

TRAVERSING THE CITIZENSHIP AMENDMENT ACT, 2019 THROUGH THE CONSTITUTIONAL LENS

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Abstract: In this paper an attempt is made to analyse the constitutional validity of the Citizenship (Amendment) Act, 2019 (CAA) from the standpoint of Article 14, Article 19 and Article 21 of the Constitution of India. The Constitutional validity of the Act can be questioned on the grounds of it being an arbitrary and unreasonable classification that considers only certain minority communities, excluding the pathos of other adversely affected religious minorities. The amending act is against Article 19 by curbing the nation's dissent and prohibiting peaceful assembly of people who raise their voices against the Act. This amending Act of 2019 is violative of Right to life and personal liberty, which is enshrined in Article 21 of the Constitution Of India, as it denies basic human dignity to the religious minority communities who are excluded from the purview of the Act and are not entitled to seek citizenship of India in a manner similar to that provided for the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the countries of Bangladesh, Afghanistan, Pakistan. This paper seeks to analyse the citizenship amendment act and draw an analogy to the condition existing in India to that advocated by eminent jurists in their literary works, by jurisprudential analysis. For the same purpose the works of eminent jurists like Thomas Hobbes and Cicero were taken into considerations. The contemporariness of Hobbes's Leviathan and the importance of the consent of the masses is relevant when a law affecting their rights and liberties is being passed. Cicero's distinction between 'true good' and 'apparent good' and how the present amendment is unable to achieve true good and failed to satisfy the needs of all the religious communities. Citizenship law defines a country's political and constitutional identity. Laying down rules that determine membership in our political community only on the basis of one's religious beliefs completely violates this principle.

Index Terms- Arbitrary, Citizenship, Constitution, Discrimination, Equality, Minorities.

I. INTRODUCTION

Indian Government strategically followed the same discriminatory policies which the Trump Administration's did by their discriminatory immigration ban in January 2017. The amendments which are brought by the Indian Government to the Citizenship Act 1955 introduced in Parliament in July 2016 and got the presidential assent on 12th December, 2019 is violative of international as well as the national laws.

The States have a right in determination of its jurisdiction and to grant citizenship but it is not absolute and it is guided by certain International principals. Factors limiting the state's power are international obligation, sovereignty of other states and also various other human rights granted to every person in the world. Article 26¹ of the ICCPR, for instance, guarantees to all persons equal and effective protection against discrimination on multiple grounds including religion. The UDHR in Article 7 similarly

¹ All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

guarantees to everyone equal protection of laws. In particular, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief enshrines religion-based non-discrimination obligations.

The preamble of the Act which states that “many persons of Indian origin including persons belonging to the aforesaid minority communities...” this means that it is not concerned with all religious minorities in all neighbouring countries. The government’s intent is quite clear and arbitrary. Many communities are excluded from the ambit of the bill even though they are also subject to religious oppression in neighbouring states such as Muslim Rohingyas in Buddhist-majority Myanmar, Buddhist Tibetans, and Muslim Uighurs in China. The Act has faced criticism for being in violation of Article 14 of the Indian Constitution that guarantees the right to equality to all “persons”, as it provides differential treatment to illegal migrants based on their religion. The amendment also violates India’s non-discrimination obligation under public international law, especially the International Covenant on Civil and Political Rights (“ICCPR”). Thereby, these would also be inconsistent with Article 51(c) of the Constitution of India, which requires India to respect its international obligations.

After India’s Independence and the whole partition fiasco several citizenship related cases were filed and were decided by the High courts and the Supreme Court between the year 1951-2009. Due to the partition of the country, the most debatable and controversial topic was the citizenships. The framers of the constitution followed ‘national-civic’ rather than following ‘national-ethnic’ for understanding of citizenship. The Constitution of India under Part II (Articles 5-11) adopted jus soli i.e. citizenship by birthplace. The Citizenship Act 1955 incorporated both jus soli as well as jus sanguinis (citizenship by descent).²

In 1985 due to Assam accord amendment was brought in naturalisation provisions which stated three fold classification for granting citizenship firstly, that people who migrated before 1966 would be considered citizens and secondly those who migrated between 1966 and 1971 eventually have to wait for 10 years before becoming eligible for citizenships; thirdly those who migrated after 1971 would be considered as illegal immigrants.³ This might seem secular classification but it was done in the backdrop of general understanding that Bangladeshi migrants were mostly Muslim. The most anti-secular step was taken by the government during 2004 where the third classification was interpreted in different manner for minority Hindus with Pakistani citizenship and subsequently it was done away with for them. The seeds of religion-based classification of granting citizenship were first sown this time and become the basis of the present act.

