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Constitutionality Of The Citizenship Amendment Act, 2019 and Why It Was Essential

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Introduction

At the time of Partition, it had been declared that it is Pakistan which is being carved out from India on the basis of a specific religion. Our leaders in position to take call on this issue agreed to divide India surrendering themselves to the politics of threat and coercion of Muslim League and more specifically fearing from the direct action of hardliner Islamic clergy. They had agreed to divide India to make the remaining India more secure and unified, which they thought was impossible while keeping Muslim majority areas and Muslim League ministers with undivided India. On this premise decision makers of Congress at that time had accepted the inevitability of Partition by December 1946. Sardar Patel was also convinced that if India was to remain united it must be divided. Nehru was also eventually convinced that Partition was a necessary evil in order to neutralise Jinnah's nuisance value and to establish a strong and centralised Indian state which would not have been possible with Muslim League ministries in office in undivided Punjab and Bengal.[1] So, they had certain apprehensions regarding certain groups and their demands in free India, which might had jeopardized India's safety and future.

However, unlike Pakistan our leaders had agreed that India is not being carved out from British India on the basis of religion of its majority, i.e. Hindus. They had considered India as the successor of British India and Pakistan being separated from it on the basis of religion for those who thought their fate was only secured in a Muslim Nation. Antithesis to the two nation theory of Muslim League, India proudly remained a secular nation and a successor of British India, a home to all the residents living in this part of India. Though, Prime Minister of Pakistan had also promised India and the religious minorities left in Pakistan that their safety and concern would be duly taken care of in Pakistan hence there was no need for India to worry about them and requested its minorities to not leave Pakistan. On the very same premise India had also sealed its citizenship issue that after the commencement of the Constitution that India will not give any special preference for granting Indian citizenship to the non-Muslims left in the Pakistan. However if we see the speeches and debates during partition amidst the demand of complete exchange of population, we find even Congress leadership was skeptical about the promise made by Pakistan to provide safety to the non-Muslims left there. In this backdrop on

1. https://www.thehindu.com/opinion/op-ed/gandhi-opposed-partition/article25570495.ece

25th November, 1947, the Congress Working Committee met and passed a resolution urging citizenship for the non-Muslim refugees of Pakistan: "The Congress is bound to afford full protection for all those non-Muslims from Pakistan who have crossed the border and come over to India, or may do so, to save their life and honour". Because of this specific fear our Constitutional framers had thought it proper to leave it for the Parliament to decide upon the Citizenship issue in future under Article 11 of the Constitution of India.

The suspicion of Dr. Syama Prasad Mookerjee and some prominent leaders of Congress came true. The newly created Muslim majority Pakistan started persecuting its non-Muslim population who stayed there on the basis of the promise made to them after partition through Nehru-Liaquat Pact, 1950. Since then, to protect their life and dignity these poor, underprivileged and victimized minorities of Pakistan, present day Bangladesh and Afghanistan[2] these minorities were forced to take shelter in India due to their continuous persecution in their own country, whereby their lands have been grabbed and their life and dignity have been put to great peril.

Now a legal question arises, in case of failure of Nehru-Liaquat Pact, 1950, which is evident from the sharp decline of the population of the minorities, who will be held accountable for it? Who will take the burden of these persecuted minorities? If India had declared itself the successor of British India and remained a secular country, a country without any state religion, then the non-Muslim minority population left in Pakistan should look towards whom in case of their forced expulsion or ethnic cleansing? Is it not a moral and legal responsibility of India to grant citizenship to this specific class of migrants, who are staying here for decades without any rights, like we all have? Why should only the non-Muslims of Pakistan and Bangladesh pay the price of necessary evil as accepted by the then Congress leadership to keep India safe and united?

Today, with this historic amendment in the Citizenship Act, we have rectified another historic wrong. We have truly proved that it was Pakistan which was carved out after partition following two nation theory and resultantly failed. Granting citizenship to non-Muslims living in India without any citizenship rights cannot be termed as unconstitutional, especially when an affirmative action has been taken by the state to give benefits for a certain class, to those who were forced to leave their own country in the wake of continuous religious

2. The case of Afghanistan is also similar as of Pakistan, in terms of persecution of its religious minorities and after its freedom from British Empire in 1919. Afghanistan is included in this Act because for the minorities left in Afghanistan was also facing the same trouble and settled in India for decades. Durand Line for Afghani non-Muslim communities had created the same trouble for them as Redcliff line has done for the non-Muslim communities left in Pakistan.

persecution for taking shelter in India, in quest of finding their natural home, petitioning India to full fill her promise made to them during Partition. Certain beneficial legislations need not benefit all; sometimes it is better to target a specific class to provide better result. Like public employment and education is an equal requirement for all sections of the society but our legal system provides preferential treatment to those who are weak and marginalized. Similarly, any challenge to the CAA, 2019 on the ground that why it excludes Muslims is bound to fail. It nowhere excludes Muslims but only provides preferential treatment and special measures for giving citizenship to the specific class of illegal migrants belonging to non-Muslim community living in India for very long.

This report will analyze the constitutionality of the CAA, 2019 in the wake of allegations made by some sections of the society that this amendment is targeted against the Muslims. There are more than sixty Writ Petitions that have been filed before the Hon'ble Supreme Court assailing the Constitutionality of the impugned Act.

This report will also try to analyze the historical context under which this Act has been amended. Thereafter, this report will try to establish the factum of persecution in the three Muslim majority neighboring countries by specific reference to demography, petition before the International Community by these persecuted class, individual incidents and media reports from these countries. We will further analyze the problem being faced by the targeted community under the amendment Act. Therefore, it will establish the 'harm' or nuisance being committed in our neighborhood which this Act tries to address. At the lastly this report will analyze various rulings of the Hon'ble Supreme Court on citizenship and Article 14 of the Constitution, about when a legislation can be called a class legislation and when it is valid if classification is based on intelligible differentia with an object to achieve the purpose of the Act having reasonable nexus with the group or class so created through intelligible differentia.

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Historical Context Of The Citizenship Amendment Act, 2019:

Whether Religious Minorities In Pakistan, Bangladesh And Afghanistan On Migration To India Can Claim Indian Citizenship?[4]

Justice M.N.Rao

It is universally recognized that depending upon the faith they espouse, people all over the world are either united or divided. In the recent times, religion in our country has become an important topic of public discussion both in political and academic circles. As this paper deals with Citizenship – the legal bond between a State and the individual - and the rights of the religious minorities of Pakistan, Bangladesh and Afghanistan, necessarily the events that happened since the partition of the undivided India into India and Pakistan, the establishment of Bangladesh and the enthronement of religious bigotry in Afghanistan and the rights of non-Muslims who migrated to this country from those countries necessarily need discussion.

The sub-continent of India prior to 1947, when it was not partitioned, was a harmonious multi-ethnic and multi religious nation State. As the freedom struggle for the country's independence with the participation of all people (Hindus, Muslims, Christians, Parsis and Sikhs) in full measure was about to yield results, the Indian Muslim League headed by Mohd. Ali Jinnah, its leader, demanded a separate home land for Muslims on the ground that they constitute a separate nation. He insisted upon the British handing over power only to a divided India. Jinnah's religious fanaticism had no place for compassion for the Muslims he would be leaving behind

3. This Paper was originally presented at the Justice Alladi Kuppuswami Centenary Seminar on "The Habitations of the Indian Constitution" held on 26th and 27th September, 2019 at Hyderabad. The present article is an edited version by the authors of this report

in India after the State of Pakistan was formed.

M.C.Chagla, former Chief Justice of the Bombay High Court and a former Union Minister, who was Jinnah's junior in the legal profession, asked him as to what would happen to the Muslims left out after the State of Pakistan was formed. Jinnah's reply was: "They will look after themselves. I am not interested in their fate." The All India Muslim League Legislators Convention on 9th April, 1946 in its resolution declared:

".....This convention further emphatically declares that any attempt to impose a constitution of a United India or to force any interim arrangement at the Centre contrary to the Muslim League demand will leave the Muslims no alternative but to resist such imposition by all possible means for their survival and national existence.

The resolution declares that Muslims are a separate nation and they will never remain part of India and they will never submit to any Constitution for united India and that a separate Muslim State – Pakistan – should be established."

(B.Shiva Rao – The Framing of India's Constitution: A Study and Select Documents Vol.1 pp.193-194)

PAKISTAN:

With the announcement of partition of the sub-continent into two independent States - Pakistan and India - communal riots broke out in different areas of both the countries. The partition holocaust had resulted in the extinction of over a million people and uprooting of several millions from their homes. (Madhav Godbole: The Holocaust of Indian Partition: An Inquest. P.30.)

The situation had resulted in the migration of a large number of Muslims from India to Pakistan and maximum number of Hindus and Sikhs from Pakistan to India. Even so, large number of Sikhs and Hindus from Pakistan could not migrate to India. On the other hand, Muslims overwhelmingly opted to stay back in India. But the minorities in both the countries were apprehensive about their safety and well-being. In order to find a solution, the Prime Ministers of the two countries – Pandit Jawaharlal Nehru and Liaquat Ali Khan - met at Delhi on 2 April, 1950. An agreement was signed by both the Prime Ministers concerning the rights of the minorities. This agreement came to be known as Liaquat-Nehru Pact. The important features of the Pact relate to ensuring the security of life and properties of the minorities in both the countries and guaranteeing full fundamental human rights like freedom of movement, thought, expression and freedom to practice religion of their choice. The Pact envisaged setting up of minorities Commissions to oversee

the implementation of the Pact. But subsequent events belied the hope held out by the Pact.

According to the 1941 census, the percentage of Hindus in the areas which eventually formed part of Pakistan was 19.52% and Muslims constituted 72.45%. After the partition, Pakistan successfully got rid of its Hindu minority almost totally. According to Pakistan Census of 1951, in West Pakistan, the non-Muslims were just 2.9% whereas Muslims constituted 97.1%. Before the partition, the population of Muslims in the undivided India was roughly 150 million and at the time of partition, 35 million Muslims remained in India but the rest found themselves in the new State of Pakistan. After the migration of Muslims from India to Pakistan, the percentage of Muslims in India (after partition) came to 9% whereas in the undivided India, the figure was 25%. (Madhav Godbole: The Holocaust of Indian Partition: An Inquest. P.207).

After Bangladesh was formed, the population figures of Pakistan as per 1998 census are as follows:

Muslims - 96.28%

Hindus - 1.6%

Christians - 1.59%

(The Times of India – August 20, 2012 – p.20)

BANGLADESH:

After the State of Bangladesh was formed by successfully waging a war of independence in 1971, the population of Hindus was about 20% but the figure came down to 9.2% by 2011. Although the 1972 Constitution of Bangladesh proclaimed that it was a secular State, its complexion was totally changed in 1977 when Islam was proclaimed as the State religion and secularism was replaced by an absolute faith and trust in Almighty Allah. In Pakistan, the State religion is Islam and there are a very few non-Muslim minorities. Blasphemy is a grave crime carrying the penalty of death.

AFGHANISTAN:

Afghanistan was a kingdom ruled by kings from 1930s to 1970s. Before that British Empire had snapped its tie with Afghanistan in 1919. Afghanistan had been released from the protectorate of British Indian Empire as a result of Third Anglo-Afghan War in the treaty of Rawalpindi and through reaffirmation of Durand Line by Afghan leaders; Afghanistan got its complete sovereignty.

A communist Government as a result of coup came to power and it was supported by the Soviet Union. In 1989, the Soviet Union withdrew under international pressure and also the gorilla activities of anti-communist mujahideen rebels. In 1996 it came under the control of hardcore fundamentalist and Islamic radicals going by the name Taliban to whom Pakistan extended full support. In 2004, Hamid Karzai became the democratically elected President of Afghanistan. Since then a truncated form of a democratic set up has been in existence in Afghanistan.

99% of the Afghanistan's population practice and profess Islam. There are no official figures about the actual population of minorities like Hindus and Sikhs. A rough estimate of their number in 2006 was 900. But due to migration, the number has dwindled. They are under great pressure to convert into Islam by the radical sections of Muslims. Afghanistan's Constitution of the year 2004 does not contain any positive provisions guaranteeing freedom of religion or belief for minorities. Blasphemy laws are in force and allegations of apostasy entail harsh punishment including death.

INDIA:

As per the 2001 India Census, Hindus constituted 80.5%, Muslims 13.4%, Sikhs 1.91%, Buddhists 0.8%, Jains 0.4% and others 0.6%. In 1961, the Hindu population was 83.5% and Muslims 10.7%. The rise in the Muslim population "is a consequence of the higher than average growth among Muslims". Another reason was illegal migration of Muslims from Bangladesh."

The principle of non-discrimination strictly applies in all its rigor to both minority and majority in India. Article 14 of the Indian Constitution, which enshrines non-discrimination clause applies equally to all citizens. The minorities are further given protection with regard to their religious and linguistic rights. Articles 29 and 30 protect the language, script and culture of linguistic and religious minorities. Their right to establish and administer educational institutions is guaranteed by Article 30. The minorities enjoy higher rights under the Constitution than what are allowed to the majority. Secularism being one of the basic features of the Indian Constitution, breach of the same invalidates not only the acts of the State but also the enactments made by Union Parliament breaching secularism. In Pakistan, the State religion being Islam, anything done by the non-Muslims touching even remotely any perceptions about Islam is visited with lethal punishments – for blasphemy, death is the penalty. Even unintended comments couched in dignified language raising reasonable doubts about any aspect of the State religion is dubbed as blasphemy.

Islam believes in proselytization. As the State of Pakistan itself was formed on the basis of religion claiming that Muslims constitute a separate nation, the non-Muslims had no security. The presumption is legitimate, reasonable and well justified. When partition talks were going on, doubts were expressed as to the safety of minorities in Pakistan. Even Dr.B.R.Ambedkar questioned whether Hindus and Muslims could live together in a common motherland. According to Dr.B.R.Ambedkar, Muslims' demand for Pakistan is based on sentiment and assertion that they constitute a separate nation. How communal problem surfaces was described by Dr.Ambedkar:

"Whenever a hostile majority is brought face to face against a hostile minority, communal problem surfaces."

On the question of difficulties in redrawing the boundaries of the two countries, Dr.B.R.Ambedkar very pragmatically suggested transfer of population. Such transfer should not be by force but should be left open for those who declare their intention to transfer. This was opposed by national leaders especially Pandit Jawaharlal Nehru. It was felt that the presence of minorities in both the countries – India and Pakistan – itself would act as a counter balancing factor to achieve social stability. Sadly, the subsequent events that happened in Pakistan belied this hope as already mentioned above. Numbers of minorities have been dwindled by acts of repression, persecution on religious grounds, forcible conversions and slapping of criminal cases resulting in lethal punishments.

Large scale human rights violations in Pakistan, Bangladesh and Afghanistan had resulted in the minorities fleeing to India. The international community has taken notice of it. Intolerance of the State had resulted in subjecting the minorities to brutal harassment with a view to forcibly converting them into Islam or driving them away from the country. One of the notable features in this regard was absence of law relating to registration of marriages of minorities. This has facilitated the religious bigots - going by the name 'Islamists' – in kidnapping the Hindu women and marrying them to Muslims and later on when complaints were made by the Hindus, the abductors insisting upon proof that the women were married to Hindus. Hindu temples were destroyed on a large scale. There is abundant material evidence to establish that large number of places of religious worship of Hindus and Christians were destroyed. The Human Rights Commission of Pakistan headed by Asma Jahangir had recorded that people continue to disappear and religious minorities – Hindus, Christians and Sikhs – were facing violent attacks.

Empirical evidence in a large measure is available unerringly pointing out the atrocities committed upon minorities in Pakistan and Bangladesh. A brief survey from what I have collected from the internet will put the problem in perspective.

The U.S. Commission on International Religious Freedom in its annual report in 2012 has designated Pakistan as a country of particular concern since 2002 and its blasphemy laws target the members of the religious minority community members result in imprisonment for longer periods and also death in some cases. Women and girls were abducted, raped and forcibly converted to Islam. The clergy also supports such heinous acts. The police force and local authorities are heavy biased in favour of the Muslim majority. A survey conducted by the All Pakistan Hindu Religious Movement revealed that out 428 Hindu Temples in Pakistan, only around 20 survive today and they remain neglected. In the 1990s, nearly 1000 Hindu temples were destroyed. How the administration openly supports the superiority of Islam is evident from the statement of Khwaja Nazimuddin, the second Prime Minister of Pakistan:

"I do not agree that religion is a private affair of the individual nor do I agree that in an Islamic State, every citizen has identical rights, no matter what his caste, creed or faith be."

