



CRITICAL ANALYSIS OF THE CITIZENSHIP AMENDMENT ACT, 2019 AND ITS IMPLEMENTATION

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ABSTRACT

After having been passed by both the houses of the Parliament and with the assent of the President, the much controversial Citizenship Amendment Bill has been enacted into a Central law. Since this law talks about providing fast track citizenship to six non-Muslim minorities from Pakistan, Bangladesh and Afghanistan, this has made a great fuss in the country. There are superficially two groups, one in support of the enactment of the bill on ground that it is sound in its constitutional legality and the other group which is opposing the implementation of the act with great ferocity on grounds that the law is contrary to the provisions of the Constitution and against the principle of secularism.

Violent protests and outcry are being witnessed in most parts of the country to controvert the new legislation. Kerala has also filed suit against the Centre in the Supreme Court under article 131 of the Constitution on the basis that the Citizenship Amendment Act 2019 is unconstitutional. Other petitions have also been filed under article 32 of the Constitution of India, contending that the act is against the provisions of the Constitution of India.

However there is a constitutional duty on States to obey any law which has been passed by the Centre under article 256 so that the balance between the Union and the State is maintained. In case of disobedience of the Union law by the State, the role of president

under article 365 of the Constitution comes into play.

From the interpretation of the Constitution this can easily be understood that the Centre executive has supremacy over the State executive and in case of any conflict the Union law shall prevail.

METHODOLOGY

The research is based on the secondary data analysis mainly from the newspaper articles, books, reports and case laws.

INTRODUCTION

After the enactment of the Citizenship Amendment Bill into an act, there is a mixed reaction received from the citizens of the country. The act provides for fast track citizenship to six non-Muslim communities from Pakistan, Bangladesh and Afghanistan. Protests and violent demonstrations have been witnessed in many states criticizing the act.

Under the Citizenship Amendment Act, 1955, the most important requirement for granting citizenship by naturalization is that the applicant must have resided in India for last 12 months and 11 years of the previous 14 years. The Citizenship Amendment Act, 2019 relaxes this 11 years requirement to 6 years for persons belonging to abovementioned religions of these three countries.

The protesters in Assam are showing violent demonstration against the effectuation of the Citizenship Amendment Act as they have existential concerns. They are worried about the consequences of the arrival of more immigrants regardless of their religion which would directly affect their demography and put pressure on the land, natural resources



and economic opportunities. The Assamese fear that they would be reduced to minority in their own land and their language and culture would be on the verge of extinction. Three Autonomous districts in Assam have been exempted but the new law remains in force in major area. Protestors are of the opinion that this new law is violative of Assam Accord of 1985, which marks the March 24, 1971 as the cutoff for Indian citizenship. Same is the cut-off for the **National Register of Citizens (NRC)** in Assam, Citizenship Amendment Act also runs contrary to objective of NRC which is to detect illegal immigrants, irrespective of religion, on the basis of a cutoff date, the Citizenship Amendment Act, 2019 differentiates amongst immigrants on the basis of religion.

After the Kerala's legislative Assembly unanimously demanded the Centre to rescind the Citizenship Amendment Act, 2019, the State approached the Supreme Court contending that the despite the Act being unconstitutional, due to the provision of article 256 of the Constitution the State would have to implement the Central law which is "manifestly arbitrary, unreasonable, irrational and violative of fundamental rights".¹

Kerala has filed petition under article 131 clubbed with the other petition that have been

filed under article 32, contending that the law allows the entry of 'illegal migrants' into India exclusively on the basis of their religion which has never happened before and is pointedly excluding Muslims. One of the contentions was also that the Citizenship Amendment Act shares a corrupt nexus with the NRC (National Register of Citizens) and is against the principles of secularism, right to equality under article 14 and dignity of life under article 21 as enshrined in the basic structure of the Constitution of India²

The Bhartiya Janta Party had contended in favour of classification done in the Citizenship Amendment Act, that in 2011, population of non-Muslims in Pakistan had reduced from 23% at the time of independence to 3.7% and in Bangladesh from 22% at the time of independence to 7.8% due to persecution of non-Muslims converting them into minorities in the respective place.

