



**CITIZENSHIP (AMENDMENT) ACT,
2019 AND THE THREAT TO
NATIONAL SECURITY: TURNING A
DEAF EAR**

By *Shubhani D Krishan*

From *Symbiosis Law School, Hyderabad -
UGC, AALAU*

ABSTRACT

The Citizenship (Amendment) Act, 2019 has been in the limelight because of the threat it poses to laws of equality in India. This Act bases its arguments solely centric to religion, due to which the secular facet of the Indian Constitution seems to be in ruins. However, amid the protests regarding violation of equality in India, the threat this Act poses to national security in the country has taken a backseat. The debate around the unconstitutionality of the Act has surpassed one of the primary concerns regarding India's homeland safety laws. The changes which have been brought to the definition of "illegal immigrant" have also caused massive risk to the protection of the country since the citizenship laws have become relaxed post the approval of the Citizenship (Amendment) Bill, 2016. Due to such grave ignorance of the aspect of security by the legislation, the focus has seemed to fade away from the international perspective of Refugee Laws and Security, while the entire emphasis has been supplied to it being India's internal matter. In the light of the recent occurrences in India, this paper shall scrutinize the standpoint of the nexus of The Citizenship

(Amendment) Act, 2019 with the security concerns it raises in the country. The findings of this paper shall attempt to determine the avenues which can be resorted to minimize the threat to national security and the possible dangers which shall arise if the same is failed to meet.

Keywords: *Citizenship, National Security, Illegal Immigrant, Refugee*

INTRODUCTION

The democracy which we know India as, has been born out of the partition of India and Pakistan by the hastened departure of the British Raj. In the midst of such chaos, India still managed to keep up with the contemporary idea of citizenship across the globe and vouched into making a Constitution fit for fulfilling the dreams of a better future. The stage was all set for creating a country which idolized equality in all forms and propagated a modern outlook incorporated with the cultural drive of Indian history. This brought about the philosophical idea of embracing diversity in all forms. This also always meant that India opened its arms for the worried and wearied neighbours to make the country their second abode almost whenever a situation of crisis emerged.² However, during all this time, usually the interest of the nation was not put at stake, considering the fact that citizenship always remained to be a long, articulate and intricate procedure as per the Constitution of India and the Citizenship Act of 1955.³

¹ Ayesha Jalal, *The Pity of Partition: Manto's Life, Times, and Work across the India-Pakistan Divide* (Princeton University Press) 85 (2013).

² William Henderson, *The Refugees in India and Pakistan*, 7 JOURNAL OF INTERNATIONAL AFFAIRS 57-65 (1953).

³ Eleanor Newbigin, *Personal Law and Citizenship in India's Transition to Independence*, 45 MODERN ASIAN STUDIES 7-32 (2011).



The requirement of stringent citizenship laws is due to the fact that they are the lynchpins of a sovereign State. These laws act as a watchdog of the country's safety, integrity, democratic spirit and culture.⁴ This sheds light on one of the most essential components of a sound citizenship law – the aspect of national security. Even though with altering times, the Citizenship Act in the Indian subcontinent underwent numerous amendments; the pillars of the law were never shaken, until the very recent changes in 2019. Migration and acquiring citizenship were procedures which had more strict and well defined meanings attached to them.⁵ The “Citizenship (Amendment) Act, 2019 (CAA) and National Register of Citizens (NRC)” have undoubtedly overlooked the idea of equality, but furthermore they have not taken due cognizance of the threat they pose to the country's safety by relaxing the procedure for acquiring an Indian citizenship due to making it an absolute matter of internal affairs. Since even hardened criminals and tough terrorists can become citizens of India in a comparatively short span of time, there is a dire need to realize that CAA is an extremely flawed piece of law in the midst of contemporary national security threats. Even though lately terrorism has been linked to predominantly Muslim religious communities, blatantly being under the assumption that only one religion can cause disruption to a nation's security, purely based on stereotypes would prove to be nothing less than a gross miscalculation. Adding to this, since the idea of national security goes way