Islamic fundamentalists in 2011 killed hundreds of minorities and women while the Government remained a silent spectator. The massacre that took place in 2010 in Lahore evoked response from the U.N. Secretary General Ban Ki-Moon:

"Members of this religious community have faced continuous threats, discrimination and violent attacks in Pakistan. There is a real risk that similar violence might happen again unless advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is adequately addressed. The Government must take every step to ensure the security of members of all religious minorities and their places of worship so as to prevent any recurrence of today's dreadful incident."

The Karachi newspaper "Dawn" severely criticized and condemned the violence perpetrated against the minorities:

"Religious minorities in Pakistan have not only been shunted to the margins of society but also face outright persecution on a regular basis."

On March 15, 2014 a crowd of Muslims burnt a Hindu temple and a dharmashala in Larkana, Sindh, Pakistan, after unverified allegations of a Hindu youth desecrating a copy of the Quran. Wealthy Muslim farmers see Hindu girls as fair game for abductions, rape and prolonged sexual exploitation in captivity. The European Parliament had cited a report from the Movement for Solidarity and Peace that **annually about one thousand non-Muslim girls are converted to Islam.** According to Pakistan Hindu Council, religious persecution especially forced conversions remains the foremost reason for migration of Hindus from Pakistan.

It was estimated that 5000 Hindus migrate from Pakistan to India every year in order to escape religious persecution. Government officials openly cooperate with the perpetrators for bringing about conversions.

In perpetrating atrocities over religious minorities, Bangladesh is not lagging behind Pakistan. According to Minority Rights Group International (MRGI), since 2013, the country has been hit by series of incidents targeting religious minorities by militant groups some of which claim affiliation to Al Qaeda. Although the Government has condemned these attacks, they could not prevent or bring to justice the offenders. The MRGI Director has stated:

"The variety of abuses they experience from forced abductions, sexual assault to land grabbing and arson have occurred with the complicity of law enforcing agencies and the judiciary. The security forces were contributing their share in the decimation of religious minorities."

In June 2016, 15,000 people belonging to minorities were arrested. Hindu shrines, temples and homes were attacked in 2016 on Diwali Festival. The steps taken by the Government in half hearted measure obviously have not yielded any results.

Socially ostracized Sikhs in Afghanistan, whose number was very limited, became victims of economic and social discrimination and their right to practice religion has been curtailed almost totally. In Kabul, at one time, there were 8 Sikh places of worship (Gurudwaras) but today, only one remains.

The trust and confidence the Indian national leaders had while finalizing the partition details regarding the safety of minorities in Pakistan was totally belied deliberately both by Pakistan and Bangladesh resulting in large exodus of minorities to India. There is no mechanism by which the safety of minorities in Pakistan and Bangladesh could be ensured. The international covenants the safety of minorities whenever they flee the country, according them the status of refugees, also to a large extent proved ineffective as they lacked enforcement machinery.

International Law apart from dealing with relations between the States inter se, also takes care of the interests of the individuals. Destruction of people because of ethnic, racial or religious factors constitutes genocide and this was recognized by the convention on the Prevention and Punishment of Crime of Genocide in 1948. The Universal Declaration of Human Rights by Article 14 recognizes the right of every individual to seek and enjoy in other countries asylum from persecution and by Article 15, the right to nationality. The U.N. Convention Relating to the Status of Refugees, 1951 defines the word "refugee" and the definition contains five grounds of persecution viz., i) race, ii) religion, iii) nationality, iv) membership of a particular

group and v) political opinion. Those subjected to persecution on the basis of any of the above five grounds are eligible to seek refugee status. The Convention confers several rights on refugees which, inter alia, include freedom of religion, non-discrimination, right to employment and also obligation of asylum giving States for assimilation and naturalization of refugees. The U.N Sub-Committee on Prevention of Discrimination and Protection of Minorities has defined minority as "a group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State endowed with ethnic religious or linguistic characteristics which differ from those of the majority of the population, having same solidarity with one another, motivated if only implicitly, by a collective will to survive and whose aim it is to achieve equality with the majority in fact and in law."

The U.N. Human Rights Commission in 1946 approved the definition of 'minority' as those "non-dominant groups in a population which possess a wish to preserve stable ethnic, religious and linguistic traditions or characteristics markedly different from those of the rest of the population".

The Convention of 1951 has not been ratified by India although 145 member countries of the United Nations are signatories to the Convention. To the extent I could verify, no precise reasons were available why the Government of India chose not to ratify the Convention. What appears to be plain is that India as a sovereign State has preserved its right to grant refugee status and also right of asylum keeping in view the broad principles of the U.N. Charter and also the Universal Declaration on Human Rights (Article 14). The asylum given to Dalai Lama and his followers is a classic example. The obligation of India with regard to treatment of refugees, although it has not ratified the 1951 Convention, emanates from the binding nature of the International Covenant on Civil and Political Rights, 1966 especially Article 27 which is adverted to in the succeeding paragraphs that it has the status of a home State.

Part II of the Constitution of India in its entirety comprising Articles 5 to 11 deals with "citizenship". Who are the persons entitled for citizenship, the rights of citizenship of certain persons who have migrated from Pakistan to India and India to Pakistan and the rights of citizenship of certain persons of Indian origin residing outside India, voluntary acquisition of citizenship of a foreign State by an Indian, continuance of rights of citizenship are dealt by Articles 5 to 10. Article 11 confers power on Parliament to regulate the right of citizenship by law. The legislative entry dealing with citizenship, naturalization and aliens is entry 17 of List I of the Seventh Schedule to the Constitution.

In exercise of the power under Article 11 read with Entry 17 of List I, the Union

Parliament enacted the Citizenship Act, 1955. The said Act has been amended four times and I feel it not necessary to refer to them. The Act defines who is an illegal immigrant and states how citizenship is acquired by birth, descent, by registration and by naturalization (Sections 2 to 6). Section 6-A contains special provisions as to acquisition of citizenship covered by the Assam Accord. Now, newly incorporated Section 6-B through the amendment Act of 2019 provides procedure for registration of a class of non-Muslim migrants from these three countries, who were illegal migrants earlier before this amendment and who entered India before 31st December 2014 and living here because of the exemption given to them earlier under the Passports Act and Foreigners Act, as defined in the Clause 2 of the amending Act. Registration of overseas citizens of India, confirmation of rights to the extent to which the rights are conferred on such overseas citizens of India, cancellation of their citizenship rights, renunciation, termination of citizenship, deprivation of citizenship and also power of Central Government to compulsorily register every citizen of India are also comprehended under the said Act.

In this paper, what is relevant is the attempt made by the Union of India in the year 2019 to further amend the Citizenship Act, 1955 through the Citizenship Amendment Bill – Bill No.172 CF 2016. The Citizenship Act, 1955 by Section 2(1) (b) defines an "illegal immigrant" as a foreigner who entered into India without a valid passport or other prescribed travel documents or who entered India with the prescribed documents but remained beyond the permitted period. The proposed amendment sought to insert a proviso to this, the effect of which is that persons belonging to minority communities viz., Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who have been exempted from the operation of the Rules under the Passport (Entry into India) Act, 1920 will not be treated as illegal immigrants. The amendment also further proposes that with effect from the coming into force of the amendment, all proceedings pending against such persons shall abate and they become eligible to apply for naturalization (for obtaining citizenship) under Section 6B of the Citizenship Act. The period of residence for such persons to apply for naturalization is reduced to five + one years instead of the originally prescribed period of eleven years. In other words, persons of the above category who have been staying in India for not less than five years become eligible to apply for naturalization in order to become citizens of India.

What is worthy of consideration is whether the amendment is justified on legal and other grounds? At the time of partition, the one safeguard considered to be an effective one was the presence of minorities in India, Bangladesh and Pakistan, which would act as a balancing factor ensuring their stability and wellbeing. This safeguard was destroyed by the unilateral action of Pakistan and Bangladesh.

State aided actions, legislative discrimination, encouragement of lawless elements to attack places of religious worship belonging to minorities, forcible kidnapping of women belonging to minorities, slapping of criminal cases with blasphemy charges resulting in very harsh punishments including death penalty compelled the minorities to renounce their religion and convert into Islam. The minorities had no alternative except fleeing the country in order to safeguard their honour, their faith and their lives and liberties.

Because of the partition, religious minorities suddenly found themselves in different hostile surroundings, a situation brought about not by their volition but by the division of the country for which they were in no way responsible. Change of sovereignty over their territory resulted in change in their status; they became second class citizens and victims of religious persecution. Statistics depicting the dismal picture of the human rights violations suffered by the minorities leave one in no doubt that Pakistan and Bangladesh had failed in their responsibility to protect the minorities. Although Pakistan is a party to the International Covenant on Civil and Political Rights, 1966 which prohibits forced assimilation and protects the separate identity of the minorities, Pakistan and Bangladesh have failed to discharge their responsibility. Article 27 of the said Covenant specifically lays down:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their groups, to enjoy their own culture, to profess and practice their own religion or to use their own language."

Present India being the successor to the undivided India, must be deemed to be the home State of the minorities of Pakistan and Bangladesh and also Afghanistan for being similarly situated in the region. India is not in a position to protect the interests of the minorities for the reason that the problem of minorities has always been considered to be in the domestic domain of the concerned States. Indeed, it is so, as long as the rights of the minorities are protected by the respective States to which they belong. Failure to protect their interests gives rise to an obligation for the home State that it is bound to receive them on the home territory since other avenues are not open to them. The five grounds of persecution stated in the 1951 Geneva Convention giving rise to refugee status come into play in the case of the minorities of Pakistan, Bangladesh and Afghanistan. Religion is one of the five grounds, the other four being race, nationality, membership of a particular group and political opinion. The said Convention imposes an obligation that victims of persecution must be received as refugees.

As already referred to supra, the obligation of India emanates, though not stricto

sensu from the 1951 Convention, from the binding nature of the International Covenant on Civil and Political Rights, 1966, the Universal Declaration of Human Rights and also most importantly, from the fact that India is "the home State of the refugees".

Minorities from Pakistan, Bangladesh and Afghanistan have already been living in this country for a number of years being victims of religious persecution. Earlier many persons of Indian origin including persons belonging to the aforesaid minority communities from the aforesaid countries have been applying for citizenship under section 5 of the Act, but are unable to produce proof of their Indian origin. Hence, they are forced to apply for citizenship by naturalization under section 6 of the Act, which, inter alia, prescribes twelve years residency as qualification for naturalization in terms of the Third Schedule to the Act. This denies them many opportunities and advantages that may accrue only to the citizens of India, even though they are likely to stay in India permanently. Hence it has also a provision to amend the Third Schedule to the Act to make applicants belonging to minority communities from the aforesaid countries eligible for citizenship by naturalization in five years instead of the existing eleven years."

The Statement of Objects and Reasons, it is judicially laid down in a plethora of judicial precedents, can be referred to for the purpose of ascertaining the conditions prevailing at the time necessitating the introduction of the Bill, the extent and urgency of the evil which is sought to be remedied.

It is authoritatively held in **SUSHIL KUMAR SHARMA Vs UNION OF INDIA** [2005 (6) SCC 281] that while deciding upon the constitutionality of a provision, the courts must keep in mind the object of the enactment which can be gleaned from the Statement of Objects and Reasons. There is yet another authority in **BAKHTAWAR TRUST Vs MD NARAYANAN** [2003 (5) SCC 298] which held that the Statement of Objects and Reasons is a useful documentation of the circumstances prevailing at the time of the legislation. What made them to enter into India without travel documents and what made them flee from their countries, the statement of objects and reasons is an insight to the purpose of legislation here also.

The Law of Citizenship in India does not permit people to enter into India without valid documents or to stay beyond the permitted period nor will it permit presence of illegal immigrants on its soil. The legislation contemplated to amend the Citizenship Act, 1955, it is self-evident, was necessitated by very strong and compelling reasons. Voluminous evidence as to discrimination suffered and the atrocities perpetrated on minorities stare in the face of Government of India.

Having failed to keep up its promise of safeguarding the minorities in Pakistan, India cannot escape the responsibility of extending refugee status to them and enable them to obtain citizenship through naturalization. When persecution on religious grounds is an undeniable fact, the duty of the Indian State under International Law is to accord them the status of refugees and make them eligible for citizenship by naturalization. It is settled law that unless a provision in any Treaty or Convention is at variance with a provision of an Indian enactment, the Indian courts have to follow the position obtaining in International Law. **(VISAKHA Vs STATE OF RAJASTHAN – AIR 1997 SC 3011).** When the Government of India has introduced the Bill second time in the Lok Sabha, it has provided all the relevant considerations constituting the raison d'etre for the legislation in the Statement of Objects and Reasons. The empirical evidence and the plight of the minorities in these countries (Pakistan, Bangladesh and Afghanistan) who are trapped and unable to move out must become an eye-opener for the Government of India to extend the benefit of citizenship to all of them whenever they seek shelter in India.

One of the harshest criticisms against the amending Act is that it is blatantly one sided, communal and in utter breach of the principle of secularism, a basic feature of our Constitution. There is no justification for this criticism. When the State of Pakistan was formed on the basis of religion, the State religion being Islam, the question of minorities getting equal treatment with others belonging to the State religion was totally ruled out. It was not even the case of Pakistan that it has treated minorities and non-minorities equally. The sympathy emanating from the Indian critics for secularism is utterly misplaced. When the State religion is Islam, the question of persons belonging to the State religion fleeing the country on the ground of persecution is utterly an unrealistic assumption. When humanitarian questions are involved, directing criticism from political angles is unjust and unwarranted. Let not ill-informed criticism coloured by political considerations contribute further to the agony of the uprooted minorities in question.

(Former Chief Justice of Himachal Pradesh Former Chairperson, National Commission for Backward Classes, Government of India. Senior Advocate, Supreme Court of India.)

(Sri T.Venkateswara Rao, Registrar (Protocol), High Court for the State of Telangana has rendered able assistance and immense help in the preparation of this paper and I am deeply thankful to him.)

Citizenship Amendment Act Is To Remedy The Historic Wrongs That Millions Of Refugees Had To Sustain

Dr. Anirban Ganguly

Citizenship Amendment Act (CAA) has granted a new life of hope to a large number of refugees who were forced to abandon their home and hearth in India's neighbourhood because of religious persecution and to seek refuge in their civilisational motherland, India.

For decades after independence, these beleaguered minorities from Pakistan, erstwhile East Pakistan and later Bangladesh, especially during the period when the Bangladesh Nationalist Party (BNP) was in power, were forced out of their countries because they professed a faith which was different from the dominant faith of the country in which they lived.

Dr B C Roy, one of the tallest leaders of the Congress from West Bengal and its Chief Minister during those crucial years and decades, who had a mind of his own, lamented in a press conference in Kolkata, on March 20, 1951, that the "refugees have a great grievance, a very natural one, indeed against everybody in West Bengal and in India, even perhaps against Providence, because they have been uprooted, put to shame and difficulties for no fault of theirs." A few days before this, speaking in the West Bengal Legislative Assembly, Dr Roy, had candidly admitted that "neither he nor the Central Government had an idea of the nature of the influx and of the number of the migrants." He pointed out how Union Government led by Jawaharlal Nehru was fixated on the notion that the migrants from East Bengal/Pakistan "would return to their homes as soon as the situation improved in East Pakistan."

Nehru's government insisted therefore that Bengali Hindu refugees from East Pakistan would only be provided with relief and not rehabilitation. Despite realising that his "entente cordiale" with Liaquat was failing, that his Pact was falling apart, despite the fact that more and more minorities were being driven out of Pakistan, Nehru turned a blind eye to the plight of the Bengali Hindu refugees. Dr Roy pointed out how only later did Nehru realise that what the refugees from East Bengal/Pakistan needed was both "relief and rehabilitation, and rehabilitation meant not only a plot of land and a house but gainful occupation and recovery from the low psychic state produced by uprooting." Even after this, little was done in terms of rehabilitation for these refugees. The fashionable

protestors in Lyutens Delhi and stone-pelters of Jamia would hardly know the agonies of these refugees.

