



CAA: A JUSTIFIED CONSTITUTIONAL LAW

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ABSTRACT

The most pivotal factor that would accept any test to the sacred legitimacy of the Citizenship Amendment Act (CAA) is that, first, it relates to 'non-citizens' as opposed to citizens; and second, the selected capacity to enact foreign jurisdiction', 'citizenship, naturalization and aliens', 'extradition' and 'admission into and emigration and expulsion from India' rests with Parliament. The constitutional validity of the Citizenship Amendment Act stands absurd

The essential ground on which the Citizenship Amendment Act (CAA) is being tested is its apparent infringement and maltreatment of the 'right to equality' revered in the Indian Constitution. The petitions under the steady gaze of the Supreme Court have asked that in addition to the fact that religion is based on segregation arbitrary and unreasonableness grounds, It carefully selects just certain communities and overlooks the persecution looked by a huge number of other people who don't have a place with the six religious gatherings determined in the. This research paper will discuss the constitutional validity of the CAA and why certain religious groups are excluded from it.

KEY WORDS

Citizenship Amendment Act, Religion, Indian Constitution, Secularism, CAA, NRC

INTRODUCTION

The Citizenship Amendment Act is constitutionally valid because it abides by all the provisions of the constitution. It is neither arbitrary nor does it uses any whimsical approach. Also the Fundamental rights of no sections have been violated because the government has taken the entire major step by minutely studying the provisions of each and every group. The government has not failed to fulfil constitutional directives as well. It should be seen that Fundamental rights cannot be claimed by the citizens of India on behalf of the minorities or illegal immigrant of other countries because Fundamental rights are available only to citizens unless they are Article 14 and Article 21¹.

Power of Parliament to make laws

The Parliament is equipped to make laws for the entire or any piece of the region of India given in Article 245 (1) of the Constitution of India. "Citizenship" is a piece of the entry number 17 in list-I (Union List) under the Seventh Schedule of the Constitution and under Art. 246(1) read with Art. 11 of the Constitution of India, the Parliament have the legislative capability to outline citizenship laws for the nation. In this manner, Citizenship Amendment Act, 2019 [hereinafter alluded to as the "CAA"] has been authorized by a capable lawmaking body.

Understanding of Article 5 and 6 of the constitution

¹ Constitution of India, 1950.



Further, Article 5 of the Constitution made each individual citizen who was at the time domiciled in India on 26th January, 1950. Such individual was either born in India or both of whose guardians was born in India or he had been conventionally residing in India for at the very least five years going before 26th January, 1950. Further Article 6 of the Constitution regards all migrants from Pakistan in India as citizens of India if such people or their folks or grandparents were born in unified India (according to arrangements of the 1935 Act) or such people had moved into India before 19 July, 1948. On the off chance that such people relocated after this date and got enrolled before an equipped official and had been inhabitant in India for at any rate a half year before the date of enlistment, at that point such people were likewise considered to be Indian citizens. Clearly Article 6 regarded a unique class of migrants post-partition [which obviously occurred on religious lines which brought about enormous scope movement additionally on religious lines] as residents of India because of their exceptionally extraordinary conditions.

Equality as under Article 14

Right to equality ensured by Article 14 of the Constitution doesn't imply that all laws must be general in character and universal in application and that the lawmaking body no longer has the intensity of recognizing and grouping people or things for the purpose behind enactment. It is presented that the main necessity preceding creation a specific classification or an uncommon enactment [as is in the CAA] is that the legislative characterization must not be founded on any arbitrary order and ought to be founded on an intelligible differentia having a reasonable connection to the object which the governing

body looks to achieve. If the classification on which the enactment is established satisfies the above said prerequisite, at that point the differentiation which the enactment makes between the class of people or things to which it applies and different people or things left outside the domain of the topic of enactment can't be viewed as a disavowal of the equal protection of the law.

The lawfulness of such a legislative measure should be tried inside that legislative domain and can't be conflated to stretch out past that object and the explanations for the Parliamentary discernment of the issue by which the able Legislature has, in its insight, devised a legislative approach to manage the recognized issue of persecution of the specific communities in the predefined nations who are, by their very Constitutions, religious nations.

The degree, scope and width of use of Article 14 and the corresponding power of the Legislatures to make a reasonable classification, has a clear nexus with the object of an enactment and it changes according to the topic of the classification.

In issues concerning international strategy, citizenship, monetary approach, and so on more extensive scope for grouping is accessible to the Parliament/Legislature considering the subject matter of the challenge and the idea of the field which the Legislature looks to manage.

