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12 RMLNLUJ (2020) 220

Comment : Whether Citizenship Amendment Act, 2019 is Against the Concept of Secularism : An Appraisal

COMMENT : WHETHER CITIZENSHIP AMENDMENT ACT, 2019 IS AGAINST THE CONCEPT OF SECULARISM : AN APPRAISAL

by

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ABSTRACT

*"On 11th December 2019, the Citizenship (Amendment) Act, 2019 was passed by the Parliament of India. It amended the Citizenship Act, 1955 by providing a way to Indian citizenship for illegal migrants of Hindu, Sikh, Buddhist, Jain, Parsi and Christian religious minorities, who had persecuted from Pakistan, Bangladesh and Afghanistan before 31st December 2014. Muslims from these countries were not given such eligibility".<sup>1</sup>*

*Against this Amendment Act of 2019 for Citizenship Act, 1955, total 144 petitions were listed before Supreme Court that also comprised Justices S. Abdul Nazeer and Sanjiv Khanna. The Bench issued notice on at least 80 more fresh petitions filed for and against the CAA. It gave the government four weeks to file its response.*

*The contentions of the petitions filed were mainly emphatic on discriminatory approach of the amending Act because on the basis of religion-Muslims were discriminated. This Amendment Act of 2019 allowed illegal migrants from the six communities to be naturalised in five years' time to acquire Citizenship in India, while Muslim migrants would be required to prove their residency in India for at least 11 years for grant of Citizenship status in India by the process of naturalisation.*



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*Earlier religion was considered superior to state, because it played an important role in regulating actions of human beings, but presently, it must be kept in mind that the first role is being played by the state and as regards to the relation of individual with god, the domain is totally free. The religion has become subordinate in these days and the state is the main unit of the society. So there are number of important areas in which state interference in religious matter is permitted by the Constitution. But due to belonging from one religion and sufferings due to following of that, should not be discriminated, what happened in this case.*

*After this controversial amendment Act of 2019 nationwide protests started throughout the country, so many lost their lives, many sustained severe injuries in police atrocities to stop the demonstrations. Still it has to be decided whether this is constitutional or unconstitutional. Here researcher is trying to find out the rationale of this amending act.*

Keywords: Amendment-Citizenship Act, 1955, Constitutionality, Secularism, Naturalisation

## I. INTRODUCTION

Our Indian Parliament passed Citizenship Amendment Act, 2019, on 11<sup>th</sup> December, 2019 for making the amendment in Indian Citizenship Act, 1955 relating to grant of citizenship on the basis of Naturalisation (one mode and process required to acquire the Citizenship), to 6 religious minorities of illegal migrants-Hindu, Sikh, Buddhist, Jain, Parsi and Christians, who persecuted from Pakistan, Afghanistan and Bangladesh before 31<sup>st</sup> December, 2014. Muslims from those countries were not given such eligibility of grant of Citizenship to them. Strangely, in this Act first time religion had been directly used as a criterion for grant of citizenship under Indian law.

Under the 2019 amendment, migrants who had entered India by 31 December 2014, and had suffered "religious persecution or fear of religious persecution" in their country of origin were made eligible and they are entitled for grant of citizenship. The amendment also relaxed the residency requirement for naturalisation of these migrants from twelve years to six.

Certain Grounds of Criticism for this Amendment Act of 2019: As discriminating on the basis of religion, particularly for excluding Muslims, the amendment has received wide criticism. The Office of the United Nations High



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Commissioner for Human Rights (OHCHR) called it "fundamentally discriminatory". However it was added by it that while India's "goal of protecting persecuted groups is welcome", this should be accomplished through a non-discriminatory "robust national asylum system". The main concerns are that the Act would be used, along with the National Register of Citizens (NRC), to render many Muslim citizens stateless, as they may be unable to meet stringent birth or identity proof requirements. Objections were also raised for the exclusion of persecuted religious minorities from other regions such as Tibet, Sri Lanka and Myanmar. However in the justification of it the Indian Government says that Pakistan, Afghanistan and Bangladesh have Islam as their state religion and therefore Muslims are "unlikely to face religious persecution" there. However, certain Muslim groups, such as *Hazaras* and *Ahmadis*, have historically faced persecution in these countries.

Object of Citizenship Act of 1955 and present Amendment Act of 2019: Citizenship Act, 1955 is to provide for the acquisition and determination of Indian citizenship. This CAA, 2019 is on that mandate is making the provisions to determine the citizenship of 6 religions' followers but leaving the others followers for any different religions. When the minorities of these 3 neighbouring countries to India is being considered for the grant of Citizenship status by relaxing the requirements of period of Naturalisation in India for acquiring citizenship then it should be available to all the minorities who persecuted religiously.

