



A DETAILED STUDY ON CITIZENSHIP AMENDMENT ACT 2019

*By Pujarani Behera
From University Law College, Utkal
University, Bhubaneswar*

ABSTRACT

India recognizes an individual as a citizen by virtue of birth, descent, registration and naturalization pursuant to the Citizenship Act 1955. Under the previous regime, the citizenship Act was amended 5 times that is in the years of 1986, 1992, 2003, 2005 and 2015. Citizenship Amendment Act 2019 have argued vigorously in favour of its constitutionality as well as its importance. Yet, it was passed by Indian Parliament on 11 December 2019. This Article deals with the meaning of citizenship, what the amendment to the Citizenship Act says, the aim of the Citizenship Amendment Act 2019, features of Citizenship Amendment Act 2019, details of the CAA protests, controversies regarding the same, issues raised against the Citizenship Amendment Act 2019 and rallies in favour of the Act. In this article, the researcher has tried to discuss in detail about the CAA 2019.

KEY WORDS: Citizenship Act, CAA, NRC, Assam Accord, illegal immigrant, CAA protests.

INTRODUCTION:

The Citizenship (Amendment) Act, 2019 seeks to amend the Citizenship Act, 1955. It was passed by the Parliament of India on 11 December 2019. It seeks to grant Indian Citizenship to persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian

communities on ground of religious persecution in Pakistan, Afghanistan and Bangladesh. The Act aims at granting citizenship rather than taking away someone's citizenship. This Act is not against any Minority in India. It is only concentrating on ending the sufferings of lakhs of persecuted refugees fleeing from these three countries. All the minority communities being persecuted on religious lines in these countries have been included.

The Citizenship Amendment Act (CAA), 2019, aims to give Indian nationality to non-Muslim "illegal migrants" from Afghanistan, Bangladesh and Pakistan, who came to India before December 31, 2014, due to religious persecution, and who enjoy the benefit of waiver of Foreigners Act and Passports Act.

WHAT IS CITIZENSHIP?

Citizenship defines the relationship between the nation and the people who constitute the nation. Citizenship carries with it certain advantages conferred by the Constitution. It gives an individual certain rights such as, protection by the state, right to vote, and right to hold certain public offices, in return for the fulfillment of certain obligations owed by the individual to the state.

CITIZENSHIP IN INDIA:

Though the Constitution of India is federal and provides for dual polity, but it provides for a single Citizenship for the whole of India. Every Indian is the Citizen of India and enjoys the same rights of citizenship no matter in what state he resides. Article 11 of the Indian Constitution expressly confers power on Parliament to make laws to provide for such matters. In exercise of its power the Parliament had enacted the Indian Citizenship Act 1955 which provides for the



acquisition and termination of citizenship subsequent to the commencement of the Constitution. Entry 17, List 1 under the Seventh Schedule talks about Citizenship, naturalization and aliens. Therefore, Parliament has exclusive power to legislate with respect to citizenship.

WHO IS AN ILLEGAL IMMIGRANT IN INDIA?

Under the Citizenship Amendment Act 2019, Illegal immigrants are citizens of other countries who entered India without valid travel documents like a passport and visa or who entered with valid travel documents but remained in the country beyond the permitted time period. They can be deported and jailed under the Foreigners Act 1946 and the Passport (Entry into India) Act, 1920.

THE SCENARIO BEFORE PASSING OF THE ACT:

The Citizenship Act, 1955 describes 5 conditions for obtaining citizenship of India, such as Citizenship by Birth, Citizenship by Descent, Citizenship by Registration, Citizenship by Naturalization, Citizenship by incorporation of territory. Under Section 5(a) of Citizenship Act 1955, a person of Indian origin must be ordinarily resident in India for seven years and they should have lived in India continuously for 12 months before submitting an application for citizenship. Under this Act, one of the essentials for citizenship by naturalization is that the applicant must have resided in India during the last 12 months, as well as for 11 of the previous 14 years.

WHAT THE ACT INTENDS TO DO?

The main aim of this Citizenship Amendment Act 2019 is to make changes in the

Citizenship Act, the Passport Act and the Foreigners Act.

