

## **6. Validity of the Citizenship (Amendment) Act, 2019**

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### **i. Abstract**

This piece of work elaborately discusses the validity of the Citizenship (Amendment) Act, 2019. This recently enacted act has been a matter of dispute and uproar across the whole nation. The quarrel centers around the proviso to Section 2 of the Act, which reads as: *“Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31 st day of December, 2014..., shall not be treated as illegal migrant for the purpose of this act”*. Like the two sides of the coin, this act also has two visible sides, one picking up on its inclusionary and exclusionary nature, and accusing it of the fracture it caused to the Indian Constitution by profoundly injuring its structural blocks that make the Indian Constitution outshine from other Constitutions. While another side of the act, calls it legitimate and completely valid enacted for the welfare of politically and socially oppressed migrants residing in India for many years without any legal rights. There are other criticisms as well like, “the act is the beginning of the arbitrary rule in India”; “BJP is playing with the Constitution to establish Hindutva agenda”, etc. But unfortunately, everyone whether having the legal knowledge or not, has flocked into the wrangling taken up against the act. Very few have looked onto the brighter side or we can say onto the legitimacy of this amendment. Assumptions, mindless clustering in protests, and concentrating merely on the congested view, has turned this act, into nothing but uncertain presumptuous paranoia against its implementation. In the following research, the best of the efforts have been made to reveal and diagnose the validity of this act, which has gone latent under the chaotic layer of miscommunication and misinterpretation.

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## **1. Introduction**

India has always been bound by the common thread of diversity. Soil of Indian land is known for absorbing, nurturing, and merging into itself every flowing stream of religion from ancient times. I would like to narrate popular Qisa -e- Sanjana, for an instance, where Jadi Rana, an Indian ruler sent a glass full of milk to a Parsi group seeking refuge in India and seeking the same, came to his kingdom. Sending a glass full of milk had a hidden message, that, his kingdom is full of the local population and thus it will not be possible to give them asylum in his kingdom. In response, the Parsi group of immigrants put sugar into the milk indicating, the way they will assimilate into the local population, just like sugar assimilated into the milk. My sheer motive is to tell how Fraternity is not just the part of Indian constitutional design but has also been a functional part of its rich diverse history in various forms.

This constitutional design or constitutional structure of India is being questioned, and debated, and is waiting on the counters of the Supreme Court since The Citizenship (Amendment) Act, 2019 has come into effect on January 10, 2019. Even after it comes into force, the Act is eager to get its stamp of validation. In simple words, if I say, the validation of the Act is being questioned based on its very nature, according to many, which is against the fundamentals of the Indian Constitution and the matter is still pending in the Supreme Court.

I have tried in this article, as a researcher by the method of Doctrinal Research, to find out how this Act has been misinterpreted and misconceived among citizens which have become the reason for uproar across the whole nation. This whole piece of work is dedicated to the microscopic research of this Act, to know-how and up to what extent it can be called completely valid and Constitutional.

## **2. Background of Citizenship In India**

History has the power to define the present and future, and in the same manner, whatever issues of validity of this Act have arisen today, must have some roots in the past. So let us dive into

the legal history of Citizenship in India, not only for the people who took birth here but also the diverse streams of people who blended effortlessly in this land coming from different cultures, religions, places, etc.

Before November 26, 1949, there was no concept of Indian Citizenship in being. After the adoption of the Indian Constitution on 26 November, the provisions relating to citizenship came into force. During the British rule, the residents of British India were British subjects governed by the British Nationality Acts. Princely states had no international personality and ‘British protected persons’ was the only status they enjoyed.

Indian Citizenship is broadly divided into two phases i.e. acquisition of Citizenship, first, at the commencement of the Constitution, and second, after the commencement of the Constitution.

Part 2 (Article 5 to 11) of the Constitution deals with the law relating to the Citizenship of India at the commencement of the Constitution i.e. on 26th January 1950. These provisions were enacted keeping in view the partition of the country in 1947 and the consequent problems, for example, migration of people.

As regards to the Citizenship of India after the commencement of the Constitution, the provisions are contained in the Citizenship Act, 1955 enacted by the Union Parliament by the power assured to it in Article 11 of the Constitution.<sup>93</sup>

According to the Citizenship Act, 1955 a person can acquire Indian citizenship through birth, descent, registration, naturalization and incorporation of territory in India. Different Amendments have been made to the Act at different times like in the years 1986, 1992, 2003, 2005, 2015, and the latest Amendment of 2019.

