

CONSTITUTIONAL STATUS OF CITIZENSHIP AMENDMENT ACT AND ITS RELATION WITH NRC AND ASSAM ACCORD

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I. INTRODUCTION

The President of India gave assent to the Citizenship Amendment Bill, 2019 on December 12, 2019, turning it into an act. The core object of the Act is to provide citizenship status to the Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have fled from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan into the Indian territory before 31st December 2019 as a result of religious persecution. However there were widespread protests against the Act by different universities, Muslim organizations as well as common masses because it denied the citizenship rights to Muslims. As there has been a lot of controversy regarding the Citizenship Amendment Act it needs a dispassionate analysis.

II. DOES THE CITIZENSHIP AMENDMENT ACT VIOLATE ARTICLE 14 OF THE INDIAN CONSTITUTION?

Article 14 states, “The State shall not deny to any person equality before law or equal protection of laws within the territory of India.” It implies absence of any special privilege in favour of some individuals and equal subject of all classes to the ordinary law.

- **Article 14 applies to both citizens as well as non citizens**

In *Chiranjit Lal v. Union of India*¹ it was held that the protection of Article 14 extends to both citizens and non citizens and to natural as well as legal persons. The equality before law

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¹ AIR 1951 SC 41

is guaranteed to all without regard to race, colour, religion, sex or nationality. Thus it is pertinent to note that even though the Citizenship Amendment Act confers citizenship rights only to Hindus, Sikhs, Buddhists, Christians and Jains who have fled from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan into the Indian territory before 31st December 2019 as a result of religious persecution but the protection of Article 14 extends to all the non citizens including the Muslims of these countries.

- **Article 14 denotes equality of treatment in equal circumstances**

The rule under Article 14 is that like should be treated alike and not that unlike should be treated alike.² Equality before the law means that among equals the law should be equal and equally administered. The right to sue and be sued, to prosecute and be prosecuted for the same action should be the same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status, nationality.³ In the noteworthy case of *State of West Bengal v. Anwar Ali Sarkar*⁴ the Supreme Court was held that all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws. The Apex court went on to elaborate that equal law should be applied to all in the same situation, and there should be no discrimination between one person and another and as regards the subject matter of the legislation their position is same. Now taking for instance if a Hindu, Buddhist, Christian, Sikh, Parsi or Jain had entered the Indian territory before 31st December 2014 from Bangladesh, Pakistan or Afghanistan as a result of religious persecution then such a person will be entitled to apply for citizenship in India but on the contrary if a Muslim had entered the Indian territory before 31st December 2014 from Bangladesh, Pakistan or Afghanistan as a result of religious persecution then such a person will not be eligible to apply for citizenship in India despite the fact that circumstances of both the above classes of persons are the same. This is a blatant violation of the mandate laid down by the Supreme Court in *State of West Bengal v. Anwar Ali Sarkar* which held that all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws because the Citizenship Amendment Act, 2019 confers the

² V.N. Shukla on The Constitution of India, P. 27 (5th Edition)

³ Jennings on Law of the Constitution, P.49 (3rd Edition)

⁴ AIR 1952 SC 75

privilege of granting citizenship rights to Hindus, Sikhs, Buddhists, Christians and Jains who have fled from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan into the Indian territory before 31st December 2019 as a result of religious persecution but excludes the Muslims.

- **Citizenship Amendment Act does not satisfy the twin tests of intelligible differentia and reasonable nexus under Article 14 and is therefore arbitrary**

