

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

---

Volume 2 | Issue 3

---

2020

© 2020 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at [editor.ijlsi@gmail.com](mailto:editor.ijlsi@gmail.com).

---

# Citizenship Amendment Act, 2019

---

NISCHAL S. KUKADE<sup>1</sup>

## ABSTRACT

*In India, the population of state is divided into two classes- citizens and aliens. A citizen of a state is a person who enjoys full civil and political rights. Citizens are different from aliens who do not enjoy all these rights. Citizenship carries with it certain advantages conferred by the constitution. Aliens do not enjoy certain advantages. The constitution does not lay down a permanent or comprehensive provision relating to citizenship in India. Part-II of the constitution simply describes classes of persons who would be deemed to be the citizens of India at the commencement of the constitution, 26th January, 1950, and leaves the entire law of the citizenship to be regulated by law made by parliament to make laws to provide for such matters. In exercise of its power the parliament has enacted the Indian citizenship act, 1955. This act provides for the acquisition and termination of citizenship subsequent to the commencement of the constitution. The recent act is of citizenship amendment bill shifts the cutoff date for granting citizenship from March 24, 1971 to December 31, 2014. The bill seeks to amend the citizenship act, 1955 to make Hindu, Sikh, Buddhist, Jain, Parsi and Christian illegal migrants from Afghanistan, Bangladesh and Pakistan eligible for citizenship of India.*

*Keywords: Persecution, migrants, immigrants, demographic, linguistic uniqueness.*

## I. INTRODUCTION

Citizenship as defined in Part-II indicates only natural person and not juristic persons like corporations. It should be noted that our constitution, though federal, recognizes one citizenship of India. There is no separate state citizenship. Every citizen has the same rights, privileges and immunities of citizenship, no matter what state he resides. In federal state like USA and Switzerland there is a dual citizenship, namely the citizen of USA and the citizenship of states where a person is born and permanently resides, and there are distinct rights and obligations flowing from the two kinds of citizenship. In India, a person born or resident in any state can acquire only one citizenship, that is, the citizenship of India.

The citizenship amendment act, 2019 was passed by parliament of India on 11<sup>th</sup> December 2019. It amended the citizenship act of 1955 by providing a path to Indian citizenship for illegal

---

<sup>1</sup> Author is a student at Dr. Babsaheb Ambedkar College of Law, Nagpur, India.

migrants of Hindu, Sikh, Buddhist, Jain, Parsi and Christian religious minorities who has fled persecution from Pakistan, Bangladesh and Afghanistan before December 2014. Muslims from those countries were not given such eligibility. The act was the first time religion had been overtly used as criterion for citizenship under Indian law.

## **II. BACKGROUND**

India shares its land boundaries with Pakistan, Afghanistan in the northwest, China (Tibet), Nepal and Bhutan in north and Myanmar and Bangladesh in the east. Therefore, the very large number of illegal immigrants entered India during 12<sup>th</sup> to 20<sup>th</sup> century during religious persecution in Iran leading to migration of many Parsis. Then in 1947 during Pakistan partition near about hundred lakhs of people migrated from Pakistan. In 1960-1971 during Bangladesh freedom movement the largest number of immigrants migrated to India. Further, in 1959-1960, during China-Tibet war and religious persecution. In 1979 during Soviet Afghan war and religious persecution, in 1980-2000 many of Shri Lankan Tamil, as well from Myanmar migrated India in 2015-2017.

According to reports, an unknown number of Pakistani Hindu refugees live in India. As estimated 5,000 refugees arrive per year, citing religious persecution and forced conversation. Also, on average 632 Hindus left Bangladesh for India each day and 280,612 annually. A much larger number of refugees estimated at 5-13 million, have arrived from Bangladesh over the decades due to a variety of complex factors. The concept of citizenship as well as issue regarding it, is mostly discussed under constitution of India and Citizenship Amendment act of 1955.

## **III. MAIN PURPOSE OF BILL**

The main purpose of bill was to amend the conditions of acquiring citizenship as given in act of 1955, which was done by:

- i. By changing the definition of illegal immigrants
- ii. By changing process of acquiring citizenship

Before, the act of 2019 illegal immigrants were described as: As illegal migrant is a foreigner who:

- I. Enter the country without valid travel document.
- II. Stays beyond the permitted time period.

But under citizenship amendment act,2019 under section 2,in sub section (1), in clause (b),

the following proviso shall be inserted namely: “Provided that any person to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Pakistan, or Bangladesh, who entered into India on or before the 31<sup>st</sup> day of December, 2014 and who has been exempted by central government by or under clause(c) of sub section (2) of section 3 of passport (entry into India) act, 1920 or from application of the provision of the foreigners act, 1946 or any rule or order made thereunder, shall be not be treated as illegal migrant for the purpose of this act.”

