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The Legality and Implications of Citizenship Amendment Act, 2019: An Analysis

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ABSTRACT

In modern world citizenship has become a deciding factor for the rights of individual residing in a country. In India the Citizenship Amendment Act (CAA) 2019 is an amendment that is completely unconstitutional as CAA clearly breaks the secular nature of the Constitution and also against the Article 14's fundamental rights. Only the six specified religious groups have been granted concessions under the CAA, and there is no reasonable classification for why protection is extended to illegal migrants solely from Bangladesh, Pakistan, and Afghanistan. This paper presents a historical perspective and factors that led to the development of the concept of citizenship. It also highlight that the constituent assembly uses universal and non discriminatory language in the provision related to citizenship by understanding the motive and meaning of our constitution makers and realize the fact that there should be misinterpretation with the Constitution's basic structure. The paper also through light on the nexus of National Register of Indian Citizen (NRC) and CAA by analysing the NRC drive in Assam. It also put a closer look of Six detention centre in Assam.

Keywords: *Citizenship, CAA-2019, NRC Assam, Detention centres.*

I. INTRODUCTION

India is a secular nation that values peace, autonomy, and harmony. The phrase "Unity in diversity" has only ever been validated in one nation in the world. As everyone knows, India is a large nation with over 200 million Muslims living in it, and for many Indians, it has always been a source of pride. India's constitution guaranteed everyone's equality before the law, stating that no one would be discriminated against on the basis of gender, caste, or religion. Every citizen will have access to the right to life. Part II of our constitution covers citizenship in Articles 5 through 11. It gives the parliament the authority to enforce out a law on such matters and any matter related to citizenship.

The introduction of Citizenship Amendment Act 2019 in the Parliament has led to major mass

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protests and demonstrations, because most of the people see it as an act that separates the nation on the grounds of religion. The speculation in the National Registry of People reform has added more heat to the ongoing anti-CAA campaign. The Citizenship Amendment Act, 2019 states that Hindu, Sikh, Buddhist, Jain, Parsi, and Christian migrants from Pakistan, Afghanistan and Bangladesh where these communities are in minority and face religious persecution can be granted Indian citizenship if they were entered into India on or before 31st December 2014. Thus, as clause 6 of the said act states, instead of granting Indian citizenship after staying in India for not less than eleven years, migrants belonging to the said communities from the said countries would be granted citizenship for staying in India for not less than five years.

(A) Aims and objective of research

Since objective of the study is one of the basic aspects of the work, following are the aims and objectives of the research.

- 1) To make an analytical study of the Citizenship (Amendment) Act, 2019.
- 2) To study the history of the notion of citizenship in Indian context.
- 3) To see why, how and where the Human rights violations are taking place with the introduction of the Act.

(B) Hypotheses

The hypothesis of the research work is that the Citizenship (Amendment) Act, 2019 is arbitrary, exclusionary, and discriminatory and it is class legislation and thereby it is violate the right to equality before law given under article 14 of the Indian Constitution.

II. HISTORY OF CITIZENSHIP

Citizenship is a concept with deep historical roots that has evolved significantly over time. It has played a crucial role in shaping the rights, duties, and identities of individuals within various societies. In ancient Greece particularly in Athens, where citizens participated in direct democracy. Only free male landowners were considered citizens, and they had rights to vote and hold public office. During 17th century thinkers like John Locke and Jean-Jacques Rousseau explored the concept of the social contract, arguing that individuals enter into a collective agreement to form a government that protects their rights. The American Revolution and the French Revolution in the late 18th century were pivotal moments in the development of modern citizenship. The U.S. Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen asserted the equality and rights of citizens. In the 20th century, the aftermath of World Wars I and II led to the establishment of international organizations like the

United Nations, which promoted the idea of universal human rights and the protection of citizenship rights worldwide.

(A) Factors that shaped the modern notion of citizenship

The development of the modern notion of citizenship in India has been significantly influenced by historical events, social movements, and legal frameworks. This can be understood as discussed below:

Colonial Legacy and Nationalism:

The colonial experience under British rule shaped India's understanding of citizenship. The colonial government implemented policies that discriminated against Indians based on race and nationality, treating them as second-class citizens.

