

CITIZENSHIP AMENDMENT ACT, 2019: SOCIO-PSYCHO-LEGAL COMPLEXITIES AND WAY FORWARD

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ABSTRACT

Current study focuses on different psycho-legal aspects of acquisition of citizenship in India after independence in 1947. It has discussed different ways to obtain citizenship under Citizenship Act, 1955 with consecutive amendments in 1986, 1992, 2003, 2005 and 2019. The major focus of this article is to discuss psychological impact of legality and constitutionality of Citizenship Amendment Act, 2019, which has introduced swift changes in acquisition of citizenship, on Indian society as a whole. The author has critically examined its provisions for citizenship for broad category of illegal migrants from Hindu, Sikh, Jain, Parsis, Buddha and Christen communities from Pakistan, Afghanistan and Bangladesh, who entered India before December 2014. In the light of psychosocial reality of right to equality, 'reasonable and just classification' for affirmative treatment to a special class, doctrine of basic structure of constitution, Universal Declaration of Human Rights etc. the pro-and against-CAA,2019 views are evaluated. In the end author has suggested open-minded and accommodative approach at national level and proactive diplomacy at international level for preserving IDEA OF INDIA as enshrined in Indian Constitution.

KEYWORDS: Citizenship Act, Fundamental Right to Equality, Reasonable Classification, Basic Structure of Indian Constitution, Universal Declaration of Human Rights

INTRODUCTION

Citizenship in India is covered under two legislations: Part II of the Constitution of India (Article 5 to 11) and the Citizenship Act, 1955 which is amended in 1986, 1992, 2003, 2005 and recently in 2019. The citizenship in India is given by birth, descent, registration and naturalization.

CITIZENSHIP ACT AMENDMENT TILL 2005

Citizenship by birth

Any person born in India on or after 26 January 1950, but prior to the commencement of the 1986 Act on 1 July 1987, is a citizen of India by birth. After the Assam agitation which resulted in Assam Accord, a person born in India on or after 1 July 1987 but before 3 December 2004 is a citizen of India if one of parents was a citizen of India at the time of the birth (Citizenship (Amendment) Act, 1986). This was an important restriction put on the *jus soli principle* (citizenship by right of birth within the territory) adopted during original Citizenship Act, 1955. This restriction is further widened by 2003 amendment and legal migrant status of both parents is made prerequisite to grant citizenship for persons born in India on or after 3 December 2004. Mumbai High Court, in 2013, upheld parental citizenship as essential aspect in acquiring citizenship.

Citizenship by Descent

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Persons born outside India on or after 26 January 1950 but before 10 December 1992 are citizens of India by descent if their father was a citizen of India at the time of their birth. Persons born outside India on or after 10 December, 1992 are considered citizens of India if either of their parents is a citizen of India at the time of their birth. From 3 December, 2004 onwards, persons born outside of India shall not be considered citizens of India unless their birth is registered at an Indian diplomatic mission within one year of the date of birth unless exceptionally allowed.

Citizenship by registration and Naturalization

Foreigners and Person of Indian origin, Marriage ties, residence criteria etc. are covered under them. For citizenship by registration, person of Indian origin should be a resident of any country outside undivided India and he/she has been residing in India for at least 7 years. A person who is married to an Indian citizen and has ordinarily resided in India for at least 7 years is also eligible for this registration. Minor children of Indian citizens are covered too.

If a person resides in India for 12 years (11 years in the aggregate and throughout 12 months preceding the date of application) and fulfils all the qualifications given in the third schedule of Citizenship Act, 1955, he/she will be eligible for Indian citizenship under Naturalization process.

