



CITIZENSHIP AMENDMENT ACT, 2019: BOON OR BANE?

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Introduction:

The origin of citizenship can be traced in the western civilization; with the advent of city states of ancient Greece conferring citizenship rights; the Romans took their hands to extend their rights to all and sundry in 212 AD. The concept of Citizenship being dynamic in nature cannot be compared to the ancient or contemporary semblances which vary according to the desideratum of every state. In India, the Citizenship Act, 1955 came into play after India freed itself from the British rule and with the advent of the Constitution of India. The Citizenship law in India, advocating the right of Citizenship based on birth, descent, registration and naturalization, presently with the amended act covers a provision for those affected with religious prosecutions in the Muslim-dominated states.

Legislative Intent:

The Citizenship (Amendment) Act, 2019 which recently received the seal of approval from the President of India has been open to debates, profuse controversies; questioning the amendment's sum and substance. The intention of the legislature is to protect the innocent victimised in the Muslim dominated states following the religious persecution. Since the intention of the legislature has been to protect minorities facing 'religious persecution', the

community which falls under the umbrella of the majority religion cannot claim the same.

Whether Right to Equality has been violated:

The Article 14 which provides equal protection to the individuals within the territory of India, has been supplemented by an intelligible differentia which needs to have a direct nexus with the object sought to be achieved. The legislative intent of the aforesaid act is to protect the minorities in the Muslim dominated states espousing a state religion. The minority communities in these states who do not profess their state religion and conform forthright with their religion have been persecuted, this itself forms a basis for a intelligible differentia and a reasonable classification for exclusion of the Muslim immigrants. Moreover, the law has conferred a special status on the persecuted minorities whereby it does not ban the Muslims from becoming a citizen of India, the process of naturalisation is always at their disposal.

Loopholes of the Act: Are they real?

With the influx of illegal migrants from Bangladesh who would be granted citizenship would cause major demographic, cultural and employment uncertainties. Earlier on, during the Bangladesh Liberation War in 1971 and since then, the north-eastern states, especially Assam and Bengal, have witnessed intrusion of illegal migrants which fled due to persecution, ergo, the Assamese population has already dwindled, reducing them to merely a minority community in their own states. With the citizenship on its way, these migrations would stumble the knitty gritty of the north-eastern states of India leading to a consequential quandary on the



Assamese, Bengali and other north eastern states. Also, the act has excluded minorities facing persecution from other countries which has canvassed discrimination and arbitrariness.

Conclusion:

The paper strives to highlight the legislative intent, the question of constitutionality of the act and its future implications.

There are two types of countries in the world - those that treat minorities equally and those that don't. India is the only country in the world which follows a third path, and gives extra special status to their minorities.

-Sunil Rajguru

1. Introduction:

Citizenship, an interwoven concept involving the individuals and the State, the individual's rights and obligations, it has also been connected to political and civil rights of an individual belonging to the State. Citizenship means the state of being a member of a particular country and having rights because of it¹. The concept of citizenship holds two independent views, namely; Individualistic view and Civil (Political) view. The rights of citizens are dynamic in nature; changing according to the needs of individuals in a society. These rights being inalienable and fundamental rights of the individuals; are also socially and politically linked together which are peculiar to one State.

Citizenship can be acquired by an individual by virtue of his birth, descent, naturalization or even so by registering through an

application to the prescribed authority depending on the laws of citizenship in the particular country. It engenders solidarity, harmony and patriotism amongst the citizens of a country owing to the fact that it is acquired amongst those individuals who share a sense of like mindedness through similar culture, languages, political outlook and social point of view. Just like globalization has brought the world together bringing accord and harmony amongst the countries internationally; citizenship and other politically driven rights keep nationalism ignited.