Article 14 permits reasonable classification. In the case of *K. Thimappa v. Chairman, Central Board of Directors, SBF*⁵ it was held that the classification under Article 14 must be founded on an intelligible differentia which distinguishes between persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved by the Act. It is to be taken under consideration that the difference created by the Citizenship Amendment act to confer citizenship rights to Hindus, Sikhs, Buddhists, Christians and Jains who have fled from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan into the Indian territory before 31st December 2019 as a result of religious persecution and exclusion of the Muslims from the same is irrational, illogical and arbitrary. This is because the classification created by the Citizenship Amendment Act solely on the basis of religion is unreasonable. If the object of the Act is to protect minorities who face religious persecution from neighbouring countries of India then it is an astonishing fact that it completely ignores the Ahmadiya and Shia Muslims who face religious persecution in Pakistan, Rohingyas and Hindus in Myanmar and Christian Tamils in Sri Lanka. In *Maneka Gandhi v. Union of India*⁶ it was held that Article 14 strikes at arbitrariness in State action and ensures equality of treatment. Furthermore in the case of *R.D Shetty v. Airport Authority*⁷ the Supreme Court held that when the classification is not reasonable and does not satisfy the two conditions of intelligible differentia and reasonable nexus the impugned legislation or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. On both of these grounds the Citizenship Amendment Act terribly fails as not only does it select certain illegal immigrants on the basis

⁵ AIR 2001 SC 467

⁶ AIR 1978 SC 597

⁷ AIR 1979 SC 1628

of religion but it also does so for the reasons that have no basis in the law itself. Some illegal immigrants should not be considered more equal than others.

Thus it is crystal clear that the Citizenship Amendment Act, 2019 violates Article 14 of the Indian Constitution as it does not treat Muslims and persons from other religions such as Hindus, Buddhists, Christians, Sikhs and Jains equally under the equal circumstance of religious persecution and does not satisfy the twin tests of intelligible differentia and reasonable nexus embodied under Article 14 as it arbitrarily discriminates with Muslims in relation to granting them citizenship rights solely on the basis of their religion.

III. DOES THE CITIZENSHIP AMENDMENT ACT VIOLATE ARTICLE 21 OF THE INDIAN CONSTITUTION?

Article 21 states, “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”

- **Article 21 applies to all non citizens including Muslim Refugees from other countries**

In *National Human Rights Commission v. State of Arunachal Pradesh* the Supreme Court held that the right to life and personal liberty also extends to non citizens. Thus it is to be noted that all the non citizens including the Muslim refugees are entitled to the protection under Article 21.

- **Procedure established by Citizenship Amendment Act arbitrarily deprives Muslims refugees who face religious persecution of the protection under Article 21**

Right to life includes the right to live with human dignity. It includes all those facets of human life which make it meaningful and worth living. Under Article 21 a person can be deprived of his life and personal liberty according to the procedure established by law but the procedure established by law should be just, fair and reasonable. A certain category of persons can neither be singled out for special treatment nor unfair treatment. However a meticulous analysis of

the Citizenship Amendment Act reveals that the Muslims of the three countries are being singled out for a differential treatment that is unfair, unreasonable and arbitrary. When the identification of the beneficiary of the law is based on religious persecution then all those religiously persecuted have to be treated as equals. Leaving out Muslims who are religiously persecuted implies that such person would be kept in detention centres thereby curtailing their right to life and personal liberty whereas their counterpart Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have fled from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan into the Indian territory before 31st December 2019 as a result of religious persecution would be eligible to get citizenship in India. Furthermore the Supreme Court in the case of *Olga Tellis & Ors v. Bombay Municipal Corporation & Ors*⁸ has held that procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it.

Thus, from the above discussion it can be safely concluded that the Citizenship Amendment Act palpably violates Article 21 of the Indian Constitution as it unfairly curtails the right to life and personal liberty of Muslim refugees who face religious persecution by denying them citizenship rights and excluding them from the ambit of this Act.

IV. DOES THE CITIZENSHIP AMENDMENT ACT VIOLATE THE BASIC STRUCTURE OF THE CONSTITUTION AND THE PRINCIPLE OF CONSTITUTIONAL MORALITY?

