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## **CITIZENSHIP AMENDMENT ACT- LEGAL ISSUES AND STATUS OF JUDICIAL PROCEEDINGS**

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### **ABSTRACT**

*This Article is all about how the Citizenship Amendment Act had an impact in India. The Citizenship Amendment Act (CAA) is an Indian law passed in December 2019. It offers citizenship to persecuted minorities from neighboring countries like Afghanistan, Pakistan, and Bangladesh, who entered India before December 31, 2014. However, it excludes Muslims, sparking controversy and protests across India. Critics argue it undermines India's secular principles and discriminates against Muslims, while supporters claim it protects persecuted minorities.*

*The Citizenship Amendment Act (CAA) is a law enacted by the Indian government in December 2019. It amends the Citizenship Act of 1955 to grant Indian citizenship to certain religious minorities from three neighboring countries: Afghanistan, Pakistan, and Bangladesh. Specifically, the CAA offers a fast-track route to citizenship for Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians who entered India illegally or overstayed their visas before December 31, 2014, and haven been persecuted. The key controversy surrounding the CAA revolves around its exclusion of Muslims from the list of eligible religious minorities. Critics argue that this selective approach violates the secular principles enshrined in the Indian Constitution and discriminates against Muslims, the largest religious minority in India. They see the law as part of a broader agenda by the ruling Bharatiya Janata Party (BJP) to marginalize Muslims and transform India into a Hindu-majority nation. Opponents also fear that the CAA, when combined with other proposed measures like the National Register of Citizens (NRC) and the National Population Register (NPR), could be used to target and marginalize Muslims by questioning their citizenship status. This fear has led to widespread protests across India, with demonstrations erupting in major cities and universities since the passage of the CAA.*

**KEYWORDS:** *Persecution, refugees, religious discrimination, human rights.*

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## **INTRODUCTION**

The president of India gave its assent to the Citizenship Amendment Bill on 19<sup>th</sup> of December 2019. The implementation of this act begins on the 11<sup>th</sup> of March 2024 and is applicable within the territory of India. It's not the first time that this Act got amended, earlier around nine times CAA was amended. This Act outlines the ways in which a person can acquire Indian citizenship, with the most common method being naturalization. To be eligible for naturalization, a person must have resided in India for one year prior to the date of application and for an aggregate of eleven years over the previous fourteen years. The Amended Act brought a drastic change, specifically for people from Pakistan, Bangladesh, and Afghanistan who are Hindu, Parsi, Christian, Sikh, Buddhist, and Jain, and who are non-Muslim. This law allows them to acquire citizenship in India if they have been residing in India prior to 31<sup>st</sup> December 2014 then instead of the aggregate of eleven years they can acquire citizenship in just six years.

The Universal Declaration of Human Rights, adopted in the year 1948, is the first document that talks about human rights. Article 14 of the UDHR says about freedom from discrimination, which means no person shall be discriminated against on the grounds of sex, race, color, language, religion, political or another opinion, national or social background association with minority group economic status, birth, or other status.

Therefore, if an individual has been persecuted on religious grounds and fled to neighboring countries to seek asylum. Persecution refers to the systematic misstatement or operations of individual or groups based on their beliefs, race, religion, ethnicity, or other identical characteristic. It often involves harassment discrimination violence or deprivation of rights aimed at intimating or controlling the target individuals or groups. Asylum refers to the

protection granted by a country to an individual who has fled their own country due to fear of persecution violence or danger. It is a legal status that allows these individuals known as refugees or asylum seekers to reside in the host country and to be protected from being returned to their home country where they may have faced harm. Asylum is typically granted to those who can demonstrate a well-founded fear of persecution.

Similarly, the two terms immigrant and illegal immigrants differ in the way that an immigrant is someone who legally moves to a country not his own with the intention of residing there permanently or for an extended period. Whereas, an illegal immigrant is someone who enters, resides, or works in a country without proper authorization as per the said country's law. They do not have legal permission to be in the country, and their presence may violate immigration regulations.

