

THE CITIZENSHIP AMENDMENT ACT AND ITS CORRESPONDENCE WITH THE ASSAM ACCORD AND THE NRC: A CONSTITUTIONAL ANALYSIS

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ABSTRACT

This research paper aims to comprehend the Citizenship Amendment Act's provisions in light of the Constitution's requirements while also looking at the Act's connections to the Assam Accord and the National Register of Citizens. The Citizenship Amendment Act of 2019's primary goal is to allow citizenship to Hindus, Sikhs, Buddhists, Christians, Parsis, and Jains who escaped religious persecution in adjoining countries like Bangladesh, Pakistan, and Afghanistan before December 31, 2019, yet it rejects Muslim refugees from those equivalent nations. Since Muslims are isolated from their partners — Hindus, Sikhs, Buddhists, Christians, Parsis, and Jains — under similar states of religious persecution and lack of equality between them is ludicrous and nonsensical, the Citizenship Amendment Act's differentiations are not in view of a sensible nexus and disregard Muslims' rights. Keeping religiously mistreated Muslims in detention facilities separate from their Hindu, Muslim, Buddhist, Sikh, and Jains partners from the previously mentioned nations confines their right to life and personal liberty based on an unreasonable cycle, which disregards Article 21 when a regulation's objective is religious persecution. The article likewise tries to resolve the issue of how the Act discriminated against Muslim immigrants by granting them citizenship rights simply based on their religion, as this contradicts both the very much cherished idea of secularism and the central moral underpinnings of the Constitution. Members of the six aforementioned religious groups have until December 31, 2014, in accordance with the Citizenship Amendment Act, to apply for citizenship in India. This date coincides with the

NRC's deadline of March 24, 1971, rendering the absurd callisthenics of the NRC in Assam meaningless.

INTRODUCTION

On December 12, 2019, the President approved the Citizenship Amendment Bill, turning it into a law. The Act's primary objective is to offer citizenship to Christians, Buddhists, Jains, Parsis, Sikhs and Hindus who fled religious persecution in nearby nations including Bangladesh, Pakistan, and Afghanistan and arrived on Indian soil before December 31, 2014. A dispassionate appraisal is necessary in light of the overwhelming expostulations made against the Citizenship Amendment Act by various institutions, Muslim groups, and the general public. Therefore, with respect to the purpose of this research paper, the methodology used by the author is "content analysis" and uses secondary sources of data so as to examine and understand the provisions of the Act. These aforementioned sources have been picked from journals such as Jstor, HeinOnline, Proquest while the case laws have been referenced from SCC Online. Further, primary sources of data such as the Government of Assam Website and the National Register of Citizens Website have also been referenced in understanding the provisions of the Assam Accord and the NRC.

DOES THE CITIZENSHIP AMENDMENT ACT CONTRAVENE ARTICLE 14 OF THE INDIAN CONSTITUTION?

The Citizenship Amendment Act (CAA) has been the subject of much debate and has been challenged in the Indian courts. Some argue that the CAA contravenes Article 14 of the Indian Constitution, which guarantees the right to equality before the law and prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Specifically, the CAA has been criticised for discriminating against Muslims and for creating a religious test for citizenship. However, the Indian government has argued that the CAA is intended to provide a path to citizenship for persecuted minorities from certain neighbouring countries and does not discriminate against any particular religious group. The final decision on whether the CAA contravenes Article 14 will be up to the Indian courts.

(A) Article 14 soughts to protect both citizens as well as aliens:

In *Natural Resources Allocations, In Re Special Reference No 1 of 2012*ⁱ, it was determined that Article 14's fundamental goal is to provide all people—citizens and noncitizens alike—the equality of status and opportunity mentioned in our constitution's preamble. Additionally, it was determined in *Chiranjit Lal Chowdhary v. Union of India*ⁱⁱ that Article 14's strengthening extends to both citizens and noncitizens, as well as to natural and legal persons. Regardless of race, colour, religion, sex, or nationality, everyone has the right to equality before the law. However, the enforcement of Article 14 extends to all aliens, including Muslims from these neighbouring countries.

