

## **CITIZENSHIP AMENDMENT ACT (CAA), 2019 – AN ANTITHESIS OF OPINION**

Written by **Dr. Ranjan Dhar,**

Lawyer Registered Under West Bengal State Bar Council

---

### **ABSTRACT**

The most debatable topic burning India at this moment is the Citizenship (Amendment) Act, 2019. Anti-Government propaganda is being spread all over the nation by a few political parties to achieve political gain. This creates a lot of confusion among the general public. Government properties as well as many private properties were being ransacked by raged mob. Taking this situation as an opportunity some separatist forces is trying to create communal riots and aggressive mass movement against the elected government of India. Indian Government is charging people with sedition charges whoever is raising voice against the Government policy. All such movements are just mere outcome of fear and confusion created by some irresponsible speech of educated persons in the country and opportunist politicians. The confusion is all about whether the amendment Act is constitutional or not, whether the nature of the amendment is discriminatory against a particular community, whether the objective of the Government is to deport persons belonging to a particular religion to the neighboring countries, what will be the policy of the Government to identify persons as citizens of this country. The objective of this article is to understand the nature of the amendment and what will be the impact of this amendment Act on common Indian citizens. In this article tests were being made regarding the provision of constitutionality with respect to the provisions made specifically for non-citizens. This article is an effort to find out the objectivity of Indian government behind the implementation of such policy.

## **INTRODUCTION:**

“The State is a compound made of Citizens” – this simplistic remark made by Aristotle. Citizens are the essential component of a nation. The characteristic of a nation is the reflection of the character of its Citizens. The sovereign countries in the world have their rights to determine the policies regarding citizenship according to the social, cultural, historical and political needs of respective countries. The Citizenship Amendment Act introduced by the Government of India is creating a lot of contrariness of opinion or expression of emotions among the peoples living in this country. The issue is getting complex and confusing to some people because they feel that their citizenship rights will be taken away, whereas, at the same time some people think that, this long-awaited amendment brings a ray of hope in their lives as they feel that they are going to be citizen of this great country. In order to write anything on this confusing and complex issue, one need to understand about the history of “Bharat” and a theory about the process of making a tailor made “INDIA” from “Bharat” as a gift of independence in 1947. The prevailing confusion is not only due to lack of knowledge about certain terms like citizen, immigrants, refugee etc. but prominently due to malicious propaganda over the issue by opposition political parties for their deemed political gain in the race of politics. The Government of India is also partly responsible for creating such confusion because, viewing such level of agitation in almost all over the country, the Government need to come up with concrete policy over the issue and publish or advertise it in such a way so that every section of people can have clarity of understanding over this contentious issue. Through this article, I am trying to express my own view to untangle this ravel. The term ‘Act’ - alone mentioned anywhere in this article denotes the Citizenship Act, 1955.

## **FUNDAMENTAL UNDERSTANDING:**

Before taking a dip into the ocean of the most debated topic of recent times – the CAA, let us make our understanding very clear on the basics. First of all, I would like to figure out some questions in my mind as follows: 1. What is known as country? 2. What is identity of an individual? 3. What is nationality? 4. What is citizenship? 5. What our Constitution speaks about citizenship? 6. Who are illegal migrants as per law? 7. Whether Islamophobia is the reason behind it? 8. Whether any other country in the world does have any policy regarding

citizenship? 9. What is the utility of such policy making? 10. Whether a State under the union of India can deny the implementation of this Act?

1. Let us find out the answer of all the questions framed above. The word country finds its origin from the French word “*Contrée*” which means (lands) lying opposite or (lands) spread before. A country may be defined as a region having permanent population who are governed by their own government and has distinct existence in political geography. According to International law, it would be more appropriate to define sovereign State in place of country. According to Article 1 of Montevideo Convention, 1933, “The State as a person of international law should possess the following qualifications: (A) A permanent population; (B) A defined territory; (C) A Government and (D) Capacity to enter into relations with other States.”<sup>1</sup> According to Max Huber, Sovereignty has been defined as: “Sovereignty in the relation between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exclusion of any other State, the functions of a State”<sup>1</sup>
2. The identity of an individual may be viewed as a public representation of the outcome of the interplay of social relations and individual trait<sup>2</sup>. Thus, if we analyze the social life of an individual then, the identity of an individual breaks into both a) methodological individualism and b) phenomenological individualism. The identity of a person is public and relational and not private in nature, distributed under category to organization. Thus, a person may wear multiple identities and he may be identified according to his experience of a category, tie, role, network, group or organization, coupled with a public representation of that experience<sup>2</sup>. An individual may also be identified by singling out one of the following multiple identities like – race, gender, class, job, religion, national origin<sup>2</sup> and a common connectedness among these identities.
3. Nationality of an individual means a bond that unites a person with a given State. In the famous case of *Re Lynch* the British Mexican Claims Commission defined nationality as: “A man’s nationality forms a continuing state of things and not a physical fact which occurs at a particular moment. A man’s nationality is a continuing legal relationship between the sovereign State on one hand and the citizen on the other. The fundamental basis of a man’s nationality is membership of an independent political community. The