## **LEGAL CHALLENGES FACED BY THE CITIZENSHIP AMENDMENT ACT**

The implementation of the Citizenship Amendment Act has had a drastic impact on the citizens of India. However, Immensely disquieting, is that even though the Act faces legal challenges, the government has chosen to go ahead with the rules. Shiromani Gurdwara Parbandhak Committee and several refugees welcomed this Amended Act. On the other hand, the Indian Union Muslim League has filed a petition in the honorary Supreme Court for the prohibition of the Citizenship Amendment Act 2019 and Citizenship Amendment Rules 2024. The Indian Constitution, 1950 part II, specifically deals with the aspect related to citizenship in India. Part II provides such provisions about which people shall be citizens of India after the partition of 1947 and even what conditions are to be followed by an individual who is seeking citizenship in India after the independence. Several people are protesting against the Act, claiming that it violates Article 14<sup>1</sup> of the Indian Constitution by discriminating based on caste, creed, and religion. In *Ramesh Prasad v. State of Bihar*<sup>2</sup>, it is observed that the aim of both concepts of 'equality before the law' and 'equal protection before the law' is to give equal justice. The Act aims to provide citizenship to individuals who have arrived in India on or before December 31st, 2014. It has been stated that CAA is unconstitutional as it provides citizenship for a specified class of people specifically Excluding non-Muslims from Pakistan Afghanistan and Bangladesh, It particularly focuses on the point that Muslims are not part of India and it is contrary as such it will affect the citizenship of the Muslim community in India.

It is argued that the Citizenship Amendment Act (CAA) does not violate Article 14 of the Indian Constitution, as it explicitly mentions an exception based on a Reasonable Classification. India is a secular country, but as observed in *S.R. Bommai v. Union of India*<sup>3</sup>, secularism is not an anti-god but a belief to stay in a free society. Some state governments

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<sup>1</sup> Right to Equality- "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*".

<sup>2</sup> 1978 AIR 327; 1978 SCC (1) 37

<sup>3</sup> 1994 AIR 1918; 1994 SSC(3); )

have voiced their opposition to the CAA and have indicated their unwillingness to implement it, leading to a complex legal and constitutional situation.

The provisions related to citizenship in India under the Indian Constitution 1950 have been placed under the Union list and so the central government has exclusive jurisdiction to amend or to make new laws related to citizenship. This is the reason why the parliament of India in 1955 made a specific Act related to citizenship namely Citizenship Act, 1955. With time, amendments were made to the Act for the welfare of the nation.

## **IMPACT OF THE CITIZENSHIP AMENDMENT ACT IN INDIA**

Additionally, six out of four religions have their origins in India: Hinduism, Buddhism, Jainism, and Sikhism. Therefore, it is India's primary duty to provide citizenship to religions that have originated in India. Though India has not abandoned Muslims from getting citizenship in India and regarding the citizenship of Indian Muslims, the Amended Act won't affect them, as certain active examples such as Pakistani Ahmadiyas or Rohingyas from Myanmar and Bangladesh, who have been staying in India as a refugee can also seek citizenship in India subject to terms and conditions. Keeping in mind that India has neither been a signatory nor ratified any convention related to the refugees, yet the said state provides shelter to the people who are prosecuted and fled to India. It has clearly stated that this Amended Act specifically focuses on those who have fled to India on the grounds of religious persecution and as such no provision says about snatching of citizenship in the said Act. The reason behind excluding Muslims from Pakistan, Afghanistan, and Bangladesh is that these states have already declared themselves as Islamic states and there is no question regarding the discrimination of Muslims on the ground of religion. As to excluding Jews, they too have their own declared state, which is Iran. After the implementation of this Act Jharkhand government officially welcomed CAA, stating that India cannot be a country of orphans that allows anyone to come or leave as per their wishes, Rather it will provide identity to such individuals who have been persecuted. Previously, individuals had to wait for eleven years to acquire Indian citizenship. This rule still applies, but according to the Amendment Act, individuals who are Hindu, Buddhist, Jain, Sikh, Parsi, Christian, and have been persecuted on religious grounds in India no longer need to wait for eleven years. They can now acquire citizenship within six years from the date they start residing in India and can acquire all the rights as a citizen of India including the right to vote.

In 2019, Sayukt Sansatiya Samitti's in their report has given the information that till 31<sup>st</sup> December 2014 around 31,313 non-Muslim minorities from Pakistan, Bangladesh, and Afghanistan have entered into India. The Matua Belts refugees in Bengal around 3-4 crores can also acquire citizenship rights through this Amended Act. According to a report by Saayukt Sansatiya Samitti in 2019, it was found that until December 31<sup>st</sup> 2014, around 31,313 non-Muslim minorities from Pakistan, Bangladesh, and Afghanistan had entered India. Through the Amended Act refugees in Matua Belts of Bengal, numbering around three to four crores can also obtain citizenship rights.

