



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Constitutional validity of the Citizenship (Amendment) Act 2019

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Received 10 May 2022; Accepted 21 May 2022; Published 04 June 2022

This paper analyses the Constitutional validity of the Citizenship (Amendment) Act. The BJP-led Government of India passed the Citizenship (Amendment) Act in 2019 which can be seen as problematic as it gives citizenship to people of several religions excluding Islam, from India's neighbouring countries where Islam is the dominant religion. Since it can be argued that the basis of this act is discriminatory, it can be said to be violative of the Constitution of India

keywords: *citizenship (amendment) act, CAA, muslims, article 14, discrimination.*

INTRODUCTION

The Citizenship (Amendment) Act of 2019, popularly referred to as “CAA” intended to change the existing citizenship law to provide a legal route for Hindus, Sikhs, Jains, Parsis, Buddhists, and Christians from Pakistan, Afghanistan, and Bangladesh to become citizens of India. The goal of the amendment was to have an alternative to the traditional methods of obtaining citizenship, which include birth, registration, descent, naturalisation, and the integration of foreign land into the Indian Territory. It can be said that the Citizenship (Amendment) Act of 2019 offers citizenship to illegal immigrants from three bordering states

who adhere to the six religious sects indicated above.¹ The measure specifically excluded Muslims as well as persecuted minorities from neighbouring countries such as China, Myanmar, and Sri Lanka. Though the law is written in such a way that it appears to provide citizenship to religious minorities in nations such as Pakistan, Bangladesh, and Afghanistan who have fled religious persecution, it is widely regarded as a stunt by the Hindu right to deny Muslims citizenship. India's new citizenship law is being hailed as a major blow to the country's secular character, and while the merits of the bill might be disputed, the reality that it discriminates against Muslims cannot be overlooked. The Constitution of India, through Article 14, prohibits discrimination on the basis of religion.² However, the basis of CAA 2019 is religion. Therefore, through a thorough reading of various articles and research papers, this paper tries to ascertain whether CAA 2019 is constitutionally valid or not.

BACKGROUND

In order to understand CAA and the feelings attached to it, it is necessary to know the history of citizenship in India. India was hurriedly partitioned into India and Pakistan on religious lines at the time of independence. Pakistan was to be a Muslim-only country, whilst India would be a secular country. Following the partition, the hasty departure of the English from the erstwhile British Indian Empire resulted in huge population displacement on both sides of the newly created border. As a result of the same, there was also a lot of violence toward minorities in both countries. In his article "Who is an Indian?" Madhav Khosla contends that India's Partition demonstrated a significant constitutional failure, highlighting the breakdown of an individual's identity and a failure to agree on political representation for the people of former British India. Many people believe Jinnah's true motivation for not wanting Pakistan to be a distinct state was to obtain greater power in the political negotiations that were taking place at the time to determine the country's political future and representation. Following the failure of negotiations and the certainty of the country's separation, Jinnah wanted citizenship to be decided on the basis of one's community and religious affiliation, regardless of how the question of the country's division was resolved. Both Hindus and Muslims were seen as

¹ Citizenship (Amendment) Act, 2019

² Constitution of India, 1950, art.14

separate by him. During the end of the British Raj and the years leading up to India's independence from British control, Khosla believed that few attempts were made to rethink political representation in a way that prioritised individual liberty.³ The CAA is premised on the basis that a person's interests are predetermined, which is contrary to the values of India's Constitution. It brings the country back to the time of the nation's division when the country was divided along communal lines and citizenship was conferred based on community affiliation. The CAA is quite similar to the Indian government's policy of the late 1940s and early 1950s when it discriminated against various populations in a variety of areas, including citizenship. Even though the administration in power professed to be secular, non-Muslims were given preference when it came to citizenship.⁴

ABOUT THE ACT

Articles 5 to 11 of the Indian Constitution talks about citizenship. According to the Constitution of India, any person with their domicile within the territory of India at the time of the commencement of the Constitution and was born in India; either of their parents was born in India, they had been a normal resident of the country for at least five years before the Constitution came into being, would be a citizen of India. The Constitution also gives the power to regulate, by law, the right of citizenship, to the Parliament of India.⁵ The Citizenship (Amendment) Act 2019 allows for all Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians who entered the country from Pakistan, Afghanistan, or Bangladesh before 31st December 2019, to be given citizenship of India.⁶

³ Madhav Khosla, 'Who is an Indian?' (*The Atlantic*, 26 January 2020)

<<https://www.theatlantic.com/international/archive/2020/01/india-republic-citizenship-law-muslim-hindu/605419/>> accessed 19 April 2022

⁴ SG Vombatkere, 'Talk of NPR-CAA again: Regressive and harmful' (*Deccan Herald*, 10 July 2021)

<<https://www.deccanherald.com/opinion/main-article/talk-of-npr-caa-again-regressive-and-harmful-1006963.html>> accessed 19 April 2022

