



CONSTITUTIONAL VALIDITY OF THE CITIZENSHIP AMENDMENT ACT, 2019

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ABSTRACT

Alike any other modern state, India has two sets of people i.e. the citizens and aliens. The former are full members of the Indian state and owes allegiance to it, they savor all civil and political rights which aren't enjoyed by the latter.

Citizenship is a thought of exclusion because it excludes non-citizens. In India the citizenship is granted to a foreigner by the citizenship act of 1955. The Indian leadership, from the time of Motilal Nehru committee (1928), has been in favor of the enlightened concept of 'jus soli.' That is to provide citizenship on the 'basis of birth'. The Citizenship Act of 1955 was legalized to provide for the acquisition and determination of India citizenship. The 2019 amendment to the act was introduced due to a historical fact of trans-border migration that has been taking place in the backdrop between the territories of India and the space comprising of Pakistan, Afghanistan, and Bangladesh.

Some part of the populous contends that the Citizenship Amendment Act is volatile of not only the 'secular' fabric of our constitution, but it also advocates for an antagonistic treatment of people based on their religious existence. Thus, advocating that it stands in contravention of the Preamble to The Indian Constitution. Hereby *Article 14, 15, 19, 21 and 25* by virtue of *Article 13(2)* of the

Constitution and does not have the legitimacy to be called a Law.

I, through this research paper would like shed some light on the key issues, that have haunted the very security of the State, that have often questioned the constitutional morality of the legislature so in question. This research paper will be dealing with the constitutional validity of the Citizenship Amendment act, 2019, The National Register of Citizens and The Assam NRC, The National Population Register, India's Policy on Refugee and Asylum Seekers and The Constitution of India & The Citizenship Amendment Act, 2019. In the last leg of the paper I have shared my own outlook and beliefs over the affair that would help the reader to concoct his or her own opinion and perception about the topic.

THE CITIZENSHIP AMENDMENT ACT, 2019

India is one of the oldest civilizations, with a kaleidoscopic array and a rich artistic heritage. Citizenship bespeaks the relation betwixt the individual and the state. Alike any other modern state, India has two sets of people i.e. the citizens and aliens. The former are full members of the Indian state and owes allegiance to it, they savor all civil and political rights which aren't enjoyed by the latter. Citizenship is a thought of exclusion because it excludes non-citizens. In India the citizenship is granted to a foreigner by the citizenship act of 1955.

Under the Citizenship Act of 1955¹, citizenship can be granted through five methods:-

- By birth in India;²

¹ *Citizenship Act, 1955*, Act No 57 of 1955.

² **Section 3**, *Citizenship Act, 1955*.



- By descent;³
- Through registration;⁴
- By naturalization (extended residence in India), and⁵
- By incorporation of a foreign territory into India.⁶

Out of the above there are two well-known principles for the grant of citizenship mainly '*jus soli*' and '*jus sanguinis*.' While the former advises citizenship on the footing of place of birth the latter gives recognition to blood relations. The Indian leadership, from the time of Motilal Nehru committee (1928), has been in favor of the enlightened concept of '*jus soli*.'

The radical belief of '*jus sanguinis*,' was also rejected by the constituent assembly as it was against the Indian ethos. Citizenship Act defines an illegal immigrant as a person who has entered India without a valid passport, or valid entry document, and any person who has remained in India after the expiry of their passport or valid entry document.⁷ The act has been amended five times of the course of history.

In the 1986 amendment, it was spelled out that, in order to be a citizen of India, one of the parents has to be an Indian citizen during the time of birth. The 1992 amendment⁸ articulates that every person born outside India shall be a citizen of India by descent, only if his father is a citizen of

India at the time of his birth, on or after January 26, 1950, but before December 10, 1992.⁹

The 2003 amendment¹⁰ made acquaintance with the concept of "illegal immigrants" and also sanctioned the Government of India to conduct a National Register of Citizens (NRC). The legislation, proposed by a number of political parties and enacted under the aegis of then Prime Minister Atal Bihari Vajpayee, inserted Section 14A¹¹ that administered for conducting headcount of Indian citizens and preparation of the NRC. The 2005 amendment¹² aimed to accommodate the growing overseas Indian population, at the flip of the millennium, the parliament introduced the ideas of Person of Indian Origin (PIO) and Overseas Citizen of India (OCI). They were granted certain limited citizenship rights through an amendment made in 2005. For example: OCI card holders were granted multiple entries, multi-purpose womb to tomb visa to go to India, exempted from registration with Foreigners Regional Registration Office (FRRO) for any length of stay in India and could participate in economic, educational and financial fields.¹³

Whereas, PIO cardholders were exonerated from reporting to the police amid their period of stay in India. They were additionally entitled to visa-free entry into India during the validity of the card i.e. 15 years, provided they carried valid national passports.