At the time of independence, the refugees were promised protection in their countries and shelter and equal rights in India if they ever left their countries because of religious persecution and discrimination. These promises were made by a number of leaders and after independence, a number of other leaders continued to speak for their rights, continued to highlight their plight but hardly ever did they attempt to settle the issue once for all.

Interestingly, it will be relevant to mention in this context, that on August 16, 1966, veteran Jana Sangh leader Niranjan Varma, then Member of Rajya Sabha, asked three pointed questions to the then Union External Affairs Minister Sardar Swaran Singh. These questions were:

What is the present position of the Nehru-Liaquat Pact, which was concluded in 1950 after the last India-Pakistan conflict? Whether both the countries are still acting according to the terms of the Pact?
The year since when Pakistan has been violating the Pact?

To Verma's first question, Swaran Singh said, that "the Nehru-Liaquat Pact of 1950 is a standing agreement between India and Pakistan. It requires each country to ensure that its minorities enjoy complete equality of citizenship with others and receive treatment identical to that available for other nationals of their country." Singh's answer to the second question was that "though in India, the rights and security of the minorities have been continuously and effectively safeguarded, Pakistan has persistently contravened the provisions of the Pact through consistent neglect and harassment of the members of the minority community." Swaran Singh's answer to the third question is more crucial for us since it pointed to the failure of the Nehru-Liaquat pact. Singh replied that "instances of such violations started coming to notice almost immediately after the inception of the Pact."

This is exactly what Union Home Minister Amit Shah pointed out in his speeches in both House of Parliament in December 2019 and this was exactly what Dr Syama Prasad Mookerjee, had in the past, also proved in the House with facts and figures during a debate on August 7, 1950. His words uttered then on the Nehru-Liaquat Pact being a non-starter proved prophetic over the years. It is strange, therefore, that some of the loudest opposition to CAA comes from the Congress which has forgotten the facts and figures given in the past by its own leader and minister.

The Nehru-Liaquat Pact's failure pushed the minorities in Pakistan to the brink, their situation further deteriorated when Pakistan became an Islamic state in 1956 when its

constitution declared that "the sovereignty of this country vests in Allah". Pandit Deendayal Upadhyaya writing at that time highlighted the adverse effect that this declaration had on the minorities in Pakistan. He wrote that "as far as Hindus are concerned, they have been subject to boycott as second-class citizens. It is impossible for them to live with any dignity in Pakistan…"

It was Bharatiya Jana Sangh from 1951 and later Bharatiya Janata Party which relentlessly continued to champion the rights of the refugees to live a life of dignity and equality in India. The Jana Sangh's first manifesto in 1955 gave top priority to the problem of displaced persons. "The party believes that rehabilitation of those who have suffered from partition and come over to Bharat is legally as well as morally the responsibility of Bharat which must not be side-tracked." Leaders and parties, namely the Congress party and the communist parties paid lip service to the cause of the refugees, often used them as political fodder yet hardly ever did anything to ameliorate their lot.

By passing the CAA, Prime Minister Modi and Union Home Minister Amit Shah, have not only corrected a historic wrong, but they have also fulfilled a historic promise, which no other party or leader had the courage or sensitivity to do in the past. The passing of the CAA thus further strengthens India's unity, it is a historic and civilisational act which is not aimed at taking away anyone's citizenship but at granting it to the beleaguered minorities in India's neighbourhood who, for decades and for historic reasons, have been victims of persecution and discrimination.

In the immediate aftermath of partition, especially after his resignation from the Union cabinet in protest against the Nehru-Liaquat Pact, Dr Syama Prasad Mookerjee extensively toured the areas of Assam and West Bengal in which the refugees had taken shelter after being driven out of Pakistan. He came in contact, in his own words in Parliament, "with lakhs of persons who have migrated from East Bengal [East Pakistan] to West Bengal and Assam" and what he saw, was extremely disturbing and distressing. "I have seen all classes and conditions of people, men, women, and children, many of whom never knew what poverty and want were. But today they are homeless; they are hopeless. Their physical suffering was great. But what struck me as most ominous and most distressing was the moral torture through which millions of people have passed."

Those who oppose CAA today, intentionally ignore and suppress this dimension of moral torture through which millions of these people were forced to pass. CAA is a step to erase and to heal the deep scars left behind by that near-unending cycle of moral torture.

(Dr. Anirban Ganguly is Director, Dr Syama Prasad Mookerjee Research Foundation, New Delhi. The Article has been originally first published in the Millennium Post, 1st January 2020, with the heading 'Healing Deep Scars'.)

Some Of The Sentiments Raised During Constituent Assembly Debates

India became independent on 15th August, 1947 after portionery it on religious lines and carving out territories of West Pakistan (Pakistan) and East Pakistan (Bangladesh). In the wake of independence through partition, the then Prime Minister of India, Pandit Jawaharlal Nehru, in his speech on 15th August 1947 declared, amongst others, as follows:

"We think also of our brothers and sisters who have been cut off from us by political boundaries and who unhappily cannot share at present in the freedom that has come. They are of us and will remain of us whatever may happen, and we shall be sharers of their good and ill-fortune alike...." "…. There is no doubt, of course, that those displaced persons who have come to settle in India are bound to have their citizenship. If the law is inadequate in this respect, the law should be changed."-

[Source - "Refugees and other problems" - Jawaharlal Nehru Speeches, Vol.2 P.8 (at P.10) published in June, 1967].

The then Home Minister of the Union Government, Sardar Vallabhbhai Patel, while addressing a Convention of East Bengal Refugees stated as under –

"We cannot fully enjoy freedom that we have got until and unless we can share it with the Hindus of North and East Bengal. How can one forget the sufferings and sacrifices which they cheerfully endured for freeing our motherland from foreign domination; their future welfare must engage 8 the most careful and serious attention of the Government and the people of the Indian Union in the light of development that may take hereafter."

Thus, it is clear that our National leaders had committed to the all-round welfare of the minorities of Pakistan and those who had migrated into India in the wake of partition. Since partition of India the country has always seen a large influx of immigrant population from Pakistan and Bangladesh, mostly consisting of minorities due to religious persecution of these communities. They have come to India seeking asylum and help to escape the persecution based purely on religious grounds. This migration is different from the migration taken place for economic reason from these countries.

On 10th August 1949, the Constituent Assembly discussed on the topic of Citizenship where Shri Shibban Lal Saxena, an Hon'ble member of the Constituent Assembly stated that

"Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship". I think our self-respect demands that this proviso should be there. Otherwise it is hopeless that when we are discriminated against by any country, still to the nationals of such country when they come here we accord equal rights of citizenship. I personally feel, and the people also feel, that if they kick us they shall also be kicked."

Pandit Thakur Das Bhargava stated that "The difficulty in my way is that I do not believe that those wh o come from Pakistan and other countries propose to stay here only for the love of the country. If they stay for that purpose, I have no objection that they become citizens of this country. But I know very well that there are a good many people who have not come to this country, or are not staying in this country with this object."

On 11.08.1949, Dr. P. S. Deshmukh, Member of the Constituent Assembly, stated that

"We have seen the formation and establishment of Pakistan. Why was it established? It was established because the Muslims claimed that they must have a home of their own and a country of their own. Here we are an entire nation with a history of thousands of years and we are going to discard it, in spite of the fact that neither the Hindu nor the Sikh has any other place in the wide world to go to. By the mere fact that he is a Hindu or a Sikh, he should get Indian citizenship because it is this one circumstance that makes him disliked by others. But we are a secular State and do not want to recognise the fact that every Hindu or Sikh in any part of the world should have a home of his own. If the Muslims want an exclusive place for themselves called Pakistan, why should not Hindus and Sikhs have India as their home? We are not debarring others from getting citizenship here. We merely say that we have no other country to look to for acquiring citizenship rights and therefore we the Hindus and the Sikhs, so long as we follow the respective religions, should have the right of citizenship in India and should be entitled to retain such citizenship so long as we acquire no other. I do not think this claim is in any way non-secular or sectarian or communal."

On the 12th of August 1949 Sardar Bhopinder Singh, another member of the Constituent Assembly, stated that

"I was saying that the Hindu and Sikh refugees view-point has been met to some extent, but not wholly. It will be very cruel to shut our borders to those who are victimised after the 19th July 1948. They are as much sons of the soil as anyone

else. This political mishap was not of their own seeking and now it will be very cruel to place these political impediments in their way and debar them from coming over to Bharat Mata. I will cite one instance. Meos from Gurgaon, Bharatpur and Alwar not very long time ago, on the instigation of the Muslim League, demanded Meostan and they were involved in very serious rioting against the Hindus-their neighbours at the time of freedom. Right in 1947 a serious riot was going on by these Meos against their Hindu neighbours. These Meos, under this very lax permit system, are returning and demanding their property. On the one hand, we are short of property and on the other hand, concessions are being given to them. This is secularism no doubt, but a very one-sided and undesirable type of secularism which goes invariably against and to the prejudice of Sikh and Hindu refugees. I do not want to give rights of citizenship to those who so flagrantly dishonoured the integrity of India not so long ago."

Finally considering all such voices and the premise of secularism, on 26.01.1950, India has adopted its Constitution, wherein the Article 11 extends the right to regulate citizenship rights by law to the Parliament. In the wake of influx of the migrants after partition, and considering future contingencies which might arise, the Constituent Assembly thought it prudent to leave the issue of citizenship and law making power with the Parliament through Article 11 of the Constitution to deal with it as and when situation arises in future as per the aspiration of the then citizenry.

Statement by Dr. Syama Prasad Mookerjee on his resignation as Minister of Industry & Supply against the Nehru-Liaquat Pact on 19th April 1950

Dr. Syama Prasad Mookerjee visiting a refugee Camp at Nadia District in West Bengal

Dr. S. P. Mookerjee (West Bengal): Sir, in accordance with parliamentary convention I rise to make a statement explaining the reasons which have led to m y resignation from the Cabinet. Let me assure the House that I have not taken the step on the spur of the moment but after deep and deliberate thought. It has been a matter of regret to me that I have not been able to reconsider my decision, although pressed to do so by many for whom I entertain the deepest personal regard. For over 2.5 years it has been my proud privilege to work as a Minister of the first National Cabinet of Free India and I have not spared myself in the discharge of the duties that fell upon me. To me the experience has been of great value and it has been my privilege to work in an atmosphere of friendliness and co-operation during one of the most critical periods in the history of our country. To all sections of the House I convey my gratitude for the confidence reposed in me and to Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel I specially tender

Today there is a general impression that there has been failure both on the part of India and Pakistan to protect their minorities. The fact however is just the reverse of it. A hostile propaganda has been also carried on in some sections of the foreign press. This is a libel on India and truth must be made known to all who desire to know it. The Indian Government-both at the Centre and in the Provinces and States-generally maintained peace and security throughout the land after Punjab and Delhi disturbances had quieted down, in spite of grave and persistent provocations from Pakistan by reason of its failure to create conditions in Sind and East Bengal whereby minorities could live there peacefully and honorably. It should not be forgotten here that the people who came away from East Bengal or Sind were not those who had decided to migrate to India out of imaginary fear at the time of partition. These were people who were bent on staying in Pakistan, if only they were given a chance to live decent and peaceful lives.

my grateful thanks for the opportunity they gave ma to serve the country under their leadership. There is nothing of a personal character which has prompted me to resign and I do hope that those with whom I have disagreed will appreciate the depth o f m y convictions just as I have unhesitatingly appreciated their own. My differences are fundamental and it is not fair or honorable for me to continue as a member of the Government whose policy I cannot approve of all fairness to the Prime Minister I should state that when I communicated my decision to him on 1st April, even before the Prime Minister of Pakistan arrived in India, he readily appreciated my standpoint, acknowledged our differences and agreed to release me from the burden of my office Any withdrawal at a subsequent stage would not have been fair to him or to me.

I have never felt happy about our attitude towards Pakistan. It has been weak, halting and inconsistent. Our goodness or inaction has been interpreted as weakness by Pakistan. It has made Pakistan more and more intransigent and has made us suffer all the greater and even lowered us in the estimation of our own people. On every important occasion we have remained on the defensive and failed to expose or counteract the designs of Pakistan aimed at us. I am not, however, dealing today with general Indo-Pakistan relationship, for the circumstances that have led to my resignation are primarily concerned with the treatment of minorities in Pakistan, especially in East Bengal. Let me say at once the Bengal problem is not a provincial one. It raises issues of an all-India character and on its proper solution will depend the peace and prosperity, both economic and political, of the entire nation. There is

an important difference in the approach to the problem of minorities in India and Pakistan. The vast majority of Muslims in India wanted the partition of the country on a communal basis, although 1 gladly recognize there has been a small section of patriotic Muslims who consistently have identified themselves with national interests and suffered for it. The Hindus on the other hand were almost to a man definitely opposed to partition. When the partition of India became inevitable, I played a very large part in creating public opinion in favour of the partition of Bengal, for I felt that if that was not done, the whole of Bengal and also perhaps Assam would fall into Pakistan. At that time little knowing that I would join the first Central Cabinet, ***I along with others, gave assurances to the Hindus of East Bengal, stating that if they suffered at the hands of the future Pakistan Government, if they were denied elementary rights of citizenship, if their lives and honor were jeopardized or attacked, Free India would not remain an idle spectator and their just cause would be boldly taken up by the Government and people of India. During the last years their sufferings have been of a sufficiently tragic character. Today I have no hesitation in acknowledging that in spite of all efforts on my part, I have not been able to redeem m y pledge and on this ground alone— if on no other— I have no moral right to be associated "with Government any longer. Recent happenings in East Bengal have however overshadowed all their past woes and humiliation. Let us not forget that the Hindus of East Bengal are entitled to the protection of India, not on humanitarian considerations alone, but by virtue of their sufferings and sacrifices, made cheerfully for generations, not for advancing their***

The supreme question of the hour is on the minorities continue to live with any sense of security in Pakistan? The test of any Agreement is not its reaction within India or in foreign lands, but on the minds of the unfortunate minorities living in Pakistan or those who have been forced to come away already. It is not how a few top-ranking individuals in Pakistan think or desire to act. It is the entire set-up of that State, the mentality of the official circles-high and low-the attitude of the people at large and the activities of organizations such as 'Ansars' which all operate together and make it impossible for Hindus to live. It may be that for some months no major occurrences may take place. Meanwhile we may on our generosity supply them with essential commodities which will give them added strength. That has been Pakistan's technique. Perhaps the next attack may come during the rainy season when communications are virtually cut off.

own parochial interests, but for laying the foundations of India's political freedom and intellectual progress. It is the united voice of the leaders that are dead and of the youth that smilingly walked up to the gallows for India's cause that calls for justice and fair play at the hands of Free India of today.

The recent Agreement, to my mind, offers no solution to the basic problem. The evil is far deeper and no patchwork can lead to peace. The establishment of a homogeneous Islamic State is Pakistan's creed and a planned extermination of Hindus and Sikhs and expropriation o f their properties constitute its settled policy. As a result of this policy, life for the minorities in Pakistan has become "nasty, brutish and short Let us not be forgetful of the lessons of history. We will do so at our own peril. I am not talking of by-gone times; but if anyone analyses the course of events in Pakistan since creation, it will be manifest that there is no honorable place for Hindus within that State. The problem is not communal. It is essentially political. The Agreement unfortunately tries to ignore the implications of an Islamic State. But anyone, who refers carefully to the Objectives Resolution passed by the Constituent Assembly of Pakistan and to the speech of its Prime Minister will find that while talking in one place of protection of minority rights, the Resolution in another place emphatically declares "that the principles of democracy, freedom, equality, tolerance and special justice as enunciated by Islam shall be fully observed The Prime Minister of Pakistan while moving the Resolution thus spoke:

" You would also notice that the State is not to play the part of a neutral observer wherein the Muslims may be merely free to profess and practice their relation , because such an attitude on the part of the State would be the very negation of the ideals which prompted the demand o f Pakistan and is these ideals which should be the cornerstone of the State which we want to build. The State will create such conditions as are conducive to the building up of a truly Islamic Society which means that the State will have to play a positive part in the effort. You would remember that the Quaid-e-Azam and other leaders of the Muslim League always made unequivocal declarations that the Muslim demand for Pakistan was based upon the fact that the Muslim had their own way of life and a code of conduct. Indeed, Islam lays down specify for social behavior and seeks to guide society in Its attitude towards the problems which confront it day to day. Islam is not just a matter of private beliefs and conduct"

In such Society let me ask in seriousness, can any Hindu expect to live with any sense of security in respect of his cultural, religious, economic, and political rights.

