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OVERVIEW OF CITIZENSHIP (AMENDMENT) ACT 2019: ITS IMPACT

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ABSTRACT:

“Citizenship is the chance to make a difference to the place where you belong.” - Charles Handy

On the Month of 11th December 2019, *The Citizenship (Amendment) Bill* was passed by a majority of 125 lawmakers of the Parliament. It becomes Act in January 2022, known as the *Citizenship (Amendment) Act or CAA*. The core resolution of this Act was to bring amends to the *Citizenship Act of 1955* and to grant Indian Nationality to those persons from Sikh, Buddhist, Jain, Parsi, Hindu, and Christian strict minorities, except Muslims, who had escaped exploitation or abuse before December 2014, from Bangladesh, Pakistan, and Afghanistan. However, many other lawmakers and like-minded public condemn and criticize the decision taken by the Ruling NDA Government and Parliament alleging an anti-Muslim prejudice. Many peaceful and violent protests have taken place across the Nation against the CAA passage in the Parliament, and no doubt it violates the principle of “*secularism*” enshrined in the Indian Constitution and other *Fundamental rights conferred by the Constitution of India*.

The researcher delved into the evolution of the CAA, its current status of the Act and a comparison between the existing laws, its needs, issues, impact, and relevant judgments on the subject matter.

Keywords: Citizenship (Amendment) Act, secularism, biases, discrimination, Indian Constitution, National Registration of Citizen.

INTRODUCTION

“Lex soli and lex sanguinis”, lex soli means “the law of the place of birth “while Lex sanguinis means “the law according to blood” - Alladi Krishnaswami Ayyar.

Citizenship is the position of a person acknowledged under law as a lawful member of a sovereign state or belonging to a specific nation.

The *Citizen Amendment Bill or CAB* was presented before the House of Parliament in 2019 to grant Indian Nationality to six religions that are Sikh, Buddhist, Jain, Parsi, Hindu, and Christian strict minorities, except

Muslims, who had evaded exploitation or abuse before the 31st of December 2014, from three countries that are Bangladesh, Pakistan, and Afghanistan. The CAB Bill was passed in the parliament of India with the majority of 120 Lawmakers, whereas 99 lawmakers objected to the bill.

Fundamentally, the government of India grants Indian citizenship via naturalization to those illegal migrants who have failed to provide valid identity documentation.

A privilege provision was inserted in the *Citizenship Act of 1955* by the central government of India that exempted Sikh, Buddhist, Jain, Parsi, Hindu, and Christian minorities, except Muslims from Afghanistan, Bangladesh, or Pakistan, to not regard or treat them as illegal migrants.

Thus, these people can enjoy the rights ensured by the Constitution of India, which they were previously deprived of in their home countries.

BACKGROUNDS OF THE CITIZENSHIP ACTS:

❖ *The Citizenship Act,1955.*¹

Under this Act, a person can acquire the status of an Indian citizen through five manners:

- *Citizenship by birth in India*
- *Citizenship by descent*
- *Citizenship by registration*
- *Citizenship by naturalization* (extended in residence in India)
- And incorporation of territory into sovereign India.
- Regardless, under this Act, an illegal migrant cannot acquire the status of an Indian citizen. Illegal Migrants are those foreigners who have entered the territory of India without proper valid travel documents like a visa and passport or are either entered with proper valid documentation but held within the permitted time duration. Under the *Foreigners Act of 1946*² and the *Passport (Entry into India) Act of 1920*³, illegal immigrants may be sent to prison or deported to their respective countries.
- From the previous Acts of 1946 and 1920 Act, The Central Government, in 2015 and 2016, decided to exempt certain specific groups of illegal migrants who had entered the territory of India before 31st December 2014. They were Jains, Hindus, Sikhs, Buddhists, Parsi, and Christians from Pakistan, Afghanistan and Bangladesh.
- It means that even if they do not possess valid documents to reside in India, they would not deport or sent to jail.

¹ The Citizenship Act,1955

² Foreigners Act of 1946

³ the Passport (Entry into India) Act 1920

- **The Citizenship (Amendment) Bill, 2016:⁴**

- To amend the 1955 Citizenship Act, the Central Government presented the Citizenship (Amendment) Bill 2016, intending to make eligible for citizenship of India to those migrated people before December 31st, 2014.
- *The Citizenship (Amendment) Bill 2019* lapsed with the dissolution of the *16th Lok Sabha*, and it was again presented before the *Lok Sabha* in December 2019.

