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“THE CITIZENSHIP (AMENDMENT) ACT, 2019.”

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I. ABSTRACT:

A Bill was presented in the Parliament by the *Hon'ble Home Minister of India, Mr. Amit Shah*, related to amendment in the *Citizenship Act, 1955*. The six religious minorities except for Muslims i.e., *Hindu, Sikh, Parsi, Jain, Buddhist and Christian*, who fled persecution from *Pakistan, Bangladesh and Afghanistan* before *December 31, 2014*, will be given Indian citizenship according to *Citizenship Amendment Bill, 2019*. The amendment has been widely criticized by the opposition parties as it is discriminating on the basis of religion by excluding Muslims. After so many protests in the resistance of the Bill, it became the Act by receiving the President's approval on *10th of December, 2019* following a slandering debate in the Parliament.

When Rajya Sabha took up the Bill since when it was passed by the Lok Sabha, Assam has been struggling in the agony of violence and the capital of India and many other cities have been going through many curfews due to which the Army is rolling across many towns. The opposition parties ruling in *Kerala, Punjab and West Bengal* denied to implement the new Citizenship Law in their respective States and legal issues have been made in the Supreme Court. Legal experts and opposition leaders have argued that it violates the letter and the spirit of the Constitution of India as it violates the conditions under Article 14 of Indian Constitution on the basis of religion by excluding Muslims and including rest non-Muslim

minorities. But on this, *Amit Shah* said that this bill is for those people who are living a wretchedly unhappy life. There has been an almost 20 per cent decline each in the population of religious minorities in both *Pakistan and Bangladesh*. Either they were forced to change their religion or killed or they ran from their respective countries to India for shelter to save themselves and their religion. He also said that there are provisions in the CAB to preserve the rights of Northeastern States, language, culture, and social identity provisions.

II. INTRODUCTION:

All those who are residing within the territory of India, all the residents of India can be broadly classified in the following categories, either they are citizens or they are aliens.

1. **Citizens:** There is a symbiotic relationship between State and citizens where state confers certain privileges, certain benefits, certain rights on citizens and in turn citizens also have duties and obligations towards the state. Only the citizens have the right to vote, can contest elections and are eligible for government jobs.
2. **Aliens:** An alien is a person who is not a citizen of India or a foreigner. Alien can further be classified into two categories:
 - **Friendly Alien:** Citizens of those countries which share friendly relations with India.
 - **Enemy Alien:** Citizens of those countries with which India is at war.

There are certain fundamental rights which are available to both citizens as well as aliens except these five fundamental rights, i.e., *Article 15, Article 16, Article 19, Article 29* and *Article 30*.

We can also call the aliens as migrants. This term '*Migrants*' can further be classified as '*legal*' or '*illegal migrants*'.

1. **Legal Migrant:** When a citizen of any other country enters into India with legal VISA provided to him for the purpose of education, hospitalization, tourism, economy, etc. then he is a legal migrant.

- I. **Illegal Migrant:** There are two definitions of illegal migrants: a) One who enters into India on a legal document or *VISA* but that *VISA* is valid for 2 or 3 months but they are overstaying in India than the period mentioned in the *VISA*. b) One who enters into India without any *VISA* or legal documents and sneaks into India illegally, are illegal migrants.

Government of India can categorize some of the illegal migrants as Refugees who are illegally entering into India, illegally staying in India and the government gives them the status of refugee and they will not be deported.

III. WHO IS A REFUGEE?

- A refugee is a person who has the fear of persecution because of his or her race, religion, nationality, political opinion or membership in a particular social group and due to this fear persecution, war or violence he or she is forced to flee from their respective country.
- The two-third population of all the refugees worldwide came to India from five countries i.e., *Syria, Afghanistan, South Sudan, Myanmar and Somalia*.

IV. THE 1951 REFUGEE CONVENTION:

- One of the main international instruments of refugee law is the 1951 Geneva Convention. The Convention clearly tells that who a refugee is and what kind of legal protection they have, other assistance and social rights he or she should receive from the countries who have signed the documents. The primary objective of this convention is to protect the Europeans aftermath of the Second World War. As the problem of displacement spread around the world, another document, the 1967 Protocol expanded the scope of the convention.
- India has neither signed the 1951 Refugee Convention nor the additional protocol of the year 1967.

V. WHO IS A CITIZEN?

The country was partitioned unfortunately on the grounds of religion. So, in 1950 we had to be absolutely sure about who the Indian citizens are and who not the Indian citizens are. That's why, Part II of the Indian Constitution specifically deals with Citizenship i.e., Article 5-11 (provisions related to citizenship). Article 11 of the Indian Constitution gives unfractured power to the Parliament and through this law, they can regulate all matters related to this citizenship.

