



Cite this article as:

Ms. Nitya Shukla, *“Decoding The Citizenship Amendment Act, 2019: A Comprehensive Analysis Of Its Legal, Social, And Political Dimensions”*, Volume 1 , Issue 3 (July-Sept) Nyayavimarsha (e-ISSN: 3048-5134), Pages 46 to 55 (26<sup>th</sup> Sept 2024), available at <https://nyayavimarsha.com/detail/decoding-the-citizenship-amendment-act-2019-a-comprehensive-analysis-of-its-legal-social-and-political-dimensions>

Publisher Details Are Available At:

<https://nyayavimarsha.com/journal>

Editorial Board Members Details Are Available At

<https://nyayavimarsha.com/editorial>

**| Copyright © 2023 By Nyayavimarsha |**

*All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Nyayavimarsha Journal), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.*

*No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.*

*For permission requests, write to the publisher, subject of the email must be “Permission Required” at the email addresses given below.*

*Email: [publisher@nyayavimarsha.com](mailto:publisher@nyayavimarsha.com) or [shailendar@nyayavimarsha.com](mailto:shailendar@nyayavimarsha.com)*

*Phone: +91-9159111938*

*Website: <https://nyayavimarsha.com/>*

*Contact Timings: 7:00 PM to 9:00 PM.*

**DISCLAIMER:**

*Nyayavimarsha and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however, the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in Volume 1 & Issue 1 are the original work of the authors.*

*Views or Opinions or Suggestions (if any), expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.*

*While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work.*

*All disputes subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Tamil Nadu only.*

# DECODING THE CITIZENSHIP AMENDMENT ACT, 2019: A COMPREHENSIVE ANALYSIS OF ITS LEGAL, SOCIAL, AND POLITICAL DIMENSIONS

---

## ABSTRACT

*India, the most populous country in the world and second largest Muslim populated country is being questioned because of the discriminatory provision excluding Muslim immigrants which has been added through Citizenship Amendment Act, 2019. The secular values of the nation are also being challenged domestically as well as internationally. India, who believes in the 'Sarva Dharma Sambhav' principle is now standing at the crossroads with the government and other proponents trying to clarify and justify the amendment and the opposition and its critiques, on the other hand, leaving no stone unturned to oppose the act. Amidst both these sides are the illegal immigrants of any religion who were persecuted in their home country because of being a religious minority there. It is their identity and their rights as a human which are at jeopardy.*

*This essay will delve into the reasons behind such huge opposition of the act examining both the domestic as well as international perspective. It will analyse the legal, social and political implications of CAA and the arguments of its proponents as well as its critiques to provide a better understanding of the issue.*

## I. INTRODUCTION

The Citizenship Amendment Act, 2019 is an amendment to the existing Citizenship Act, 1955. The act was amended several times in the past between 1986 and 2019, but this time it has been in the news for the wrong reasons. As per the Citizenship Act 1955, a person can acquire Indian citizenship in one of the five ways: birth, descent, naturalization, registration, or incorporation of territory into India. The 2019 Amendment added religion as one of the

criteria. According to the proviso added under Section 2(1)(b)<sup>1</sup>, ‘any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community from Afghanistan, Bangladesh, or Pakistan who entered into India on or before the 31st day of December, 2014 shall not be treated as an illegal migrant’. This provision thus excludes Muslim immigrants. Another amendment is the addition of Section 6B<sup>2</sup> that provides special provision for the citizenship of the person provided under the proviso to Section 2(1)(b). As per the amendment, any legal proceedings against this specified class of illegal immigrants, will be closed once they are granted Indian citizenship. There are certain qualifications that must be fulfilled to get the citizenship. One of the qualifications for these immigrants is that one has resided in India for five years.<sup>3</sup> Furthermore, certain areas, namely the tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under “The Inner Line” notified under the Bengal Eastern Frontier Regulation, 1873 are excluded.<sup>4</sup>