CITIZENSHIP AMENDMENT ACT 2019 (CAA, 2019)

Citizenship Amendment Act 2019, is passed by Indian parliament on 11th December, 2019 and came into effect on 10th January, 2020. CAA, 2019 has introduced swift changes in acquisition of citizenship. It has changed the previous provision (in 2003) of not allowing citizenship to any illegal migrant. It has now provided an easier path to apply for citizenship for broad category of illegal migrants from Hindu, Sikh, Jain, Parsis, Buddha and Christen communities from Pakistan, Afghanistan and Bangladesh, who entered India before December 2014 and who have been exempted by central government under the Passport Entry into India Act, 1920 or Foreigners Act, 1946. The intent mentioned is to give justice to these minorities in those countries who have been religiously persecuted or faced fear of persecution (In actual Act, there is no mention of 'persecution' anywhere). Additionally, it has reduced the residential requirement from 11 years to 6 years.

To protect linguistic, ethnic, social and cultural identities of North-East states' communities, it is not applied in (Schedule 6 protected areas of) Assam, Tripura, Manipur, Mizoram and Manipur (recently notified). It is also not applicable (through Bengal Eastern Frontier Regulation Act, 1973) to Inner Line Permit areas of Arunachal Pradesh (Full), Mizoram (Full), Nagaland (Majority area) and Manipur (Majority area). Committee of Assamese people according to Assam Accord 1985 (Clause 6) is also formed to protect their rights. Authority of Sikkim to clear CAA through its legislature is kept intact. It also furthered the 2003 Act objective to construct a National Register of Citizens (NRC).

LEGALITY V/S CONSTITUTIONALITY DEBATE ABOUT CAA, 2019 AND ITS PSYCHOSOCIAL PERCEPTION BY DIFFERENT COMMUNITIES

Democracy as 'system' and as 'value'

There are two things to understand simultaneously in democracy. First thing is about *democracy as a System*. In India, subject of 'Citizenship' is placed under Union List, Entry 17 of 7th Schedule. Article 11 of the constitution gives power to parliament to make or modify citizenship laws. States have to follow the laws passed by parliament with consent by President. No doubt that CAA, 2019 has passed this condition.

The second thing is *democracy as Value*. It speaks about the constitutionality of law which will be ultimately decided by the Supreme Court. Both, People and States, have right to dissent and can file writ petitions against a law passed by parliament, if they perceive that it violates constitutional values. By convention, Supreme Court presumes the constitutionality of law once it is passed by parliament through due procedure. Therefore, those who challenge it have to take the burden to prove its arbitrariness and/or irrationality and/or unjust objectives. This generally takes

time and especially in case of Citizenship Law which is directly attached to every person of India, sensitivity is so high that it should be dealt with utmost care. On this backdrop, the Supreme Court has allowed the submission of more than 150 petitions against CAA, 2019 without staying the execution of the act yet. Kerala is the first state to file a suit and challenge the CAA, 2019 under Article 131 of the Constitution which fetches Supreme Court hearing of the case. Apart from it, Indian Union Muslim League (IUML), Trinamool Congress MP Mahua Moitra, former Union minister of Congress Jairam Ramesh & leader Debabrata Saikia, All India Majlis-e-Ittehadul Muslimeen (AIMIM) leader Asaduddin Owaisi, Non-government organizations (NGOs) - Rihai Manch and Citizens Against Hate, Advocate M.L. Sharma, and many others have filed separate writ petitions. Major objections raised by them against CAA included violation of secularism, right to equality (Art 14), prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Art, 15), right to freedom (Art 19), right to life (Art 21) and constitutional morality. Supreme court has decided to hear government's reply first before giving any order. It has also made a mention of handover the issue to a larger bench, if required.

Fundamental Right to equality: A crux of the issue

Part III of the constitution provides 'Right to Equality' under Article 14 and mandates the State to maintain equality before law for every person (citizen and non-citizen alike). It is generic, philosophical and negative concept borrowed from British idea of 'rule of law' which forbids any special privileges for anyone. Article 15 speaks about citizens and mandates the State not to discriminate against them only on the ground of religion, race, caste, sex and place of birth and demands 'equal protection of law' made by legislature. It is specific, functional and positive concept influenced by United State constitution. Equally true is the fact that constitution doesn't forbid to treat un-equals differently. It recognizes that uniform treatment for un-equals is as bad as unequal treatment for equals. But in case of unequal treatment, when proposed by parliament for a particular class, *twin test for Article 14 -test of reasonable and rational classification and significant fulfillment of intentions, aims and objectives of the law* – has to be satisfied by the law to make it valid. Citizenship Amendment Act, 2019 has to pass these two tests.

