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# The Citizenship (Amendment) Act vis-a-vis the Indian Constitution

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## ABSTRACT

*Indian Citizenship has been an untended controversy since the period of partition with Pakistan. Owing to the sore relations between the two countries and a cumulus migration of people back and forth has led to this uncertainty in the legal identities of the people. One such controversy recently took a violent turn in January, 2019 after the recent enactment of the Citizenship (Amendment) Act, 2019. Even though the Constitution of India provides for certain provisions regarding Citizenship but the same do not take into consideration of every aspect of citizenship and thus has given power to the Parliament to make laws pertaining to this topic. Thus, the enactment of CAA came into being which blazed the fire amongst the people. The said Act constitutes certain questionable provisions which brought the Basic Principle of Secularism into question. The Act tends to exclude certain communities as well as some neighbouring countries from its scope and introduces the usage of National Register of Citizens which had already been a rising conflict looking at the statistics and circumstances established in Assam.*

*Taking into consideration the conflict between the government and the people, the present study clarifies the objectives behind CAA, the interpretation of Citizenship based on the Constitution and finally the Pros and Cons of CAA in order to speculate the discrepancies and statistical validities attached to it.*

*The author aims to bring out certain justifications to the provisions of the Act and suggested certain amendments to remove the conflict and establish a law in line with the constitutional principles.*

**Keywords:** CAA, Constitution of India, NRC, Secularism

## I. INTRODUCTION

The freshly enacted Citizenship (Amendment) Act, 2019 (CAA) has caused a sizeable deal of political unrest in India. Though purportedly designed to grant a positive direction to Indian citizenship for certain oppressed minorities that fled from India's neighboring countries due to religious persecution in their native countries. There have been various protests on account

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of the discrimination posed by the law based on the religion of migrants and is considered a stunt on the part of the ultra-Hindu leaders in order to strip the Indian Muslim community. The protests have extended since the enactment and being continued since .The paramount argument of the protesters was regarding the non- secular spirit of the law.

This study dwells upon the basics introduced by the CAA and other provisions instituted into action along with that. It discusses the aspect of the constitution based on CAA and the Indian Constitution i.e. The wider and a narrower concept of citizenship laws. It in detail analysis the pros and cons of the CAA depicting the risks of inclusion of Muslims from Muslim majority countries for a grant of Indian citizenship and also regarding the possible infringement of their human rights as specified in the UDHR and other international organisations.

It also ponders upon the effects of CAA and the present intolerant attitude of the Indian Government which has been depicted in the recent past owing to the exclusive and discriminatory policies of the government and certain customary decisions of the Supreme Court. It has been discussed how the said act will disrupt the economic advances towards India and further result in economic crises and a dismantled foreign relations with states. At last the study concludes that the CAA is not per se a draconian law but a few provisions attached ought to be amended thereby confide with the constitutional principles

#### **(A) Significance of the Study**

The Research on CAA holds great significance as it is among the most controversial part of the Indian Constitution and one of the hot topics of the year 2020. Researching on this topic would provide us with the minute intricacies of the provisions of CAA and the Constitution of India and would benefit the society as it helps understand the most important document of the country and the spirit imbibed therein and not only this but this study will help clear the doubts regarding the CAA from the minds of people and clear the enormous amounts of confusion that has caused a turmoil in the country. And considering the situation and the circumstances India is in the study becomes all the more important.

#### **(B) Objectives of the Study**

The foremost objective of the research would be to pin point the Pros and cons of the CAA and thereby decide if any such changes are required therein.

#### **(C) Methodology**

The research shall be a doctrinal research although there are certain facts but they are viewed

strictly from the prisms of Indian constitutional principles. The research is heavily relied upon the- The Constitution of India, CAA, Commentaries of various commissions, Reports of certain committees and the landmark verdicts of the judiciary and other reliable sources of information from the World Wide Web.

#### **(D) Scope & Limitations**

The scope of the research is to examine the CAA and the Pros and Cons which comes with the law. The main purpose is to review the Article and the examine or identify the loopholes of the said provision so that it could be rectified and something could be done rectify the mistakes done by way of the unconstitutional basis of the said law.