The exclusionary nature of the provision has created a controversy regarding the CAA, 2019, as it not only excludes the Muslims but also excludes the immigrants from other countries, such as Sri Lanka. The Home Minister, Amit Shah, has clarified that citizenship has been granted to refugees in the past at various times who came from nations like Sri Lanka and Uganda.<sup>5</sup> But at that time, refugees from Afghanistan, Bangladesh, and Pakistan were not considered.<sup>6</sup> However, this doesn’t seem to be a satisfactory response. Moreover, it has received nationwide criticism from various stakeholders of the country and also from international human rights organizations. Consequently, more than 200 petitions were filed against it, and these were clubbed with the writ petition filed under Article 32<sup>7</sup> by the Indian

<sup>1</sup> The Citizenship Act, 1955, §2, No. 57, Acts of Parliament, 1955 (India).

<sup>2</sup> The Citizenship Act, 1955, §6B, No. 57, Acts of Parliament, 1955 (India).

<sup>3</sup> The Citizenship Act, 1955, §6, No. 57, Acts of Parliament, 1955 (India).

<sup>4</sup> The Citizenship Act, 1955, §6B No. 57, Acts of Parliament, 1955 (India).

<sup>5</sup> TOI News Desk / TIMESOFINDIA.COM / ‘no deportation’: MHA clears ‘misconceptions’ about CAA: India News, THE TIMES OF INDIA (Sep, 06, 2024) <https://timesofindia.indiatimes.com/india/no-deportation-mha-clears-misconceptions-about-caa-citizenship-amendment-act-pakistan-bangladesh-muslims/articleshow/108439798.cms>.

<sup>6</sup> Ibid.

<sup>7</sup> INDIA CONST. art. 32.

Union Muslim League (IUML), which challenged the constitutionality of the act. The case is currently pending before the Supreme Court of India.<sup>8</sup>

## II. LEGAL IMPLICATIONS AND CONSTITUTIONAL DISPUTES

The validity of the act has been challenged on the grounds that it violates Article 14<sup>9</sup>. Article 14 states that ‘the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India’. The term ‘any person’ means that it is applicable not just to the citizens but also to foreigners. In the case of *Ram Krishna Dalmia v. S.R. Tendolkar*<sup>10</sup>, the court gave the test of reasonable classification which says that if a classification is made, then it must be based on intelligible differentia - meaning it should be justifiable and it should have a rational relation with the object of the legislation. However, the amendment not only distinguishes Muslims from the other six religions which are included in an unreasonable manner, but also this exclusion of Muslims has no rational relation to the object sought which is to provide for the acquisition and determination of Indian citizenship.<sup>11</sup> The religion-based classification represents an arbitrary exercise of the power of the state as it fails the reasonable classification test.

The Supreme Court in the case of *E.P. Royappa v. State of T.N.*<sup>12</sup> observed that the action of the state must be based on relevant principles that can be applied to the people in similar circumstances, and must not be based on irrelevant factors as it would be a denial of equality and would amount to a mala fide exercise of power by the state. Including only six religions from three countries cannot be considered to be based on relevant principles and considerations. There are other minorities that face religious persecution in their country, such as Ahmadiyyas in Pakistan, Rohingya Muslims in Myanmar, and Shia and Hazaras in Afghanistan. However, they are not included in the amended provision.

---

<sup>8</sup> SCC Observer, <https://www.scobserver.in/cases/constitutionality-of-the-citizenship-amendment-act-2019-cao/> (last visited Sep 10, 2024)

<sup>9</sup> INDIA CONST. art. 14.

<sup>10</sup> *Ram Krishna Dalmia v. S.R. Tendolkar*, AIR 1958 SC 538.

<sup>11</sup> The Citizenship Act, 1955, No. 57, Acts of Parliament, 1955 (India).

<sup>12</sup> *E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3.