Constitutional Framework

The framing of the Indian Constitution in 1950 laid the foundation for modern citizenship. It enshrined principles of equality, non-discrimination, and fundamental rights (Articles 14-32) that apply to all Indian citizens. The Constitution also defined who would be considered a citizen of India. It distinguished between "citizens by birth," "citizens by descent," "citizens by registration," and "citizens by naturalization" (Article 5-11).

Secularism and Pluralism²:

India's commitment to secularism (Article 15-16) and religious freedom (Article 25-28) has been instrumental in recognizing diverse religious and cultural identities within the citizenship framework. The idea of a secular state ensures that citizens can practice their religions freely, contributing to a multi-religious and pluralistic notion of citizenship.

Immigration and National Identity:

Debates around citizenship in India have intensified with regard to immigration, particularly in the context of the National Register of Citizens (NRC) and the Citizenship Amendment Act (CAA). The CAA and NRC have sparked discussions about who qualifies for Indian citizenship, often centering on religious identity.

Thus the development of the modern notion of citizenship in India has been shaped by historical struggles for independence, the framing of the Indian Constitution, principles of secularism and pluralism, social justice initiatives, gender equality reforms, and contemporary debates on immigration and national identity. These concepts have collectively influenced the idea of

² SUNIL KHILNANI, *IDEA OF INDIA* (Penguin India 2004).

inclusive and diverse citizenship in India.

III. CITIZENSHIP LAWS IN INDIA

(A) The constituent assembly debates on citizenship

The concept of citizenship in India underwent a profound transformation during the debates of the Constituent Assembly, leading to the establishment of a unique and inclusive citizenship framework. The debates in the Constituent Assembly, which took place from 1946 to 1949, were instrumental in shaping the principles, rights, and duties of Indian citizens. Here we discuss the evolution of citizenship in India as viewed through the lens of the Constituent Assembly debates, highlighting the key principles and debates that influenced the formation of modern Indian citizenship.

The Constituent Assembly debates led to the creation of a progressive and inclusive citizenship framework in India. The debates were characterized by a commitment to equality, secularism, and social justice. The framers of the Constitution recognized the importance of accommodating India's vast diversity while ensuring equal rights and opportunities for all citizens. Thus the Constituent Assembly debates were pivotal in shaping the concept of citizenship in India. The debates reflected a commitment to pluralism, equality, and social justice, and these principles continue to guide India's citizenship framework to this day. The Indian Constitution, as a result of these deliberations, provides a blueprint for citizenship that respects individual freedoms, safeguards minority rights, and strives for a more inclusive and equitable society.³

Through debate and dissension, the Assembly finally came around to endorse a holistic constitutional vision, a vision founded on principles of republicanism, secularism, equality and non-discrimination, and inclusion. The citizenship chapter formed an integral part of the web, a thread in the design. In this essay, I have tried to show that taking the citizenship clauses in isolation, and reading into them a permission to introduce religious tests for citizenship, will mean nothing less than an unraveling of that design. Or, to put it in constitutional terms, the Constitutional commitment to secularism and non-discrimination acts as an implied limitation on Parliament's powers to determine citizenship under Article 11 of the Constitution. Citizenship-as a condition of entry into the political community-cannot be such as to defeat the founding identity of that polity, an identity enshrined in the Constitution.

This reading will help bring to life the long-dead provisions in Chapter II of the Constitution. The relevance of Articles 5 to 8 did not end with the end of the refugee crisis after Partition.

³ AUSTIN GRANVILLE, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* (Oxford University Press 1966).

Seventy years later, the rigorously universal and non-discriminatory language of these provisions is a reminder of the path that the Constituent Assembly could have chosen to walk-but didn't. It is in the rejection of sectarian citizenship, at a moment when the fire of religious hatred and persecution was at its peak that the universal humanism of the Indian Constitution's citizenship chapter truly shines through.⁴