³ Sec 4, Citizenship Act, 1955.

⁴ Sec 5, Citizenship Act, 1955.

⁵ Sec 6, Citizenship Act, 1955.

⁶ Sec 7, Citizenship Act, 1955.

⁷ Section 2, Citizenship Act, 1955.

⁸ The Citizenship (Amendment) Act, 1992, No.39 of 1992.

⁹ Section 2, The Citizenship (Amendment) Act, 1992.

¹⁰ The Citizenship (Amendment) Act 2003, No. 06 of 2004.

¹¹ Section 12, The Citizenship (Amendment) Act 2003.

¹² The Citizenship (Amendment) Act 2005, No. 32 of 2005.

¹³ Section 7A, The Citizenship (Amendment) Act, 2005.



The 2015 amendment¹⁴ popularized the concept of an ‘Overseas Citizen of India Cardholder’ (an “OCC”) that virtually replaced and merged OCIs and PIOs. The absorption of the two schemes provided PIO cardholders the pay off extended to OCIs, such as visa-free travel to India, rights of residency and participation in business and educational activities in the country.¹⁵

In the year 2019 the Government of India Introduced yet another amendment, under this latest amendment to the Citizenship Act¹⁶ stipulates, that any person who belongs to the minority communities of Hindu, Sikh, Jain, Parsi, Buddhist or Christian from Pakistan, Bangladesh or Afghanistan, who has or have entered into India either on or before the 31st of December, 2014 and those who has been exonerated by the Central Government by or under the clauses the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act of 1946, shall not be treated as an illegal migrants.

The amendment act further provides that such a person will be granted Indian citizenship by naturalization after 6 years of continued residence. The duration of residence in India for those seeking citizenship has also been reduced from 11 years to 6 year for those who wanted to become a citizen naturally.¹⁷

One of the sources to this amendment can be traced down to the *Nehru-Liaquat Agreement* of 1950 also known as the Delhi Pact.¹⁸ The agreement was signed between the then prime ministers of India and Pakistan. The agreement was signed in the backdrop of the extensive migration of 1947 between both the countries with the constitutional aim of safeguarding the minorities. The government of both the countries conceded that:

- Each shall assure to the minorities throughout its territory complete equality of citizenship heedless of religion.
- A sensibility of security in respect of life, culture, religion, property and personal honor has to be provided to its minorities.
- Freedom of movement throughout the territory.
- Freedom of speech, occupation, worship and subject to law and morality.
- To provide the minorities with equal opportunity with members of the majority community to participate in the public life of their country.
- Non recognition of forced conversion shall be strictly observed.¹⁹

However, over a period of time, these minorities namely the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh and Pakistan were exposed to persecution on the basis of their religion. There have been numeral instances of forced conversions,²⁰ killing of Sikh

¹⁴ *The Citizenship (Amendment) Act, 2015*, No. 01 of 2015.

¹⁵ **Section 3**, *The Citizenship (Amendment) Act, 2015*.

¹⁶ *The Citizenship (Amendment) Act 2019*, No. 47 OF 2019.

¹⁷ **Section 3**, *The Citizenship (Amendment) Act, 2019*.

¹⁸ *Agreement Between the Governments of India and Pakistan Regarding Security and Rights of*

Minorities (Nehru- Liaquat Agreement), New Delhi, (08 Apr 1950), available at: <https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.pdf>

¹⁹ *supra*

²⁰ *Forced Conversion of Minority Girls and Women in Pakistan*, SUBMISSION TO THE UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS FOR THE



minorities and gazing down Gurudwara in Afghanistan,²¹ religious killing of Hindus and Buddhist in Bangladesh.²² Heeding to such atrocities the government of India pitched in this act.

However, some part of the populous understood it as an implication and interpreted it as a law that is highly discriminatory against one religion, that's going completely against the principle set forth in the Indian constitution. Specially **Article 14** that recognize equality amongst all religions, the very article of the constitution which forms part of the basic structure doctrine and grants equality of all persons in front of law. Moreover people found this law in violation of **Article 15**, which spells out non-discrimination on grounds of religion, race, caste, gender and place of birth as the key Constitutional principles, **Article 19**, Protection of certain rights such as freedom of speech etc., **Article 21**, Right to Life and personal liberties and **Article 25**, Freedom of conscience and free profession, practice and propagation of religion.