Amendment Act, 1986 was passed by the Congress government in which the provisions of the Act were tightened. The reason for making provisions more stringent was a large influx of illegal immigrants from Bangladesh (mainly after 1971)<sup>94</sup> and Sri Lanka besides those from Pakistan and some African countries. Amendment Act, 1992, also passed under Congress govt., eliminated the discrimination against women and their children in the matter of citizenship.

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<sup>93</sup> Constitutional Law of India by Narendra Kumar, p.54.

<sup>94</sup> Indo Pak War of 1971 also known as Liberation War, before the war present Bangladesh was earlier East Pakistan.

Amendment Act, 2003 passed under the then BJP government has amended Act of 1955 by introducing and defining the notion of "Illegal Migrant" and Foreigners Act and Passport Act debar such a person and provide for putting Illegal Migrant into jail or deportation.

The Citizenship (Amendment) Ordinance, 2005 was enacted for extending the scope of OCI<sup>95</sup> for PIOs<sup>96</sup> except the countries of Pakistan and Bangladesh because their countries allow dual citizenship.

Amendment of 2015, under the present government of BJP, introduced the concept of an 'Overseas Citizen of India Cardholder' (an 'OCC) that essentially replaces and merges OCIs and PIOs.

**Citizenship (Amendment) Act, 2019** which is the focus of our research, has amended Section 2 of the original Act, 1955. **Section 2** states that *Hindu, Sikh, Buddhist, Jain, Parsi, or Christian from Afghanistan, Bangladesh, or Pakistan who entered into India before the 31st day of December 2014 will not be considered illegal migrants.*

### 3. Terminology

In the light of this topic, there are some terms which must be studied before we move further in this research. The terms which are to be discussed hereunder are: Citizen, Alien, Types of Aliens, Refugee, Asylum Seeker, and Migrant.

**3.1. Citizen:** A person who enjoys complete civil and political rights in the State is known as a citizen of that State. Full membership of the political community can be enjoyed by him.<sup>97</sup> Citizen is a legal status given to persons, who by the virtue of this status can enjoy certain rights in the State concerned. He does not just carry the rights of civil nature but also of the political nature with him. For example, Fundamental Rights enshrined in the Constitution of India is available to citizens of India only. Again, citizens alone have the right to suffrage, to hold high

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<sup>95</sup> Overseas Citizenship of India (OCI) is an immigration status permitting a foreign citizen of Indian origin to live and work in India indefinitely.

<sup>96</sup> Person of Indian Origin (PIO).

<sup>97</sup> See *United States v. Cruikshank*, (1875) 92 U.S.542.

offices such as that of the President, the Vice President, the Governor of the State, the Judges of the Supreme Court and High Courts, the Attorney General, and the Advocate General of a State. Citizenship carries with it certain duties and obligations too, such as, the Fundamental Duties contained in Article 51-A which are addressed to the citizens of India only. Nationals are different from the citizens. Former has a narrower significance than the latter as every citizen can be the national of the country but every national may not be the citizen of India. This is because the nationals of a State are only politically members of the State and owe allegiance to the State but do not carry with them special rights that only a citizen can enjoy, for example, right to vote. A person may remain the National of a country even after residing outside the country; he may lose his citizenship without losing his nationality. The term Nationality is neither used in the Constitution nor the Citizenship Act, 1955. Thus, all citizens of India would also be regarded as an Indian National.

**3.2. Alien:** Term Alien means outsider, and in the context of citizenship, we can broadly say, that a person who is not a citizen of the State is an Alien. However, in the Foreigners Act, 1946, term alien is nowhere defined but section 2(a) of the Act defined the term ‘foreigner’ but after the amendment of the Act in 1957, the term foreigner is defined to mean the same as alien, i.e., a person who is not a citizen of India. There are different types of Aliens like resident aliens and non-resident aliens, enemy aliens, and friendly aliens. Here in this article, we would focus on resident and non-resident aliens only. Former one i.e. Resident aliens are foreign persons residing in the State only by the virtue of temporary title to membership of the State. They do not enjoy the same rights as enjoyed by the citizens of the State; they only have the right to protection laws. While the latter one i.e. non-resident aliens don’t have any claim to State membership and stand altogether outside the body politic.

**3.3. Refugee:** A refugee is a person, who has left his/her own country, fearing persecution, based on nationality, race, of a particular group, or political opinions.<sup>98</sup> Refugees are threatened by their government for being persecuted, leaving them unsafe in their State. U.N. Refugee

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<sup>98</sup> *The Tribune, August 8, 2015.*

Convention, 1951 provides protection when persons are recognized as refugees. U.N. Refugee Agency (UNHCR) supports refugees with food, shelter, and safety.

