

# LEGALFOXES LAW TIMES

## THE LEGALITY OF CITIZENSHIP AMENDMENT ACT, 2019

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"Freedom isn't the mark of progress, responsibility is". The Citizenship Amendment act, 2019 came into effect on 12th October 2019. The Central Government took the responsibility to protect the Indians in three Neighbouring countries Pakistan, Afghanistan, and Bangladesh from religious persecution taking place since Independence.

We have witnessed many protests, riots in Delhi and many states as well where people came on to the streets with placards against the CAA, 2019.

### **1. What was the reason for so much of havoc in the country?**

The Central government just wanted to allow the Indians in the Islamic Countries who are facing persecution since ages, their right to life and personal liberty was taken away by not allowing them for continuing their occupation, temples were devastated, rejection of Non-Muslim religions, forced conversions, destruction of educational institutions, etc. But, keeping in mind the Constitution of India, one cannot say that the government has overseen the principles of Article 14, Secularism, and the basic structure of the Constitution because here the protection of Non-Muslims in the three countries is of utmost priority.

It should be the Government's main motive to protect the Indian's first, give them all the rights under the Indian Laws. The six Communities i.e., Hindhu, Sikh, Buddhist, Jain, Parsi, and Christians cannot go to any other country. But, Pakistan, Afghanistan, and Bangladesh have Islam as their state religion prescribed under Article 2 of their Constitution. Muslims believe only in Allah, there is no superior power than Allah. So, Muslims if they are in India or Islamic countries, it's the same, but, not for the Hindus and other Religions.

### **2. How does the Amendment Act, 2019 doesn't violate Reasonable classification under Article 14?**

Dating back to History, it has been almost seven decades for India and Pakistan partition which resulted in the exchange of population on both sides. Today, we see that the Hindu

and Sikh population in Pakistan is less than 1% when it was almost 20% at the time of partition. Therefore, to ensure the rights of the minority communities, India and Pakistan signed the Nehru-Liaquat pact on April 8, 1950<sup>1</sup>. The Pact was ineffective since then. This failure of the Nehru-Liaquat Pact made the central government to make laws to bring the historic pact into effect and becomes the constitutional obligation on the Indian government to grant citizenship to the victims of the partition.

Discussing further, that the amendment act is neither against Article 14 and nor it violates the principles of Secularism. Article 14 deals with the equality rights in the constitution which does not mean that all the general in character. It doesn't mean that each law must have universal application for all, persons aren't naturally, attainment, or circumstances within the same position. The variable desires of varied categories of persons usually need separate treatment. From the dynamic nature of society, there ought to vary laws in numerous places and therefore the legislature controls the policy and enacts laws within the best interest of the society and security of the State. Identical treatment in unequal circumstances would lead to inequality. So, a reasonable classification is not solely allowed but is necessary if society has to progress.

Therefore, Article 14 forbids class-legislation but it does not forbid reasonable classification of persons, objects, and transactions. The Article allows the classification based on intelligible differentia of the persecuted minorities based on a separate religion practiced by the said communities than the one recognized by the constitutions of such countries as their State Religion. The Amendment Act is not 'arbitrary, artificial or evasive'. CAA made real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the Government. A reasonable classification is made fulfilling the following conditions:

*(i) The classification must be founded on an intelligible differentia which distinguishes*

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<sup>1</sup>**(NEHRU-LIAQUAT AGREEMENT) New Delhi, 8<sup>th</sup> Apr. 1950**, "The Government of India and Pakistan solemnly agree that each shall ensure, to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honor, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality.....", Para A of AGREEMENT BETWEEN THE GOVERNMENTS OF INDIA AND PAKISTAN REGARDING SECURITY AND RIGHTS OF MINORITIES.

