

NATIONAL REGISTRY OF CITIZENS: A CRITICAL ANALYSIS THROUGH THE PARADIGM OF CONSTITUTIONAL AND INTERNATIONAL LAW

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ABSTRACT

National Register of Citizens, 1951 is a register prepared after the conduct of the Census of 1951. The objective behind the NRC update is the identification of the illegal migrants who migrated from Bangladesh after 24th March 1971 to Assam. It also aims at determining whether the citizens applying for their names in the NRC are the genuine citizens of Assam or not. A petition was filed in the Supreme Court in 2009 by an NGO called Assam Public Works demanding the identification and deportation of illegal Bangladeshis in Assam.

But Citizenship Amendment Act, 2019 allowed Hindus, Sikh, Parsis, Jains, Christians and Buddhist except Muslims to grant them the Citizenship who came to India before 31st December 2014 and allow them to settle anywhere in the country except 6th schedule areas. This breaks the term of Assam Accord under which people who came after 25th March, 1971 would be deported back and would not be granted permission to settle in Assam. According to many experts, this particular amendment is also in violation of Article 14 which discriminates members of two different religions. Also deporting back members of Muslim community where they would have danger to their life breaks the non-refoulment principle which has become an international custom.

So looking at these complex issues we will find whether issue of Assam was a communal one or an issue related to land. Secondly, author will look into constitutionality of Citizenship Amendment Act, 2019 specifically through Article 14 and find whether this amendment bill hampers the term of Assam Accord. Thirdly, we will see whether India is bound to follow the Principle of Non-Refoulment. Lastly author will provide recommendations for the same.

Keywords: National Registry of citizen, Citizenship Amendment Act, Non-Refoulment Principle, Article 14.

1. INTRODUCTION:

When the colonial rule was established in Assam, it was a labour-scarce state, but in the beginning of 20th century, migration increased in Assam and from 1901 to 2001 Assam's population increased by 710% whereas the population of India in the same period went by 331%. The Syed Mohammad Saadulla government in Assam in 1942 introduced Land Development Scheme with the intention to bring more migrants into the province.

This scheme took away the autonomy Tribal in Assam had over their lands and shifted it towards the government. The tribal farmers lacked proper land documents and were accustomed to using "un-claimed land" for shifting cultivation. Their agricultural style was clearly disrupted as migration in the region increased; thereby beginning a conflict which till date continues to be unresolved.

Post-Independence, in 1951 first attempt was made to identify who foreign nationals are in the region and who are indigenous people by the introduction of national registry of citizen (NRC). The method of tabulation of NRC was such that all-important census data was transcribed from the census slips with the exception of census question No 6 (dis placed persons), No 8 (bilingualism) and No 13 (indigenous persons). The NRC used the same symbols and abbreviation and can be said to be a copy of census slips. It was compiled in separate parts, one relating to each village and each ward of a town. It was to be maintained as a permanent record and kept up-to date by collecting information through village officials.¹

As it was not possible to hand-sort for house slips which relate to individuals, the National Register of Citizens giving details of the individuals arranged by households was utilized for sorting and tabulating certain characteristics of the households like their size, ordinary structure and composition.² This method accounted for certain discrepancies like male were accounted as female and vice-versa, the age was wrongly noted due to illiteracy prevalent in many households or due to lack of birth certificates, house-hold workers were not accounted for the same in the census slip, etc.

The socio-political dynamic of Assam further changed in 1971 when Bangladesh liberation war was fought between India and Pakistan and huge influx of immigrants was seen in the region. The situation of illegal migrants intensified to an extent that in 1983 thousands of alleged illegal migrants were killed in the infamous Nellie massacre. In 1985 Assam Accord resulted in keeping things quiet for some time but its' complete implementation hasn't been seen till date.

¹ R B Vaghaiwalla, the Census Superintendent, Assam, (Census Report, 1951, Part IA, pp xxxiii E), 1951.

² Anil Roychoudhury, National Registry of Citizens 1951, Economic and Political Weekly, Vol. 16, No. 8 (Feb. 21, 1981), pp. 267-268, Last Accessed at: 5-010-2022 09:25 UTC.

