

ISSN: 2582 - 2942



# LEX FORTI

---

LEGAL JOURNAL

VOL- I ISSUE- III

APRIL 2020

## DISCLAIMER

---

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

# EDITORIAL BOARD

---

**EDITOR IN CHIEF**

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

**EDITOR IN CHIEF**

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE  
OF ARBITRATORS

PHONE - +91-8500832102

**EDITOR**

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+  
YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK  
EXPERIENCE IN BANKING SECTOR; CONTENT  
WRITER FOR BUSINESS TIMES AND ECONOMIC  
TIMES; EDITED 50+ BOOKS ON MANAGEMENT,  
ECONOMICS AND BANKING;

**EDITOR**

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL  
UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

# EDITORIAL BOARD

---

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND  
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS. P SAI SRADDHA SAMANVITHA

STUDENT EDITOR

## ABOUT US

---

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



**Constitutionality of Citizenship Amendment Act 2019**

**Anup Abraham Jacob**

## ABSTRACT

---

Recently, the entire of India has been in a state of protests and campaigns, which can be directly attributed to the recent bill passed by the Government amending the Citizenship Act 1995. This current amendment is known as the Citizenship Amendment Act 2019. There are two main reasons why this amendment was not accepted by the various classes of people.<sup>1</sup> The act was primarily opposed by the Muslim Community on the ground that the act was biased and discriminatory against persons of Islam. The act has gained a lot of attention because of its alleged biasness towards the mentioned communities as it openly excludes the Muslims from the entire act. However, the act is also being challenged by the people of various North-east states, mainly Assam. The claim raised by these people is that irrespective of the community to which they belong to, immigrants are a threat to the cultural identity of their state. This paper tries to give an overview to its readers about how the act may amount to infringement of certain Constitutional principles as well as rights of various classes of persons. The researcher has adopted doctrinal method.

---

<sup>1</sup> Tanisha, Citizenship (Amendment) Act 2019: Persecuting the Religious Minorities, Legal Service India

## **INTRODUCTION**

---

“The contentious Citizenship Amendment Act 2019 hereinafter referred as CAA recently passed by the Indian Parliament is not only merely poisonous, discriminatory, divisionary, but also against the foundational philosophy of Constitution of India”. The Citizenship Act of 1955 had initially stated that there were five ways in which a valid Indian Citizenship could be obtained – (i) Birth (ii) Decent (iii) Registration (iv) Naturalisation and (v) Incorporation of some territory into India. However, the 1955 act prohibited illegal migrants from acquiring Indian citizenship. According to the 1955 Act, a foreigner would be deemed to be an illegal immigrant if he either enters the country without valid travel documents, like a passport and visa, or if he/she enters India with the required valid documents, but stays beyond the permitted time.<sup>2</sup> Initially, the Foreigners Act of 1946 and the Passport (Entry into India) Act, 1920 vested with the Central Government the power to regulate the entry, exit and residence of foreigners within India.

The provisions of the Citizenship Act of 1955 were generally accepted by the various religious as well as other classes of people. In 2015 and 2016, two notifications were issued by the Central Government which exempted certain classes of people from the provisions of the Foreigners Act of 1946 and the Passport (Entry into India) Act, 1920. These classes of people would thus not be deported or imprisoned even if they were found to be residing or travelling within India without valid documents. The classes of people who were included under the exemption were Hindus, Jains, Parsis, Christians, Sikhs and Buddhists from Afghanistan, Bangladesh and Pakistan. Further, in 2016, a bill to amend the Citizenship Act 1955 was introduced.<sup>3</sup> This Bill provided that illegal migrants belonging to the above-mentioned religions from Pakistan, Afghanistan and Bangladesh would be eligible for citizenship. This Bill was passed in the Lok Sabha in January 2019 and was enacted in December 2019. However, the introduction of the Citizenship Amendment Act 2019 resulted in various protests and agitation nationwide.