**3.4. Asylum Seeker:** Asylum seeker, in simple words, are refugees who have not been recognized as refugees. They are seeking the status of refugees by the respective State, they have fled to, from their own country in search of International protection. Those who are not recognized as refugees and also found to not need any other form of international protection can be sent back to their home countries.

**3.5. Migrant:** Migrants and refugees often travel in the same way but the migrants choose to leave their own country for various reasons not related to persecution. A migrant enjoys full protection from his/her Government even when abroad. A migrant can move to another country for jobs, studying, reuniting with families, etc. whereas refugee moves to save their lives from their government.

Now, when we have gone through the basic terms related to the study of citizenship. It will be convenient for the reader to weigh the Citizenship (Amendment) Act, 2019 from a new and structural manner.

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

Citizenship Bill was introduced on 9<sup>th</sup> December 2019 in Lok Sabha and the very next day on December 10 it was passed by the same house after a long debate with 311 members in favor and 80 voting against the bill. Union Home Minister, Amit Shah, remarkably made all his points clear on the Bill which were raising any type of conflict with constitutional law of the country. Prime Minister Modi while appraising Amit Shah posted on Twitter saying, “I would like to especially applaud Home Minister @AmitShah Ji for lucidly explaining all aspects of the Citizenship (Amendment) Bill, 2019. He also gave elaborate answers to the various points raised by respective MPs during the discussion in the Lok Sabha.” On December 11, 2019, it was passed by Rajya Sabha as well and was assented and signed by our President Ram Nath



Kovind on 12 December, 2019. It came into effect on January 10, 2020. Bill turned into Act in a matter of two or three days but the debates last longed for months. The questions raised on the Act must be discussed with the elaborate answers given by Amit Shah because till now no hearing has taken place in the Supreme Court although petitions related to protests have been heard. Thus discussions taken place in the Houses have to be studied meticulously.

First of all have to point our microscope towards the amendment in section 2 which has become the main cause of all ambiguities. Amendment in Section 2 of the principal Act is made by adding a proviso to sub-section 1 clause b of Section 2. Sub-section 1(b) of Section 2, Act, 1955 defines “Illegal Migrant” as a foreigner who entered into India without a valid passport or other documents or lives in India beyond the permissible period. The proviso to section 2(1)(b) added by the virtue of Amendment Act, 2019 reads as "*Provided that **any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for this Act;***"

After the questions rose upon the necessity of inserting this proviso to Section 2, our Home Minister referred to two important historical pieces of works i.e., **Liaquat Nehru Pact, 1950**, and **Assam Accord, 1985** which were enthusiastically undertaken by the Congress Government but unfortunately never came into exercise properly. And to correct these wrongs and uncompleted tasks is the main objective of introducing this proviso to section 2(1) (b) by Amendment Act, 2019 according to Amit Shah in his debates while introducing the Bill in Lok Sabha and Rajya Sabha. Let us look into the work history of Liaquat Nehru Pact, 1950, and Assam Accord, 1985.

#### **4.1. Liaquat - Nehru Pact, 1950**

Due to unexpected and unwarranted partition of 1947, minorities suffered a lot of loss on both sides of the borders. But less violence was witnessed in Bengal as compared to the violence

that occurred due to population exchanges in Punjab. To check exodus on either direction a pact called the Neogy-Ghulam Mohammad Agreement of 1948 was signed by ministers of both countries for rehabilitation. But this pact failed to stop the violence in East Pakistan which subsequently resulted in riots in Kolkata at the start of 1950. The communal violence sparked the population exchange in Bengal. To protect Bengali Hindus even armed forces were deported on the borders. But later being bristled on the insinuations that Pakistan is dictating all these actions, Liaquat Ali agreed to sign a mutual agreement to look into the situation. This Pact came into being after six days of a long discussion between Jawaharlal Nehru and Liaquat Ali Khan, then Prime Ministers of India and Pakistan who met in Delhi on April 2, 1950, to discuss the rights of minorities. This is the reason this Pact is also known by the name of ‘Delhi Pact’ and ‘Bill of rights for minority communities’. On April 8, 1950, finally, the agreement was signed between both the prime ministers.

Part A. Governments of both the nations solemnly agreed to ensure the equal right of citizenship without any discrimination based on religion, with security of life, property, honor, culture, freedom of movement, occupation, worship, and speech which will be subject to morality and law. Minorities shall have equal rights of participation in the political arena, holding offices and serving their countries’ armed and civil forces as well<sup>99</sup>. Part B included provisions regarding the disposal of property by the migrants which they have left behind. It was promised that the Rights of ownership and occupancy of minorities shall not be disturbed by Governments. It was agreed in Part C that all steps required restoring the peace of East Bengal, West Bengal, Assam, and Tripura which has been disturbed due to the unexpected migration of millions of people and also resulted in crimes against persons and property, shall be taken. Forced conversions shall be punished and all possible efforts to recover the looted property shall be made. Part D dealt with subparagraphs (1), (2), (3), (4), (5), (7) and (8) of Part C which is said to be of general scope and shall be applied to exigency to any part of India and Pakistan. Part E was about deputing representatives of minorities in both countries to restore the confidence of minorities. Part F was added to assist in the implementation of Part E by setting up minority commissions.