Table 1.1: Record of refugee arrivals in Assam, 1946 – 1951¹

Refugees from East Pakistan		Number of refugees from West Pakistan	Number of refugees from unidentified districts	Total Number of refugees, 1946-1951
Year	Number			
1946	6,860	647	1,733	274,455
1947	42,346			
1948	41,740			
1949	33,138			
1950	144,512			
1951 ²	3,479			
"Origin" Total		647	1,733	-

Table 1.2: Number of Refugees in India, 1970-72³

State	No. of Camps	No. of Refugees	No. of Refugees of their own	Total
West Bengal	492	4,849,786	2,386,130	7,235,916
Tripura	276	834,098	547,151	1,381,249
Meghalaya	17	591,520	76,466	667,986
Assam	28	255,642	91,913	347,555
Bihar	8	36,732	-	36,732
Madhya Pradesh	3	219,218	-	219,218
Uttar Pradesh	1	10,619	-	10,619
Total		6,797,615	3,101,660	

A part of para 5 of the Accord was given statutory recognition by Section 6-A of the Citizenship Act, 1955.⁴ On May 29, 2012, All Bodoland Minority Students Union (ABMSU) called for a 24-hour band to protest against the alleged removal of the sign board by cadres of the ex-bodo liberation Tiger (BLT) from a piece of land in the Badlangmari area that has been allocated for a mosque. In the year 2014, the Division Bench of Justice Ranjan Gogoi and Justice RF Nariman approved the modalities for the NRC update, thereby kickstarting the entire process and closely monitoring the same.

In August 31 2019, a supplementary list of inclusions and exclusions was uploaded, thereby excluding over 19 lakh persons out of 3.3 crore applicants (in contrast to the draft list published in 2018 which had excluded nearly 40 lakh persons). This list took 5 years in the making and an expenditure of 1220 crore. Further several rights groups have went on to claim that around 7800 crores have been spent on hearings alone.

This shows that the issue in Assam was not the communal one but the issue related to land. Further this paper intends to focus on constitutional and International law paradigm of the migration issue that is plaguing Assam currently.

1.1. Assam Accord:

Coming to the Assam Accord, it is important that it is looked from provision to provision for the purpose of this study. Let us begin with understanding the most important of all provisions, Clause 5 and Clause 6

The clause 5 states (emphasis added) –

5.1 For purposes of detection and deletion of foreigners, 1.1.1966 shall be the base date and year.

5.2 All persons who came to Assam prior to 1.1.1966, including those amongst them whose name appeared on the electoral rolls used in 1967 elections, shall be regularized.

¹ Madhumita Sarma, A Study of Migration from Bangladesh to Assam, India and its Impact, March 2015, p 38. file:///C:/Users/admin/Downloads/A_Study_of_Migration_from_Bangladesh_to.pdf

² Id at 2.

³ Id at 3.

⁴ The Citizenship (Amendment) Act, 1986, No. 51, Acts of Indian Parliament, 1986.

5.3 Foreigners who came to Assam after 1.1.1966 (inclusive) and up to 24th March 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order 1964.

5.4 Names of Foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.

5.5 For this purpose, Government of India will undertake suitable strengthening of the governmental machinery.

5.6 On the expiry of a period of ten year following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored.

5.7 All persons who were expelled, earlier, but have since re-entered illegally into Assam, shall be expelled.

5.8 Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and expelled in accordance with law. Immediate and practical steps shall be taken to expel such foreigners.

5.9 The Government will give due consideration to certain difficulties expressed by the AASU/AAGSP regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983.¹

Clause 6 talks about constitutional, legislative and administrative safeguards –

6. 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.

Section 6A was added to the Citizenship Act of 1955 in 1985 to include particular rules pertaining to the citizenship of those covered by the Assam Accord.

Section 6-A divided the illegal immigrants of Indian origin (i.e. those whose parents or grand-parents were born in undivided India) into three groups:

1. Those who entered into the State before 1966 were deemed to be the citizen of India.
2. Those who entered into the State between 1966 to 25-3-1971 (official date of announcement of the Bangladesh war) were deemed to be citizens but their names were deleted from the electoral rolls. This was done because the political parties in order to increase their vote bank were giving citizenship arbitrarily to every immigrant without NRC (National Register of Citizens).
3. After 1971, those who entered the country had to be found and deported in accordance with the law.²

The constitutionality of Section 6A came up in the Assam Sanmilita Mahasangha case³.

Further Assam Accord emphasized about the Illegal Migrants (Determination by Tribunals) Act, 1983. In this Act, the responsibility of detecting and deporting foreign nationals was shifted from the executive and was vested to quasi-judicial tribunals.

