

## **A STUDY ON CITIZENSHIP ACT**

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### **Abstract**

*The Indian Constitution that was implemented in 1950 guaranteed citizenship to all of the country's residents at the commencement of the constitution, and made no distinction on the basis of religion. The Indian government passed the Citizenship Act in 1955. The Act provided two means for foreigners to acquire Indian citizenship. People from "undivided India" were given a means of registration after seven years of residency in India. Those from other countries were given a means of naturalisation after twelve years of residency in India. Political developments in the 1980s, particularly those related to the violent Assam movement against all migrants from Bangladesh, triggered revisions to the Citizenship Act of 1955. The Citizenship Act was first amended in 1985 after the Assam Accord was signed, wherein the Indian government of Prime Minister Rajiv Gandhi agreed to identify foreign citizens, remove them from the electoral roles, and expel them from the country. The Citizenship Act was further amended in 1992, 2003, 2005 and 2015. In December 2003, the National Democratic Alliance government, led by the Hindu nationalist Bharatiya Janata Party (BJP), passed the Citizenship (Amendment) Act, 2003 with far-reaching revisions of the Citizenship Act. It added the notion of "illegal immigrants" to the Act, making them ineligible to apply for citizenship (by registration or naturalisation), and declaring their children also as illegal immigrants. Illegal immigrants were defined as citizens of other countries who entered India without valid travel documents, or who remained in the country beyond the period permitted by their travel documents. They can be deported or jailed. The 2003 amendment also mandated the Government of India to create and maintain a National Register of Citizens. The bill was supported by the Indian National Congress, as well as the Left parties, such as the Communist Party of India (Marxist) (CPI (M)). During the parliamentary debate on the amendment, the leader of opposition, Manmohan Singh, stated that refugees belonging to minority communities in Bangladesh and other countries had faced persecution, and requested that the governments approach to granting them citizenship be made more liberal. According to M.K. Venu, the formulation of the 2003 amendment discussed by Advani and Singh was based on the idea that Muslim groups in Pakistan and Afghanistan that had experienced persecution also needed to be treated with compassion. The researcher has made an attempt to critically analyse the study of Citizenship Act*

**Keywords-***citizens, refuses, Pakistan, fundamental rights*



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## **INTRODUCTION:**

Citizenship amendment bill was passed by the parliament of India 12 December 2019. Lok Sabha was passed the bill was 10th December and the Rajya Sabha pass the bill was 11 December 2019. The bill was sign Indian president of Ram Nath Kovind 12TH Dec 2019. The bill was pass. but, not mention in effective date and year. Earlier India was Follow only our constitution provisions, article 5-11 says about the citizenship. After we enact the new one, it is called citizenship act of 1955. It was enacted year of 30 Dec 1955.

Soon after its passage from the Indian Parliament, the Citizenship Amendment Act, 2019 has received much criticism. The country has witnessed and is still witnessing an unprecedented protest from almost all sects of the society. The law seems to contain brazenly discriminatory provisions which prima facie discriminates migrants on the basis of their religion, but also on the score of their country of origin, date of their entry into India and their place of residence in India. Numerous petitions have already been filed impugning statutory validity of the Citizenship Amendment Act 2019 (the Act) before the Hon'ble Supreme Court of India, wherein the matter is still under consideration. However, amid the chaotic situation, one thing which is absolutely crystal is that, the Citizenship Amendment Act, 2019 is not for taking away citizenship of any individual. The law intends to give citizenship to religiously persecuted immigrating persons from Hindu, Sikh, Buddhist, Jain, Parsi and Christians communities from Afghanistan, Bangladesh and Pakistan. As a matter of fact, this law is not applicable to 1.33 billion people of India, rather, is only applicable to the above stated class of religiously persecuted immigrating persons intending to secure Indian citizenship.

Citizenship in India is regulated by the Citizenship Act, 1955. The Act stipulates that citizenship in India can be obtained by five methods – by birth, by descent, by registration, by naturalisation, and by territorial incorporation. The acquisition of Indian citizenship is not permitted to an illegal migrant. Any person who enters India illegally, i.e. without any valid travel documents such as a visa or a passport, or lawfully enters India, but stays beyond the period of time specified in its travel documents is an „illegal immigrant“.