## **II. OBJECTIVES OF CAA**

The Citizenship Amendment Act, 2019 was introduced by the BJP government in India. The aspect of citizenship has always been a point of conflict in India owing to the ambiguity in the laws and a large population. The first law that dealt with this aspect is the Citizenship Act, 1955 the provisions of which have been amended time and again over the years. The most recent development came through the Citizenship Amendment Bill, 2019 which received the assent of the parliament and the President of India and thus is presently a law. The present government had various objectives behind enacting this law some of which have been described below:

1. Stark rise in the trans-migration of people between India and neighbouring countries like Pakistan, Afghanistan and Bangladesh most of who belong to certain minority communities in these neighbouring countries. People belonging to communities like Hindu, Jain, Sikh, Buddhist and Parsi are always under a fear and turpitude while serving their daily chores and activities. They might experience a certain level of persecution for exercising their basic rights like Right to practice, profess and propagate their religion. To escape this fearful environment most of the oppressed communities seek shelter in India even after expiration of their travel documents.

2. Earlier laws did not allow illegal migrants who travelled to India without adequate and valid documentation to seek an Indian Citizenship. But the Central government in the year 2016, exempted these migrants from the adverse consequences that could arise under the provisions of the Passport (Entry into India) Act, 1920 and Foreigners Act, 1946 and certain other notifications issued by the government. Not only did this exemption take ground but the government also allowed them to have a long term visa for India and now as per the recent amendment they are allowed to obtain Indian citizenship.

3. The CAA seeks to provide immunity to such migrants from any proceedings taking place against them with respect to their migration status or citizenship does not inhibit them for applying for Indian citizenship. The authorities involved in the process ought to ignore any prior proceeding against such person with respect to their status as an illegal immigrant if they establish all the qualifications required for citizenship.

4. Further, many people who applied for citizenship under the Citizenship Act, 1955 face various issues as they are unable to produce essential evidences of their Indian origin. So, instead they were forced to opt for citizenship through naturalisation under Section 6 of the Act which prescribed twelve years residency as a qualification for the said process as per the third Schedule to the Act. Due to this they are denied various opportunities that are usually available to Indian citizens although they are allowed to stay in India permanently. To deal with this the present amendment aims at reducing the duration of residency in India as specified in the Third Schedule from twelve to a minimum of Five years.

5. This act shall empower the Central Government to do away with the registration of Overseas Citizen of India Cardholder for any violation of any law for the time being in force in India. It also adds a provision giving a right to be heard for the Overseas Citizen Card holder before necessarily cancelling the card permanently under Section 7D. The Act seeks to ensure constitutional guarantee for native population of the Northeastern regions covered under the Sixth Schedule of the Constitution of India and protection to areas under “The Inner Line” system of Bengal Eastern Frontier Regulation, 1873.

These were the few objectives that the present amendment aimed to achieve with regard to the aspect of citizenship.

### **III. CITIZENSHIP AS PER THE THE CONSTITUTION OF INDIA**

The aspect of citizenship has been dealt with under Section 5 to 11 of the Constitution of India. The said sections basically divide the Indian population into four different categories based on their origin and movement during the time of partition of India and Pakistan and India and Bangladesh. It defines them according to the time since which that they have been living in India from the prescribed dates in 1948 and 1947 and the drafting of a Specific law regarding the same was left in the hands of the Parliament. The categorisation done by the constitution is classified below:

#### **1. Domiciled Citizenship (Article 5):**

The Article provides certain qualifications for citizenship based on their domicile in the

territory of India. It states that every person who is domiciled in India (Domicile of a person pertains to the country, the law of which deems him to have a permanent residence in its territory) and was born in India or either of his parents was born in India or who has been an ordinary resident of India for a threshold of at least five years immediately preceding the commencement of Indian Constitution, shall be considered as a citizen of India.