Indeed our Prime Minister analysed the basic difference between India and Pakistan only a few weeks ago on the floor of the Housed and his words will bear

repetition:

"The people of Pakistan are of the same stock as we are and have the same virtues and failings. But the basic difficulty of the situation is that the policy of a religious and communal State followed by the Pakistan Government inevitably produces a sense of lack of full citizen ship and a continuous insecurity among those who do not belong to the majority community".

It is not the ideology preached by Pakistan that is the only disturbing factor. Its performances have been in full accord with its ideology and the minorities have had bitter experiences times without number of the true character and functioning of an Islamic State. The Agreement has totally failed to deal with this basic problem.

Public memory is sometimes very short. There is an impression in many quarters that the Agreement recently made is the first great attempt of its kind to solve the problem of minorities. I am leaving aside for the time being the disaster that took place in the Punjab; in spite of all assurances and undertakings there was a complete collapse of the administration and undertakings there was a complete collapse of the administration and the problem was solved in a most brutal fashion. Afterwards we saw the gradual extermination of Hindus from the North Western Frontier Province and Baluchistan and latterly from Sind as well. In East Bengal about 13 millions of Hindus were still living and their future had been a matter of the gravest concern to all of us in India. Between August, 1947 and March, 1948, as many as five lakhs of Hindus were squeezed out of East Bengal, There were no major incidents as such; but circumstances so shaped themselves that they got no protection from the Government of Pakistan and were forced to come away to West Bengal for shelter During that period there was no question of any provocation given by India where normal conditions had settled down; there was no question of Muslims being coerced to go away from India to Pakistan. In April 1948, the First Inter-Dominion Agreement was reached in Calcutta, dealing specially with the problems of Bengal. If anyone analyses and compares the provisions of that Agreement with the recent one it will appear that in all essential matters they are similar to each other. This Agreement, however, did not produce any effective result. India generally observed its terms but the exodus from East Bengal continued unabated. It was a one-way traffic, just as Pakistan wished for. There were exchanges of correspondence; there were meetings of officials and Chief Ministers; there were consultations between Dominion Ministers. But judged by actual results Pakistan's attitude continued unchanged. There was a second Inter-Dominion Conference in Delhi, in December, 1948, and another Agreement was signed, sealed and delivered. It dealt with the same problem-the rights of minorities especially in Bengal. This also was a virtual

repetition of the first Agreement. In the course of 1949 we witnessed a further deterioration of conditions in East Bengal and an exodus of a far larger number of helpless people, who were up-rooted from their hearth and home and were thrown in to India in a most miserable condition. The fact thus remains that in spite of two Inter-Dominion Agreements as many as 16 to 20 lakhs of Hindus were sent away to India from East Bengal. About a million of uprooted Hindus had also to come away from Sind, During this period a large number of Muslims also came away from Pakistan mainly influenced by economic considerations. The economy of West Bengal received a rude shock and we continued as helpless spectators of a grim tragedy.

Today there is a general impression that there has been failure both on the part of India and Pakistan to protect their minorities. The fact however is just the reverse of it. A hostile propaganda has been also carried on in some sections of the foreign press. This is a libel on India and truth must be made known to all who desire to know it. The Indian Government-both at the Centre and in the Provinces and States-generally maintained peace and security throughout the land after Punjab and Delhi disturbances had quieted down, in spite of grave and persistent provocations from Pakistan by reason of its failure to create conditions in Sind and East Bengal whereby minorities could live there peacefully and honorably. It should not be forgotten here that the people who came away from East Bengal or Sind were not those who had decided to migrate to India out of imaginary fear at the time of partition. These were people who were bent on staying in Pakistan, if only they were given a chance to live decent and peaceful lives.

Towards the end of 1940 fresh events of a violent character started happening in East Bengal. On account of the iron curtain in that area, news did not at first arrive in India. When about 15,000 refugees came to West Bengal in January 1950, stories of brutal atrocities and persecutions came to light. This time the attack was directed both against middle class urban people and selected sections of rural people who were strong, virile and united; to strike terror in to their hearts was a part of Pakistan's policy. These startling reports led to some repercussions of a comparatively minor character in certain parts of West Bengal. Although these were checked quickly and effectively, false and highly exaggerated reports of so-called occurrences in West Bengal were circulated in many parts of East Bengal. This was clearly done with official backing and with a sinister motive. In the course of two to three weeks events of a most tragic character, which no civilized Government could ever tolerate, almost simultaneously broke out in numerous parts of East Bengal, causing not only wanton loss of lives and properties, but resulting also in forcible conversion of a large number of helpless people, abduction of women and shocking

outrages on them. Reports which have now reached our hands clearly indicate that all these could not have happened as stray sporadic incidents. They formed part of a deliberate and cold planning to exterminate minorities from East Bengal; to ignore this is to forget hard realities. During that period our publicity both here and abroad became hopelessly weak and ineffective. This was partly done in order to prevent repercussions within India. Pakistan however followed exactly the opposite course of action. The result was that we were dubbed as aggressors while the truth was the reverse of it. During these critical weeks-although there were people who were swayed by passions and prejudices-vast sections of India's population were prepared to leave matters in the hands of Government and expected it to take stubborn measures to check the brutalities perpetrated in Pakistan. At that hour of crisis we failed to rise equal to the occasion. Where days-if not hours-counted we allowed weeks to go by and we could not decide what was the right course of action. The whole nation was in agony and expected promptness and firmness, but we followed a policy of drift and indecision. The result was that in some areas of West Bengal and other parts of India, people became restive and exasperated and took the law into their own hands. Let me say without hesitation that private retaliation on innocent people in India for brutalities committed in Pakistan offers us no remedy whatsoever. It creates a vicious circle which may be worse than the disease; it brutalizes the race and lets loose forces which may become difficult to control at a later stage. We must have equal rights and protection, irrespective of their religion or faith. The only effective remedy in a moment of such national crisis can and must be taken by the Government of the country and if Government moves quickly, consistent with the legitimate wishes of the people and with a full sense of national honour and prestige, there is not the least doubt that the people will stand behind the Government. In any case, Government acted promptly to re-established peace and order throughout India. Meanwhile Muslims, though in much lesser numbers, had also started leaving India, a good number of whom belonged to East Bengal and had come to West Bengal for service or occupation. Pakistan realized the gravity of the situation only when it found that on this occasion, unlike previous ones, there was no question of one way traffic, Since January last at least 10 lakhs of people have come out of East Bengal to West Bengal. Several lakhs have gone to Tripura and Assam Reports indicate that thousands are their march to Indi today and they represent all classes and conditions of people.

The supreme question of the hour is on the minorities continue to live with any sense of security in Pakistan? The test of any Agreement is not its reaction within India or in foreign lands, but on the minds of the unfortunate minorities living in Pakistan or those who have been forced to come away already. It is not how a few

top-ranking individuals in Pakistan think or desire to act. It is the entire set-up of that State, the mentality of the official circles-high and low-the attitude of the people at large and the activities of organizations such as 'Ansars' which all operate together and make it impossible for Hindus to live. It may be that for some months no major occurrences may take place. Meanwhile we may on our generosity supply them with essential commodities which will give them added strength. That has been Pakistan's technique. Perhaps the next attack may come during the rainy season when communications are virtually cut off.

I have found myself unable to be a party to the Agreement for the following main reasons:

First- we had two such Agreements since Partition for solving the Bengal problem and they were violated by Pakistan without any remedy open to us. Any agreement which has no sanction will not offer any solution.

Secondly, the crux of the problem is Pakistan's concept of an Islamic State and the ultra-communal administration based on it. The Agreement side-tracks this cardinal issue and we are today exactly where we were previous to the Agreement.

Thirdly-India and Pakistan are made to appear equally guilty, while Pakistan was clearly the aggressor. The Agreement provides that no propaganda will be permitted against the territorial integrity of the two countries and there will be no incitement to war between them. This almost sounds farcical so long as Pakistan troops occupy a portion of our territory of Kashmir and warlike preparations on its part are in active operation.

Fourthly-events have proved that Hindus cannot live in East Bengal on the assurances of security given by Pakistan. We should accept this as a basic proposition. The present Agreement on the other hand calls upon minorities to look upon Pakistan Government for their safety and honour which is adding insult to injury and is contrary to assurances given by us previously.

Fifthly- there is no proposal to compensate those who have suffered nor will the guilty be ever punished, because no one will dare give evidence before a Pakistan Court. This is in accordance with bitter experience in the past.

Sixthly- Hindus will continue to come away in large numbers and those who have come will not be prepared to go back. On the other hand, Muslims who had gone away will now return and in our determination to implement the Agreement Muslims will not leave India. Our economy will thus be shattered and possible conflict within our country will be greater.

Seventhly-in the garb of protecting minorities in India, the Agreement has reopened the problem of Muslim minority in India, thus seeking to revive those disruptive forces that created Pakistan itself. This principle, carried to its logical conclusions, will create fresh problems for us which, strictly speaking, are against our very Constitution.

This is not the time nor the occasion for me to discuss alternative lines of action. This must obviously wait until the results of the policy now adopted by Government are known. I do not question the motives of those who have accepted the Agreement. I only hope that the Agreement must not be unilaterally observed. If the Agreement succeeds; nothing will make me happier. If it fails, it will indeed be a very costly and tragic experiment. I would only respectfully urge those who believe in the Agreement to discharge their responsibility by going to East Bengal not alone, but accompanied by their wives, sisters and daughter and bravely share the burden of joint living with the unfortunate Hindu minorities of East Bengal That would be a real test of their faith. While I have different from the line of approach adopted by our Government to solve a malady which perhaps has no parallel in history, let me assure the House that I fully agrees that the supreme need of the hour in the maintenance of peace and security in India. While utmost pressure can and must be put upon the Government of the day to act rightly, firmly and timely to prevent the baneful effects of appeasement and to guard against the adoption of a policy of repression, no encouragement should be given to create chaos and confusion within our land. If Government is anxious to have another change and let us understand it clearly that this is the last chance that it is asking for by all means, let Government have it, But let not the critics of Government policy be silenced or muzzled. To our misfortune, one of the parties to the Agreement has systematically broken its pledges and promises and we have no faith in its capacity to fulfill its future pledges, unless its shows by actual action that it is capable of doing. This not of warning sounded by us should not be unwelcome to Government, for it will then act with more keenness and alertness and not permit the legitimate interest of India to be sacrificed or sabotaged in any way.

While dealing with the problem of refugees, we will have to consider also the stupendous tasks of rehabilitation. The present truncated province of West Bengal cannot simply bear this colossal burden. It is a mighty task where both official and non official elements can work together for the larger good of the country and between Government and its critics there will always be ample room for co-operation in facing a problem which concerns the peace and happiness of millions of people and of the advancement of the entire nation.

Statement Of Objects And Reasons Of The Citizenship Amendment Act, 2019

1. The Citizenship Act, 1955 (57 of 1955) was enacted to provide for the acquisition and determination of Indian citizenship.

2. 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. Under the existing provisions 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, it is proposed to make the said migrants eligible for Indian Citizenship.

5. The illegal migrants who have entered into India up to the cut of date of 31.12.2014 need a special regime to govern their citizenship matters. For this purpose the Central Government or an authority specified by it, shall grant the certificate of registration or certificate of naturalisation subject to such conditions, restrictions and manner as may be prescribed. Since many of them have entered into India long back, they may be given the citizenship of India

from the date of their entry in India if they fulfil conditions for Indian citizenship specified in section 5 or the qualifications for the naturalisation under the provisions of the Third Schedule to the Act.

6. The Bill further seeks to grant immunity to the migrant of the aforesaid Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities so that any proceedings against them regarding in respect of their status of migration or citizenship does not bar them from applying for Indian citizenship. The competent authority, to be prescribed under the Act, shall not take into account any proceedings initiated against such persons regarding their status as illegal migrant or their citizenship matter while considering their application under section 5 or section 6 of the Act, if they fulfil all the conditions for grant of citizenship.

7. Many persons of Indian origin including persons belonging to the said minority communities from the aforesaid countries have been applying for citizenship under section 5 of the Citizenship Act, 1955 but they are unable to produce proof of their Indian origin. Hence, they are forced to apply for citizenship by naturalisation under section 6 of the said Act, which, inter alia, prescribe twelve years residency as a qualification for naturalisation in terms of the Third Schedule to the Act. This denies them many opportunities and advantages that may accrue only to the citizens of India, even though they are likely to stay in India permanently. Therefore, it is proposed to amend the Third Schedule to the Act to make applicants belonging to the said communities from the aforesaid countries eligible for citizenship by naturalisation if they can establish their residency in India for five years instead of the existing eleven years.

8. Presently, there is no specific provision in section 7D of the Act to cancel the registration of Overseas Citizen of India Cardholder who violates any provisions of the Act or any other law for the time being in force. It is also proposed to amend the said section 7D so as to empower the Central Government to cancel registration as Overseas Citizen of India Cardholder in case of violation of any provisions of the Act or any other law for the time being in force.

9. Since there is no specific provision in the Act at present to provide an opportunity of being heard to the Overseas Citizen of India Cardholder before cancellation of the Overseas Citizen of India Card under section 7D, it is proposed to provide the opportunity of being heard to the Overseas Citizen of India Cardholder before the cancellation of the Overseas Citizen of India Card.

10. 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.

11. The Bill seeks to achieve the above objectives.

HM Shri Amit Shah, 4th December, 2019, New Delhi

Two Types Of Migration Into India From The Three Neighbouring Countries

The voices being raised in the protest against the impugned amending Act and the Writ Petitions filed before the Hon'ble Supreme Court are primarily intentionally or mischievously mixing two types of immigration and creating unnecessary confusion among people in rem. One which happened and continuously happening because of economic consideration and another which happens because of religious persecution of the minorities from these three Muslim majority country in our neighborhood.

Both types of migration constitute two distinct classes and in the Citizenship Act, 1955 as amended after the CAA 2019, both classes have separate provision to seek citizenship in India and the amendment is not discriminatory. The impugned amendment is in the line of well established principle of reasonable classification, which provides to treat unequals with different yardstick, which is one of the basic principles as enumerated by Hon'ble Supreme Court while interpreting Article 14 of the Constitution.

The CAA 2019 was passed to address the specific issue and problem of the class of people who were facing religious persecution in the three neighboring countries. It nowhere deals with the issue of those who came and keep coming to India with economic and political motive and for better life; equality in law for two unequal classes would be detrimental to the sacred doctrine of equality itself.

Essentiality Of The Citizenship Amendment Act, 2019

The Government of India is under an obligation to protect and help the prosecuted minorities in the backdrop of partition of India which happened to give a separate country to Muslims and thereafter, as Pakistan is in breach of the commitment given under the Nehru-Liaquat Pact, 1950, The persecuted minorities have entered the territory of India seeking refuge to save their life and dignity and to evade religious persecution. It is important to note that these communities were an integral part of the country before its partition, and the refuge is seen as a consequence of the partition and non-acceptance of their community in the said three foreign states.

The protestors and their intellectual leadership only give one side of the story and deliberately choose to not mention the reason that compelled the Government to bring this amendment. They choose to remain ominously silent about increasing number of immigrants coming into India because of the religious persecution in Pakistan, Bangladesh and Afghanistan. The effect of accepting the argument of critique of the amending Act on the ground of exclusion of Muslims of Pakistan, Bangladesh and Afghanistan would result in legitimizing illegal Muslim migration into India from these countries also who have been coming because of economic and political motives. This will jeopardize the purpose of the enactment itself. This dangerous political calculation is not only badly misplaced but also against the idea of India that was envisaged during our independence.