*persons or things that are grouped from others left out of the groups; and*

*(ii) The differentia must have a rational reference to the thing sought to be achieved by the Act.*

The classification is based on two factors:

*(i) The classification of countries from Pakistan, Afghanistan, and Bangladesh Versus the rest of the countries.*

*(ii) The classification of people – Sindhu, Sikh, Jain, Buddhist, Parsi, and Christians Versus other sections of society.*

The true meaning and scope of Article 14 are explained within the number of cases by the Supreme Court, in *re Special Court Bill Case*<sup>2</sup>, Chandrachud, J., reformulated new propositions to be followed regarding the applicability of Article 14. The principles laid down by Das, J., in *Dalmia's case* have not been disputed by Chandrachud, J., and therefore there was no need to reformulate unless necessary to add something to the existing principles<sup>3</sup>. In the plight of this, the proposition set down in *Dalmia's case* still stands good governing valid classification that is as follows:

(a) There is always a presumption in favor of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles.

(b) It must be presumed that the Legislature understands and viably appreciates the desires of its people, that its laws are directed to issues created manifest by the expertise and that its discriminations are supported on adequate grounds.

(c) The classification made by a Legislature need not be scientifically perfect or logically complete<sup>4</sup>. Mathematical nicety and perfect equality are not required<sup>5</sup>. Equality before the law does not need mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment. Similarity, not the identity of treatment, is enough<sup>6</sup>.

It is, therefore, proved that the classification made by the government in the Act satisfies the

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<sup>2</sup>In *re The Special Courts Bill*, .Vs. Unknown, AIR 1979 SC 478

<sup>3</sup>H.M. Seervai, *Constitutional Law of India*, Vol. I, 294 (3<sup>rd</sup> Edition, 1983).

<sup>4</sup>*Kedar Nath .Vs. State of West Bengal*, AIR 1953 SC 404: 1954 SCR 30.

<sup>5</sup>*Kameshwar Singh .Vs. State of Bihar*, AIR 1954 Pat 91

<sup>6</sup>*The State of Justice in India: Issues of Social Justice, Trivialising Justice*, Pg. 137.

test laid down in the above propositions. The question of whether a classification is reasonable, and proper or not, must, however, be judged more on common sense than on legal Subtleties.

### **3. Why did the Government exclude certain groups from the Amendment Act, 2019?**

There can be two ways in which the Selectivity argument is made on the CAA-class:

1. *Persecuted groups were chosen selectively to only include non-Muslims.*
2. *Citizenship based on religious persecution identifies only one form of persecution out of a whole bunch of vulnerabilities.*

#### (i) Rohingya Muslims from Myanmar

There are significant security reservations specific to Rohingyas that do not apply to either Islam and Non-Islam. According to the report of *Amnesty*<sup>7</sup>, it revealed evidence about the brutal 2017 massacre of dozens of Hindus by Rohingyas in the village of Ah Nauk Kha Maung Seik in Rakhine, Myanmar. Their bodies, along with those Sindhu villagers in a neighboring town were found in four mass graves. While it would be dangerously prejudicial to suggest that Rohingyas ought to be excluded from consideration of citizenship or refugee status as a result, including all Rohingya migrants as a class for citizenship in a country with a significant Sindhu population raises valid security concerns. It is further submitted that Rohingyas are not on the same footing as the religiously persecuted minorities who have fled into India from Particular neighboring countries.

#### (ii) Tamil Buddhists from Sri Lanka

Tamils from Sri Lanka were persecuted during a long-running Civil War, but this persecution was largely on an ethnolinguistic and not a religious basis<sup>8</sup>. Hence, Sri Lankan Tamils do not fall within the CAA-class. It is further submitted that the vast majority of the Sri Lankan Tamils have been repatriated back to Sri Lanka through the Diplomatic negotiations between India and Sri Lanka to repatriate<sup>9</sup> around 1,00,000 or so

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<sup>7</sup>AMNESTY INTERNATIONAL, Myanmar: New Evidence reveals Rohingya armed group massacred Score in Rakhine states, <https://www.amnesty.org/>

<sup>8</sup>The Atlantic, Global: How Sri Lanka's Christians Became a Target, <https://www.theatlantic.com/587842>.

<sup>9</sup>Business Standard, Sri Lanka working with India for repatriation of Tamil Refugees: Envoy, [https://www.business-standard.com/119011900173\\_1.html](https://www.business-standard.com/119011900173_1.html).