AMENDMENTS:

The Citizenship Amendment Act of 2019 has inserted 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;

A new section 6B was inserted (in the section concerning *naturalization*), 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 naturalization to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

WHAT IS THE CUT-OFF DATE FOR INDIAN CITIZENSHIP?

The cut-off date for Indian Citizenship is 31 December 2014. Only those who entered India before this date have a right to seek citizenship in India under the CAA. Those who entered India thereafter have no such right, even though they may have faced religious persecution in the subject countries before or after that date.



FEATURES OF CITIZENSHIP AMENDMENT ACT 2019:

1. Under the Citizenship Act 1955, a person may be given an OCI card, if he is of Indian origin or the spouse of a person of Indian origin. The Citizenship Amendment Act 2019 gives the facility to OCI cardholder to travel in India, work, and study in the country.
2. The Citizenship Amendment Bill 2016 says that the citizenship of OCI cardholders can be cancelled on 5 grounds: showing disaffection to the Constitution of India, registration through fraud, engaging with the enemy during war, damaging the sovereignty of India, sentenced to imprisonment for two years or more within five years of registration as OCI. But the Citizenship (Amendment) Bill, 2019 added one more ground of the cancellation i.e. if the OCI has violated any law that is in force in the country.
3. The Act says that on acquiring Citizenship such person shall be deemed to be Citizens of India from the date of their entry into India and all legal proceedings against illegal migrants related to their illegal migration or citizenship will be closed.
4. The Citizenship Amendment Act, 2016 provided that these illegal migrants of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians communities of Afghanistan, Bangladesh, and Pakistan must stay at least 6 years in India before applying for Indian citizenship through naturalization. But the Citizenship (Amendment) Act 2019 would reduce this period to 5 years from 6 years.

EXCEPTION:

The provisions on citizenship for illegal migrants does not apply to the tribal areas of Assam, Meghalaya, Mizoram, and Tripura, as included in the Sixth Schedule of the

Constitution. These tribal areas include Karbi Anglong in Assam, Garo Hills in Meghalaya, Chakma District in Mizoram, and Tripura Tribal Areas District. It also does not apply to the areas under the Inner Line Permit under the Bengal Eastern Frontier Regulation, 1873. The Inner Line Permit regulates the visit of Indians to Arunachal Pradesh, Mizoram, and Nagaland. The Act does not include migrants from non-muslim countries fleeing persecution to India, Rohingya Muslim refugees from Myanmar, Hindu refugees from Sri Lanka and Buddhist refugees from Tibet, China.

WHAT IS ASSAM ACCORD?

The Assam Accord was a Memorandum of Settlement signed by the Government of India and Assam and the All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) in New Delhi on August 15, 1985. The signing of the Accord led to the conclusion of a six-year agitation that was launched by AASU in 1979, demanding the identification and deportation of illegal immigrants. In the late of 1970s, an extra-ordinary student movement had taken root in Assamese soil. Very high concentration of immigrants from East-Bengal, drew national attention due to a sudden rise in the number of voters compared to the previous election two years earlier.

What was agreed upon in the Assam Accord?

- i. Foreigner's issue.
- ii. It was agreed that "for purposes of detection and deletion of foreigners, 1. 1. 1966 shall be the base data and year", and that "all persons who came to Assam prior to 1. 1. 1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections shall be regularized."



- iii. Foreigners who “came to Assam after 1. 1. 1966 and upto 24th March 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunal) Order, 1964” and their names “will be deleted from the electoral rolls in force”.
- iv. “Such persons” it was agreed, “will be required to register themselves before the Registration Officers of the perspective districts in accordance with the provisions of the Registration of Foreigner’s Act 1939 and the Registration of Foreigner’s Rule 1939.
- v. Under clause 5, “Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and practical steps shall be taken to expel such foreigners”.
- vi. NRC will be prepared.

NATIONAL REGISTER OF CITIZENS:

The NRC in Assam is basically a list of Indian Citizens living in the State. The Citizens Register sets out to identify foreign nationals in the state that borders Bangladesh. The process to update the register began, following a Supreme Court order in 2013, with the states nearly 33 million people having to prove that they were Indian Nationals prior to March 24, 1971. The updated final NRC was released on August 31, with over 1.9 million applicants falling to make it to the list.