It is pertinent to mention that the Prime Minister of newly created nation Pakistan and India signed the Nehru-Liaquat Pact, according to which both the nations (India and Pakistan) post the partition promised to take care of the religious minorities in their respective states. The demand of complete exchange of population was also rejected in the light of this pact. And both the countries asked minorities living across the border to accept their fate in the light of assurance given by their respective Prime Ministers.

It is only after this commitment made, India had decided the cutoff date and passed the Citizenship Act, 1955. And therefore, the failure on the side of Pakistan to protect its minorities necessitated the impugned amendment in the Citizenship Act, 1955. The minorities in order to save their life across the border came to India considering this country as their native land as was before partition. This migration started from the date of Partition and continuing till today. It is evident from the

large influx of the minorities that Pakistan and Bangladesh have not honored their promise. Therefore it becomes the obligation of the Indian Government being another signatory of the Pact and also specifically because of India being successor of the British India, to look after the minorities who were once a population of this nation.

The present amending Act is only enacted with the sole objective to help these prosecuted minorities from the said three countries. The CAA, 2019 has been brought specifically to address this issue of such persecuted migrants living in India for decades without any citizenship rights. There might be several other classes of illegal migrants in India, but it is the sole prerogative of a sovereign state to choose one and not to choose others to provide citizenship. It is a domain of policy and political consideration keeping security and other national interest in its mind. Hence, the scope of judicial review becomes very narrow. However, in any care, a challenge on the ground as to why this Act doesn't consider the case of another class of migrants is far from being even remotely sustainable before the Hon'ble Supreme Court for assailing the provisions of the amending Act. The **Doctrine of Harm** is well settled on this very same premise in favor of the legislature.

The CAA, 2019 is not in violation of Article 14 and Article 21 of the Constitution of India. It is also not in violation of the principle of secularism, which is a basic structure of the Constitution. The impugned Act was needed as a result of the religious persecution that had happened in the above mentioned countries i.e. Pakistan, Bangladesh and Afganistan by dishonoring the Nehru-Liaquat pact. It is imperative to note that this pact was signed purely for the protection of the minorities and the same was not related with the right of others.

The Parliament of India is allowed under Article 14 of the Constitution of India to make an intelligible differentia, if it has a reasonable nexus to the objective sought in a legislation. The impugned CAA, 2019 has been enacted to address this specific issue and to give rights to those migrants who fled their country facing religious persecution and living in India for decades and came to India till 31st December 2014 and were considered illegal migrant before the impugned amendment.

This classification is based on the partition and the displacement of the population that took place and the resultant minorities in the respective countries. The objective is to grant rights of citizenship to the minorities was fled to take refuge in India from the above stated countries as a result of the religious persecution in those countries. Therefore, since there is a reasonable classification it is not in violation of Article 14 of the Indian Constitution.

The case of Afghanistan is also similar to Pakistan and Bangladesh. It is an Islamic Country and shares a common border with Pakistan and India (POK) and there is a large influx of immigrants persecuted in that country for religious reasons. Therefore specifying these three countries is not an arbitrary action but a reasonable classification.

It is also emphasized that the legislative intent matches the action. The intent was to give rights to the immigrant who were flowing in and who had settled as an unfinished task of the partition. The partition had happened only with the specified countries and hence the Hindus, Sikhs, Buddhists, Parsis and Christians became a minority Pakistan and Bangladesh and hence the people from these communities who have become illegal immigrants in India now have a chance to get citizenship. India has no such history with other neighbouring countries such as Myanmar, Sri Lanka or Bhutan etc.

The Government of India framed the Citizenship Act, 1955 to classify and differentiate between citizens and immigrants. In the scheme of the Act illegal migrants have been defined under Section 2(b) of the Act and are ineligible to apply for citizenship by Naturalization under Section 6 of the Act. It is note worthy that by virtue of the impugned amendment the above said class of minorities from these three countries, who have migrated to India before 31.12.2014 and earlier covered under the definition of illegal migrants have been now excluded to be considered as illegal migrant and have been made eligible for the Citizenship of India under Section 6B of the amended Act. However, it is also pertinent to mention that person from any community and any country is also entitled to acquire the Citizenship under Section 6 of the Act if they had entered India with valid documents.

Constitution Exists But There Is No Constitutionalism In Pakistan, Bangladesh And Afghanistan As Far As Non-Muslims Are Concerned:

It has been argued before various national forums that there is no persecution of non-Muslims in these three Islamic Countries. Hence, the basis of giving preferential treatment to these minorities is hollow. Some thinkers have even gone to the extent of refusing the mentioned three countries being Islamic constitutionally while arguing that since the Constitution provides for fair treatment for non-Muslim minorities also hence it's not fair to assume that non-Muslims are being persecuted there.

But while arguing such bare things they missed the most vital aspect of the Constitutional Law. What matters for the field of Constitution is Constitutionalism, not the black letters written in the Constitution. Constitutionalism is the practice and manner how the principle of Constitution actually holds grip on the working of the government and over all its national affairs.

The concepts of constitution and constitutionalism refer to the legal framework of a country. While constitution is often defined as the "supreme law of a country" constitutionalism is a system of governance under which the power of the government is limited by the rule of law. Constitutionalism recognizes the need of limiting concentration of power in order to protect the rights of groups and individuals.

Constitutionalism is a system of governance in which the power of the government is limited by laws, checks and balances, in order to reconcile authority with individual and collective freedoms. The principle of constitutionalism must be understood in opposition to nonconstitutionalism – a system in which the government uses its powers in an arbitrary fashion, without respecting the citizens' rights.

The idea of constitutionalism (and of constitution) is strictly linked with the progress and spread of democracies. In monarchic, totalitarian and dictatorial systems there is generally no constitution or, if it exists it is not respected. Individual and collective rights are often disregarded in dictatorial regimes, and the government cannot be held accountable as there is no legal document that

defines its limits.

The main difference between constitution and constitutionalism lies in the fact that the constitution is generally a written document, created by the government (often with the participation of the civil society), while constitutionalism is a principle and a system of governance that respects the rule of law and limits the power of the government. The constitution is often a written document, while the principles of constitutionalism are generally unwritten. Both constitution and constitutionalism evolve with the promulgation of democratic ideals – although they do not always proceed at the same speed.[4] There can be a constitutional form of governance – that respects the rights of the citizens and promotes democratic values – even though the national constitution is outdated.

At the same time, an inefficient democratic government may not be able to rule in a constitutional way, despite the existence of a constitution, which is the case with these three countries. There are various phases of constitution in these countries where a despotic and totalitarian regime ruled the national sphere, which in turn to gain popular support of the majority, completely tilted towards Islamic nature of the state. It resulted in persecution of non-Muslims by state and non-state actors, and State chose it politically convenient to not address the grievances of its non-Muslim citizens.

They had no constitutional guarantee in practice and in reality through which they could manage their life and affairs with freedom like the fellow Muslim residents. In anutshell it is safe to say there is no constitutionalism as far as rights and freedom of these religious minorities are concerned irrespective of what kind of freedom is guaranteed in their constitution in writing. Minorities continuously faced persecution and their migration from their home country has become a natural phenomenon in the last century. From the date of commencement of constitution till today almost all of such migrants have been received by India only.

It is res ipsa loquitar in the light of news reports coming from our Muslim majority neighborhood that non-Muslims have no equal protection or rights at par with the Muslim citizens in those countries. These countries eventually failed to uphold the spirit of constitutionalism. Even if these countries have a Constitution, but it has failed to provide constitutional protection to its non-Muslim citizens, they are not following constitutionalism. Any reasonable person will conclude after going through the vast data presented hereinafter in this report that non-Muslims are

4. http://www.differencebetween.net/miscellaneous/politics/difference-between-constitution-and-constitutionalism/

persecuted because of their faith and forced to leave their home country to save their life and dignity.

Despite the Citizenship Act, 1955 and the Pact the persecution of minorities led to a large influx of immigrants as these minorities fled to India from Pakistan, Afghanistan and Bangladesh.

Evidences of Religious Persecution: A Fact Sheet

I. In August 1969, Prof. Pravin M. Visarla, Professor at the Department of Economics, University of Bombay, published a research paper in a journal DEMOGRAPHY, Volume 6, Number 3, under the title Migration Between India and Pakistan, 1951-61, which evaluated and analyzed the data on migration between India and Pakistan from 1951-1961 and showed that the percentage of people fleeing Pakistan was equal to the percentage of people migrating into India, thereby showing that all those who left Pakistan entered India seeking refuge. It also showed that there is negligible net migration of India born person into Pakistan. It also establishes that intercensal growth rates for the population of different religious faith in Pakistan are consistent with the estimates of net immigration into India and between 1951 to 1961 India has gained 2.2% (1.68 millions) of total population growth from such migrants and the survivors of their progeny.[5]

II. In the year 2004, Mr. Mizanur Rahman has edited a book titled 'Human Rights and Good Governance' wherein a chapter has been written by Gobind Chandra Mandal, Asst. Professor of Law at University of Dhaka titled **'Rights of the Minorities: The case of Bangladesh'.**[6] While considering gross human rights violation in Bangladesh this article concludes that the non-recognition of minority rights and minority existence through the state projects Bangladesh as a Bengali Muslim dominated state which shrinks the space for the minorities and the laws privileging the majority puts the minorities in a vulnerable position and flags gross migration to the neighboring country because of such hard conditions.

5. https://www.jstor.org/stable/2060400?seq=1
6. https://www.academia.edu/839044/Rights_of_the_Minorities_The_Case_of_Bangladesh

III. In the same above mentioned book an article titled **'Treatment of Law to the Minorities in Bangladesh: Rhetoric and Reality'**[7] by the same author a glaring situation has been described wherein the State policies has promoted religious discrimination. The implementation of enemy property law affected 30% of the total Hindu households and 10.5 million acres of land belonging Hindu minority dispossessed, which has resulted in mass out migration of Hindu Population from mid-1960s onwards. It further notes that hundred plus organizations of the Islamic militants present in Bangladesh in June 2007, wherein killings, abduction, torture, extortion, land grabbing, desecration of religious institutions and places, forcible eviction, violation against women, electoral violence etc. have been the part of regular nightmare for Bangladeshi minorities.

IV. On March 1st - 5th, 2004, Mr. Samson Salamat, a member of the National Commission for Justice and Peace- Pakistan addressed the United Nations Commission on Human Rights Working Group on Minorities- 10th Session and briefed them about the continuous incidents of violence against religious minority groups, attacks and destruction of their places of worship. He emphasized on the issues of lack of effort on the part of the Government officials to address those issues and giving preferential treatment to religious majority.[8]

V. In the 11th Session of the Working Groups on Minorities of the United Nations High Commission for Human Rights organized in Geneva from May 30th to 3rd June, 2005, Mr. Nabendu Datta, Director Planning and Coordination Council, Bangladesh Hindu, Buddhist and Christian Unity Council, United States of America addressed the Session where he highlighted the human rights violations in Bangladesh against religious minorities and provided several such incidences of atrocities against the minorities.[9]

VI. The Guardian on 02.08.2009 reported that one of the MP of Afghanistan Abdurrab Rasul Sayyaf stated in an interview that the government has an obligation to protect the minorities but they will have to pay Poll tax and that they will never be allowed to take up any governmental body or office.

VII. On 22nd October 2012 Open Democracy published its report titled ***"Pakistan's disappearing Hindus"*** and reported that there is a steady increase in the influx of Hindu Migrants to India over the past 5 years and it is widely perceived that the exodus is similar to the situation between 1989 and 1991 when

7. https://www.academia.edu/839049/Treatment_of_Law_to_the_Minorities_in_Bangladesh_Rhetoric_and_Reality
8. https://www2.ohchr.org/english/issues/minorities/docs/NCJP3a.doc https://www.satp.org/satporgtp/countries/pakistan/document/papers/NCJP_2015_%20Report.pdf
9. https://www.ohchr.org/Documents/Issues/Minorities/WG/11/Bangladeshi_3a.doc

thousands of Hindus migrated to India. It also reported as per the Asian Human rights commission every month 20 -25 kidnappings and forced conversions of Hindu girls is reported in Sindh.[10]

VIII. The Reuters reported on 22nd Sept. 2013 that a suicide bombing had killed 78 Christians in Pakistan, it was also stated that a Pakistan based terror organization Tehrik-i-Taliban Pakistan (TTP) Jundullah took responsibility of the attack and stated that "They are the enemies of Islam, therefore we target them," "We will continue our attacks on non-Muslims on Pakistani land."[11]

IX. Aljazeera, an international news agency, reported on the 23rd May 2014 that ***Sikhs have staged a protest in the grounds of Parliament of Pakistan against the destruction of their places of worship.***[12]

X. On 25-26th November, 2014, Pirbhu Lal Satyani, a Member of the ***Pakistan Dalit Solidarity Network*** addressed the 7th Session of Minority Rights Forum[13] and stated that the issue of religious minorities is a serious human rights issue in Pakistan that is increasing day by day. The transition of a country from secular values given by its founder to Islamic ideology by religious fundamentalists has promoted religious extremism, making religious minorities in Pakistan more vulnerable and putting their lives at risk. The increasing role of madrassas, biased curriculum, and misuse of anti-blasphemy laws, forced conversion of young and minor minority girls and attacks on religious places of minorities has built the sense of insecurity and fear among the religious minorities in Pakistan.

XI. The International Journal on Minority and Group Rights published a paper in 2015 authored by Mr. Amalendu Misra, a Senior Lecturer in the Department of Politics, Philosophy and Religion, Lancaster University, titled, ***"Life in Brackets: Minority Christians and Hegemonic Violence in Pakistan"*** [14] which focused on the Christian minority in Pakistan and postulated that their "crisis condition" can be explained with a set pattern of rules promoted by both state and non-state actors.

10. https://www.opendemocracy.net/en/opensecurity/pakistans-disappearing-hindus/
11. https://www.reuters.com/article/us-pakistan-blast/suicide-bombers-kill-78-christians-outside-pakistani-church-idUSBRE98L02K20130922
12. https://www.aljazeera.com/news/asia/2014/05/sikhs-protest-pakistan-parliament-grounds-201452311207256179.html
13. https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/UN/SP/Pirbhu_Lal_Satyani__PDSN__Statement_-_UN_Minority_Forum_2014.pdf https://www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Session7/Item4/Participants/Pakistan%20Dalit%20Solidarity%20Network.docx
14. https://www.researchgate.net/publication/277931257_Life_in_Brackets_Minority_Christians_and_Hegemonic_Violence_in_Pakistan

XII. The Dawn on 23.06.2015 in an article titled ***'Where should a Pakistani Hindu go?***[15] reported that Lal Malhi, a Members of National Assembly (MNA) on a minority seat from Pakistan Tehreekh-E-Insaaf Party, commented on how frequently insensitive and outright offensive our parliamentarians usually are when in their rhetoric of jingoism they want to condemn and criticize India and instead start blaming and hurling abuses at Hindus. He also stated that a lot of MNAs have mocked Hindus for worshiping cows. In their mindless hate-spewing, they ignore the fact that four million Hindus live in Pakistan and their derogatory words hurt the religious sentiments of the local Hindu community. He concluded that "We often feel like citizens of "no man's land" because here in Pakistan we are treated as Indians... Where should we do?"

XIII. On 25.10.2015, the BBC news reported in an article titled 'Why Pakistani Hindus leave their homes for India' that there are about 1200 people who migrated from Pakistan to India from 2010-2015 because of religious and cultural persecution and are housed in camps in Delhi.[16]

XIV. On 19.01.2016, livemint has published an article 'Slow genocide of minorities in Pakistan: Farahnaz Ispahani' referring Farahnaz Ispahani, media advisor of the President of Pakistan from 2008 to 2012 through her book 'Purifying the Land of the Pure: Pakistan's Religious Minorities that there is slow genocide of minorities happening in Pakistan alleging Jamaat-i-Islami (JI) founder and ideologue Maulana Abul Ala Maududi for creating a militant group to target religious minorities.[17]

XV. In June 2016, Reuters has published a report titled 'Afghanistan's dwindling Sikh, Hindu communities flee new abuses' flashing the religious persecution of Sikh and Hindu communities in Afghanistan. It records the statement of Jagtar Singh, a shop owner in Kabul that if you are not a Muslim, you are not a human in their eyes.[18] According to Avtar Singh, Chairman of National Council of Hindus and Sikhs, the community now numbers fewer than 220 families, compared with around 220,000 members before the collapse of the Kabul Government in 1992.

