CITIZENSHIP AMENDMENT ACT, 2019: BLESSING TO MINORITIES IN ISLAMIC (MUSLIM MAJORITY) COUNTRIES OR A NATIONAL THREAT

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SUPERVISOR CERTIFICATE

This is to certify that Miss **Girisha Sinha**, is pursuing Master of Laws (LL.M) from National Law University and Judicial Academy, Assam has completed her dissertation titled **"Citizenship Amendment Act, 2019: Blessing To Minorities In Islamic (Muslim Majority) Countries Or A National Threat"** under my supervision. The research work is found to be original and suitable for submission.

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DECLARATION

I, **Girisha Sinha**, do hereby declare that the dissertation **titled "Citizenship Amendment Act, 2019: Blessing To Minorities In Islamic (Muslim Majority) Countries Or A National Threat"** submitted by me for the award of the degree of Master Of Laws One Year Ll.M Degree Programme of National Law University, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

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PREFACE

The Parliament has passed the Citizenship Amendment Act, 2019 (CAA) on 11th December, 2019. In the amendment, persons belonging to minority communities of Hindus, Jains, Sikhs, Christians, Buddhists and Parsis from Afghanistan, Pakistan and Bangladesh, who have entered into India on or before 31st December 2014 have been excluded from the definition of "illegal immigrants". There has been huge influx of migrants from across the border in India due to the religious persecution of the minorities being carried out since the time of Independence of India. The CAA is enacted by the government in order to exempt such illegal migrants who have been persecuted on the basis of religion and to provide a mechanism in order to enable them to apply for Citizenship by naturalisation by relaxing certain requirements.

In Assam, the amendment has started a lot of violent protests as it is in conflict with the Assam Accord of 1985, which asks for identification and deportation of illegal immigrants who have come to Assam from Bangladesh, in order to protect their culture and tradition. Several petitions have been filed in the Supreme Court challenging the constitutional validity of the Citizenship (Amendment) Act, 2019. There has been debate going on in the country regarding the constitutionality of this amendment and many sections of the society is in a constant fear of this Act. Therefore the researcher through this research paper has analysed whether it's constitutional or whether its goes against the principle of Secularism and how it will violate Assam Accord.

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Table of Abbreviations

1.	AIR	All India Reporter
2.	Anr	Another
3.	AASU	All Assam Students' Union
4.	CAA	Citizenship Amendment Act
5.	CJI	Chief Justice of India
6.	Dr	Doctor
7.	Ed.	Edition
8.	e.g.	exempli gratia or “for sake of example
9.	etc.	et cetera or so on
10.	FTs	Foreign Tribunal
11.	Govt.	Government
12.	GOI	Government of India
13.	HC	High Court
14.	i.e.	Id est or “in other words.”
15.	ICCPR	International Covenant on Civil and Political Rights
16.	NRC	National Register of Citizens
17.	NPR	National Population of Register
18.	Ors.	Others
19.	OCI	Overseas Citizens of India
20.	PIO	Person Of Indian Origin
21.	SOR	Statement of Objects and Reasons
22.	SC	Supreme Court
23.	UDHR	Universal Declaration of Human Rights
24.	V	Versus

1. INTRODUCTION

"Every nation has a message to deliver, a mission to fulfil, a destiny to reach. The mission of India has been to guide humanity".[1]

- Swami Vivekananda

These are the words of the one of the great philosopher of India, who has stated that from ancient times the role of India is to imbibe a system which is very useful to the mankind and to provide a message to the world as a whole in order to develop the society and delve upon a better place to live. From the ancient times India has been a country which is open to all religions and has been welcomed the immigrants with open hands whether for education, trade or travelling. As the history of India reflects that although there were times were a specific religion was being followed by a ruler or a king. But it was not problematic to the people belonging to the religion who did not follow the particular religion and also not in the position to rule the particular. "Sarva Dharma Sambhav" which is a principle enumerated in the ancient religious texts has been practiced in India since ancient times. As the society evolved and developed, there has been evolution of the concept of State. Any State to exist under the ambit of International law requires the qualification laid down under the Montevideo Convention to be fulfilled. The following are the condition laid down for the recognition of the state: a. a permanent population, b. a defined territory, c. a government and d. capacity to enter into relation with the other states.[2] In the present context in order to have a recognition the abovementioned requirements are required to be fulfilled. In order to fulfil the requirement of a permanent population it is required on the part of the state to recognise the group of persons who constitute the permanent part of the population of the country. So, to recognise the permanent population of the particular state or a country, modern states have evolved the concept of citizenship which regulated and provide rights to the member of the state who constitute a permanent population of that particular nation/state.

[1] Quotes by Founding Fathers and Others on Citizens Duties, https://doj.gov.in/sites/default/files/Quotes%20by%20founding%20fathers.pdf, last accessed on 04-06-2020.
[2] Article 1 of the Montevideo Convention on the Rights and Duties of the States, 1933, https://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml, last accessed on 28-06-2020.

When it comes to the evolution of the laws relating to citizenship in India it can be trace back to the British period to the Government of India Act, 1935. It was a period way back before India got Independence and at that particular time there was a complete ban on the power of legislating a framework related to citizenship by under the Government of India Act, 1935. After India got Independence, in order to demarcate the permanent population the framers of the constitution came up with the provisions relating to the Citizenship at the time of commencement of Constitution under Part II from Article 6- Article 11. Under these Articles, provisions relating to the citizenship at the time of commencement of the Constitution is provided at that time it was required to regulate the laws relating to the Citizenship because of the two reasons which are firstly India was getting Independence from its colonial masters i.e. the Britishers and secondly the ill effects of the partition which led to the large number of migration of peoples across the borders. The Partition of British India into India, which holds as the successor state of British India and Pakistan, which has been carved out from the British India on the basis of the specific religion as a theocratic state which follows the principle of Islam. So, the constitutional framers envisaged at that period that there is a need of a clear and cogent laws relating to citizenship which is there to consolidate, define and amend the laws relating to citizenship in India in order to recognise at that particular time period that who is the Citizen of India, what are the methods through which a citizenship of an Individual will be recognised and what will be the instrumentalities to regulate the laws relating to Citizenship in India. The Constitution framers also empowered the Parliament to come up with the laws relating to citizenship as and when it is required to be legislated.[3] The Parliament is empowered to come up with the laws which consolidate, define or amend the laws relating to citizenship as per the powers provided under the Constitution. By using the powers provided under article 11 of the Constitution of India, the Parliament has come up with the Citizenship Act, 1955 which specifically provides provisions related to the recognition of Citizenship in India. From the date of its institution till present time the Citizenship Amendment Act, 1955 has been amended various times in order to enable or restrict certain class of persons to be provided with the citizenship.

[3] INDIA CONST. art. 11.

Till now as per the common knowledge there is no Parliamentary legislation which has been expressly designed to recognize and enforce refugee rights in India. In the absence of any particular legislative entry relating to 'refugees' in the Seventh Schedule to the Indian Constitution, the current legislative regimes relating to 'refugee' rights in India have primarily being referring to entries 17 (citizenship, naturalization and aliens), 18 (extradition) and 19 (admission and emigration and expulsion from India; passports and visas) under List I of Schedule VII of the Constitution of India. This in turn has led to the 'refugees' being regulated by the provisions of various legislative enactments, namely the Passport (Entry into India) Act, 1920, the Passports Act, 1967, the Foreigners Act, 1939, the Foreigners Act 1946, the 1955 Citizenship Act and the Extradition Act, 1962.

The Citizenship Amendment Act, 2019 (hereinafter referred as "CAA"), is one such amendment which has been brought under the powers enumerated to the government under Article 11 of the Constitution of India. The CAA, has been implemented in order to carve out individuals of some specific religions (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) who have been religiously persecuted from the specified countries of Afghanistan, Bangladesh and Pakistan from the concept of "illegal migrant". Even though they might have entered into India without any proper travel documents and in order to enable them with the opportunity to apply for citizenship under naturalisation in India. No other legislation which has been recently passed has received as much debate and protest as the CAA. Even the Judiciary in India has been flooded with the number of petition challenging the constitutional validity of CAA. Due to the ongoing protests there has been division of people in two ideologies one which opines that the CAA is a national threat as it is unconstitutional and will not stand on the test of the basic features of the Constitution being violated It is also contended that contrary to the popular opinion, the discrimination against Muslim immigrants that tends to be a part of the CAA is not a fairly recent retro trend. Leaders with otherwise unmistakably secular credentials, such as Nehru and Ambedakar, brought about provisions at the founding of India's republic that discriminated against Indian Muslims who had migrated to Pakistan and wished to return. A preference for non-Muslim immigrants and prejudice against Muslim immigrants, the CAA is clearly part of policies which were introduced by the Indian government when the country was partitioned and the Constitution was framed. The

other ideology which supports that the CAA is not in violation of any of the provisions of the Constitutional law and is brought in to correct the wrong which the framers of Constitution did while the provisions related to the Citizenship was enacted at the time of Commencement of the Constitution.

1.1 STATEMENT OF PROBLEM

In absence of the laws relating to the refugees in India there has been no particular legislation which recognises the rights of the refugees in India. There has been huge influx of migrants from across the border in India due to the religious persecution of the minorities being carried out since the time of Independence of India. The person migrating to India has overstayed even after the expiry of their valid documents and is living as an "illegal migrants" in India having no rights of citizenship. The CAA is enacted by the government in order to exempt such illegal migrants who have been persecuted on the basis of religion and to provide a mechanism in order to enable them to apply for Citizenship by naturalisation by relaxing certain requirements.

The laws relating to Citizenship for illegal immigrants, migrating to India due to the religious persecution in Afghanistan, Bangladesh and Pakistan is within the secular principles of the basic structure to the Constitution of India and it is required to analyse in the backdrop of these citizenship laws on the right to equality and other rights in India related to the illegal migrants or it is a National threat to Constitution of India and its secular principle.

1.2 AIMS AND OBJECTIVES

1. To analyse the provisions related to citizenship in India.
2. To understand the framework of the Citizenship Amendment Act, 2019 and how it provides the mechanism for citizenship to a certain class of persons.
3. To understand how it will help minorities of Islamic Nation to enjoy their rights and also understand how they were religiously persecuted in their countries.
4. To analyse whether this new amendment is really a national threat to its constitution or it's just a misunderstood whoopla.
5. To find out that to what extent using the Policy matters a government can legislate a law to discriminate among certain group of Individuals.
6. To understand the intent of the legislature behind passing of the Citizenship Amendment Act, 2019.
7. To analyse whether it is violation of Assam Accord or not.
8. To find out the extent to which the judicial decisions can limit the power of the government to legislature.

1.3 SCOPE OF THE STUDY

The scope of this research is to find relevant insights to the most debatable and relatable issues in a democratic country like India related to citizenship on the light of recent Citizenship Amendment Act, 2019. It is quite essential to research on the topic of religion and secularism as the current issue has taken precedence over all other activities and even the main focus of political parties and the people is not it rather than issues like economy and development, which is going to be detrimental to this country. With certain recent judgments of the Apex Court and the kind of uproar and wrath of the citizens it is facing is problematic and these research is aiming at striking a balance between religious freedom and interest of society , morality and the state action involved.

As there are different research carried out on the Citizenship Amendment Act, 2019, whether it's constitutional or whether its goes against the principle of Secularism. This research may be useful for other scholars and also has the scope of finding out the opinion of certain people through the empirical study.

1.4 LIMITATION TO THE STUDY

There are certain limitations with reference to the research methodology used as there is a time limitation due to which exhaustive data collection may not be possible. Also, due to the ongoing pandemic due to limited resources doctrinal research on the ongoing issue could not be carried out. Thus the conclusion reached may not be held scientifically but may be found educationally relevant.

1.5 RESEARCH QUESTIONS

1. What are the laws relating to Citizenship in India and how the amendment to the laws relating to the Citizenship has affected the rights of the individuals?
2. Whether Religion can be used as a measure to discriminate people in applying for the citizenship under the laws relating to Citizenship in India?
3. Whether the amendment brought to the Citizenship Act by the Citizenship Amendment Act, 2019 follows the principle of under inclusion as provided under Article 14 to the Constitution of India?
4. What are the various judicial interpretation regarding conflict of religious freedoms and whether the Courts are allowed to interfere with these freedoms?
5. How it will help the minorities residing in Islamic Countries to have a chance to get Indian Citizenship?

1.6 HYPOTHESIS

The researcher undertook the study with the following Hypothesis:

1. Interference of the state on the citizenship laws on the basis of religion poses a threat to Secularism in India.
2. The Citizenship Amendment Act, is violating the Assam Accord entered in 1985.
3. State can impose certain discrimination for the benefit of a greater good as a policy decision following proper classification.
4. Religion is also considered as a valid criterion for classification under Article 14 to the Constitution of India.
5. Unconstitutionality and unsecular nature of Citizenship Amendment Act, 2019.
6. Citizenship Amendment Act, 2019 will not affect Indian Citizen specially Muslims in any ways.

1.7 RESEARCH METHODOLOGY

The researcher has mostly used doctrinal research methodology whereby the concepts related to the topic and its recent development has been added. The research is primarily analytical. The primary data is collected from the debates of Constitutional Assembly, the debates in Parliament on important Constitutional amendments, the judgments of Supreme Court on the various Constitutional amendments, on various enacted laws and of executive orders.

The secondary data consists of various interpretations made in commentaries on the Indian Constitution, Constituent Assembly Debate, the books, articles and research papers published in different journals.

1.8 LITERATURE REVIEW

The researcher has reviewed various articles and books like Constitution of India by V.N Shukla, Commentary on Constitution of India by D.D Basu, Indian Constitutional Law by M.P Jain. The researcher has also reviewed various articles like Secularism and the Citizenship Amendment Act, Dr.Abhinav Chandrachud, Testing CAA on the Principles of Constitutional law, Avinash Amarnath, Besieged by sophistry: The CAA is constitutionally sound and is unfairly picked apart by its enemies, Mahesh Jethmalani, Constitutionality of the Citizenship Amendment Act and why it was Essential, Dr. Shyama Prasad Mukherjee Research foundation.

After reviewing the major books related to Constitutional law it was seen that the mainly the authors have discussed the various dimensions of the Citizenship in India at the time of commencement of the Constitution and even after the institution of the Citizenship Act. The authors have also elaborately discussed regarding the detailed analysis of who can be a citizen of India and how the citizenship will be provided to the person and even alien at the time of the commencement of the Constitution and thereafter. The authors have used various case laws and how the judiciary has interpreted various dimensions of the citizenship laws in India. These authors however failed to deal with certain burning issues which pose challenges to the Indian Secularism and right to equality by the wake of the Citizenship Amendment Act, as this is a recent legislation and there is a limitation on the part of the authors also to come up with the detailed analysis in such short span of time. They have put more focus on the historical perspective rather than giving contemporary analysis.

After reviewing online articles it was found that they not only dealt with the basic principle of secularism along with the unique Indian situation of Citizenship in India but have also dealt with the detail analysis of the Citizenship Amendment Act, 2019. There is also limitation on the part of the authors that they have only analysed a particular set of matters from one side as, they did not look after the two facets of the same coin. Also it can be seen that the writers belonging to minority communities fear that the majority ideologies are trying to take over the position of dominance in recent years and therefore raising the conflicting issues between different communities.

2. CITIZENSHIP LAWS IN INDIA

2.1 DEFINITION OF CITIZENSHIP

"Citizenship is the status of person recognized under the convention or law of a sovereign state as a member of or belonging to the state. Citizenship is generally used as a synonym for nationality. Where citizenship is used in a meaning that's unlike from nationality it refers to the legal rights and duties of people attached to nationality under domestic law. In some national laws, citizenship includes a more specific meaning and refers to rights and duties which will only be exercised after the age of majority (such as voting rights) or to rights and duties which can only be exercised within the national territory[4]".

2.2 CONCEPT OF CITIZENSHIP

"A citizen is a participatory member of a political community. Citizenship is gained by meeting the legal necessities of a national, state, or local government. A nation grants certain rights and privileges to its citizens. In return, citizens are anticipated to obey their country's laws and defend it against its enemies".

The value of citizenship diverges from nation to nation. In some countries, citizenship can mean a citizen has the right to vote, the right to hold government offices, and then the right to collect unemployment insurance payments, to name some examples. Living in a particular country doesn't mean that an individual is necessarily a citizen of that country. Citizens of one country who lives in an overseas country are called as aliens. Their rights and duties are determined by political treaties and by the laws of the country in which they stay. In the US, aliens must obey the laws and pay taxes, just as U.S. citizens do. They need to register with the U.S. government to get legal permission to stay for an extended length of period. Legal aliens are eligible to protection under the law and to use of the courts. They can also own property, carry on business, and join public schools. But aliens cannot vote or hold government office. In some states they're not allowed to practice certain professions until they

[4] *Centre for study of Citizenship*, http://www.clas.wayne.edu/Citizenship/Definition-of-Citizenship, last accessed on 21-07-2020.

become citizens. In some states they are not allowed to practice certain professions until they become citizens.

Some countries permit their citizens to own multiple citizenships, while others assert on exclusive allegiance. someone who doesn't have citizenship of any state is alleged to be stateless, while one who lives on state borders whose territorial status is uncertain could be a border-lander[5].

2.3 HISTORY

History of citizenship describes the changing relation between an individual and the state, commonly termed as citizenship. Citizenship is mostly identified not as a characteristic of Eastern civilization but of western civilization. There is a general view that citizenship in prehistoric time was a less complicated relation than modern types of citizenship, although this view has been challenged[6].

While there's disagreement about when the relation of citizenship began, many thinkers point to initial city-states of ancient Greece, possibly as a reaction to the fear of slavery, although others see it as primarily contemporary phenomenon dating back only approximately few hundred years. In Roman times, citizenship began to take on more of the character of a relationship grounded on law, with less political participation than in ancient Greece but a widening sphere of who was considered to be a citizen. In the middle Ages in Europe, citizenship was principally identified with commercial and secular life within the growing cities, and it came to be seen as membership in emerging nation-states. In modern democracies, citizenship has contrasting senses, including a liberal-individualist view emphasizing needs and entitlements and legal protections for essentially passive political beings, and a civic-republican view emphasizing political participation and seeing citizenship as a lively relation with specific privileges and obligations.

While citizenship has varied considerably throughout history, there are some common elements of citizenship over time. Citizenship bonds extend beyond basic kinship ties to unite people of various genetic backgrounds that is, citizenship is more than a

[5] Coplan, David, Introduction: From empiricism to theory in African border studies. Journal of Borderlands Studies, 25.2 (2010): 1-5.
[6] Isin (co-editor), Engin F.; Turner (co-editor) & Bryan S. (2002), Handbook of Citizenship Studies. Chapter 5 – David Burchell – Ancient Citizenship and its Inheritors; Chapter 6 – Rogers M. Smith – Modern Citizenship. London: Sage. pp. 89–104, 105. ISBN 0-7619-6858-X.

fraternity or extended association network. It generally describes the relation between an individual and an overall political entity like a city-state or nation and signifies membership within that body. It's often centred on, or a function of, some sort of military service or expectation of future military service. It's generally characterized by some kind of political participation, although the extent of such participation can vary considerably from minimal duties like voting to active service in government. And citizenship, throughout history, has often been seen as a model state, closely allied with freedom, a very important status with legal aspects including rights, and it has sometimes been seen as a bundle of rights or a right to have a rights[7]. Last, citizenship nearly always has had a portion of exclusion, in the sense that citizenship derives meaning, in part, by excluding non-citizens from basic rights and privileges.

2.4 OVERVIEW

While a general definition of citizenship is membership in a political society or group, citizenship as a theory is difficult to define. Thinkers as far back as Aristotle realized that there was no agreed-upon definition of citizenship. And modern thinkers, as well, agree that the history of citizenship is complex with no single definition predominating. It's hard to isolate what citizenship means without orientation other terms like nationalism, civil society, and democracy. According to one view, citizenship as a matter of study is undergoing transformation, with increased interest while the meaning of the term continues to shift. There's an agreement citizenship is culture-specific: it's a function of every political culture. Further, how citizenship is seen and understood depends on the perspective of the person making the determination, such that a person from a superior class background will have a distinct notion of citizenship than someone from the inferior class. The relation of citizenship has not been a fix or stagnant relation, but constantly changes within each society, and that according to one view, citizenship might "really have worked" only at selected periods during certain times, like when the Athenian politician Solon made reforms within the early Athenian state[8].

[7] Virginia Leary (2000), *Citizenship. Human rights, and Diversity*, In Alan C. Cairns; John C. Courtney; Peter MacKinnon; Hans J. Michelmann& David E. Smith (eds.*), Citizenship, Diversity, and Pluralism: Canadian and Comparative Perspectives*, McGill-Queen's Press. pp. 247–264. ISBN 978-0-7735-1893-3.
[8] Heater & Derek, *A Brief History of Citizenship*, New York City: New York University Press. pp. 157. ISBN 0-8147-3671-8 (2004).

The history of citizenship has from time to time been presented as a stark contrast between ancient citizenship and post-medieval times. One view is that citizenship should be studied as an extended and direct progression throughout Western civilization, beginning from Ancient Greece or perhaps earlier, extending to the present; as an example, thinker Feliks Gross examined citizenship as the "history of the continuation of solo institution." Other views question whether citizenship can be examined as a linear process, growing over time, usually for the improved, and see the linear progression approach as an oversimplification possibly resulting in incorrect conclusions. As per this view, citizenship shouldn't be considered as a "progressive realisation of the core meanings that are definition ally built into citizenship[9]. "Another caveat, offered by some thinkers, is to avoid judging citizenship from one era in terms of the standards of another era; as per this view, citizenship should be understood by examining it within the context of a city-state or nation[10], and trying to apprehend it as people from these societies understood it. The rise of citizenship has been studied as a feature of the growth of law.

2.5 CITIZENSHIP IN INDIA

The conferment of a person as a citizen of India is ruled by the Part II of the Constitution of India (Articles 5 to 11). According to Article 5, all the people that were resident in India at the commencement of the Constitution were citizens of India as well as people born in India. The President of India is termed the First Citizen of India. The Constitution does not define the term 'citizen' but specifics of various categories of persons who are entitled to citizenship are given in Part 2 . Citizenship is listed in the Union List under the Constitution and thus is under the exclusive jurisdiction of Parliament. Unlike other provisions of the Constitution, which came into being on January 26, 1950, these articles were enforced on November 26, 1949 itself, when the Constitution was adopted.

[9] Kostakopoulou, Dora, *the Future Governance of Citizenship*, United States and Canada: Cambridge University Press. pp. 13, 195, ISBN 9781139472449 (1994).
[10] Gross, Feliks, *Citizenship and ethnicity: the growth and development of a democratic multi-ethnic institution*, Westport, Connecticut: Greenwood Press. pp. xi–xiii, 4. ISBN 0-313-30932-9 (1999).

“Article 5: It provided for citizenship on commencement of the Constitution”.

- “All those domiciled and born in India were given citizenship”.
- “Even those who were domiciled but not born in India, but either of whose parents was born in India, were considered citizens”.
- “Anyone who had been an ordinary resident for more than five years, too, was entitled to apply for citizenship”.

“Article 6: It provided rights of citizenship of certain persons who have migrated to India”

- “Since Independence was preceded by Partition and migration, Article 6 laid down that anyone who migrated to India before July 19, 1949, would automatically become an Indian citizen if either of his parents or grandparents was born in India”.
- “But those who entered India after this date needed to register themselves”.

“Article7: Provided Rights of citizenship of certain migrants to Pakistan”.

