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## 20. Law as a Tool of Social Change: Critical Appraisal of CAA, 2019 and NRC Rules, 2003

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### Abstract

Law is the king of kings. Law in all ages has been an instrumental to regulate, govern and control human society. It has become one of the most authoritative means to achieve and administer ends of justice. It comes from the prerogatives of the State, age old customs and principles evolved through judicial verdicts. It is a powerful and valid weapon of State to control human conducts in all respects. Law is not merely a static and dead letters but dynamic and living social organism that ought to be changed according to changing needs of society.

In India, law has eradicated many unwanted and inhuman social customary practices such as Sati system, Dowry, Child Marriage, Triple Talaq, Untouchability etc. it also has played pivotal role in order to curb malfeasance etc through criminal laws not only in traditional but in virtual forms also. Law can bring social harmony amongst different groups of social enmity. Legal dynamism in our society is brought about by the Constitution of India that is living document. It has assured guarantee of fundamental rights, welfare of downtrodden and protection against arbitrariness.

On the other hand, law also can be a strong weapon of suppression of poor and vulnerable sections of society.

It is need of the time that role of law has to be critically evaluated with special reference to Citizenship law, rules relating to citizens register etc in the light of constitutionalism, human rights and international law. In this seminar paper, author has critically examined CAA, NRC etc rules for open deliberation of intellectuals.

"Last reason of law is the welfare of society"

- Justice Cardozo

### 1. Introduction

Law has been an instrument to bring about social transformation in every human society. It has played a pivotal role in regulation, control of human conduct and also prohibited unwanted

acts or omission on the part of persons. Law is also changed with social change. State is the master of law in an ordinary sense but it is also not above the 'rule of law'.

Law relating to citizenship is a subject matter of Central government and part and parcel of Constitution of India. At present, Citizenship Act amendment, 2019 and National Register of Indian Citizenship, Rules 2003 etc have stirred domestic and international environment. Masses have been demonstrating across the country against CAA and NRC in all possible ways. Common people, Intellectuals, students etc. are in civil disobedience of this amended law irrespective of religious or political affiliation.

Several petitions are pending before Hon. Supreme Court for judicial intervention in the issue. It is need of the time to have intellectual deliberation on this widespread and significant matter of national importance. The paper aims to appraise various issues involved in on the basis of constitutionality, reasonableness, human rights, international laws etc.

## 2. Basic Concepts

**Law-** law covers in its ordinary sense all rules legislated, judicially applied and customarily followed. It can be regarded as a product of the State enacted to rule the subject. The positivist theory of law states that law is a command of sovereign backed by sanction.<sup>1</sup> Salmond regards law as set of principles to be enforced by court of law.<sup>2</sup> Roscoe Pound states that law is a social engineering.<sup>3</sup> Marx refers law as an instrument of suppression by the State.<sup>4</sup>

**Social Change-** It is referred as a continuous and gradual process of change or evolution in the society without willful and institutional directions. It covers changes in social structure, behavioral pattern, value system etc. this kind of changes occur due to internal and external operational forces such as urbanization, industrialization, technological advancements etc.<sup>5</sup>

**CAA-** It is referred to The Citizenship (Amendment) Act, 2019. It has amended The Citizenship Act, 1955. It is enacted under S.18 of the Act of 1955 by the Parliament of India.<sup>6</sup>

**NRC-** National Register of Indian Citizens (NRC) means the register containing the names of Indian citizens. NRC updation basically means the process of enlisting the names of citizens based on Electoral Rolls up to 1971 and 1951 under The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003<sup>7</sup>

## Historical Perview of Law & Social Change

The path of social change in India has been charted out by the Constitutional of India and legislations to give effect to its provisions and values. Law does not only changes according to

social changes but also it brings changes into social process and institutions. Progressive society needs a progressive law. There are numerous examples of social changes caused by law.

1. The Constitution of India has conferred all citizens with fundamental rights,<sup>8</sup> duties,<sup>9</sup> values like Justice, Equality, Liberty and Fraternity irrespective of caste, race, religion etc. It has declared India as a Sovereign, Secular, Socialist, Democratic, Republic nation.<sup>10</sup>
2. Law has abolished ancient but cruel and inhuman custom of Sati in India.<sup>11</sup>
3. Law has prohibited the evil custom of Dowry, polygamy and child marriage.<sup>12</sup>
4. Law has conferred people irrespective of gender all freedoms, rights relating to education, equal work and remuneration, trade and business, property and succession, legal remedies etc.<sup>13</sup>
5. Law has also prohibited various unwarranted practices such as child labour, bonded labour, illegal arrest and detention.<sup>14</sup>
6. It is law that has laid down foundation and structure of welfare state in India.