2. History of Citizenship:

Before citizenship originated, the individuals of a society were connected and affiliated to a kin or a tribe, thereby lacking solidarity between the state and the individuals. The origin of citizenship has been credited to the Greeks for recognizing the individuals of the Greek city-states; whereas the Romans considered citizenship as a sign of power for the ones who had acquired it. The concept of citizenship originated through certain rudimentary features namely; like-mindedness, common beliefs, common recognition; pertaining to the individuals of a State. Since then, there has been a sea change from what was construed as citizenship to what it stands for today. The ancient citizenship was restricted to men; barring women, children and slaves and without any lawful act governing the rules of citizenship; whereas the modern citizenship stipulates the inclusion of all individuals residing legally, lawfully and in line with the Citizenship act of the respective country.

¹ Citizenship -Cambridge English Dictionary



3. Need for the Citizenship Amendment Act, 2019 (CAA):

The recent Citizenship Amendment Act, 2019 (CAA) has been condemned and denounced for allegedly being unconstitutional and unsecular in nature. The alleged insertion, Section. 2(1)(b) in CAA contains that any person belonging to the religions; specifically Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan shall not be treated as an illegal immigrant under the Act given, he/she has entered into India on or before 31st December 2014 and the Central Government has exempted he/she under Section 3(2)(c), Passport Act, 1920 or from the application of provisions of the Foreigners Act, 1946²"

The classification based on religion has been severely censured for specifically excluding Muslims in the act. The Citizenship Act established in 1955 has been amended in 1986, 1992, 2003, 2005, 2015 and 2019 by the Citizenship Amendment Acts. A person can acquire citizenship by birth, descent, registration and naturalization under the Citizenship Act, 1955³ and the Constitution of India⁴. The recently amended act has provided a measure to protect and grant citizenship to the minorities who have been victims of religious persecution in Pakistan, Afghanistan and Bangladesh. The abovementioned criterion has been considered as being targeting a specific religion as well as blemishing the basic structure of Indian constitution.

The three countries which share a border with India; Pakistan, Bangladesh and Afghanistan have been considered as theocratic nations (official and non-official) from the point of view of India and various other countries as well as International Organizations, since they having proclaimed a state religion i.e. Islam. The minorities present in these countries i.e. Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have been subjected to religious persecution; i.e. ill-treatment to a group practicing a particular religion and its affiliated beliefs or traditions. The country-wise rampant ill-treatment and persecution of the minorities:

a. Afghanistan:

In Afghanistan, during the Taliban rule, all the Hindu males of a family were killed and the women were taken as sex slaves and were forced to bear the children of their "owners". There have been many cases where Non-Muslims in Afghanistan were punished because they were not present in the mosques during prayer times as even this was considered to be a sign of infidelity and disrespect to Islam. Hindu women subjected to rape, forceful conversion into Islam is commonplace in these countries. Also, The Islamic State in Khorasan Province (ISKP), an affiliate of ISIS which is a designated terrorist organization, and Taliban continued to target and kill the innocent persons belonging to the minority religious communities because of their loyalty to their religion, culture and beliefs.⁵

b. Pakistan:

² Citizenship Amendment Act, 2019, S. 2(1)(b)

³ Citizenship Act, 1955, S. 3-6

⁴ The Constitution of India, Art.5-11

⁵ Afghanistan International Religious Freedom Report, 2017



The crimes in Pakistan increased after the introduction of blasphemous laws by Gen. Zia Ul Haq in 1975. After these, most of the crimes against minorities were state sponsored. Gen. Zia Ul Haq also said that this was a way to "Islamize " Pakistan who considered this as a necessary measure, the campaign was termed as 'Governance by the Prophet'⁶.

The minorities in Pakistan have been a victim of the treacherous blasphemy laws; minority sections are fined, imprisoned and sometimes given death penalty by falsely accusing them of using derogatory remarks against the Prophet Muhammad⁷. Into the bargain lies, Khawaja Nazimuddin, the 2nd Prime Minister of Pakistan, had staunchly stated that that religion is not a private affair and Islamic states do not provide equal rights to all of its citizens⁸. The condition of the minorities since the partition has never been better; it has gotten worse with each passing day.

c. **Bangladesh:**

Also in Bangladesh, the conditions of minorities are as unwelcoming as that in Pakistan. With an increasing population of the minorities in Bangladesh, the persecution has intensified blatantly, Hindus are being forced to leave, Hindu women raped and temples pulled to pieces. Further, in Bangladesh and Afghanistan, Hindu houses have an 'H' mark in yellow paint that shows

that they belong to the Hindu community which makes it easier for the persecutors to identify and harass them. The Christians are also subjected to killings.