XVI. Tolo News reported on 21.06.2016 in its article that ***nearly 99% of Hindus, Sikhs left Afghanistan in last three decades.*** It has reported that Sikh and Hindu population number was 220,000 in the 1980s. That number dropped sharply to 1,500 when the mujahideen was in power during the 1990s and remained at that

15. https://www.dawn.com/news/1189939
16. https://www.bbc.com/news/world-asia-india-34645370
17. https://www.livemint.com/Politics/F4r3Tmf51k8Sm6DGjPRaEN/Slow-genocide-of-minorities-in-Pakistan-Farahnaz-Ispahani.html
18. https://www.reuters.com/article/us-afghanistan-minority/afghanistans-dwindling-sikh-hindu-communities-flee-new-abuses-idUSKCN0Z82SL

level during the Taliban regime. It is now estimated that only 1,350 Hindusand Sikhs remain in the country.[19]

XVII. Another international news agency, Reuters on June 23, 2016 stated that, Sikhs and Hindus in Afghanistan faced a lot of persecution and the number has gone down from 220,000 families to 220 families from 1992 till 2016. It stated that Hindus and Sikhs were not allowed to even cremate the dead in peace. World Sikh Organisation (Canada) published a report in 2015 highlighting the ***Plight of Afghan Sikhs and Hindus in Afghanistan,*** which also emphasis that there is no recourse of proper public employment even in India.[20]

XVIII. On June 23, 2016 the Diplomat, a Japan based International news magazine, in its article titled ***'The Plight of Pakistan's Hindu Community'*** stated that Hindus represented almost 15 percent of Pakistan's population; now, however, their representation has come down to less than 2 percent. In 2014, a Hindu lawmaker told the National Assembly that every year about 5,000 Hindus flee Pakistan to avoid persecution. It stated that a madrasa (religious school) in Sindh, called Dargah Alia Qadria Bharchundi Sharif, had openly made claims about its aim of converting at least 2,000 Hindu girls to Islam.[21]

XIX. The Economic Times reported in its article titled ***'India raises atrocities in Balochistan; persecution of Hindus'*** on 19th September 2016 that the people of Balochistan, amongst other provinces, have been waging for decades a bitter and brave struggle against their daily abuse and torture. Religious and sectarian minorities such as Hindus, Christians and others continue to face discrimination, persecution and targeted attacks in Pakistan. Places of worship belonging to minorities have been destroyed and vandalized. Blasphemy laws remain in force and are disproportionately used against religious minorities.[22]

XX. Al-Jazeera on 01.01.2017 in its report titled ***'The decline of Afghanistan's Hindu and Sikh communities'*** stated that the population in the 1970s, there were around 700,000 Hindus and Sikhs, and now they are estimated to be less than 7,000. It also states that due to the presence of large number of terrorist groups it has become harder for Hindus to live there. The constitution of Afghanistan guarantees equal rights to all Afghan citizens in Article 22 and then contradicts

19. https://tolonews.com/afghanistan/nearly-99-hindus-sikhs-left-afghanistan-last-three-decades
20. https://www.ourcommons.ca/Content/Committee/421/CIMM/Brief/BR8401077/br-external/WorldSikhOrganizationofCanada-e.pdf
21. https://thediplomat.com/2016/06/the-plight-of-pakistans-hindu-community/
22. https://economictimes.indiatimes.com/news/politics-and-nation/india-raises-atrocities-in-balochistan-persecution-of-hindus/articleshow/54414651.cms

itself in Article 62 by excluding a section of the population, as that article prohibits non-Muslim Afghans from becoming president of the country.[23]

XXI. Before the United Nations Human Rights Council Forum on Minority Issues 10th Session: Minority Youth: Towards Inclusive and Diverse Societies Mr. S Arun Jyoti Barua, a member of Bangladesh Minority Council presented a report on 29th November 2017 which emphasized on ***'Silent ethnic cleansing in Bangladesh'.*** The report presented the methods of ethnic cleansing adopted by the state and non-state agencies.[24]

XXII. On 16.04.2018 The Hindu Business Line published an article titled ***"Religious minorities continue to face violent attacks in Pakistan: Human Rights Commission".***[25] It also highlighted the same plight of non-Muslims living in Pakistan.

XXIII. The Hindu Business Line reported on the 01.07.2018 that a suicide bomber targeted a convoy of Sikhs and Hindus on their way to meet Afghanistan's president in the eastern city of Jalalabad, killing at least 19 people.[26] It also reported Sikhs and Hindus have long suffered widespread discrimination in the conservative Muslim country and been targeted by Islamic extremists. The community numbered more than 80,000 in the 1970s, but today only around 1,000 remain in the country. Under Taliban rule in the late 1990s, they were told to identify themselves by wearing yellow armbands, but the dictate was not wholly enforced. In recent years, large numbers of Sikhs and Hindus have sought asylum in India, which has a Hindu majority and a large Sikh population.

XXIV. In July 2018, the Minority Rights Group International published a report on World Directory of Minorities and Indigenous People- Bangladesh: Hindus, which discussed the status and conditions of the religious minority in the area and the current issues and challenges faced by the religious minority i.e. the Hindu community.[27]

XXV. In 2018, Augsburg Fortress, published a book in which one chapter was

23. https://www.aljazeera.com/indepth/features/2016/12/decline-afghanistan-hindu-sikh-communities-161225082540860.html
24. https://www.ohchr.org/Documents/HRBodies/HRCouncil/MinorityIssues/Session10/Item5/AdditionalStatements/item5%20-%20Bangladesh%20Minority%20Council%20.pdf
25. https://www.thehindubusinessline.com/news/world/religious-minorities-continue-to-face-violent-attacks-in-pakistan-watchdog/article23561059.ece
26. https://www.thehindubusinessline.com/news/world/suicide-bomber-targets-sikhs-hindus-in-afghanistan-19-dead/article24306284.ece
27. https://minorityrights.org/minorities/hindus/

authored by Mr. Rashid Gill, titled ***"Persecution and Pakistani Christians Diaspora in Canada".*** The chapter discussed about the challenges faced by the Christians in Pakistan because of the lack of effort taken by Government officials to improve the situation.

XXVI. On the 30th of October, 2018 BBC News reported in its report titled ***'Why are Pakistan's Christians targeted?'*** that there has been an escalation in the number of attacks on residential areas and places of worship of the religious minorities and especially on the Pakistan's Christian minorities and claims that it is mostly motivated by the political motives and the blasphemy laws. It also reported that the percentage of population of the Pakistan's Christians in the conflict areas have been reduced from 15% to less than 4%. It showed that the whole of the Christian community is living under a sense of vulnerability and fear.[28]

XXVII. The Dawn newspaper on 27.03.2019 in its report titled ***'Religious minorities want basic rights granted'*** stated that the representatives and activists from religious minorities expressed disappointment over the state of law and order nationwide, as crimes against their communities continued unabated.[29] In the report one of the Hindu community activist Amarnath Randhawa said the issue of forced conversions was rising once again. "Young girls from the Hindu community are being abducted and raped, and at gunpoint married off to Muslim boys even though some of them are already married," he said. "Even the Sikh community is not safe, as recently in Khyber Pakhtunkhwa a married young Sikh woman was abducted."

XXVIII. The Business Standard reported on the 16th of May, 2019 minorities in Pakistan, especially Christians, are facing constant discrimination and persecution by state and non-state agencies. The agency also interviewed Noel Malik, a political activist and member of Pakistan Minorities Alliance who stated that Christians face atrocities of highest degree, with the state subjecting them to arbitrary detentions, enforced disappearances and even cold-blooded homicides.[30]

XXIX. The Asia Times on 09.07.2019 in an article titled 'Pakistan's religious minorities continue to suffer' reported that, "At the time of partition in 1947, almost 23% of Pakistan's population was [composed] of non-Muslim citizens. Today, the proportion of non-Muslims has declined to approximately 3%".

28. https://www.bbc.com/news/world-asia-35910331
29. https://www.dawn.com/news/1472116
30. https://www.business-standard.com/article/news-ani/atrocities-against-minority-christians-growing-rapidly-in-pak-says-activist-119051600906_1.html

XXX. The Economic Times, on the 10.09.2019, reported that a Sikh man from the party of the Prime Minister of Pakistan i.e. Pakistan Tehreek-e-Insaf (PTI) sought an asylum in India citing atrocities against the minorities in Pakistan.[31]

XXXI. The Economic Times on the 10.09.2019 reported Pakistan's Christian minority continues to languish and suffer under extreme socio-economic conditions.[32]

XXXII. The Print reported on 12.09.2019 that "In the last few days, three prominent cases of girls from minority communities being forcefully converted to Islam have surfaced in Pakistan. These girls, hailing from Sikh, Hindu and Christian families, have highlighted the deep-rooted problem in the country, which has continued for decades now, prominently in Sindh and Punjab provinces."[33]

XXXIII. The New York Times reported on 05.10.2019 that many members of Pakistan's dwindling Hindu minority has been wondering whether it was worth trying to stay in a country where they felt increasingly unsafe. In April, an angry mob vandalized a different Hindu temple, smashing its idols and chucking the pieces in an open sewer. In May, a Hindu veterinarian was accused of blasphemy in a neighboring town, his shop burned to the ground on the rumor that he was selling medicine wrapped in Islamic religious text.[34]

XXXIV. The Sunday Guardian Live reported on the 30.11.2019 in an article titled 'Hindus under attack in Bangladesh, Pakistan, face annihilation' that "Incidents of human rights violations against Hindus are on the rise in the People's Republic of Bangladesh and the Islamic Republic of Pakistan, where they are in a minority, but neither of the two countries nor the international community is concerned. As a result of this, the population of Hindus has declined in these two countries."[35] It has reported that in the first 11 months of 2018, 1,792 incidents of violence and discrimination targeting religious minorities took place in Bangladesh. Of these, 50 took place on religious institutions and temples, while 2,734 acres were grabbed by local musclemen, according to "Hindu Human Rights Report 2019", which

31. https://m.economictimes.com/news/politics-and-nation/pakistans-former-legislator-seeks-asylum-in-india/articleshow/71060829.cms
32. https://m.economictimes.com/news/international/world-news/pakistans-christian-community-languishes-as-imran-khan-government-busy-on-kashmir/articleshow/71071410.cms
33. https://theprint.in/opinion/letter-from-pakistan/imran-khan-lectures-modi-on-minorities-he-must-ban-forced-conversions-in-pakistan-first/290419/
34. https://www.nytimes.com/2019/10/05/world/asia/pakistan-hindu-india-modi.html
35. https://www.sundayguardianlive.com/news/hindus-attack-bangladesh-pakistan-face-annihilation

covers violations of human rights of Hindus documented by "IndiaFacts Research Group".[36 & 37]

XXXV. The most recent incident happened in Nankana Sahib, Pakistan on 03.01.2020. A riotous mob threw stones at the Gurdwara in which many Sikhs were reportedly hurt. The Muslim mob had threatened that Sikhs with slogans demanding their ouster from Pakistan. The mob claimed that the place will be converted and renamed as 'Ghulam-e-Mustafa' from Nankana Sahib and no Sikh will remain in the country. The mob was led by the family of Mohammad Hasan who had kidnapped the Sikh girl Jagjit Kaur a few months ago and forcibly converted her to Islam and married her.

The above facts leave no doubt about the large scale persecution of the non-Muslims in these three countries which resulted in their migration to India to save their life and dignity. Persecution continued leading to a large number of immigrants in India, but the government could only provide limited help to these minorities because of the restrictions imposed in The Passports Act, 1967 and The Foreigners Act, 1946. Therefore, on these facts and circumstances in December, 2019 the Government passed the Citizenship Amendment Act, 2019 to accommodate the above mentioned immigrants who had come to India on grounds of religious persecution being Hindus, Jains, Sikhs, Parsis, Christians and Buddhist and this enactment is completely supported by the evidence of persecution to protect ethnic cleansing and grant a life of dignity to these migrants.

36. http://indiafacts.org/hhrr2019/
37. http://indiafacts.org/wp-content/uploads/2019/07/2.0-Hindu-Human-Rights-Report-2019-3.pdf

THE CITIZENSHIP AMENDMENT ACT, 2019 IS CONSTITUTIONAL AND IT WILL PASS THE MUSTER OF JUDICIAL REVIEW

The Citizenship Amendment Act, 2019, is not in violation of Article 14 of the Indian Constitution as being criticized by others. Under Article 14 of the Constitution, the legislature is allowed to make a reasonable classification which is in relation to the object it seeks to achieve. In the instant case the classification is made on the basis these countries being Islamic dominated states. The countries that have been chosen (i.e. Pakistan, Bangladesh) are the ones that India had a history of Partition with and thereby had a lot of population moving in and out of the country. Afghanistan has a common border with Pakistan and India (POK) and hence there was a lot of immigration on both sides due to the Partition and also it is similarly situated in terms of persecution of minorities in Pakistan.

The object sought to achieve in the instant case is that the religious minorities who have illegally migrated to escape persecution on the lines of religion are to be given citizenship. This is done because during the time of partition, post the date of 19 July, 1948, it was decided that those who came to India before that will be deemed to be citizens of India, post this the Nehru-Liaquat Pact was signed in which both India and Pakistan promised to give equal rights and opportunities to their religious minorities who had decided to stay back in the respective countries.

Based on the recent history of persecution of religious minorities in the above mentioned countries viz. Pakistan, Afghanistan and Bangladesh, a lot of illegal immigrants have come to India and this Act aims in assisting those illegal immigrants who have migrated to India to flee from the persecution based on religion in their respective countries. Hence the objective sought and the classification made have a nexus. It is for granting Citizenship to a class of migrants only, it nowhere snatches any body's right.

38. https://timesofindia.indiatimes.com/world/pakistan/muslims-mob-attack-gurdwara-nankana-sahib-with-stones/articleshow/73088062.cms

RULINGS OF THE HON'BLE SUPREME COURT:

The Impugned Act Provides A Reasonable Classification And Hence is Not In Violation Of Article 14

A. It has been held in multiple cases by the Hon'ble Supreme Court that reasonable classification is allowed under Article 14 of the Constitution. It is based on the principle of intelligible differentia: Like to be treated alike, and consequently allows unlike to be treated differently. In **Budhan Choudhry and Ors. vs. The State of Bihar, AIR 1955 SC 191,** It has been held by a 7 judge bench of the Hon'ble Court that Article 14 of the Constitution prohibits class legislation but permits reasonable classification:

"It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question."

B. *A 5 judge bench of the Hon'ble Court in* ***Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538*** *has held that:*

"Para 11. *The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Article 14 of the Constitution. In Budhan Choudhry v. State of Bihar [(1955) 1 SCR 1045] a Constitution Bench of seven Judges of this Court at p. 1048-49 explained the true meaning and scope of Article 14 .... It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped*

together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration……

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—

a. *that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;*

b. *that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;*

c. *that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;*

d. *that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;*

e. *that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be concieved existing at the time of legislation; and*

f. *that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and un-known reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."*

MEANING OF ARBITRARY

C. A Five Judge bench of the Hon'ble Supreme Court in the case of **E.P. Royappa v. State of T.N., (1974) 4 SCC 3** has explained the term arbitrary as very simply the lack of any reasoning, which is not present in the instant case as in the instant case there has been a detailed and logical explanation provided. The said explanation has been further reiterated by another 5 judge bench of this Hon'ble Court in **Justice K.S. Puttaswamy and Ors. vs. Union of India (UOI) and Ors. (2019) 1 SCC 1;**

"Para 378. *A challenge Under Article 14 can be made if there is an unreasonable classification and/or if the impugned measure is arbitrary. The classification is unreasonable if there is no intelligible differentia justifying the classification and if the classification has no rational nexus with the objective sought to be achieved. Arbitrariness, which was first explained at para 85 of E.P. Royappa v. State of T.N., (1974) 4 SCC 3, is very simply the lack of any reasoning."*

Further, another 5 judge bench of this Hon'ble Court in ***State of Uttar Pradesh v. Kaushailiya and Ors. AIR 1964 SC 416*** *in Para 7 echoed the same sentiment.*

D. Recently a 2 judge bench of this Hon'ble Court in **Binoy Viswam vs. Union of India (UOI) and Ors. AIR 2017 SC 2967** reaffirmed the same and held that:

"Para 96. *What follows is that Article 14 forbids class legislation; it does not forbid reasonable classification of persons, objects and transactions by the Legislature for the purpose of achieving specific ends. Classification to be reasonable should fulfil the following two tests:*

(1) It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.