### **Object of the Act:**

1. The Citizenship Act, 1955 (57 of 1955) was enacted to provide for the acquisition and determination of Indian citizenship.
2. It is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in

Pakistan, Afghanistan and Bangladesh. Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries. Some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents<sup>3</sup>.

3. Under the existing provisions of the Act, migrants from Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Pakistan or Bangladesh who entered into India without valid travel documents or if the validity of their documents has expired are regarded as illegal migrants and ineligible to apply for Indian citizenship under section 5 or section 6 of the Act<sup>4</sup>.
4. The central Government exempted the said migrants from the adverse penal consequences of the passport (Entry into India) Act, 1920 and the Foreigners Act, 1946 and rules or orders made thereunder vide notifications, dated 07.09.2015 and dated 18.07.2016. Subsequently, the Central Government also made them eligible for long term visa to stay in India, vide, orders dated 08.01.2016 and 14.09.2016. Now, it is proposed to make the said migrants eligible for Indian Citizenship.
5. The illegal migrants who have entered into India up to the cut of date of 31.12.2014 need a special regime to govern their citizenship matters. For this purpose, the Central Government or an authority specified by it, shall grant the certificate of registration or certificate of naturalisation subject to such conditions, restrictions and manner as may be prescribed. Since many of them have entered into India long back, they may be given the citizenship of India from the date of their entry in India if they fulfil conditions for Indian citizenship specified in section 5 or the qualifications for the naturalisation under the provisions of the Third Schedule to the Act.

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<sup>3</sup> G.S.R.685(E) and G.S.R.686(E), Gazette of India [07-09-2015]; G.S.R. 703(E), Gazette of India [18-07-2016]

<sup>4</sup> "Parliament passes the Citizenship (Amendment) Bill2019". pib.gov.in. Archived from original on 16 December 2019. Retrieved 18 December 2019.

6. The Bill further seeks to grant immunity to the migrant of the aforesaid Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities so that any proceedings against them regarding in respect of their status of migration or citizenship does not bar them from applying for Indian citizenship. The competent authority, to be prescribed under the Act, shall not take into account any proceedings initiated against such persons regarding their status as illegal migrant or their citizenship matter while considering their application under section 5 or section 6 of the Act, if they fulfil all the conditions for grant of citizenship.
7. Many persons of Indian origin including persons belonging to the said minority communities from the aforesaid countries have been applying for citizenship under section 5 of the Citizenship Act, 1955 but they are unable to produce proof of their Indian origin. Hence, they are forced to apply for citizenship by naturalisation under section 6 of the said Act, which, inter alia, prescribe twelve years residency as a qualification for naturalisation in terms of the Third Schedule to the Act. This denies them many opportunities and advantages that may accrue only to the citizens of India, even though they are likely to stay in India permanently. Therefore, it is proposed to amend the Third Schedule to the Act to make applicants belonging to the said communities from the aforesaid countries eligible for citizenship by naturalisation if they can establish their residency in India for five years instead of the existing eleven years<sup>5</sup>.
8. Presently, there is no specific provision in section 7D of the Act to cancel the registration of Overseas Citizen of India Cardholder who violates any provisions of the Act or any other law for the time being in force. It is also proposed to amend the said section 7D so as to empower the Central Government to cancel registration as Overseas Citizen of India Cardholder in case of violation of any provisions of the Act or any other law for the time being in force.
9. The Bill further seeks to protect the constitutional guarantee given to indigenous populations of North Eastern States covered under “The Inner Line” system of the Bengal Eastern Frontier Regulation, 1873.

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<sup>5</sup> “Citizenship Amendment Act comes into effect from today as MHA issues notification”. The Indian Express. 10 January 2020.

**Constitutional Provisions:**

Article 5 - of the Indian Constitution stipulates that, “at the commencement of this Constitution every person who has his domicile in the territory of India and (a) who was born in the territory of India; or (b) either of whose parents was born in the territory of India; or (c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement, shall be a citizen of India”.

Article 6 - of the Indian Constitution deals with the rights of citizenship of certain persons who have migrated to India from Pakistan and it states that, “notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if (a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948 , he has been ordinarily resident in the territory of India since the date of his migration, or (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948 , he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India or at least six months immediately preceding the date of his application”.