(B) The provisions of citizenship in Indian constitution, 1950:⁵

The Indian Constitution's provisions on citizenship, encompassed in Articles 5 to 11, establish a framework for citizenship rights and regulations. Article 5 confers citizenship to individuals domiciled and born in India, extending to those born abroad with at least one parent born in India, as well as residents for more than five years. Article 6 addresses citizenship for migrants from Pakistan to India before July 19, 1949, granting automatic citizenship to those with ancestral ties to undivided India. However, post-July 1949 migrants are required to register for citizenship. Article 7 grants citizenship rights to individuals who migrated to Pakistan after March 1, 1947, yet returned with resettlement permits. Additionally, Article 8 extends citizenship privileges to persons of Indian origin residing outside India, allowing registration through Indian diplomatic missions if they or their ancestors were born in India. Articles 9 and 10 outline provisions regarding the voluntary acquisition of foreign citizenship and the continuity of citizenship rights, respectively, while Article 11 empowers the Indian Parliament to legislate on citizenship acquisition, termination, and related matters.⁶

(C) The Citizenship Act, 1955:

The Citizenship Act, 1955 for the first time made the provisions of the citizenship in Independent India -Govind Ballabh Pant the first home minister of India while introducing the Citizenship Bill in Parliament on August 5, 1955, made the historic proclamation that mere fact of birth itself provides the right of citizenship in India.⁷ He stated that the govt. of India took a cosmopolitan view of citizenship He further stated that in consonance with the spirit of the times and also with the temper and atmosphere this cosmopolitan view of citizenship they wanted to promote in the civilised world. It means that they adopted a liberal view of citizenship in India at the very onset of the framing of the Indian Constitutions.

In the constitution Citizenship is a federal subject. Article 11 of Part II of the constitution provides the Indian Parliament the supreme power to make necessary laws to regulate and

⁴ GAUTAM BHATIA, ON CITIZENSHIP 94-95 (Aleph Book Company 2021).

⁵ INDIA CONST. art. 5 - 11

⁶ V.N.SHUKLA, CONSTITUTION OF INDIA 15-23 (EBC 2019)

⁷ Govind Ballabh Pant, Home minister while placing the Indian Citizenship Act in 1955.

determine the provisions for acquisition and termination of citizenship and all other matters relating to it. And accordingly, The Indian Parliament enacted the Citizenship Act, 1955 with detailed provisions specifying as to how one can get citizenship through by birth, by descent, by registration, by naturalization or through by incorporation of territory. The Act does not in any way provide for dual citizenship or dual nationality in India.

IV. CITIZENSHIP AMENDMENT ACT - 2019

Since the inception of Article 11 which gave the right to the parliament to make the amendments in the Citizenship clause; it has been amended a lot of times. Until year 2020 since the assent from the president in 1960 this clause has been amended around 10 times and the major ones being in the year 1955 and the year 2019.

In order to understand the problem in the latest amended version of this clause we need to analyze by comparing it to the citizenship amendment bill 1955. The citizenship clause is a very small clause which just has 19 sections and in section 2 clause (b) of this we have the definition of “illegal migrant, which is very important in the present controversy. As according to the earlier amended part only two categories of people were considered as illegal migrants. First ones are those who were foreigners who entered our country without a valid passport. And the second were those who entered the country with a valid passport but stayed here longer than the required time. But when this clause was amended again in 2019 the meaning was made broader by adding another category to illegal migrants. They added the category of all the people from Sikh, Hindu, Buddhist, Parsis, Jains and Christians from Afghanistan, Bangladesh and Pakistan who entered the country before December 31st, 2014 and They will not be considered as illegal migrants Or if these people had got the assent from the central government by exempting them from section 3 of the Passport Entry into India Act, 1920. So if the citizens prove both⁸ the conditions mentioned above they can become the citizens of the country.

Beside the above some major changes were discussed below:

1. The tribal areas of Assam, Meghalaya, and Tripura are exempted from its applicability. The provisions of the CAA states that illegal migrants will not be applicable to the tribal areas of Assam, Meghalaya, Mizoram, and Tripura, as included within the Sixth Schedule of the Constitution. Some of the tribal areas in the North East like Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District are included.

⁸ Abhishek Atrey, *Framework and Challenges to Citizenship (Amendment) Act and National Register of Citizens*, INDIAN LEGAL LIVE (Jan. 06, 2020).