Through the passage of the 5th and 8th amendments of the Bangladesh Constitution, the Government paved the way for Talibanization of Bangladesh and licensed atrocities against the country's minorities⁹. Also, the law enforcement agencies of Bangladesh directly participate in atrocities against minorities¹⁰. Further, the Ruling Government has failed/refused to investigate the atrocities and rehabilitate the victims of religious and ethnic cleansing¹¹. The Bangladeshi Governments have denied these allegations time and again.

4. **Constitutional Validity of CAA:**

A. **Presumption of Constitutional validity:**

It is presumed that any law enacted by the Legislature is benign in its nature and does not violate the Constitutional provisions of India. In one Supreme Court case¹² it was held that there is a presumption of the constitutionality of the Act. In pursuance of the same, CAA has to be presumed to be constitutional whereby if the provisions of a law or the rule is construed in such a way as would make it consistent with the Constitution and another interpretation would render the provision or the rule

⁶Sharlach Lisa, 'Veil and four walls: a state of terror in Pakistan' 2008/04/01, Vol.1, Critical Studies on Terrorism

⁷Global Human Rights Defence. "Human Rights Report 2019" (PDF), 4 June 2019

⁸Qasmi, Ali Usman. *The Ahmadis and the Politics of Religious Exclusion in Pakistan*. Anthem Press. ISBN 9781783084258, 2015, p. 149.

⁹11TH Session of the working groups on minorities, the United Nations High Commissioner for Human Rights, U.N., Geneva, May 30 - June 3, 2005

¹⁰ The Daily Star, June 3, 2003

¹¹Prime Minister Khaleda Zia's response in Amnesty International, *The Daily Prothom Alo*, Jan 13, 2003

¹² ML Kamra v New India Assurance 1992 AIR 1072



unconstitutional, the Court would lean in favor of the former construction¹³. Thus, while the CAA matter is being heard by the Supreme Court of India the presumption would lean in favor of its constitutionality.

B. Article 14- Reasonable classification:

The clause in the Citizenship Amendment Act has been determined as violative of Article 14 and of the Constitution of India. Article 14¹⁴ provides for the right to equality to individuals within the territory of India. Even though Article 14 gives citizens and noncitizens the right to exercise their fundamental rights and redress the inequality, Article 14 provides for reasonable classification which is discrimination done in good faith. Equality amongst inequals would in itself result into arbitrariness.

In the Supreme Court case of *Vijay Lakshmi vs Punjab University And Others*¹⁵, reasonable discrimination meaning distinct and rational classification having nexus with the object of an Act which is an accepted jurisprudence and practice that the concept of equality before the law and the prohibition of certain kinds of discrimination under Article 14 do not require identical treatment i.e. equality among equals and inequality among inequals. Equality means relative equality i.e. To treat unequals differently according to their inequality is not only permitted but required. Also, the classifications are based on nations that advocate theocracy in their lands, making the minorities suffer who do not accede to the interests of the theocrats,

thus justifies the classification under Article 14 of the Constitution of India.

Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar, a landmark case on constitutionality of reasonable classification has set out principles namely;

- that a law may be constitutional even though on account of some special circumstances or reasons applicable to an individual are not applicable to others,
- that there is always a presumption in favour of the constitutionality of an enactment and the burden to prove its unconstitutionality is on the one who challenges it,
- that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, the history of the times and may assume every statement of facts which would have been existing at the time of legislation¹⁶.

