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## CAA 2019: HOW DOES IT IMPACT ON NORTHEAST

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### **Abstract**

Citizenship is a legal categorization of an individual as a lawful member of an independent country or nation. Articles 5-11 of India's constitution discuss the notion of citizenship. Citizenship refers to whole involvement in any state. When the country declared its independence, it was divided into two parts: India and Pakistan. People were free to join any country they wanted to become citizens of. Thus, the circumstance necessitated strict rules to frame India's citizenship policy before the commencement of the constitution. India is likely the only country whose constitution includes the concept of citizenship. The main reason for putting citizenship into the constitution was to address the problems that arose due to the partition. The Citizenship Amendment Act, 2019 has become a watershed moment in India's sociopolitical scene. The Citizenship Amendment Act (CAA) was passed to change India's citizenship laws, sparking heated discussion and protests since its inception. It aims to provide sanctuary to religious minorities fleeing persecution in adjacent countries by implementing a selected procedure based on religion and date of admission into India. This approach has sparked constitutional issues, with some claiming that it contradicts India's fundamental ideals of "secularism" and "equality" under Article 14. It has sparked tremendous discussion and controversy across India, particularly in the Northeast. The paper comprehensively assesses the CAA's influence on Northeast India. The region's numerous ethnic groupings and complicated socio-cultural dynamics have resulted in massive demonstrations and resistance against the Act. It also addresses the important concerns and viewpoints surrounding the CAA in Northeast

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India, emphasising the importance of nuanced knowledge and conversation in handling the region's distinct socio-political difficulties.

## **Keywords**

Citizenship, Indigenous, Immigration, Northeast India, Assam Accord

## **Introduction**

Parliament approved the Citizenship Act 2019 amendment on December 11, 2019, and it is primarily regarded as one of the most contentious amendments adopted by the Indian Parliament. The President extended his authorization on 12 December 2019. The Act aimed to amend the Indian Citizenship Act of 1955 to expedite the acquisition of Indian citizenship by illegal migrants from Afghanistan, Pakistan, and Bangladesh (especially Buddhists, Hindus, Sikhs, Jains, Parsis, Christians, and Afghans). Advocates of the CAA argue that it offers protection to persecuted minority groups, whereas critics argue that it promotes discrimination against Muslims and undermines the secular nature of the Indian Constitution.

In no other area has the impact and controversy surrounding the CAA been more evident than in Northeast India, characterized by its diverse ethnic makeup, intricate historical context, and distinct socio-political dynamics. The Northeast comprises eight states between Bhutan, China, Myanmar, and Bangladesh and has always struggled with identity, migration, and autonomy issues. The enactment of the CAA has further intensified existing tensions and raised significant concerns among indigenous communities, civil society organizations, and political leaders in the region.

Northeast India possesses a unique demographic composition, with numerous indigenous tribes and ethnic minorities coexisting alongside immigrant communities, both documented and undocumented. The region shares porous borders with neighbouring countries, facilitating cross-border movement and cultural exchange. However, the influx of aliens, mainly from Bangladesh, has been a contentious matter in Northeast India, fuelling anxieties regarding demographic changes, encroachment on land, and socio-economic competition.

The introduction of the CAA has brought a new aspect to the discourse on immigration and citizenship in Northeast India. Although the legislation provides a pathway to citizenship for non-Muslim migrants from neighbouring countries, it has sparked concerns regarding its impact on the indigenous communities and ethnic minorities of the region. Critics contend that

the CAA, through the selective granting of citizenship based on religious identity, undermines the rights and aspirations of indigenous populations, exacerbates communal tensions, and poses a risk to the delicate socio-cultural equilibrium of the area.

## Laws Concerning Citizenship in India

Throughout India's partition crisis and suffrage, no exact criterion for articulating who was and was not a citizen existed between August 1947 and November 1949, when the Constituent Assembly established the Constitution. Due to the large influx, the framers granted citizenship not just to Indians from the subcontinent but also to those who departed before independence.<sup>3</sup> Apart from Jammu and Kashmir, citizenship obligations went into effect on November 29, 1949, when the Indian Constitution was enacted. The Constitution defined a single type of citizenship: national citizenship. There needed to be an idea of a distinct state-based citizenship besides national citizenship.

Article 5 outlines a two-step process for conferring citizenship at the time of the Constitution's inception.<sup>4</sup> Being 'domiciled' in India was a fundamental need. To be considered an Indian citizen, individuals must meet one of three conditions:

- A. *"Being born in India,*
- B. *having parents born in India, or*
- C. *having lived in India for at least five years before the commencement date."*

This refers to a combination of factors. The prerequisites of heredity and domicile are complimentary. Nonetheless, the main character is nearer to the "ius soli" explanation since it emphasizes natural living on Indian land. The provision indicates that the framers aimed to modernise citizenship interpretation and legislation.<sup>5</sup>

Article 6 of the Constitution was primarily concerned with the "*Rights of citizenship of certain persons who have migrated to India from Pakistan.*"<sup>6</sup> As per the Constitution, an individual who migrated to India from Pakistan is recognized as a citizen of India if: "*they were born in*

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<sup>3</sup> Niraja Jayal, 'Citizenship' in Sujit Choudhry, Madhav Khosla and Pratap Mehta (eds.), *The Oxford Handbook of the Indian Constitution* (Oxford: New York, 2016), pp. 168-170

<sup>4</sup> Constitution of India, 1949, Art.5

<sup>5</sup> Vinayak Tiwari, *Citizenship in India: Special Reference to Recent Developments in Citizenship Laws*, Vol. 4 Issue 2, IJLMH, 169, 171-172, 2021

<https://ijlmh.com/paper/citizenship-in-india-special-developments-to-recent-developments-in-citizenship-laws/>

<sup>6</sup> Constitution of India, 1949, Art.6

*India as specified in the Government of India Act, 1935 (as originally enacted). Additionally, if such a person migrated before the nineteenth day of July 1948, they must have resided in the territory of India since their migration. On the contrary, if the migration had not occurred before July 19, 1948, the before would not have been required to be officially acknowledged as an Indian citizen by a designated officer of the Indian Government of the Dominion of India. This registration should have been done through an application submitted to the designated officer in the form and manner prescribed by the Government before the commencement of the Constitution.”* A person must remain in India for six months before citizenship.

