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CITIZENSHIP AMENDMENT ACT: A EUPHORIOUS ACT FOR PERSECUTED MINORITIES

Aakrisht Dubey¹

ABSTRACT

The Constitution of India does not expressly provide any permanent or comprehensive provision related to citizenship in India. The Citizenship Act, 1955 laid down different provisions related to Indian Citizenship. The Citizenship Amendment Act, 2019 is the fulfilment of a long standing demand and a humanitarian gesture to provide succour to those minority refugees who have been compelled to flee due to majoritarian impulses of religious beliefs in Afghanistan, Bangladesh and Pakistan. This amendment is a wise legislation by the Indian Government which helps in giving much needed status of citizen to classified minorities.

‘The Citizenship Amendment Act, 2019 violates Article 14 and also the basic structure (Secularism) and Articles 25 to 28 of the Indian Constitution. The Citizenship Amendment Act, 2019 violates Articles 15, 19 and 21 of the Constitution of India and Assam Accord 1985.’ Like abovementioned, The Citizenship Amendment Act, 2019 faced opposition from different sections of the society including university students, intellectuals, religious communities and political parties on different contentions which are proved to be groundless in this paper.

The contentions are being nullified by different provisions under the Constitution of India. The debate upon the Citizenship matter in the Legislative Assembly before the commencement of Indian Constitution, the data of minority population of these three countries, Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016 and different books of Constitution of India are being thoroughly considered for the purpose of this paper.

All the petitions filed before the Hon’ble Supreme Court are being contemplated for the purpose of combining all the contentions made under them, so that the reader could get

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answers for each and every question, while facing any kind of problem in understanding the Act. I believe, this would be resourceful paper.

INTRODUCTION

INDIA is a sovereign, socialist, secular, democratic and a republic nation which secure its all Citizens by giving them social, economic and political justice; by giving liberty of thought, expression, belief, faith and worship and by giving equal status and opportunity to each. Constitution of India i.e. the law of the land promotes fraternity among the citizens and hence, assures the dignity of each citizen and the unity and integrity of the nation. The Constitution of India is an organic document which gives existence to the special and personal legislations. Any legislation, if derogates or become inconsistent to PART III is declared void as per the conditions embodied in Article 13 of the Constitution of India.

The Constitution of India does not expressly provide any permanent or comprehensive provision related to citizenship in India. PART II of the Constitution, from Articles 5 to 11 gives a gist of classes of persons who would be deemed as citizens of India at the commencement of the Constitution on 26th January, 1950. Citizenship has been classified under the Constitution of India by domicile, migration and registration. And the Act i.e. The Citizenship Act, 1955 lays down five different way of acquiring citizenship viz.: (1) birth (2) descent (3) registration (4) naturalisation and (5) incorporation of some territory into India; from section 3 to 7 respectively. Citizenship Act also have provisions related to the termination of citizenship viz.: (1) Renunciation (2) Termination and (3) Deprivation; from section 8 to 10 respectively.

The Citizenship Amendment Act, 2019 is the fulfilment of a long standing demand and a humanitarian gesture to provide succour to those minority refugees who have been compelled to flee due to majoritarian impulses of religious beliefs in Afghanistan, Bangladesh and Pakistan. This amendment is a wise legislation by the Indian Government which is only designed to assist persecuted minorities from the three Islamic countries to acquire citizenship in a faster time frame, so that the venerable situations in which they were living, and also the problems which they are facing while living within the territory of India as an illegal migrants, can be changed. ***The Citizenship Amendment Bill was***

introduced in the Lok Sabha on 9th of December, 2019 by the Home Minister of India, Amit Shah and was passed after a 12-hours long debate, while 311 MPs voted in favour of the bill, 80 voted against it. The Rajya Sabha also passed the Bill after the marathon debate stretching more than six hours with a majority of 125 to 99. Later, on 12th of December it was assented by the President of India, Ram Nath Kovind.

The Citizenship Amendment Act, 2019 lays down that any person belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or the Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India i.e. within the territories of India, on or before 31st day of December, 2014, without proper documents such as passport, visa, etc., shall not be treated as an illegal migrant. Whoever of these communities from given countries on or before such date had come to India and have been exempted by the Central Government by or under Section 3(2)(c) of the Passport (Entry into India) Act, 1920 or from the application under the Foreigners Act, 1946 provisions or any rule or order made thereunder, shall not be treated as an illegal migrant for the purpose of this Act and hence, should be granted citizenship on certain conditions and restrictions, provided s/he has been in India for an aggregate period of not less than five years in place of not less than eleven years.

