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# Protection of Human Rights of Emigrants (with emphasis on CAA and Constitutional validity)

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## ABSTRACT

*All together the start of 2020 can be highlighted to two of these events, the first one being Anti-CAA protests all around the world in addition to which the world saw its first global modern day pandemic named as the SARS COVID-19 outbreak. The former left a big dent in our public service department and left us all questioning whether we are "safe" in our own country. The police has been accused of being hypocrites owned by the politicians specially by one of the most controversial department of the govt of India that is the home ministry as headed by Mr Amit Shah. Many even went forward to say that he is a modern day Hitler and his party (Bharatiya Janata Party) showcase all the traits of a Pre-Nazi Germany just before the holocaust. International communities have come forward in solidarity to support rising human rights groups all around the vast sub continent and a proper legal analysis was of utmost importance as a legal practitioner to be the future of this country.*

On the date of 11th December of 2019, the govt of India headed by the BJP party enacted one of the most controversial enactment to be named as the Citizenship Amendment Act of 2019. They had stood up to their promise that was made 5 years back in 2014 when the public supporting our honorable PM demanded a strict action against Pakistan as well as Islamic ideology. Back when I read this news I was not surprised as this was inevitable and it was clear to everyone in this country that BJP was and always be will be a hindutva party supporting Hinduism and its highest etiquettes. But as my roots belonged to my beloved state of Assam which had its own complications I had to delve deeper into the broad understanding of the meaning of citizenship and the perks that come with it. In today's ever evolving world human rights of immigrants have been under severe scrutiny ever since the US adopted a more regressive approach of immigration and subsequent citizenship. India always had a pretty acceptable welcoming attitude when it came to helping and aiding immigrants from neighbouring countries as the famous example of a lot of Bangladeshis living in West Bengal and Assam. India being a signatory to the UDHR (United Nations Declaration of Human Rights) always have lived up to the highest standards of UDHR and have maintained their

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image of a "tolerable" state up until recent times.<sup>2</sup>On the 12th of December just one day after the enactment, a young boy barely a student and another man were killed in the protests that resulted from the aftermath. Subsequently over the period of two months more than 60 people were killed in the agitation against the ruling BJP party and their extremists followers often termed as bhakts. The ruling govt has been accused of practising police brutality to halt the protests and silence the masses. The worst result of this was the 2020 Delhi riots which was directly triggered from Kapil Mishra's hate speech in which he threatened to "do something about it" if the police were unsuccessful when referring to protesters creating useless ruckus and confusion.<sup>3</sup>When compared to the notion of them being ruckus creators these anti CAA protestors have shown great strength and determination in resisting this so called anti-democratic law and they have promised to stand solid till the time when the govt agrees to take down the controversial enactmen. On 20 December 1961, after military action, India acquired all territories of Goa, Daman and Diu and Dadra and Nagar Haveli which were held by the Portuguese. Due to this new orders were made to include denizen of those areas to be included in Indian territory. After than in 1986 with the then new Assam Accord some amendments had been made for the independent state of Assam. In the wake of these orders no significant amendment had been made to the Citizenship Act of 1955.t.The Citizenship Amendment Bill, according to the government, is rooted in humanitarian concerns: it offers refugee to people fleeing religious persecution from their own respective countries.

These concerns being selective, restricted to Hindus, Buddhists, Parsis, Sikhs, Jains and Christians from Pakistan, Afghanistan and Bangladesh while the larger Muslim community has been left out. When we take a outside the box more logical view to understand this confusion it is very clear that refugees from Myanmar, including thousands of Rohingya who fled ethnic cleansing from Sri Lanka were also left out. The govt tries very hard to convince the illiterate crowd that the main objective of this act was to give citizenship to immigrants facing prosecution in their own country but to their own dismay they sounded diabolical because they included only a handful of people under this act.<sup>4</sup>This inclusion non inclusion practised by the govt in lawmaking of one of the most crucial amendments has been criticised. This issue was also raised in the Rajya Sabha by present MP Derek O' Brien when he called out the govt on this highly controversial legislation. The opposition has been also under severe scrutiny for criticizing the govt and the elected leaders and have been referred to

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<sup>2</sup> <https://thediplomat.com/2019/08/a-changing-india-a-land-of-dichotomies-and-magic/>

<sup>3</sup> <https://www.google.com/amp/s/www.indiatoday.in/amp/india/story/assam-cao-protest-4-dead-in-police-firing-175-arrested-more-than-1400-detained-1628545-2019-12-16>

<sup>4</sup> <https://www.google.com/amp/s/www.washingtonpost.com/politics/2019/12/13/indias-new-law-may-leave-millions-muslims-without-citizenship/%3foutputType=amp>

under many umbrellas such as "tukde tukde gang" or anti national gang. These notions are misleading because they don't take into account the actuality of the issue and just stand to blame each other.

As law students we are aware of the popular concept of "intelligible differentia" which roughly means that people can be divided on the basis of some intelligent and logical parameter because unequal people can't be equal. This isn't a very simple concept to comprehend for many because there comes twin test of differentiation with this concept under constitutional law. This test lays down that for a segregation to be lawful the end result should be synonymous with the purpose of the action. In layman's words one needs to accomplish what he set out to do and his actions should be in accordance with his goals. Now applying this rule to the amendment act the purpose of the act was to grant citizenship to immigrants facing prosecution from their countries but their actions of eliminating Muslims and all a lot of communities doesn't hold any value or meaning so they have failed the twin test under this rule. Organizations working for human rights have on numerous occasions pointed out to police brutality and detention centre hardships. For example people coming from the neighbouring country of Bangladesh to Assam via the border are detained at detention centres and are susceptible to inhumane conditions of living and dignity. There have been hundreds of deaths in these so called "detention camps" and people have often termed them as similar to 1930's Nazi Germany's concentration camps. Children and women living in these camps have suffered the most due to their vulnerability to diseases and rough conditions. Amnesty International a NGO from the United Kingdom on the month of February had taken out a report that said "CAA as enacted by the govt of India is violative of human rights and stood contrary to India's human-rights obligations to the UN". This report was dismissed as useless by the govt of India and they asked foreign leaders to stay out of internal matters of the country. This may be a good approach of self sustaining and more protective approach, but it is also very crucial to co-operate with big international organizations because that's how people will form an image of a country in the international level. Based on how efficient and reliable human rights are in a country, its tolerability is calculated and based on that a country makes a mark on the global front. Now as I have already mentioned that India has been a great friend to all countries be it Pakistan or United Kingdom, due to this one controversial amendment have lost all that years and decades of reputation that our forefathers and present high level bureaucrats had build from scratch.<sup>5</sup> This gradual diminished reputation will stand to discredit our country's image on the international

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<sup>5</sup> <https://carnegieendowment.org/2019/04/04/fate-of-secularism-in-india-pub-78689>

fronts.

The existential question of whether muslim communities can be excluded from the definition of immigrants due to their relative privilege that they have in their muslim majority countries is not a very good question. This is due to the reason that Ahmediyas tribe belonging to the country of Pakistan have been also faced atrocities and prosecution even being a muslim community. Therefore the govt taking a anti muslim stand just because they belong in the majority isn't a very wise and democratic decision on the part of the BJP party. The issue of human rights and police brutality should be taken seriously by the national government so that the very notion of India as a "secular" and "tolerable" state will vanish from our history and the future of our brave country will be very different than what was envisaged by our forefathers.

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