

AN ANALYSIS OF THE CITIZENSHIP AMENDMENT ACT, 2019 (CAA) AND THE NATIONAL REGISTER OF CITIZENS (NRC)

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ABSTRACT

The citizenship act had been enacted in the year 1955 which prohibited foreigners who entered into India without a valid passport or travel documents (illegal immigrants) from becoming citizens. This Citizenship Act 1955 has been amended six times by the Citizenship (Amendment) Acts up to 2019. The Citizenship Amendment Bill (CAB), 2019 has been passed by the Lok Sabha on 9 December 2019 and signed by the President on 12 December. So as of now, the CAB has become the Citizenship Amendment Act, (CAA). The opposite parties have been insisting and opposing this act, claiming that this Citizenship Amendment Act can't be given on the basis of religion and article 14 of our Constitution of India whereas it was one of the polls promises of the NDA government. This is more or less like a tuck-up war. This paper presents an analysis of the Citizenship amendment act 2019 and the way to solve the problem by taking the example of *Keshvanandha Bharati Vs State of Kerala* case which has played a vital role when the supremacy had arisen between Judiciary and Parliament.

INTRODUCTION

The first amendment bill for citizenship had been implemented in the parliament in 1955 known as The Citizenship Amendment Bill with 5 conditions for obtaining citizenship of India, such as Citizenship by Birth, descent, registration, naturalization and incorporation of territory⁽¹⁻³⁾. This Citizenship Amendment Bill, 1955 prohibited the illegal migrants from acquiring Indian citizenship. The Citizenship Amendment Bill, 1955 made it mandatory for a person to stay in India for at least 11 years⁽¹⁻³⁾. This 11 year was reduced to 6 years later. This same citizenship bill was amended in 1986, 1992, 2003, 2005, 2016 and 2019.

The Lok Sabha recently passed the Citizenship (Amendment) Act, 2016 provided that the illegal migrants from Northeast of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians communities of three countries such as Afghanistan, Bangladesh, and Pakistan must stay at least 6 years in India before applying for Indian citizenship through naturalization⁽¹⁻³⁾.

THE CURRENT CITIZENSHIP (AMENDMENT) ACT 2019

The current Citizenship (Amendment) Act 2019 was passed by the Parliament of India on 11 December 2019⁽⁵⁾. This amended citizenship act gives a path to Indian citizenship for illegal migrants of Hindu, Sikh, Parsi, Buddhist and Christian religious minorities, except Muslims who had fled persecution from **Pakistan, Bangladesh, and Afghanistan (3 Countries)** before 31st December 2014^(4,5,6). The bill was passed by 311-80 votes in Lok Sabha on 9th December 2019⁽⁷⁾. The Rajya Sabha passed the contentious Citizenship (Amendment) Bill CAB, 2019 with 125 votes in favor and 99 votes against the bill on 11th December 2019⁽⁸⁾. The union home minister said the citizenship bill is not to snatch anyone's Indian Citizenship, Muslims have no need to fear or worry⁽⁸⁾. MDMK leader says that this bill should be thrown into Bay of Bengal⁽⁸⁾. Central Govt. says these minority religious groups have come escaping persecution in these 3 Muslim-majority nations. For examples the neighboring country Burma giving troubles to Rohingya Muslims and Hindus by showing face discrimination and persecution. Another neighboring country Sri Lanka shows discrimination for Hindu, Christian, and Tamils. Amit Shah says that the bill does not violate any article of the

Constitution ⁽⁷⁾. Every citizen has been given a place on the basis of reasonable classification ⁽⁷⁾.

On December 9, when the Citizenship Amendment Bill (CAB), 2019, was introduced in the Lok Sabha, thousands of people from all walks of life thronged the streets at several places in Assam, in a spontaneous protest against what they believe is a design to destroy their land, language, and identity ^(9,11). The Citizenship (Amendment) Act was immediately challenged in the Supreme Court by scores of petitioners, but the court has declined to stay the citizenship (Amendment) Act, and has issued a notice to the central government about all 59 petitions to hear the plea on 22nd January 2020 ⁽¹⁰⁾.