What happens with the excluded individuals?

‘Non-inclusion of a person’s name in the NRC does not by itself amount to him/her being declared a foreigner’, Govt. has said. Such individuals will have the option of to present their case before foreigners’ tribunal. If one loses the case in the tribunal, the person can move the court and then the Supreme Court. In the case of Assam, the state

government has clarified it will not detain any individual until he/she is declared a foreigner by the Foreigners’ tribunal.

DEPORTATION:

The CAA has absolutely nothing to do with the deportation of any foreigner from India. The deportation process of any foreigner irrespective of his religion or country is implemented as per the mandate of the Foreigners Act, 1946 and/or The Passport (Entry into India) Act 1920. These two laws govern entry, stay movement within India and exit from India to all foreigners irrespective of their religion or country therefore the usual deportation process which would apply to any illegal foreigner staying in India. It is a well considered judicial process that is based on a proper inquiry by the local police or administrative authorities to detect an illegal foreigner. It is ensured that such an illegal foreigner has been issued a proper travel document by the embassy of his country so that he can be duly received by officials of his country when he is deported. In Assam, the process of deportation happens only after the determination of such a person as a ‘foreigner’ under the Foreigners Act 1946. Then, he becomes liable for deportation. Therefore, there is nothing automatic, mechanical or discriminatory in this exercise. The State Governments and their district level authorities enjoy the power of the Central Govt. under Section 3 of the Foreigners Act and Section 5 of the Passport (Entry into India) Act, 1920 to detect, detain & deport any illegal foreigner.

CAA PROTESTS:

The passage of the legislation resulted in large-scale protests in India. Violent demonstrations were organized against the bill. The people of North Eastern states were



in fear that granting Indian citizenship to refugee and immigrants will cause a loss of their rights. The protesters in other parts of the country said that the bill is against Muslims and demanded that muslim refugees and immigrants must be granted Indian Citizenship. Major protests against the Act were held at universities in India. Students of Aligarh Muslim University and Jamia Milia Islamia alleged brutal suppression by Police. The protests have led to death of protesters, damage to the public and private property, detention of hundreds of people and internet ban.

The protests held from Delhi to Kochi, from young students on their respective university campus to the women striking and protesting at Shaheen Baugh, are collectively upholding their constitutional right to dissent and striving to uphold India's rich legacy of peaceful protest protected under the Article 19(a) and 19(b) of the Constitution of India.

Jamia Milia Islamia is a very prominent institution and has students from all faiths. This institution also became the main protest site against CAA. Even the non-muslim students were compelled to join in the protest as they felt that it was their duty to stop the government from dividing people in religious lines. A thousand of people had gathered on the main road outside the university of JMI many of them were women accompanied by their young children - sat on carpets on the road all day, while men stood on the sides. Protesters listened to speakers talk about secularism and the constitution, and how the government was threatening to undermine both.

The protesters held posters condemning the act of the Government and there Anti-muslim steps, speeches against the Anti-secular steps was being given. Nobody was armed or

disrupted any public order instead there was an atmosphere of healthy resilience and resent on the roads. The protestors had arranged a "Sarva Dharma Sambhava" to highlight unity among religions and communities. The interfaith ceremony, witnessed traditional Hindu-style 'havan' and Sikh 'kirtan'. Many political leaders from Fourteen political parties protested outside Mahatma Gandhi's statue and sat on dharna there since morning wearing black bands on their arms as a symbol of protest against the NPR, NRC and CAA. Adding that the opposition leaders also left their designated seats in the front row and sat at the back in separate blocks.

From enforcing the Section 144 of the Criminal Procedure Code, the Unlawful Activities (Prevention) Act, sedition laws, internet shutdowns to National Security Act – the heavy-handed approach of the Government demonstrates the betrayal of what India stands for: upholding the dignity and liberty of its people. The authorities have not only been curbing freedom of expression and the right to peaceful assembly and association, but are also using excessive force to deter future peaceful protests – which has resulted in the arrests of over 1000 people, detaining over 5000 persons and at least 30 deaths. With this, India stands in complete violation of international human rights laws and standards.

