

CITIZENSHIP AMENDMENT ACT: A EUPHORIOUS ACT FOR PERSECUTED MINORITIES

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ABSTRACT

The Indian constitution doesn't really explicitly allow for just about any enduring or detailed clause relating to the nationality of our country. The Law dealing with citizenship passed in the year 1955 provided for separate laws. The Act of 2019 seems an accomplishment of one lengthy requirement and compassionate initiative to offer aid to certain community victims who're forced to leave because of authoritarian tendencies of personal faith in Afghanistan, Bangladesh, and Pakistan. It's an amazing form of policy by the Govt. that seeks to offer another boost to checking the status and affirming or denying citizenship.

The Act infringes Art. 14 as well as the fundamental form (Fundamentalism) and Art. 25 to 28, 15, 19 and 21 and the 1985 Assam Compromise.¹ As the act was rejected by diverse parts of the population, particularly college going people, academics, faith groups, and local groups, mostly on grounds of disagreements that are shown to be baseless throughout the article presented.

Both grievances submitted even before Hon'ble SC has to be considered in order to consolidate together the arguments rendered through these courts because then the consumer can provide responses to almost every dispute when grappling with some sort of difficulty in the interpretation of the Law. I think this will be an industrious piece.

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INTRODUCTION

Our country is an independent, egalitarian, liberal, republican one and supports a democracy that secures most of its people by providing them culturally, socioeconomic due process; freedom of thinking, speech, opinion, religion, and praise, and by granting equal position and ability.

It encourages solidarity between people and thus ensures the equality of every person as well as cohesion and stability. It's an endogenous text which leads to unique and beautiful laws. Any law which deviates and becomes incompatible with Fundamental rights shall be held invalid in accordance with provisions laid down in Art. 13.

It doesn't explicitly allow for any temporary or detailed clause relating to nationality in our country. PART II which is from Art. 5 to 11, a list of groups of people that will be called residents of our country at the outset of the Republic. Nationality was already defined by place of residence, place where one migrates, and place where one registers under it. It points out 5 separate methods to be called a citizen: (1) born (2) inheritance (3) enrollment (4) gaining citizenship, and (5) the integration of some territories into our country, namely, from the sect. 3 to 7. It also includes clauses pertaining to the revocation of being called as a citizen: (1) Relinquishment (2) Revocation and (3) Denial.

The Bill was presented in L.S on 9 Dec. 2019 by Amit Shah, which was approved by 311 Members & denied by 80. The R.S has approved the bill after a lengthy debate lasting by a plurality of 125 to 99. Later, on the 12th of December, it was assented by the President of India, Ram Nath Kovind.

The existing laws do not automatically award nationality to such 6 religious groups, although it is simply a requirement that renders the people as qualified to qualify for our country by naturalization, given that they are able to live in our country for a span of 5 years instead of 11 years. According to the Legislature, this Law became meant to give those minorities who've been exposed to unlawful discrimination and have no choice but to immigrate unlawfully.

The term has been used by the Home Secretary, but the opp. has protested that it is not in Act. The link to the term is also taken from the **opinion of the Special Committee on Citizenship (Amendment) Bill, 2016**. It specifically indicated that the object of the provision is to grant

the tag of a citizen of our country to individuals who have been persecuted or compelled to offer asylum in our country on the basis of bigotry or apprehension of political bigotry back home.

When it had been discussed, the Drafting Dept. made it known to the J.C that **it was drawn up in such manner that it applies to the notices decision dated Sept. 2015 and July next year, that address the word 'Religious Persecution.'**

As regards the methodology of credible confirmation of bigotry in faraway countries, the MoHA has argued that feedback through intelligence forces, among other corroborating facts of various types, might play a role in determining it in distant nations.

CONSTITUTIONAL VALIDITY OF THE ACT

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

As it transformed into an act, several Public Interest Litigations and writ petitions were lodged before the Hon'ble Supreme Court alleging that it is unconstitutional and that Art. 14 is also breached.

Even those claims were raised by the opp. during the discussion and were well addressed by the Home Secretary. The claim of the breach of Art. 14 was posed in the sense of a fair category but that was argued that the distinction provided for in the Act was not rational.

- The question of 'citizenship' is set out in the first List of registration no. 17 under the 7th Sched. e. Art. 246(1)(r/w) Art. 11. The Legislature has the power to make authorities of granting when to give the tag of a citizen of our country. This issue will have an effect on the country and, thus, areas of the project throughout this respect are delegated solely to the Legislature.
- The Act contradicts the theory of designation set down in Art. 14, which is a null argument. The misconception that the right-wing government is threatening the Islamic world has contributed to resistance. The Act meets the Fair Identification Test in the positive. 2 needs that must be satisfied by definition in order to be fair would be as follows:

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

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

Reasonable security underneath the legislation referred to in Art. 14 doesn't mean the state no more has the right to identify and define individuals or objects underneath the law. Whenever the Jt. Comm. called for clarity on the problem that perhaps the Bill breaches Art. 14, the Legislature Dept. argued that now the draft constitutional amendment would maintain the criterion of fair identification as planned by 7 Judge Bench of the S. C. in *West Bengal v. Anwar Ali Sarkar*.

- In the case, *Hans Muller of Nuremberg v. Superintendent, Presidency Jail, Calcutta* the court said 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 the supreme and unrestricted right to expel a foreigner. Now when the Amendment Act does not violate 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'.

