

**The Citizenship (Amendment) Act 2019:
Legislative Policy and Repercussions**

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Recently, the Parliament passed the Citizenship (Amendment) Act 2019.

The citizenship (Amendment) Act 2019 seeks to amend the Citizenship Act, 1955. The earlier Act of 1955 provides for citizenship by birth, descent, registration, naturalization and by incorporation of the territory into India.

In addition, it regulates the registration of Overseas Citizen of India Cardholders (OCIs) and their rights. An illegal migrant is prohibited from acquiring Indian citizenship under Indian Citizenship Act. An illegal immigrant is a foreigner who either enters India illegally, i.e., without valid travel documents, like a visa and passport, or enters India legally, but stays beyond the time period permitted in their travel documents. An illegal migrant can be prosecuted in India and deported or imprisoned under the provisions of the existing law.

The question arises that, is it violative of Article 14 of the Constitution which guarantees the right to equality and applicable to both the citizens and non-citizens **and the principle of secularism enshrined in the preamble of the constitution**. The fundamental criticism of the Act has been that **it specifically targets Muslims**.

Thus, the religious basis of citizenship not only violates the principles of secularism but also of liberalism, equality and justice. It also boils down to the **political rights** of the people of the state. Migration has been a burning issue in North-Eastern part of the country.

The Citizenship Amendment Act is an **instance of class legislation**, as classification on the ground of religion is not permissible. The researcher hereby focuses on this legislative policy decision of the government and different perspectives involved in, with unavoidable consequences.

“Hindus and Sikhs of Pakistan, who do not wish to live there, can come to India. It is the duty of the Government of India to ensure a normal life for them”

- Mahatma Gandhi, 15 August, 1947

Recently, the Parliament passed the Citizenship (Amendment) Bill 2019 which received the President's assent to become an Act. The citizenship (Amendment) Act 2019 seeks to amend the Citizenship Act, 1955. The previous legislation provides for citizenship by birth, descent, registration, naturalization and by incorporation of the territory in India. In addition, it regulates the registration of Overseas Citizen of India Cardholders (OCIs) and their rights. An illegal migrant is prohibited from acquiring Indian citizenship. An illegal immigrant¹ is a foreigner who either enters India illegally, i.e., without valid travel documents, like a visa and passport, or enters India legally, but stays beyond the time period

¹ clause (b) of sub-Section (1) of Section 2 of the Citizenship Act, 1955

permitted in their travel documents. The Act of 2019 also provided " that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have 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 order made there under, shall not be treated as illegal migrants for the purposes of this Act."

An illegal migrant can be prosecuted in India and deported or imprisoned. The question arises that, is it violative of Art 14, a non derogable clause of the Constitution which guarantees the right to equality and applicable to both the citizens and foreigners and the principle of secularism enshrined in the preamble and Part III of the constitution. The fundamental criticism of the Act has been that it specifically targets Muslims. This agitation is levelled against policy as it is against the principles of liberalism, equality and justice. It also boils down to the political rights of the people of the state. Migration has been a burning issue in north eastern states and the high level of agitations and strong protest is also seen where in the destruction of national property is witnessed.

India since time immemorial has believed in principle of equal respect for every religious community and respect for all religions, the state has no religion of its own. The present CAA, 2019 is facing a significant challenge that will test its commitment to constitutionalism and democratic values. In this paper, author attempt to move beyond basic arguments which have become crucial in the public sphere and specifically blamed for being beyond reasonable classification, arbitrariness, and secularism, will suggest that there are deeper reasons to hold the CAA unconstitutional. As it will become clear, a closer engagement with these reasons will require us to rethink some of our long-held assumptions about Indian constitutional law². With the passing of the said act the fundamental question raised is does this grant of immunity to a specified group violate the fundamental principle of 'reasonable classification' which is basis of Art 14, to impose such provision is stand the test of non arbitrariness and thereby the basic structure of equality and secularism. It sharply provides that the migrants from only Muslim community are treated differently on the basis of religion, and special treatment is given to other religious communities. The CAA provides that migrants from certain communities will not be treated as "illegal migrants" for the purposes of the Passport Act and the Foreigners Act, if they meet four grounds viz they came to India before December 31, 2014, the central government has exempted them from the Passports and Foreigners Acts, they are from Afghanistan, Bangladesh or Pakistan, they belong to any one of the six religious communities, Hindus, Sikhs, Christians, Parsis, Jains or Buddhists. The news releases of the government of India says only about 31,313 people fulfil the above four criteria and have stated, when they first entered India, that they had come to the country to escape religious persecution. Only they are the beneficiaries under the CAA. But this also raises question about *intelligible differentia*.³

² Founding vice chancellor of O P Jindal Global University and founding dean of Jindal Global Law School

³ Test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others

The CAA identifies persons belonging to six religious communities and privileges them over other *Islam*. This doesn't qualify the test of reasonable classification and the law will not pass constitutional scrutiny, having specifically left out Muslims. It is an example of discrimination. While drafting the law of the land our draftsmen have specifically rejected the grant of citizenship on the basis of religion. The reasoning of religious persecution does not have rational relation in classification. In world there are other countries where chances of such religious persecution are seen but we are considering only these three countries. Another issue is arbitrary imposition⁴ of the provisions which is violative of Art 14, which provides "equality before law or equal protection of the laws within the territory of India". The Supreme Court had on various occasions emphasised the importance of non-arbitrariness to pass the test of equality and underscored this arbitrariness as is detrimental to the jurisprudential foundations. Also it has laid the grounds of arbitrariness as non-inclusion, arbitrary selection, arbitrary cut of date, and religious discrimination. In present case of CAA considering these entire arguments, one can easily say that it is going to hamper the basic structure of the Constitution of India. The Union and the State Legislature are bound to protect the framework of basic structure of the Constitution.