VI. WAYS OF ACQUIRING INDIAN CITIZENSHIP:

The Indian Citizenship can be acquired in the following ways:

1. *Citizenship by Birth¹ (Section 3 of the Indian Citizenship Act, 1955):* A child born on the soil of India is an Indian citizen, provided;
 - *If both the parents are Indian, or*
 - *If one of the parents is an Indian and the other is not an illegal migrant.*
2. *Citizenship by Descent² (Section 4 of the Indian Citizenship Act, 1955):* A child born outside the country can also become a citizen of India by Descent, provided;
 - *If both the parents are Indians, or*
 - *One of the parents is an Indian.*
3. *Citizenship by Registration³ (Section 5 of Indian Citizenship Act, 1955):* A person who marries outside the country can acquire Indian Citizenship when his or her spouse has stayed in India for a period of 7 years.
4. *Citizenship by the acquisition of foreign territory:* Puducherry was a French Colony. When India acquired Puducherry, the government was empowered to classify

¹ Subs. By Act 6 of 2004, s. 3, for section 3 (w.e.f. 3-12-2004)

² Subs. By s. 4, *ibid.*, for sub-section (1) (w.e.f. 3-12-2004)

³ Subs. By Act 6 of 2004

that all these people of the French Colony are now Indian citizens because we have acquired a foreign territory.

5. **Citizenship by Naturalisation (Section 6 of Indian Citizenship Act, 1955):** A person who is not born in India to an Indian parent, not born outside India to an Indian parent, not related to an Indian by the mechanism of marriage, the country has not been acquired by India, even then that person wants to apply for Indian citizenship, it can be done through a process called naturalization.

Conditions for Naturalisation:

A person should have to:

- *Renounce or give up previous citizenship,*
- *Stay in India for a period of 14 years and cumulatively should have stayed in India for a period of 11 years.*

One common thing about all these ways of acquiring citizenship is that one should not be an illegal migrant.

Jus soli means the law of soil and *jus sanguinis* means the law of blood. The former is followed in the United States which means a child born on U.S. land is the citizen of the U.S. regardless of whether the parent is U.S. national or not. The latter is followed in India which means no matter where you are born, if you link to India through blood relations then you are an Indian citizen.

VII. PROVISIONS RELATED TO CITIZENSHIP (AMENDMENT)

ACT, 2019:

Under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920, illegal migrants may be imprisoned or deported. The government of India issued two notification in the year 2015 and 2016, frugaling certain groups of illegal migrants from provisions of the 1946 and the 1920 Acts. The groups who arrived in India *on or before December 31, 2014*,

include Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. In these two notifications, it implies that these groups of illegal migrant will not be deported or imprisoned for being in India without a valid document.

The Bill amended the Act to provide that those minorities such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who are facing religious persecution in these respective Islamic countries will not be treated as illegal migrants. In order to get this benefit the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 by the central government, must have also been spared them.

The Bill says that on acquiring citizenship:

- *Such a person can be deemed to be citizens of India from the date of their entry, and*
- *All legal proceedings against them going in foreign tribunals will be closed.*

VIII. THE CAA, 2019 ALSO CREATES SOME EXCEPTIONS:

The provisions of citizenship for illegal migrants added by the Bill, will not apply to:

- The Sixth Schedule of the Constitution which includes the tribal areas of Assam, Meghalaya, Mizoram or Tripura.
- The area under the inner line under the Bengal Eastern Frontier Regulation, 1873. The Inner Line Permit regulates visit of entering to Arunachal Pradesh, Mizoram and Nagaland, as well as extended to Manipur.
- The Bill further reduces the period of naturalisation for such group of persons from 11 years to 5 years.

The Inner Line Permit means if anyone wants to enter the ILP area, they need to take permission. It means CAA cannot be extended to ILP areas.

IX. GROUNDS FOR CANCELLING OCI REGISTRATION:

The Act provides that the central government may cancel the registration of OCI on six grounds including:

- *Registration through fraud.*
- *Showing disaffection to the Constitution.*
- *Engaging with the enemy during war.*
- *If the necessity arises in the interest of sovereignty of India, security of the State or public interest.*
- *If within five years of registration the OCI has been sentenced to imprisonment for 2 years or more.*
- *If any law that is in force in the country has been violated by the OCI.*

X. NOT AGAINST MUSLIMS:

Muslims from Pakistan, Bangladesh and Afghanistan were not offered Indian citizenship under this Act because they are the Muslim- majority countries who do not face any religious persecution. They are free to practice their religion independently and even force other non-Muslims to follow their Muslim religion. Other non-Muslim population of these countries is in minority because of fear of religious persecution and this is the reason that they want to flee away to other neighbouring countries where they could stay freely. The BBC says that while these countries have in their provisions of Constitution that other non-Muslims are guaranteed rights including freedom to practice their religion. In reality, they have to face harsh discrimination and persecution regarding their religion.

According to the Economist, if the Indian government is concerned about religious discrimination, they should have included Ahmadiyyas and Hazaras. Ahmadiyyas have been harshly treated in Pakistan as heretics and Hazaras have been murdered in Afghanistan. India's minister of minority affairs, Shri Mukhtar Abbas Naqvi defended this exclusion by saying that India does not consider them as non-Muslims. According to Indian Law in a

landmark judgement in 1970, by the Kerala High Court, deemed Ahmadiyyas to be Muslims. Naqvi added that India has provided shelter to different persecuted sectors at different times and Ahmadiyyas will not be forgotten. They can still seek Indian Citizenship through naturalization (if they enter with valid travel documents).