(B) article 14 connotes equality of treatment in equal circumstances which is not sufficed by citizenship amendment act:

According to Article 14, similar things should be treated similarly, not similarly to those that are dissimilarⁱⁱⁱ. Equality before the law means that everyone should be treated similarly and equally under the law. A natural corollary of the rule of law, which permeates the Indian Constitution, is the notion of equality before the law^{iv}. The Hon'ble Supreme Court ruled in *John Vallamatom v. Union of India*^v that all people in comparable situations must be treated equally with regard to the rights and obligations granted by the law. Additionally, it was declared in the case of *Gauri Shankar v. Union of India*^{vi} that the concept of equality of law means that all members of one class should get the same treatment under the law. It means that similar things shouldn't be treated similarly to different things, and vice versa. Likes ought to be handled similarly. In addition, the Supreme Court ruled in the historic case of *State of West Bengal v. Anwar Ali Sarkar*^{vii} that all people with comparable circumstances must be treated equally with regard to the rights granted and obligations imposed by the law. The Supreme Court additionally mentioned that everybody ought to be concerned to the equal legal guidelines withinside the equal circumstances, that there ought to now no longer be prejudice among one character and another, and that everybody ought to maintain the equal perspectives concerning the legal guidelines' subjects. Referring to the previously mentioned decisions withinside the literary substance of the Citizenship Amendment Act, if a Muslim had entered Indian territory sooner than 31 December 2014 from Bangladesh, Pakistan, or Afghanistan due to otherworldly persecution, they could now at this point not be qualified to use for citizenship

in India. Be that as it may, if any person belonging to the aforementioned communities had entered Indian territory before 31 December 2014 from Bangladesh, Pakistan, or Afghanistan attributable to religious persecution, they would be. This is an egregious infringement of the High Court's decisions in *John Vallamatom v. Association of India*, *Gauri Shankar v. Association of India*, and *Province of West Bengal v. Anwar Ali Sarkar*, which held that all individuals in like conditions should be dealt with similarly in the rights conceded and commitments forced by the law. This is because the Citizenship Amendment Act, 2019 gives preference to granting citizenship rights to Hindus, Sikhs, Buddhists, and Christians.

(C) citizenship amendment act is not in concordance with the twin tests of intelligible differentia and reasonable nexus under article 14 and is hence ultra vires the constitution:

Reasonable categorization is guaranteed under Article 14. The criteria for a reasonable classification should be met.

Tests like:

1. It shouldn't be capricious, deceptive, or evasive. It should be founded on an understandable differentia, some genuine distinction that separates the individuals or objects included in the class from those excluded from it.^{viii}
2. The categorization criteria must be sensible or reasonable in relation to the goal that the relevant law is trying to accomplish.^{ix}

In *Maneka Gandhi v. Union of India*^x, it was determined that Article 14 assures equality of treatment and reeks of arbitrary state action. The landmark judgment of *K. Thimappa v. Chairman, Central Board of Directors, SBI*^{xi}, has set the precedent that the classification required by Article 14 had to be based on an understandable differentiation that distinguished between individuals or objects included in the group and those excluded, and the differentiation had to have a logical connection to the entity that the Act aimed to achieve. It should be recalled that the Citizenship Amendment Act's irregularity in giving citizenship rights to Hindus, Sikhs, Buddhists, Christians, and Jains who got away from nearby nations like Bangladesh, Pakistan, and Afghanistan and attacked Indian territory sooner than December 31, 2014 in light of religious persecution and isolation of Muslims from the equivalent is nonsensical, crazy, and silly. This is because of the ludicrous scientific categorization made by the Citizenship

Amendment Act that is just in view of the premise of religion. Assuming the motivation behind the Act is to give security to minorities confronting religious persecution in India's neighbors, it is astonishing that it totally disregards Ahmadiyya and Shia Muslims who face persecution in Pakistan, Rohingya and Hindus in Myanmar, and Christian Tamils in Sri Lanka. Moreover, the High Court noted on account of *R.D. Shetty v. Air terminal Power* that when the grouping is outlandish and doesn't fulfill the two necessities of understandable differentia and sensible nexus, the challenged regulation or leader action would be clearly eccentric, and the Article 14 assurance of equality would be invalidated. The Citizenship Amendment Act bombs hopelessly on the two counts in light of the fact that, as well as ordering numerous unlawful immigrants in view of their religion, it additionally does as such for non-legitimate reasons. Since a couple of unlawful immigrants ought not be apparent as being more prominent than others, the Act's separation isn't generally founded on a legitimate association.