legal relationship involves rights and corresponding duties upon both on the part of the citizens no less than on the part of the State.”<sup>1</sup> Here, it would be quite relevant to know about the subtle difference between “nationality” and “citizenship”. Nationality is the legal relationship between the nation and the individual, whereas, citizenship denotes the relations between a person and the State Law. Through nationality the civil and natural rights of a person may come under international law whereas, the right of citizenship is concern of the State law. It is possible that all citizens may have nationality of a particular State, but it is not necessary that all the nationals are citizens of that State. Citizens possess political rights in that State but, person with nationality only may not possess all the political rights. The Act related to Indian Citizenship followed both *jus sanguinis* (citizenship by descent or the right of blood) and *jus soli* (citizenship by right of birth within the territory or the right of soil). It had been observed that, subsequent amendments of the Citizenship Act, 1955 gradually shifting the right of citizenship from *jus soli* to *jus sanguinis* since the amendment of the Act in 1987 and it can be said that *jus soli* are almost abolishing slowly from the scope of the Act.

4. Population of a country or State (as per international law) can be classified into two groups – Citizens and aliens. Citizens are entitled to the civil and political rights of that country. The Constitution of the country is the guardian to protect the rights of citizens. The aliens do not enjoy such rights. The definition of citizenship of a country cannot be given in one sentence. Citizenship may be viewed as a certain kind of relationship which has been built up as a result of a continuous series of transaction between persons and agents of a given country in which each has a mutually enforceable rights and obligation.
5. The subject of Citizenship is dealt under Article 5 to 11 of the Constitution. The Constitution does not lay down a permanent or comprehensive provision relating to citizenship in India. Part-II of the Constitution describes the classes of persons categorized under citizenship of our country under Article 5 to 8 at the time of commencement of the Constitution (26<sup>th</sup> January, 1950) is as follows:
  1. Citizenship by domicile (Article 5)
  2. Citizenship of emigrants from Pakistan (Article 6)
  3. Citizenship of migrants to Pakistan (Article 7)

#### 4. Citizenship of Indians abroad (Article 8)

Article 11 empowers the Parliament to frame laws with regard to citizenship of our country. In exercise of this power, the Citizenship Act, 1955 was passed for the purpose of making provisions for acquisition and termination of citizenship after commencement of the Constitution.

6. The meaning of illegal migrants has been elaborated under Section 2 clause 1(b) of the Citizenship Act, 1955 as: “illegal migrant” means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time.

7. Immigration is a critical issue that need to be understood with clarity, required to be judged on the context of political history & present global scenario, and necessary to analyze with a deep introspective view for the betterment of our country’s economy & internal security. Some people may raise a point that, Islamophobia is one of the main reasons behind the introduction of such Amendment in the Citizenship Act, 1955 by the present Central Government. Let us find out the truth. It has been noticed in recent years that; a specific phobia gripped the western societies named as Islamophobia<sup>4</sup>. Increase in Islamophobic attitude of the western society was being noticed after the incident of 9/11. A survey shows that around 52% Americans and 48% Canadians say that West do not respect Muslim societies<sup>4</sup>. Islamophobia is not limited to countries like US, Canada, Europe, Australia, Belgium etc. but, it is a globally accepted phenomenon now. China is the home of the greatest irreligious population in the world, it may be viewed as Godless country. In very recent developments of global scenario, the Chinese which is known for its ethnical homogeneity, the Xi Jinping’s government decided to declare Islam a contagious disease of “ideological illness” and more than 1 million Uighur Muslims (1.6% of Chinese population) has been detained at concentration camps or ‘reeducation camps’ for the treatment of such mental sickness. The Chinese authority is taking such