The provisions in this Act would not immediately grant citizenship to these six religious communities but it is merely a criteria which makes them eligible to apply for the Indian citizenship by naturalisation, provided they can establish their residency in India for five years instead of eleven years. As per the Government, this Act was to grant the Indian citizenship to the said minorities which were subjected to religious persecution and have no option left other than entering India illegally. The word '**religious persecution**' was used in the Parliament by the Home Minister of India, but it was contended by the opposition that it is nowhere penned down in this Act. Hence, the reference of the word 'religious persecution' is drawn from the **Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016**². The report clearly stated that the purpose of the amendment is to give Indian citizenship to persons who were forced or compelled to seek shelter in India due to religious persecution or fear of religious persecution in their countries. While the Bill was being scrutinized, the Legislative Department clarified the Joint Committee that **the Bill has**

² January, 2019/PAUSHA 1940(Saka); Pg. 15&16.

*been drafted in such a way that it gives reference to the notifications dated September 7, 2015 and July 18, 2016 which mention the term 'Religious Persecution'. Regarding methods for authentic verification of religious persecution in a foreign land, the Ministry of Home Affairs have submitted that inputs from Security Agencies along with other corroborative evidences of different kind would help to establish religious persecution in a foreign land. Moreover, the applicant's for citizenship, claiming of religious persecution or fear of religious persecution would be enquired into by the FRRO/FRO concerned and IB to verify the authenticity of such claims.....*³

CONSTITUTIONAL VALIDITY OF THE ACT

I. Whether the Citizenship Amendment Act, 2019 violates Article 14 and also the basic structure (Secularism) and Articles 25 to 28 of the Indian Constitution.

As soon as the Bill was passed from the Parliament, many Public Interest Litigations (PILs) and writ petitions were filed before the Hon'ble Supreme Court contending that it is discriminatory and Article 14 of the Constitution of India is also violated. Even these contentions were put up before floor of the Houses by the opposition during the debate and were well answered by the Home Minister of India. The contention of violation of Article 14 was raised in nexus to reasonable classification and it was alleged that the classification done in the Act is unreasonable.

- The matter of 'Citizenship' is listed on entry number 17 in List-I (Union List) under the Seventh Schedule of the Constitution. Article 246(1) r/w Article 11 of the Constitution of India, the Parliament is competent to legislate laws of Indian Citizenship. This matter can affect the security of the Nation, hence, legislative policies in this regard are exclusively entrusted to the Parliament.
- The Act violates the principle of classification under Article 14, is totally a void and baseless contention. Misunderstanding that Muslim community is getting targeted by the *Right Wing* Government led to opposition. The Act affirmatively passes the Test of Reasonable Classification. Two conditions must be fulfilled by a classification to be reasonable are:

³ Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016. (2.41; Pg. 49).

- i. *The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and*
- ii. *The differentia must have a rational relation to the object sought to be achieved by the Act.*⁴

Thus, according to the above test of classification, it is necessary that there must be a clear *nexus* between the basis of classification and the object of the Act which makes the classification.⁵ The classification in this Act is based on the minority status of these six religions of these three countries and the object of the Act is to stop the religious persecution of these minorities in their country and to ultimately give them Indian citizenship. All the three countries (Afghanistan, Bangladesh and Pakistan) are Muslim majority countries and they are declared Islamic Nations. The persecution of the minorities on the basis of religion forced their citizens to elope from there and find shelter in India. Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities were religiously persecuted and the object of the Act is to save these religiously persecuted minorities, so the classification on the basis of the religion does not violate Right to Equality, hence, passes the *test of reasonable classification*.

“The Legislature is, therefore, competent to exercise its discretion and make reasonable classification. Differential treatment does not per se constitute violation of Article 14. Courts allow permissible classification, which includes selective application of law according to the exigencies where it is sanctioned.”⁶

Equal protection of the laws under Article 14 does not mean that the Legislature no longer has power of distinguishing and classifying persons or things for the purposes of legislation. When the Joint Committee asked for clarification on the issue that Act violates Article 14, the Legislative Department submitted that the proposed amendment bill would uphold the

⁴ Ram Krishna Dalmia v. Justice S.R. Tendolkar, 1959 SCR 279.