Article 7- of the Indian Constitution further deals with the rights of citizenship of certain migrants to Pakistan, which contemplates that, “notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947 , migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India: Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948”.

Article 10- continuance of the rights of citizenship, the parliament made by any provision to continue to citizen.

Article 11- of the Indian constitution says, parliament to regulate the rights of citizenship by law; which means the parliament make any law for acquisition or termination of citizenship and all others matters relating to citizenship.

Article 14 -of the Indian constitution says equality before the law- the state shall not deny to any person equality before the law or equal protection of the law within the territory of India. It was protecting citizen and non-citizen. Also applicable for every person in Indian territory. In this concept was derive from rule of law.

**Rule of Law**-Rule of law was created by dicey. In this concept first emerge in British period. The rule of law was mainly popularized in 19th century. We get independent 1947. Dr. B R AMBEDKAR was making constitution in November 26th 1949. The rule of law concept was also inserted. The rule of law consisting three principle 1. supremacy of Law 2. equality before the law 3.pre-dominance of legal spirit.

1. **Supremacy of Law** - Law only a supreme of the nation.
2. **Equality Before the Law** -. No one can above the law. LAW IS BLIND which means law should not concern rich and poor or higher caste and lower caste. The law cannot discriminate to any citizen in manner of race, sex, Religion, place of birth. India also follow a natural justice (legal maxim; audi alteram partem which means hearing two sides another maxim is; nemo iudex in causa sua which means rule against bias).
3. **Pre - Dominance of Legal Spirit** - The court impose the rule of law impartial and free from the external influences. The judicial become act as a freely. Court was given any judgment without intervention of any external.

#### **The Amendments:**

The Citizenship (Amendment) Act of 2019 amended the Citizenship Act,1955, by inserting the following provisos in section-2, sub-section (1), after clause (b):

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920

or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;"<sup>6</sup>

A new section 6B was inserted (in the section concerning *naturalisation*), with four clauses, the first of which stated

(1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

The "exempted" classes of persons were previously defined in the Foreigners (Amendment) Order, 2015, (issued under the Foreigners Act, 1946):

**3A. Exemption of certain class of foreigners.** – (1) Persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parses and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014

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(a) without valid documents including passport or other travel documents and who have been exempted under rule 4 from the provisions of rule 3 of the *Passport (Entry into India) Rules, 1950* [...]; or

(b) with valid documents including passport or other travel document and the validity of any of such documents has expired, are hereby granted exemption from the application of provisions of the *Foreigners Act, 1946*, and the orders made thereunder in respect of their stay in India without such documents or after the expiry of those documents, as the case may be [...].

The Rules had been further amended in 2016 by adding Afghanistan to the list of countries.

Exemptions were granted to north-eastern regions of India in the clause (4) of section 6B:

(4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.

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<sup>6</sup> "MINISTRY OF HOME AFFAIRS NOTIFICATION S.O. 172(E)" (PDF). The Gazette of India. 10 January 2020. Retrieved 10 January 2020.

**Citizenship Amendment Act, 2019: Doctrine of equality and Reasonable Classification:**

As discussed earlier, the amendment makes it crystal that the illegal migrants who fulfil below mentioned conditions will not be treated as illegal migrants. The conditions are:

- a) they must belong to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community;
- b) they must be from Afghanistan, Bangladesh or Pakistan;
- c) they must have entered into India on or before the 31st day of December, 2014.

Furthermore, these amended provisions are not applicable to the tribal area of Assam, Meghalaya, Mizoram or Tripura and to the areas under the "internal line" as notified under the Bengal Eastern Frontier Regulation, 1873.

Clearly, the new law governing citizenship of illegal migrants in India provides for differential treatment on the basis of:

- a) country of origin;
- b) religion;
- c) date of entry into India;
- d) place of residence in India.

And therefore, the obvious question that would arise here is regarding the violation of Article 14 of the Indian Constitution, which guarantees „equality before the law“ or „equal protection of the laws within the territory of India“ to every person. Interestingly, the framers of the sovereign document chose to guarantee the right of equality to every person and not merely to Indian citizens. Therefore, any enactment which gives the executive an unfettered power to select cases for special treatment, without specifying the policy, may be set aside as violative of the right to equality. Under Article 14, the equality clause is of great importance, as it guarantees equal treatment (equality before the law) or the equal protection of the laws within the territory of India. Nevertheless, like any other constitutional right, even the right to equality is not absolute as the State has the power to impose restrictions, treating any person or group of person as a separate and distinct class. Howsoever, such classification must qualify the test of reasonableness, that is to say, it must be a reasonable classification, based on intelligible differentia having nexus with the object sought to be achieved.<sup>5</sup>

Therefore, Article 14 allows classification, but same should be a reasonable classification, free from all forms of arbitrariness. The classification must ultimately have a rationale and just object to achieve.