steps in order to restrict the terrorist activity of East Turkestan Islamic Movement (ETIM) and to completely cut down the ISIS activity on its own territory. In a global measure for war against terrorism, China had taken steps to bring down the religious extremism. Islamophobia may be viewed either as “dread or hatred of Islam” (Runnymede Report, 1997) or “fear and dislike of all...Muslims” (T.H. Green, 2015). Incidents of Islamophobia has been noticed in Asian countries like Sri Lanka, Myanmar, Malaysia etc. It was reported that, Buddhist nationalist groups such as the Bodu Bala Sena in Sri Lanka<sup>5</sup> and the 969 Movement in Myanmar<sup>5</sup> spread anti-Muslim propaganda in the region. In 2017, Arakan Rohingya Salvation Army (ARSA) launched deadly attacks on more than 30 police posts and this triggered the so called ‘persecution’ on Rohingyas. Myanmar is a Buddhist majority country and the Buddhist religion is known for peace. The separatist movements initiated by outfits like Arakan Rohingya Islamic Front (ARIF), Rohingya Solidarity Organisation (RSO), Arakan Rohingya National Organisation (ARNO), ARSA, branches of extremist organizations like Harkat-ul-Jihad al-Islami and Harkat-ul-Ansar, reports of CIA that ARNO members having connections with terrorist outfits like Al-Qaeda and the Taliban; all such incidents causes an apprehension to the mind of peace loving Buddhist community that the integrity of their nation is in danger and the outcome of these collective incidents were resulted into crackdown on Rohingyas. Now, let us examine whether India is suffering from Islamophobia or not. In India, several communal riots happened between the Hindus and Muslims both before and after independence of India, the undivided India known as ‘Bharat’ had torn into three parts in order to accommodate the Islamists, two-third of ‘Bharat’ formed Pakistan and Bangladesh at present and one-third became today's India. Almost thirty years ago Kashmir noticed gruesome genocide of Kashmiri Pandits (Hindu) committed by Islamic separatists of the valley and as a result around four lakh Kashmiri Hindus became refugee in their own country but unfortunately no marked protest against that genocide was noticed by the Indians. In Godhra, train compartment full of Hindu pilgrims were being burnt by Muslim fanatics which triggered the infamous riot of Gujrat. Mumbai bomb blast of 1993, Mumbai attack on 26/11/2008, Indian Parliament attack in 2001, Patna bombings in 2013 etc. all such attacks were organized by Islamic terrorist outfits. Anti-India slogans were being raised in several Indian Universities, anti-CAA protests organized by Popular Front of India (PFI)<sup>6,7</sup> were being

funded by Islamic outfit and Enforcement Directorate has unearthed a link between the protest and money transactions of around 120 Crore & 73 bank accounts<sup>6,7</sup> linked with such transactions and the name of some eminent personalities were being surfaced in this connection and involvement of some NGOs like Rehab India foundation<sup>6,7</sup> has been found in this connection. Some quotations of the representatives of Muslim minorities like Afreen Fatima of Jawaharlal Nehru University (JNU), "I reject the idea of India", 'Supreme Court cannot be trusted', Sharjeel Imam at Shaheen Bagh "Agitate and cut off chicken's neck corridor to isolate Assam from India", Ex-Aligarh Muslim University Student's Union President "Muslims can destroy anything", Akbaruddin Owaisi in his infamous "15 minutes" speech in 2013 addressed that, 25 crore Muslims of this country would need just 15 minutes without the police to show 100 crore Hindus who is more powerful<sup>8</sup>, he justified Mumbai bombings also, Madrasa headmaster in West Bengal - Kazi Masum Akhtar was attacked by a mob of Islamic fundamentalists for asking the students of Madrasa to sing National anthem in 2015 etc. and many more, this is the status Freedom of Speech and expression of Muslim minorities in India. There more than 4 lakh mosques retains in the country, no mosques were demolished out of rage arising out of communal violence, no military escalations were being organized by the Government against the Muslim minorities so that they had flee to the other country, no organized attack by the Hindu community had been ever launched against Muslim minorities. India is a country which shows its patience and character of true secularism against its minorities. The signs of Islamophobia and resulting incidents of Islamophobia as noticed in global scenario is completely absent in India.

8. Policy regarding citizenship has already been introduced in several countries like US, China, Japan, Vatican City, Qatar, Bhutan, Nepal, UAE, Kuwait, Switzerland etc. long ago and many countries of the world are now looking at this issue with a serious note. The countries which were being mentioned under the said amendment of 2019, have citizenship identity cards issued to their citizens. This particular policy making is an absolutely important internal matter of a country and a sovereign country like India reserves the exclusive rights in such policy making procedure.
9. The policies of a country regarding the identification of its own citizen is very important so that the country is enable to frame proper financial policies for its actual citizens, can

solve the problem of unemployment, and most importantly such policy making is absolutely important for internal security and stability of a country.

10. After Citizenship (Amendment) Bill, 2019 was passed from both the houses of Indian Parliament and becomes incorporated as an Act, the Citizenship (Amendment) Act, 2019. Some States led by opposition political parties of the Central Government have declared that, they will oppose implementation of this Act in their States. The Seventh Schedule (Article 246) of the Indian Constitution mentions lists of subject matter of laws made by Parliaments and by the Legislatures of States. According to the Seventh Schedule, the matter related to “Citizenship, naturalisation and aliens” comes under the purview of Union List and this means that, the Parliament of India has the exclusive power to make laws in the matter of citizenship and the State legislature has not been given any such rights to decide any matter regarding citizenship.

