontrovertible that the Union Parliament cannot effectuate any legislation which vitiates the basic structure of the Constitution. Citizenship which was previously patulous to all without any discrimination apropos to anyone positioned on religion, caste, race, sex etc was one of the most innovative, avant-garde and apprized idea of the Indian Constitution. However it is opportune to descry that the Citizenship Amendment Act, 2019 unreasonably discriminates against the Muslim refugees who visage religious hounding and rebuffs them citizenship rights whereas it caters citizenship rights to Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have absconded from the aforesaid countries and penetrated the Indian territory before 31<sup>st</sup> December 2014 as a consequence of religious persecution. This intrinsic of the Act to

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<sup>27</sup> AIR 1986 SC 180

<sup>28</sup> AIR 1973 SC 1461

<sup>29</sup> AIR 1994 SCC 1

discriminate against the Muslims exclusively on the ground of religion is an assault on the well treasured principle of secularism in India. Hence, the Citizenship Amendment Act palpably bridges the principle of secularism and thereby desecrates the basic structure of the constitution.

### **(B) CITIZENSHIP AMENDMENT ACT TRANSGRESSES THE DOCTRINE OF CONSTITUTIONAL MORALITY**

The doctrine of constitutional morality inherently adumbrates to conform to the norms of the Constitution and not to act in an idiosyncrasy which would be desecration of the rule of law. In the case of *Govt. of NCT of Delhi v. Union of India*<sup>30</sup>, it was held that constitutional morality in its puritanical sense of the terminology insinuates punctilious and unexpurgated fidelity to the constitutional provisions as embalmed in multifarious splinters of the document. This duty promulgated by the Constitution emanates from the fact that the Constitution is the quint essential foundational substratum that operates as the trailblazer force to sentinel and cinch that the democratic structure asseveration to the citizenry remains unruffled. Conversely the Citizenship Amendment Act excludes the Muslims who affront religious hounding but confers citizenship rights to Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have absconded from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan and penetrated the Indian Territory before 31<sup>st</sup> December 2014 owing to religious persecution consequently infringing *Article 14 and 21 of the Indian Constitution*. Additionally it scrunches the principle of secularism as it distinguishes between Muslim refugees with regard to catering them citizenship rights exclusively on the pedestal of their religion and subsequently scuttles the basic structure of the Constitution. As the *Citizenship Amendment Act, 2019* vitiates *Article 14, 21*, does not seek adherence to the doctrine of secularism subsequently transgressing the basic structure it can be conspicuously concluded that it abridges the principle of constitutional morality as it does not conform to the most imperative elements of the constitution.

## **V. SUBSISTENCE OF RECALCITRANT PROVISIONS BETWEEN NRC AND CAA AND VIOLATION OF ASSAM ACCORD**

### **(A) FELONIOUS IMMIGRANTS CATALOGED UNDER NRC WOULD BE ELIGIBLE TO AMELIORATE CITIZENSHIP BY USING CAA**

National Register of Citizens was enforced in the State of Assam with a desideratum to unmask and expatriate the illegal immigrants to Bangladesh. In acquiesce to the Citizenship

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<sup>30</sup> (2018) 8 SCALE 72.

Amendment Act the cutoff date for persons pertaining to the six abovementioned religious groups asserting citizenship in India is 31<sup>st</sup> December 2014 which collides with the NRC cutoff date of 24<sup>th</sup> March 1971 consequently rendering the gross calisthenics of NRC in the state futile. Those antecedently detected as verboten immigrants in Assam and who infiltrated Assam subsequent to the cutoff date of 24<sup>th</sup> March 1971 would become capable to apply for citizenship under the Citizenship Amendment Act if they pertain to any of the abovementioned communities who penetrated Assam before 31<sup>st</sup> December 2014 as a consequence of religious hounding.

#### **(B) CITIZENSHIP AMENDMENT ACT VITIATES THE PROVISIONS OF ASSAM ACCORD**

1. The augmentation to *Section 2(1) (b) of the Citizenship Act, 1955* abrogates the provision enshrined in *Clause 5* of the Assam Accord, which postulates any person entering Assam between 1<sup>st</sup> January 1966 to 24<sup>th</sup> March 1971 to register themselves in the Foreigners Act, 1939.
2. The amelioration to the Third Schedule also attenuates *Section 6A of the Citizenship Act* which is borrowed from the Assam accord which explicitly advocates that any person who had immigrated to Assam between 1<sup>st</sup> January 1966 and 24<sup>th</sup> March 1971 were capable to be citizens of India either instantaneously or after duration of ten years. On the other hand the Citizenship Amendment Act pauperizes this period from ten to five years.
3. The Citizenship Amendment Act also collides with *Clause 6* of the Assam Accord which cites that, “*Constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.*” The Citizenship Amendment Act springs perturbation by failing to define the term “Assamese people” discernibly. The shortcoming of a clarion and legal definition for the nomenclature of “Assamese people”, “indigenous people” and “local identity” exacerbates the problem of ingrained operation of *Clause 6 of the Assam Accord*.

#### **VI. CONCLUSION**

Thus, it is apposite to prognostic that though the Citizenship Amendment Act, 2019 was enacted in order to confer citizenship status to the Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have eluded from the neighboring countries such as Bangladesh, Pakistan and Afghanistan into the Indian Territory before 31<sup>st</sup> December 2014 because of religious persecution but it infringes the fundamental rights under *Article 14 and 21 of the*

*Indian Constitution.* Furthermore as the Act discriminates the Muslim refugees in relation to granting them citizenship rights solely on the basis of their religion it casts an attack on the well cherished principle of secularism and thereby contravenes the basic structure and scuttles the principle of constitutional morality enshrined under the Constitution. In acquiesce to the Citizenship Amendment Act the cutoff date for persons pertaining to the six abovementioned religious groups asserting citizenship in India is 31<sup>st</sup> December 2014 which collides with the NRC cutoff date of 24<sup>th</sup> March 1971 consequently rendering the gross calisthenics of NRC in Assam futile and vitiating the Assam Accord. A deep insight into the above loopholes of the Act and eradication of the same would lead to universal acceptance of the Act.

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