



CITIZENSHIP (AMENDMENT) ACT, 2019 AND SECULARISM: REPURCUSSIONS AND LOGIC.

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Abstract

The inherent feature of the Indian society depicts that it is intrinsically a religious and spiritual country. The feature of secularism and respect to every section of citizens is duly recognized and acknowledged by the Indian Constitution. But during last years, the introduction of the NRC and CAA legislations and the national level protests against the same legislation i.e. (the Citizenship (Amendment) Act (CAA), 2019) have again thrown open the debate of constitutional ethos of secularism. The paper analyses the law points and the repercussions of CAA combined with National Register of Citizens(NRC) in secular context.

Key words: citizenship, national register, political harmony, secularism etc.

1. Introduction

For the purpose of understanding CAA legislations we need to know; who is an “illegal immigrant”? An Illegal immigrant refers to “an individual of foreign origin staying in the territory of another country without the authentication from the liable authority.”¹

¹ However, UNHRC have advocated against the use of the term ‘illegal immigrants’ and have insisted on use of better words like ‘undocumented’ or ‘irregular’ because illegal is a term used for things and human beings are not things and most of all adding illegal to someone’s name robs them of their dignity. M Paspalanova · 2008. Undocumented vs. Illegal Migrant. available at <<http://www.scielo.org.mx> > scielo> accessed on 19.8.2021.

In India, there are numerous laws dealing with immigration and people entering it but they were only limited to the legal migrants that is people who entered the country with proper legal visas. Unfortunately, we did not have any laws to deal with illegal immigrants and after their illegality was discovered by the Government Authorities they were prosecuted and put in detention. India is one of the rare examples which does not have a national polity outline to deal with immigrants as well as the refugees. This is made further wicked by the fact that it is not a signatory to the United Nations Refugee Convention, 1951, or United Nations Refugee Protocol, 1967.² To add to this gruesome picture Indian legal system has nothing to offer to the problem of statelessness as it has also yet to implement the United Nation Convention on Statelessness and the United Nation Convention On Reduction Of Statelessness.³ Hence, India is not bound to ensure rights to the illegal migrants or the refugees as is set out by these Conventions.

The laws dealing with refugees and illegal immigrants include:

- Registration of Foreigners Act, 1939⁴;
- Foreigners Act, 1946;⁵ and
- Passport Act, 1967⁶

While illegal immigrants and refugees can directly apply to the Indian Government for protection except those belonging to Myanmar, which after such application are granted the appropriate documents by the FRPOs(Foreign Regional Registration Officers), other countries who are not neighbors comes under the United Nations High Commission For Refugees (UNHCR) Mandate under which each individuals claim is analyzed, his/her biometrics are taken, an interview is conducted by an UNHCR officer and consequentially if the claim is genuine an Identification Card is provided to the person declaring him/her a recognized refugee. Government issues in the

² The 1951 Convention relating to the Status of Refugees and its 1967 Protocol together are the most comprehensive instruments which have been adopted to date on a universal level to safeguard the fundamental rights of refugees and to regulate their status in countries of asylum. *available at* <<https://www.unhcr.org>> 1951-refugee-convention> accessed on 19.8.2021.

³ The 1954 Convention provides the definition of a “stateless person” and the foundation of the international legal framework to address statelessness. The 1961 Convention is the leading international instrument that sets rules for the conferral and non-withdrawal of citizenship to prevent statelessness. *available at* UN Conventions on Statelessness – UNHCR <<https://www.unhcr.org>> un-conventions-on-statelessness> accessed on 19.8.21.

⁴ An Act to provide for the registration of foreigners in British India.

⁵ An Act to confer upon the Central Government certain powers in respect of foreigners. WHEREAS it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into [India], their presence therein and their departure therefrom.

⁶ An Act to provide for the issue of passports and travel documents, to regulate the departure from India of citizens of India and other persons and for matters incidental or ancillary thereto.

both scenarios, that is whether a person belongs to a neighboring country and has applied for protection or whether he is a recognized refugee holding a UNHCR Identification Card, “long term visa” on case to case basis. This whole process still doesn’t grant them citizenship or even the right to be in the race to be one.

