

CITIZENSHIP AMENDMENT ACT

The CAA was passed by parliament on December 11. According to the CAA, members of Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities who have come from Pakistan, Bangladesh and Afghanistan till December 31, 2014 facing religious persecution there, will not be treated as illegal immigrants but given Indian citizenship¹.

The current amendment is the 9th amendment following Citizenship (Amendment) Acts of 1957, 1986, 1992, 2003, 2005, and 2015. This Act amends the part in citizenship act which deals with citizenship through naturalization. The amendments are the culmination of the measures taken in September 2015 and July 2016 where the central government exempted certain groups of illegal migrants from being imprisoned or deported. These entail the persecuted religious minorities (which include Hindu, Sikh, Buddhist, Jain, Parsi and Christian religious communities) of Afghanistan, Pakistan and Bangladesh which came to India on or before 31st December 2014. The Act provides an umbrella categorization of these people, so that they can be allowed Indian citizenship with ease and for this specified class of illegal migrants, the number of years of residency has been relaxed from 11 years to 5 years. However, it does not take away other's right to apply and acquire Indian citizenship who are not mentioned in this act; be it from the above-mentioned geographies or other regions from applying for citizenship. (throughout 12 months preceding the date of application and 11 years in the aggregate).

The act has clear provisions which define the areas and regions in which the new citizenship acts will not be applicable and thus three regions will be kept out of the law's purview. These are:

- (i) The tribal areas of Assam, Meghalaya, Mizoram, and Tripura, as included in the Sixth Schedule to the Constitution, and
- (ii) The states regulated by the "Inner Line" permit under the Bengal Eastern Frontier Regulations 1873. These Sixth Schedule tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.

¹<http://ddnews.gov.in/national/citizenship-amendment-act-2019-comes-force>

- (iii) The Inner Line Permit regulates visit of all persons, including Indian citizens, to Arunachal Pradesh, Mizoram, and Nagaland.

Morality of the Act

Morality of this act can only be based on the rationality of the objectives prescribed and that can only be seconded with the reality of the people and region in consideration. The morality of the act can be justified by the following-

Nehru Liaqat Pact

It becomes important to lay bare the pact as it has been the moral compass for the C.A.A 19. This pact was signed at the aftermath of the massive communal rioting which ensued as part of the direct-action plan and then partition. As per some estimates around a million Hindus and Muslims migrated to and from East Pakistan amid communal tensions and riots such as the 1950 East Pakistan riots and the Noakhali riots. The above-mentioned situation was the catalyst for signing the pact.

“The Governments of India and Pakistan solemnly agree that each shall ensure, to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality. Members of the minorities shall have equal opportunity with members of the majority community to participate in the public life of their country, to hold political or other office, and to serve in their country’s civil and armed forces. Both Governments declare these rights to be fundamental and undertake to enforce them effectively. The Prime Minister of India has drawn attention to the fact that these rights are guaranteed to all minorities in India by its Constitution. The Prime Minister of Pakistan has pointed out that similar provision exists in the Objectives Resolution adopted by the Constituent Assembly of Pakistan. It is the policy of both Governments that the enjoyment of these democratic rights shall be assured to all their nationals without distinction. Both Governments wish to emphasise that the allegiance and loyalty of the minorities is to the State of which they are

citizens, and that it is to the Government of their own State that they should look for the redress of their grievances.” - Nehru Liaquat Pact, 1950².

Statement of objects and reasons³

1. It is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries. Some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents.

3. Before the recent amendment of the Act, migrants from Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Pakistan or Bangladesh who entered into India without valid travel documents or if the validity of their documents has expired are regarded as illegal migrants and ineligible to apply for Indian citizenship under section 5 or section 6 of the Act.

4. The Central Government exempted the said migrants from the adverse penal consequences of the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946 and rules or orders made thereunder *vide* notifications, dated 07.09.2015 and dated 18.07.2016. Subsequently, the Central Government also made them eligible for long term visa to stay in India, *vide*, orders dated 08.01.2016 and 14.09.2016. Now, through this amendment the said migrants are eligible for Indian Citizenship.

5. The Bill further seeks to protect the constitutional guarantee given to indigenous populations of North Eastern States covered under the Sixth Schedule to the Constitution and the statutory protection given to areas covered under “The Inner Line” system of the Bengal Eastern Frontier Regulation, 1873.

² White Paper on CAB, Dr. SPM Research Foundation

³ legislative.gov.in

Why only Afghanistan, Pakistan and Bangladesh?

The characterization of the state with respect to the Act is important as the object of the Act is in very much relation to the type of state these three define themselves to be. The Pakistan and Afghanistan are by definition Islamic Republics. However, the state of Bangladesh or as it is called Gana Prajatantri Bangladesh is a unitary multiparty democracy. In spite of that because it has a state religion i.e. Islam, thus, it is bound to have differentiation among the people based on religion. When one state defines its official state religion, at that very moment it is not a secular country.

