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Citizenship (Amendment) Act in comparison with Domicile Law.

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Abstract

This paper examines the provisions of the Citizenship modification Act (CAA) against the scenery of the citizenship provisions of the Indian Constitution. It argues that contrary to widespread belief, the discrimination against Muslim immigrants that seems to make a neighborhood of the CAA is not a development of comparatively recent vintage. However, this paper additionally argues that the CAA is unconstitutional by today's standards as a result of the conditions that existed during the times of India's dominions, between August 1947 and Jan 1950, which do not exist these days. It posits that the CAA is discriminatory for many reasons though not for the insidious, malar bone fide reasons that area unit typically attributed to the govt. in widespread discourse. However, this paper also points that India's citizenship laws amplify the issues with the CAA, by casting the evidentiary burden of proof on Indians to prove their citizenship, by abandoning the principle of citizenship by birth, by failing to supply judges of foreigners tribunals security of tenure, and by omitting a secure harbor for Muslim "dreamers" Who lawlessly came to Bharat as minors with their folks, by no fault of their own, and Who have solely known Bharat to be their country since childhood.

Keywords: Citizenship modification Act, National Register of voters, Indian Constitution, Secularism, CAA, NRC.

BACKGROUND

For quite a month, India has been awash with protests. Triggered by the December 12, 2019 passage of the highly contentious Citizenship Amendment Act, many thousands of individuals , many of them students, have taken to the streets in defiance of the newest during a string of anti-Muslim policies unrolled by the ruling Bharatiya Janata Party, or BJP.

The CAA fast-tracks Indian citizenship for Hindus, Sikhs, Buddhist, Christians, Parsis, and Jains who arrived in India before New Year's Eve, 2014; from its Muslim-majority neighbors, namely Pakistan, Bangladesh, and Afghanistan. By smoothing the trail for all non-Muslim immigrants from adjoining countries to achieve citizenship, the law paves the way for practitioners of Islam to be unfairly disadvantaged when seeking to immigrate to India.

Indian Prime Minister Narendra Modi has framed the CAA as a noble effort to welcome Hindus who are oppressed in neighboring Muslim-majority countries. During a recent rally in India's capital, Modi said, "We passed this bill to assist the persecuted."

The anti-CAA protests are an unprecedented show of resistance against Modi's BJP, and that they come on the heels of several moves by the Indian government in recent months that appear designed to punish Muslims. In early August, the BJP amended the constitution to strip Kashmir, an embattled Muslim-majority region, of its autonomy. Then, in November, the Indian Supreme Court issued a ruling enabling the development of a Hindu temple on the location of a 16th-century mosque desecrated quite 20 years ago by Hindu nationalists within the city of Ayodhya.

Emergence of Citizenship (Amendment) Act,2019

The CAA is a narrow tailored law geared to facilitating the acquisition of Indian citizenship by the minorities of three of our Islamic neighbors mentioned above who entered India before the end of 2014. It neither affects the citizens of India, including Muslims, nor does it in any way close the existing channels of registration or naturalization of migrants from any country, including our three Islamic neighbors, as Indian nationals. Indeed, in the last six years 2830 Pakistanis, 912 Afghans, and 172 Bangladeshis, many of whom were Muslims, have been accorded Indian citizenship. Additionally, 14864 Bangladeshis were accorded Indian nationality consequent on the exchange of enclaves between the two countries in 2014. The Act cannot, therefore, by any stretch of imagination be regarded as anti-Muslim as so vigorously being projected by those opposed to it.

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 attempts 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 law.

With the passing of the said act the fundamental question raised is does this grant of immunity to a specified group violating 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.

Migration

It is the movement of a person or a group of people, to settle in another place, often across a political or administrative boundary. Migration can be temporal or permanent, and it may be voluntary or forced. Migration is not a new thing; it is known historically, that people have always had migratory lifestyles. There is enough evidence that people have moved from faraway places to inhabit new areas. For example, Migrants from Asia ended up in North and South America over a period of time, via a land bridge over the Bering Strait. There have been several bulk movements of people in the history of humans, all of which were caused by some specific events during those times.

In the case of *KulathilMammu v. the State of Kerala*¹, the meaning of the word “migration” was negotiated wherein the Supreme Court of India was divided in its opinion. The majority of the judges construed that the term migrated used in Article 6 and 7 with reference to the context, purpose and prevailing political conditions at the time of making Constitution. In simple words, they interpret the term as nothing but ‘voluntarily going from India to Pakistan permanently or temporarily’. Whereas minorities view was that there must be an element of some permanence in the intention of a person migrating to settle in Pakistan. Since the majority view was broader, it was accepted.

In the *State of Bihar v. Kumar Amar Singh*²; Statement of Facts: In this case, a lady went to Karachi on July 1948, leaving her husband in India. She contended that she went to Pakistan for medical purposes, which was found baseless. After obtaining a temporary permit wherein it was stated that she was domiciled in Pakistan and was the Pakistan national, she again returned to India in December 1948. On the expiry of that temporary permit, she went back to Pakistan in April 1949. She made an effort to get the permit to settle in India permanently, but her efforts failed.