beyond the limits of only terrorism, easily giving away resources to immigrants on the basis of citizenship would pose many more worries regarding job and food security, which may lead to increased marginalization and rebellions in the coming days, furthermore destroying the security fabric of the country. With India being the second most populated country in the world, to keep a track of turbulence in matters of internal security amid a humungous influx of immigrant population, it would be a rather herculean task to take up on while we still continue to be a developing nation since our very existence. In the purview of this crisis, it would be very important to understand the economic conditions of the country would keep on deteriorating if India becomes such an easy country to take permanent shelter into. The worsened economic conditions would lead to depreciating standard of living, which could in turn also make the citizens of the country being involved in activities which are anti-state since it is no unforeseen concept that poverty breeds terrorism very commonly.⁶

In a country like India where laws related to national security have been relentlessly misused by authorities and seem to fail due to their questionable constitutionality, it becomes a daunting job to keep control of possible malicious activities in the country. India has had a history of multiple unsuccessful attempts to keep in check the anti-national activities in India without barging into controversy.⁷ Amid all these

⁴ Partha S. Ghosh, *The Citizenship Discourse in India*, 46 ECONOMIC AND POLITICAL WEEKLY 28–30 (2011).

⁵ *Kulathil Mammu v. State of Kerala*, 3 SCR 706 (1966).

⁶ James A Piazza, *Poverty, Minority Economic Discrimination, and Domestic Terrorism*, 48 JOURNAL OF PEACE RESEARCH 339–353 (2011)

⁷ C Arunkumar & P Sakthivel, *Challenges to National Security in India*, 21 WORLD AFFAIRS: THE JOURNAL OF INTERNATIONAL ISSUES 114–121 (2017).



allegations on the State, weak citizenship acquiring provisions seem to just add on the misery of the people across the nation.

The need to work on this study is to bring a rather disregarded issue of the India's national security at threat into notice of the public eye because of loosened citizenship acquiring laws. This is one of the issues which has blurred out due to the foggy windowpanes of constant attention towards only one side of the coin – equality.⁸ The need of India to be a signatory to the United Nations Convention on the Status of Refugees, 1951 for effective implementation of citizenship laws has become imperative for a stable mechanism to handle refugees and illegal immigrants floating across.⁹ One of the main reasons behind the same being that it would lead to a more secure manner of accepting refugees into the country, which would be highlighted via this study. Once the laws related to immigration in India are regulated by an International Protocol, it would be a more credible and safe way to let refugees in. In addition to this, there would be a more practical approach in dealing with the issues related to providing citizenship and protecting the interest of national security simultaneously. Thus, the research will pave way to grab the due attention of scholars and public to the issue of an improved approach for better national security laws in the context of currently amended citizenship laws in India.

RESEARCH QUESTIONS

Thus, the questions which this research would venture into would be:

- How has India dealt with the concept of Citizenship post the British Raj and Partition?
- What are the consequences of relaxed citizenship laws on a nation's security?
- How would the Citizenship (Amendment) Act, 2019, specifically challenge the safety and security of India?
- What suggestions can be put forward to mitigate the threat that Citizenship (Amendment) Act, 2019 poses to the country's security laws?

RESEARCH OBJECTIVES

This would mean that the objectives of this paper are as follows:

- To understand the evolution of the concept of Citizenship in India since independence.
- To comprehend the manner in which relaxed citizenship laws affect national security.
- To elucidate the overlooked aspect of the threat to national security peculiarly in the light of the recent Citizenship (Amendment) Act, 2019.
- To pose solutions to curb the threat to National Security of India by a more wholesome approach towards Citizenship (Amendment) Act, 2019.

