

THE CAA, 2019 AND ITS IMPLICATIONS FOR ALL OF US

The Citizenship Act of 1955 (CA, 1955) provided the definitions and interpretation of acquisition of citizenship. This Act was amended through the Citizenship Amendment Bill (CAB). On 12th December 2019, the CAB became an Act when the President gave his approval. This Act is now called the Citizenship Amendment Act, 2019 (CAA, 2019).

I. WHAT ARE THE AMENDMENTS ABOUT?

The amendments brought some changes to the CA, 1955. Broadly the amendments are as follows:

Amendment in Section 2 (1) (b) of the CA, 1955

The Act of 1955 provided that “Illegal Migrant” means a foreigner who has entered into India- (i) without a valid passport or other travel documents, or (ii) with a valid passport or other travel documents but remains therein beyond the permitted period of time.

Through CAA, 2019 now it has been added that person belonging to Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community from Afghanistan, Bangladesh, or Pakistan, who entered into India on or before the 31st day of December, 2014, shall not be treated as illegal migrant, except in few cases.¹

2. In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, 57 of 1955. in sub-section (1), in clause (b), the following proviso shall be inserted, namely:—

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the 34 of 1920. Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as 31 of 1946. illegal migrant for the purposes of this Act;"

Amendment in Third Schedule of CA, 1955

The Third Schedule of CA, 1955 talks about the qualifications for Naturalization. Among these, one of the important qualifications, (d), is that during the 14 years immediately preceding the period of 12 months when applied for citizenship, she has either resided in India or been in the service of a Government in India, for period of not less than 11 years.

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6. In the Third Schedule to the principal Act, in clause (d), the following proviso shall be inserted, namely:— Amendment of Third Schedule.

'Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years".'. .

This qualification of Naturalization has been modified. Now a provision has been added- it says that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community in Afghanistan, Bangladesh, or Pakistan, the aggregate period of residence or service shall be 5 years instead of 11 years. This means such people of specified religion from three specified countries shall be able to get Citizenship Registration if they spend 5 years in India, during last 14 years.

¹ Cases where they violated The Passport (Entry into India) Act, 1920 or Foreigners Act, 1946 or any order under these Acts

Amendment in Section 7D of CA, 1955

Section 7D of the Act of 1955 which is about citizens of India who are from overseas has also been amended. While other conditions regarding the cancellation of their OCI Card remain as it is, one more condition has been added. It says that OCI Card can be cancelled on the ground that he has violated any provisions of this Act or of any other law.

II. CAA, 2019 & NRC

CAA, 2019 is an amendment in the CA, 1955. An Act provides a set of rights and their terms and conditions. Generally, an Act comes with a set of Rules. “Rules” is a separate document and mostly provide for procedure and implementation of the concerned Act. “Rules” provide for procedure only and cannot grant or take away anything, which has been provided by the concerned Act.

Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 have been notified by the government and will come into force after publication in Official Gazette. These Rules provide for the process and machinery of National Register of Indian Citizens, generally known as NRC. NRC is a tool/procedure to implement the Citizenship Act, 1955. NRC is an official record of those who are legal Indian citizens. After amendments in Citizenship Act, 1955 these rules will be implemented with these changes.

G.S.R.937(E).- In exercise of the powers conferred by sub-sections (1) and (3) of section 18 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement. – (1) These rules may be called the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

(2) They shall come into force on the date of their publication in the Official Gazette.

NRC in Assam- The register was first prepared after the 1951 Census of India and since then it has not been updated until recently, except for the state of Assam. Assam was specifically chosen to keep its ‘ethnic uniqueness unaltered’. In 2015, NRC updating process was initiated, in accordance with CA, 1955 and Rules of 2003, and the updated final NRC was released on 31st August 2019. During this process, over **1.9 million applicants failed to make it to the NRC list**. After protests of the exclusion of many people from the list, the Home Ministry declared that the NRC will be carried out again in Assam.

III. ANALYSIS

The stand of the Government on CAA, 2019 is that the amendment is to provide protection to religious minorities (namely Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community) from Afghanistan, Bangladesh, or Pakistan. It says that reasonable classification is permitted under Article 14.

The ‘Statement of Objects and Reasons’ of the Act states that the mentioned countries have a religion of their own which have resulted in religious persecution of minority groups. However, it does not clarify the reasonableness of its classification. The objective also does not clearly mention the reasons behind the exclusion of Muslims. This shows that the classification of illegal migrants is on the basis of their religion, place of residence, country of origin, and date of entry. Let’s check the instance of Government on two grounds- reasonable classification under Article 14 and secular principle of State policy.