One of the fundamental arguments of Senior Adv. Harish Salve (Supreme Court Lawyer) is as follows, "*There is absolutely no question of discrimination, and does the government of*

*the date have the right to determine the national policy of the State? or is every policy of the national government going to be questioned? The decision on who to bring in or allow the citizenship of India is a policy decision of India, which cannot be taken away by the government from anyone. It is as fundamental as saying that the elected government of India has the right to decide the foreign policy of the country”.*

## **STATUS OF JUDICIAL PROCEEDINGS**

Following the enactment of the Amendment in 2019, over 200 petitions were filed in the Hon'ble Supreme Court. Former Chief Justice U.U. Lalit presided over the first hearing regarding the CAA in the Supreme Court. During the hearing, it was decided that a decision on the matter of CAA would not be made until the central government's side was heard. Later the government of India filed an affidavit in the Supreme Court, stating CAA to be part of law. The very first case related to the Citizenship Amendment Act which was created a controversy that brought concern about police violence at the campuses of Aligarh Muslim University and Jamia Milia Islamia University. The incident happened on 30<sup>th</sup> January 2020, when an individual shot one of the Anti-CAA protesters in Jamia Milia Islamia giving a peak to a demonstration in India. A large number of cases of violence between the police and the protesters were seen. Several petitions regarding Violence at the campus were filed in the Hon' Supreme Court. The Bench of Chief Justice S.A. Bobde and Justices B.R. Gavai and Surya Kant were, however, reluctant to hear the matter and opined that the appropriate forum for the pleas would be their jurisdictional High Courts.

The Kerala government has filed a petition in the Supreme Court challenging the implementation of the Citizenship Amendment Act, becoming the first state to do so. On 15<sup>th</sup> March 2024, the Honourable Supreme Court agreed to hear the plea for a stay of the Citizenship Amendment Act, which rules on 19<sup>th</sup> March 2024.

## **IMPLEMENTATION OF THE CITIZENSHIP AMENDMENT ACT IN INDIA**

The government of India has announced the rules for eligible individuals to acquire citizenship in India. These rules specify the necessary documents required for the citizenship application process. The government has decided to make the entire process virtual. Individuals seeking citizenship will have to mention the year of their arrival in India, along with they have to prove that they are residents of Pakistan Afghanistan, or Bangladesh. For this purpose government of India has made nine types of documents as valid documents for such purpose. A committee has been set up to give the citizenship and this committee includes the Census Director, Intelligence Bureau (IB), Foreign Regional Registration Office, Post Office, and State Information Officer.

## **COMPLEXITY OF CAA**

Two types of arguments are to be seen regarding the opposition of CAA. In the first argument, the Northeastern states, including Assam showed a concern that CAA will lead to an increase in migrant numbers, potentially harming cultural and linguistic diversity. The All

Assam Students Union (AASU) and thirty indigenous organizations protested against the Citizenship Amendment Act by burning copies of the law in various parts of Assam, including Guwahati, Barpeta, Lakhimpur, Nalbari, Dibrugarh, and Tezpur. The Chief Advisor of AASU, Samujjal Bhattacharya said, they will continue their non-violent, peaceful, democratic movements against CAA'. Other opponents of CAA argue that it discriminates against Muslim refugees by excluding them and pointing to the Muslim community. The opponents stated that CAA is a divisive thought and based on Godse's thought they wanted to reduce Muslims to second-class citizens. If the only point is to provide citizenship to these six specified religions from only three neighboring countries, then why Myanmar has not been included, as the majority of Buddhists are persecuted in Myanmar?

Whereas, the Central Government, on this view, stated that, through CAA, it seeks to provide relief to persecuted minority communities in Bangladesh, Pakistan, and Afghanistan. The Muslim community in India is not in the minority, but in the majority and this is the reason why they have been excluded.

## **CONCLUSION**

The conclusion to the Citizenship Amendment Act (CAA) is multifaceted and subject to ongoing debate and legal challenges. From a legislative standpoint, the CAA remains in effect, providing a path to Indian citizenship for certain persecuted minorities from neighboring countries. However, it continues to spark controversy regarding its perceived discriminatory nature and its implications for India's secular identity and constitutional principles. The resolution of these issues will likely involve continued legal scrutiny, public discourse, and potential amendments to the law.

Additionally, the implementation of the CAA could influence India's relationships with its neighboring countries and impact regional dynamics, particularly regarding migration and refugee policies. Furthermore, the social and political ramifications of the CAA remain significant, shaping narratives around identity, inclusion, and citizenship within Indian society. Continued dialogue and engagement will be essential in addressing the complexities and challenges associated with the CAA.

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