There have been harsh police actions against anti-CAA protesters very particularly BJP-ruled states has been an alarming incident for the right activists. The Delhi police arrested students Meeran Haider and Safoora Zargar from JMI university for their alleged role in organisation of protests against the Citizenship Amendment Act (CAA), which is considered discriminatory towards Muslims. Even the members of civil society condemned the Delhi Police, which fell under the



jurisdiction of Home Minister Amit Shah, for falsely implicating "student activists in Delhi violence cases. In February, 53 people were killed in the worst religious violence that the Indian capital could have ever seen in decades. The violence erupted after a mob led by the governing party leader targeted sit-ins in New Delhi against the Citizenship Act. The Muslims residing in the North-east Delhi were attacked by a group of Hindu people and the capital burned while the Prime Minister Narendra Modi was engrossed in a diplomatic meeting with the US president barely 20 km away from the site of communal violence. Where a huge number of people lost their lives, the then Home Minister Amit Shah by rejecting the complicity of the Delhi Police chose to praise them for controlling it.

The shootings at Shaheen Bagh and JMI was the result of the hateful speeches delivered by governing party leaders, who went on to the extent of naming Shaheen Bagh as a "centre of anti-national activity". The Minister of Finance and Corporate affairs Anurag Thakur while condemning the Shaheen Bagh protests by leading chants of "Shoot the Traitors" at BJP election rally. Parvesh Varma, a BJP parliament member from the constituency of West Delhi said that the people at Rahim Bagh are "Muslims who want to take over India" and that they would rape and kill New Delhi resident. These politicians were liable under Sec 153A for persons who indulge in wanton vilification or attacks upon the religion, race, place of birth, residence, language etc. of any particular group or class or upon the founders and prophets of a religion. and 295A to punish deliberate and malicious acts intended to outrage the religious feelings of any class by insulting its religion or the religious beliefs but nothing was done instead the protesters which included women and children were lathi

charged upon and treated with utmost brutality by the use of tear gas.

On January 30th, a gunman attacked the protesters at the JMI, injuring a student. The attackers social networking site showed that he was a CAA supporter and had shared posts praising Mahatma Gandhi's assassin on his 72nd death anniversary. A couple of days later a man opened fire at the protesters at the Shaheen Bagh hurling out anti-secular comments. There was an atmosphere of fear spread outside the JMI university after two men conducted air firing.

RALLIES IN SUPPORT OF THE ACT:

Akhil Bharatiya Vidyarthi Parishad, a student wing of the Hindu Nationalist Rashtriya Swayamsevak Sangh, held Rallies in support of the Citizenship Amendment Act. Rallies in support of the Act were led by BJP leaders in West Bengal. Similarly, in Rajasthan, New Delhi, Pune also rallies were held by the BJP. In Kerala, ABVP organized rallies in support of CAA and NRC.

CHALLENGES PUT FORTH AGAINST THE VALIDITY OF CITIZENSHIP AMENDMENT ACT 2019:

1. It violates the basic structure of the Constitution.

Basic Structure are systematic principles underlying and connecting provisions of the constitution. They give coherence and durability to constitution. Theory of basic structure is based on the concept of constitution identity. In **Keshavananda Bharati's case**, it has been held that Judicial review is the basic features of the Indian Constitution and, therefore it cannot be damaged and destroyed by amending the constitution under Article 368 of the



Constitution.¹ The amendment is violative of the basic structure and the fundamental values articulated in the preamble i.e. equality, justice, rule of law, secularism as enshrined in the constitution. The power of amendment under Article 368 is a 'constituent' power and not a 'constituted power'; that, there are no implied limitations on the constituent power under Article 368; that, the power under Article 368 has to keep the Constitution in repair as and when it becomes necessary and thereby protect and preserve the basic structure. In such process of amendment, if it destroys the basic feature of the Constitution, the amendment will be unconstitutional.

The theory of basic structure states that the constitution contains certain characteristics that cannot be taken away by any legislation. These form the cornerstone of the governance of the country. Therefore, any legislation that fails the test of "basic structure" is unconstitutional. In the case of **S.R. Bommai v. Union of India**², it was held that Secularism is a part of the "basic structure". Therefore, any Act passed by the Parliament must not be against secularism. However, the recent amendment has only provided for non-Muslims to get citizenship if they have come before 31st December 2014, which is inimical to the idea of Secularism.

