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CITIZENSHIP AMENDMENT ACT 2019 (CAA)

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ABSTRACT:

The union parliament has recently enacted the Citizenship (Amendment) Act, 2019 (CAA) which fundamentally discriminates and is mainly enacted to target the minority population of Muslims. The Citizenship Act, 1955 provided five different ways through which a person could acquire Indian citizenship which are: birth, descent, registration, naturalization and incorporation of some of the territories in India. CAA grants the citizenship rights to the minorities of the various neighbouring countries which is extremely shocking and violative of Article 14 of the Constitution of India. The defence taken by the government of reasonable classification is not tenable under the eyes of law. The CAA violates the preamble and various articles of the constitution, namely, article 15, 25, 29 and 30. Article 51C and 253 makes it necessary to respect the international law. This bill has changed the definition of illegal migrant. It is very controversial. It has led to numerous protests in the north eastern part of India.

Keywords: *Citizenship; Citizenship Amendment Act, 2016; Illegal migrants; Migrant Workers.*

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I. Introduction:

This was a bill that parliament of India passed on 11th December 2019². This new act was made by amending the old act of the citizen amendment act of 1955 which provided a clear way to the illegal migrants for Indian citizenship. The illegal migrants include the Hindu, Sikh, Buddhist, Parsi, Jain, and Christian minorities which come from Pakistan, Bangladesh, and Afghanistan before 2014 December.³ The Muslims who fled from these countries were not given any such status or eligibilities. This act was used as a basis for providing citizenship under Indian law.

The Bhartiya Janta party (BJP) had in the elections promised that they would provide citizenship to the minorities which came from the various neighbouring countries. In this Amendment Act of 2019, the people who came to India by 31st December 2014 were facing a lot of fear of being persecuted based on religion. This amendment even suppressed the residence requirement from twelve to six. According to the statistics of the intelligence bureau, from this Act, there will be only 30000 beneficiaries immediately.⁴

When this amendment was passed it got widely criticized because it was discriminating against the citizens based on their religion especially when they excluded the Muslims.⁵

The office of the United Nations High Commissioner for Human Rights (OHCHR) had described this Act as being fundamentally discriminatory. They further added that India should welcome the persecuted groups and should strengthen the national asylum system.⁶ With the help of the national register of citizens (NRC), the government wants to make the migrant Muslims stateless and disable them to meet the identity proof requirements of their place of birth. On the contrary, groups of Muslims such as the Hazaras and the Ahmadis have also faced persecution even in those countries.

² "MINISTRY OF HOME AFFAIRS NOTIFICATION S.O. 172(E)". The Gazette of India. 10 January 2020. Retrieved 10 January 2020

³Citizenship Amendment Bill: India's new 'anti-Muslim' law explained, BBC News, 11 December 2019

⁴Saha, Abhishek (20 January 2019). "Explained: Why Assam, Northeast are angry". Hindustan Times. Retrieved 11 December 2019

⁵"India passes controversial citizenship bill that excludes Muslims". CNN.

⁶ Spokesperson for the UN High Commissioner for Human Rights Archived 19 December 2019 at the Way back Machine, Jeremy Laurence, UNHCR, Geneva (13 December 2019)

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After this legislation was passed, a number of protests flooded the country. All the north-eastern states and especially Assam had caused many violent attacks protesting the Act because they were scared that if this Act grants Indian citizenship to the refugees then it will cause them to lose their political rights and land rights in the country and will cause further migration from Bangladesh. In other parts of India, it was criticized for being discriminatory against the Muslims of the country and they wanted that the Act should provide Indian citizenship to the Muslim immigrants and refugees as well.⁷

II. BACKGROUND:

When the Indian constitution came into force in 1950, it had guaranteed to provide citizenship to all the residents of the country and created no difference amongst religions. When the citizenship act was passed in 1955 it provided 2 mediums to acquire the citizenship of India to the foreigners. People of India were provided with registration after they have resided in India for 7 years, whereas people who were from different countries were provided with registration after 12 years of residency in India.⁸ When in the 1980s the political developments took place especially related to Assam movements, which were against the migrants from Bangladesh, it caused the enactment of the Citizenship Act of 1955. This act was first amended in 1985 when the accord of Assam was signed where the then Prime Minister Rajiv Gandhi decided to remove the foreign citizens from the electoral roles and wanted to remove them from the country.⁹

In 1992, 2003, 2005 and 2015 the Citizenship Act was further amended. The revision act added the notion of illegal immigrants which made them illegible in applying to the registration of citizenship. Their children were also declared to be illegal immigrants.