## **2. Citizenship of migrants from Pakistan to India (Article 6):**

This Article classifies the citizens based on the date of their migration from Pakistan to India. The Article further categorises such people into two based on particular dates i.e. i) The people who migrated to India before 19<sup>th</sup> July, 1948 and ii) People who migrated on or after 19<sup>th</sup> July, 1948. In the case of the former category, a person shall be deemed to be a citizen of India if the person has been regularly residing in Indian territory since the date of his migration and in case of the latter category, he shall be considered to be a citizen if a person has been registered as a citizen, after residing in the territory of India for at least six months immediately before the date of application for registration by any authority appointed by the government of India.

## **3. Citizenship of Migrants of Pakistan (Article 7):**

This Article defines the criteria for citizenship of a person who being a citizen of India migrates to Pakistan after 1<sup>st</sup> March, 1947, but returned to Indian territory based on the permit for resettlement in India, the person is eligible to be a citizen of India if he gets himself registered as a citizen after residing here for at least six months immediately prior to the date of application for registration, by an authority appointed by the government of India itself.

## **4. Citizenship of Persons of Indian Origin Residing Outside India (Article 8) :**

This article classifies the qualification for Indian nationals staying in abroad can be granted Indian citizenship, like they have been registered by consular or diplomatic representatives of India in the territory where the person is presently residing. Herein the section defines Indian nationals as persons whose parents or grandparents were born in Indian territory as mentioned in the Government of India Act, 1935.

As stated above the classifications drawn by the Constitution of India are very wide and obscure and the drafting of a law specific to this context was left to the parliament as per Article 11. Thus the Citizenship Act, 1955 is the specific law introduced by the government and has been amended in 2019 introducing various new provisions which add a substance to the law as mentioned before.

#### **IV. THE CONFLICT BETWEEN THE TWO ASPECTS**

The Citizenship Amendment Act, 2019 has suffered a lot of repression and bad talk regarding some of the major changes it aims to make. There have been rising protests across the country by students and certain other groups of the society. This chapter aims to explore the pros and cons of CAA and the level of consonance that it bears with the Constitution of India and its principles. Many countries have expressed their concerns regarding the constitutionality of the Act with respect to the Indian Constitution. Even after the explanation of the objectives behind the law by the government the people being affected are still not convinced over certain provisions of the law and their harmonious construction with other objectives. Citizenship has always been a controversy in India but this time the effect has grown internationally too. The major international bodies like UN and Amnesty International have passed harsh comments over the discriminatory nature of the Law. It has been explicitly analysed that the present law will have a major effect on the International relations of many countries with India. But, as analysed below the CAA has its own positives and negatives attached to it and needs major changes in the law to overcome those hurdles.

##### **A. Pros of CAA in the Indian Pretext**

###### **1. National Security:**

One of the possible reasons behind introducing such a law excluding the migrants from a certain community of the countries mentioned therein is Political Relations with the Countries specified. The present provisions exclude the Muslim migrants from the right to have a citizenship of India. The three countries namely Pakistan, Afghanistan, and Bangladesh are all Muslim majority countries have traces of sore relations with India. Especially, Pakistan is a house to some of the major terrorist organisations which have inflicted greater harm to India through the terrorist acts organised by such masterminds.

Even though it is believed that terrorism and terrorists are not nationals and do not belong to any religion but taking into consideration the practical scenario it can be examined that a Muslim majority country like Pakistan or Afghanistan are a host to major terrorist organisations which include a sizeable part of the Muslim majority population . Allowing Muslims migrants citizenship under the eased duration of five years would escalate the risk of such attacks in India owing to the uneven relations of the neighbouring countries. The conflict of the two communities act as a cherry on the cake. The hatred brewing between the two major communities and the neighboring countries acts as a catalyst for riots and attacks and thereby pose a serious risk to the national security of India.

## **2. Majority Population:**

As is evident from the constitutions of the three countries i.e. Afghanistan, Pakistan, and Bangladesh, they are all Islamic states and thus are prone to religious persecution against people belonging to minority religions like Hindus, Christians, Sikhs, Jains and Buddhists. These communities have always been targeted owing to their religious inclination to so called foreign communities (Hindus, Jains, etc.). The Large scale violations of human rights and basic fundamental rights of minorities in these three neighboring countries have led to such people fleeing to India. This has been confirmed by various statistics put together by the U.S. Commission on International Religious Freedom has risen serious questions regarding the working of certain investigating authorities as well as the ideology and attitude of the Government of the respective countries.

