

CITIZENSHIP AMENDMENT ACT 2019 CRITIQUE

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CERTIFICATE

This is to certify that the Dissertation entitled “Citizenship Amendment Act.2019 Critique.” submitted by Mr. Ilamhuing Daimie in partial fulfillment of the requirement for the awarding the Degree of Master of Law (LL.M) to National Law University and Judicial Academy Assam, is a record of the candidate’s own works carried out by him under my supervision. The matter embodied in this Seminar paper is original and has not been submitted for the award of any others degree.



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DECLARATION

I, Ilamhuing Daime, pursuing Master of Law (LL.M) from National Law University, Assam, do hereby declare that the present dissertation titled Citizenship Amendment Act.2019 critique is an original research 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.

Date:15/07/2021



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TABLE OF CASE

1. Indian Union Muslim League v. Union of In
2. Mahua Moitra; Jairam Ramesh v. Union of India
3. Asaduddin Owaisi v. Union of India
4. Deb Mukharji IFS (Retd) v. Union of India
5. T.N. Prathapan v. Union of India
6. Harsh Mander v. Union of India
7. Sayyed Farooq v. Union of India
8. Tehseen Poonawalla v. Union of India
9. Ashwini Kumar Upadhyay v. Union of India
10. Asom Gana Parishad v. Union of India
11. All Assam Students Union v. Union of India
12. All Assam Lawyers Association v. Union of India
13. Assam Pradesh Congress Committee Assam v. Union Of India
14. Assam Association of the Deaf v. Union of India
15. Assam State Jamiat Ulema v. Union of India
16. Asom Jatiyatabadi Yuba Chatra Parishad v. Union of India
17. All Assam Matak Sanmilan v. Union of India
18. Asom Sankhyalaghu Sangram Parishad v. Union of India
19. Asam Sahitya Sabha v. Union of India
20. United Against Hate v. Union of India
21. Edara E Sharia v. Union of India
22. Peace Party v. Union of India
23. Social Democratic Party of India v. Union of India
24. Muslim Advocates Association v. Union of India
25. Jamiat Ulama E Hind v. Union of India
26. Tamil Nadu Muslim Munnetra Kazhagam Trust v. Union of India
27. National People's Party v. Union of India
28. North East Students Organisation v. Union of India
29. Democratic Youth Federation of India v. Union of India
30. Digboi IOCL Contract Association v. Union of India
31. Kerala Muslim Jamaath v. Union of India
32. Loktantrik Yuva Janata Dal v. Union of India

33. Jamiat Ulama I Hind v. Union of India
34. Dravida Munnetra Kazhagam v. Union of India
35. Jorhat Bar Association v. Union of India
36. Communist Party of India v. Union of India
37. ANIS Educational and Welfare Trust v. Union of India
38. Nishtha Ganesh v. Union of India
38. Makkal Needhi Maiam v. Union of India
40. Debabrata Saikia v. Union of India
41. Ehtesham Hashmi v. Union of India
42. Pradyot Deb Burman v. Union of India
43. Ramesh Chennithala v. Union of India
44. Rangon Choudhury v. Union of India
45. Suhas Chakma v. Union of India
46. Intekhab Alam v. Union of India
47. Prasenjit Bose v. Union of India
48. Peter Aiborlang Dohkrut v. Union of India
49. Maitur Rahman v. Union of India
50. Hiren Gohain v. Union of India
51. Prof. Manoj Kumar Jha v. Union of India
52. Jitendra Chaudhury v. Union of India
53. Prashant Padmanabhan v. Union of India
54. Mohd. Azam Hashmati v. Union of India
55. Mohd. Ghouse v. Union of India
56. Rakesh Chakravorty v. Union of India
57. Jorhat Bar v. Union of India
58. Syed Mohammad Haider v. Union of India
59. Lachit Bordoloi v. Union of India
60. Puneet Kaur Dhanda v. Union of India
61. Mukesh Kumar Sharma v. Union of India
62. Ummea Salma v. Union of India

TABLE OF STATUTES

1. Citizenship Amendemen ACT 2019
2. CRPC Section 144
3. Citizenship ACT 1955
4. Article 14
5. Article 21

TABLE OF ABBRIVATION A TO Z

1	AASU	All Assam Students' Union
2	ATTF	All Tripura Tiger Force
3	BJP	Bharatiya Janata Party
4	CAA	Citizenship Amendment Act
5	CPI (M)	Communist Party of India (Marxist)
6	CrPC	Criminal Procedure Code
7	CAB	Citizenship Amendment Bill
8	CJI	Chief Justice of India
9	EU	European Union
10	FAQ	Frequently ask question
11	FRRO	Foreign Regional Registration Office
12	IUML	Indian Union Muslim League
13	ILP	Inner Line Permit
14	KMSS	Krishak Mukti Sangram Samiti
15	LDF	Left Democratic front
16	MLA	Members of Legislative Assembly
17	NGO	Non Governmental Organization
18	NPR	National Population Register
19	MEA	Ministry of External Affairs
20	NE	North East
21	NRC	National Register of Citizen
22	NPP	National People's Party
23	OCI	Overseas Citizen of India
24	OHCHR	Office of the United Nation Hight Commission for Human Right
25	OIC	Organization of Islamic Cooperation
26	PM	Prime Minister
27	USIRF	United State Commission on International Religions Freedom
28	USIR	United States Inter-Regional
29	UPA	United Progressive Alliance
30	UNHCR	United Nation High Commissioner for Refugees
31	US	United State
32	UK	United Kingdom
33	UNHRC	United Nation Human Rights Commission

CONTENTS

Certificate-----	(i)
Declaration-----	(ii)
Acknowledgement-----	(iii)
Table of Case-----	(iv-v)
Table of Abbreviations-----	(vii)

CHAPTER-1

1-7

- 1.1 Introduction
- 1.2 Background
- 1.3 Aim (s)
- 1.4 Objective (s)
- 1.5 Statement of problem
- 1.6 Scope and limitation:
- 1.7 Immigrants and refugees
- 1.8 The Amendments
- 1.9. Exemption of certain class of foreigners
- 1.10 Analysis
- 1.11 Selectively Addressing Religious Persecution
- 1.12 Exclusion of persecuted Muslims
- 1.13 Exclusion of other persecuted communities

CHAPTER- 2

:CONSTITUTIONAL LEGISLATION ON

8-14

CITIZENSHIP

- 2.1 Citizenship Act of 1955: provisions and Amendments
- 2.2 Constitutional provisions for citizenship
- 2.3 Citizenship Act of 1955 and its Amendments
- 2.4 Modes of Acquisition of Citizenship
- 2.5 Loss of Citizenship in India

2.6 Overseas Citizen of India (OCI)

2.7 Non-resident Indian

2.8 Persons of Indian origin

CHAPTER-3 :POLITICS ON CITIZENSHIP

15-23

3.1 LEGISLATIVE HISTORY

3.2 Who does it leave out?

3.3 What Is the Govt's logic on this?

3.4 What is the background of the Law?

3.5 Who are the opposers?

3.6 What are the objections that have come up?

3.7 Which states will be affected?

3.8 How many will it add to India's population?

CHAPTER-4 :MAIN FUNCTION OF CITIZENSHIP

24-35

AMENDMENT ACT 2019

4.1 The Citizenship Amendment Act (CAA): meaning, key features, and objectives

4.2 Explain in details Citizenship Amendment Act 2019 (CAA)

4.3 What is Citizenship?

4.4 Who is an illegal migrant in India?

4.5 Features of CAA 2019

4.6 The Citizenship Amendment Act (CAA): meaning, key features, objectives

4.7 What is Citizenship Amendment Act, (CAA) 2019?

4.8 What is the cut-off date for Indian Citizenship?

4.9 What does the Citizenship Amendment Act, 1955 say?

4.10 Citizenship act of 1955: provisions and Amendments

4.11 Key features of Citizenship Amendment Act, 2019

4.12 Why this bill is opposed? 4.13 What is the cut-off date for Indian Citizenship?

4.14 What does the Citizenship Amendment Act, 1955 say?

4.15 Why this bill is Opposed?

CHAPTER -5 :COMPARATIVE STUDY OF NRC AND CAA 2019 36-42

- 5.1 Relationship to NRC
- 5.2 Protests
- 5.3 Indian government response
- 5.4 Rallies in support
- 5.5 Refugees
- 5.6 Political and legal challenge
- 5.7 Commentary and petitions

CHAPTER-6 :PUBLIC OUTRAISED ON CAA 2019 43-66

- 6.1 Protest in Kerela
- 6.2 Resolution in Assembly
- 6.3 Challenging CAA in court
- 6.4 Controversial steps
- 6.5 Another battlefield
- 6.6 No stay on implementation
- 6.7 Assam Protest
- 6.8 Citizenship Act protest: police baton-charge activists at Torch rally ahead of Modi's visit to Assam
- 6.9 Despite a few political setbacks, The BJP's brand of Hindu nationalism is gaining strength in the Modi Government's second term
- 6.10 With state elections due next year in both Assam and Bengal, the BJP is now letting the CAA issue simmer

CHAPTER-7 :COURT ON CAA 2019 67-83

- 7.1 CJJ says its is "Uppermost in every body's minds" indicates referring CAA challenge to constitution
- 7.2 Challenge to Citizenship (Amendment) Act, 2019 before supreme court
- 7.3 CAA Case comes up just thrice in 1 year in sc despite 140 pleas, including from un body
- 7.4 New Delhi

CHAPTER -8 :INTERNATIONAL REACTIONS 84-94

- 8.1 The significance of international reactions to the CAA March 4, 2020
- 8.2 Protest the Act

CHAPTER-9 SUGGESTION AND CONCLUSION 95-97

**:
BIBLIOGRAPHY 98**

CHAPTER 1

1.1 INTRODUCTION

The Citizenship (Amendment) Act, 2019 was passed by the Parliament of India on 11 December 2019. It amended the Citizenship Act, 1955 by providing a pathway to Indian citizenship for persecuted religious minorities from Afghanistan, Bangladesh and Pakistan who are Hindus, Sikhs, Buddhists, Jains, Parsis or Christians, and arrived in India before the end of December 2014. The law does not grant such eligibility to Muslims from those countries, all of which are Muslim-majority countries. The act was the first time that religion had been overtly used as a criterion for citizenship under Indian law.

The Bharatiya Janata Party (BJP), which leads the Indian government, had promised in previous election manifestos to offer Indian citizenship to members of persecuted religious minorities who had migrated from neighboring countries. Under the 2019 amendment, migrants who had entered India by 31 December 2014, and had suffered "religious persecution or fear of religious persecution" in their country of origin, were made eligible for citizenship. The amendment also relaxed the residence requirement for naturalization of these migrants from twelve years to six. According to Intelligence Bureau records, there will be just over 30,000 immediate beneficiaries of the bill.

The amendment has been criticized as discriminating on the basis of religion, particularly for excluding Muslims. The Office of the United Nations High Commissioner for Human Rights (OHCHR) called it "fundamentally discriminatory", adding that while India's "goal of protecting persecuted groups is welcome", this should be accomplished through a non-discriminatory "robust national asylum system". Critics express concerns that the bill would be used, along with the National Register of Citizens (NRC), to render many Muslim citizens stateless, as they may be unable to meet stringent birth or identity proof requirements. Commentators also question the exclusion of persecuted religious minorities from other regions such as Tibet, Sri Lanka and Myanmar. The Indian government said that since Pakistan, Afghanistan and Bangladesh have Islam as their state religion, it is therefore "unlikely" that Muslims would "face religious persecution" there. However,

certain Muslim groups, such as Hazaras, have historically faced persecution in these countries.¹

The passage of the legislation caused large-scale protests in India. Assam and other northeastern states witnessed violent demonstrations against the bill over fears that granting Indian citizenship to refugees and immigrants will cause a loss of their "political rights, culture and land rights" and motivate further migration from Bangladesh. In other parts of India, protesters said that the bill discriminated against Muslims, and demanded that Indian citizenship be granted to Muslim refugees and immigrants as well. Major protests against the Act were held at some universities in India. Students at Aligarh Muslim University and Jamia Millia Islamia alleged brutal suppression by the police. The protests have led to the deaths of several protesters, injuries to both protesters and police officers, damage to public and private property, the detention of hundreds of people, and suspensions of local internet mobile phone connectivity in certain areas. Some states announced that they would not implement the Act. In response, the Union Home Ministry said that states lack the legal power to stop the implementation of the CAA.

1.2 BACKGROUND

The Indian Constitution that was implemented in 1950 guaranteed citizenship to all of the country's residents at the commencement of the constitution, and made no distinction on the basis of religion. The Indian government passed the Citizenship Act in 1955. The Act provided two means for foreigners to acquire Indian citizenship. People from "undivided India" were given a means of registration after seven years of residency in India. Those from other countries were given a means of naturalisation after twelve years of residency in India. Political developments in the 1980s, particularly those related to the violent Assam movement against all migrants from Bangladesh, triggered revisions to the Citizenship Act of 1955. The Citizenship Act was first amended in 1985 after the Assam Accord was signed, wherein the Indian government of Prime Minister Rajiv

¹ Correspondent, Special. "Writer Bhyrappa Accuses Congress of Pursuing Vote-bank Politics over CAA." N.p., 10 Jan. 2020. Web. 29 July 2020.

Gandhi agreed to identify foreign citizens, remove them from the electoral rolls, and expel them from the country.²

The Citizenship Act was further amended in 1992, 2003, 2005 and 2015. In December 2003, the National Democratic Alliance government, led by the Hindu nationalist Bharatiya Janata Party (BJP), passed the Citizenship (Amendment) Act, 2003 with far-reaching revisions of the Citizenship Act. It added the notion of "illegal immigrants" to the Act, making them ineligible to apply for citizenship (by registration or naturalisation), and declaring their children also as illegal immigrants. Illegal immigrants were defined as citizens of other countries who entered India without valid travel documents, or who remained in the country beyond the period permitted by their travel documents. They can be deported or imprisoned.

The 2003 amendment also mandated the Government of India to create and maintain a National Register of Citizens. The bill was supported by the Indian National Congress, as well as the Left parties, such as the Communist Party of India (Marxist) (CPI (M)). During the parliamentary debate on the amendment, the leader of opposition, Manmohan Singh, stated that refugees belonging to minority communities in Bangladesh and other countries had faced persecution, and requested that the government's approach to granting them citizenship be made more liberal. According to M.K. Venu, the formulation of the 2003 amendment discussed by Advani and Singh was based on the idea that Muslim groups in Pakistan and Afghanistan that had experienced persecution also needed to be treated with compassion.

1.3 AIM (S):

The aim of this Dissertation is to show the details of CAA-2019 and also in relation to the citizen of India the effect of CAA in India. The main is to look into the development of CAA in India with respect to the present scenario and also to study the current and evolved situation of the country and to find out the current states of the country and also to find out the main fact of the newly Amended Act. Which is benefit for the citizen or not study the details of Act. And why over the country are protest the newly Amended Act, is

² Says:, SuchindranathAiyerS. "Infiltrator Vote Banks under Threat from CAA, NPR, NRC." N.p., n.d. Web. 29 July 2020.

benefit for the Indian Citizen or not this dissertation aim to study detail of the Act. To explore the unknown and unlock new possibilities.

1.4 OBJECTIVE (S) :

This Dissertation sets to achieve following object :-

2 To study the particular problems.

3 Careful and details study of the Act

4 An in-depth analysis of information creat space for generating new question

5 To make concepts and understandings the main objective of research is to explore the unknown and unlock new possibilitiesian extial component of success.

6 To learn and gain a deeper understanding

7 To discover the most recent information available

8 Specific objectives deine the primary aim of the study.

9 Determining the constitutional validity of Act.

10 To identify the basic of section of specific communities from specific countries.

11 Examining economic, social and political impact.

12 To get to the bottom of the reason for protests and understanding the pattern if any

To determine whether there is a co-relation between CAA and NRC and NPR.

13.To analyse supreme count's stand on the issue.

14 To study states response in accordance with NRC.

1.5 STATEMENT OF PROBLEM :

The problem for this Dissertation is related to the concept of Citizenship Amendment Act. 2019 and its relation with NRC. To also find out whether the CAA is same as NRC and also finding lots of confusion regarding excluding the minority Muslim community in this particular Act, and also have lots of question that if the CAA is implanted is there any value of NRC or not and also the students' Organization so called AASU has said that this Act is against the Assam accord according to them the Assam accord has talk about

deportation of all illegal foreigners- predominantly Bangladeshi immigrants. And some of the hills area sixth schedule areas are asking about their land rights or protection of land rights. Like Nagaland, Manipur, Mizoram Arunachal Pradesh etc state has also raise voice not to pass bill and also NESO has protest the Act. Some of the states demand ILP in their respective state due to scare of CAA. The problem also is also in political issue like opposition party and the present govt.

1.6 SCOPE AND LIMITATION:

The scope of this Dissertation is limited to the following subject-matter

- a) Understanding the history and development of Citizenship Amendment Act and its role, advantages and disadvantages.
- b) Understanding the key challenges face to pass this bill and to implement the Act. When they want to pass under the present Govt.
- c) Analyzing the provision and legal frameworks relating to Citizenship Amendment Act.
- d) Understanding the various regulations followed in national level.

1.7 DETAILED LITERATURE REVIEW:

This Dissertation will review the following literatures for understanding the topic under study

The most commonly accepted definition of citizenship comes from the English sociologist T.H. Marshall; according to him citizenship means, “full and equal membership in a political community.” From the above stated description, citizenship denotes membership in a political community, which in our current perspective is a nation. The nation offers many facilities, privileges, and some rights to citizens. The nation also does its best for the welfare and development of citizens. They provide them educational facilities, make their lives better and in return, citizens have to follow certain rules and regulations of the country. They have to protect or use judiciously all the facilities provided by the government. Citizens are expected to be terribly loyal to their nation. They are expected not to misuse the rights, privileges, and facilities conferred by the government. Therefore, citizenship reflects a specific aspect of the relationship between people living together in a

nation. It emphasizes political allegiances and civic loyalty within the community rather than any cultural / emotional identity.

1.8 RESEARCH QUESTION:

This paper will try to find appropriate solutions of the following research questions

1. Are the earlier Act, is not serving the purpose serve new Act?
2. Does not this Act untredic with the principles laydown in the constitutions certains?
3. As not their encourage exodus to India creating population exclusisim?
4. How will CAA affect India Muslim?
5. Does CAA violate Article 14 of the India constitutions?
6. Is CAA applicabile in North-eastern states?
7. Is CAA applicabile in Assam? Why is Assam protesting?
8. How will verification of documents take place under CAA?
9. What will happen to people who cannot claim citizenship as per this Act?

1.9 HYPOTHESIS:

1. This paper makes an attempt to study and critically analyse the Citizenship Amendment Act, 2019
2. The main provisions of the act have been examined. Article 14 and the Preamble of the constitutions
- 3 To repeal the CAA are motivated by different reasons.
4. Citizenship Amendment Act, 2019 is inconsistent with the provisions of the Indian constitution and is divisive and discriminatory in nature.

1.10 RESEARCH METHODOLOGY:

The research aims to provide information in an explanatory manner i.e it explains the causes and consequences of a well-difined problem and procise conclusions are rought for an established issue, here Citizenship Amendment Act, 2019.

The paper is written using basic research technique which aims to develop knowledge, theories and predictions.

1.11 RESEARCH DESIGN/CHAPTERISATION:

The research pattern of this Dissertation paper includes the following structure;

1. Introduction, Background
2. Constitutional legislation on Citizenship
3. Politics on Citizenship
4. Main function of Citizenship Amendment Act 2019
5. Comparative Study of NRC and CAA 2019
6. Public outraged and CAA 2019
7. Court on CAA 2019
8. International reactions
9. Suggestion and Conclusion

CHAPTER- 2

CONSTITUTIONAL LEGISLATION ON CITIZENSHIP

2.1 CITIZENSHIP ACT OF 1955: PROVISIONS AND AMENDMENTS

The Citizenship Act, 1955 and its Amendments deal with the acquisition and termination of citizenship in India. Moreover, the Constitution has also provided citizenship rights for Overseas Citizen of India, Non-Resident Indians, and Persons of Indian Origin.³

Indian Polity

The term citizenship refers to the enjoyment of full membership of any community or state in which a citizen; enjoys civil and political rights. It can be defined as a legal relationship of an individual with a particular state which is expressed by pledging his loyalty towards state and by carrying out duties like paying taxes, serving in the army during need, respecting national principles and values etc.