- ❖ **FUNDAMENTAL ELEMENTS OF THE ACTS:**

1. For the first time, the Government of India granted citizenship on the grounds of religion, except for Muslim communities from Pakistan, Bangladesh, and Afghanistan, who had entered the territory of India before 31st December 2014.
2. *Hindu, Buddhist, Parsi, Jain, and Christian other than the Muslim communities*. It implies that except for Muslim Communities, any person belonging to this specific group is eligible to become an Indian Citizen and from the above-cited countries e.g. Afghanistan, Pakistan, and Bangladesh only.

3. **Illegal Migrants are not eligible to apply for two categories:**

1) **“Inner Line Permits”**:⁵ There are special permits that require non-residents or non-natives to enter into protected states such as Arunachal Pradesh, Nagaland, Manipur, and Mizoram implemented by Bengal Eastern Frontier Regulation in 1873.

2) **Sixth Schedule of Indian constitution**⁶:

The Autonomous District Councils (ADCs) of these states are vested with special powers to govern in specific Northeastern states (Assam, Meghalaya, Mizoram, and Tripura), in these states.

4. **Citizenship by Naturalization:**

- If an applicant seeks to get an Indian nationality via the naturalization process, they must reside in India for 12 months and 11 of the previous 14 years in the *Citizenship Act of 1955*.
- The latest *Citizenship (Amendment) Act, 2019*. reduces the second provision from 11 years to 5 years for applicants of six specified religions from the three countries such as Pakistan, Afghanistan, and Bangladesh.
- *The Overseas Citizen of India (OCI) registration* can be canceled for disobeying any law reported by the central government. Nevertheless, the Bill lacks guidance on the nature of such statutes, as stressed by the *Supreme Court* to prevent arbitrary exercise of powers.

⁴ The Citizenship (Amendment) Bill, 2016

⁵ Bengal Eastern Frontier Regulation, 1873 (Act 5 of 1873)

⁶ The Constitution of India, art.244(2),275(1).

CONSTITUTIONAL ASPECT OF THE NATIONALITY.

Part II of the Indian Constitution governed the citizenship from Articles 5-11, from the commencement of the Indian Constitution that is on 26th January 1950.

- The Constitution of India empowers the parliament to regulate the citizenship. **Article 11 of the Indian constitution** mandates the parliament's special power to enact laws on matters associated to citizenship. *The Citizenship Act of 1955* was promulgated based on *Article 11 of the Indian Constitution*.
- Articles 5 and 8 illustrated who can acquire or is eligible to obtain Indian Citizenship after the Constitution of India 1950 came into commencement.
- **Article 5 of the Indian Constitution:** The Apex Court of India profoundly highlights three essentials to be satisfied by a person having a domicile in India to be an Indian Citizen: (1) a person born in India, (2) either of his parents were born in India, and (3) ordinarily residing in Indian territory for not less than Five years instantly preceding the commencement of the Indian was held In *Abdul Sattar v. State of Gujarat*.⁷ In the case of *Pradeep Jain v. Union of India*,⁸ the Supreme Court of India explained the law of domicile. The court also contended that there is only one domicile, which is the domicile of India.
- **Article 6 of the Indian Constitution:** a person eligible to obtain Indian Citizenship who has migrated from Pakistan at the period of the commencement of the Constitution. Moreover, as per the Government of India Act 1935, a person or either of his parent or any of his grandparents were born in India, or in case he migrated from Pakistan before July 19th, 1948, or has been residing in India since his migration eligible to acquire an Indian Citizenship.
- Or after July, 19th 1948 a person migrated from Pakistan and was registered as a citizen with due process of law before the Constitution took effect, he must be resident in India for at least, 6 months before the registration application was filed before the appropriate Authority. *The Supreme Court of India* defined migration and stated that it means coming to Indian territory from outside it must take place before the commencement of the constitution, held in the case of *Union of India v. Karam Ali*.⁹
- **Article 7:** talks about the rights of those people who migrated to Pakistan after March 1, 1947, but later returned to India Territory
- **Article 8:** Article 8 deals with those citizens of India who are residing outside of India for Marriage, education, and employment purposes.
- **Article 9:** deals with voluntarily obtaining citizenship in an alien country that will no longer hold Indian citizenship.
- **Article 10:** a person who is recognized as an Indian Citizen under any provision of laws shall be subjected to any laws enacted by the Parliament of India.