Secularism means "Sarva Dharma Sambhava". This means that all religions are equal in the eyes of law and that the state shall not propagate or endorse one particular religion. This philosophy is also enshrined in the Preamble and in Articles 26-29 of the Constitution. The critics said that this amendment violates the basic structure of the constitution of India. By violating the basic structure of the Constitution, it doesn't fulfil

the width and identity test. And the law which fails the width and identity test is to be null and void as it is unconstitutional.

2. It is against Muslim.

The fundamental criticism of the Act has been that it specifically targets Muslims. Thus, the religious basis of citizenship not only violates the principles of secularism but also of liberalism, equality and justice. It fails to allow Shia, Balochi and Ahmadiyya Muslims in Pakistan and Hazaras in Afghanistan who also face persecution, to apply for citizenship. A key argument against the CAA is that it will not extend to those persecuted in Myanmar and Sri Lanka, from where Rohingya Muslims and Tamils are staying in the country as refugees. Neither is religious persecution the monopoly of three countries nor is such persecution confined to non-Muslims.

This Act states that religious minorities from Afghanistan, Pakistan and Bangladesh will no longer be treated as illegal immigrants. It specifically names 6 religions, that is Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. Muslims and Jews have been deliberately kept out of the ambit of this Act. Even though some of these religions are also religious minorities in India, it is notable that 4 out of 6 religions fall under the ambit of Hindu Personal Law. The critics are of the view that the Citizenship Amendment Act is unconstitutional as the Act specifically targets Muslims and the religious basis of citizenship not only violates the principles of secularism but also of liberalism, equality and justice.

3. It violates Article 14.

Critics argue that CAA is violative of Article 14 of the Constitution, which guarantees the right to equality. It is violative of Article 14 as

¹ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

² 1994 AIR 1918, 1994 SCC (3) 1.



it has failed to pass the twin test of reasonableness which led to unequal treatment among the equals and the act is arbitrary. Whether a classification is a permissible classification under Article 14 or not, two conditions must be satisfied, namely, (1) that the classification must be rounded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question.³ Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India. The principle of equality of law means not that the same law should apply to everyone but that a law should deal alike with all in one class; that there should be an equality of treatment under equal circumstances. It means “that equals should not be treated unlike and unlike should not be treated alike. Like should be treated alike”.

The CAA is in the teeth of Article 14 which not only demands reasonable classification and a rational and just object to be achieved for any classification to be valid but additionally requires every such classification to be non-arbitrary. The Act is an instance of class legislation, as classification on the ground of religion is not permissible. It violates the equality clause of Art.14. The question of discrimination arises only when there is discriminatory treatment among equals and offending Art.14 of the constitution. The Rule of Law embodied in Article 14 is the “basic feature” of Indian Constitution and hence it can not be destroyed even by an amendment of the Constitution under Article 368 of the Constitution. The Act

treats equals as unequals, i.e. all persons facing religious persecution in their native country are not being treated alike.

In **E. P. Royappa v. State of Tamilnadu**⁴, Bhagawati, J., delivering the judgment on behalf of himself, Chandrachud and Krishna Iyer, JJ. Propounded the new concept of equality in the following words- “Equality is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed, cabined and confined’ within traditional and doctrinaire limits. From a positivistic point of view, equality is antithesis to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the Rule of Law in a republic while the other, to the whim and caprice of an absolute monarch. Where an Act is arbitrary, it is implicit in that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14.”

The Act has failed to pass the twin test of reasonableness as the Act has resulted in unreasonable classification. Moreover the differentia adopted is unreasonable and there is no reasonable nexus. The implied exclusion of Muslims makes the classification legally and Constitutionally impermissible because it is against the fundamental constitutional policy of Secularism. all the sufferers of religious prosecution were differentiated on the basis of religion. In fact, there are sects within Muslim which face religious prosecution in some of these Countries. Since, the classification attempted is against the Constitutional policy of Secularism, it is invalid and therefore there is no reasonable classification in the eye of law. So far as the rational nexus is concerned, since there is no valid classification, the doctrine of rational

³ Deepak Sibal & Ors. V. Punjab University & Another, 1989 AIR 903, 1989 SCR (1) 689.