While considering the instance of non-residents – 'Aliens' – the doctrinal methodology of deciding 'intelligible differentia', combined with a 'rational nexus', need not be adopted by any means. Without a doubt, 'personal' in Art. 14 of the Constitution cover 'Aliens' too. In any case, a significant qualification that must be indicated here is



that such rights would relate just to those individuals who have legitimately and lawfully entered the Indian Territory. Each sovereign State, thus too the Republic of India, has the selective option to permit, reject passage, or remove any outsider/non-resident. The correspondence condition, according to Article 14 of the Constitution of India, to the extent that it ensures rights to each 'individual', to the extent that it relates to Aliens, would just work where it isn't dependent upon some other inability radiating by method of any provisions of the Constitution thus to a legitimately authorized resolution/enactment/bye-law/rule.

It might be noticed that under the Indian constitution while certain rights, similar to those referenced in Article 19, are accessible just to residents, others like the privilege to uniformity referenced in Art. 14 and the privilege to life and freedom referenced in Article 21 (which has been deciphered by the Supreme Court to mean the right to live with respect) are accessible to all people. A non-resident is absolutely an individual, and henceforth is additionally qualified for those rights.

In a few cases, the Supreme Court has frequently conjured Chief Justice Patanjali Sastri's words that Art. 14 of the Constitution doesn't necessitate that the classification achieved by enactment be "scientifically perfect or logically complete". Supporters of the CAA may utilize this teaching to legitimize the rule. All things considered, Chief Justice Sastri held that Art. 14 doesn't "imply that all laws must be general in character and universal in application" or deny the state of its "power of distinguishing and classifying persons or things for the

purposes of legislation." What was required in such cases, he composed, was that the order must be "founded on intelligible principle having a reasonable relation to the item which the legislature tries to accomplish."The petitioner before the court in that case had challenged the constitutional validity of a West Bengal law² which set up special courts to try certain criminal offences which were specified in a schedule to the statute.

Supreme Court in **Clarence Pais v. Association of India**³ 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 accorded

So enactment won't be violative of Article 14 simply in light of the fact that it makes a separation between different geological regions. Such enactment is legitimate and unavoidably sound if there are chronicled and historical explanations behind such separation and there is an only connection between the explanation and the issue in regard of which separation is made.

The CAA makes a class of people having a place with specific religions that are in minority in 3 nations. So there is separation on a geological premise and there is a historic justification of such differentiation and furthermore there is a reasonable Nexus between this legitimization and the issue for which separation is concurred.

The historic justification is the factum of partition on religious grounds and this subcontinent having been one country once.

² West Bengal Criminal Law Amendment (Special Courts) Act, 1949.

³ AIR (2001) SC 1151, 1152.



The Nexus is clear, the injustice endured by individuals having their underlying foundations in India because of partition and the guarantee made to keep our entryways open. Thus, CAA is especially in consonance with the Idea of India, the possibility of mankind and the possibility of Justice to our kin. At the point when associated with NRC, it gives added security to this class of individuals and there's nothing more to it. NRC whenever executed will basically bring about the expelling of illicit Aliens who don't have a place with this class and who have a place with this class yet haven't benefited to the chance of applying for Indian citizenship.

Taking everything into account, it is adept to make reference to that the birthplaces of the CAA 2019 can be followed back to the Nehru-Liaquat Pact of 14 April 1950, whereby the two India and Pakistan consented to ensure minority rights. Nonetheless, considering the unending abuse that minorities face in the three neighbouring nations, particularly Pakistan, it comes to pass for the Indian state to guarantee the commitments of the 1950 agreement are completed.

CAA is constitutionally valid as it confers with Article 14 which interest illegal immigrant also at the outset, it is submitted that the Parliament is competent to make laws for the whole or any part of the territory of India as provided in Article 245 (1) of The Constitution of India.

Why Religions of other neighbouring countries are excluded?

CAA is a specific amendment which seeks to tackle a specific problem prevalent in the specified countries i.e. persecution on the ground of religion in light of the undisputable theocratic constitutional position in the

specified countries, the systematic functioning of such States and the perception of fear that may be prevalent amongst minorities as per the de facto situation in the said countries.

India's secularism is "not irreligious" rather it takes cognisance of all religions and promotes brotherhood.

Recognition of religious persecution in neighbouring countries with a particular state religion and a long history of religious persecution of minorities is in essence a re-establishment of India values of secularism, freedom and brotherhood.

