

A CRITICAL ANALYSIS OF CITIZENSHIP AMENDMENT ACT, 2019

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Abstract

When this Citizenship amendment act 2019, there were lots of controversy related to it, it was said as religious agenda of BJP government to discriminate with Muslim people of neighboring country. As the JP has RSS back ideology its actions are always in favor of Hindu and against the Muslim. They have brought out not CAA but some other act and bills which doubt their secular thinking. Besides all this issue raised. It becomes difficult to show that this act violates the constitution. And has done discrimination with any community because every amendment done in this act or any discrimination done here has the reasonable and valid reasons, the reasons which are provided by constitution. And hence this act does not violate any of the rights of any human, it's all done on valid grounds.

Introduction

This Article is going to introduce you with **citizenship amendment act** of 2019 along with citizenship act 1955 and all of its amendments, this Article will present you all the issues for which the act was needed to amend again and again for almost 6 times, for the first time in 1986 and then in 1992, 2003, 2005, 2015 and the last one in 2019 which was questioned by everyone in the country and had experienced a lot of criticism not from our own country people but from around the globe.

The thing which we are going to discuss here will be what is citizenship amendment act 2019 and how it is different from the earlier one, what were the legal issues with this act, as they are per the constitution, do they violate any of the fundamental rights of citizens or non-citizens of the country, how it was affecting the minority of our country as well as of neighboring countries. Will also relate it with NRC (National Register of Citizens), and try to bring out both sides of the point of view that of the government favoring it and of those who are opposing it. It is to bring out loopholes in the citizenship act 2019 and check if they are actually violating the Indian constitution, or we

can say does it really do any discrimination with the people of the country. Then will try to show the government's perspective about the act, how they see this act and how they support all the points presented by citizens and the opposition.

The citizenship Act – 1955

The act came in 1955 dated 30th Dec 1955. It was given the act no. 57. This act required –

9. A “government of India” that is state or central government
10. A citizen – that is with respect to country that is mentioned on schedule I of the constitution of India.
11. ‘citizenship or nationality law’ with respect to schedule I
12. ‘the India consulate’ that can be any officers of government of India, who has record of birth or where birth registration is there.
13. Then the minor, someone who is not of 18 age or is below age of 18
14. ‘the person’ doesn't amount to any company or association.
15. ‘the prescribed’ which means something prescribed as per rules under this act.

16. 'undivided Indian' that is mention in government of India act 1935.

As per this Act if someone aboard on some registered ship/ aircraft or an unregistered ship of any government of any country it should be believed that he is born in county where the ship or aircraft is registered.

The Acquisition of citizenship

Citizenship by birth

If someone born in India after 20 jan 1950 and any of his parent are Indian at the time of his birth then he will be considered as Indian citizen, this letter got amended in 1986 and in 2004 and hence only when both the parents are Indian then only citizenship by birth is granted, not even any photo id such as passport, Aadhaar card or birth certificate can grant you citizenship, only thing needed is Indian parents.

Even there was case in Highcourt in 2012 where a man was born in Pakistani part of Kashmir demanded Indian citizenship and passport, he claimed it on the basis of that India consider Kashmir region in its Border.

Citizenship by descent

If someone born not in India but outside India on or after 26 jan 1950 is granted citizenship by descent only if his father is a citizen of India at the time of his birth. But this got amended in 1992 and then any of parents of child should be Indian citizen at their birth time. Which again changed and from 2004 if someone born outside country will not be given citizenship until or unless his birth is not registered in Indian diplomatic mission in time of one year, if they fails to do so then only in some special case with the approval of the central government they can get the citizenship, also it should be made clear by their parent that their child doesn't have any passport of any other country.

Citizenship by registration

The center can grant citizenship to person by an application as per section 5 of citizenship act 1955 but he full fill certain requirement such as

- If some is of Indian origin who is resident in Indian for at least for seven year before applying for citizenship as per section (i)(a).
- If some is of Indian origin and is residing outside the India in any other country.
- Also if someone marries to the citizen of India and is resident in India for at least seven year in country before applying is given citizenship.
- Any person who is of full age and has parents who are registered as citizens of India.
- Any person of full age who has parents who were citizens of Independent India. And is residing in country for year or more just before applying for registration.
- If someone of full age is registered as overseas citizens of India for at least five year and residing in county for year.