The government has included only the three countries of Afghanistan, Bangladesh and Pakistan which have Islam as the state religion. While Bangladesh and Pakistan were part of undivided India, the reason for inclusion of Afghanistan as per the Joint Committee report is because of ‘multiple attacks against Indian interests in Afghanistan by the Pakistan establishment sponsored LET, Haqqani Network and Taliban.’ The Ministry of Home Affairs also claimed that a number of people had come to India from Afghanistan following religious persecution or fear of religious persecution.

The status and condition of religious minorities in Pakistan, Bangladesh and Afghanistan is well known. The number of Hindus and Sikhs in these countries has declined steeply over the years. Even today, we have instances in Pakistan of Sikh girls being abducted, forcibly married and converted to Islam. Many Sikhs moved out of Afghanistan during Taliban rule. A significant number of Hindus have migrated from Bangladesh to India before 1971 and afterwards, even if Sheikh Hasina’s government today is protective of minorities.⁴

Exclusion of Rohingyas, Ahmadis, Sri Lankan Tamils Etc.

The ‘secular’ argument has been carried to an absurd length in demanding that even persecuted Muslims in Islamic and other countries such as the Ahmadis and Rohingyas should be eligible for Indian citizenship.

Shias and Ahmadiyyas do not follow a different religion than Islam. The persecution is not due to religious difference rather, its sectarian. The Ahmadiyyas and Shias who are in Pakistan today, all of them were involved in the Direct Action of Jinnah. Ahmadi leaders even made a militant organisation named ‘Ahmadi Militia’. Some are also arguing that the

⁴https://russiancouncil.ru/en/analytics-and-comments/columns/asian-kaleidoscope/fears-over-the-citizenship-amendment-act-are-unfounded/?sphrase_id=34047144

Muslims who went to Pakistan are also being treated as second class citizens and tagged as 'Mohajirs'. They argue that the bill should have considered their cases too. But all of those who are giving these arguments are not mentioning that behind Pakistan the major supporting factor was Direct Action which resulted in murder, gang rape and mutilation of millions of Hindus, led by these same Ahmadiyas.

The exclusion of Muslims is not an act of Islamophobia. Muslims in Bangladesh, Afghanistan and Pakistan are the majority community in these nations and the CAA is meant for only minorities facing religious persecution in these nations. In any case, there are 50 Muslim majority nations globally, of which 45 have officially declared themselves as Islamic Republics. Muslims, including Ahmadiyas and Bahais, can find shelter in any of these 50 Muslim centric nations but a persecuted Hindu for instance has no country to turn to. Hence those protesting against CAA are exhibiting Hinduphobia. Being pro-Hindus or pro-Buddhists does not make CAA anti-Muslims.

The Rohingyas have entered India illegally but no Ahmadi has fled Pakistan for safety in India. Rohingyas are not a religious but an ethnic group. Myanmar considers them to be Bangladeshi immigrants. Bangladesh's prime minister, Sheikh Hasina, herself considers the Rohingya refugees as a threat to her country and the region. India must not interfere in arguments between Myanmar and Bangladesh over the origins of Rohingyas.

In addition to this, there have been multiple reports by intelligence agencies of exploitation of Rohingya radicalism by Pakistan's Inter-Services Intelligence. India has the right to ensure the security of its own people and since the Rohingya groups (including the Hindu Rohingyas) are a threat to the national security, they have not been given any blanket benefit for citizenship

As far as Sri Lankan Tamils are concerned, The act takes into account only religious persecution and not ethnic persecution. The Tamils were ethnically persecuted.

Similarly, 4.61 lakh Tamils of Indian origin were given Indian citizenship during the years 1964-2008 after signing of international agreements in 1964 and 1974 between the two countries. Presently, about 95 thousand Sri Lankan refugees are living in Tamil Nadu. They are being given rations, doles and other facilities by Government of India and Government of

Tamil Nadu. They can apply for Indian citizenship as and when they become eligible to do so⁵.

During 1962-78 more than two lakh Burmese of Indian origin fled from Burma after many trades and businesses were nationalized there and properties of such Indians were forcibly taken by the State. They were settled in various parts of India⁶.

However, Union Finance Minister Nirmala Sitharaman on Sunday (19 January) said that there will be process to give citizenship to 95,000 Sri Lankan Tamilian refugees, despite that fact that it has not been part of the Citizenship Amendment Act (CAA), 2019. She said that in the last six years, 2,838 Pakistan nationals, 912 Afghan refugees and 172 Bangladeshi refugees were given Indian citizenship including Muslims and data will prove that the allegations against the CAA are false⁷.

Does this mean that Muslims from Pakistan, Bangladesh, and Afghanistan can never get Indian citizenship?

No, the present legal process of acquiring Indian citizenship by any foreigner of any category through Naturalization (Section 6 of the Citizenship Act) or through Registration (Section 5 of the Act) stays operational. The CAA does not amend or alter it in any manner whatsoever. Hundreds of Muslims migrating from these three countries have been granted Indian citizenship during the last few years. If found eligible, all such future migrants shall also get Indian citizenship, irrespective of their numbers or religion. In 2014, after the settlement of Indo-Bangladesh boundary issues, 14,864 Bangladeshi citizens were given Indian Citizenship when their enclaves were incorporated into the territory of India. Thousands of these foreigners were Muslims.