⁴ Maneka Gandhi v. Union of India, AIR 1978 SC 597.



nexus has no relevance. Even then it can be said that the object of the law, namely to legalize the illegal migration of certain religious communities to the exclusion of one religious community and to grant citizenship to them is against the secular policy enshrined in the Constitution. This being so, one doesn't have to examine the rationality of the nexus between the difference and the object of the law. Thus, the Citizenship Amendment Act 2019, doesn't satisfy the twin test. The critics says that as there is exclusion of one particular religious community from its purview and as it groups only three countries and expressly excludes specific religions and regions it violates Article 14. Thus, it is arbitrary and discriminatory.

4. It is violative of Article 15 of the Constitution.

Article 15 of the Constitution provides that no citizen shall be subjected to discrimination in matters of rights, privileges and immunities pertaining to him. Article 15(1) specifically bars the State from discriminating against any Citizen of India on grounds only of religion, race, caste, sex, place of birth or any of them. Any law discriminating on one or more on these grounds would be void. The Citizenship Amendment Act has added a provision under section 2 that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian Community from Afghanistan, Bangladesh, Pakistan who entered India on or before the 31st December, 2014, and who has been exempted by the Central Govt. under any relevant law shall not be treated as 'illegal immigrant'. The definition of 'illegal immigrant' which following the Amendment, is alleged to have become discriminatory to a

particular religion and hence, directly violates Article 15 of the Indian Constitution.

5. It is violative of Article 19 of the Constitution.

The right to protest, to publicly question and force the government to answer, is a fundamental political right of the people that flows directly from a democratic reading of Article 19. Using of internet is something like freedom to connect. The Supreme Court has declared access to internet as a fundamental right under Article 19 of the Constitution. Government cannot deprive the citizens of fundamental rights except under certain conditions explicitly mentioned in the constitution. Access to Internet is a fundamental right under Article 19 of the Constitution, subject to some restrictions and said freedom of press is a valuable and sacred right. Access to Internet is merged with manifold fundamental rights like Education, information, communication, free speech and expression, health among others. In the *Anuradha Bhasin Case*⁵, challenging the J&K restrictions that free speech and expression on the internet was a fundamental right and constitutionally protected under Art.19.

Internet shutdown is a violation of fundamental rights. Internet access is a basic right that must not be restricted. A blanket shutdown can be dangerous because it fails to distinguish between the legal and illegal aspects of the action. During a shutdown, one can't do card transactions or rely on e-governance. The poor and the vulnerable can't rely on biometrics for rations and cooking fuels. On the face of it, internet shutdown also restricts legal forms of speech. Blanket

⁵ Anuradha Bhasin v. Union of India, Writ Petition (Civil) No. 1031 OF 2019.



shutdowns are disproportionate and unconstitutional. In India, there has been no consensus on whether such internet restrictions constitute a violation of basic human rights. However, according to the Universal Declaration of Human Rights (UDHR)⁶, the UN has stated that internet access is a human right. It is clear that internet shutdowns violate individual rights guaranteed under the Constitution. They aren't productive and lead to deep social and economic losses. These shutdowns also lead to economic losses.

6. It is violative of Article 21 of the Constitution.

Article 21 guaranteed the Right to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The right guaranteed in Article 21 is available to 'citizens' as well as 'non-citizens'. Life or personal liberty includes right to live with human dignity. The expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights. The Constitution of India guarantees equal protection to all and forbids the state from depriving anybody's life and personal liberty without procedure established by law. The right to life and liberty mentioned in Article 21, which has been interpreted by the Supreme Court to mean the right to live with dignity are available to all persons. A non-citizen is certainly a person, and hence is also entitled to those rights. In *National Human Rights Commission vs State of Arunachal Pradesh*⁷⁶, the question was about the Chakma refugees, who were illegal

immigrants from Bangladesh. The Supreme Court observed that the fundamental right of life and liberty guaranteed by Article 21 of the Indian Constitution is also available to Chakmas, though they were not Indian citizens. Therefore, the critics are of the view that the Citizenship Amendment Act is unconstitutional as it violates Article 21 of the Indian Constitution. The Act violates Article 21 by creating a separate class of individuals who would be rendered stateless. The government may justify it to say that Article 21 is available to even those belonging to foreign lands but as a legislative policy it is an act of discrimination. It violates the right to belong to India as a citizen with dignity protected by Article 21.