Though all these legal justification stands in the way of journey to constitutionalism, there are other views supporting this legislative policy. Equality is among the equals, Reasonable classification is permissible, Cannot treat two unequal's as equal –else it violates rule of law, Focus on positive concept of Art 14. The provision being bound to be followed by state governments also interferes their autonomy and challenge for cooperative federalism and mutual consultation. Regarding the issue of religious persecution and treatment to minorities the issue is not the outcome of particular recent event, it has legal background also as in Nehru-Liyakat Agreement,⁵ which was a bilateral treaty between India and Pakistan, where the people from both countries could come to dispose of the property can enter the country on permit basis, also it provided to unrecognised the forced conversions and both of them undertook to protect the minority rights. This treaty discussed various issues involved and decided to mutually act accordingly. Since then the refugees migrated from Bangladesh to West Bengal in India. But the issue of illegal migrants in India is becoming serious concern for the country. Under the Citizenship Act, 1955, anyone who does not have a valid passport or who has stayed in India for a period beyond the permitted time, is described as an "illegal migrant", irrespective of nationality or religion. Such illegal migrants are liable to be prosecuted under the Foreigners Act, 1946 and The Passport (Entry into India) Act, 1920. The Passport (Entry into India) Amendment Rules, 2015 and The Foreigners (Amendment) Order, 2015, made changes in this. 'The Home Minister said that this Bill contains provisions

left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question.

⁴..Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and is proportionate, such legislation would be manifestly arbitrary." *Shayara Bano v. Union of India*, (2017) 9 SCC 1, paragraph 101

⁵ 8 April, 1950

to grant Citizenship on reasonable grounds to refugees facing religious persecution in the above three countries, which in no way go against any provision under the Constitution of India and does not violate Article 14. He also reassured that no provision of Article 371 would be violated by this Act.⁶

Repercussions

The purpose of the Amendment 2019 is to enable acquisition of Indian Citizenship by members of minority communities namely Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who were forced or compelled to seek shelter in India due to religious persecution or fear of religious persecution in their countries.

Sec. 5 citizenship, after 2019 Amendment

Migrants from those three countries, legal migrant, may be given LTV, may be given citizenship, citizenship for religiously persecuted, minorities 7 years stay, Person of Indian origin, Deemed to be legal migrant if entered before 31st Dec. 2014, citizenship for non minorities, cannot be illegal migrant, 7 years stay, Person of Indian origin illegal migrants may be detected and deported, May continue to have them as illegal migrants, .

Effect of sec.6 after 2019 amendment

6 communities makes application, Deemed to be legal migrant if entered India before 31st Dec. 2014, Fulfils conditions of third schedule, Residence in India for not less than five years. Other than these 6 though they make application, Should not be illegal migrants, Fulfils conditions of third schedule, Residence in India for not less than eleven years.

Political and social outrage

Ensuring sense of safety to local minorities Problems of north east states – their constitutional promises,⁷, and issue involved of constitutional basic structure provides advantage to opponents, and also gave opportunity to debate on secularism, in fact this discussion in unending and full of political smell. Real concern for the concerned community and practical issues are different, it becomes political agenda by the opposition without logical reasoning. Students who are the future of nation also protested against CAA on various issues. The resistance across the country, particularly among the youth and the students across university campuses is motivated by a deep commitment to constitutionalism and democratic values. The challenges are not in the context of our national issues but also if globally considered, it has some challenges such as Relations with neighboring countries are

⁶ Amit Shah [Minister of Home Affairs], The Citizenship (Amendment) Act, 2019, after it received Presidential Assent on December 12, 2019, (*The 4th December, 2019*)

⁷6(B) (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.'

going to be disturbed, its surely going to upset of Muslim dominated nations, we are held to secular in the eyes of global community it will be then a farce veil of secularism, another issue of human rights and a holistic refugee/asylum policy, this is not going to benefit our image in world community. Another issue of NRC⁸ Sec14A the Central Government may compulsorily register every citizen of India and issue national identity card to him, to register nationals, the intention behind is to detect and deport Illegal Migrants, which has become a most debatable issue. Along with this also there will be a difficulty in detection and again a unavoidable issue of deportation. Huge destruction of Pubic property and loss of work hours caused by the protesters to this issue has again alarming situation which is witnessed since few days back.

Conclusion

The legislative policy in India is based upon the basic philosophy of Constitution of India, which has for years made a identity of nation as a democratic, secular, republic and any legislation is expected to be in tune with this constitutional framework. Any instance of un-constitutionalism cannot stand in long run, hence this legislation and the present reaction to it is an open invitation to the apex court to pronounce upon its constitutional validity as each of three requirements under the present statute regarding as country of origin, religion, and date of entry into India - are effectively beyond the control of the individuals the law is targeted at. A person cannot choose which country they were born in, which religious community they were born into, and when persecution forced them to flee into India. But the CAA takes the category of migrants living in India and divides them precisely on these three bases. This is why it goes against the basic tenets of equality and principles of liberalism, equality and justice other democratic principles.

⁸ National Register of Citizens