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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **“THE CITIZENSHIP AMENDMENT ACT (CAA) OF 2019: A BASIC GUIDE”**

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## **ABSTRACT**

The Citizenship Amendment Act, 2019 has been at the heart of controversy ever since it was placed before the parliament in the form of a bill. Keeping that controversy aside, it is important to understand the aspects of the act and also the need for bringing such legislation.

The main intention of the Act is to give citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians entering India on or before 31.12.2014 from the three neighbouring countries namely Afghanistan, Pakistan and Bangladesh. The three countries in question are all Islamic Countries and there have been a number of cases of people being persecuted on account of their religion. As a result of such regular persecution, minorities belonging to these countries were left with no other option but to seek refuge in India.

By bringing the CAA, 2019, India is giving voice and shelter to the millions of refuge who were left stateless by the act of their own countrymen. The CAA should not be looked down as an act that violates the secular principles of our constitution but should be looked upon as an act of uplifting the marginalized victims of religious persecution.

Ever since Independence, India has taken it as its responsibility to protect the rights of the minorities in its neighbourhood and thus when it has a chance to do exactly the same, it cannot decide to look the other way. The onus of protecting the minorities from these countries is on India and we are not shying away from fulfilling our moral obligations.



## INTRODUCTION

The rules for the Citizenship Amendment Act (CAA), 2019 were recently notified on 11<sup>th</sup> March, 2024. Even before the Act was passed, there has been huge uproar over it on account of some calling it unconstitutional and a blatantly communal law which strikes at the root of India's secularism. Due to the noise surrounding the act, most of us have been unable to comprehend the true purpose of the act. While it is true that there have been a lot of opposition since the Act was brought in, one should also not underestimate the support that the Act has garnered over the period of time.

The main intention behind the act is to give citizenship to a select group of illegal migrants mainly the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Pakistan, Afghanistan and Bangladesh. The act applies to only these selected people and only if they had entered India before the deadline of 31.12.2014. Thus, such illegal migrants shall now be considered eligible for acquiring the citizenship of India.

Before the CAA, 2019 came into force; the people of these 6 religions coming from the 3 countries were not eligible to seek citizenship in India as they were termed as illegal migrants under sec 2 (1) (b) of the Act<sup>1</sup> while sec 5 and 6 prohibited them from applying for citizenship.

The amendment to the Citizenship Act, 1955 also known as CAA, 2019 paved way for these illegal migrants to be eligible for India's citizenship. The term illegal migrant as defined under sec 2 (1) (b) of the act was amended to carry a proviso that people belonging to the above said 6 religions coming from the Pakistan, Afghanistan and Bangladesh who had entered India on or before 31.12.2014 shall not be termed as an illegal migrant.

The Third Schedule was also relaxed for people belonging to the above group so as to enable them to apply for citizenship in case they had stayed in India for not less than 5 years. The above rule originally requires 11 years of stay in order to seek citizenship.

Passport (Entry into India) Rules and the Foreign (Amendment), Act, 2015 were also passed in the year 2015 which further provided protection to this group of people from any harassment and deportation since they were already a victim of persecution.

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<sup>1</sup> The Citizenship Act, 1955



## **HISTORICAL CONTEXT**

The horror of partition is still etched in the memories of those who were alive at the time of India's Independence. For today's generation, partition was just another event in India's long history. When Pakistan was carved out of India, a pact was made between both the countries where they pledged to protect the minorities and India further conceded that the protection of minorities in the neighbourhood was its responsibility.

Pakistan, Afghanistan and Bangladesh turned into an Islamic state and this made things worse for the minorities who started facing persecution on account of their religion on a consistent basis. The right of the minorities to practice their religion in these 3 countries was severely obstructed and most of them were left with no choice but to run away from their country and come to India.

In 1972, just when Bangladesh was carved out of India, Indira Gandhi, the then Prime Minister of India had a pact with her counterpart Sheikh Mujibur Rahman, popularly known as the Indira-Mujeeb pact wherein India had agreed to fulfil its moral obligation by giving refuge to more than 1.2 million people who were mostly Hindus, Sikhs, Buddhists and Christians.

The horror of partition is not fully comprehended in today's times and living those memories again will do no good either but in order to understand the history behind the need for CAA, 2019, it is important to understand this aspect as well. The religious persecution of minorities in the 3 countries is a long standing event and it is India's responsibility to protect them.