- “Those who had migrated to Pakistan after March 1, 1947 but subsequently returned on resettlement permits were included within the citizenship net”.
- “The law was more sympathetic to those who migrated from Pakistan and called them refugees than to those who, in a state of confusion, were stranded in Pakistan or went there but decided to return soon”.

Article 8: “Provided Rights of citizenship of certain persons of Indian origin residing outside India”

- “Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was born in India could register himself or herself as an Indian citizen with Indian Diplomatic Mission”.

Article 9: “Provided that if any person voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India”.

Article10: “It says that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen”.

Article 11: “It empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it”.

The Indian legislation associated with this matter is the Citizenship Act, 1955, which has been amended by the Citizenship (Amendment) Acts of 1986, 1992, 2003, 2005, 2015 and 2019. The 1986 amendment limited citizenship by birth to require that at least one parent had to be an Indian citizen. The 2003 amendment further restricted that aspect by requiring that a parent couldn't be an illegal immigrant. The 2003 amendment also mandated the govt. of India to construct a National Register of Citizens. The 2019 amendment provided a relaxed path to citizenship for persecuted selected minorities, i.e. Hindus, Sikhs, Buddhists, Jains, Parsi and Christians from the neighbouring Muslim-majority countries of Bangladesh, Pakistan, and Afghanistan who entered India before December 2014. These two measures have given rise to large-scale protests in India in 2019.

There are two renowned principles for the grant of citizenship are:

While ‘jus soli’ confers citizenship on the base of place of birth, ‘jus sanguinis’ gives recognition to blood ties.

The current Indian nationality law largely follows the *jus sanguinis* as opposed to the *jus soli* (citizenship by right of birth within the territory)[11]

From the period of the Motilal Nehru Committee (1928), the Indian leadership was in favour of the enlightened concept of jus soli. The racial idea of jus sanguinis was also rejected by the Constituent Assembly because it was against the Indian ethos.

[11] *Chidanand Rajghatta, As Trump strikes at birth right citizenship, Americans – and Indians – look up 14th Amendment*, Times of India, October 31, 2018.

2.6 CITIZENSHIP DURING BRITISH RAJ

The Government of India Act 1858 established the British Raj and formally brought the majority of Indians under British imperial rule. Indians under the British Raj generally fell into two categories:

- "Indians resident and born in British India came under the direct dominion of and bore allegiance to the British Crown, and held the status of British subject. From 1 January 1915, the British Nationality and Status of Aliens Act 1914 defined British subjects as those born or naturalised in the British Sovereign's dominions (including British India) along with their spouses and children".[12]
- "Indians resident and born in a princely state under the British Raj, or in any other British protectorate or protected state under the British government, held the status of British protected person. British protected persons were considered de jure foreigners, but could travel on British-issued passports".

In effect from 15 August 1947, India was recognized as an independent Dominion of India. All Indians resident, born in or naturalised within the Indian outlying areas legally remained British subjects by virtue of Section 18(3)[13] of the Indian Independence Act 1947. Indians inhabitants within the princely states that acceded to India were also considered as British subjects, whereas those resident in British protectorates retained the status of British protected persons.

[12] British Nationality and Status of Aliens Act, 4&5 Geo. c.17 (1914).

[13] Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as tie law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

2.6.1 India- Pakistan Partition

After the partition of the country, two waves of immigration occurred from west Islamic Republic of Pakistan to India. In the first wave, which started from March 1, 1947, large numbers of Hindus and Sikhs arrived here. With the second wave in 1948, many Indian Muslims who had migrated to West Pakistan sought to return to India due to poor conditions there, especially in Karachi. This second wave of immigration created problems.

In April 1948, Nehru acknowledged that the "influx of Muslims to Delhi and other parts of India from Pakistan has raised certain difficulties". The subsequent month, Sardar Vallabhbhai Patel wrote to Nehru that there was "considerable discontent" among the public in general and refugees in particular about the Indian government's "failure to prevent the inflow of Muslims from Pakistan." The return of "these Muslims", he explained, "while we are not yet able to rehabilitate Hindus and Sikhs from Pakistan would again be the refinement ground of communal poison, on which activities of organisations like the RSS thrive." He believed that returning Indian Muslims were "a great source of danger to the peace and security of Delhi". Nehru replied and said that this was an "undoubtedly serious" matter.

It was against this backdrop that the Indian government introduced a scheme on July 19, 1948, under which nobody could move from West Pakistan into India without an authorisation issued by the Indian High Commission in Karachi or Lahore.

Among the several sorts of permits that were available, the "permanent resettlement" permit, meant for Indian Muslims who had migrated to West Pakistan and who now wanted to permanently resettle in India, was incredibly difficult to acquire. The application form had to be personally inspected by the Indian High commissioner or Deputy high commissioner. If the home in India of the Indian Muslim who had migrated to West Pakistan was being used to assimilate non-Muslim refugees, then his return to India might be blackballed by the provincial government where that home was situated. In June 1949, Nehru wrote to Mehr Chand Khanna that "we should be strict about the return of enormous numbers of Muslims to India from Pakistan or even a smaller number".

This was because the immigration of Hindus and Sikhs from West Pakistan to India had nearly come to an end by July 1948 when the permit system was introduced, but there have been still large numbers of Hindus in East Pakistan (Bangladesh) who were arriving in India as refugees at that point. In November 1948, several months after the permit system was introduced for immigration to India from West Pakistan, there have been around 16 million Hindus in East Pakistan (Bangladesh), many of whom were being forced to either convert to Islam or leave for India. Meant to stop Muslims from permanently re-entering India, the permit system, if introduced for immigration from Bangladesh, would have prevented Hindu refugees from arriving in India

2.6.2 Hidden Constitutional Premises

In the Constituent Assembly, the citizenship provisions of the Indian Constitution were prepared on the idea of two hidden premises. These were that firstly, among people who had migrated to India from Pakistan before the introduction of the permit system on July 19, 1948, the massive majority were non-Muslims. Secondly, people who found themselves on the Indian side of the border at partition, migrated to Pakistan after March 1, 1947, and subsequently returned to India so as to permanently resettle here were Muslim.

The Constitution treated these two categories of persons differently. People who had migrated from Pakistan to India in the first wave before the permit system, presumed to mostly be Hindus and Sikhs, got a relaxed path to citizenship. In B.R. Ambedkar's words, their "citizenship is automatic. No conditions, no procedure is laid down with regard to them".

On the opposite hand, Indian Muslims who had migrated to Pakistan after partition and sought to return to India could only become citizens if they'd obtained a permit for resettlement.

In the Constituent Assembly, it was Nehru who outlined the Constitution's hidden citizenship premises. He explained that those who came into India in the first wave were mostly Hindus and Sikhs, and India accepted them as citizens "practically without demur or enquiry". "You cannot have rules for Hindus, for Muslims or for Christians only", he said, "but in effect we say that we allow the first year's migration

and obviously that huge migration was a migration of Hindus and Sikhs from Pakistan." "The others", i.e., Muslims, "hardly came into the picture at all" at this time. On the other hand, "[i]t is possible that later, because of [the] permit system, some non-Hindus and non-Sikhs came in."

The permit system substantially reduced the number of Muslim refugees in India. Nehru explained that "a very prodigious deal of care has been taken" before allotting a permit for resettlement. Before the permit system, some 20,000 Muslims from West Pakistan had arrived in Delhi between March-July 1948 alone. By August 1949, only around 2,000 to 3,000 such permits were issued.

2.7 TERRITORIAL ACQUISITIONS

On 20 December 1961, after military act, India acquired the territories of Goa, Daman and Diu and Dadra and Nagar Haveli which were under the territories of Portugal. The French territories of Puducherry, Karaikal, Mahé, and Yanam, were acquired under treaty of cession with France in 1954 (ratified by the French National Assembly in 1962). Previously, the French territory of Chandernagore had voted in a poll to join the Indian Union in 1949.[14]Sikkim was also merged with India and became a fundamental state with effect from 16 May 1975. Some of the enclaves in the eastern part of India were also acquired under border agreements with Pakistan and Bangladesh.

In order to explicitly provide the citizenship for people in territories as mentioned above, the central government issued the Goa, Daman and Diu (Citizenship) Order, 1962, Dadra and Nagar Haveli (Citizenship) Order, 1962 and Citizenship (Pondicherry) Order 1962, in exercise of its powers under section 7 of the Citizenship act and for Sikkim, the President extended the Citizenship act, and the relevant rules under Article 371-F (n) of Indian Constitution. In case of acquired reserves, that did not demand legislative action, as that was only a border demarcation agreement[15].

[14] Namakkal, Jessica, *The Terror of Decolonization: Exploring French India's 'Goonda Raj',* Interventions. 19 (3): 338–357. doi:10.1080/1369801X.2016.1231586. ISSN 1369-801X, last accessed on 25-07-2020.
[15]Agrawala, S. K.; Koteswara Rao M., *Nationality and International Law in Indian Perspective*, In Swan SikKo (Ed.*). Nationality and International Law in Asian Perspective*, Google Books. ISBN 9780792308768 (1990).

2.8 GRANTING OF CITIZENSHIP IN INDIA UNDER CITIZENSHIP ACT, 1955

People living within the territory of India as on 26 November 1949 automatically became Indian citizens through process of the relevant provisions of the Indian Constitution coming into force, and most of these constitutional provisions came into force on 26 January 1950. The Constitution of India also made provision on the subject of citizenship for migrants from the territories of Pakistan which had been a part of India before partition.

There are four ways in which Indian citizenship can be acquired: birth, descent, registration and naturalisation. The provisions are listed under the Citizenship Act, 1955.

2.8.1 Citizenship by birth

In India, the citizenship by birth has been provided under section 3 of the Indian Citizenship act, 1955.

Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth. A person born in India on or after 1 July 1987 but before 3 December 2004 is a citizen of India if one of parents was a citizen of India at the time of the birth.[16] Those born in India on or after 3 December 2004 are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth.

In September 2013, the Bombay court gave a judgement that a birth certificate, passport or even an Aadhaar card alone might not be enough to prove Indian citizenship, unless the parents are Indian citizens.[17]

In a 2012 case, the Bombay High Court ruled that a man who was born in Pakistani-administered Kashmir and entered into India was an Indian citizen and should be

[16] Acquisition of Indian citizenship, Foreigners division, Ministry of Home Affairs, Government of India. Retrieved 26 September 2019.
[17] *Passport alone no proof of citizenship: Bombay HC*, Times of India, October 29, 2013. Retrieved 3 July 2013.

granted an Indian passport, since India considers all of the Kashmir region to fall within its borders.[18]

2.8.2 Citizenship by Descent

The citizenship by descent in India is provided under section 4 of the citizenship act which deals with the group of individuals who are not born India but there parents are Indian citizens.

Persons born outside India on or after 26 January 1950 but before 10 December 1992 are citizens of India by descent if their father was a citizen of India at the time of their birth.

Persons born outside India on or after 10 December 1992 are considered citizens of India if either of their parents is a citizen of India at the time of their birth.

From 3 December 2004 onwards, persons born outside of India shall not be considered citizens of India unless their birth is registered at an Indian diplomatic mission within one year of the date of birth. In certain circumstances it is possible to register after one year with the permission of the Central Government. The application for registration of the birth of a child must be made to an Indian diplomatic mission and must be accompanied by an undertaking in writing from the parents of the child that he or she does not hold the passport of another country.

2.8.3 Citizenship by registration

The Central Government may, on an application, register as a citizen of India under section 5 of the Citizenship Act 1955 any person (not being an illegal migrant) if s/he belongs to any of the following categories:

- "a person of Indian origin who is ordinarily resident in India for seven years before making application under Section 5(1)(a) (throughout the period of twelve months immediately before making application and for six years in the aggregate in the eight years preceding the 12 months)".

[18]Ahmed, Zubair, *Indian passport for Kashmiri man*, BBC, Retrieved 13 June 2020.

- "a person of Indian origin who is ordinarily resident in any country or place outside undivided India"
- "a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration"
- "minor children of persons who are citizens of India"
- "A person of full age and capacity whose parents are registered as citizens of India".
- "a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration"
- "a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration".

2.8.4 Citizenship by naturalisation

The Citizenship by naturalisation in India is provided under section 6 of the Citizenship Act, 1955. If a person submits an application to the Central Government that the person is not an illegal migrant accompanied by a fee and in a prescribed form and that person is capable of submitting the same application because of his age and ability and if found to be legal, that person shall qualify for naturalization and grant him a certificate of naturalization of the basic requirement for submitting a request is specified in this section. The original, unamended provision of Section 6 provides that if any person of "full age and ability who is not a citizen of any country specified in the First Schedule" may apply for citizenship, and the Central Government may grant a certificate of naturalization after determining whether such person fulfils the qualifications set out in the Third Schedule. However, by obtaining the certificate does not enable an individual to be a citizen. He or she is required to take an oath of allegiance in accordance with provisions enumerated in the Second Schedule and it is only after swearing of the oath he or she will be qualified as an Indian citizen.[19] Section 6 provides for an exception – where the government finds the applicant to be an eminent person who has made an important contribution to, science, philosophy,

[19] Citizenship Act, 1955. Sec. 2, cl. 2.

art, literature, world peace or human development.[20] The 2003 amendment got substituted the 'First Schedule' in Section 6 with the expression "illegal migrants." The explanation for the root of this phrase caters back to the amendment of 1985 to the Citizenship Act, 1955. The statement of objects and reasons of the Citizenship (Amendment) act, 1985 states the issue related to the foreigners in a reference to the problem of the mass influx of these illegal migrants in the territory of India. In order to rectify this ongoing issue which resulted to the amendment of 1985 to the Citizenship Act and as a result Section 6A was instituted in the Citizenship Act, 1955. Section 6A tried to establish two types of persons- persons who had resided in Assam before 1st January 1966 and persons who came from Bangladesh to Assam "on or after 1st January 1966 but before 25th March 1971" and who were identified as foreigners.[21] The first category of persons were considered to be citizens of India simply by living in Assam and by virtue of their residency and their name as mentioned under the electoral rolls for the purpose of General Election as held in the year 1967. The second group of people who were required to register as per the rules made under section 18.[22] With one notable exception, the person belonging to the second category were entitled to the same rights as were provided to the ordinary Indian citizens. The exception was that the persons falling in this group will not be allowed to exercise their right to vote for ten years after the date on which they were registered as foreigners.[23] This staggered extension of rights in the franchise sphere is considered to be a very unusual option considering how inextricably bound to the notion of citizenship is franchise.

Both Section 6 and 6 A deals with the naturalisation by Citizenship to the foreigners.

[20] Citizenship Act, 1955. Sec. 6, cl. 1.
[21] Citizenship Act, 1955. Sec. 6A.
[22] Citizenship Act, 1955. Sec. 18.
[23] Citizenship Act, 1955. Sec. 6A, cl. 1.

2.8.5 Other conditions are:

1. That he is not a citizen or subject of a country where Indian citizens are prevented from becoming citizens by naturalization;

2. That he renounces his citizenship of the other country;

3. That he has either resided in India and/or been in government service for 12 months immediately preceding the date of application;

4. That during 14 years prior to these 12 months, he has either resided and/or been in government services for not less than 11 years;

5. That he is of good character;

6. That he has an adequate knowledge of a language recognized by the Constitution;

7. That after naturalization he intends to reside in India.

If the Central government is of the opinion that the applicant has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the above conditions for naturalization in his case.

Citizenship by incorporation of territory. If any new territory becomes a part of India, the Government of India, the Government of India shall notify the persons of that territory to be citizens of India.

2.9 OVERSEAS CITIZENSHIP OF INDIA

The Overseas Citizenship of India (OCI) is an immigration status allowing a foreign citizen of Indian origin to live and work in the Republic of India open-endedly. The OCI was introduced in response to demands for dual citizenship by the Indian migration, predominantly in advanced countries. It was introduced by "The Citizenship (Amendment) Act, 2005 in August 2005. It was launched during the Pravasi Bharatiya Divas convention held in Hyderabad in late 2005".

"The Constitution of India does not licence dual citizenship for citizens of India. Indian authorities have interpreted the law to mean a person cannot have a second country's passport concurrently with an Indian one - even in the case of a child who is claimed by another country as a citizen of that country, and who may be required by the laws of the other country to use one of its passports for foreign travel (such as a child born in United States or in Australia to Indian parents), and the Indian courts have given the executive branch wide freedom of choice over this matter" .

"To apply for and use an OCI document, a holder must be a citizen of and hold a passport of another country, except that of Pakistan or Bangladesh. Furthermore, the holder must not have parents from either of those two nations. In May 2019 the Indian Home Ministry contemplated permitting Bangladesh citizens to apply for the OCI registration. Bangladesh will likely be eligible in the future, but tensions with Pakistan as a nation still remain".[24]

On the commendations of a High-Level Committee on Indian Diaspora, the Government of India decided to register Persons of Indian Origin (PIOs) of a definite category, as has been specified in the Section 7A of the Citizenship Act, 1955, as Overseas Citizenship of India (OCI) cardholders.

Before 29 January 2015, travellers holding OCI card were required to carry the passport which contained the lifespan visa while traveling to India. This requirement was done away with that day and OCI card holders no longer require the visa sticker passport. The OCI card (the blue booklet) in combination with a current valid foreign passport is adequate to travel to and from India.

[24] *Overseas Citizen of India (OCI) Cardholder, Bureau of immigration India, Government of India*. (Retrieved 22 April 2017), Boi.gov.in, last accessed on July 26, 2020.

Earlier, the government could cancel OCI status of people who obtained it by scam, showed acts of unpatriotic, or broke a law punishable with at least two years in jail before five years of having allotted OCI. The Citizenship (Amendment) Act, 2019 gives the government additional supremacy to strip people of their Overseas Citizen of India (OCI) status if they violate any local law, whether it is a minor offense or a serious felony. The new act makes the rules much harsher for OCI card holders in a defensible attempt to preserve the status's dignity. However, it also has a provision which gives the person whose OCI status is at stake the power of being heard by the government before they come to a verdict.[25] In March 2020 visa-free travel granted to OCI holders were put on hold till 15 April due to the coronavirus pandemic.[26]

Eligibility to obtain OCI

The Government of India, on application, may register any person as an Overseas Citizen of India, if the person:

- "was a citizen of India on 26 January 1950 or at any time thereafter" or
- "belonged to a territory that became part of India after 15 August 1947" or
- "was eligible to become a citizen of India on 26 January 1950" or
- "is a child or a grandchild or a great-grandchild of such a citizen" or
- "is a minor child of such persons mentioned above" or
- "is a minor child and whose both parents are citizens of India or one of the parents is a citizen of India" or
- "Is a spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A of the Citizenship Act, 1955 and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application?"

"No person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan & Bangladesh, is eligible for registration as an

[25] *Why India's new citizenship bill is controversial*, 2019-12-11. Retrieved 2019-12-18.
[26] *India suspends visas in attempt to contain coronavirus spread*, Aljazeera, 25-04-2020.

Overseas Citizen of India.[27] Persons who served as a member of any foreign military are also ineligible to receive an OCI card".[28]

OCI needs to be reissued, even though it is termed as lifelong. OCI holders are not eligible for repatriation privilege from Government of India. A total of 1,372,624 people held OCI cards as on 31 July 2013.

2.10 PERSONS OF INDIAN ORIGIN CARD (PIO CARD)

Persons of Indian Origin Card (PIO Card) was a form of identification issued to a Person of Indian Origin who held a passport in a country other than Afghanistan, Bangladesh, Bhutan, China, Iran, Nepal, Pakistan and Sri Lanka. Hence, the Citizenship (Amendment) Act, 2003, made provision for acquirement of Overseas Citizenship of India (OCI) by the Person of Indian Origin (PIOs) of 16 specified countries. It also omitted all proviso recognizing, or concerning to the commonwealth citizenship from the principle Act. Later, the Citizenship (Amendment) Act, 2005, expanded the opportunity of grant of OCI for PIOs of all countries except Pakistan as long as their home country allows dual citizenship under their local law in case it recognizes OCI as a second citizenship of India. The OCI is not actually a dual citizenship as the Indian constitution prohibits dual nationality (Article 9).

In early 2011, the then Prime Minister of India, Manmohan Singh, announced that the Person of Indian Origin card will be combined with the Overseas Citizen of India card. This new card proposed to be called the Overseas Indian Card.

On 9 January 2015, the Person of Indian Origin card scheme was introverted by the Government of India and was merged with the Overseas Citizen of India card scheme. All currently held PIO cards are treated as OCI cards. PIO card holders will get a special stamp in their present PIO card, saying "lifelong validity" and "registration not required", thus making them equal to existing OCI cards.[29] An extended deadline was given where the card could be converted for free to an OCI until 31 December 2017.

[27] *Eligibility criteria*, Ministry of Home Affairs. This article incorporates text from this source, which is in the public domain, Retrieved 16 April 2016.
[28] *No OCI card to people with military background*, The Economic Times. 11 July 2018.
[29] *indembassybern.ch, Indembassybern*, Archived from the original on 31 July 2017.

PIO card holders can use their PIO card to travel to India until 30 September 2020. Effective 1 October 2020, PIO card holders' entry to India will be declined.[30]

2.11 AMENDMENTS

The act has been amended six times in total in the years 1986, 1992,2003,2005,2015 and 2019. By these amendment parliament has pointed down the extensive and universal principles of citizenship based on the fact of Birth. Moreover the foreigner act places a heavy burden on the individual to prove that he or she is not a foreigner. The three most important amendment were the amendment of 1986, 2003 and the most recently 2019.

1986 Amendment: The 1986 amendment, legislated after the Assam agitation and Assam Accord, was a serious restriction of the *jus soli* principle adopted in the Constitution and the original Citizenship Act.

- The amendment has added the condition that those who were born in India on or after January 26, 1950 but before July 1, 1987, shall be Indian citizen.
- Those born after July 1, 1987 and before December 4, 2003, in addition to one's own birth in India, can get citizenship only if either of his parents was an Indian citizen at the time of birth.

2003 Amendment: Before this bill was passed, it was branded as a "dual citizenship bill", a reference to the provision for Overseas Citizen of India.[31] It is labelled "Act 6 of 2004".[32] This amendment made following changes:

- Introducing and defining a notion of "illegal migrant", who could be jailed or deported.
- Making illegal immigrants ineligible for citizenship by registration or by naturalisation,
- Disallowing citizenship by birth for children born in India if either parent is an illegal immigrant, and

[30] Office Memorandum, IN.CKGS.us. Ministry of Home Affairs. Retrieved 25 October 2019.
[31] Neena Vyas & Anita Joshua, *Dual citizenship Bill passed*, The Hindu, 23 December 2003.
[32] Universal (2004), p. 2

- Introducing a notion of Overseas Citizen of India (OCI) for citizens of other countries who are of Indian origin.

The Act also mandated the Government of India to construct and maintain a National Register of Citizens.[33] With these restrictive amendments, India has almost moved towards the narrow principle of jus sanguinis or blood relationship.

2.12 CITIZENSHIP AMENDMENT ACT, 2019

The origin of the CAA dates back to the Pre-Independence era. Without be familiar with historical viewpoints the present amendment cannot be taken to mean in isolation. The word "India" was established pursuant to Section 311 of the Government of India Act in which the current Pakistan and Bangladesh were part of India till the independence of India and Partition of Pakistan. India earned independence after a long struggle with the enactment of the Indian Independence Act, 1947 where the British Parliament divided India into two dominions i.e. India, and that of Pakistan. The division of Pakistan was based on faith, as two country theory based on religion was propagated by the then portion of the Muslim Community. The Partition unsettled the non-Islamic community within the then eastern and western Pakistani territories. The large number of non-Islamic people migrated to India leaving just about everything they had behind. Similarly, a significant number of Muslims migrated from India to Pakistan then as well. Subsequently, some of those Muslims who migrated to Pakistan were returning to India with Indian Government permission. The Constitution of India grants all those people who migrated to India on or before 19th July 1948 from the territories of undivided India as specified in the Government of India Act,1935 the deemed citizenship on the date of commencement of the constitution. Many non-Islamic communities, however, could not migrate from Pakistan to India immediately after partition and were later locked at the borders in order to move legally into India.