#### 5. Law OF CAA, NRC

**CAA, 2019-** It is referred to The Citizenship (Amendment) Act, 2019. It has amended The Citizenship Act, 1955. It is enacted under S.18 of the Act of 1955 by the Parliament of India. The crucial amendments to the provisions of the Act of 1955 are made as follows.

In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (1), in clause (b), the following proviso shall be inserted, namely:—

**"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.<sup>15</sup> [Emphasis supplied]**

Another crucial amendment made is to reduce the period of residence in India so as to grant citizenship, is as follow.

In the Third Schedule to the principal Act, in clause (d), the following proviso shall be inserted, namely:—

'Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years"<sup>16</sup>

**NRC Rules, 2003-** National Register of Indian Citizens (NRC) means the register containing the names of Indian citizens. NRC updation basically means the process of enlisting the names of citizens based on Electoral Rolls up to 1971 and 1951 under The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003

The Registrar General of Citizen Registration shall establish and maintain the National Register of Indian Citizens. The National Register of Indian Citizens shall be divided into sub-parts consisting of the State Register of Indian Citizens, the District Register of Indian Citizens, the Sub-district Register of Indian Citizens and the Local Register of Indian Citizens.<sup>17</sup>

The National Register of Indian Citizens shall contain the following particulars in respect of every Citizen, namely:-

(i) Name; (ii) Father's name; (iii) Mother's name; (iv) Sex; (v) Date of birth; (vi) Place of birth; (vii) Residential address (present and permanent); (viii) Marital status, if ever married, name of the spouse; (ix) Visible identification mark; (x) Date of registration of Citizen; (xi) Serial number of registration; and (xii) National Identity Number.<sup>18</sup>

The Registrar General of Citizen Registration is empowered to notify the date on which the National Register of Indian Citizens shall be initialized throughout the country. It shall be compulsory for every Citizen of India to get registered with the Local Registrar of Citizen Registration during the period of initialization.<sup>19</sup> It shall be the responsibility of the head of every family to give the correct details of name and other particular of members of the family of which he is the head.<sup>20</sup>

The Registrar General of Citizen Registration, or any officer authorized by him in this behalf, shall issue the National Identity Card to every Citizen whose particulars are entered in the National Register of Indian Citizens.<sup>21</sup>

The National Identity Card is the property of the Central Government. No person shall willfully destroy, alter, transfer or use in any form the National Identity Card, except for the lawful purposes.<sup>22</sup> Any violation of provisions of rules shall be punishable with fine which may extend to one thousand rupees.<sup>23</sup>

## 6. Critical Appraisal

The Citizenship (Amendment) Act, 2019 has incorporated provision to grant citizenship to people coming only from Muslim Countries such as Pakistan, Afghanistan and Bangladesh. Moreover, it has also provided provisions to grant citizenship to only non-Muslim persons such as Hindu, Sikh, Buddhist, Christian, Jain etc. Religion is the base on which citizenship is being granted to people that is neither permissible under Constitutional provisions nor under provisions of Act of 1955. It is violative of principle of equality under Articles 14, 15 and right to life under Art 21 of the Indian Constitution. It cannot be a reasonable classification as it is based on religion.

It also violates human rights of people belonging to sub-sects of Muslim religion who cannot get citizenship under this amendment act of 2019.<sup>24</sup> Coming to the Interplay of Human Rights Law and Refugee Law, both of them describe the Principle of Non-Refoulment which prohibit forceful repatriation. On the whole none of the Laws work independently but go hand in hand with each other. Some of the principles or ideas are borrowed or adopted from each other as well.<sup>25</sup>