Along with the stats, the various incidents of burning of Hindu Temples in Pakistan , crimes inflicted upon Hindu Women therein and a considerable amount of conversion of people belonging to these communities to Islam all of which goes on to show that these countries are intolerant to these minority communities and either to convert them to Islam or to kill them. To save themselves from these exploitations the minorities tend to flee from these countries to India as immigrants by virtue of it being a follower of secularism. Thus this Act specifies only those minority communities and not Muslims as no such exploitation is not met towards the religious majority which is in conformity with the ideals and attitude of the government of these countries. Even though there are certain parts of Islamic communities are being exploited by the governments there but the inclusion of a whole community to incorporate such a meager part is unreasonable and not needed to that extent.

## **3. Rise in Population:**

In circumstances like these wherein the government is allowing certain oppressed communities from other countries into India and further granting them citizenship of India within a reduced duration of five years there is an assumption of a consequential rise in the Indian Population and thereby further effect the resources of the government. The greater the population the greater the responsibility of the government to allocate resources.

It is a well known fact that India is the second most highly populated countries in the world and with this law in place there will be a further increase in the population. In the past few years India has been experiencing a declining economy and a lack of food, shelter and employment for their existing citizens and it will be even harder for them to accommodate these communities but the minority communities are still acceptable but if the law allows the

Muslim immigrants from these Islamic countries there is a great probability that a huge population from these countries might migrate to India and it will become impossible to control the spread further and provide them adequate resources to sustain a good standard of living. Not only will the immigrants suffer but the existing citizens will have a serious set back from their lives too.

#### **4. NRP (National Register of Population) as an Asset:**

The scheme of NRC is a step towards the registration of citizens at a single platform. The BJP Government aims to start with the scheme and the same was first implemented in Assam. Although clear rules and regulations have not been made for the same as yet. The government at present aims to implement NPR i.e. National Population Register which shall include all the people living in an area including citizens and non-citizens. This will if harmoniously implemented with CAA will kill two birds with one stone as the CAA will take care of the obligation of the government to protect such oppressed communities and the NPR will ensure their registration as a person staying in the Indian territory thereby ensuring the government regarding the share of resources to be provided in every area and thereby prevent all the people to have a share. This will further prevent the trafficking of migrants, influencing them and further protect them from any harm that can be inflicted upon them.

#### **B. Cons of CAA in the Indian pretext:**

##### **1. Against Constitutional Principles:**

The CAA is against the Principle of Equality and Secularism as it discriminates between illegal migrants based on their religious orientation as it excludes the Muslim communities from its provisions thereby barring them from obtaining a citizenship in India. It only acts in favour of Hindu, Jain, Sikh, Buddhist, Christian and Parsi communities which are all included under the definition of 'Hindu' as per the Indian laws. The law ignores the plight of the Muslim minority communities like Ahmadiyahs or Shiyas, atheists who are subjected to exploitation in these countries and have no other place to go to.

The principle of equality before the law and equal protection of law prohibits the state from distinguishing between any two classes of people unless it is reasonable and not arbitrary as a classification. The CAA does not confide with these essential principles of the Constitution of India. By ignoring a major religious community out of its purview the law effectively violates the Constitutional principles of secularism which form an essential element of its

constitutional morality<sup>2</sup>.

Taking into consideration the attitude of the government towards Muslim communities for the past few years it can be said that the government is inclined towards enacting even more Hindutva provisions which may not be in favour of Muslims and would be subject to protest on their part. Lately certain actions taken by the Indian government have been pointing towards certain anti-Muslim activities and serious steps towards the degradation of Muslim communities thereby arising the debate upon the Secularism part of the Preamble.

## **2. Not Inclusive:**

The CAA is not an inclusive law. It does not take into consideration the migrants from other neighbouring countries like Myanmar, Sri Lanka, Nepal and Bhutan and their oppressed communities even when these countries too have various instances of persecution of minorities based on religion and they do have a state religion of their own. The biggest example of this is the large scale persecution of Rohingya Muslims in Myanmar and Refugees that fled from there. Both the States have their state religion as Buddhism and there have been cases wherein the other communities and ethnic groups have been denied their basic human rights.