- **Citizenship Amendment Act is an assault on the basic feature of secularism of the Constitution**

The Supreme Court elaborated the concept of basic structure in the historic case of *Keshavananda Bharati v. State of Kerala*⁹ and held that the Parliament by virtue of its

⁸ AIR 1986 SC 180

⁹ AIR 1973 SC 1461

amending power under Article 368 of the Indian Constitution cannot change the basic features of the Preamble. The amending power cannot be interpreted so as to change the Constitution in such a way that it ceases to be 'Sovereign Socialist Secular Democratic Republic'. Furthermore in *S.R. Bommai v. Union of India*¹⁰ the Supreme Court has held that secularism is a basic feature of the constitution. From the above decisions of the Supreme Court it is apparent that the Union Parliament cannot enact any law which violates the basic structure of the Constitution. Citizenship which was earlier open to all with no discrimination towards anyone based on religion, caste, race, sex etc was one of the most revolutionary, radical and cherished idea of the Indian Constitution. However it is pertinent to note that the Citizenship Amendment Act, 2019 unfairly discriminates against the Muslim refugees who have faced religious persecution and denies them citizenship rights whereas it confers citizenship rights to Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have fled from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan into the Indian territory before 31st December 2019 as a result of religious persecution. This object of the Act to discriminate against the Muslims solely on the basis of religion is an attack on the well cherished principle of secularism in India. Thus, the Citizenship Amendment Act blatantly violates the principle of secularism and thereby contravenes the basic structure of the constitution.

- **Citizenship Amendment Act violates the principle of Constitutional Morality**

The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of an action in an arbitrary manner. In the case of *Govt. of NCT of Delhi v. Union of India*¹¹, it was held that constitutional morality in its strictest sense of the term implies strict and complete adherence to the constitutional principles as enshrined in various segments of the document. This duty imposed by the Constitution stems from the fact that the Constitution is the indispensable foundational base that functions as the guiding force to protect and ensure that the democratic setup promise to the citizenry remains unperturbed.

¹⁰ AIR 1994 SCC 1

¹¹ (2018) 8 SCALE 72.

However the Citizenship Amendment Act omits the Muslims who face religious persecution but grants citizenship rights to Hindus, Sikhs, Buddhists, Christians, Parsis and Jains who have fled from the neighbouring countries such as Bangladesh, Pakistan and Afghanistan into the Indian territory before 31st December 2019 as a result of religious persecution thereby violating Article 14 and 21 of the Indian Constitution. Furthermore it attacks the principle of secularism as it discriminates between Muslim refugees in relation to granting them citizenship rights solely on the basis of their religion and thereby contravenes the basic structure of the Constitution. Thus since the Citizenship Amendment Act, 2019 violates Article 14, 21 and does not conform to the principle of secularism it can be safely concluded that it violates the principle of constitutional morality as it does not seek adherence to the most vital segments of the constitution.

V. CONTRARY PROVISIONS EXIST BETWEEN NRC AND CAA AND VIOLATION OF ASSAM ACCORD

- **Illegal immigrants identified under NRC would be able to gain citizenship by using CAA**

National Register of Citizens was implemented in the State of Assam with an aim to detect and deport the illegal immigrants to Bangladesh. As per the Citizenship Amendment Act the deadline date for persons belonging to the six aforesaid communities claiming citizenship in India is 31st December 2014 which clashes with the NRC deadline of 24th March 1971 thereby rendering the entire exercise of NRC in the state meaningless. Those previously identified as illegal immigrants in Assam and who entered Assam after the deadline date of 24th March 1971 would be eligible to apply for citizenship under the Citizenship Amendment Act if they belong to any of the aforesaid communities and entered Assam before 31st December 2014 as a result of religious persecution.

- **Citizenship Amendment Act violates the provisions of Assam Accord**

- 1- The addition to Section 2(1)(b) of the Citizenship Act, 1955 negates the provision under Clause 5 of the Assam Accord, which requires any person entering Assam between 1st January 1966 to 24th March 1971 to register themselves under the Foreigners Act, 1939.
- 2- The amendment to the Third Schedule also dilutes Section 6A of the Citizenship Act which is derived from the Assam accord which clearly states that any person who had migrated to Assam between 1st January 1966 to 24th March 1971 were eligible to become citizens of India either immediately or after a period of ten years. However the Citizenship Amendment Act reduces this period from ten to five years.
- 3- The Citizenship Amendment Act also clashes with Clause 6 of the Assam Accord which states that, “ 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.” The Citizenship Amendment Act causes confusion by not defining the term “Assamese people” clearly. The lack of a clear and legal definition for the terms “Assamese people”, “indigenous people” and “local identity” aggravates the issue of thorough implementation of Clause 6 of the Assam Accord.