1.1 DEFINING NRC AND CAA

At the time of Independence, Citizenship in India has never been a serious issue reason being, there are more severe and greater problems like self-sufficiency in food grain, power generation, poverty, model of marketing to be followed etc. than to decide who will be the citizen and who will not. Further with the partition of the country on religious grounds into east and west Pakistan wherein countless number of people moved inward and outward has made this exercise of defining a citizen more futile. Later on, with the social, economic and political developments India started thinking of taking the problem of illegal immigrants seriously with the specific legislation. To this direction, many Amendments have been made to the Citizenship Act, 1955⁷ out of which the latest have been made in 2019, the Citizenship (Amendment) Act, 2019. This amendment became the ground of great controversy as it has tried to force in religion to the sensitive topic of citizenship as it stands today especially after the recent National Register of Citizens list release in Assam which saw lakhs of Assamese people not making it to the final list.

1.1.1 CAA, PROVISIONS AND THE POINT OF CONTROVERSY

The Provision: The Citizenship (Amendment) Act, 2019 redefines the meaning of the term ‘illegal immigrant’ as any person of the following religion:

Hindu;

Sikh;

Jain;

Parsi;

Buddhist; and

Christian,

from the three neighboring states of Pakistan, Afghanistan and Bangladesh, who have been living in India without legal visas. After analyzing their claim on case to case basis they will be provided with Indian Citizenship in 6 years. Prior to this the eligibility for acquiring eligibility via naturalization was 12 years. The provisions of this Act applies on the basis of the religious persecution faced by the abovementioned religious communities. The aim being protection of these migrants, who left their native countries out of the fear of persecution, from legal proceedings. The date finalized by the government for applying for the same is 31-12-2014, which simply implies that the applicant must have been living in India on or before such date. As it is clear from the provision itself, Muslim community have not been mentioned in this Amendment.

⁷ Article 5 to Article 11 of the Indian Constitution governs Indian citizenship and the law in regard to this is the Citizenship Act of 1955. The 1955 Act was amended **six times** — 1986, 1992, 2003, 2005, 2015 and 2019.

The Rationality of this legislation: The reason which the Central Government gave for not including Muslims in this provision is that the people of these six faiths have constantly faced persecution in these three Islamic countries and hence need protection which India is duty bound to provide and the same is not the case with the Muslims of these countries. This has also been justified on the grounds that when India was divided in 1947 into Pakistan and Bangladesh it was on the basis of the majority of Hindus and Muslims, where the Muslims were in majority in these two countries and hence other communities being in minority have faced suppression to this day and this is the reason why India shall accommodate these immigrants⁸.

The controversy: As mentioned above the reason for excluding Muslims is given to be the 'religious persecution' however this has been nowhere mentioned in the Act itself and there has been demarcated no limitations as to what acts would constitute religious persecution and if the criterion is simply that the migrant has to be one of the six above specified religion then it is clearly based on the grounds of religious discrimination which our Constitution explicitly prohibits. And moreover there are plenty of cases in which Muslims have faces persecution in these countries as well like the Ahmadia Sect of Muslims and even the Shia Muslims have been facing discrimination for decades, the same is the case of Rohingya Muslims as well as Hindus from Burma. The Act does not cover all religious minorities and also does not apply to all of the neighboring countries

1.2 UNDERSTANDING THE NRC IN ASSAM CONTEXT.

Basically, a National Register for Citizens is a statistical document created by the government authorities which would represent a number of people holding Indian Citizenship legally. This record will provide with all the demographic details of the all the persons who were found eligible under the provisions of Citizenship Act, 1955 at the time of preparation of this document. It was prepared for the very first time after 1951 census and has not been updated since until 2015 and afterwards. According to the provisions of 1955 Act any individual is a citizen of India who is born in it:

- (a) on or after 26-01-1950, but before the 01-07-1987;
- (b) on or after the 01-07-1987, but prior to the implementation of the CAA, 2003 and one of his/her parents were Indian that is one of them held Indian Citizenship at the time of their birth;

⁸ This is being done on the similar grounds when in 1970s and 1980s. Srilankan Tamil Hindus were given citizenship by India. On being criticized by the fact that Rohingya migrants were turned out and were declared a threat to the country then it is defended with an argument by the government that they being Muslims have other countries to seek refuge in.