Article 7 focuses on the “*Rights of citizenship of certain migrants to Pakistan.*”<sup>7</sup> It explicitly states that anyone who migrated from the territory of India to the territory now included in Pakistan after the first day of March 1947 shall not be recognized as a citizen of India. A fundamental interpretation of Articles 6 and 7 reveals the framers’ universal dedication to the principles of citizenship, specifically *ius soli*.<sup>8</sup> However, it is critical to emphasize the fact that the secular language employed in these articles shouldn't eclipse the later religious sections, which played an essential part in the debate over these provisions. The founders of the laws of India, like the British colonists, were motivated by communal factors in their conceptual structure of the collective 'people,' with the caste aspect influencing their modernist conception of the topic. The framers' debates reveal their differing perspectives. Articles 6 and 7 each have two particular areas of focus. According to Article 6, Hindus fled Pakistan to seek refuge in India. Article 7 was created in the wake of Muslims who fled to Pakistan and wanted to return to India at afterward.

Interestingly, the Hindu Parties’ remarks in the Assembly debates revealed some concern about the situation. The Muslims, on the other hand, were labelled as refugees, with the accusation that they fled India on purpose during the chaos of partition. As a result of the narrator disparity, “migrant” Muslims required proof of allegiance before being granted citizenship, as seen by subsequent disputes and jurisprudence. The Hindu counterparts have not received any inquiry about intentions or loyalty.

Article 8 outlines citizenship rights for people of Indian heritage living outside India.<sup>9</sup> Unlike those mentioned in Article 5, this category of people must register to become citizens.

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<sup>7</sup> Constitution of India, 1949, Art.7

<sup>8</sup> Jain M.P., M.P. Jain Constitution of India, Lexis Nexis, 8th Edition, 2018, pp. 839-847, 2018

<sup>9</sup> Constitution of India, 1949, Art.8

According to Article 9, Indian citizenship can only be obtained by those who voluntarily relocate to another state.<sup>10</sup> Article 10, titled “Continuance of Citizenship Rights,” refers to a provision detailing Parliament’s jurisdiction rather than establishing a right or restricting citizenship rights.<sup>11</sup> During a plenary session, Parliament can enact citizenship laws and other related issues under Article 11. It authorizes Parliament to make legislation about consistency, damage, and other citizenship-related matters without consideration for constitutional limits or underlying principles.<sup>12</sup> Parliament has amended these statutes with a precise grasp of its constitutional authority. The Constitution did not include provisions for determining citizenship until its adoption. The constitutional prerequisites for establishing citizenship were developed during the Constitution's inception. The Citizenship Act of 1955 established the fundamental basis for citizenship following the authorities outlined in Article 11. This Act was supplemented by the Citizenship Rules of 1956, which were repealed by the Citizenship Rules 2009.

Section 3 of the Citizenship Act 1955 states that people who were born in the nation of India between January 26, 1950, and July 1, 1987 are regarded as Indian citizens by birth. On or following July 1, 1987, before the enactment of the Citizenship (Amendment) Act, in 2003, if any of the parents is a citizen of the nation of India during the time of birth.

- According to the Citizenship (Amendment) Act, 2003, a kid can be born in India if both or one parent is a citizen.

The Citizenship Act of 1955 outlines the means to get citizenship in India. It indicates that being a citizen in India may be earned in five different manners: by being born, descent, and enrolment, naturalization (increasing residence), and acquisition of an area. . According to Section 3<sup>13</sup> of the Citizenship Act, 1955:

- Individuals who were born in the nation of India between January 26, 1950, and July 1, 1987 are regarded as Indian citizens by birth.
- On or following July 1, 1987, before the enactment of the Citizenship (Amendment) Act, in 2003, if any of the parents is a citizen of the nation of India during the time of birth.

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<sup>10</sup> Constitution of India, 1949, Art.9

<sup>11</sup> Constitution of India, 1949, Art.10

<sup>12</sup> Constitution of India, 1949, Art.11

<sup>13</sup> The Citizenship Act, 1955, § 3, No.57, Acts of Parliament, India, 1955

- According to the Citizenship (Amendment) Act 2003, children are allowed to be birthed in India if both of their parents are citizens or if either parent has been an Indian citizen while the other is not an illegal migrant.

An individual is not deemed a citizen by childbirth if their biological parent possesses protection from legal action provided by an ambassador of foreign sovereign authority authorized by the president of India but is not an Indian citizen or if their parent is an enemy alien and their birth happens in hostile territory.