### **CITIZENSHIP IN INDIA:**

India provides citizenship to a person as per the provisions mentioned under the Citizenship Act, 1955 may be summarized as follows:

1. **Citizenship by birth (Section 3):** Eligibility to citizenship rights under this Section depends on the following grounds:
  - a) Persons born in India on or after 26<sup>th</sup> January, 1950 but before 1<sup>st</sup> July, 1987;
  - b) Persons born in India on or after 1<sup>st</sup> July, 1987 but, before commencement of the Citizenship (Amendment) Act, 2003, need to have either of his/her parents is a citizen of India at the time of his/her birth;
  - c) Persons born after in India after commencement of the Citizenship (Amendment) Act, 2003, need to fulfill two conditions: (i) both parents are citizens of India & (ii) one of his/her parents is a citizen of India and the other is not an illegal migrant at the time of his/her birth,  
A person who fulfills the above conditions shall be considered as a citizen of India by birth.



2. **Citizenship by descent (Section 4):** This Section is applicable for persons born outside India. A person will be considered as a citizen of India if he/she fulfills the following conditions:
- a) Person born within a period on or after 26<sup>th</sup> January, 1950 but, before 10<sup>th</sup> December, 1992 and the father of such person must be an Indian citizen at the time of birth. This condition is applicable provided that, the birth is registered at an Indian consulate within one year of the commencement of the Act or with the permission of Central Government after expiry of limitation period of one year and also provided that his/ ger father was in service at the time of his/her birth.
  - b) Person born on or after 10<sup>th</sup> December, 1992 will be considered as a citizen of India if either of his/her parents is an Indian citizen. This condition is applicable provided that, the birth is registered at an Indian consulate within one year of the commencement of the Act or with the permission of Central Government after expiry of limitation period of one year and also provided that his/ ger father was in service at the time of his/her birth.
  - c) The same clauses as mentioned above are applicable under the Citizenship (Amendment) Act, 2003 to get citizenship under this Section.
  - d) A minor who has been declared as a citizen by virtue of this Section of the Act, shall cease to be a citizen of India if, he does not renounce the citizenship or nationality of other country within six months of attaining maturity.
  - e) This section is applicable for citizenship of persons of Indian origin residing abroad.
3. **Citizenship by registration (Section 5):** The conditions required to fulfill by the persons prior making an application for Indian citizenship under this Section may be summarized as:
- a) Person of Indian origin who is residing in India for seven years or person of Indian origin who is ordinarily resident of any country or place outside undivided India;
  - b) Person married to Indian citizen and ordinarily residing in India for seven years;
  - c) Minor citizen of persons who are Indian citizens;
  - d) A competent person with age of maturity and capacity whose parents are registered as Indian citizen Under Section 5 (Clause a) or Section 6(1);

- e) A competent person with age of maturity and capacity who or either of his parents was earlier Indian citizen in independent India and is ordinarily residing in India for 12 months;
  - f) A competent person with age of maturity and capacity who is registered as an overseas citizen of India for five years and who is ordinarily residing in India for 12 months;
  - g) A person deemed to be considered as “ordinarily resident of India if he/she has resided in India for 12 months before making an application under this Section and he/she has resided in India during 8 years immediately preceding the said period of 12 months for a period of not less than 6 years.
4. **Citizenship by naturalization (Section 6)<sup>3</sup>**: Where an application in prescribed manner is made by any person of full age and capacity and who is not an “illegal migrant” as per Section 2 clause 1(b) of the Act, the Central Government after getting satisfied with the applicant’s profile may grant the applicant a certificate of naturalization. The qualifications to obtain citizenship by naturalization may be summarized as follows:
- a) He must not be a citizen of a country where Indian citizens are prevented from getting citizenship by naturalization;
  - b) He has renounced citizenship of other country (if any);
  - c) He has either resided in India or has been in Government Service for 12 months prior making application for naturalization, or during 7 years prior to these 12 months, he has resided or has been in the Government Service for not less than four years;
  - d) He must take an oath of allegiance;
  - e) He is of a good character;
  - f) He has an adequate knowledge of a language recognized by the Constitution;
  - g) After naturalization being granted to an applicant, he intends to reside in India or to serve under the Government of India. However, if the Central Government is of the opinion that the applicant has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress, it (Proviso to Section 6 of the Act) may waive all or any of the above conditions for naturalization in that particular case.

5. **Citizenship by incorporation of territory (Section 7):** If a new territory becomes part of India then, the Central Government reserves the sole authority to decide about the status of citizenship of persons residing over that territory. The Central Government may publish a Gazette notification in that regard.