Article 14 in any classification stands constitutional if the notion of classification is based on intelligible differentia, the difference on which an individual or a group of persons are classified separately from others. This intelligible differentia also needs to have a rationale with the objective set out in the act. Herein, the classification made in the Amendment has been based on religious persecution of the minorities from the Muslim dominated states. The geographical

¹³ Ibid, p. 4 p. 38

¹⁴ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁵ (2003) 8 SCC 440

¹⁶ AIR 1958 SC 538



selection of these countries i.e. Afghanistan, Pakistan and Bangladesh is based on historical reasons. The Supreme Court in *Clarence Pais v. Union of India* has held that ‘Historical reasons may justify differential treatment of separate geographical regions provided it bears a reason and just relation to the matter in respect of which differential treatment is accorded¹⁷.’ Thus, geographical classification is considered valid if historical reasons may permit and justify the reasoning.

Moreover, while determining the validity the court has to examine whether classification is based upon a intelligible differentia which classifies a class, a group of individuals from that of the other group.¹⁸ The validity of the law would be upheld once the test of reasonable classification has been¹⁹.

Here in, the geographical classification based on historical reasons between the minorities and the majority in the three countries on account of religious persecution is a reasonable nexus to achieve the objective sought to be achieved in the Statement of Object and Reasons of CAA- the Constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, minorities of these countries have faced persecution on grounds of religion in those countries.

The partition of 1947 witnessed a huge refugee crisis i.e. exodus of Muslims into India; and Hindus, Sikhs, Jains, Buddhists and Christians to Pakistan and East Pakistan. The Nehru-Liquat Pact, an agreement signed between Jawaharlal Nehru, the then Prime Minister of India and Liqat Ali Khan, the then Prime Minister of Pakistan where the rights of minorities of the respective countries were confirmed.²⁰ India never has failed to protect and promote the rights of its minorities; instead, India has bestowed additional rights to that on the minorities for their betterment and upliftment. As has already been discussed in the earlier paragraphs, Pakistan has had never fulfilled its promise of promoting the interests of its minorities, instead it has always been inhumane and barbarous towards the minorities. Even the then Law Minister of India, J.N. Mandal²¹, resigned on account of relentless persecution on the Hindus in Pakistan. Thus, the geographical classification based on historical reasons is a reasonable nexus for the objective to be achieved in the Amendment of the Citizenship Act, 2019.

C. CAA- A supplement to Secularism:

The Preamble of the Constitution of India asserts that India is a Secular nation²². Secularism is one of the facets of the Basic

movement within each country and freedom of occupation, speech and worship, subject to law and morality.

²¹ J.N Mandal quoted, “I cannot bear the load of untruth and pretensions that Hindus live with honour and security of their life, religion and property in Pakistan.”

²² 42nd Amendment, 1976

¹⁷ Clarence Pais v Union of India, AIR 2001 SC 1151

¹⁸ Supra note 16

¹⁹ Ibid

²⁰ Nehru-Liquat Agreement, 1950, A. The Government of India and Pakistan solemnly agree that each shall ensure to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of



structure doctrine of the Constitution of India, 1950, which, being a part of its basic structure cannot be amended²³. The concept of secularism implies treating all religions equally, which is based on Article 14²⁴ and Article 25²⁵ of the Constitution of India, 1950. The constitutional validity of CAA is determined by Article 14 and its reasonable classification with respect to the Islam Community and the minority community of Pakistan, Bangladesh and Afghanistan.

The right to equality comes with an exception of reasonable classification which provides that equality means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal²⁶; thus when secularism is linked to treating all religions equally at par with Article 14, the scope of secularism needs to be restricted when it comes to reasonable classification. The rationale for excluding the Islamic community from the clause stems from the need to assure protection to the minorities facing religious persecution in these theocratic countries. The protection is meant for the minorities section, the Islamic community of these three countries fall into a majority and thus are exempted from the act. The instances of the rampant persecution of the minorities are manifold and therefore, the reasonable classification between the minorities and the non-minority present in those countries is justifiable.

