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## **A Critical examination of Citizenship Amendment Act (CAA) and its implications on religious minorities in India**

After four years and eight extensions, the Ministry of Home Affairs (MHA) finally released the Citizenship Amendment Rules (CAR) 2024 just days before the announcement of general elections, 2024. These rules aim to operationalize the Citizenship Amendment Act (CAA) passed by Parliament in 2019. Though the legislation facilitates citizenship to undocumented people belonging to religious minorities from Pakistan, Bangladesh and Afghanistan, the rules state that the applicants will have to provide six types of documents and specify “date of entry” in India. Enacted in December 2019, the Citizenship Amendment Act (CAA) received presidential approval within 24 hours. However, the MHA's planned January 2020 launch was postponed due to the absence of essential rules, delaying the Act's implementation.

### ***Demystifying Citizenship***

Being a citizen means a person is legally recognized as part of a country. The citizenship entails the enjoyment of full membership of any state in which a citizen has civil and political rights. In India, citizenship falls under the exclusive authority of the central government and Parliament because it's a part of the Union List. This means there is a single set of citizenship rules that applies to all Indian citizens, regardless of which state they reside in. Nationality in India mostly follows the *jus sanguinis* (citizenship by right of blood) and not *jus soli* (citizenship by right of birth within the territory). Citizenship in India is governed by Article 5 – 11 (Part – II) of the Indian Constitution. Article 5 to 10 deals with granting people citizenship exclusively at the time of commencement of the constitution.

Article 5 outlines the qualifications for becoming an Indian citizen when the Constitution was adopted in 1950. There are two main requirements: 1) residing in India or having a domicile<sup>1</sup>, and 2) meeting one of three criteria: being born in India, having a parent born in India, or living there for at least 5 years before 1950. The following article talks about granting those people citizenship who migrated from Pakistan to India in 1950. The article bifurcates two types of people who migrated to India before and after 19<sup>th</sup> July, 1948. This date was chosen because *Permit System* was introduced which helped people migrate from India to Pakistan or from Pakistan to India after Partition. People who came before the said date had to fulfil the two

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<sup>1</sup> Mohammad Raza V. State of Bombay, AIR 1966 SC 1436

conditions like the person themselves, or at least one parent or grandparent, needs to have been born in India as defined by the *Government of India Act, 1935* and he should have resided in India since the date of his migration. People who came to India after 19<sup>th</sup> July, 1948 had to submit an application for Registration to the Officer and had been registered as a citizen by such an officer. The key difference is that Article 5 applies to those already living in India, while Article 6 addresses those who migrated specifically from Pakistan. Article 7 categorises people who migrated to Pakistan from India into two types. The first being the people who left India to move to Pakistan after *1<sup>st</sup> March, 1947* eventually losing their Indian citizenship. Second category is of those people who travelled to Pakistan and again came back to India. In this case, they can get citizenship provided they fulfil the below mentioned conditions – they themselves, their Parent or grandparents were born in India, had resided in India after re-immigration for at least 6 months, registered as citizens by concerned officer of Government of India. Thus, Article 7 acts as an exception to Articles 5 and 6. This means that even if someone meets the requirements for citizenship under Articles 5 or 6, they won't be considered a citizen if they don't qualify under Article 7. Article 8 talks about granting those people citizenship who are of Indian origin but are living in foreign territory except Pakistan. As per Article 9, if an Indian citizen willingly acquires citizenship of another country, they lose their Indian citizenship. Article 10 says that if a person becomes a citizen of India through Article 5 to 8, he generally remains an Indian citizen unless parliament passes a legislation to make changes in the same. Article 11 introduced the law-making power of the Parliament to change or govern citizenship laws in the country. This article essentially makes the Parliament the rule maker for citizenship. It is worth noting that India is probably the only country whose constitution includes the concept of Citizenship.