Citizenship by naturalization

As per condition given in sec. 6(1) of this act, a foreigner who is residing in county for 12 year can get the citizenship.

Renunciation

It is mention in sec. 8 of this act, in India if someone who is adult makes any declaration of renunciation of India citizen, he or she will lose his/her Indian citizen . Also if any minor kid of that person looses citizenship because of him. Then when that child gets the age of 18 then he can restore his citizenship and the requirement of this declaration is that person is of full age and capacity.

Termination

It is mention in sec.9, both termination and renunciation have their separate provision. As per sec.9(1) of citizenship act any citizen of India through neutralization or by registration gets the citizenship, of some another country will lose his citizenship of India. Termination has more broader and different provision because it for "citizen of India" and is not limited to adults, hence the children's will automatically get terminated when they acquires the citizen of any other country by means of method given in sec. 9(1).



Overseas citizenship of India

Under the citizenship Act 1955, a scheme was introduced in 2005 called as overseas citizen of India (OCI), it was launched in Hyderabad in 2006 during Pravasi Bhartiya Divas, it was introduced due to increase in demand of dual citizenship, specially from north America and also from other developing countries but still the OCI doesn't amount to dual citizenship. Indian system says that a person cannot have a passport of some other country as well as of Indian one both of them together. Also in the situation where the child is being claimed by some another country as its citizens, he may be asked by the laws of other country to use only one of its passport for foreign travel.

Hence OCI cards are not alternative of Indian VISA and because of this a life time VISA is must to carry by OCI holder while traveling in country, also the OCI card are printed with "V" sticker, which means it's not a lifelong.

This was the brief idea about the citizenship act 1955, to get the reader a overview about what was there in this act when it first came. And how citizenships are given in over country, this act got amended many time and had many changes, like in 1986 it was made mandatory to have at least one parent to be Indian to get citizenship. In 2003 it was added that no parent should be illegal immigrant or otherwise citizenship won't be granted and also it was added that the illegal immigrant are not qualified to get citizenship of India through the means of naturalization or registration. Then further in 2019 it made changes in granting citizenship to religiously prosecuted minority, which faced a lot of criticism. Which we are going to study further in this paper

Citizenship amendments act 2019

The home minister of India presented the citizenship amendments bill 2019 in Lok sabha on 9 dec. and it got passed with 311 of majority in favor on 10 of December 2019. This bill amends the citizenship act of 1955, the main purpose of this act is to give citizenship to

religious minority communities of neighboring country such as Afghanistan, Bangladesh and Pakistan¹⁹.the citizenship will be granted to the religious minority such as Hindu, Sikh, Buddhist, Jain, Parsi, and Chirstian , who belongs to Afghanistan, Bangladesh and Pakistan. And this had a lot of criticism.

The new provision of this Act

the first thing that this act bring is – Hindu, Shikhs, Buddhists, jains, parris, and Christians belonging to Afghanistan, Bangladesh, and Pakistan, if they had come to India before 31 dec. 2014, they won't be counted as an illegal migrants.

- Also to provide benefits of this act they were exempted from the foreigner's Act, 1946 and the passport act 1920 by the Indian government , this 1920 act makes it mandatory for any foreigner to carry passport when they are in India, and in 1946 act is made to control the entry as well as departure of foreigner in India ²⁰.

It also made changes in granting citizenship by registration or naturalization, in order to get citizenship through the registration or naturalization as we have seen earlier in this paper that the person need to reside in India for at least 11 year before demanding the citizenship, but now this new amendment reduces it from 11 years to 5 year for Hindu, Sikhs, Buddhists, Jains, parris and Christians from Afghanistan, Bangladesh, and Pakistan. And after getting the citizenship such person will be deemed as citizens of India and if there were some legal proceeding were going against them regarding the illegal migration or related to citizens then they all will be stopped.

Applicability

This amendments of act would not be applicable to tribal area of state such as Assam, Meghalaya, Mizoram, and Tripura, which all are there in Sixth schedule of the constitution,

¹⁹ <https://www.prsindia.org/theprsblog/explainer-citizenship-amendment-bill-2019>

²⁰ Passport act 1920 , foreigner act 1946

the area such as Korbi Anglong in Assam, Gargo Hills of Meghalaya, Chakma District of Mizoram and Tripura tribal Areas district, further it won't be applicable to the 'inner line' areas which are mention in Bengal Eastern frontier regulation 1873. These are area where Indians are needed to get permit before visiting there. Currently this is only valid in Arunachal Pradesh, Mizoram, and Nagaland, Manipur was also brought to under the Inner line permit though the Gazette notification which was issued on the someday as the bills was passed.

