

# LEGALFOXES LAW TIMES

## INTERNATIONAL LAW AND CITIZENSHIP AMENDMENT ACT

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## INTRODUCTION

There were continues challenges posed to the international humanitarian law. The armed conflicts, minority oppression and nationalist racial intolerance are subjecting to significant raise in the number of stateless population across the world. India is also in the verge of same situation.

The international legal definition of a stateless person is “one who is not considered a citizen by any state operating under the law.” Simply put, this means that stateless persons have no nationality in any country. Some people are born stateless, while others are stateless. Statelessness can occur for several reasons, for example, discrimination against a particular ethnic or religious group, or discrimination based on gender. Emergence of new nations and transfer of territories between existing nations and gaps in nationality law etc., whatever the cause, statelessness has serious consequences for people in almost every country and everywhere in the world. Government of India has recently passed the Citizenship Amendment Act [“CAA”]<sup>i</sup>. Following this there was a national widespread of protest<sup>ii</sup> in the every corner of the country which even bought attention of the International Bodies. The CAA was described as “fundamentally discriminatory” by the UN High Commissioner Michelle Bachelet Jeria.<sup>iii</sup>

This article analyses the inconsistency of the CAA with the international law principles, norms, conventions and others that India has ratified and bound to comply with.

## BACKGROUND

The CAA has amended the definition of the “illegal migrant” as per the 1955 law. The 1955 law refers to the illegal migrants as to the foreigners who enter India without a valid travel document like the passport or any other form a proper authority. As per the provisions of the new amended law, person who doesn't belong to a specific community and enter India from Bangladesh, Pakistan and Afghanistan before the last day of the year [31<sup>st</sup> December of 2014] shall be considered as illegal migrants. Especially the Muslim community is excluded from the set of

communities that are considered within the act. In addition to that the minorities from Myanmar and Sri Lanka are also excluded.

National Register of Citizens [NRC] has been created by the government of India in the North-Eastern state of Assam and plans to implement it across the country.<sup>iv</sup> Through this exercise, any person who does not have relevant documentation will be considered an “illegal / foreign migrant”.<sup>v</sup> Individuals must establish citizenship before March 24, 1971 or establish the citizenship of their immediate ancestors. However, this ignores the concern that poor people simply do not have the necessary documentation. In the absence of such a process, they may appeal to certain courts that decide their nationality,<sup>vi</sup> once they become legal citizens of India, these individuals can suddenly become incapacitated for work. This was not a result that the Indian state had not expected. It plans to set up detention centers across the country (as has already happened in the Northeast) to detain these individuals until their departure.<sup>vii</sup>

Although this law applies to refugees from three countries, the indigenous peoples of Assam fear that it will mainly benefit Indian Hindu immigrants from Bangladesh, who have settled in most of the country. Assamese fears that if Bangladeshi citizenship is granted to Hindu migrants in Bangladesh, they will exceed the number of Assamese in the state.<sup>viii</sup> They give an example of Tripura, where Bangladesh-speaking Hindu migrants dominate political power, crowding out the indigenous population. Unlike other places in India where people question the exclusion of Muslims, Assamese do not want immigrants of any religion, whether Hindus or Muslims.

### **CAA INCONSISTENCIES WITH INTERNATIONAL LAW**

Article 15 (2) of the Universal Declaration of Human Rights [UDHR] prohibits arbitrary deprivation of nationality. India signed the UDHR in 1948, but it is not a legally binding document. Apart from enforcement, AAC directly violates the right to nationality.

Most notably, the primary face of violation of the general provisions of discrimination against the ICCPR is the Indian Citizenship Act. Paragraph 1 of Article 2 requires states to ensure non-discriminatory rights for a number of specific reasons. The CAA recognizes certain communities based on religion and gives them priority citizenship. In this regard, Muslims are rejected. Therefore, the law violates Article 2, paragraph 1, of religious discrimination.

Another concern is the temporary detention facilities established by the Government of India. It is not possible to deport these people immediately to neighboring countries because there are no official documents. This means that their detention will continue indefinitely, which will have a direct impact on their right to life (Article 6) and the right to detention in the United Nations High Commissioner for Refugees (Article 10).

The United Nations High Commissioner for Refugees (UNHCR) has issued directives on the detention of refugees, reflecting the status of international law in the field.<sup>ix</sup> These guidelines prohibit refugees from being unilaterally and arbitrarily detained. There is a difference between refugees and stateless people in their country. However, the manual states that many criteria, such as homeless refugees, apply. This includes improper and indefinite detention. Indian detention camps violate international law.

Although the CFP's biggest achievement is the ghost of stateless people, India has no specific promises in this regard. India did not ratify the United Nations Convention on the Protection of Stateless Persons (1954) and the National Reducing Convention on the Protection of Stateless Citizens (1961). However, they are considering how to protect these stateless persons in the ICCPR system in accordance with the provisions of Article 12 (4).