The Act was later in the year 2005 struck down by the Supreme Court in the case of Sarbananda Sonowal v. Union of India.⁴ The basic argument of the petitioner in the case was –

“The Foreigners Act of 1946 applies to all foreigners living in India, but the IMDT Act, which was passed later with the stated goal of making it easier to find and deport illegal immigrants living in Assam, has completely fallen short of even the minimal requirements set forth in the Foreigners Act. Aside from that, the IMDT Act’s provisions that offer some genuine Indian nationals some protection against illegal immigrants are not being fully enforced because of unrelated political factors that subvert the rights of Indian residents living in Assam. A number of non-Indians, who secretly entered Assam after March 25, 1971, without possessing a valid passport, travel documentation, or any legitimate authorization to do so, are still residing there as a result of the IMDT Act.”⁵

The Supreme Court declared the Act unconstitutional for violating Article 14 and 355 of the Constitution.

Overall, the Assam Accord failed to contain both the violent clashes and the influx of migrants in Assam which in 2005 forced the Asom Gana Parishad MP Sarbananda Sonowal to file a writ petition against the IMDT Act, the very act that AGP always felt wasn’t being implemented properly and this aspect was even emphasized in the Assam Accord but could never be implemented on ground.

After the IMDT Act was struck down, its place was taken by the Foreigners Tribunals (hereinafter FTs) created under the Foreigners Act, 1946. This meant that now it will be upon the citizens to prove that they are not foreign nationals, thereby playing a very important role in the present day crisis. Many critics of the above decision blame the Supreme Court for preferring the quickness of the FTs over the fairness of IMDT.⁶

1.2. THE CITIZENSHIP AMENDMENT ACT, 2019:

¹ Shahiuz Zaman Ahmed, Deportation Movement Creation of ‘D’ voters and problems of NRC updation in Assam, JSTOR (2019), Deportation Movement.pdf

² Id at 7.

³ (2015) 3 SCC 1

⁴ A.I.R. 2005 S.C. 2920.

⁵ Id at 10.

⁶ Askar Patel, Amnesty says Foreigner Tribunal created Havoc in Assam for last 15 years, THE HINDU (Nov. 27, 2019, 4:27 P.M.), <https://www.thehindu.com/news/national/other-states/amnesty-says-foreigners-tribunals-created-havoc-in-assam-for-last-15-years/article30096907.ece>

The CAA, 2019 can be called as last nail in the coffin of Assam's migration crisis. Migration in Assam was from all sectors and always resulted in the isolation or ignorance of the indigenous people. As per our study so far, the crisis in Assam was a land crisis, a crisis for the struggle of ethnic identity and the Bodo culture of the tribal population. The crisis was never on the communal lines but was on ethnic lines. More importantly, the riots in the 80s are called anti-Bengali pogrom by historians¹, highlighting that the issue was never communal to begin with.

It can still be argued that the migration before independence was majorly from the Muslim community, but the Bangladesh Liberation War saw a huge influx of Bengali Hindu migration in the state and for the indigenous people, it has become a question of losing land and losing ethnic identity.

Udayon Mishra in his 2012 article writes:

*"... those who are trying to portray the present crisis in the BTAD as a Hindu-Muslim communal clash are either not acquainted with the Assamese social scenario or are consciously trying to bring about polarization along religious lines. But even in the latter case, it needs to be kept in mind that some 12% of the Bodos are Christians while the majorities are followers of the Brahma sect and traditional Bathou religion."*²

So, when the NRC list came out, as per a local source, there were 4.86 lakh Muslims out of 19,06,657 excluded people and rest 2/3rd of all people constitute Hindus or other communities. Further, the procedural lapses in the process, dating back to 1951, have been highlighted in this study earlier showing that there is reasonability to believe that many actual foreigners would have been included in the list and many indigenous people who ignored the paperwork all these years thinking they have nothing to worry about would have been excluded out of the NRC and now it is upon them to prove in the FTs that they are not foreigners.

This is where we come to the Citizenship Amendment Act, 2019. This Act is applicable to all of India unlike the NRC which is only applicable to Assam (at least currently!). In this study we will limit the application of this Act to Assam and hence the study on constitutionality will be limited to Assam only. Whether this Act is constitutional from the perspective of entire India is out of the scope of this study.

The Act, in Section 2, in sub-section (l), in clause (b) introduced the following proviso –

*"Provided that 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 and who has been exempted 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 application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;"*³

The exclusion of Muslims is what sparked the controversy in all over India, but in the case of Assam the inclusion of the communities mentioned in the Act is what raised the anger of common public.⁴

Our study from this point will not focus on what is the popular sentiment but what is the legal position. The questions that come up are that is it legal to have a citizenship law that gives citizenship based on religion? Is it legal to exclude the Muslims from the 19 lakh people whose names were not in NRC and include the others whose names were not in that list as this is what this law does? Prime facie from the context of Assam there is discrimination as the out of the 19 lakh people who were supposed to be given equal treatment as all of them belonged to the same category, about 2/3rd of them will have a special provision to give them citizenship, provided of course they can show that they entered before 2014 and also show their connection with the three countries mentioned in the Act. Isn't it a violation of the Assam Accord where the cut of date was supposed to be--?