⁵ Dr J.N. Pandey, Constitutional Law of India. (56th Edition).

⁶ Parisons Agrotech (P) Ltd. v. Union of India, (2015) 9 SCC 6157.

test of reasonable classification as propounded by a seven Judge Bench of the Supreme Court in the ***State of West Bengal v. Anwar Ali Sarkar***^{7, 8}.

- When it comes to the violation of **Secularist** structure of the Indian Constitution or introduction of ‘religious test’ by the Act, it is very clear from the judgement of the Supreme Court in the case ***Hans Muller of Nuremberg v. Superintendent, Presidency Jail, Calcutta***⁹ that ***the power of the Government to expel a foreigner is absolute and unlimited. A foreigner cannot claim Indian Citizenship and cannot claim to stay in India as a matter of right. The Government has supreme and unrestricted right to expel a foreigner.*** Now when the Amendment Act does not violates the *test of reasonable classification* and the clear nexus is being established, then in no sense the Act violates the Secularist structure of the Indian Constitution by introducing ‘religious test’.

In 1980’s, preferential treatment like Long Term Visa were given to religiously persecuted Hindu and Sikh families migrating to India¹⁰. Later (2011 onwards)¹¹, by the Ministry of Home Affairs this preferential treatment was extended to Buddhists and Christian communities. These preferential treatments were given under the instructions by Ministry of Home Affairs to Cabinet Committee on Political Affairs. Hence, before application of this Act, ‘religious test’ had already been practiced.

- The **Nehru Liaqat Agreement, 1950**, was signed by the Heads of Governments of India and Pakistan (East & West both) to protect religious minorities, but many instances can be recalled that Pakistan never implemented the true spirit of the Agreement. In 1964, at Lok Sabha session our Home Minister Shri Gulzari Lal Nanda said ***“It was expected that the Hindus in Pakistan will live with equal rights, equal status and equal security and safety and that if Pakistan was failing to discharge its responsibilities, on human considerations, India will have to do something***

⁷ AIR 1952 SC 75.

⁸ Report of the Joint Committee on the Citizenship (Amendment) Bill, 2016. (2.43; Pg. 50&51).

⁹ AIR 1955 SC 367.

¹⁰ Indian Union of Muslim League v. Union of India WP(C) No. 1470 of 2019. (Counter Affidavit)

¹¹ Govt. of India, MHA; Lok Sabha unstarred question no. 280. (L.S.US.Q NO. 280 FOR 05.02.2019).

about it."¹² It is the moral duty of the Nation to correct in some sense the wrongs done by the partition of the country in 1947, on the religious grounds.

- When people are being "religiously persecuted", then on the basis of moral values and even by legal sense the 'religious test' is good in law, as the Act does not violate any provision of Indian Constitution. For the question, why the Ahmadis, Shias, Bahaiis or Hazras are not being included in the Act, it is clear on face of the CAA that it is concerned with the people facing religious persecution in these three countries, not intra-religious or sectarian persecution.
- CAA has no basis in law or in facts which could result in breach of principles of 'Freedom of Religion' under Article 25 to 28. Notwithstanding, any such contention, CAA seeks to protect, such right of the classified minorities of these three countries who have been persecuted from practicing their religion.

II. Whether the Citizenship Amendment Act, 2019 violates Articles 15, 19 and 21 of the Constitution of India and Assam Accord 1985.

- Opposing the Act became so much prominent that few petitioners and even people from different walks of life made the Indian Citizenship to look like a Fundamental Right of everyone. They contested, the Act is violative of such Fundamental Rights which are only for citizens of India like Article 15 i.e. *"Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."*¹³ They made their contentions on the heading of Article 15 and does not even pay attention to the sub-sections of it which clearly states that *"The State shall not discriminate against ANY CITIZEN on grounds only of religion, race, caste, sex, place of birth or any of them"*¹⁴. The irony in their contention is, they are trying to get the Act declared void on the basis that it discriminate in giving citizenship to non-citizens, by the Fundamental Right which is only exercisable by the Citizens of India. Hence, the Act is violative of Article 15 is a baseless and void contention.
- Another vague contention was put up before the Hon'ble Supreme Court, that the Citizenship Amendment Act violate Article 19 of the Constitution of India. Again the misunderstanding of the Act by the people and even the legal

¹² Lok Sabha session on 11.02.1964 and 13.02.1964 on a Calling Attention Motion.