There are many declarations, conventions, regarding refugees such as Convention relating to the Status of Refugees (1951), Protocol (1949), Convention relating to the status of Stateless Persons (1954), UN Declaration on Territorial Asylum (1948), Universal Declaration of Human Rights (1948), Convention on the Elimination of Discrimination against Women (1979), International Convention on Civil and Political Rights, Convention on the Reduction of Statelessness (1961), Guiding Principles on Internal Displacement (1998). Some of the Regional Refugee Laws are Cartagena Declaration (1984), Asian African Legal Consultative Committee Principles (1996).<sup>26</sup>

Judiciary plays an important role in protecting refugees and has delivered landmark judgments regarding rights of refugees. The judiciary has made it easy with the concepts of Social Action Litigation and Public Interest Litigation.<sup>27</sup>

## 7. Conclusions & Suggestions

### Conclusions

It is concluded that law relating to CAA and NRC is violative of fundamental rights of people under Articles 14, 15 and 21. of Constitution of India. It is further concluded that amendment rules of 2019 and 2003 are violative of basic human rights under humanitarian laws

and international laws and conventions relating to refugees and stateless persons. Indian judiciary has shown humanistic approach towards illegal migrants in various landmark judgments. Law cannot be a religion-centric in a country like ours as a secular State. CAA, 2019 is a permissible law enabling people and empowering Central Government to grant citizenship to illegal migrants on the basis of religion. NRC Rules 2003 is law that empowers the State to eliminate people who will not prove their citizenship with valid documents from India. There are millions of people who are native of India but due to lack of valid documents like birth certificates, proof of residence etc can be deprived from citizenship. Trial of NRC in Assam has proved itself to be worst and haphazard for all citizens.

#### Suggestions

In respect of above mentioned laws, facts and interpretations, it is suggested that

- I. Citizenship shouldn't be granted on the basis of religion.
- II. It is further suggested that national register of citizens is not required to be maintained as there is already a national population register.
- III. Implementation of NRC will adversely affect all citizens in their every aspect of life.
- IV. The native, nomadic, tribal and so many are not in position to produce documents of domicile, residence, birth etc and they will have to suffer for reason of unwanted law of registration of citizens.
- V. State must adopt humane, empathetic approach in legislative policy of citizenship.
- VI. Law shouldn't be used to create fear in the mind of people.

NRC rules will have lifelong effects on people, govt. of states, hence, they should be considered in the process of implementation of it.

#### Foot Notes

1. See, Paranjape, N.V., Jurisprudence, Central law Agency, Allahabad, 2015
2. See, Fitzgerald, Salmond on Jurisprudence
3. Ibid
4. Supra note 2
5. See, W. Friedmann, Law and Social Change, Universal law Publishing, New Delhi
6. See, The Citizenship (Amendment) Act, 2019
7. See, The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 and Ministry of Home Affairs (Office of Registrar General, India), Order No. S.O. 596(E), dated 15th March, 2010; See also, www.nrcassam.nic.in
8. See, Part III of Constitution of India, Articles 12 to 35

9. See, Part IV-A of Constitution of India, Article 51-A
10. See, Preamble, Constitution of India
11. See, The Commission of Sati (Prohibition) Act, 1987
12. See, The Dowry Prohibition Act, 1961; See also, The Child Marriage Prohibition Act, 2006
13. See, Art. 19 to 21, Constitution of India
14. See, Article 20 to 24, Constitution of India
15. See, S.2, the Citizenship (Amendment) Act, 2019
16. See, S.6, the Citizenship (Amendment) Act, 2019
17. See, S. 3, The Citizenship Rules, 2003
18. Ibid
19. See, Ss.6-7, The Citizenship Rules, 2003
20. Ibid
21. See, S.13, The Citizenship Rules, 2003
22. See, S.14, The Citizenship Rules, 2003
23. See, S.17, The Citizenship Rules, 2003
24. Art. 1(A) (2) of Refugee Convention, 1951
25. <https://legaldesire.com/human-rights-refugees-refugee-laws-india-globally/>
26. Ibid
27. See, Dongh Lian Khan v. Union of India, 2015 SCC Online Del; See also, Louis De Raedt v. Union of India, 1991 (3) SCC 554; NHRC v. Arunachal Pradesh, 1996 (1) SCC 742; Digbijay Mote v. Union of India, 1993 (4) SCC 175; Malvika Karelkar v. Union of India, Writ Petition (Crim) No.583 of 1992