2.2 CONSTITUTIONAL PROVISIONS FOR CITIZENSHIP

The Constituent Assembly incorporated a generalized provision through Article 11 for the Parliament to regulate the citizenship by law. However, when it adopted the Constitution it brought into force Part 2 of Constitution for Citizenship with Articles 5-11 dealing with it which states as follows:

Article 5 states that “every person” who has a domicile in the territory of India and:

- Who was born in the territory of India or
- Either of whose parents were born in the territory of India or
- Who has been ordinarily resident in the territory of India for not less than 5 years immediately preceding such commencement shall be a citizen of India

³Ashraf, A. (2015, November 20). Scroll.in., from Scroll.in: <https://scroll.in/article/769463/we-will-never-know-the-number-of-templ...>, accessed on December 22, 2019

Article 6: Rights of Citizenship of certain persons who have migrated to India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution

Article 7: Rights of Citizenship of certain migrants to Pakistan is a special provision for persons who have migrated to Pakistan after March 1, 1947, but returned to India subsequently.

Article 8: These are the Rights of Citizenship of certain persons of Indian origin residing outside India for the purpose of employment, education, and marriage

Article 9: Persons who voluntarily acquire citizenship of a foreign state will not be citizens of India.

Article 10: Every person who is a citizen of India under any provisions of this part will be subject to any law enacted by the Parliament.⁴

2.3 CITIZENSHIP ACT OF 1955 AND ITS AMENDMENTS

1. Citizenship Act of 1955 deals with the acquisition and termination of citizenship after the commencement of the Constitution. The provisions under it include:

- A person born in India after 26th January 1950 would-be citizen of India except those of children of diplomats and enemy aliens cannot be citizens of India by birth
- Any person born after 26th January 1950 would-be citizen of India subject to certain requirements, for example, either parent (mother or father) to be a citizen of India
- Certain categories of citizens can acquire citizenship by registration in the prescribed manner
- Foreigners could acquire Indian citizenship by naturalization on certain conditions
- If any territory becomes part of India, the Government of India could specify the conditions for them becoming citizens

⁴ BJP.ORG. (2019, April 8), from BJP.Org: <https://www.bjp.org/en/manifesto2019>, accessed on December 22, 2019

- Citizenship could be lost by termination, renunciation, deprivation on certain grounds
- Citizen of a Commonwealth country would have the status of a Commonwealth citizen in India

2. The Citizenship (Amendment) Act of 1986: This act specifically deals with the citizenship of the state of Assam. It mentions those illegal migrants to get citizenship to need to be registered with the Indian consulate in the prescribed format.

3. The Citizenship (Amendment) Act of 1992: According to this Act any person born outside India is considered a citizen of India by virtue of Citizenship by Descent if either of the parents was a citizen at the time of his birth.

4. The Citizenship (Amendment) Act of 2003: This Act introduces several provisions for overseas citizens regarding their registration, rights in India etc.

5. The Citizenship (Amendment) Act of 2005: This Act is based on the recommendations of the Parliamentary Standing Committee on Home Affairs. It provides for dual citizenship to PIO of 16 countries.

2.4 MODES OF ACQUISITION OF CITIZENSHIP

1. By birth: The grant of citizenship under this clause is subject to changes according to amendments in place at that time.
2. By registration: Citizenship can be acquired by registering.
3. By Descent: Similar to citizenship by descent this provision also was subjected to changes from time to time
4. By naturalization.
5. By incorporation of territory.

2.5 LOSS OF CITIZENSHIP IN INDIA

The Citizenship Act of 1955 deals with the loss of citizenship also in addition to acquisition.

Accordingly, it is carried by the following means:

1. By renunciation: Any person who has made a declaration stating his willingness to renounce the citizenship shall cease to be the citizen of India.
2. By termination: If a person voluntarily or knowingly becomes a citizen of any foreign country.

3. By deprivation.

2.6 OVERSEAS CITIZEN OF INDIA (OCI)

According to the Citizenship (Amendment) Act of 2003, an overseas citizen of India includes a person:

1. Of Indian origin being a citizen of a specified country
2. Was citizen of India immediately becoming a citizen of other country and registered as OCI by the central government

2.7 NON-RESIDENT INDIAN

An NRI is a citizen of India who holds an Indian passport and has temporarily immigrated to other countries either for employment or education or any other purpose.

2.8 Persons of Indian Origin

A PIO is a person of India origin whose parents or grandparents are citizens of India but he is not a citizen of India but of other countries.

The issue of citizenship plays a vital role in a democratic nation-state and hence citizenship is a significant principle of a democratic polity.

Content Source: M.Laxmikant

2.8 IS THE ACT AGAINST SECULARISM?

Every legislation passed in India shall not violate basic structure doctrine. Therefore any legislation that fails the test of “basic structure” is unconstitutional. In the case of S.R. Bommai v. Union of India, it was held that Secularism is a part of the “basic structure”. Therefore, any Act passed by the Parliament must not be against secularism. However, the recent amendment has only provided for non-Muslims to get citizenship if they have come before 31st December 2014, which is inimical to the idea of Secularism.

2.9 COUNTRY OF ORIGIN

The amendment has classified illegal immigrants on the basis of their country of origin. It has only allowed those immigrants who belong to Afghanistan, Bangladesh and Pakistan to get citizenship of India. It was stated in the Statement of Objects and Reasons that these Countries have a State religion as a result of which religious minorities in these nations have faced persecution. It stated that millions of citizens of undivided India were living in Pakistan and Bangladesh after the partition and hence they are given differential treatment but it has not specified the reasons for the inclusion of Afghanistan.

There is a history of persecution of Tamil Eelams, a linguistic minority in Sri Lanka, and Rohingya Muslims, a religious minority in Myanmar, who have also been facing persecution. And as a result of persecution in these countries, many people have fled to India as a refugee. Given that the objective of the amendment is to provide citizenship to migrants who are fleeing religious persecution, it is not clear why the amendment has excluded the minorities from these countries who are also facing persecution.

2.10 ARGUMENTS OPPOSING THE ACT IS THERE A VIOLATION OF ARTICLE 14?

Article 14 of the Constitution of India says that “State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” The phrase “within the territory of India” conveys that equality should be given to all persons residing in India which includes foreigners and citizens. In the case of *Indira Gandhi v Raj Narain*, the court also recognised the “Right to Equality” as one of the basic features of the Constitution. This rule is not absolute and permits classification between groups of people if there exists some rationale that serves a reasonable purpose, as was held in the case of *State of West Bengal v Anwar Ali Sarkar*. The act shall also pass the reasonable classification test as was given in the case of *State of Madras v. V.G. Row*, which underlined two principles for the test i.e firstly there should be a reasonable classification and secondly, there should be a nexus between the object sought to be achieved and legislation. Therefore, it needs to be checked whether there exists some reasonable rationale for the classification of illegal immigrants on the basis of

- their country of origin,
- religion,
- date of entry into India, and
- place of residence in India.

2.11 ARGUMENTS SUPPORTING THE ACT

The Government has clarified that Pakistan, Afghanistan and Bangladesh are Islamic Republics and hence, the Muslims living in those countries cannot be said to be persecuted. It has further assured that application from any other community will be decided on a case to case basis.

Home Minister Amit Shah has referred to Nehru-Liaquat Pact that was signed between India and Pakistan in Delhi in 1950. The Pact provided for better treatment of minorities in both countries. Home Minister said that the Pact failed to achieve its objective in protecting minorities in Pakistan, and this flaw is being remedied by the Indian Government through the amendment.

The NDA Government has argued in the Statement of Objects and Reasons that:

Millions of citizens of undivided India, after the partition between India and Pakistan on religious lines in 1947 were staying in Pakistan and Bangladesh (previously East Pakistan) from 1947. The Constitution of Pakistan, Afghanistan and Bangladesh provide for a specific State religion i.e Islam. As a result of which many persons belonging to Hindu, Jain, Sikh, Buddhist, Parsi and Christian communities have faced persecution on grounds of their religions in those countries. Some people from these communities in these countries have also fears about facing such persecution in their day-to-day life, where the right to practice, profess and propagate their religion has been obstructed. Many persons out of such fear have fled to India to seek shelter and continued to stay in India even after travel documents have expired or they have incomplete or no documents.

For reduction of period from 11 years to 5 years for the persecuted minorities in the three countries, the Government argued that imposing condition of 11 years residence to get citizenship by Naturalisation “denies them many opportunities and advantages that may

accrue only to the citizens of India even though they are likely to stay in India permanently.”

2.12 WHAT IS THE POSITION OF OVERSEAS CITIZENS OF INDIA UNDER THE ACT?

The Amendment has added that a foreigner may apply for registration as OCI if they are of Indian Origin (i.e former Citizen of India or their descendants) or the spouse of such a person is of Indian Origin. It also seeks to allow the cancellation of their OCI registration if there is a violation of any law as notified by the Central Government. However, the amendment does not provide any guidance on the nature of laws that may be notified by the Central Government for the applicability of the provision. Also, giving the Central Government power to notify such laws whose violation would lead to cancellation of OCI Card is a wide discretion that may amount to an excessive delegation by the legislature. The Supreme Court in the case of *Humdard Dawakhana v Union of India* has noted that a policy, standard or rule must be set by the legislature while delegating the power to the executing authority to give guidance, which is necessary to set limits on the authority’s powers and to avoid any arbitrariness in exercise of powers. A provision is also added to give the opportunity of being heard to the OCI cardholders before the cancellation.⁵

2.13 WAS THE BILL PASSED BY LOK SABHA?

The bill was introduced in Lok Sabha on 19th July 2016. It was then referred to a Joint Parliamentary Committee, which submitted its report on 7th January 2019. The bill was subsequently passed by the Lok Sabha on 8th January. It was referred to Rajya Sabha but consequently, due to the dissolution of 16th Lok Sabha, the bill lapsed.

⁵ Brass, P. R. (2004). Development of an Institutionalised Riot System in Meerut City, 1961 to 1982. *Economic and Political Weekly* .

CHAPTER-3

POLITICS ON CITIZENSHIP

3.1 LEGISLATIVE HISTORY

The BJP government first introduced a bill to amend the citizenship law in 2016, which would have made non-Muslim migrants from Pakistan, Afghanistan, and Bangladesh eligible for Indian citizenship. Although this bill was passed by the Lok Sabha, or lower house of Indian parliament, it stalled in the Rajya Sabha, following widespread political opposition and protests in northeast India.

The BJP reiterated its commitment to amend the citizenship act in its 2019 election campaign. It stated that religious minorities such as Hindus and Sikhs are persecuted in neighbouring Muslim-majority countries, and promised to fast track a path to citizenship for non-Muslim refugees. After the elections, the BJP government drafted a bill that addressed the concerns of its northeastern states. It excluded Arunachal Pradesh, Mizoram, Nagaland, Tripura, Meghalaya and Manipur, except for non-tribal cities exempted under pre-existing regulations. It also excluded tribal areas of Assam. The Indian government, while proposing an Amendment, said, that its bill aims to grant quicker access to citizenship to those who have fled religious persecution in neighbouring countries and have taken refuge in India.

The Bill was introduced in Lok Sabha on 19 July 2016 as the Citizenship (Amendment) Bill, 2016. It was referred to the Joint parliamentary committee on 12 August 2016. The Committee submitted its report on 7 January 2019 to Parliament. The Bill was taken into consideration and passed by Lok Sabha on 8 January 2019. It was pending for consideration and passing by the Rajya Sabha. Consequent to dissolution of 16th Lok Sabha, this Bill has lapsed.

After the formation of 17th Lok Sabha, the Union Cabinet cleared the Citizenship (Amendment) Bill, 2019, on 4 December 2019 for introduction in the parliament. The Bill was introduced in 17th Lok Sabha by the Minister of Home Affairs Amit Shah on 9 December 2019 and was passed on 10 December 2019, with 311 MPs voting in favour and 80 against the Bill.

The bill was passed by the Rajya Sabha on 11 December 2019 with 125 votes in favour and 105 votes against it. Those who voted in favour included Janata Dal (United), AIADMK, Biju Janata Dal, TDP and YSR Congress Party.

After receiving assent from the President of India on 12 December 2019, the bill assumed the status of an act. The act came into force on 10 January 2020. The implementation of the CAA began on 20 December 2019, when Union Minister Mansukh Mandaviya gave citizenship certificates to seven refugees from Pakistan.

3.2 WHO DOES IT LEAVE OUT?

Leading opposition parties say the law is discriminatory as it singles out Muslims who constitute nearly 15 percent of country's population. The government clarifies that Pakistan, Afghanistan and Bangladesh are Islamic republics where Muslims are in majority hence they cannot be treated as persecuted minorities. It also assures that the government will examine the application from any other community on a case to case basis.

3.3 WHAT IS THE GOVT'S LOGIC ON THIS?

Citing partition between India and Pakistan on religious lines in 1947, the NDA government has argued that millions of citizens of undivided India belonging to various faiths were staying in Pakistan and Bangladesh from 1947. "The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution ..

3.4 WHAT IS THE BACKGROUND OF THE LAW?

It was one of the poll promises of the NDA government. The Bill in its earlier form was passed in January 2019, ahead of the general elections. It again sought to grant Indian citizenship to the six non-Muslim communities-Hindu, Buddhist, Christian, Parsi, Jain and Sikh. It reduced the mandatory requirement of 12 years stay in India to seven years to be eligible for citizenship if they do not possess any document. The earlier Bill was referred.

3.5 WHO ARE THE OPPOSERS?

Among the main opposition against the Bill is that it is said to be violative of Article 14 of the Constitution — the Right to Equality. Congress, Trinamool Congress, CPI(M) and a few other political parties have been steadfastly opposing the bill, claiming that citizenship can't be given on the basis of religion. There has also been widespread protests across North East in Assam, Meghalaya, Manipur, Tripura, Mizoram, Nagaland and Sikkim.

3.6 WHAT ARE THE OBJECTIONS THAT HAVE COME UP?

The Act has triggered widespread protests in northeastern states where many feel that permanent settlement of illegal immigrants will disturb the region's demography and further burden resources and decrease employment opportunities for indigenous people. A large section of people and organisations opposing the Act also say it will nullify the provisions of the Assam Accord of 1985, which fixed March 24, 1971, as the cut-off date

3.7 WHICH STATES WILL BE AFFECTED?

The Act would have impacted all 7 North Eastern states. However after several rounds of discussion, the Centre has agreed to provide safeguards for NE States. It says, “Nothing in this section shall apply to tribal areas of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under the ‘Inner Line Permit’ notified under the Bengal Eastern Frontier Regulation, 1873.” These areas require ..

3.8 HOW MANY WILL IT ADD TO INDIA'S POPULATION?

There are no official figures other than records furnished by the Intelligence Bureau before the JPC saying there are 31,313 persons belonging to these minority community living in India on Long Term Visa. They had sought refuge here on grounds of religious persecution. Home Minister Amit Shah in Parliament said the bill will give a new dawn to lakhs and crores of people. Parties like Shiv Sena have been asking for an exact number

3.9 IMMIGRANTS AND REFUGEES

A very large number of illegal immigrants, the largest numbers of whom are from Bangladesh, live in India. The Task Force on Border Management quoted the figure of 15 million illegal migrants in 2001. In 2004, the United Progressive Alliance (UPA) government stated in Parliament that there were 12 million illegal Bangladeshi migrants in India. The reasons for the scale of migration include a porous border, historical migration patterns, economic reasons, and cultural and linguistic ties. Many illegal migrants from Bangladesh had eventually received the right to vote. According to Niraja Jayal, this enfranchisement was widely described as an attempt to win elections using the votes of the illegal migrants from Bangladesh. Bangladeshi scholar Abul Barkat estimated that over 11 million Hindus have left Bangladesh for India between 1964 and 2013, at a rate of 230,612 annually. The reasons were religious persecution and discrimination, especially at the hands of the post-independence military regimes. An unknown number of Pakistani Hindu refugees also live in India. An estimated 5,000 refugees arrive per year, citing religious persecution and forced conversion.

India is not a signatory to either the 1951 UN Refugee Convention or the 1967 Protocol. It does not have a national policy on refugees. All refugees are classed as "illegal migrants". While India has been willing to host refugees, its traditional position formulated by Jawaharlal Nehru is that such refugees must return to their home countries after the situation returns to normal. According to the US Committee for Refugees and Immigrants, India hosts refugees in excess of 456,000,¹ with about 200,000 from "non-neighbouring" countries hosted via the UNHCR. According to Shuvro Sarker, since the 1950s and particularly since the 1990s, the Indian governments under various political parties have studied and drafted laws for the naturalisation of refugees and asylum seekers. These drafts have struggled with issues relating to a mass influx of refugees, urban planning, cost of basic services, the obligations to protected tribes, and the impact on pre-existing regional poverty levels within India.

3.10 EXCLUSION OF OTHER PERSECUTED COMMUNITIES

The Act does not include migrants from non-Muslim countries fleeing persecution to India, Rohingya Muslim refugees from Myanmar, Hindu refugees from Sri Lanka, and Buddhist refugees from Tibet, China.

The Act does not mention Tamil refugees from Sri Lanka. The Sri Lankan Tamils were allowed to settle as refugees in Tamil Nadu in 1980s and 1990s due to systemic violence from the Sinhalese of Sri Lanka. They include 29,500 "hill country Tamils" (Malaiha).

The Act does not provide relief to Tibetan Buddhist refugees, who came to India in the 1950s and 1960s due to the Chinese invasion of Tibet. Their status has been of refugees over the decades. According to a 1992 UNHCR report, the then Indian government stated that they remain refugees and do not have the right to acquire Indian nationality.

The Act does not address Rohingya Muslim refugees from Myanmar. The Indian government has been deporting Rohingya refugees to Myanmar.

3.11. EXEMPTION OF CERTAIN CLASS OF FOREIGNERS

(1) Persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before 31 December 2014

(a) without valid documents including passport or other travel documents and who have been exempted under rule 4 from the provisions of rule 3 of the *Passport (Entry into India) Rules, 1950* or

(b) with valid documents including passport or other travel document and the validity of any of such documents has expired,⁶

are hereby granted exemption from the application of provisions of the *Foreigners Act, 1946*, and the orders made thereunder in respect of their stay in India without such documents or after the expiry of those documents, as the case may be

⁶ The Telegraph. (2018, August 5). Retrieved December 22, 2019, from The Telegraph: <https://www.telegraphindia.com/opinion/sinister-myth/cid/1078310>, accessed on December 22, 2019

The Rules had been further amended in 2016 by adding Afghanistan to the list of countries.

Exemptions were granted to northeastern regions of India in the clause (4) of section 6B:

(4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.

3.12 EXCLUSION OF PERSECUTED MUSLIMS

Muslims from Pakistan, Bangladesh and Afghanistan are not offered eligibility for citizenship under the new Act. Critics have questioned the exclusion. The amendment limits itself to the Muslim-majority neighbours of India and takes no cognisance of the persecuted Muslims of those countries. According to *The Economist*, if the Indian government was concerned about religious persecution, it should have included Ahmadiyyas – a Muslim sect who have been "viciously hounded in Pakistan as heretics", and the Hazaras – another Muslim sect who have been murdered by the Taliban in Afghanistan. They should be treated as minorities. India's minister of minority affairs, Mukhtar Abbas Naqvi defended the exclusion of the Ahmadiyyas by saying that India does not consider them as non-Muslims. A landmark 1970 judgement from the Kerala High Court deemed Ahmadiyyas to be Muslims by the Indian law. Naqvi added that India has provided refuge to different persecuted sects at different times, and Ahmadiyyas will not be forgotten.

Pakistan, Afghanistan, and Bangladesh are Muslim-majority countries that have modified their constitutions in recent decades to declare Islam their official state religion. Therefore, according to the Indian government, Muslims in these Islamic countries are "unlikely to face religious persecution". The government says that Muslims cannot be "treated as persecuted minorities" in these Muslim-majority countries. The BBC says that while these countries have provisions in their constitution guaranteeing non-Muslims rights, including the freedom to practice their religion, in practice non-Muslim populations have experienced discrimination and persecution.

3.13 SELECTIVELY ADDRESSING RELIGIOUS PERSECUTION

The Exemption section in the Amendment of the Act does not give attention to the refugees from all the neighboring countries. Of all the countries in the

border China, Bhutan, Nepal, Pakistan (in the North or North-West), and Bangladesh and Myanmar (in the East) and Sri Lanka (in the South), this Act mentions Afghanistan, Bangladesh and Pakistan only, that is the Muslim majority countries in the border only are being addressed by design in the Act.

3.14 BJP HAD PROMISES DURING ELECTION

The Bharatiya Janata Party (BJP), which leads the Indian government, had promised in previous election manifestos to offer Indian citizenship to members of persecuted religious minorities who had migrated from neighbouring countries. Under the 2019 amendment, migrants who had entered India by 31 December 2014, and had suffered "religious persecution or fear of religious persecution" in their country of origin, were made eligible for citizenship. The amendment also relaxed the residence requirement for naturalisation of these migrants from twelve years to six. According to Intelligence Bureau records, there will be just over 30,000 immediate beneficiaries of the bill.