"5.2 All persons who came to Assam prior to 1.1.1966, including those amongst them whose name appeared on the electoral rolls used in 1967 elections, shall be regularized."⁵

5.3 Foreigners who came to Assam after 1.1.1966 (inclusive) and upto 24th March 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order 1964."⁶

The Citizenship Amendment Act takes this cut of date and only for selective communities up to 2014, contradicting the Assam Accord.

2. THE CONSTITUTIONAL LAW PARADIGM:

2.1. CONSTITUTIONALITY OF CITIZENSHIP AMENDMENT ACT, 2019:

Citizenship is a legal status given by a State to an individual as a result of which certain legal and political rights are being conferred on that individual. Citizenship is covered under Part-II of the Constitution given under Article 5-11 and lay down as to who are the citizens of India. Article 11 gives unfactured power to Parliament to make a law and regulate all matters related

¹ Amalendu Guha, Little Nationalism Turned Chauvinist: Assam's Anti-Foreigner Upsurge, 1979-80, Economic and Political Weekly, Vol. 15, No. 41/43, Special Number (Oct., 1980), pp. 1699.

² Udayon Misra, Bodoland: The Burden of History, Economic and Political Weekly, Vol. 47, No. 37 (SEPTEMBER 15, 2012), pp. 41.

³ Citizenship Amendment Act, No. 47 of 2019, Acts of Parliament (1955).

⁴ Bikash Singh, Citizenship Amendment Bill: Why Assam is protesting? The Economic Times (Dec 17, 2019, 10:25 A.M.) <https://economictimes.indiatimes.com/news/et-explains/citizenship-bill-why-is-assam-protesting/articleshow/72483294.cms>

⁵ Prabhaskar K Dutta, What is Assam Accord of 1985 and how amended citizenship law challenges it? INDIA TODAY (13 Dec, 2019, 12:13 IST), <https://www.indiatoday.in/news-analysis/story/what-is-assam-accord-of-1985-and-how-amended-citizenship-law-challenges-it-1627965-2019-12-13?onetap=true>

⁶ Id at 17.

to citizenship.¹ Accordingly, Parliament has enacted Citizenship Amendment Act, 1955. The act provides necessary provisions for acquisition, termination and deprivation of citizenship in certain circumstances.

The Act provides five ways of acquiring citizenship. They are as follows:²

- i. Birth
- ii. Descent
- iii. Registration
- iv. Naturalization
- v. Incorporation of some territory into India

For the research author will particularly focus on acquiring citizenship by Naturalization. According to the terms of it, to acquire citizenship by way of naturalization, it is necessary that an individual should have stayed in India for 14 years out of which he should have stayed 11 years cumulatively. Citizenship Amendment Act, 2019 decreases this term of 11 years to 5 years term period. According to the provisions of CAA, 2019 an individual who belongs to Hindus, Parsis, Sikhs, Jains, Buddhists and Christians from three countries i.e., Afghanistan, Bangladesh and Pakistan would be given citizenship that came to India on or before 31st December, 2014. This act has retrospective effect, which says that any person that belongs to minority community and fled from above three countries from religious persecution would be deemed as Indian citizens. This means that these individuals would not be treated as illegal immigrants but would be allotted citizenship through registration or naturalization if they showed that they have been staying in India for last five years.

But this particular act have an exception like that this amendment act do not apply to Muslims from these three countries, migrants who have been given citizenship status would not be allowed to stay in tribal areas of Assam, Meghalaya, Mizoram and Tripura as included in 6th schedule of the Constitution. They can also not stay in State of Arunachal Pradesh, Meghalaya, Mizoram and Manipur where Inner Line Permit applies according to Bengal Frontier Regulation, 1881.

This amendment act have excluded Muslims, persecuted minorities from other countries such as Rohingyas from Myanmar, Tamils from Sri Lanka, Ahmadiyas from Pakistan, etc. It is said that these exclusion of Muslims violate Article 14 as this act discriminates on basis of religion. Hence on the basis of these arguments author will try to ascertain whether CAA, 2019 is constitutionally valid or not.

2.2. Constitutionality Of CAA With Respect To Article 14:

Article of 14 of Indian Constitution talks about Right to equality which can be divided into two doctrines i.e., Equality before law and Equal protection of law. In the study to prove or disapprove constitutionality of the act, author will refer the first doctrine i.e., Equality before law.

