

# Analyse on Citizenship Amendment Act, 2019

**Ajay Ashok Deore**

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School of Law, Sandip University, Nashik, Maharashtra, India

[mwajaydeore@gmail.com](mailto:mwajaydeore@gmail.com)

**Abstract:** *December 10, 2019, the Citizenship (Amendment) Act (CAA) passed in the Lok Sabha (the lower house of Indian parliament). Two days later, it cleared the Rajya Sabha (the upper house of Indian parliament) and, after quickly receiving the assent of Indian President Ram Nath Kovind, became law. A campaign promise of the ruling Bharatiya Janata Party (BJP) during both the 2014 and 2019 parliamentary elections, the CAA provides a fast track for non-Muslim immigrants from Muslim-majority Afghanistan, Bangladesh, and Pakistan to apply for and gain Indian citizenship. The law essentially grants individuals of selected, non-Muslim communities in these countries refugee status within India and reserves the category of “illegal migrant” for Muslims alone. Opposition parties decried the bill for violating India’s secular foundations and expressed worry that it would be used to disenfranchise India’s sizable Muslim population. Union Home Minister Amit Shah, who introduced the bill in parliament, argued that the CAA has nothing to do with India’s own religious minorities and is aimed at protecting those who have suffered from religious persecution in neighboring states. The CAA, however, does not require members of the listed non-Muslim religious groups to provide any proof of persecution, yet omits Muslim minority communities such as Shi’a and Ahmadi Muslims who have faced severe persecution in Afghanistan and Pakistan due to their faith.*

*That the Afghanistan, Bangladesh and Pakistan are muslims are in majority that they torture and harassment to the minorities and to force them to convert Their religion and those countries are not secular and hence it must to save the minorities communities. In 2019, the Indian parliament adopted the Citizenship (Amendment) Act, which grants citizenship to non-Muslims ‘persecuted’ minorities such as Hindus, Sikhs, Buddhists, Jains, Parsis or Christians from Afghanistan, Bangladesh and Pakistan. Protests were held against the CAA in various parts of India. For protestors, the CAA is contrary to the secular character of the Indian citizenship. Supporters of the CAA also held rallies enumerating its benefits. This paper traces the historical evolution of the constitutional debates and changes in the Indian citizenship rules, and examines the socio-political impact of the CAA.*

**Keywords:** Citizenship act, illegal migrant, Amendment, CAA, Constitution.

## I. INTRODUCTION

The Citizenship Act, 1955 regulates who may acquire Indian citizenship and on what grounds. A person may become an Indian citizen if they are born in India or have Indian parentage or have resided in the country for a period of time, etc. However, illegal migrants are prohibited from acquiring Indian citizenship. An illegal migrant is a foreigner who enters the country without valid travel documents, like a passport and visa, or enters with valid documents, but stays beyond the permitted time period.[1]

Illegal migrants may be imprisoned or deported under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920. The 1946 and the 1920 Acts empower the central government to regulate the entry, exit and residence of foreigners within India. In 2015 and 2016, the central government issued two notifications exempting certain groups of illegal migrants from provisions of the 1946 and the 1920 Acts.[2] These groups are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who arrived in India on or before December 31, 2014. This implies that these groups of illegal migrants will not be deported or imprisoned for being in India without valid documents. In 2016, a Bill was introduced to amend the Citizenship Act, 1955.[3] The Bill sought to make illegal migrants belonging to these six religions and three countries eligible for citizenship and made some changes in the

provisions on registration of Overseas Citizens of India (OCI) cardholders. It was referred to a Joint Parliamentary Committee, which submitted its report on January 7, 2019.[4] The Bill was passed by Lok Sabha on January 8, 2019.[5] However, it lapsed with the dissolution of the 16th Lok Sabha. Subsequently, the Citizenship (Amendment) Bill, 2019 is being introduced in Lok Sabha in December 2019. The 2019 Bill seeks to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship. It exempts certain areas in the North-East from this provision. The Bill also makes amendments to provisions related to OCI cardholders. A foreigner may register as an OCI under the 1955 Act if they are of Indian origin (e.g., former citizen of India or their descendants) or the spouse of a person of Indian origin. This will entitle them to benefits such as the right to travel to India, and to work and study in the country. The Bill amends the Act to allow cancellation of OCI registration if the person has violated any law notified by the central government.

#### **Constitutional provisions relating to citizenship:**

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 who was born in the territory of India; or 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 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 (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 of the Indian Constitution deals with the continuance of the rights of citizenship, and reads as, “every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen”.

Article 11 of the Indian Constitution empowers the Union government to legislate upon the subject of citizenship, and provides that, “nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship”.

The constitutional foundation of Indian Citizenship, therefore does not create any classification based on religion, it does not discriminate between people professing different religions and is based on the principles of secularism.

#### **Laws regulating citizenship in India:**

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".<sup>6</sup>

**Prosecution and deportation of illegal migrants:**

The Indian laws provide for the prosecution and deportation of illegal migrants, and empower the Union government to control foreigners entering, leaving and residing in India. The Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 authorize illegal migrants to be imprisoned or deported.