Canceled the registration of OCI

The act also gives power to government to cancel the registration of OCT on same ground such as – it is registered through fraud or if the OCI is sentence to imprison for two or more year. Within five year of registration. Also if it is question of sovereignty or security of India, in all this case OCI will be disregistered but the bill addes one more rule that if there is provision which is violated by OCI or any other law mention by central India. Then the proceeding of OCI should not be initiate before the OCI card holder is notified and also heard the his side.

Issues with the act

Violation of Assam accord

The Assam accord came in 1985, which was meant to deport all illegal migrant from Bangladesh who came after 25th of march 1971, which too irrespective of any religious.

The citizenship act is seen violating some of provision of Assam accord the section 2(1)(b) of citizenship act, dilutes the clause 5 of the Accord, which was that if someone entire's the Assam from ljan 1966 to 24 march 1971 in order to register himself as per the registration of foreigner's act 1939 the amendment which also dilute section (6) A of citizenship act . which says that anyone who is migrated to Assam in between 1966 and 1971 is totally eligible to offer 10 year, but the CAA 2019 reduced that time from 10 year to 5 year

This amendment also contradict clause 6 of the Accord, that was constitution, legislative and administrative safeguard need to protect preserve the cultural, social, and linguistic identity and heritage of Assamese people, though the government had said no to any violation of this clause and had set up a joint parliamentary committee for the implementation of this clause. The committee divided the assamese into 3 groups, first the indigenous tribal, second indigenous assamese speaking people, and the other indigenous people of assam but they didn't told the parameter's to determine the category and causing further confusion, later CAA also created lots of confusion because it didn't define assamese people clearly. Thus this lack of clarity raised the issue of implimentation of clause 6 of the Assam accord.

The issue with NRC

The CAA contradicts the extensive exercise of updating the NRC and this will become null and void because since NRC is national register of citizens, where the citizens need to produces proper paper s to prove their nationality but CAA gives citizenships to even illegal immigrants not having papers, hence it will be difficult for Muslims illegal immigrants because they are only community which are not going to get citizenship through the CAA, so it was questioned that CAA is doing injustice with Muslims community and done properly to have complete Hindu Rashtiya by BJP government which has back of RSS ideology. Though they both CAA and NRC has no connection, NRC is just simple count of citizen, except the state of Assam, it is done in no part of country. So far for first time it is being going to conduct to detect illegal migrants.

Issue with article 14

CAA was more in question with respect to violation of article 14 of Indian constitution. The Article 14 of constitution says that everyone should be treated equally. It gives to any person the equality before the law and the equal

protection before the laws that in the territory of India, but this article doesn't provide the absolute equality. It says that like should be treated like, it says that equal treatment should be given to equals and also allows the reasonable classification. Even the SC said in case *Clarence Pais v. Union of India*, that historical reason may be enough to give different treatment to different geographical reasons, but have a valid reason and it should be related to matter for which this treatment is given. Which means that legislative would not be violating article 14 just because it made a differentiation among the different geographical reason. This would be a valid legislation and constitutionally correct if this has historical valid reason of this differentiation and also there is enough relation among the reason and the matter for which this all thing are done.

The problem with the CAA was that it created its own class which belongs to certain religious minority in 3 countries. But if this classification is historically justified and also this differentiation has its relation with matters and the justification given, then it will be valid. CAA says that people who belongs to Hindu, Jain, Parsis, Buddhists, Christians and belongs or had come from Pakistan, Afghanistan, Bangladesh will be given citizenship if they have some requirement such as they are minority, has come to India on or before 31 dec 2014, who are being prosecuted on the basis of religion in their country and belongs to country mention above, means a specific officials state and that shares border with India.

Earlier it was seen that since Muslim are not included in this Act with other community. Hence there have been violation of their fundamental rights granted under 14 but it was not so the classification done correct and as per the constitution, there was no breach of fundamental rights.