The doctrine of equality before law is necessary corollary of Rule of Law. The main object of Article 14 is to secure to all person, citizens, or non-citizens, the equality of status and opportunity referred to in preamble to our constitution.³ It not only applies to citizen of the country but also who are considered as friendly alien i.e., foreigners from other countries having good relations with India.⁴ Article 14 recognizes equality among all citizens irrespective of religion, race, caste, sex and place of birth. But the recent Constitutional Amendment Act by excluding Muslims for giving citizenship discriminates on basis of religion and hence violates Article 14. Besides Right to Equality is considered as Basic structure of Indian constitution as iterated by SC and hence CAA, 2019 violates the basic structure and hence should be considered as unconstitutional.⁵ In no uncertain terms the content of Article 14 got expanded from revolving around discrimination and classification to recognizing the principles of doctrine of promissory estoppel, non-arbitrariness, compliance with rules of Natural Justice eschewing irrationality, etc.⁶

Article 14 and 15 read in the light of Preamble to the Constitution reflect the thinking of our Constitution makers and prevent any discrimination based on religion or origin in the matter of equal treatment or employment.⁷

Article 14 says that like should be treated alike and unlike should be treated differently.⁸ This means those people who are in like circumstances should be treated equally. In the present case in Citizenship Amendment Act, 2019 this is not the case as people are being differentiated on basis of religion though they are living in same and pathetic condition as illegal immigrant without any ration card, employment, government identity card or without any economic support from the Government. This leads to discrimination under Article 14 as likes are being treated differently based on religious identity. It does not however apply in cases of reasonable or rational classification as not all classes of citizens are situated in similar situation. Legislature is entitled to make reasonable classification for purposes of legislation and treat all in one class in equal footing. In order to emphasize this principle, the Supreme Court stated that "Article 14 of the Constitution protects equality among equals: Its objective is to safeguard person similarly placed against discriminating treatment. However, it does not interfere with logical classification. A person filing a complaint alleging that they were denied equal treatment under the law must prove that, among those in comparable situations, some were treated prejudiced and that the disparate treatment had no justifiable connection to the goal of the law."⁹

¹ INDIA CONST. art. 11.

² Citizenship Amendment Act, 2019, Acts of Parliament, 1955 (India).

³ Natural Resources Allocation, In Re Special Reference No. 1 of 2012, (2012) 10 SCC 1 (77).

⁴ Chiranjit Lal Chowdhary v. Union of India AIR 1951 SC 41.

⁵ Indra Sawhney v. Union of India, 1992 SCC (L & S) supp. 1.

⁶ M. Nagaraj v. Union of India AIR 2007 SC 71.

⁷ Zoroastrian Coop. Housing Society Ltd. V. District Registrar, Coop. Societies, AIR 2005 SC 2306

⁸ T.M.A. Pai Foundation v. State of Karnataka, AIR 2003 SC 355.

⁹ R.K. Garg v. Union of India, AIR 1981 SC 2138.

Article 14 allows reasonable classification but classification on basis of class i.e. class legislation is not allowed. Classification to be reasonable should fulfill two tests:

1. It should not be arbitrary, artificial or evasive. It should be based on some intelligible differentia, some real and substantial distinction, which distinguishes person or things grouped together in the class from others.¹
2. The classification-based differences must be rational or reasonable in relation to the goal that the statute in question is trying to accomplish.²

Differential treatment does not per se amount to violation of Article 14 of the Constitution. The violation happens when there is no reasonable basis and there are several test to decide whether the classification is reasonable or not and one of the test will be as to whether it is conducive to the functioning of modern society.³ So analyzing this, it is necessary to show that any act under which classification has been made is discriminatory and that it does not have any rational nexus with the object sought to be achieved by the State.

Reasonable classification, as per the court, was said to not be a paraphrase of equality but rather it was only one of the means to understand whether there is element of arbitrariness or not.⁴

In the case of *Dr. Saurabh Chaudhari & Ors. v. Union of India & Ors.*⁵ SC ruled that basis of reasonable classification must be intelligible differentia, which differentiates the people from being classified to the ones being left out. In the same case SC also ruled that the grounds on which classification is being made and the objective which is sought to be achieved should have a rational nexus between them.⁶

The statement of object and reasons of CAA states that Islam being the state religion of Pakistan, Afghanistan and Bangladesh, minority communities have faced persecutions there and many such persons have fled to India to seek shelter and have continued to stay in India.