When the parliamentary debate took place, the leader Manmohan Singh stated that the minorities of Bangladesh and other countries had faced the persecution. He had even requested to grant citizenship more liberally.¹⁰¹¹

III. Immigrants and refugees:

⁷ ""Want Peace, Not Migrants": Thousands of Women Protest Citizenship Act Across Assam". NDTV.com.

⁸ "Why the Citizenship Amendment Bill Goes Against the Basic Tenets of the Constitution", EPW Engage, 53 (13), pp. 7–8

⁹ Universal's the Citizenship Act, 1955 (2004): See p. 15, clause 5 for "seven years"

¹⁰ Dual Citizenship Bill passed in Rajya Sabha, The Hindu, 19 December 2003.

¹¹ Neena Vyas, Anita Joshua, Dual citizenship Bill passed, The Hindu, 23 December 2003.

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There are large numbers of illegal immigrants who are especially from Bangladesh that live in India. The task force had quoted about 15 million illegal migrants in 2001. Then in 2004 the United Progressive Alliance (UPA) quoted that there were about 12 million Bangladeshi migrants in India which were illegal. There are various reasons for these migrations which include a border, the migration patterns of history and various ties of culture and language. Many of these illegal migrants had even received the right to vote. If we state the statistics then about 5000 refugees arrive in a year.¹² And an estimation of about 5-13 million Bangladeshi migrants has arrived in a decade.

India doesn't have any national policy on refugees. They all are classified as illegal migrants. Jawaharlal Nehru formulated this traditional method where India became the host to various refugees and asked them to return to their home countries after the situation in the country returns to normal. The US committee had stated that India is a host country with about 4,56,000 refugees and within which 2,00,000 are from non-neighbouring countries.¹³ The illegal migrants were given citizenship if they were non-Muslims only if they were refugees and the Muslims had to be deported.¹⁴

In the 2014 general elections, the leaders of BJP had promised that they would provide a natural home to the Hindu refugees. But one year before the Assam elections in 2016, the government of India legalized that the minorities from Pakistan and Bangladesh should be granted visas for long terms. They were exempted from the Passport Act, 1920 and the Foreigners Act, 1946.

A bill was introduced by the BJP government to amend the citizenship law in 2016, through this bill the non-Muslim migrants which were from Afghanistan, Pakistan and Bangladesh were made eligible for citizenship. When the bill was stalled in parliament, it caused a political opposition and protest in the north-eastern part of India.

The BJP government had formed National Register of Citizens (NRC) in Assam. This register was made public in 2019 in August in which approx. 1.9 million residents were listed. They feared that they would lose their citizenship. Bengali Hindus are the most affected as

¹² By Listing Religions, Modi's CAA Broke Atal-Manmohan-Left Concord on Persecuted Minorities, The Wire, 29 December 2019.

¹³ Why Pakistani Hindus leave their homes for India, BBC News, 28 October 2015

¹⁴ Ahmad, Nafees (12 September 2017). "The Status of Refugees in India". Fair Observer.

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they constituted the majority of the voter's base in BJP. Home minister Amit Shah on 19th November 2019 declared in Rajya Sabha that this national register of citizens should be implemented in the whole country.