CAA does not aim to identify or try to offer solutions to any or some sort of supposed discrimination that might have existed globally or that may have existed somewhere in the world beforehand. It is claimed that in this respect, the CAA is a broadly focused law aimed at solving the particular problem that awaited the attention of India for a solution since several decades.

It doesn't violate fundamental rights of any religious groups because it seeks to tackle the problem of those religions that face discrimination in countries on the ground of religion persecution.

The contentions raised by the Islam of the 3 countries are that secularism which is the part of preamble has been violated by excluding the Islam. Pakistan, Afghanistan, and Bangladesh constitutions allow for a specific State religion. As a result, in those countries many people belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities faced persecution on religious grounds.

The CAA is guided by the mission of identifying those people who are so severely



persecuted that they cannot return to their country of origin.

Ahmadis from the Islamic Republic of Pakistan.

The Ahmadis cannot be included in the Act because India recognizes them as Muslim.

A milestone 1970 judgment from the Kerala High Court considered Ahmadiyyas to be Muslims by the Indian law. Naqvi included that India has given asylum to various aggrieved orders at various occasions, and Ahmadiyyas won't be overlooked.

Now those who argue that Ahmadiyyas and Shias are also persecuted must realize that without their whole hearted support and their votes Pakistan could not have been created and could not have become an Islamic state. The persecution of these sects started much later when Pakistan allowed itself to become a theocratic state. How can one call these people as persecuted when they themselves supported the creation of a Theocratic Islamic state.

Shi'as from the Islamic Republic of Pakistan.

That is to say, the violence against Shi'as is not persecuted by the State through overt or covert legal means, as it is against members of the CAA-class living in Pakistan.

Rohingya (Muslims) from Buddhist Myanmar.

Under the CAA, the amount of Rohingyas given citizenship in India will be almost zero. It is since the CAA establishes a 31 December 2014 cut-off date for migrants entering India to become part of the CAA-class. This is ahead of the turmoil in Myanmar's Rakhine state beginning in 2017. Besides this glaring technical point, there are

significant security reservations specific to the Rohingyas that do not apply to other Muslim (and non-Muslim) refugees to India.

Tamils from Buddhist Sri Lanka.

Tamils from Sri Lanka were persecuted during a long-running Civil War, but this persecution was largely on an ethno-linguistic and not a religious basis. Hence, Sri Lankan Tamils do not fall within the CAA-class.

Christians from Buddhist Sri Lanka.

The way Sri Lanka operationalizes persecution against Christians is not through the state, but via sectarian conflict.

Lhotshampa and other Minorities from Buddhist Bhutan.

The locus of the persecution of these Bhutanese was ethnic, not religious, in nature, emanating as it did from ethnic exclusions in citizenship law. There is no evidence for actual State sanctioned persecution to date of Lhotshampas.

Hazaras from Afghanistan

It could reasonably be argued that the Hazaras are technically an ethnic minority, not a religious one and that persecution against them is on an ethnic basis.

Assam and other north eastern states have seen rough showings against the bill over feelings of trepidation that conceding Indian citizenship to evacuees and foreigners will cause them to lose their "political rights, culture and land rights" and persuade further movement from Bangladesh.

India isn't a signatory to either the 1951 UN Refugee Convention or the 1967 Protocol. Thus it further doesn't violate the constitution directives under Article 51(c) of



the constitution. India is under no obligation to follow the treaties which are not ratified by it. The ratified treaties have well been looked and CAA doesn't violate any of international protocols and treaties.

CONCLUSION

CAA is a generous bit of legislation which looks to give an unwinding, in the idea of a relaxation, to explicit networks from the predetermined nations with an obvious off date. CAA is a particular change which tries to handle a particular issue common in the predefined nations for example mistreatment on the ground of religion considering the undisputable religious established situation in the predefined nations, the methodical working of such States and the impression of dread that might be pervasive among minorities according to the de facto circumstance in the said nations. The Parliament, subsequent to taking perception of the said issues through the span of the previous seven decades and having contemplated the recognized class of minorities in three explicit nations, has ordered the present amendment.

It turns out to be certain that the treatment given to the classified communities in the specific neighbouring nations has been drawing in the consideration of progressive governments however no administration took any authoritative measure and merely recognized the issue. CAA doesn't try to perceive or look to give answers to all or any sort of indicated persecution that might be occurring over the world or that may have occurred already anyplace on the planet. It is presented that in such manner; the CAA is a barely custom-made enactment looking to address the particular issue which anticipated India's consideration for an answer since a very long while as expounded hereinabove.

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