

# The Citizenship (Amendment) Act, 2019: An Analytical Study

Ambuj Mishra

Research Scholar (Ph.d.), Department of Law, Faculty of Law, Dr. Ram Manohar Lohiya, Awadh University, Ayodhya (U.P.), India

**Abstract:** *The Citizenship Amendment Act, 2019 looks to give Indian citizenship to illicit exiles from 6 religious minorities originating from Pakistan, Bangladesh, and Afghanistan. These 6 religious minorities incorporate; Hindu, Buddhist, Sikh, Christian, Jain, and Parsi. Worth to make reference to those Illegal migrants can be detained or ousted under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920. These two Acts engage the focal government to check the passage, exit and living arrangement of outsiders inside India.*

**Keywords:** citizenship, religious minorities, illegal migrants, Rights

## 1. Introduction

The Union government of India introduce the citizen (Amendment) bill, 2019 in parliament for the protection of Hindu, Jain, Parse, Buddhism, shikh, and Christian community who migrated from Afghanistan, Bangladesh, and Pakistan. Its amendment bill was passed by parliament. This amendment is gives the citizenship who is migrated from own country because own country was not gives the security for life, dignity, property and rights. India will be assured that if these kinds of people entered in Indian Territory as migrants then this are not consider as illegal migrants and gives all the rights to those persons. But some questions are arises from that bill why its bill is depend upon religious basis, why Muslims are not include in same, whether it is violates the Article 14 of the Constitution of India and against to secularism. So in this research paper discussed about on these above mention points.

Article 11 of the Constitution of India gives the power to parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.<sup>1</sup>

The Cabinet cleared the Citizenship (Amendment) Bill, 2019 and it will be presented in Parliament on December 9, 2019. Further a Bill to amendment in the Citizenship Act, 1955. The CAB looks to give citizenship to non-Muslims from Bangladesh, Pakistan and Afghanistan who came to India at the latest December 31, 2014. They incorporate Hindu, Buddhist, Christian, Parsi, Jain and Sikh who face mistreatment in the three nations.

The Citizenship Bill says the six non-Muslim people group will not be treated as illegal migrant. The Bill additionally proposes to shield the candidates under this class from all pending lawful cases, with respect to illegal migration.

The beneficiaries would be the non-Muslims out of the over 19 lakh people who were excluded from Assam's NRC, published on August 31, 2019. The Bill will empower an individual from the six networks to apply for citizenship, even without a proof of birth, just by remaining in India for

a long time However; the Citizenship Bill will not make a difference to ancestral territories of Assam, Meghalaya, Mizoram and Tripura.

It will not make a difference to Arunachal Pradesh, Mizoram and Nagaland that are ensured by Inner Line Permit (ILP). According to the Bengal Eastern Frontier Regulation 1873, residents of different States require ILP to visit the three States.

Northeast States organized a dissent against the Bill as it will invalidate the arrangements of the Assam Accord of 1985. The Assam Accord fixed March 24, 1971 as the cut-off date for expelling of every illicit foreigner, independent of religion. Upper east States contradict the CAB saying that allowing citizenship to outside displaced people may make statistic or ethnic changes there.

### Basis of Amendment Bill

This bill is basically depending upon religion because nearest adjacent State likes Bangladesh, Pakistan and Afghanistan is an Islamic country and in this country another religion is in minority. Whose person belongs to its minority religion is much exploited. The exploited persons migrated to India for his safety. The State Department's International Religious Freedom Report (IRFR) released on growing attacks on minorities in **Bangladesh** there were a significant number of attacks on religious minorities particularly Hindus and attributed some of them to the Islamic State (IS) and the Al Qaeda.

In October, hundreds of villagers in the eastern part of Bangladesh demolished more than 50 Hindu family houses and 15 Hindu Mandir, following a Face book post believed by some to be offensive to Islam according to the IRFR.<sup>2</sup> At least 24 people were murdered in attacks by extremist's organisations and they included Hindus, Christians, Buddhists and other minorities.

In Pakistan, the IRFR official the attacks on Hindus to claims of profanity not in favour of Islam and said: "Persons belongs to religious minority communities assured the government was incompatible in safeguarding minority

<sup>1</sup> Article 11 in the Constitution Of India Act, 1949.

<sup>2</sup> International Religious Freedom Report, 2016

rights, and official bias against Christians, Hindus, Sikhs and Ahmadis persisted."<sup>3</sup>

In the earliest 11 months of 2018, 1792 incidents of hostility and intolerance targeting religious minorities took place in Bangladesh, according to Gobinda Chandra Pramanik of the Bangladesh National Hindu Mahajote an association of 24 Hindu rights organisations. Of these 50 took place on religious institutions and temples, even as 2734 acres were destroyed by local people.<sup>4</sup> This includes violations of human rights of Hindus and has been organized by Subhdeep Mukhopadhyay, Sankrant Sanu and Nithin Sridhar of the India Facts Research Group.