⁷ *Abdul Sattar v. State of Gujarat*, AIR (1965) SC 810.

⁸ *Pradeep Jain v. Union of India*, AIR (1984) SC 1420.

⁹ *Union of India v. Karam Ali*, AIR (1970) A. & N. 1416.

- **Article 14 of the Indian Constitution:** according to this Article every “*person equality before the law or the equal protection of Law*”, for both citizen and foreigners.
- **Article 15 of the Indian Constitution** says that there shall be no discrimination on the grounds of gender, race, religion, place of birth, etc.¹⁰

Article 11 of the Constitution of India reflects that the Central government is empowered to regulate matters related to Citizenship. Whereas *Articles 14 and 15 of the Indian Constitution* are *Fundamental Rights*, stating that everyone is equal before the eyes of the law, and respectively, Article 15 says that there should be no discrimination based on Gender, race, place of birth, religion, etc. *The Citizenship Amendment Acts 2019* was amended based on religious communities that were *Hindus, Parsi, Sikh, Buddhist, Christian, and Jains besides Muslim Communities*, which violates the norms of Articles 14 and 15 of the Indian Constitution and the principle of secularism.

❖ **TERMINATION OF CITIZENSHIP:**¹¹

There is a three-way to terminate Citizenship with due process of the Act:

- 1) **Renunciation:** A person can renounce his Citizenship by making a statement in the prescribed form.
- 2) **Termination:** If a person intentionally obtained citizenship of another foreign country, then his citizenship will be canceled.
- 3) **Deprivation:** The Government of India can cancel citizenships in certain matters; however, this only applies to citizens who acquired citizenship via naturalization, registration, or under Article 5, Clause (c).

❖ **ISSUES AND IMPACT OF THE CAA:**

- After the Bill passed in the Parliament, critics criticized it by saying it violated clause 6 of the *Assam Accord 1985*, which defines “*constitution, legislative, administration and safeguard*” for conserving the unique culture and identity of the Assamese people. Moreover, due to the Amendment, it the *NRC* updating will be rendered Null and Void.
- Nearly 20 million undocumented illegal migrants from Bangladeshi citizens are residing in Assam, and they inalienable changed the Assam demographics and placing a significant pulling resources and economy of the states.
- It violated the rights guaranteed under *Article 14 of the Indian Constitution* “*every person equality before the law or the equal protection of Law*” and applicable to both the citizen and foreigners.
- The Critic argues that, it violates the principle of “*Secularism*” which is mentioned in the constitution's preamble which is also known as a soul of the *Indian Constitution*.
- The Act sheds light on religious oppression in these three countries e.g. Bangladesh, Pakistan, and Afghanistan which may weaken our bilateral ties.¹² Moreover, it flowed with significant criticism for targeting Muslims community, thus, the Act was based on religious communities that were *Hindus, Parsi, Sikh, Buddhist, Christian, and Jains besides Muslim Communities*, which violates the norms the principle of secularism, liberalism, fairness, equality and justice. Further, the Act failed to include *Balochi, Shia* and

¹⁰ The Constitution of India, art.5,6,7,8,9,10,11,14,15

¹¹ “Citizenship in India”, India available at: <https://byjus.com/free-ias-prep/citizenship/> (last visited on May 15, 2024).

¹² “Citizenship (Amendment) Act, 2019”, India available at: <https://www.drishtias.com/to-the-points/Paper2/citizenship-amendment-act-2019>, (last visited on 16 May 2024).

Ahmadiyya Muslims of Pakistan and Afghanistan's *Hazaras* who are also a victim to acquire citizenship in India. Furthermore, the critic also argues that, the Act did not include to those oppressed in Sri Lanka and Myanmar, from where Tamils and *Rohingya Muslims* are staying in India as a refugee¹³.