2. The Act is not supposed to be applied to under the Bengal the "Inner Line Permit"⁹ Eastern Frontier Regulation, 1873. The visit of the Indians to Arunachal Pradesh, Mizoram, and Nagaland regulated under the Inner Line Permit parliament on 9 December 2019, regulates. Manipur has also been brought under the Inner Line Permit (ILP) regime through a Gazette Notification on the same day the bill was passed within the parliament.
3. Under the Citizenship Act 1955, an individual could also be given an OCI card, if he is of Indian origin, e.g., a former citizen of India or their descendants, or the spouse who is of a person of Indian origin. Now the Act of 2019 gives the power to OCI cardholder to travel in India, work, and study within the country. It also says people holding Overseas Citizen of India (OCI) cards - an immigration status allowing a foreign citizen of Indian origin to live and work in India for an indefinite period.

(A) Argument given by the government

The central Govt. has given some arguments in favour of CAA and NRC. The home Minister Amit Shah himself declared in the Rajya Sabha (the Parliament) on Upper House of the 19th November 2019, that the National Register of Citizens would h implemented throughout India.¹⁰ The arguments in favour of CAA and NRC given by the Central Govt. is that the Citizenship Act of 1955 prohibits illegal immigrants from obtaining citizenship in India, defining them as individuals who entered without proper documentation or overstayed their permitted time.

However, in 2015, amendments to passport and foreigner acts were made to allow non-Muslim refugees from certain countries to stay in India, facilitating their path to citizenship. The government's stance is that the Citizenship Amendment Act (CAA) aims to grant citizenship rather than revoke it. It specifically benefits victims of partition and subsequent religious conversions in Pakistan, Afghanistan, and Bangladesh, excluding Muslims due to their majority status in Islamic republics. Nonetheless, Muslims facing persecution from these countries can still seek refuge in India, with their cases evaluated individually.

The CAA is focused on three countries due to historical and cultural ties with India, addressing the declining minority populations post-partition. It's important to note that the act doesn't automatically grant citizenship to minorities; they must meet specific criteria including good conduct and physical residence in India as outlined in the Citizenship Act of 1955. However,

⁹ Gazzett notification on Inner Line Permit on 9th December 2019

¹⁰Indian express, <https://indianexpress.com/article/opinion/columns/citizenship-law-not-about-hindu-and-muslim-6173883/>, (last visited Feb.19, 2024)

the CAA doesn't preclude the possibility of granting citizenship to individuals from the majority religion in these countries, subject to meeting the stipulated conditions and case-by-case evaluation, with a reduction in the residential requirement for naturalization from 11 to 5 years.

(B) Constitutionality of the citizenship (amendment) act-2019

- a. **Constitutional validity of the act:** Questions have been raised regarding the constitutional validity of the Citizenship (Amendment) Act, 2019 from different sections both national and international sphere because it violates various constitutional principles and ethos practiced so long. So now the *onus is up to the Supreme Court of India to prove or disprove the validity of the act.*
- b. **Human Rights Issues:** The act is clearly violative of different national and international Human Rights Conventions, Documents and protocols etc, in different ways. The said act violates the International Bill of Rights - the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social, Economic and Cultural Rights (CESCR) through the discriminatory, arbitrary exclusion of the Muslims. The Act is also violative of racial discrimination which is highly prohibited both by the Indian Constitution and also by the various international treaties, conventions and covenants etc.
- c. **Secularisms in Indian Constitution and the CAA:** The said Act proposes to give eligibility for Indian citizenship to illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis, Christians and Zoroastrian communities who have come from Pakistan, Afghanistan, and Bangladesh and who entered India on or before 31 December 2014 and facing religious persecution there. According to the act, these religious communities wouldn't be imprisoned citizenship after six years of residency in India. This is highly welcome. The deported and would gain permanent fundamental criticism of the Act has been that it's highly discriminatory because it

Singles out Muslims who constitute nearly 15% of country's population. This law is highly discriminatory against one religion and goes completely against the Indian Constitution, especially Article 14, which recognizes equality amongst all religions. Any religious basis of citizenship not only violates the principles of secularism but also of liberalism, equality and justice. This unequal treatment should be dropped to stand the test of 'basic structure doctrine'.