CITIZENSHIP IN INDIA

Citizenship is indicative of a bond between the nation and its individuals. The essence of citizenship lies not only in the State protecting its people, but also in the people

⁸ Ornit Shani, *Conceptions of Citizenship in India and the "Muslim Question,"* 44 MODERN ASIAN STUDIES 145–173 (2010)

⁹ Saurabh Bhattacharjee, *India Needs a Refugee Law,* 43 ECONOMIC AND POLITICAL WEEKLY 71–75 (2008).



devoted to their nation's progress.¹⁰ This two-way dedication is what brings people together in sharing responsibility and also celebrating nationalistic spirit. However, mere feelings are not enough to make a person eligible for citizenship of a country. With modernization, documentation has furthered and thus, requirement of concrete evidence in reference to citizenship has become a mandate for purposes of rights, duties and national security.¹¹

Citizenship Law in India and Prior Amendments

A country like India, where people have a strong sense of a shared past and rich history of its heritage, also has a very stringent citizenship acquiring law on the lines of the Constitution and Citizenship Act, 1955.¹² Given the country's excruciating past of times of the Partition, back in the days, documentation was not the primary concern of people migrating and settling; it was safety and wellbeing.¹³ After such conditions of violence and disturbance, it would have been unreasonable and insensitive on the part of the Indian Government to expect all current residents to have paper sheets justifying their belonging to the nation. Also, given the fact that in a country like India, where documentation is a privilege available only to the fortunate of the nation, with the amendments which were brought about successively in the Citizenship Act for the

creation of NRC were dubious unless implemented very efficiently.¹⁴

Irrespective of the many changes that were brought in the idea of citizenship and its execution in India, at all times, the prime focus of the lawmakers was to ensure that the provisions of the Constitution are not contradicted and national security is never put at risk due to the actions of the law-making bodies. This is evident from the fact that all amendments which were put forth in citizenship laws only made the process of acquiring citizenship stringent and rigorous. For instance, the 2003 Amendment gave rigid interpretation to illegal immigrants and their deportation, stricter terms for registration and naturalization and obviously, NRC, which also propagated the same trail of thought – better implementation of citizenship laws.¹⁵

Citizenship (Amendment) Act, 2019 and Aftermath

The year 2019 was notable in the history of Indian Citizenship laws since very apparently, few aspects of it which existed since beginning underwent drastic changes, altering the very essence of citizenship laws in India. The equality debate arose due to religious bounds on citizenship, while the other question was regarding the reduction of a span of eleven years being brought down to five for acquiring citizenship.¹⁶ These relaxed and unheard amendments in CAA

¹⁰ Joya Chatterji, *South Asian Histories of Citizenship, 1946–1970*, 55 THE HISTORICAL JOURNAL 1049–1071 (2012).

¹¹ Anne Macduff, *Law and Democracy, Performing Citizenship, Embodying Obedience* (Australian National University) 132 (2014).

¹² Newbigin, *Supra* at Note 3.

¹³ Subrata Mitra, *Citizenship in India: Some Preliminary Results of a National Survey*, 45 ECONOMIC AND POLITICAL WEEKLY 46–53 (2010).

¹⁴ Sidharth Luthra & Nivedita Mukhija, *The Nationalism Debate, Concerns, and Constitutional Response*, 30 NATIONAL LAW SCHOOL OF INDIA REVIEW 1–10 (2018).

¹⁵ Raghbirlal Bhagatram Sethi, *Law of Foreigners and Citizenship* 56 (Law Publishers) (1981).

¹⁶ Citizenship (Amendment) Act, S 6 (2019).



were highly criticized even not only nationally but internally by the United Nations as well; the entire reason behind stringent citizenship acquiring laws was ignored – national security.¹⁷ Indians took out massive protests on the streets of the country outrightly challenging the constitutionality of the very Amendment brought. However, an aspect to take due consideration was how amid the protests for propagation of anti-secular sentiments on behalf of the government, the aspect of security of the nation was overlooked.¹⁸

It is to be noted that citizenship laws in the country to impart rights and duties while the reason behind these rights and duties is to preserve the nation's social, economic and cultural structure.¹⁹ The preservation of these spheres of a country is pertinent to make the country stronger and secure. The entire idea behind doing so, ultimately, is to protect the country from fright of terror, internal or external, at all times. This is the aspect which the 2019 Amendment very conveniently ignores.