ARGUMENTS AGAINST CAA BY OHCHR:

Office of the United Nations High Commissioner for Human Rights (OHCHR) said that India's new Citizenship (Amendment) Act 2019 is fundamentally discriminatory in nature. The amended legislation seeks to expedite citizenship for religious minorities namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, fleeing persecution in Afghanistan, Bangladesh and Pakistan, who have been resident before 2014. But Muslims are excluded from the same protection.

International Covenant on Civil and Political Rights and the Convention for the Elimination of Racial Discrimination prohibit discrimination based on racial, ethnic or religious grounds. The amended law appeared to undermine the commitment to equality before the law enshrined in the Constitution of India.

⁶ Universal Declaration of Human Rights, adopted on 10 December 1948.



The UN High Commissioner for Human Rights filed an intervention at the Supreme Court of India, linked to petitions challenging the Citizenship Amendment Act of 2019 (CAA). This legislation – along with a population and citizenship register – has been the focus of nationwide protests across India. The arguments of the petition are limited to those excluded from the purview of the legislation from the specified countries – Afghanistan, Pakistan and Bangladesh. Therefore, this does not address the exclusion of Sri Lanka, Nepal, Bhutan or those fleeing from any other country. The main focus of the legal argumentation is to address the principle of equality between citizens and non-citizens, and non-discrimination in enacting legislation. The intervention application seeks to protect migrants that fall outside the specific categories of the CAA. The CAA allows Buddhist, Christian, Hindu, Jain, Parsi and Sikh migrants from Afghanistan, Bangladesh and Pakistan, a path to legal citizenship in India who entered India on or before December 31, 2014.

ARGUMENTS BY SUPPORTERS OF THE ACT:

1. It does not violate the basic structure of the Constitution of India.

The supporters of the Act said that, the Citizenship Amendment Act 2019 is not violative of the basic structure of the Constitution of India. Theory of basic structure is based on the concept of constitution identity. The Constitution of India envisaged a secular and democratic republic taking into account the diverse cultural heritage and religious groups that reside in the sub-continent. The Act primarily allows certain illegal migrants to apply for citizenship provided they meet four criteria: a) they came to India before 31 December 2014;

b) they got exemptions from the Passports Act and Foreigners Act from the Union government; c) they're from Afghanistan, Bangladesh or Pakistan and; d) they're Hindus, Sikhs, Christians, Parsis, Jains or Buddhists. Secularism is a part of the basic structure of constitution of India. As per one of the landmark Case of India decided by the largest bench of 13 judges, it was made a principle that the 'basic structure of the constitution of India', cannot be amended to remove any word whatsoever. However, additions can be made to them if the situation demands. Constitution of India treats all religions equally.

The Act aims at granting citizenship rather than taking away someone's citizenship. This Act is not against any Minority in India and the rights of each Indian Citizen will be equally protected. It is only concentrating on ending the sufferings of lakhs of persecuted refugees fleeing these three countries. All the minority communities being persecuted on religious lines in these countries have been included. Muslims are not included as they do not face religious persecution in these Islamic countries. It does not affect the Indian Citizens of Islamic community. 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.

2. It is not violative of Article 14.

The Amendment makes differentiation between two groups: one consisting of Hindu, Sikh, Buddhist, Jain, Parsi and Christian Community and the other Muslim. The



language of the proviso makes reasonable distinction between the two groups in a particular context which is discernable from the phrase ‘from Afghanistan, Bangladesh or Pakistan’. The Amendment is restricted in terms of only three countries where Muslim is the official state religion and the said communities form minority groups in those countries. The differentiation in the proviso is thus based on the fact that it separates the minorities from the majority of these three countries.