The same populous also contends that the Citizenship Amendment Act is volatile of not only the 'secular' fabric of our constitution, but it also advocates for an antagonistic treatment of people based on their religious existence. Thus, advocating that it stands in contravention of the Preamble to The Indian Constitution. Hereby **Article 14, 15, 19, 21 and 25** by virtue of **Article 13(2)** of the

Constitution and does not have the legitimacy to be called a Law.

Nevertheless my understanding of this act is not in unison with those who feel that the act infringes the Constitution and for this very rational I will put forth my philosophy in the chapter '*The Constitution of India & The Citizenship Act (Amendment 2019)*'.

THE NATIONAL REGISTER OF CITIZEN AND ASSAM NRC

In the year 1951 after the partition of 1947 the Government of India felt a need for a National Citizenship Register so as to enumerate as to who were the residents and insisted on being an Indian national at the time. The NRC hasn't been updated in most States barring Assam since 1951. The underlying reason being the paucity in sustaining documentation of birth, death or marriage registration by the people as well as the states.

The process of NRC in Assam endorsed the people to justify their citizenship based on certain specific set of documentation such as birth documentation so as to verify that you were simply born in India previous to the specific cut-off year. However if the abovementioned documents weren't available, in such a case a second set of documents such as lineage certificate were mandatory so as to prove that one is in biological relation with his/her ancestors who were born in India previous to the cut-off year

CONSIDERATION OF THE 3RD UNIVERSAL PERIODIC REVIEW OF THE ISLAMIC REPUBLIC OF PAKISTAN DURING THE 28TH SESSION, BY WORLD SINDHI CONGRESS, available at: <https://unpo.org/article/20019>.

²¹ Dipanjan Roy Chaudhury, '25 killed in Kabul gurdwara attack,' THE ECONOMIC TIMES, (26 Mar 2020), available at,

<https://economictimes.indiatimes.com/news/defence/gunmen-attack-sikh-religious-gathering-in-kabul-4-dead/articleshow/74804783.cms?from=mdr>

²² Vivek Gumaste, 'There may be no Hindus left in Bangladesh in 30 years', SUNDAY GUARDIAN LIVE, (08 Feb 2020), available at: <https://www.sundayguardianlive.com/opinion/may-no-hindus-left-bangladesh-30-years>



and whose name appear in the pre-1971 voting list of Assam²³ so that one has proof, that either you or your immediate ancestors have been a resident of Assam prior to the cut-off list of 1971.

In case of an all India NRC, the government hasn't specified any documents that would be obligatory for a person to prove his citizenship. Keeping the Assam NRC as a footing for the nationwide NRC, one can say that this technique is inherently erroneous due to its compulsion to seek documentation from people. The Modern History of Civic Registration in India that is The Registration of Births and Deaths Act of 1969²⁴ administers the legislative space for a compulsory registration of births and Death.

The Act makes it the 'duty of the head of the family or the oldest male member in a house' to register births and deaths occurring in their family by providing an oral or written testimony to the Registrar or their designated officer²⁵ within 21 days after the incidence. Section 13 of the act states the procedure for delayed registration of birth and death up to a year, post which the applicant who wishes to register has to seek permission from a Judicial Magistrate, for which the exact procedure isn't prescribed.

Moreover the Section 22 of the Act, levies a penalty not exceeding a fine of 50 rupees in cases of failure to registration of a birth or death. Records by the UNICEF shows that every year nearly 42% of births go unregistered which practically amounts to 10

million births. The 5 major low performing states ,UP, Bihar, Rajasthan, AP and Madhya Pradesh, that have problems of low registration ranging from 20% to 57% which is affecting the overall registration level in the country.²⁶

It is a well-understood that the registration in the rural areas is lower than that of in urban areas. Scenarios where in there is an absence of documentation, it will be challenging for people to able to prove their citizenship under the extant process as seen in Assam. Furthermore, people whose births were registered, it is very much possible that they are no longer in possession of documentation in relation with their birth registration due to natural or man-made calamities. There is moreover a possibility that the office of the Registrar may not have in possession replicate physical records of the documentation as Government offices are not immune to loss and damage.