Above mention situation Indian Union Government have amend the Citizenship Act, 1955 on the basis of religion for the protection of right to life and give to dignified life to migrants through gives the Indian citizenship.

#### **Why Muslims are not including in CAB, 2019;**

This amendment bill is passed for religious minority of Pakistan, Bangladesh and Afghanistan. These countries are Islamic country. Therefore is very minimum chance to violate the rights of Islamic people organisation.

Article 2(A): "The state religion of the Republic is Islam"<sup>5</sup>

Article 2; "Islam shall be State religion of Pakistan."<sup>6</sup>

Article 2; "The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals."<sup>7</sup>

#### **Whether it is violates the Article 14 of the Constitution of India;**

Article 14 of the Constitution of India provides that Equality before law; The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 14 divided into two parts;

- 1) Equality before the law
- 2) Equal protection of the law.

Part first of the Article 14 provides that every person is equal before the law and any law can't discriminate on the basis of religion, race, caste, sex or place of birth. But the second part of the Article provides equal protection of the law. The second part of the Article 14 provides the Justice to backward classes and minority community. Any person who is deprived from his rights of any backwards classes and minority community then its article assured the right of aggrieved person or community. The equivalent assurance of laws ensured by Article 14 doesn't imply that all laws must be general in character. It doesn't imply that similar laws ought to apply to all people. It doesn't achievement or conditions similarly situated. The shifting needs of various

classes of people regularly require separate treatment. From the change idea of society there ought to be various laws in better places and the genuine controls the arrangement and orders laws to the greatest advantage of the wellbeing and security of the state. Truth be told indistinguishable treatment in inconsistent conditions would add up to disparity. So a sensible grouping is just not allowed yet is fundamental if society is to advance.

In this way what Article 14 precludes is class-enactment yet it doesn't restrict sensible order. The characterization anyway should not be "discretionary, counterfeit or equivocal" however should be founded on some genuine and considerable bearing an equitable and sensible connection to the item looked to be accomplished by the enactment. Article 14 applies where equivalents are dealt with diversely with no sensible premise. Be that as it may, where equivalents and unequal's are dealt with in an unexpected way, Article 14 doesn't make a difference. Class enactment is what makes an ill-advised separation by presenting specific benefits upon a class of people discretionarily chose from an enormous number of people every one of whom remain in a similar connection to the benefit conceded that among whom and the people not all that supported no sensible differentiation or significant contrast can be found defending the consideration of one and the rejection of the other from such benefit.

#### **Reasonable classification**

While Article 14 prohibited class enactment it doesn't restrict classification and exchanges by the assembly to accomplish explicit closures. In any case, arrangement must not be arbitrary. It should consistently settle upon some genuine upon some genuine and considerable qualification bearing an equitable and sensible connection to the item tried to be accomplished by the enactment. Article 14 allows the reasonable classification which is satisfied the two tests;

- 1) The classification must be based on "Intangible differentia" which is distinguished persons or things that are organized together from another's left out of the organisation.
- 2) The differentia must have a rational nexus between object and Act.

If the parliament makes any law for the protection of rights of any individual or group of individuals and such law satisfied the above mention test then it will be constitutionally valid. But Parliament does not make any law which is based on arbitrariness.

The supreme court of India decided many cases which constitutionally valid.

**Ram Krishna Dalmia Vs Justice S. R. Tendolkar & others**<sup>8</sup> In exercise of the forces presented upon it by S. 3 of the Commissions of Enquiry Act, 1952, the Central Government by a warning dated December 11, 1956, delegated a Commission of Inquiry to ask into and report in regard of specific organizations referenced in the Schedule appended to the notice and in regard of the nature and degree of the control and intrigue which certain people

<sup>3</sup> International Religious Freedom Report, 2019

<sup>4</sup> Hindu Human Rights Report, 2019

<sup>5</sup> CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH, 1972

<sup>6</sup> Constitution of Pakistan, 1973

<sup>7</sup> The Constitution of Afghanistan, 2004

<sup>8</sup> 1958 AIR 538.

named in the warning practiced over these organizations. By resulting warnings the Central Government made every one of the arrangements of sub-ss. (2), (3), (4) and (5) Of s. 5 Of the Act material to the Commission and fixed a time Of 2 years from February 11, 1957, as the period inside which the Commission was to practice its capacity and to make its report. The four people named filed three applications under Art. 226 of the Constitution before the Bombay High Court addressing the legitimacy of the Act and of the notice and appealing to God for writs for suppress the equivalent. The High Court rejected the applications and ordered that the said notice was legitimate and substantial aside from as to the last piece of cl. 10 thereof which engaged the Commission to suggest the move which ought to be made as and by way of verifying review or discipline or to go about as a preventive in future cases.