The amendment has been criticized as discriminating on the basis of religion, particularly for excluding Muslims. The Office of the United Nations High Commissioner for Human Rights (OHCHR) called it "fundamentally discriminatory", adding that while India's "goal of protecting persecuted groups is welcome", this should be accomplished through a non-discriminatory "robust national asylum system". Critics express concerns that the bill would be used, along with the National Register of Citizens (NRC), to render many Muslim citizens stateless, as they may be unable to meet stringent birth or identity proof requirements. Commentators also question the exclusion of persecuted religious minorities from other regions such as Tibet, Sri Lanka and Myanmar. The Indian government said that since Pakistan, Afghanistan and Bangladesh have Islam as their state religion, it is therefore "unlikely" that Muslims would "face religious persecution" there. However, certain Muslim groups, such as Hazaras and Ahmadis, have historically faced persecution in these countries.

The passage of the legislation caused large-scale protests in India. Assam and other northeastern states witnessed violent demonstrations against the bill over fears that granting Indian citizenship to refugees and immigrants will cause a loss of their "political rights, culture and land rights" and motivate further migration from Bangladesh. In other parts of India, protesters said that the bill discriminated against Muslims, and demanded

that Indian citizenship be granted to Muslim refugees and immigrants as well. Major protests against the Act were held at some universities in India. Students at Aligarh Muslim University and Jamia Millia Islamia alleged brutal suppression by the police. The protests have led to the deaths of several protesters, injuries to both protesters and police officers, damage to public and private property, the detention of hundreds of people, and suspensions of local internet mobile phone connectivity in certain areas. Some states announced that they would not implement the Act. In response, the Union Home Ministry said that states lack the legal power to stop the implementation of the CAA.

4.15 POLITICS-VOTE BANK

Vote bank Politics has played a big role in India since the beginning. It is a way through which political parties target votes for their tenure. Since the BJP has implemented the CAB, the opposition parties have left no opportunity to target the Muslim community and propagate that the said bill is to take away their citizenship. Nevertheless, their sole purpose has been to spread a sense of fear among the Muslim community against the Hindus, and to further divide the Hindu Muslims.

It has been seen that dissenting opinion has been received from the states which are non-BJP ruled, and the very reason for which is the vote bank politics. The opposition has gotten a chance to turn to the pseudo secularism era. For instance, bordering states like West Bengal and Assam, have for a long time provided illegal immigrants with Indian identification cards and in return, the party has received a compulsory vote from those people.

In west Bengal, Muslims have shown faith in their Chief Minister, Mamta Banerjee as she went against the implementation of the bill in her state and has won the heart of the Muslims for the purpose of vote bank. Congress has always aimed at consolidating Muslim votes. S.L Harappa, a renowned Kannada novelist, mentions how congress has facilitated illegal migration of Muslims to Assam from the then East Pakistan.

Not only this, even after Bangladesh was established, it did not stop and the left-wing parties that governed West Bengal permitted migrants to enter illegally which eventually allowed them to scatter all over the country. The imminent danger to Congress, CPM, TMC, SP, BSP, RJD and others who allow and promote illegal immigrants is clearly

evident.

They tend to issue them Indian identities, Aadhaar cards, even addresses and voting cards so as to increase their vote banks. Count of these immigrants is projected to be over 2 crores. The CAA has ignited the fire between religions and the opposition parties have taken advantage of the bill and has tried to win the hearts of the communities who have dissented the bill and who have been going for protests against the implementation of the bill.

CHAPTER-4

MAIN FUNCTION OF CITIZENSHIP AMENDMENT

ACT 2019

4.1 THE CITIZENSHIP AMENDMENT ACT (CAA): MEANING, KEY FEATURES, AND OBJECTIVES

- Citizenship by Birth.
- Citizenship by Descent.
- Citizenship by Registration.
- Citizenship by Naturalization.
- Citizenship by incorporation of territory.

4.2 EXPLAIN IN DETAILS CITIZENSHIP AMENDMENT ACT 2019 (CAA)

The Citizenship Amendment Bill (CAA Bill) was first introduced in 2016 in Lok Sabha by amending the Citizenship Act of 1955. This bill was referred to a Joint Parliamentary Committee, whose report was later submitted on January 7, 2019. The Citizenship Amendment Bill was passed on January 8, 2019, by the Lok Sabha which lapsed with the dissolution of the 16th Lok Sabha. This Bill was introduced again on 9 December 2019 by the Minister of Home Affairs Amit Shah in the 17th Lok Sabha and was later passed on 10 December 2019. The Rajya Sabha also passed the bill on 11th December.

The CAA was passed to provide Indian citizenship to the illegal migrants who entered India on or before 31st December 2014. The Act was passed for migrants of six different religions such as Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan. Any individual will be considered eligible for this act if he/she has resided in India during the last 12 months and for 11 of the previous 14 years. For the specified class of illegal migrants, the number of years of residency has been relaxed from 11 years to five years.

4.3 THE AMENDMENTS

The Citizenship (Amendment) Act of 2019 amended the Citizenship Act, 1955, by inserting the following provisos in section 2, sub-section (1), after clause (b):

Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made there under, shall not be treated as illegal migrant for the purposes of this Act;

A new section 6B was inserted (in the section concerning *naturalisation*), with four clauses, the first of which stated:

(1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

The "exempted" classes of persons were previously defined in the Foreigners (Amendment) Order, 2015 (issued under the Foreigners Act, 1946):

4.4 WHAT IS CITIZENSHIP?

- Citizenship defines the relationship between the nation and the people who constitute the nation.
- It confers upon an individual certain rights such as protection by the state, right to vote, and right to hold certain public offices, among others, in return for the fulfilment of certain duties/obligations owed by the individual to the state.

Citizenship in India

- The Constitution of India provides for single citizenship for the whole of India.
- Under Article 11 of the Indian Constitution, Parliament has the power to regulate the right of citizenship by law. Accordingly, the parliament had passed

the Citizenship act of 1955 to provide for the acquisition and determination of Indian Citizenship.

- Entry 17, List 1 under the Seventh Schedule speaks about Citizenship, naturalization, and aliens. Thus, Parliament has exclusive power to legislate with respect to citizenship.
- Until 1987, to be eligible for Indian citizenship, it was sufficient for a person to be born in India.
 - Then, spurred by the populist movements alleging massive illegal migrations from Bangladesh, citizenship laws were first amended to additionally require that at least one parent should be Indian.

In 2004, the law was further amended to prescribe that not just one parent be Indian; but the other should not be an illegal immigrant.

To know more about citizenship in India, refer to the linked page.

4.4 WHO IS AN ILLEGAL MIGRANT IN INDIA?

Under the Act, an illegal migrant is a foreigner who:

- Enters the country without valid travel documents like a passport and visa, or
- Enters with valid documents, but stays beyond the permitted time period.

Illegal migrants may be put in jail or deported under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920.

Read about Migration & India in the linked article.

The scenario before the passing of the Act

- Under the existing laws, an illegal migrant is not eligible to apply for acquiring citizenship. They are barred from becoming an Indian citizen through registration or naturalization.
 - The Foreigners Act and the Passport Act debar such a person and provide for putting an illegal migrant into jail or deportation.

A person can become an Indian citizen through registration.

- Section 5 (a) of Citizenship act of 1955: A person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
- And they should have lived in India continuously for 12 months before submitting an application for citizenship.

Under the Citizenship Act, 1955, one of the requirements for citizenship by naturalization is that the applicant must have resided in India during the last 12 months, as well as for 11 of the previous 14 years.

What the Act intends to do?

- The Citizenship Amendment Act 2019 aims to make changes in the Citizenship Act, the Passport Act, and the Foreigners Act if the illegal migrants belong to religious minority communities from three neighbouring countries of Bangladesh, Pakistan, and Afghanistan.

4.5 FEATURES OF CAA 2019

- The Act seeks to amend the Citizenship Act, 1955 to make Hindu, Sikh, Buddhist, Jain, Parsi, and Christian illegal migrants from Afghanistan, Bangladesh, and Pakistan, eligible for citizenship of India. In other words, the Act intends to make it easier for persecuted people from India's neighbouring countries to become citizens of India.
 - The legislation applies to those who were "forced or compelled to seek shelter in India due to persecution on the ground of religion". It aims to protect such people from proceedings of illegal migration.

The amendment relaxes the requirement of naturalization from 11 years to 5 years as a specific condition for applicants belonging to these six religions.

The cut-off date for citizenship is December 31, 2014, which means the applicant should have entered India on or before that date.

The Act says that on acquiring citizenship:

- Such persons shall be deemed to be citizens of India from the date of their entry into India, and
- All legal proceedings against them in respect of their illegal migration or citizenship will be closed.

It also says people holding Overseas Citizen of India (OCI) cards – an immigration status permitting a foreign citizen of Indian origin to live and work in India indefinitely – can lose their status if they violate local laws for major and minor offences and violations.

Exception

- The Act adds that the provisions on citizenship for illegal migrants will not apply to the tribal areas of Assam, Meghalaya, Mizoram, and Tripura, as included in the Sixth Schedule of the Constitution.
 - These tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.

It will also not apply to the areas under the Inner Line Permit under the Bengal Eastern Frontier Regulation, 1873.

4.6 THE CITIZENSHIP AMENDMENT ACT (CAA):MEANING, KEY FEATURES, OBJECTIVES

The Citizenship Amendment Act (CAA), 2019 has been passed by the Lok Sabha on 9 December 2019. The purpose of this bill is to give Indian citizenship to illegal migrants of 6 communities i.e. Hindu, Sikh, Buddhist, Christian, Parsi, and Jain) belong to Bangladesh, Pakistan, and Afghanistan.

- India is a secular, sovereign and peace-loving country. Perhaps it is the only country in the world that has justified the slogan of 'Unity in diversity'. Perhaps this is why citizens of many countries want Indian citizenship.
- The Citizenship Amendment Bill, 2019 has been passed by the Lok Sabha on 9th December 2019. This bill is signed by the President on 12 December 2019 that is

why it has become as act now. Let us know in this article; what is this act, what are its features and Why is it opposed by some political parties?

4.7 WHAT IS CITIZENSHIP AMENDMENT ACT, (CAA) 2019?

The Citizenship Amendment Act, 2019 seeks to provide Indian citizenship to illegal refugees from 6 communities coming from Pakistan, Bangladesh, and Afghanistan.

These 6 communities include; Hindu, Buddhist, Sikh, Christian, Jain, and Parsi. Worth to mention that Illegal migrants can be imprisoned or deported under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920. These two Acts empower the central government to check the entry, exit and residence of foreigners within India.

4.8 WHAT IS THE CUT-OFF DATE FOR INDIAN CITIZENSHIP?

The cut-off date for citizenship is December 31, 2014, which means the applicant should have intruded into India on or before this date.

The intruders are assumed to those who were “forced or compelled to take shelter in India due to persecution on the ground of their religion” in their native country.

4.9 WHAT DOES THE CITIZENSHIP AMENDMENT ACT, 1955 SAY?

The Citizenship Amendment Bill, 1955 describes 5 conditions for obtaining citizenship of India, such as

1. Citizenship by Birth
2. Citizenship by Descent
3. Citizenship by Registration
4. Citizenship by Naturalization
5. Citizenship by incorporation of territory

4.10 CITIZENSHIP ACT OF 1955: PROVISIONS AND AMENDMENTS

The Citizenship Amendment Bill, 1955 made it mandatory for a person to stay in India for at least 11 years to acquire citizenship naturally, which was later reduced to 6 years, but in the Citizenship (Amendment) Act, 2019, this period reduced to 5 years.

4.11 KEY FEATURES OF CITIZENSHIP AMENDMENT ACT, 2019

1. Under the Citizenship Act 1955, a person may be given an OCI card, if he is of Indian origin (e.g., a former citizen of India or their descendants) or the spouse of a person of Indian origin. Now the Act of 2019 gives the facility to OCI cardholder to travel in India, work, and study in the country.

2. The Citizenship (Amendment) Bill, 2016 says that the citizenship of OCI cardholders can be cancelled on 5 grounds;

a. Showing Constitution of India disaffection to the

b. Registration through fraud

c. Engaging with the enemy during war.

d. Damaging the sovereignty of India

e. Sentenced to imprisonment for two years or more within five years of registration as OCI.

But the Citizenship (Amendment) Bill, 2019 added one more ground of the cancellation i.e. if the OCI has violated any law that is in force in the country.

3. The Citizenship (Amendment) Act, 2019 says that on acquiring citizenship:

(a). Such persons shall be deemed to be citizens of India from the date of their entry (on or before December 31, 2014) into India, and

(b). All legal proceedings against illegal migrants related to their illegal migration or citizenship will be closed.

However, the bill will not give these benefits to the illegal migrants of tribal areas of Assam, Meghalaya, Mizoram, and Tripura.

4. The Citizenship Amendment Act, 2016 provided that these illegal migrants of (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians communities of Afghanistan, Bangladesh, and Pakistan must stay at least 6 years in India before applying for Indian citizenship through naturalisation.

But the current Citizenship (Amendment) Act 2019 would reduce this period to 5 years from 6 years.

4.12 WHY THIS BILL IS OPPOSED?

Basically this bill is opposed because it does not give citizenship to illegal migrants of muslim community from these 3 countries. Another reason behind its criticism is that it violates the provisions of article 14 of the Indian Constitution.

So these were some provisions of the Citizenship Amendment Act, 2019 which gives Indian citizenship to illegal migrants of 3 countries.

However, some people are arguing that this amendment is a violation of Article 14 of the Constitution as it opposes discrimination with anyone based only on caste, religion, sex, and place, etc. Hopefully, the government will take the right decision after listening to all sections of the country.

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Citizenship Act of 1955: Provisions and Amendments

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- Key Features of Citizenship Amendment Act, 2019

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c. Engaging with the enemy during war.

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Basically this bill is opposed because it does not give citizenship to illegal migrants of muslim community from these 3 countries. Another reason behind its criticism is that it violates the provisions of article 14 of the Indian Constitution.

So these were some provisions of the Citizenship Amendment Act, 2019 which gives Indian citizenship to illegal migrants of 3 countries.

However, some people are arguing that this amendment is a violation of Article 14 of the Constitution as it opposes discrimination with anyone based only on caste, religion, sex, and place, etc. Hopefully, the government will take the right decision after listening to all sections of the country.

WHAT IS THE CITIZENSHIP (AMENDMENT) ACT, 2019?

The Citizenship (Amendment) Act, 2019 seeks to amend the Citizenship Act, 1955 by giving citizenship rights to illegal immigrants, belonging to certain religious minorities who have entered into India on or before 31st december 2014, after facing persecution in the countries of Pakistan, Afghanistan and Bangladesh. It has also relaxed the time limit for getting Citizenship by Naturalisation from eleven years to five years for these communities. The amendment has also made new provisions regarding OCI cardholders.

Investigation Bureau, from his records, gave a count on 31,313 people who are going to be the immediate beneficiaries after this amendment, among whom Hindus constituted the largest chunk, 25,447, followed by Sikhs at 5,807, Christians at 56, and Buddhists and Parsis numbering only two each.

It was passed by the Lok Sabha on 10th December and by Rajya Sabha on 11th, and finally after receiving the assent of the President on 12th December has become an Act. However, it is yet to come into force subject to the notification of the government.

4.15 WHICH STATES ARE GIVEN EXEMPTIONS?

Seven North-eastern states have been given exemptions from the amended provisions. The Act says “Nothing in this section shall apply to tribal areas of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under the ‘Inner Line Permit’ (ILP) notified under the Bengal Eastern Frontier Regulation, 1873.” The tribal areas that are excluded include Karbi Anglong in Assam, Garo Hills in Meghalaya, Chakma district in Mizoram, and Tribal Areas district in Tripura. The areas that fall under the “Inner Line Permit” are Arunachal Pradesh, Mizoram and Nagaland. This means that to enter these areas or pass through them, the Indians from other states would have to get “Inner Line Permit. It is being feared that Manipur might get affected most due to the Amendment, therefore, Home Minister Amit Shah has

announced to bring Manipur under the ILP. However, Chief Minister of Sikkim P S Tamang had written to Amit Shah asking for an exemption from the Amendment, underlining the Constitutional safeguard under Article 371(F) which governs the state of Sikkim and provides it special status.

4.16 WHO ALL ARE LEFT OUT?

The amendment has left out illegal immigrants belonging to the Muslim Community of Afghanistan, Pakistan and Bangladesh. Although Muslims constitute the largest minority religion of India, they have not been given rights to acquire citizenship similar to the non-muslim communities. It has also not recognised Sri Lankan Tamils and Rohingya Muslims in Myanmar who face religious persecution in their countries. Also, it has no provision for Muslim sects such as Ahmadiya and Shia who also face persecution in Pakistan.

4.17 WHO ALL ARE COVERED UNDER THE ACT?

The amendment covers illegal immigrants belonging to six communities, who are Hindus, Sikhs, Jains, Parsis, Christians and Buddhists from Afghanistan, Pakistan and Bangladesh, and who have entered into India on or before 31st December 2014. Persons belonging to these communities who have entered into India illegally (i.e. without passport/other documents or have been staying beyond the permitted period) would be entitled to get Indian Citizenship. In 2015, changes were also done in the Foreigners Act and Passports Act to allow non-muslims refugees from these countries to stay back in India even if they entered without valid documents. The government has favoured these communities on the basis that these are persecuted minorities in the three Countries.

4.18 ANALYSIS

The Act has amended the Citizenship Act, 1955 to give eligibility for Indian citizenship to illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, and who entered India on or before 31 December 2014. The Act does not mention Muslims. According to Intelligence Bureau records, the immediate beneficiaries of the Amended Act will be 31,313 people, which include 25,447 Hindus, 5,807 Sikhs, 55 Christians, 2 Buddhists and 2 Parsis.

Under the act, one of the requirements for citizenship by naturalisation is that the applicant must have lived in India during the last 12 months, and for 11 of the previous 14 years. The bill relaxes this 11-year requirement to 5 years for persons belonging to the same six religions and three countries. The bill exempts the tribal areas of Assam, Meghalaya, and Tripura from its applicability. It also exempts the areas regulated through the Inner Line Permit, which include Arunachal Pradesh, Mizoram and Nagaland. The inclusion of Manipur in Inner Line Permit was also announced on 9 December 2019.

The bill includes new provisions for cancellation of the registration of Overseas Citizenship of India (OCI) if there are any violations of any law of India. It also adds the opportunity for the OCI holder to be heard before the cancellation.

CHAPTER -5

COMPARATIVE STUDY OF NRC AND CAA 2019

5.1 RELATIONSHIP TO NRC

The National Register of Citizens is a registry of all legal citizens, whose construction and maintenance was mandated by the 2003 amendment of the Citizenship Act. As of January 2020, it has only been implemented for the state of Assam, but the BJP has promised its implementation for the whole of India in its 2019 election manifesto. The NRC documents all the legal citizens so that the people who are left out can be recognized as illegal immigrants (often called "foreigners"). The experience with Assam NRC shows that many people were declared "foreigners" because their documents were deemed insufficient.

In this context, there are concerns that the present amendment of the Citizenship Act provides a "shield" to the non-Muslims, who can claim that they were migrants who fled persecution from Afghanistan, Pakistan or Bangladesh, while the Muslims do not have such a benefit. Such a claim may be possible only for people in the border states who have some ethnic resemblance to the people of Afghanistan, Pakistan or Bangladesh, but not to the people of interior states. Muslim leaders have interpreted the CAA–NRC package in precisely these terms, viz., that the Muslims in the country would be targeted (by considering documents as insufficient) as potential foreigners, leaving out all non-Muslims.⁷

In an interview to India Today, Home Minister Amit Shah offered reassurance that no Indian citizen needs to worry. "We will make special provisions to ensure that no Indian citizen from minority communities is victimized in the NRC process." But the Indian Express said that the purpose of the NRC is precisely to identify the Indian citizens. So these references to "Indian citizens" remain unexplained.

CAA and NRC Difference: The newly amended citizenship act (CAA) has aroused fear among Indian citizens that it will deny citizenship to the existing Muslim minority

⁷ Says:, SuchindranathAiyerS. "Infiltrator Vote Banks under Threat from CAA, NPR, NRC." N.p., n.d. Web. 29 July 2020.

communities in India. The CAB bill aims to provide Indian citizenship to non-Muslim minorities who faced religious persecution in Pakistan, Bangladesh and Afghanistan.

The passing of the CAB bill raised a lot of questions like- what is CAA, how is it different from NRC, will it be discriminatory against the Muslim Community and will it lead to deportation of the minority communities from India. The Union Home Ministry released a set of answers to the frequently asked questions (FAQs) on the CAB bill on December 17, 2019 to clear the doubts surrounding the CAA law. The Ministry stated that the amended citizenship act will not affect any Indian citizen, including Muslims.

