

# **CITIZENSHIP FOR A CLASS: AN AMENDED LAW OF INDIA**

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## **ABSTRACT**

India is a democratic nation governed by rule of law and has witnessed the supremacy of law in various instances and the principle of rule law is also interpreted by judiciary on several occasions. The Constitution of India has acknowledged the model of separation of powers. Accordingly the primary function of legislature is to make laws. On December 12<sup>th</sup> 2019, The Citizenship (Amendment) Act, 2019 (No. 47 of 2019) was enacted by Legislature, which provides the provision of granting the citizenship to class of persons of Afghanistan, Bangladesh or Pakistan. The aftermath of enactment was not a pleasing one several protest are going throughout the nation against the Citizenship (Amendment) Act, 2019 and Public Interest Litigation were filed in the Supreme Court of India.

The Current Study is focused on analysis of enacted statue and its Constitutional validity along with analysis of principle of reasonable classification.

**Keywords:** Citizenship; Law; Act; Protest; Person; Constitution; India.

## **INTRODUCTION**

India shares its Borders with many sovereign countries; Nepal, Pakistan, China, Bangladesh, Bhutan, Sri Lanka, Afghanistan and Myanmar, through these sovereign countries permitted emigration and immigration is allowed, but occasionally illegal migration also takes place from the borders. In order to reduce the overload of illegal immigrants who has entered into the territory of India, the government of India has altered the existing Citizenship Act 1955.

The Citizenship Amendment Act 2019 was passed by the legislature on 12<sup>th</sup> of December 2019. The amended Act provides provision by which Indian citizenship may be granted to Hindu, Sikh, Buddhist, Jain, Parsi and Christians, who migrated to India from Afghanistan, Pakistan and Bangladesh on or before 31<sup>st</sup> December, 2014.

With the current population of India 1,375,937,112 as of Saturday, March 14, 2020, based on Worldometer (Worldometer 2020) with this outbreak of population any Nation will exhaust in its natural and economic resources. Indians are not worried about this outbreak but many of them are protesting for those who are not even the citizen of India and taking the plea that Citizenship Amendment Act 2019 is against the Spirit of Constitution of India and religion oriented. While some are pleading that the “reasonable classification” defense taken by the government is not justified it is not “reasonable classification” but “class legislation” hence fundamentally wrong and unconstitutional (Nagarwal 2019). Many people are opposing it because of they think that it is against the principle of secularism which is affirmed by the constitution of India (Dabhade 2019 ).

Over 160 petitions were also filed various activist, journalist and lawyers including students of some universities against the Citizenship (Amendment) Act, 2019 in Supreme Court of India. Recently, the United Nations Commissioner for Human Rights has also moved an intervention application in the Supreme Court on the Citizenship Amendment Act matter.

Thus the prime objective of this article is concerned with the Citizenship Amendment Act, 2019 and analyzing the validity of issues.

## SELECTION OF NON MUSLIMS OF AFGHANISTAN, PAKISTAN AND BANGLADESH: A REASONABLE CLASSIFICATION

To understand that why these three nations are selected and why only non Muslims from these three countries are allowed to grant citizenship we have to analyze the population of these three nations and the majority religion and condition of minority religion of these three nations.

### **Afghanistan-** (Federal Research Division 2008)

- **Independence:** Afghanistan recognizes its independence day as August 19, the date in 1919 when the country became fully independent of British rule.
- **Religion:** Virtually the entire population is Muslim. Between 80 to 85 percent of Muslims are Sunni and 15 to 19 percent, Shia. Small numbers of Hindus and Sikhs live in urban centers. A Jewish population that numbered 5,000 in 1948 had left Afghanistan entirely by 2000.

### **Pakistan**

- **Independence:** On 14 August 1947, the new Dominion of Pakistan became independent from the British rule.
- **Religion:** In 1947 when Pakistan (West Pakistan and East Pakistan) separated from India, non-Muslims comprised 14.20% of the total population according to 1951 census. In West Pakistan (now Pakistan), the non-Muslim population was 3.44% while in East Pakistan (now Bangladesh), the non-Muslim population was 23.2%. (Wikipedia 2020).

According to USCIRF | annual report 2018 current religious demography of Pakistan (west Pakistan) there are 96.28% Muslim, 85–90% Sunni, 10–15% Shia, 0.22% Ahmadi, 1.59% Christian, 1.60% Hindu. (Commission 2018).

The USCIRF report also states that in Pakistan the non-Muslim citizens persistently face threats to their security and are subject to various forms of harassment and social exclusion and several instances are there when Non Muslim females are forcefully converted to Islam. (Commission 2018).

## Bangladesh

- **Independence:** The Independence of Bangladesh was declared on 26<sup>th</sup> March 1971.
- **Religion:** Pakistan's census data show that non-Muslims formed 23.20 per cent of East Pakistan's total population in 1951 (Wikipedia 2020). There was constant decrease in ratio of non Muslim population in East Pakistan as it is noted that by 1961, share of non-Muslims in East Pakistan had reduced to 19.57 per cent, In 1974 it further reduced to 14.60 per cent; in 1981 to 13.40 per cent; in 1991 to 11.70 per cent and in 2001 to 10.40 per cent (Rawat 2019).