Other country and their minorities

Other than Pakistan, Bangladesh, Afghanistan, Bangladesh there are many other neighboring countries to India such as Sri Lanka and Myanmar and there are many refugees and illegal immigrants from these such as Tamil and Rohingya respectively. But doesn't have any mention of them in this Act. Not only them but also from Butan and Nepal, any communities coming from there also having any mention there.

The reason given by government for this was that if they give citizenship to all such people then country will be flooded with such people, so even Rohingya and Tamil coming who are here since or before 31 dec 2014 are also not given reference here. That was quite strange.

Also there will be difficulties for government to differentiate between illegal migrants and those who are prosecuted because if any person of community such as Hindu, Sikh, Buddhists, Jains, Parsis, or Christians belonging to Afghanistan, Bangladesh, Pakistan can get citizenship by saying that he has been prosecuted, no matter if he is actually being prosecuted and this would lead to misuse of this act, anyone if wants to get the citizenship he might get it for even false reason but there will be also people such as Muslim or any other community not mention in the group will not get the citizen, though they have genuine reason for that also when they have been prosecuted there by their government.

Governments opinion and action

There was huge anger and conflict was rose among the people for government. Even revolt was started across the country against the BJP lead government because earlier the news was spread that government has planned out to throw the Muslims out of country through this act. They are taking back citizenship from Muslim community. Also in north east there was lots of clash due to lack of clarity in Act, not only in north but entire country was burning, even few state such as Kerala, West Bengal and



Punjab passed the resolution that they won't accept this Act, though they were constitutionally bound to follow this Act. For all the issue we have discussed above, the government is having its own opinion and explanation to prove this act valid, which we will be seeing one by one

There was lot of criticism regarding not involvement of Muslim community with other six community who are going to get citizenship with this Act, on which the government commented that all three countries that are Pakistan, Afghanistan, and Bangladesh, they are Islamic republics countries and there Muslim community are in Majority and also this Act is for granting the citizenship to certain people. It is not about taking someone's citizenship. Also the government told that any only who are actually prosecuted and deserve the citizenship will only get the citizenship. There will be a proper check and balance on the application from all community mention in this group, application will be checked from case to case and there won't be any case of granting the citizenship to person who is not actually deserving it, Hence there is no problem of granting citizenship to any wrong person.

This act is also said as boon to the people who were victims of the partition and also the conversation of these 3 countries into Islamic republic. At the time of partition there were lots of people who come to India bear handily without having any food, shelter, identity. Many of them are still living here without any identity, which deprive them of many rights and facility given by government of India. Also many people got stuck in other country and always wanted to come back to India because they have been badly prosecuted in these Islamic republic country. There have been a lot's of cases of forcefully conversion also in these countries. This act opens door to such people and give them a new identity hence this has been a greater boon to partitions victims. The government even said that the one of reason behind the bringing of this act was the partition

of India was on religious bases and also the failure of the Nehru-liaqat pact 1950 in protecting the rights of minority.

The government also gives one more reason for bringing this act and not including Muslim in prosecuted minority. When India agreed to accept 1.2 million refugees for first time at the time of partition and second time in during the Indira- Mujid pact in 1972 and it's a fact that both the time it was the Hindus, Sikhs, Buddhism, and Christians who came as refugees, there was not a single Muslim person which shows that they are not needed to put in this list of minority.

Also. Regarding not including the minority of Sri Lanka, Myanmar etc in CAA, the government said that it's not that we have news provided citizenship to refugees. The government has taken many step in past from time to time with reasonable qualification of article 14. And same is done this time, at this time the refugees prosecuted from 3 three country mention in Act is being considered.

With regarding the implication of clause 6 of Assam accord the government made a notification to high-level committee (HLC) to make sure the implementation of clause 6 of Assam accord and also asked the committee to submit the report as early as early as possible to the central government. So the proper step are taken for this Accord and all this is done by government to preserve the linguistic, cultural and social identity of assamese.

Conclusion

After seeing everything we have discussed above we can say that the act is having lots of controversial things, as BJP has RSS back ideology its action are always in favor of Hindu and against the Muslim. They have bring out not CAA but some other act and bills which doubt there secular thinking.

Beside all this issue raised. It becomes difficult to show that this act violets the constitution. And has done discrimination with any

community because every amendment done in this act or any discrimination done here has the reasonable and valid reasons, the reasons which are provided by constitution. And hence this act does not violets any of the right of any human, its all done on valid grounds.

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