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# UNPACKING THE CITIZENSHIP AMENDMENT ACT 2019: A CRITICAL ANALYSIS

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## ABSTRACT

India is known for its secularism and diversity. But this long-standing principle was questioned when the Citizenship Amendment Act was passed on 11<sup>th</sup> December 2019, by the BJP government<sup>1</sup>, and an Amendment brought into the Section 2 of Citizenship Act, 1955 which spoke about “Illegal Migrant” and their citizenship. Thus, through this Amendment the 6 communities, which are, Sikhs, Jains, Parsis, Buddhists, Hindus and Christians which entered India without valid documents and passport from Pakistan, Bangladesh and Afghanistan were not required to be considered illegal migrants and were allowed to acquire Citizenship of India easily by way of reduction in the number of stay years of naturalization. They just had to prove their stay of 5 years and instead of 11 years. This has also seen large scale protests happening all over the country, which resulted in severe injuries and loss of many lives as well. The main opposition arguments were based on the lines of this Amendment being unconstitutional due to the infringement of Article 14 as enshrined under the constitution as well as it being against the principle of secularism as laid down in the preamble of the Constitution.

**Keywords:** Citizenship Amendment Act, 2019, Article 14, Discrimination, Secularism.

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<sup>1</sup> “Citizenship Amendment Bill : India's New ‘Anti-Muslim’ Law Explained”, 11 December, 2019 <https://www.bbc.com/news/world-asia-india-50670393>

## **I. INTRODUCTION**

India follows a system of single citizenship. It is governed by the Citizenship Act, 1955 which allows for Citizenship to be obtained by birth, ancestry, registration, or naturalization. Under each category there are various pre requisites and conditions laid down in order to obtain Citizenship and time period is being specified which must be adhered to. But illegal migrants are exempted from obtaining citizenship. The Citizenship Act, 1955 prohibited illegal migrants to obtain Citizenship later on this Amendment Act 2019 was brought in to permit certain sects of people who did not get protection in other neighboring countries and are considered as illegal migrant to acquire Citizenship and excluded certain precluded Muslim communities to acquire Citizenship who have entered and stayed in India for a minimum Period of 5 years, this means entered India on or before 31<sup>st</sup> December 2014. This Amendment is also linked and opposed based on Article 14 and its violation thereof by not fulfilling the twin test of Article 14 as given under the Constitution of India. Religion has always been of utmost importance to India and it is known for its rich diversity in varied religions. The government always used to frame laws keeping in mind the sentiments of all the religions and not being bias towards any one or two of them. This Act is thus closely linked to the aspect of Secularism and it being violative of this principle by discriminating against the Muslims and thus being bias and supporting few other religions. These two major aspects are further discussed in detail.

## **II. CITIZENSHIP AMENDMENT ACT 2019**

In order to understand the amendment, it is important to understand the meaning of illegal migrant in its entirety. As per Citizenship Act, 1955, Section 2(1)(b) defined Illegal migrant- “illegal migrant” means a foreigner who has entered into India (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;”<sup>2</sup>. Citizenship Amendment Act, 2019 adds a proviso to this sub clause, as mentioned above and therefore is mainly controversial due to the status of illegal migrant being awarded to certain communities and excluding certain set of communities. The amendment reads as follows: "Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan,

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<sup>2</sup> The Citizenship Act, 1955, § 2, cl.(1)(b), No. 57, Acts of Parliament, 1951.

who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act."<sup>3</sup> Another place where illegal migrants are dealt with are under the Passport (Entry into India) Act, 1920 and Foreigners Act, 1946. The central government is given the authority to control foreigners' admission, leave, and residency in India under the 1946 and 1920 Acts. This is major aspect of the entire amendment act that would be dealt with by the researcher under this paper. Before we begin with the arguments in favour and against this Amendment, we shall look into the comparison with the previous Act and the present amendment Act.

### **III. COMPARISON BETWEEN PARENT LEGISLATION AND CITIZENSHIP AMENDMENT ACT, 2019**

Firstly, by comparing the object and purpose of both the Acts we find that The Citizenship Act of 1955 is responsible for defining and establishing Indian citizenship. Whereas Citizenship Amendment Act, 2019 on the other hand, is just furthering and amending it and letting 6 religious minority groups (Jains, Sikhs, Parsis, Buddhists, Christians and Hindus) coming into India from 3 neighbouring countries (Pakistan, Afghanistan, Bangladesh) to acquire Citizenship and excluding the Muslim communities since they are not considered minorities in those countries.