➤ **ARGUMENTS IN FAVOUR OF THE ACT.**

- Amit Shah, the Union Home Ministry, explained the exclusion of Muslims from the Act because Pakistan, Bangladesh, and Afghanistan were Islamic countries that were Muslim in majority. He also stated that “*All the three countries from where persecuted minorities can come to India are Islamic nations. Can Muslims be religiously persecuted there?*”.
- He also elucidates that the Act does not nullify the *naturalization laws*, and migrated Muslims from any foreign country are eligible to apply for Indian Citizenship.
- The Central Government also clarified that the Act, did not snatch the citizenship of people and it will not affect the *National Register of Citizens*.
- The *Union Home Ministry* also stated that the Act does not have any such provision that will impact India's 18 crore Muslim citizens. “*Who have equal rights like their Hindu counterparts*”. “*No Indian citizen would be asked to produce any document to prove his citizenship after this Act,*” the government has commented.¹⁴

❖ **CURRENT UPDATES RELATED TO CAA 2019.**

“*Citizenship consists in the service of the country.*” -Jawaharlal Nehru

- On 15h May 2024, the central Government granted Indian citizenship to six religious persecuted in three countries that are Pakistan, Afghanistan and Bangladesh, after their applications went through a series of processes online via a designated portal. The Citizenship certificate was disseminated by the *Union Home Secretary Ajay Kumar Bhalla*.¹⁵
- *The Union Home Minister Shri Amit Shah*, in an exclusive conversation with India Today T.V stated, “*Today, the Ministry of Home Affairs has initiated the process of issuing certificates (under CAA). I want to extend my heartfelt congratulations to all 14 refugees. CAA is Prime Minister Narendra Modi's promise to the nation.*” It means the central government started granting or issuing Indian Citizenship to those who had faced persecution in those three countries from the specific six religions such as *Hindu, Sikh, Jain, Christian, Parsi, and Buddhist*.¹⁶
- Thus, *Under CAA (Citizenship Amendment Act) 2019*, it was the first set of certificates issued to them. Currently, the citizenship application must be flooded on the designated portal from the six religions in fear of persecution they have faced in those three countries.

¹³ “Citizenship Amendment Act 2019 (CAA) - Bill Explained in Detail for UPSC”, India available at: <https://byjus.com/free-ias-prep/citizenship-amendment-bill-2019/>. (last visited on May 16, 2024).

¹⁴ Abishek De, “Discriminatory', 'not anti-citizen': Arguments for and against CAA”, *India Today*, March 19,2024.

¹⁵ News Desk, “MHA Issues First Set of Citizenship Certificates Under CAA, 14 People Granted Indian Nationality”, *News 18*, May 15,2024.

¹⁶ Anuja Jha, “First citizenship certificates handed out to 14 people under CAA”, *India Today*, May 15,2024.

❖ **LANDMARK CASES ON CITIZENSHIP LAW:**

1)**Sarbananda Sonowal v. Union of India (2005)**¹⁷ This case is related to an Illegal immigration issue in Assam, also known as the “*Assam Illegal Migrants*” case. The Supreme Court of India held that detection and deportation are illegal to protect the rights and interests of the citizens of India. The court appointed *Foreigners Tribunals and the National Register of Citizens (NRC)* updated in Assam.

2)**Mohammed Shakeel v. State of Andhra Pradesh (2008)**¹⁸ *The Supreme Court of India* distinguishes between nationality and citizenship and holds that acquiring Indian nationality does not mean automatically granting Indian citizenship. To obtain Indian Citizenship, a person must follow the due process of the law and the same incorporated separately under the Citizenship Act.

3)**National Legal Services Authority v. Union of India (2014)**¹⁹ This a landmark of 2014, where *the Supreme Court of India* not only acknowledged the third gender rights (transgenders)but also asserted their rights to self-identify their gender and to all the rights and benefits naturally available to any other Indian Citizen, including citizenship.

4)**Navtej Singh Johar v. Union of India (2018)**²⁰ *The Rights of LGBTQ+* individuals were acknowledged by the Supreme Court, which established their right to privacy, dignity, and equal citizenship rights and decriminalized consensual same-sex relationships by trucking down the *Indian Penal Code*, Section 377. Thus, it was a landmark case of 2018, which brought many changes into the life of LGBTQ+ life.