According to the survey done by **INDIA TODAY**³, taking Pakistan's Census 1951 as benchmark for the analysis:

Non-Muslims formed 23% of the population only in East Pakistan. However when population of both East and West Pakistan was taken together, total share of non-Muslims was 14.20 % in 1951(which was highest ever).

¹Krishnadas Rajagopal, *Kerala files suit against CAA*, THE HINDU (Jan. 14, 2020, 18:29 PM), <https://www.thehindu.com/news/national/kerala/kerala-govt-moves-sc-challenging-caa/article30564866.ece>.

² *Id.*

³Mukesh Rawat, *No, Pakistan's non-Muslim population didn't decline from 23% to 3.7% as BJP claims*, INDIA TODAY (Dec. 12, 2019, 23:59 PM), <https://www.indiatoday.in.cdn.ampproject.org/v/s/www.indiatoday.in/amp/in>

[dia/story/pakistan-bangladesh-non-muslim-population-citizenship-amendment-bill-bjp-1627678-2019-12-](https://www.indiatoday.in/story/pakistan-bangladesh-non-muslim-population-citizenship-amendment-bill-bjp-1627678-2019-12-12?usqp=mq331AQCKAE%3D&_js_v=0.1#aoh=15800703352975&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.indiatoday.in%2Ffindia%2Fstory%2Fpakistan-bangladesh-non-muslim-population-citizenship-amendment-bill-bjp-1627678-2019-12-12)

[12?usqp=mq331AQCKAE%3D&_js_v=0.1#aoh=15800703352975&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.indiatoday.in%2Ffindia%2Fstory%2Fpakistan-bangladesh-non-muslim-population-citizenship-amendment-bill-bjp-1627678-2019-12-12.](https://www.indiatoday.in/story/pakistan-bangladesh-non-muslim-population-citizenship-amendment-bill-bjp-1627678-2019-12-12?usqp=mq331AQCKAE%3D&_js_v=0.1#aoh=15800703352975&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s&share=https%3A%2F%2Fwww.indiatoday.in%2Ffindia%2Fstory%2Fpakistan-bangladesh-non-muslim-population-citizenship-amendment-bill-bjp-1627678-2019-12-12)



The Bhartiya Janta Party is correct in saying that the population of non-Muslims has reduced appreciably in Bangladesh but the numbers told by them are not true because as per the official census data the drop is from 23.20% in 1951 to 9.40 % in 2011 not from 22% to 7.8% as stated by them.

When talking about the West Pakistan, population of non-Muslims was 3.44% of the total population of the region and according to the census their population has increased to 3.5% over the decades.

Besides religious persecutions there were other strong factors also which led to diminution of non-Muslims in Pakistan and Bangladesh. This is a fact that thousands of non-Muslims were victimized in Pakistan at the time of partition in 1947 but many Hindus and other non-Muslims left Pakistan and entered India. Similarly many Muslims left India and went to Pakistan. This migration of people altered the religious compositions of the country and there is no clear data showing the exact scale of persecution and migration. Major causes for the settlement of large number of illegal migrants also include persecution based on language in Bangladesh and greener economic opportunities in India. These illegal migrants from Bangladesh didn't have only Hindus but also hefty population of Bengali Muslim.⁴

❖ **SUPREME COURT IS UNLIKELY TO REPEAL THE CITIZENSHIP AMENDMENT ACT 2019**

ACCORDING TO THE BHARTIYA JANTA PARTY CITIZENSHIP AMENDMENT ACT IS SOUND IN ITS CONSTITUTIONAL VALIDITY:

- The Citizenship Amendment Act is meeting with the requirements of article 14 because the classification of six religious groups namely, Hindu, Sikhs, Buddhist, Jains, Parsis and Christians, is based on intelligible differentia and has nexus with the object which is sought to be achieved. The basis of classification is reasonable because it is not religion per se but 'persecuted minorities' in neighbouring countries Pakistan, Afghanistan and Bangladesh. The Constitutions of these countries provide for specific State religion. The Government of India had declared the abovementioned six religious groups as persecuted minorities in these countries in 2015 and 2016.