### ***Citizenship Act, 1955***

The Citizenship Act, 1955 is the legislation dealing with citizenship in India. This Act established the fundamental basis for citizenship following the authorities outlined in Article 11. It was further supplemented by Citizenship Rules of 1956. There are five ways of acquiring Indian citizenship as envisioned under this act. *Section 3* provides citizenship on the basis of **Birth**. It states that people who were born in India between 26<sup>th</sup> January, 1950 to 1<sup>st</sup> July, 1987 automatically becomes Indian citizens regardless of their parents' nationality. On or following July 1, 1987, before the enactment of the Citizenship (Amendment) Act, in 2003, that is till 3<sup>rd</sup> December, 2003, if any of the parents is a citizen of the nation of India during the time of birth of their child will be regarded as Indian citizens. Persons born after 3<sup>rd</sup> December 2003 are Indian citizens if both parents are Indian citizens or if one parent is an Indian citizen and the other is not an *illegal migrant*<sup>2</sup> at the time of birth. *Section 4* provides citizenship by **Descent**. It states that any individual born outside India on or after 26<sup>th</sup> 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. This was followed by the **Amendment Act of 1992** which sought to aim towards **Gender Neutrality**. It outlined that people born between 10<sup>th</sup> December, 1992 and 3<sup>rd</sup> December, 2004 will acquire citizenship if either of their parents were Indians at the time of birth. However, it is important to understand the law which is currently applied in our country with respect to Descent criterion. If a child born outside India after December 3<sup>rd</sup>, 2004, then parent need to register their birth at the Indian Consulate within one year of their birth and sign a document stating that their child doesn't have a passport from any other country. As per the provisions of *Section 5* of the Act, the Central Government may register any individual as a

citizen of India based on his application if he is not an illegal immigrant<sup>2</sup> 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.
- 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) 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. This section deals with people living in those territories which became a part of India after 15<sup>th</sup> August, 1947 such as Sikkim. There is a specific category for such people called as **Person of Indian Origin (POI)**. *Section 6* of this Act 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, if the Government believes that the applicant has made a remarkable contribution in the fields of science, philosophy, art, literature, global peace, or human advancement in general then 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.

### ***Termination of Indian Citizenship***

Termination of citizenship is possible in three ways according to the Act. It is through the process of Renunciation, Termination and Deprivation. If a citizen who is also a national of another country renounces his Indian citizenship through a declaration in a prescribed manner, then he ceases to be an Indian citizen. Secondly, if a citizen voluntarily or with his free will acquires the citizenship of any foreign country, he ceases to be an Indian citizen. The government of India can deprive a person of his citizenship in some cases. But this is not applicable for all citizens. It is applicable only in the case of citizens who have acquired the citizenship by registration, naturalization, or only by Article 5 Clause (c) (which is citizenship at commencement for a domicile in India and who has ordinarily been a resident of India for

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<sup>2</sup> Section 21B of Citizenship Act, 1955

not less than 5 years immediately preceding the commencement of the Constitution). This is called Deprivation.

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

The Act has amended the Citizenship Act, 1955 to give eligibility for Indian citizenship to persecuted minorities who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, and who entered India on or before *31 December 2014*. The Act was introduced in light of increased problem of illegal immigrants in the country which in turn had an adverse impact on the governance of the country. 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 *fast-track citizenship* without showing any documentation. The CAA 2019 was, therefore, enacted to offer hassle-free citizenship to migrants who have endured religious persecution in these three bordering nations. The primary purpose of this act was to amend certain changes in the current legislation and limit immigration to six religions so as to provide citizenship to only those minorities who were persecuted or were in fear that they might be persecuted. *Section 7D* of the Act 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. 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.<sup>3</sup> Interesting thing worth noting here is that this amendment does not apply to Tribal areas s like Meghalaya, Tripura, Mizoram, or Assam. It also does not apply to areas identified under the Inner Limits of the Bengal Eastern Frontier Regulation Act of 1873.

### ***Evaluating the concerns surrounding the CAA***

It is the first time that Citizenship is granted in India exclusively on the grounds of religion. The most crucial aspect of this amendment is that it excludes Muslim community and critics have recognised this as primary reason for violating the principles of Secularism, equality and Justice. Critics further argue that if at all the act aims to protect persecuted minorities then why does it not include Shia, Balochi and Ahmadiyya Muslims in Pakistan, Hazaras in Afghanistan. Additionally, it is further said that Rohingya Muslims from Myanmar and Tamils staying as refugees in several southern states are not being included under this act. Hence, it is said that this act tends to favour some religious minorities while continue to ignore other minorities. Another point of contention is that the Act tends to violate Article 14 of the Constitution which guarantees Right to Equality. Others call it a Class Legislation, as classification on the grounds of religion is not permissible. In addition to this, government's motto of including only three specified countries and thereby excluding other (neighbouring) countries is unclear and ambiguous. Although, Afghanistan does not form a part of British India. On the classification

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<sup>3</sup> Humdard Dawakhana v Union of India, 1960 AIR 554

of individuals, the Act provides benefits to sufferers of only one kind of persecution, i.e. religious persecution neglecting others. Religious persecution is a grave problem but political persecution is also equally existent in parts of the world. If the intent is to protect victims of persecution, the logic to restrict it only to religious persecution is a suspect. Experts fear that this act could lead to a situation where a person from Rohingya community who is facing persecution might be refused citizenship while a Hindu from Bangladesh, who might be an economic migrant and have not faced any direct persecution in his life, would be entitled to citizenship. The clear reason for choosing to reduce the residential requirement for Naturalisation from eleven years to five years have not been mentioned anywhere.