⁵ Constitution of India, 1950, art.5-11

⁶ Citizenship (Amendment) Act, 2019

CONSTITUTIONALITY OF THE ACT

According to Article 14 of the Indian Constitution, discrimination on the grounds of religion is prohibited.⁷ Article 14 permits reasonable classification but class legislation is prohibited under it. According to the case of *Dr. Saurabh Chaudhari & Ors. v Union of India & Ors.*, Supreme Court ruled that the basis of the reasonable classification must be intelligible differentia, which differentiates the people being classified from the ones being left out. It was also ruled by the court that the differential on grounds of which the classification has been made and the object of the act are two separate things. There needs to be a rational relation between the two.⁸ The CAA has received mixed feelings from the people. Many people support this act while many oppose it. Since it was passed by the BJP government, it has a tremendous backing from right-wing groups. However, the left-wing liberal groups oppose the same. According to the people who do not support the CAA, the Act seems to be violative of Article 14 of the Constitution as it discriminates on the basis of religion. However, according to the ones who support it, Article 14 should not be applicable to the Act as it does not deal with Indians, who come under the purview of the Article and the Constitution, rather, it deals with foreigners, and grants them Indian Citizenship. They also contend that even if Article 14 is to be applied, the two conditions of reasonable classification are fulfilled as the religious identities mentioned in the act face religious persecution in the neighbouring countries mentioned. Although, if this is the sole basis of classification, then a question that arises is why the religious identities like Ahmediyas in Pakistan, Rohingyas in Myanmar, and Uighurs in China have been excluded from the act.⁹ According to a Supreme Court judgement given in the case of *Nagpur Improvement Trust & Anr. v Vithal Rao & Ors.*, there needs to be a reasonable relation of the act to the object it seeks to achieve. The objective cannot be malafide in its nature.¹⁰ According to the CAA, its objective is to provide asylum to the religiously persecuted minorities in India's neighbouring states. However, if that's the case, then countries such as China, Sri Lanka, and

⁷ Constitution of India, 1950, art.14

⁸ *Dr. Saurabh Chaudhari & Ors. v Union of India & Ors.*, (2004) 2 MLJ 113 SC

⁹ Saroj Chadha, 'CAA & Article 14 of Indian Constitution' (*The Times of India*, 29 January 2020)

<<https://timesofindia.indiatimes.com/blogs/blunt-frank/caa-article-14-of-indian-constitution/>> accessed 19 April 2022

¹⁰ *Nagpur Improvement Trust & Anr. v Vithal Rao & Ors.*, (1973), AIR 689

Nepal with minorities such as Ahmeddiyas, Uighurs, and Rohingyas should also have been included. The objective of the Act's amendment is to therefore provide citizenship only to people from a select group of religions from a select group of countries. Therefore, the amendment is based on religious discrimination. The nature of the same can therefore be considered to be malafide.

EXPERTS' OPINIONS

According to Dr. Abhinav Chandrachud, as mentioned in his paper titled 'Secularism and the Citizenship Amendment Act', the courts will try to have a "practical" approach to CAA and the fact that it is not "scientifically perfect or logically complete" will be ignored. He is of the view that it shall be presumed by the courts that the Parliament used degrees of harm to base its distinctions on the CAA. For instance, Hindus in Pakistan are in more need of asylum than Ahmeddiyas from there. Chandrachud also believes that the cut-off date in the act is arbitrary and those who enter the nation after that date will also be facing religious persecution in their home countries.¹¹ Dr. Chandrachud further believes that the term "secularism" has lost an appeal in recent years as a result of its link with vote-bank politics, in which previous regimes pursued a strategy of appeasing the religious minorities while disregarding or opposing the Hindu majority's interests. Following the success of the Bhartiya Janata Party (BJP) in the Lok Sabha Elections, which formed the Hindu right, with the assistance of the Rashtriya Swayamsevak Sangh (RSS), the Hindu right could govern without the backing of regional parties and coalitions. As a result, they openly called for the adoption of the principle of "Hindutva" and the rejection of the idea of secularism. Hatred against Muslim immigrants is not something that is a new occurrence. Indian Muslims who had previously migrated to Pakistan and sought to return to India faced a great degree of prejudice. Chandrachud believes that the favourable treatment of non-Muslim immigrants and prejudice against Muslim immigrants is a policy that takes one back to the policies of the Indian government at the time of the partition of India. He contends that the CAA is unconstitutional in today's world since

¹¹ Abhinav Chandrachud, 'Secularism and the Citizenship Amendment Act' (*SSRN E-Journal*, 27 January 2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3513828> accessed 19 April 2022

the difficulties of housing shortages and a communal environment exacerbated by an influx of refugees do not exist as they did between August 1947 and January 1950.¹²

Chandrachud continues by claiming that the CAA places the burden of evidence on Indians to prove that they are in fact citizens of India. The government has developed policies such as not granting citizenship solely on the basis of birth, not providing security of tenure to judges of foreigners' tribunals, and not making any provisions for Muslims who came to India illegally with their parents and know India as their only home. When read in conjunction with the CAA, these regulations and policies deliberately target Muslims and strip them of their Indian citizenship, regardless of the fact that whether or not they have ever recognised another country as their home.¹³