The proposed standard of granting citizenship formulated by the drafters of the constitution was secular and not based on any religious lines. It was based on jus soli or jus sanguine which was clear, unambiguous and not arbitrary unlike the naturalization process. The naturalization process is ambiguous because non-Muslims will be eligible for citizenship by naturalisation, and that too after 6 years of residence, compared to 11 years for other Muslims migrants.⁴ The Inter-American Court of Human Rights in its advisory opinion on the Costa Rica Naturalization case⁵ noted that differentiation might be permissible if based on substantial

²NIRAJA GOPAL JAYAL, *The 2016 Citizenship Amendment Bill consolidates a trend towards a majoritarian and exclusionary concept of Indian citizenship*, The Caravan (20th Feb, 2017), available at <https://caravanmagazine.in/vantage/2016-citizenship-amendment-bill-majoritarian-exclusionary> last seen on 28/12/2019 .

³ *Assam Accord*, Economic and Political Weekly, Vol. 20, No. 33 Economic and Political Weekly Stable, pp. 1369, 1370, (Aug. 17, 1985) available at <https://www.jstor.org/stable/4374698>, last seen on 30/12/2019.

⁴ Nivedita Menon, *State/Gender/Community: Citizenship in Contemporary India*, Economic and Political Weekly, Vol. 33, No. 5, Economic and Political Weekly Stable, pp. PE3-PE10, (1998) available at <https://www.jstor.org/stable/4406347>, last seen on 30/12/2019.

⁵ Advisory Opinion OC-4/ 84 of 19 January 1984, Series A No 4, para 14, [57]

factual differences, but the aims cannot be 'arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind'.

India being a signatory and acceded to the ICCPR cannot discriminate on grounds of religion while granting citizenship by naturalization. Thus, it can be seen that it is a clear violation of India's obligation under the international regime. The meaning of term discrimination under the ICCPR states that "any distinction, exclusion, restriction or preference" which is based on any of the enumerated grounds (including religion) "which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms". Thus, in the recent act it is clearly indicated that preferential treatment is being given to the six identified religious communities and the others left out are being granted the differential treatment. This classification purely on the basis of class is not reasonable and arbitrary and against the international norms and standards.

II. JURISPRUDENTIAL ANALYSIS OF THE ACT

Thomas Hobbes's Leviathan has always aroused strong feelings and even though it was written in April 1651 its relevant in today's world and the recent political trends is worldwide. The contemporariness of the Hobbes's masterpiece i.e. leviathan is quite dramatic because it depicts the extraordinarily heterodox vision of the role of religion in human society. Leviathan is a Hebrew term which means "sea-monster" and it shows a body formed of multitudinous citizens and surmounted by a king's head.⁶ According to Hobbes, there exists a state of nature in which men are unruly and violent. Thus, by the social contract where the citizens abandon all their rights to the sovereign and in return the sovereign provides them with security is a win-win contract for both parties. The sovereign power is granted absolute authority for securing the common wealth through common defence.

In the present situation Hobbes's leviathan has some contemporariness and relevance but certain aspects will be proved to be infectious in the current scenario. The social contract is important in present situation also because if it extinguishes then it will be a situation of anarchy and chaos as it is being seen in states like Somalia where the government exists in name only and have lost all the authority.

In his work Leviathan, Hobbes makes references to the concept of "body politic" and to the metaphor of political disease and those social, economic or political issues which could have troubled the functioning of the Commonwealth, for which Hobbes uses the term "infirmities".⁷ According to him the state is an artificial being and the agreement i.e. social contract led to the creation of the sovereign is by a covenant which itself is artificial. He also stressed that due to the artificial nature of the state it can change the civil law without the consent of the subjects and also against their will. Hobbes in his work stated that the best way that a sovereign can govern the citizens is by excluding the interference of the church in the state politics. Therefore, it can be inferred that leviathan was a secular creature and it did not discriminate between its subjects and it protected the security of all the common wealth as whole. The recent amendment to the Citizenship (Amendment) Act, 2019 was majorly brought in to prevent illegal immigration and to protect the security of the people. Hobbes's sovereign did not discriminate between people based on religion and granted protection to them all but the present amendment discriminated based on religion and refused to grant citizenship and the security and protection which a citizen should get.