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<sup>99</sup> INDIA Bilateral Treaties and Agreements, Volume 1. See <https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.pdf>.

The Pact did talk about the protection of minority rights on both sides of the borders, at length but it failed to protect Bengali Hindus from persecution in East Pakistan. Joya Chatterjee, a renowned historian, criticized this two-nation Pact by saying that Nehru's ideology that rehabilitation of Hindu refugees from East Bengal is unnecessary became the reason for suffering faced by East Bengali Hindus. Central Government which was preoccupied with the of resettling 7 million migrants in Punjab ignored the problems faced by East Bengali Hindus who were asked not to migrate but were left to get minority rights counting on the agreement made between the two Prime Ministers. But Bengali Hindus continued to migrate from East Pakistan to India, to get the status of a citizen, which they never got. One study by Dhaka-based economist Abul Barkat found that between 1964 and 2013, around 11.3 million Hindus had left Bangladesh.

From the above study, it seems that Amit Shah's banging on about the Liaquat Nehru Pact has a strong reason behind it and to be agreed with new Amendment of 2019 because no one with an iota of conscience of the left can ignore the situation of these migrants to India as well as persecution faced by them in neighboring countries.

#### **4.2. Assam Accord, 1985**

Assam has always remained the target of illegal immigrants, refugees, and intruders from different periods and for different reasons throughout its history. During Nehru's tour to Assam in 1937,<sup>100</sup> he came to realize that three major problems plagued the Brahmaputra Valley or Assam and these were: Sylhet, immigration, and Opium. According to him, Sylhet and immigration were more vital subjects than Opium but later he did not even address the issues which he called vital. First issue of Sylhet district from Bengal to Assam in 1874 which added to the demographic and political strength of Bengalis and Assamese. Both the communities wanted Sylhet to be returned to Bengal.

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<sup>100</sup> Nehru and the North East- Jawaharlal Nehru, Discovery of India, Penguin, Delhi, 2010, originally published by The Signet Press, Calcutta, 1946, pp. 54–55. See [https://web.archive.org/web/20171016015213/http://125.22.40.134:8082/jspui/bitstream/123456789/946/1/Sajal\\_Nag\\_10June\\_2015\\_final.pdf](https://web.archive.org/web/20171016015213/http://125.22.40.134:8082/jspui/bitstream/123456789/946/1/Sajal_Nag_10June_2015_final.pdf).

The second issue of immigration rose from the partition of Bengal in 1905. This partition divided Bengal into East Bengal and West Bengal to weaken the strong Nationalist Movement of Bengal. Before the partition, Bengal was one of the largest provinces which encompassed Bengal, Bihar, Orissa, parts of Chhattisgarh, and Assam, but after the partition, it was split into eastern and western Bengal. Eastern Bengal consisted of eastern districts of Bengal which were joined with Assam. Whereas western Bengal consisted of western districts of Bengal, Bihar, and Orissa. In eastern province, most of the population was of Muslims who were happy with the partition while nationalists held many protests opposing the partition of their Bengali motherland. Later, unable to end the protests the authorities reversed the partition in 1911 and reunited Bengal. Bengali spoken districts were unified once again, while provinces of Assam, Bihar and Orissa were separated from them. Immigration of farm settlers from East Bengal during the partition period encouraged by the Colonial state also added to the number of the Bengalis in Assam. This gave rise to the issues of land acquisition and land ownership for the indigenous Assamese. Line System Policy was introduced in 1927 to impose restrictions on the settlement of immigrants to specified areas. The Asomiya Samrakshini Sabha and Assam Deka Dal submitted their contentions to Jawaharlal Nehru to seek his intervention in saving Assamese Nationality from the threats of Immigrants and asked for some initiatives to be taken for this matter by the central leadership. But Nehru did not address these issues properly as he looked at them as small things on which he said, “If we waste our energies over small things we should not think of independence.”<sup>101</sup> He considered the problem of immigrants in Assam as one relating to the mere measuring of wasteland and distributing it to the outsiders and did not consider it a question primarily for economists and experts.