It is widely accepted that Pakistan, Afghanistan and Bangladesh are Islamic States. Moreover the Constitution of Pakistan has clearly mentioned in Article 2 that Islam is the official religion of state and Article 31 of Constitution of Pakistan imposes the duty on the government to foster the Islamic way of life (Ispahani 2013). Thus it is crystal clear that the status of non- Muslim minorities in all these three states has suffered consistently thus to provide the provision to grant citizenship to such minorities is a reasonable classification and not a class legislation.

## CONSTITUTIONAL VALIDITY OF THE CITIZENSHIP (AMENDMENT) ACT, 2019

The preamble of India affirms the principle of socialism and secularism. Even B.R. Ambedkar in his last speech of Constituent Assembly has put emphasis to make political democracy a social democracy and urged that without social democracy political democracy will not last long. He defined social democracy as a way of life which recognizes liberty, equality and fraternity as the principle of life and cannot be separated from each other and if divorced from each other it will defeat the very purpose of democracy (B.R.Ambedkar 1949). In Citizenship Amendment Act the principle of socialism and secularism is adopted since the non Muslim religious minorities in Afghanistan Pakistan and Bangladesh are not having liberty equality and fraternity as provided there to the majority Muslim population and non Muslim always face discrimination in their native state.

The Citizenship (Amendment) Act 2019 also provides dignified life to the non-Muslim minorities of the three specified states which is granted to every person under Article 21 and it also provides them Equality before law as affirmed in Article 14 of Indian constitution the provision is inserted in Citizenship Amendment Act 2019.

The Citizenship (Amendment) Act 2019 is also in consistency with the Article 25(1) and these non Muslim minorities are equally entitled to freedom of conscience and they have the right to freely profess, practice and propagate their religion.

Thus the Citizenship (Amendment) Act 2019 is constitutionally valid and is in conformity of the Indian Constitution.

### **WHY MUSLIMS OF THESE THREE COUNTRIES DEBARRED?**

There are few key points due to which only Hindu, Sikh, Buddhist, Jain, Parsi and Christians are permitted and Muslims are debarred.

Afghanistan, Bangladesh and Pakistan all these three states are Islamic states with majority of approx 85 to 90% populations is Muslim and all these three countries are economically weaker in comparison to India. If Muslims are also permitted then it is possible that a large number of Muslims who are not citizen of India will also demand to be the citizen of India in order to get work and live much better life though same scenario is with non-Muslims also but they are religiously prosecuted in their respective state.

Ahmadi: In many Islamic countries the Ahmadi have been defined as heretics and non-Muslim and Ahmadi believes that Mohammed was not last prophet (Wikipedia, Persecution of Ahmadis 2020). With this view there is chance of internal violence between Indian Muslim citizens and Ahmadi sect so it is precautionary not to consider Ahmadi sect for granting citizenship.

According to the report of governor which was sent to president in year 1998 it was also stated that “Muslim infiltrators continued migrating into Assam for economic reasons. However, Hindu refugee movement from Bangladesh has continued to Tripura and West Bengal. Illegal

migrants from Bangladesh into Assam are now almost exclusively Muslims” (TheGovernorofAssam 1998).

In same report it was also mentioned that “The myopic view accounts for the more sinister and dangerous aspects being overlooked. The views expressed by Jinnah, Bhutto, Sheikh Mujibur-Rahman and the present day intellectuals in Bangladesh cannot be ignored.”

“Assam can provide the much desired lebensraum for Bangladesh. This fact coupled with Assam's geostrategic importance, Bangladesh's bursting population and growing international Islamic fundamentalism, underscore the volatile situation created by this ongoing demographic intrusion from across the border. We must not allow any misconceived notions of secularism to blind us to these realities”.

Further in the report it was said that “Although Bangladeshi illegal migrants have come into several States of India and they are more numerous in West Bengal than in Assam, they pose a much greater threat in Assam than in any other State. If not effectively checked, they may swamp the Assamese people and may sever the North East land mass from the rest of India. This will lead to disastrous strategic and economic results”. (TheGovernorofAssam 1998).

With this report it is concluded that there is major threat of sovereignty to India, as in Assam, if migration of Muslim population continues. Therefore it is reasonable to debar the Muslim illegal migrants to grant citizenship.

### ***Status of Application filed in Supreme Court of India***

The bench issued notice to the Centre on the batch of pleas, seeking stay on the operation of the law as well as on the main petition challenging the constitutional validity of the legislation.

## **CONCLUSION**

Citizenship (Amendment) Act, 2019 is an act of parliament which is in conformity to constitution of India and absolutely constitutional. It provides Citizenship to the non-Muslim minorities of Afghanistan Bangladesh and Pakistan. The criteria to provide citizenship is not discriminating but it is the reasonable classification by which these religions based persecuted people get protection and rights in India. India is affirming the status of being welfare state

and through Citizenship (Amendment) Act, 2019, India has shown the world that it is not only working for the welfare of its citizen but is providing relief to those who don't initially belongs to India.

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