According to act of 1955, under section 6- Citizenship of India by naturalization can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for 12 years (throughout the period of 12 months immediately preceding the date of months immediately preceding date of application and for 11 years in the aggregate in the 14 years preceding the 12 months) and other qualifications as specified in third schedule to act.

Under citizenship act 2019- In the third schedule to the principal act, in clause (d), the following proviso shall be inserted, namely- “Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of reference 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 11 years.’

**Issues involved:**

- i. Why they have considered only these 3 countries and excluded other religious communities?
- ii. Why there is so much of opposition from North East states specifically from Assam?

The amendment has been widely criticized as discriminatory on the basis of religion, particularly for excluding Muslims. The office of United Nations High Commissioner for Human Rights

(OHCHR) called it ‘fundamentally discriminatory’ adding that while India ‘goal of protecting persecuted groups is welcome’, this should be accomplished through a discriminatory “robust national asylum system.” Many of critic express concerns that the bill would be used along with the national register of citizens (NRC) to render many Muslim citizen stateless as they may be unable to meet stringent birth or identity proof requirements. Further the statement given that the main object of act is to expand the loss of migration. And the violence has been faced by minority community as well as religious persecution. The countries of Afghanistan,

Pakistan and Bangladesh does not have the concept of secularism though they are Islamic states. Therefore, they have selected these 3 countries and 6 religious communities.

It has deep rooted history; from the period of 1920 when the riots were taking place many of east Bengal people migrated to north east states, specifically in Assam and started acquiring resources and land of that area, as compared to local population immigrants population increased. Further, in 1948 from India Pakistan partition lakhs of people shifted north east states as well as cities. Later after independence and state recognition the people of North states became so possessive about their language, culture etc. And then just like that of Jammu & Kashmir, north east states were also given special status.

Further, the Assam Accord of 1985 was result of a six year student movement against the migration of Bangladeshi refugees in Assam. The movement demanded that the government identify illegal immigrants so as to protect the rights of indigenous Assamese people. It successfully ended when its leaders signed a memorandum of settlement with Indian government representatives on 15<sup>th</sup> August, 1985. But after citizenship act 2019, it says that people that are excluded by Assam accord that the people who were declared illegal migrants will be consider as citizen under CAA. The act does not apply to tribal areas of Tripura, Mizoram, Assam and Meghalaya because of being included in the 6<sup>th</sup> schedule of the constitution. Also areas that all under the inner limit notified under the Bengal Eastern Frontier Regulation, 1873 will also be outside the act's purview.

#### **IV. MAJOR REASONS FOR PROTEST**

There was two kinds of protests across India because of bill-

- i. In the northeast the protest was against the act implementation in their areas, because they fear that if implemented that act will cause a rush and may alter their demographic and linguistic uniqueness.
- ii. In the rest of India, like in Kerala, west Bengal, Delhi people were protesting against the exclusion of Muslim alleging it to be against the ethos of the constitution.

Further, the opposition to CAA is equally fragmented. The political class does not want to go beyond he established Hindutva hegemony. In fact, except a few parties the non BJP groups found it difficult to associate themselves directly with anti CAA protests. As a result, the create potentials unleashed by the Muslim, dominated anti CAA protests could not be channelized to produce any creative critique of Hindutva hegemony. Violation of article 14 was also point of protest. A bill makes illegal migrants illegal migrants eligible for citizenship on the basis of

religion. This may violate article 14 of the constitution which guarantees right to equality. The bill violates the right to equality (art14) as it seeks to grant citizenship to illegal migrants on the basis of religion.

**Exclusions:** The act does not apply to tribal areas of

- Tripura, Mizoram, Assam and Meghalaya because of being included under schedule 6<sup>th</sup> of constitution
- Areas that fall under the inner limit notified under the Bengal Eastern Frontier Regulation, 1873.
- Arunachal Pradesh, Mizoram and Nagaland.

## **V. CONCLUSION**

As said by Supreme Court ‘uppermost in everybody’s mind, but refused to stay the law without hearing the government first.’ The bill that now has become an act makes it easier for the non-Muslims immigrants from India’s three Muslim majority in Pakistan, Bangladesh and Afghanistan to become citizen of India. Though the bill does not spell it out clearly, but the fact that it entitles Hindus, Sikh, Buddhist, Jains, Parsis and Christians facing persecution in the 3 nations to seek Indian citizenship, highlights the exclusion of Muslims.

\*\*\*\*\*