Bengal was partitioned for the second time when the nation was divided into India and Pakistan in 1947 solely on religious grounds. Millions migrated across the borders, from the year 1946-51. There were a total of 2, 74, 455 number of refugees who arrived in Assam from East Bengal annually<sup>102</sup> also called East Pakistan at that time.

In 1955, East Bengal became East Pakistan whereas West Bengal remained the part of independent India. Now, Pakistan after the partition of 1947 consisted of two zones, West Pakistan, which is present-day Pakistan, and East Pakistan, which is present-day Bangladesh,

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<sup>101</sup> Ibid.

<sup>102</sup> Census of India, 1951, Vol. XII, Part I (I-A), 353.

with India in between. There were political disparities between east and west Pakistan because of more power concentrated with Pakistan while East Pakistan was widely ignored. There were many language controversies as well between Bengali speaking in Pakistan on the eastern front and Urdu speaking in Pakistan on the western front. On March 25, 1971, when East Pakistan political party named as Awami League won the election, it was ignored by west Pakistan-ruling establishment and as result of political discontent led to the war between these two zones and finally on March 26, 1971, Awami League leader declared East Pakistan's independence as the state of Bangladesh. The Liberation War was a consequence of Operation search Light which was undertaken in March 1971. In this operation, Pakistani Army led military pacification to curb the Nationalist Bengal Movement in East Pakistan also called East Bengal, and to make East Pakistan Bengali free by the systematic elimination of nationalist Bengali civilians, students, religious minorities, and armed personnel. There were mass killings, raids on the local population, mass deportation, genocidal rapes, etc. Although the war was fought between East and West Pakistan but it affected the geopolitical atmosphere of India as well. An estimated 10 million Bengali refugees fled to neighboring India while 30 million were internally displaced.

To protect the cultural, constitutional, and indigenous rights of people of Assam, student leaders in 1979, started a movement known as All India Students Union (AASU) and All Assam Gana Sangram Parishad (AAGSP) collectively known as Assam Movement against illegal migrants. This agitation among the indigenous Assamese led to violence across Brahmaputra valley leading to various events of protests and finally to massacres of 1983. The Khoirabari massacre which took place on 7 February 1983 was an ethnic massacre of 100-500 illegal immigrant Bengali Hindus in the Khoirabari area of Assam, which was followed by Nellie massacre in central Assam on the morning of 18 February 1983 which claimed the lives of 2,191 people (unofficial figures run over 10,000 lives)<sup>103</sup>. The victims were mostly Muslim immigrants from East Bengal.

Keeping in view the increasing agitation of Assamese people, The Illegal Migrants (Determination by Tribunal) Act was enacted in 1983 by the Indira Gandhi Government. It was applicable in the state of Assam only to detect the foreigners while in all other states foreigners

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<sup>103</sup> Genesis of Nellie Massacre and Assam Agitation. See <https://www.slideshare.net/umain30/genesis-of-nellie-massacre-and-assam-agitation>

were detected under The Foreigners Act, 1946. But the Act was struck down in 2005 by Supreme Court in **Sarbanda Sonowal vs. Union of India**<sup>104</sup> on 12 July 2005 because it only focused on the procedure of deportation which was a faulty one. For instance, it put the burden of proving citizenship on the accuser than the accused, unlike the Foreigners Act. Moreover, illegal migrants by simply producing a ration card could prove his Indian Citizenship. It excluded migrants from accusations of illegal migrants who entered India before March 25, 1971. This made the procedure of deporting even tough.

Finally, on 15 August 1985 **Assam Accord** was signed between the Rajiv Gandhi Government of India and the leaders of the Assam Movement. It used on protecting the Assamese cultural, economic, and political rights. But most of all, to deport the foreigners was the main aim of the Assam Accord. Assam Accord was Memorandum of Settlement (MoS) in which leaders of the Assam Movement accepted the migrants who entered into India before 1966 but those who entered after 1971 have to be detected and deported under this Act. This Act put the stoppage on the agitation spread by AASU. Assam Accord contains Foreigners Issue in **Clause 5** which is as follows:

- Making 1.1.1966 the base date and year, the foreigners will be detected and deported.
- All people who came to Assam before 1.1.66 shall be regularized and will not be considered illegal migrants including those whose names are enrolled in 1967 elections.
- Foreigners, who came to Assam after 1.1.1966 (inclusive) and up to 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946, and the Foreigners (Tribunals) Order 1964.
- Foreigners detected will be deleted from all electoral rolls in force at that time. Such persons will be required to register themselves before the Registration Officers of the respective districts in accordance with the provisions of the

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<sup>104</sup> See <https://indiankanoon.org/doc/907725>.