Section 4 outlines the criteria for acquiring citizenship by descent.<sup>14</sup> It states that any individual born elsewhere than India on or after the 26th of January, 1950, but before 10 December 1992, is a citizen of India by heredity if his father was an Indian citizen at the time of birth. If either of his parents were Indian citizens when he came into the world, then he would have been born before or on December 10, 1992. However, following the implementation of the Citizenship (Amendment) Act 2003, a person fails to qualify as a citizen of the nation if their birth wasn't recorded with an Indian consulate within a calendar year of their date of birth or, with the approval of the government of India after the time frame has expired. The registration request must contain a contract from the parents indicating that the child in question does not hold a passport from a different nation. A minor who is both an Indian citizen under this provision and a citizen of another country will forfeit his Indian citizenship if he fails to give up his citizenship in another nation within a period of six months of attaining the age of maturity.

As per the provisions of Section 5 of the Act,<sup>15</sup> the Central Government may register any individual as a citizen of India based on his application if he is not an illegal immigrant and falls into one of the following categories:

1. The applicant is of Indian origin and has resided in India for a period of seven years prior to filing under Section 5(a).
2. The individual is of Indian heritage and often dwells outside of India.
3. The applicant is married to an Indian citizen and has resided in India for at least seven years before applying.

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<sup>14</sup> The Citizenship Act, 1955, § 4, No.57, Acts of Parliament, India, 1955

<sup>15</sup> The Citizenship Act, 1955, § 5, No.57, Acts of Parliament, India, 1955

4. The youngster and his/her parents are Indian citizens.
5. The individual is of full age and capacity, and his/her parents are registered Indian citizens.
6. 6. The applicant must be of full age and capacity, a citizen of Independent India, and have lived in India for at least a year before registration.
7. The applicant must be of full legal age and capacity, an officially recognized Overseas Citizen of India for a period of five years, and have resided in India for one year before applying.

A person is considered a resident for sections (1) and (3) if he lived in India for twelve months directly before the application and six years in total in the eight years preceding the twelve months.

Section 6 of the Citizenship Act, 1955<sup>16</sup> states that the foreigner who is not an illegal immigrant and has been typically domiciled in the nation for a period of twelve years (within the twelve months following the date of application along with a total of 11 years within the fourteen-year period immediately preceding the twelve months) can obtain Indian citizenship by means of naturalization. This eligibility is contingent on completing additional conditions indicated in the Third Schedule to the Act.

However, suppose the Central Government believes that the applicant has made a remarkable contribution to the causes of science, philosophy, art, literature, global peace, or human advancement in general. In that case, it may waive all or any of the qualifications listed in the Third Schedule.

According to Section 7 of the Act, when a territory becomes a part of India, the central government may execute an order specifying the persons who will be considered as citizens of India because of their ancestral ties with the respective region.<sup>17</sup>

## **The Citizenship (Amendment) Act, 2019**

The goal of modifying the law was to offer identity to a specific group of illegal immigrants. Thousands of individuals have faced persecution for their beliefs in Afghanistan, Pakistan, and Bangladesh. Consequently, they moved to India in search of a safe refuge. Before this Act, these immigrants were unable to apply for Indian citizenship since they came to India illegally.

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<sup>16</sup> The Citizenship Act, 1955, § 6, No.57, Acts of Parliament, India, 1955

<sup>17</sup> The Citizenship Act, 1955, § 7, No.57, Acts of Parliament, India, 1955

Furthermore, the previous Act banned anyone from getting citizenship by naturalization until they showed that they had resided in the nation for a period of eleven years. So, the Amended Act seeks to provide Indian citizenship to anyone fleeing persecution in the three nations. The CAA 2019 gives citizenship to migrants from these three countries.

The CAA 2019 offers citizenship to migrants from these three countries. It reduces the qualification term for Indian citizenship from 11 to 5 years, providing they join the country on or before December 31, 2014. This allows migrants to obtain citizenship without showing any documentation. As long as the standards listed above are followed, the CAA will assist such migrants in obtaining citizenship without difficulty. The CAA 2019 was, therefore, enacted to offer hassle-free citizenship to migrants who have endured religious persecution in these three bordering nations.

Before 2019, on July 15, 2016, the Government introduced the Citizenship (Amendment) Bill to Parliament. On August 11, 2016, a resolution was made to submit the Bill to a Joint Committee comprised members from both Houses of Parliament. A similar motion was introduced in the Rajya Sabha on August 12, 2016. The Bill was sent to a Joint Committee chaired by Rajendra Agrawal, consisting of 20 Lok Sabha members and 10 Rajya Sabha members, with a mandate to report by the first day of the last week of the Winter Session that year. The Committee did, however, request a time extension six times. The Committee took depositions from witnesses, both official and non-official. It reviewed the Bill and approved it, with only a few minor amendments. In its report, the Committee expressed satisfaction with the different defences against the Bill made by the Government. Large-scale migrations into India, particularly in the North Eastern states, significantly impact the country's demographic structure.