The religious persecution became a practice in eastern and western Pakistan after post-independence. "Liaquat-Nehru Agreement" was entered into as a bilateral treaty between India and Pakistan only with the intent to protect minorities in the two countries. India has remained committed to protecting religious minorities present in

[33] Roy (2019), p. 29: "Section 14A made the registration of all citizens of India, issue of national identity cards, the maintenance of a national population register, and the establishment of the NRC by the central government, compulsory."

India but Pakistan has struggled measurably with its commitment in order to protect the religious minorities. Religious minorities in Pakistan continued to suffer religious persecution, and by treating them as secondary citizens, they were even kept away from basic human rights. Because of religious persecution or fear of persecution, the only choice left to religious the abovementioned religious minorities was to either suffer or move to neighbouring countries. Main chunk of religious minorities migrated to India from Pakistan. While the oppressed religious minorities also migrated to India from neighbouring countries, their entry into India was not legal and was termed as illegal migrants and was thus subject to criminal prosecution.

Section 2(1) (b) of the Citizenship Act defines "illegal migrant" as a foreigner who has entered India without a valid passport or other travel documents, or with a valid passport or other travel documents, but who remains in India beyond the time allowed time period.[34] It is evident from the above that the Citizenship Act as it was before the CAA did not offer the benefit of getting citizenship to illegal migrants of any religion. The clear argument was that illegal migrants who have entered India without proper travel documents have committed illegality and do not deserve citizenship benefits.

The CAA now seeks to carve out from the concept of "illegal migrant" persons of certain specified religions (Hindus, Sikhs , Buddhists , Jains, Parsis and Christians from certain specified countries , i.e. Afghanistan, Bangladesh and Pakistan, even though they may have entered India without proper travel documents and confer upon them the opportunity to apply for citizenship. The CAA has brought four amendments to the Citizenship Act, 1955. Firstly, under Section 2(1) (b) of the Citizenship Act provides that, for the purposes of the Citizenship Act, 1955 Hindus, Sikhs,Buddhists, Jains, Parsis and Christians who entered India on or before 31stDecember 2014 from Afghanistan, Bangladesh and Pakistan and which have been exempted by the Central Government from the implementation of other laws regulating the entry of foreigners without valid documents shall not be regarded as "illegal migrants." Through this clause, the CAA carves out of the large class of "illegal migrants" non-Muslims from the stated countries.

Secondly, CAA instituted Section 6B, which provides for the acquisition of Citizenship by the class of persons who are carved out from the definition of illegal

[34] Citizenship Act, 1955. Sec. 2, cl. 1, sub-cl. b.

migrants. Section 6B sub-section 1 requires the Central Government to issue a certificate of registration or certificate of naturalization with such conditions and limitations as the Government has specified. Sub-section 2 states that if the certificate is granted, such person shall be deemed to be a citizen of India upon fulfilment of the criterion for registration or naturalization. Upon granting a certificate of registration or naturalization, sub-section 3 nullifies any pending proceeding as illegal migrants or citizens. Furthermore, it states that the termination of any proceeding as an illegal migrant or a resident is not an obstacle to applying for citizenship. Sub-section 4 prohibits the operation of the Act from notified triable areas in north-eastern states as well as states where it requires an inner-line permit.

Thirdly , the CAA also inserts section 6 B to the Citizenship Act, 1955 which confers the right to Hindus, Sikhs , Buddhists , Jains, Parsis and Christians who entered India on or before 31 December 2014 from Afghanistan, Bangladesh and Pakistan and also relaxes the requirement of residence from 11 years to 5 years.[35]

The Statement of Objects and Reasons stipulates that the rationale for the CAA is that since the constitutions of the Specified Countries provide for a specific state religion (i.e. Islam), many non-Muslims in those countries have faced persecution on religious grounds. Many of them even have fears in their everyday lives about such persecution where the right to practice, confess, and spread their faith has been obstructed and limited. Many such people have fled to India to seek refuge and have stayed in India even though their travel documents have expired or have incomplete documentation or no documentation. Hence, the CAA recommends that these individuals be entitled for acquiring the Indian citizenship.[36]

The Laws relating to citizenship have been defined under the Constitution of India and the Citizenship Act, 1955. If any such situation arises and it is required on the Part of the Parliament to legislate on the matter related to the ways to acquire, terminate or continue the Citizenship of the individuals. The Parliament using the power as provided by framers of the Constitution under Article 11 of the Constitution of India enacts or amends the existing framework related to the citizenship in order to enable certain group of persons to enable certain group of citizenship to get benefitted of the Citizenship Laws present in the Country.

[35] Citizenship Act, 1955. Sec. 6b.
[36] The Statement of Object and Reasons of Citizenship (Amendment) Bill, 2019.

3. MINORITIES FROM ISLAMIC COUNTRIES

3.1 MINORITIES (THE CONCEPT)

The term “minority” cannot be for practical purpose explained simply by interpreting the word in its literal sense. Generally, the minority is thought of as the opposite of the majority. In democratic societies, it is based on the numerical ratio to the population as a whole in a particular place. But in international law the term “minority” is commonly used in more restricted sense. It has come to refer to a particular kind of group, which differs from the dominant group within the state. From a scientific point of view, the term “minority” includes many elements, which are changeable both in content and in degree of intensity. This term is most frequently used to apply to communities with certain characteristics like ethnic, linguistic cultural or religious etc. and always in an organised community. The members of such community feel that they constitute a national group, or sub-group which is different from the majority group. Indeed it is true that, despite the differences among various groups, all are held together by a sense of nationality which is larger, though thinner, in a national consciousness, than that of either of the separate groups. A minority necessarily presupposes stable characteristics, which differ sharply from those of the rest of the population.

3.2 MEANING

Minorities are those people who are less in number in their state and are in a non-dominant position. In sociology, Minorities group refer to a group or community of people who as compared to dominant social group face certain disadvantages. If we talk about political point of view, “minorities” in some countries is known as ethnic group, specified with some rights and recognized by the law of the nation. Canada, China, Ethiopia, Germany, India, the Netherlands, Poland, Romania, Russia, Croatia, and the United Kingdom are few countries around the globe which have special provision for the Minorities. But there are many countries which does not have any provision regarding the rights of the minorities and they are tortured and faces violence.

The several minority group in few countries are not given equal treatment. Even some minority group are so trivial and indistinct to obtain minority protection and rights. For example, a member of a particularly small ethnic group might be forced to check "Other" on a checklist of different backgrounds and so might receive fewer privileges than a member of a more defined group.

The term "minority group" often befalls within the discourse of civil rights and collective rights, as members of minority community are prone to differential treatment in the states and societies in which they live.[37] Members of minority communities often face discrimination in numerous areas of social life, including accommodation, employment, healthcare, and education, among the others.[38]

Minority group is typically based on differences in observable characteristics or practices, such as: ethnicity (ethnic minority), race (racial minority), religion (religious minority), sexual orientation (sexual minority), or disability.[39] Here we will talk about the Religious minority.

Individuals having a place with religious minorities have a confidence which is not quite the same as that held by the larger part. Most nations of the world have religious minorities. It is now widely accepted in the west that public should have the liberty to choose their own religion, including not having any religion (atheism and/or agnosticism), and including the right to convert from one religion to another. However, in many countries this freedom is constricted. In Egypt, a new system of identity cards[40] needs all citizens to state their religion and the only choices are Islam, Christianity, or Judaism. Another example is the case of decreasing population of minorities in Pakistan, where they are being forcefully converted or killed.

[37] Johnson, Kevin, *the Struggle for Civil Rights: The Need for, and Impediments to, Political Coalitions among and within Minority Groups*, Heinonline.org. Louisiana Law Review. Archived from the original on 2019-02-15. Retrieved 2018-08-14.
[38] Becker, Gary S. (Gary Stanley*), the economics of discrimination* (2nd ed.), Chicago: University of Chicago Press. ISBN 9780226041049. OCLC 658199810(1971).
[39]George, Ritzer, *Essentials of sociology. Los Angeles*, ISBN 9781483340173. OCLC 871004576(2014-01-15).
[40] *The Situation of the Bahá'í Community of Egypt* and *Religion Today: Bahais' struggle for recognition reveals a less tolerant face of Egypt*, Bahai.org Archived 2006-10-01 at the Wayback Machine, Archived 2007-10-14.

3.3 A BRIEF ON 'MINORITY IN INDIA'

India is a secular country. It does not have any religion. Each and every citizen is allowed to practice his/her own religion and belief. The constitution of India provide every citizen with the fundamental right of Right to religion.[41] India has given world a two widely practice religion that is Hinduism and Buddhism. In India, Hinduism is practised widely and a majority of population is Hindu population. Unlike large Christian minority besides Muslims and Buddhists, in India these minority does not face any discrimination regardless of their religion and also aren't targeted as minority.

The Constitution of India, which came into effect approximately seventy years ago, grants special fundamental rights for the protection and progression of minorities in India. Though, the term "minority" itself is not defined in the Constitution. One can nevertheless surmise from Articles 29 and 30 read together that the term primarily denotes to religious and linguistic minorities.

In the DAV College case[42] of 1971, it was held that "Religious or linguistic minorities are to be determined only in relation to the particular legislation which is sought to be impugned." In further words, if a Central legislation like the National Commission for Minorities Act is challenged, "minority" in such a case would have to be standardised with reference to the population of the whole of India, not any one state.

The 2002 judgment of the apex court in the TMA Pai case examined afresh the meaning of "minority" under Article 30 and came to a curious conclusion that since the restructuring of States in India had been on verbal lines, religious and linguistic minorities have to be considered state wise. Senior Advocate Fali S. Nariman, one of India's leading jurists, while delivering the 7th Annual lecture of the NCM in 2014, remarked that "the decision in TMA Pai was an unmitigated disaster for the minorities."

The 2005 verdict in the Bal Patil case, treats religious minorities and linguistic minorities differently. It agreed with TMA Pai that linguistic minorities are to be

[41] INDIA CONST. art 25-28.
[42] AIR 1971 1737 SCR 688 (India)

identified on the basis of their population in a particular state of India since the states were originally rationalised on linguistic lines. On the other hand, the Court witnessed that calibrating religious minority status on the basis of their population at the state level would influence against the integrity and secular fabric of India.

In conclusion, the six religious minority communities at the national level are the ones that fall within the meaning of "minority."

3.4 MINORITIES IN PAKISTAN

Nevertheless predominantly Muslim, at around 95 per cent of the population, Pakistan however includes an extensive kind of religious minorities, reflecting its long and sophisticated history. Hindus (1.9 per cent) and Christians (1.6 per cent) conjure the biggest minorities, but there are many smaller religious groups like Bahá'i, Buddhists, Kalasha, Parsis, Sikhs and Zikris.

Furthermore, between 10 and 25 per cent of the Muslim population are Shi'a - a sect of Islam that, while fully recognized by law, isn't in practice enjoy the identical status and privileges as like the Sunni majority. Even more side-lined, however, are the country's Ahmadis: while their exact numbers are unknown, they include numerous thousands and possibly a lot of Pakistanis who, while identifying as Muslims, have for several years been designated 'non-Muslims' within the Constitution.

Since independence, this diversity has been threatened by the increase of a highly exclusionary patriotism, which has favoured a narrow understanding of Islam. This has had serious implications for Pakistan's religious minorities who, despite constitutional guarantees and international commitments, have found themselves in an exceedingly condition where their rights to freely practise their religion are highly limited. Attacks on places of worship , particularly against Christians, Hindus and, increasingly, Shi'a Muslims are forced conversion, and state-led bans on any manifestation of various beliefs, same is the case for Ahmadis, there are few violations faced by minorities on a frequent basis.

Meanwhile, Pakistan's blasphemy laws, often accustomed to settle personal scores and achieve political gains, still affect Pakistan's minority communities

disproportionately. Sentences for blasphemy laws[43] can include the execution and accusations have frequently been followed by mob attacks on the accused. While serious violent incidents against minorities are generally perpetrated by non-state actors, including extremist outfits like the Tehreek-e-Taliban Pakistan (TTP), Lashkar-e-Jhangvi (LeJ) et al., the state still must answer to the failure to regulate or bring such groups to justice. Such groups often act with near impunity and, at times, there are allegations of state complicity.

Pakistan's religious minorities also face discrimination along economic, social and cultural positions, and confront barriers to their effective participation in political life. These challenges are worsened for those like lower-caste Hindus working as bonded labourers in southern Punjab's brick kiln industry, Hazara Shi'a living Quetta, and minority women across the country who face intersectional discrimination, with religious discrimination operating alongside and reinforcing other systems of oppression. Instead of challenging such approaches, the education system often reinforces intolerance and favouritisms against religious minorities, through their representation in textbooks further as everyday sorts of favour discrimination within the classroom.

In response to the continuing violence and discrimination targeted against Pakistan's religious minorities, the govt. at various stages, has taken some steps, including initiating an education reform process which began under General Pervez Musharraf, because of the newer National Action Plan, which has curbing hate speech and guarding religious minorities among its stated goals. Since the passing of the 18th Amendment in 2010, which decentralised minority related issues to the provinces, some pro-minority legislation has also been passed at this level, particularly in Sindh. While these are welcome developments, implementation of such policies and processes has often been slow. More sustained has been the work of civil society actors who, even amid high intensities of violence, have made efforts to spread awareness and encourage tolerance in Pakistan, often at their own risk, as highlighted by targeted attacks against activists.

Minority Rights Group International (MRG) has been working with activists in Pakistan on religious minority issues for several years. Together with its local

[43] *What are Pakistan's blasphemy laws*? BBC News, 8 May 2019, https://www.bbc.com/news/world-asia-48204815.

partners, it's currently engaged in supporting human rights defenders to watch and document violations against religious minorities, and to figure out together across religious lines in advocating for better tolerance. As a part of a broader initiative with Bangladesh, India and other country, it also aims to backing up dialogue and cooperation at a regional level, and draw networks between the challenges facing religious minorities in numerous parts of South Asia.

3.4.1 Rights of Minorities in Pakistan

Pakistan was established on the ideology of Islam. Most of the population in Pakistan was Muslim but non-Muslim minorities were also present in Pakistan. They were anxious about their future. Quaid-i-Azam was fully alert to the very fact. So in his first address to the Constituent Assembly on 11 August 1947, special attention was given to the minorities in these words:

"You are free; you are to go to your temples. You are free to go to your mosques or to any other places of worship in this State of Pakistan. You may belong to any religion or caste or creed that has nothing to do with the business of the State[44]"

He further said,

"Now, I think we should keep that in front of us as our ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State"[45]

After independence, Govt. of India Act, 1935 became with certain adaptations, the working constitution of Pakistan and also the Constituent Assembly was given the task of framing future constitution for country. The primary step towards it had been taken in March 1949, when "Objectives Resolution" was passed. It was considered as boulder for the longer term constitution of the country. It also included guarantee of fundamental rights for all the citizens of Pakistan i.e.

[44] Jinnah, Ali. Jinnah Speeches as Governor-General of Pakistan, 1947-1948. . Lahore: Sang-e-Meel Publications, 2013.
[45] Jinnah, Ali. Jinnah Speeches as Governor-General of Pakistan, 1947-1948. . Lahore: Sang-e-Meel Publications, 2013.

Muslims as well as non-Muslims. The citizens were guaranteed their fundamental rights under following provisions:

Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed.

Wherein adequate provisions shall be made for the minorities to freely profess and practice their religions and develop their cultures.

Wherein adequate provisions shall be made to safeguard the legitimate interests of minorities and depressed and backward classes.

According to this resolution minorities were absolve to profess and practice any religion and it had been duty of the govt. to guard their interests. They were allowed to enter into government services of Pakistan. On-Muslims and even some Muslim members of the Constituent Assembly wanted Pakistan to be a secular state but constitutional foundation of the country was laid on the principles of Islam and minorities got all their fundamental rights as guaranteed by Islam.

With the "Objectives Resolution" the method of constitution making started off. After passage of this resolution in 1949, several committees were framed by the Constituent Assembly to border a constitution on the premise of principles laid down by the resolution. Among these committees "The Basic Principles Committee" was the foremost important. It consisted of twenty four members and was headed by the prime minister. A committee on "Fundamental Rights of the Citizens of Pakistan" and on "Matters referring to Minorities" had been established by the Assembly in its inaugural session on 12 August 1947. The committee was primarily divided into two sections. One was occupied with the formation of Basic Human Rights and also the other section was looking into the rights and protection of the minorities in Pakistan. In 1950, the Constituent Assembly accepted the reports devised by this committee, which was finalized in 1954.

By virtue of this report presented by the Committee on Human Rights and after its acceptance by the Constituent Assembly in 1950, minorities were granted generous rights as citizens of Pakistan. The basic rights were certain to

all the citizens of the state i.e. both Muslims and non-Muslims, and included the following provisions:

1. Equality of all citizens before law[46].

2. Equal protection of all citizens before law.

3. No discrimination on the basis of religion, race, caste, sex, or place of birth.

4. The right to induction in the services of the state.

5. Freedom of speech, conscience, expression, association, profession, occupation, trade, or business.

6. Every community would be allowed to provide religious instructions to the pupils of its own community and personal law of every community was guaranteed.

7. No person would be compelled to pay any special taxes for the propagation of any religion other than his.

8. No discrimination against any community in the matter of exemption from or concession in taxes granted with respect to religious institutions.

9. No discrimination in admission to educational institutions.

The report was highly appreciated both inside furthermore as outside the Constituent Assembly. With reference to rights of minorities in Pakistan, in its final report, the Constituent Assembly added the subsequent provisions within the fundamental rights.

1. Any minority residing in the territory of Pakistan or any part thereof having a distinct language, script, or culture of its own should not be prevented from conserving the same.

2. The state shall not discriminate in granting aid to educational institutions, discriminate against any educational institution merely on the ground that it is mainly mentioned by a religious minority.

[46] PAKISTAN CONST. sec. 25A.

3. There shall be a Minister for Minority Affairs both at the centre and in the provinces to look after the interests of the minorities and to see that the safeguards provided in the constitutions for the minorities are duly observed.

The first constitution of Pakistan was promulgated in 1956; it included all the fundamental rights for all the citizens despite of their religion. All the minorities living in Pakistan were guaranteed all their fundamental rights. Unfortunately this constitution was abrogated in 1958 and new constitution was framed in 1962 which did not include fundamental rights but these were included in the constitution through constitutional amendment afterwards. Unfortunately, this constitution also could not last long and once again a new constitution was framed in 1973, this time by the Assembly elected by the people of Pakistan. This constitution guaranteed all the fundamental rights to all the citizens of Pakistan.

3.5 MINORITIES IN AFGHANISTAN

Afghanistan could be a unique case when it involves to minority rights, mainly because no ethnicity could be a majority within the country, and most ethnicities have tried to expand their numbers so on seem more powerful. The constitution identifies no minorities, and thus no minority rights.

Afghanistan has minorities supported religion, ethnicities and language. While it's an Islamic State, as per its constitution, people of other faiths are permissible to practise them in private according to the law. 84.7-89.7% of the population is Sunni, while 10%–15% is Shia (Central Intelligence Agency 2018). Other minorities, mainly Hindus and Sikhs, make for roughly 1% of the population. Persecution of Hindus and Sikhs has increased drastically in recent years, forcing most of them out of the country. Therefore, their numbers have dropped down to a mere 220 families.

More than 3.5 million Afghan refugees live outside the country, mainly in Pakistan and Iran. Over 700,000 Afghan refugees returned in 2016, many under considerable pressure from Pakistan. However, Afghanistan's lack of capacity to engross large numbers of returnees and also the risk that a lot of them will end in an exceedingly situation of displacement upon arrival has led numbers to drop. In November 2017, the UN refugee agency UNHCR recorded only 50,000 registered returnees from Pakistan during the primary three quarters of the year, compared with 370,000 the year before. At about the same time, increased civilian casualties led Amnesty International to warn that the EU should stop forcibly returning rejected Afghan asylum-seekers. The quantity of returns had tripled between 2015 and 2016, with nearly 10,000 having been returned in 2016 alone. Meanwhile, a study published by the Norwegian Refugee Council in January 2018 concluded that three-quarters of returning refugees ended up in situations of displacement, with 72 per cent having been displaced a minimum of twice.

Afghanistan's political life has always been dominated by ethnic Pashtuns, who are thought to mark up quite a 3rd of the population. Pashtuns are overwhelmingly Sunni with the exception of the Pashtun Turi tribe who are Shi'a. Significant numbers of the Tajik community also are Sunnis, notwithstanding from some Imami Shi'a Tajiks living in western Afghanistan, and therefore the Badakshan Tajiks who are Ismailis.

The majority of ethnic Hazaras are Shi'a (Imami Shi'a) however the Hazaras of Shibar are Ismaili Shi'a with a little low minority who are Sunni.

There are small Hindu and Sikh communities, estimated in 2016 at about 900 persons, but their numbers are thought to possess dropped significantly over the past decades because of emigration. Following the parliamentary denial of a presidential decree proposing a reserved seat for Hindus and Sikhs in December 2013, political representation of those groups remained limited in 2014. However, in an exceedingly historic appointment, in May 2014 the previous Afghan government selected a representative from the dwindling Hindu community for the diplomatic rank of ambassador for the primary time. Nevertheless, despite managing to secure positions in parliament by appointment, Sikhs and Hindus still report being pressured to convert and facing disruptions to funeral and cremation ceremonies by local officials. Socially ostracized, Sikhs living in Kabul reportedly face economic hardship, with many refusing to conduct business with them, but also recognitions to land grabs in areas within which Sikhs have historically resided. In addition to daily economic and social discrimination, sometimes establishing as physical and verbal abuse, freedom to practise their religion has also been abridged. Kabul was one time home to eight Sikh places of worship or gurdwaras, but only 1 remains today.

Considerable intermarriage, mostly between the Pashtuns and other groups has somewhat blurred ethnic distinctions among communities. There has also been mixing between Tajiks and later Mongolian and Turkmen migrants, and a few between Hazaras and Uzbeks.

Afghanistan remains largely a society, divided into many tribes, clans and smaller groups. Considerable variation within the kinds of terrain and hindrances imposed by high ranking mountains and deserts, account for the country's marked ethnic and cultural differences.

The country's population reflects its location with the presence of several national minorities. the most ethnic groups are dispersed throughout the country as follows: Pashtuns, the major group, are concentrated mainly within the south and south-east but also live everywhere in the state; Tajiks inhabit mainly in the north and north-east, and also the Kabul region; Hazaras board the centre (Hazarajat) and in Kabul;

Uzbeks in the north; Aimaq in the west; Turkmens in the north; Baluchis in the west and south-west; and Nuristan is in the east.

The Constitution of Afghanistan came into force on 4 January 2004. It recognizes Afghanistan as an Islamic Republic and as an 'independent, unitary and indivisible state'. The Constitution further gives official recognition to the subsequent ethnic groups: 'Pashtun, Tajik, Hazara, Uzbek, Turkman, Baluch, Pachaie, Nuristani, Aymaq, Arab, Qirghiz, Qizilbash, Gujur, Brahwui and other tribes.' Pashtu and Dari are recognized because the official languages, but grants 'third official language' status to areas where Uzbeki, Turkmeni, Pachaie, Nuristani, Baluchi or Pamiri language speakers are in the majority. These languages are effectively adopted and developed by the govt., with publications and broadcasting proposed to be overall the spoken languages of Afghanistan. The tutorial curriculum, however, is envisaged as being unitary and supported Islam and 'national culture'. Article 22 contains a basic non-discrimination clause, but it doesn't specify any conditions on which discrimination is also based.