Registration of Foreigners Act, 1939, and the Registration of Foreigners Rules, 1939.

- Government of India for this purpose will strengthen the Governmental machinery.
- The names of all such persons whose names were deleted from electoral rolls will be restored after the expiry of 10 years following the date of detection.
- All persons shall be expelled who after being expelled entered into Assam again illegally.
- Those who entered on or after 25 March, 1971 shall continue to be detected, deported, and expelled according to the law, and practical and stern steps shall be taken to expel such foreigners.
- The difficulties expressed by AASU/AAGSP regarding the implementation of The Illegal Migrants (Determination by Tribunals) Act, 1983 shall be given due consideration by the Government.

In May 2005, the first tripartite discussion was held on Assam Accord after 32 years of it being signed. This discussion was held between All Assam Students' Union, Union Home Minister Rajnath Singh along with Chief Minister Sarbanda Sonowal where AASU mentioned the major issues which remain unsolved even after 32 years of Assam Accord. Rajnath Singh assured AASU leaders that Centre would take steps for preserving their rights and make Assam Accord functional. After a long hailing outcries of indigenous Assamese people deprived of their rights, Citizenship Amendment Act, 2019 according to our Home Minister Amit Shah is a way forward to make Assam Accord functional and this will help to eradicate the problems arising from communal, lingual, cultural and other issues between people of Assam and illegal Migrants who have entered into India through many events in history.

## 5. National Register of Citizens (NRC)

National Register of Citizens (NRC) has been another reason for heated debates and protests across the country. NRC has also been a part of various speeches given by our Home Minister at Parliament where he announced NRC to be taken up throughout the country like it was recently taken up in Assam in the year 2013 under strict monitoring of Supreme Court guidelines.

NRC can be called the soul of Assam Accord so it has the same function i.e. to identify Intruders, illegal migrants from citizens of India. In short, we can say, those who could not prove their citizenship will be deported or sent to detention camps.

Widespread paranoia in the minds of the people regarding NRC is that While CAA after its operation, will declare Muslims and other excluded religious communities, to be illegal migrants until and unless they acquire citizenship by any other methods mentioned in the original Act, 1955. And whenever NRC will be implemented, according to many critics, it will render Muslim and other religious communities to be illegal migrants and failing to prove their citizenship, they will be deported or sent to detention camps. But it seems that misinterpretation of NRC is the result of mushrooming myths regarding its functioning. To know the actual objectives and functions of NRC, let us study and discuss its background and its place in Indian history.

As we have discussed above that NRC has the same function as Assam Accord, it is to maintain a registry by the Government which will contain names and information regarding the identification of genuine Indian citizens from illegal migrants in the state of Assam only, because of the historical background of Assam which has faced an influx of migrations during a different period of times and has affected the cultural and constitutional rights of indigenous people of Assam. For the first time, NRC was prepared in India after the census of 1951 which was the first time undertaken after independence.

In 2003, Citizenship (Registration of Citizens and Issue of National Identity Card Rules) was enacted which contained rules for undertaking NRC whenever required.

After the failure of Assam Accord, 1985 and Illegal Migrants (Determination by Tribunal) Act, 1983, Pilot Project was undertaken to implement NRC in two districts of Assam namely,



Kamrup and Barpeta but within 4 weeks there was a mob attack on the office of IAS Commissioner, Barpeta that resulted in police firing killing 4 persons. Because of this, the problem of law and order the Pilot Project was aborted and it seemed that undertaking the NRC project is a huge problem and tougher than it seems.

Finally, the state of Assam started undertaking NRC upon the directions of the Supreme Court in **Assam Public Works vs. Union of India**<sup>105</sup> in 2013 by Justice Sharad Bhabde.

CJI Ranjan Gogoi and Justice Rohinton Nariman monitored the process very carefully, to make sure that Government is undertaking its exercise according to the Citizenship Act, 1955, and Citizenship (Registration of Citizens and Issue of National Identity Card Rules), 2003.

NRC complete draft was released on July 30, 2018. According to this draft, out of 3.29 crore 2,89,83,677 applications of people were recognized as citizens of India. 40,70,707 persons were labeled as illegal residents<sup>106</sup>.

Supreme Court immediately after the draft was published on 31 July, warned Government authorities against taking any stern or strict action against 4 million unidentified Indian citizens as a draft of NRC on 30 July was merely a draft and not final submission.