The minority communities in these countries have fear of persecution on the basis of religion and the differentiation becomes reasonable on humanitarian grounds. It is humbly argued that the religious groups who will be given citizenship are the ones who faced religious prosecution in those three Muslim countries and the Muslims have not faced this problem there. Therefore, the classification of sufferers of religious prosecution who belong to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian Communities is valid under Article 14. However, it has nothing to do with any Indian Citizen in any way. The Indian citizens enjoy fundamental rights conferred on them by the Constitution. No statute including CAA, can abridge or take them away. The CAA does not affect any Indian Citizens, including Muslim Citizens.

The Amendment does not prohibit persons belonging to Muslim Community from applying for Citizenship of India. It does not freshly declare Foreign Muslims as Illegal migrants. The position of Foreign Muslim remains unchanged by the Amended Act and only a relaxation to foreign persons belonging to minority communities of specific three countries has been provided based on a reasonable Objective. So far as the Constitutionality of the Amendment is

concerned, it passes the twin test laid down in Article 14.

3. It is not violative of Article 21.

The Constitution of India guarantees equal protection to all and forbids the state from depriving anybody’s life and personal liberty without procedure established by law. “Everyone has the right to life, liberty and security of person.” The expression “life or personal liberty” under Article 21 is interpreted by the Court to mean and include life with human dignity. Every society has different norms to protect the human life and dignity of individual. The right to life denotes the significance of human existence for this reason. It is widely called the highest fundamental rights. The Amendment does not prohibit persons belonging to Muslim Community from applying for Citizenship of India. It does not freshly declare Foreign Muslims as Illegal migrants. The position of Foreign Muslims remains unchanged by the Amended Act and only a relaxation to foreign persons belonging to minority communities of specific three countries has been provided based on a reasonable Objective. Therefore, the Citizenship Amendment Act is not violative of Article 21 of the Constitution.

The present legal process of acquiring Indian Citizenship by any foreigner of any category through Naturalization or through registration of the Act stays operational. The CAA does not amend or alter it in any manner. Hundreds of Muslim migrating from these three countries have been granted Indian Citizenship during the last few years. If found eligible, all such future migrants shall also get Indian Citizenship, irrespective of their numbers of religion. In 2014, after the settlement of Indo-Bangladesh border issues, 14, 864 Bangladeshi Citizens were given Indian Citizenship when their enclaves were



incorporated into the territory of India. Thousands of these foreigners were Muslims. Government has cited that the partition of India on religious lines and subsequent failure of the Nehru-Liaquat pact of 1950 in protecting the rights and dignity of the minorities in Pakistan and Bangladesh as the reasons for bringing this Bill. After Independence, India conceded that the minorities in its neighbourhood are its responsibility. First, immediately after Partition and again during the Indira-Mujib Pact in 1972 when India had agreed to absorb over 1.2 million refugees. It is a historical fact that on both occasions, it was only the Hindus, Sikhs, Buddhists and Christians who had come over to Indian side.

The Citizenship Amendment Act (CAA) is "perfectly legal and constitutional", the government told the Supreme Court, asserting that the citizenship law was a matter concerning the sovereign power of parliament and "could not be questioned" before the court. "Only parliament has got sovereign powers to legislate on citizenship," said the government in a preliminary affidavit to the Supreme Court. The government said, the CAA did not relate to any Indian. "Neither does it create any citizenship to them nor takes it away,"

CONCLUSION:

Union of India has a duty to protect those who are prosecuted in its neighbourhood. But the procedure must be in accordance with the spirit of the Constitution. In India, all citizens including Muslims enjoy the same rights. The CAA facilitates the claiming of citizenship by illegal non-Muslim immigrants or other persons who are unable to provide the proof of residence. To understand the CAA, one has to consider the political situation in other

South-Asian countries. There has been persecution of religious minorities for decades in Pakistan, Bangladesh and Afghanistan. CAA does not affect India's external relations and India doesn't have any repatriation agreement with Afghanistan, Bangladesh or Pakistan. The Act aims at granting citizenship rather than taking away someone's citizenship. This Act is not against any Minority in India and the rights of each Indian Citizen will be equally protected. It is only concentrating on ending the sufferings of lakhs of persecuted refugees fleeing from these three countries. All the minority communities being persecuted on religious lines in these countries have been included. Muslim are not included as they do not face religious persecution in these Islamic countries. It does not affect the Indian Citizens of Muslim community.