(c) on or after the implementation of the CAA, 2003, where-

(i) both of whose parents held Indian Citizenship; or

(ii) one of whose parents held Indian Citizenship and other was not a migrant living in India illegally, shall hold Indian Citizenship by the virtue of his/her birth alone.

With respect to the Assam situation, the Ministry of Home Affairs had to create the NRC to distinguish citizens from illegal immigrants because of high number of immigrants from Bangladesh (formerly East Pakistan). In 1951.

The State of Assam has certain the historical underpinnings that have led the people of Assam to advocate and even protest for this exercise because they constantly feel robbed of their cultural and living rights by the illegal immigrants which come from Bangladesh and which till now constitutes. As per the data available, at least one-sixth of the whole population of the State. Assam is the only Indian State that has a NRC, a register that contains the list of all Indian citizens in Assam bearing their name, address and photograph.

In 1985 the Assam Accord⁹ was signed, which mandated a second NRC. The Assam Accord ended the six-year-long Assam Agitation, responsible for the large inflow of migrants during the Indo-Pakistani War of 1971.

The Assam Accord divided migrants into three groups: 1951-61; 1961-71 and after 1971.

- Foreigners who entered Assam between 1951 and 1961 were to be given full citizenship, including the right to vote.
- Entrants between 1961 and 1971 were to be denied voting rights for ten years but would enjoy all other rights of citizenship.
- Entrants after 24 March 1971 were to be deported.

There has been a long history of “sons of the soil” problems against the people migrating from Bangladesh — who have flooded here in these parts of India — provides historical underpinning of the Assamese protests. These long frictions are the fuel which made these confrontations between two fronts of migrants and natives, and this has further lead to a Civil war in 2011¹⁰.

Updating of NRC has been continued in Assam for the official reason of saving the cultural uniqueness. Assam Public Works and Assam Sanmilita Mahasangha & Ors went to the Supreme Court in 2013¹¹ by the way of a writ

⁹ Assam – The Accord, The Discord' review - The Hindu. *available at* <<https://www.thehindu.com>>. 31-Aug-2019. accessed on 16.8.21.

¹⁰ The whole process of conflicts and violence started when a Students Organization known as AASU demonstrated against the inflow of Muslim Migrants from Bangladesh, this whole resulted in constitution of ULFA which is a rebel group operating in Assam. Today, this retaliation is not only towards Bangladeshi Muslims but Hindus as well...M Sarma · 2015.A Study of Migration from Bangladesh to Assam, India and Its. *available at* <<https://digital.library.adelaide.edu.au/bitstream>> accessed on 16.8.21.

¹¹ *Assam Sanmilita Mahasangha & Ors v Union Of India & Ors* (2015) 3 SCC 1.

petition requesting the Court to order the removal of names of illegal migrants from the voters list of Assam. The court in return of the petition ordered in 2014 the updating of the National Register of Citizens, in accordance with the 1955 Citizenship Act and 2003 Citizenship Rules in whole of the State of Assam. The updating process started in 2015 and resulted in over 19 lakh people not making it to the final list.

In Assam, such exercise conducted in Assam with respect to State-wide implementation and preparation of NRC. As a result of this exercise in Assam, almost 19 Lakh individuals, out of almost 3.3 Crore individuals, did not find themselves in the final list which makes the failure rate to be about 6%.¹² Now applying this to the current estimated population of India which is projected to be almost 133.3 for the year 2019 where 6% means approximately 8%(7.99), hence almost 8 Crore people are most likely to fail to prove their origins and will be as a consequence be declared Illegal Migrants.¹³

This figure although a mere speculation cannot be ignored because Assam is comparatively a smaller state both in area and population and furthermore there are other states which share much larger borders with other countries than Assam. And as the history shows the impact of these practices are not just on the foreigners because even the members of the family of former Pres. Fakhruddin A. Ahmad failed the test more than one time and so was the case with Muhammad S. Ullah who is a renowned soldier who fought at Kargil and is a well decorated war hero, who was then put behind bars in May, 2019 when he was declared a foreigner by a Tribunal. Hence the conducting of this practice cannot be taken lightly at all. The Assamese Problem can be said to be the major factor in this concern. As The State of Assam have always been in news for the influx of Bangladeshi migrants (of any religion Hindu or Muslim). There has always been tension with native Assamese people complaining that such influx poses constant threat to their cultural and heritage uniqueness and also the loss of livelihood at the hands of the migrant population.¹⁴