The Citizenship Act was amended many times to accommodate social needs and change in social demography. The Act was amended in 1986, 1992, 2003, 2005, 2015 and most recently in 2019. Every amendment added some important development(s) in the existing Act, which are essentially required to maintain integrity of our nation, utmost important for social progression and most relevantly need of the time. The most important declaration made in Citizenship (Amendment) Act, 1986 is that – to get a right to citizenship by birth, it is required for such person that either of the parents need to be Indian citizen. The declaration made in Citizenship (Amendment) Act, 1992 is that a person born outside India would be deemed to be considered an Indian citizen if the parents are Indian. The Citizenship (Amendment) Act, 2003 is an important landmark and so many laws regarding the issues of overseas Citizenship have been incorporated through this enactment. The incorporation of Sections 7-A (Provisions for registration of overseas citizenship), 7-B (provisions for conferment of rights on overseas Citizens of India), 7-C (Renunciation of overseas citizenship), and 7-D (Cancellation of registration as overseas citizen of India) to the Act; and another important Section (14A) have been added to the Act. Section 14A of the Act provides that, the Central Government may compulsorily register every citizen of India and issue national identity card to them. The Registrar-General of India appointed under sub-sections (1) of Section 3 of Registration of Births and Deaths Act, 1969 shall act as National Registration Authority and he shall function as Registrar General of Citizen Registration.

The Citizenship (Amendment) Act, 2019 incorporate two most striking changes that, 1. Hindus, Sikhs, Buddhists, Jains, Parsi and Christians from Afghanistan, Bangladesh and Pakistan who entered in India on or before 31<sup>st</sup> December, 2014 will not be treated as illegal migrants; 2. The communities mentioned in the amendment Act were required to spend a certain period of residence in India or service to the Government of India. The time period has been reduced from “not less than eleven years” to “not less five years” in this amendment Act of 2019.

## **DICHOTOMIES OF OPINIONS, SECULARISM, PAIN OF REFUGEES AND A TALE OF THE AMENDMENT:**

The word 'Secular' have its origin from the Latin word "Saeculum" means 'generation, age', that is used in Christian Latin meaning 'the world' and it is better to interpret that, the temporal age or period of the world is distinguished or separated from the realm of God and in the context of democratic politics it would be better to elaborate that secular means that, the affairs of the State is separate and independent from regulatory control and classification of any religion.

India had been declared as a secular country after the historic 42<sup>nd</sup> amendment of the preamble of the Constitution and the amendment had been incorporated through the Constitution (Forty-second amendment) Act, 1976 in the Indian Constitution during the time of National Emergency (25 June 1975 – 21 March 1977) declared by Indian National Congress led Government headed by Indira Gandhi. After this highly controversial amendment ever in the history of Indian democracy, the description of India changed from "SOVEREIGN DEMOCRATIC REPUBLIC" to "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC". Although, the quantitative assessment of how much harm does this amendment caused to the Constitution of India cannot be measured by any parameters and also it is out of the scope of this article.

Now, let us examine whether the Citizenship (Amendment) Act, 2019, compromised the secular character of the nation or not. The said amendment assures to provide citizenship to the communities like: Hindu, Buddhist, Sikh, Jain, Parsi, and Christian from countries like: Pakistan, Afghanistan and Bangladesh but not Muslims of those countries. From a secular point of view all region needs to be treated equally before law. But the countries mentioned in the said amendment having State religion – Islam; and it can be easily understood that, in those countries the Muslims can never be persecuted on the basis of religion. In this issue some people raised questions like: why Ahmedians in Pakistan, Shias & Hazaras in Afghanistan, Rohingyas in Myanmar were being left out of the provisions of this Act? Unfortunately, the persons who are raising such issue have not interpreted the amendment Act properly. The amendment is to provide the Citizenship of the religious minorities who were being forced to come to India due to religious persecution in the countries mentioned in the amendment Act.

If we look at the history of independence and partition of Bharat to 'India' based on 'two nation' theory, approximately 23% land of undivided India ('Bharat') were given for approximately 19% Muslims. In 1947, when Pakistan was formed by Muhammad Ali Jinnah, Pakistan's first Governor-General, declared to present a secular Constitution to the people of Pakistan, but after Jinnah's death, Liaquat Ali Khan approved the 'objective resolution' at Pakistan Assembly in March, 1949 and the Constitution of Pakistan had been formed based on Islamic philosophy. Here, it is important to mention that, Shias and Ahmediyas also supported the 'primary proposal' at that time. The State religion of Pakistan had been declared as Islam. On 8<sup>th</sup> April, 1950 – the Nehru-Liaquat Pact had been signed in order to protect the rights of the minorities of both the countries and to safeguard the properties, religion and life of minorities of the respective countries. But this pact, unfortunately proved as a farce in Islamic countries like Pakistan and East Pakistan (now Bangladesh) as these countries failed to protect the rights of minorities and it is painful to say that the minorities of those countries were being subjected to persecution as their religion differ from the Islamic majority population. Let us go through some fact check.

According to a survey report titled – 'Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2013' published by Hindu American Foundation, – at the time of partition the Hindu population of Pakistan was 15% of the total population (Hindu population of Bangladesh or East Pakistan was not included), whereas in 1998 the Hindu population narrowed down to 1.6%. Similarly, in Bangladesh the sharp decline of Hindu population has been observed as 22% Hindu in 1951 to 9.5% in 2011.