⁶ NOEL MALCOLM, *Leviathan*, The English Historical Review, Vol. 128, Oxford University Press Stable, pp. 1517-1524, (2013) available at <https://www.jstor.org/stable/24473896> last seen on 30/12/2019.

⁷ John M. Orbell and Brent M. Rutherford, *Can Leviathan Make the Life of Man Less Solitary, Poor, Nasty, Brutish and Short*, British Journal of Political Science, Vol. 3, No. 4, Cambridge University Press Stable, pp. 383-, 407, (1973) available at <https://www.jstor.org/stable/193469> last seen on 30/12/2019.

Democracy is the most important aspects of a state and the voice, freedom and their consent in the laws affecting them is very relevant.⁸ The contrary opinion of Hobbes stated that sovereign has the power to make laws without the consent of the common-wealth is not appropriate in the current situation all around the world. Granting absolute power to the sovereign will corrupt it and will be detrimental to the rights and well-being of the common-wealth. In the Indian situation it is seen that the recent controversial act which was passed by the parliament Citizenship (Amendment) Act, 2019 is being challenged by the masses because of it being ultra vires to the constitution and majorly violating Article 14 of the constitution. The act is very discriminatory in nature and it was unable to protect the minority rights of the certain community. The basis in which were it has considered person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan is arbitrary and lacks reasonable classification. The framer of the Indian constitution considered India as a secular country where every religion has their own freedom and voice and say in the democratic setup. The essence of democracy in India is also being fettered and the people are unable to voice their opinion and right to dissent is an important part of a democratic setup and ensures good governance.

Marcus Tullius Cicero rightly distinguished between ‘apparent good’ and ‘true good’. According to him the aim of the society should be to pursue good and perfection and what should be avoided is evil. Human actions which are not directed towards pursuit of perfection and action which seeks pleasure which involves moral guilt is an apparent good. It can also be explained as when an action individual, political, societal only concerns itself with the happiness and well-being of a particular community and not for the wellbeing of an entire society as a whole. On the other hand, True good is that were the interest and consent of all the people concerned is taken into consideration and it results in the wellbeing of the whole community. In this context the recent amendment has not been able to attain the ‘true good’ as it has failed to take into consideration certain religious communities without proper justification. The discrimination between Muslims and non-Muslims in arbitrary and unreasonable. Since independence India has always sustained secularism as a basic feature of the constitution and the right granted to every person to follow their faith and religion was one of them. Due to this amendment it is being curtailed and infringed and has proved to be just an apparent good and not a true good.

III. CONSTITUTIONAL VALIDITY OF CITIZENSHIP AMENDMENT ACT

ARTICLE 14

The Constitution of India was given to the individuals of the nation by themselves in accordance with the social contract theory to end the state of chaos that was in existence during the reign of the tyrant British Rule. The Constitution attempts to promote equality before law and equal protection of laws to all individuals be it citizens or non-citizens by virtue of Article 14 of Indian Constitution. This Article has a negative and positive connotation in the sense that the phrase ‘equality before the law’ is a declaration of equality of all persons within the territory of India and has a negative connotation in a manner that it prevents any kind of special privilege to be meted out to any individual. While the phrase - ‘equal protection of laws’ seeks positive action on the part of State to promote equal treatment to all individuals in like circumstances.

This doctrine of equality before law enunciated in Article 14 of the Constitution of India is a necessary corollary of Rule of Law which pervades the Constitution⁹. It bars discrimination and prohibits laws that are discriminatory in nature and which attempt to strike at the roots of Right to Equality.

In the case of Union of India v. International Trading Corporation¹⁰, the Hon’ble Court held -

⁸ Patrick T. Giamario, *The Laughing Body Politic: The Counter-Sovereign Politics of Hobbes's Theory of Laughter*, Political Research Quarterly, Vol. 69, available at <https://www.jstor.org/stable/44018012> last seen on 30/12/2019.