Pro-CAA, 2019 views

The pro- groups have cited the fact that three neighboring countries - Pakistan, Bangladesh and Afghanistan – have a proven track record of harassment of religious minorities. Their constitutions have accepted either supremacy or special status of Islam. It directly or indirectly helped Muslim majority and governments to curb the

fundamental rights of religious minorities. The draconian treatments like forceful conversion, atrocities, killings etc. in the name of following Shariya laws, blasphemy etc. have been imposed on minorities and courts have either justified or kept mum about such grave human injustice. They are internationally ill-known for supporting terrorist organizations, which brutally preach Islamic supremacy and disturb world peace and order. The result is the consistent decrease or insignificantly meager increase in minority population in these countries since 1950s.

On the other hand, India has accepted secularism and followed Nehru-Liaquat Resolution, 1950 (Delhi Pact) between India and Pakistan (current Bangladesh was also the part of Pakistan at that time) signed on the contextual ground of large-scale migration of minority community families between the two countries in the wake of attacks by the majority communities in their respective territories. This pact allowed refugees to return unmolested, to dispose of their property, protection from forceful conversions etc. It specified the ways to assure constitutional rights to minorities through legal safeguards like minority commission etc. India has followed this pact in letter and spirit but these neighbouring countries persistently contravened the provisions through consistent neglect from the beginning itself. As a result, millions of religious minority population have thrown their life at risk, took refuge in India and struggled for life since decades. The recent extraordinary development happened in August, 2021 in Afghanistan where the Taliban, which has a track record of spreading extremism and terrorism, has taken over democratically elected system of Kabul after United States of America military has left the land, highlights special significance of this new act. Describing Afghan crisis as humanitarian crisis, India has rightly opened a new category of visa to fast-track the Afghans people applications for Indian citizenship, irrespective of their religion. As a mature democracy, it is the moral responsibility of India to look after these helpless refugees who came in the hope of humane treatment.

Though India is neither a signatory of any international refugee convention (UN Convention, 1951 or the 1967 Protocol), nor has any refugee policy or law, it has hosted thousands of refugees from various neighbouring countries. In 2019, approximately 40,000 refugees and asylum-seekers are registered in India as per the data by the United Nation High Commissioner for Refugees. Among those, Afghans are the second-largest community comprising 30 % of total refugees. Between 2014-19, 18999 foreign nationals are given Indian citizenship through naturalization process. Out of these, 15036 are Bangladeshis (14864 through Indo-Bangladesh Land Agreement, 2015), 2935 are Pakistanis and 912 are from Afghanistan. Hundreds of them are Muslims

as per the reply given by Union Minister of State for Home Affairs in Rajya Sabha.

To protect the above population coming from neighboring countries, laws advocating one-size-fits-all universality will not prove adequate. Hence, a special treatment to those illegal migrants living in India who come under religious minorities in Pakistan, Afghanistan and Bangladesh (2003 Act defines 'illegal migrant' as foreigner without valid passport/valid travel document or the period of stay is expired) has been sought through CAA, 2019 Act. It has created a 'Special Class of Religious Minorities' in above mentioned countries. This is not religion-based classification but 'minority-based classification' and such affirmative action is allowed and valid under Art 14, 21 and 25 of Indian constitution. In past too, India has given citizenship to Sri Lankan Tamils and Nepalese.

The pro-CAA people are of the view that the basis of 'arbitrariness' is not applied to parent legislation. Also, ordering addition of 'other than covered religious minorities' like Tamils, Ahmadiya etc. in CAA, 2019 doesn't come under the ambit of courts. Courts have to decide only whether the 'Class' created by the act is a reasonable classification or not and the answer is 'Yes, it's a reasonable, rational and just classification.