Hence, it should be referenced that the Citizenship Amendment Act, 2019, disregards Article 14 of the Indian Constitution as it really does now never again treat Muslims and those of various religions likewise beneath the equivalent circumstance of religious persecution, which incorporate Hindus, Buddhists, Christians, Sikhs, and Jains, and as it randomly separates contrary to Muslims with racial segregation.

DOES THE CITIZENSHIP AMENDMENT ACT ABRIDGE ARTICLE 21 OF THE INDIAN CONSTITUTION?

The Citizenship Amendment Act (CAA) has been challenged in the Indian courts and some argue that the CAA may abridge Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. Specifically, it has been argued that the CAA, when read in conjunction with the National Register of Citizens (NRC), may result in the arbitrary detention and deprivation of citizenship of individuals, particularly those who are unable to produce the required documentation. The Indian government has argued that the CAA and NRC are separate pieces of legislation and that the CAA is intended to provide a path to citizenship for persecuted minorities from certain neighboring countries and does not affect the right to life and personal liberty of any individual. The final decision on whether the CAA abridges Article 21 will be up to the Indian courts as well.

(A) *Ambit of article 21 encompasses all aliens including muslim refugees from other countries:*

The Supreme Court ruled in *National Human Rights Commission v. State of Arunachal Pradesh* that noncitizens also have the right to life and personal freedom. The Supreme Court also expanded the definition of "statute" in *Wong Yang Sung v. McGrath*^{xii} by defining it to include a broader definition of law, which gave an alien facing deportation legal protections. Since all non-citizens, including Muslim refugees, are entitled to protection under Article 21, it is appropriate to predict that this will be the case.

(B) *Procedure established by citizenship amendment act capriciously bereaved Muslims refugees who accost religious persecution of the tutelage under article 21:*

The right to life interpolates the right to a dignified existence. It includes all the aspects of human life that give it weight and significance. Before a person is robbed of his life and personal freedom, the legal process must be rigorously followed^{xiii} and cannot be changed to the detriment of the person who will be impacted^{xiv}. This right goes beyond serving as a defence against unlawful presidential action^{xv} and instead extends to the realm of legislation^{xvi}. In the case of *Bachan Singh v. State of Punjab*^{xvii}, it was said that a system for denying someone their personal liberty must follow one that is reasonable, fair, and just. The fundamental goal of Article 21 is for everyone to live fulfilling lives^{xviii}. The provisions included in its scope address both physical existence and quality of life^{xix}. Any measure that violates this fundamental right must be ruled extra vires^{xx}. A statute's compliance with Article 21 must be evaluated in light of Article 14 in order to be legitimate^{xxi}. The term "personal liberty" in Article 21 has the broadest scope and refers to a number of rights that together make up a person's personal freedom, some of which have been elevated to the level of independent basic rights^{xxii}. The authorities must demonstrate that the contested exclusion or termination precisely complies with the legal process since personal liberty as guaranteed by Article 21 is so sacred and high on the scale of fundamental values^{xxiii}. It is impossible to single out a certain set of individuals for unfair or exclusive treatment. But a thorough look at the Citizenship Amendment Act demonstrates that political and arbitrary discrimination is being directed specifically against Muslims from the aforementioned countries. If the law's intended victim is someone who has been persecuted because of their religion, then every such person must be treated similarly.

Muslims who are targeted for their religion would be detained if they were separated away, which would limit their access to life and personal freedom. In addition, the Supreme Court ruled in *Olga Tellis v. Bombay Municipal Corporation v. & Ors*^{xvii} that a method that is irrational in the context of a case draws the vice of injustice, invalidating both the statute that prescribes it and the actions that are performed as a result.