Full list of Frequently Asked Questions on CAA⁸

5.2 PROTESTS

Main article: Citizenship Amendment Act protests

The passage of the Act triggered different types of protests and criticisms. Violent protests erupted in Assam, where the protesters maintained that the new provisions of this Act are against prior agreements such as the Assam Accord, and that they would cause a "loss of political rights and culture". The India-Japan summit in Guwahati, which was supposed to be attended by Shinzō Abe was cancelled. The UK, USA, France, Israel and Canada issued travel warnings for people visiting India's north-east region, telling their citizens to "exercise caution".

In other parts of India, political and student activists protested that the law "marginalizes Muslims, is prejudicial against Muslims" and sought that Muslim migrants and refugees should also be granted Indian citizenship per its secular foundations. The protesters demanded that the law should grant Indian citizenship to Muslim immigrants and refugees too.

Protests against the bill were held in several metropolitan cities across India, including Kolkata, Delhi, Mumbai, Bengaluru, Hyderabad, and Jaipur. Rallies were also held in various Indian states of West Bengal, Punjab, Uttar Pradesh, Karnataka, Tamil Nadu, Gujarat, Telangana, Bihar, Maharashtra, Kerala and Karnataka. 27 people were killed by police firing guns in the whole of India.

⁸ Hebbar, Nistula. "CAA Is Perfectly Legal and Constitutional, Says Law Minister Ravi Shankar Prasad." N.p., 29 Dec. 2019. Web. 29 July 2020.

Various cities around the world, including New York, Washington D. C. Melbourne, Paris, Berlin, Geneva, Barcelona, San Francisco, Tokyo, Helsinki, and Amsterdam, witnessed protests against the Act and the police brutality faced by Indian protesters.

Kerala human chain was formed by approximately 6 to 7 million people and extended for a distance of 700 kilometres⁹

Students from various universities like Jamia Millia Islamia, Aligarh Muslim University, Nadwa College, Jawaharlal Nehru University, IIT Kanpur, IIT Madras, Jadavpur University, Tata Institute of Social Sciences, IISc, Pondicherry University, and IIM Ahmedabad also held protest. More than 25 student associations from all over India joined protest. On 15 December, police forcefully entered the campus of Jamia Millia Islamia university, where protests were being held, and detained the students. Police used batons and tear gas on the students. More than a hundred students were injured and an equal number were detained. The police action was widely criticized, and resulted in protests across the country.

Muslims all over India came out to protest the CAA–NRC package with a renewed assertion of their identity as Indians. Muslim women started protest at Shaheen Bagh on 15 December 2019 start as an ongoing 24/7 sit-in peaceful protest. The protesters at Shaheen Bagh have blocked a major highway¹ in New Delhi using non-violent resistance for more than 51 days now as of 5 February 2020. On 24 February, violent clashes occurred during the North East Delhi riots in which seven people were killed and more than a hundred injured. The death toll rose to 42 within 36 hours, with 250 people getting injured.

5.3 INDIAN GOVERNMENT RESPONSE

On 16 December, after the protests entered the fifth day, Prime Minister Narendra Modi appealed for calm in a series of tweets saying "No Indian has anything to worry regarding this act. This act is only for those who have faced years of persecution outside and have no other place to go except India". As CAA protests raised concerns on combined effects of CAA with NRC, the government has sought to downplay its narrative

⁹ In The Supreme Court Of India Writ Jurisdiction Writ . N.p., n.d. Web. 29 July 2020.

on NRC, with both the PM Narendra Modi and Home Minister Amit Shah stating that there has been no talk on pan-Indian NRC in their government for now, and neither the cabinet nor the legal department has discussed it.¹⁰

Considering Violence and damage to public properties during demonstration, on 19 December, police banned protests in several parts of India with the imposition of section 144 which prohibits the gathering of more than 4 individuals in a public space as being unlawful, namely, parts of the capital Delhi, Uttar Pradesh, and Karnataka, including Bangalore. Police in Chennai denied permission for marches, rallies or any other demonstration. Internet services were shutdown in several parts of Delhi. As a result of defining the ban, thousands of protesters were detained, including several opposition leaders and activists such as Ramachandra Guha, Sitaram Yechury, Yogendra Yadav, Umar Khalid, Sandeep Dikshit, Tehseen Poonawalla and D Raja.

5.4 RALLIES IN SUPPORT

Student groups such as those from the Akhil Bharatiya Vidyarthi Parishad – a student wing of the Hindu nationalist Rashtriya Swayamsevak Sangh, held rallies in support of the amended Citizenship Act. Rallies in support of the Amendment Act were led by BJP leaders in West Bengal, who alleged that the state government blocked them. They also accused the Chief Minister Mamata Banerjee's party members of misinforming the state's residents about the new law. Similarly, some 15,000 people joined a BJP-organised rally in support of the Act in Rajasthan. On 20 December 2019, scores of people held demonstrations in Central Park, Connaught Place, New Delhi in support of the Act. Hundreds of people gathered in Pune, forming a human chain, in support of CAA, on 22 December. ABVP members held a rally in support of CAA and NRC in Kerala. Hundreds of citizens were out on the streets in support of the citizenship law in Bangalore. Members of the Social Democratic Party of India, linked to the Islamist

¹⁰ Preliminary Counter Affidavit On Behalf Of Union Of India, 2019
https://images.assettype.com/barandbench/2020-03/ce48cef8-485a-4f2f-8026-4882405092f8/Central_Government_CAA_Counter_Affidavit.pdf

militant organization Popular Front of India, were paid Rs.10000 to attack leaders supporting CAA in Bengaluru according to the Police¹¹

Jay Kholiya, ex-Member and Officer Bearer of ABVP Maharashtra had resigned from his office during these protests citing "Ideological Differences". In Assam, ABVP's National Executive Moon Talukdar also had joined Anti-CAA Protests. He also announced that around 800 members would resign in opposition to the government's move to implement the Citizenship (Amendment) Act (CAA).

5.5 REFUGEES

Hindu refugee families in Assam, living since the 1960s in a refugee camp and who had been denied Indian citizenship so far, said that the Amendment had "kindled hope" at first. They added that the recent protests against the Act and demands for its cancellation have made them fearful of the future. In New Delhi, about 600 refugees from Pakistan living in a camp consisting of tiny shanties celebrated the new law. A delegation of Sikh refugees who had arrived from Afghanistan three decades ago thanked the Indian government for amending the citizenship law. They stated the Amended law would allow them to finally gain Indian citizenship and "join the mainstream".

Some Rohingya Muslim refugees in India were not optimistic about the Amendment and feared they would be deported. Other Rohingya refugees expressed gratitude at having been allowed to stay in India, but did not make any comments specific to the Act lest they provoke a backlash. They said that local police had asked them not to protest against the Act.

More than 200 families have arrived in the Indian state of Punjab with all their belongings after the law was enacted.

5.6 POLITICAL AND LEGAL CHALLENGE

The bill was opposed by the Indian National Congress, who said it would create communal tensions and polarise India. The Chief Ministers of the Indian states

¹¹ Report Of The Joint Committee On The Citizenship (Amendment) Bill, 2016, www.prsindia.org/sites/default/files/bill_files/Joint%20committee%20report%20on%20citizenship%20%28A%29%20bill.pdf.

of Madhya Pradesh, Chhattisgarh, West Bengal, Punjab, Kerala and Rajasthan and union territory of Puducherry – all led by non-BJP governments – said they will not implement the law. According to the Union Home Ministry, states lack the legal power to stop the implementation of CAA. The Ministry stated that "the new legislation has been enacted under the Union List of the 7th Schedule of the Constitution. The states have no power to reject it". Modi stated on 21 December that the NRC had only been implemented in Assam to follow a directive from the Supreme Court of India, and that there had been no decision taken to implement it nation-wide.¹²

The Indian Union Muslim League petitioned the Supreme Court of India to declare the bill illegal. The royal family of Tripura also filed a petition in the Supreme Court against the bill. The first hearing by the Supreme Court of India on 60 petitions challenging the Act was on 18 December 2019. During the first hearing, the court declined to stay implementation of the Citizenship (Amendment) Act, 2019. On 22 January 2020, around 143 petitions, including several petitions filed after 18 December 2019 were heard. Court again declined the request for stay. Bench, presided over by Chief Justice of India SA Bobde indicated that the matter may be referred to a larger bench. a as the next date of hearing. The next hearing was scheduled on 21 April 2020.

5.7 COMMENTARY AND PETITIONS

The foreign intelligence agency of India, R&AW, had expressed concern while deposing in front of the joint parliamentary committee, and had stated that the bill could be used by agents of the foreign intelligence agencies to infiltrate legally into India. Former National Security Advisor Shiv Shankar Menon called the incident a self inflicted goal that has isolated India from the International community.

Harish Salve, former Solicitor General of India, said that the bill does not violate Article 14, Article 25 and Article 21 of the Constitution of India.

A group of prominent individuals and organisations from around 12 countries representing minorities of Bangladesh released a joint statement in which they described the Act as "humanitarian" provision through which India has "partially fulfilled" its obligations

¹² NDTV Harish Salve On Citizenship Bill Youtube, commentary by Sreenivasan Jain, 11 december 2019, <https://www.youtube.com/watch?v=VgiFqMrCxPU>

towards the minorities of Bangladesh, Pakistan and Afghanistan. The National Sikh Front – a group representing the Sikhs in Jammu and Kashmir, stated that it supports the Act because it will help the Sikh refugees in India who left Afghanistan.¹³

A petition opposing the bill was signed by more 1,000 Indian scientists and scholars. The petition stated that "The use of religion as a criterion for citizenship in the proposed bill" was "inconsistent with the basic structure of the Constitution". A similar number of Indian academicians and intellectuals released a statement in support of the legislation. The petition stated that the act "fulfills the long-standing demand of providing refuge to persecuted religious minorities from Pakistan, Bangladesh and Afghanistan".

Historian Neeti Nair commented that the Citizenship (Amendment) Act and the National Register of Citizens represent steps towards a "Hindu Rashtra" that should be "summarily dismissed both by the people and by the courts". Similar views were also expressed by social activists such as Harsh Mander, Indira Jaising, and media houses National Herald and The Caravan. The Japan Times termed the Act as "Modi's project to make a Hindu India".

5.8 WHAT IS THE DIFFERENCE BETWEEN CAA AND NRC?

There is a conflict between the CAA and NRC as the government has been trying to implement both. However, there are differences between the two:

- NRC is aimed at weeding out people who have entered into Assam from Bangladesh illegally after 24th March 1971 but CAA is aimed at giving citizenship to the six communities that came to India before 31st December 2014 after facing persecution in the countries of Afghanistan, Bangladesh and Pakistan.
- NRC is not based on religion but CAA is.
- The base year for NRC is 1971 but for CAA, it is 2014.
- The NRC is only applicable to Assam till now but CAA is applicable to India as a whole, except some areas as specified in the Act.

¹³ <https://www.insightsonindia.com/2019/12/10/rstv-the-big-picture-citizenship-amendment-bill/>

CHAPTER-6

PUBLIC OUTRAISED ON CAA 2019

6.1 PUBLIC OUTRAISE

A large number of citizens are on the streets protesting the newly amended Citizenship Act. Their right to protect emerges from Article 19 (1) (a) of the Constitution. It gives all citizens the right "to assemble peacefully and without arms".¹⁴

Citizens hitting the streets of cities across states against the Citizenship Amendment Act are exercising their fundamental right guaranteed under the Constitution.

But the visuals beamed on the television show that many of them are using arms - stones, bricks, lathis and some inflammable materials too - and have damaged public property, even resorting to setting public and private vehicles on fire.

These violent protests have taken place at places where restrictions were imposed under Section 144 of the Criminal Procedure Code (CrPC).

Resorting to violence during protest is violation of a key fundamental duty of citizens. Enumerated in Article 51A, the Constitution makes it a fundamental duty of every citizen "to safeguard public property and to abjure violence".

6.2 LAW SAYS ONE THING, PROTESTERS OTHER

Then there is the Prevention of Damage to Public Property Act, 1984 which makes damage to public property by an individual punishable with jail term of six months extendable up to five years and a fine or both.

i n the ongoing protest against the Citizenship Amendment Act, buses meant for public transport, private vehicles such as cars and bikes, roads and a police station (in Lucknow)

¹⁴ <https://www.insightsonindia.com/2019/12/10/rstv-the-big-picture-citizenship-amendment-bill/>

have been damaged or torched by the protesters at different places. In most cases, the call for protest was given by some group.¹⁵

Interestingly, in all cases of violence during their protest, the groups giving call for the protest distanced themselves from vandalism and violence blaming it on "outsiders". Police have been on the look for these "outsiders".

Public property under the law includes "any means of public transportation or of tele-communications" and any building or installation of public use or service.

6.3 SUPREME COURT IS NOT HAPPY

However, the Supreme Court in several cases has asked the government of the day to frame adequate laws to fix accountability for the damage done to public property during protests. The Supreme Court has also held many a time that those giving call for protest should be made to pay for damage of public property.

The first such instance in recent times was seen in 2007, when the Supreme Court took suo motu cognizance of "large scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like" and set up two committees examine existing laws and suggest ways to deal with the issue. The two committees were headed by Justice KT Thomas -- retired Supreme Court judge - and Fali Nariman, the senior advocate to suggest changes to the law. The government later proposed amendment to the 1984 Act.

The main problem with the law is that it only provides for individual liability for causing damage. The 1984 Act relating to damage of public property does not impose any form of collective liability on groups which may engage in such actions.

¹⁵ <https://m.economictimes.com/news/et-explains/citizenship-amendment-bill-what-does-it-do-and-why-is-it-seen-as-a-problem/articleshow/72436995.cms>

6.4 AGITATION AND VIOLENCE GO TOGETHER

The issue of fixing accountability for the damages caused to public property came during Hardik Patel's Patidar agitation in 2015 in Gujarat and Jat quota agitation in 2016 in Haryana.¹⁶

In Hardik Patel's case, he was charged with sedition. When case reached court, the lawyers said he did not give a call for violence. The police failed to identify people who called for damaging public property and fix responsibility. In yet another case in 2017, the Supreme Court referred to its 2009 guidelines issued on the basis of the reports of Thomas and Nariman committees. In this case, the petitioner claimed he was held up for 12 hours due to an ongoing agitation.

6.5 SUPREME COURT GUIDELINES

The Supreme Court held that those giving call for protests should be made liable for damage to public property. It also suggested that law should be changed to make the protesters prove their innocence.

The protesters have often argued that they did not give a call for violence and those resorting to violence were "outsiders". The Supreme Court reiterated this point in October 2020.

A three-bench of the Supreme Court ruled, "Persons who have initiated, promoted, instigated or any way caused to occur any act of violence against cultural programmes or which results in loss of life or damage to public or private property either directly or indirectly, shall be made liable to compensate the victims of such violence."

6.6 ONGOING PROTEST IS NO DIFFERENT

Even hearing a petition in connection with the police action inside Jamia Milia Islamia University campus over protest against the passage of the Citizenship Amendment Act by

¹⁶ <https://indianexpress.com/article/explained/citizenship-amendment-bill-2019-parliament-winter-session-nrc-6122846/>

Parliament, the Supreme Court warned the lawyers representing the students that "if violence and destruction of public property continues, we will not hear it."¹⁷

"Just because they happen to be students, it doesn't mean they can take law and order in their hands, this has to be decided when things cool down. This is not the frame of mind when we can decide anything. Let the rioting stop," Chief Justice of India SA Bobde told the petitioners on December 16.

However, violence has continued - in Delhi, Lucknow and elsewhere -- in protests against the Citizenship Amendment Act that seeks to offer Indian citizenship to illegal immigrants from Bangladesh, Pakistan and Afghanistan provided they belong to six minority communities in these countries and fled their parent countries to escape religious persecution.

6.1 PROTEST IN KERALA

Kerala the loudest, most emphatic, but lonely, support for the Citizenship (Amendment) Act (CAA), 2019, amidst widespread protests across Kerala against it, came rather surprisingly, not from the State unit of the Bharatiya Janata Party (BJP) but from the Governor of the State, P. Arif Mohammed Khan.

Uncharacteristically for a Governor, and claiming that he was duty-bound to speak in support of a law passed by Parliament (and the Constitution), he welcomed the Central government's move to enact the CAA. He said the government, through this Act, had upheld the promise made by "Mahatma Gandhi, Pandit Nehru and the Congress to the people who were leading deplorable lives in countries such as Pakistan".

Even as the ruling and opposition parties in the State joined hands initially in launching protests against the new law, with several sections of society participating jointly and independently in it, the Governor made several controversial public statements, describing the new law as an "extraordinary solution" to the problem of minorities from neighbouring countries fleeing religious persecution. He cited figures to claim that the percentage of

¹⁷ <http://prsindia.org/billtrack/citizenship-amendment-bill-2019>

minorities had drastically gone down in Pakistan, Bangladesh and Afghanistan while it had increased significantly in India.¹⁸

Protests against the Governor too increased in the streets and some public venues as a result, even as Arif Mohammed Khan began inviting the protesters themselves for a debate with him on the issue. On December 29, 2019, he was heckled and shouted down for his pro-CAA comments and forced to stop his inaugural speech at the 80th edition of the Indian History Congress held at Kannur University.

But ever since then, and after the Assembly passed a unanimous resolution on December 30 urging the Centre to repeal the new citizenship law, his critics say, the Governor has spared no opportunity to hinder the State government's efforts to register its opposition to the moves of the Central government.

In the wake of widespread protests all over Kerala against the Central government's decision to implement the CAA and the National Population Register (NPR), the Chief Minister Pinarayi Vijayan convened a meeting of leaders of political parties and social, religious and community organisations in the State on December 29. Almost all participants, except those of the BJP who walked out, raised several concerns about the CAA and the NPR.

6.2 RESOLUTION IN ASSEMBLY

Following this, the Assembly passed a unanimous resolution (with the lone BJP MLA O. Rajagopal refraining from voting after speaking against the resolution) urging the Centre to repeal the new citizenship law, which, it said, "leads to religious discrimination in the matter of granting citizenship" and "destroys the ideals of secularism enshrined in the Constitution". The resolution, it said, was adopted "taking into consideration the widespread apprehensions that have risen among a large section of the people".

The resolution further said: "When citizenship is decided on the basis of religion, it suggests that an approach towards religious nationalism is inherent in such a move. Since

¹⁸ <http://prsindia.org/billtrack/citizenship-amendment-bill-2019>

it is entirely contradictory to the secular ideals of the Constitution, the proposed law is not in tune with the basic structure of the Constitution.”¹⁹

The Chief Minister, who moved the resolution in the Assembly, said that India had been able to survive despite its diverse geography and different languages and cultures because secularism and unity in diversity formed its foundation. “When secularism is threatened it will weaken the very existence of the nation.”

The Chief Minister also wrote letters to the Chief Ministers of 11 non-BJP-ruled States seeking similar action from them and stressing the need for joint efforts to strengthen the demand for the repeal of the CAA and the proposed National Register of Citizens (NRC) in order to protect and preserve the cherished values of democracy and secularism and to help preserve the basic tenets of the polity, which form the cornerstone of Indian democracy.

6.3 CHALLENGING CAA IN COURT

Subsequently, in an unusual move, the Kerala government filed an Original Suit under Article 131 in the Supreme Court challenging the validity of the CAA—the first State to approach the apex court thus and the fifth instance in history when a case has been filed under Article 131 by a State against a Central law.

Article 131 of the Constitution gives the Supreme Court, “to the exclusion of any other court, original jurisdiction in any dispute between the Government of India and one or more States, if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends”.

The Kerala government has argued in its suit that if the Act is not annulled, in accordance with Article 256 of the Constitution the State will be forced to implement it as well as the related notifications under the Passport (Entry into India) Amendment Rules, 2015 and 2016, and the Foreigners (Amendment) Order, 2015 and 2016, promulgated by the Central

¹⁹ <https://www.indiatoday.in/india/story/citizenship-amendment-bill-all-you-need-to-know-about-cab-1627516-2019-12-11>

government, which are all “manifestly arbitrary, unreasonable, irrational and violative of fundamental rights under Articles 14, 21 and 25”.

It said that it was filing the Original Suit under Article 131 as “thus, there exists a dispute, involving questions of law and fact between the Plaintiff State of Kerala and the defendant Union of India regarding the enforcement of legal rights as a State and as well for the enforcement of the fundamental, statutory, constitutional and other legal rights of the inhabitants of the State of Kerala”.

Kerala has said that the Amendment Act, Passport (Entry into India) Amendment Rules, and Foreigners (Amendment) Order that are being challenged “are class legislations harping on the religious identity of an individual, thereby contravening the principles of secularism, which has been recognised repeatedly by the Supreme Court as a basic structure of the Constitution. Making religion and the country of origin of the person criteria for grant of citizenship results in classifications that are apparently and manifestly discriminatory, arbitrary, unreasonable and have no rational nexus with the object sought to be achieved and that the Act has resulted in religion-based exclusion of Muslims from the benefit of acquiring citizenship through naturalisation.”