With relevance religious minorities, it's worth noting that it's the constitutional chapter on 'The State' that protects religious freedom instead of the chapter on 'Fundamental Rights and Duties of Citizens'. Article 2 recognizes Islam as per the state religion and that, 'followers of other religions are free to exercise their faith and perform their religious rites within the bounds of the provisions of the law.' This sole clause has been called inadequate as there are not any provisions of the law that protect the liberty of faith or belief for minorities. Indeed, jurisprudence establishing harsh penalties for blasphemy and apostasy have been used to harass religious minorities. Blasphemy is punishable by death if committed by someone of sound mind who has reached the age of majority, namely over the age of 18 for males or over the age of 16 for females. The accused is given three days to recant, or otherwise, face death by hanging. Conversion from Islam is well thought-out as apostasy and might be punishable by death. A fatwa issued in 2007 declared practitioners of the Baha'i faith as a blasphemous deviation from Islam.

3.6 MINORITIES IN BANGLADESH

Islam is the state religion of Bangladesh by article 2A of the constitution[47], however secularism is one among the four fundamental principles as per the 1972 Constitution of Bangladesh. The constitution further states that "the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions".[48] Bangladesh is one among the few secular Muslim-majority nation.

As per 2011 census Muslims constitute over 90% of the population, while Hindus constitute 8.5% and remaining rest constitute 1%.[49] A survey in late 2003 confirmed that religion is the first choice by a citizen for self-identification. The Constitution denominates Islam, Hinduism, Christianity, and Buddhism.

Bangladesh is the fourth-largest Muslim-populated country. Muslims are the predominant community of the country and that they form the majority of the population in all eight divisions of Bangladesh. Overwhelming majority of Muslims in Bangladesh are Bengali Muslims at 88%, but a minute low segment about 2% of them are Bihari Muslims and Assamese Muslims. Most Muslims in Bangladesh are Sunnis, but there's small Shia community. Most of these who are Shia reside in urban areas. Although these Shias are few in number. Shia observance commemorating the martyrdom of Muhammad's grandson, Husain ibn Ali, is widely observed by the nation's Sunnis.

3.6.1 Rights of Minorities in Bangladesh

The constitution of Bangladesh recognizes no minority in the country and contains no special provision for their protection and promotion. Everyone in the State gets equal treatment of law. The first and foremost right, which has been made justiciable under part III of our constitution, is the right to equality before the law and the equal protection of laws. The term 'equal protection of law' means persons similarly situated should be treated alike. Equal protection is the guarantee that similar people will be dealt with in a similar way In the case of Dr.Nurul Islam V. Bangladesh R. Islam Justice has interpreted the doctrine in the same way: "The principle on which

[47] BANGLADESH CONST.
[48] *The state religion*, Bdlaws.minlaw.gov.bd. Retrieved 17 July 2015.
[49] Official Census Results 2011 page xiii, Bangladesh Government. Retrieved 17 April 2015.

the doctrine of equal protection of laws is founded is that persons in similar circumstances must be governed by the same laws."

The principle of equality laid down in Article 27 is spelt out for certain situations in greater detail in Article 28. Article 28 clause (1) is limited to discrimination on the grounds of religion, race, caste, sex, or place of birth or any of them. This article projects the citizen against discrimination. The crucial word in this Article is discrimination, which means making an adverse distinction with regard to or distinguish in unfavourably from others.

All over the world the minority groups are more or less in a vulnerable position. And their special protection has been recognized by differentinter national forum. Different nation States have adopted sufficient protection mechanism in their Constitution as well as in other enactments. Even neighbouring India incorporated a good number of provisions in its constitution to safeguard different religious groups, castes and tribes. Bangladesh Constitution contains a very few such like clauses and that is also not mandatory for State to follow it. Under Article 28(4) the State has an opportunity to make special provision for the advancement of any backward sections of the citizens. Or as it is in Article 29(3) (a), where the State is empowered to make laws for reservation of any backward sections of the citizens, if not adequately represented in the Service of the Republic, and prescription of professing a particular religion or belonging to a particular denomination, if the office is in connection with the affairs of any religious or denominational institution.[50]

But Bangladesh has not had any such experience ever.[51] And Bangladesh ever took a very little step to adopt measures for the protection against disfigurement damage or removal of all monuments, objects or places of special artistic or historic importance or interest concerned to the minority communities as it was promised under Article24.[52] Due to serious negligence from the State authority hundreds of artistic

[50] Article 29 (3) Nothing in this Article shall prevent the State from – (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic.
(b)giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination.
[51] Article 28(4): "Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward sections of the citizens.
[52] Article 24: The State shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places or special artistic or historic importance or interest.

and architecturally enriched buildings, temples and sacred places are being damaged, occupied and lost day by day.

But all these equality clauses become meaningless when anybody goes through Articles 8(1), 8(1A), 2A or Article 25(2). All these highly discriminatory articles for the minorities were not in the original Constitution of Bangladesh. The later amendments, especially the 5th and8th, incorporated these highly discriminatory provisions. Anyone may, from his common sense consider it insulting and humiliating for the minorities. In reference to article 8(1),[53] replacement of absolute trust and faith in the almighty Allah for secularism is a complete denial of the freedom and existence of other religious beliefs in the State, which went completely against the spirit of the freedom fight, Or Article 8(1A)[54] another provision seriously embarrassing for the minority citizens. And this is a threat to their religious feelings, as it becomes their constitutional responsibility to set absolute trust and faith in the almighty Allah while performing any statutory obligation. The extreme aggression came in the8th amendment of the Constitution when Islam was declared as the state religion making the people professing other beliefs as the second class citizen of the country. Though under Article 2-A[55] contains space for practicing other religions in peace and harmony, but the concept of State religion is a great shock to the religious rights, sense, and emotion of the minority communities in Bangladesh. Or in reference to the promotion of international peace, security Solidarity State's endeavour to consolidate preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity only causes the minority people worried about their cultural security and international protection.[56]

At the same time the constitutional declaration of Bangla as the only language and clear avoidance of other smaller linguistic groups' worries them about their rights and existence in further.[57]

[53]Article 8(1): "The principles of absolute trust and faith in the Almighty Allah, nationalism, democracy and socialism meaning economic and social justice, together with the principles derived from them as set out in this part, shall constitute the fundamental principles of State policy."
[54]Article 8(1A): "Absolute trust and faith in the Almighty Allah shall be the basis of all actions."
[55]Article 2-A: "The State religion of the Republic is Islam, but other religions may be practised in peace and harmony in the Republic.
[56]Article 25(2), Constitution of the Peoples Republic of Bangladesh.
[57]Article 3: "The State language of the Republic is Bangla."

3.6.2 Religious Persecution of Minorities

There are several occurrences of violence against the religious minorities in Bangladesh. Hindus, Buddhists and Christians have derived under widespread attacks by Islamist extremists during communal riots, elections and post-poll violence. Most of those attacks target Hindus, the leading minority of the country, who are particularly vulnerable in an exceedingly period of rising violence and extremism, whether motivated by religious, political or criminal factors, or some combination. Bangladesh has been rocked by several anti-Hindu riots in 1992, 2001, 2013 and 2014. These violence's included attacking and killing Hindus, looting and burning of Hindu owned properties and businesses, abduction and rape of women's, vandalising and destroying Hindu temples by the extremist Muslim mobs. There also are alleged discrimination against Hindus by the administration within the kind of Vested Property Act by which over 40% of Hindu-owned lands and houses are confiscated, intimidation during elections and revoking their names from electoral rolls. Since the rising of Islamist political parties during 1990s, enormous number of Hindu families have migrated from Bangladesh to India owing to a sense of insecurity and economic necessity. These factors combined with lower birth rates of minorities have resulted in an exceedingly dwindling Hindu population within the country. The Bihari ethnos in Bangladesh has been subject to persecution during and after 1971 Liberation War. In arrears to their pro-Pakistan stance, many Bihari's were forcefully repatriated to Pakistan and people who stayed back weren't granted citizenship and voting rights by Bangladesh government.

4. BLESSING FOR MINORITIES

4.1 ESSENTIALITY OF CAA, 2019

At the time of Independence and even after the time of partition there have been several agreement between India and Pakistan. The agreement between the governments of India and Pakistan regarding security and also the Right of Minorities at New Delhi on 8th April, 1950 which is famously called Nehru-Liaquat Agreement[58] was specified to guard the minorities belonging to both the countries. The govt. of India is under a responsibility to safeguard and assist the persecuted minorities within the framework of the partitioning of India, which happened to grant a separate country to Muslims and thereafter was named Pakistan. Pakistani has time and again breached to the commitment made under the Nehru-Liaquat Pact, 1950, and as a result the persecuted minorities on the ground of religion have entered the territory of India seeking refuge in order to protect their lives and dignity. It is important to notice that before the partition of India and Pakistan, these communities were an integral part of the country, and therefore the refugees are seen as a consequence of partition and non-acceptance of the countries in the two foreign states that are Pakistan and Bangladesh.

It is appropriate here to say that the Prime Minister of the newly formed nation of Pakistan and India has signed the Nehru-Liaquat Pact, rendering to which both nations (India and Pakistan) have made a promise to take care of religious minorities in their respective countries. In the light of this treaty the suggestion for full population exchange was also dismissed and both countries asked minorities living across borders to simply accept their fate in the light of the guarantees given by their respective prime ministers.[59]

Because of the commitment made under the Nehru-Liaquat Pact India had decided for the time limit for giving the Citizenship for the migrants and came up

[58] *Agreement Between The Governments Of India And Pakistan Regarding Security And Right Of Minorities* (Nehru- Liaquat Agreement), https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.
[59] Ibid.

with the Citizenship Act, 1955 for providing citizens. However there was no action taken by the Pakistan for the minorities within the specific religion state. The minorities came to India to save and protect their lives across the border believing this country to be their ancestral land because it was before partition. This migration began from the Partition date and continues till today. It's evident from the large influx of minorities that Pakistan and Bangladesh haven't kept their promise. Then it's the responsibility of the Indian Government being another signatory of the Agreement and also clearly due to India being inheritor of British India, to look after the minorities who were once a minority of this nation. As per the International Law the successor state has all the rights inherited from the predecessor state. As Pakistan broke up from the British -India and formed a fresh state and applied for a new member to the United Nations under Article 4 of the Charter of United Nation.[60]

The present amending act is simply implemented with the prompt intention of assisting these oppressed minorities from the three aforementioned countries. The CAA, was specifically brought forward to handle this issue of such persecuted migrants living in India for countless years with no citizenship rights. There could also be several other classes of illegal migrants in India, but it's the solitary privilege of a sovereign state to select one and to not choose another to provide citizenship. It's a matter of policy and political consideration that keeps security and other national interests in mind of a specific government. This classification relies on the partition and displacement of the population in the respective countries and also the resulting oppression of minorities. The intent is to grant these minorities' citizenship rights to migrate from the above mentioned countries to seek shelter in India as a results of religious persecution in those countries.

[60] Article 14 of the Charter of the United Nations, 1948 available at: https://www.un.org/en/sections/un-charter/chapter-ii/index.html last accessed on: 25-06-2020.

4.2 CONSECRATION FOR MINORITIES IN ISLAMIC COUNTRIES

Since Immemorial time, the Indian Culture have always contributed significantly towards the social, spiritual, economic development of human growth. Its culture is the soul of this country. This Culture is like an incessant flow, nurtured through meditation and Philosophy of ancient thinkers and Sufi saints, motivating the world after evolving into banyan tree. Love, compassion, Harmony, Tolerance, Sacrifice, dedication, equality for every religion and benevolence are some of the basic element of this culture. When development paves ways into any nation, reformatory steps become the base and this very base to strengthen its commitment towards progress has been attained by PM Modi-led government with the solidification of the Citizenship Amendment Bill (CAB) into law as the Citizenship Amendment Act (CAA). For putting an end to the long-standing atrocities of the minority refugees the Citizenship Amendment Act, 2019 has been introduced. The basic tenets of this act has been articulated by the PM Narendra Modi in a beautiful manner. He said "CAA is not a favour. It will protect the interests of people reposing faith in Bharat Mata".

On one hand this act tends our cultural values, on other hand Fundamental spirit of the Indian Constitution is nurtured and protected. Granting Indian citizenship to the minorities of Pakistan, Afghanistan and Bangladesh who are continuously facing hardship in leading their lives peacefully in their respective countries. This act provides provision for granting citizenship to the Hindu, Buddhist, Jains, Shikh, Parsi and Christian refugee living in India since or before 31st December 2014. Minorities from these three countries can apply for Indian Citizenship only if they are living here for at least 5 years.

Inspired by the ancient philosophy of Vasudhaiv kutumbkam[61] and sarve bhavantu sukhinah sarve santu niramaya,[62] India has provided shelter or home to every weak and helpless person. India has always been known for having rich legacy and glorious history of having always given refugee to oppressed people. Be it Parsis who are given shelter in India or the Tibetans in recent years, India has always extended a warm welcome to the oppressed minorities of other countries.

[61] The world is one family.
[62] May all be happy, free from illness, see what is auspicious/may no one suffer and may all have peace.

When it comes to protecting the humanitarian idea of the World, India has always stand strong no matter what. Similarly amending of CAA is one step forward in establishment of its hold upon the country's commitment to aid those who have been facing the risks of religious persecution. For the religiously oppressed community in Pakistan, Bangladesh and Afghanistan this act of CAA is a ray of hope and it might evade the darkness of uncertainty and illusion from their lives.

India is the only country where minorities have not faced any religious or any kind of discrimination. In India all citizen including 175 million Muslims (14% of the total population of India) enjoys the same rights like others. So it is important here to mention that Muslims from all across the world can apply for the citizenship of India and obtain it under existing citizenship laws. Muslims of Pakistan, Bangladesh and Afghanistan can also apply for the Indian Citizenship.

The citizenship of a nation is directly established on comparable standards followed in practically all nations represented by the Rule of law. Citizenship is obtained by birth, naturalization and by acquisition of regions. The individuals who effort to enter a nation without its consent are illegal migrants and are at risk to be expatriated.

Have one, ever considered the declining ratio of minority in Pakistan and Bangladesh? Did anyone ever noticed where they went or fled? They did not left with a much choice and changed their religion, some became refugees and some encountered in communal violence. This is why CAA is the result of decades-long atrocities committed against the minorities.

On September 26, 1947, during a prayer meet, Mahatma Gandhi had positively stated that "All Hindus and Sikhs living in Pakistan were free to come to India if they did not wish to live there. It would be the primary duty of the Indian government to provide them jobs and help them settle down here in a normal way". So this government is doing the same.

To understand the CAA, one has to consider the administrative situation in other South Asian nations. There has been oppression of religious minorities for decades in Pakistan, Bangladesh and Afghanistan. The CAA offers a legitimate solution one that currently does not exist, for future migrants coming from Pakistan and other nations. For the record, the European Parliament has raised many apprehensions relating precisely to the suppression of minorities in Bangladesh, Afghanistan and Pakistan.

These include the European Parliament's Resolution 2018[63] on15 November 2018 on the human rights situation in Bangladesh, Resolution 2017[64] on 14 December 2017 on the situation in Afghanistan and Resolution 2017[65] on 15 June 2017 on the human rights situation in Pakistan.

Home Minister stated that "The Citizenship Amendment Act will not only remove the tag of illegal migrants from the people of these six communities coming from these neighbouring nations, but will also provide them with all legal and constitutional rights by getting Indian citizenship after residing in India for five years, instead of the earlier requirement of 11 years".

CAA's affirmed objective is to enable conferment of Indian citizenship upon members of minority communities who hail from Afghanistan, Bangladesh and Pakistan. Does one really need proof that minorities are persecuted within these Islamic republics? How can anyone be faulted for coming to a conclusion that such minorities in the three named neighbours must be protected?

India has always welcomed the refugees from everywhere with open arms and provided them with an encouraging atmosphere to lead their lives with dignity here. Be it Mahatma Gandhi or Sitaramayya, J. B. Kripalani or Abul Kalam Azad, Syama Prasad Mookerjee or Tridev Kumar Choudhary, everybody has been concerned for the refugees thinking they should all get a shelter to live with respect and dignity. The whole world knows that India has always taken important decisions for the sake of humanity to keep with its obligation to universal welfare. When the exploited minorities from other nations will get a chance to live a dignified life in India, because of the initiatives of Indian government, the country's prestige, honour and glory will certainly enhance within the world.

India is a secular country, while the other three countries mentioned are Islamic countries. Thus, all religions are accepted in India and the CAA only underlines this fact. Everyone has right to lead their life with dignity and respect CAA is a step towards it.

[63] 2927(RSP)
[64] 2932(RSP)
[65] 2723(RSP)

5. ASSAM ACCORD AND NRC

5.1 ASSAM ACCORD

In 1948, there were no restrictions on the movements of persons from India to Pakistan or vice versa even after Partition till July 19, 1948, when 'Influx from West Pakistan (Control) Ordinance, 1948' came into existence. Later, the Constitution of India formalised this as the cut-off date that entitled the Right to citizenship of certain migrants from Pakistan.

The issue of illegal immigrants is old in Assam. It was a raging issue soon after Independence forcing the government to bring the Immigrants (Expulsion from Assam) Act in 1950. A National Register of Citizens (NRC) was to be prepared on the basis of Census 1951.

The issue of illegal immigrants fuelled massive protests for six years beginning 1979, when a Lok Sabha by poll was to be held at Mangaldoi seat. Various outfits with All Assam Students Union (AASU) forming the nerve centre of the protests complained about foreigners - mainly Bangladeshis - having been included in the voters' list.

In 1955, The Citizenship Act came into force that codified rules for Indian citizenship by birth, descent and registration. In 1957 Immigrants (Expulsion from Assam) Act was repealed.

In the year 1979 Anti-foreigners' movement started in Assam. Six-year-long Assam agitation, spearheaded by the All Assam Students' Union (AASU) and All Assam Gana Sangram Parishad (AAGSP) for detection, disenfranchisement and deportation of foreigners. All Assam Students' Union (AASU) submitted the first memorandum demanding updating of NRC to Centre on January 18, 1980.

The Indira Gandhi government continued to engage with the protesters between 1980 and 1984 but without reaching an agreement. After her assassination, the Rajiv Gandhi government signed an agreement with the protesters - AASU and All Assam Gana Sangram Parishad - bringing the agitation to an end.

The Assam Accord was a Memorandum of Settlement (MOS) signed between councils of the Government of India and the leaders of the Assam Movement.[66] It was

[66] Assam Accord, United Nations Peace Accord Archives. 1985.

signed in the presence of the then Prime Minister Rajiv Gandhi in New Delhi on 15 August 1985. Later Citizenship Act was amended for the first time in the next year, 1986. It followed a six-year agitation that started in 1979. Led by the All Assam Students' Union (AASU), the protestors demanded the identification and deportation of all illegal foreigners – predominantly Bangladeshi immigrants. They feared the past and continuing large scale migration was overwhelming the native population, impacting their political rights, culture, language and land rights. The Assam Movement caused the estimated death of over 855 people. The movement ended with the signing of the Assam Accord.[67]

The leaders of the Assam Movement agreed to accept all migrants who had entered into Assam prior to January 1 1966.[68] The Government of India acknowledged the political, social, cultural and economic concerns of the Assamese people and agreed to revise the electoral database based on that date. Further, the government agreed to identify and deport any and all refugees and migrants after March 25 1971. In 1971, millions of citizens of Bangladesh – then called East Pakistan – fled the abuses of a civil war and associated genocide between East Pakistan and West Pakistan triggering mass illegal migration into Assam, West Bengal, various other nearby states of India as well as Myanmar.[69]

According to the Assam Accord, the Government of India agreed to secure the international border against future infiltration by the "erection of physical barriers like walls, barbed wire fencing and other obstacles at appropriate places" and deploying a patrol by security forces on land and river routes all along the international Bangladesh-India border. To aid this effort, the Government also agreed to build a road near the border for the patrol and quicker deployment of Indian security forces, as well as maintain a mandatory birth and death list of citizens. All open police charges against the participants and the leaders of the Assam Movement, prior to and on the date of signing the Accord, were also withdrawn and closed. The families of those who died during the Assam Movement were given monetary compensation. The

[67] Sangeeta Barooah Pisharoty, *Assam: The Accord, the Discord. Penguin Random House*, pp. 1–7, Introduction chapter. ISBN 978-93-5305-622-3, (2019).
[68]Assam Accord, United Nations Peace Accord Archives. 1985.
[69] Sarah Kenyon Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War, and the Dilemmas of Humanitarian Aid*, Cornell University Press. pp. 24–25. ISBN 978-1-5017-0039-2, (2015).

Government also agreed to open an oil refinery, reopen paper mills and establish educational institutions in the state.

The accord brought an end to the Assam Movement and paved the way for the leaders of the agitation to form a political party and form a government in the state of Assam soon after. Though the accord brought an end to the agitation, some of the key clauses are yet to be implemented, which kept some of the issues festering.[70] According to Sanjib Baruah-a professor of Political Studies, the task of identifying foreigners became politically difficult, affected vote banks, and attracted accusations of religious or ethnic discrimination. Hiteswar Saikia, a chief minister of Assam in early 1990s and senior Congress party leader, for example gave conflicting statements in his speeches. In the front of some crowds, he denied there were any foreigners; before other crowds, he said there were hundreds of thousands of illegal foreigners in Assam that need to be deported. In 1997, the state government completed a study and marked numerous names in its voter list with "d" meaning "disputed citizenship", with plans to block them from voting. Critics complained of disenfranchisement. The High Court of the state ascertained that the "d" is based on suspicion, not documentary evidence. All residents – citizens and foreigners – were allowed to vote in subsequent Assam elections. The supporters of the Assam Movement stated that the government has failed to implement the Assam Accord.

The main issue covered in the Accord were:

- Foreigners issue
- Economic development
- Restricting acquisition of immovable property by foreigners
- Prevention encroachment of government lands
- Registration of births and deaths

This was done to ensure protection of political, social, economic and cultural identity of the local people.

[70] *Union Cabinet clears panel to promote Assam's cultural identity*, The Hindu. Special Correspondent. 2 January 2019.

5.1.1 Clause 5

“Clause 5 is the heart of the Assam Accord. Clause 5 of the Assam Accord deals with the problem of foreigners, that is, detection of foreigners in Assam, deletion of their names from the voters' list and their deportation through practical means.”

The foreigners were classified under three heads for identification and difference treatment under Clause 5 of the Assam Accord. Two dates are of significance in the Assam Accord: 1st of January 1966 and 24th of March 1971.

"All persons who came to Assam before 1.1.1966, including those amongst them whose name appeared on the electoral rolls engaged in 1967 elections, shall be regularised," states Clause 5 of the Assam Accord.

Clause 5 of the Assam Accord further says, "Foreigners who came to Assam after 1.1.1966 (inclusive) and up to 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and also the Foreigners (Tribunals) Order 1964."

This means that those illegal immigrants who came to Assam between 1966 and March 24, 1971 were to be disenfranchised. This group of individuals was required to register themselves as foreigners in accordance the Registration of Foreigners Act, 1939.