The main features of the 2019 Citizenship Act are as follows:

- I. The Citizenship Act of 1955 forbids unlawful immigration from acquiring citizenship. The primary purpose of implementing this Act was to amend the prior legislation and provide citizenship to migrants oppressed in India's neighboring nations. The act limited immigration to five religions: Buddhists, Hindus, Sikhs, Jains, Parsis, and Christians. The Act explicitly specified that "those who fled due to religious persecution



or were in fear that they might be persecuted" from surrounding Afghanistan, Pakistan, and Bangladesh would be covered by this law.<sup>18</sup>

- II. Aside from that, the act contained several other amendments. First, the citizenship deadline has been moved to December 31, 2014. This meant that applicants may only apply for citizenship if they arrived in India on or before the deadline.
- III. The act also reduced the naturalisation period from 11 to 5 years for the six minority religious groups.
- IV. Section 7D of the act<sup>19</sup> includes Amendments for OCI holders (Overseas Citizen of India). A foreigner is eligible for OCI if their spouse lives in India or their partner are of Indian origin. OCI cards are additionally entitled for certain advantages, including the ability to find employment and pursue education in the country. In *Humdard Dawakhana v Union of India*, the Supreme Court of India held that prior to transferring authority to an executing authority to offer direction, lawmakers must formulate an approach, standard, or control to limit the powers and avoid arbitrary decisions in its use of authority. A provision is also included to provide OCI cardholders the right to be heard before revocation.
- V. According to Section 6B, Clauses 2 and 3 of the Act assumes individuals are citizens of the nation upon arrival and closes all legal proceedings related to illegal migration/citizenship.<sup>20</sup>

The Act provides two major exemptions. First and foremost, the Act wouldn't apply to tribal regions like Meghalaya, Tripura, Mizoram, or Assam. The listing of the aforementioned states in the Indian Constitution's 6 Schedule is the fundamental reason for this exemption. In addition, the provisions of the Act will not apply to areas identified under the Inner Limits of the Bengal Eastern Frontier Regulation Act of 1873. The tribal regions excluded are Assam's Karbi Anglong, Meghalaya's Garo Hills, Mizoram's Chakma district, and Tripura's Tribal Areas District. The "Inner Line Permit" encompasses Arunachal Pradesh, Mizoram, and Nagaland. To visit or travel through these locations, Indians from another state must get an "Inner Line Permit." It is feared that the Amendment will have the most significant impact on Manipur, hence, the central government has announced that Manipur will be included in the ILP. However, Sikkim's Chief Minister, PS Tamang, has written to Amit Shah, requesting an

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<sup>18</sup> The Citizenship (Amendment) Act, 2019, § 2, No.47, Acts of Parliament, India, 2019

<sup>19</sup> The Citizenship (Amendment) Act, 2019, § 4, No.47, Acts of Parliament, India, 2019

<sup>20</sup> The Citizenship (Amendment) Act, 2019, § 3, No.47, Acts of Parliament, India, 2019

exemption from the Amendment, citing the Constitutional guarantee under Article 371(F),<sup>21</sup> which controls the state and grants it special status.

## **Problem of Immigration in Northeast: Case Study of Assam**

Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, and Sikkim are the Northeastern states of India. These states are noted for their distinct cultural and historical characteristics. The North Eastern states have a history of illegal migration. Since pre-British times, the region has been a destination for migrants from Tibet, Indo-Gangetic India, Bangladesh, Myanmar, and Bhutan, which lasted until the 1990s. The large-scale flood of migrants caused poverty, an identity crisis among indigenous peoples, displacement of native labour, environmental damage, and so on. These events sparked protests in several Northeastern states, including Assam, Meghalaya, Nagaland, and Tripura. The concern of immigration in Northeast India has long been a matter of disagreement and debate, deriving its origins from historical, cultural, and political circumstances. The inhabitants of this area have consistently displayed a profound concern for their culture and individuality.<sup>22</sup> The British rule in India implemented the ILP in 1873 to prevent illegal immigration and safeguard indigenous customs in the North-East region. An Inner Line Permit allows people from other regions of India to access Arunachal Pradesh, Nagaland, and Mizoram. In addition to ILP, the Constitution's Sixth Schedule and Article 244(2)<sup>23</sup> establish Autonomous District Councils (ADCs) in Assam, Meghalaya, Tripura, and Mizoram, granting them legislative, judicial, and administrative autonomy.

The concerns held by the people of the Northeast regarding CAA 2019 are as follows:

- The rise in the number of immigrants has become a matter of concern due to enacting the Citizenship Amendment Act 2019. Granting citizenship to these five communities will lead to a decline in the native population among minorities, erosion of their traditions and cultures, and a loss of livelihood opportunities.
- The legitimization of undocumented migrants will lead to economic pressures in the Northeast Region. As these migrants are granted Indian citizenship, there will be an

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<sup>21</sup> Constitution of India, 1949, Art.371(F)

<sup>22</sup> Chetan Kumar & Dr. Pushpalata Kumari, Citizenship Amendment Act & Issues of North-Eastern States, Vol.10 Issue 9, IJCRT, 968, 972-973, 2022 <https://ijcrt.org/papers/IJCRT2209367.pdf>

<sup>23</sup> Constitution of India, Art.244(2)

increase in job demands from them, potentially reducing job opportunities for the indigenous and local populations.

- Implementing the Citizenship Amendment Act 2019 has raised concerns about the political rights of the state's residents. It is feared that these undocumented migrants, upon becoming legal citizens, could have a significant influence on the state's political future.

Assam has experienced successive waves of migration from neighboring nations such as Bangladesh and other regions within India. This influx of individuals seeking residence has significantly altered the state's population distribution, placing strain on available resources and intensifying tensions among the native populace. The influence of immigration on Assam's demographic makeup is a primary concern. Indigenous communities, including the Assamese, Bodos, and various tribal groups, have voiced apprehensions regarding the potential marginalization they may face as newcomers settle within their territories, thereby modifying the social and cultural framework of the area. Consequently, this reshaping of the demographic landscape has engendered elevated conflicts grounded in identity and sparked communal tensions, frequently culminating in violent episodes and societal unrest.