ARTICLE 14 OF OUR CONSTITUTION OF INDIA

Constitution of India Article 14 guarantees equality before the law ^(20,21) and equal protection of laws. This means that no one can have any special privileges in the country, with respect to treatment by law to all persons, including citizens and foreigners ⁽¹²⁾. It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose ⁽¹²⁾. The question is whether this provision violates the right to equality under Article 14 of the Constitution as it provides differential treatment to illegal migrants.

This also means that the Supreme Court has held that the provision provides for equal treatment only under equal circumstances. India is a secular, sovereign and peace-loving country. India is the only country in the world that has justified the slogan of 'Unity in diversity'. This could be the reason why citizens of many countries want Indian citizenship ⁽¹⁵⁾.

THE PREAMBLE OF THE CONSTITUTION OF INDIA

Our Indian Constitution is a secular Constitution. The preamble of the Indian Constitution outlines the main objectives of the Constitution. The original text of the preamble to the Constitution had provided that, India will be “**Sovereign Democratic Republic**”. It is important to note that the words “Socialist” and “Secular” were not mentioned or included in the preamble of 1950 ⁽¹⁷⁾.

The Preamble is not an Integral Part of the Indian Constitution ^(18, 19)

In *Berubari's* case, 1960 a bench consisting of **Eight Judges** sitting on the bench and Justice Gajendragadkar delivered the unanimous opinion that the preamble is not a part of the Constitution. A similar judgment was given by **11 Judges bench Golaknath case, 1967** and the Supreme Court of India gave judgment that **the Preamble is not an integral part of the Indian Constitution** ^(18, 19), and therefore it is not enforceable in a court of law.

Keshvanandha Bharati Vs State of Kerala ^(21, 22, 23):

Kesavanandha Bharati Vs the State of Kerala, The case is called in the annals of Indian judicial history got its name from **His Holiness Keshvananda Bharati a Pontiff** ⁽²¹⁾ of the mutt. This **Keshvanandha Bharati Vs State of Kerala** has played a vital role between Judiciary and Parliament. First Time in the Indian Judiciary, 13 judges sat in a single bench to hear this case. Judgment was passed by a majority of seven judges, including **Chief Justice S.M. Sikri** on 24 April 1973. The judgment was decided by a thin margin of 7–6. The argument was taken for 68 working days commencing on October 31, 1972, and ended on March 23, 1973.

The Preamble is an integral part of the Indian Constitution:

The Chief Justice of India **SM Sikri** concluded that Parliament can amend every Article in the Constitution, but this power of amendment is not absolute because as it does not enable Parliament to overrule or take away fundamental rights or to completely change the basic fundamental features of the Constitution so as to destroy its identity. **The Basic Structure of the fundamental features of the Constitution can't be altered or changed** ⁽²³⁾. The Supreme Court has held that Preamble is an integral part of the Constitution. The Supreme Court in *Kesavanadha Bharati Case* (1973) gave an elaborate verdict that Preamble is Part of the Constitution and is subject to the amending power of the parliament as any other provisions of the Constitution, provided the basic structure of the constitution cannot be destroyed. In the light of *Kesavanadha Bharti* as well as other judgments, the following points about the constitution must be noted. The Preamble is an Integral part of the Constitution and Preamble Indicates “Basic structure of the Constitution”.

In the Kesavanandha case, the Majority of judges held, “Government can Amend the fundamental rights of the Constitution by **Article 368**, but without changing the Basic Feature, Structure and Nature of the Constitution.” And Court further **held that “Preamble is the Integral part of the Constitution** ⁽²³⁾.