According to article 14 of the Indian Constitution, equal protection requires that the State should take affirmative action towards unequal by providing facilities and opportunities.⁵ An analogy can be drawn from Indra Sawhney case where 'caste' was taken as a ground for social backwardness and exception was made in the favour of people belonging to lower caste for providing reservation in government jobs and employments.

- The Home Minister Amit Shah talked about the 'Nehru-Liaquat Pact' of 1950 which was signed after the partition of the subcontinent in 1947, the pact sought to create a framework to guarantee the rights, interests and lives of the minorities in both the countries to avert another war. Since the pact's objective was limited only to protect the rights of minorities in India and Pakistan, Tamil refugees from Sri Lanka cannot be given benefit under this new law.
- In addition to the abovementioned reasons, the Constitution of India acknowledges the

⁴ *Id.* at 3.

⁵ Panchayat Varga Shramajivi Samudaik Sahakari Khedut Cooperative Society v. Haribhai Mevabhai, AIR 1996 SC 2578 (India).



religious minorities as one single religious group, without categorizing them into further cults and denominations of faith, and supplement welfare and auspices to them accordingly. Because the Constitution recognizes all Muslims as one religious community which is 'Umma', the Ahmadiya community as raised by some group of people, don't qualify to avail any international shielding as refugees in India. The UNHCR in 2011 itself elaborated the term 'refugee' which was mentioned in the UN Convention of 1951, by classifying them as refugees, "Who are outside their country of nationality or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order." In furtherance to this, the European Union provides for the similar definition of refugee as given by UN Convention of 1951.

Therefore the migrants belonging to Muslim community, who have fled from Pakistan, Bangladesh and Afghanistan, remorsefully, can't qualify to be recognized as a 'refugee' as the cause of their migration in India is not the outcome of the abovementioned condition. However Each country may have its own formulation of methodology to classify refugees and providing them rational and fair treatment accordingly.⁶

⁶ Krishna Kumar, *Here's why Supreme Court is not likely to quash the Citizenship Amendment Act*, WION (Dec. 13, 2019, 05:17 PM), <https://www.wionews.com/opinions/heres-why-supreme-court-is-not-likely-to-quash-citizenship-amendment-act-268142>.

❖ **OPPOSITION FROM STATES AGAINST THE IMPLEMENTATION OF CITIZENSHIP AMENDMENT ACT (2019)**

The new law Citizenship Amendment Act, which seeks to give citizenship to six non-Muslim minority communities Hindus, Christians, Sikhs, Parsis, Buddhists and Jains from Pakistan, Bangladesh and Afghanistan, has seen clamorous opposition across the country ever since it passed by Parliament in December 2019.

The country has witnessed Assam in paroxysm of violence after the Citizenship Amendment Bill was passed in Lok Sabha and taken up in Rajya Sabha. Situations worsened and Delhi was under indeterminate curfew with army and paramilitary troops controlling the turbulent protesters.

The effects of the Act was not only limited to Assam but also seen in other states including three other Opposition ruled states Kerala, Punjab and West Bengal. These states have declared that the Act will not be implemented and lawsuits challenging the constitutionality of the Act have been file in the Supreme Court.⁷

The opponents of the Citizenship Amendment Act, can be chiefly distinguished into two groups having two major grounds, one group of dissenters with existential concerns, are mainly the inhabitants of north-east region who have the fear of loss of their identity in their own state and loss of various economic opportunity and dissipation of uncommitted natural resources

⁷ Apurva Vishwanath & Kabir Firaque, *Explain: What is Citizenship Amendment Act?*, THE INDIAN EXPRESS (Dec. 25, 2019, 7:14:43 AM), <https://indianexpress.com/article/explained/explained-how-to-be-a-citizen-of-india-earlier-now-6165960/>.



due to immigration. However the other group having the ideological concerns mainly belongs to politicians who are of the opinion that the new law is contrary to the principle of secularism and provisions of the Constitution.