The petitioner and Union of India filled appeal and the Court held that the Act was valid and notification was also valid.

The Act doesn't delegate to the Government any self-assertive or uncontrolled power and doesn't insult Art. 14 Of the Constitution. The circumspection given to the Government to set up a Commission of Inquiry is guided by the arrangement set down in the Act that the official activity is to be taken only when there exists an unequivocal matter of open significance into which a request is fundamental.

**D.S. Nakara & others Vs. Union of India**<sup>9</sup> The Government gave an office reminder reporting a changed annuity plot for resigned government workers yet made it relevant to the individuals who had resigned after 31 March 1979. The incomparable court held that the fixing of the slice off date to be prejudicial as abusing Article 14. The division of beneficiaries into two classes based on the date of retirement did not depend on any discerning standard on the grounds that a distinction of two days in the matter of retirement could have a horrendous impact on the beneficiary. Such a grouping held to be discretionary and unscrupulous as there was no satisfactory or enticing explanation in support of its. The said grouping had no normal nexus with the article looked to accomplished. So it is Unconstitutional and invalid.

**Sanaboina Satyanarayana Vs. Government Of Andhra Pradesh & others**<sup>10</sup> the Andhra Pradesh Government detail a plan for avoidance of wrongdoing against ladies. In detainment facilities additionally detainees were order in to two classes first Detainees blameworthy of wrongdoing against ladies and second detainees who are not liable of wrongdoing against ladies. Detainees who are blameworthy of wrongdoing against ladies challenge the court saying that there right to uniformity is denied. Court held that there is reasonable arrangement to accomplish some target.

**Tamil Nadu Electricity Board Vs R. Veeraswamy & other**<sup>11</sup> The representative was administered by the contributory fortunate reserve conspire. With impact from 1-7-1986 a plan was presented. The inquiry was whether the

annuity plot should be applied to the individuals who had just resigned before the presentation of the benefits conspire the incomparable court dismissed the case. According to the guidelines predominant at the time the retirees had gotten all their retrial benefits. In the event that the benefits plot was made material to every single past retiree, the subsequent budgetary weight would be Rs200 crore which would be past the limit of business. The explanation given for presenting the plan was money related limitation a legitimate ground. The court held that resigned representatives and the individuals who were in work on 1-7-1986 cannot be dealt with the same as they don't have a place with one class. Te labourers who had resigned and gotten every one of the advantages under the contributory opportune store conspire stop to be representatives of the appellant board w.e.f. the date of their retirement. They structure a different class. In this way there was no illicitness in presenting the annuity plot and not making it appropriate reflectively to the individuals who had resigned before the date.

**Air India Vs Nergesh Meerza & others**<sup>12</sup> Air Hostesses employed by Air India were regulated by Regulations 46 and 47 of Air India Employees Service Regulations and the Air Hostesses employed by I.A.C. were regulated by the Indian Airlines Service. Air Hostesses under Air India was retired from service in the following basis:

- 1) On attaining the age of 35 years;
  - 2) On marriage if it took place within four years of the employment
  - 3) On 1<sup>st</sup> pregnancy.
- 1) The age of retirement of Air Hostesses could be extensive upto ten years by granting yearly extensions at the option of the Managing Director. If the Managing Director chose to exercise his discretion under Regulation 47 an Air Hostesses could retire at the age of 45 years. Air Hostesses under I.A.C. was govern by similar service situation except that the age of retirement of permanent Air Hostesses could be extended upto 40 years. In their transferred case and writ petitions, it was contended on behalf of the Air Hostesses that the Air Hostess employed by one corporation or the other from the same class of service as the AFPs and other members of the cabin crew, performing the same or similar duties and hence any biasness made between these two employees who are equal circumstanced was clearly violative of Article 14 of the Constitution of India.
  - 2) There was an inter sc favouritism between the Air Hostesses posted in the United Kingdom and those serving in the other Air India flights.
  - 3) The Air Hostesses have been mainly selected for unfriendly inequity by the Corporation mainly on the ground of sex or disabilities arising from sex and therefore the regulations amount to a clear infringement of the provisions of Art.15(1) and Art.16(4).

The Supreme Court held that

- 1) The voliative provisions appear to be a clear case of official arbitrariness. As the impugned part of the

<sup>9</sup> 1983AIR 130.