The Centre on 14 August 2018 informed the Supreme Court about creating distinct IDs for 4 Million people filing objections and claims against the draft of 30 July. Biometric information will be put on these distinct IDs according to the Center. The petitions against the NRC draft will be closely monitored by the Supreme Court. On 31 August 2019, NRC final list was published on its website<sup>107</sup> by The Office of the State Coordinator which examined that out of 3,30,27,661 applicants 19,06,657 were to be excluded as illegal residents. Three-Judge bench including Chief Justice SA Bhabde kept on and will keep on monitoring the NRC functioning in Assam.

Some of the points to be considered for eligibility of NRC<sup>108</sup> :

- Those persons who have their names registered in NRC, 1951.

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<sup>105</sup> See <https://www.scobserver.in/court-case/assam-s-national-register-of-citizens>.

<sup>106</sup> Ibid.

<sup>107</sup> <http://www.nrcassam.nic.in/index-M.html>.

<sup>108</sup> See <https://www.indiatoday.in/india/story/what-is-nrc-all-you-need-to-know-about-national-register-of-citizens-1629195-2019-12-18>.

- Those persons who have their names in any of the Electoral Rolls up to midnight of March 24, 1971.
- Above persons' descendants.
- Those persons who have entered into Assam on or after January 1, 1966, but before March 25, 1971, and are registered according to rules made by Central Government with Foreigners Registration Regional Officer (FRRO) and those who are not declared as foreigners or illegal migrants by the competent authority.
- Those who have their origin from Assam and are inhabitants of Assam, along with their descendants and children as citizens of India. Provided that registry authority has ascertained their citizenship beyond a reasonable doubt.
- According to the list of documents that are admissible for citizenship, those persons who can provide any one of the documents issued up to midnight of March 24, 1971, can be categorized as eligible persons for NRC.
- NRC is open to All citizens of India if they have moved to Assam after March 24, 1971, along with their children and descendants, and if they can prove that they are residents of India except Assam as on March 24, 1971.
- Under Clause 3(3) of the Schedule of the Citizenship (Registration of Citizens and Issue of National Identity Cards Rules), 2003, Tea Tribes' members shall also be covered under 'Original inhabitants of Assam'.
- Members considered as original inhabitants of Assam shall only be included in NRC if they can prove their citizenship, beyond a reasonable doubt to register authority.

These guidelines can be updated from time to time after the consultation with Central Government, according to **Section 18** of The Citizenship (Registration of Citizens and Issue of National Identity Card Rules) Act, 2003.

Foreigners' (Tribunals) Amendment Order, 2019 has been passed on May 30, 2019, by the Government of India which allows not only Assam but all states and UTs within the union of India to constitute their own Foreigners' Tribunals which was earlier confined to the state of

Assam only. These are made to address the question of citizenship of a person. District magistrates in all states and UTs are empowered to set up these tribunals to detect foreigners<sup>109</sup>. The amendment empowers district magistrates in all states and union territories to set up Foreigners' Tribunals to detect foreigners. Following the Amendment State Government of Assam has established 400 Foreigners' Tribunals out of which 200 are made functional since September 2019.

As said earlier, people are worried especially Muslims, because according to the CAA will declare them illegal migrants and NRC will deport them. One thing which is to be made clear here is that NRC will detect and deport only and only illegal migrants and not citizens of India. Section 2 of CAA although excludes Muslims, for a particular reason (discussed later in this article), but it nowhere threatens Muslims of Indian origin, those who are already citizens of India, will remain the citizens of India and they need not to worry, stated Amit Shah during Parliamentary sessions. Moreover, every migrant has the right to get Indian Citizenship under the procedure described in the Citizenship Amendment Act, 1955. NRC in Assam, no doubt, has been implemented to detect Illegal Migrants but if it would be carried throughout India, which has yet not been decided, it will be held only to keep the record of Indian Citizens, which can be used later for undertaking various programs.

“I don't have any problem in college at personal level but in front of media they call us Bangladeshi”, said Siddique, M. Com. Student of Gauhati University and ‘they’ here refers to organizations like AASU, which are leading the Assam Movement against illegal migrants from Bangladesh. He looks up to the day when NRC will be implemented in Assam and everything will come to normal.<sup>110</sup> This statement of student tells us how even the genuine citizens are facing problems because of Illegal Migrants. Illegal migrants do not include Refugees because India has a history of always giving protection to those facing various problems from their own countries, for example, refuge given to Tibetans, residing, and co-existing peacefully in India.

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<sup>109</sup> See <https://www.news18.com/news/india/new-mha-order-allows-creation-of-foreigners-tribunals-gives-it-power-to-regulate-its-own-procedure-2179731.html>.

<sup>110</sup> See <https://economictimes.indiatimes.com/news/politics-and-nation/national-register-of-citizens-in-assam-issue-of-illegal-foreigners-continues-to-be-a-major-political-one/articleshow/47657561.cms>.