The amendment, therefore, is also against the secular values, as intrinsic and core traits cannot be the basis of classification.<sup>13</sup> It was held in the SR Bommai v. Union of India<sup>14</sup> that

secularism is a basic feature of the constitution. However, the amendment stands otherwise. Furthermore, the amendment also appears to be contrary to what is stipulated in Article 21<sup>15</sup> of the Constitution. This is because the exclusion of certain groups of people based on their religion creates uncertainty and also an atmosphere of tension and fear among them.

The legislature must ensure that any law or amendment to the law that it introduces, conforms with the principles laid down in the Constitution, as these principles cannot be bypassed under any circumstances. These principles are the foundation upon which the present as well as the future of India depends.

The amendment is also criticized as it stands in conflict with international law. Although India is not a signatory to the Refugee Convention 1951<sup>16</sup>, it cannot disregard its obligations under International customary law and should not discriminate between refugees based on their religion. The same right is more broadly guaranteed in Article 26<sup>17</sup> of the International Covenant on Civil and Political Rights and Article 7<sup>18</sup> of the Universal Declaration of Human Rights, 1948 (UDHR), to which India is a signatory.<sup>19</sup> Additionally, Article 15 of the UDHR provides that 'everyone has a right to nationality'. Moreover, it is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.<sup>20</sup> Hence, international law should also be considered while enacting or amending domestic laws.

<sup>13</sup> Navtej Singh Johar v. Union of India,

<sup>14</sup> SR Bommai v. Union of India, (1994) 3 SCC 1.

<sup>15</sup> INDIA CONST. art. 21.

<sup>16</sup> UNHCR – The UN Refugee Agency, <https://www.unhcr.org/sites/default/files/legacy-pdf/4cd96e919.pdf> (last visited Sep 13, 2024).

<sup>17</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>18</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA res 217 A(III) (UDHR).

<sup>19</sup> SCC Observer, <https://www.scobserver.in/reports/indian-union-muslim-league-citizenship-amendment-act-cao-writ-petition-summary-indian-union-muslim-league/>, (last visited Sept 13, 2024).

<sup>20</sup> Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

### III. UNDERSTANDING THE SOCIAL FALLOUT

The CAA, 2019 led to protests in different parts of the country, with New Delhi being the focal point for protests.<sup>21</sup> These protests continued in Shaheen Bagh, New Delhi, even during the Covid time in 2020. It also led to the deaths of hundreds of people. There were communal tensions among the religious groups, as some were in favour of the act while others vehemently opposed it. The reason for such heightened conflict was the exclusionary nature of the act. However, this cannot be said to be the only reason behind such nationwide opposition to the act. There were myths about CAA in the minds of people, and some of them were misguided by rumours, which led to violence.

The fact that CAA has included only six religions from three countries for the purpose of citizenship does not exclude Muslims and other immigrants from applying for citizenship, nor does it take away the citizenship of Muslims or deport the illegal immigrants back to their countries. The amendment only leads to fast approval for citizenship for illegal immigrants of these six religions who faced religious persecution in their countries. But there are certain qualifications that have to be fulfilled by any person who is applying for Indian citizenship. One of the qualifications is that the person must have resided in India for the preceding eleven years and the preceding five years in the case of immigrants of these six religions specified in the amendment. However, fear was created among Muslim immigrants that they would not be able to get citizenship of India. This created a sense of statelessness among them and a direct attack on their national identity.

Another implication of CAA is that it deepened the feeling of distrust, disharmony, insecurity, fear, and suspicion among the religious minorities, especially Muslims.<sup>22</sup> This led

---

<sup>21</sup>Hemani Bhandari, Delhi's protest hub Shaheen Bagh calm but tense after CAA comes into force, HINDUSTAN TIMES, (March 13, 2024, 12:55 am) <https://www.hindustantimes.com/cities/delhi-news/delhis-protest-hub-shaheen-bagh-calm-but-tense-101710265466936.html>.