In the opinion of Manoj Mate who is a visiting professor of law at UC Irvin and specialist in India's constitutional law, concerns of the first group seem to be echt while ideological concerns of the second group influenced by political issues, appear to be more surreal and motivated than having any substantive value in real.⁸

The legislative assembly of Kerala previously passed a resolution asking for the abrogation of the Citizenship Amendment Act and the Chief Minister wrote to 11 other Chief Ministers calling for their interposition against the citizenship law, which he referred to as "fundamentally discriminatory in nature."⁹

"The states are saying that the sovereignty of India's parliament cannot just walk over the will of the people, of states, or their right to determine things for themselves," says Manu Bhagavan, a professor at the City University

of New York and expert in South Asian history.¹⁰

In order to put pressure on the Central government following the remark made by Home Minister that the Centre would not budge an inch even if all the Opposition parties come together against the legislation, the Congress government in Rajasthan and the Kerala and the Punjab Assemblies decided to pass resolution against the effectuation of the Act.¹¹ Chief Ministers of Madhya Pradesh and Chhattisgarh are also against the implementation of the act and West Bengal chief minister Mamata Banerjee called for major protests in Kolkata following the enactment of the Act.¹²

IS STATE BOUND TO COMPLY WITH THE UNION LAW?

➤ ENFORCEMENT OF UNION LAWS BY STATE:

Under article 256, whether or not there is expressed delegation of power to administer a Union law, it shall be the constitutional duty of every State to enforce and ensure due compliance with the Union laws as are applicable in that State.¹³ The enforcement of

⁸ Sanya Mansoor, 'A defining moment.' *An Indian State's decision to challenge the country's controversial Citizenship law signals a growing divide*, TIME (20 January 2020), <https://time.com/5765954/kerala-citizenship-law-supreme-court/>.

⁹ Sanya Mansoor, 'A defining moment.' *An Indian State's decision to challenge the country's controversial Citizenship law signals a growing divide*, TIME (20 January 2020), <https://time.com/5765954/kerala-citizenship-law-supreme-court/>.

¹⁰ *Id.*

¹¹ *Rajasthan Assembly to pass resolution against Citizenship Amendment Act*, THE HINDU, (Jan. 19,

2020, 20:51 PM), <https://www.thehindu.com/news/national/rajasthan-to-bring-in-assembly-resolution-against-implementation-of-cao-in-state/article30599783.ece>.

¹² *Assam Tense; Protest against CAA in other States*, THE ECONOMIC TIMES (Dec. 14, 2019,09:02 AM), https://economictimes.indiatimes.com/news/politics-and-nation/assam-tense-protests-against-cao-in-otherstates/articleshow/72579331.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

¹³ 12 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 13192 (9th ed. 2018).



laws made by Union is secured by the law enforcement by the state.¹⁴

A failure to comply with article 256 may attract serious consequences but no court can entertain a petition at the instance of a private party that there is violation of article 256 by the State Government.¹⁵

Article 256 covers cases where in exercise of the executive power of the Union the president may want to give direction to a State Government in relation to any existing Union law which applies to that State and the President is likely to exercise this power if the Union Government feels that the State Government exercises its executive power in such a manner that amounts to hindrance to enforce the law made by Central Government.¹⁶

➤ **SCOPE OF ARTICLE 365**

Under article 365, it shall be legitimate that the President holds that a circumstance has surfaced where the State Government cannot continue in conformity with the Constitutional provisions.