Sri Lankan Tamils currently living in Tamil Nadu remain active. Therefore submitted that granting mass citizenship to this group would jeopardize those negotiations and disregard the will of 80% of the population who wish to go back to Sri Lanka.

*(iii) Christian Buddhists from Sri Lanka*

Quite apart from being legally sanctioned, persecution against Christians in Sri Lanka is often a result of the perception that Sri Lankan Catholics are “associated with the ruling government in Sri Lanka”<sup>10</sup> as the Catholic Church has tried to adjust itself with the political agenda of Sinhalese Buddhist elites. How persecution against Christians in Sri Lanka is operationalized is not via the State but through sectarian conflict.

*(iv) Ahmadis from the Islamic Republic of Pakistan*

This class has the most well-founded grievance against having been left out of the CAA-class. This is because a 1974 amendment to Pakistani’s Constitution does not consider Ahmadis to be Muslims<sup>11</sup>. The counsel submits the two reasons why the government excluded this class:-

- The present ruling party points out the Nehru-Liaquat Pact, 1950<sup>12</sup>, in which Pakistan undertook the responsibility to protect the religious minorities in these countries. The failure on the part of Pakistan and Bangladesh places a special responsibility on India towards these minority groups. But, because Ahmadis were recognized as Muslims until 1974, they were not understood to fall under the definition of “minorities” irrespective of their religion when India became a party to the pact.
- The Officials might have difficulty in assessing Ahmadi Claims to citizenship under the CAA because, CAA is targeted to give citizenship based on their Religion, Nationality. But, Ahmadis have to deny their Muslim hood to obtain Voter ID cards and Passports, for instance, many forgo this process. Thus, ironically, many do not possess the said documents and cannot be identified by

<sup>10</sup>The Atlantic, Global: How Sri Lanka's Christians Became a Target, <https://www.theatlantic.com/587842.html>.

<sup>11</sup>HUFFPOST, Ahmadiyya Muslims in Pakistan: The Legally Declared Non-Muslims, <https://www.huffpost.com/8099324>

<sup>12</sup>AGREEMENT BETWEEN THE GOVERNMENTS OF INDIA AND ZAKISTAN REGARDING SECURITY AND RIGHTS OF MINORITIES ( NEHRU-LIAQUAT AGREEMENT), NEW DELHI, 8<sup>TH</sup> APR., 1950, <https://mea.gov.in/PA50B1228.pdf>

their actual religion, but as merely "Non-Muslim." This does not blame the Indian government for protecting their rights and ensuring that they are not deported back to a state that persecutes them. Therefore the above provides a reasonable basis for excluding them from a targeted exercise.

(v) Hazaras from Afghanistan

Hazaras are technically ethnic minorities, not a religious one and that persecution against them is on an ethnic basis. Hazaras<sup>13</sup> are the descendants of Genghis Khan, possessing Asiatic features and speaking a Persian dialect completely different from Pashtun. Therefore, they can be read outside the CAA-class.

(vi) Shia's from the Islamic Republic of Pakistan

Unlike Ahmadis, Shia's do not face blasphemy laws of forced conversion<sup>14</sup> and kidnapping largely condoned by the State<sup>15</sup> the way the other members of the CAA-class living in Pakistan do. That is to mention, the violence against Shia's isn't operationalized by the State through overt or covert legal means, because it is against members of the CAA-class living in Pakistan. In the precedented case of "*Navtej Singh Johar .Vs. U.O.I.*"<sup>16</sup>, intelligible differentia has been interpreted to mean "reasonable differentia". Since Bangladesh and Pakistan were a part of undivided British India until 1947, lakhs of people travelled from one country to another and are minority communities who are facing religious persecution in those countries. It is very pertinent that the Indian government provides shelter to the victims of the theocratic states like Pakistan and Bangladesh. This Justifies the reasonableness of the differentia created.

In the Precedent of, "*David John Hopkins .Vs. U.O.I.*"<sup>17</sup>, Madras HC has iterated that it's upon the Centre's discretion, to refuse citizenship is absolute and isn't against the right to equality under Article 14 of the Indian Constitution.