It has also said that such religious classification violates the twin test of classification under Article 14, the protection of which is not limited or restricted to citizens alone and extends to all persons; that there is no rationale in not extending the rights conferred to a class of minorities from Pakistan, Afghanistan and Bangladesh to religious minorities belonging to Sri Lanka, Myanmar, Nepal and Bhutan or to other minorities who faced religious persecution in Afghanistan, Pakistan and Bangladesh, such as the Ahmadiyas and Shias from these countries, or Rohingyas in Myanmar and Muslims in Sri Lanka who are also minuscule minorities in the said countries.

Among other things, Kerala has also argued that the Act and the rules that it has challenged are also discriminatory because it covers only religious persecution but ignores persecutions that are based on other reasons such as ethnicity or language; and that the Amendment Act and related rules and orders violate India’s international obligations under Articles 14 (which provides that everyone has the right to seek and enjoy in other countries asylum from persecution) and Article 15 (which provides that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality) of the Universal Declaration of Human Rights,

and Article 26 of the International Covenant on Civil and Political Rights (which provides that all persons are equal before the law, that all persons are entitled without any discrimination to the equal protection of the law and that the law shall prohibit any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status).

6.4 CONTROVERSIAL STEPS

Meanwhile, in successive controversial steps, Governor Arif Mohammed Khan continued to make headlines. First, he brushed aside the resolution passed by the Assembly as irrelevant since “citizenship is purely a Central subject and the State has no role in it and it is a waste of time to debate on an issue not affecting the State in any way” as the “Assembly is functioning with public funds, which should not be misused”. He also raised the doubt, without dwelling on it much, whether an Assembly could pass a resolution against an Act passed by Parliament.

His statements came even as huge anti-CAA rallies and protests were taking place in many parts of Kerala and leaders of many political parties were demanding that he stop acting like the State president of the BJP (a post which had been lying vacant for months now after P.S. Sreedharan Pillai was appointed Governor of Mizoram).

His second act had been to refuse to sign an ordinance delimiting the wards in local bodies (where elections are to be held in a few months) reportedly telling Minister for Local Self Government A.C. Moideen, who met him, that if the State government could find the time to convene a special session of the Assembly to pass a resolution against the CAA, then the House could have been convened as well to pass a law for the delimitation of the local body wards instead of the government seeking to achieve its purpose through an ordinance.

“I have not said I will not sign the ordinance but have only raised some queries and they are to come back with explanations,” the Governor said, while pointing out that he was “not a rubber stamp” and that the Constitution expected him to apply his mind on such issues. “I need time to go through the ordinance and will act only as per the Constitution.”

Things seemed to come to a boil when the Chief Minister, while addressing a “Constitution Protection Rally” in Malappuram the same day, said that when the British ruled India, Residents used to be appointed above rulers of the princely states. “But everyone should keep in mind that there are no such Residents now, who have more power over the State Assembly.”

Soon after the State government approached the Supreme Court with its Original Suit under Article 131, the Governor was quick to register his displeasure once again, this time more menacingly, in not being informed beforehand either about the Assembly resolution or about the State’s decision to move the Supreme Court against the CAA.

In several impromptu interactions with the media, the Governor said that the State government had flouted rules, with the Chief Minister not informing him about the State’s decision to approach the Supreme Court challenging the CAA.

He told mediapersons: “This is not a personal fight between me and the State government. I am not important. But what is important is the Constitution and the law of the land. The rules for the transaction of business of the government are framed by the Cabinet. The Governor only approves them. All I am saying is that the government go by the rules of business. The Assembly frames its own rules. Assembly Rule 119 says that the House shall not discuss any matter which is not the concern of the State government. You are violating rules and laws which you yourself have created. Don’t try to use constitutional institutions and authority to violate the letter and spirit of the very document which has given you this authority.”

He also said: “The Supreme Court has said that Clauses 1 and 2 of Article 166 of the Constitution are of a directorial nature. But rules framed under Clause 3 of the Article are of mandatory nature. Therefore, my view is that the Governor’s approval is needed [for the government to approach the Supreme Court], but even if, for the sake of argument, I accept the claim that the Governor need only be informed about it, it is a fact that the State Government has gone to the Supreme Court without informing me. That is an unlawful act; not legally correct. So, none of the explanations provided can satisfy me.”

He summoned Chief Secretary Tom Jose to the Raj Bhavan demanding a report and promptly rejected whatever explanation the State government provided.

Arif Mohammed Khan also said he would like to make a comment about the Communist Party of India (Marxist) general secretary Sitaram Yechury's statement at a public meeting in Thiruvananthapuram marking the culmination of the party's Central Committee meeting. "He talked about the abolition of the office of the Governor. It proves only one point. He has not been able to point out anything that I have done is wrong. He is only asking that you abolish the office so that there is nobody to oversee whether rules are being followed or the Constitution is being followed or not. But the authority [to abolish the post of the Governor], that only the people of India can give them."

Later, the Governor brought more sharpness to his statement, when he was asked once again about Yechury's comment about the post of the Governor being superfluous: "Let them [the CPI(M)] ask the people of India to give them their trust so that they can do with the Constitution what they want to do. But today, they are not in a position to do that."

Asked what he intended to do, now that he had rejected the State government's explanation, Arif Mohammed Khan said: "I shall not discuss the next step now. But one thing I can assure you, I will not allow constitutional machinery to collapse in the State. That cannot be allowed to happen. The very fact of going to the Supreme Court without submitting the case to the Governor is unlawful. The case can be closed if the unlawful action is withdrawn."²⁰

The Governor, who was leaving for Ayodhya to attend a seminar at Awadh University, was again asked whether he felt the constitutional machinery was collapsing in Kerala. His reply was: "Well, I will take whatever you are saying also into consideration when I finally make my decision."

The BJP's only representative in the Assembly, former Union Minister and senior party leader O. Rajagopal, had at one point advised the Governor (and the Chief Minister) to exercise restraint and cautioned them against making acrimonious public statements when legitimate avenues were open to settle such disputes between a Chief Minister and a Governor whose roles were clearly defined by the Constitution.

²⁰ Verma, L. (2015, february 16),The Indian Express, <https://indianexpress.com/article/india/india-others/from-up-stage-bhag...>, accessed on December 22, 2019

“The Governor may have his own opinions. But is it something which he should declare in public?” Rajagopal asked in reply to questions from a prominent television channel and suggesting he could intervene to try and settle such an unwanted dispute.

With an Assembly session about to be convened on January 29 and the Governor scheduled to address the House with the government’s policy statement, the members of the Left Democratic Front (LDF) Cabinet have been generally soft in their tone while responding to the Governor’s statements.

According to Law and Parliamentary Affairs Minister A.K. Balan, the State government made no deliberate attempt to bypass or belittle the office of the Governor and with the help of legal experts hoped to address satisfactorily the apprehensions he had raised.

However, the Minister made it clear that the State government had no constitutional obligation to secure the permission of the Governor before approaching the Supreme Court challenging the validity of the CAA.

Similarly, the Governor’s permission was not required for passing a resolution in the Assembly on the issue. Only the Assembly Speaker’s approval was required for a resolution to be taken up. The Minister said that it was the government’s view that it had not violated the Constitution, rules of the Assembly or rules of business by approaching the Supreme Court or passing a resolution in the Assembly against the CAA.

The issue of invoking Article 131 was now before the Supreme Court. If the court said the Governor was right, we would accept the court’s decision on it, he said.

6.5 ANOTHER BATTLEFRONT

Meanwhile, opening another battlefront against the Central government on the issue, the State Cabinet formally decided on January 20 to inform the Registrar General and Census Commissioner under the Ministry of Home Affairs that it was not possible to cooperate with or conduct activities relating to the revision of the NPR in Kerala.

The Chief Minister had already reiterated the government’s stand, for instance, while addressing the Constitution Protection Rally at Malappuram on January 17, that the State would not allow any agency to conduct activities linked to the revision of the NPR in the State nor allow the CAA to be implemented in the State.

“The decision has been taken because it is the constitutional duty of the government to remove apprehension among the people and ensure that law and order is maintained in the State,” an official statement issued by the government after the Cabinet meeting said. The Kerala government, however, clarified that it would cooperate fully with the Census operations in the State.

“NPR is a process that leads to the National Register of Citizens (NRC). This has caused much apprehension among the people. If NPR and NRC are implemented in Kerala it will create widespread uncertainty in the State. The experience of a State which has already prepared NPR is an example. The police has reported that if the Kerala government went ahead with the NPR revision, it will adversely affect the law and order situation in the State,” the statement said.

District Collectors, too, have informed the government that if an attempt was made to revise the NPR along with the population census, it might not be possible to conduct the Census operations themselves properly. The State government has approached the Supreme Court questioning the constitutional validity of the CAA and has already put a stop to activities in connection with the revision of the NPR in the State. Minister A.C. Moideen said directions would be issued to enumerators in the State to exclude questions regarding date of birth and details of parents from the Census questionnaire and that the Census directorate would be informed accordingly.

6.6 NO STAY ON IMPLEMENTATION

At the time of filing this report, the Supreme Court had just granted four weeks’ time for the Central government to respond to 143 petitions challenging the validity of the CAA filed by various groups and individuals, including the Muslim League and its four MPs from Kerala. The court denied requests for a stay on the implementation of the Act but indicated that the petitions may eventually be heard by a five-judge Constitution Bench.

It left an immediate resolution of the plea filed by the State government in the apex court as well as the Governor’s challenge against the State government with some uncertainty for a while at least. The leaders of the ruling CPI(M)-led LDF, however, expressed confidence repeatedly, like the Chief Minister did at a huge rally in Kozhikode: “The people of Kerala can rest assured that there will be no need for anybody here to run around searching for the place and date of birth of their aged parents or grandparents. All of those

who are born here are citizens of our country. We do not need certificates from anyone. I can say with certainty that the National Population Register that the Central government is trying to implement cleverly as a prelude to the preparation of a National Register of Citizens will not be implemented in the State.”

6.7 ASSAM PROTEST

Fresh agitation against the Citizenship Amendment Act (CAA) was launched by 18 organizations in Assam on Friday, demanding repeal of the legislation and release of jailed KMSS leader Akhil Gogoi. Gogoi had been taken into custody during the protests last year.

Protest rallies were taken out across the state by the organisations, including Krishak Mukti Sangram Samiti, All Assam Students Union (AASU), Asom Jatiyatabadi Yuba Chatra Parishad, Lachit Sena, besides students, and youth organisations of ethnic communities.

The agitation began from Sivasagar, where it was launched last year before it was halted due to Covid-19 pandemic.

Mentioning that the CAA was against the identity, language and cultural heritage of the indigenous people of the state, the protestors were demanding that the act be rolled back. They were also seeking immediate release of KMSS leader Akhil Gogoi.

Addressing the rallies, leaders of the organisations said, the people will give a “fitting reply” to the BJP-led dispensation in Assam in the Assembly elections for allegedly “betraying the people by imposing the CAA upon them despite protests, since its introduction in Parliament till its enactment”. The state Assembly polls are due in March-April next year.

The AASU, that had launched the six-year long anti- foreigners Assam Movement (1979-1985), has called for a ‘Rono Hungkar’ (clarion call for war against CAA) from Saturday on the first ‘anniversary’ of the anti-CAA agitation.

The AASU hoisted black flag at its headquarters here and displayed such flags in seven northeast states under aegis of the North East Students Organisation demanding roll back of the CAA, AASU chief advisor Samujjal Bhattacharya told reporters.

“The government has to repeal the anti-Assam law that has claimed the lives of five Assamese citizens, including innocent students. The families of the deceased people and the AASU will continue to seek justice,” stated an AASU press release, issued jointly by its president Dipanka Kumar Nath and general secretary Shankar Jyoti Baruah.

Five persons had lost their lives during the anti-CAA protests in Guwahati last year.

The objective of the CAA is to grant Indian citizenship to persecuted minorities – Hindu, Sikh, Jain, Buddhist, Parsi and Christian -from Pakistan, Bangladesh and Afghanistan People from these communities who had come to India till December 31, 2014 due to religious persecution in these countries will not be treated as illegal immigrants but given Indian citizenship.

6.8 CITIZENSHIP ACT PROTEST: POLICE BATON-CHARGE ACTIVISTS AT TORCH RALLY AHEAD OF MODI’S VISIT TO ASSAM

The police also detained several members of the All Assam Students’ Union. The union has condemned the crackdown and called for a shutdown in Sonitpur today.

The police in Assam on Friday resorted to baton-charging All Assam Students’ Union activists, who took out a rally in Tezpur to protest against the Citizenship Amendment Act, reported NDTV.

The police also detained several activists of the union from across the state. AASU has condemned the police crackdown and announced a shutdown in the Sonitpur district on Saturday.

The activists were protesting against the Citizenship Amendment Act by holding torch rallies. The students’ body had called for a three-day protest in the state against the CAA ahead of Prime Minister Narendra Modi’s and Union Home Minister Amit Shah’s visits to Assam over this weekend.

On Friday, the police blocked a massive torch rally in Guwahati, according to PTI. Tension also prevailed in Sivasagar and Dhekiajuli cities, where smaller rallies were held. The union leaders, including its chief advisor Samujjal Bhattacharya and president Dipanka Nath, also got into a heated argument with the police. “The government has directed the police to stop our peaceful, democratic, torch-light rally,” Nath alleged. “This BJP [Bharatiya Janata Party] government is trying to snatch away our democratic right to protest by using force.”

Nath warned the Centre that the students’ body will intensify their agitation against the CAA ahead of Modi and Shah’s visit. “No rest until CAA is repealed by the government,” he added. AASU and various other student organisations have planned to greet the prime minister with black flags.

Last December, hundreds of thousands of people in cities across India joined in protest against the recently passed Citizenship Amendment Act (CAA). The law creates a pathway to citizenship for some undocumented residents who have fled religious persecution, but it discriminates against refugees and immigrants who happen to be Muslim—members of India’s largest minority. The anti-CAA movement, as it became known, was India’s most sustained people’s movement since the Bharatiya Janata Party (BJP) came to power in 2014.

The size of the protests caught Prime Minister Narendra Modi’s government by surprise. Like the ongoing protests led by Sikh farmers against new agricultural laws, the anti-CAA movement was characterized by the ruling party as “anti-national.” But while the Modi government is now negotiating with the farmers to end their blockade of Delhi’s borders, the anti-CAA movement was never accorded any political legitimacy.

One year on, the anti-CAA movement has receded into the background, its anniversary barely remembered: Delhi police stopped a candlelight march led by students on Dec. 15. In March, the mass protests were cut short by the coronavirus pandemic, but it is hard to say how long they would have survived anyway, given the movement’s vilification by BJP leaders, hostilities from Delhi residents over blocked roads, and the lack of support from India’s so-called secular parties.

The movement has suffered from its own limitations. It failed to engage a larger cross-section of society, building bridges with other distressed communities such as farmers and Dalits, and to counter the BJP's messaging that it was stirred by Pakistan. The arrests of the anti-CAA movement's leaders, as well as others who have decried the BJP's virulent Hindu nationalism, mark the decline of India's inclusive and consensus-building democratic ethos. Indian Muslims remain in the same precarious situation they found themselves in 2019: living in fear of becoming second-class citizens.

The anti-CAA movement challenged not only the BJP's Hindu majoritarianism but also the Modi government's authoritarianism, apparent in its moves to ram through laws such as the CAA or its sudden announcement in 2016 that it would replace certain Indian rupee notes with new ones, causing chaos and lasting economic damage. Using the language of the 1949 constitution, the movement was a tribute to the idea of an India built on secularism and pluralism, an appeal for practicing tolerance.

But it's clear that the anti-CAA protests did not resonate much beyond an urban, liberal segment of Indian society. Much of the media and the Hindu middle class—the country's largest demographic—remain solidly behind the prime minister and his politics. Even so, the large numbers of people who joined the movement served as a rude awakening for a leadership confident that it had stamped out dissent. The protests, coupled with a shift in international perceptions, seemed to push Modi's government to take a step back and soften its tone.

The mothership of the anti-CAA movement was in Shaheen Bagh, a Muslim-majority neighborhood in Delhi. Muslim women led a sit-in there for three months, joined by Muslims and non-Muslims alike. "I sat for 101 days, but no one [from the government] came to meet or speak with us," said Bilkis Bano, 82, one of the most famous faces of the sit-in. "What could we do when no one came to speak with us?"

Even before the full onset of the pandemic, the anti-CAA movement came to a halt after religious violence ravaged parts of Delhi in February, killing 53 people, mostly Muslims. The students and activists who led the anti-CAA protests—mostly young women and men—were blamed. A Delhi Police investigation, which critics have called biased, concluded that the protests were part of a conspiracy to overthrow the Modi government.

In two separate bail hearings for jailed activists, the judges said the terrorism charges were seemingly “targeted” and “vindictive.”

6.9 DESPITE A FEW POLITICAL SETBACKS, THE BJP’S BRAND OF HINDU NATIONALISM IS GAINING STRENGTH IN THE MODI GOVERNMENT’S SECOND TERM.

The arrests of anti-CAA activists and students reflect a narrative that pins blame for the riots on the protesters, and by extension the Muslim community. Delhi police have called activist Umar Khalid, 33—one of the most vocal critics of the Modi government—the “mastermind” behind the Delhi riots. “He has been targeted because he refused to be silenced,” Banojyotsna Lahiri, his partner, said.

Despite a few political setbacks in state elections, the BJP’s brand of Hindu nationalism is gaining strength in the Modi government’s second term. In addition to the passage of the CAA, it has stripped Muslim-majority Jammu and Kashmir of its constitutional autonomy and prompted fears of demographic change in the region. And in November 2019, after decades of litigation, the Supreme Court ruled in favor of building a Hindu temple on the site of a 16th-century mosque destroyed by Hindu extremists in 1992.

In Modi’s India, people increasingly reveal a once-hidden anti-Muslim bigotry. Just last month, a major jewelry brand pulled an advertisement that showed a Hindu woman married into a Muslim family after public backlash. The BJP government in Uttar Pradesh, India’s most populous state, recently passed a law against forced “unlawful conversions” and marriages intended solely to change a woman’s religion. Critics say the law amplifies the Hindu nationalist conspiracy that Muslim men seek to convert Hindu women by marrying them—so-called love jihad. (Modi’s government has officially distanced itself from the term.)

All over India : The pandemic has provided fresh opportunity for Hindu nationalists to beat down an already disadvantaged minority group. As protests against a new citizenship law sweep the country, signs that the authorities are condoning and even instigating violence have India’s Muslims alarmed.

The CAA grants citizenship to non-Muslim minority groups from Afghanistan, Pakistan, and Bangladesh. The Modi government maintains that the law won't affect Indian Muslims. But some fear that coupled with the National Population Register, a data collection exercise, and a proposed National Register of Citizens (NRC) aimed at identifying those living in the country without the proper documents, the CAA will be used to target Muslims who can't produce documents and strip them of the right to call India home.

One year after the Indian parliament passed the CAA, the Modi government says it is still drafting the rules to enforce it, and the Supreme Court has yet to hear more than 140 petitions challenging its constitutional validity. Home Minister Amit Shah, who has described undocumented immigrants as "termites," backtracked on the plan for a nationwide citizens' register last year, after 11 states not governed by the BJP refused to implement it. But while the government may have put the NRC on hold, it has not ruled out implementing data collection, which some argue is a surreptitious way of reintroducing the NRC.

The stripping of Kashmir's protected status, the passage of the CAA, and the subsequent crackdown on anti-CAA students at two predominantly Muslim universities have offended Islamic countries that are friendly to India. Iran, Turkey, and Malaysia condemned the Delhi riots in February. The Organization of Islamic Cooperation has called on Modi to ensure protection for Muslims and Islamic holy places in India. And after a year of lobbying, Pakistan managed to get the organization to pass a strong statement on Kashmir.

India's CAA push has even put off friendly Bangladesh, which has refused to accept the return of any Indian residents left out of the NRC. Prime Minister Sheikh Hasina has called the CAA unnecessary, and three of her ministers canceled trips to India amid the protests. The Modi government will likely tread forward carefully, given that Islamophobia in India has become somewhat of a liability—and could be a thorny issue with U.S. President-elect Joe Biden.