Another major and obvious difference is that Citizenship Act 1955, prohibited illegal migrants to acquire the status of Indians. While Citizenship Amendment Act, 2019 was brought in to force to save a few communities from persecution that they faced in the Muslim majority communities and ease out their process of obtaining Indian Citizenship. Along with this the year of stay in India for these 6 communities was just 5 years now instead of 11 years like before. This means that whichever illegal migrant from these communities who has entered into India on or before 31<sup>st</sup> December 2014.

An implied effect of this was that According to Section 6B, Clauses 2 and 3 of the Act, these individuals will be treated as Indian citizens as of the date of their admission and all legal

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<sup>3</sup> The Citizenship (Amendment) Act, 2019, §2, No.47, Acts of Parliament, 2019.

actions taken against them in connection with their unlawful migration or Citizenship will be dropped.<sup>4</sup> This was obviously not present in Citizenship Act 1955 and they were tried for their illegal migration.

Another aspect that Citizenship Act 1955 deals is with regards to overseas citizens of India. An amendment under Citizenship Amendment Act, 2019 was introduced under Section 7D as well with regards to this aspect. There were minor additions added via amendments to Section 7D as well as Section 18 of the Parent Act.

#### **IV. CRITICISM OF CITIZENSHIP AMENDMENT ACT, 2019**

##### **Against Secularism**

One of the major criticisms faced by this amendment is clearly the outright exclusion of Muslim communities from the 3 countries. It was contended that shows how the Citizenship Amendment Act, 2019 is focussed and targeted towards only Muslims. This indeed raised concerns as to the consistency with the principle of secularism which India claims to follow since time immemorial. India follows the goal of secularism wherein it does not and will not promote any single religion in the country, hence the specific target of the Muslim group is being questioned and criticised.

Another observation is that it fails to consider the minority Muslim sects in the 3 neighbouring countries who as well faced hostility in those countries. For example, the group of Shias, Ahmadiyyas etc.

##### **Violates Article 14 of the Constitution**

Another main critic argument is that it clearly violates Article 14 of the Constitution of India, by discriminating between the religious groups and sects. This amendment should have passed the twin test of Article 14 as laid down in the case of *State of West Bengal v. Anwar Ali*<sup>5</sup>. The twin test is as follows:

- a. There must an Intelligible differentia in the discrimination between either individuals

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<sup>4</sup> The Citizenship (Amendment) Act, 2019, §6, No.47, Acts of Parliament, 2019.

<sup>5</sup> *State of West Bengal v. Anwar Ali* AIR 1952 SCR 75.

or groups that discriminated.

b. This differentiation must clearly have a rational nexus with the object that is sought to be achieved and the purpose of any Act.

It is argued that differentiation based on just religion clearly does not have any intelligible differentia nor any rational purpose can be attached to it. Article 14 also requires every classification made to not be arbitrary. Clearly, this classification of excluding Muslims seems very arbitrary. Also, since this classification is based only on religion and nothing else, it qualifies as a class legislation which again it prohibited by Article 14.

Another aspect of Article 14 is equal protection of law to alike people. Citizenship Amendment Act, 2019 will deny such equal protection to the alike illegal migrants by discriminating between the illegal migrants coming in from other countries as well apart from Pakistan, Bangladesh and Afghanistan in order to obtain citizenship. For example, if person A who has faced hostility and persecution from Bhutan might enter into India and not be able to obtain Citizenship easily like any other illegal migrant entering from Pakistan who might not have gone through any hardship and still acquire Citizenship easily. This is clearly an unacceptable situation.

### **Other relevant criticisms**

The Citizenship Amendment Act, 2019 only considers Sikhs, Hindus, Jains, Parsis, Buddhists, Christians and exclusion of Muslims, but does not speak about Jews or any other minor religions.

Another aspect is that it only speaks about migrants coming in only from 3 countries, and not about migrants coming in from the other border sharing countries like Bhutan, Myanmar or Nepal. While the reason given for only 3 countries being considered was that they have a state religion and those 6 communities are considered as minorities in those countries. But this shall not hold good when it comes to the country of Bhutan which is also has a state religion of Buddhism.

The reasoning behind the reduction in the cut-off date for the 6 communities to acquire Citizenship is also not given by the law makers. And that by reducing it to 5 years it is nullifying the sanctity of the Assam Accord which had mentioned the cut off date as 24<sup>th</sup> March, 1971.