The Assam Accord doesn't entail their deportation but they were to urge voting rights only after expiry of 10 years from the date of their detection or declaration as foreigner. The rest had to be expelled. Religious persecution wasn't a consideration for any relaxation in accommodating illegal immigrants.

5.1.2 Clause 6 Promise

Clause 6 is another often quoted provision of the Assam Accord to challenge the new amendment within the Citizenship Act. Clause 6 of the Assam Accord says that constitutional, legislative and administrative steps are going to be taken by the Centre to "protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people".

5.2 ASSAM COMPLICATED ISSUE WITH THE CAA

Though tribal areas of Assam have been exempted from applicability of CAA; act still covers a large part of Assam.[71] The protest stem from the fear that illegal Bengal Hindu migrants from Bangladesh, under CAA, will threaten culture and linguistic identities of the state.

The north-east region is vastly diverse, with approx. hundred different communities inhabiting its seven states (excluding Sikkim, which is an outlier), but the long politics of ethnic insider and outsider is a collective thread that runs through all of them. People from communities that are majorities elsewhere in India, like Bengali and Nepali speakers, have lived there for many years as members of oft-persecuted minorities.

The blowback in Assam, particularly, is due to a protracted and complex history of protests against immigrants from East Bengal, dating back to well before Partition. Many politicians, including the present chief minister of Assam, Sarbananda Sonowal, and his colleague Himanta Biswa Sarma have built their careers on this. The fear that the CAA would open the doors to a flood of refugees from East Bengal—today's Bangladesh—has naturally inflamed passions.

The genesis of the tensions between the Assamese and Bengali linguistic communities in Assam lies in the state's particular history. In 1826, the erstwhile Ahom kingdom, which was then under Burmese rule, demolish to British East India Company after the first Anglo-Burmese War of 1824-26. At the time, the British colonial government in India was run out of Calcutta in what accustomed be the Bengal Presidency. Thus, what's now Assam entered British domains as a part of Bengal.

In January 1838, the judicial and revenue department of British Company Raj ordered that "in the districts comprised within the Bengal division of the presidency of Fort William, the vernacular language of these provinces shall be substituted for the Persian in judicial proceedings, and in the proceedings regarding the revenue, and the time of twelve months from the primary instant shall be allowed for effecting the substitution". Bengali thus came to be imposed on Assam—a burden for which the Bengali clerks (who were dominant at the lower levels of bureaucracy), instead

[71] INDIA CONST. art. 244, cl. 2 and art.275, cl.1. Schedule 6. Provisions as to the Administration of Tribal Areas in 1 [the States of Assam, Meghalaya, Tripura and Mizoram].

of British sahibs, came to be blamed. This subsequently became the historical genesis of a conflict between the Bengali and Assamese linguistic communities within the North-East that lingers to the current day.

Anxieties about being dominated or overrun by Bengalis have been debatably the utmost single issue in the politics of Assam, and of a minimum of at least two other North-East states-Meghalaya and Tripura-for decades. In Tripura, the local tribal of the erstwhile princely state became a minority because of an influx of Bengali-speaking migrants-from what is now Bangladesh-at the time of partition in 1947. This is often still held up as a warning tale by all the states and communities of the North-East. It's a sort of primal fear that an analogous fate may befall others too. The specific historical conditions that led to the partition of the subcontinent, and therefore the forced migration of refugees, are usually forgotten.

While the rest of the India has been protesting both the projected NRC as well as the CAA, the protests in Assam and Meghalaya are directed only against the CAA. Assam is till date the lone state to have gone over the NRC exercise. Over 1.9 million residents of the state are left out from the final list and now face statelessness. The exercise has been condemned as erroneous by all political parties in Assam. One of its former cheerleaders, state minister of finance Himanta Biswa Sarma, has promised a review. Even the All Assam Students Union (Aasu) has rejected it. For the Bharatiya Janata Party (BJP), the matter is simple: Too many Hindu Bengalis, who are its core voters in Assam, are left out. For Aasu, the contention is the exact opposite. They aver that too few people are excluded. However, both agree that the numbers aren't reliable.

Nobody knows what percentage of these 1.9 million are just poor Indian citizens who are left out due to issues with documents from before the expiry date of 25 March 1971, over 48 years ago. However, while protests against the NRC and CAA rage throughout the country, there has not been one protest against the NRC in Assam, which may have to undergo through the exercise a second time if it's held for the whole country—such is the desire in the state to get people evicted.

The protests in Meghalaya and its capital, Shillong, against the CAA brought out vast numbers of individuals on the streets. Here too, the protests were purely against the CAA. In fact, almost the entire state of Meghalaya was already immune from the

provisions of the CAA by virtue of the tribal areas being covered by the Sixth Schedule of the Constitution, administered by autonomous district councils. The quantity of pending citizenship applications from potential CAA beneficiaries in the state is in single digits, as per highly placed government sources. In Assam, Sonowal told the media that the number of recipients of the CAA would be “very few in number", and subsequently repeated that the number was “very negligible".

Every single North-East state has seen rumbles of protest against the CAA. This has included states completely exempted from the provisions of the CAA, like Nagaland, Mizoram and Arunachal Pradesh, where Indian citizens from other states require Inner Line Permits,[72] and Manipur, which was added to the list of ILP states to assuage its residents. The worry of the ILP states is simple: The ILP is insufficient protection, they fear. The permit may be procured quite easily and while there's a system to test whether an individual entering the state has the permit, there's no system to investigate if anyone with the permit overstays. The distress is that despite the exemption from CAA, people from Bangladesh, which adjoins the North-East, are someway going to come flooding in now, and settle within the region.

Assam and also the rest of the North-East didn't want Hindus or Muslims either, and this was the opinion that Arnab Goswami made.[73]

The contradictions between ethno-linguistic politics and the religious nationalist politics are now out in the open. The Assam government is trying to manage the condition by appeasing supporters of both. It has now announced a cabinet decision to make the Assamese language obligatory up to class X in all the schools irrespective of the medium of instruction,[74] but exempted the Barak Valley, which features a Bengali majority, the Bodoland areas, and also the autonomous hill districts.

In emerging explosively into view at an instant of Abe and Modi’s cancelled summit on Act East in Guwahati, these contradictions have highlighted another contradiction. There’s a strangeness in carrying on a domestic politics built on

[72] Inner Line Permit is an official travel document issued by the concerned state government to allow inward travel of an Indian citizen into a protected area for a limited period. It is obligatory for Indian citizens from outside those states to obtain a permit for entering into the protected state.

[73] Samrat X, *Why has Republic TV’s Arnab Goswami broken with the BJP on Citizenship Bill?* Dec13, 2019 https://www.newslaundry.com/2019/12/13/why-has-republic-tvs-arnab-goswami-broken-with-the-bjp-on-citizenship-bill.

[74] *Learning Assamese till Class 10 compulsory for Assam government jobs*, India Tv, Jan 26, 2020, https://www.indiatvnews.com/news/india/assamese-till-class-10-compulsory-assam-government-jobs-583112.

demonizing people of neighbouring countries while at the very same time investing money and exertion in improving connectivity and business ties with them. The Bangladesh home and foreign ministers, like Abe, postponed scheduled visits to India. A former Bangladesh high commissioner to India, Tariq A. Karim, had inscribed in a column in the north-eastern journal east wind, before the CAA was passed, that “if the Indian state today is redefining itself as a Hindu Rashtra (ironically portraying itself as a mirror-image to Pakistani self-vision), it'll find itself losing its long-touted credentials as a champion of secularism. In the event, it might well trigger questions in Bangladeshi minds on why the latter should still remain secular, as indeed secularism comprises one of the four pillars of the Bangladeshi state as asserted in its own Constitution".

Bangladesh has the third-largest Hindu population in the world, after India and Nepal. There are approx. 14 million Hindus there, and they have chosen to stay there, like Muslims in India, because that's their motherland and they clearly don't wish to leave their nation. The only situation in which the North-Eastern paranoia of lakhs of Bengali Hindus pouring into the region-as happened in 1947 and 1971-will occur is that if situations of the kind that drove forced migration of ordinary people caught in large historical events of those times were to return. Unfortunately, the NRC and its twin, the CAA-for they are two faces of the same coin-may have increased the likelihood of this.

5.3 NATIONAL REGISTER OF CITIZENS (NRC)

The National Registry of Citizens was a promise made in the Assam Accord to spot and deport foreigners. By the time it was published, it became apparent that majority of these denied citizenship were Hindus or indigenous tribes. Protesters say CAB will make NRC redundant and bestow citizenship on illegal immigrants. However, the Asom Gana Parishad says Clause 6 of the Assam Accord will insulate Assam from CAA's adverse impact.

5.4 HISTORY OF NRC

The NRC has a stimulating timeline in the history of contemporary Assam, especially after 1947. It followed the 1951 census and appeared in government circulars issued to reassure agitating groups in Assam that the immigration issue would be addressed by the administration. This meant taking recourse to laws just like the Foreigners Act, 1946, and also the Foreigners (Tribunal) Order, 1939.

Such a process was in marked contrast to the upheavals of the tragic transfer of individuals between India and Pakistan in the west, where these laws were overpassed to accommodate people escaping violence in West Pakistan. This difference between the two partitioned sectors of British India is very important, because it alludes to the various ways regional governments answered to the humanitarian crisis.

In 1951, people in Assam – especially Muslim cultivators and concrete poor who lived along the East Pakistan border – were asked to fill out an enumeration form by the government because of the initiation process of the NRC. As mentioned earlier, it absolutely was not for the primary time since the country had attained independence from Britain that an enumeration process was being held. Ordinary citizens would have felt a way of confusion, since the Census had just taken place. Moreover, those living along the Naga Hills were being asked a related set of questions regarding autonomy.

Hence, the concept of a government process involving various organs of the state but without much argument, would have seen so far another administrative issue whose

impacts weren't immediately tangible, especially since it involved the declaration of documents and evidence by individuals to the administration.

This was in marked contrast to reaffirmation of independence after a plebiscite on the question of Naga territory and other people being a part of India that was undertaken by Naga leaders within the province of Assam. The referendum began on 16 May, 1951, in the Kohima playground and involved merely one ballot paper upon which every single adult Naga was asked to stamp his or her view on the political upcoming for the people. The plebiscite is central to the moral and political apparatus upon which Naga people linger to assert their independence and autonomy in India.

The 1951 NRC, on the other hand, wasn't central to the disputes around citizenship for a greater a part of the political history of Assam. No elected government took it upon itself to revise the NRC until 2010.

The capacity of the state to conduct such head-counts on the base of documents that attest to property, occupation and proof of residence has increased manifold since 1951. However, as anthropologist Matthew Hull has pointed out, there's no clear association between an administration's ability to document and the way people answer to such demands.[75]

Most people who must negotiate with the state know that there are theoretical and practical ways to form the sort of documentation so as to complete employment. within the recently concluded NRC in Assam, the govt. sought to minimise these shortcomings in two ways: one, by throwing in the entire state machinery, including all departments of the govt. of Assam, the Registrar General of India and therefore the Supreme Court, into the process; and two, by using technology to iron out wink-wink deals that are attributed to the everyday workings of the state in developing countries.

[75] Mathew S. Hull, Government of Paper: *The Materiality of Bureaucracy in Urban Pakistan*. Last accessed on 28-07-2020.

5.4.1 The 2015 edition

The 2015 edition of the NRC was more robust. It required individuals to display their legacy data that included having a family member's name within the 1951 NRC and/or having the individual – or a direct family member's name – included within the electoral rolls as of 24 March, 1971, a day after the Bangladesh liberation war was formally announced.

In case someone was unable to seek out her/his name within the legacy data, the administration allowed for 12 other documents that might be shown as evidence, provided they were granted before 24 March, 1971. These were land tenancy records, Citizenship Certificate, Permanent Residential Certificate, Refugee Registration Certificate, Passport, LIC Policy, Government issued License/Certificate, Government Service/Employment Certificate, Bank/Post Office Accounts, Birth Certificate, Board/University Educational Certificate, and Court Records/ Processes.

These documents have an aura of middle-class respectability to them. They attest to someone having ownership of property, access to education, jobs and documents that allow her/him to travel at will. However, a massive majority of itinerant working people – most of whom constitute Assam's unorganized labour sector – were unable to provide these documents.

5.5 NRC, 2019

Authorities in the north-eastern Indian state of Assam have published a citizenship list that aims to classify genuine citizens amid fears millions may well be excluded.

A total of 31.1 million people were included within the National Register of Citizens (NRC), leaving out 1.9 million people, in line with a press release from the Assam government.

The NRC list is exclusive to Assam and was first prepared in 1951. It'll include those whose names appear in the 1951 document and their descendants. The list also will include people who are on India's electoral rolls up to March 24, 1971, or in the other document approved by the govt.

The government says it wants to detect and deport undocumented immigrants from Bangladesh. The work on the newest NRC list, a Supreme Court-monitored exercise, started in 2015. A draft citizenship list published last year excluded quite four million people.

Assam, with a population of 33 million people, is during a state of high alert and extra security forces are deployed in anticipation of any law-and-order situation following the publication of the NRC list.

5.6 WHAT HAPPENS TO THOSE EXCLUDED FROM NRC?

The government says those that don't find their names on the concluding list are going to be given the chance to prove their citizenship first in quasi-judicial courts - referred to as Foreign Tribunals (FT) - and subsequently in higher courts.

Those excluded wouldn't be considered foreigners until they exhaust all their legal options.

People will get 120 days to appeal, the govt. announced earlier this month. Up to 200 more FTs are expected to be set up on top of the present 100. But rights activists say courts will be overwhelmed since the appeal period is short.

"Imagine FTs adjudicating two to three million cases and they have been given just 120 days," Suhas Chakma, director of New Delhi-based Rights and Risks Analysis Group, told Al Jazeera.[76]

Human rights activists fear that the people that don't find their names on the list might face possible jail time or deportation, and their voting and other civil rights would be snatched away.

The government has already announced its strategy to build 10 more detention centres. Nearly 1,000 people are currently lodged in six detention centres located within the existing district jails.

5.7 LINK BETWEEN CAA AND NRC

To detect illegal foreigners, particularly from Bangladesh, the NRC list in Assam was first released in 1951. The list contains the names of Indian citizens in Assam. As per the concluding list released by the govt. in 2019, around 19 lakh people are excluded. Several media reports point that the vast majority of those individuals are Hindus.

In furtherance of this exclusion, several people and media reports have highlighted that each one these excluded Hindus in NRC are going to be automatically given citizenship through the CAA. This stand isn't correct. To comprehend this issue, it's important to look at the ways within which the NRC process takes place in Assam.

NRC is basically governed by the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 which lays down the method by which data has to be collected and therefore the authorities' in-charge of identifying citizens. To detect illegal foreigners, appropriate authorities perform a survey for the identification of suspected individuals. The analysis takes place door to door in which all the members of the family are expected to provide documents in support of their citizenship.

Reasonable opportunity is given to an individual to indicate documents in support of their citizenship. In an exceedingly scenario, where the documents furnished are

[76] Saif Khlid, *India publishes final NRC: All you need to know on citizens list*, Al Jazeera, Aug 15, 2020 https://www.aljazeera.com/news/2019/08/final-nrc-list-india-assam-190829133456422.html.

unauthentic an investigation is initiated and after the receipt of the enquiry-report, the issue is referred to the Foreigners Tribunal, a quasi-judicial authority that deals with these disputes. Hence, one must note that a person would deem to be an illegal foreigner only if the Foreigners Tribunal decides on the matter.

Even Section 6A of the Citizenship Act, 1955,[77] mandates the similar purpose. Accordingly, the 19 lakh individuals left out of the NRC don't seem to be illegal foreigners until decided by the Foreigners Tribunal. As per the Foreigners Tribunal Order, 1964, the tribunal is assured to provide a rational opportunity to a person for making a representation and produce evidence to support his/her claim. Only then, the concluding decision is given.

Now let's examine the nexus between the CAA and the NRC in Assam. Let us all assume that a Hindu or a Christian left out of NRC in Assam is professed as an illegal foreigner by the Tribunal. In such a scenario the CAA wouldn't automatically cover the individual because he/she would have contested by way of an affidavit, for an Indian citizenship in the Tribunal. If the individual claims after the judgment of the Tribunal, that he/she was actually an illegal immigrant from one among the three countries stipulated under the CAA, such a claim would amount to perjury (lying under oath) which is a punishable offence.

The claim won't be acceptable either by the courts or by the govt. Now, another question may come up: what if someone belonging to Hindu or a Christian group left out in the NRC in Assam out rightly lies in the Tribunal and claims that he/she is an illegal immigrant from one of the countries specified under the CAA? Even then, the CAA won't be automatically extended, because the person will be required to show or rather fabricate the proof that he/she entered India before 31 December 2014, and that their country of origin is Pakistan, Bangladesh or Afghanistan.

The Tribunal will observe all the fabric facts and evidence before adjudging one as an illegal foreigner. Telling the reality and providing sufficient evidence in support of the citizenship would perhaps give one much higher chances of getting citizenship than lying and showing fabricated documents to the Tribunal. Also, the individual would be subject to further scrutiny and background checks. Hence, there are statutory safeguards in place to keep the check if somebody is a genuine illegal foreigner or

[77] 6A. Special provisions as to citizenship of persons covered by the Assam Accord.

not. Further, one must look ahead to the rules to be issued which will provide the precise type or kind of documents required to be shown by people claiming to be illegal foreigners. In any case, the notion that the CAA automatically applies as masses to all non-Muslims who are left out of the NRC in Assam isn't legally correct.

Even in terms of the nationwide NRC, it's too premature to conclude how the CAA is going to be extended to spiritual groups left out of the NRC. Would there be separate authority likely to set just like the Foreigners Tribunal? Who would have the last say in declaring individuals as illegal foreigners? What would be the proof required to prove citizenship? What documents would an illegal foreigner need to furnish to show the entry to India and country of origin? These are a number of the crucial questions that require to be answered to understand the applicability of the CAA on the nationwide NRC.

5.8 PAN-INDIA NRC

Ever since the implementation of the NRC in Assam, there has been an increasing demand for its nationwide implementation. Now, many top BJP leaders including Home Minister Amit Shah have proposed that the NRC in Assam be implemented across India. It effectively suggests to bring in a legislation that will enable the government to identify infiltrators who have been living in India illegally, detain them and deport them to where they came from.

Amit Shah's statement in the Lok Sabha on December 9, 2019: "We are very clear that NRC will happen in this country." Mr. Shah also said in the House, "Magar maanke chaliye ki NRC aane wala hai" (but accept that there will be an NRC)[78].

But while addressing a rally at Delhi's Ramlila Maidan to kick off the Bharatiya Janata Party's campaign for the Delhi Assembly election, Mr. Modi, however, said the NRC was conducted only in Assam because the Supreme Court had said so.

This contradicted Home Minister Amit Shah's declaration in parliament that a nationwide NRC was in the works.

[78] JatinAnand, *Pan-India NRC was never on the table, says PM Modi*, Dec 24, 2019, https://www.thehindu.com/news/cities/Delhi/pan-india-nrc-was-never-on-the-table-says-narendra-modi-at-delhi-rally/article30372096.ece.

After the PM's comments, Mr Shah told news agency ANI: "There is no need to debate this (pan-India NRC) as there is no discussion on it right now, PM Modi was right, there is no discussion on it yet either in the cabinet or parliament."

Asked whether better communication from the government would have helped calm the protests, Mr Shah said: "I have no hesitation in admitting that there may have been a communication gap".[79]

[79] *Clearly Stating No Link between NPR and NRC, Says Amit Shah,* Dec 24, 2019, https://www.ndtv.com/india-news/no-link-between-nrc-and-national-population-register-amit-shah-2153871.

6. SECULARISM

6.1 SECULARISM AND CITIZENSHIP LAWS IN INDIA

Secularism as an idea originated in western countries and relates to the partition of the Church from the State, giving the State a position of neutrality between the various religions, although at the same time assuring to all citizens the right to profess any religion. In some ways, the word 'secular' was used as the contradictory of the word 'religious,' which sometimes led people to believe that secularism is completely at odds with religion. But generally speaking, it was used not as against religion but as divorced from any religion or religion that had nothing to try and do with the conduct of affairs of the state. The main aim of a secular state is to confirm that all individual who make up the State have freedom of morality and also the freedom to profess their own religion, so that people of various faiths have the same rights and responsibilities and there is no discrimination amongst them.

6.2 SECULARISM UNDER INDIAN CONSTITUTION

The cultural and historical ethos of India shows that India was and continues to be a pluralistic country. The social unrest and the ensuing political disturbance of independence formed the backdrop for the acceptance of secularism as the foundation of the constitutional system. After India's independence on 15 August 1947, the Constituent Assembly formed the Drafting Committee on 29 August 1947.[80]

Nevertheless, at the time of the drafting of the Constitution and through the discussions held in the Constituent Assembly, the members of the Constituent Assembly refused to accept or add the words 'secular' or 'secularism' either to the preamble of the Constitution or to the articles on the secular provisions of the Constitution. At that point, this idea had a sense or way of being a foreign concept, particularly because it was employed in Western countries. The Constituent Assembly also omitted its presence in the Constitution. Mr. Jawaharlal Lal Nehru introduced

[80] *Concept of Secularism: An Indian Scenario*, https://shodhganga.inflibnet.ac.in/bitstream/10603/77961/8/08_chapter%2003.pdf. last accessed on 25-06-2020

the Objectives Resolution in the Constituent Assembly on 13th December, 1946, which was adopted by the assembly on 22nd January, 1947, and incorporated the principles embodied within the Objectives Resolution into the Preamble to the Constitution of India. for instance, it had been stated that "Wherein shall be guaranteed and secured to all the people of India, justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality"[81] Thus, the concept of secularism was already included without using the term "secularism" explicitly within the Constitution. The words weren't even stated in the long speech given in the Constituent Assembly by Mr. Nehru at the time of moving the Objective Resolution. This was also not stated by Dr. B. R. Ambedkar, who was the chairman of the drafting committee, and therefore the word was not stated at all throughout the speech given at the time of the adoption of the draft constitution in which he highlighted the salient features of the Draft Constitution.[82]

In addition, the word secularism doesn't appear in any a part or anywhere in the Constitution. The omission of the terms "secular" and "secularism" isn't unintended but is prepared deliberately. It can be effortlessly gathered after a perusal of constitutional assembly debates that the concept of secularism was always in the context of the constitution making process and also the framers had the particular aim of creating India a secular nation with equal respect for all religions and without prejudice to any specific religion.

Originally, secularism had not been mentioned within the Indian Constitution. Nevertheless, the members of the Constituent Assembly, who drafted the Constitution of India between 1947 and 1950, often invoked the word "secularism". They understood that, contrary to Pakistan, India would be a place to welcome all religions with open arms, because it had been for hundreds of years.

The word "Secularism" was inserted in the Preamble of the Constitution by the

[81] Swagat Baruah, *Can Secularism be a Constitutional Reality*, http://iclrq.in/editions/jan/3.pdf. Last accessed on 25-06-2020.

[82] Constitutional Assembly Debate, Vol. VII, 66-67.