Exclusion of persecuted Muslims from Pakistan, Bangladesh and Afghanistan and Indian Government's stand: Muslims from Pakistan, Bangladesh and Afghanistan are not provided the benefits of this relaxation to acquire the citizenship under the new amended Act. Critics have questioned the exclusion. The amendment is confined to the Muslim-majority neighbours of India like Pakistan, Afghanistan and Bangladesh and does not takes into consideration of the persecuted Muslims of those countries for the purpose of giving the benefit to them for reducing the time of naturalisation from 11 years to 5 years<sup>2</sup>. Some of the critics are of the opinion that if Indian Govt. was having the concerns for religious persecution, the *Ahmadiyyas* from Pakistan and the *Hazaras* from Afghanistan should have included in the list of beneficiaries under this amending Act because they were in the minority in

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such countries. India's minister of minority affairs, Mukhtar Abbas Naqvi defended the exclusion of the Ahmadiyyas by saying that India does not consider them as non-Muslims. A landmark 1970 judgment from the Kerala High Court deemed Ahmadiyyas to be Muslims by the Indian law.<sup>3</sup> Mukhtar Abbas Naqvi has



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assured in his statement that India has provided refuge to different persecuted sects at different times, and Ahmadiyyas will not be forgotten.

The Indian Government says that Muslims cannot be “treated as persecuted minorities” in these Muslim-majority countries. Pakistan, Afghanistan, and Bangladesh are Muslim-majority countries that have declared Islam their official state religion. Therefore, according to the Indian government, Muslims in these Islamic countries are “unlikely to face religious persecution”.

Impact of this Amendment Act to Muslims in India and its relation with NRC: Through 2003 Amendment in Indian Citizenship Act, 1955 it was mandated to register all the legal citizens in the National Register of Citizens (NRC). But till January 2020 only State of Assam has witnessed this exercise of registering in NRC and so many persons were declared illegal immigrants (or foreigners) and now GOI want to implement this exercise in whole of India.

The Muslim leaders are apprehended that Muslims will be facing difficulties in producing the documents and probably which will be considered insufficient and thereby will be treated potential foreigners and all non-Muslims will be getting the benefits under this Amendment Act of 2019. CAA and NRC joint combination is also their concerns.

Constitutionality of CAA, 2019 and Role of Supreme Court: After the passing of this amending Act, petitions filed in Supreme Court of India challenging the constitutionality of it. The petitioners argued that a law that welcomed “illegal migrants” into India selectively on the basis of their religion was against the principles of secularism, right to equality and dignity of life enshrined in the Basic Structure of the Constitution.

Indian Constitution and the notion of Secularism: Preamble of Indian Constitution says that India is a Secular State. The Preamble reflects the way of life adopted by Indian citizens for themselves after independence. In fact, every civilization has also been a mirror of way of life as well as reflecting movement of human spirit. Religion in each civilization has indicated about the faith of human beings in absolute values and a way of life to realize them. Because of following a particular religion no one should be deprived of any kind of benefits whatever is being given to others. If any law is being enacted for any other religion, then no religion should be left and here the persons of Muslim religion are being isolated.

Religion is a universal, permanent, pervasive and perennial institution and it has to play vital role in maintaining the social system as a whole. There are many religions in the world and the questions at this juncture is to be resolved to conclude that whatever is being done is in conformity to maintain the secularism principles-



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- Which religion should be followed by a person?
- Can a State compel its citizens to follow a particular religion?
- Can a State have its own religion?
- Can a Government of a State give preferential treatment to the followers of a particular religion?
  - And overall whether Constitution allows to make discrimination to any particular religion?

Here in this case of *Citizenship Amendment Act, 2019*, the Muslim Religion's followers have been discriminated. It is against the spirit of the Constitution because for Muslim community only, Indian Govt. provided not to grant the Citizenship to them on the criteria on which others are being benefitted through this Amending Act.

Domicile status and Citizenship status in respect of the 1955 and 2019 Act: Under the provisions of Citizenship Act, 1955 to acquire the citizenship by *Naturalisation* in our country of India, one is required to show at least 11 years residence in the territory of India.<sup>4</sup> Here through Amendment Act of 2019 this residency requirement of 11 years to get the certificate of Naturalisation by Central Govt. is being reduced to 5 years only to acquire the citizenship in India for these 6 religions 'community by considering them minority in 3 neighbouring countries.

Protests and demonstrations in oppose staged all over India and World against this Amending Act, 2019: Protests were held throughout India in the opposition to this Amendment. Many cities like Kolkata, Delhi, Hyderabad, Mumbai, Jaipur and Bengaluru witnessed huge protest against to this Amending Act of 2019. Even Rallies were held in some of Indian states to show disagreement for CAA-2019. States of west Bengal, Uttar Pradesh, Karnataka, Punjab, Kerala, Maharashtra and Bihar were the leading in it. Many lives were lost in Police firing and in other measures adopted by the forces to suppress the protestors.

