

# LEGALFOXES LAW TIMES

## CITIZENSHIP AMENDMENT ACT 2019: ASSAULT ON INDIAN DEMOCRACY

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India recognizes an individual as a citizen by virtue of birth, descent, registration, and naturalization pursuant to the Citizenship Act of 1955, which takes effect from Part II of the Constitution, namely Articles 5 to 9. Under the previous regime, the Citizenship Act was amended 5 times i.e. in the years of 1986, 1992, 2003, 2005 and 2015. Another amendment was broached by the current Modi Government which triggered protests all around the country. The amendment made by the Government of India to the Citizenship Act of 1955 is being hotly debated throughout all platforms. The advocates of the Citizenship (Amendment) Act, 2019 (CAA) have vigorously argued in favor of its constitutionality as well as its importance, thus ignoring all apprehensions and concerns relevant to its possible detrimental impact on the country and its people.<sup>1</sup>

### WHAT WAS THE LAW PRIOR TO CAA?

An individual may be granted citizenship in four forms under the Citizenship Act, 1955, namely i) by birth; (ii) by descent; (iii) by registration, and (iv) by naturalization. The CAA has amended the provisions and procedures relating to the granting of citizenship by naturalization. Before the CAA was implemented, any legitimate migrant (i.e. a person who entered India with a valid passport and visa) living in India for a cumulative period of at least 12 years from the date of application was qualified for Indian citizenship. This privilege was obviously not related in any

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<sup>1</sup>Prabhash K. Dutta New Delhi December 9, 2019 UPDATED: December 9 & 2019 15:55 Ist, *Why Citizenship Amendment Bill needs to pass Article 14 test*, INDIA TODAY, <https://www.indiatoday.in/news-analysis/story/does-citizenship-amendment-bill-violate-fundamental-right-to-equality-1626641-2019-12-09> (last visited Dec 26, 2019).

way to the immigrant's beliefs pursuing Indian citizenship. The Act does not grant citizenship to any illegal immigrants regardless of their religion.<sup>2</sup>

### WHAT HAS CAA CHANGED?

The CAA seeks to provide fast track Indian citizenship to illegal migrants belonging to the Hindu, Muslim, Catholic, Jain, Sikh and Parsian sects who migrated to India from Afghanistan, Pakistan and Bangladesh before 31 December 2014. Furthermore, the CAA excludes Muslims from the application of the Act. Since the CAA mandates that these non-Muslim illegal migrants remain in India for a period of at least 5 years from the date of registration, on and after 31 December 2019, they will be eligible for citizenship.

The purpose of the legislation is likely to provide shelter to the above-mentioned community of non-Muslim illegal migrants who have endured religious persecution in Afghanistan, Pakistan, and Bangladesh as a consequence of their minority status. Notably, the CAA does not include Pakistan's Ahmadiyas and Shias or Myanmar's Rohingya Muslims who are also subject to religious persecution in their respective countries.<sup>3</sup>

### WHY IS THE CAA UNCONSTITUTIONAL?

The proviso which is inserted for the definition of citizenship to the present act is clearly unconstitutional keeping in mind the rule laid down by the Hon'ble Apex Court in the case of **State of West Bengal v. Anwar Ali Sarkar**<sup>4</sup> in 1952. Article 14 provides for both reasonable and rational classification. What is vital is that the rational classification needs to have a reasonable nexus with the objective sought to be achieved by the legislation. In other terms, there is a twin prerequisite for rational classification and a reasonable nexus to meet the standard of Article 14, and this is regrettably ignored in this discourse. Justice SR Das in this case explicitly mentioned that in short, while the Article forbids class legislation in order to discriminate unfairly by granting privileges or imposing liabilities to individuals arbitrarily selected from a large number of other persons similarly situated in relation to the privileges sought or the

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<sup>2</sup>Citizenship (Amendment) Act: An unconstitutional Act, DECCAN HERALD (2019), <https://www.deccanherald.com/specials/sunday-spotlight/citizenship-amendment-act-an-unconstitutional-act-785638.html> (last visited Dec 26, 2019).

<sup>3</sup>Explainer: How does one become an Indian Citizen? What changed with the CAA?, <https://factly.in/explainer-how-does-one-become-an-indian-citizen-what-changed-with-the-caa/> (last visited Dec 26, 2019).

<sup>4</sup>The State Of West Bengal vs Anwar All Sarkarhabib, AIR 75 (1952).

liabilities proposed to be imposed, it does not preclude classification for the purposes of legislation.<sup>5</sup>

In short, despite their arrival to India without valid documents and permission, the Citizenship Amendment Bill will grant illegal migrants the status of legal migrants. This clearly indicates that the intent of the legislature is to create discrimination against Muslims which is clearly forbidden under Article 14 of the Indian Constitution. Article 14 is one of the foundations of the Constitution. It states, "No person shall be denied equality before the law or equal protection of laws within the territory of India by the State." Equality before the law means that the State shall treat all classes of persons without discrimination. Equal protection of the law means that the State will not lay down laws or rules which discriminate between two persons.