IV. Legislative History:

This Act (then Bill) was first introduced by the BJP government to amend the citizenship laws in 2016. This Act makes non-Muslim migrants which were from Pakistan, Afghanistan, and Bangladesh eligible for receiving the Indian citizenship. This Act got passed in Lok Sabha but did not get passed in Rajya Sabha because huge protests were going on in north-eastern India.¹⁵

The BJP then decided to amend the citizenship act in 2019. In this, it was stated that the Hindu and Sikhs with minorities were persecuted in Muslim majority countries which were the neighbouring ones and they wanted to open a path for non-Muslim refugees' citizenship. After the BJP won its elections, they drafted a bill in which they expressed their concerns for the north-eastern states which excluded Mizoram, Arunachal Pradesh, Nagaland, Tripura, Manipur, and Meghalaya. It even excluded the various tribal areas in Assam. When the government proposed this bill, they wanted to give quicker access to citizenship to the people who were facing religious persecution in the neighbouring countries who have taken the refugee in India.¹⁶

In Lok Sabha, this bill was introduced on 19th July 2016 which was known as the citizenship amendment bill 2016. This bill was then referred to the joint parliamentary committee on 12th August 2016. Consequently, Lok Sabha passed it on 8th January 2019. Rajya Sabha did not pass it and kept it as pending. After sometime this bill lapsed after the 16th Lok Sabha got dissolved.

Then the 17th Lok Sabha was formed in which the union cabinet had cleared off the citizenship bill 2019 ("Controversial Citizenship (Amendment) Bill to Be Tabled in Lok Sabha on Monday, 8 Dec 2019). Then the bill was introduced by the minister of home affairs

¹⁵ The Gazette of India, Issue 553 of 2015 Archived 16 December 2019 at the Way back Machine, 8 September 2015.

¹⁶ "The Citizenship (Amendment) Bill, 2019. Highlights, Issues and Summary". *PRS Legislative Research*. 9 December 2019.

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Amit shah in the 17th Lok Sabha on 9th December 2019 and then it was passed on 10th December 2019. In this bill around 311 MPs voted in favour and 80 were against the bill.¹⁷

On 11th December 2019, the bill was then passed in Rajya Sabha which had 125 votes in their favour and 105 votes were against it. The parties that were in favour of the bill were AIADMK, TDP, YSR Congress party, Janata dal, Biju Janata dal.

On 12th December 2019, the President of India gave its assent and, on that day, onwards this bill became an act. It came on the force from 10th January 2020. When the Union Minister Mansukh Mahdavia had given citizenship certificates to seven refugees from Pakistan from that day the implementation of CAB was done which was on 20th December 2019.

The amendments: The Citizenship Act, 1955 was amended and was made into the Citizenship (Amendment) Act 2019. It inserted the following provisions in section 2 and subsection (1) after the clause (b).¹⁸

Any person who belongs to Hindu, Sikh, Buddhist, Jain, parse or Christian religions and who are from Afghanistan, Bangladesh or Pakistan and had entered inside the boundaries of India on or before the 31st of December 2014 and were exempted by the central government under the clause () of subsection (2) of section 3 of the passport act of 1920 or any provisions of Foreigners Act 1946, they shall not be treated as an illegal migrant according to this act.

V. Then a new section was inserted in the act which was section 6B which had four clauses:

1. The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions, and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalization to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

Analysis: The Citizenship Act of 1955 was amended by the bill to provide the eligibility to the illegal migrants to receive the Indian citizenship who are Hindus, Sikhs, Jains, parties, Buddhists, and Christians who belonged to Afghanistan, Bangladesh, and Pakistan who before 31st December 2014 had entered India. This Act did not mention anything for the

¹⁷ "Beyond the poll rhetoric of BJP's contentious Citizenship Amendment Bill". Observer Research Foundation.

¹⁸ "Citizenship Amendment Bill: 'Anti-Muslim' law challenged in India court". *BBC*. 12 December 2019.

Retrieved 16 December 2019.

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Muslims. As stated by the intelligence bureau the beneficiaries from this act would be around 31,313 people in total in which: 25,447 Hindus, 55 Christians, 5,807 Sikhs, 2 Buddhists, and 2 parties.

If there is a need for the naturalization of citizenship then there is a requirement that the citizen must be living in India in the last 12 months and for 11 of the previous 14 years. According to this Act that 11 years is now reduced to 5 years for the people who belonged to those six religions and the 3 countries. That bill had ignored the tribal areas such as Assam, Meghalaya, and Tripura. It even excluded the areas that belonged to the inner line permit which are Arunachala Pradesh, Mizoram, and Nagaland.