1. Reasonable Classification under Article 14 Article 14 forbids class legislation but does not forbid reasonable classification. Supreme Court has provided and used the test of reasonable classification. A classification to be reasonable must always be based on real and substantial distinction. It must have a just and reasonable link to the objective to be achieved. So, we need to check the CAA, 2019 on these two tests.

Firstly, real and substantial distinction– It means that the classification must not be arbitrary, it should be based on intelligible classification which distinguishes persons or things that are grouped together from other left out of the group. CAA, 2019 has grouped together religions or we can say excluded one religion, and also grouped together three countries. Criteria for selection of religion and countries are not clear, whether it is persecution of minorities in other countries (then why only these three countries?) or is it these three countries where persecution is happening (why mention the specific religions then?).

Secondly, just and reasonable link to the objective– This means that the basis of classification and the objective to be achieved should have a rationale link. The distinction, which is the basis of classification and the object of the Act, are two different things. It is necessary to have a reasonable link between these two. When this link is not there then such classification is discriminatory. The object of the CA, 1955 is to “provide for acquisition and determination of Indian Citizenship”. CAA, 2019 is about protecting religious minorities in three Islamic countries. No reasonable link can be established between the objective of the Act and the basis of classification as given in CAA, 2019.

2. Secular Principle of State Policy- India is a secular country and its policies need to be secular in nature. CAA, 2019 looks at the religion of a person while deciding whether they can be considered a ‘legal migrant’ or not and then be given Indian citizenship. Connection of citizenship with religion is violation of secularism- a basic principle of the Constitution.

The questions before us are

1. Can these be termed as reasonable rationale and within the ambit of Article 14?
2. Can India, which is a secular country, grant or not grant citizenship to an illegal migrant on religious grounds?
3. Is it about rights of a group of people only or it is also about upholding the spirit of the Constitution?

IV. IMPLICATIONS

The implications of CAA, 2019 on various constituents are as follows:

1. Illegal Immigrants The CA, 1955 prohibits illegal immigrants to take up citizenship, but the CAA, 2019 allows the people from the six religions to take up citizenship even if they are illegal immigrants from the mentioned three countries. Those who are not covered by CAA, 2019 will continue to be termed as “illegal migrant”. According to the CA, 1955, citizenship could be claimed through the process of naturalization if the “illegal migrant” has lived and contributed for 11 years or more. However, the rule stands changed under the CAA, 2019 for the criteria has been reduced to 5 years.

2. **Assam** From 1979 to 1985 Assam witnessed the Assam Andolan nicknamed as the anti-foreigners' movement. Assam Accord was the outcome of this protest. It was to protect ethnic uniqueness of Assam, by detection of foreigners and their deportation through practical means. NRC process was initiated, and register was prepared in August 2019, the purpose was to identify and deport the illegitimate citizens. In Assam, through this process 19,06,657 people were identified as illegal immigrants. After CAA, 2019 Hindu, Sikh, Buddhist, Jain, Parsi, or Christian communities from Afghanistan, Bangladesh, or Pakistan will get the citizenship through naturalization, while others have to prove that either they, or their ancestors were in Assam on or before 24th March 1971. This amendment violates the Assam Accord, which aimed at ensuring protection of political, social, economic, and cultural identity of the citizens of Assam, and maintaining their 'unadulterated ethnic uniqueness'.

3. **Existing Citizens** The implication of the CAA, 2019 for existing citizens will arise when the implementation of the Act will happen, through the Rules providing the NRC. Like in Assam, all citizens will have to provide documents to prove their citizenship and get registered. Many citizens will have these documents. But there are large number of citizens- largely poor and marginalised- who may not have the required documents, or have lost their documents, or have incorrect documents. The question is- will they be termed as 'illegal immigrants'? If yes, then under CAA, 2019, eventually Hindu, Sikh, Buddhist, Jain, Parsi, or Christian citizens will get their citizenship, but Muslims will not get it. So, the CAA, 2019 may not currently discriminate against Muslim citizens in principle but may discriminate against them in procedure.

4. **OCI Cardholders** Adding the condition through CAA, 2019 that violation of ANY law may result in cancellation of OCI card, is a harsh law, that may result in arbitrary exercise of power on OCI cardholders.

References:

The Citizenship Act, 1955

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Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003

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The Citizenship (Amendment) Act, 2019

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