When the British occupied Assam in 1826, they brought Bengali speakers from West Bengal to conduct clerical work. The Bangla speakers persuaded the British authorities that Assamese was a distorted version of Bangla, and Bangla was subsequently adopted as the official language of Assam. The Assamese language earned its proper place only in 1873, thanks to the participation of Baptist missionaries, although the Assamese people's concern over the supremacy of the Bangla language persisted. The Assamese are concerned that if Bangla-speaking illegal immigrants are awarded citizenship, they may overwhelm the natives, as has happened in Tripura, where Bengali-Hindu immigrants from East Bengal already hold political power, forcing the original tribals to the outskirts.<sup>24</sup> The Liberation War of 1971 in East Pakistan resulted in a significant rise in migration, leading to the formation of Bangladesh.<sup>25</sup> During the Liberation War, around 10 million Bangladeshi migrants fled to India to escape military brutality.<sup>26</sup> In 1972, India and Bangladesh struck an agreement requiring Bangladesh

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<sup>24</sup> Kaushik Deka, Why Assam is protesting against Citizenship Amendment Bill, India Today, December 11, 2019, 05:43 PM <https://www.indiatoday.in/india-today-insight/story/why-assam-is-protesting-against-the-citizenship-amendment-bill-1626656-2019-12-09>

<sup>25</sup> Srinath Raghavan, 1971: A Global History of the Creation of Bangladesh (Harvard University Press, 2013) 235; Anupama Roy, 'Between encompassment and closure: The 'migrant' and the citizen in India.' (2008) 42(2) Contributions to Indian Sociology 219, 227

<sup>26</sup> UNHCR, The State of the World's Refugees, 2000: Fifty Years of Humanitarian Action (Oxford University

to resettle all refugees who arrived in India after March 25, 1971, when the Pakistani military attempted to repress the independence movement. The porous border between India and Bangladesh and improved living conditions have increased Bangladeshi migration to India. Some assessments predict a net illegal immigration of 1.8 million into Assam over the ten years from 1971 to 1981.<sup>27</sup> The arrival of illegal immigrants damaged the cultural, religious, and linguistic heritage of many indigenous Assamese people.<sup>28</sup> The Election Commission of India recorded considerable growth in Assam's electoral rolls before the 1980 parliamentary elections, sparking a political debate.<sup>29</sup>

The major regional political organisations in Assam, the All Assam Students Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) called for the vetting of electoral rolls and the repatriation of all illegal immigrants from Bangladesh, regardless of religion.<sup>30</sup> This political protest, the Assam Movement, quickly turned violent and spread throughout Assam. From 1979 to 1985, illegal immigration caused widespread ethnic violence and political instability in Assam.<sup>31</sup> On August 15, 1985, the Indian government and regional organizations reached a broad agreement known as the Assam Accord. Under the Assam Accord, the Indian government pledged to discover and deport any unlawful migrants who entered Assam after March 24, 1971. The government pledged to maintain the Assamese people's cultural, social, and linguistic heritage by constitutional, legislative, and administrative measures. In this regard, the Citizenship Act, 1955 was amended in 1985 to include a hierarchical concept of citizenship that classed migrants based on when they entered Indian territory.<sup>32</sup>

## **IMDT Act**

Observing large-scale demonstrations by Assamese people, as well as the danger that national security presented by illegal immigration, forced the governing body to take harsh steps to find and remove the infiltrators. The Union government launched the Prevention of Infiltration in India for Pakistani Nationals (PIP) campaign in June 1960. The purpose of this approach was

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Press, 2000) 61

<sup>27</sup> Myron Weiner, 'The Political Demography of Assam's Anti-Immigration Movement' (1983) 9(2) *Population and Development Review* 279, 286

<sup>28</sup> Udayon Misra, 'Immigration and Identity Transformation in Assam' (1999) 34(21) *Economic & Political Weekly* 1264, 1265

<sup>29</sup> Sanjib Baruah, *India against Itself: Assam and the Politics of Nationality* (University of Pennsylvania Press, 1999) 120

<sup>30</sup> Chandra Nath Boruah, *Assamese Response to Regionalism* (Mittal Publications, 2010) 22

<sup>31</sup> Sandhya Goswami, 'Ethnic Conflict in Assam' (2001) 62(1) *Indian Journal of Political Science* 123, 131

<sup>32</sup> Dixit, Pratik, *The Citizenship Debate in India: Securing Citizenship for the Stateless* (April 4, 2021). Available at SSRN: <https://ssrn.com/abstract=3819159>

to prevent new immigrants from the eastern region from entering the country while simultaneously inspecting existing migrant colonies and deporting any new migrants. Following Bangladesh's formation, the Prevention of Infiltration of Foreigners (PIF) program was renamed. The strategy was deployed intermittently rather than continually. The scheme failed to produce the promised results.

It has received abundant worldwide criticism for the broad powers provided to police officers. In response to these opinions, the Union government created the Foreigners' Tribunals in 1964. These courts may hear an individual's case and decide if he was a foreigner. It was designed for anyone who have received a 'Quit India' warning from the police. Such individuals could submit applications to these tribunals and expect a fair hearing. This is like the PIF system as well since the entire procedure caused considerable delays in the detection and detention of illegal immigrants. These failures triggered anti-foreigner rioting in Assam throughout the late 1970s and early 1980s.