Not only in India but in some abroad countries like Geneva, Berlin, Paris, Washington D.C., New York and Barcelona etc., protests were demonstrated against this and Indian protestors faced the brutality of the police force.

In India students from different Universities, IITs, IIMs, also staged demonstration in their protest to show disagreement. The police force used Batons and tear gas to suppress the agitations of students-protesters.



On 24 February 2020 violent clashes occurred during the North East Delhi riots in which seven people were killed and more than a hundred injured. I am of the opinion that due to Corona Virus (COVID 19) outbreak in our country such protest was ended otherwise it would have continued even today.

Object of 42nd Amendment (Constitutional) Act of 1976 regarding *Secularism* and sanctity of CAA-2019: The Forty Second (42<sup>nd</sup>) Constitutional Amendment Act, in 1976 added the '*secular*' word in the Preamble of the Constitution of India which denotes that there will be no religion of the Nation, but equal respect will be given to all the religions. The other notion of this Concept is that — No discrimination will be done with any religion's followers while formulating any policy. But here in present case the discrimination is being done with the followers of other than 6 religious minorities of 3 neighbouring countries to India.

Article 25/26 and 29/30 of Constitution of India and CAA-2019: Under the

Indian Constitution some of the rights are guaranteed in Part-III in the form of freedoms. Articles 25 and 26 specifically provides the right of Freedom of religion that anyone can profess, practise and propagate religion freely and manage the religious affairs. But this very CAA-2019 is a kind of obstruction for other religions' followers to follow because they will be bound to convert themselves in any other religion to get the kind of benefit whatever is being given by the Govt. of India.

Likewise Articles 29 and 30 covers the Cultural and Educational Rights of the minorities of any section and in any way not in support of this Citizenship Amendment Act, 2019 because it restricts to certain 6 religions in India whenever they will be acquiring citizenship in India by naturalisation process.

## II. CONCLUSION

After looking into the matter, it seems that Muslims are being discriminated by this particular Amendment Act, 2019 to bring the changes of Citizenship Act of 1955. Because the other religious persons are to be given Citizen status fulfilling criteria of time frame of 31<sup>st</sup> Dec, 2014 etc. but Muslims from these 3 neighbouring countries who came in India through religious persecution will not get citizenship and this will be concluded as discrimination against them.

Supreme Court should have taken this at priority and decide the validity of this Amendment Act. Because huge no. of lives lost due to protest of this Act in question. It was argued by the petitioners that the illegal migrants of these 3 countries are being given benefit to acquire the citizenship on selective basis because only six religions' followers will get the benefit and Muslims are being discriminated. Due to this discriminatory amending Act, Muslims have to prove their residency at least 11 years in India and for other 6 religions'



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followers only 5 years are sufficient to get the benefit of this in terms of Naturalisation.

Our Indian judiciary has always tried to strike the balance in a harmonious way but the people of India should not forget the dream of the constitution-framers and the ancient philosophy of 'Sarva Dharma Sambhavah'. But here in this case Government forgot completely this very concept of Secularism and amended the Citizenship Act in a manner that is against the Secularism-Concept what is enshrined in the Constitution of India and specifically Preamble of Indian Constitution that equal treatment with all the religions in Country. Here in this case, clear cut discrimination was done with the Muslims. The Govt. of India contended that Majority is of the Muslims in these countries, but even some particular sects in the Muslims also faced religious persecution and they came here in India and now they will be declared illegal immigrants and thereby foreigners and they will be compelled to face the consequences accordingly.

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<sup>1</sup> "Citizenship Amendment Bill : India's New 'Anti-Muslim' Law Explained" accessed from <<https://www.bbc.com/news/world-asia-india-50670393>> on 11 December, 2019.

<sup>2</sup> "Citizenship (Amendment) Act, 2019 : What is it and Why is it Seen as a Problem". Accessed from <[https://economictimes.indiatimes.com/news/et-explains/citizenship-amendment-bill-what-does-it-do-and-why-is-it-seen-as-a-problem/articleshow/72436995.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/et-explains/citizenship-amendment-bill-what-does-it-do-and-why-is-it-seen-as-a-problem/articleshow/72436995.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)>. (Accessed on 20 January, 2020).

<sup>3</sup> Chaudhury, Dipanjan Roy (19 June, 2019), "Ahmadis in Pakistan Face Persecution, Flee to Nepal". *The*

*Economic Times*, retrieved 4 March, 2020.

<sup>4</sup> S. 6 of Indian Citizenship Act, 1955 and Sch. III.

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