Because of the previous conversation, it is appropriate to foresee that the Citizenship Amendment Act outrageously disregards Article 21 of the Indian Constitution since it unreasonably limits the right to life and the right to personal liberty of Muslim refugees escaping religious persecution by denying them citizenship rights and barring them from the Act's domain.

DOES THE CITIZENSHIP AMENDMENT ACT SCUTTLE THE PRINCIPLE OF CONSTITUTIONAL MORALITY AND THE BASIC STRUCTURE OF THE CONSTITUTION?

The basic structure of the Constitution refers to the underlying principles and values that are considered essential to the functioning of the Constitution and cannot be amended. The principle of constitutional morality refers to the idea that the Constitution should be interpreted and applied in a way that is consistent with the moral values and principles that it embodies.

Some argue that the CAA undermines the basic structure of the Constitution by undermining the principles of equality and non-discrimination, and by creating a religious test for citizenship. They also argue that the CAA may be in violation of the principle of constitutional morality by being against the spirit of the Constitution which is secularism, equality, and non-discrimination.

However, the Indian government has argued that the CAA is intended to provide a path to citizenship for persecuted minorities from certain neighbouring countries and does not discriminate against any particular religious group.

(A) *Citizenship amendment act is an incursion on secularism guaranteed by the constitution:*

In the significant case of *Keshavananda Bharati v. State of Kerala*^{xxv}, the Supreme Court analysed the basic structure theory and determined that the Parliament may not revise the Preamble in violation of Article 368 of the Indian Constitution. The amendment process cannot be construed in a way that causes the phrase "Sovereign Socialist Secular Democratic Republic" to lose its meaning. In addition, the Supreme Court ruled in *S.R. Bommai v. Union of India*^{xxvi} that secularism is a fundamental component of the constitution. It is clear from the Supreme Court's aforementioned rulings that the Union Parliament cannot pass any legislation that undermines the Constitution's fundamental principles. One of the most unique, bleeding edge, and generally welcomed thoughts of the Indian Constitution was the idea of citizenship, which was sans already to everybody with next to no segregation in view of religion, standing, race, sex, and so forth. In any case, it is critical to take note of that the Citizenship Amendment Act, 2019, unjustifiably victimises Muslim refugees who escape religious persecution and denies them citizenship rights, while it awards citizenship rights to persons from the aforementioned communities who escaped the previously mentioned nations and entered Indian territory before December 31, 2014 because of religious persecution. The Act's inherent bias towards Muslims solely on the basis of religion is a direct attack on India's highly revered secularism ideal. The Citizenship Amendment Act therefore manifestly violates the secularism principle and thereby tramples on the foundation of the constitution.

(B) *Citizenship amendment act transgresses the doctrine of constitutional morality:*

The principle of constitutional morality presupposes that one should abide by the Constitution's rules and refrain from acting in a way that would violate the rule of law. The landmark judgement of *Govt. of NCT of Delhi v. Union of India*^{xxvii}, outlined the precedent that constitutional morality, in a puritanical sense, implied scrupulous and unwavering obedience to the requirements of the constitution as preserved in various fragments of the text. This obligation established by the Constitution results from the fact that it serves as the unwavering bulwark for the democratic system asserted to the populace and serves as the underlying substratum for all other core principles. Interestingly, the Citizenship Amendment Act awards citizenship rights to persons belonging to the aforementioned communities who escaped adjoining nations like Bangladesh, Pakistan, and Afghanistan and entered Indian territory

before December 31, 2014 because of religious persecution, in this way disregarding Articles 14 and 21 of the Indian Constitution. The Act likewise rejects Muslims who offend religious nagging. Moreover, it abuses the secularism standard by victimising Muslim refugees to give them citizenship rights exclusively founded on their confidence, which subverts the Constitution's crucial standards. Clearly the Citizenship Amendment Act, 2019, which abuses Articles 14, 21, and 25, and doesn't look to stick to the convention of secularism while likewise disregarding the essential construction, abbreviates the standard of sacred ethical quality since it doesn't consent to the most urgent arrangements of the constitution.