The Illegal Migrants (Determination by Tribunals) Act was enacted by the Indira Gandhi government in 1983 in reaction to that movement. The Act applied to all of India but went into effect only in Assam on October 15, 1983. The Foreigners Act, 1946 applied to India's other states. The goal of the Illegal Migrants Act was identical to the previous government's attempt: expulsion of foreigners and protection of Indian citizens. The IMDT Act superseded the Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950, the Passports Act, 1967, and any rule or order issued under any of the aforementioned Acts.<sup>33</sup>

Section 3(c) of the Act specifies "illegal migrant." Under the Section, any person is an illegal migrant if they match the following criteria:

- Entered India after March 25, 1971.
- The foreigner arrived in India without an appropriate passport or legal documentation.

Section 2 of the Act exempted the following individuals from its provisions:

- Those who were deported from India before the Act's implementation or who were deported under other legislation;

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<sup>33</sup> The Illegal Migrants (Determination by Tribunals) Act, 1983, § 4, No.39, Acts of Parliament, India, 1983

- Those identified as foreigners upon entering India's international borders.

Section 5<sup>34</sup> created the tribunals to oversee the Determination of Illegal Migrants. The Act specified that the Central Government might establish numerous Illegal Migrants (Determination) Tribunals as it thought necessary by notice. Each Tribunal's authority should be confined to its jurisdiction. Each Tribunal should have at least two people on it. The individual selected to the Tribunal must be a District or Additional District Judge in the state. An application to the Tribunal can be made in two ways:

- by opposing the government's order to declare someone a foreigner and force them to leave the nation or
- by any person alleging another of being an illegal migrant.

Section 8,<sup>35</sup> on the other hand, allowed for applications to the tribunals by the Central Government to determine if a person was an illegal migrant or by the individual seeking a finding that he was not an illegal migrant. Section 8A<sup>36</sup> permitted a person to apply to the Central Government for a determination by a tribunal on whether the individual whose name and other details were provided in the application was or was not an illegal migrant. The Central Government could also reject the application or refer it to a tribunal for a decision.

The Tribunal had the following powers:<sup>37</sup>:

- Authority to summon and examine witnesses under oath and to discover and produce documents.
- Reception of evidence on affidavits.
- Requesting public records from any court or office.
- Issuing any commission for the examination of witnesses.

To make this procedure effective, things needed to be resolved fast. As a result, Section 13 of the Act stipulated that any referral made to the Tribunal must be investigated and resolved within six months of serving.<sup>38</sup> To make this approach practical, issues have to be dealt

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<sup>34</sup> The Illegal Migrants (Determination by Tribunals) Act, 1983, § 5, No.39, Acts of Parliament, India, 1983

<sup>35</sup> The Illegal Migrants (Determination by Tribunals) Act, 1983, § 8, No.39, Acts of Parliament, India, 1983

<sup>36</sup> The Illegal Migrants (Determination by Tribunals) Act, 1983, § 8A, No.39, Acts of Parliament, India, 1983

<sup>37</sup> The Illegal Migrants (Determination by Tribunals) Act, 1983, § 9, No.39, Acts of Parliament, India, 1983

<sup>38</sup> The Illegal Migrants (Determination by Tribunals) Act, 1983, § 13, No.39, Acts of Parliament, India, 1983

with quickly. Consequently, Section 13 of the Act required that every reference brought to the Tribunal be examined and concluded within a period of six months of service.

The Appellate Tribunal was likewise to be established under the central government's authority, with a minimal number of two and a maximum of six members. A High Court Judge is required to be qualified for membership in the Appellate Tribunal. An appeal to the Appellate Tribunal may be lodged within 30 days of the Tribunal's ruling. After thirty days, if the Appellate Tribunal was satisfied with the cause of delay, the issue would be heard; otherwise, the Tribunal's judgment would be final.<sup>39</sup>

A significant segment of the Assamese society believed that the Act was enacted to provide shelter and protection to illegal immigrants who had arrived from Bangladesh after March 25, 1971, rather than identify and remove them. Under the Foreigners Act of 1946, the suspected foreigner bears the burden of proving he is not a foreigner.<sup>40</sup> However, under the IMDT Act, the complainant bears the burden of proving that the alleged person is a foreigner. Aside from that, a complainant must be a resident of the same area where the alleged foreigner lived. Critics branded the Act as 'toothless' because it failed to correctly identify and expel illegal immigrants. It was legislation more on paper than on the ground, as evidenced by the fact that only sixteen of the thirty tribunals established in the original Act were eventually approved. In 1998, just five of the sixteen were operable.

One of the reasons why the Act did not work was because it allowed a third person to report illegal migrants regarding whom he knew, although the ability to do so was restricted. The condition required the complainant and accused to be inhabitants of the identical police station. The state was responsible for demonstrating guilt. The State was obligated to demonstrate that the individual was an illegal migrant; this was attempted to dissuade non-serious instances, but it proved to be an error. When individuals were identified under this Act, they moved and became unreachable. Unlike the Foreigners Act, it did not provide state police the authority to search and seize. Unlike the Foreigners Act, this did not empower state police to search and seize. Until July 2005, of the 1,12,791 cases sent to the tribunals, 88,770 were pending, and only 12,846 were pronounced unlawful migrants, with 1,547 deported or driven back across the border into Bangladesh.