Furthermore, the law states that, in theory, the CAA is a benign piece of legislation that intends to grant select communities from the designated nations a relaxation in the form of an amnesty with a clearly defined cut-off date.⁷ The centre declares that the CAA's goals and purview are not "to provide answers to all or any kind of purported persecution," but rather, they are "narrowly tailored legislation seeking to address the specific problem which awaited India's attention for solution," according to the legislation.⁸

Lastly it says: —

*"CAA does not impinge upon any existing right that may have existed prior to the enactment of the amendment and further, in no manner whatsoever, seeks to affect the legal, democratic or secular rights of any of the Indian citizens"*⁹

So, if we look at the broader picture, CAA does not solve the migration issue of Assam to begin with and it further discriminates with communities based on religion. The Bangladesh Liberation War so indiscriminate killing of all people in that land and not just the Hindus which makes the basic tenet behind the "persecution" in neighboring countries shallow as it is taken on face value that there exists a religious persecution just because of the existence of one state religion and there will be no persecution within the classes of that religion.

Citizenship Amendment Act, 2019 got mixed feelings of people. Some support it while others oppose it. The ones opposing it say that it infringes Article 14 as it discriminates on ground of religion by excluding Muslims while the one who supports CAA, 2019 say that CAA makes reasonable classification and gives citizenship to person from three countries to the once who ran from their country for being religiously persecuted. Moreover, the three countries of Afghanistan, Pakistan and Bangladesh are Muslim nations so Muslims there cannot be said to be religiously persecuted. It is essential here to make the difference between ethnic violence and religious violence who say that Ahmediyas of Pakistan and others should also be given citizenship as they are also persecuted.¹⁰ Citizenship Amendment Act, 2019 clearly verifies that citizenship is being given to those who are religiously persecuted. If we would have clubbed ethnic violence with religious persecution, it would not have been reasonable classification.

According to a Supreme Court judgement given in the case of *Nagpur Improvement Trust & Anr. v Vithal Rao & Ors.*, there needs to be a reasonable relation of the act to the object it seeks to achieve. The objective cannot be malafide in its nature.¹¹ According to the objective of CAA, it seeks to give asylum to religious persecuted minorities in India's neighboring States. But if this was the case, then other neighboring countries like Sri Lankan Tamils should also have been included. Therefore, the objective of the CAA, 2019 was to confer citizenship to select group of religion from selected group of countries. Therefore, the amendment is based on religious discrimination. The nature of it therefore can be considered as malafide and not in the line with objective sought to be achieved.

¹ *Laxmi Khandsari v. State of Uttar Pradesh*, AIR 1981 SC 873, 0891.

² *Id* at 28.

³ *Transport & Dock workers Union v. Mumbai Ports Trust*, 2011 AIR SCW 220.

⁴ *Ajay Hasia v. Khalid Mujid*, (1981) 1SCC 722.

⁵ *Dr. Saurabh Chaudhari & Ors. v Union of India & Ors.*, (2004) 2 MLJ 113 SC.

⁶ *Id* at 32.

⁷ Krishnadas Rajagoopal, CAA is benign piece of legislation, Union Home Ministry tells Supreme Court, *The Hindu* (31 October, 2022, 10:51 a.m.) <https://www.thehindu.com/news/national/caa-is-a-benign-piece-of-legislation-home-ministry-tells-sc/article66075067.ece>

⁸ *Id* at 34.

⁹ *Id* at 34.

¹⁰ Saroj Chadha, 'CAA & Article 14 of Indian Constitution' (*The Times of India*, 29 January 2020) accessed 19 July 2023. <https://timesofindia.indiatimes.com/blogs/blunt-frank/caa-article-14-of-indian-constitution/>

¹¹ *Nagpur Improvement Trust & Anr. v Vithal Rao & Ors.*, (1973), AIR 689

According to one of the expert Dr. Abhinav Chandrachud, SC will have a practical approach and to CAA and will ignore the fact that it is scientifically and logically incomplete. SC will look into constitutionality of CAA through lens of Article 14 on three grounds as held in *State of West Bengal v. Anwar Ali Sarkar*¹

1. *Statement of object of the bill*: To give asylum to the religious persecuted minorities from three States.
2. *Intelligible differentia*: To look into the included and excluded category. Article 14 would have been violated if we would have included just few of persecuted religious minorities. Example only Hindus and excluded rest of them.
3. *Rational Nexus*: There should have a relation between the above two criteria.