FINDING AND RESULT:

- *Article 11 of the Indian Constitution* vested powers to the Central government to enact the laws related to citizenship. Eventually, the Parliament of India utilized these powers and succeeded in enacting the Citizenship (Amendment) Act, which later faced much criticism from across the country.
- The *CAA* was enacted to allow the acquisition of Indian citizens, those who had faced persecution or oppression in the countries of Pakistan, Afghanistan, and Bangladesh, from six religions that were *Hindus, Jain, Christian, Parsi, Buddhist, and Sikh, excluding Muslim communities*.
- The Act fails to enclosed *Balochi, Shia, and Ahmadiyya Muslims* of Pakistan and Afghanistan's Hazaras, who are also facing difficulties to acquire Indian Citizenship. Moreover, the Act failed to include those oppressed in Sri Lanka and Myanmar, from where *Tamils and Rohingya Muslims* are staying in India, taking refugee shelters.
- Under the *CAA*, many provisions were enacted to make it effortless for a person to obtain *Indian Citizenship*.
- The Act was enacted based on religion, which is against the norms of the Indian constitution, and a violation of the principle of “*Secularism*” and *Articles 14 and 15 of the Indian Constitution*. Even

¹⁷ *Sarbananda Sonowal v. Union of India (2005)*

¹⁸ *Mohammed Shakeel v. State of Andhra Pradesh (2008)*

¹⁹ *National Legal Services Authority v. Union of India (2014)*

²⁰ *Navtej Singh Johar v. Union of India (2018)*

though the Central government had issued a clarification that the Act was not *Anti-Muslim* but with good faith to help those who faced persecution in these three countries, and the Act will not impact any existing laws in the country.

- Therefore, The CAA was ploy played by the Central Government to generate a vote bank for the upcoming election to maintain their power in the Central. It was the main reason for including these six religions except one religion e, i Muslims religions.

SUGGESTIONS:

- *The Central Government* should insert provisions to allow those Muslims such as *Balochi*, Shia, and Ahmadiyya Muslims of Pakistan and Afghanistan's *Hazaras*, including those oppressed in Sri Lanka and Myanmar, from where Tamils and *Rohingya Muslims* are staying in India as refugees who are facing persecution to obtain Indian citizenship.
- The Indian Government should take proper measures before adding more population to *India's demography* because the country is already flooded with a massive population, and adding more population into the country will bring nothing but a tremendous impact on the country's demography, the strain on available resources and the interest of the *Indian citizens*. Moreover, instead of adding more population to *India's demography*, the government should generate more jobs or government job schemes for unemployed youth to support them to make their life stable.
- The latest *Citizenship (Amendment) Act, 2019*. reduces the second provision from 11 years to 5 years for applicants of six specified religions from the three countries such as Pakistan, Afghanistan, and Bangladesh, it should be increased from 5 to 7 years.
- The law enacted by the Central Government should not be discriminated based on any religion, as we Indians believe in "*secularism*" and "*fraternity*".
- The Acts enacted by the Parliament should be transparent, and there should not be a hidden political agenda. So, to uphold the norms of the democracy of the country and the *Preamble of the Indian Constitution* established by the *farmers of the Constitution*.

CONCLUSION:

The Parliament of India utilized *Article 11 of the Indian Constitution*, which vested powers to the Central government to enact the laws related to citizenship and succeeded in enacting the *Citizenship (Amendment) Act, 2019*, allowing six religions to acquire Citizenship in India, who had faced abuse or persecution from three specific countries that are Pakistan, Bangladesh, and Afghanistan. The Act reduces the second provision from 11 years to 5 years for applicants to acquire citizenship by Naturalization, except in *Inner Line states* and *6th Schedules of the Indian Constitution*. This Act faced many criticisms from across the nation and violated the norms of the principle of "*Secularism*", *Articles 14 and 15 of the Indian Constitution*.

Therefore, the Central government could have acted with more transparency without having any political motives or discrimination based on any religious viewpoint. Moreover, it hurts the sentiments of Muslim communities who are currently residing in India and face persecution in obtaining *Indian citizenship*. Just recently, the Central Government finally issued 14 certificates to those persecuted citizens from six specific religions and three countries.