(2) The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.

Thus, Article 14 in its ambit and sweep involves two facets, viz., it permits reasonable classification which is founded on intelligible differentia and accommodates the practical needs of the society and the differential must have a rational relation to the objects sought to be achieved. Further, it does not allow any kind of arbitrariness and ensures fairness and equality of treatment. It is the fonjuris of our Constitution, the fountainhead of justice. Differential treatment

does not per se amount to violation of Article 14 of the Constitution and it violates Article 14 only when there is no reasonable basis and there are several tests to decide whether a classification is reasonable or not and one of the tests will be as to whether it is conducive to the functioning of modern society."

E. The Government has a right to make the classification based on what it feels is necessary and for the greater good when there is a proper classification. The same was held in the case of **Kumari Chitra Ghosh v. Union of India, (1969) 2 SCC 228** where 5 judge bench of this Court has held that:

***"Para 9. .....** If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification."*

F. A 5 judge bench of this Hon'ble Court in **R. C. Poudyal v. Union of India, 1994 Supp (1) SCC 324 at page 386** has held that:

***"Para 130.** In State of M.P. v. Bhopal Sugar Industries Ltd. [(1964) 6 SCR 846, 850] this Court said:*

"The Legislature has always the power to make special laws to attain particular objects and for that purpose has authority to select or classify persons, objects or transactions upon which the law is intended to operate. Differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object of the statute.... Where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on those historical reasons would be upheld."

G. A 3 judge bench of this Hon'ble Court in **Glanrock Estate (P) Ltd. v. State of T.N., (2010) 10 SCC 96** at page 111 has held that

***"Para 37.** The doctrine of classification under Article 14 has several facets ... Equality is a comparative concept. A person is treated unequally only if that person is treated worse than others, and those others (the comparison group) must be those who are "similarly situated" to the complainant...."*

H. A 5 judge bench of this Hon'ble Court in **Makhan Lal Malhotra v. Union of India, (1961) 2 SCR 120** has considered the classification of migrants on the basis of their residence in Pakistan, rural and urban and held such classification valid. It means that the migrants can be classified in different groups to properly addressing the issues of each class.

***"Para 15. .....**There must be a reasonable nexus between the classification and*

the object sought to be achieved. The object of the impugned provisions, read with the relevant Acts, is to rehabilitate the evacuees on an equitable basis. To implement the scheme of rehabilitation the evacuee law has classified evacuees under different categories. Broadly speaking, the main division is between persons who were residing in Pakistan in rural areas with agriculture as their avocation and those persons who were residing in urban areas in Pakistan. Persons from rural areas have been divided into two categories, namely, persons who owned agricultural land with a building as part of the holding and persons who held agricultural land with an independent building which cannot be described as part of the holding. Separate treatment is given to rural areas and urban areas. In the rural areas, land with a building is treated as one unit, but when the building is of a substantial value it is put in a different category and separately compensated for. This classification has certainly a reasonable relation to the object of rehabilitation, for it cannot be denied that the three categories require separate treatments for the purpose of resettlement on new lands and for the payment of compensation."

On reasonable classification there is catena of judgments echoing the similar views. The above quoted judgments are leading ones and only represent a fraction of an inclusive list.

Religion Is Also A Valid Criteria For Classification

I. A 5 judge bench of this Hon'ble Court in **Mahant Moti Das v. S.P. Sahi, AIR 1959 SC 942** has held that

"Para 7. *We proceed now to consider the contentions urged on behalf of the appellants. The first contention is that the provisions in Sections 2, 5, 6, 7 and 8 infringe Article 14 of the Constitution. ..... The submission is that there is inequality of treatment as between Hindu religious trusts on one hand and Sikh religious trusts on the other, the latter having been excluded from the purview of the Act; secondly, there is inequality of treatment even as between Hindu religious trusts and Jain religious trusts, though both come under the Act. We do not think that there is any substance in this contention. ..... It is enough to say that it is now well settled by a series of decisions of this Court that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation, and in order to pass the test of permissible classification, two conditions must be fulfilled, ... In view of these differences it cannot be said that in the matter of religious trusts in the State of Bihar, Sikhs, Hindus and*

Jains are situated alike or that the needs of the Jains and Hindus are the same in the matter of the administration of their respective religious trusts; therefore, according to the well-established principles laid down by this Court with regard to legislative classification, it was open to the Bihar Legislature to exclude Sikhs who might have been in no need of protection and to distinguish between Hindus and Jains. Therefore, the contention urged on behalf of the appellants that the several provisions of the Act contravene Article 14 is devoid of any merit."

J. Here the classification between Muslims and Non-Muslims from these three countries has not been done only on the basis of religion. The reason of exclusion of Muslims of these three countries from the group of beneficiaries of CAA, 2019 in not only religion, but a fact that they are living in a country dominated by their own religion and there is an insignificant chance for them to face religious persecution as being faced by non-Muslims. It is the probability of facing religious persecution which qualifies religion here. What is restricted is a classification only on religious line, if with religion some additional factor is involved then such classification would be valid. A 2 judge bench of this Hon'ble Court in **Ewanlangki-E-Rymbai v. Jaintia Hills District Council, (2006) 4 SCC 748** has held that

"Para 20. *Mr R.F. Nariman, learned Senior Counsel appearing on behalf of Respondents 5 and 6 analysed the provisions of Articles 14, 15, 16, 25, 26 and 29 of the Constitution of India and submitted that Article 14 permitted reasonable classification in accordance with well-settled principles. Article 15 was a species of Article 14 in as much as it prohibited the State from discriminating against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. However, he emphasised the use of the words "on the ground only of religion". Thus if a citizen is discriminated against "on the ground only of religion", such action may be unconstitutional. That however, is not the case here. The exclusion is on account of the admitted fact that a Christian cannot perform the religious duties of a Dolloi. …*

Having regard to the nature of duties to be performed by a Dolloi the person elected as Dolloi must be religiously proficient to perform his religious duties. It was really with a view to preserve their culture that a Christian was excluded from contesting the office of Dolloi which involved performance of religious duties, which he could not perform…

26. *…. It logically follows that the Dolloi must be one who is conversant with the indigenous religious practices of the inhabitants of the elaka. … The custom cannot be said to be discontinued or destroyed by such aberrations. The High*

Court has also noticed the judicial recognition given to the customary practice in the Khasi and Jaintia Hills that a Dolloi cannot be a Christian.

***27.** Having regard to all these facts, we are in agreement with the High Court that by excluding Christians from contesting for the post of Dolloi, Articles 14, 15 and 16 are not violated. The exclusion is justified by good reason, since admittedly the religious duties of a Dolloi of Elaka Jowai cannot be performed by a Christian. Thus the ground for exclusion of Christians is not solely the ground of religion, but on account of the admitted fact that a Christian cannot perform the religious functions attached to the office of the Dolloi. The reason cannot be said to be either unreasonable or arbitrary.*

***33.** In Clarence Pais v. Union of India [(2001) 4 SCC 325] …the Court made pertinent observations in the following words: (SCC p. 332, para 7)*

"7. We have shown above that it is applicable to Parsis after the amendment of the Act in 1962 and to Hindus who reside within the territories which on 1-9-1870 were subject to the Lt. Governor of Bengal or to areas covered by original jurisdiction of the High Courts of Bombay and Madras and to all Wills made outside those territories and limits so far as they relate to immovable property situate within those territories and limits. If that is so, it cannot be said that the section is exclusively applicable only to Christians and, therefore, it is discriminatory. The whole foundation of the case is thus lost. The differences are not based on any religion but for historical reasons that in the British Empire in India, probate was required to prove the right of a legatee or an executor but not in Part 'B' or 'C' States. That position has continued even after the Constitution has come into force. Historical reasons may justify differential treatment of separate geographical regions provided it bears a reasonable and just relation to the matter in respect of which differential treatment is accorded…."

K. A 11 judge bench of this Hon'ble Court in **T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 at page 661** (Ruma Pal J. partly dissenting) has held while asserting need to provide extra protection of minority that

"Para 371. Similarly, the Constitution has also carved out a further exception to Article 29(2) in the form of Article 30(1) by recognising the rights of special classes in the form of minorities based on language or religion to establish and administer educational institutions of their choice. The right of the minorities under Article 30(1) does not operate as discrimination against other citizens only on the ground of religion or language. The reason for such classification is not only religion or language per se but minorities based on religion and language.

Although, it is not necessary to justify a classification made by the Constitution, this fact of "minorityship" is the obvious rationale for making a distinction, the underlying assumption being that minorities by their very numbers are in a politically disadvantaged situation and require special protection at least in the field of education."

Classification Between Two Classes Of Foreigners Is A Valid Classification

L. A 5 judge bench of the Hon'ble Supreme Court in Hans Muller of Nurenburg v. Superintendent, Presidency Jail, (1955) 1 SCR 1284 has held that:

"Para 23. *We now turn to the argument that Section 3(1)(b) is ultra vires because it offends Article 14 of the Constitution. Actually, the attack here is on Section 3(2)(c) of the Foreigners Act but as Section (3)(1)(b) of the Preventive Detention Act is consequential on that, it is also involved. Section 3(1)(b) permits detention of a "foreigner" within the meaning of the Foreigners Act, 1946. The definition of "foreigner" is given in Section 2(a) of that Act and is as follows:*

'foreigner' means a person who—

(i) is not a natural-born British subject as defined in sub-sections (1) and (2) of Section (1) of the British Nationality and Status of Aliens Act, 1914, or

(ii) has not been granted a certificate of naturalization as a British subject under any law for the time being in force in India".

The rest of the definition is not material. The argument is that this differentiates between foreigner and foreigner. It takes two classes of British subjects who are now as much foreigners as anyone else not an Indian citizen, out of the class of foreigners for the purposes of preventive detention and for the purposes of expulsion under the Foreigners Act. This, it was contended, offends Article 14 ..

24.** This argument is easily answered by the classification rule which has been repeatedly applied in this court. The classification of foreigners into those who are British subjects of the kind set out in the definition, and others, so as to make the former not foreigners for the purposes of the Foreigners Act and the Preventive Detention Act, is a reasonable and rational classification and so does not, on the authority of our previous decisions, offend Article 14.* ***There is no individual discrimination and it is easily understandable that reasons of State may

make it desirable to classify foreigners into different groups. *We repel this argument.*

26. *We hold that the impugned portions of Section 3(1)(b) of the Preventive Detention Act and Section 3(2)(c) of the Foreigners Act, 1946 are intra vires."*

.....

The Degree Of Harm Which Has Prompted The Enactment Of A Particular Law Is A Matter Within The Discretion Of The Law-Makers

M. A 5 judge bench of this Hon'ble Court in **Chiranjit Lal Chowdhuri v. Union of India, 1950 SCR 869 : AIR 1951 SC 41** has held that

"Para 30. ..... A legislature empowered to make laws on a wide range of subjects must of necessity have the power of making special laws to attain particular objects and must, for that purpose, possess large powers of distinguishing and classifying the persons or things to be brought under the operation of such laws, provided the basis of such classification has a just and reasonable relation to the object which the legislature has in view. While, for instance, a classification in a law regulating labour in mines or factories may be based on age or sex, it may not be based on the colour of one's skin. It is also true that the class of persons to whom a law is made applicable may be large or small, and ***the degree of harm*** *which has prompted the enactment of a particular law is a matter within the discretion of the law-makers. It is not the province of the court to canvass the legislative judgment in such matters....*

67. *.... It said that owing to mismanagement and neglect, a situation had arisen in the affairs of the company which prejudicially affected the production of an essential commodity and caused serious unemployment amongst a certain section of the community. ..... . As has been laid down by the Supreme Court of America, "The legislature is free to recognise degrees of harm and it may confine its restrictions to those cases where the need is deemed to be the clearest [Radice v. New York, 264 US 294] "."*

There Is No Fundamental Right Of A Foreigner To Reside And Settle In The Country And Article 14 Cannot Help Them As Article 19 Strictly Applicable Only For Citizens

N. A 5 judge bench of the Hon'ble Supreme Court in **Hans Muller of Nurenburg v. Superintendent, Presidency Jail, (1955) 1 SCR 1284** has held that

"Para 33. Article 19 of the Constitution confers certain fundamental rights of freedom on the citizens of India, among them, the right "to move freely throughout the territory of India" and "to reside and settle in any part of India", subject only to laws that impose reasonable restrictions on the exercise of those rights in the interests of the general public or for the protection of the interests of any Scheduled Tribe. No corresponding rights are given to foreigners. All that is guaranteed to them is protection to life and liberty in accordance with the laws of the land…"

O. A 2 judge bench of Hon'ble Supreme Court in **State of Arunachal Pradesh v. Khudiram Chakma, 1994 Supp (1) SCC 615 at page 622** has held that

"Para 75. It is true that fundamental right is available to a foreigner as held in Louis De Raedt v. Union of India [(1991) 3 SCC 554)

"The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country."

As such Articles 19(1)(d) and (e) are unavailable to foreigners because those rights are conferred only on the citizens. Certainly, the machinery of Article 14 cannot be invoked to obtain that fundamental right. Rights under Articles 19(1)(d) and (e) are expressly withheld to foreigners."

P. The Hon'ble Supreme Court in **Anwar v. State of J&K, (1971) 3 SCC 104, page 105** has held that

"Para 4. The petitioner is not a citizen of India. He is, therefore, a foreigner as defined in the Foreigners Act. Not being a citizen, he is clearly not entitled to any fundamental right guaranteed by Article 19 of the Constitution. He has thus no right to remain within the territories of India. His entry into this country was also

without any right and indeed he himself does not claim to have entered into India in accordance with the provisions of the Foreigners Act and the Orders made thereunder. The only rights which he can claim in the present proceedings are those contained in Articles 20 to 22."

Hence, it can be safely argued against the demand of inclusion of all by the protestors and the contention raised in the Writ Petition contending about the right to reside for illegal migrants of a particular majority class can have no protection under Article 14 and 19 because they are not Citizens of the Country and also the challenge to the validity of the Act in the Supreme Court is also not maintainable under Article 32 as none of the Petitioners are aggrieved from the impugned legislation.

The Segregated Class Is Not Citizens Of India And They Have No Protection Under Article 15 Of The Constitution

Q. The scheme of protection under our constitution over and above the generality of equality principle laid out in Article 14, Article 15 provides for prohibition of discrimination on specific grounds, such as only on the basis of race, sex, and also religion. This means, that any such basis of classification, even if intelligible, cannot pass muster of Article 14 for reason of the specific prohibition in Article 15.

However, the same is with its rider, i.e., Article 15 applies only to citizens. On the other hand Article 14 applies to 'any person'. Thus, as settled in **Chandrima Das (2000) 2 SCC 465 (2 Judge Bench); and Indo-China Steam Navigation cases (1964) 6 SCR 594** (5 Judge Bench); a non-citizen cannot take benefit of Article 15. Hence, for the reason of non-application of Article 15 for non-citizens, a classification which has religious inklings cannot be dismissed at the threshold in this case since the impugned law is with respect to non-citizens, and such classification shall be constitutional if it passes the tests of Article 14.