- d. **The Act is accused of Class Legislation:** The Act which openly discriminates against Muslim migrants on the basis of faith on religion is an instance of class legislation, and classification on the basis of religion isn't permissible. Entire focus of the Act is merely on religious persecution.
- e. **Article 14 of the Constitution and the CAA:** It is also violative of Article 14 of the Constitution, which guarantees the right to equality and applicable to both the citizens and foreigners. The classification on any ground not only demands reasonable classification and rational and just objects to be achieved for any classification to be valid and non-arbitrary. The exclusion of Muslims as a community from the ambit of the law constitutes a gross discriminatory treatment that the right to equality without discrimination 'racial' element - is one among the fundamental principles of international human rights.
- f. **Arbitrary grounds of Exclusion:** Questions have been raised about the nature of the exclusion. The amendment mentions only the Muslim-majority neighbors of India takes no cognizance of the persecuted Muslims of these countries. According to the critics the Indian government was not concerned about religious persecution, else it should have included Ahmadiyas _ a Muslim sect, who are tortured in Pakistan claiming them as non-conformists and the Hazaras -another Muslim sect of Afghanistan are killed by the Taliban. They along with Shia, Balochi also ought to be treated as minorities to apply for citizenship. So, any kind of arbitrariness is unconstitutional.

V. NRC, NPR AND PROBLEM OF STATELESSNESS

(A) Register of citizens (NRC)

The Citizenship (Amendment) Act, 2019 accompanied by the declaration of implementing National Register of Citizens (NRC) declared those people as illegal immigrant who could not produce sufficient documents of their birth before 24 March of 1971 in Assam. The National Register of Citizens (NRC) in Assam is basically a list of Indian citizens living in the state. The citizens' register sets out to identify foreign nationals in the state bordering Bangladesh. The process to update the register began following a Supreme Court order in 2013, with the state's nearly 33 million people having to prove that they were Indian nationals prior to March 24, 1971. The updated final NRC was released on August 31, with over 1.9 million applicants failing to make it to the list. Even the name of family members of former president of India Fakhruddin Ali Ahamd was not find its place in the final list.

The reason for such a huge number is because the general rule of evidence i.e. one who alleges must prove it is reversed during Assam NRC process and burden of proof is put on people to prove that he or she is a citizen of India. Also women who married before 18 years of age, which is a common practice in North East have their husband name and not their parents name in their electorate. So they find it difficult to prove their ancestors being an Indian.

After the publication of the NRC on August 31, 2019, Union home minister Amit Shah said that Assam will have to go through the citizen's list or the NRC again as almost all the leading organizations of the state, including the Govt. have alleged that names huge amount of immigrant nationals have been incorporated in the new NRC.¹¹

In the center, the NRC is an official record of the individuals who are lawful Indian residents. It incorporates segment data p of those people who qualify as residents of India according to the Citizenship Act, 1955. The register was first arranged after the 1951 Census of India and from that point forward it has not been refreshed as of not long ago.

Up until this point, such a database has just been kept up for the territory of Assam. Notwithstanding, on November 20, Home Minister Amit Shah announced during a parliamentary meeting that the register would be stretched out to the whole nation.

Since the time of the execution of the NRC in Assam, there has been a developing interest for its across the nation usage. Presently, many top BJP pioneers including Home Minister Amit Shah have suggested that the NRC in Assam be actualized across India.

It adequately proposes to acquire an enactment that will empower the administration to distinguish infiltrators who have been living in India unlawfully, keep them and expel them to where they originated from.

(B) National Population Registrar (NPR)

National Population Register (NPR) is a database of people living in India whether citizens or otherwise. The Citizenship (Registration of Citizens and Issue of National identity Cards) Rules, 2003 mandates preparing National Population Register (NPR) to Identify the 'Doubtful Citizen or Doubtful Voter from the National Register of the Citizens (NRC). The NPR (National Population Register) is a register of those residents of India where the enumerator collects demographic and bio-metric data of individuals living at the place of enumeration for six months or more. It was originally stated to be April 2020 and September 2020, and be ready ahead of the Census 2021 Ground work on the NPR has begun and is still underway in several

¹¹ Office of the State Coordinator of National Registration (NRC), Assam.

states. Now the government wants, at any point of time, the data collected for the NPR may be legally used for NRC, and more ironically, where in jurisprudence, the burden of proof lies with the prosecution but here the burden to prove lies with the citizens to prove their citizenship. What a great mockery of jurisprudence!

(C) Doubtful-voter (d voter)¹²

D voters or Doubtful voters, as they are also called, these residents of Assam have been disfranchised during electoral roll revision for their reported lack of citizenship credentials. Their cases are pending in one of 100 Foreigners Tribunals (FTs) across the state. Once adjudged a foreigner, a person is sent to any of the ten detention camps housed within jail before deportation.