Among other things, the preamble describes India as a secular state, that suggests that the state cannot feel a greater duty to support one religion over another as a matter of policy. Consequently, a statute that aims to expedite the awarding of citizenship to non-Muslim illegal migrants on account of their religious persecution from thus ignoring the religious persecution of Muslims in neighbouring countries is against the fundamental principle of secularism reflected in our Constitution.

### IS THERE AN NRC LINK?

The claim that the CAA and the NRC are completely separate or that the CAA will have no direct or indirect effect on the NRC mechanism to be followed by the State is like living in a fool's paradise. It would be foolish to claim that the CAA must be seen in isolation and that its repressive essence becomes increasingly evident when perceived holistically, especially from the wider perspective of the government's established philosophy and the long-held policy of the incumbent government, which is nothing but a slow and gradual ethnic cleansing of the nation. It was also clearer from the tweet of BJP Official handle that the current regime when the NRC exercise in the state of Assam is connected with CAA. More than 19 lakh Hindus were eliminated from the NRC when this process was done in Assam under the guidelines of Hon'ble

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<sup>5</sup>A premature denouncement of the Citizenship Act - The Hindu, , <https://www.thehindu.com/opinion/op-ed/a-premature-denouncement-of-the-citizenship-act/article30362045.ece> (last visited Dec 26, 2019).

Apex Court. Some claim that the Citizenship Amendment Act is a method of obtaining citizenship of these 19 lakh Hindus in Assam.<sup>6</sup>

### **IS THERE VIOLENT USE OF SECTION 144 OF CrPC?**

With demonstrations against the Citizenship Amendment Act intensifying in multiple locations across many nations, governments have enforced Section 144 of the Criminal Procedure Code (CrPC) banning demonstrators from assembling against or in support of the controversial legislation passed by Parliament. The administration is empowered under Section 144 to impose restrictions on the personal freedoms of individuals. This ensures that the government can restrict the fundamental right to peaceful assembly provided for under Article 19 of the Constitution if the executive magistrate considers the condition at any given location with the potential for disruption of law and order.

The Karnataka High Court questioned the legality of Section 144 of CrPC which was imposed in Bengaluru by the State Government which was planned for the controversial act. It questioned the assumption of the State Lawmakers that every protest could not be turned into violence. The right to protest is enshrined under Article 19 (1)(a) of the Indian Constitution. It grants all citizens the right to "assemble freely and without violence." Citizens hitting city streets across states against the Citizenship Amendment Act practice their constitutionally guaranteed fundamental right. But when the State is arbitrarily using Section 144 of CrPC to prohibit the gathering of protestors, it is violating their right to protest.<sup>7</sup>

### **SUGGESTIONS-**

The Bill says in the declaration of objects and reasons mentions that countries like Pakistan, Afghanistan, and Bangladesh have a state religion. As a consequence, many individuals from Hindu, Sikh, Buddhist, Jain, Parsi and Christian sects in those countries have faced persecution on religious grounds. As per the current Government, it forms the basis of intelligible differentia among non-Muslim immigrants and provides the legal and constitutional ground for keeping Muslim immigrants without legitimate documentation who have reached India or

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<sup>6</sup>Everything you wanted to know about the CAA and NRC - India Today Insight News, <https://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23> (last visited Dec 26, 2019).

<sup>7</sup>Citizenship Amendment Act: Imposition of Section 144 to prevent democratic protests smacks of colonialism; shows inability to handle dissent, FIRSTPOST, <https://www.firstpost.com/india/citizenship-amendment-act-imposition-of-section-144-to-prevent-democratic-protests-against-law-smacks-of-colonialism-shows-govts-inability-to-handle-dissent-7801111.html> (last visited Dec 26, 2019).

remained in India. In creating such a differentiation, it would be difficult to prove who, out of religious persecution or for the sake of a better economy, entered India among the illegal immigrants. In some other countries, the government cannot examine a few million cases to verify the claim of religious persecution.

It also means that the Citizenship Amendment Bill advances the line of argument brought forward by Muhammad Ali Jinnah contributing to India's 1947 Partition. He created a Muslim nation Pakistan, and therefore, Article 14 is the foundation stone of the Indian Constitution which states not only right to equality but also somewhere freedom of religion. Hence, the Act is an assault on Indian democracy which is affecting the secularism of India.

The following can be suggestions given for this controversial act are-

- The Government should take the advice from the judiciary before making any bill that is related to language, religion and culture, so that it does not affect society at all.
- The Supreme Court should hear those matters urgently which are violating many provisions of the Constitution. The present Chief Justice should not act as a remote-controlled CJI for the ruling regime and should preside over the crucial constitutional cases.
- The use of Section 144 should be minimal by lawmakers and should only be used in extraordinary circumstances. The present regime should not suppress the voice of dissent who are criticizing the bill.
- Since India is a secular nation, therefore, citizenship can't be given on the basis of religion, otherwise, it would destroy the constitutional fabric of the country.