⁹ Ashutosh Gupta v State of Rajasthan (2002) 4 SCC 34.

“It is now firmly established that Article 14 strikes at arbitrary state action, both administrative and legislative. There has been a significant shift towards equating arbitrary or unreasonableness as the yardstick by which administrative as well as legislative actions are to be judged. A basic and obvious test to be applied in cases where administrative action is attacked as arbitrary is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.”

While Article 14 forbids class legislation, it doesn't forbid reasonable classification of persons, transactions for the aid and benefit of Legislature. It enables reasonable classification which is based on an intelligible differentia and satisfies the needs of the society. It detests any kind of classification that is arbitrary and is unreasonable in the eyes of law.

In the case of *EP Royappa v. State of Tamil Nadu*¹¹, the Hon'ble Court held that equality is a dynamic principle consisting of many aspects and dimensions to it and any or all of those aspects cannot be cribbed, cabined and confined within the traditional and doctrinate limits. From the positivist point of view, equality is antithesis to arbitrariness.

The Hon'ble court in the case of *Maneka Gandhi v Union of India*¹², observed that Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades under Article 14 is like a breathing omnipresence.

Whenever there arises a situation where the validity of a legislation is challenged on the ground of violation of Article 14, each case has to be examined independently in the context of Article 14, and not by applying any general rule. The criteria to determine the reasonableness of a particular classification includes-

- i. The Classification shall be based on an intelligible differentia involving a real and substantial distinction which distinguishes persons or things grouped together as distinct and separate from the others in the same class,
- ii. The differentia which is adopted as the basis for classification must have a reasonable nexus to the objective that is being attained by such a classification.

In another case of *Dhirendra Pandua v. State of Orissa*¹³ the court held –

“27. It is well settled that Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. Nonetheless, that classification should not be arbitrary but must rest upon some real and substantial distinction bearing reasonable and just relation to the things in respect of which the classification is made.”

The recently enacted Citizenship Amendment Act of 2019 (CAA, 2019) has created a lot of furore, immediately after being passed by both the Houses of the Parliament and after receiving the assent of the President. While this Act is perceived as an important step by the Government in power, in curbing and restricting the illegal immigrants from acquiring citizenship of India and plundering its wealth and resources, it has been highly condemned by the Opposition Parties as a deliberate attempt by the Government to strike at the secular facet of the Constitution of India and promote a Hindu-Nation. Keeping aside all the political arguments that have time and again been debated by the Representatives of the Nation, we attempt to determine the

¹⁰ *Union of India v. International Trading Corporation* (2003) 5 SCC 437

¹¹ *EP Royappa v. State of Tamil Nadu* (1974) 3 SCC 3.

¹² *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

¹³ *Dhirendra Pandua v. State of Orissa*, (2008) 17 SCC 311.

constitutionality of the Act with respect to the Fundamental Rights of the Citizens of the country enumerated under Part III of the Constitution.

This Act is primarily in defiance to Article 14 of the Constitution which in a layman's terms attempt to promote Right to Equality among the individuals of the Nation be it citizens or non-citizens. It has amended Section 2 of the Citizenship Act of 1955 by inserting sub clause (b) to clause (1) of the section. This Section has been discriminatory in the sense that it has denied the inclusion of Muslim immigrants in comparison to other religious minority communities such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the countries of Bangladesh, Afghanistan, Pakistan, who have been by means of the Act, allowed to secure the citizenship of the country even if they crossed the borders and entered the nation without any valid documents for citizenship, prior to the 31st day of December, 2014. While most of the supporters of the Act might suggest that the inclusion of Muslim immigrants is reasonable in the sense that the Countries of Bangladesh, Afghanistan, Pakistan doesn't have Muslims as religious minorities who might be faced with the imminent danger to flee from their own homeland and seek refugee in India, however this argument is a single dimensional one. The classification which is made by the Parliamentarians to just include the religious minorities of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the countries of Bangladesh, Afghanistan, Pakistan is an unreasonable and faulty classification as it fails to include the other minorities such as Jews of Afghanistan, Rohingyas of Myanmar, the Tamils of Sri Lanka and Ahmadiyyas of Pakistan who equally face a threat from the countries that are neighbours of India and to whom citizenship should be extended for the purpose of safety and security of these communities. The Act has undoubtedly relied on a religion-based classification and has been discriminative towards the Muslim community by excluding them from the list of the individuals to whom citizenship shall be extended despite the absence of valid set of documents. This is against Article 14 of the Constitution as any legislation which fails to stand the test of reasonableness and absence of arbitrariness is violative of Article 14 of the Constitution of India.