#### **CONCEPT OF ARTICLE 12(4) AND 'ONE'S OWN COUNTRY'**

Article 12 of the General Criminal Court is about the freedom of movement. The restrictions in Article 12 are limited to special circumstances and in a democratic society three parts of the prescription test, namely law, legal purpose and necessity, must be carried out. In open reading of Article 12, the JMD can be protected by addressing public policy and the legitimate purpose of national security. This gives rise to the view that granting citizenship and standardizing entry and exit are important steps in the exercise of state sovereignty.<sup>x</sup>

However, paragraph 4 of Article 12 presents a significant challenge. "No one shall be arbitrarily deprived of their nationality nor denied the right to change their nationality." According to Article 12 of the General Criminal Court decision, Article 27 prohibits large-scale deportation to another country.<sup>xi</sup> It is fair to say that the words of the article do not differentiate between citizens and foreigners, indicating a broader relationship than one nationality. The application of Article 12 (4) is also unique - it also exceeds the limits of Article (3). (4) Article 4's position is

unclear, so I wonder if Article 4 (4) is merely a political / moral obligation of a state. However, the United Nations High Commissioner for Refugees refused to consider the supply as ducks.<sup>xii</sup>

Under this provision, stateless persons living in a long-standing country can be protected under the ICCPR. The general imposition also suggests that there are very few cases where expulsion is justified. One such case occurred in *Stewart v. Canada*<sup>xiii</sup>, where the United Nations High Commissioner for Human Rights (UNHRC) was asked to comment on the phrase “their country”. While the UN High Commissioner for Refugees (UNHCR) deliberately refused Stewart’s assistance in excusing his deportation from Canadian citizenship, he acknowledged that there is a category of people deprived of his nationality, but he nevertheless maintained status the special contacts with the state. These persons shall be protected in accordance with the provisions of Article 12 (4) and shall have the right to enter (reside) in their country of residence.

The United Nations High Commissioner for Refugees (UNHCR) exercised official citizenship based on Stewart’s position. In *Warsame v Canada*<sup>xiv</sup> and *Nystorm v Australia*<sup>xv</sup>, the UNHRC looked at various factors to determine its “place”. These include family communication, spoken language and residence time. According to the United Nations High Commissioner for Refugees, they have established a strong bond that links the person directly to the state, even without nationality.

In the Indian context, the expatriates included long-term residents whose fathers immigrated to India after the break of India and the Bengal war of 1988. So they have lived in the country for years and are they can be religious and ethnic to Indian society. These communities may not have detailed government mandated documents, but they certainly have strong socio-cultural ties with India. According to the United Nations High Commissioner for Refugees (UNHCR), India can certainly be described as a “country of origin”. Their detention and deportation is therefore a violation of their jurisdiction in the International Criminal Court.

In addition to violating their legal rights and interests, these people face a lonely reality. This is because citizenship is associated with certain welfare rights, such as health care, nutrition, education, and self-defense. As a result, the impact of citizenship is very serious for stateless people.

### **REMEDIES AND JUSTIFIABILITY**

Unfortunately, medicines are limited both domestically and internally. First, the legal framework of the city of India is binary. Article 253 of the Constitution of India gives Parliament the power to enact legislation on the implementation of a treaty. This means that violations of rights under the International Covenant on Human Rights (ICCPR) would be incompatible without any specific law enforcing those rights. India has also made a reservation in Article 13 (rights of aliens)<sup>xvi</sup>, which allows it to apply its domestic law to foreigners without interference.

Second, the UNHRC is also aware of this. This is because India has refused to ratify the first voluntary protocol to PIDCP (1976)<sup>xvii</sup>, which allows for individual complaint procedures. Therefore, violations of PIDCP are not justified internationally. The International Court of Justice may also address violations of the PIDCP jurisdiction it used, for example, in its advisory opinion on the Wall. However, it cannot, in its own opinion, investigate sovereign acts of states without being objected to by one or more states.<sup>xviii</sup>

There is nothing wrong with paper counting the legal citizens of the country. However, it is essential to ask whether it is a ground for discrimination or whether it applies to other uses. In addition, due to the size of our population and other complications, it will become a big exercise. This is evident in Assam, which even reportedly left out the real Indian citizens and reportedly included a group of illegal immigrants. Before the government can begin this exercise, it must also implement a statelessness policy. Not yet in India. And detention of illegal immigrants in detention centers is hardly a matter for the state.

It may be time to rethink the broad freedom granted to states to form their own criteria of nationality. However, these crises require close scrutiny of the sense of nationalism in international law itself. It is important for states to shift from an official concept of nationality to one that recognizes one's multi-faceted relationships with the state.

