

DEVELOPING CONCEPT OF CITIZENSHIP IN INDIA: ISSUES AND
CHALLENGES

DIVYA BHARGAVA

Indore Institute of law

1. Introduction

The Parliament has approved the Citizenship Act 2019 for grants to various community groups, belonging to Hindus, Jains, Parsis, Sikhs, Buddhists, and Christians. The appellation “Citizenship” described in the small sentence, that the people living in the country must enjoy all the rights and freedoms. The Conception of Citizenship act was first recognized after the partition in the year 1948, to provide equality among Hindus and Muslims. The requisite for amending the citizenship act, of 1955 is that each person in India should get an identical opportunity and be recognized in an equal manner. The citizens of a state are its people who have full right to enjoy their freedom, civil and political right. The Citizenship Act carries a lot of advantages conferred by the Constitution, but alien countries do not have the power to enjoy these rights. The citizenship act 1955 and 2019 was introduced for giving benefits and provisions to Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan¹. Earlier, an initiate of the Citizenship Act, 1955 that there was no specific action to give identities to an illegal immigrant and also, they were not given any citizenship by naturalization unless they were shown that they have been living in India for the past 11 years². Numerous petitions have already been filed impugning the statutory validity of the Citizenship Amendment Act 2019 (the Act) before the Hon’ble Supreme Court of India, wherein the matter is still under consideration. However, amid the chaotic situation, one thing which is absolutely crystal is that the Citizenship Amendment Act, 2019 is not for taking away the citizenship of any individual³.

2. The Citizenship’s Act Constitutional Provisions :

The Citizenship Act, which falls under Part II of the Constitution, merely describes classes of people and specifically those who entered India as illegal migrants so that they might be

¹ Ayush Verma, CITIZENSHIP (AMENDMENT) ACT, 2019: EVERYTHING IMPORTANT YOU SHOULD KNOW ABOUT (DEC 19,2019). https://blog.iplayers.in/citizenship-amendment-act-2019-everything-important-you-should-know-about/#What_was_the_need_for_amending_the_Citizenship_Amendment_Act_1955.

² *Ibid.*

³ Abhishek Choudhary& Rajashree Kanungo, A STUDY OF CONSTITUTIONALITY OF THE CITIZENSHIP AMENDMENT ACT,2019.

assigned to a specific class. The people of India will become citizens of India when at the constitution takes effect⁴ :

- a) Citizenship by Domicile (Article 5)⁵.
- b) Citizenship by emigrants from Pakistan (Article 6)⁶.
- c) Citizenship of migrants to Pakistan (Article 7)⁷.
- d) Citizenship of Indians abroad (Article 8)⁸.

As stated in, Article 5 of the Indian Constitution⁹, domicile entitles the person to citizenship, if it fulfills the following conditions: First, who was born in the territory of India. Second, either of the parents was born in India. Third, who has been an ordinary resident of India for not less than five years immediately before the commencement of the Constitution¹⁰.

Article 6¹¹ of the Indian Constitution bids flexibility, it pacts with those persons who have migrated from Pakistan to India have been classified into two categories: One, either of his parents or any of his grandparents born in India as defined in the Government of India Act, 1955. Two, in case of where such migrated to India before July 19, 1948¹².

Article 7¹³ deals with the Rights of Citizenship of certain Migrants of Pakistan, it does not affect article 5&6. In this article, there is an exception that those people who returned to India based on resettlement will be permitted Citizenship in India. To fulfill the rights of Citizenship of certain migrants of Pakistan, there are certain boundaries: First, those people are entitled to become citizens of India if they fulfill all the necessary conditions necessary for immigrants from Pakistan after 19 July 1948, under article 6 of Indian Constitution¹⁴.

The last article that deals with the enactment of citizenship in India is Article 8 of the Indian Constitution which deals with the Citizenship of persons of Indian origin residing outside India. Under this article, only those persons whose parents or either of grand-parents living in India as defined under the Government of India Act, 1955

⁴ Dr. J.N Pandey, The Constitutional of India, 49th Ed. 41(2012).

⁵ The Constitution of India, 1949, art.5

⁶ *Ibid*, art.6

⁷ *Ibid*, art.7

⁸ *Ibid*, art.8

⁹ *Supra*, n (7).

¹⁰ *Ibid*.

¹¹ *Supra*, n(8).

¹² *Ibid*.

¹³ *Supra*, n (9).

¹⁴ *Supra*, n (5), art.7.

and who is ordinarily residing outside India, shall be deemed to be Indian, if he has been registered as a citizen of India by the diplomatic or consular representatives of India.

The Citizenship Act, 1955 was amended six times in the years 1986, 1992, 2003, 2005, 2015, and 2019.