Unlike the Assam NRC, a refined pan-India NRC may not require a voting list such as the curious case of 'Voting list', that was one of the obligatory documentation required in the formers case. In Assam many constituencies were unable to produce pre-1971 voting list. Then state coordinator in an interview unconditionally stated that Assam is the only state which has undertaken the task to digitize its voting list for as many constituencies as possible. He furthermore mentioned that the Election Commission was only constrained to maintain electoral rolls for up to six years

²³ 'What is the List of Admissible Documents?', OFFICE OF THE STATE COORDINATOR OF NATIONAL REGISTRATION (NRC), GOVERNMENT OF ASSAM, available at: <http://nrcassam.nic.in/admin-documents.html>

²⁴ *The Registration of Births and Deaths Act, 1969*, Act No. 18 of 1969.

²⁵ **Section 8**, *The Registration of Births and Deaths Act, 1969*.

²⁶ *UNICEF India Annual Report 2019*, UNICEF, (May 2020), available at: <https://www.unicef.org/india/reports/unicef-india-annual-report-2019>



following each electoral registration drive, henceforth, most of the Indian states will not have a historic voting-list data dating back to 1951, or 1971 or to 1987²⁷.

Following the NRC process in Assam, 1.9 million people plunged outside the political and constitutional enrollment of the Indian state. While the state abstained from calling them as stateless, it also upholds that these people are 'not a citizen'. Thus there are justifiable fears of a pan-India NRC leading to expulsion for millions of people from marginalized sections into a class of 'non-citizens'. One also suspects that after the pan India NRC process the Hindu, Sikh, Buddhist, Jain, or Christian religion will be sooner or later granted citizenship after 6 years, vide CAA, it is undiscovered as to what will happen in case of people from Muslim or other minority communities who will be found to be non-citizens

Having stated the problems with the Assam NRC, one simply needs to understand that no country can work without a register of its citizen. As this will help its own citizen of the country, as it will exclude illegal citizens. The botched up NRC process in Assam need not be taken as a footing for a Pan India NRC as that was based on the Assam accord. The NRC is the very right of the State. The government time and again has come forward to clarify that NRC and CAA are to different processes altogether.

A false sense of fear has been created that a series of steps being undertaken by the government through NRC would end the protections available to Muslims, and they would be declared outsiders or illegal migrants. One of the reason for the this is the silence of the government on the documentation required which a common man has to furnish to prove that he or she is a citizen of India. Even though a draft will be presented in the near future by the government people are eagerly waiting for the guidelines. Even though a list of documentation is not disclosed, the home minister has gone on record to state that common documents will only be required to prove ones identity. These common documents are likely to include voter cards, passports, Aadhar cards licenses etc. however a final list of documents is yet to be compiled²⁸.

THE NATIONAL POPULATION REGISTER (NPR)& THE NATIONAL REGISTER OF CITIZENS (NRC).

The National Population Register (NPR) is a Register that dwells data of usual residents of the country. This data is being compiled from the very elementary stage of the Village, District, and State upto the National level under the provisions of the Citizenship Act 1955 and also the Citizenship Rules, 2003. The methodology behind of reexamining the Nation Population Register will be carried

²⁷ G Seetharaman, 'NRC in Assam: State coordinator Prateek Hajela on why not all voter lists till 1971 can be made available,' THE ECONOMIC TIMES, (14 Jun 2015), available at: <https://economictimes.indiatimes.com/opinion/interviews/nrc-in-assam-state-coordinator-prateek-hajela-on-why-not-all-voter-lists-till-1971-can-be-made-available/articleshow/47657765.cms?from=mdr>

²⁸No citizen should worry about NRC, Citizenship Amendment Act, says govt in document released to bust 'misinformation,' FIRST POST, (19 Dec 2019), available at: <https://www.firstpost.com/india/no-citizen-should-worry-about-nrc-citizenship-amendment-act-says-govt-in-document-released-to-bust-misinformation-7804851.html>



out under the aegis of the Registrar General and ex-Officio Census Commissioner of India²⁹.

It is therefore de rigueur for every usual resident of India to register in the NPR. A regular resident in the country is depicted for the benefit of NPR as anybody who has resided in a local area for up to 6 months or more or an individual who shows intentions to reside in that area for the next 6 months or more. The constitutional objective behind the National Population Register is to constitute a comprehensive identity database of every usual resident in the country.

The following demographic details of every individual are required for every usual resident³⁰:

- Name of person
- Relationship to head of household
- Father's name
- Mother's name
- Spouse's name (if married)
- Sex
- Date of Birth
- Marital status
- Place of birth
- Nationality (as declared)
- Present address of usual residence
- Duration of stay at present address
- Permanent residential address
- Occupation/Activity
- Educational qualification

The statistics for the NPR was last collected in 2010 along with the Census of India 2011.