## **PROTESTS IN ASSAM**

---

Although agitations and protests against the Citizenship Amendment Act 2019 took place throughout India, Assam was one of the states in which such agitation was maximum. The people of Assam were against the illegal migrants irrespective of their nation of origin. The Citizenship Amendment Act 2019 states that on acquiring citizenship, the person would, from

---

<sup>2</sup> Section 2(1)(b) of Citizenship Act, 1955.

<sup>3</sup> The Citizenship Amendment Bill,  
2016



the date of entry into India be deemed to be citizens of India, and any existing legal proceeding against that person in respect of their illegal migration or citizenship will be done away with. However, the act has provided exemption from the purview of the act to certain North-eastern states only. The act would not apply to the Tribal areas included in the sixth schedule of the Constitution. However, various districts of Assam are not included in the Sixth Schedule and so these areas were under the threat of immigrants. The claim raised by the people of Assam was that such illegal migrants would be a threat for the economy as well as the cultural identity of Assam. On acquiring citizenship, these immigrants would be treated just like ordinary citizens, and would be eligible for employment as well. All resources are scarce, and it must always be the first priority of the Government of a nation to look after the needs of its citizens. Large scale immigration from Pakistan, Afghanistan and Bangladesh could reduce the standard of living and even endanger the lives of the natives of these states. This large scale taking over by immigrants would also result in the loss of culture and identity of Assam.

The provisions of the act are also seen to be in direct violation of the Assam Accord of 1985.<sup>4</sup> The Assam accord had initially stated that any immigrant from Bangladesh moving into India post March 25<sup>th</sup> 1971 would be subjected to deportation in accordance with law.<sup>5</sup> Clause 6 of the accord further provides that in order to preserve and protect the culture, identity, and heritage of the Assamese people, appropriate constitutional, legislative as well as administrative safeguards shall be provided. The infiltration of Assam by migrants of either of the three countries mentioned in the Citizenship Amendment Act 2019 would ultimately result in the Assamese people being a minority in their own state.

## **SECULARISM**

---

The next major issue faced by the disputed Citizenship Act of 2019 is that it has been opposed by the Muslim community on the grounds that the provisions of the act are framed in such a manner that it is discriminatory against Muslims. The act has provided that illegal immigrants from Pakistan, Afghanistan, and Bangladesh belonging to various religious communities such as Christians, Hindus, Jains, etc who enter India on or before 31<sup>st</sup> December 2014 shall be eligible to obtain Indian citizenship. However, the act has not provided any remedy for Muslim immigrants. This leads to the assumption that the act attacks the secularism of the state, and has been drafted on the basis of religious prosecution. Illegal immigrants, irrespective of which

---

<sup>4</sup> Assam Accord, 1985.

<sup>5</sup> Clause 5, Assam Accord, 1985.

religion they belong to, all face almost the same kind of sufferings. The reasoning of the Parliament in adding such a provision is that Pakistan, Bangladesh, and Afghanistan are all Muslim countries and so it is assumed that Muslims would not face any kind of religious persecution in their own countries. However, it is seen that various Muslim communities such as the Shias and Ahmadiyyas are forced to suffer extremist violence in their countries.<sup>6</sup> Currently, the provisions of the disputed act are such that it would not give protection to any illegal immigrant belonging to any Muslim community, even if they suffer the same pains and sufferings as illegal immigrants of any other religion. This is thus in violation of various constitutional provisions including the right to equality enshrined in Article 14 of the Constitution of India. Article 14 states “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”<sup>7</sup> So, according to article 14, all immigrants must be treated equally before the law. Article 14 permits the legislature to make reasonable classification while enacting laws. What it does not permit is class legislation. As a result, the Supreme Court has, in many cases struck down various legislations on the grounds that classification is not reasonable. “In order for a classification to pass the test of reasonableness, it must fulfil two conditions -(1) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) the differentia must have a rational nexus with the object sought to be achieved by the statute in question.”<sup>8</sup> Further, the interpretation of article 14 by the judiciary in various cases has led to the premise that article 14 strikes at arbitrariness. The Supreme Court in *Maneka Gandhi Vs Union of India* has held that no law must be arbitrary.<sup>9</sup> Arbitrariness and equality are opposites. If any law is arbitrary, then it is against equality. And if a law is to abide by the principles of article 14, then it must not be arbitrary as well.