Objections raised against CAA, 2019

According to groups who have objected the implementation of CAA, 2019, the unity and integrity of the nation should not be seen in territorial language which is predominantly geographical but should be understood in terms of psycho-social integration of people. Fundamental rights to citizens should be pursued through moral and constitutional values and not just by pure collective policies. Justice is not merely a pragmatically pursued thing but is an essentially a morally justified concept. This shared morality will bring dignity and fraternity among Indians which is a superordinate goal of Welfare State like India. On this canvas, they see the un-equal treatment for illegal immigrants proposed under CAA, 2019 as unjustified. They are of the view that fraternity, one of the ideals in preamble, will be promoted only through keeping inherent dignity of illegal immigrants. Classification of illegal immigrants based on religion sacrifice this fraternity and violates the intrinsic connection between fraternity and secularism which is highlighted in S.R. Bommai case. It has quoted unequivocally, "India being a plural society with multi-religious faiths..., secularism is the bastion to build fraternity and amity with dignity of person as its constitutional policy." They emphasize that the insertion of 'religion' as a criterion for citizenship under CAA, 2019 will become void in India where 'secularism' comes under the 'basic structure' of the Indian Constitution according to the historical judgment by 13

judges-bench in *Kesavananda Bharati v/s State of Kerala case* in 1973, and therefore non-amenable. Universal Declaration of Human Rights (UNHR), 1948, which is signed by India as original party, too, has recognized inalienability and indivisibility of right for citizenship for any person by virtue his/her human nature.

The arbitrary introduction of 'religion' of neighboring migrants brings sympathies with certain religious group and antipathy with other religious groups/atheists. It also discriminates between these migrants in declaring some persecuted people to be preferred over others even if they are similarly persecuted. The irrational belief that followers of religions originated in India deserve superior rights, if perpetuated by law, may crush 'Idea of India' preached by preamble like justice (social, economic and political), liberty (of thought, belief, faith and worship) and equality (of status and opportunity). The logic that Muslim illegal migrants come under 'majority population' in Pakistan, Afghanistan and Bangladesh and therefore their harassment is the internal problem of Islam in those countries is haphazard one. These Muslims illegal migrants may not be accepted by these countries and even if they are living for decades in India, they will be sent to detention centers due to illegal tag. The cost of maintenance will be huge. The psychological effect of such exercise on the psyche of Indian Muslim population, which is country-wise the second largest population of Muslims in world and largest minority in India, may be disastrous. It has a potential to vertically divide the country and its progressive journey.

NOT JUST A PSYCHOSOCIAL INTERNAL AFFAIR BUT HAS A PROMINENT INTERNATIONAL ANGLE

India has given citizenship to lakhs of people from neighbouring countries like Nepal and Sri Lanka in past. It has done this exercise through proper international pacts such as Shastri – Bandarnike pact, 1964 (for Sri Lankan Tamils) and Indo-Nepal Friendship and Cooperation Treaty, 1950 (for Nepalese). In case of CAA, 2019, India has cited it as its internal issue. Though such stand has great appeal within India, convincing it internationally poses big challenge. India is emerging power in 21st century and its democratic and secular credentials have played a big role reaching there. Almost on all platforms whether political, economic, environmental, peace-making, technological etc., India has now visible footprints. It has also claimed a permanent seat in the most powerful United Nation Security Council (UNSC). India needs strategic and long-term vision to cater support of other nations for its growth in global order including Muslim dominated Arab countries. Various reports and statements from USA to European Union to United Nations have already echoed negative sentiments about CAA, 2019. It may provide an opportunity to Pakistan, Afghanistan to gain lost sympathy

again. Though past efforts of taking over Afghanistan's control by Taliban forces in 1990s were not much successful, due to change in contemporary global politics, it is witnessed that the major countries like China, Russia, Iran, Uzbekistan, and Turkmenistan apart from Pakistan have supported their recent regime of Afghanistan. India has registered serious concern over this development by calling it 'not inclusive' and 'done without negotiation' in a joint meeting of the Shanghai Cooperation Organization (SCO) and Russia-led Collective Security Treaty Organization (CSTO) at Dushanbe. Inadequate attention to these issues will prove costly.