## V. DEFENSE OF CITIZENSHIP AMENDMENT ACT, 2019

Above mentioned were certain arguments against the Citizenship Amendment Act, 2019. On the other hand, we have the Government of India supporting this particular Act and argues how this Act fulfils and satisfies Article 14 and does not violate it. They have argued on the line that the object and purpose of the Act clearly states Islamic religion as being the official religion of the 3 countries and that the other 6 communities who have been given easy access to Citizenship had entered India to get away from the hostility, they faced in those three countries.<sup>6</sup> The Modi government had introduced this particular Act and they have been often accused in the history as well to target Muslims in various instance. They have time and again justified their stance that even though they believe in Hinduism, they do so without discriminating other religions. They have made it clear that the minority Muslim communities are not excluded to ever obtain citizenship, and that they can do so by entering India with valid passport and documents and obtain Citizenship as per the ways provided under the parent legislation. For example, by countering the argument of Shias and Balochi Muslim groups, it is said that if they have also entered India with a view to protect themselves from persecution then their application shall also be considered on its own merits.<sup>7</sup> Therefore, it is not targeting or excluding the Muslims and that there are other ways open to them to obtain Indian Citizenship.

Union Minister Amit Shah had argued during the passing of the bill in the year 2016, that this provision clearly passes the twin test of Article 14 by relying on the object and purpose statement of the Act. He further contented that the Act is very clear and if and when a law is subject to judicial review, the statement of aim and reasons provides the limits for legal justifications and interpretations of the legislation. It is also contended that the 6 communities mentioned in the amendment as well have certain pre-requisites to fulfill in order to gain Citizenship for themselves as it is not conferred upon them automatically. They are also required to satisfy the conditions as laid down in the 3<sup>rd</sup> schedule of the parent legislation.

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<sup>6</sup> Prabhash K Dutta , Defence of Citizenship Amendment Bill and the constitutional question (Dec 11, 2019) <https://www.indiatoday.in/news-analysis/story/defence-of-citizenship-amendment-bill-and-the-constitutional-question-1627313-2019-12-11>.

<sup>7</sup> Citizenship Amendment Act (CAA) 2019 - Background & Controversies, BYJUS, ( Dec 23, 2021) <https://byjus.com/free-ias-prep/citizenship-amendment-bill-2019/#:~:text=The%20fundamental%20criticism%20of%20the,liberalism%2C%20equality%2C%20and%20justice>

The main justifications given in defense are that the 3 countries which are mainly considered have a state religion that they promote and are not secular the way India is. This was the reason why the said group of communities required protection and Citizenship of India to be safeguarded from any kind of persecution that they would have faced in those countries by virtue of them being minority in those countries. And the Muslim communities did not require protection as they were the majority groups and were not persecuted in those countries.

Another argument put forth was that the disadvantaged undocumented immigrants were victimised because of their religious convictions. They were subject to hostility because of their beliefs and faith in a particular kind of religion which was not in line or in consistency with those countries. In order to escape and seek for protection and a roof over their heads they moved to India and which is the reason why the government felt the need to provide them faster access to the status of Indians and not term them as illegal migrants.

The violation or infringement of Article 14 is decided based on the test of classification. It means that the differentiation must be based on intelligible differentia and that it must have a rational connection with the object which is aimed to be achieved by the particular enactment. This clearly indicates that differentiation can be made between certain classes or groups of people if it is thought or believed by the authorities that it is so required. In this particular instance the two classes of people are: Muslim and non- Muslim migrants. The government has clearly stated that due to the partition of India during the independence, a lot of people, who were a victim of that division were of different religious backgrounds and were residing in those neighbouring countries. And Indian government has always put forth that it is their primary duty to help such minorities in the neighbouring countries.

## **VI. SECULARISM AND CITIZENSHIP AMENDMENT ACT, 2019**

The word “Secularism” was inserted into the preamble of Indian Constitution via the 42<sup>nd</sup> Constitutional Amendment Act. Secularism in general is a very subjective concept for all the countries and is applied in very different ways for all countries. In India, in short it just means that India as a country does not have or does not promote any religion of its own. It means that the country as a whole does not have any state religion. This is the reason why India is a diverse country and is mix of many religions. This principle of secularism as laid down in the Preamble shows what kind of a nation India is. In context of any legislation being drafted or made for a particular group of people or any religion, since time immemorial, the government and the law

makers have always taken into consideration all the mixed diverse groups of religion and not discriminated against any religions. Hence, another major question regarding this particular Amendment Act was whether it was deviating and ignoring the principle of secularism as laid down in the Constitution. And, if it did so, it shall be a ground for considering it unconstitutional.