¹³ Constitution of India, 1950.

¹⁴ *Ibid.*

practitioners made the Indian Citizenship look like a Fundamental Right of everyone, which is definitely not. Hence, an Act which is giving citizenship to non-citizens cannot be done unconstitutional on the basis that it violates Article 19, which is only for the citizens of India who are not being talked about in this Act.

The rights under Article 15 and 19 are specifically available only to the citizens of India and not to illegal migrants or other foreigner.

- The Act violates the Right to Live with Dignity under Article 21 i.e. ***“No person shall be deprived of his personal life or personal liberty except according to procedure established by law”***¹⁵ is a vague contention. Personal liberty or Right to Live with Dignity under Article 21 (in relevance to CAA here), does not give right to any non-citizen to live within the territory of India for undefined term or for extended term than allowed. Personal liberty or Right to Live with Dignity does not make any non-citizen eligible to become a citizen of India. If any person keep on living in India illegally doesn't make them automatically a citizen of India. So, claiming of the Indian citizenship within the protection of Article 21 is void, as citizenship is not a matter of Fundamental Right. Contending that the Act violates the Article 21, is in no sense valid.

Another view to this is that the Article itself provide its exception that the person can be deprived of his life or personal liberty according to the procedure established by law. The Bill has become the law after being passed by the Parliament and assented by the President of India, hence, the Act can debar Muslim illegal migrants from getting the Indian citizenship. ***“Parliament possess exclusive power to legislate with respect of ‘citizenship’.”***¹⁶

- The crux is that the Citizenship of India is a matter which is in the hand of the Legislature according to the Constitution of India under PART II and the baseless contentions which are being made after misunderstanding the Act is upon the Fundamental Rights under PART III. When the Drafting Committee

¹⁵ Constitution of India, 1950.

¹⁶ Hans Muller of Nuremberg v. Superintendent, Presidency Jail, Calcutta, AIR 1955 SC 367.

headed by Dr B.R. Ambedkar had kept the matter of Citizenship differently from the Fundamental Right and specifically in the hands of Legislature (under Article 11), then why the attempts are being continuously made to degrade the Indian Citizenship and make it a matter of Fundamental Right.

- The contention that the Act violates or dilutes the Assam Accord, 1985, is totally a groundless contention, as it is clear on the face of the Act under the inserted sub-section (4) of Section 6B in the Citizenship Act, 1955. It is clear that the Act is not applicable to the tribal areas of Assam, Meghalaya, Mizoram and Tripura as covered under Sixth Schedule of the Constitution and also to areas covered under the “Inner Line” notified under the Bengal Eastern Frontier Regulation, 1873.

CONCLUSION

The Chairman of the Drafting Committee, Dr B.R. Ambedkar, in Constituent Assembly on Article 5 stated:

“This Article refers to, citizenship not in any general sense but to citizenship on the date of commencement of this Constitution. It is not the object of this particular Article to lay down a permanent law of citizenship for the country.....” and also stated: ***“.....but the Parliament may take altogether a new law embodying new principles. That is the first proposition that has to be borne in mind.....they must not understand that the provisions that we are making for the citizenship on the date of the commencement of this constitution are going to be permanent or unalterable. All that we are doing is to decide ad hoc for the time being.”***¹⁷

The Citizenship Amendment Act, 2019 faced opposition from different sections of the society including university students, intellectuals, religious communities and political parties on different contentions which are already being proven groundless in this paper. Maxim ***‘ubi ius ibi remedium’*** means where there is a right there is a remedy, and citizenship is not a matter of Fundamental Right, hence there is no remedy available to claim it, as a matter of right. Indian Constitution grants single citizenship which is one of the salient features of our Constitution. Hence, ‘Citizenship’ being matter of **Union List** under

¹⁷ Constituent Assembly debate on 10th August, 1949.

Seventh Schedule of the Constitution of India, makes Union Government only competent authority to Legislate upon it. **As a matter of fact, decisions related to the Citizenship of a Nation can be termed as a SOVEREIGN Function of the Union Government.**