THE CITIZENSHIP AND NATIONAL SECURITY LIAISON

Citizenship is said to be very strongly associated with nationality; nationality is intricately linked to national integrity. This national integrity is crucial for national security.²⁰ This series of connection between citizenship and national security is not

unheard of. It is very prevalent and has been a topic of burning discussion in the modern era given the history of consecutive instances of annexation and invasions in India.²¹

In order to comprehend the necessity of citizenship laws, it is significant to understand the reason behind a formal system of imparting citizenship. It is seen that a systematic list helps categorize people into citizens and illegal immigrants. By doing so, the Government deports people who reside in this country illegally since they can pose a threat to the security of the nation and disrupt allocation of resources.²² This showcases the undeniable link between citizenship and national security.

CAA 2019 and National Security

In India, the link between citizenship and national security seems to be in ruins due to CAA, 2019 as of now. The entry of illegal immigrants solely on the basis of religion from Afghanistan, Bangladesh and Pakistan poses immense threat to national security.²³ This point has gone overlooked due to the entire debate on religious discrimination. It is vital at this time to reimagine this legislation from first, the perspective of security and then, discrimination. This is so because India has been victim to many attacks on its security blanket and on top of this, India's history with anti-terrorism laws has not been

¹⁷ Taylor Francis, *Arbitrariness, Subordination and Unequal Citizenship*, 4 INDIAN LAW REVIEW 121 (2020).

¹⁸ Sudha Ramachandran, *Hindutva Violence in India: Trends and Implications*, 12 INTERNATIONAL CENTRE FOR POLITICAL VIOLENCE AND TERRORISM RESEARCH 15 (2020).

¹⁹ V.M. Tarakunde, *Secularism and the Indian Constitution*, 22 INDIA INTERNATIONAL CENTRE QUARTERLY 143–152 (1995).

²⁰ Arunkumar & Sakthivel, *Supra* at Note 7.

²¹ Daud Ali, *The Historiography of the Medieval in South Asia*, 22 JOURNAL OF THE ROYAL ASIATIC SOCIETY 7–12 (2012).

²² Ghosh, *Supra* at Note 4.

²³ Citizenship (Amendment) Act, S 2 (2019).



the strongest.²⁴ Given such a situation of chaos, with immigrant influx at its highest, weak terrorism combating laws put India in an extremely perilous position.

It is not that the Government has never brought in the angle of national security at any time whilst the discussion unveiled. However, the arguments seemed to be tad flawed. At times, the argument of exclusion of Muslims from the list of religions eligible for citizenship in India as per CAA, 2019 is said to be for prevention of terrorism and unlawful activities. Most of the contradictions which erupt of this decision of the government are countered by giving reason of Muslims not being a minority religious community in the three countries as above.²⁵ Said that, this method of exclusion is not fool-proof. Presuming that only one religious community is capable of terrorizing India would be a mistake.

The experienced Government in India is not unaware of prior attacks in India which have been motivated not only by religion. Restricting the entry of a particular religion is no guarantee to a securer nation. If this aspect of CAA is taken into account, it is not a difficult task for enemy states to send in disguised terrorists under the pretence of persecuted minorities and fulfil ulterior motives. Not only will such terrorists be allowed inside the country but given citizenship in a mere course of five years to empty the country from its core.²⁶ Thus, it becomes crucial for not only pointing that the

exclusion policy by the Government goes wasted but also that the reduction of time period is alarming from the perspective of national security.

Considering the above, there would be no point of preaching equality and equal protection of laws in a country which is so aloof as to the maintenance of the facet of the national security of its own.²⁷ Very lucidly, it can be stated that national security is an aspect which is of prime concern for a democratic nation like India. Only if this component of a state is safeguarded can others be protected. We require to be a safe nation for other significant laws to be implemented. This safety undoubtedly, in terms of immigration and other international specifics, requires maximum participation of India. However, international regulation also becomes a must.