Moreover, the secular concept of India is divergent from the Western concept of secularism, which does not separate religion and state, instead it gives due regard to all the religions without any preference to a specific religion. India is the only country which professes the ideology of not only coexisting with other religions, but also providing special status to the minorities. Indian Secularism respects such diversity because of the significance it attaches to freedom of conscience and choosing one's own religion²⁷. Ideology of India since ages revolves around following one's own religion, whereby it can be safely inferred that the concept of secularism in India has been incorporated taking into consideration the importance of protection of the rights of the minorities as well as one's own religion in India.

In CAA, the provision focuses on persecution based on religion. The Legislature while formulating the law centers not only on constitutionality of the act, but also the social significance and moral consciousness of the people²⁸. The increasing atrocities based on religion of the majoritarianism on the minorities in the countries viz. Pakistan, Bangladesh and Afghanistan have been the root cause of the framework of CAA. Since India bestows significance on the protection of minorities based on religious factors²⁹ in its own constitution as well as its statutes, the

²³ Kesavananda Bharti vs. State of Kerala, (1973) 4 SCC 225

²⁴ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

²⁵ Freedom of conscience and free profession, practice and propagation of religion

²⁶ St. Stephen's College V. University of Delhi (1992)1 SCC 559

²⁷ Pseudo-secularism in India, J. Subramanyan1 & Ajith Kumar, Vol. 2, Issue 5, May 2014, 7-12

²⁸ Rakesh Sinha, Article on Citizenship Act is an extension of and commitment to the idea of secularism, December 24, 2019

²⁹ The Constitution of India, Art. 29 and 30



Amendment, too, focuses on persecution based on religion.

Also, one cannot fail to consider the historical factors that have contributed to the formulation of the law. The partition of 1947 leading to the refugee crisis; the exodus before the Bangladesh Liberation War of 1971; the subsequent ill-treatment, unequal and inhumane conditions of the minorities by the radical majoritarianism in the countries has made it potent to implement provisions in the interests of the minorities which were once a part of the undivided India.

Even before the secular values of India were enshrined in the Constitution of India, Indians have been sympathetic and welcoming to protect the rights and identities towards the minorities who had taken refuge in India. The Parsis (originally Iranians) fled to India in the 6th Century to preserve their religious identity which was being subject to conversion by the Muslim conquerors in Iran. The Indians, then too actively assimilated the Parsi minorities into our motherland. The reasonable classification itself justifies the exclusion of the Muslims from the Muslim dominated countries, since the objective in itself is to protect the identity, rights of the minorities and protect them from the existential threat posed by the radical majoritarianism.

The CAA extends its support to secularism ingrained in the form of humanitarianism and morality. The citizens of the country have

³⁰ ‘These techniques would show that some sacrifice of absolute equality may be required in order that the legal system may preserve the flexibility to evolve new solution to social and economic problems.’, held in Superintendent And Remembrancer V. Girish Kumar Navalakha, 1975 AIR 1030, p.8 p.758

been looking at it as discriminatory to the Muslims due to its under-inclusiveness, but fail to appreciate the initiative taken up by the nation to lend support to the minorities who have been victims of extreme religious fanaticism and unceasing atrocities in the lands of theocratic and radical majoritarianism.

D. Under-inclusiveness does not render an Act unconstitutional:

If any enactment is determined as under-inclusive, it is not rendered unconstitutional since it does not go against the principles of secularism and right to equality under Article 14. Under-inclusiveness is justified as to not be in violation of Article 14 on the basis of administrative necessity, as also bringing every individual under one umbrella would fail as an experiment to bring about any legal or social reform³⁰.

The persecution based on religious factors of the minorities in those countries has been the root cause of the framework of CAA³¹. Thus, in pursuance of the amendment brought into effect for the protection of the minorities from religious persecution, under inclusiveness is justified for bringing out a social and legal reform.

E. CAA does not violate Article 21:

Even though Section 2(1) (b)³² of CAA is made applicable only to the minorities

³¹ Statement of Object and reasons CAA, 2019, Many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries.

³² ‘Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered



present in Pakistan, Bangladesh and Afghanistan, the act does not prohibit any individual of the Islam community from acquiring citizenship of India. The act only has fast tracked the process of the minorities from these three countries. The personal liberty under Article 21 has not been violated by this act.