### *Application for citizenship under the CAA rules*

In the rules notified in march, 2024 the Home Ministry has published a 52 page document explaining the procedure for application in detail. Under Section 6B of the Citizenship Act, 1955, applicants must follow a specific application process, including electronic submission of the application to the Empowered Committee through the designated District Level Committee. Applicants need to prove their country of origin, religion, date of entry into India, and knowledge of an Indian language to qualify for Indian citizenship. Upon submission, applicants will receive an acknowledgement in Form IX. This will be followed by document verification by the District Level Committee.

The designated officer administers the oath of allegiance to the applicant, and the application, along with necessary documents, is forwarded to the Empowered Committee for further processing. In case the applicant fails to appear in person for the oath-taking, the District Level Committee may forward the application to the Empowered Committee to be considered for refusal. Upon successful completion of the application, citizens will be provided digital certificates. A hard copy of the certificate may be provided on request. The task of processing the citizenship applications under the CAA has been assigned to the **Postal department and Census officials** under the Union government. Background and security checks will be conducted by Central security agencies like the **Intelligence Bureau (IB)**. Final decisions on applications will be made by empowered committees led by the **Director (Census Operations)** in each State.

### *Examining the clash between the Assam Accord and citizenship policies*

The North Eastern states have a long history of people moving in from other areas. This movement started even before British rule and continued until the 1990s. People came from places like Tibet, mainland India (Gangetic plains), Bangladesh, Myanmar, and Bhutan. However, this large influx of migrants caused several problems for the natives. These included increased poverty, a feeling of cultural loss among the original inhabitants, competition for jobs, and damage to the environment. As a result, there were protests in many North Eastern states like 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 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 and Manipur. In addition to ILP, the Constitution's Sixth Schedule and *Article 244(2)* establish *Autonomous District Councils* (ADCs) in Assam, Meghalaya, Tripura, and Mizoram, granting them legislative, judicial, and administrative autonomy. The Sixth Schedule of the Indian Constitution provides special powers to autonomous district councils (ADCs) in Assam, Meghalaya, Tripura and Mizoram, which have jurisdiction over specific tribal-majority areas, with the objective of ensuring development and boosting self-governance by tribal communities in those pockets.

In north-eastern region, Assam has been severely affected due to illegal immigrants entering Assam thereby posing a threat to native population living there. Assam, a state rich in tribal population has indigenous resources and known for its culture. The same has seen a downfall over several decades. Assam does not come under the sixth schedule causing unrest in these areas against CAA. There is no record of these migrations; neither of the large-scale ones around the times of great upheavals — India's Independence and Partition in 1947, the creation of Bangladesh in 1971; nor of the steady trickle that has continued since then. Although some of these refugees/migrants are Muslim, a majority are believed to be Bengali-speaking Hindus. 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. To address this concern, 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. Now, the Amendment act goes against several provisions of this accord. Hence, there have been increased tensions in Assam.

### ***Scrutinizing the Act's legal basis***

In December 2019, Hon'ble Supreme Court, led by former Chief Justice of India (CJI) S.A. Bobde, refused to stay the operation of the CAA. Instead, the court suggested that the government should publicize the actual intent of the Act. A similar plea for a stay was rejected by the court on January 22, 2020, with the court emphasizing the need to hear the government's perspective first. In October, 2022 - A Bench led by former CJI U.U. Lalit ordered that final hearings in the case would commence on December 6, 2022. However, since then, the case has not been listed. According to the Supreme Court's website, the petitions are currently before a Bench headed by Justice Pankaj Mithal.

### ***Conclusion***

The parliament has unfractured powers to make laws for the country when it comes to Citizenship. Citizenship Amendment Act is one such exhibit of Parliament's powers. Although the act 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. In order to

safeguard concerns of indigenous tribes and population, proactive measures should be taken to conserve their culture and rich heritage. To enhance effective implementation of the policy, inclusive development programs to bridge the socio-economic gap between the native population and immigrants settling there.

Lastly, the onus is now on the Supreme Court, being the Guardian of the Constitution, to interpret the provisions of the Act and test its Constitutionality that whether the "classification" done in the Act is "reasonable" or not if tested against Article 14.