With regard to above stated preposition, the Hon'ble Court in **Railway Board v. Chandrima Das, (2000) 2 SCC 465** has held that:

"Para 28. *The fundamental rights are available to all the "citizens" of the country but a few of them are also available to "persons". While Article 14, which guarantees equality before law or the equal protection of laws within the territory of India,*

is applicable to "person" which would also include the "citizen" of the country and "non-citizen", both, Article 15 speaks only of "citizen" and it is specifically provided therein that there shall be no discrimination against any "citizen" on the ground only of religion, race, caste, sex, place of birth or any of them nor shall any citizen be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment, or the use of wells, tanks, bathing ghats, roads and places of public resort on the aforesaid grounds. Fundamental right guaranteed under Article 15 is, therefore, restricted to ***"citizens"****……"*

R. The Hon'ble High Court of Gujarat after considering catena of judgments from the Hon'ble Supreme Court in **Adam Chaki v. Govt. of India, 2013 SCC OnLine Guj 8811** has held that:

"Para 119. *On plain reading of Articles 14, 15 and 16, it is very clear that the right to equality and the prohibition against discrimination provided for under Articles 15 and 16 of the Constitution of India are in a sense narrower than the guarantee of equality before law incorporated in Article 14. Both Articles 15 and 16 confined the guarantee as well as the corresponding prohibition, in relation to citizens alone and have, therefore, no application to non-citizens. The operation of these two Articles is, therefore, narrower in that sense than the terms of Article 14. In a sense the guarantee provided under these two Articles is more unqualified than the terms in which Article 14 guarantees the rights. While Article 14 permits reasonable classification provided such classification is permissible on an application of the principle referred to above, the scope of such classification under Articles 15 and 16 is restricted by the terms of these two Articles because any classification based solely on the grounds set out in these Articles, which would be permissible under Article 14 would nevertheless be outside these Articles. For example, if a person is discriminated against solely on the ground of religion, race, caste, sex or place of birth or any of them, the discrimination would not be struck down under Article 14 if such classification is founded on an intelligible differentia which distinguishes persons that are grouped together from others who are outside the group and such differentia has a rational relation to the object sought to be achieved. Such a classification, however, would nevertheless militate against Article 15 and in case of any matter of public employment, Article 16 as well, unless in the case of Article 15, such a classification could be justified with a reference to clause (3) of Article 15, which provides that "nothing in this Article shall prevent the State from making any special provision for women and children", and in the case of Article 16, relating to matters of public employment, such a classification or discrimination is saved by clauses 3, 4 and 5 of that Article."*

S. The Citizenship Amendment Act, 2019 does not go against the concept of secularism also. In the instant case certain minorities from the above stated countries, who are already exempted under Foreigners Act and Passport Act and permitted to stay in India, who have earlier because of compelling circumstances illegally migrated to India will be given citizenship. It is held that these groups were placed at a disadvantaged position as they were facing religious persecution. Giving them citizenship will put them in an equal pedestal with everyone so that they can compete on a level basis. In the case of **Bal Patil v. Union of India, (2005) 6 SCC 690;** a 3 judge bench of the Hon'ble Supreme Court has held that it is "for the State Government to decide as to whether the Jain community should be treated as a minority community in their respective States after taking into account their circumstances/conditions in that State".

Therefore it can be argued that the Government of India is well within its discretion to give certain group of migrants on basis of their faith Indian Citizenship excluding the majority of the three countries, so as to elevate them to the same position as the others.

Muslims Of These Three Countries Are Also Entitled To Seek Indian Citizenship

T. The right to avail citizenship is equally applicable for the majority of these three countries like other foreigners. It is only for the minorities of these three countries, because of their being a persecuted class, their application for citizenship is being fast tracked under the present amendment. There is no question of it being favoring one religion over the other hence not against Secularism. It is in fact a kind of affirmative action undertaken by the state to heal the wounds of persecuted minorities having cultural link with India.

The religious minorities who are victims of oppression just because of their religious identity, any action for them won't dent or hamper Indian secularism, contrarily it will uphold and strengthen the idea of secularism. The very purpose of the Amendment Act is to ensure well-being of minorities who are suffering religious persecution in these three countries. Since Muslims are neither minorities nor they face issues of religious persecution because of their religion they are obviously not included here.

OTHER GROUNDS:

The Citizenship Amendment Act, 2019 is not in violation of India's obligations under ICCPR and UDHR. It is clear from the scheme of the Amendment Act that India has not discriminated or set aside people from any particular community. The Act does not state that the Muslims will not be granted citizenship, since the Act is made under an obligation to protect the minority community which was a result of the partition because of Pakistan not honoring the Nehru-Liaquat Pact, the government made a reasonable classification to prefer the minority communities viz. Hindu, Sikhs, Jains, Parsis, Christians and Buddhist who were affected by the partition and because we share common borders, it does not although anywhere state that if a Muslim immigrant applies for citizenship it will be discarded or will not be considered.

In fact, we may also observe that the CAA, 2019 had come in to effect because of the gross violations of Article 27 of the ICCPR. The Government of India is only furthering its obligation under UDHR Article 14 (which states everyone has the right to seek and enjoy other countries asylum) and ICCPR by granting citizenship to immigrants that have fled from their country trying to escape religious persecution. It is completely within the sovereign domain of a country to choose a class of foreigners or migrants for citizenship and reject others keeping security and demographic concerns in its mind, so that there is no alteration to the nature of state, its civil and cultural integrity and democratic principles.

There is no violation of obligation under UDHR as well, as there is no discrimination against the Muslim immigrants as the above stated Act does not in any way deny them asylum or refuge in the country nor does it say that their application for citizenship will be rejected. It is only creating a preference which can be compared with Articles 29, 30 of the Indian Constitution for protecting minorities to grant them an equal level playing field as the other, as they have faced persecution all these years.

The CAA, 2019: Some Questions Answered

The CAA, 2019 has no direct or indirect relationship with the exercise of making National Population Register, hereinafter referred as NPR. The first exercise under NPR has already performed during last census, 2009-2010 during the UPA-II regime under The Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003.

These rules which state that we should have a separate register for people residing in an area and citizens residing in that area are in existence since the year 2003. Even the backward countries like Pakistan and Afghanistan provides for National Identity Cards on same lines. These rules are natural corollary of the Citizenship Act, 1955. It should be done much earlier as envisaged in the parent act itself to make our country safer and demographically stable.

Similarly, the CAA, 2019 has also no direct relation with National Register of Citizens, hereinafter referred to as NRC. In fact the exercise of updating/creation of NRC are yet to be framed and undertaken in rest of India except Assam and rules and requirement with regard to registration in the Citizenship Register is not even in the draft stage anywhere. The assumption that the rules of 'Assam NRC' as provided by the Assam Accord, 1985 and under the guidelines of Hon'ble Supreme Court will be implemented across India is farfetched and without any reasonable basis. Moreover, the apprehension is colored and confusion is being created to help illegal Muslim migrants residing in India from these three countries. Any Indian will certainly have the basic minimum requirement to be included in the NRC, if any rules and procedures will be framed in this regard.

It is pertinent to mention here that the class which is being benefitted from the CAA, 2019 is already an exempted class and eligible to reside in India, unlike illegal Muslim migrants from these three countries. Mere assertion that the Government will implement NRC is just an extension of what 2003 Rule provides statutorily. Assuming that any future rules framed under NRC will be in detriment to the interest of citizens also is hence without any basis, and only being spread to create confusion and tension in our society to achieve mischievous goals.

When Government of India has notified in last week of December 2019 about undertaking NPR exercise, the vested groups confused it with NRC. NPR includes name of all person residing in an area, which means citizens and non citizens both are included. Basically, NPR records details of each person residing in an area without going into a question or scrutiny that whether that person is citizen or not.

It is usually done with census to make it expedient for preparation of a register on actual basis for various governmental reasons. Hence, it has been first exercised in 2009. Nobody has been detected non-citizen since then because of that NPR exercise. The outrage against NPR is nothinig but fearmongering.

UNDERSTANDING NPR AND NRC:

NPR is defined under Rule 2(l) of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. According to Rule 2(l) "population register means the register containing details of persons usually residing in a village or rural area or town or ward or demarcated area within a ward in a town or urban area."

Rule 3(4) provides: central government may provide for a date by order by which the Population Register shall be prepared. It is to be prepared by collecting information relating to all persons who are usually residing within the jurisdiction of Local Registrar.

It is mandatory for every usual resident of India to register in the NPR. A usual resident is defined for the purpose of NPR as a person who has resided in a local area for past 6 months or a person who intends to reside in that area for next 6 months or more.

Data for NPR was collected first in 2010. This data was updated in 2015. Particulars for NPR contains: 1. Demographic Particulars and 2. Biometric data (GOI seeded Aadhar No. in NPR Database in 2015)

NRC

It has been defined under Rule 2(k) of Citizenship (Registeration of Citizens and Issue of National Identity Cards) Rules, 2003. National Register of Indian Citizens means register containing details of Indian Citizens living in India and outside India.

Rule 3 makes it mandatory for the Registrar General of Citizen Registration to establish and maintain the NRC, Rule 4 further makes it mandatory for Central Government to carry out house to house enumeration for the collection of particulars specified to be contained in NRC.

Rule 3: National Register of Indian Citizens:

3(1): makes it mandatory for The Registrar General of Citizen Registration to establish and maintain the NRC

3(2): It provides for division of NRC into sub parts. It further provides that NRC shall contain such details as central government may specify by order, in consultation with the Registrar General of Citizen Registration. Hence, it empowers central government to decide the content or details to be contained in NRC.

3(3): Provides for particulars to be contained in NRC.

3(4): it empowers central government to provide for a date by which the Population Register shall be prepared. It is to be prepared by collecting information relating to all persons who are usually residing within the jurisdiction of Local Registrar.

3(5): The Local Register of Indian Citizens shall contain details of persons after due verification made from the Population Register (NPR).

Hence, the Local Register of Indian Citizens and The Population Register both are separate exercise. The Local Register of Indian Citizens is mandated to record details only after the due verification has been made from the Population Register. So, to confuse present exercise under NPR with NRC and the CAA, 2019 is completely misplaced.

The exercise under NPR is only related with census exercise at present. The Rules and Procedure for pan India NRC is yet to be notified under Rule 18 of 2003 Rules. Even the Rules for CAA, 2019 to implement procedure under newly introduced Section 6B of the Citizenship Act, 1955 as amended in 2019 is yet to be notified regarding documentation and other details to extend the benefit to the said class of persecuted minorities. In effect the entire basis of opposing CAA, 2019 is assumption and surmise. It, nowhere, impinges the validity of the amendment.

Conclusion

It is manifestly clear from an earnest reading of the Constitution of India, Article 14 in particular, that the Citizenship Amendment Act is neither anti-Muslim nor it violates Article 14 and 15 of the Indian Constitution. As discussed previously in this report, it is being argued by those with vested interests that the Citizenship (Amendment) Act, 2019 compromises the secular character of the Indian State by excluding a particular religious community (Muslims), and that this is unconstitutional. The Opposition and several opinion-makers have said that this will shake the foundations of the Republic. It then becomes necessary to evaluate the political and legal dimensions of this amendment in order to draw a distinction between truth and propaganda.

Article 14 is for 'persons' and not only for citizens. A non-citizen can claim equality under 14. However, the principle of Article 14 is equals ought to be treated equally and unequals can be treated differently. Therefore, potential violation of 14 can be justified and will stand water if the classification is reasonable, the differentia is intelligible and is in nexus with the object of the law. The classification, with its underlying principle, is religious minorities of theocratic states in India's neighborhood and object of the law is to prevent their persecution. The classification is reasonable and intelligible, as the basis is structurally laid out, we know theocratic states in our neighborhood, we know the minorities living there, their second class existence by virtue of those nations' state religion is well established. It is coherently in furtherance of the object of law, which is preventing their persecution. It is not arbitrary since one community is not being chosen whimsically, all religious minorities have been included. Further, it is also not arbitrary since official census records of these nations show systematic and alarming rate of fall of minority population, such as from 23 to 3 in Pakistan since independence and from 22 to 7 in Bangladesh since independence.

Article 15 is only applicable to citizens. Hence, foreigners from Pakistan, Bangladesh and Afghanistan cannot say religion cannot be basis of classification. Further, the basis is not only religion, but religious persecution. As long as the 3 prongs of Article 14 test are met, equality is not violated.

Leaving out Muslims is not 'glaringly discriminatory' since Muslims are not a religious minority in the Islamic nations of Pakistan, Bangladesh and Afghanistan. Muslims are not persecuted in these Islamic nations who swear by the Quran in their Constitution.

Ahmadiyas are a sect in Islam, not a religion. Further, this distinction is not to bypass humanitarian principles because in fact they believe in Islam and are practitioners of Islam and the Quran. In the broadest common denominator of world religions, the recognised world religions are broadly considered as Islam, Christianity, Hinduism, Buddhism, Jainism, Zoroastrianism, Sikhism, Judaism. Islam has multiple sects within it in various proportions across nations viz Sunni, Shia, Ahmadiyas, Baathis, Bohra, etc. They believe in different forms, expressions, and colours of Quran which does not mean they become external to the religion. Further, a width and scope of classification is determined at the altar of the sovereign, and on the basis of those principles it ought to have the right to determine contours of citizenship to foreigners, as long as the classifications meet the test of Article14. Broadening the principles are also the prerogative of the state, and there is no constitutional basis to say that the state ought to be forced to expand its principle of classification even if it meets the tests of 14. The state can obviously do that later in its own prerogative. In practice, the inner fault lines in Pakistan's Islamic community can lead to a domino effect wherein an extension to Ahmadiyas shall mean an extension to Shias and Balochs, who constitute a considerable population of the country, the burden of which cannot be forced upon the Indian state because it afforded a beneficial legal structure to others from these countries on an entirely different principle.

The relegation to realm of policy is the basis of separation of powers in our constitutional democracy, the basis of statutes in policy is rooted in the democratic legitimacy of the executive, which if stands the test of constitutional scrutiny cannot be delegitimised as relegation to policy. Our constitutional principles are sound and strong that stands the force of India's foundational ideas. It begs questioning when policies meeting constitutional ideals are questioned on alternative standards of morality.

Lastly, it is important to note that the CAA doesn't discriminate against Indian Muslims. Any protest or fear-mongering around it is totally unwarranted and reeks of devious designs of those who aim at undermining the sovereignty and democracy in India. It only aims to protect, by fast-tracking the citizenship process, those minorities who are persecuted in their home countries owing to their religious affiliations.

- Shubhendu Anand
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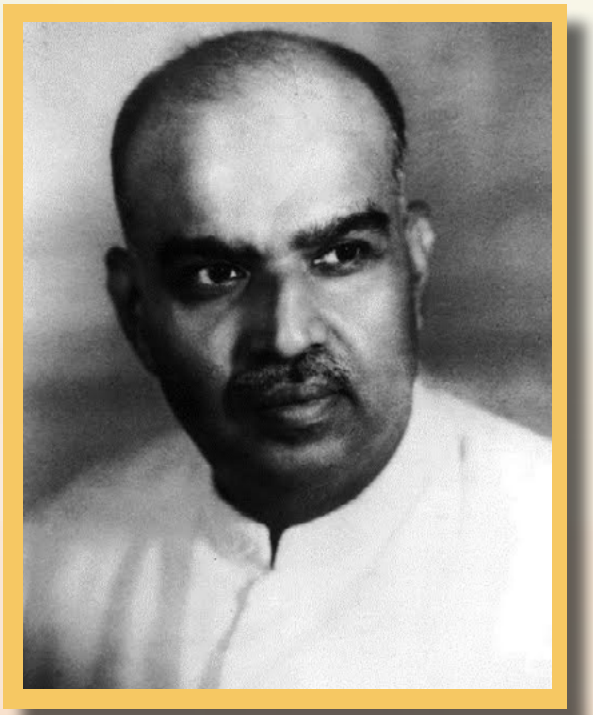

"I ask, in all seriousness and with all humility: what was the main purpose of the Pact? [Nehru-Liaquat Pact] Was not the chief object of the pact that Hindus would be able to live in East Bengal with a sense of security and without fear; that there would be no exodus and those who had come away would gradually of their accord feel emboldened to go back to their home? Was it not the purpose of the Pact that there would be a sense of security in the minds of the minorities themselves so that they could decide on their own course of action without any fear or expectation or favour from any quarter? Judged from this standpoint the Pact has failed. The exodus continues; the intense sense of insecurity in the minds of the minority continues…."

-Dr. Syama Prasad Mookerjee
Discussion on the Bengal Situation, Parliament
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