



CITIZENSHIP AMENDMENT ACT 2019: AN ANALYSIS OF ITS LEGALITY AND CONSEQUENCES IN FUTURE

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Introduction

Citizenship amendment act has been in controversy for a long period of time and the reason for many protests nationwide. The act stated that "certain minority communities in Bangladesh and Pakistan and later Afghanistan. viz., Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and who entered India before 31 December 2014 could not be deported for entering India illegally." The intentions of it seem to be rather good at first because of the above statement but it was later deemed problematic because it basically grants citizenship to illegal migrants of all the religions while conveniently leaving out the Muslim migrants.

History of citizenship in India

Indian citizenship came with a complicated set of laws and regulations. As a result of partition, there was a great deal of immigration. People had to go through a lengthy process to obtain a permit to stay permanently in India, known as the

permanent resettlement permit. The permanent resettlement permit had non-secular roots because it was extremely difficult for Muslim refugees to obtain one. The reason being that property owned by the Muslim migrants had previously been allotted to house Hindu migrants, and there was nowhere to relocate the Muslim refugees. However, it is to be noted that such circumstances don't apply anymore. Ambedkar stated that there was a great deal of uncertainty regarding who should be granted citizenship or not, and that this had "caused the Drafting Committee a pain."¹

According to the 1955 Citizenship Act, a person can become an Indian citizen in five different ways: through birth, descent, registration, naturalisation, and incorporation of territory. The CAA has long been the subject of criticism from the public since it provides a new, exclusive path to Indian citizenship by essentially awarding citizenship to all illegal immigrants, barring Muslims. The NRC which was created in Assam pursuant to Supreme Court orders, is something that critics of the CAA believe the government may soon begin compiling.² The 1955 act had made it easier for illegal immigrants to settle permanently, but the 2004 modification, which was enacted to implement the Assam Accord, made it difficult for a "illegal migrant" to get citizenship via registration or naturalisation. There were dozens of new objections after the treaty was changed in 2019 to include a humanitarian purpose of awarding citizenship to non-Muslims enduring religious exclusion in some countries mentioned. It should be emphasised that this

¹ Abhinav Chandrachud, 'Secularism and the Citizenship Amendment Act' (Indian law review, 19 May 2020) Secularism and the Citizenship

Amendment Act: Indian Law Review: Vol 4, No 2 (tandfonline.com)

² Ibid.



religious differentiation was not made at the time the Assam Accord was signed.

CAA is unconstitutional and discriminatory

The preamble is thought of as the constitution's identification card. The preamble includes the word secular, which denotes that all religions enjoy equal standing and government backing. For the reasons listed above as well, the CAA obviously violates the fundamental elements of the constitution as it excludes Muslims from its provisions and by violating the secularism principles outlined in the constitution. CAA was essentially humanitarian because it assisted undocumented immigrants in obtaining citizenship, but by barring Muslims who were seeking shelter, it clearly lost that humanitarian intent. Article 14 further suggests that everyone should be equally subject to the common law of the land as it is applied by common courts. The CAA clearly violation of article 14 of the Indian constitution because it places an unique duty on the governments to treat everyone equally, including non-citizens. It has been determined that CAA 2019 is both discriminatory and unconstitutional. By allowing only certain people to apply for citizenship via registration or naturalisation while excluding the tribal areas of Assam, Meghalaya, Mizoram, or Tripura.

The CAA can certainly be found discriminatory or unconstitutional, but original Constitutional elements, like the citizenship articles of the Constitution,

cannot.³ The idea that someone who is expelled from a country is not robbed of his or her life and personal freedom is false. According to article 21 of the constitution, a citizen of India who is erroneously labelled as a foreigner and expelled from the country because he cannot prove his identity is undoubtedly stripped of his right to life and liberty. It's important to address the misconception that "Muslims can't face religious exclusion in Islamic countries," which is sometimes offered as evidence to endorse CAA. In Afghanistan, Bangladesh and Pakistan Muslim communities have endured and still endure religious persecution. Persecuting Ahmadiya Muslims is common and supported by the government in Pakistan. Shia Muslim populations of Afghanistan, especially the Hazaras, have experienced terrible persecution as a result of their religious beliefs.⁴