<sup>10</sup> 2003 SCR 874.

<sup>11</sup> 1999(2) SCR 221

<sup>12</sup> 1981 AIR 1829

- directive is severable from the rest of the rule, it is not needed to struck down the entire regulation.
- 2) The part of Regulation 47 which gives opportunity to the Managing Director to extend the service of an Air Hostesses is struck down. The consequence of striking down this condition would be that an Air Hostesses unless the terms is correctly amended to carry it, in accord with the provisions of Art. 14 would continue to retire at the age of 45 years and the Managing Director would be clear to grant yearly extensions as a matter of course for a period of ten years if the Air Hostesses is set up to be medically well. This will avoid the Managing Director from judicious between one Air Hostesses and another.
  - 3) The regulation 46 (i) (c) struck down. The condition on first pregnancy either occurs

Earlier is unconstitutional, void and against to Article 14 of the Constitution of India.

So Constitution of India is allowing to reasonable classification for the protection of rights of persons. The Citizenship (Amendment) Act, 2019 of the Parliament of India altered the Citizenship Act of 1955 giving a way to Indian citizenship for religious minorities from Pakistan, Bangladesh and Afghanistan. The religious minorities given qualification were recorded as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. Muslims were not given such eligibility The recipients needed to have entered India at the very latest 31 December 2014, and ought to have confronted "religious mistreatment or dread of religious oppression" in their nations of origin. The Act likewise loosened up habitation prerequisite for naturalization from 11 years to 5 years for these transients.

#### **The Citizenship (Amendment) Act, 2019**

The Citizenship (Amendment) Act, 2019 is as follows: -  
**Section 2.** In the Citizenship Act, 1955 in section 2, in sub-section (1) in clause (b) the following proviso shall be inserted.

Provide that any person belong to Hindu, Sikh, Buddhist, Jain, Parsi or Christian society from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempt by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the request of the provisions of the Foreigners Act, 1946 or any rule or order finished there under shall not be treated as illegal migrant for the purpose of this Act, 2019.

#### **Section 6B**

After section 6A of the primary Act, the following section shall be inserted

Namely;

Special provisions as to citizenship of person covered by proviso to clause (b) of sub-section (1) of section 2.

- 1) Section 6B (1) The Central Government or an authority particular by it in this behalf may, subject to such circumstances, limits and manner as may be set, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person

referred to in the proviso to clause (b) of sub-section (1) of section 2.

- 2) Subject to completion of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person approved the certificate of registration or certificate of naturalisation under sub-section (1) shall be deem to be a citizen of India from the date of his entry into India.
- 3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding awaiting beside a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him: Provided that such person shall not be ineligible for making application for citizenship under this section on the opinion that the proceeding is pending against him and the Central Government or authority precise by it in this behalf shall not decline his application on that view if he is otherwise establish qualified for grant of citizenship under this section: Provided further that the person who makes the application for citizenship under this section shall not be depressed of his rights and privileges to which he was allowed on the date of receipt of his application on the ground of making such application.
- 4) Nothing in this section shall affect to tribal area of Assam, Meghalaya, Mizoram or Tripura as incorporated in the Sixth Schedule to the Constitution and the area covered under The Inner Line notified under the Bengal Eastern Frontier Regulation, 1873.

#### **Section 7D**

In section 7D of the main Act,—

- (i) after clause (d), the following clause shall be inserted,  
 Namely;

Section 7(d)(a) the abroad Citizen of India Cardholder has dishonoured any of the provisions of this Act or provisions of any other law for time being in force as may be precise by the Central Government in the notification published in the Official Gazette or

- (ii) After clause (f), the following proviso shall be inserted,  
 Namely;

Provided that no order under this section shall be passed if the Overseas Citizen of India Cardholder has been given a rational opportunity of being hear.

#### **Section 18**

In section 18 of the main Act, in sub-section (2), after clause (eei), the following clause shall be inserted;

Namely;

(eei) the circumstances, limits and way for granting certificate of registration or certificate of naturalisation under sub-section (1) of section 6B.

#### **Third Schedule**

In the Third Schedule to the main Act, in clause (d), the following proviso shall be inserting

Namely;

provide that for the person belongs to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause

shall be read as “not less than five years” in place of “not less than eleven years.

## **2. Conclusion**

The citizenship (Amendment) Act, 2019 was passed by Parliament for the protection of religious minorities who is suffered inhuman condition in own nation specifically Pakistan, Afghanistan and Bangladesh. This Act is given to citizenship who was enter into Indian Territory without any authoritative permission before 31december 2014. This Act cannot exclude any class or sect of religious minority. This Act is specially based on reasonable classification and it is constitutionally valid.