1.3 CONSEQUENCES

Since the commencement of the CAA, 2019 a series of protests have unfolded throughout the country in which people have been killed, people have committed suicide and property has been damaged. Although most of it is just the result of unjustified havoc created by the lack of awareness among the poor and illiterate. It has been argued by the protesters of this legislation that the same is a discriminatory law and can be used to throw out Muslim migrants out of the country fairly easily if seen together with Pan-India NRC. The notion of Hindu Rashtra: has

¹² India Today Web Desk. New Delhi. August 31, 2019. *available at* <<https://www.indiatoday.in/india/story/assam-final-nrc-list-out->>>. accessed on 19.8.21.

¹³ *Ibid.*

¹⁴ As a result of this conflict many protests were held in which the student organization AASU took an active part and after negotiations with the government the solution came out in the form of NRC which is a measure suggested by the Government for weeding out the illegal migrants from Bangladesh.

led to formation of certain kind of uneasiness in the minds of the minority. Although, it doesn't seem to be so as the constitution has given due protection to the minority rights under article 25-30.¹⁵

The CAA 2019 amendment to the Citizenship Act nullifies this NRC process to a great extent especially for the Illegal Immigrants of Hindu religion. This Amendment provides that migrants who entered India Illegally before the date – 31-12-2014 and who belong to the Hindu, Sikh, Parsi, Buddhist, Christian or Jain religion shall be provided with Indian Citizenship. This provision makes acquiring citizenship fairly easy for the illegal immigrants who entered India decades ago and hence violates the promises made by the government to the Assamese people and further makes futile the exercise of preparation of NRC which was being conducted since 2015 in Assam.

The Exclusion of Muslims: Although all the Muslim population of India who are citizens of India will not be affected by this Amendment at all but on the other hand it is true that the Amended provision provides almost every minor religion prevalent in India but excludes Muslims. However, it is true that not being included in the provision does not mean that they'll be thrown out of the country and they can still apply for a long-term stay but this is nowhere near to acquiring the citizenship of the Country. The Combined Effect Of CAA And NRC: it is been feared that The Citizenship (Amendment) Act, 2019 and pan-India National Register Of Citizens may be used as a tool to throw out Muslim population out of the country. As, After seeing the outcome of the NRC exercise conducted in Assam recently where lakhs of legitimate Indian citizens did not make it to the final list due to the failure of not being able to show the required documents, it is being apprehensive that if such exercise is conducted all over the country lakhs more will not make it and combining it with the CAA the Muslim population who for some reason are not be able to produce the proper documents will be declared illegal immigrants and face legal proceedings and persecution. This to some extent seems farfetched at times.

1.4 CONCLUSION

There is a close relation between religion and politics because these are most certainly the two and the most important factor which acts as a catalyst in the 'social factor' executing the political will. As a general rule it has been seen that once a Government's general functioning policy is dominated by a religious ideology then it's growth, especially economic, slumps. Therefore, through the invention of the "Basic Structure Doctrine" in the Keshava Nanda Case,¹⁶ it has been upheld by the Supreme Court that Secularism is part of the basic structure of the Constitution of India. And it is. The ongoing debates and the protests with regard to the citizenship can be

¹⁵ Article 25 to 28 of the constitution of India guarantees the right of Freedom of religion. Article 29 and Articles 30 guarantee certain right to the minorities. Article 29 protects the interests of the minorities by making a provision that any citizen / section of citizens having a distinct language, script or culture have the right to conserve the same. Article 30 provides an absolute right to the minorities that they can establish their own linguistic and religious institutions and at the same time can also claim for grant-in-aid without any discrimination.

¹⁶ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225: Basic Structure broadly includes the sovereign, democratic and secular character of the polity, rule of law, independence of the judiciary, fundamental rights of citizens etc...

sorted out if the constitution is kept in the Centre as grund norm of all the laws made by the Parliament, wherein every section of the community residing in India is given access to all the ideals and provisions of our constitution. The bifurcation of Indian integrity on the basis of religion is absolutely against the spirit of secularism as envisaged in our Constitution.