Its categorising of people based on their religious beliefs is manifestly arbitrary, irrational, and in violation of the Constitution. Since it was built on the permanent resettlement permit, which itself was based on nonsecular roots because it was extremely difficult for Muslim immigrants to obtain a permit, the CAA clause was deemed to be "manifestly arbitrary."⁵ Because it excludes (i) other religious minority populations in Pakistan, Afghanistan and Bangladesh; (ii) other nations, both neighbouring and not; (iii) those oppressed on reasons apart from faith; and (iv) anyone persecuted post 31 December 2014," the

³ Ibid.

⁴ M Mohsin Alam Bhat, 'The Constitutional Case against the Citizenship Amendment Bill' (economic and political weekly, 19 January 2019).

⁵ Abhinav Chandrachud, 'Secularism and the Citizenship Amendment Act' (Indian law review, 19 May 2020) < Secularism and the Citizenship Amendment Act: Indian Law Review: Vol 4, No 2 (tandfonline.com)>



CAA is discriminatory.⁶ A legal purpose must be tested and examined, and the classification must also be non-arbitrary, in order to be considered reasonable. Due to the law's apparent intention to exclude Muslim minority, the distinction made cannot be regarded as a legitimate classification. On the other hand, it is arbitrary because there is no reason Muslim minorities who face religious persecution in Muslim countries should have been left out if the law is meant to protect all minorities who face religious persecution in neighbouring countries. Muslim communities have faced religious discrimination in Afghanistan, Pakistan, Bangladesh, and other Islamic nations, and they still do. Furthermore, persecution of people occurs for reasons other than religion, which is also excluded.

The acceptable classification must also satisfy two requirements in order to be accepted: 1) A discernible difference is required (which means that it should be possible to differentiate between those protected by law and those who aren't). 2) The differentiation of the law should be connected by logic. On each of the three counts, the law is thought to be ineffective. This is because it is obvious that any distinction made amongst non-Muslims from these countries and Muslims from other nations is an artificial, nonsensical one. It also lacks a logical connection, as there is no justification for excluding Myanmar or Sri Lanka from the law's protection of those who are under investigation and also have fled their countries (Rohingya situation). According to another perspective, only religious persecution should not be only

thing taken into account because people in these countries also experience several other types of discrimination based on ethnicity, race, and language. As a result, it is obvious that it fails the constitutional test for arbitrariness.

The problem of burden of proof

Another issue is that it is the foreigner's responsibility to provide proof of citizenship. Previously, this wasn't the case because it was the government's responsibility to demonstrate that the individual was a foreigner; the foreigners (tribunals) order first brought about this shift. The federal government passed the Illegal Migrants (Determination by Tribunals) Act (IMDT Act) in 1983 with the intention of placing the burden of proof on the government to demonstrate that a person was not a citizen. The Supreme Court invalidated the IMDT Act. in *Sarbananda Sonowal v. Union of India* on the grounds that it violated Articles 14 and 355 of the Constitution.⁷ However, it was reiterated that the person who is accused being a foreigner will have the burden of proof to disprove the claim. In *Sarbananda Sonowal v. Union of India*, the Supreme Court struck down the law and declared that the burden of proof for establishing citizenship belongs to the foreigner, as is the "general rule in the world's leading democracies," including the United Kingdom, the U.s, Canada, and Australia.⁸ The socioeconomic conditions of the people in these nations, however, are very dissimilar from others in India. Due to the low levels of income inequality and education in these nations, it may be simpler for legitimate

⁶ Ibid.

⁷ *Sarbananda Sonowal v. Union Of India Writ Petition (civil) 131 of 2000.*

⁸ Ibid.



residents to demonstrate their citizenship. People worry that those who are left out may not even be border migrants but rather genuine Indian nationals who lack the necessary documents to prove their citizenship.