National Security on Grounds of Resource Allocation

External attacks are not always the ones which terrorize a nation. The internal knitting of the country is also hugely responsible for its national security. In this regard, the heavy influx of immigrants not only poses threat to basic border security requirements but also to security in terms of sustainability and resource sharing. For a developing nation like India, unending entry to immigrants already poses immense strain on the economy of the country. With meagre resources to handle shocking poverty, it is extremely challenging to endure furthermore.²⁸ The disturbance in

²⁴ P. Sakthivel & P. Sakthival, *Terrorism in India: The Unholy Neighbors*, 71 THE INDIAN JOURNAL OF POLITICAL SCIENCE 153–162 (2010).

²⁵ Shani, *Supra* at Note 8.

²⁶ Lee Jarvis & Michael Lister, *Anti-terrorism, Citizenship and Security* 34 (Manchester University Press) (2015).

²⁷ *Id.*

²⁸ G. Borjas & J. Crisp, *Poverty, International Migration and Asylum* 57 (Palgrave Macmillan UK) (2005).



Assam can be attributed to the same and so as in many other states of India.²⁹

The incoming refugee population in states, especially sharing border with the neighbouring countries looking for shelter in India, undergo a plethora of problems in terms of dealing with this refugee population which also requires to be fed, sheltered and employed on the expense of the nation. In this respect, it becomes extremely difficult for the nation to one on hand take care of border security issues and on the other, resource and employment allocation. Under these circumstances, often uprisings become a common manner of expressing dissent and anger. This dissent is backed up by the fact that the nation is willing to compromise natural resources, jobs and shelter for outsiders rather than expanding them and allocating them to the original residents of the country. In spite of the debatable NRC, keeping track of all citizens and non-citizens becomes a daunting task.³⁰ This, though overlooked, is also a significant factor in determining national security.³¹ In this context as well, international regulation becomes a pertinent requirement.

REQUIREMENT OF INTERNATIONAL PROTOCOL

Sovereignty is a lynchpin of a country, thus cannot be interfered with. India too, is a sovereign nation and functions on its own Constitution and Governance.³² Said that, most of the countries follow the sovereignty

model and take stances for themselves, but this does not exempt them from being liable as a nation to other countries on a global platform. Thus, this showcases that the role of the United Nations (UN) is a herculean one in maintaining peace and security on an international level.³³

India has been a consistent supporter of the initiatives of the UN, but Surprisingly, it has never been a signatory to the 1951 or the 1967 Refugee Convention and has always let refugees in under no guidance of any international protocol.³⁴ This decision of India has been dissected internationally many a times while India has received ample backlash for CAA 2019 as well. The lack of being a signatory to a major refugee convention has caused havoc in India which is very evident from the Constitution of the country being violated and an Act like that of the Citizenship Act of India being amended so recklessly by the Government.

The absence of an international protocol regulating immigrant influx in India is very alarming for the national security of the country. Since India is voluntarily not a signatory to the Convention, no matter how many Acts like that of the Illegal Immigrants (Determination by Tribunal) Act, 1983 (IMDT) are passed, they will always remain inadequate and thus ultimately will be struck down due to lack of implementation, like IMDT.³⁵

²⁹ Geeta Sharma et al., *Assam NRC (National Register of Citizens): A Study of Defects and Solutions on National Register of Citizens (NRC) of Assam 22* (Independently Published) (2020).

³⁰ *Id.*

³¹ Piazza, *Supra* at Note 6.

³² Vinay Kaura, *Securing India's Economic and Security Interests in the Indo-Pacific*, 31 INDIAN JOURNAL OF ASIAN AFFAIRS 37–52 (2018).

³³ John Weston, *United Nations Peacekeeping*, 3 THE BROWN JOURNAL OF WORLD AFFAIRS 41–44 (1996).

³⁴ *Id.*

³⁵ *Sabrananda Sonowal v. Union of India*, (2005) 5 SCC 665.