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<sup>13</sup>Aljazeera, Afghanistan: Who are the Hazaras?, <https://www.aljazeera.com/160623093601127.html>

<sup>14</sup>Religion News Service, Forced conversions, marriage spike in Pakistan, <https://religionnews.com/>.

<sup>15</sup>Abduction, Oppression and forced conversion is the fate of Hindus in Pakistan, <https://www.indiatoday.in/746139-2011-05-20.html>

<sup>16</sup>Navtej Singh Johar .Vs. U.O.I, MANU/SC/0947/2018.

<sup>17</sup>David John Hopkins .Vs. U.O.I, AIR 1997 Mad 366.

Therefore, the government desires to ensure the Right to Life and Liberty under Article 21 and Right to profess and propagate their religion under Article 25(1)<sup>18</sup> and wants to protect them through the CAA, 2019 therefore it is constitutional in the Eyes of Law.

#### **4. Secularism and the Basic Structure of the Constitution concerning the CAA, 2019**

The Assertions made by the public that CAA, 2019 is violative of Secularism and the basic structure of the constitution. But, such allegations made are erroneous and are the results of the provocations made by the opposition parties also CAA results in not allowing any kind of exemptions to Srilankan Tamils, Tibetan Buddhists and therefore, the assertions that the CAA attempts to classify only to the Muslim Community as 'illegal migrants' has no evidence in law or fact. It is submitted that merely religion is the beginning point of any classification [and not the only of any classification], shall not imply that such classification is against the principles of Secularism. It is further submitted to this Hon'ble court that the recognition of religious persecution in the neighboring countries that have their specific state religion and long history of religious persecution of minorities, is a rehabilitation of the ideals of Secularism, fraternity, and equality.

#### **5. How CAA, 2019 is not violative of Fundamental Rights?**

CAA, 2019 does not violate any fundamental right or affect the democratic, legal, and secular rights of any citizens. Also, the Allegations that CAA is against the Islam community cannot be held because the Historic step to empower Muslim Women by abolishing Triple Talaq was executed by the same government. The CAA, 2019 is just extending the facility to the minorities in the three neighboring countries, who have cultural and ethnic connections with India because those three countries have their state religion. The counsel submits to the court that the Fundamental Rights like Article 14, 15, 19, 21 and 25 have nothing to interfere with the CAA, 2019 and mainly talking about Secularism, CAA intends only to accommodate minorities, there is the only community which is left out, is a community that is not a minority in those countries, so in one

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<sup>18</sup>INDIA CONST. Art. 25, (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

sense, this is a minority protection measure and not a violation of any Fundamental Rights.

• **Article 14:** The Scope of Article 14 and the power of Legislature to make ‘reasonable classification’ because it creates a classification as:

(a) On an Intelligible differentia

(b) The classification has nexus with the object sought to be achieved, the object of the bill is to deal with the discrimination of minorities in the three neighboring countries (Pakistan, Afghanistan, and Bangladesh) and the classification is perfectly valid.

In the case of *Ram Krishna Dalmia*<sup>19</sup> the SC elucidated the permissible classification for Article 14 that:

(a) It must be upon an intelligible differentia which distinguishes persons or things that are grouped from others left out of the group.

(b) The differentia must have rational nexus with the object sought to be achieved by the statute in question.

• **Article 15 and 19:** The rights are specifically available only to the citizens of India and not to illegal immigrants or foreigners. In the case of “*Gazula Dasaratha Rama Rao*”<sup>20</sup> SC held that Article 15 prohibits discrimination based on religion, race, caste, sex, place of birth, etc., which is available only to the citizens of India. Hence, the allegation that CAA violates Article 15 cannot be held as the amendment deals only with those who are not citizens of India. Article 15 and 19 cannot be raised in the matters concerning the religious persecution of minorities in the neighboring countries.

• **Article 21**<sup>21</sup>: The CAA does not deprive anyone of their right to life and personal liberty. Moreover, it is the CAA which extends the facility to the people of the six communities in the three countries to Migrant into India and enjoys all the provisions under Article 21 of the Constitution. Also, the Scope under Article 21 is very wide and it is false to argue that such a large Scope shall be provided to the illegal migrants. It has been further held that foreigners, esp. Illegal immigrants are not entitled to challenge the provisions under CAA. Irrespective of ethnicity, ideology, India has a history of

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<sup>19</sup>Shri Ram Krishna Dalmia .Vs. S.R. Tendolkar,1958 AIR 538, 1959 SCR 279.