Constitutional validity of the act

The legality of this particular amendment can only be speculated as the Supreme Court is yet to pass its judgement on the petitions. So, as one should leaving emotive issues behind, we will go article by article. Taking into cognizance all the articles that are perceived to be in contradiction to the amendment, those are article 14, 15 and 21.

⁵ <https://cab.getfacts.in/>

⁶ *ibid*

⁷ https://www.business-standard.com/article/current-affairs/there-will-be-process-to-give-citizenship-to-sri-lankan-tamil-refugees-fm-120011900335_1.html

As per article 14, the amendment and thus the act is violating right to equality by denying equality to citizenship before law. Here, the court may look for intelligible differentia and rational nexus. As we can observe that reasonable classification has an object to be achieved (i.e. to deal with the discrimination of minorities in 3 neighboring countries). “The object is not illegal which is why the amendment does not violate article 14” - Harish Salve. That is to say that it comes under reasonable classification.

It is also said that the bill does not stand the test of article 15. For it asks for prohibition on grounds of caste, religion, race, sex and place of birth. The bill is believed to be in disjunction with article 15. However, as it is clear that the article 15 comes into picture only if you are a citizen and thus the claim stands invalidated.

It is also stated that as the bill deprives the Muslim immigrants of right to life and personal liberty and thus stands in contradiction to article 21. However, if we look at it from the constitutional point of view, the citizenship bill of 1955 has deprived all immigrants from their right to life and personal liberty, as it prevents them from entering India, so the amendment is not taking away any right of immigrants as they did not exist in the past, but, is opening a way to selectively give these rights of minorities in the three neighboring countries.(As Harish Salve has reiterated many a times)

Lastly, it is mentioned that the bill (now Act) compromises the basic structure of the constitution. This is a point where there can be difference of opinions as it depends on from which perspective you are viewing the amendment. The basic structure of the constitution is the child of judiciary, as it was introduced as a measure of maintaining a status-quo legislative in their never-ending tug of war for power. So, the best people to judge whether the bill is in line with the basic structure of the constitution or not is the judiciary.

What is the evidence that the government will require in order establishing whether or not the migrant has been religiously persecuted?

The Government is yet to notify the rules under the CAA which will answer these questions.

However, during the Joint Committee’s discussion, MHA stated that inputs from security agencies and evidences in print and electronic media will be used for establishing religious persecution. How will this be proved in every individual case remains unanswered.

2.13 Asked to state the mechanism available with the Government to establish religious persecution in a foreign land, the MHA responded as under:

"Inputs from security agencies alongwith other corroborative evidence in the print/electronic media would help to establish religious persecution in a foreign land."

What will happen to those who entered India after 2015?

As per the act, they will have to apply for Long Term Visas and follow the criteria as listed in the citizenship act. No consideration will be given to them as of now.

What will happen to the illegal migrants under this law?

The CAA does not deal with actions taken against illegal migrants. The Passport (Entry into India) Act, 1920 and Foreigners Act, 1946 govern entry and exit of foreigners. It is based on these laws that detention and deportation of illegal immigrants takes place.

How many people are likely to apply for naturalization under CAA?

With the cut-off date set at December 31 2014, the number of people who will benefit from the amendments stands at 31,313, a figure submitted by the IB during a parliamentary committee hearing on the bill in 2016.

“As per our records, there are 31,313 persons belonging to minority communities (Hindus- 25447, Sikhs – 5807, Christians – 55, Buddhists – 2 and Parsis – 2) who have been given long term visa on the basis of their claim of religious persecution in their respective countries and want Indian Citizenship. Hence, these persons will be immediate beneficiaries.”

How is the National Register of Citizens (NRC) linked to the Citizenship Act?

The National Register of Citizens is an exercise that will enlist all Indians citizens on a ‘national register’ by vetting their documentation. The NRC does not exclude any Muslim who is a genuine Indian citizen.

The NRC, which identified illegal immigrants from Assam, had been a long-standing demand in Assam. After the updated final NRC in Assam was released on August 31 2019, it excluded the names of over 19 lakh applicants, including Hindus. Hence the malicious NRC, which shall be extended to the rest of the country, does not discriminate based on religion, so Muslims have nothing to fear. Every sane country in the world has a national register of its citizens and India is no exception. Opposition parties like the Congress have amnesia and conveniently forgotten that the Assam accord inked by Rajiv Gandhi in 1985, provided for NRC exercise in Assam, to check illegal migrants and infiltrators.

Congress-led central governments also made suitable insertions in the Citizenship Act thereafter by way of Clause 14A in 2004, relating to issue of national identity cards to all citizens of India and later Schedule 4A in 2009, was also added.

Hence fanning violence now, by spreading falsehoods regarding the NRC and CAA, to further the Congress brand of divisive politics, simply because it has been electorally vanquished by the electorate, is not justified.