Article 21³³ of the Constitution of India deals with the fundamental right of life and personal liberty, but this is not an absolute right enjoyed by the citizens as well as the aliens. The 'procedure established by law' provided under Article 21 has a different set of meaning from that of 'due process of law' termed under the American Constitution of India. The framers of our Constitution had determined the essential difference in the meaning of the phrases "due process of law" and "according to procedure established by law", the former implied the supremacy of the judiciary and the latter the supremacy of the legislature³⁴. The procedure of the law implicitly means the law established by the statute. Moreover, the intent of the legislature is presumed to be done in good faith. The power of Legislature (Parliament) which formulated the Citizenship Act, 1955 and amended CAA falls under Article 246 (1)³⁵ of the Constitution.

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

³³ No person shall be deprived of his life or personal liberty except according to procedure established by law.

³⁴ A.K. Gopalan vs The State Of Madras. Union Of India AIR 1950 SC 27

It is far too well-settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair, just and reasonable³⁶. The fairness and reasonableness of the Legislative Amendment has been substantiated under Article 14 in the previous segment of the paper. When read with Article 14, Article 21 makes the alleged classification in the CAA, 2019- fair, reasonable, non-arbitrary.

Also, in the case of *Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendulkar*, it has been put forward by the Hon'ble Supreme Court of India that when any statute determines a law, the intention of the statute for any classification should have a reasonable nexus with the objective that ought to be sought even though there are individuals or group of individuals reasonably differentiated from other³⁷. The validity of the same has been upheld in *Chiranjitlal Chowdhri v. The Union of India*³⁸. Thus, Article 21 read with Article 14 for reasonable classification justifies the exception established by the procedure of law to one's right to life and liberty.

³⁵ Subject matter of laws made by Parliament and by the Legislatures of States: (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)

³⁶ Maneka Gandhi V. Union of India, AIR 1978 SC 597

³⁷ Supra Note 16

³⁸ AIR 1951 SC 41



F. The Central Government has the power to restrict the entry as well as depart Foreigners:

The Foreigners Act, 1946 confers the power to restrict and remove foreigners³⁹ from India under Section. 3(1)⁴⁰ and Section 3(2)(c)⁴¹. An unrestricted and absolute right to restrict or expel foreigner vests with the Central Government under this Act, since there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains⁴².

The Government has absolute power to expel foreigners has been held in a judgment *Louis De Raedt versus Union of India*⁴³ "The power of the Government of India to restrict foreigners is absolute and unlimited and there is no provision in the Constitution fettering its discretion and the executive government has unrestricted right to do the same."

The Government of India has an absolute power to remove or restrict the entry of foreigners into the territory of India and does not classify as arbitrary or discriminatory on the part of the Government to exempt even any particular foreigner or any prescribed class or description of foreigner. Thus, the power of the Government to restrict the entry of the Muslims from Pakistan, Afghanistan and Bangladesh i.e. a specific class of Foreigners is justified under the Foreigners Act, 1946.

³⁹ Foreigner-A person who is not a citizen of India, Foreigners Act, 1946, Sec. 2(a)

⁴⁰ The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of

5. Loopholes: Are they real?

A. Ambiguity in CAA:

The wordings in CAA are ambiguous and vague when it comes to defining "religious persecution" which is the basis on which classification has been made in the amendment. The word "religious persecution" needs to be added in the definitions of the Act.

Also, the Statute does not comment on the status of the illegal migrants who would not be given citizenship on account of lack of proof of origin or travel documents. Whether their status would be stateless, whether they would be still accommodated in the refugee camps or sent back to their home country are open to question. The ambiguity in the amendment should be rectified, which in itself has made the Act open to arguments and interpretations, thus blemishing the authenticity of the Act.