²⁹ 'Explainer: What is the contentious NPR, and is it a prelude to the NRC?', THE WEEK, (27 Dec 2019), available at: <https://www.theweek.in/news/india/2019/12/27/explainer-what-is-the-contentious-npr-and-is-it-connected-to-the-nrc.html>

This decennial census is the largest single authority on an array of statistical information on different characteristics akin to the Indian populous. Meanwhile, the NPR only contains demographic information; whereas furthermore minutiae are required for census such as information on literacy and education, demography, economic activity, and housing and household amenities.

The process of updating the data was undertaken during 2015 by the proposition of conducting a door to door survey which was followed by the digitization of the updated information. The government of India in 2019 decided to update the National Population Register along with the House listing phase of Census 2021, from April to September 2020 in all the States/UTs except Assam.

During the data compilation process of the National register of population, the Home Minister stated that the respondent will not be required to produce any document and that the information so provided will be self-attested, that is, whatever information is provided by the respondent will be presumed to be correct and no documents or biometric would be required.

National Population Register is a database of people living in India, irrespective of being an Indian citizens or not, but National Register of Citizens is a database of Indian citizens. The NRC process stipulates proof of citizenship from the respondents. However

³⁰ Office of the Registrar General & Census Commissioner, MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, available at: <https://censusindia.gov.in/2011-common/introductiontonpr.html>



with NPR, there is no need to provide any such document.

Even though the process of NPR and the NRC will begin simultaneously, the two databases can't be assimilated as a synonym for each other. The Home Minister furthermore stated and clarified in an interview that the data so collected from the NPR cannot be used for the purpose of the NRC. He furthermore added that even if a name is missing from the NPR, then too his citizenship will not be affected³¹.

INDIA'S POLICY ON REFUGEE AND ASYLUM SEEKERS

“India is not party to the 1951 Refugee Convention or its 1967 Protocol and does not have a national refugee protection framework. However, it continues to grant asylum to a large number of refugees from neighboring States and respects UNHCR’s mandate for other nationals, mainly from Afghanistan and Myanmar. While the Government of India deals differently with various refugee groups, in general it respects the principle of non-refoulment for holders of UNHCR documentation.”³²

To date the estimate on refugees in India is unexplored. India's bias towards these asylum seekers has been shaped and conditioned by its relations with the State that these refugees hail from. For example, due to the relations between India-China dynamics, Tibet has been granted a full refugee stature and furthermore has been given consent to operate a Government in Exile. His Holy Highness Dalai Lama preserves a full-fledged government in Dharamshala and in Byllakuppe where Tibetans are free to administer and adjudicate their civil affairs, inclusive of revenue collection for the smooth functioning of their exile government³³.

For some time now, India's concerns regarding its territorial security have had more of a selective and exclusive impression on being an asylum haven. Due to the influx of mixed migration into the state, things have become even more arduous in reference to the identification and protection of refugees. However, UNHCR has unquestionably heightened its registration activities to endure with this and to bring about necessary support to the state. In the dearth of a national legal framework in regard to the refugees, UNHCR has been urged to conduct refugee status determination for people from a foreign land and to go to identify and map stateless groups.

“In, May 1946 the Economic and Social Council of the United

³¹‘No link between the process of NPR and NRC, says Amit Shah,’ THE TIMES OF INDIA, (24 Dec 2019), available at: <https://timesofindia.indiatimes.com/india/no-link-between-the-process-of-npr-and-nrc-says-amit-shah/articleshow/72957381.cms>

³² UNITED NATIONS HIGH COMMISSION FOR REFUGEES, *Global Report, Asia, India*, (2011), available at: <https://www.unhcr.org/4cd96e919.pdf>

³³ *Brief Introduction to Tibetan Government In-Exile*, THE OFFICE OF TIBET – PRETORIA, available at: <https://www.officeoftibet.com/index.php/2014-08-21-17-03-06/brief-introduction-to-tibetan-government-in-exile>



*Nations created a Commission on Human Rights composed of members from 18 countries. India was a member of the first Commission on Human Rights, which was charged with the task of drafting an ‘international bill of rights’.*³⁴

In a nutshell, even though India is not the signatory to the convention on refugees of 1951 and the protocol of 1967, it is an endorser and promulgates a number of other United Nation and world conventions ascribing to human rights, affairs relating to refugees and other related matters. Therefore India’s obligation in regards to aliens or refugees emanates from the latter. Moreover, India has been an observer and an advocate of the universal declaration of human rights that ratifies rights for all persons, citizens and non-citizens alike.