Vijaya Laxmi Pandit, the first woman President of United Nations General Assembly and also headed Indian delegation for 22 years (1946 to 1968), in her speech on 30<sup>th</sup> September, 1963 said: "The government of Pakistan, ever since its creation, has followed a communal policy based on the pernicious two-nation theory. It is as a result of this policy that 2.25 million Hindus have been forced to flee East Pakistan during the period 1951 to 1961. This policy has a double advantage for Pakistan. In the first place, it helps Pakistan to get rid of its Hindu population from East Pakistan; the Hindus from West Pakistan having been already practically eliminated." (GREAT WOMEN OF MODERN INDIA – 4: VIJAYA LAXMI PANDIT HER CONTRIBUTION TO POLITICAL, ECONOMIC AND SOCIAL DEVELOPMENT; EDITORS: VERINDER GROVER & RANJANA ARORA).

The similar observation has been published in a book named “Political economy of reforming agriculture-land-water bodies in Bangladesh” written by Dr Abul Barkat (President of Bangladesh Economic Association and Professor at Dhaka University) and the author observed that from a period of 1964 to 2013, approximately 11.3 million Hindus flee from Bangladesh due to religious persecution and discrimination<sup>9</sup>. From his version, an estimated number of approximately 632 Hindus left the country every day and tentatively 230612 people from Hindu community leaving Bangladesh annually. He also mentioned that the rate of exodus is so severe and continuing for the past 49 years that ‘no Hindus will be left after 30 years.’ He also mentioned the active role of the Bangladesh Government in grabbing the land of Hindus and declare those lands as enemy land and after that those lands were being declared as vested property, thus, in Bangladesh 60% of the Hindus are landless<sup>9</sup> and have lost 2.6 million acres of land through implementation of the Enemy (Vested) Property Act<sup>10</sup>. National Human Rights Commission (NHRC) Chairman, Kazi Reazul Kabir has revealed that ‘Religious and ethnic minorities are most persecuted in Bangladesh’<sup>10</sup> and he also mentioned that Bangladeshi minorities have been consistently denied their rights and evicted from their own land<sup>10</sup>.

The minorities in countries like Pakistan, Bangladesh and Afghanistan were facing persecution for several past decades since independence and partition. The places of worship of non-Muslims were being destroyed, forceful conversion of non-Muslims to Islam, attacks and murders of religious minorities on the pretext of violation of Islam, abduction of non-Muslim women and child, forceful marriage, and the most painful is the active participation of the Government in land acquisition of religious minorities and declaration of such properties as vested properties.

Let us consider the situation of Muslims in India. I am talking about Muslims only because, the Citizenship (amendment) Act, 2019 discussed the matters of providing citizenship to communities other than Muslim community. Muslims of India are considered as religious minority although India is a Secular country. Muslims have never been deprived of their right to worship. No mass destruction of Mosques happened in India; Madrasa education systems is encouraged. National Policy on Education (NPE) formed to uplift and modernization of minority education; National Monitoring Committee for Minorities Education (NMCME) formed in 2004 for development of minority education, Rs. 325 crores were proposed under XI<sup>th</sup> Five Year Plan. A private body or NGO like All India Muslim Personal Law Board is there

to observe the applicability of Muslim Personal Law (the Muslim Personal Law (Shariat) Application Act of 1937) in India. The freedom of conscience and free profession, practice and propagation of religion has been guaranteed under Article 25 of Indian Constitution and in India the Muslim minorities have grown since partition from 9.8% according to Census Report of 1951 to 17.22 Crores i.e. 14.2 % in 2011. India is now home to over 10% of world's total Muslim population. Muslims are considered as a significant player in Indian politics and thus appeasement of Muslim population is considered as one of the most vital factors in the political scenario of India. This 14.2% Muslims does not consist of only Indian Muslims but, illegal infiltration through border districts of States like West Bengal, Assam and other border States of Bangladesh, Myanmar and Pakistan is considered to be responsible to change the demography of population in many regions of India. According to Census Report-2011, J&K (68.3%), Assam (34.2%), West Bengal (27%) and Kerala (26.56%) have largest share of Muslims. There is freedom of speech and expression extended to all the Indian Muslims. Indian Muslims are living in this country without any fear of persecution on the basis of religion unlike the religious minorities of other countries as mentioned in the amendment Act.

Indian Muslims need not to fear about this amendment Act, this amendment is not going to curb the rights of Indian Muslims they were enjoying till date but, this Act is all about providing citizenship to those unfortunate individuals, who were the victims of religious persecution in our neighboring countries like Pakistan, Bangladesh and Afghanistan. This amendment is for the benefit of the individuals who were being forced to choose the life of a refugee as their own country snatches all the rights of living like a human being from them. This amendment Act is going to soothe the anxiety of the refugees who were given a never ending or never achievable assurances by various political parties at the time of election about their citizenship issue.