This act has additionally failed to distinguish between the meaning of a 'migrant' and 'refugee' which has in turn diluted the nexus between the classification and the objective being sought by the act. The amended Section 2 of the Act, attempts to promote citizenship to the migrants who were forced to flee from their countries out of fear of persecution by the majority communities of their respective nations. It is to be noted here that, there exists a significant difference in the meaning of the terms - 'migrant' and 'refugee'. While Migrants choose to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding work, or in some cases for education, family reunion, or other reasons¹⁴, Refugees are persons fleeing armed conflict or persecution¹⁵. The legislators have failed to strike a distinction between the two terms and have used migrants to refer to refugees under the amended Section 2 of the Act as the migrants cannot be at the receiving end of a religious persecution. While the Indian government refused to grant refugee to the Rohingyas of Myanmar despite pressing problems of genocide and persecution being hurled at them, the decision of granting citizenship to migrants who hail from certain categories of religious communities despite their inability to show valid legal documents is unreasonable and is not based on any intelligible differentia.

The earmarking of 31st December, 2014 as the date to grant citizenship to the religious minorities of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the countries of Bangladesh, Afghanistan, Pakistan who have crossed the borders and entered the nation without any valid legal documents before such date is arbitrary and has no grounds for selecting such a date.

In addition to this, the reduction of tenure from eleven to six years for granting a certificate of registration to those who have resided or been in service of the government for the purpose of acquiring citizenship of India under clause (d) of the Third

¹⁴ UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right? , UNHRC <https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html> last seen on 19/12/2019.

¹⁵ Ibid.

Schedule of the Citizenship Act, 1955 is unreasonable and arbitrary and is based on the whims and fancies of the Government without any basis to the objective of prohibiting illegal migrants from acquiring citizenship of the country. This amending act has failed to expand the objective of the Citizenship Act of 1955 and has in turn been an instrument for discriminating against certain religious communities.

This makes the Citizenship Amendment Act of 2019, violative of Article 14 of the Constitution and therein turn provides a ground for declaring the act as unconstitutional and against public morality.

ARTICLE 19(a) and 19(b) BY THE CAA,2019

The CAA, 2019 has led to nation-wide commotion and fuss owing to the inclusion of unreasonable and capricious clauses that has not only led to the disintegration of the secular fabric of the Constitution of India by excluding Muslims, but has also affected the fundamental freedoms of all of those individuals who have been trying to mobilize themselves to uphold and stand for the cause of other religious minorities that have been significantly ignored by the Act. The imposition of Section 144 of the Code of Criminal Procedure (CrPC), 1908 by the State Governments has in affected the Fundamental Right of Freedom of Speech and Expression under Article 19(1)a and Right to assemble peacefully and without arms under Article 19(1)b of the Constitution Of India. One may argue that the imposition of Section 144 is the need of the hour in the interests of public order and security of the state and is reasonable restriction under Article 19(2) of the Constitution, however flouting the powers of the State to curb dissent and debar people from raising their voices against arbitrary legislation and action is nothing but a facade in the name of protecting security of the state and maintaining public order.

In the case of *Pathumma v State of Kerala*¹⁶, the Supreme Court has while adjudicating the question of reasonableness of restrictions under Article 19(2) to 19(6) had held that in interpreting the constitutional provision, the social setting of the country should be kept in mind so as to show a complete consciousness and deep awareness of the growing requirements of the society , the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the legislature in its wisdom through beneficial legislation seeks to solve.

Emphasizing on the importance of dissent and need for Freedom of Speech and Expression, the Supreme Court had in the case of *Maneka Gandhi v Union of India*¹⁷ stated -

Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people, by the people is it obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.