Judgement: It was held that there could be no doubt that the lady must be held to have migrated from the territory of India after 1 March 1947, although her husband has stayed in India. Migration in this Article refers to one before 26 January 1950, i.e. between 1 March 1947 and 26 January 1950.

CAA against Article 14 of the Indian constitution

One of the most contentions of these complaintive against CAA is that it's against Article 14 of the constitution that relates to elementary Right to Equality. It's as long as politicians can perpetually interpret such laws supported either what the individuals need to listen to or what the politicians need them to believe. This, whereas being wrong, is a smaller amount dangerous than once learned voters, United Nations agency themselves are a part of nation's judiciary and law decoding commissions, initiate with lop sided interpretations. First and most significant is that

¹*KulathilMammu v. the State of Kerala*; 1966 AIR 1614

² *State of Bihar v. Kumar Amar Singh*; AIR 1955 SC 1614; (1966) 3SCR 706

the undeniable fact that Indian Constitution is applicable to Indian voters and by no stretch of imagination will it's applied to anyone United Nations agency isn't a national of the state. Those that square measure being offered or might look for Republic of Indian votership underneath CAA don't seem to be citizens of India as on date. Therefore however will Indian government be defendant of treating these non-citizens in associate degree impulsive or unequal manner?

Moreover, Article 14 lays down clearly that each law within the nation can't be general. During a heterogeneous society like Republic of India there'll be a desire for laws that square measure applicable by selection. To the present finish Article 14 doesn't forbid classification of individuals, objects or transactions by assembly to satisfy specific ends. Under Article 246 of the Constitution, the parliament possesses the exclusive power to create laws with relation to any matters listed within the list One in seventh schedule, in that, item seventeen is to try and do with citizenship and naturalization of aliens,"the Centre's legal instrument argued, defensive the disputed law at the guts of nationwide protests. "The CAA doesn't impinge upon any existing rights of a national. It will not have an effect on the legal, democratic or lay rights of individuals," it declared, reiterating that the law doesn't exclude citizenship however is concerning giving citizenship. On the one aspect these pathetic ones were persecuted within their countries and on the opposite they stand discriminated in the democratic republic of Republic of India.

The NDA Government headed by the BJP has determined to come back to the rescue of those non-Muslim refugees because it was associate degree item within the declaration of the BJP. The significant bill has been glided by the Lok Sabha with a hundred twenty five votes in favor of the bill and one hundred and five votes against it .While piloting this disputed however revolutionary bill, Home Minister Amit Shah has aforementioned that the division of the country on the idea of faith has forced the state to bring this bill to produce citizenship to the persecuted non-Muslim refugees, who were persecuted in their countries and so fled to Republic of India to save lots of themselves from maltreatment and harassment.

In fact the bill isn't supported on faith however relies on humanity associate degreed aims at serving to those that are persecuted in their countries and in Republic of India are discriminated by the sequential regimes of the congress for the vote bank politics and BJP is attempting to

correct the historical wrong and it's hoped that the bill when changing into an act can wipe the tears from the eyes of the refugees.

Domicile in relation with Citizenship (Amendment) Act, 2019.

The concept of citizenship and the concept of domicile are two entirely different things. The word 'Domicile' means in a simple context where a man has his home and what laws, jurisdictions will be conferred on him, whereas 'citizenship' refers as relationship between an individual and a state, it gives a person legal status, social responsibility, duties and rights. Though sometimes it is confusing that citizenship in a state and domicile in a state are the two same things and to clear this concept we need to discuss two principles namely Jus Soli and Jus Sanguinis.

The Principle of 'Jus Soli' basically means birth right citizenship; it is derived from a Latin word and which means law of soil. The principle was also a part of English Common Law which was later adopted by India. This principle was previously followed in India till the amendment of the Indian Citizenship Act, 1986. The amendment has added that 'those who were born in India on after January 26, 1950 but before July 1, 1987, shall be Indian citizen and people born after July 1, 1987 and before December 4, 2003, can get citizenship only if either of his parents was an Indian citizen at the time of birth'. The Principle of 'Jus Sanguinis' basically means nationality law by which citizenship acquired, a child inherent citizenship if either of the parents are the citizen of country India. This shift from jus soli to jus sanguinis was reflected in the recent bill of citizenship, 2019.

Domicile means where a person has its permanent home, and where a person has no intention of moving somewhere else in the near future. Moreover, domicile doesn't get ceased if he is temporarily residing somewhere. In *Udny v. Udny*, House of Lords by Lords Westburg laid down the principle that governs the domicile law as-“

- No one shall be without domicile.
- No one can hold two domicile at the same time.
- Domicile connects a person with the single system of territorial law.
- Presumption of the continuance of an existing domicile.³”

³*Udny v. Udny*(1869) L R 1 Sc& D 441.