The National Register of Citizens in Assam has been drawn up in a way that actually breaches the Citizenship Act 1955. The NRC used as its cut off point for citizenship midnight on March 24, 1971. But the Citizenship Act is absolutely explicit, it says every person born in India before July 1, 1987, in other words up to June 30, 1987, is a citizen by birth. And the Citizenship Act is the law of the land.

The NRC has all the earmarks of being an endeavor to fix this situation of the implementation of the CAA by the government by making another rundown to bring those forgotten about into the overlap. Further, the administration seems to make the contention that it is constrained by law to make the NRC. In any case, Section 14A of the Citizenship Act, 1955 obviously shows that the legislature has a decision with regards to giving character cards to residents. No reasons have been offered with respect to why another specification practice is required when Aadhaar is set up.

NRC is away from Section 3 which gives citizenship by birth, and since NRC is being done under the Registration of Citizens and Issue of National Identity Card Rules, 2003, the Rules can't damage the parent Act.

Moreover, there are not small issues with the formation of the NPR as there is no clearness on the status of those considered to be "double citizens". This is a grave oversight given that the aftereffect of rejection from NPR is the loss of citizenship. It represents the impulsive idea of the

NRC and is the most clear sign yet that the activity is completely self-assertive and without reason or rationale.

¹²Sarma. P, Dispur gives D voters data, online Telegraphindia.com (2018)

Given the total absence of verifiable setting and the absence of any legitimization for the activity, the end that the NRC is clearly discretionary seems inescapable, as it fails the trial of "reasonable, sensible, unbiased, straightforward, non-whimsical, unprejudiced, without partiality or nepotism, in quest for advancement of solid rivalry and impartial treatment" as set s in *Shayara Bano*¹³.

Along these lines, the joined NPR-NRIC practice is an away from State activity that is obviously discretionary, and thus is violative of Article 14 of the Indian Constitution.

The right to live with dignity incorporates inside its ambit the minimum essentials of life, for example, sufficient nourishment, apparel and shelter, just as the opportunity to move about and collaborate with individual people. A demonstration that impedes pride is a hardship of the right to life revered in Article 21, and it is clear that any type of torment or cruel treatment would remain infringing upon this sacred assurance. As held by the Court in *Francis*, the right to security against torment or remorseless treatment is verifiable in Article 21.

The extent of the right to live with poise was stretched out in *Olga Tellis v. Bombay Municipal Corporation*¹⁴ to incorporate inside its ambit the right to livelihood, with the Court perceiving that "the most straightforward method of denying an individual of his right to life is deny him of his methods for livelihood to the point of annulment.

The planning of the across the nation NRC will definitely follow a different procedure. Nonetheless, the Assam NRC practice gives the prime case of how bureaucratic wastefulness and legal lack of concern can join to trim down the substance of the right to life revered in Article 21. The particular accomplishment of the NRC was exhibiting that crucial rights were totally dependent upon having citizenship – and there is little to demonstrate that the administration will charge any better in the usage of the NRIC¹⁵.

Thus the CAA is a completely unconstitutional amendment and should be discarded. The NPR and NRC apart from being a colossal waste of money, it will also lead to a remarkable nationwide tragedy. Furthermore, this bill is a huge threats to our national security our intelligence agency. Row had expressed the same anxious since illegal immigration would become easier due to this bill. Anyone could just request for citizenship by generating an affidavit declaring he is a Hindu and he would be admitted citizenship very easily. So, if you want your country to

¹³ *Shayara Bano vs. Union of India*, (2017) 9 SCC 1

¹⁴ *Olga Tellis v. Bombay Municipal Corporation*, 1986 AIR 180, 1985 SCR Supl. (2) 51

¹⁵ IANS, *How is CAA different from Citizenship Act, 1955*, TIMES OF INDIA, (Jan. 16,2020), <https://timesofindia.Indiatimes.com/India/how-kaa-is-different-from-citizenship-act-1955/articleshow/73303946.cms>

scale heights then we need to remain secular.