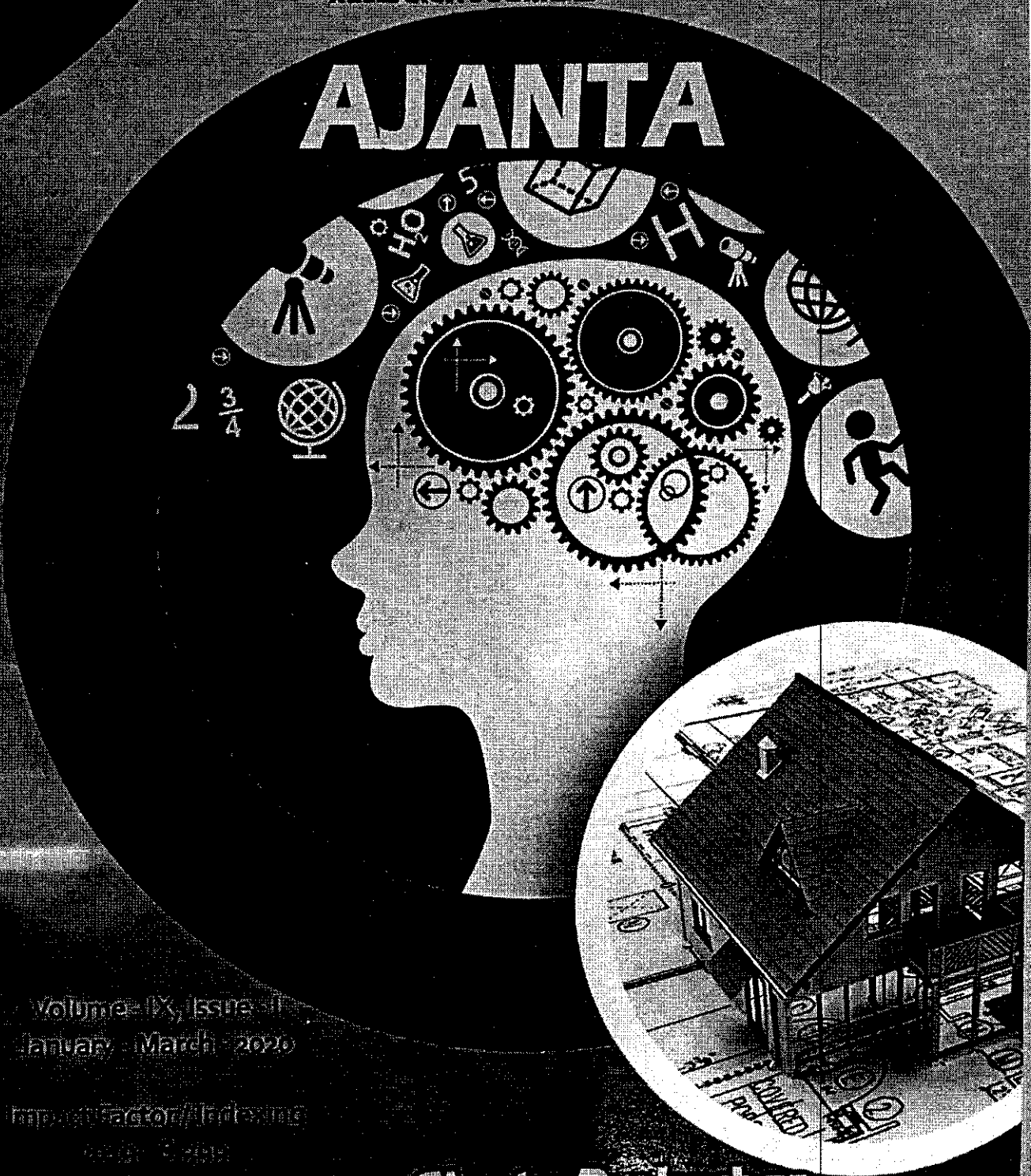


Peer Reviewed Referred and UGC  
Listed Journal (Journal No. 40776)

ISSN 2277-5730  
AN INTERNATIONAL  
MULTIDISCIPLINARY QUARTERLY  
RESEARCH JOURNAL



# AJANTA



Volume - IX, Issue - I  
January - March - 2020

Impact Factor / Indexing  
SJIF 8.001  
DOI: 10.24018/ajanta.v9i1

**Ajanta Prakashan**