3. Various Amendments in the Citizenship Act

The Citizenship Act, 1955 is a law providing for the acquisition, determination, and termination of citizenship after the commencement of the constitution¹⁵. Following, the 1955 amendment legislation, another amendment was passed in 1986 stating that this act is no longer sufficient for granting Indian Citizenship to anyone born in India. Another amendment took place in 1992 which eliminated discrimination against women in the matter of citizenship and also their children¹⁶. The third major amendment in the citizenship act took place in the year 2003 which changed the concept of the National Registrar of citizens and the issue of national identity cards to all the citizens of India. In year 2015, the citizenship amendment bill was amended which granted registration to overseas citizens by minor whose parents in Indian and in respect existing PIO cardholders, in the year 2015 amendment act made mandatory provisions for Indian citizens to stay for one year.

4. What is The Citizenship Act, 2019?

The Bill 2019 deals with the immigrants of Hindus, Sikhs, Jains, Buddhists, Parsis, and Christians from Pakistan, Bangladesh, and Afghanistan. Simply, the naturalization of migrants who have fled their hometown. The Citizenship act, 2019 does not base on discrimination of religion but facially, it discriminates among Muslims. The Citizenship Act, 2019 deals with the special provisions for the tribunal area of Assam, Mizoram, Meghalaya, and Tripura is included in the sixth constitutional amendment act.

5. Basic Amendment Changes that Citizenship Act 2019 brings to 1955 Act:

The citizenship act, of 2019 brings a lot of changes in the act after the 1955 act. The 2019 act applies to only non-Muslim immigrants from major three Muslim countries

¹⁵ Devika Sharma, Citizenship Amendment Act-A Critique (March 5,2020), <https://www.sconline.com/blog/post/2020/03/05/citizenship-amendment-act-a-critique/>.

¹⁶ Negi Mohita, THE CITIZENSHIP AMENDMENT BILL 1992, [HTTPS://WWW.YOURARTICLELIBRARY.COM/ESSAY/THE-CITIZENSHIP-AMENDMENT-BILL-1992/24871..](https://www.yourarticlibrary.com/essay/the-citizenship-amendment-bill-1992/24871..)

i.e., Bangladesh, Pakistan, and Afghanistan, given that they will be granted the Indian citizenship act, provided that they entered India before 31 December 2014¹⁷.

6. Whether the Citizenship Amendment Act is violating the article(s) provided under the Constitution of India?

. The Citizenship Amendment Act violates the fundamental rights of citizens. The role of fundamental rights is to provide equal opportunity to all the citizens and the citizens are equal before the law. The citizenship amendment act, on another hand, made a distinction based on religion. Citizenship included people of all faiths, but Muslims are not included in the Citizenship Act, 2019. This raises a concern in the legal community, that the particular religion “Muslims” is not granted citizenship. So, however, the answer to this question is very simple, i.e. “Yes” it is violating the Constitution of India, the law talks about equality, justice, liberty, and fraternity. But, without a doubt, the citizenship amendment act doesn’t provide any justice to those who still are not registered as Indian citizens.

Another violation is that in the Citizenship Amendment Act, 2005 the government is providing rights to the overseas citizens of India but after the 2019 act, the government has written down another criticism is, to cancel the registration without any hearing.

7. Issues and Challenges with the Citizenship Act, 2019

1. *The first issue is that it is violating article 14 of the Indian Constitution: -*

Article 14 of the Indian constitution talks about equality among Indian citizens, that they should not be discriminated against on the basis of race, caste, color, sex, or place of birth¹⁸, but, in the 2019 amendment act, the citizens are being discriminated on the basis of place of birth and caste. If the Government of India treated the people of India equally then they should not discriminate between Muslims and Hindus .

2. *The First Challenge is for the Muslim Community:*

As mentioned above that, all the rules should be equal for all the citizens of India but as stated in the Citizenship amendment act 2019, the Muslim community is excluded which lead to changes a lot of things that the citizenship is not applicable for the Muslim community, though Muslim community is excluded from the three major countries i.e. Pakistan, Afghanistan, and Bangladesh. Not providing an opportunity to

¹⁷ Debayan Roy, WHAT 2019 CITIZENSHIP AMENDMENT ACT SAYS AND WHY THE OUTRAGE OVER IT, 19 DECEMBER, 2019(4:12PM || IST) .

¹⁸ *Supra*, n.5, art.14.

the Muslim community results in a lot of difference before the law. The logic behind the bill is not consistent as the bill does not protect all religious minorities, nor does it apply to all neighbors¹⁹. It is even more concerning that CAA has deterred Muslims from Indian Citizenship. Here, there is a preference of giving specific religions preferred status over another religion, allowing for interference that the secular Government of India prefers a certain religion over another²⁰.

3. *The Second Issue and Challenge is Exclusion of Tribunals :*

The Citizenship Act, 2019 does not apply to Tribal Areas of Tripura, Assam, Meghalaya, and Mizoram because it is included in a sixth schedule of the Indian Constitution²¹. This act will also not apply to the states which are regulated by “Inner Line” permit under the Bengal Frontier Regulation, 1873²². It clearly highlighted the violation of equality before the law because these states are also a part of India, therefore it should be treated likewise before the law but after the amendment, it shows a major difference among the citizens. The major issue in Assam is the NRC, which targeted illegitimate immigrants²³. A person has to prove that either they or their ancestors were in Assam on or before March 24, 1971²⁴.