Sawant, J. has explained the sense of article 365, in *S.R. Bommai v. Union of India*¹⁷ [K. Ramaswamy, J. (who gave the minority opinion) for himself and on behalf of Kuldeep Singh, J. conveyed the corresponding view] remarked that Article 365 is more in the nature of a deeming provision. In addition to that he also expressed that failing to comply with or not bringing into force any order given by the

Centre under any Constitutional provision falls under one of the circumstances excogitated by the expression “Government of the State cannot be carried on in accordance with the provisions of this Constitution” arising under Article 356.¹⁸

The words “it shall be lawful for the President to hold” coming under Article 365 are not obligatory. These words only grant discretionary power to the president to exercise. Regardless of the scope and gravity of the Union direction, if the State Government has not complied with the direction, the President is not apprenticed to say that a situation has emerged where the State Government defiant of the direction, cannot continue in line with the Constitution. The President should use this draconian power in a fairish manner with caution and vigilance, and not mechanically. Also if there is any response given by the State Government, he should reflect upon all pertinent contexts of the reply.

The State Government might give reasons to the President, for not complying with the directions of the Union and on the basis of those reasons, show that the issuance of direction is based on some awry facts and misinformation, or the needed rectification has been effected.

The President should also examine that every peanut deviance or transgression the provisions of the Constitution by the State Government officials would not certainly and reasonably lead him to decide that the State

¹⁴ 1 H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 295 (4th ed. 2007).

¹⁵ Addl. Dr. Magistrate v. Shivkant Shukla, AIR 1976 SC 1207 (India).

¹⁶ State of Rajasthan v. Union of India, AIR 1977 SC 1361.

¹⁷ S.R. Bommai v. Union of India, (1994) 3 SCC 1104 (India).

¹⁸ K.Madhusudhana Rao, *The Scope of Article 365 of the Constitution*, 4 SCC J-1, J-2 (2000).



Government cannot function in conformity with the Constitutional provisions.

Therefore article 365 can reasonably be invoked only if the Union Government has given certain directions within its power under Constitutional provisions and the State Government has failed to abide by it or refuse to observe the same.¹⁹

Also in a situation where State Government has failed to observe or give effect to order given by the Union, Article 365 works like a shield to preclude any precipitant recourse to the rigorous action under Article 356. Therefore, the exceptional power given under article 365 should be utilized with caution and in utmost instances²⁰

➤ **IS THE STATE EXECUTIVE SUBSERVIENT TO THE UNION EXECUTIVE?**

Article 256 requires that the State should exercise their executive powers in compliance with the Union laws in biddability so that the balance is maintained, between the Centre and the State and the Centre's executive power stretches to giving such directions as are necessary for running the Constitutional machinery smoothly and achieving the object of preserving the unity and integrity of India. The High Court of Calcutta in Jay Engineering Works Ltd. v. State of W.B.,²¹ ruled that the provisions of article 256 are obligatory and the State must observe and give effect to the provisions. Facts of the case were that a

circular was issued by the State of West Bengal to the police officers not to interfere in 'gherao' of industrial establishment by its workers. A writ petition challenging the constitutionality of the circular, was filed in Calcutta High Court.

The circular issued by the State had one of the provisions of not enforcing certain sections of a Central law. Treating article 256 mandatory, the circular was struck down as it was violative of article 256. This judgement also makes the intention of the constitution makers strong that the State executive is submissive to the Union executive power.

Constitutional expert K.V. Dhananjay said that under Articles 256 and 257 of the Constitution, it would be legally not permissible for a state government to contravene with the Centre.²²

Another instance which shows the supremacy of the Union executive over the State executive is that under article 251 and 254, in case of any inconsistency between center legislation and state legislation, centre legislation will always prevail, this is another instance which shows the supremacy of the Union executive over the State executive.

The Constitution framers had the intention of making the Union Government strong enough to bridge over the trouble created by the breakaway propensities. In their view, Article 365 is one of the ways to achieve the goal of making Union more powerful. At

¹⁹ K.Madhusudhana Rao, *The Scope of Article 365 of the Constitution*, 4 SCC J-1, J-1 (2000).

²⁰ Sarkaria Commission, *Report on Centre-State Relations*, 1 New Delhi: Government of India 106 107 (1988).