6.10 WITH STATE ELECTIONS DUE NEXT YEAR IN BOTH ASSAM AND BENGAL, THE BJP IS NOW LETTING THE CAA ISSUE SIMMER.

The issue is already playing out in Assam state, home to many Bengali-speaking Hindus and Muslims who have immigrated from Bangladesh over many years. The state government prepared a list of citizens in August 2019. But the BJP suffered a setback: Of the 1.9 million people found to be living in Assam without documents, over 500,000 were Hindus who would effectively have to claim they fled religious persecution in a neighboring country to gain their citizenship. BJP leaders have said that Hindus left out of the NRC would be covered under the CAA, and Shah said last year that the NRC would be repeated in Assam. This month, the Assam government said that the list it had declared final in 2019 was not final after all.

With state elections due next year in both Assam and Bengal, the BJP is now letting the CAA issue simmer. In Assam, the BJP's attempt to make the NRC a Hindu-Muslim issue—rather than one tied to local differences in language and ethnicity—hasn't quite worked. Winning Bengal, which also has a sizable population of immigrants from Bangladesh, would be a milestone for the Hindu right wing. There, the BJP has tapped into Hindu conservatism dormant among upper-caste communities and worked hard to polarize the base of Chief Minister Mamata Banerjee, who took power after three decades of Communist Party rule in 2011.

“The BJP is in a legal bind when it comes to Assam. But wherever there is some space in the communal game, they are playing it,” said Sangeeta Barooah Pisharoty, the author of *Assam: The Accord, The Discord*.

In the anti-CAA movement, progressive forces couched their pleas to uphold the rights and freedoms of minority groups as a call to defend the constitution. They now recognize the BJP government's unwillingness to even pay lip service to India's constitutional values—and the not-so-silent majority's antagonism toward these calls.

6.11 PROTESTS IN STATE WISE

As soon as the bill was passed, it sparked off protests throughout the country. The protests continued for months. Opposition Political parties played a very important role in

mobilizing people. While some protests remained peaceful, others turned violent resulting in mass destruction of public property and loss of lives too. The police were often blamed and criticized for manhandling the protestors. People used the social media platforms as well to express their dissent. The protests weren't only focused on CAA but also included Anti-NRC sentiment. College students were seen in the forefront. Women participation too played an important role (e.g. In Shaheen Bagh). Several Awards and Honours were returned. Mujtaba Hussain returned his Padma Shri claiming that Indian Democracy has reduced to "a joke". Around 300 eminent personalities signed and issued an open statement against the CAA.

The ruling party organized several marches showing support for the legislation. A Mobile Number was circulated so that people could give a missed call on it and show their support for CAA. While at some point almost every state and union territory was affected, a gist of some of the states' protests has been discussed:

6.12 DELHI

On 13th December protests erupted in Delhi's Jamia Milia Islamia University and Uttar Pradesh's AMU (Aligarh Muslim University). On 14th December protests began at Jantar Mantar. On midnight of 14th-15th December 2019 police cracked down on Jamia and AMU vandalising even the Library and the Mosque. On 15th December women protesters sat on an indefinite protest in Shaheen Bagh[13]. Two days' later violence happened in Seelampur and Jaffrabad. Bhim Army Chief led protest at Jamia Masjid. Congress party held 'Satyagraha for unity' at Rajghat. Thousands protested in East Delhi's Khureji.

6.13 PUNJAB

Protests began in Malerkotta, Patiala and Ludhiana with Khalsa Aid's support. Punjab University students took a leading role in the protests, and were backed by the Association of Democratic Rights.

6.14 WEST BENGAL

The state witnessed violent protests as railways stations and public buses were attacked by the protestors. Protestor set fire to 5 trains in Murshidabad district, in Suti,

railways tracks were also damaged. Chief Minister, Mamta Banerjee led an anti-CAA protest which was joined by thousands. When PM Modi visited Kolkata, hundreds of people stood in protest at the Kolkata Airport. On republic day, people of West Bengal formed a parallel 11 km long human chain from Shyambazar to Golpark in Kolkata.

6.15 BIHAR

Communist parties in Bihar called a 'Bandh'; it was supported by several small parties. Protesters blocked rail and road traffic. On 21st December, 2019, a "Bihar Bandh" was organized by the Rashtriya Janata Dal.

6.16 TAMIL NADU

Tamil Nadu has given shelter to many Tamils from Sri Lanka. These Hindu Tamils from Sri Lanka are complaining against their exclusion from the Bill. Citizenship to only Hindus from Pakistan, Bangladesh and Afghanistan is being questioned. DMK leader Dayanidhi Maran questioned if Amit Shah's leadership as home minister extends only to North India because of his indifferent attitude towards Tamil Nadu. Maran has asked about the government's plan for the Tamils from Sri Lanka.

6.17 KERALA

On 1st January, around half a million people assembled in peaceful rally to protest against the act. The Kerala government was the first one to challenge the CAA under Article 131 of the Constitution. On republic day the Left Democratic Front led by CPI organized a human chain. 6-7 million people had participated in the formation of the chain which extended to a distance of 620 km.

6.18 NORTH EAST

The North East erupted as soon as the Citizenship (Amendment) Bill, 2019 was passed in both the houses of the parliament. The new law enables Indian citizenship for undocumented non-Muslim migrants from Bangladesh, Pakistan and Afghanistan. While many called the amendment "an attack on secularism", in the North-East the issues are different. People here fear losing their native identity to a possible influx of refugees. The region saw widespread protest when the Bill was first introduced in January 2019. To

prevent a similar flare-up, the Modi govt. made several concessions. It exempted all tribal areas covered under the 6th schedule from the Bill. It also exempted states like Arunachal Pradesh, Mizoram and much of Nagaland that comes under the Inner Line Permit rule. The government even extended the Inner Line Permit rule to Manipur and Dimapur district in Nagaland.

Assam has been the epicenter of protest. The reason is that only 7 out of 33 districts in the state will be exempted from the Bill. Large parts of Assam which are non-tribal areas will be affected by the Citizenship Bill. For years the Ahoms have feared that Bengali migrants will take over their resources and jobs. There is a long history to this. In 1836, the British made Bangla the official language of Assam. This remained in force for 37 years. When the Partition took place, a number of Bengali migrants came and settled in Assam. This created more resentment among the locals. After a long struggle the Assam Accord was signed in 1985. Under this, 1971 was set as the cut-off year for granting citizenship to illegal migrants in the state. With the CAA, the govt. has now extended the deadline for non-Muslim migrants to 31st December 2014. Protesting groups in Assam say that this is a clear violation of the Assam Accord and they are afraid that there will be an influx of refugees into the state. There's another element to this: The NRC or National Register of Citizens.

Meghalaya also witnessed protests after the CAB was passed. Protesters burned the effigies of PM Modi, Amit Shah and Agatha Sangma of the ruling NPP who voted in favour of the CAB in the Lok Sabha. Meghalaya is protected under the 6th schedule except a small patch in Shillong. But there are fears that once Bangladeshi Hindus are given citizenship, they will easily be able to come and settle in Meghalaya which shares a long border with Bangladesh as well as Assam. There are now demands that even Meghalaya should be included in the ILP. To bring down tempers, the state has come up with the amended Meghalaya Residents Safety and Security Act. The Act requires a visitor who wants to stay for more than 24hours in the state to fill an online application and get permission.

Arunachal Pradesh has similar fears that such people would easily come via Assam and settle in the state.

Although Nagaland has remained comparatively peaceful, people are sceptical about the Act. A student leader said that the ILP hasn't been able to control illegal immigration, so extending it to the entire state would not help much.

In Tripura too, where the tribal areas of the state were exempted from CAA, life was thrown out of gear. Protesters say that the Bill violates various treaties the govt. of India has signed with the people of Tripura over the years which include the one signed with ATTF (All Tripura Tiger Force) and the Instrument of accession.

In Mizoram, a major concern is the presence of Chakma refugees who came from the Chittagong hill tract in Bangladesh. There are fears that if given citizenship Hindu Chakma refugees will affect the demography of the Christian majority state

6.19 WHY THE PEOPLE OF ASSAM ARE PROTESTING AGAINST IT?

A lot of protests have started in Assam after the Bill was passed by the Lok Sabha on 10th December 2019. The bill seeks to nullify the purpose of the National Register of Citizens (NRC) that was published this year. The NRC was passed to eliminate thousands of illegal Bangladeshis who were living in Assam. However, after the exercise, 19 lakh people found themselves excluded from NRC. These people included Hindus and Muslims. Now the recent amendment seeks to give citizenship to the non-muslims who have entered illegally in Assam. But it is silent when it comes to providing citizenship to the Muslims. The people of Assam are fearing that accommodating such migrants might pose a threat to their culture, tradition, language and ethnicity of the region, which has become the cause of their protests. Allowing illegal immigrants to live in Assam would also create an economic burden on the State and may decide the political future of Assam.

6.20 CLAUSE 6 OF THE ASSAM ACCORD

Assam Accord was signed between the Union Government and leaders of the All Assam Students Union (AASU) in 1985, at the end of a six-year-long agitation demanding the expulsion of illegal immigrants from Bangladesh. Clause 6 of the accord talks about providing constitutional, legislative and administrative safeguards to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.

However, the accord has not been implemented as the committee which was formed to give a roadmap for its implementation has not submitted its report yet. The Accord said that any person who cannot prove their ancestor's presence before 24th March 1971 would be deemed as an illegal immigrant. The NRC was a promise made in the Assam Accord to identify and deport illegal immigrants but after the Citizenship (Amendment) Act, 2019, illegal immigrants belonging to non-Muslim communities cannot be deported.

CHAPTER-7

COURT ON CAA 2019

7.1 BACKGROUND

The Citizenship (Amendment) Act, 2019 (hereafter 'CAA') amends the Citizenship Act, 1955 so as to grant a certain class of illegal migrants a path to Indian citizenship. The CAA makes illegal migrants eligible for citizenship if they (a) belong to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community and (b) are from Afghanistan, Bangladesh or Pakistan. It only applies to migrants, who entered India on or before 31 December, 2014. Certain areas in the North-East are exempted from the provision.²¹

Viewed in combination with the proposed all-India National Register of Citizens (NCR), the CAA has the potential to deprive many Muslims residing in India of full citizenship. The proposed NRC will likely deprive many persons, both Muslim and non-Muslim, residing in India of citizenship. While excluded non-Muslims will have the opportunity to regain citizenship via the CAA, this will not be the case for Muslims. Hence, the NRC in combination with the CAA may disproportionately exclude Muslim residents of India.²²

On 11 December, Parliament passed the Citizenship (Amendment) Bill, 2019 (at which point it became the Citizenship (Amendment) Act, 2019). The CAA was officially notified on 10 January 2020.

Immediately after the Bill was passed, the Indian Union Muslim League (IUML) filed a petition under Article 32 of the Constitution challenging the constitutionality of the CAA. Soon various other litigants followed and there are currently around 200 petitions tagged to the IUML petition. These petitions primarily challenge the CAA for discriminating on the basis of religion. They also contend that it violates the fundamental rights to equality and dignity of illegal migrants under Articles 14 and 21 of the Constitution.

²¹ [https://en.wikipedia.org/wiki/Citizenship_\(Amendment\)_Act,_2019](https://en.wikipedia.org/wiki/Citizenship_(Amendment)_Act,_2019)

²² https://economictimes.indiatimes.com/articleshow/72436995.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst&from=mdr

A majority of the petitions base their primary challenge to the CAA on Article 14. Article 14 guarantees all ‘persons’ (not only citizens) equality before the law and equal protection of law. In *R.K. Garg* (1981), the Supreme Court established that Article 14 prohibits Parliament from enacting laws that arbitrarily or irrationally differentiate between groups of persons. The Court has developed the two-part reasonable classification test for assessing whether a law unconstitutionally differentiates between persons: (1) any differentiation between groups of persons must be founded on ‘intelligible differentia’; (2) ‘that differentia must have a rational relation to the object sought to be achieved by the Act’. The petitioners claim that the CAA fails the reasonable classification test and thus violates Article 14 of the Constitution.²³

The stated aim (‘object sought to be achieved’) of the CAA is to accommodate persons facing religious persecution. The petitioners claim that this aim has no rational relation with a differentiation based on religion and country of origin. For example, there are illegal migrants who have fled to India after facing religious persecution in Sri Lanka, but the CAA arbitrarily excludes them. The petitioners conclude that there is no rational nexus between the differentia and the aim sought.²⁴

The petitions pray for the Supreme Court to strike down the CAA for violating the Constitution. A majority of the petitions single out Section 2(1)(b) of the CAA, which specifically provides for a path to citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh or Pakistan.

Further, many of the petitions pray for the Court to strike down four notifications issued by the Union government in 2015 and 2016 on the same grounds. The notifications (G.S.R. 685(E), 686(E), 702(E), 703(E)) exempt illegal migrants from the above six religions and three countries of origin from deportation and detention under the Passport (Entry into India) Act, 1920 and Foreigners Act, 1946.

On 28 May, the Government of India issued an order under Section 16 the Citizenship Act, 1955. The order gives district collectors in 13 districts with a high migrant population

²³ <https://timesofindia.indiatimes.com/topic/citizenship-amendment-act>

²⁴ <https://economictimes.indiatimes.com/news/et-explains/citizenship-amendment-bill-what-does-it-do-and-why-is-it-seen-as-a-problem/articleshow/72436995.cms>

the power to accept citizenship applications from people from the same 3 countries belonging to the same 6 religions.²⁵

On 1 June, the IUML has filed an application requesting an interim stay on this order.

The Citizenship (Amendment) Act (CAA), 2019, is unconstitutional. This has been said since the moment the first draft of the Bill was made public in 2016 and can be said of the latest draft that has cleared both Houses of Parliament and become law.²⁶

Any number of laws are passed in legislatures across the country in any given year that, in some way or another, violates the constitutional rights of people or is outside the power of such legislature as defined in the Constitution.

7.2 SUPREME COURT REFUSES TO STAY CITIZENSHIP AMENDMENT ACT

The Supreme Court on Wednesday refused to stay the implementation of the Citizenship Amendment Act (CAA), 2019, which fast-tracks citizenship by naturalisation process for “illegal” migrants from six religious communities, other than Muslims, who have fled persecution from Pakistan, Bangladesh and Afghanistan.

Chief Justice of India (CJI) Sharad A. Bobde instead orally suggested to the government to publicise the actual intent of the Act so that there was no confusion among the public about its objectives and aims.

Violence, riots, arson, police action on protesting students have spread to various parts of the country since the notification of the Act on December 12.

“There is need to publicise why the Act [CAA] is passed. There is a need for that,” Justice Bobde addressed Attorney General K.K. Venugopal for the Centre.

7.3 LOT OF CONFUSION

The CJI’s comments came on a submission by advocate A.K. Upadhyay that there was a lot of confusion in the public mind about the objectives of the CAA.

²⁵ <https://www.thehindu.com/topic/citizenship-amendment-act/>

²⁶ <https://www.business-standard.com/about/what-is-citizenship-bill>

The government has maintained that the amendments made to the Citizenship Act of 1955 were meant to protect and welcome religiously persecuted people fleeing the three neighbouring countries where Muslims form the majority.

The Supreme Court issued a formal notice admitting 59 petitions filed by people from all walks of life and faiths to parliamentarians to retired High Commissioners and service officers to lawyers, students, activists, professional associations to Opposition political parties cutting across regions and ideology and NGOs.

The court said it would hear the petitions on January 22. This is its last working day before it closes for winter vacations till January 1.

7.4 LAWYERS' PLEA

But lawyers continued to fervently urge the Bench, also comprising Justices B.R. Gavai and Surya Kant, to stay the Act even after the court called the next case.

“We are not going to hear this case today!” Justice Bobde said emphatically.

Mr. Venugopal said there were at least four judgments of the court, which said an Act once notified as law cannot be stayed.

“The Act has not come into existence. Its Rules are yet to be notified,” senior advocate Rajeev Dhavan, for a petitioner, countered.

During a brief but tense hearing, both the CJI objected to how several lawyers shouting at the same time to be heard by the Bench created an atmosphere of ruckus not befitting the court's decorum.

“I went to the Pakistan Supreme Court. They have a lectern where only one lawyer addresses the Bench... We should have something like that here,” Mr. Venugopal said.

7.4 PETITIONERS' ARGUMENTS

The petitions argue that the law welcomes “illegal migrants” into India selectively on the basis of their religion and pointedly exclude Muslims. It has an “unholy nexus” with the

National Register of Citizens (NRC) exercise and is against the principles of secularism, right to equality and dignity of life enshrined in the Basic Structure of the Constitution.

The new law fast-tracks citizenship by naturalisation for minority Hindu, Sikh, Buddhist, Jain, Parsi or Christian migrants from Pakistan, Afghanistan and Bangladesh who enter India illegally, claiming religious persecution in their native countries, the petitions point out. They say the Act selectively agrees to grant citizenship benefits to illegal migrants from only three countries. Why not those from Sri Lanka, Bhutan and Myanmar, they ask. Besides, the new law does not impose any requirement on illegal migrants from the six religions to prove their claim of religious persecution or even a reasonable fear of it.

The petitions say the legislation effectuates discrimination on the basis of the intrinsic and core identity of an individual, that is, his religious identity as a Muslim. The Act ensures that only an illegal immigrant who is Muslim will be singled out and prosecuted under the Passports (Entry into India) Act, 1920 or the Foreigners Order 1949 and deprived of his personal liberty. On the other hand, illegal migrants from the protected six religions will be entitled with Indian citizenship and the benefits that come with it. While Muslim migrants should show their proof of residency in India for at least 11 years, the law allows illegal migrants from the six communities to be naturalised in five years time.

7.5 CJI SAYS IT IS “UPPERMOST IN EVERYBODY'S MINDS”, INDICATES REFERRING CAA CHALLENGE TO CONSTITUTION BENCH.

The Supreme Court on Wednesday said the Citizenship (Amendment) Act (CAA), 2019, is “uppermost in everybody's minds”, but refused to stay the law without hearing the government first.

A three-judge Bench led by Chief Justice of India (CJI) Sharad A. Bobde did not pay heed to fervent pleas to even postpone the process of collecting population data to identify illegal migrants or “doubtful citizens” on the basis of their religion.

The CJI indicated that the CAA challenge may eventually be referred to a Constitution Bench for a decision on merits.

The Bench issued notice on at least 80 more fresh petitions filed for and against the CAA. It gave the government four weeks to file its response. The government urged the court to “freeze” the number of petitions filed in the case.

144 petitions

A total of 144 petitions were listed before the Bench that also comprised Justices S. Abdul Nazeer and Sanjiv Khanna.

The court said it would list the case in February to pass interim orders. It asked the senior lawyers involved in the case to categorise the petitions and work out a schedule for hearing them.²⁷

“I don't think anything any law like the CAA is irreversible. There will have to be a date for hearing this interim prayer [for a stay of the CAA]... This case is uppermost in everybody's minds,” the CJI reacted to the concerns.

Lawyers argued that the National Population Register (NPR) exercise is commencing in April. Data collected through it would be used for preparing a nationwide National Register of Citizens (NRC). The NPR-NRC is considered a harbinger of facilitator for the operation of the CAA, which fast-tracks the citizenship-by-naturalisation process for “illegal migrants” from six religious communities, other than Muslims, who have fled persecution from Pakistan, Bangladesh and Afghanistan.

Senior advocate K.V. Vishwanathan addressed the court, “The most immediate concern now is the sweeping powers given to executive authorities to brand people as ‘doubtful citizens’. Once this is done, there are no guidelines to help these people. This is sinister. It will lead to gerrymandering of electoral rolls. The concern is spread across both the majority Hindus and the minorities as well. You have to address this fear... Otherwise fear and insecurity will pervade the country.”

U.P. govt. ‘move’

Senior advocate A.M. Singhvi submitted that the Uttar Pradesh government had “marked” people as doubtful citizens two weeks ago. “The process of granting citizenship under CAA is already underway,” he said.

Senior advocate Kapil Sibal urged the court to postpone the NPR and the citizenship process for at least two months to avoid chaos.

Attorney General K.K. Venugopal reacted that “a postponement of the CAA and its stay were one and the same”.

²⁷

[https://en.wikipedia.org/wiki/Citizenship_\(Amendment\)_Act,_2019#:~:text=The%20Citizenship%20\(Amen dment\)%20Act%2C,India%20on%2011%20December%202019.&text=Under%20the%202019%20amendme nt%2C%20migrants,were%20made%20eligible%20for%20citizenship.](https://en.wikipedia.org/wiki/Citizenship_(Amendment)_Act,_2019#:~:text=The%20Citizenship%20(Amen dment)%20Act%2C,India%20on%2011%20December%202019.&text=Under%20the%202019%20amendme nt%2C%20migrants,were%20made%20eligible%20for%20citizenship.)

Senior advocate Shyam Divan contended that the final certificate of citizenship by naturalisation to illegal migrants should be stayed during the pendency of the case in the Court. Indian citizenship once granted cannot be revoked if the challenge to the CAA succeeded in court, he said.²⁸

But Mr. Venugopal countered that there were provisions in the law that allowed the revocation of citizenship.²⁹

would give due importance to petitions concerning the impact of CAA in border States such as Assam and Tripura. These cases may be segregated and heard. He, however, said all the petitions on the CAA would be subject to a common final decision.