### **UNO APPROACHED THE SUPREME COURT OF INDIA**

According to reports on March 3<sup>xix</sup>, the United Commissioner for Human Rights (Deputy Commissioner) has filed a petition with the Supreme Court of India to intervene to challenge the Citizenship Amendment Act, 2019 (CAA). This law, the registers of demographic and civic groups, has become the standard of expression throughout the country<sup>xx</sup>.

In short, the CAA seeks to facilitate access to citizenship for those arriving in India before December 2014 from Afghanistan, Pakistan and Bangladesh as "Hindus, Sikhs, Buddhists, Jains, parasites or Christians". This does not prevent supporters of Judaism, Islam, or any other religion but these are defined. The protection is based on religious persecution and common ground for those who practice the religions mentioned in the law.<sup>xxi</sup>

While it is unclear whether the application was filed in court, a copy of the online search warrant was found to have clarified the Indian mission in Geneva.<sup>xxii</sup> What does it mean to be an important factor in the event of an intervention?

### **LEGAL APPROACH OF THE HIGH COMMISSIONER**

A series of legal interventions focusing on specific aspects of the Citizenship problem are discussed below.

The first is that the petition seeks to show that the amicus summary is not in line with the arguments of the other petitioners - perhaps trying to focus only on the legal aspects of international release.

The following is a discussion of issues related to migration and refugees. As many commenters point out that the CAA deals with the phenomenon of 'illegal immigrants' but the context in which the law is created is beyond racial and ethnic disparities. However, this initiative on immigration and legal protection is a good initiative to keep the focus on advertising and legal matters.

The petition does not decide to leave other countries close to the CAA, but the controversies are limited to those that are beyond the scope of the proposed rule - Afghanistan, Pakistan and Bangladesh. So this does not speak of the departure of Sri Lanka, Nepal, Bhutan or others fleeing from another country.

The focus of the legal debate is on addressing the issue of conflict between citizens and non-citizens and non-violence in the implementation of law, which stems from international agreements signed by India, such as the International Agreement on Health and Politics, (PIDCP). The petition clarifies that sovereignty should not be prevented, even in the interest of citizenship, in the interests of non-discrimination, in accordance with Art.26 of the PIDCP. This

has also been considered in the light of the translation of the Committee on Global Responsibility for the Elimination of Individuals with Disabilities (CERD Committee), the Convention on the Rights of the Child (CDC) and the Special Convention the UN.

While the intervention calls for agreed differences, it implies that restrictions under international law are legally binding - they must be consistent with the right goals and be prepared. General Encouragement 32 of the CERD Committee is leading in the analysis of what constitutes real and perceived abuse.<sup>xxiii</sup> In light of this, the question that needs to be determined is whether the difference in CAA is “meaningful and relevant”.

The Human Rights Commission recognizes that the purpose of the bill - the discrimination of countries described as supported by UN human rights standards - but has also indicated that no protection is provided due to adherence against Islam, expressing contempt for Ahmadis, Shiites, Hazaras, among others.

The last part of the debate focuses on the legality of non-deduction under refugee law and the entry into treaty and customary law, which cannot be dismissed. In the final assessment, the risk of incapacitated injury increases during intervention when many human rights bodies are supported. While the CAA can reduce the risk for some communities, it leaves other communities at risk. There are good land conservation practices to follow.

The intervention ends with India’s support of the ‘legal guardianship’ group over the negotiations on the 1949 PIDCP treaty and the government’s responsibilities, including projects on the decline of India.<sup>xxiv</sup>

### **SIGNIFICANCE OF THE INTERVENTION**

The news had a strong reaction from a spokesman for the Indian Foreign Ministry, said:

“The Citizenship Reform Act is an internal matter in India and relates to the sovereignty of the Indian Parliament for making laws. We firmly believe that neither foreign party has a position on matters of Indian sovereignty. We are confident that our solid legal standing is justified by the Supreme Court. In addition, some questioned the ability of the High Commissioner to intervene in the Indian Supreme Court or even in any court in this regard as well as in this matter (international and human rights law).”

First, legal intervention is unprecedented. There are cases where the UNHCR - as well as other UN agencies and experts (Special Rapporteurs and Working Groups) are actually intervening in courts around the world - regional courts and constitutional courts. A few examples to illustrate this point. The UNHCR intervened in the human rights cases of immigrants, such as the courts of *N.D and N.T v. Spain*<sup>xxv</sup>, *Hirsi et al v. Italy* and *Raufi v. Greece*<sup>xxvi</sup> in the European Court of Human Rights.