In the present situation, the citizens have been stopped from indulging in general discussion and expressing their dissent by imposing restrictions such as ban on the access and usage of Internet and imposition of section 144 of CrPC. These measures are arbitrary and fail to stand the test of reasonableness as there is no nexus between the restrictions and the likelihood of Public disorder. The usage of Section 144 of CrPC shall be restricted to situations relating to emergency when it is considered that the situation is of a volatile nature and can lead to violence¹⁸. However, in several instances the Government has imposed Section 144 even when people have assembled without arms for a peaceful protest against the enactment. This just goes in to reinstate that the government has exaggerated the situation and has unnecessarily banned the internet and imposed other restrictions as a precautionary measure for preventing violence even when the public had no intention of causing violence and ruckus in and around the country.

¹⁶ *Pathumma v State of Kerala* (1978) 2 SCC 1.

¹⁷ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

¹⁸ *Madhu Limaye v Sub-Divisional Magistrate Monghyr* (1970) 3 SCC 746.

ARTICLE 21

Article 21 of the Constitution of India has been instrumental in assuring every person a right to life and personal liberty. The phrase - 'right to life' in Article 21 has been interpreted to mean not only physical existence but also the quality of life.

Article 21 guarantees enjoyment of life by all citizens of this country with dignity, viewing this human right in terms of human development, self-determination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21.¹⁹

The CAA, 2019 which fails to come with an effective date in the Act itself, mentioning the date from which it shall be in force is violative of Article 21 of the Constitution Of India as it denies the religious minorities communities other than the Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the countries of Bangladesh, Afghanistan, Pakistan who have crossed the borders and entered the nation without any valid legal documents, the right to life and personal liberty by denying them from acquiring citizenship of India in a manner contemplated for the other religious minorities. The classification provided in the Act is solely based on religion and thereby takes away the most basic right of life for a person, irrespective of the fact that this religion is bestowed to him by his birth and is nothing of his own acts and conduct. The State by inadvertently discriminating on the basis of religion infringes the right of a person to live with dignity and is violative of Article 21 of the Constitution of India.

In the case of Francis Coralie Mullin v. The Union Territory of Delhi²⁰, the Hon'ble Court had held –

“6. The right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. ... Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to life and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.”

IV. CONCLUSION & RECOMMENDATIONS

The central government have used the defence that the act will be beneficial to those religious minorities who have escaped persecution in Muslim-majority nations. The Opposition has accused the Government of creating a Hindu-Rashtra, which is outrightly disposed against the Muslim Religious community and considers them to be the root cause for terrorism and infiltration activities in India. But if we are to analyse the pros and cons of this piece of legislation, the arbitrary and unreasonable classification and the importance given to certain distinct communities hailing from certain predetermined and specific countries outweigh any kind of good that could have been generated because of the implementation of the Act in India. Undoubtedly, this act has failed to achieve its objectives because it differentiates between religious minorities and also between neighbouring countries. For example, Shias face discrimination in Pakistan; Hindu and Christian Tamils in neighbouring Sri Lanka, yet all of these communities have not been taken into consideration while fixing certain specific religious minorities.

All of this goes on to indicate the malicious intent of the Government behind the Act, and that establishment of an egalitarian state by the present form of Government in India is nothing but a bare faced lie, which has almost zero chances of being fulfilled at all. The recent government is trying to attack the secular character of the nation which has been accepted since Independence. Israel and India are two different nations which had two different ideologies. India since its Independence was adamant in having a

¹⁹ National Legal Services Authority v Union of India (2014) 5 SCC 438.

²⁰ Francis Coralie Mullin v The Union Territory of Delhi (1981) 1 SCC 608.

secular character and no religious based discrimination on the other hand Israel wanted to make a nation for particularly Jews and accordingly have religious discrimination. During India's partition also, Pakistan was clear that it would be an Islamic state and majority population would be Muslims but India on the other hand kept its secular character alive.

Considering India's past, Government's step towards the act is quite arbitrary and is against the very concept of equality. While legislations, being the instrument of governance must be in all its form secular and must treat all and every religion alike without any unreasonable distinction, this Act is a clear cut example of how religion is used as a weapon in the hands of the ones in power to act in an extremely callous and arbitrary manner, breaking the reigns of reason and logic while exercising important functions and power by the Government.

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