Muslims belonging to Pakistan, Bangladesh, and Afghanistan did not become eligible for citizenship according to the new act. Various critics had questioned their exclusion. According to the study of the economist, they stated that if the Indian government was worried about the persecutions of the religion then they would have included the Ahmadiyya's and the Hazaras. They should have been treated like a minority. The Minister of Minority Affairs of India Mukhtar Abbas Naqvi had defended the exclusion of these Ahmadiyya's and said that India did not consider them as the non-Muslims. In 1970, a landmark judgment was passed in Kerala high court which stated that Ahmadiyya's should be included in the Muslims.¹⁹

Pakistan, Afghanistan, and Bangladesh have declared themselves in their constitutions to have Islam as their official state religion.²⁰ So, the Muslims in those countries need not face any religious persecution. The Muslims should not be treated as any persecuted minority in these three states because they are the Muslim majority countries. According to the study of BBC, these countries consist of a provision in their constitutions that non-Muslims have the freedom to the rights such as freedom to practice their religion, during this many non-Muslims have faced a lot of discrimination and persecution.²¹

VI. Exclusion of other persecuted communities:

¹⁹ "Citizenship Amendment Bill has public endorsement, was part of manifesto: Amit Shah". India Today

²⁰ "India's Parliament passes contentious citizenship bill excluding Muslims". *The Japan Times Online*. 12 December 2019. ISSN 0447-5763

²¹ "Is India's claim about minorities true?". 12 December 2019

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The migrants which are from non-Muslim countries are not included in this act. These Muslims are the Rohingya Muslim from Myanmar, Hindu refugees from Sri Lanka and the Buddhist refugees which are from Tibet and China.²²²³

VII. Relationship to NRC:

The 2003 amendment act had mandated the registry of all the citizens in the national register of citizens. In January 2020 it was only mandatory for Assam. The NRC documents were necessary to be shown by the citizens and the people who were left were called as illegal migrants. In Assam, many people were considered as illegal migrants because they consisted of insufficient documents.

The amendment of the act provides a shield to the non-Muslim's because they can claim that they are the migrants from Afghanistan, Pakistan, and Bangladesh whereas Muslims do not have such benefits. These claims can only be made by people who have some resemblance with the people of Pakistan, Bangladesh or Afghanistan. Various Muslim leaders have interpreted the CAA-NRC package as the Muslims in the country would only be targeted to be the foreigners and they left out all the non-Muslims.

Protests: when the citizenship act came into force it caused many types of protests and various criticisms. There were many protests which were violent and came up in Assam where the protesters claimed that the new act that came up was against the agreement which was done prior known as the Assam accord and because of which there will be lost in the political rights and the culture. Many countries like UK, USA, France, Canada, etc had spread warnings for their people who were traveling to India's north-eastern region to take cautious steps.

Then in the other parts of India, many students protested that Muslim refugees and the migrants who were In India should be granted Indian citizenship.

Students who belonged to universities such as Jamia milia Islamic, Nadwi College, Aligarh Muslim University, IIT Kanpur, IISC, etc had done protests against the act. There were more than around 25 students who joined the protests and they were from all over India. Then on 15th December police had entered the campus of Jamia milia Islamic forcefully and started to

²²Suryanarayana, V.; Ramaseshan, Geeta (25 August 2016). "Citizenship without bias". The Hindu.

²³ "Plea to Render Justice for Malaiha (Hill Country) Tamil Refugees from Sri Lanka – OpEd"

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detain the students. The police had opened tear gas and batons on the students. In this process more than hundreds of students were injured and detained. The act of police was highly criticized and had caused protests in the entire country²⁴.

The Muslims from all over India had done protests against the CAA –NRC. On 15th December 2019, the Muslim women had come on the streets of Shaheen Bagh to start their protests which were peaceful. They had blocked the major highway of Shaheen Bagh in New Delhi. The protests took place for 51 days which was till 5th February 2020. Then protests took place in the north-eastern Delhi riots which took place on 24th February in which 7 were killed and more than hundreds were injured. In this scenario, the death toll of the people rose to 42 in 36 hours in which around 250 people got injured.²⁵

VIII. Indian government response: the CAA protesters had raised their concerns on the

CAA- NRC in which the government had decided to downplay the NRC in which both PM Narendra Modi and Home Minister Amit Shah decided that there should be no talk related to the pan Indian NRC from now on and neither will the legal department nor the cabinet minister will discuss it²⁶.