WAY FORWARD FOR PRESERVING PSYCHOSOCIAL INTEGRITY OF INDIA

Helping on humanitarian ground to foreigners is indeed a welcome step but selective cherry-picking by making classification on the ground of religious majority-minority considerations in other countries seems narrow. It may make those happy who overtly or covertly want to teach lessons to the neighbouring countries having long history of using terrorism against India. Even if such suppressed and justified mass anger is understood, the validity of this law as 'JUST' should be judged by assessing its overall effect after taking many other aspects into consideration. Harmonious interpretation of such an important law instead of reading it in isolation is needed. The historical doctrine of 'Basic Features of Constitution' which included 'Secularism', has shown multi-religious, multi-caste, multi-linguistic and multi-culture India a progressive vision which should never be compromised by the legislative and executive powers. Preamble, which is considered as a guiding torch to interpret the Constitution when ambiguity arises, also speaks about Secularism of country. The possibility of allowing route to citizenship to all illegal migrants from these neighbouring countries irrespective of their religion and discarding the doubtful cases irrespective religions will be one of the wise ways to explore.

Further, clearing the doubts among citizens about linking CAA and National Register of Citizens (NRC) is necessary. Indian Union Muslim League (IUML) has opposed central government's recent notification in May, 2021, which has invited non-Muslims belonging to Afghanistan, Bangladesh and Pakistan who are residing in 13 districts of Gujarat, Rajasthan, Chhattisgarh, Haryana and Punjab to apply for Indian citizenship. According to center, it is a mere delegation of power vested with the Central Government to local authorities and was being used many times in past. No eligibility criteria for foreign nationals (citizenship by registration or naturalization) are relaxed for offering citizenship. It is thus not in any way related to section 6B which has been inserted in CAA, 2019. On the other hand, IUML strongly objected the classification of applications on

the basis of religion as illegal and unconstitutional. If citizenship for foreign non-Muslims is granted in this way and if apex court strikes down religion as criterion for citizenship as proposed in Citizenship Amendment Act, 2019, which is under judicial scrutiny, then, taking back the citizenship already granted through May 28, 2021 Order, would be a nearly impossible. Supreme Court has agreed to hear this complex issue too.

The projection of NRC as an exercise aimed at throwing out non-citizens after verification is more sensational than meritorious idea. To succeed, it requires confidence building measures and mass education as it involves potential life-threatening consequences for everyone. NRC is basically a process of reversing the burden of proof for citizenship on people who stay in India. The rural, tribal, slum, displaced and poor population are especially vulnerable population who will face difficulty in producing relevant documents due to legal illiteracy and/or ignorance. If they fail to provide necessary documents, they will be labeled as illegal migrants and suffer at the mercy of officers. Here again, only six minorities covered under CAA, 2019 (but not others) can get a chance to apply for citizenship for naturalization. Also, in an environment of religious polarization campaign through mass media, specific communities/groups especially those holding political views different from the views of ruling groups may suffer more in the hands of public officers having prejudiced minds. How will it benefit the IDEA of INDIA? The NRC exercise recently carried out in Assam has demonstrated such incidences where public servant who has received Presidential Award for service, the grandson of Ex. President of India, children of legal citizens are being excluded from the list. Such traumatic experiences make people from all communities doubtful and fearful. It creates questions not just about content but about 'INTENT' also. Government should take extra care and show deep sensitivity in this regard.

On international front the challenge is even more complex to sustain India's image as largest plural, secular and democratic country. Oversimplification of such complexity in the name of nationalism and labelling all voices different from firm support as anti-national will ultimately end in disaster. More accommodative, open minded approach by ruling authorities with proactive steps to reach out dissidents and opponents for constructive dialogue will help in this endeavor.

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