Senior advocate Vikas Singh said the CAA would change the entire demography of Assam. The CAA violated the Assam Accord of 1985, which stipulated that any foreigner who entered the State after the cut-off date of March 24, 1971, irrespective of their religious affiliation, would be deported. The cut-off date in the CAA is December 31, 2014.

The government has maintained that the amendments made to the Citizenship Act of 1955 were meant to protect and welcome religiously persecuted people fleeing the three neighbouring countries where Muslims form the majority.

The petitions argued that a law that welcomed “illegal migrants” into India selectively on the basis of their religion was against the principles of secularism, right to equality and dignity of life enshrined in the Basic Structure of the Constitution.

The petitions said the Act selectively agreed to grant citizenship benefits to illegal migrants from only three countries. Besides it did not impose any requirement on illegal migrants to prove their claim of religious persecution or even a reasonable fear of it. The legislation effectuated discrimination on the basis of the intrinsic and core identity of an individual, that was, his religious identity as a Muslim. While Muslim migrants would have to show their proof of residency in India for at least 11 years, the law allowed illegal migrants from the six communities to be naturalised in five years' time.

²⁸ <https://prsindia.org/billtrack/the-citizenship-amendment-bill-2019>

²⁹ <https://www.prsindia.org/theprsblog/explainer-citizenship-amendment-bill-2019>

7.6 CHALLENGE TO CITIZENSHIP (AMENDMENT) ACT, 2019 BEFORE SUPREME COURT

The Court had issued notice in the matter in December, although it had declined to stay the operation of the amendment.³⁰

The Supreme Court is currently hearing the batch of petitions challenging the constitutional validity of the Citizenship Amendment Act, 2019.

The matter is being heard by a three-judge Bench of Chief Justice of India SA Bobde and Justices S Abdul Nazeer and Sanjiv Khanna.

The Citizenship Amendment Bill 2019 received assent in the Lok Sabha on December 11, last year. The Rajya Sabha has also signed off on the controversial legislation the following day.

After notice was issued in 60 petitions challenging the validity of the Amendment in December 2019, the Central Government notified the Citizenship Amendment Act, 2019 on January 10, this year.

In the meanwhile, more petitions were filed in the matter before the Supreme Court. A number of petitions were triggered by the redefinition of the term "illegal migrant", to exclude Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan from its purview. Further, naturalisation standards for people from these communities have also been relaxed.

In effect, Muslims have been excluded from the purview of the Amendment. This has been challenged as being violative of Articles 14, 21 and 25 of the Constitution, apart from being against the basic principles of secularism.

Some of the petitions also challenge the Amendment in terms of violation of the Assam Accord of 1985, which had been introduced to control illegal immigration in Assam.

³⁰ <https://www.livemint.com/news/india/citizenship-amendment-act-2019-all-you-need-to-know-11576401546515.html>

A petition has also been filed in support of the Amendment, and calling on the Supreme Court to act against those spreading misinformation about the legislation.³¹

7.7 CONSTITUTIONAL VALIDITY- ARTICLE 14

At first glance, the bill passed might seem to be discriminatory and violative but when addressed in depth from the legal perspective, it upholds the requirement of Article 14, thus being perfectly constitutional. Article 14 provides for equality before the law which is one of the magnificent cornerstones of Indian democracy. India is a country of religions and every citizen of India, has the right to equality, which is a fundamental right.

It primarily seeks to protect all persons, including non-citizens as well from any injustice and inequality. To check, if a citizen's fundamental right is being infringed under Article 14, there needs to be inequality amongst the citizens similarly situated. Article 14 prohibits class legalization but does not prohibit reasonable classification and this bill calls for reasonable classification

The CAA seeks to grant citizenship to six religious minorities who fled from State religion dominated three neighboring countries to India before the cutoff date i.e. 31st December 2014. To test the validity of this bill with Article 14 of the constitution, two prerequisites have to be fulfilled which are the components of the reasonable classification test. This test was upheld in *Anwar Ali Sarkar vs State of West Bengal*.

The first requirement to prove that equality is ensured is that the classification, if any made, has an intelligible differentia, which primarily means classification shall be based on some real and substantial distinction which distinguishes persons or things grouped together in a class from others left out of it.

In *Navtej Singh Johar vs Union of India*, intelligible differentia was interpreted to mean reasonable differentia. In the CAB, the persecuted minorities have been distinguished from the majority in the three countries which have a state religion i.e. Islam. The six minorities namely Hindu, Parsi, Sikhs, Jain, Budhhist, Christians were on historic background seen

³¹ <https://www.drishtiiias.com/to-the-points/Paper2/citizenship-amendment-act-2019>

to be persecuted on basis of religion as these three countries, namely Pakistan, Afghanistan, and Bangladesh had become theocratic states.³²

So intelligible differentia has been established as the classification is based on a reasonable basis and is not arbitrary and it would be discriminatory if these minorities are treated equally with the majority in those countries. The second requirement is that the differentia should have a rational nexus that sought to achieve the object of the bill. In the bill, the objective is to provide these religious persecuted minorities citizenship in India, as they have been residing here illegally for years now. Various questions have arisen, various protests have broken out and people have related the Bill to being Anti Muslim. But is the bill really anti-Muslim and does it bring back the fight which led to partition?

The answer is NO. The concern which people have raised is that the bill does not explicitly state the word religious but only persecuted minorities and that it is discriminatory to create a bill based on religion. The bill does not need to state each and everything, and that religious persecuted minorities were referred to while ministers were explaining the bill, as they relied on the notification dated 7.9.2015 which clarifies that the persecuted minorities refer to religious persecuted minorities.

Further, certain legal arguments were raised, the first one was if being the choice of three countries on legal valid classification? The answer is Yes, the classification of countries is based on an intelligible differentia as these three neighboring countries have a declared state religion and their constitution also says it all. Additionally, based on historic pieces of evidence provided by the government in the Joint Committee Report, it is clear, that these communities have faced severe persecution based on religion some of them being, forced conversion of Hindus to Islam, the practice of Untouchability, suppression of Hindus, mental torture of Hindu students in Pak, calling kafir, No recognition of Hindus in government services, demolishing of temples especially after Babri Masjid demolition in India, etc.

All this shows how these communities have faced persecution and that too on the basis of religion. Further, the cross-border migration was majorly based on this persecution. Ever

³² <https://lordslibrary.parliament.uk/research-briefings/lln-2020-0058/>

since the partition, these communities have only suffered and their situation has been critical in these countries. India being a secular country, seeks to open a gateway for all these people who illegally ventured into India to save themselves from persecution. So, the first tier of classification is valid, reasonable, and non-arbitrary.³³

Another question that has been contested is on the inclusion of Afghanistan and the exclusion of other land borders sharing neighboring countries. To which the answer was justified by the Ministry of Home Affairs herein referred to as MHA, that in recent past, multiple attacks on Indian interest were witnessed in Afghanistan between 1990 and 2001 when the control was with the Taliban and the Haqqani. Furthermore, the SOP guidelines which were issued by the MHA on 29th December 2011, take care of the refugees and migrants from other countries like Sri Lanka and Myanmar. Also, inclusion and non-inclusion of any country is not a legal argument but a policy argument, it cannot be subject to judicial review as said by Harish Salve, Ex Attorney General of India.

It is totally on the Legislative powers of the parliament to select some countries and exclude others. The choice of countries is based on Intelligible differentia and ethnic connect with India leading to perfect legitimate classification. Additionally, the legal argument which has been raised is the exclusion of Muslims, and the bill appearing to be anti-Muslim, which is absolutely absurd. The migration laws of India, never allowed any illegal migrants to acquire citizenship but if now it is relaxing its migration laws, it cannot be claimed as being arbitrary. The catch is, that India is not creating a new law but only relaxing its existing law which cannot be questioned. The bill aims to identify one type of persecution amongst the others, mainly because these countries follow the state religion and persecute the other religious communities as they account for minorities in these countries. The bill does not identify any other type of persecution like economic, social, etc. Further, the positive concept of equality does not promote equality of person in equal circumstance but equality amongst those people who are similarly situated. Minority and majority cannot be treated equally. Article 14 allows for reasonable classification, which means the people in the minority should be treated alike and those in majority should be treated alike.

³³ <https://www.bbc.com/news/world-asia-india-50670393>

Denotes equality of treatment in equal circumstances
Further, the opposition has targeted the legality of this bill by questioning the exclusion of the Ahmadiyya and Shia as they also face persecution in these three countries. To which it has been clarified, the bill does not seek to redress the concerns of inter-religion difference and linguistic or ethnic differences as such issues fall within the scope of administrative and governance-related issues of the concerned States.³⁴

And as regards Rohingyas, the answer of the Home Minister in Parliament is sufficient, that, 'they come through Bangladesh', and this is something which dilutes their legal position as genuine refugees so far as India is concerned. As Harish Salve, ex solicitor general of India mentioned, it is on the parliament to create a law for other minorities if they have to be allowed or not, the matter of fact that few religions have been considered for citizenship, excluding others cannot be questioned. Madras High Court in David John Hopkins vs. Union of India stated that the Centre's right to refuse citizenship is absolute and it is not hindered by the right to equality guaranteed under Article 14 of the Constitution of India.

Once article 14's constitutionality has been proved, the policy of parliament cannot be second-guessed as there is always a presumption of validity under this article. Laws related to citizenship are considered a matter of sovereign or legislative wisdom where courts usually don't intervene. Also, the CAB does not aim to go against any provision which is prohibited in the constitution.

To our surprise, only 31,313 persons will be benefitted, (Hindus - 25447, Sikhs - 5807, Christians - 55, Buddhists - 2 and Parsis - 2) these persons will be immediate beneficiaries, as quoted by the Intelligence Bureau. Further these minorities are distinguishable from the rest of Muslim citizens belonging to the three Islamic countries The CAA was the only way to seek the historical injustice, therefore, to conclude with, the amended citizenship Act does not suffer from over/under inclusion because it addresses a set target audience (i.e. the victims of religious persecution) which has been selected on basis of an

³⁴ <https://economictimes.indiatimes.com/news/et-explains/citizenship-amendment-bill-what-does-it-do-and-why-is-it-seen-as-a-problem/articleshow/72436995.cms?from=mdr>

identifying metric (i.e. the communities which form the religious minority in the three specified countries). This accounts for the non-inclusion of sectarian minorities of the three countries. For these reasons, it is unlikely that any claim of violation of article 14 will stand in court.

7.8 NOT ANTI RELIGION

Article 21 of the constitution of India states that no person shall be deprived of his life or personal liberty except according to the procedure established by law. It must be ensured that no legislative action must be taken which could deprive a person of his personal liberty until there is a substantive and justifiable law to support it. Post Maneka Gandhi's case, the court laid down that the procedure contemplated by Article 21 should comply with the requirements of Article 14 which requires it to qualify the reasonable classification test. The procedure must be fair and reasonable and non-arbitrary. Since Article 14 and article 21 are interlinked, in case law concerning personal liberty of individuals passes the reasonable classification test, it will be justified under article 21.

It has been discussed earlier how Citizenship (Amendment) Act, 2019 satisfies the test of reasonableness under Article 14, thus the act will also be justified under article 21. In *Hans Muller of Nuremburg vs Superintendent, Presidency Jail, Calcutta & Ors.*, the court held that Section 3(1)(b) questioned under The Preventive detention Act, 1950 and Section 3(2)(c) under the Foreigners Act, 1946 are not ultra vires as far as the constitution is concerned, having regard to Entry 9 and Entry 10 of the seventh schedule to the constitution. As the name suggests, it is related to Preventive Detention.

The given sections provide the central government with the right to limit the movement of a foreigner and determine the extent of their movement in the country. It is related to the absolute right of the central government to expel a foreigner. They have the power to make necessary arrangements for 'expulsion' which also includes requisite measures to avoid any violation of the order.

The state government has the authority to give an order to detain a foreigner or an illegal immigrant as per the law concerning the 'order of expulsion' made by the central

government. The authority to expel a foreigner provided to the government is unlimited and unrestricted. Thus, the government has the sovereign 'power to expel' an illegal immigrant or foreigner without giving any justification. A foreigner may assert to safeguard his right to life and personal liberty under article 21, but cannot claim the 'right to reside or settle in any part of the territory of India' under article 19(1)(e) as it is not provided to the non-citizens of the country.

The counter affidavit filed by the central government states that the scope of Article 21 in India is very broad. Illegal immigrants or foreigners may not be given access to each and every element under article 21. It is essential to understand that it is the government's legislative and moral obligation to identify and recognize illegal immigrants residing in our country to ensure security and as a 'principle of governance' and is in accordance with article 21.

The court has continued to consider the procedure mentioned under the foreigner's Act to be just and fair. It was further stated that illegal immigrants would not have the right to challenge the provisions of the Act. Hence, it proves that any action against illegal immigrants will not deprive them of their personal liberty if taken in conformity to the procedure under the foreigner's Act.

Article 25-28 of the constitution of India guarantees the right to freedom of religion. Citizenship (Amendment) Act, 2019 strives to preserve the rights of certain communities that faced persecution in specific neighboring countries for practicing, professing and propagating their particular religions. It is merely an expansion of a provision to provide citizenship to religious minorities. These minorities include Hindu, Sikh, Buddhist, Jain, Parsi, and Christian who are facing religious persecution in three countries i.e. Pakistan, Afghanistan, and Bangladesh as they have a specific state religion.

Identification of the minorities facing religious persecution in neighboring countries with a particular state religion and providing them citizenship denotes re-establishment of constitutional and Indian values of secularism, boosts confidence and devotion of the country. Any Muslim who is born to Indian Muslim people are automatically considered as Indian citizens. No such Muslim has been deprived of citizenship.

Even Muslims from the respective neighboring countries, or any foreign country may apply for citizenship under Section 6 of The Citizenship Act, 1955. Long-term Indian visas and citizenship are issued to individuals from the respective neighborhood, if they fulfill the requirements disclosed in the Visa Regulation & Citizenship Act, 1955.

Foreigners may legally migrate and be considered as an Indian citizen, once the required conditions are satisfied. Many individuals belonging to the majority group of these three neighboring countries reside on valid visas in India and these particular individuals would still be qualified for citizenship, with respect to the conditions laid down in the act.

Identification of classified communities that systematically face persecution in specific geographical regions having a particular state religion cannot be defined as contrary to the definition of secularism. It is merely a representation of limited relaxation that has been provided by the country to classified religious minorities.

As we may observe, Harish Salve mentions in one of his interviews that a country would not allow anybody to migrate then to allow minorities of those countries facing religious persecution to migrate. It is correct that Ahmadis & Shiites have faced persecution in the respective neighboring countries, especially in Pakistan, where the Islamic constitution of the country does not even consider Ahmadis as Muslims. Such persecution mostly involves political ground and is not particularly religious. Regardless of whether Pakistan identifies them or not, India considers Ahmadis as Muslims because of their strong belief in Allah and Quran.

It is not our country's duty to interfere with the intra-religious persecution faced by a community in some different country following a specific state religion. Non-identification of specific religions or a group of individuals believing in a specific religion within the sense of majority religion in those countries cannot be compared with persecution of religious minorities, who believe in a religion other than the majority religion in certain neighboring countries.

It is very difficult to deal with all the issues at the same point and it is not our country's duty to address each and every issue of the neighboring countries. In Spite of not signing

the UN refugee Convention, 1951 our country has continued to provide shelter to a lot of refugees and asylum seekers. Approximately, there are 31,000 refugee and asylum seekers from countries such as Iran, Iraq, Afghanistan and many more. Other migrants not protected by the CAA are still secured on the basis of 'India's refugee policy'. The citizenship has also been provided individually to various refugees which includes migrants from Bangladesh, Afghanistan and Uganda.

It is very essential to keep in mind that the CAA does not make changes in the current citizenship 'naturalization' procedure. Past few years, there have been many individuals from Afghanistan, Pakistan, Bangladesh, which include Muslims, who were granted Indian citizenship through the naturalization process. A renowned personality, Adnan Sami (Pakistani Singer) was granted citizenship in 2015, under Section 6(1) citizenship by naturalization. CAA does not discriminate on the basis of religion, but categorizes it on the basis of 'religious persecution' in respective countries with state religion. Consequently, the CAA does not breach the revered concept of secularism.

7.3 CAA CASE COMES UP JUST THRICE IN 1 YEAR IN SC DESPITE 140 PLEAS, INCLUDING FROM UN BODY

The first petition against CAA was filed the day after Parliament passed it in December 2019. CJI-headed bench described it as a matter 'uppermost' on minds.

7.4 NEW DELHI:

Ever since the Citizenship (Amendment) Act was passed by Parliament on 11 December 2019, it was met with protests all across the country. The new law was challenged in the courts almost immediately, with the Indian Union Muslim League (IUML) filing a petition against it in the Supreme Court the day after its passage. The CAA came into effect on 10 January 2020, while petitions against it kept mounting in the Supreme Court registry. Currently, there are over 140 petitions tagged to the IUML petition. Even the United Nations High Commissioner for Human Rights, Michelle Bachelet, filed an intervention application against the law last year, offering to assist the court as amicus curiae.

However, the petitions have since seen little movement, with the case coming up before the Supreme Court thrice. The apex court has also refused to pass an interim order staying the law without hearing the Centre, which took 2.5 months to file its first response to the petitions.

CHAPTER -8

INTERNATIONAL REACTIONS

8.1 THE (IN) SIGNIFICANCE OF INTERNATIONAL REACTIONS TO THE CAA MARCH 4, 2020

In the past year, Prime Minister Narendra Modi's actions with respect to Kashmir and the controversial Citizenship Amendment Act have come under the international scanner for their apparently discriminatory and Islamophobic underpinnings. Most recently, political leaders from other countries, as well as international organizations, have strongly condemned the brutal communal violence in New Delhi, which occurred in broad daylight during US President Donald Trump's historical visit to the national capital. But have these incidences created a shift in how foreign powers deal with India?

For decades since India's independence, world powers—especially in the Global North—have espoused India as the biggest success story of a pluralistic liberal democracy. As opposed to China, India's billion-plus population is viewed as a thriving market that is open to foreign collaboration and investments. The country's growing regional influence, both strategically and militarily, has caught the eye of many a world leader. At international forums and bilateral talks, Modi has been able to project his vision for India as an all-round progressive and inclusive one that is devoid of any Hindutva agenda, and this has worked in the country's favour so far, especially with respect to trade and investments, joint military exercises, and diasporic engagement.

As the world's 5th largest economy and a neighbour of China, India's importance in the current international scenario is quite high, especially for the Global North who look at the country as a natural mediator to their discontents with China. India's continued emphasis on destroying transnational Islamic terrorism and holding Pakistan accountable for its complicity has also impressed many, who now see potential defence partnerships with India to be in their security interests. Hence, even though news of alleged targeted state-sponsored violence and police brutality comes as a shock to Western powers that have fallen to Modi's charm, they are unlikely to punish India for its illiberal outlook.

This is why, for example, the Trump administration, albeit wary of signing a trade deal with Modi's government, has continued to push for a stronger defence relationship with India. Trump's speech at the Motera Stadium was full of positivity and niceties, especially towards Modi, whom he has previously referred to as a 'tough negotiator'. Even his official statement regarding the violence in New Delhi was one of hope; hope that the Indian administration will ensure religious peace and freedoms for all citizens. This comes despite the fact that the CAA has been rejected and opposed by the US Commission on International Religious Freedom, Congressional Democrats, and even the city of Seattle. But tides may change if Bernie Sanders comes out as a winner for the next election since he has taken a solid stance against the issue and criticized Trump's ambivalence to the violence in New Delhi.

Europe has also taken an uncharacteristically neutral stance on Modi's questionable treatment of religious minorities. Ugo Astuto, the EU ambassador to India, said that he hoped that the bill was in accordance with the Indian Constitution's "high standards". In addition, the EU parliament has deferred its vote on the issue. This, along with the rather elusive visit of mostly far-right EU parliamentarians to Kashmir, at a time when local political leaders and journalists were barred from accessing the region, makes it quite clear that the EU wants to steer clear of any controversy regarding India's domestic affairs. It is also worth noting that at a time when the very foundations of the EU are trembling—à la Brexit, rising Euroscepticism, the acknowledgment of a changing world order and 'Westlessness'—it is in the body's best interest to maintain cordial relations with foreign powers like India.