## **3. Against International Human Rights:**

After analysing CAA, the Amnesty International declared that CAA stands in clear violation of the principles of Indian Constitution and International Human Rights Conventions and legalises discrimination based on religion. In a country like India, ultra-nationalism policies like this do not hold ground among the diverse cultures and Muslims have been at the suffering end due to such policies this promotes a feeling of intolerance in the Indian society. To curb such intolerant and discriminatory policies is necessary not only to maintain a balanced atmosphere in India but also to prosper International Peace and Harmony. The law was staunchly opposed by various countries like USA, Japan and the United Nations which consider it as anti-Muslim and against the principle of secularism and further these countries suggested the Supreme Court of India to review the law in the context of India's international obligations.

## **4. NRC Impractical:**

In the year 2003 and 2009, various rules were enacted under the Citizenship Act to prepare a NRC for both India and Assam respectively. Since then the SC has issued a series of orders

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<sup>2</sup> Indian Young Lawyers Association v. State of Kerala, (2018) SCC Online SC 1690, p. 189; State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501, p. 308.

directing the government to ensure the implementation of NRC in Assam and thereby deport the illegal immigrants from the state of Assam. Later, the court analysed the exercise of NRC in Assam and analysed that around 19 lakh people were excluded from the list. It was this that led to the enactment of the CAA, 2019 which. Provides a path for attaining citizenship for the respective minority communities, by permitting them to apply for registration or naturalisation for Indian citizenship. Even though the intention behind the implementation of NRC might be positive but the burden of proof for such registration lies on the person himself and thus if such a person is not able to produce certain documents as proof he cannot be considered as a citizen of India.

Even after a sincere groundwork in Assam, the NRC came out to be flawed and unsuccessful resulting in the failure of NRC. Out of the people left out of the NRC list the CAA protects the non-muslim minorities but disenfranchises Indian Muslims who have been left out from the list and will further lead to them being considered as illegal migrants. If such practice is initiated all over India a large chunk of muslims may have to be unnecessarily and unreasonably be considered as illegal migrants even when they are not and be deported from India. Thus is a major lacuna in the law and needs to be amended at all costs as driving citizens, either Muslim or non-Muslim, out of their homelands where they have been staying for a long period out is completely unreasonable and against the basic human rights of such persons.

## **V. CONCLUSION**

The study has analysed in depth the Objectives of the Citizenship Amendment Act,2019 and confides with the fact that every country ought to have a valid and specific law for the purpose of granting citizenship to any person who doesn't belong to Indian. Due to the Indian History since the time of Partition with Pakistan many illegal migrants have been living in India and without any notice to the government which does make it difficult to establish a mechanism for the same. Considering the diverse cultures and the international relations that India holds with its neighbouring countries like Pakistan it can be very well said that India needs to take into account the refugees coming from the mentioned countries and not only those three but the others too. The study also brings about the interpretation of Constitution of India with respect too citizenship but the sense of citizenship described in the constitution is very wide and does not contain specific provisions for situations apart from what has been mentioned therein.

Further, moving to the analysis the study discusses the Pros and Cons of the CAA and

discusses the unknown concept of the relationship between the NRC and the CAA and so analysed that both are two separate things and the chances of advancement of NRC after the implementation of the CAA have led people to think and revolt against it because even though it has not been mentioned effectively by the government but the result of implementation of both the schemes may lead to a havoc in the country just like it did in Assam . It is a very high possibility that certain people who are Indian Nationals who belong to the Muslim community may get ousted from their homeland and that is the reason that so many protests came through on this subject.

There are other factors that are of concern along with the implementation of CAA. The people of India today are realising that the government is taking such decisions that might hamper the basic spirit of Secularism in India. These schemes and attitude of the Government in the present scenario is a trigger to a much volatile revolt on CAA. Even the Apex courts today have been alleged for being biased towards certain community in the society taking into consideration the Decisions rendered therein. Finally, it can be said that CAA needs to be amended as any law which is not in consonance with India's constitutional principles ought to be repealed.

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