²¹ *Jay Engineering Works Ltd. v. State of West Bengal*, AIR 1968 Cal 407 (India).

²² Imran Ahmed Siddiqui & R. Balaji, *Can states defy citizenship law? No and Yes*, THE TELEGRAPH (Dec. 14, 2019, 2:46 AM), <https://www.telegraphindia.com/india/can-states-defy-citizenship-law-no-and-yes/cid/1726692>.



present the Indian polity is facing many problems like conservative tendencies, patronage, religious disputes, petty political interests, cross-border terrorism leading to imbalance in the society. Article 365 of the Constitution has a very important role to play in such a socio-political environment in maintaining the unity and integrity of India.²³ The inconsiderate directions given by the Centre to the State to implement the Union laws may lead disturbance in constitutional balance between the Centre and the states.²⁴

❖ **CAN SUPREME COURT EXAMINE THE CONSTITUTIONAL VALIDITY OF A STATE UNDER ARTICLE 131?**

The new law (Citizenship Amendment Act) will provide citizenship to six non Muslim minorities namely Hindus, Christians, Sikhs, Parsis, Buddhists and Jains from Pakistan, Bangladesh and Afghanistan. It has become controversial largely because it excludes Muslims community.

Kerala, becomes the first state in the country to challenge the contentious Citizenship Amendment Act in Supreme Court, sought to declare it as violative of the principles of equality, freedom and secularism enshrined in the Constitution, it has joined the batch of 60 other petitions questioning the constitutionality of the law.

There is a major difference between the petitions which had already been filed before

the Supreme Court and the one filed by the State of Kerala, because the latter has been filed under article 131 of the Indian Constitution. Normally, the validity of any executive and legislative action is challenged by way of writ under article 226 in High Courts and under article 32 in Supreme Court.²⁵

Kerala's suit asks for a declaration that the Citizenship Amendment Act, 2019, is violative of the Constitution, and against the principle of secularism that is a basic feature of the Constitution. The lawsuit contends that the religious minorities which are receiving the opportunity of getting fast track citizenship, have been chosen irrationally and it also asks that why this new law doesn't provide protection to Ahmaddiyas and Shi'ites of Muslim communities who are facing persecution in Pakistan, Afghanistan and Bangladesh. Simultaneously, the lawsuit also challenges the validity of notifications issued under the Passport (Entry into India) Amendment Rules and the Foreigners (Amendment) Order, in 2015-16, as contravening with the Constitutional provisions.²⁶

➤ **MAINTAINABILITY OF THE SUIT:**

Exclusive jurisdiction is conferred on Supreme Court by the article 131 of the Constitution in a dispute arising out of a contradiction between Government in office at the Centre and the government in office in

²³ K.Madhusudhana Rao, *The Scope of Article 365 of the Constitution*, 4 SCC J-1, J-8 (2000).

²⁴ P.B. Mukherji, *The Critical Problems of the Indian Constitution*, Bombay: University of Bombay 28 (1968).

²⁵ K.Venkataramanan, *Explained| Can State challenge the validity of central law?*, THE HINDU (Jan. 19, 2020, 10:10 AM),

<https://www.thehindu.com/news/national/can-states->

[challenge-the-validity-of-central-laws/article30595797.ece](https://www.supremoamicus.org/challenge-the-validity-of-central-laws/article30595797.ece).

²⁶ Sanya Mansoor, 'A defining moment.' *An Indian State's decision to challenge the country's controversial Citizenship law signals a growing divide*, TIME (Jan. 20, 2020), <https://time.com/5765954/kerala-citizenship-law-supreme-court/>.



a State. In order to bring a suit within the ambit of article 131 the plaintiff should question the legal or constitutional right claimed by the Central Government or any other State.²⁷

The Supreme Court refused to give restrictive meaning to article 131 and ruled in the case of State of Rajasthan v. Union of India that article 131 involves a dispute between Central and State Government involving legal rights. In the words of Justice Chandrachud, “the true construction of article 131, a true in substance and true pragmatically is that a dispute must arise between the Union of States and a State.”²⁸

In case of State of West Bengal v. Union of India²⁹, the State of West Bengal filed a suit against the Centre, seeking to declare the Central law as unconstitutional, but the court upheld the validity of impugned law.