This amendment Act reflects the clarity of thought and generosity of heart of our Central Government that, this Government not only concerned about their own citizens but this Government is ready to extend their benevolent measures to benefit the persecuted citizens of other country and include them in our country as a citizen. This gesture is the symbol that our society and our Government is the bearer of the great Indian cultural heritage which announce to the world: "Vasudhaiva Kutumbakam" – which means that, the world is one family.

## **AMENDMENT ACT, 2019 – CONSTITUTIONAL OR NOT:**

Question regarding the constitutionality of the Act and State's prerogative. In India, only the rights guaranteed by Articles 14 and 21 of the Constitution are available to both citizens and aliens or non-citizens. Article 14 embodies the concept of equality and declares that; the State shall not deny to any person equality before the law or the equal protection of law with in the territory of India. Thus, Article 14 uses two expressions: 1. Equality before the law and 2. Equal protection of the law. Article 14 permits reasonable classification but prohibits class legislation. From the very nature of the society, there should be different laws in different places and the legislature controls policy and enacts laws in the best interest of the safety and security of the State. Identical treatment in unequal circumstances would amount to inequality. Thus, a reasonable classification is not only permitted but also necessary for the progression of a society. A classification to be reasonable must fulfill the following two conditions:

1. 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
2. The differentia must have a rational relation to the object sought to be achieved by the Act.

Let us elaborate the concept on the basis of the Citizenship Act, 1955. The differentia is the basis of reasonable classification and the object of the Act are the two distinct components and a relation between these things need to be established. The objective of the Act is "An Act to provide for the acquisition and determination of Indian citizenship". The amendment Act of 2019 also have the objective of providing citizenship to the minorities of Pakistan, Bangladesh and Afghanistan. The countries mentioned in the amendment Act have their distinct State religion – Islam. So, the minorities staying in those countries will definitely be non-Muslims. The amendment Act of 2019 is concerned only about the persecuted minorities of those countries. Hence, non-Muslim communities like Hindu, Sikh, Buddhist, Jain, Parsi and Christian need to be classified as minorities of an Islamic country and treated as separate class in this amendment Act of 2019. Now, the persons belong to those minority community who are staying in our country for a long time, since they were being forced to take shelter as refugee due persecution on the basis of their religion, need to be protected & treated with dignity. Such refugees with proper conduct towards this nation deserve to get citizenship of this country. In



Dalmia's case (Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar & others, 1958), there were some important observations found by the Honorable Court which are relevant for a valid classification may be applicable for this particular amendment are: 1) 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 itself, 2) It must be assumed that Legislature correctly understand and appreciates the need of its own people that its law are directed to problem made manifest by experience and that its discrimination are based on adequate grounds, 3) In order to sustain the presumption of constitutionality of any Act, the court may take into consideration matters of common knowledge, matters of report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation, 4) The basis of classification may be different e.g. geographical or according to object or occupation or the like. The amendment Act, 2019 qualifies the test of reasonable classification and it is also known to us that, Article 14 is applicable even to the non-citizens. Therefore, it can be concluded that there is no violation of this Article and the amendment Act is constitutional with respect to Article 14.

Article 21 of the Constitution mentions that, "No person shall be deprived of his life or personal liberty except according to a procedure established by law." So, Article 21 secures two rights: a) Right to life and b) Right to personal liberty. This Article also emphasizes in protecting the right of a person to live with human dignity and livelihood. The right to life does not only mean physical existence of a person but to live a life free from exploitation and such life which includes living with all human values, to meet the bare necessities of life like having food, clothing and a shelter, to engage or involve in such social activities which symbolizes expression of human self. The primary objective of this amendment Act, 2019 is to provide citizenship to the persons who were being forced to live as a refugee for a long time and to extend the rights of citizen to those unfortunate peoples. This shows the generosity and greatness of our country – India. Thus, we can easily conclude that this amendment Act is constitutional with respect to Article 21.

## CONCLUSION:

The glory of a nation cannot be adjudged by the vastness or volume of land under its possession or cannot be defined by the natural wealth that country possessed but the greatness of a nation should be measured by the brightness of mind and generosity of heart of the people living in that country. The greatness of our country lies in the inclusiveness of various diverse culture, customs, languages & heritages and unite all such diversity to build a united and strong nation. Many a times in the past, intruders invaded this country and ruled at their own will but the country never lost her identity and keep its existence alive through her citizens, maintain & enrich her rich cultural heritages by inclusion of foreign culture into her own. While the other countries of the world are still struggling with the formation of a policy that is going to prove a boon for the refugees sheltered in those countries, our government is successful in making such policy. We are talking about human rights but when an enactment was coming into force, some political parties were trying to malign the government by raising false propaganda like: the amendment Act is unconstitutional or this amendment is hurting the secular nature of the Constitution or this amendment Act is anti-Muslim. These rumors spread by few political parties for their own political gain resulting into destruction of Government properties by a raging mob, buses and trains were being burnt. Many fundamentalists utilizing this opportunity to speed up anti-national movement. No one is coming up with a concrete strategy to talk with the Government authorities to clear about their doubts. The protesters are even doubtful about the speech of our Prime-Minister on the issue of Citizenship (Amendment) Act, 2019.