Forty-Second Amendment Act to the Constitution in 1976, which came into force on 3rd January 1977.[83] Prior to the 42nd amendment, the Indian Constitution did not had the term secular in the Preamble. Only the word "God" could be found within the Third Schedule of the Constitution.[84] By the 42nd Amendment the words the initial words which were originally introduced at the time of commencement of the Constitution of India were replaced by the following words: "We, the people of India, have solemnly resolved to constitute India into a sovereign socialist secular democratic republic."[85]

To underline the prevailing constitutional commitment to the goal of socioeconomic justice, the word "socialist" was added to the preamble of the Constitution of India. The Constitution as enacted in 1950 didn't include the term "secularism", but only debated of religious freedom and that the state of India is immunized from any religion. It had been the Indian Prime Minister Indira Gandhi, who introduced the term "secularism" in the preamble to the Constitution in 1976. The term "secular" emphasizes that the state shouldn't have its own religion and that all people have the right to profess, practice and spread their own religion. The fundamental rights under Articles 25-28 further guarantee this right. The expression also implies that the constitution doesn't enable religion and state power to be mixed together. So, they shall be kept separately from one another. Secularism is more than passive in attitude as associated with religious tolerance; it's a positive concept of equal treatment to any or all religions.[86] The Secularism in India necessitates that the State reforms the religious practices which are discriminatory in nature. For instance, the Constitution abolished untouchability and open out Hindu religious places of worship to any or all, including the "untouchables"[87] and caste substantial reforms linked with the regressive customs of Hinduism.

[83] INDIA CONST. 42nd Amendment.
[84] INDIA CONST. Schedule III
[85] Preamble to the Constitution.
[86] Supranote 39 at 41.
[87] INDIA CONST. art.17.

6.3 CONCEPT OF SECULARISM AS EVOLVED BY INDIAN JUDICIARY

In Article 25-28, 29(2), 30 read together with Article 15 and 16, the Constitution expresses its attitude towards religion, the ramifications of which each received clarifications from the highest tribunal, i.e. the Supreme Court. In various cases, the Supreme Court, through its important judgments, has explained the secularism and therefore the secular nature of the Indian constitution.

The Supreme Court in Kesavananda Bharati v. State of Kerala[88] has state that the "Constitution has certain fundamental features that constitute, its basic structure, the core that was beyond the Parliament's power to amend the constitution". This case timely confirmed that when it came to constitutional matters the Supreme Court has unparalleled authority. Through assuming the power to inspect all constitutional amendments- not just those regarding fundamental rights, the Supreme Court significantly broadened the scope of its power of judicial review. If the Parliament had an unencumbered right to amend the Constitution, the Supreme Court had stated that co-extensive powers of review and held that secularism was one such basic feature of the constitution. In identifying the features which are basic and aren't amendable within the Constitution is empowered by the statement that-"A Secular State is a state which doesn't have a particular state religion."

Two years later in the case regarding the Indira Nehru Gandhi's election[89], the Court stated that secularism was inalienable from the Constitution and also the politics formed under it. The Court didn't remarked on the essence of secularism in those two cases, since there was no occasion for the same. However, it appears from the one or two sentences in the two judgments (Shelat and Grover JJ. in Kesavananda Bharati and Chandrachud J. in Indira Nehru Gandhi) that the Court referred, within the abstract, to the main (first) principles of Western secularism which prohibit the State from having any religion of its own and grant the individual freedom of conscience and also the right to profess practice and propagate religion.

[88] AIR 1973 SC 1461 (India).
[89] Indira Nehru Gandhi v. Raj Narayan, AIR 1975 SC 2299 (India)

After these two cases, in a number of decisions, the Supreme Court repeated that secularism is a fundamental feature and a part of the basic structure of the Indian Constitution and will not be undermined in any way by any legislative act or any executive action. S.R Bommai v. Union of India[90], is so far the utmost landmark judgment addressing the term Secularism. In this case, the Court was to contemplate the constitutional validity of the presidential proclamations issued pursuant to Article 356 of the Constitution dismissing several state governments. Rajasthan, Madhya Pradesh and Himachal Pradesh were among the states hit by the impugned Presidential proclamation. Among other things, the reports of the Governors of the three States, which formed the constitutional basis for the Presidential Proclamation, stated that the governments of those states had extended lively overt and covert support to communal organizations and individuals, helping them greatly to demolish the Babri Masjid. As per the Governor's reports "the constitutional machinery in those states had collapsed." But what's evident is that every of the three dismissed governments in their respective legislatures enjoyed a sturdy majority. Therefore, the Presidential declaration was perceived as an attack on democracy.

But, in defending secularism, the Court was strongly in support and unyielding. Seven of the nine judges constituting the Bench reiterated the view that secularism was the essential feature of the Constitution, and in the event that a State Government acted contrary to the constitutional mandate of secularism or, worse still, directly or indirectly, subverted secular principles, that would amount to a failure of the constitutional machinery. The several judges of the Indian Supreme Court have clarified in seriousness the importance and position of secularism under the Constitution.

In M. Ismail Faruqui v. Union of India[91], the Supreme Court again examined the meaning and nature of secularism. It's been reiterated that the principle of secularism is an element of the constitution's basic structure, the Court has held it

[90] AIR 1994 SC 1918 (India).
[91] (1994) 6 SCC 360 (India).

to be one facet of the right to equality "woven as the central golden thread in the cloth depicting the scheme pattern in our Constitution."[92]

The Supreme Court in State of Karnataka v. Dr. Pravin Togadia[93] observed that welfare of the people is that the eventual goal of all laws and state action, and above all the Constitution. Even the crux of spiritual values, which the Vedas, Upanishad and Puranas were told to divulge to mankind, seems to be "Love others, serve others, aid ever, never hurt" and "Serve Jana Sukhino Bhavantoo."[94] In Aruna Roy v. Union of India[95], the Supreme Court has held that the concept of secularism isn't jeopardized if the essential tenants of all religions throughout the globe are studied and learned and value-based education helping the state to fight fanatic.

The Constitution of India has held that the Secularism is the basic feature of the Constitution of India and of the "Constitutional Morality".[96]

[92] Ibid.
[93] (2004) 4 SCC 684 (India)
[94] Ibid.
[95] AIR 2002 SC 3176 (India)
[96] Abhinav Chandrachud, *Is Constitutional Morality a Dangerous Doctrine*, Bloomberg Quint, 19 December 2019, https://www.bloombergquint.com/opinion/indian-judiciary-isconstitutionalmorality-a-dangerous-doctrine-by-abhinav-chandrachud last accessed on- 26-07-2020

6.4 THE UNSECULAR NATURE OF CAA

The CAA is in a way planned to grant Indian citizenship by a generous route to those minorities who have fled because of religious persecution in Pakistan, Bangladesh and Afghanistan. The CAA amends the definition of 'illegal migrant' such that if a person who entered India before 31st December 2014 and is from Afghanistan, Bangladesh or Pakistan and is Hindu, Sikh, Buddhist, Jain, Parsi or Christian, they do not fall under the characterization of 'illegal migrant.' The CAA has been passed on the religion source and hits the secular nature of the Indian Constitution which is one of the basic features of the Indian constitution. Even when the argument in the Constitutional Assembly debates relating to citizenship were going on it was stated that, "using religion for the discrimination amongst the people will not be acceptable".[97] So, the discrimination based on the religion was turned down even during the time Constitutional Assembly debates but the discrimination based on the religion was turned down at the time of origination of the Constitution. It is a challenge to the CAA that whether, it affects the secularism which is one of the basic structure under the Constitution of India as it provides for discrimination based on religion basis. The one of the other discriminatory feature of the CAA is that does not cover people coming to India from other nations, even if they belong to the same communities which are mentioned under CAA.

It has been time and again stated that if any law passed by the legislature violates any law on the basis of secularism then the law will be held ultra vires to the Constitution and will be struck down. Though, there are certain legislations which seems to be unsecular in nature and it is termed that it will be struck down of being violative of the basic structure of the Constitution but when we analyse the impugned legislation on the test laid down by the provisions laid down in the Constitution and the decisions of the Apex court then it will be clear whether the impugned legislation fails the test of Constitutionality.

[97] *Amartya Sen, CAA violates Constitutional Provisions,* https://economictimes.indiatimes.com/news/politics-and-nation/caa-violates-constitutionalprovisions-amartya-sen/articleshow/73151348.cms, last accessed on 28-06-2020.

7. UNCONSTITUTIONALITY OF CAA

7.1 THREAT ON CONSTITUTION

Ever since CAA has come into force there are many protest and opposition going on in the country and it is stated that CAA is a national threat to our constitution and the secular nature of this country. Any number of laws are passed in legislatures across the country in any given year that, in more or less way or another, violates the constitutional rights of individuals or is outside the control of such legislature as defined within the Constitution. The object why the unconstitutionality of the CAA is so egregious and consequential is because it represents a fundamental break from the core principles of the Constitution, namely citizenship being receptive all without discrimination on the premise of faith, language race ethnicity or gender.

7.2 ULTRA VIRES TO THE CONSTITUTION OF INDIA

In India the power to create laws in the democratic setup of the country is provided to the Parliament.[98] So as a laws to be held constitutional it's required that it must be not violating the fundamental rights as hallowed under part III of the Constitution of India.[99] The prime reason for challenging the CAA is that it's arbitrary, discriminatory and denies equality before law and equal protection of laws in violation of Article 14 of the Constitution in so far because it excludes from the other nations Muslims from the specified Republics and persecuted on religious grounds. There are various challenges to the CAA grounded on the Article 14 and 21 of the Constitution of India and various other challenges associated with Assam accord and non-inclusion of varied categories of other persecuted minorities.

7.3 CHALLENGES ON GROUND OF ARTICLE 14 OF INDIAN CONSTITUTION

Article 14 of the Constitution of India embodies the fundamental guarantee that each one of individuals in the territory of India shall have the right to equality.[100]Over the

[98] INDIA CONST. art. 245 read with art. 246, cl.1.
[99] INDIA CONST. art. 13, cl. 2.
[100] INDIA CONST. art. 14.

years, several doctrinal tools are established by the Supreme Court to assess the denial or else of the right to equality within the scope of Article 14. The prevailing test for an analysis of equality under Article 14 has long been defined as the ”reasonable classification” or “reasonable nexus” test and continues to maintain its significance and appeal in contemporary constitutional dissertation.[101] The aim of the test is that it circumscribes the scope of permissible differentiation, such as it doesn't amount to bias or class legislation. So as to pass the, “reasonable classification” test, the legislation in question must fulfil the subsequent twin requirement:

i) the classification must be based on an intelligible differentia which distinguishes those grouped together from those left out of the category, and
ii) The differentia must have a logical relationship with the objects to be sought by the Act.[102]

Later decisions of the Supreme Court has clarified that the subject-matter of classification must itself be lawful and non-discriminatory so as to endure the scrutiny of equality pursuant to Article 14.[103] It’s also clear that the differentiation which forms the ground of classification and therefore the subject material of the legislation is distinct and become independent from one another, meaning that the differentiation cannot be an end in itself. In other words, the aim of an enactment cannot simply be to differentiate between one class (of persons, objects, circumstances, etc.) and another, or to establish from a given category two or more distinct groups (of persons, objects, circumstances, etc. Article 14 applies in all the classification to the laws whether they are negative or positive, i.e. whether the statute causes a disability or offers a benefit. The classification has to be reasonable in both cases.[104]

By applying the above test to Section (2) of the CAA it's analysed that it seeks to ascertain two groups of “migrants” (legal and illegal), one among which can be differentiated from the other due to the nationality and cumulatively examined religion markers. The actual challenge, though, is to spot the purpose that underlies the classification. To the extent that “reference” to the Statement of Objects and Reasons (hereinafter referred to as “SOR”) is permissible to comprehend the

[101] Rajbala v. State of Haryana AIR 2016 1 SCC 463 (India).
[102] State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (India).
[103] Subramanian Swamy v. Director, CBI, (2014) 8 SCC 682 (India)
[104] D.S. Nakara vs. Union of India, (1983) 1 SCC 305 (India)

background, the preceding state of affairs, the circumstances surrounding the statute and also the evil that the statute sought to remedy[105], so as to gain an understanding of the matter of classification, resort to the same might also be needed. Though, a perusal of the SOR annexed to the Act makes it clear that giving a justifiable explanation for the impugned classification is simply too general and inaccurate. Therefore, if the object of the classification is to be extracted from the SOR alone, it's clearly discriminatory and doesn't meet the 'reasonable classification' test in so far because it doesn't provide a cogent explanation for privileging one class of "illegal migrants" over another, and differentiation per se cannot be a lawful classification basis. There are, however, a minimum of three reasons to not rely solely on the SOR as the final word for the purpose of an enactment. The presumption of constitutionality is the first and most significant of them. The presumption of constitutionality is a time-honoured practise of constitutional adjudication in favour of an enactment. It requires the judiciary to acknowledge the fundamental nature and importance of the legislative process[106]. It had been held that the scope of the presumption isn't confined to the enacting or substantive provisions of an enactment, but is way broader and, in fact, informs the investigation of the objective and purpose of an enactment[107]. The other two explanations regarding the SOR's inadmissibility as a legal aid to construction[108] and the law necessitating consideration of the statute's content requirements in a bid to arrive the object underlying the questioned legislation.[109]

Therefore, without reference to the SOR it turn out to be necessary to scrutinize the factual provisions of the CAA on their own terms. A careful examination of Section 2 of the CAA requires us to enlist the backing of two other key subordinate pieces of legislation so as to understand actuality of import of the classification concerned. In the maximum amount as Section 2 makes specific reference to the exemptions accepted under or in compliance with the applicable provisions of the Passport (Entry into India) Act, 1920 and also the Foreigners Act, 1946, it's appropriate to review the provisions of the Passport (Entry into India) Amendment Rules, 2015; the Passport (Entry into India) Amendment Rules, 2016; the Foreigners (Amendment) Order, 2015

[105] State of West Bengal v. Union of India, AIR 1963 SC 1241 (India).
[106] Supranote 95 at 55.
[107] State of Bihar v. Bihar Distillery Ltd., (1997) 2 SCC 453 (India).
[108] Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369 (India).
[109] KangsariHaldar v. State of West Bengal, AIR 1960 SC 457 (India).

and at latest, the Foreigners (Amendment) Order, 2016. A combined reading of the classification scheme that runs through these relevant pieces of legislation shows that the Bill is meant to ascertain two distinct groups of "migrants."

The stated objective of the CAA is to permit individuals who have faced discrimination on religious grounds eligible for citizenship. The CAA carves out a category founded on religion and nationality, i.e. it distinguishes citizens in certain countries from other countries. The existence of a prima facie religious community poses questions on the law that clashes with secularism, a belief accepted by the Supreme Court as a part of the basic structure of the Constitution in S.R. Bommai v. Union of India[110]. While religion and nationality might be a valid intelligible differentia in some frameworks, the question is whether or not these differentia are intelligible within the context of this law, i.e. the Citizenship Act, and in the light of the CAA's objective. A relaxed perusal of the above-mentioned provisions of the Constitution and Citizenship Act would be stated that, the law on citizenship has simply been neutral with religion till now.

The CAA gives the subjected minority communities a path to citizenship,[111] by permitting them to apply for citizenship by registration or naturalization, except in the tribal areas of Assam, Meghalaya, Mizoram or Tripura.[112] In its present form following are the point of view which are persuasive in nature so as to consider the CAA as unconstitutional as per Article 14 of the Constitution:

7.3.1 Other religious communities:

The CAA applies only to Hindu, Sikh, Buddhist, Jain, Parsi and Christian immigrants but then again not to other religious communities. In Afghanistan, Pakistan or Bangladesh, Jews, Muslim minorities like Shias or Ahmadis, also atheists or agnostics, may have even been persecuted on religious grounds. Yet the CAA is popping a blind eye to them. The CAA violates the principle of secularism which is a component of constitutional morality by covering only just some religious communities and not others.[113] The Ahmadis or Ahmadi's are a Muslim sect that follows Mirza Ghulam Ahmad who claims to be divinely appointed as the promised

[110] AIR 1994 3 SCC 1.
[111] Citizenship Act, 1955. Sec. 6B.
[112] Citizenship Act, 1955. Sec. 6B, cl. 4.
[113] Indian Young Lawyers Association v. State of Kerala, AIR 2018 SCC Online SC 1690.

Mahdi (Guided One) and also the anticipated Messiah of Muslims. Irrespective of this assumption that the Messiah was Mirza Ghulam Ahmad, many conservative Muslims find the Ahmadis to be non-Muslims, who face severe persecution who oppression. In Pakistan, by way of the Constitution (Third Amendment) Order, 1985 Pakistan's Constitution was amended to define a "non-Muslim" as a being who isn't a Muslim and includes an individual belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person belonging to the Quadiani or Lahori group (which is termed 'Ahmadis' or by some other name), or a Bahai, and an individual belonging to that group.[114] As per data provided by the National Commission for Justice and Peace, Pakistan under various clauses of blasphemy laws from 1987 until 2018 a whole of 776 Muslims, 505 Ahmadis, 229 Christians and 30 Hindus had been accused of blasphemy. This clearly shows that the Ahmadis, if not extra than the groups mentioned within the CAA, are as persecuted, and their religious beliefs are the intention for their persecution. Yet the Ahmadis don't get the advantage of seeking Indian citizenship.

The fact that Muslim immigrants in India may not vote in favour of the supervision's Hindutva policies currently in power in centre makes the CAA even more suspicious.

7.3.2 Other Countries:

Not only “illegal migrants” from Afghanistan, Bangladesh or Pakistan may have faced religious persecution in their own country. The CAA ignores religious asylum seekers from other nations, as an example Myanmar's Rohingyas. There may be a neighbouring countries like Nepal, Bhutan or Sri Lanka, or countries that aren't neighbours of India but might still face persecution by members of the specified religious groups.

7.3.3 Cut-off Date:

Only people who entered India under the CAA before 31 December 2014 have the apt right to seek nationality in India under the Citizenship post the amendment by CAA. All people who subsequently entered India don't have any such right, although

[114] *Clause 6 of the Constitution (Third Amendment) Order, 1985*, http://www.pakistani.org/pakistan/constitution/orders/po24_1985.html, last accessed on 29-06-2020

before or afterward that date they have faced religious persecution within the countries in question. That undermines the CAA's inherently humanitarian purpose.

Though, given the arbitrariness of this method of line-drawing, the law tolerates these laws because it's necessary to draw a line anywhere. For instance, when a state requires its people to vote, there must be a regular age, an age at which the state will believe its people would be mature enough to cast their vote wisely. The explanation for bright-line laws is that public policy needs a line to be drawn someplace and that it is not possible to resolve the arbitrariness of the position where the line is drawn.

The concern with the CAA, however, is that the time line it's drawn interferes with the ostensive intent for which the law was passed. The CAA's aim is to arrange for shelter and refuge to non-Muslim religious minorities in India's neighbourhood who have suffered religious persecution or feared religious persecution in certain defined countries.

7.3.4 Non-religious persecution:

The CAA, totally ignores the "illegal migrants" who have entered India as they faced non-religious persecution which can be also based on sexual orientation or political views or even on race.

As the right to equality isn't only limited to the citizens of the country. As primarily, the discrimination made against the Muslims migrants returning to India from Pakistan is stated as a hidden premise present within the Citizenship laws of India. However, though discrimination against returning Muslim immigrants was entrenched in the Constitution itself between 1948 and 1950, the discrimination characteristic in the CAA has no constitutional basis. While the initial Constitutional provisions, referring to the Citizenship can't be considered discriminatory or unconstitutional but the CAA can definitely be held unconstitutional for violating the provisions preserved under Article 14 of the Constitution.

The Supreme Court has often specified in many cases that Article 14 of the Constitution does not allow the classification conveyed on by legislation to be "scientifically perfect or logically complete."[115] CAA supporters may use this

[115] DharamDutt v. Union ofIndia, (2004) 1 SCC 712 (India).

doctrine to justify the law. The Supreme Court has stated that Article 14 doesn't "mean that all the laws must be general in character and universal in application" or deprive the State of its "power to differentiate and classify persons or things for legislative purposes."[116] The Supreme Court has held that the classification test must be applied during a "practical" and not "doctrinaire" manner, though "without whittling down the clauses of equality"[117] as specified by the Supreme Court, the court will only intervene if the classification leads to "pronounced inequality" or "palpable arbitrariness".[118]

In W.B. State v. Anwar Ali Sarkar, the Supreme Court clarified that intelligible differentia implies that there must be a standard for distinguishing between those included within the category and those excluded. The goal of the Act amendment is to 'protect those in Afghanistan, Pakistan, and Bangladesh who have faced religious persecution.' However, by excluding Muslims from the 'persecuted' category, the proposed law relies on the premise that in an exceedingly Muslim-majority country only Hindus, Sikhs, Buddhists, Jains, Parsis and Christians face religious persecution.

The case against the CAA is compelling to use these tests in the stability. As we've seen above, the CAA is under inclusive therein it leaves, as we've discussed above the following: a. "other religious minority communities in Pakistan, Bangladesh and Afghanistan";

b. "other religious minority from other neighbouring countries;"

c. "the persons persecuted on the premise of grounds apart from religion;"

d. "the person persecuted after 31st December, 2014."

While, there's a presumption in favour of the Constitutionality of the CAA 2019 and the apex court will determine the validity of the Act. It's also true that courts while deciding the case will attempt and adopt a "practical" approach and neglect the very fact that the CAA isn't "scientifically perfect or logically complete". There's no intelligible differentia however, why the CAA has excluded the above-mentioned categories, and the segregation of those categories tolerates no rational nexus with the purpose the statute pursues to attain. The exclusion from those countries of persecuted

[116] KedarNath Bajoria v. State of West Bengal, AIR 1953 SC 404 (India).
[117] Ganga Ram v. Union of India, (1970) 1 SCC 377 (India).
[118] Namit Sharma v. Union of India, (2013) 1 SCC 745 (India).

Jews, atheists, agnostics, Shias, and Ahmadis bears no rational nexus to the object. Furthermore, the absence of nations like Nepal, Bhutan, Myanmar and Sri Lanka is astonishing. The simple undeniable fact that Islam isn't the official religion of these above mentioned countries doesn't automatically mean that its citizens have the right to free religious exercise. Likewise, countries in which religions are "founded" can still be secular by law. The cut-off date is palpably arbitrary because it leaves out even in neighbouring Muslim countries of India those who may experience religious persecution after that date.

The contention is that countries' choice is predicated on intelligible differentia because the parliament has selected three neighbouring countries that are declared Islamic states, i.e. their official state religion is Islam. The argument is, for several reasons, problematic. First, if the condition is proscribed to one religion, i.e. countries with Islam as the official state religion, this is arbitrary and prejudiced on the face of it, and runs contrary to the very purpose of the CAA, i.e. protecting communities facing religious persecution. It's because Muslims will never be a community to be oppressed by this argument. How ironic it'd be that a law which seeks to safeguard communities on the ground of religious persecution itself discriminates on the idea of faith and doesn't offer protection to a religion as a whole, even though its adherents that and are literally facing religious persecution. Second, if the criterion isn't limited to religion but extends to any neighbouring state with an official state religion, then the CAA will arbitrarily exclude Sri Lanka, a declared Buddhist state in the course of which Tamils face religious persecution.

Finally, facts and history show us that it doesn't mean that there's no religious persecution of individuals in such countries just because a nation might not have an official State religion. So, e.g. Myanmar has no official religion of the state and yet it's to blame for the world's most oppressed minority, i.e. the Rohingya Muslims. The CAA carves out from the great class of persons belonging to certain specified religions of certain Specified Countries and declares them to be non-illegal immigrants (without the requirement to provide any travel documents) thereby opening the way for these persons to become citizens. The foundation for this move is that in the Specified Realms, people of those religions have faced religious persecution. Many other individuals without travel documents are now considered illegal migrants and aren't eligible for citizenship while they

might have faced religious persecution. The CAA unreasonably discriminates in conferring this benefit among similarly placed illegal migrants who have faced religious persecution. The response to that cannot be that individuals of a unlike background, i.e. non-illegal migrants, can gain from citizenship. This choice had been open to non-illegal migrants even before the CAA came into force. Although it's true that the Parliament isn't required to acknowledge all kinds or forms of persecution, if it's recognized a specified form of persecution, i.e. religious persecution, it cannot then discriminate between various groups that have experienced religious persecution, as otherwise the legislation isn't in line with Article 14. It's an argument which fits against the essence of Article 14. Although it's true that one doesn't have to correct all mistakes so as to mend some mistakes, if Parliament decides to correct one mistake, it's constitutionally obligated to complete remedy that mistake and not unilaterally preclude any citizens from remedying that mistake.