## **LEGAL FRAMEWORK**

The Citizenship Act, 1955 recognizes citizenship by Birth, citizenship by Descent, citizenship by Registration, citizenship by Naturalization and citizenship by Incorporation of Territory. The passing of the CAA, 2019 means that we now have a 6<sup>th</sup> kind of citizenship that is exclusively meant for conferring citizenship on illegal migrants who have entered on or before 31.12.2014 belonging to the specified 6 religions coming from Pakistan, Afghanistan and Bangladesh. A brief look at the different types of citizenship conferred by the Citizenship Act will help us understand the CAA, 2019 and the reason why it was needed.

## **Citizenship by Birth<sup>2</sup>**

Citizenship by Birth provides citizenship to an individual on 3 different counts. The first kind includes those who are born on or after 26.01.1950 but before 01.07.1987. The second involves those are born on or after 01.07.1987 but before the commencement of the Citizenship Amendment Act, 2003. In this case, either of the parent should be a citizen of India. The third kind consists of those who are born on or after the commencement of the CAA, 2003. In this case, either both the parent of the child are a citizen of India or if one of them is a citizen of India then the other should not be an illegal migrant.

## **Citizenship by Descent<sup>3</sup>**

Citizenship by Descent confers citizenship to a person born outside India. If he is born on or after 10.12.1992, at least one of his parents is a citizen of India. If he is born on or after 26.01.1950 but before 10.12.1992, his father should be a citizen of India.

## **Citizenship by Registration<sup>4</sup>**

Citizenship by Registration is another kind of citizenship conferred upon a person. It specifically states that an illegal migrant shall not be eligible for citizenship by registration. This type of citizenship is mostly conferred upon a person of Indian origin who has been an ordinary resident of this country in some way. It also confers citizenship on the minor child of Indian citizens.

## **Citizenship by Naturalization<sup>5</sup>**

A citizenship by Naturalization is provided to people who satisfy the conditions prescribed under Schedule 3 of the Act. A total of 7 conditions are laid down under the Schedule and each of these conditions has to be fulfilled by a person to be granted citizenship by naturalization. Two of the conditions mentioned here require our attention as one of these conditions has been relaxed by the CAA, 2019 for people coming from Pakistan, Afghanistan and Bangladesh. One of the condition states that the person should have stayed for whole of the preceding 12 months in India before applying for citizenship. Another condition states that the person should have stayed for 11 years out of the previous 14 years before the 12 month period preceding the application in order to be granted

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<sup>2</sup> Sec 3, The CA, 1955

<sup>3</sup> Sec 4, The CA, 1955

<sup>4</sup> Sec 5, The CA, 1955

<sup>5</sup> Sec 6, The CA, 1955

citizenship by naturalization.

### **Citizenship by Incorporation of Territory<sup>6</sup>**

Citizenship by Incorporation of Territory is granted in situations where a territory becomes a part of India and thus in that condition, all the citizens of that territory shall become a citizen of India.

### **Citizenship by CAA, 2019**

The CAA, 2019 confers citizenship on the illegal migrants belonging to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Pakistan, Afghanistan and Bangladesh who have entered into the territory of India on or before 31.12.2014. Sec 2 of the Act has been amended to carry a proviso which says that the minorities coming from Afghanistan, Pakistan and Bangladesh shall not be treated as illegal migrants.

The provision of residing 11 years out of the previous 14 years in the Third Schedule has also been amended to 5 years for such people.

Thus a brief reading of the earlier citizenship rule gives us an idea of how the illegal migrants were kept out of the purview of being granted citizenship but with the CAA, 2019 coming into place, persecuted minorities can now seek citizenship of India.

## **ARGUMENTS IN FAVOUR OF THE VALIDITY OF CAA, 2019**

The arguments in favour of the act revolve around the contention that the three countries included in the act are all Muslim countries and thus the minorities of those countries are being conferred citizenship through the act. The contention that Muslims should not be excluded from the act does not arise because Muslims cannot be a victim of religious persecution in any of the three countries as all of them are Islamic countries and thus they do not need to seek shelter in India.

The minorities in these countries have long been victim of religious persecution and thus providing special care to such group shall not be construed as a communal act or an act that goes against the secular principles of our nation. India has the moral obligation of protection minorities in its

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<sup>6</sup> Sec 7, The CA, 1955

neighbour from religious persecution.

The argument that the act has been brought with the intention of taking away the citizenship of Indian Muslims is also ill-founded. The CAA, 2019 can only confer citizenship on persons and there is no provision which allows for taking away the citizenship of an individual or a group of people.