So, it will stand the test of judicial scrutiny. Dr. Chandrachud is also of the view that degree of harm would also be taken into consideration. For instance, Hindus and Sikhs are more in need of asylum than Ahmediyas of Pakistan as we have seen the recent incident where Nankana Sahib Gurudwara in Pakistan was bombarded. Dr. Chandrachud is also of the view that cut-off date of 2014 is arbitrary as after that date also there would have been some religious minorities who would have come to India to save themselves.²

It is now an established fact that Article 14 strikes on arbitrary State action i.e., both legislative and executive. A basic test to apply to see whether executive action and legislative act is arbitrary or not is to see whether there is any discernable principle emerging from impugned action and if so, does it really satisfy the test of reasonableness.³ It is now considered that non-compliance with the rules of Natural Justice amounts to arbitrariness violating Article 14.⁴ Under Citizenship Amendment Act, 2019 there is lack of reasonableness in the following points:

1. There is no inclusion of Muslims in CAA, 2019 to give them the citizenship as other communities like that of Hindus, Sikhs, Jains, Buddhist, Parsis, and Christians as they are also persecuted in the countries like Ahmediyas of Pakistan.
2. Only three countries are included i.e., Pakistan, Afghanistan and Bangladesh which is not the reasonable classification as if Government wanted to include the countries which were part of India earlier then Afghanistan should not have been included and if Government wanted to include neighboring States then it should also have included Bhutan, Nepal, Myanmar and Sri Lanka.
3. If Government wants to give citizenship based on religious persecuted minorities to Hindus then question arises why Sri Lankan Tamils who have been discriminated in Sri Lanka and fled to India is not included under the Act.

The Supreme Court however warned about over-emphasizing the classification. The Court has explained that “doctrine of classification” is only a subsidiary rule evolved by the courts to give practical content to doctrine of equality, over-emphasize on the doctrine of classification or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the potency of the glorious content of equality enshrined in Art.14 of the Constitution.⁵ The overemphasis would result into substitution of doctrine of equality to doctrine of classification. This would result into deny of equality to the larger segment of society.

By looking into above discussion we can say that Muslims and other minority communities which are included in CAA, 2019 are considered both as illegal migrants who have fled from their countries to save their lives. These minorities are similarly situated in economic, social and political terms where everyone does not have a permanent job to sustain their livelihood, no government support in terms of providing ration to them, etc. This shows the hostile treatment done to Muslims community compared to other minority communities. Also if there is a debate that the classification is being done on basis of religious persecution then it should be kept in mind that discrimination on basis of religion is prohibited as it destroys the very fabric of our Constitution i.e., Secularism and as said by SC that reasonable classification should not be over-stretched to the extent that it destroys the „doctrine of equality“ itself for which the „reasonable classification principle“ was brought.

Today the CAA brought by Government goes against the ideals of Constitution creators who did not want to make a religion specific State but wanted all religion to live in peace and harmony. The CAA according to Madhav Khosla is a threat to liberal vision of the Constitution.⁶

2.3. Violation of Muslim Minorities in Pakistan:⁷

Pakistan being an Islamic State no doubt discriminates religious minorities. Even in their Constitution discrimination in terms of religion can be clearly established where they treat all people belonging to other religion except Muslims as second class citizen. In Pakistan, there are instances of religious discrimination that are caused by both Islamic fundamentalism and Pakistan's repugnant laws.

The tragic murder of a Hindu girl named Pooja, who was kidnapped and executed in order to convert her resentment, illustrates how minority groups in Pakistan live in perpetual terror. In addition to forced conversions, discriminatory legislative and constitutional provisions, bogus accusations of blasphemy, and forced second-class citizenship are other issues that people must deal with.⁸

¹ *State of West Bengal v. Anwar Ali Sarkar* AIR 1952 SC 75.

² Abhinav Chandrachud, *Secularism and the Citizenship Amendment Act* (2020) 4(2) *Indian Law Review* 138.

³ *Union of India v. International Trading Cooperation*, AIR 2003 SC 3983.

⁴ *Rajasthan State Road Transport Cooperation v. Bal Mukund Bairwa* (2), (2009) 4 SCC 299.

⁵ *E.V. Chinnaiah v. State of Andhra Pradesh*, AIR 2005 SC 162.

⁶ Madhav Khosla, 'Who is an Indian?' (The Atlantic, 26 January 2020).

⁷ <https://www.theatlantic.com/international/archive/2020/01/india-republic-citizenship-law-muslim-hindu/605419/>

⁸ Narendra Sharma, *The abandoned minorities of Pakistan: Discrimination with impunity, state and constitutional support to the forced conversion, humiliation of Hindus*, opIndia, 26 March 2022, <https://www.opindia.com/2022/03/abandoned-minorities-pakistan-discrimination-state-constitutional-hindus/>

⁸ Id at 45.