Due to this violence and the damage which was caused to the public property on 19th December, the police had to ban the protests which were taking place in the country and had imposed section 144 of Criminal Procedure Code which banned the gathering of more than 4 people together in a public space²⁷. In various parts of Delhi, the internet services were also banned and various protesters were detained.²⁸

Rallies in support: Various student groups were formed which held rallies in the support of this citizenship act. These rallies in support were headed by the BJP leaders in the West Bengal which the state government had later banned. The Bengal Chief Minister Mamata Banerjee's party was also accused that she was misinforming the residents about the new law. The social democratic party of India was paid around Rs 10,000 to attack the leaders who were supporting the CAA in Bengaluru.

²⁴ *India citizenship law protests spread across campuses*

²⁵ "CAA protest LIVE: 18 Delhi metro stations shut; protestors defy Section 144". *Business Standard*.

²⁶ "India PM plea for calm as citizenship unrest rages"

²⁷ "India police ban protests against citizenship law"

²⁸ BHU Students hold rally in support of CAA and NRC, United News of India

Refugees: The Hindu refugees living in Assam, who were denied Indian citizenship claimed that this act had given them hope. When the protests were taking place and the act was on the verge of cancellation, it made them think in fear about their future. Around 600 refugees who were living in New Delhi which were from Pakistan were celebrating this new law.

The Afghanistan Sikh refugees even thanked the Indian government for the amendment of this act. They said that this amendment would allow them to gain Indian citizenship.²⁹

There were some of the Rohingya Muslim refugees who were staying in India they had feared that they could have been deported back. Both other parts of the Rohingya Muslims were thankful to have been allowed to stay in India and they had not made any comments related to the act. They were asked by the police not to protest against this act.

In Punjab, around 200 families had arrived with all of their belongings after this law got enacted.³⁰

Political and legal challenge: The Indian National Congress had opposed the bill which would create lots of tensions between the communities. States such as Madhya Pradesh, West Bengal, Chhattisgarh, Kerala, Rajasthan, Puducherry all were led by non-BJP governments so they all denied implementing this law.³¹ The union home ministry stated that the state lacked the legal power of stopping the implementation of this act. The legislation said that the legislation was enacted under the 7th schedule of the constitution³². On 21st December mode said that they only had a plan to implement this law in Assam and not to implement this in the whole of India.³³

In the supreme court of India, a petition was filed by the Indian Union Muslim league for declaring the bill to be illegal. In the supreme court, about 60 petitions were filed to challenge

²⁹ "Protest in Delhi Today: People gather at Delhi's Central Park, raise slogans in support of CAA". *The Times of India*. 20 December 2019.

³⁰ "National Sikh Front backs Citizenship Act". *Outlook India*

³¹ Varma, Anuja and Gyan (14 December 2019). "President gives assent to CAB, 5 states refuse to implement it". *livemint.com*

³² "1,000 academics come out in support of CAA". *The Times of India*. 22 December 2019.

³³ "'Anti-Muslim' citizenship law challenged in India court". *BBC*. 12 December 2019. Retrieved 17 December 2019

the act. In the first hearing, the court had cancelled the implementation of the act. A new date was given for the hearing.³⁴

IX. CONCLUSION:

I would like to conclude my article by saying that it is the government's responsibility as they are the representatives of the public to look after the interest of the citizens of the country and to protect them if they face any internal or external threat. If we look at the granting of citizenship to illegal migrants from Afghanistan, Pakistan and Bangladesh then it should not only be based on the religion because then it will cause a lot of discrimination in the country and would violate the constitution and even the accord of Assam which was signed in 1985. Citizenship should only be granted to those people who have proper legal documents with them and if they do not possess then they should be deported from whichever religion they belong. The countries like Afghanistan, Pakistan and Bangladesh due to being religiously persecuted they have made them as an Islamic country. This Act has provided the benefit to the non-Muslims that if they reside in the country for continuous six years then they would be granted with the Indian citizenship.

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