VI. DETENTION CENTERS IN INDIA: A CLOSER LOOK

Detention centers have been a topic of considerable discussion and debate in India. These facilities are primarily intended for the detainment of individuals who are deemed to be residing in the country illegally. This essay delves into the concept of detention centers in India, examining their purpose, conditions, controversies, and potential alternatives.

(A) Purpose of Detention Centers:

Detention centers serve as holding facilities for individuals who have been identified as staying in India without proper documentation or who have overstayed their visas. These centers are meant to house such individuals temporarily while their legal status is being determined by the relevant authorities.

Assam has six detention centres in Dibrugarh, Goalpara, Jorhat, Kokrajhar, Silchar and Tezpur. The six detention centers in the State house 970 detainees. In addition to the existing facilities in the State, the government has approved the construction of another detention centre in Matia in Goalpara at a cost of Rs 46.5 crore¹⁶.

According to report in The Indian Express The first batch of at least 68 “foreigners” were moved to a newly built “detention centre” now officially known as ‘transit camp’ at Goalpara in Assam on Friday, senior government officials told The Indian Express. This marks the beginning of a proposed phase-wise transfer of “foreigners” to the Matia Transit Camp, 150 km from Guwahati.

However, most migrants, particularly the Muslims of Bengali origin who comprise a lion’s share of the so-called non-native population of Assam, arrived much before India and Bangladesh (East Pakistan before 1971) were separate countries. Many believed the NRC update exercise would finally settle the matter. As Abbas Ali, who lived in a village close to Matia said, “Many Muslims were engaged to build the detention camp and now the main intention of the centre is to harass them.”¹⁷

On 8th August 2023 Supreme Court in a writ petition filed for releasing a Rohingya refugee from indefinite detention in a detention center in Delhi. The bench comprising Chief Justice of India DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Mishra while issuing notice,

¹⁶ The Hindu, <https://www.thehindu.com/data/data-where-are-detention-centres-in-india/article30451564.ece> (last visited Feb. 19, 2024)

¹⁷ Scroll.in, www.scroll.in/article/1045195/inside-indias-largest-detention-centre-it-is-better-to-die-than-live-with-no-hope (last visited Feb. 15, 2024)

also granted the liberty to serve the copy of the petition on the Central Government.¹⁸

VII. CONCLUSION AND SUGGESTION

This is crude reality that the problem of the refugees, stateless people, migrant people, internally displaced persons and so on is the biggest challenge before the globe today. The echo of the cry of these people is really heart rending. The world is so big but for them no place is there for their habitation. Most of the states are denying their existence. The United Nations Organization has come up with so many conventions and treaties but in most cases, these are of no importance. It is to be noted that the former president of the United States of America, Jimmy Carter reminded if any particular group of people is singled out in the status of secondary citizenship, this is violation of the basic human rights. The stateless people like Rohingya who were persecuted minorities of Myanmar are the worst example. The doors for them are closed in any of the country and facing push back from everywhere they are reaching. Today the largest populations of the stateless people are staying in the countries Bangladesh, India, Kenya, Malaysia, Myanmar, Nepal, in Arabian countries and a lot more. As per the latest record of the United Nations for the High Commissioner for Refugees there are around 12 million stateless people in the world. Being a human and supposing to enjoy the basic rights they are deprived of it. Such is the farce in the name of Human Rights in the modern civilization too! It is very much pertinent to note the remark of the German novelist Winfried Georg Sebald, in his novel *Vertigo* while he states that it was a deepest agony for him to spend sleepless hours considering the fact that he belonged to a different nation meaning thereby he belonged to no nation at all.

In Indian context the same picture is prevailing. The Citizenship (Amendment) Act 2019 is again fueling the making of the stateless people in the country in a large number basing on religion. It is true that the parliament is the supreme authority to make laws in regard to policy making for the country. Also, the Supreme Court is the highest authority to make any laws in regard to the citizenship of the country. But the laws should be in consonance with India's long followed tradition of equality, justice, Liberty, secularism etc. And it must not be discriminatory in nature to respect the national and international standards of human rights. There is no doubt; India should protect the rights of those as well who are persecuted in the name of religion in the neighboring countries. India. Since its ancient past believes in Vasudhaiva Kutumbakam and cannot forget its values followed down from the centuries. India is a country of varieties of culture and traditions. It is a land of Unity in diversity. India is truly a land of different sects