Sections 298-B and 298-C of the Pakistani Penal Code, which discriminate against religious groups and forbid them from freely practicing their religion, as well as Sections 295-B and 295-C, which put an accused person's life in jeopardy, are examples of repugnant clauses. This demonstrates how these minorities always worry about Islamic vigilantism.¹

With the Sunni domination in the country of Pakistan, there is no security and freedom even for the women and ethnic and linguistic minorities who follow Islam. Women face double discrimination based on her minority status either due to ethnicity or her linguistic or due to discrimination based on her gender where females are considered subordinate to male counterparts and are treated badly in their home. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified by Pakistan, although criminality against women continues unabatedly. Hatred in society is against minorities especially against women is fermented which can be seen in the sector of education which is considered as one of the human right.²

There have been reports of Balochs, Hazaras, Sindhis, Ahmadis, and residents of Gilgit-Baltistan having their human rights violated. Attacks on their social gatherings and their worship places are common by the people of Sunni extremist. In 1974 Ahmadis were denied the legal right for being considered as Muslims. Forceful abduction, rape, extra-judicial killings are common in Balochistan and Pashtun province of Pakistan. Even though Pakistan ratified the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, these ethnic and religious minorities are nevertheless excluded from participation in political and social life with religious minorities.³

From this we can say that there is not much difference in the treatment of religious and ethnic minorities and the line of reasonable classification should be narrowed due to the treatment met by even these minorities who are ethnically persecuted as Shia Muslims.

2.4. Violation of Rights of Rohingya Myanmar:

According to the report of WHO Rohingya's is one of the most persecuted minorities in the World. They belong to Myanmar where they are religiously persecuted in Buddhist majority country. In 2017 there was widespread violence against Rohingyas of which main target was women and children who was physically and sexually abused. Around 1 million refugees from Arakan State of Myanmar fled the camp and went into Cox Bazar Area of Bangladesh, 20000 refugees came to India, some went to Thailand, Nepal, Indonesia, etc. Due to pressure being formed environmentally and to fulfill basic needs of these Refugees Bangladesh and Indian Government decided to repatriate Rohingyas back to Myanmar where condition is still not sober and since last 3 years Myanmar Government is under Military rule where they have danger of life. Even National Human Rights Commission (NHRC) raised its voice against the decision taken by Indian Government for repatriating Rohingya's back to Myanmar where they have significant danger of life.

This calls for the equal treatment with all immigrants in India who ran from their origin country due to the danger of life. The question which arises is whether Article 14 is applicable to person who is not in India since Article 14 is applicable to even foreign citizens.

According to experts Article 14 is applicable to only those foreigners who are staying in India and not those who are outside the boundaries of India. This shows that Rohingyas who are living in India as illegal immigrant is also a persecuted religious minority who fled their home State to protect them from religious persecution in Buddhist majority State.

In *NHRC v. State of Arunachal Pradesh*, SC stated that "Every human person is given certain rights under our constitution, and citizens are given additional rights. Everyone has a right to legal equality and equal protection under the law. In the same way, no one may be robbed of their life or their freedom unless they follow the legal process. Therefore, the State has a duty to safeguard each person's life and freedom, whether they are citizens or not."⁴

In the *People's Union for Civil Liberties v. Union of India*⁵, the Supreme Court states: "The courts may rely on covenant provisions that describe and work to implement the fundamental rights protected by our Constitution as aspects of those rights and hence enforceable as such."⁶

2.5. CAA Is Violation Of NRC And Assam Accord:

National Register of Citizens basically came to expatriate the migrants from Bangladesh who entered India after 24th March 1971 as a result of uproar in Assam. Assam people were afraid that migrants from Bangladesh who were migrating in Assam were snatching away the resources, employment, etc. which was their part of the share. Moreover their cultural identity according to them was also under threat due to influx of more illegal immigrants from the neighboring country. As a result of this Assam Accord was signed in 1985 to calm down the situation in Assam.

Article 6 of the Assam Accord states that constitutional, legislative, and administrative safeguards should be offered to conserve, preserve, and advance the Assamese people's cultural, linguistic, and social identity and history.

The present cut-off date of CAA, 2019 i.e. 31st December 2014 overlaps with the date fixed for NRC to deport illegal immigrants back to their home countries i.e. 24th March, 1971 rendering the gross calisthenics of NRC in the State futile. Those religious minorities who are capable to apply for citizenship under CAA if would have crossed the borders subsequent to 24th

¹ Id at 45.

² Id at 45.

³ Id at 45.

⁴ *NHRC v. State of Arunachal Pradesh* (1996) 1 SCC 742.

⁵ (1997) 3 SCC 433

⁶ *People's Union for Civil Liberties v. Union of India* (1997) 3 SCC 433.