India has never stated reasons as to why it has not signed crucial treaty unlike the other almost 140 countries in the world.³⁶ It is assumed at times that this is in order to avoid the conflict of masses between the South Asian communities as India is one of the biggest shelters of this region and given the porous borders of the countries hereby would result only in destruction and forced entries and exits.³⁷ Also, stating India's image of a peace-loving nation, it usually does not intervene in putting rigid conditions to further deteriorate international relations. However, this has at almost all instances resulted in India being subjected to mammoth border tensions and disputes, by meaning of which it is pertinent for the country to abide by international protocols of the United Nations High Commissioner for Refugees (UNHCR) to take some concrete stance regarding this issue.³⁸

In reference to the points above, it is apparent as a fact that India would not have been criticised internationally or even nationally had there been a regulated protocol binding the country into not taking the citizenship laws so flexibly, affecting masses of citizens in India.

CONCLUSION AND SUGGESTIONS

Considerate law-making is fuel to a democracy. For a country like India, which was built on the pillars of equality, upliftment and sovereignty, it is germane for the government to be vigilant at all times as to what laws are appropriate for the country and fit into the constitutional framework. Being a citizen of any country is, and always will be

of great importance. Laws pertaining to citizenship are one thing which should not be loosened and played with. Citizenship embarks feelings of connection to one's land, belongingness and instils a sense of responsibility towards the nation. Relaxing laws pertaining to something so quintessential to a country would be shaming its worth.

Amid such strong feelings, it is easy to blur out the aspect of a country's security and integrity by letting people become its citizens so effortlessly. Giving shelter to refugees is one thing and granting them the status of citizens is another. Such internal access to immigrants with minimal residential period of five years can pose threat to national security by large. In this context, with a history of controversial anti-terrorism laws enforced, such timid citizenship laws are an invitation to turbulence. With both, weak terror combating laws and citizenship acquiring laws, India can very easily fall prey to malicious activities of other countries. This is something the latest amendment to Citizenship Act, 1955 has not taken cognizance of. On top of it, justifying the same is hurtful to the country at large.

In order to combat such issues which arise out of this debatable amendment, it is essential for us, as a country to revise what it truly means to be a citizen, the responsibilities attached to the status and the rights possessed via this virtue. It is vital for us to realize that any law which *ultra vires* the sacred Constitution under the purview of no definite justification of the evolving world is invalid,

³⁶ Eric A. Ormsby, *The Refugee Crisis as Civil Liberties Crisis*, 117 COLUMBIA LAW REVIEW 1129 (2017).

³⁷ Bhattacharjee, *Supra* at Note 9.

³⁸ Sarah Dryden-Peterson, *Refugee Education: The Crossroads of Globalization*, 45 EDUCATIONAL RESEARCHER 482 (2016).



thus, should not be enforced. As a country and a member of the global fraternity, it is our duty to respect other countries and help them when the situation of urgency arises, however, not at the expense of our nation's security. If we are not a secure nation by ourselves, how will we be ever competent to assure safety to those who genuinely require to be citizens of our country – the immigrants.

At this stage, it is indeed a necessity to ratify Refugee Conventions and legitimately welcome immigrants as per the international protocol. It is of extreme value for India to showcase that in order to become a citizen of India, dedication and devotion are of great importance. To do so, post entry to territory of India, after certain years, certain standards of education, employment and social work should be met and adhered to, monitored by the government in order to grant citizenship to illegal immigrants entering. In this way, citizenship will be granted to those who deserve to be citizens of India and have proved their potential worth in the country. It will also be in consonance with the fact that being a citizen is always symbiotic – benefiting both.

In situations like these, it is also helpful to analyse citizenship models of other countries and comprehend the lacunae of ours and work on it. There is absolutely nothing wrong with learning from other nations which are comparatively doing well and implementing the same for the country's wellbeing. India being an important part of the world and having its very recognition on a global platform, it is necessary to not let other nations advantage of what it has to offer to the world. At this stage of development, it is pertinent for the country to work towards its

growth and strive towards betterment, at large. Unless the democratic fabric of the country keeps withering, it is rather impossible to secure ourselves.

Thus, it is essential for CAA 2019 to be amended further and become a legislation which respects national security and integrity of India. While doing so, the precondition being the Constitution should be followed religiously and the provisions pertaining to citizenship should take cognizance of the contemporary world and the threats it exposes the country to.