Considering the situations and circumstances in India, Religion for any human being is considered as their utmost priority and no discrimination based on that is tolerated by any group. Therefore, the supporters here have contended that this Amendment is in conformity with this goal of Preamble. Whereas on the other hand the critics have strongly opposed it, by arguing that it clearly supports and favour a few religions over the other.

As already discussed in length with regards to Citizenship Amendment Act, 2019, it was the majority Muslim groups of Pakistan, Bangladesh and Afghanistan, who were not given the provision to avail the easier route of obtaining Citizenship like the Sikhs, Jains, Parsis, Hindus, Christians and Buddhists. This clearly showed biasness based on only religion and goes against the notion of secularism. This indeed shows that, whether the state is trying to promote some kind of religion by giving them incentive of protection and Citizenship over the Muslim community and discouraging people to belong to Muslims and to enter India. This somehow tries to encourage people to stop following Muslim religion and get themselves converted to acquire Indian Citizenship. This kind of situation is totally unacceptable for a country like India that has been following the notion of secularism since ages and non-discrimination among various religions was the entire motive behind adding the word 'Secularism' into the Constitution. This was the reason of hundreds of protests being held in the entire country by the Muslim communities claiming their right to equality and that they also have right to be protected and gain the status of being Indians within a span of 5 years instead of 11 years.

There are various other provisions provided in the Constitution which indirectly or directly promote the concept of secularism. Article 15, 16, 25, 26 provides for no discrimination to be made only and solely on the ground of religion, and indeed supporting the idea of secularism by not letting the state to promote a state religion. These are various rights and freedoms that are very basic to citizens like educational rights and access to other basic amenities.

Hence, this Amendment Act at the out front clearly violates the principle of secularism if it is proved that it violates Article 14.

## **VII. SUGGESTIONS**

There were a lot of protests that emerged from passing of Citizenship Amendment Act, 2019 starting off from the north-eastern states and then spreading over to the whole country. These were not small scale rather large-scale protests displayed due to opposition and dissatisfaction of this Act. Hence, it is clear from this that this Act has indeed disrupted public order, peace and morality and something must be done at earliest to resolve this issue and to get this issue to come to an end. Presently, this matter is before the Supreme Court and the petitions regarding the constitutional validity of this Amendment Act has been clubbed together. Now, it all lies in the hands of the Judiciary to interpret it in the most correct and reasonable manner.

Though the intention of the government is just to provide protection and shelter to the people who require it, it could have been done in a different way which would not have hurt the sentiments of the other communities and hence would have been in consistency with the Constitution. After looking into the arguments of both the sides it does seem like it does violate Article 14 and since there has clearly been discrimination solely based on religion which obviously cannot be entertained. The classification and enactment of the Act seems very rash and quick decision since it leaves a lot of areas untouched and explained upon. One of major area is the minority Muslim group were not even considered and there would be a situation where even in those Muslim countries they would have been considered as minority and persecuted and even in India they wouldn't get a chance to obtain Citizenship easily within 5 years. The Act should have also considered the other neighbouring countries which have a state religion as well.

## **VIII. CONCLUSION**

Taking into consideration all the facts and arguments and a few suggestions it is clear how there has been slight discrimination towards Muslims in general and no consideration being given to the minority Muslim. There also have been a lot of grey, vague areas which have to be clearly explained through the interpretation of the judiciary. Once the terms and reasoning have been cleared it can be figured out whether it is constitutionally valid or invalid.

Due to the petitions being pending before the Apex Court, in the mean time a large number of people have been affected by the protests being carried out because of enactment of this Amendment Act. Apex Court must give out decision as early as possible now otherwise it will

lead to more and more loss. Mainly deciding something in respect of the minority Muslims who face persecution even in those majority Muslim neighbouring countries. As these communities will not have easier access to acquire the Citizenship like those 6 communities addressed in this particular Amendment Act.

Even when it comes to secularism, there is a sort of conflict between the minds of Constitution makers and present-day law makers who amended this particular Act. The makers of the constitution always wanted to welcome and respect all the religions in our country and which is why they supported Secularism and not any one state religion. Whereas on the other hand it is believed that the present government deviated from that belief of the makers and indeed made a law that hampers that principle of secularism and discriminates against few religions. Even though the reasoning given by government is considered and appreciated, there have been arguments that the amendment could have been brought about by striking a balance between all aspects and taking consideration various aspects of the constitution in order to not hurt the sentiments of the people. Hence, in short, the burden is now on the judiciary to decide and resolve all the matters as the judiciary itself is the guardian. It is hoped that the judgement takes into consideration all the minor loopholes and grey areas as well and gives out a very meticulous decision in the favour of the deserving.

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