**Exemption to certain class of illegal migrants:**

In 2015 and 2016, the Narendra Modi led Union government issued two notifications which went beyond the provisions of the 1946 and the 1920 Act and exempted some category of illegally immigrating persons from Hindu, Sikh, Buddhist, Jain, Parsi and Christians communities from Afghanistan, Bangladesh and Pakistan, who arrived in India on or before 31 December of 2014.<sup>6</sup>

**Amendments in the Citizenship Act of 1955:**

A proposal for amending the Citizenship Act, 1955 was introduced in 2016 vide the "Citizenship (Amendment) Bill, 2016" with the intention of making the illegal migrants from these six sects and three countries eligible for citizenship in India. However, the Citizenship (Amendment) Bill, 2016 was passed by the Lok Sabha on January 8, 2019, but it lapsed with the dissolution of the 16th Lok Sabha.

Finally, the Citizenship (Amendment) Bill, 2019 was introduced in the lower house of the Indian Parliament on December 9, 2019, which was subsequently passed with overwhelming majority on the very same day. The Bill of 2019 was passed by the Rajya Sabha on December 11, 2019.

**Effect of acquiring citizenship:**

The much anticipated Citizenship Amendment Bill, 2019, which now has taken the force of law, specifies that above stipulated class of illegal migrants from the three countries, Pakistan, Afghanistan and Bangladesh, will not be treated as illegal migrants, thereby making them eligible for citizenship of India.<sup>8</sup> These illegal migrants upon acquiring citizenship shall be considered as Indian citizens from the date they entered into India and all legal proceedings qua their status as illegal migrants or their citizenship shall stand abated.<sup>9</sup>

**Special provisions for tribal areas:**

Section 3 of the Citizenship Amendment Act, 2019 which inserts Clause (4) of Section 6B of the Citizenship Act, 1955 deals with the special provisions relating to the tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution of India and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.

This newly inserted provision restricts the applicability of the provisions on citizenship for illegal migrants to the tribal area of Assam, Meghalaya, Mizoram or Tripura. Furthermore, these provisions would not extend to the areas under the "internal line" as notified under the Bengal Eastern Frontier Regulation, 1873, which primarily governs visits to Arunachal Pradesh, Mizoram and Nagaland by Indians.

**Period of naturalisation:**

Through registration or naturalization, the law permits a person to apply for citizenship if the person complies with stipulated requirements.

The amendment Act relaxes the provision for citizenship by naturalisation as it reduces the required period of residence in India from eleven years to six years for the above stated class of migrants from Pakistan, Afghanistan and Bangladesh.

**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:

they must belong to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community;

they must be from Afghanistan, Bangladesh or Pakistan;

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:

country of origin;

religion;

date of entry into India;

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.

However, 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>10</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.

Exclusion of migrants from other neighbouring countries:

Recognising the religious persecution of minority groups in Afghanistan, Pakistan and Bangladesh, who have a national religion, the amendment Act clearly differentiates migrants from these countries from the migrants from other neighbouring countries. A bare perusal of the Statement of Objects and Reasons in the Bill of 2019, which reads as under, solidifies this stand:

“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.”

What the Bill fails to justify, is the reason for excluding illegal migrants from other neighbouring countries with which also India shares her border. The non-inclusion of the Tamil Eelams (linguistic minority in Sri Lanka), the Rohingya Muslims (religious minority in Myanmar) stand unexplained. Considering that the Bill's very objective is to provide Indian citizenship to migrants facing religious persecution, it is not evident why the Bill excluded illegal migrants belonging to religious minorities in Sri Lanka and Myanmar.

Exclusion of illegal migrants from religious minorities other than those specified:

When tested upon the parameters of the reasonable classification theory, there is no clear indication why the Bill of 2019 involves illegal migrants from only six listed religious minorities. In addition, the Bill also fails to explain the

reasons why 'Ahmadiyya Muslims' in Pakistan who are considered in Pakistan as non-Muslims, were excluded. Very pertinently, it can be concluded that the Bill is also silent as to why illegal migrants from only six specified religious minorities have been included.

If the nexus between the basis of classification and the object intended to be is fleeing religion persecution, then all kinds of people can be fleeing religious persecution.

It cannot mean that only people practicing certain specified religious faiths can be religiously persecuted and not others. The right to apply for Indian citizenship as given to religiously persecuted Hindu, Buddhist, Sikh, Parsi or Christian should also have been given to an Ahmadiyah or Shia Muslim, who flees religious persecution from Pakistan and Afghanistan. Reasonable classification has to be in the context of the purpose of the law or the classification, which clearly is absent in the present case.

## II. CONCLUSION

Clearly, this classification is not based on any intelligible differentia having nexus with the object sought to be achieved, hence, there is no reasonable classification. The differentia neither covers within its ambit all the neighbouring countries, nor does it cover all religiously persecuted minorities. The Citizenship Amendment Act, 2019 does not have any rational or just objective to achieve and hence it prima facie fails to qualify the test of reasonableness.

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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