Domicile, residence is the process to achieve the citizenship as every individual should have domicile, the law confer domicile on every individual by birth. There are two types of domicile that is:

- Domicile of origin.
- Domicile of choice.

Domicile of origin is to refer to that no one can be without a domicile and the law confers domicile on each and every person in this world. The domicile of origin of a child can be paternal or maternal. This concept of domicile of origin revolves around the child's parent origin that is it which state they are citizen and domiciled. In English Private International and also in Indian Law domicile of a legitimate or illegitimate child who is born during the lifetime of the father has the father's domicile in the country, and also a legitimate child born after the death of his father gets the domicile of his mother at the time of his birth. No person can relinquish his domicile as because domicile of origin continues. Suppose a person tries to achieve a new domicile that is domicile of choice, then that person's domicile of origin will reveal until the person successfully achieves his domicile of choice, Moreover, if that person after some time wants to be domicile in another new country and leave the previous domicile of choice then automatically the domicile of origin will come into play.

For better understanding lets read it with an illustration : Let's assume that 'A' has domicile of origin in the country India, later he wanted to shift to USA out of his domicile of choice, as he wanted to reside there further, but few years later he decides that he want to move to Canada. Now what will happen? As he left his domicile of choice, we know that no person can be without a domicile. So in this case when the person leaves its domicile of choice then domicile of origin automatically comes into play as because domicile of origin can't be taken away from the person.

Furthermore lets discuss a case law, SankaramHorindan v. Lakshmi Bharati,⁴in this case Krishnan was domiciled of India and went to England to study in medical in 1925 and his parents was unable to financial aid him so one of friend did so. Later on he started practice and purchased a mansion in Sheffield and he continued living there for 30year. He used to write letter to his friend were he expressed his intention that he will return back to India, and later on

⁴SankaramHorindan v. Lakshmi Bharati; 1964 Ker 244.

he said that after his insurance policy maturity he would return back to India. So the Kerala High Court decided on these facts that Krishnan never abandoned his domicile of origin.

Whereas domicile of choice means a person can acquire his choice of domicile, if the two conditions of domicile are fulfilled. Domicile of choice is actually acquired by moving to another country by the intention of being a resident there or by the intention of not coming back to the domicile of origin country, in other words we can also term it as ‘animus manendi’. While discussing about domicile of choice we came the residence, therefore residence is wide term, which don't have any actually definition in domicile. Residence is a place where a person drinks, eats, and sleeps, so merely being a resident at a place a person can't opt for domicile of choice. These are two different components.

In Central Bank of India v. Ram Narayana,⁵it was stated that ‘Ram Narayana carried out his business in Multan and he was domiciled in British India. After the partition in 1947, Multan became the part of Pakistan. So he sent his family to India and carried as well as stayed in Multan. Afterwards, he wound-up his business and migrated to India’. Now the question before the court was that he continued his domicile in Pakistan or by sending his family to India In 1947 he has acquired Indian domicile. The Supreme Court of India held that “his domicile can't be determine by his family coming to India, without any finding that he had established a home for himself in India”.

So, domicile and citizenship are not similar but it can be related or it can be said that domicile comes under the process of acquire citizenship like for example providing citizenship to a naturalized person. In the case of AbdurRahaman v. The State,⁶it was stated that ‘Domicile is different from citizenship. The person may possess nationality or citizenship and different Domicile, or he may have a domicile but no nationality’. In other words we can say that domicile creates a connection with territory, but not membership of community which is an essence of citizenship or nationality.

SUGGESTIONS AND CONCLUSION

It needs to be noted that India is in dire need of a NRC as a means to curb illegal migration and its creation has been mooted from time to time. For instance, the Group of Ministers (GOM) set

⁵Central Bank of India v. Ram Narayana;1955 SC 36.

⁶AbdurRahaman v. The State;AIR 1964 Pat 384.

up following the Kargil conflict to look into national security in its entirety had recommended the compulsory registration of all citizens and non-citizens living in India with the former being given Multipurpose National Identity Cards and the latter cards of a different color and design. It had additionally recommended the introduction of a work permit for foreigners. The recommendations were accepted by the Government in 2001 and subsequently the Citizenship Act 1955 was amended in 2004 by inserting Section 14A, which allowed the central government to compulsorily register every citizen of India and issue them a national identity card. Unfortunately, the GOM recommendation to issue work permits to foreigners was not implemented. It is hoped that this recommendation is revisited as it is well-nigh impossible to deport the millions who are likely to be declared illegal migrants and who are mainly from Bangladesh. Above all, it will not only put at rest the apprehensions of deportation or being herded into camps amongst those not included in the NRC but will also alleviate the fears of Bangladesh that we would pressurize it to take back those who have migrated from there.