### **Consequences:**

- The first and foremost reason was it was violating the Indian constitution. The Indian constitution article 14 was violating. Article 14 the state shall not deny person equality before the law. It was applicable to citizen and not citizen.
- The parliament pass any new act at least six months waiting after only pass the new act. But this act was pass within two days. very quickly move the bill. It was considered as a most drawbacks. The Lok Sabha pass the bill 10th Dec, after a day Rajya Sabha pass the bill 11th Dec, the president assents the bill 12th December. The parliament give for three hours only debate to this bill. It was against the democracy. Any bill was passing the parliament to give a time at least one month for discussion of the bill. After only pass the bill assent of the president.
- Article 10 and 11 says parliament can make any law adding or remove the persons citizenship. this provisions clearly says the parliament make law nobody questioned. But, not violate the fundamental rights. Any law violated the fundamental rights it was unconstitutional.
- The citizenship amendment bill was violating the preamble of the constitution. India was secular country. Indian people were brothers and sisters. The bill was violating the secularism. Secularism is a basic structure of the constitution.
- Muslim religious was minority in India. So, the people was consider majority (Hindus) was dominating and discriminating.
- Some people ask why not article 15 of India constitution violate? This article clearly says no citizen shall be discriminating on caste, sex, religion, etc., It was only applicable for citizen of India.
- Jamia Milla Islamia university student protest against the CAB. The student was protesting within the university campus. But the police were attack the student without university permission. Peoples and students were condemned for the police activity. The protest was spread across the India. Delhi, Lucknow, Gujarat, Hyderabad, Mumbai, etc participate the protest. Chennai colleges also participate the protest. Example TNDALU, Madras University, IIT Colleges.
- Assam Peoples protesting was not against CAB. Reason for the protest, new persons will come, the native persons was affecting the job vacancies and the cultural changes. Assam peoples was living in hills and mountain only and always given importance to tradition and customs.

### **What makes the Citizenship Amendment Bill Controversial?**

- The Citizenship (Amendment) Bill 2019, in effect, seeks to give Indian nationality **only to the non-Muslim refugees** from Pakistan, Bangladesh and Afghanistan.
- Six religious' communities – Hindus, Sikhs, Buddhists, Jains, Parsis and Christians – are considered eligible for Indian citizenship if they entered India on or before 31 December 2014, but not Muslims.
- The countries from which minorities are allowed include Afghanistan, Bangladesh and Pakistan, but not Myanmar or Sri Lanka.
- Citizenship is granted by relaxing the requirement of residence in India for citizenship by naturalisation from 11 years to 5 years for these migrants.
- North-east India has already suffered a lot due to the problem of illegal migrants. The natives of North-east India are against any move to allow citizenship to illegal migrants – irrespective of their religion<sup>7</sup>

### **The Stand of the Government regarding CAB:**

- The Central government is of the opinion that the bill is not discriminatory against Muslims. As the Citizenship Amendment Bill has not amended the original provisions, any foreigner, including a Muslim, can still apply for Indian citizenship under the normal process of naturalisation. However, it may take 11 or more years to get Citizenship in this route.
- The strong advocate of the Citizenship Amendment Bill (CAB) 2019, Amit Shah, Home Minister of India, connected the **2-nation theory** which led to the division of India with the new bill. As per him, as the two nations – India and Pakistan – are created on the basis of religion, CAB turned a necessity now.
- Home Minister also cited the **Nehru-Liaquat pact**. As per him, Nehru-Liaquat pact failed to achieve its objectives in protecting minorities in Pakistan and Bangladesh. Pakistan, Bangladesh and Afghanistan have declared Islam as their State Religion. However, there are religious persecutions of minorities in these countries. Home Minister pointed out the declining minority population in the three neighbouring countries.