With regards to *Balochi Refugees*, to be independent from Pakistan, Balochistan has struggled a lot and by including Balochis in CAA, can be treated as interference in Pakistan's internal affairs. Thus, CAA does not exclude Muslims from these countries to apply for Indian Citizenship. They can do so in the same way as others like Muslim actors or singers from Pakistan apply for citizenship.

It is important to know that even minorities cannot enter India directly without verification. They will have to fulfill conditions specified in the *Third Schedule* to Citizenship Act, 1955, namely, good character requirement and physical residence in India.

**XI. NOT A VIOLATION OF ARTICLE 14 AND ARTICLE 15 OF THE
INDIAN CONSTITUTION:**

Article 14 is a law to confer, not to deprive citizenship:

The CAA does not apply to Indian citizens right now. It has a primary motive of providing citizenship to those people of religious minorities from three Islamic countries who fled away because of fear of prosecution. It means CAA is to provide citizenship to those religious minorities of three Islamic countries and not to deprive Indian Citizenship. So, it is providing citizenship to other groups not depriving the Indians of their citizenship. In *David John Hopkins v. Union of India (1997)*⁴, it was held by the *Madras High Court* that the right of the Union to refuse citizenship is autocratic and shackled by equal protection under Article 14. Similarly in *Louis De Raedt v. Union of India (1991)*⁵, it was held by the Supreme Court

⁴ AIR 1997 Mad 366

⁵ 1991 AIR 1886, 1991 SCR (3) 149

of India that the right of a foreigner in India is captive to Article 21 and he cannot seek citizenship as a matter of right. Article 15 provides no discrimination on the grounds of caste, religion, race, gender, language, etc. But it applies to citizens of India only not to foreigners. So, according to this citizenship of Indians is not deprived.

XII. AMENDMENTS:

Citizenship Act, 1955 is amended by inserting certain provisos in Section 2 (b) (1) and named it as Citizenship (Amendment) Act, 2019:

- In this section it is mentioned that if any person belongs to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan has entered into India on or before the 31st December, 2014 and has been exempted by the government by section 3 (2)(c) of the Passport (Entry Into India) Act, 1920 shall not be treated as an illegal migrant.
- Section 6 B was inserted regarding naturalization with four new clauses.

Section 6 B (1):

A person referred to in section 2B(1) is granted a certificate of registration or naturalization by the central government or authority specified by the government.

Exemption of certain foreigners' classes:

In section 3 A persons who belong to a minority group of Bangladesh and Pakistan and who entered into India on or before 31 December, 2014, due to fear of persecution based on religion, are granted exclusion from the application of provisions of the Foreigners Act, 1946, if they enter into India without any valid document such as a passport or other travel documents or with valid documents including passport or other travel documents and validity of such documents has expired. Later, Afghanistan was added in 2016 to the list of countries of Bangladesh and Pakistan. Certain exemptions were included in Sec. 6 B (4) regarding Northeastern regions of India: Nothing provided in this section shall apply to tribal areas of

Assam, Meghalaya, Mizoram or Tripura as they are the part of Sixth Schedule of Indian Constitution which covers the "Inner Line Permit".

XIII: RELATIONSHIP TO NRC:

The *National Register of Citizens* is a record of all legal citizens which was started through an amendment in citizenship act in the 2003. Although, as of January 2020 it has only been implemented in the state of Assam but, in its 2019 election manifesto, BJP promised it to be implemented across the nation. The NRC enlists all the legal citizens of India so that those who are living in India without any documents (often called "illegal immigrants "or "foreigners") can be recognized. Due to this amendment, the government was successful in declaring foreigners to those who lacked sufficient documents.

Muslim leaders interpret and allege this CAA-NRC bill to be made to target the Muslims of the country and declaring them as foreigners as there are concerns that this act provides sheil to those Non-Muslims who claim that they were immigrants who fled from the atrocities of Afghanistan, Bangladesh or Pakistan, but the Muslims of the country has no such benefits. Although, these claims are possible only to those people of the Border States, those who show ethnic or cultural similarities to the country they claim to migrate from⁶.

XIV. CONCLUSION:

Here we conclude that according to Article 11 of Indian Constitution, the Parliament has the power to make or amend laws related to citizenship. But the opposition and other political parties assert that this Act introduced by the Government in December, 2019 violates some of the basic features of the constitution like secularism and equality. It may reach the doors of the Supreme Court where the Supreme Court will be the final interpreter. If it violates the constitutional features and goes ultra-wires it will be struck down, if it is not we will continue to have the law. But one thing that is most important is that the government has to create a

⁶ [https://en.wikipedia.org/wiki/Citizenship_\(Amendment\)_Act,_2019](https://en.wikipedia.org/wiki/Citizenship_(Amendment)_Act,_2019)

state of balance as this move done by the government involves other neighbouring countries too. Any embellish does not cost the goodwill earned by the Indian government over the period of time. India is a land of traditions and birthplace of religion. Moreover, India is known for its secular culture that religion should not be part of the affair of the State, so the principle of secularism is going forward.

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