The Constitution Of India & The Citizenship Act (Amendment 2019)

I. Article 14 of the Constitution states that:

*“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”*³⁵.

Before mentioned right factors that every person who lives within the territory of India, enjoys equality and equal protection before the law which means that all are equal in the

same line. However there are some hidden elements which are needed to be explained. The article furthermore states that the protection so provided is not limited to the citizens only but is also applicable to all persons.

This article embodies the very essence of the principle which is contained in the *Article 7* Universal Declaration of Human Rights that *“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”*³⁶

The two expressions ‘equality before law’ and ‘equal protection of the laws’ penned in our constitution, simply, epitomizes the conception of the rule of law and of equal justice, law in particular refers to the term ‘equality before the law’.

The educating percept underlying *Article 14* is that all persons and things similarly ordained or circumstanced shall be treated alike in both privileges conferred and liabilities imposed. Law should be applied to all in same condition.³⁷

The honorable Supreme Court has adjudged that the fluctuating needs of different classes of persons oftentimes require distinct treatment. Those who aren’t equal are not only allowed to be treated unequally but they have got to be so treated.³⁸ The dictum of

³⁴ Miloon Kothar, *India’s Contribution to the Universal Declaration of Human Rights*, JOURNAL OF THE NATIONAL HUMAN RIGHTS COMMISSION, INDIA, Vol. 17, (2018), available at: <http://in.one.un.org/wp-content/uploads/2019/03/Shri-Miloon-Kothari-UDHR-Chapter-12.pdf>

³⁵ **Article 14**, *The Constitution of India*, 1950.

³⁶ UN GENERAL ASSEMBLY, *Universal Declaration of Human Rights*, 217 A (III), (Dec 10 1948).

³⁷ *B.C. &Co. v. Union of India*, AIR 1973 SC 106.

³⁸ *St. Stephens’ v. University of Delhi*, (1992) 1 SCC 558; *See also, Chiranjee Lal v. Union of India*, AIR 1951 SC 41.



equality before law therefore prompts to the inevitability of classification. For *Article 14* is administered where equals are treated differently without any reasonable basis. Wherein equals and unequals are treated differently the article doesn't apply.

Accordingly, *Article 14* permits 'reasonable classification' but forbids 'class legislation'. It is however necessary that the classification must not be 'arbitrary or evasive' and should be based on some substantive distinction which bears a just and reasonable relation to the objective so sought by the legislation.³⁹

The equal protection of law guaranteed by the constitution doesn't imply that all legislation needs to be generic in character or that the same laws should be applied to all persons. This in no manner represents that every law must have a universal application as no one person is of the same stature by nature, attainment, or circumstances. The varying demands of distinctive classes of persons often require separate treatment.

Thus a permissible classification to be legitimate, must in fact accomplish two conditions, specifically,

- i. the classification must be established on an intelligent differentia which simply differentiates persons or things that are grouped together from those left outside, and
- ii. this differentia must have a rational relation to the objective so sought by statute so in question.⁴⁰

Therefore the citizenship amendment act accomplishes the aforementioned conditions,

³⁹ *R.K Garg v. Union of India*, AIR 1981 SC 2138; See also *PrabhakarRao v. State of Andhra Pradesh*, AIR 1986 SC 210.

by striking a rational relation, by establishing a classification based on religion which in turn is based on an intelligible differentia as these minorities are persecuted for practicing different religions than the one recognized in those countries. The government has furthermore equipped proof of persecution by confiding on Parliamentary Committees as well as other contemporaneous official records and the debates in the Indian Parliament.

Moreover, legislative recognition of religious persecution within a given geographical area with established non-secular states should not be dubbed against the concept of secularism. CAA doesn't differentiate on the basis of religion rather it segregates on the ground of 'religious persecution' in countries with a state religion.

II. *Article 15 and Article 19 of the Constitution respectively state that:*

*"... The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them..."*⁴¹.

"... All citizens shall have the right— (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of

⁴⁰ *Shashi Mohan v. State of West Bengal*, AIR 1958 SC 194.

⁴¹ *Article 15, The Constitution of India*, 1950.