The victims of partition will finally be able to live freely and practice and propagate their religion without the fear of being persecuted.

## **ARGUMENTS AGAINST THE VALIDITY OF CAA, 2019**

Ever since the act was passed, protests started taking place across the country. The most basic concern was that the act has been framed with the intention to target the Muslim community at large.

The important question is what actually led to the passing of the CAA, 2019? People argue that the unpopular Assam NRC wherein 16,00,000 people were left out of the Final NRC actually led to the passing of the CAA. Of the 16,00,000 people left out of the final draft, only 7,00,000 were Muslims while the Bengali Hindus consisted of 5,00,000, the Assamese Hindus made up 2,00,000 and the Gorkhas were approximately 1,50,000 in numbers. The perception was that the CAA, 2019 was being passed to protect the Hindus that were excluded from the final draft of NRC. It effectively meant that only the Muslims excluded from the Final Draft would bear the brunt of NRC, while the rest will be protected under the CAA.

The first batch of protest started from Assam wherein people felt that providing shelters to the persecuted minorities under the CAA would lead to a demographic and cultural change in Assam. They consider this as an attack on the indigenous culture of Assam.

Following the Assam NRC, Home Minister Amit Shah along with few other leaders of the BJP started arguing for a nationwide NRC which led to protests across the country terming it an attack on the secular fabric of the nation. The main argument was that only Muslims would face the heat of a nationwide NRC as the rest would be protected by the CAA, 2019.

A few questions certainly arise out of the passing of the CAA, 2019. India's neighbourhood consists



of 9 countries namely Afghanistan, Bangladesh, Bhutan, China, Maldives, Myanmar, Nepal, Pakistan and Srilanka. The biggest question thus comes to our mind is as to why out of the 9 countries, only Afghanistan, Pakistan and Bangladesh were considered for CAA while the rest others were not.

Persecution of minorities is not limited to these 3 countries alone. The persecution of Rohingyas in Myanmar is a worldwide accepted event so much so that in 2021, the ICJ directed Myanmar not to commit genocide on the Rohingyas. Why the Rohingyas were thus left out of the scope of CAA? We have found no answer to this question thus far. The persecution of Christians in Bhutan is also not hidden from anyone. Why were the Bhutanese Christians left out of the ambit of CAA? What about the persecution of Tamil Hindus in Srilanka? Why was Srilanka left out of CAA despite the fact that the death of Former Prime Minister Rajiv Gandhi is closely associated with the cause of the Tamil Hindus? Thus India carry no obligation to protect minorities of these countries? We need answers to these questions in order to make a reasoned decision on the validity of CAA.

Another question that comes to our mind is why only religious persecution? Persecution can be on political and linguistic grounds as well. Confining ourselves to religious persecution is beyond common sense and logic.

The most important question that strikes at the very root of CAA is whether it is in violation of Article 14<sup>7</sup>? Most legal minds argue that the three fundamental elements of article 14 have been violated in the CAA. The three elements are: - 1) equality before law, 2) unreasonable classification and 3) arbitrariness.

The principle of equality before law seems to have taken a back seat in the CAA. How can people of 6 religious groups be included while one religion is left out? On what basis were the three countries included in CAA? Why were other countries with similar minority persecution record left out? This is an ideal case on unreasonable classification. The third and the most important element is that of arbitrariness. The decision to include 6 religion groups and exclude the other while also including 3 Islamic Countries while leaving out others is a blatant act of arbitrariness.

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<sup>7</sup> The Constitution of India, 1950

## CONCLUSION

With the CAA rules now being notified, it is a no brainer that CAA will be implemented in this country. Even though petitions challenging CAA are pending in the Supreme Court of India, we are assuming that the law will be held constitutional considering the large Humanitarian assistance it promises to carry.

For people protesting against the act, it is the duty of the government of India to assure them that the purpose of the act is not to target a community but to protect those persecuted on religious grounds. The government of India has been consistent in its view that the act does not have the power to take away the citizenship of any person and can only be used to provide citizenship.

People should also understand that the Assam NRC came in 2019 while the CAA bill was first brought before the Parliament in 2016. The Foreigners Act and the Passport Act had already been amended in the year 2015 to be in line with the CAA, 2019. So the question of CAA being brought in due to the exclusion of Hindus from the final draft of Assam NRC is a misplaced notion. It is clear that fear of a nationwide NRC is the main reason for uneasiness among a large sum of population and thus the government will need to do its best in keeping that fear out of the minds of the people.

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