UNICEF intervened in US District Courts and the Special Court in Sierra Leone. The United Nations High Commissioner for Refugees (UNHCR) interventions - which you can find here - are numerous. This includes interventions in the courts of the United States, Australia and the United Kingdom. It may be a matter of strategy that the UNHCR did not intervene with the CAA in India, but this is assumed in light of the broader results by the Human Rights Bureau. Interventions in the courts are carried out by UN experts or special rapporteurs on a variety of issues, including freedom of expression and belief, racism and torture. In addition, the Working Group on Discrimination against Women intervened in the Constitutional Courts of South Korea, the Brazilian Supreme Court and the United Kingdom.

In India, in particular, as far as I know, the High Commissioner did not intervene in the cases in the courts, but I am ready to reform. However, there is a record of involvement by the UN Special Rapporteur in contemporary forms of racism, segregation, xenophobia and case-related intolerance of expulsion of Rohingya. On July 12, 2019, the Special Rapporteur interfered with India's international legal obligations with the Supreme Court, preventing Rohingya from being widely dispatched to India. The case is still pending in federal court and has been closed.

The question is how the Supreme Court will conduct this intervention and whether it has the capacity to have specialized knowledge of international law. The Supreme Court reiterates its rulings and is based on international law, and should be happy to assist in this case. According to the widespread argument about sovereignty - this is a legal cartel for the enactment of discriminatory laws that violate not only the constitution but also the international legal obligations that India is bound by in conventional international treaties and law.

### CONCLUSION

The intervention of the High Commissioner of State is made at the exact moment of the review of human rights records in India. I wrote earlier about the UN human rights mechanism, including the special rapporteurs - this intervention is just an inevitable step.

This intervention not only highlights the arguments of international law that must be taken into account in the CAA review, but it also means that the international community takes citizenship without potential citizenship seriously.

<sup>i</sup><http://egazette.nic.in/WriteReadData/2019/214646.pdf>

<sup>ii</sup><https://www.aljazeera.com/news/2019/12/india-citizenship-law-protests-latest-updates-191216080909659.html>

<sup>iii</sup><https://news.un.org/en/story/2019/12/1053511>

<sup>iv</sup><https://in.one.un.org/un-press-release/un-experts-risk-of-statelessness-for-millions-and-instability-in-assam-india/>

<sup>v</sup><http://nrcassam.nic.in/admin-documents.html>

<sup>vi</sup><https://www.bbc.com/news/world-asia-india-49520593>

<sup>vii</sup><https://economictimes.indiatimes.com/news/politics-and-nation/states-told-to-set-up-centres-to-detain-illegal-migrants/articleshow/70426017.cms?from=mdr>

<sup>viii</sup>[https://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-cao-and-nrc-1630771-2019-12-23](https://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-caa-and-nrc-1630771-2019-12-23)

<sup>ix</sup><https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>

<sup>x</sup>[https://www.jstor.org/stable/10.5305/amerjintelaw.105.4.0694?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/10.5305/amerjintelaw.105.4.0694?seq=1#metadata_info_tab_contents)

<sup>xi</sup><https://www.refworld.org/pdfid/45139c394.pdf>

<sup>xii</sup>[https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR\\_Handbook-on-Protection-of-Stateless-Persons.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf)

<sup>xiii</sup><https://www.refworld.org/cases,HRC,584a90807.html>

<sup>xiv</sup><https://www.refworld.org/cases,HRC,4ee0f0302.html>

<sup>xv</sup>[http://www.worldcourts.com/hrc/eng/decisions/2011.07.18\\_Nystrom\\_v\\_Australia.pdf](http://www.worldcourts.com/hrc/eng/decisions/2011.07.18_Nystrom_v_Australia.pdf)

<sup>xvi</sup>[http://www.bayefsky.com/html/india\\_t2\\_ccpr.php](http://www.bayefsky.com/html/india_t2_ccpr.php)

<sup>xvii</sup><https://indicators.ohchr.org/>

<sup>xviii</sup><https://www.icj-cij.org/en/frequently-asked-questions>

<sup>xix</sup><https://www.thehindu.com/news/national/un-rights-body-to-move-supreme-court-on-citizenship-amendment-act/article30970693.ece>

<sup>xx</sup><https://www.washingtonpost.com/politics/2019/12/31/india-thousands-are-protesting-new-citizenship-law-here-are-things-know/>

<sup>xxi</sup><https://www.thehindu.com/opinion/lead/it-is-everybodys-constitution/article30446190.ece>

<sup>xxii</sup><https://thewire.in/diplomacy/un-human-rights-chief-intervention-application-supreme-court-cao>

<sup>xxiii</sup>[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGC%2f32&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGC%2f32&Lang=en)

<sup>xxiv</sup><https://www.iom.int/global-compact-migration>

<sup>xxv</sup><https://www.refworld.org/pdfid/57a876f34.pdf>

<sup>xxvi</sup>[https://www.ohchr.org/Documents/Issues/Migration/Raoufi\\_v\\_Greece.pdf](https://www.ohchr.org/Documents/Issues/Migration/Raoufi_v_Greece.pdf)