*the territory of India; (g) to ...*⁴²

While article 14 blankets all persons and proclaims the generic principle of equality before the law and equal protection of the laws, the consequent *Article 15 & Article 19* cite some areas for the operation of the general principle mostly in view with the citizens of India. *Article 15* is available only to the citizens and enjoins the state not to discriminate against any citizen based on caste, religion, sex, place of birth, or any of them.

Article 19 of the constitution categorically guarantees to the citizen of the state six basic freedoms, viz. of speech and expression; of peaceful assembly without arms; to form associations; movement throughout the territory of India; residing and settling in any part of the territory of India and of practicing any profession, and to carrying on any occupation, trade or business.

These rights are conferred only by the citizens, not being citizens or corporations cannot invoke this article. Having said so it is unambiguous that *Articles 15 and 19* do not apply to non-citizens, and since citizens do not stand to be affected by CAA, these Articles cannot be invoked in this case.

III. Article 21 of the Constitution states that:

*“No person shall be deprived of his life or personal liberty except according to procedure established by law”*⁴³.

The Ministry of Home Affairs has stated that the Central Government has unfettered

discretion in a matter regarding the deportation of the illegal migrants while at the same time ensuring a due process of law. Under Article 258(1) of the Constitution of India, the power of the Central Government to detain & deport an illegal foreigner is entrusted to the State Government since 1958.

The expanse of *Article 21* is extremely wide and it cannot be contended that the whole expanse would be available to illegal migrants. Identification of illegal migrants in the country, as a principle of governance, is a sovereign, statutory and moral responsibility of the government and is in conformity with *Article 21*.

The opposition in the parliament has time and again said that the citizenship amendment act deprives the Muslim immigrants of their right to life and personal liberty. Well that is the fallacy of the argument. The citizenship act even prior to the amendment didn't allow anybody to migrate from either the Muslim community or even for that matter from any other community.

My take on this legislation is that one should see this as an opening of a narrow gate to the walls of the citizenship act which allows some people to migrate by, on the basis an intelligible differentia that has been established with a rational relation to achieve the objective. Objective here being to provide relief to the minorities under the Citizenship Amendment Act, 2019.

Furthermore *Article 21*, the right to life is a right to life of those who live in India and reside in India and not for those who want to enter India.

⁴² Article 19, *The Constitution of India*, 1950.

⁴³ Article 21, *The Constitution of India*, 1950.



IV. Article 25 of the Constitution states that:

“ (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly⁴⁴.

In today's time's religious birthmark has become very much relevant because those declared minorities in the Islamic states are very much being prosecuted because of the

particular beliefs of these state in a specific religion which acts as a basis of their constitution.

Article 25 of the constitution articulates that all people are equally empowered to freedom of conscience and possess the right to freely profess, practice, and propagate religion. Having stated so, I don't think *Article 25* has any role to play, as the amendment is not preventing anybody from practicing his or her religion. One can very well do the same, once you come into India and become a part of the Indian mainstream then *Article 25* can be invoked which protects your civil rights.

Having said so I also believe that the principle of constitutional morality cannot be invoked in isolation and must be, in fact, located within the ambit of the provisions of fundamental rights. And as the citizenship amendment act doesn't violate the fundamental right provisions of the constitution, the question of violation of constitutional morality does not arise.

CONCLUSION

The Citizenship Act of 1955 was legalized to provide for the acquisition and determination of India citizenship. The 2019 amendment to the act was introduced due to a historical fact of trans-border migration that has been taking place in the backdrop between the territories of India and the space comprising of Pakistan, Afghanistan, and Bangladesh.

This has led to India dealing with the situation of illegal migrants of whichever religion, stand illegal in India by our citizenship act have to be deported. They need to be detained and deported back to

⁴⁴ Article 25, *The Constitution of India*, 1950.



whichever country they come back from. However what is being achieved vide this act is that the government is sought to bring about an exception for those minorities, which have been mentioned in the Citizenship Amendment act, 2019, who have been in our country for long enough, in this case, it being 5 years, By considering their continuance here and not deporting them back, if and only if they come in the ambit of declared minorities in the three theocratic states.

India is a secular state but assuming that there is another theocratic country where there is a state's religion, that is, the constitution of the state derives its footing from a specific religion makes these illegal migrants in India as minorities in that very theocratic state, the reason being that they observe a different religion than the state religion. Such people won't be sent back due to the fear of them being religiously prosecuted, which is the very logic behind this very legislature.