Conclusion

By advocating a preference for non-Muslim immigrants and prejudice against Muslim immigrants, CAA transgresses the secular spirit of the constitution. It is firmly held that the propagation of Hindu nationalism has increased as a result of the BJP's ascent to power. The idea that Pakistan was created for Muslims and that India is therefore a Hindu country is a common Hindutva stereotype. It must be remembered that after partition, leaving one's house in Pakistan or India and moving to the other dominion was barely a viable option. It is also false to generalise about Muslim communities as ones who engage in terrorism and violent crime. The majority of Muslim communities didn't voluntarily depart. In the end, the partition is where CAA first emerged. The division had a defect, which caused a great deal of difficulty. The scars left by the divide have never fully healed. Fault lines in delicate border regions like Assam and Tripura have been reopened by CAA. By emphasising the communal persecution of minorities in Bangladesh, the BJP has targeted this sizable mass of Hindus of Bangladeshi descent in

west Bengal for potential votes. By altering this act, CAA has been utilised as a risky political instrument to win support from certain communities. The majority of illegal Bangladeshi immigrants have already acquired all the benefits of Indian citizenship, which involves voter identification cards, which makes the situation worse.⁹ This is a flaw of the CAA that the Intelligence Bureau has identified. For all intents and purposes, they are citizens of our country since "many more may have arrived and they may have already earned citizenship through numerous means."¹⁰ These factors led the Intelligence Bureau to predict that only a small portion of migrants would benefit from the CAA. Vote-bank politics have taken precedence above the necessity of bridging the communities' growing mistrust and separation.¹¹

Considering that the act has now been contested by the SC and challenged by numerous states, its current position is that the regulations controlling it have not yet been announced.¹² It has already received six extensions in a row. The delay was attributed to COVID 19, according to the BJP. But this seems more like a handy justification than a sincere one. The actual lockdown occurred exactly four months just after CAA was passed. Furthermore, the government didn't hesitate to pass incredibly disruptive laws like the agriculture bills during the lockdown, so what's to stop it from creating the CAA rules?¹³ The CAA has drawn attention to the

⁹ Shoaib Daniyal, 'A year ago, the BJP focussed its politics on the CAA. So why hasn't it been implemented yet?', (scroll, 11 december 2020) < A year ago, the BJP focussed its politics on the CAA. So why hasn't it been implemented yet? (scroll.in)> accessed on 5 July 2022.

¹⁰ Ibid.

¹¹ Does CAB violates constitution? Harish Salve and Slarith explain legalities of CAB.

¹² Vijaita Singh, 'Two years after CAA was passed, rules governing it yet to be notified' (the Hindu, 9 December 2021) < Two years after CAA was passed, rules governing it yet to be notified - The Hindu> accessed on 5 July 2022.

¹³ 8 Shoaib Daniyal, 'A year ago, the BJP focussed its politics on the CAA. So why hasn't it been implemented yet?', (scroll, 11 december 2020) < A year ago, the BJP focussed its politics on the CAA. So



fact that these social issues persist today. The Indian dream was intended to be codified by the constitution's founders, who emphasised the characteristics of the type of social structure they vowed to create. They achieved this in a variety of ways by ensuring secularism in a country rife with intergroup conflict and bloodshed.¹⁴

Citizenship regulations have always been difficult and complicated. It is a significant topic since it effectively determines who the nation chooses to shelter or whose needs it pledges to meet. People are always thinking about the issue of overpopulation because they believe that it will lead to a shortage of resources and possibilities for them. Certainly, CAA made many individuals more anxious. Particularly those who were excluded (Muslims, for example) and had to worry about deportation, as well as Assamese people's who were anxious about an influx of new immigrants into their states. It sparked panic on both sides, which led to a number of protests. However, it's crucial to emphasise that even many from privileged backgrounds who won't be directly impacted by it have participated actively in this debate, including politicians, academics, lawyers, intellectuals, and others. This opens up a positive line of thought that suggests such unconstitutional measures cannot always avoid public scrutiny, debate, and questioning.

why hasn't it been implemented yet? (scroll.in)> accessed on 5 July 2022.

¹⁴ Jaideep Singh Lalli, 'communalising of citizenship law: viewing the CAA through prism of constitution.'

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