7.4 CHALLENGES BASED ON ARTICLE 21 TO CAA

Through a series of judicial decisions, it's now been well-settled that the fundamental rights contained in part III of the Indian Constitution do not form "self-contained codes"[119] or "isolated silos"[120] but slightly a part of an "integrated scheme."[121] the philosophy of interrelationship between different constitutional rights demands that the Court analyse the "direct and inevitable effect "as contrasting to the state action's" shape and purpose." in a specific case, it is quite possible that the form and object" (pith and substance) of the contested State action deals with a certain fundamental right, but its "direct and inevitable effect" is on another fundamental right. In such an eventuality it's fair that the conduct of the impugned State always passes the test of the above fundamental right. The statutes of offence are Passport rule 4(1) (ha) (Entry into India) Rules, 1950 and paragraph 3A of the Foreigners Order, 1948 which implement the classification scheme for the benefit of a selected class of persons. Ex facie, the uncertain provisions could be treated as dealing with Article 14 but the clear and unavoidable effect of the challenged law and order is to abridge the basic rights of refugees enshrined in Article 21 of the Indian Constitution. They can't therefore survive constitutional scrutiny except they

[119] R.C. Cooper v. Union of India, AIR 1970 SC 564 (India)
[120] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).
[121] Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).

satisfy the 'substantive due process' test, meaning that it is not only the law-established process that must be fair, fair and reasonable, but the law itself must be reasonable.[122]

Although it's true that the ambit of Article 21 applies to citizens and foreigners (including refugees) alike, no such elaborated definition has been given as to allow them to be admitted to the civil liberties of citizenship or to reside and settle in any a portion of the territory of India.[123] Additionally, it's also been explained that the ability of the Union Government to expel foreigners is absolute and unrestricted, that this right isn't bound by any clause in the Constitution.[124]

At any case, at a minimum, the protection could be said to form the fundamental standard of non-refoulment[125] under the refugee law because without it the reassurance of Article 21 is going to be meaningless and vague for refugees. Thus, the impugned classification read with the related deportation provisions[126] clearly lies within the teeth of the national and international commitments made by India. It's been judicially acknowledged that 'the standard of reasonableness doesn't apply solely to the character of the method prescribed by the law with relevancy to Article 21, but to the substance of the law itself.' The 'reasonableness' of the law remarked in Article 21 is sometimes tested with high opinion to Articles 14 and 19 of the Constitution of India.[127]

In applying the above tests to the above-mentioned provisions, we discover that neither was there any persuasive State interest justifying discrimination between and among refugee sub-populations, and even if that necessity is somehow satisfied, the 'law' in question is surely not narrowly tailored or less preventive in it's obviously compilation and indiscriminate criminalization of non-exempted refugees under CAA.

[122] Mithu v. State of Punjab (1983) 2 SCC 277 (India)
[123] Louis De Raedt v. Union of India (1991) 3 SCC 554 (India)
[124] Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta, AIR 1955 SC 367 (India)
[125] Universal Declaration of Human Rights, 1948, Art. 14.
[126] Passport (Entry into India) Act, 1920, sec. 5.
[127] Ashfaq v. The Registrar, Supreme Court of India, (2014) 9 SCC 737 (India).

7.5 CHALLENGE TO TRANSGENDERS AND ORPHANS TO PROVE THEIR CITIZENSHIP

When the Citizenship Act, 1955 came into force it provided a path for the individuals of the state to claim citizenship by birth. Under this provision, any person born in India after the commencement of the Constitution, i.e. 26 January 1950, was considered an Indian citizen,[128] irrespective of whether or not his parents were illegal immigrants. We have seen that this changed in 2004. That year, as of 1st July 1987, Parliament amended the Citizenship Act, 1955 and abolished citizenship by birth for the category of person born after that date but before 3rd December2004 and they had to prove that at least one of their parents was an Indian citizen. Those born after 3 December 2004 had to prove either that both their parents were Indian citizens or that one was an Indian citizen and the other was not an illegal migrant.[129] This amended provisions is creating a difficulty for the members of the Transgender community and orphans as both of them are majorly abandoned after their and there is no specific documents available to them in order to prove their identity. It will be very problematic to them to prove that one of their parents was a citizen of India at the time of their birth.[130] It would not be a problem to prove their birth as but it would lead to a helpless case if they have to prove regarding the citizenship of any of their parents.[131] The present amendment brought to the Citizenship Act, 1955 by the CAA is silent on the issues of minor illegal migrants and the abandoned illegal migrants and it will pose a threat when the question is raised regarding the issues of their citizenship. We have seen that "illegal migrants," i.e. those who have entered India without proper documents, are not entitled by registration or naturalisation to become Indian citizens. A minor who entered India with his parents illegally would be considered an "illegal migrant" It is uncertain whether a child born to parents of illegal migrants in India will also be considered an “illegal migrant” too. It is unreasonable for the CAA to deny these “dreamers” a path to citizenship by registration or naturalization solely on the grounds of religion and nationality, thus carving out a route for similarly positioned Indian citizenship for others.

[128] Citizenship Act, 1955, sec. 3, cl. 1.
[129] Citizenship (Amendment) Act, 2003, sec 3.
[130] Gaurav Das, *The NRC Poses a Two-Fold Predicament for Assam’s Transgender Community*, THE WIRE, 8 October 2019, https://thewire.in/rights/nrc-exclusions-assam-transgender, last accessed on 28-06-2020.
[131] Saru Sheikh v. Union of India, (2017) SCC Online Gau 872 (India).

7.6 CHALLENGE TO CAA ON THE ACCOUNT OF ASSAM ACCORD

The Assam Accord was an agreement entered between the government of India and leaders of the "Assam Agitation" which had taken place "between 1979-85 to protest the voting rights being given in Assam to the illegal immigrant". The method of identifying and expelling foreigners in Assam, however, has never been adequately implemented, which is why the Supreme Court finally stepped in to and speed up the compliance procedure in Assam Sanmilita Mahasangha v. Union of India[132] and other cases.

The Foreigners Act, 1946 states that a "foreigner" is a person who is not a citizen of India.[133] The government has the power to deport a foreigner with no valid passport to India.[134] In September 2015, after the Supreme Court had stepped in to implement the Citizenship Act's Assam Accord provisions, the central government released a notification stating that representatives of some minority groups in Bangladesh and Pakistan (and later Afghanistan129), i.e., Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, who were "forced to seek shelter in India because of religious persecution" and the persons who entered India before 31 December 2014 could not be deported for entering India illegally or overstaying.

National Register of Citizens (NRC) was prepared for all provinces under a direction provided by the central government's home ministry. In 2003 and 2009, rules were enacted for the preparation of an NRC for India and Assam, respectively, under the Citizenship Act. The Supreme Court issued instructions in a series of orders subsequently to ensure that the NRC is updated in Assam to detect and deport illegal migrants in the state. 19, 06,657 people were omitted from the list of citizens in the court-monitored NRC exercise in Assam while 3, 11 crore made it to the list.134 It is alleged that it was against this backdrop that the Citizenship (Amendment) Act, 2019 (CAA) was enacted. CAA, infringes the Assam Accord, as it naturalizes all non-Muslim migrants from Bangladesh into citizenship and thus undermines the very

[132] (2015) 3 SCC 1 (India)
[133] Foreigners Act, 1946, sec. 2(a).
[134] Passport (Entry into India) Act, 1920, sec. 5.

reason for which an NRC was intended. It is also contended that the CAA dilutes the decision of the Supreme Court as laid down in the case of Sarbananda Sonowal v. Union of India[135] , where the court has had struck down the Illegal Migrants (Determination by Tribunals) Act of 1983 (and the rules laid down therein) (hereinafter referred to as the ("IMDT Act")on the grounds that, firstly, the IMDT Act only resulted in the provision of advantages and benefits to an illegal migrant while failing to achieve the real purpose of the law, namely the identification and expulsion of illegal migrants; secondly, the classification of illegal migrants; according to which the IMDT Act applied solely to the State of Assam did not have a rational nexus with the policy and subject-matter of the Act and therefore was in breach of Article 14 of the Constitution. The Supreme Court has also stated while deciding the case that, "If a law made by the Legislature has the disastrous effect of providing shelter and protection to foreign nationals who have illegally transgressed the international border and who reside in India and, furthermore, the Act is unconstitutional, any citizen shall be entitled to bring it to court notice by filing a petition under Article 32 of the Constitution."

Although there is a restriction under section 6B(4) of the Citizenship Act, that the persecuted minorities from the abovementioned countries can apply for citizenship by registration or naturalization, except those in the tribal areas of Assam, Meghalaya, Mizoram or Tripura. The implications of the CAA for Assam state are different from the rest of India due to the exercise of the National Register of Citizens (NRC), and the Assam Accord (1985). A majority of those in Assam's opposition to the CAA have claimed that it undermines the Assamese people's identity and culture.

The Assam Accord is affected by the passing of the CAA, because there are differences between the cut-off date between as provided under the Assam Accord and the CAA. It is also alleged that when due to NRC in Assam majority of the Hindu who were left out I'll try to be included as a citizen of India due to the implementation of the CAA because it does not require any proof to be given by the aforesaid communities and the cut-off date is also 31 December 2014 as compare to the Assam Accord which date back to 1966.

[135] (2005) 5 SCC 665 (India)

7.7 ARGUMENTS AGAINST CONSTITUTIONALITY OF CAA

The argument that, under the Citizenship Act, the excluded persons still have the general route to citizenship available is based on a profound misunderstanding of the Citizenship Act and also the reforms caused by the CAA. From this vast class, the CAA carves out persons belonging to certain identified religions from certain Specified Countries and recognizes them as non-illegal immigrants (without the necessity to provide any travel documents) thereby opening the way for such persons to become citizens. The reasoning for this alteration is that within the Specified Countries, citizens of certain religions have faced religious persecution. Many other individuals without travel documents are now considered as illegal migrants and aren't eligible for citizenship while they may have tackled religious persecution. The CAA unreasonably discriminates in conferring this benefit among similarly positioned illegal migrants who have faced religious persecution. The response to the current cannot be that individuals of a diverse class, i.e., non-illegal migrants, that advantage from citizenship. This choice had been receptive to non-illegal migrants long before the CAA came into force.

Even though it is true that one does not need to precise all mistakes in order to fix some errors, if Parliament decides to correct one mistake, it is constitutionally required to fully remedy that mistake and not separately preclude any citizens from remedying that mistake. That the CAA on a standalone basis violates, and must be found to be unconstitutional, the guarantee of equality before the law and equal protection of the laws referred to in Article 14 and the right to a life of dignity referred to in Article 21 of the Constitution of India; While it is not the case that a law granting refugee citizenship must extend to any individual in the world, appropriate criteria must be industrialised to select a group of refugees to confer this benefit. The CAA seems to lack such a reasonable classification and tends to discriminate between equally placed individuals.

In the light of abovementioned analysis it can be stated that the CAA fails the test of reasonable connexion and reasonable classification as there is no intelligible differentia regarding why the specified religions who have been persecuted have been treated as a different class as compare to the minorities belonging to the other

countries. Also, the neglecting of the orphans and the transgender from the provisions of the act will cater a great hindrance for the CAA to hold constitutional. Also, CAA cannot be termed as a policy decision of the government as it has been specifically instituted through an amendment in the Parliament. So, as per the abovementioned analysis CAA will fail the test of Constitutionality as it is against the secularism which is considered as one of the basic features of the Constitution also it will be held to be against the twin test of Article 14, and it also discriminates solely on the basis on the religion. As, CAA is not a policy decision of the government it will be held unconstitutional by the Supreme Court after judicially reviewing the legislation on the touchstones of the Constitutional law.

8. CONSTITUTIONALITY OF CAA

8.1 INTRA VIRES TO THE CONSTITUTION OF INDIA

The Citizenship Amendment Act, 2019 has been challenged in a number of High Courts and Supreme Court of being an unsecular law which violates the vital structure of the Constitution of India because it violates the Article 14 of the Constitution of India which deals with the provisions of equality and also the right under this article is as well available even to non-citizens of the country. However, the Act has faced opposition from segments of society including students from universities, intellectuals, religious communities and political parties. The opponents of the CAA, primarily argue that the Act discriminates against Muslims and undermines the right to equality enshrined within the Constitution, which specifies that among other things, the State shall not discriminate against any citizen on the grounds of religion, race, caste, sex and birthplace. Yet, the reality is that CAA doesn't deal with Indian people like Muslims but merely provides for the acquisition of Indian citizenship by non-Muslim refugees from the three specific countries. This Act doesn't disfavour Indian Muslims in any way or by any implication and so any effort to link it to the rights of Indian Muslim citizens is flawed.

8.2 TEST OF CAA BASES ON ARTICLE 14

The Citizenship Amendment Act, 2019, doesn't violate the provisions related Article 14 of the Indian Constitution as complained by others. Under Article 14 of the Constitution, it's appropriate for the parliament to make a reasonable classification regarding the objective it seeks to achieve. In the present case the classification is grounded on basis of Islamic dominated states as these countries follow. The chosen countries (i.e., Pakistan, Bangladesh) are those that India had a history of partition with and thus had lots of population moving within and outskirts of the country. Afghanistan features a shared border with Pakistan and India (POK) and, as a results of the partition, there has been plenty of immigration on either side, and it's equally situated in Pakistan as regards the persecution of minorities. The

justification for the addition of Afghanistan as a country although not forming the part of British India is that it has a common history of religious harassment of the said communities as in Pakistan and Bangladesh. The objective sought in the prompt case is to provide citizenship to the religious minorities who have illegally migrated to escape torture or discrimination on the lines of the religion. This is happening because during the time of partition, after the date of 19th July 1948, it had been decided that people who came to India before will be deemed to be Indian citizens, post this the Nehru-Liaquat Pact was entered into in which both India and Pakistan promised to provide equal rights and prospects to their religious minorities who had decided to stay back within the respective countries.

The Hon'ble Supreme Court has held in plethora of cases that reasonable classification is acceptable under Article 14 of the Constitution. It is established on the principle of intelligible differentia which states that: like to be treated alike, and thus agrees unlike to be treated differently. In Budhan Choudhary v. The State of Bihar,[136] it's been stated by the Supreme Court that even though Article 14 prohibits class legislation but it permits the reasonable classification "It is now well-established that while article 14 forbids class legislation, it doesn't forbid reasonable classification for the determination of legislation in order, however, to pass the test of permissible classification two conditions must be satisfied, namely,

i.) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and

ii.) That that differentia must have a rational regard to the objective sought to be achieved by the statute in question.

In plethora of cases Supreme Court has established the subsequent regarding real meaning and scope of Article 14 of the Constitution of India:

i. That a law could also be constitutional whether or not it relates to one individual, that individual might be treated as a class by himself due to certain special circumstances or reasons applicable to him and not applicable to others;

[136] AIR 1955 SC 191 (India).

ii. That there is always an assumption in favour of the constitutionality of an act and that it is the load on the person who attacks it to show that the constitutional principles have been clearly dishonoured;

iii. That it must be presumed that the legislature recognises and appreciates properly the necessity of its own people, that its laws are directed at empirical problems and that its discriminations are based on satisfactory grounds;

iv. That the legislature is free to identify degrees of damage and can restrict its limits to cases where the need is considered to be the most understandable;

v. That, in order to support the presumption of constitutionality, the court may take matters of common knowledge, matters of common report, the history of the times into consideration and may assume any state of acts that may exist at the time of law; and

vi. that although good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.[137]

It is contended that the under the CAA, the government's purported strategy is to provide protection to certain minorities from three neighbouring countries where they had always experienced religious persecution. The three chosen countries have a State religion i.e. Islam. The religious groups that were selected in those countries are non-Islamic minorities. The peculiarity is therefore intelligible, as individuals belonging to groups that doesn't practice the religion of the state are chosen. The policy nexus is simple-it wants to safeguard these communities by making it tranquil for them to escape persecution and acquire Indian citizenship. The initial argument put onward by the Central Government and legal experts in favour of the CAA is that classification is reasonable and grounded on intelligible differentia due to the specified Countries i.e. Afghanistan, Pakistan and Bangladesh share land boundaries with India and have a

[137] Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538 (India).

partition history established on religious lines. The three countries that are proclaimed Islamic states have refused to guard minorities in their countries that are subject to religious persecution. The CAA is aiming only to shield these minorities. Obviously, there's no necessity to include Muslims because the Muslims in these countries aren't a minority.

The 'intelligible differentia' is that the basis of rational classification. The intelligible differentia between the three countries and other countries are prima facie centred on geographical conditions and their political arrangement. a whole of eight adjacent nations are linked to Indian territory, including Afghanistan, China, Nepal, Bhutan, Myanmar, Bangladesh, Sri Lanka, and Pakistan. The noteworthy difference between, on one side, 'Afghanistan, Bangladesh & Pakistan' and, on the opposite, five countries is that the three countries' foundations are based upon a specific religion. Afghanistan and Pakistan's official name begins with 'Islamic Republic,' which shows that the state relies on a precise religion. Though Bangladesh's name begins with the People's Republic, Art.2A of the Constitution prescribes the official religion of the State as Islam.[138] The Art. 2 of the Constitution of Afghanistan also specifies Islam as its official state religion.[139] The Art.2 of the Constitution of the Islamic Republic of Pakistan provides that Islam shall be the State religion of Pakistan.[140] In short, it can be stated that the three countries mentioned within the CAA, 2019 indicates there State Religion as Islam. Other states are concerned so far; the People's Republic of China's constitution is silent on religion. China doesn't officially recognize any religion, nor does it give religious freedom. The Chinese Constitution doesn't grant religious groups any special position. It acknowledges only minority based on Nationality.[141] The term ethnicity isn't synonymous with citizenship in the Chinese Constitution, but is related to racial meaning. Nepal's constitution recommends that the state of Nepal is an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented, republican federal democratic state. It also explains the term "secular" meaning religious freedoms, cultural freedoms, including the

[138] *Article 2A of Constitution of Peoples Republic of Bangladesh*, Available at: http://bdlaws.minlaw.gov.bd/act-367/section-24549.html, last accessed on 29-06-2020.
[139] *Article 2 of Constitution of the Islamic Republic of Afghanistan*, Available at: http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf, last accessed on 29-062020
[140] *Article 2 of Constitution of the Islamic Republic of Pakistan*, Available at: http://www.pakistani.org/pakistan/constitution/part1.html, last accessed on 29-06-2020.
[141] *Constitution of the People"s Republic of China, Chapter I General Principles, Art.4,* available at: http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content_1372963.htm, last accessed on 28-06-2020.

protection of religion, culture passed down from times of yore.[142] The Monarchy-based constitution of Bhutan acknowledges the twin concept of belief and politics. The King is the administrator of Chhoe-sid, i.e. belief and politics (Temporal & Secular).[143] Bhutan's Constitution acknowledges Buddhism as Bhutan's spiritual heritage, but it places duties on the King to preserve all religion. Accordingly, the Constitution's combined reading highlights Bhutan's secular political structure.

In the present facts the 'intelligible differentia' is predicated on functional, geographical and historical considerations. Eight countries share India's shared Border. The three countries out of eight have State religion as Islam, where non-Islamic communities are persecuted on religion grounds aside from Islam. The remaining five countries are secular in a sense where no religion is believed to be State Religion. The existing two countries were a part of an undivided India out of three countries, where the then Prime Minister of India and then the then Prime Minister of East and West Pakistan agreed to safeguard the religious minorities within the respective states by way of a treaty. The utter failure to shield the religious minority triggered India's gigantic scale of migration. The troubled migrants belonging to the six groups cannot be driven back from where they migrated to those three nations. The Act also covers six groups that are religiously oppressed minorities from Islamic states who have already entered India before 2015 and are not any longer considered as illegal migrants under the Indian Citizenship Act, 1955. The aim is to guard the human rights of people who have entered India from adjacent state because of religious persecution. The classification of these circumstances isn't grounded on religion but on territorial, historical, practical and other considerations. The second test of reasonable classification is a rational nexus with the purpose sought to be achieved. The very purpose is to facilitate for the entitlement of all the benefits of leaving dignified life to the religious minorities who came to India either persecuted on the base of faith or with fear of persecution. The Act provides for clause that holds the fact in mind. The CAA, which deals with the communities identified, necessitate a humanitarian approach. Individuals illegally migrated from States may be deported if they bear the identity of belief which is

[142] *Article 4 of the Constitution of Nepal*, http://www.lawcommission.gov.np/en/archives/985, last accessed on 29-06-2020.
[143] *Art. 2 (2) Constitution of the Kingdom of Bhutan,* https://www.nationalcouncil.bt/assets/uploads/docs/acts/2017/Constitution_of_Bhutan_2008.pdf, last accessed on 29-06-2020.

the State's official religion. There'll be no fear of human rights violations following deportation therein situation. However, if deported back to their homeland again, the ethnic oppressed minorities will be brutal and harsh. India isn't a haven for all the ethnic minorities that are persecuted. However, migration to adjacent countries is incredibly natural for these communities in order to safeguard their lives from physical and mental cruelties, atrocities.

8.3 TEST OF CAA BASED OTHER RELIGION AS A CONDITION

It has been stated that the devotion can't be held as a reasonable ground for differentiation under the right to equality as provided under Article 14 of the Constitution of India. But the Supreme Court of India has time and again through the judgment in plethora of cases has stated that what's limited is a classification on religious line only, if there's some additional factor involved with religion then such classification would be valid. In Mahant Moti Das v. S.P. Sahi[144] stated that so as to manage the trust there could be differentiation held the premise of religion so as to manage trust between the Sikhs, Jains and Hindus. Here the discrepancy between Muslims and non-Muslims from these three countries wasn't made on religion alone. The explanation the Muslims of these three countries are excluded from the community of CAA beneficiaries, 2019 not only in ethnicity, but also in the reality that they reside in a nation governed by their own ethnicity and there's an insignificant chance for them to face religious persecution as being faced by non-Muslims. It's the probability of facing religious persecution here that qualifies religion here. What is restricted is a classification built on religious lines only, if there's any additional factor related to religion then such classification would be valid. Thus, the constitution permits that there can be a distinction built on religion but it is to follow another requirements also. To the main stream of these three nations, the liberty to claim citizenship is correspondingly valid as are other foreigners. It's just for the minorities of these three countries that their application for citizenship is being rapidly tracked under the current amendment, since they're a marginalized community. There's not at all doubt that one religion is favoured over the other, and thus not against secularism. In fact, it's a kind of positive action undertaken by the state to heal the injuries of persecuted minorities with a cultural connection to India.

[144] AIR 1959 SC 942. (India).