I do understand that the 2019 amendment, in one sense acts as a minority protection measure. This amendment is a narrowly tailored legislature that is specifically drafted to deal with the declared religious minorities who are being persecuted in the three Islamic neighboring states namely Afghanistan, Pakistan, and Bangladesh. The very basis given in the statement of object and reason in this amendment act is that the Constitution of these three countries has religion as a footing for the states constitution, which in turn only makes Religious birthmark much relevant today because those declared as religious minorities, namely the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in these countries are being prosecuted because of a particular state of the constitution of those three states.

The basic issue here is that we keep mixing up two different things, that is, we tend to mix a political philosophy, a political policy, or a legislative intent as reflecting that political policy, with sheer constitutionality, unemotional, nonpolitical, and neutral. The political intent may be anything but one should look at the action itself and see whether it's constitutional or not.

Having understood so, the Constitution is a document that lays down boundaries on the government; it doesn't lay down what you can do, rather it lays down what you cannot do. I therefore cannot find any constitutional bars on the citizenship amendment act of 2019. Nonetheless, one can contend that are we trying to tilt the secular spirit of the country by violating the basic structure doctrine? The fact remains the same that these communities are declared minorities in those countries which have declared state religions. And if this acts as a valid basis then how are we denting secularism.

It is fundamental to know that the basic structure doctrine was developed by the Supreme Court as a limitation in the power of the parliament to amend the constitution. Having said so, I feel that there is an urgency to understand that the principles of secularism have not been articulated in any specific article; yes they have pervaded the constitution. Secularism is itself a nebulous concept that is why while it is a very important philosophy since the contours of secularism aren't defined there is no precise formulation so to say that it violates the basic structure of the constitution.

And if this is the case then one would rather not allow anybody to migrate than to allow minorities of those countries to migrate and thence I don't grasp this as a violation of the



basic structure. I fail to understand as to how accommodating the minorities violates the secular fabric.

One can say be more generous, be more altruistic, to be the good and the big neighbor and allow anybody and everybody to come in, but I don't subscribe to that idea. This law is not drafted to open up the gates for economic migration. The object of the law is to provide for a situation where from the three Islamic republics who are our neighbors; minorities who are potentially subjected to persecution in these three states can migrate into India.

If that is the object of the law which prima facie is then the classification is based entirely on that object. Now the discrimination argument overlooks that if in those states, religious persecution is the basis and then by definition, somebody who belongs to the religion of the state itself cannot be subjected to religious persecution. This law doesn't state that the Muslims of the other state will never be granted citizenship.

It has also been contended that the citizenship amendment act, 2019 doesn't even mention the words 'religious persecution'. I would like to make it cloudless that the act doesn't need to as the minister who introduced it in the parliamentary proceedings has explained the entire legislation and moreover there is no constitutional principle that states, that the bill needs to ride out everything. That is why many times parliamentary debates are referred to in the Supreme Court when one is arguing validity in the parliament.

One needs to perceive that an ethnic group comprises of folks who share analogous cultural ideas and beliefs that have been a part of their community for generations. The

attributes that they may have in universal could incorporate a language, a religion, a shared history, and a set of traditional stories, beliefs, or celebrations. These idiosyncrasies make up a common culture that is shared by those in an ethnic group.

The adherent of Islam is called as Muslims. These three Islamic states are home to many contrasting ethnic groups such as the Shias, the Sunnis, the Ahmadiyyas, and the Hazaras who share similar religions, but have many differences amongst them due to contrasting beliefs.

Whereas, a religious group shares, a common, belief system in a god or gods, alongside a very specific set of rituals and literature. People who hail from distant ethnic groups may share the same religion even though they may be from very diverse cultures. The religion divides on the basis of those who are the followers of the Islamic State and those who are not the followers of the Islamic state. Therefore, the purpose of this act is not to address the governance problems in our neighboring countries.

India owes no obligation to the neighboring states to go and find people who are badly treated in that state and make and allow them to make a home in India. That's no part of the international law and, even our, domestic constitutional law.

The other basic fallacy regarding this amendment, which is well established, is that a law that addresses one evil need not address all possible or all similar evils. This can never be a ground to challenge a law, that's providing for a particular purpose. The moral argument overlooks one thing, which is to provide for a specific problem. No one has been able to deny, to date, the fact that in the



three Islamic states there is a problem faced by these minorities. And if that is a genuine problem, then to say that in order to recognize their problem a narrowly tailored law cannot be made is simply erroneous and unsound. Then this legislature which is rhetorically based on India's secular character is simply and plainly misplaced. After all, what's awry with a law that protects the declared minorities in those states?