It is particularly imperative to gauge the reaction of Islamic countries to what is being deemed as an anti-Muslim pogrom. The states in the Gulf Cooperation Council have maintained a resounding silence on the issue, which does not seem out of place considering that their diplomatic relations with India have traditionally been guided by principles of non-intervention in state matters. India is also an extremely important trading partner for oil and petroleum, as well as being one of the region's primary sources of manual labour. However, the Organization of Islamic Cooperation (OIC) has been prompt in criticizing India for the CAA and the New Delhi violence, to which the Ministry of External Affairs has reacted strongly, calling the body's statement misleading and inaccurate.

But India seems to be heading towards a diplomatic shift over this issue with two countries in particular—Iran and Malaysia. Following the Iranian Foreign Minister’s recent tweet condemning the CAA and the New Delhi violence, India summoned the Iranian ambassador in Delhi and lodged a strong protest over these comments. Simultaneously, the Indian government banned the import of palm oil from Malaysia as a response to its reactions to Kashmir and the CAA, despite the fact that the state has been India’s primary supplier of palmolein and refined palm oil. Such reactions from the Indian government have the potential to drastically affect the trade of these essential items and further sour relations with these countries.

Perhaps the most interesting development so far has been the reaction of the United Nations to the CAA. Most recently, the UN High Commissioner for Human Rights, Michelle Bachelet, moved the Indian Supreme Court to hear a petition claiming that the CAA is fundamentally discriminatory. Bachelet also expressed her concern about police inaction during the New Delhi riots. While the Centre has responded to the petition reiterating that the issue is an internal matter, this move has definitely caught international attention. And while one may debate the relevance of the UN and its rather limited role in mediating in domestic conflicts, changing attitudes towards India may have a detrimental effect on the country’s efforts to gain a coveted permanent UNSC seat.

Lastly, the implications of the CAA in India’s extended neighbourhood within South Asia must be examined. New Delhi’s Neighbourhood First policy aimed at increasing connectivity and trade in the region may not be enough to mitigate the massive insecurity created by the CAA, especially for Bangladesh. Maintaining good ties with Dhaka is essential to the country’s Neighbourhood First policy, the Act East policy, and to ensure stability and peace along India’s North-Eastern frontiers. However, while Sheikh Hasina’s government has acknowledged that the CAA and NRC are India’s internal matters, it fears the reverse migration of those that will be expelled once the acts are implemented. To express its dissatisfaction with India’s moves, Bangladesh cancelled the visits of two of its cabinet ministers to the country. As anti-India sentiments grow among the Bangladeshi populace, New Delhi must be wary of losing to China, who is trying to woo Bangladesh as a part of its Belt and Road Initiative.

Pakistan’s reaction to the CAA has been expectedly strong and India will continue to trivialize its attempts at internationalizing the issue. So there is nothing new to

discuss with respect to Islamabad, except perhaps that New Delhi must be wary of insurgent terrorist groups that may use this issue as a pivot to instil suspicion and fear among Indian Muslims and in Kashmir. In the case of Afghanistan, who offered citizenship to Afghan Sikhs and Hindus seeking refuge in India just before the CAA was passed, there has not been much of a reaction except an initial discomfort with Indian claims that Afghanistan continues to oppress religious minorities, which the MEA later backtracked on and clarified. India has also reacted very cautiously to the recent US-led Afghan Peace Deal, extending its support to peacebuilding initiatives that ensure the end of terrorism in the country.

Over the past few months, the Subrahmanyam Jaishankar-led MEA has aligned itself with the Centre by maintaining a rigid and defensive stance on the CAA. It has outrightly rejected any international criticism or concern on the matter. However, as former Foreign Secretary Shivshankar Menon has said, quashing down on dissent and taking all possible measures to ensure an unbridled implementation of the legislation has definitely brought Modi and his administration under the global scanner.

Even though most major states have maintained a diplomatic distance on the issue and many have expressed their support for Modi and his ability to control the current situation, it is safe to say that reports of police brutality and the actions of the state towards protestors and dissenters have dealt a major blow to India's soft power. Indian diaspora as well as concerned foreigners all over the world have joined in protest against the law in their own countries. The forced expulsion of a German student for participating in a protest in India and the consequent revocation of his visa have also raised many eyebrows about the Modi government's brazen rejection of criticism and its treatment of foreign students and visitors.

At a time when major world powers are acknowledging India's growing power and are moving towards increased strategic and economic cooperation with the country, Modi and Jaishankar must be tactful in how they respond to international criticism. On a regional level, India needs to move towards increased cooperation with its neighbours to mitigate insecurities, ensure the repatriation of those that it will render stateless, and sustainably manage the impending refugee crisis that is set to follow. Unless India acknowledges that its internal issue can have regional consequences, it is likely that its neighbours—who have traditionally relied on India for infrastructural and economic support—will turn towards China. Moving forward,

Modi stands to lose the vibrant diasporic support that has been globally sustaining his personality cult thus far if he fails to properly recognize the concerns of those protesting abroad.

Therefore, while the current situation is one where India does not stand to lose much tangibly in the short run, its consistently defensive stance on the CAA and the state's complicity in riots and violence threaten to alienate the rest of the world and impose significant costs in terms of diplomatic capital and trade relations.

8.2 PROTEST THE ACT.

At a time when Citizenship Amendment ACT (CAA), is debated in the country, not much attention has been paid to its external implications. The Act grants citizenship to all religious minority migrants except Muslims from Afghanistan, Bangladesh and Pakistan who have come to India before December 31, 2014.

With a good section of students, youths and Muslim community continue to hold protest against CAA for more than a month, the issue has begun to draw international attention. The United Nations Human Rights Commission (UNHRC) has already called the ACT as 'fundamentally discriminatory'. US Congress has also raised its concern over the discriminatory nature of the ACT. Within the Muslim world, a sharp reaction came from Malaysia and Turkey to the extent of condemning the Act, while Bangladesh refused to send their Foreign Minister and Finance Minister as a mark of protest. With the foreign media continuously focusing on the issue, there is a disquiet emerging within the Arab world with against the Modi government.

One needs to recall here that when the Modi government abolished the Article 370 and changed the status of Jammu and Kashmir from full statehood to Union Territory, the world did not pay heed to Pakistan's outcry on the subject matter and considered the issue as 'internal matter' of the government of India. However, the goodwill that PM Modi has generated in the last five years in the global arena is losing its momentum. One of the clear indicators of this trend is convening of the meeting of Foreign Ministers of Organisation of Islamic Cooperation (OIC) over Kashmir by Saudi Arabia. This is not a good sign for Indian foreign policy as this would give a fillip to the internationalisation of Kashmir issue and would also hinder the Indian efforts of isolating Pakistan.

Another ominous sign is that both Saudi Arabia and UAE has slowed down the promises of investment in India. Both are important trade partners to India and the major sources of hydrocarbon products for the Indian market. Along with remittances, the Gulf is a critical element for India's economic stability and growth trajectory. From different sources, it appears that Saudi Arabia has planned to invest 100 billion dollars in many sectors of Indian economy including petrochemicals refinery, infrastructure and mining among others. Oil giant Saudi Aramco has two major investment plans in the country: strategic investment in the greenfield petroleum refinery in Maharashtra and a \$15 billion worth 20 per cent stake acquisition in the refining and petrochemicals business of Reliance Industries (RIL).

When the Indian economy is already in bad shape and possibly heading towards recession, any negative fall in terms of India's relationship with West Asia would have a crippling effect on its economy. It is, therefore, imperative that either the Modi government undertake a course correction to CAA or effectively reach out to the outside world with facts and convincing arguments that CAA is not discriminatory and is not intended to deprive the Indian Muslims of its citizenship rights.

8.3 PROTESTS OUTSIDE INDIA

On India's 71st Republic Day thousands turned up at an anti-CAA-NRC protest in US' capital Washington DC. In Sydney, 60 Indians distributed flyers that had details of the CAA written down outside a Starbucks outlet. From the streets of Germany's Munich to the campuses of Colombia University in New York and Tampere University in Finland to the neighbourhoods of Cape Town in South Africa, a small but vocal community of young liberals are standing up against what they feel goes against the very ethos of their homeland.

8.4 INTERNATIONAL COMMUNITY'S RESPONSE

UN Secretary General, Antonio Guterres condemned violence used to control the protestors. Pakistan's Prime Minister criticised CAA expressing his concern that such policies could create a refugee crisis in the subcontinent. US Congress think tank, Congressional Research Service expressed concerns that the CAA along with the NRC

may affect the status of the Indian Muslim community. Kuwait National Assembly issued a statement calling the legislation abusive. EU resolution states that CAA marks ‘a dangerous shift ‘ in the way citizenship will be determined in India and is set to create the ‘largest statelessness crisis in the world’.

8.5 LINKING CAA WITH NRC AND NPR

NRC stands for the National Register of Citizens. Its objective is to separate the legal Indian Citizens from undocumented migrants, so that once this identification is done, the foreigners can be deported. For this purpose, a record shall be prepared under NRC enlisting such persons.

In 2004, Citizenship Amendment Act[18] had been passed under the leadership of Mr. Atal Bihari Vajpayee. The Act inserted Section 14A to the principal act. This section deals with the provisions regarding issuance of national identity cards. The Central Govt. has been authorised under this section to issue a national identity card to a registered citizen of India. It further confers powers on the Union Govt. to create a National Register of Indian Citizens. Union Govt. has also been enabled to set up a National Registration Authority for the purpose of creating such a Register.

Assam is the first state where the NRC has been carried out. The Supreme Court passed an order in 2013, following which the process to update the register began in Assam. Around Thirty-Three million people were asked to prove their Citizenship. They had to establish their national identity as Indians prior to March 24, 1971.

The updated final NRC was released on August 31, with over 1.9 million applicants failing to make it to the list, many of them are Hindus[19]. They will now be eligible to become citizens under the CAA. Since the NRC was a long-standing demand of Ahom groups, they see the CAA as a betrayal. Union Home Minister has explicitly stated that once CAA becomes effective, the exercise of NRC will come into play and it will be conducted for not just West Bengal but for entire nation.[20]

NPR (national population register) is a register of residents of India in which demographic and biometric data of individuals living at the place of enumeration for six months or more is collected by the enumerator.

8.6 ANALYSIS

Under CAA 2019 the six communities (Hindu, Muslims, Sikhs, Parsis, Jains and Christians) from Bangladesh, Afghanistan and Pakistan, will be able to apply for citizenship and would not be considered illegal migrants for the purpose of this act. Hence all such people shall be included in the NRC. But an illegal immigrant from other than these three countries or people coming from there but belong to Muslim community will be affected as they are not included in Citizenship Amendment Act. Govt. said that if a person's name is not mentioned in the NRC, it would not amount to him/her being declared a foreigner. Those left out would be given the option of approaching foreigners' tribunal and put forth their case. In case of loss, an individual shall have the option of approaching the High Court, as well as Supreme Court afterwards. Assam govt. has declared that no person shall be arrested till the foreigners' tribunal declares him an illegal migrant.

The NPR was planned to be prepared between April 2020 and September 2020, in order to be ready before the Census 2021. Ground work on NPR is underway in several states. Section 14A of the citizenship Act 1955 provides the legal basis for NPR preparation and links it with census and NRC. It says that the Registrar General India shall act as the National Registration Authority and also as the Registrar General of Citizen Registration. Point to be noted is that the Registrar General functions as the Census Commissioner of India. This means if the government wants, at any point of time, the data collected for the NPR may be legally used for NRC.

8.7 ANALYZING GLOBAL RESPONSE TO THE CONTROVERSIAL CITIZENSHIP AMENDMENT ACT

International concern over the Citizenship Amendment Act and abrogation of Article 370 demands realignment of India's domestic and international agendas

The Citizenship Amendment Act (CAA) has evoked extreme reactions from the international community. While the government has dealt with nationwide dissent with strong retaliatory measures, the move seems to have backfired, further widening the divide between the advocates and opposers of the bill. Notably, the reverberations of dissent have not just been felt within India. The global community too, seems to have taken stock of the

mass anti-CAA protests across India and the perceived implications of the legislation on minority sentiments. With the enactment of the CAA coming on the heels of the decision to abrogate Article 370, the BJP's strong *Hindutva* stance informing domestic policy decisions is influencing the foundational principle of religious pluralism that underscored many of India's key strategic alliances. The global responses have ranged from open condemnation to tactful neutrality depending on the nature of the alliance and the extent to which 'shared values' inform the same. Moreover, since Prime Minister Narendra Modi has previously demonstrated his interest in solidifying India's ties with the likes of the United States, European Union and China, examining the ramifications of these legislations beyond the domestic outrage is pertinent.

The US' criticism of India's rightward shift clearly reflected in their response to the controversial CAA. The United States Commission on International Religious Freedom (USIRF) raised concerns over the proposed legislation even before it was endorsed by the Rajya Sabha. It conceived of the bill as using religion as a pathway to citizenship to be against the core tenet of "religious pluralism". Describing the bill as a "dangerous turn in the wrong direction," the USIRF maintained that the bill undermined "the most democratic tenet". It went on to demand sanctions against "Amit Shah and other principled leadership".

In response to revocation of Article 370, two house resolutions (H. Res 724 and H. Res 745) were tabled by Rep. Rashida Tlaib and Rep. Pramila Jaypal respectively. Although these resolutions are not passed onto the Senate for a vote, the critical scrutiny of India's domestic policy in the US Congress is likely to influence international opinion. Moreover, the house resolutions also went against a key tenet of bipartisanship in US foreign policy with respect to Kashmir, which has traditionally treated the Kashmir dispute as India's internal matter. The house resolution (H. Res 724) criticised the Indian state for unilaterally changing "the status of the Kashmiri people without a direct consultation or consent of the Kashmiri people". This perception of India's actions in Kashmir coupled with decisions to curb dissent through internet shutdowns and putting political adversaries under house arrest further reinforced fears of a shift in how India seeks to establish control.

Thus, American skepticism regarding both legislations seem to be hinged on its perceived divergence from shared values of the alliance. Moreover, with Donald Trump being

impeached by the house, the race to the 2020 US presidential election seems wide open. With key Democratic representatives like Adam Schiff and James McGovern openly condemning India's actions, the US-India strategic alliance is likely to face headwinds.

In anticipation of Obama's visit to India in 2010, an article on the expanding US-India strategic partnership and the core values underscoring it, had shed light on why certain sections of American policymakers fear the authoritarian turn India is taking with its domestic policy decisions. The article ascribed the strategic partnership to shared values of "democracy, individual liberty, rule of law, freedom of expression and practice of religion and protection to minorities." Thus, demonstrating that strategic alliances between nations are not merely a product of converging utilitarian interests, it is often based on shared values and ethics.

The European Union (EU) on the other hand has preferred to adopt a relatively neutral stance. The official statement of the EU in response to Article 370 stressed on "the importance of steps to restore the rights and freedoms of the population in Kashmir". EU's stance was mirrored in response to the CAB legislation as well, wherein EU ambassador to India Ugo Astuto hoped that the bill is in accordance to the "high standards" of the Indian constitution. The rapidly evolving EU-India strategic alliance based on shared interest could explain this neutral stance. Previously deemed as a "loveless arranged marriage," the EU-India alliance has strengthened in recent decades. The EU-India Summit in 2017 that cemented bilateral ties on sustainable urbanisation and climate change amounted to an investment of 800 million Euros in Indian solar projects. EU's big stakes in India thus partially explain its hesitation to take an explicit stance of condemning the CAA and Indian actions in Kashmir.

The Organisation of Islamic Cooperation (OIC), meanwhile, declared that it was "increasingly concerned" by the CAA due to its apparent discrimination of Indian Muslims. The OIC has historically expressed a sympathetic view towards disenfranchised Muslims as demonstrated in their desire to exclude primarily Muslim groups in fighting for liberation against oppressive regimes from the definition of terrorism.

More surprising was the reaction of China, which preferred to issue a joint statement with Pakistan. The joint statement by India's immediate neighbors opposed "any unilateral sanctions that complicated the situation". India, often considered as a "natural balancer" to

China's growing influence, was particularly sensitive to Chinese dissatisfaction. Japan PM Shinzo Abe's visit to India, too, was delayed citing increasingly violent protests in Assam. Whether the afore-mentioned instances of global acknowledgement of India's domestic policy decisions would adversely affect key foreign policy issues and indeed foreign investments opportunities through programmes such as the 'Make in India' initiative, only time will tell. Nonetheless, it is clear that India is concerned about its global image and has taken various steps to counter the growing perception of it being an oppressive regime.

In response to murmurs of American sanctions against Amit Shah, India refuted USIRF's concerns as "neither accurate nor warranted". When Malaysian Prime Minister Mahathir bin Mohamad questioned the "necessity" of the CAA and lamented the "withering of secularism" in India, instead of a general rebuttal, India's MEA went a step further and summoned the Charge D' Affairs of the Malaysian embassy to express discontentment. Probably India's most explicit manifestation of fearing international backlash for domestic policies was the unofficial visit of an informal delegation of the EU to the Kashmir Valley. At a time when domestic politicians were prohibited from visiting and taking stock of the scenario, the EU delegation's visit indeed raised eyebrows. Moreover, with 22 of the 27 EU delegates belonging to the far right, the motives behind their visit seemed to get tacit international validation, reinstating the importance India lays on its global image.

With protests against CAA gaining momentum across the world in locations like Boston, Chicago and Hague among others, India's global image as the world's largest liberal democracy is under the scanner. Whether strongly worded responses by the MEA and partisan International delegations supporting India's stance work to improve that image is a mystery still evading clear consensus. Nonetheless, a realignment of domestic and international agendas seems to be imperative in order to prevent further maligning of a global image that took decades to solidify.

CHAPTER -9

SUGGESTION AND CONCLUSION

9.1 SUGGESTION

- 1) The constitution of India provide for provision od acquisition of Indian citizenship.
- 2) Since the Indian constitution provides for succession, there this act is base on religionism, its country to the principles of the Indian constitution in hence it should be repeal.
- 3) Being secular state grant citizenship selectively based on religion will bring disunity in state.

9.2 CONCLUSION

The CAA coupled with the NRC dents constitutional morality and betrays the very idea of India, which was founded on composite nationalism and shared identity. India was envisaged as a secular country, home to followers of all religions and also atheists. But the ruling dispensation, by hastily getting this Act passed without democratic consultation, has undermined democratic institutions in India. It is reimagining India as a Hindu Rashtra with citizenship defined along lines of ethno-nationalism. This Act is not the first and by no means will be the last attempt to further the agenda of Hindu Rashtra. One can anticipate many such moves meant to keep the hatred against Muslims simmering. The ruling dispensation will be reinventing tools to keep the xenophobia brewing. However, this divisive politics will only hurtle India onto the treacherous road of relentless anxiety, uncertainty and injustice. It will expose million of its own citizens against the vagaries of statelessness. The pressure it will exert on the seams of the already existing fault lines in India might result into spiraling violence and unrest for decades to come.

As we all know, illegal migrants are usually considered a threat to the security of a country so it becomes critical to detect such infiltrators. Those who enter into India on valid travel documents and are registered with FRRO/FRO and possess valid residential permit/visa have a legal right to stay in India and are termed as legal, otherwise, they are illegal immigrants.

We must not ignore the distinction between illegal migrants and refugees who faced religious persecution, who were oppressed and had to leave their native countries for the sole purpose of believing in their religion and not the state religion. CAA aims to provide these doomed nationless people a legal identity.

If we try to prove the flawed logic of the oppositions about the bill being anti-Muslim, there is no country other than India except Nepal where the Hindu religious community is a majority but there are about 50 countries with Islam as their state religion out of which 11 follow the Shariat.

If it is said that the bill classifies people on the basis of religion, where would the approx 800-900 million Hindus go? From a constitutional aspect, citizenship cannot be granted as a matter of right to any person as it is not a fundamental right. It is the discretionary power of the parliament on behalf of the country as a whole to decide whether citizenship is to be granted or not.

With all that being said, it can be concluded that all religions are equally given preference and are valued in India. No one religion is preferred over the other for giving citizenship. India is a secular democracy, welcoming all religious communities and with the Amendment bill there has been only a relaxation which has been provided for the six religious minorities which were persecuted in the three Muslim neighboring countries.

But this does not mean that any other religious communities' right to citizenship is being taken away or is being restricted. They can apply for Indian Citizenship under this category but they would have to prove religious persecution which made them flee to India. Further, the introduction of this bill does not affect any other means through which earlier citizenship used to be granted under the citizenship act, 1955 like by obtaining a passport, ration card, all other documents required, or by getting them registered in the voter's list. Certainly, the bill is the recourse for those immigrants who have applied for citizenship and have claimed that they have been persecuted on the basis of religion in their respective country.

CONCLUSION:

The major issue with the amendment is that it provides citizenship only to non-muslim immigrants who have live for five years from the the three countries. However, any foreigner can still apply for citizenship but can only be registered after they have lived in India for 11 years i.e by the normal process of naturalisation. Presently, the petition challenging the amendment has been pending in the Supreme Court which will decide its constitutional validity.

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