8.3.1 Minorities of another Countries: It has been resisted that there has been abandoning of various minorities who are alleged to be religiously persecuted which includes Ahmadis in Pakistan, Hazaras in Afghanistan, Rohingyas from Myanmar and the Tamil is from Sri Lanka and so on. It is a prevalent belief that the above mentioned communities have been left out to be included under the CAA but when we closely look at the motives for not adding up to the list of person excused under the definition of "illegal migrants" under section 2 (1) (b) of the Citizenship Act, 1955 we would find that the intent of the legislature was correct in elimination of the aforementioned communities from the list of persons excluded under the definition of illegal migrants. The reason for not adding of these communities to the list of the definition of illegal migrants under Section 2 (1) (b) if the Citizenship Act is as following:

8.3.1a Predicament of Ahmadis: Ahmadis were initially were the supporters of the Partition of Pakistan on the premise of faith and their prominent leader Sir Zafarullah Khan is considered as one of the protuberant Architects of the creation of a Pakistan as an Islamic state. He authored the Lahore Resolution of 1940, which for the first time probe for the creation of Pakistan as a separate state by the Muslim league.[145] After Freedom primarily Pakistan was a secular state initially as Jinnah in his speech to the Constituent Assembly on 11th August, 1948 had state that-

"… We are starting with this fundamental principle that we are all citizens and equal citizens of one state…we should keep that in front of us as an ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State …"[146]

Pakistan never became a secular state because the hope of Pakistan to be a secular country ended with the death of Mohamed Ali Jinnah in 1948. Liaquat Ali Khan, who succeeded Jinnah, presided over and lent strong backing to the infamous 'Objectives

[145] *Ahmadiyyas were at the forefront of creation of Pakistan, an Ahmadiyya Unit fought against India in Kashmir in 1947-48*, https://www.opindia.com/2019/12/how-ahmadiyyas-were-at-theforefront-of-creation-of-pakistan-islam-all-you-need-to-know/, last accessed on 29-06-2020.

[146] *Muhammad Ali Jinnah's first Presidential Address to the Constituent Assembly of Pakistan,* http://www.columbia.edu/itc/mealac/pritchett/00islamlinks/txt_jinnah_assembly_1947.html.Last accessed on 29-06-2020.

Resolution' of March 1949. The resolution proclaimed that it would model Pakistan's future constitution on Islam's philosophy and faith. Every non-Muslim member of the Constituent Assembly intensely opposed, and voted against, the resolution.[147] This was opposed by the minority leaders Sris Chandra Chattopadhyay who was a member of the east Pakistan (Bangladesh) stated that, "The state religion could be a dangerous principle. Previous occurrences are sufficient to warn us to not repeat the blunder. We all know people were burnt alive within the name of faith." Since the Objective Resolution in Pakistan-Hindus, non-Muslims, Sikhs and Christians are subjected to repulsive crimes of all forms of violence and murder; theft and open burning of property; abduction and rape of women; forcible conversions and also the destruction and burning of their worship places. Many of these actions were certainly the work of a Sunni majority. Yet a minimum of Shias and Ahmadiyas, who first connived when the Objectives Resolution was passed, stood vainly by their fellow countrymen's cruel abuse in the hands of their co-religionists. After cleansing out the minorities in Pakistan the subsequent step was to carry out the carnages on the Ahmadis once the Muslim minorities were reduced to a negligible in population. After the partition there have been various attacks on the Ahmadis and eventually by the objective resolution of 1974 the Ahmadis were declared as non-Muslims or apostates.[148]

Also, the discrimination on Ahmadis and Shias in the Pakistan is not discriminatory against as persons of these sects seeking citizenship on the basis of religious persecution for the following three convincing reasons:

i) The Ahmadis and Shias have their own petard hoist. Firstly they deliberately rejected a secular constitution at the time of their country's freedom and opted for an Islamic Republic that reduced non-Muslims to second-class citizenship status. Inferior, they conspired in or stood idly by as their non-Muslim complements underwent a slow ethnic cleaning operation. As the CAA's Indian criticisers never get bored with reminding the state that our Constitution is secular. Would it therefore be

[147] *The Objectives Resolution, Islamic Studies*, spring 2009, Vol. 48, No. 1 (Spring 2009), pp. 89, 91-118, http://www.jstor.com/stable/20839154, last accessed on 29-06-2020.
[148] *Constitution (Second) Amendment Act, 1974*, http://www.pakistani.org/pakistan/constitution/amendments/2amendment.html, last accessed on 2906-2020.

discouragement of our Constitution if Parliament, in its wisdom, found it improper to offer citizenship to representatives of oppressed communities who had no devotion to secular values, had a deep devotion to a theocracy in their own faith, were indifferent to the rights of minorities and whose consciences didn't seem to have been bothered by annihilations only because they shared distinct religious beliefs.

ii) Though in the 2011 census the Indian government officially recognized Ahmadis as an Islamic sect,[149] not only do Indian Muslims not respected Ahmadis as Muslims, but they have committed violent and destructive hostility and violence against them. Following are some of the reported instances by the Muslims of India against the Ahmadis:

a) Prominent Muslims led by none aside from AIMM leader Assauddin Owaisi in June 2008 called on the then state (Andhra Pradesh) chief minister YSR Reddy to demand that Ahmadis be refused permission to carry a Hyderabad public meeting. The CM ordered that police to not consent Ahmadis to hold the meeting.[150]

b) A leading group of religious specialists, the Majilis Tahaffuze Khatme Nabuwat (MTNK) blamed the Central Government for considering the Ahmadis as a part of the Muslim community in the 2011 census. The Ahmadis, as per the MTNK, can't be considered an Islamic sect as they practice a separate faith.[151]

c) After shrill protests by the Jama Masjid Imam – Ahmed Bhukari, a Koran exhibition held by Ahmadis was called off in September 2011 in Delhi.[152]

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[149] *Some clerics do not want Ahmadiyyas to be counted as Muslims*, 14th August, 2016, Hindustan Times, https://www.hindustantimes.com/mumbai-news/some-clerics-do-not-wantahmadiyyas-to-be-counted-as-muslims/story-XtKK3Ei85sggXilqgBb03I.html, last accessed on 2906-2020

[150] Mahesh Jethmalani, *Besieged by sophistry: The CAA is constitutionally sound and is unfairly picked apart by its enemies*, TOI Print Edition, 16th January, 2020, https://timesofindia.indiatimes.com/blogs/toi-edit-page/besieged-by-sophistry-the-caa-isconstitutionally-sound-and-is-unfairly-picked-apart-by-its-enemies/. Last accessed on 03-02-2020.

[151] K Bhattacharjee, *'Liberals' who have suddenly discovered their love for Ahmadiyyas were silent when Asaduddin Owaisi was oppressing them*, 12th December 2019, https://www.opindia.com/2019/12/citizenship-amendment-bill-muslims-owaisi-ahmadiyyas/, last accessed on 29-06-2020

[152] Irena Akbar, *Ahmadiyyas Quran exhibition cut short by protests, Bukhari detained*, 25th September 2011, Indian Express, https://indianexpress.com/article/cities/delhi/ahmadiyyas-quranexhibition-cut-short-by-protests-bukhari-detained/, last accessed on 29-06-2020.

d) Ahmadis are not legitimate to sit on All India Muslim Personal Law Board, a body of religious leaders recognized by the central government as representatives of Indian Muslims.

It is a minimum of evident that a very significant section of Muslim leadership within the social, political and religious spheres doesn't just regard Ahmadis as an apostate, but is eager to express its opposition to their very survival in India through violent and destructive methods. The treatment of Ahmadis by influential and robust individual Muslims / institutions representing those shows that allowing Ahmadiya refugee's citizenship is fraught with serious danger as much as it has the prospective to encourage acute sectarian conflict. Accordingly, the Indian government would be ill advised to open the doors for Ahmadis to grant citizenship, as this will present a substantial threat to public order and law & order. So, by considering this in notice there has been exclusion of the Ahmadiyas from the CAA.

iii) What are the necessities to grant citizenship rights belonging to the people of the intra-religious difference to grant citizenship in India even though they don't qualify for the discrimination built the religion? Only religious fraction cannot be considered as the criterion to be considered as a community being religiously persecuted.

8.3.2b Predicament of Rohingyas: Essentially, the Rohingya crisis could be a problem that's between two neighbours. Bangladesh and Myanmar who are friendly to India. Rohingyas were originally citizens of Bangladesh but the Britishers felt the requirement for migrant labour to cultivate the fertile rice fields of the Burma country which Britishers took control in 1824. Rohingya labourers were thus transported from Bangladesh to the Rakhine area in Burma. One amongst the vexed problems that arose when Burma achieved independence in 1948 was entitlement to citizenship of its residents. The Myanmar state's opposition to granting citizenship to the Rakhine state's Rohingya inhabitants isn't because they're Muslims but because their origins are in Bangladesh and since their presence in Myanmar is transitory due to British labour policy. Additionally, culturally the Rohingyas have a greater affinity with Bangladesh in the maximum amount as they speak the Bengali dialect common in Bangladesh's Chittagong Area and not Burmese. Throughout Myanmar, on the

opposite hand, there are other Muslims whose presence is to be found within the country including the Rakhine state. Such Muslims are ethnically distinct from the Muslims of Rohingya and that they speak the Burmese language. All through the second waves of Rohingya migration which transpire in 2012 & 2017, these Muslims weren't subject to any religious persecutions. In other words, the Rohingya refugee disaster that has engulfed India and other countries is not a product of religious intolerance or oppression but is more of an Assam-type "outsider" problem and is simply a clash of competing citizenship claims.

Also, the migration of Rohingyas in India isn't a right away, they primary migrated to Bangladesh from Myanmar then came to India. Moreover, the problems of Rohingya is more of a persecution grounded on linguistic differences and it couldn't be termed as a persecution built on religious differences. As, the presence of Muslims in Myanmar are often seen so it cannot be stated that there has been harassment of the Muslims in Myanmar established on religious in differences. So, the non-inclusion of Rohingyas under the CAA is justified and it doesn't cause a discrimination among equals such as its some specified communities mentioned under CAA from the countries of Pakistan, Afghanistan and Bangladesh. As these two aren't regarding the same class but are different amongst each other. Out of these two prosecutions the persecution of Rohingyas relies on linguistic basis whereas the prosecution of non-Muslims in Pakistan Afghanistan and Bangladesh is founded upon religion.

8.3.3c Predicament of Tamils: The claim against the persecution of the Tamils constructed on the religious line is just too vague in nature. As the persecution of the Tamils was meted out on the idea of the ethno-linguistic and not was carried on the religious basis. Around one lakh Sri Lankan Tamils reside in India, including some 60,000 in camps across Tamil Nadu.[153] These refugees are mainly Hindu, of Sri Lankan and Indian origin. Although there are huge number of refugees and illegal migrants belonging to the Sri Lankan Tamil even then they are not qualify for being part of the CAA due to the reasoning that they have migrated from Sri

[153] Arun Janardhan, *Explained: In citizenship debate, a related question -that of Sri Lankan Tamils,* The Indian Express, 24th December, 2019.

Lanka because of ethno-linguistic clash which resulted in the civil war within the Sri Lanka.

Another specific argument raised about the Sri Lankan Tamils is that Sri Lankan Tamils have been given citizenship from time to time through many international agreements. Those Tamilians who wish to accumulate Indian citizenship can do so, and therefore the Indian government can confer citizenship by naturalization if they meet the desired criteria for such a grant. Therefore, Sri Lanka's exclusion from the CAA scope is entirely justified; it's a friendly neighbour, a democratic state, its previous ethnic tensions have deteriorated dramatically, and its Tamil population is currently healthy and secure within the region.

8.4 CHALLENGE TO CAA- A POLICY MATTER

When the chief authority or the govt. Takes a resolution centred on the executive power authorized to do it. There can be no judicial review of such policy matter if not and until it's arbitrary in nature. One among the points put onward was that the CAA is solely a government policy decision on whether to permit refugees have citizenship and therefore the courts cannot intervene with such a policy decision. As, the scope of judicial review is proscribed in the case of policy decisions the judiciary cannot review the policy decision unless it's arbitrary or vague or against public policy. The above mentioned argument won't stand against the backdrop of judicial review due to the subsequent reasons:

i) The CAA is elapsed by Parliament and is a law as defined under Article 13 to the Constitution of India and any violation of the fundamental rights won't be exempted. So, there will be a judicial review of the CAA if it violates any of the fundamental Rights especially right to equality as enshrined under the Article 14 of the Constitution of India.

ii) Even if it is recognised that CAA is a policy passed by the executive authority still it can be judicially reviewed on the ground of arbitrariness or being against the public policy.

Nevertheless, while it can be claimed that such a classification removes certain similarly situated persons (under-inclusive classification) from the application of CAA 2019, the very fact is that such a classification could certainly have sufficient validity to pass the constitutionality examination. Several Supreme Court judgments

have confirmed that 'under-inclusion' in itself doesn't make legislation violating Article 14. This is because government strategy in countries with Islam as state religion indicates a possibility of religious persecution. The defence required is for all religious groups in those nations, with religion being generally understood. Although the policy itself could also be problematic, that doesn't render it unconstitutional.

It is explained that why the CAA wanted to put on the benefit to just some countries and communities is a matter of policy and can't be a matter of constitutional law. How ample a nation wants to ease its migration policy is solely a political decision, so it cannot be unconstitutional to be included in a citizenship law.

8.5 CHALLENGE TO CAA- ON ASSAM ACCORD

The Challenge posed to the CAA on the ground of being violative of the Assam Accord is that Clause 6 of the Assam Accord provides for constitutional, legislative and administrative safeguards, as applicable, for the protection, preservation and promotion of the Assamese people's cultural, social, linguistic and heritage. However, the CAA enables individuals of distinct and contrasting cultural, social, linguistic origin to circumvent and settle in Assam. The Assam Accord's statutory and administrative safeguards. It is also contended that CAA, also infringes the Assam Accord, as it naturalizes all non-Muslim migrants from Bangladesh into citizenship and thus undermines the very reason for which an NRC was intended.

On response to Assamese concerns, the Centre clarified that CAA does not dilute the Assam Accord's sanctity as far as the March 24, 1971 cut-off date is concerned but addresses the concerns of only a few specified minorities for humanitarian reasons. It further agreed to safeguard the Assamese people's linguistic, cultural, economic, and political rights. In addition, in July 2019, the Ministry of Home Affairs (MHA) reconstituted a high-level committee of 12 members to examine the efficacy of the steps taken pursuant to Clause 6 of the Assam Agreement, to suggest appropriate levels of reservation of seats for the Assamese people at the state legislative assembly and local bodies, as well as jobs under the state government, and recommend steps to

protect and promote the social, cultural and linguistic identity of the people of Assam.[154]

There has been nationwide dilemma pertaining to the NRC that it will be implemented with CAA. But it is not the case even the Minister for Home Affairs has stated that CAA and NRC are not to be intermingled with each other.[155]

8.6 ARGUMENTS IN FAVOUR OF CONSTITUTIONALITY OF CAA

The Citizenship Amendment Act, 2019 doesn't disregard the responsibilities of India under ICCPR and UDHR. It's evident from the Amendment Act system that India has not discriminated against or put aside persons from any given community. The Act doesn't claim that Muslims wouldn't be allowed citizenship, since the Act is created under an obligation to shield the minority community that resulted from the partition. Since Pakistan didn't respect the Nehru-Liaquat Pact, the govt. made a practical distinction so as to prioritize the minority communities. Hindu, Sikhs, Jains, Parsis, Christians, and Buddhists who are tormented by the partition and since we share common borders, but it doesn't say anywhere that if a Muslim applicant applies for citizenship it'll be rejected or not taken into consideration.

However, we may additionally acknowledge that the CAA came into effect because of the gross violations of Article 27 of ICCPR; the govt. of India only upholds its duty under UDHR Article 14 (which states that everybody has the right to obtain and enjoy asylum from other countries) and ICCPR by giving way to citizenship to immigrants who have fled their country seeking to avoid religious persecution. Choosing a category of immigrants or refugees for citizenship and refusing others holding security and demographic considerations in mind is entirely within a country's sovereign sphere, so that there is no modification to the essence of state, its civil and cultural integrity and democratic values.

There is no breach of obligation under UDHR furthermore, because there's no prejudice against Muslim immigrants as the above-mentioned Act doesn't in any way

[154] *No.11012/04/2019-NE.VI, Ministry of Home Affairs (Northeast Division), the Gazette of India*, Available at: https://mha.gov.in/sites/default/files/filefield_paths/HLC_Clause_6AssamAccord.PDF, last accessed on 28-06-2020.
[155] *No connection between detention centre, CAA and NRC: Amit Shah*, Times of India, 24th December, 2019.

refuse them asylum or refuge in the country nor does it state that their citizenship application would be declined. It just creates a distinction which can be compared to Articles 29, 30 of the Indian Constitution for shielding minorities so as to grant them equal playing field likewise others, as they have enough faced persecution over these years.

In the light of abovementioned analysis it is stated that the CAA doesn't fails the test of reasonable nexus and reasonable classification as there's intelligible differentia regarding why the indicated religions who are persecuted are treated as a distinctive class as compare to the minorities belonging to the further countries have been selected. Also, there's no violation of Assam accord rather there are progressive steps taken by the govt. to tackle the problems regarding the Assam Accord. Also, CAA can be termed as a strategy decision of the govt. because it has been specifically instituted through an amendment within the Parliament for a special purpose. So, as per the abovementioned analysis CAA won't fail the test of Constitutionality because it isn't against the secularism which specified as of the one of the essential basic features of the Constitution .Also it'll not be held to be against the twin test of Article 14, and it also doesn't discriminates solely on the premise on the religion. One amongst the assertions in favour of CAA is that at the time of independence, India was divided into religious lines, i.e. the neighbouring states. In religious lines Pakistan and Bangladesh were established. Such states have failed in their obligation to safeguard minorities in their countries and thus the CAA aims to guard such minorities and to reverse the partition wrongs.

9. CONCLUSIONS AND SUGGESTIONS

9.1 CONCLUSION

While the ongoing debate regarding the "Constitutionality of the CAA" is divided into two subsets one which leads to it as a Constitutional and well within the ambit of the basic features of the Constitution of India whereas the other contention leads it to be discriminatory and threat to the Constitution of India. It has been stated regarding the CAA is brought in order to cater the wrongs which were carried out at the time of the partition by the political leaders due to which there has been suffering to the religious minorities till the implementation of the CAA. Although various petition regarding the "Constitutional validity of the CAA" is still pending in the Apex Court.

The Following conclusions regarding the "Constitutionality of the Citizenship Amendment Act, 2019" can be summarized as follows:

- "Citizenship Amendment Act, 2019 has been brought under the power of Parliament as provided under Article 11 of the Constitution which provides for the power of the Parliament to make laws relating to the Citizenship".
- The classification of religious minorities to be decided to be excluded from the definition of illegal migrants under section 2(1) (b) of the Citizenship Act, 1955 is based on the reasonable classification as provided under Article 14 of the constitution of India. As, all these communities are religious minorities based in the Islamic State and in some way or the other have been religiously persecuted by the members of the majority in the Particular states.
- The Classification of the country of choice for excluding from the definition of illegal migrants is somehow problematic as the "Pakistan and Bangladesh were initially the part of the British India as per the definition provided under section 311 of the Government of India Act. But there is a complete silence when it comes for the justification of Afghanistan to be a country of choice for exclusion of the minorities from the List of countries is a problem while justifying the choice". Although all these countries have been somehow or other accepted Islam as their state religion but there is requirement of detailed

reasoning of why Afghanistan has been chosen as a country to be excluded under the definition of illegal migrants.

- The CAA accounts for the class of foreigners who have migrated to India. The act no longer considers them as illegal migrants if they entered India on or before 31 December 2014 as belonging to specified six groups of three countries. This separates therefore the individuals belonging to the six groups from the rest of the illegal migrants who have entered India. The classification is based upon the permissible and reasonable classification of territorial, historical, present situation and other variables. Classification is nothing but a positive discrimination.
- The CAA, 2019 is an affirmative action to heal the wounds of religious minorities across boundaries who have endured profound discrimination in every area of life, including physical and mental cruelties. Therefore, if the fair classification requirement is met, the question as to whether any class of individuals is omitted is immaterial and has no legal impact. This is State prerogative and policy decision of a government and cannot be challenged in the courts.
- This act is only protecting the illegal migrants who have fled or have left their country due to religious persecution. This is in a way a chance for them to lead a better life in India which is secular in nature.
- The CAA is only to provide benefit to the religiously persecuted minorities of the above mentioned countries.
- The Act does not discuss about existing Citizens, therefore is no question of violating the rights of any of the Indian Citizens by excluding certain sections of foreigners which are not covered by the Act.
- The whole rumour that Indian Citizens especially Muslims will have to prove their nationality is vague and ambiguous and is only a fake hoop-la. Government of India has already cleared that Indian Citizens won't suffer because of the CAA.
- There are other religiously oppressed minorities in the three identified countries i.e. Pakistan, Afghanistan and Bangladesh or in other countries not included in this amendment. The exclusion of these countries does not contravene Article 14 of the Constitution, because the test of reasonable

classification is met and the purpose of the Act is constitutional and with this act the constitution of India faces no threat.

The Citizenship Amendment is said to be within the fore walls of the basic feature of the Constitution i.e. Secularism and the CAA does not diverge away from the principles of Secularism instituted in the Constitution of India. Although religion has been a criterion of discrimination among the particular groups of immigrants but it is not the sole criterion for discrimination but it is in addition to other factors which makes it to follow the basic tenets of Secularism as provided under the Constitution. Although it is true that one does not need to correct all mistakes in order to fix some mistakes, if Parliament decides to correct one mistake, it is constitutionally obligated to fully remedy that mistake and not unilaterally preclude any citizens from addressing that mistake. The Indian Parliament has time and again come up with specific amendment to cater this problem and the present Act deals with the one kind of persecution which is limited to the religious persecution and therefore it is justified in excluding other kinds of justification.

In terms of the constitutionality of laws, there is also a presumption and the burden lies on the person who contests it to show that it violates the constitutional provisions. The Citizenship (Amendment) Act, 2019 allows a religious classification, but it appears that the classification meets the requirements of intelligible differentia and rational nexus for validity under Article 14. Contrary to common belief, India's citizenship laws are not changed by the Act. The CAA is a humanitarian act and its enactment fulfils a long-standing demand to support those minorities who have been forced to flee from Afghanistan, Bangladesh and Pakistan due to majoritarian impulses. Although there are some setbacks which needs to be overcome but the CAA illustrates the Indian culture of acceptance, harmony, compassion and brotherhood. The constitutional validity of the CAA is very difficult to challenge and it is highly unlikely that the petitions which challenge its validity will succeed.

9.2 SUGGESTIONS

- A special addendum is required in order to declare that the CAA is not in anyways linked to the National Registry of Citizens as it led to widespread protest and upheaval in the Country by the implementation of CAA.
- In order to provide the rights to the "immigrants" who are religiously persecuted in the three counties i.e. "Pakistan, Afghanistan and Bangladesh". It is suggested that with passage of time there is a provision of timely amendment of the cut-off date is required in order to save the aforesaid minorities from the fear of being persecuted on the religious basis from the abovementioned countries.
- It is suggested that the new act does not mean that all refugees or illegal immigrants getting Indian citizenship automatically. They have to apply for citizenship which will be processed by the competent authority. The applicant concerned will be given Indian Citizenship only after fulfilling the required criteria.
- There has been many misinterpretation regarding the NRC that people will be excluded on religious ground, so it is suggested that it should be cleared that No one can be excluded for being a follower of any religion.
- It is suggested that if an illiterate person is not having a relevant document, authorities should allow him to bring witnesses, various other proofs/community verification etc. A due procedure will be followed. No Indian citizen will be put to undue trouble.
- It is also suggested that there is a requirement of the detailed policy that how the linguistic, cultural, economic, and political rights of the people of Assam will be saved by the efforts of the government after the implementation of CAA and how it will not affect the conditions laid down in the Assam Accord of 1985.

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