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<sup>39</sup> The Illegal Migrants (Determination by Tribunals) Act, 1983, § 16, No.39, Acts of Parliament, India, 1983

<sup>40</sup> The Foreigners Act, 1946, § 9, No.31, Acts of Parliament, India, 1946

## Sarbananda Sonowal Cases

In the case of *Sarbananda Sonowal v. Union of India (Sonowal I)*,<sup>41</sup> the Supreme Court overturned the *Illegal Migrants (Determination by Tribunals) Act, 1983*, citing violations of Articles 14<sup>42</sup> and 355<sup>43</sup> of the Constitution. This case is considered seminal because the law in this area is rudimentary, and subsequent judges will invariably look to it to shed light on intricate jurisprudential issues that would naturally arise, especially given that liberal democracies worldwide face myriad problems arising from immigration. Before this landmark case, the issue of Bangladesh's infiltration was brought before the Supreme Court through a public interest litigation. The Supreme Court raised concern over the infiltration and instructed the Central Government and the affected states to provide a status report. It further expressed hope that the relevant governments would take necessary steps to address the situation.<sup>44</sup>

Due to its failure to succeed, there was a solid demand to abolish the *IMDT Act*. Sarbananda Sonowal, an Assamese resident, the previous leader of the *All Assam Student Union*, and the previous chairman of the *North East Students Association*, brought an application for writ under Article 32 of the Indian Constitution in 2000 by way of public interest litigation,<sup>45</sup> asserting that specific provisions of the *Illegal Migrants (Determination by Tribunals) Act, 1983* were extremely vires; the respondents were the Government of Assam and the Central Government.

On July 18, 2000, the Ministry of Home Affairs Director issued an opposition affidavit on behalf of the Central Government, indicating that the Government of India is contemplating abolishing the *IMDT Act*. The authorities also admitted that it is hard to establish an exact estimate of the total amount of illegal immigrants coming from Bangladesh because of ethnicity and language similarities between residents and migrants. Assam filed a counter-affidavit on August 28, 2000, saying that the state administration regularly writes to the Central Government seeking repeal of the *IMDT Act*. The petition also stated that the state government feels that the *IMDT Act* is against the national interest since, due to the Act's severe restrictions, illegal migrants numbering in the

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<sup>41</sup> (2005) 5 SCC 665

<sup>42</sup> Constitution of India, 1949, Art.14

<sup>43</sup> Constitution of India, 1949, Art.355

<sup>44</sup> *All India Lawyer's Forum for Civil Liberties v. Union of India*, (1999) 5 SCC 714

<sup>45</sup> Constitution of India, 1949, Art.32



The Government of Assam also criticized the Act as discriminatory due to the fact it was only implemented in Assam and not in places like West Bengal, Tripura, and Meghalaya, which had similar problems with illegal immigration. On August 8, 2001, the Assam government asked that the court recall its prior counter-affidavit filed on August 28, 2000, saying that the affidavit did not represent the current legal reality in the state. They also requested that government officials be permitted to file a fresh counter-affidavit. The recently filed affidavit stated that the legislation was intended to safeguard Indian citizens from undue harassment. The IMDT Act is lawful, not arbitrary or discriminatory, and the current administration does not support abolishing or repealing it. The 175th report of the Law Commission of India on the Foreigners (Amendment) Bill, 2000, also addressed the Assam issue. According to the report, illegal migration is not only undesired, but it also poses a significant threat to India's democratic system and internal security, particularly in the country's eastern region and Jammu & Kashmir. The report also called for the repeal of the IMDT Act.<sup>46</sup>

The panel of Justices R.C. Lahoti, G.P. Mathur, and P.K. Balasubramanyan observed the plight of the Assamese people, who had been relegated to a minority inside their state. The Court declared on July 12, 2005, the ruling that the Illegal Migrants (Determination by Tribunals) Act, 1983, was unlawful, rendering the Illegal Migrants (Determination by Tribunal) Rules, 1984, illegal. All ongoing cases before the Tribunals established under the IMDT Act were transferred to the Tribunals established under the Foreigners (Tribunals) Orders, 1964, while all matters remained to be resolved under the Foreigners Act and its provisions.

After this judgement by the Supreme Court, an order was issued authorising the Central Government in 2006 to establish a special tribunal to deal with foreigners in Assam.<sup>47</sup> The order was passed using the powers granted under Section 3 of the Foreigners Act 1946.<sup>48</sup> While this order does not mimic the features of the IMDT Act, it is unquestionably more “immigrant-friendly” than the prevailing law. Due to this, Sarbananda Sonowal and Charan Chandra Deka filed a writ petition at the Supreme Court challenging the 2006 order.<sup>49</sup> The petitioners argued the following:

- The 2006 Order is irrational and capricious in its application of power. It has to be quashed or ruled invalid.

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<sup>46</sup> Law Commission of India, 175th Report on the Foreigners (Amendment) Bill, 2000

<sup>47</sup> The Foreigners (Tribunals for Assam) Order, 2006

<sup>48</sup> The Foreigners Act, 1946, § 3, No.31, Acts of Parliament, India, 1946

<sup>49</sup> Sarbananda Sonowal II v. Union of India, (2007) 1 SCC 174

- The tribunal would be solely responsible for determining whether or not a person is a foreigner.
- The methods outlined in the 1946 Act and the 1964 and 2006 Orders are unfair and violate Articles 14 and 21 of the Indian Constitution.<sup>50</sup>

The Central Government contended that given the higher rate of illegal migration into Assam than in other Union states and the state's unique conditions and characteristics, such a policy has to be implemented. It was pointed out that under the 1964 Order, the Central Government could choose whether or not to refer a case to the Tribunal, whereas under the 2006 Order, this is mandatory. Now, the Central Government must refer to whether a person is a foreigner or not.