## **CITIZENSHIP AMENDMENT ACT 2019 AND THE NATIONAL REGISTER OF CITIZENS**

---

The Government had conducted the National Register of Citizens in Assam, and had also stated that it would be implemented in the entire country. This simply means that each and every

---

<sup>6</sup> 6 Alok Prasanna Kumar, *Citizenship (Amendment) Act: An unconstitutional Act.* (Dec.24, 2019, 9:15 PM) <https://www-deccanherald-com.cdn.ampproject.org/v/s/www.deccanherald.com/amp/specials/sunday-spotlight/citizenship-amendment-act-an-unconstitutional-act-785638>.

<sup>7</sup> INDIA CONST. art. 14

<sup>8</sup> *The State Of West Bengal vs Anwar Ali Sarkar* AIR 1952 SC 75, 1952 CriLJ 510, 1952 1 SCR 284

<sup>9</sup> *Maneka Gandhi vs Union Of India* 1978 AIR 597, 1978 SCR (2) 621

person in India would have to prove that he/she is a citizen of India. This would further prove to be burden and cost on the common people of India who do not have various required documents. The poor and illiterate people would find it difficult to provide various documents and prove their citizenship. Any such person who fails to prove his citizenship would inturb be classified as an immigrant. The disputed Citizenship Act would now prove to be a protection legislation only for the religions mentioned in it. Immigrants belonging to other religions such as Islam would not be entitled to avail any remedy. In fact, Muslims, even the Indian origin Muslims would be deported or put into detention if they fail to provide the required documents. Thus, implementing the NRC along with the Citizenship Amendment Act would prove to be a dangerous move.

## **CITIZENSHIP AMENDMENT ACT AND FRATERNITY- CONCLUSION**

---

“Not only the fundamental rights of equality, life and liberty are violated under the Citizenship Amendment Act, but also the deepest constitutional commitments to dignity, fraternity and integrity that breathe life into our fundamental rights, are also violated.”<sup>10</sup> Illegal immigrants may be classified in a reasonable manner so as to provide the required treatment to them. However, they must not be classified in an unreasonable manner. Under the provisions of the Citizenship Amendment Act 2019, immigrants are distinguished and segregated from each other based on the religion to which they belong. Such a classification is against the constitutional provisions, and is arbitrary. It confers on some extra benefits without any proper reason. The Citizenship Amendment act has thus been drafted in such a manner that it breaches the intrinsic relation between fraternity and secularism. In *SR Bommai Vs Union of India*, the Supreme Court stated that India being a plural society with multi religious faiths, secularism is the bastion to build fraternity and amity with dignity of persons as its constitutional policy.” Further, the Citizenship Amendment Act 2019 is a mockery towards the legal migrants, as they must wait atleast seven years to obtain citizenship, while illegal migrants from the specified regions can obtain citizenship in just five years.

India is a country of diverse ethnicity, heritage, and culture. In such a country, no community must be made to feel inferior to another community. The laws enacted by the legislatures must be in such a manner that it treats all persons and communities in a reasonable manner. Thus, its

---

<sup>10</sup> Pritam Baruah, ‘Not just equality, the CAA betrays constitutional values of dignity, integrity’, *The Wire* (Jan 10, 2020, 7:40 PM) <https://www.google.com/amp/s/thewire.in/rights/caa-constitution-equality/amp/>

is remarkable that huge protests are being carried out by the citizens of India to oppose a legislation which is arbitrary and discriminatory. The Supreme court must look into the constitutionality of the legislation and decide whether it must be struck down or not. The Supreme Court must uphold the faith of the citizens of India and must provide justice to whosoever seeks it.