The Indian Constitution's creators, according to Madhav Khosla, did not want a person's interests to be pre-determined. Today, following the enactment of the Citizenship Amendment Act, a person's citizenship is determined by their religion, which goes against the ideals of the Constitution's creators. The Citizenship Amendment Act, according to Khosla, poses a severe threat to the liberal vision of the Constitution.¹⁴ Achin Vanaik says in his article "Citizenship Amendment Act: Who is an Indian Citizen?" that citizenship has been awarded to non-Indians based on religion for the first time in India since the partition. It was never awarded on the basis of religion prior to 2003. Discrimination has escalated since the CAA. Citizenship is incredibly valuable since it grants its holders a variety of benefits. People who hold citizenship in a certain country have more rights than those who do not.¹⁵ The Citizenship Amendment Act, it has been maintained, is not intended to deprive Indian Muslims of their citizenship, but rather to grant citizenship to aliens. In his article "Who is an Indian?", Siddharth Singh contends that the Act grants citizenship to members of minority communities who live in nations where Islam is the state religion. He goes on to clarify that the Act makes no distinction between Indian citizens and that Indian laws have never made such distinctions.

¹² *Ibid*

¹³ *Ibid*

¹⁴ Madhav Khosla (n 3)

¹⁵ Achin Vanaik, 'Citizenship Amendment Act: Who is an Indian Citizen?' (*Newslick*, 17 September 2020)

<<https://www.newslick.in/Citizenship-Amendment-Act-Who-is-an-Indian-Citizen>> accessed 19 April 2022

The Act grants citizenship to those who are not Indian nationals. As a result, extending the principle of secularism to someone who is not an Indian citizen will place undue strain on the country. Singh is of the view that India's Home Minister Amit Shah has made it quite clear that people who migrate to India to escape religious persecution and those who come for economic gain have to be treated differently. The Citizenship Amendment Act helps people who are persecuted for their faith in their homeland. Because Islamic governments like Pakistan, Bangladesh, and Afghanistan are non-secular, Shah has stated that there cannot be a secular requirement for citizenship. In the Act, Shah has neglected to include sects of Islam that are similarly persecuted in these countries, such as the Ahmeddiyyas and Shias, according to Singh. Although, it has also been pointed out in the article that Shah has not refused to help those communities either. It is just that CAA is not a tool for the same.¹⁶

Jaideep Singh Lalli in his paper “Communalisation of Citizenship Law: Viewing the Citizenship (Amendment) Act 2019 Through the Prism of the Indian Constitution” talked about how the supporters of the CAA often overlooked the progression of article 14 of the Indian Constitution. The author believed that CAA's discriminatory distinctions fail to provide equal protection and instead undermine the secular character of the Constitution. In this paper, he attempted to point out the law's argumentative illogicality and breaks the barrier by responding to plenty of arguments put up to support the CAA's constitutionality claim. He further believed that CAA when examined via the prism of constitutional morality, the government's bogus valuing of the CAA's seemingly humanitarian intention appears to be a thin veil, inadequate to hide its prejudice-laden aim. Arguments in favour of the CAA's legitimacy are primarily based totally on baseless reasoning and fake extrapolation of statements made through Supreme Court judges in preceding cases and consequently lack credibility. He ends the paper by saying that the assurance of equality and secularism seems to be an empty promise as the communalisation of Indian citizenship law is best defined because CAA's remodeling of secular citizenship regulation to construct a framework of citizenship built in religious identity to the exclusion of Muslims. This shatters the constitutional vision of

¹⁶ Siddharth Singh, 'Who is an Indian?' (*Open The Magazine*, 13 December 2019)
<<https://openthemagazine.com/cover-stories/who-is-an-indian/>> accessed 20 April 2022

equality and cocks a snook at the constitution's mainstay: secularism. The sugary diet of pity for the victimised has no bearing on the constitutional law grounds in opposition to the CAA's credibility. As a result, it can be optimistically said that as long as the CAA eclipses the equitable conferral of India's citizenship.¹⁷

CONCLUSION

The Citizenship (Amendment) Act 2019, which was passed by India's parliament in 2019, isn't only poisonous to the country, but also arbitrary, divisive, discriminatory, and absolutely opposite to the standards, philosophy, and ideals of the Indian constitution. The amendment of the Act has been seen as a political trial and expels Muslims from the country and denies them citizenship. This amendment violates the articles of the constitution of India especially article 14 which talks about the right to equality. The CAA is largely discriminatory towards particular groups of people, particularly Muslims. Furthermore, it violates what the Constitution stands for, blatantly. Therefore, to conclude it can be said that the citizenship amendment act of 2019 is fundamentally incorrect and constitutionally not valid.

¹⁷ Jaideep Singh Lalli, 'Communalisation of Citizenship Law: Viewing the Citizenship (Amendment) Act 2019 Through the Prism of the Indian Constitution' (2020) 3 (1) University of Oxford Human Rights Hub Journal <<https://ohrh.law.ox.ac.uk/wp-content/uploads/2021/04/U-of-OxHRH-J-Communalisation-of-Citizenship-1.pdf>> accessed 20 April 2022