42nd Amendments included two words Socialist and Secular in the Preamble:

During the Emergency in December 1976 in India, the Indira Gandhi government pushed through several changes in the 42nd Amendment of the constitution ⁽²⁵⁾. A committee under the chairmanship of Sardar Swaran Singh recommended that this amendment is enacted after being constituted to study the question of amending the constitution in the light of past experience. In this 42nd amendment, the words "socialist" and "secular" were added between the words "Sovereign" and "democratic" and the words "unity of the Nation" were changed to "unity and integrity of the Nation". From 1977 onwards the 3 words **Secular, Socialist, and Integrity** were added to the constitution ⁽²⁵⁾.

From 26th January 1977 onwards The Preamble of the Constitution changed the description of India from “**Sovereign Democratic Republic**” to a “**Sovereign, Socialist, Secular Democratic Republic**”, and also changed the words "unity of the nation" to "unity and integrity of the nation". Constitution of article 44 insists its responsibility of the state to implement the Uniform Civil Code. Our constitution makers were aware that a Uniform Civil Code has the potential to bring unity and integration in our society. At present, our religious sentiments are being manipulated by many politicians for their own benefits. However, once the Uniform Civil Code gets implemented, politicians would find it difficult to misuse religious sentiments as there would be very little difference between various personal laws.

The exact text of the Preamble, after 42nd amendment is given below:

PREAMBLE

“WE, THE PEOPLE OF INDIA,

have solemnly resolved to constitute India into a

SOVEREIGN SOCIALIST

SECULAR DEMOCRATIC REPUBLIC

and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression,

belief, faith and worship;

EQUALITY of status and of opportunity;

And to promote among them all

FRATERNITY assuring the dignity of the individual and

the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY

this twenty-sixth day of November, 1949, do

HERE BY ADOPT, ENACT AND

GIVE TO OUR SELVES THIS CONSTITUTION.”

The preamble of our constitution from 1976 onwards declares India as a **Sovereign, Socialist, Secular, Democratic, republic**. The aspirations being **Liberty, justice, equality, fraternity** are yet to be achieved.

STUDENTS PROTEST AGAINST CAA

Against the Citizenship (Amendment) Act 2019 and National Registration of Citizens Protests have busted out across in India, a few of them violent? Also, the students have taken to the streets from liberal arts, engineering, law, public, and private colleges across India against CAA and NRC. A day after the students protest against the citizenship Act turned violent in the national capital: Prime Minister Narendra Modi ⁽²⁸⁾ through a series of tweets termed the protests as “Unfortunate and deeply distressing”, and appealed to people to stay away from the rumors. Also, he is insisting on the point that this citizenship amendment act will not affect our Indian Muslims. The Chief Minister of Tamil Nadu appealed to Muslims, particularly women folk, not to protest to agitations against Citizenship amendment act and he promises protection for all ⁽³⁰⁾.

CONCLUSION

Now the Citizenship Amendment Act has become the law of the Land. Citizenship Amendment Act will be accepted by all as it is not against any existing citizen of our country. This Citizenship Amendment Act gives citizenship to refugees of religious persecution and in this persecution, Muslims do not come under this as they have no reason to migrate to India. The Citizenship Amendment Act is for conferring citizenship for the Hindus, Christians, Sikhs, Parsi's, Jains and Buddhists. This Citizenship Amendment Act has been challenged in the Supreme Court of India. A very good number of writ petitions have been filed in the Supreme Court challenging the legal validity of the Citizenship Amendment Act. The Supreme Court of India has asked the Union government to respond by the second week of January. According to article 14 of our constitution, all persons are entitled to equality, but there have been several Supreme Court judgments say that reasonable classification can be applied to this principle of equality. According to Kesavananda Bharati case judgment “The Principle of Basic Feature and Structure of Doctrine for the Constitution, which cannot be altered or destroyed by any of the Constitutional Amendments Acts passed by the Parliament”. Also, the question is whether this Citizenship amendment act, will come under the basic structure of our constitution? The future of this act will be based on the judgment by the Supreme Court of India. Today in India,

there is a large number of ancient cultures prevailing or still practicing. Though there are several numbers of diverse cultures in India, still we find “Unity in Diversity ⁽³¹⁾” among Indian.

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