The Kerala suit involves a dispute which includes not only the legal rights of the State but also the fundamental rights and other legal rights of its inhabitants. As the State believes that this new law and rules are arbitrary, unjustified, and violate the fundamental rights, a dispute involving law and fact has indeed arisen between Kerala and the Centre.

There have been some conflicting decisions of the Court regarding the maintainability of the suit which seeks to challenge the constitutional validity of law passed by the Parliament.

In 2011, in State of MP v Union of India³⁰, the Supreme Court held that validity of central laws can be challenged under Article 32 of the Constitution and not under Article 131.

In the case, Madhya Pradesh had sought to challenge under Article 131 the constitutional validity of certain provisions of the Madhya Pradesh Reorganisation Act, asserting that they violated Article 14 of the Constitution.

The two-judge bench of Justices P. Sathasivam and B.S. Chauhan, however, felt that a petition under Article 32 would've been more appropriate for the challenge.

Three years later, in 2014, another two-judge bench hearing the case of State of Jharkhand v State of Bihar³¹ disagreed.

This bench, comprising Justices J. Chelameswar and S.A. Bobde, held that Article 131 could be used to examine the constitutionality of a statute.

The question was then referred to a three-judge bench, headed by Justice N.V. Ramana. It is currently pending there.

The judgment in the 2014 case had referred to a 1977 Constitution bench decision in State of Karnataka v. Union of India³², in which the Supreme Court had examined the scope of Article 131.

The majority opinion by the seven-judge bench had observed, “When differences arise between the representatives of the State and those of the whole people of India on questions of interpretation of the

²⁷ 9 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 9352 (9th ed. 2017).

²⁸ State of Rajasthan v. Union of India, AIR 1977 SC 1361 (India).

²⁹ State of West Bengal v. Union of India, AIR 1963 SC 1241 (India).

³⁰ State of M.P. v. Union of India, AIR 2012 SC 2518 (India).

³¹ State of Jharkhand v. State of Bihar, (2015) 2 SCC 431 (India).

³² State of Karnataka v. Union of India, (1977) 4 SCC 608 (India).



Constitution, which must affect the welfare of the whole people, and particularly that of the people of the State concerned, it appears to be, with great respect, to be too technical an argument to be accepted by us that a suit does not lie in such a case under Article 131 of the Constitution.”

The concurring opinions by Justices Y.V. Chandrachud and P.N. Bhagwati had then ruled that the condition for invoking the court’s jurisdiction under Article 131 was that the dispute should involve a question on the existence or extent of a “legal right” and not a political one.

The Kerala Government has, therefore, attempted to justify its invocation of Article 131 on this aspect, asserting that the dispute with the central government, concerning implementation of CAA, involves “*enforcement of legal rights as a State and as well for the enforcement of the fundamental, statutory, constitutional and other legal rights of the inhabitants of the State of Kerala*”.

CONCLUSION

The enactment of the Citizenship (Amendment) Act can hold significant importance in changing the discourse encompassing the Centre and generating greater checks on its power. This, however, depends on the ability of the opposition and regional parties to use opportunities given by the present. The three- judge bench headed by Chief Justice S. A. Bobde of the Supreme Court didn’t grant any stay on Citizenship Amendment Act, 2019 till it hears the Centre over the matter and has decided to form a constitutional bench to hear the pleas. The Supreme Court has also restrained any High Courts from hearing any pleas till it decides the petitions.

Despite the ground-breaking power of Citizenship Amendment Act to accumulate such a mixed set of criticisms and responses from a myriad of vantage points, the opposition parties have failed to find fault with any ardour this amendment, both outside and within the Parliament. If used befittingly, this act possesses the potency to alter the discourse in the Indian subcontinent for it influences different groups of people differently.