SUBSISTENCE OF RECALCITRANT PROVISIONS BETWEEN NRC AND CAA AND VIOLATION OF ASSAM ACCORD

Some argue that there are recalcitrant provisions between the National Register of Citizens (NRC) and the Citizenship Amendment Act (CAA) that may lead to the violation of the Assam Accord. The Assam Accord is a 1985 agreement between the Government of India and the people of Assam that aimed to resolve a long-standing demand for the detection and deportation of illegal immigrants in the state.

The NRC, which is a register of citizens in India, was implemented in the state of Assam in 2019 with the goal of identifying illegal immigrants. The CAA, which was passed in 2019, provides a path to citizenship for persecuted minorities from certain neighboring countries. The concern is that the CAA may provide a path to citizenship for illegal immigrants who are not covered by the Assam Accord and that this may undermine the goals of the Accord.

Critics of the CAA also argue that the act violates the Assam Accord as the Accord specifically states that all those who came to Assam after March 24, 1971, will be detected and expelled, and the CAA grants citizenship to non-Muslims who came to India before December 31, 2014. It also dilutes the cut off date of March 24, 1971.

However, the Indian government has argued that the NRC and CAA are separate pieces of legislation and that the CAA is intended to provide a path to citizenship for persecuted minorities and not intended to undermine the Assam Accord.

(A) *Felonious immigrants catalogued under nrc would be eligible to ameliorate citizenship by using CAA*

To distinguish and oust the unlawful immigrants to Bangladesh, the Province of Assam executed the Public Register of Residents. As per the Citizenship Amendment Act, the end date for people of the six previously mentioned religious gatherings to attest citizenship in India is December 31, 2014, which agrees with the NRC's end date of Walk 24, 1971, making the state's vulgar exercises contrary to the NRC futile. On the off chance that they have a place with any of the previously mentioned networks and penetrated Assam preceding December 31, 2014 because of religious persecution, those recently recognized as disallowed immigrants in Assam who entered after the cutoff date of 24th Walk 1971 will be qualified to, under the CAA, register for being a citizen of India.

(B) *Citizenship amendment act vitiates the provisions of assam accord:*

1. The amendment to Section 2(1)(b) of the Citizenship Act of 1955 nullifies Clause 5 of the Assam Accord's requirement that everyone entering Assam between January 1, 1966, and March 24, 1971, register under the Foreigners Act of 1939.
2. The Third Timetable's change likewise debilitates Segment 6A of the Citizenship Act, which depends on the Assam Accord and explicitly expresses that anyone who emigrated to Assam between January 1, 1966, and Walk 24, 1971, was qualified to turn into a resident of India right away or following 10 years. The Citizenship Amendment Act, then again, lessens this time period from 10 to five years.
3. The Citizenship Amendment Act also violates Assam Accord Clause 6, which states that the constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people. The Citizenship Amendment Act hence is the epicentre of confusion as it omits a clear definition of the word "Assamese people." The absence of a precise and legal meaning for terms such as "local identity", "Assamese people," and "indigenous people," makes it more difficult to execute Clause 6 of the Assam Accord in its embedded form.

CONCLUSION

Accordingly, it is sensible to accept that the Citizenship Amendment Act, 2019 disregards the key rights safeguarded by Articles 14 and 21 of the Indian Constitution, regardless of the fact that it was passed to concede citizenship status to Hindus, Sikhs, Buddhists, Christians, Parsis, and Jains who escaped adjoining nations like Bangladesh, Pakistan, and Afghanistan into Indian territory before December 31, 2014 in light of religious persecution. Additionally, the Act breaches the basic moral values outlined in the Constitution by denying citizenship rights to Muslim immigrants solely because of their faith, as well as undermining the commonly accepted idea of secularism. The Assam Accord and the NRC's official callisthenics in Assam are invalidated because the Citizenship Amendment Act sets a deadline of 31 December 2014 for members of the six aforementioned religious groups to apply for citizenship in India. This deadline conflicts with the NRC's deadline of 24 March 1971. If the aforementioned Act defects were fully comprehended and resolved, the Act would be generally embraced.