Preferable status, such as Longer-term Visas, was issued throughout the early 1990s to culturally oppressed Hindu and Sikh people coming to our country. Afterward (2011), the Ministry of Home Affairs applied these special privileges to Buddhist monks and Christian groups. These special privileges being provided to the Ministerial Council on Public Relations under the orders of the Ministry of Home Affairs. Thus, before the implementation of this Statute, the 'religious test' was already being carried out.

- The Nehru Liaqat Agreement, 1950, was ratified by the national leaders of India and Pakistan (both East and West) to secure minority religions, but there are several

occasions in which Pakistan has never followed the real meaning of the Contract. In 1964, our Home Minister, Shri Gulzari Lal Nanda, said at the Lok Sabha conference "*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 about it.*"

It is the spiritual obligation of the country to redress, in any way, the wrongdoings perpetrated by the division of the world in 1947 for ethical reasons.

- Where citizens are "devoutly oppressed," therefore the "specific religion" is fine in legislation on the grounds of fundamental principles and sometimes even constitutional meaning since the Law doesn't really contradict some clause of our prestigious, amazing Constitution. As to why Ahmadis, Shias, Bahaiis, or Hazras are not included in the Legislation, it is obvious from the Constitutional Amendment Act's point of view that they are dealing with citizens experiencing political bigotry in such nations which were 3 in number inside the latest legislation, not intra-religious or religious persecution.
- Constitutional Amendment Act has no foundation in statute or evidence and may result in a violation of the freedom of Faith' rules set down in Art. 25 - 28. Despite all other disputes, the Constitutional Amendment Act aims to secure the freedom of listed communities in those 3 nations that've been oppressed from expressing their beliefs.

II. Whether the C A A, 2019 goes against Art. 15, 19, and 21 of the Constitution of India and Assam Accord 1985.

- The opposition to the Legislation is so popular that very few plaintiffs and sometimes even individuals of diverse sorts of backgrounds rendered Indian citizenship seem like a constitutional right to all. They contested, the Act is violative of such F.Rs 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.***" Art. 15 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***". The paradox of the argument is that they've been seeking to make the Legislation pronounced irrelevant on the grounds that it prohibits discrimination against anti-citizens by gaining amnesty to a constitutional right that can only be practiced by the people of our glorious country.

The Conduct is thus in violation of Art. 15, which is an unfounded and invalid assertion.

- Several ambiguous claims were made before the Hon'ble Supreme Court that perhaps the New Legislation goes against Art. 19. Still, the person's and sometimes even law professionals' misapprehension of the legislations made a citizen's right seems like a constitutional right of all, that isn't really. Accordingly, legislation awarding citizenship to non-citizens can't be made illegal upon this ground that it infringes Art. 19. That's only for Indian citizens who may not be alluded to it in this Statute.

The protections provided for in Art. 15 & 19 are only applicable to residents and not too irregular settlers or other aliens.

- 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 the procedure established by law***"² is a vague contention. Personal liberty or Right to Live with Dignity under Article 21 (in relevance to CAA here), does not give the right to any non-citizen to live within the territory of India for an undefined term or for an extended-term than allowed. Personal liberty or the Right to Live with Dignity does not make any non-citizen eligible to become a citizen of India. If any person keeps on living in India illegally doesn't make them automatically a citizen of India. So, claiming Indian citizenship within the protection of Article 21 is void, as citizenship is not a matter of Fundamental Right. Contending that the Act violates Article 21, is in no sense valid.

A further opinion would be that the restriction of the Art. itself would be that a citizen may be stripped of his or her life and liberty in compliance with the process laid down by statute. The act is becoming legislation once it has been enacted and approved by the President of India, which ensures that the Legislation will prohibit Islamic undocumented migrants from obtaining tags of an Indian citizen. "***Parliament possesses exclusive power to legislate with respect of 'citizenship'.***"

- The heart of the argument would be that the Nationality of our country is a subject within the hands of the Parliament with the help of the Constitution of India under PART II, and also that the constitutional rights under PART III are the simple assertions that are rendered after ignorance of the Legislation. If the Drafting

² Constitution of India, 1950.

Committee led by Dr. B.R. Ambedkar has left the question of citizenship separate from that of the Constitutional Rights and explicitly in the possession of the Parliament (Art. 11), so why steps are being taken on an ongoing basis to weaken Indian citizenship and making it a matter of fundamental law.

- The argument which the Legislation contradicts or devalues the Assam Accord is baseless, as is evident from the surface of the Legislation together added under sub-section (4) of Section 6B of the Citizenship Act of 1955. The Legislation would not extend to the tribal regions of Assam, Meghalaya, Mizoram, and Tripura as protected by the 6th Schedule of the Constitution and even to items affected by the Inner Line notified under the Bengal Eastern Frontier Law, 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 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."³

The Act of 2019, encountered resistance across various parts of society, which include undergrads, academics, spiritual organizations, and social factions, on particular perspectives that have been proved baseless in this article. Maxim '**ubi jus ibi remedium**' implies that where there would be a privilege there is still a solution, and citizenship would not be a question of constitutional law, and so there's no recourse sufficient to assert it as a point of practice. The Indian Constitution gives a common nationality, which is among the main aspects. Hence, 'Citizenship' being a matter of **Union List** under **Seventh Schedule** of the Constitution of India, makes Union Government only competent authority to Legislate upon

³ Constituent Assembly debate on 10th August, 1949.

it. **Decisions related to the Citizenship of a Nation can be termed as a SOVEREIGN Function of the Union Government.**