<sup>22</sup> Dr. Aakuthota Srinivasulu, Socio-Political Implications of the Citizenship Amendment Act 2019 in India: A Review, International Journal for Multidisciplinary Research (IJFMR) <https://www.ijfmr.com/papers/2024/2/15859.pdf>.



to the polarization of Hindus and Muslims. The discriminatory nature of the provision has created a challenge to the peaceful co-existence of the communities. It became difficult to

maintain the social harmony and solidarity among the groups, despite the fact that the

protests included people from different religions, not just the Muslims or other minorities. CAA, thus, created a deep impact in the minds of the religious minorities in India and a feeling of alienation among the refugees who are being excluded in the CAA, leading to protests and violence despite the efforts of the government, NGOs, and other activists to promote peace and harmony through inter-religious dialogue and clearing the misconceptions regarding the CAA.

#### **IV. POLITICAL DISCOURSE AND FEDERAL TENSIONS**

The CAA, 2019 not only attracted criticisms from different parts of the country but has also left a deep impact in the political landscape of the country. While the ruling party, Bharatiya Janata Party, has several times clarified the misconceptions about the CAA and justified its introduction, the opposition joined the protests and criticized the CAA by calling it politically motivated, particularly because the CAA rules had been notified before the 2024 Lok Sabha elections, five years after the CAA was enacted.<sup>23</sup> This has also attacked India's federalism as it created tension between the centre-state relation. Several states have been opposing the CAA by arguing that it is eroding the secular values of the country, which are also enshrined in the constitution. Moreover, they argue that it is a clear infringement of the rights of the states.

CAA is being seen as a threat to secularism within the country, leading to marginalization of the minorities and further escalations of tensions between religious groups, which in turn could also lead to the mobilization of votes based on religious ideology. While the proponents say that it is to safeguard the interests of religious minorities who are being persecuted in neighbouring countries of India, particularly Pakistan, Afghanistan and Bangladesh, critiques, on the other hand, argue that it is a discriminatory provision towards other immigrants who are being persecuted in their country but are still excluded from the purview of the provision.

<sup>23</sup> Citizenship (Amendment) Act: Why CAA in 2024 could be different from CAA in 2019-20, THE ECONOMIC TIMES, (Mar 12, 2024, 3:38 pm) <https://economictimes.indiatimes.com/news/india/citizenship-amendment-act-why-caa-in-2024-could-be-different-from-caa-in-2019-20/articleshow/108432353.cms?from=mdr>.

## V. CONCLUSION

The Citizenship (Amendment) Act was established to address the concerns of immigrants, but it also caused fear among citizens, posing a number of issues for the government and the people. There are major differences between those who are and are not citizens, based on the definitions and criteria of citizenship set forth by different legislative acts. The multiple amendments to the principal act i.e. the Citizenship Act, 1955 show the significance of adapting legal provisions to align with the needs of the country. The Act contains a number of citizenship-related provisions. However, the CAA, 2019 remains an unsolved issue in India that has created communal tensions in the country. It has led to polarization of groups and raised significant concerns that need to be addressed by the government. It can be done by involving various stakeholders of the society in peaceful consultation.

The exclusion of the Muslim immigrants in the amended provision and the inclusion of six religions from only three countries find no plausible explanation. This has led to widespread debate and criticism regarding the constitutionality of the Act, as critics argue that it violates Articles 14 and 21 of the Constitution of India. It also undermines secularism, which is a basic feature of the constitution. On the other hand, the government and those in favour of CAA believe that it will allow the rehabilitation of the religious minorities who have been persecuted in their respective countries and will allow them to have an identity and to live a dignified life where their rights are protected.

Since CAA was passed in 2019 and its rules have been notified by the government in 2024, it has undoubtedly gotten the legislative sanction. However, its constitutionality is being challenged in the Supreme Court in the case of Indian Union Muslim League v. Union of India<sup>24</sup> which is still pending. While the hon'ble court delivers another landmark judgement, it is to be noted that it will have a deep impact in our country.

---

<sup>24</sup> Indian Union Muslim League v. Union of India WP (C) 1470/2019.