¹⁸ Live law, [www.livelaw.in/amp/top-stories/supreme-court-rohingya-refugees-detention-sabera-khatoon-vs-union-\(of-india-234649](http://www.livelaw.in/amp/top-stories/supreme-court-rohingya-refugees-detention-sabera-khatoon-vs-union-(of-india-234649) (last visited Feb. 17,2024)

and religious groups. Pluralism is its basic creed. Right to practice and profess religion is a fundamental right but at the same time tenet of Secularism is the basic principles that we practice. India has practiced secularism and will stick to it in future also. The central Govt. should, of course work in accordance with the spirit of the constitution. Carve out equilibrium through protecting secularism, Non-discriminatory provisions that is inclusive in nature.

Since the Act has been challenged in the Supreme Court, the guardian of the Constitution of the country, so the onus lies now on the apex Court to look into the interpretation of the provisions of the Citizenship (Amendment) Act, 2019. Thus, the Constitutionality of the Act can be proved. Apart from that whether the "classification" done in the Act is "reasonable" or not also will be seen in light of this discussion. It is a true fact that laws and acts made for the betterment of the men, men are not made for law. It is quite obvious that from the point of constitutionality of the Act, from human rights perspective in all grounds, the Supreme Court is expected to pronounce upon the constitutional validity of the Act. It is always true that law is for men, men are not for laws. In a civilized nation laws are meant for the wellbeing of the citizens.

Harsh Mander has filed a separate petition in the Supreme Court. And according to this petition, the apex court has to ask the Government of the state of Assam to prepare and place a report immediately on the number of its detention centers across the state and the capacity of the number of the inmates in the detention centers. These detention centers are violative of the basic human rights guaranteed to every human being. The question has been raised as to the torture of those persons who have been declared as the illegal immigrants from the country Bangladeshi and have been removed to detention centers. At the time of adjudication on the question of these issues, the consequences of exclusion of the people from the NRC should be kept in mind. It can be expected that the Supreme Court while considering on this issue and will go for declaring lakhs of people as illegal immigrant, the social consequences of statelessness will be taken into consideration.

When the world talks about Global citizenship today, which is embedded in the sustainable Development Goals SDG 4 to be achieved within 2030, when the widening Concept of citizenship propagates there should not be any barriers among the countries, when the world is a global village today, then narrowing down the concept of Citizenship and creating millions of Stateless people in India will be quite unjustified.

It would be apt to conclude remembering the words of the first Prime Minister of India during the partition while he reminds us though our brothers and sisters have been cut off from us by the political boundaries and who are not at all happy with this partition cannot enjoy the taste

of freedom in the true sense of the term. Those sisters and brothers will remain with us in our good and ill fortune in the same way it was done earlier.¹⁹

(A) Suggestions

Through the detail study of the above research work the following suggestions are to be made by the researcher. If the suggestions are accepted, the problem of Citizenship can be resolved to a large extent.

1. It is true that the state must have its own registrar of its own citizens. So, the process of National Registrar of Citizens (NRC) must be made. The best way to determine citizenship is by birth of a person, as many developed nation apply this rule.

2. The CAA, 2019 should be amended again to refrain from giving citizenship on the religious basis. The Govt. should make the law not on the basis of discrimination in respect of religion. The Class legislation is not constitutional in India.

3. The ideals of equality as enshrined in Indian Constitution should be protected and India's heritage of plurality of culture and unity in diversity should be respected and continued.

4. India does not have a national policy on the issues of the refugees staying in the country for long time. All of these refugees are categorized as "illegal migrants" in the country. There is an urgent need of framing national policies on the issues of the refugees while the problem is so burning.

5. India should take the initiative through mutual bilateral negotiations that these people who are either refugees or the immigrants or the non-citizens should be sent to the countries of their origin. But it should be done through the bilateral talks among the Govt.

6. India should adopt a robust asylum system based on the principles of dignity, equality, and non-discrimination and pass comprehensive anti-discrimination legislation to ensure that all Indians enjoy the same rights, privileges and equal treatment of the people.

7. It is the proper time to take necessary measures by the Central Gov. of India to decide the fate of the people whose names have been left out of the list of the National Registrar of Citizens of Assam.

8. The illegal immigration should be stopped.

¹⁹ The historic statement by Jawaharlal Nehru the first Prime Minister of India during the partition