<sup>20</sup>Gazula Dasaratha Rama Rao .Vs. The State of A.P.,1961 AIR 564, 1961 SCR (2) 931.

<sup>21</sup>INDIA CONST. Art. 21, No person shall be deprived of his life or personal liberty except according to the procedure established by law



providing shelter to persecuted minorities from around the world.

As per the reports of UNHCR, there are around 2,07,848 persons of concern in India in 2018, out of which, 1,95,891 were refugees and 11,957 were Asylum seekers and is largest refugee population in South Asia.

India is not a member of the United Nations Refugee Convention on the status of refugees but, has participated in the Global Summit on Refugees and was a part of the ny Declaration for Refugees and Migrants in 2016. At present, India deals with refugees and asylum seekers as per the Passport (Entry of India) Act, 1920, Passport Act, 1967, Registration of Foreigners Act, 1939, Foreigners Act, 1946, and the Foreigners Order, 1948.

In the case of *National Human Rights Commission*<sup>22</sup>, the SC restrained the expulsion of Chakma Refugees from the state and intervened in the liberal interpretation of the law and classified Chakmas from Foreigners, deserving protection under Article 21 of the Constitution. Therefore, following the orders of the SC and the Laws under the Constitution, the govt. has never failed to protect these refugees and migrants In India.

Also, in the case of *Felix Stefan Kaye*<sup>23</sup>, the Delhi HC keeping in mind the Application of Article 21, to the refugees and asylum seekers, and most certainly to the petitioners who were genealogically rooted to the Indian Soil. Taking into the consideration of the facts, the Court allowed the petitioners to submit a fresh application to the respective District collector and forward the same to the Central government within sixteen weeks of the receipt of the Application. The court reminded the central government of its power to consider the applications favorably without any technical status and keep in mind the grave situation in which the petitioners were placed.

It is, therefore, submitted that the identification of illegal migrants in the country is Statutory and the moral responsibility of the government and also *The Asylum Bill, 2015*<sup>24</sup> is pending in the parliament introduced to deal with refugee and Asylum seekers and hereby contend that CAA is not a violation under *Article 21*.

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<sup>22</sup>NHRC .Vs. State of Arunachal Pradesh, 1996 AIR 1234, (1996) SCC (1) 742

<sup>23</sup>Felix Stefan Kaye.Vs. Foreigners Regional Registration Office,(2018) SCC OnLine Del 8212.

<sup>24</sup>The Asylum Bill, 2015, Bill No. 334 of 2015

- **Article 25:** Allegations that CAA does not allow the people to propagate and profess their religion under *Article 25*. Everyone is free to profess and propagate their religion. It is submitted that the CAA, 2019 is opened on a very narrow basis, and it does not prevent anyone to practice or profess their religion. The religious birthmark is relevant today because those people in those countries are being persecuted because of a particular state of the constitution in those three countries. Once a person steps on the land of India and becomes a part of the Indian mainstream then *Article 25*<sup>25</sup> protects their civil rights.
- Let us understand one thing first, that the government is “Of the people, for the people, by the people”, any act done by the government is for the welfare of its citizens. The Constitution of India is one of the most frequently amended constitution in the world so as not to stand in the way of the growth and development of the nation and her people. The Citizenship Amendment Act, 2019, initiative by the present government, looks forward to protect its citizens from Religious persecution in the three countries. The Amendment nowhere violates any principles of the constitution, the general public must go through the entire amendment first, and then raise their voice against the government, rather than just following the actions done by the public on the streets. It does not affect the Indian Muslims from any angle. There is no point of destroying public peace and harmony without an evident reason. As a responsible citizen we must let the government do its actions, ultimately for our own good.

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<sup>25</sup> INDIA CONST. Art. 25, Freedom of conscience and free profession, practice and propagation of Religion, Constitution of India.