The bench of Justices SB Sinha and PK Balasubramanian held that it is not open to the authority in question to annul the Supreme Court's orders in Sonowal-I through subordinate legislation, rendering the 1964 Order inapplicable to the State of Assam. Such elimination, or making the Order of 1964 inoperative just in Assam, was discriminatory and violated Article 14 of the Indian Constitution. The provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983, and the Illegal Migrants (Determination by Tribunals) Rules, 1984, were deemed unconstitutional and repealed. The bench also observed that when the Parent Act is in effect and relevant, the authority concerned cannot negate the Supreme Court's orders through subordinate legislation by issuing an order that applies to a specific state. According to the Court, the 2006 Order appeared to be a cover-up for failing to implement the Court's directives in Sonowal I. The Writ petition was allowed, and the court ordered that the 2006 order and the Foreigners (Tribunal) Amendment Order 2006 be quashed and that the respondents immediately implement the Court's Sonowal I directives within a reasonable time frame. The court urged the Central Government to establish a sufficient number of Tribunals under the 1964 Order to expeditiously handle matters involving foreigners who have unlawfully entered Bangladesh or are staying in Assam. The Supreme Court ruled that the orders given in Sonowal-I did not serve the objective intended by the 1946 Act or the Citizenship Act, nor did they fulfil the Central Government's duty to defend the State under Article 355 of the Indian Constitution.

## **Conclusion**

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<sup>50</sup> Constitution of India, 1949, Art.21

The intricate and diverse conclusion regarding the Citizenship Amendment Act (CAA) of 2019 and its impact on the Northeast region has been subject to extensive debate. Those who support the Act argue that it has provided an avenue for persecuted minorities from neighbouring countries, specifically Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, who have sought refuge from religious persecution and entered India before December 31, 2014, to attain citizenship. They maintain that this legislation aligns with India's humanitarian principles and extends sanctuary to needy people. Nevertheless, the CAA has generated significant controversy and unrest, particularly in the Northeastern states like Assam. Critics argue that the Act dilutes the Assam Accord, 1985, which aimed to protect the cultural and linguistic identity of the indigenous communities in the region. They express concerns that the CAA, together with the National Register of Citizens (NRC) and the proposed implementation of the National Population Register (NPR), could precipitate demographic changes and pose a threat to the socio-cultural fabric of the Northeast.

In the Northeastern region, the issue of immigration has historically been closely intertwined with identity politics, ethnic tensions, and concerns about resources and employment opportunities. The apprehension of “outsiders” altering the demographic equilibrium has nurtured animosity and sparked protests against the CAA. Additionally, the lack of clarity and consistency in the execution of the CAA has engendered confusion and anxiety among various communities, thereby exacerbating tensions. Furthermore, the exclusion of certain groups, notably Muslims, from the ambit of the CAA has given rise to allegations of discrimination and religious division. This has the potential to strain inter-community relations and foster mistrust within the diverse socio-cultural fabric of the Northeast.

To summarise, while the CAA aims to address the predicament of persecuted minorities, its implementation and consequences, particularly in sensitive regions like the Northeast, necessitate careful consideration of the concerns and aspirations of all stakeholders. Striking a balance between humanitarian considerations and the imperative to preserve regional identity and security is indispensable for promoting harmony and inclusivity in the Northeastern states.

## **Recommendations**

- Government officials in Northeast India should disregard any dialogue and consultation with various stakeholders, such as indigenous groups, civil society organizations, and

local leaders. The objective of this discourse should be to address issues, clarify uncertainties, and incorporate local perspectives into the policymaking process.

- The Citizenship Amendment Act (CAA) has raised concerns among indigenous communities in Northeast India regarding population shifts and threats to their socio-cultural identities. To address these concerns, government officials should proactively take measures to protect indigenous rights, conserve cultural heritage, and encourage inclusive development projects specifically designed for the unique socio-cultural environment of the region.
- The government must establish strong safeguards to protect the rights and interests of indigenous populations in Northeast India. This could entail passing new laws or adopting additional measures under the CAA framework to ensure that the arrival of immigrants has no negative impact on the region's demographic balance and socio-cultural fabric.
- To foster social cohesion and integration, the government should invest in inclusive development programs that bridge socioeconomic gaps and enhance infrastructure in Northeast India. By prioritizing education, healthcare, economic opportunities, and essential utilities in the region, the government can mitigate feelings of marginalization and alienation among local communities.
- Enhancing border security measures is essential for managing the influx of immigrants into Northeast India. This requires deploying extra border surveillance resources, increased collaboration among law enforcement agencies, and the effective use of technology to monitor porous borders.
- Transparency, fairness, and non-discrimination are crucial in implementing the CAA in Northeast India. The government should establish clear rules and processes for identifying and verifying eligible beneficiaries under the CAA and mechanisms for addressing grievances and ensuring accountability in decision-making.
- Promoting intra-community dialogue, understanding, and discord among similar ethnic and religious groups in Northeast India is an inconsequential responsibility of the government. Efforts should not be exerted to foster mutual respect, tolerance, and peaceful coexistence while discouraging divisive rhetoric or actions that may exacerbate tensions and undermine social cohesion.
- Prioritizing the monitoring and assessment of the impact of the CAA on the Northeast region is imperative for the government. This necessitates establishing comprehensive

systems for continuous evaluation, data collection, and soliciting feedback from affected groups. These valuable insights will be pivotal in shaping future policy changes and initiatives.

- Ensuring individuals or communities affected by the CAA have access to legal remedies and redressal processes for grievances or issues is paramount. This may entail the creation of specialized tribunals or commissions tasked explicitly with addressing problems and providing remedies for those adversely affected by the law.