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<sup>7</sup> <https://timesofindia.indiatimes.com/india/caa-and-nrc-know-the-difference/articleshow/72880836.cms>

- The CAB legislation, as per the Union Government, will give bring a new light into the lives of the people who were facing religious persecution in neighbouring countries.
- As per the government, the bill does not violate any provisions of the Constitution including Article 14.<sup>8</sup>

### **Three flaws in the logic of the Central Government:**

Even though Jinnah proposed 2-nation theory in the 1940s, the result was never a Muslim Pakistan and a Hindu India. While **one nation (Pakistan) was created on the basis of religion**, the other nation was created on the basis of secular ideology Only Pakistan and Bangladesh were part of Pre-Partition India, Afganistan was not. Even if the government take moral responsibility to protect the minorities affected by the 2-nation theory, that logic is not applicable in the case of Afganistan.

In secular India, citizenship was granted to members of all regions including Islam. If the intention of the CAB is to protect all minorities facing persecution in the neighbouring countries- the bill turns a blind eye on the minorities in Myanmar (Rohingya Muslims) and Sri Lanka (Tamils).

Thus clearly, the bill is highly selective. CAB is intended to select some communities and omit others.

### **Acts which the CAB amend:**

- Citizenship Act of 1955.
- Passport Act of 1920.
- Foreigners Act of 1946<sup>9</sup>.

### **Exceptions to the Bill:**

- CAB won't apply to areas under the sixth schedule of the Indian Constitution – which deals with autonomous tribal-dominated regions in Assam, Meghalaya, Tripura and Mizoram.
- The bill will also not apply to states that have the inner-line permit regime (Arunachal Pradesh, Nagaland and Mizoram)<sup>10</sup>.

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<sup>8</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/all-you-need-to-know-about-proposed-pan-india-nrc/articleshow/72671119.cms>

<sup>9</sup> <https://www.indiatoday.in/india-today-insight/story/everything-you-wanted-to-know-about-the-cao-and-nrc-1630771-2019-12-23>

### **Status of the Citizenship Amendment Bill:**

The Union Cabinet cleared the Bill on 4 December 2019. It was passed by the Lok Sabha on 10 December and Rajya Sabha on 11 December.

In Lok Sabha, the Bill was passed 311-80, with zero abstentions after the Opposition put up a spirited attack against it.

In Rajya Sabha, 125 votes were cast in favour and 105 against the bill. The President of India signed the bill on December 12, and the Citizenship Amendment Bill (CAB) became the Citizenship Amendment Act (CAA)

### **Conclusion:**

The parliament only have the ultimate law-making power. But the laws were violating fundamental rights, it was goes to the judicial review. The judiciary only decide this law is valid or invalid. so, the parliament carefully make the law. The CAB Also goes to the judicial review the Supreme Court only decide it was valid or invalid. But It was considered as undemocratic only. The people elected person only make the law. That the reason only conduct election and make ministry of law and justice.

The chief opposition to the Citizenship (Amendment) Bill is that it discriminates on the basis of religion by identifying only non-Muslims refugees as those who would be eligible for Indian citizenship. While any foreigner can still apply for Indian citizenship, he/she has to follow the normal process of naturalisation – which takes 11 or more years. The CAB is seen by many as a quick move to change the demographics and voters-profile in favour of the ruling party by selective admission of illegal migrants.

As per the critics, Citizenship (Amendment) Bill violates Article 14 of the Indian Constitution – the fundamental right which guarantees equality to all persons. This is part of the basic structure of the Constitution and hence cannot be reshaped by any Parliament laws. It is yet to be seen if the Supreme Court allows the selective fast-tracking for Indian Citizenship. The apex court has power even to declare the bill as unconstitutional. The policy towards illegal migrants and refugees needs wider debates and deliberation. However, religion can never be the basis of Indian Citizenship.

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<sup>10</sup> <https://www.drishtias.com/to-the-points/Paper2/to-the-point-paper-2-national-register-of-citizens-nrc>

Nevertheless, the constitutional vires of the newly enacted Citizenship Amendment Act, 2019 has already been challenged before the Hon'ble Supreme Court of India, who will now examine its constitutional validity on the touchstone of "test of reasonableness", but until then the debate as to the positive or negative discrimination created by the Citizenship Amendment Act, 2019 will continue surely.

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