This amendment Act is Constitutional and never hurt the secular characteristics of our Constitution. It is going to give relief to many persecuted minorities who were waiting for citizenship of India for a long time. Various political leaders have exploited these people to political goal. They were in a state of nobody, because they were actually citizens of other country but they cannot live in their own country because these people belong to a religion which is different from the recognized State religion of those country. In a democratic country where election of government is done by the majority of the people living in that country; the ideology of such elected government is the reflection of the opinion of the majority of citizens of that country. Opposition is an essential part of running a democracy but, constructive criticism by the opposition helps to build a nation; a destructive opposition which incites people to aggressively protest against the government resulting into huge loss of Government property

(more than 100 crore) is not an acceptable part of democracy. If anyone thinks that the present government is playing a role against a particular community then, I must say that Adnan Sami, Taslima Nasrin who got Indian citizenship despite they originated from Pakistan and Bangladesh respectively. The father of Adnan Sami was a member of Pakistani armed forces and despite of the fact, Adnan Sami is the receiver of the highest civilian award, 2020. If India is devoid of secularism then, Dr. A.P.J. Abdul Kalam would never be the President of India. India is secular that is why, more than three lakhs of Masjids remain in this country; funding is available to Madrasa for development & modernization of community specific education system; no community specific suppressive law (the Enemy (Vested) Property Act) is imposed by any government in India; protest in Shaheen Bagh by people of a specific community has not faced any forcible repression from the government; people living here enjoy the Freedom of expression and speech even to the level of abusing the Honorable Ministers of the Central Government. We need personalities like Kazi Nazrul Islam, Ashfaqulla Khan, Maulana Abul Kalam Azad, Habibur Rahman, Colonel Shah Nawaz Khan, Dr. A.P.J. Abdul Kalam and many others as Indian citizens but we don't need citizens like Dawood Ibrahim, Yakub Menon, Afjal Guru etc. If India can implement this policy, the crimes in which such people are often getting involved would be reduced, proper policy to provide economic benefits to these people can be implemented, problems related with unemployment is expected to get reduced, the corruptions like issuance of fake ration card, voter IDs, Aadhar Card, passport etc. related to these people is expected to be reduced in significant amount. Proper development and utilization of national resources can be achieved through appropriate implementation of citizenship policy by the Government.

India is a peace-loving nation, there might be difference of opinion among groups of people over certain issue and there are justified & peaceful mechanisms of resolving the differences of such opinions. Willful act of publicizing anti-government narrative and leading fiery protest against the government policy will only do harm to our nation. As a citizen of this country we should not fall into the trap of "Tukre" gang or "Azadi" gang or groups of 'progressive' 'intellectuals' belong to few Indian Universities. We all need to remember that, our country has achieved freedom from foreign rulers at the cost of life of our freedom fighters (although in some State Board syllabus they are branded as terrorist) and it should be our priority that we maintain our national integrity at any cost - "United We Stand, Divided We Fall".

## REFERENCES:

1. International Law & Human Rights by Dr. S. K. Kapoor.
2. Citizenship, Identity and Social History by CHARLES TILLY, International Review of Social History, Vol. 40, SUPPLEMENT 3: Citizenship, Identity and Social History (1995), pp. 1-17 (17 pages).
3. Constitutional Law of India, Dr. J.N. Pandey
4. <https://news.gallup.com/poll/157082/islamophobia-understanding-anti-muslim-sentiment-west.aspx>
5. Understanding Islamophobia in Asia: The Cases of Myanmar and Malaysia, Mohamed Nawab Bin Mohamed Osman Nanyang Technological University, Singapore, ISLAMOPHOBIA STUDIES JOURNAL VOLUME XX, NO. X Season 2017, PP. 17-36.
6. <https://www.hindustantimes.com/india-news/popular-front-of-india-mobilised-money-to-finance-anti-cao-protests-says-ed-note-to-mha/story-VIkqs81KDHBgattY2s0m1M.html>
7. <https://www.moneycontrol.com/news/india/ed-unearths-money-trail-of-popular-front-of-indias-role-in-anti-cao-protest-report-4862251.html>
8. <https://timesofindia.indiatimes.com/city/hyderabad/Akbaruddin-in-trouble-for-hate-speech/articleshow/17803821.cms>
9. <https://www.dhakatribune.com/bangladesh/2016/11/20/abul-barkat-632-hindus-left-country-day/>
10. <https://www.dhakatribune.com/bangladesh/law-rights/2017/12/28/religious-ethnic-minorities-persecuted-bangladesh/>