B. Religious Persecution: On what basis?

An important issue raised by the critiques is how can we say if an individual is persecuted on the basis of his religion and has fled to India? In other words, while giving the illegal migrants measures to live in a country with respect and dignity who have been victims of religious persecution in the three countries, how is it possible to decipher whether those individuals that have approached for citizenship under CAA, 2019 are the ones

foreigners into 1 [India] or their departure therefrom or their presence or continued presence therein.

⁴¹ Shall not remain in [India] or in any prescribed area as therein;

⁴² Hans Muller Of Nurenburg vs Superintendent, Presidency, *1955 AIR 367 1955*

⁴³ 1991 3 SCC 554



who have been victims of religious persecution?

But not seconding this thought, this Act is merely a preventive measure to prevent these minorities from further persecution. On a moral basis, India cannot wait for each and every individual to be persecuted for him/her to come to India. Before CAA came into picture, the law excluded everyone, but now it has opened doors to the minorities. This Act aims to prevent further persecution of these minorities by the neighbouring states.

Also, while formulating the law, the Legislation too would have taken into serious consideration its implementation, to which a special committee/ officers would be appointed who would scrutinize the status of these illegal migrants, and after safely concluding that the illegal migrants are religiously persecuted, then only they would be granted citizenship.

C. Exclusion of Shias, Ahmaddiyas, and Hazaras from the minorities' list:

These sects of Muslims have also been subject to religious persecution in these countries due to their faith which minorly differs from the majority Sunnis in these countries. Particularly in Pakistan, the Ahmaddiyas are not even recognized as Muslims according to the Pakistani Constitution. Thus, they have been subjected to a lot of brutality in the country. One of the most important arguments raised by the critiques of CAA is the exclusion of these sects from the act.

The Indian Government in response to this argument has said that Ahmaddiyas are recognized as Muslims according to Islam

and according to the Government of India. The exclusion of Ahmaddiyas as Muslims in Pakistan is an internal issue and the Indian Government holds absolutely no jurisdiction to interfere in the internal matters of Pakistan. Also, the inclusion of these sects would mean that India is further classifying and dividing Muslims by breaking them down into sects and giving a "preferred" treatment to certain sects as the Ahmaddiyas and the Hazaras. Neither does the Indian Government nor does the Indian Constitution hold any power to do the same. When the Act provides for the exclusion of Muslims, it includes all Muslims from these countries, irrespective of their faith, sects or other reasons. India is absolutely no one to interfere in the internal matters of these countries and create a divide or classification amongst Muslims.

D. Exclusion of Tamils from Sri Lanka and Rohingyas from Myanmar:

When the Act classifies the individuals who will be allowed to seek citizenship in India, it clearly states that the persons who are subject to Religious Persecution in these specific countries. Tamils and Rohingyas are not religiously persecuted communities in their respective countries; there is discrimination against them on the basis of ethnicity and not religion. The Legislature cannot include these communities in the Act as the Act is only applicable to minorities who have faced religious persecution and nothing else. Further initiative by the Government of India if any, would also include persecutions based on ethnicity.

E. Demographic and Cultural changes in the Assam:



The refugee crisis in Assam started in the year 1971 when approximately ten million people from East Pakistan (now Bangladesh) immigrated to India. They settled mostly in parts of West Bengal and Assam and other states of NE. This led to severe demographic and cultural changes in Assam. With the application of CAA, there is an estimated increase of 19 million Bangladeshi non Muslims in the state of Assam.

This tremendous increase in the population has speculated that the Assamese speaking population of Assam will be severely affected as it would result in fierce competition for employment, education and other factors such directly affecting the daily lives of the Assamese speaking population. Assam has a total of 115 ethnic communities, speaking 55 languages and dialects. With such a massive increase of population, this demography of Assam is likely to change in large proportions, as most of the immigrants are Bengali speaking Hindus from Bangladesh and may become the majority population of Assam, while pushing the original population of Assam into minority, causing a major demographic and cultural change in the state.

Even though the Act specifically provides that the Act shall not be applicable to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873', yet the regions where the Act applies to the North-Eastern states should be taken care of by the Government of India, whereby the culture and demography of these states do not get affected.