ENDNOTES

ⁱ (2012)10 SCC 1(77)

ⁱⁱ AIR 1951 SC 41

ⁱⁱⁱ V.N. Shukla, *The Constitution of India*, 5th Edition, Page 27

^{iv} *Ashutosh Gupta v. State of Rajasthan*, AIR 2002 SC 1533

^v AIR 2003 SC 2902.

^{vi} (1994) 6 SCC 349.

^{vii} AIR 1952 SC 75

^{viii} *Budhan Chowdhary v. State of Bihar*, (1955) I.S.C.R. 1461.

^{ix} *LaxmiKhandsari v. State of Uttar Pradesh*, AIR 1981 SC 873,891; (1981) 2 SCC 600; *State of Haryana v. Jai Singh*, (2003) 9 SCC 114; AIR 2003 SC 1696; *Welfare Asson, ARP v. Ranjit P. Gohil*, (2003) 9 SCC 358; (2004) 1 SCC 369; AIR 2003 SC 3057; *Javed v. State of Haryana*, (2003) 8 SCC 369; AIR 2003 SC 3057.

^x AIR 1978 SC 597

^{xi} AIR 2001 SC 467

^{xii} 339 U.S. 33 (1950)

^{xiii} *Makhan Singh Tarsikka v. State of Punjab*, 1952 SCR 368; AIR 1952 SC 27.

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- ^{xiv} Naranjan Singh Nathawan v. State of Punjab, AIR 1952 SC 106: 1952 SCR 395.
- ^{xv} A.K. Gopalan v. State of Madras, 1950 SCR 88: AIR 1950 SC 27.
- ^{xvi} Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746: (1981) 1 SCC 608.
- ^{xvii} AIR 1982 SC 1325: 1983 SCR (1) 145; Machhi Singh v. State of Punjab, AIR 1983 SC 957: 1983 SCR (3) 413; Laxman Naik v. State of Orissa, AIR 1995 SC 1387: (1994) 3 SCC 381; Gian Kaur v. State of Punjab, AIR 1996 SC 946: (1996) 2 SCC 648; Aruna Ramachandra Shanbaug v. Union of India, (2011) 15 SCC 480: 2012 AIR SCW 3786.
- ^{xviii} Hinch Lal Tiwary v. Kamla Devi, (2001) 6 SCC 496: AIR 2001 SC 3215; Anwar v. State of J&K, (1970) 2 SCWR 276 (279): AIR 1971 SC 337: (1971) 3 SCC 104; National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742: AIR 1996 SC 1234; Louis De Raedt v. Union of India, (1991) 3 SCC 554; State of Arunachal Pradesh v. Khudiram Chakma, 1994 Supp. (1) SCC 615; State of Maharashtra v. Prabhakar Pandurang Sanzgiri, AIR 1966 SC 424 (426): 1966 (1) SCR 702.
- ^{xix} In re Noise Pollution (V), (2005) 5 SCC 733: AIR 2005 SC 3136; In re Noise Pollution (VI), (2005) 8 SCC 794.
- ^{xx} Confederation of Ex-Servicemen Associations v. Union of India, (2006) 8 SCC 399: AIR 2006 SC 2945.
- ^{xxi} Reliance Energy Ltd. v. Maharashtra State Road Development Corporation Ltd., (2007) 8 SCC 1, 21: (2007) 11 JT 1.
- ^{xxii} Rustom Cavasjee Cooper v. Union of India, AIR 1970 SC 1318: (1970) Ker LT 354: 1970 Cur LJ 576.
- ^{xxiii} Union of India v. Chhaya Ghoshal, (2005) 10 SCC 97: AIR 2005 SC 428: 2004 AIR SCW 6999.
- ^{xxiv} AIR 1986 SC 180
- ^{xxv} AIR 1973 SC 1461
- ^{xxvi} AIR 1994 SCC 1
- ^{xxvii} (2018) 8 SCALE 72
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