4. *The third challenge is for Overseas Citizens of India :*

The Citizenship Amendment Act, 2005 introduced a new category of overseas citizens, i.e. an overseas citizen of India cardholder. This new provision is related to persons of India living outside India, especially in western countries. In 2005, an act granted the registration to an overseas citizen of India. However, after the amendment in the year 2019, a new provision for the cancellation of the citizenship of the overseas citizen of India cardholder was added i.e. the government has the power to cancel the OCI registration²⁵. Here, in the 2019 amendment, the second and third class of citizenship

¹⁹ Citizenship (Amendment) Act 2019: *What is it and why is it seen as a problem*, *The Economic Times*, Dec 31,2019.

²⁰ Tayiba Khan, *THE CITIZENSHIP AMENDMENT ACT, 2019: A RELIGION BASED PATHWAY TO INDIAN CITIZENSHIP*, PG.6.

²¹ “Citizenship Amendment Act 2019: All you need to know”, Dec 15,2019. <https://www.livemint.com/news/india/citizenship-amendment-act-2019-all-you-need-to-know-11576401546515.html>.

²² Roshni Sinha, *Explainer: The Citizenship (Amendment) Bill, 2019*, Dec 9 ,2019 <https://www.prsindia.org/theprsblog/explainer-citizenship-amendment-bill-2019>.

²³ *Supra*, n.10.

²⁴ *Ibid*.

²⁵ Albertina Almeida, *THE CAA'S PROVISION FOR CANCELLING OCI IS AIMED AT PUNISHING DISSENTERS*, 25 APRIL 2020. [HTTPS://THEWIRE.IN/RIGHTS/CITIZENSHIP-AMENDMENT-ACT-OCI-CARDHOLDER](https://thewire.in/rights/citizenship-amendment-act-oci-cardholder).

become entrenched by the violation of the law on grounds of canceling the OCI registration. Second, the language of this provision suggests the grounds that will not violate the law.

5. *The third issue is the exclusion of other illegal migrants from other countries:*

Here, the first issue arises is that, the citizenship amendment act grants citizenship to Pakistan, Afghanistan and Bangladesh but not to other countries. The amendment bill differentiates migrants from different countries. If this bill is for Hindus, then Hindus are situated all over the world. Why this amendment bill targets the Major-Muslims country?. The non-inclusion of Tamil Eelam's (linguistic minority in Sri-Lankan), the Rohingya Muslims (a religious minority in Myanmar) stand unexplained²⁶.

8. Conclusion

Why is it necessary to amend any law? The answer is to protect the citizens and change the law, which will be very fruitful for all the people. Howsoever, here is a big question mark, that with the developing concept of citizenship acts in India many citizens in India will face many consequences which may result into numerous mishappening because First the developing concept of citizenship is difficult in India because all the citizens should follow all the rules and take steps necessary but it is discriminating on the basis of religion. India is a country where there are all types of religions but discriminating among Hindus and Muslims is not equal before the law. The Preamble of the Constitution talks about that “*We, the people of India having solemnly resolved to constitute India into a [Sovereign, Socialist, Secular, Democratic, Republic] and to secure all the citizens*”²⁷. The phrase “all citizens” includes all the religions of India. But, after the amendment of the citizenship bill it cleared the misunderstanding, it differentiates among the religions; this is the first criticism that lack behind the developing concept of citizenship act in India. If, citizens were not treated equally then it will create a huge gap between citizens and the government. The CAA was born out of a rising Hindu nationalistic movement. Even if India were to repeal the CAA, it would not be the only step to placate tensions amongst the religious communities in India or calm the Hindu nationalism movement. Frankly, regarding the issue of refugees, like any other foreign government, the Indian government has full authority to regulate the asylum or citizenship process as it sees fit. India also has no legal or moral obligation to welcome every single visitor, refugee, or tourist for the matter. Also, it must be acknowledged that not only does India have

²⁶ *Supra*, n.3

²⁷ The Constitution of India, 1949.

problems with civil and religious issues but the country faces the issue of extreme poverty and overpopulation²⁸.

References

1. <https://thewire.in/rights/citizenship-amendment-act-oci-cardholder>.
2. <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>.
3. <https://theprint.in/theprint-essential/what-2019-citizenship-amendment-act-says-and-why-the-outrage-over-it/337766/>.
4. [HTTPS://WWW.YOURARTICLELIBRARY.COM/ESSAY/THE-CITIZENSHIP-AMENDMENT-BILL-1992/24871..](https://www.yourarticlelibrary.com/essay/the-citizenship-amendment-bill-1992/24871..)



²⁸ *Supra*, n.10.