Thus, we can conclude that the threat in the minds of people is presumptuous, and it should be considered mindfully keeping in view the turmoil situations, that people of Assam have gone through throughout their history because of Illegal migrants.

## **6. National Population Register (NPR)**

NPR (National Population Register) is another crucial decision taken at a cabinet meeting on 24, December, 2019 which earmarked Rs. 3941 crore for NPR. The objective of NPR is different from NRC, it is to create only a comprehensive identity database of every resident of India which was carried out for the first time in 2004, then 2010, 2015 and now it will be carried out from April 2020 to September 2020 and final count will be given in February 2021 i.e along with 2020-21 census, according to Prakash Javedkar, Union Minister; which has been postponed indefinitely because of Coronavirus says, Home Minister. The basic difference between NRC and NPR is that NRC requires documents while NPR is self declaratory, other difference lies in their purpose of the exercise. Opposition calls NPR a forerunner of NRC while the ruling government calls it a step towards collecting a database of all residents (irrespective of their citizenship) of country. This skeptical view towards NPR is mindless and unreasonable because NPR is just producing the data collection to draft population register, irrespective of citizenship. Though it is well-stated fact that to carry out NRC, population register is important according to The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 but NRC and NPR don't need to be always interlinked, NPR can be undertaken by the Government individually for other purposes as well.

## **7. Controversies**

What makes this whole Amendment Act controversial is a series of questions like why only three countries<sup>111</sup> are grouped and other neighbors left out? Why only six religious

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<sup>111</sup> Three countries are namely, Afghanistan, Bangladesh or Pakistan.

communities<sup>112</sup> are identified and leave out others like Ahmaddiyas<sup>113</sup>, Hazaras<sup>114</sup>, and Rohingyas<sup>115</sup>? Why only Christianity is chosen and other two Abrahamic religions i.e. Judaism and Muslims are left out? Why Hindus of Sri Lanka and Christians of Bhutan have been left out? Does or does not CAA violate the ruling principle of Article 14 of the Constitution<sup>116</sup> i.e. equality before the law and reasonable classification<sup>117</sup>?

Amit Shah, while answering to similar questions frequently asked during Parliamentary sessions, said that these three countries are grouped in the act because they are Islamic countries which share their land boundaries with India, and are known to have religious persecution of the six communities named in Section 2, while Muslims are presumed not to be persecuted in these countries on the grounds of religion mainly because of their majority.

He said that various other laws regarding religious persecution of Hindus in Sri Lanka have been made from time to time and will be made whenever needed but for this

Amendment, its sole purpose lies in protecting six mentioned religious communities from persecution in only three of these countries. While answering the questions arose on the constitutionality of the Act, he said, Constitution in Part 2 gives power to the Parliament to enact a law on Citizenship, and in its power, the Parliament is doing so.

He also said violation of Article 14 has not been anywhere done because of the Reasonable Classification permitted in Article 14 and in the eyes of the government protecting the listed religious communities because they are minorities in three stated countries comes under the definition of Reasonable Classification.

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<sup>112</sup> Six religious communities are namely, Hindu, Sikh, Buddhist, Jain, Parsi or Christian.

<sup>113</sup> Ahmaddiyas Muslims belong to a sect of Islam which originated in India and spread to the world. Founder of this sect was Mirza Ghulam Ahmad, whom they believe to be the true prophet of Islam and they view themselves as leaders of propagation and renaissance of Islam.

<sup>114</sup> Hazaras are said to be descendants of Genghis Khan, founder of Mongol Empire native to the mountainous region of Hazarajat in central Asia. They are primarily Shia Muslims but because Afghanistan has majority of Sunni Muslims, thus they face religious persecution in other Islamic countries too.

<sup>115</sup> Rohingya people are stateless Indo-Aryan ethnic group who reside in Rakhine State, Myanmar (previously known as Burma), they are facing conflicts from Rakhine Buddhists.

<sup>116</sup> Article 14 provides for equality before the law or equal protection of the laws within the territory of India.

<sup>117</sup> Reasonable Classification is a doctrine in Article 14 which becomes a necessity for the society to progress for example, poor people cannot pay the same tax as paid by rich ones, thus if your object is for society's welfare, such differentia known as intelligible differentia (test for the basis of reasonable classification) is permissible.

## 8. Shaheen Bagh and Judiciary

Shaheen Bagh for more than 2 months has remained the epicenter for peaceful protests. Although it is peaceful and people's right to protest in Democratic India but it has also affected the rights of the people working, trading, moving, or living on Shaheen Bagh Road. And now when Coronavirus is spreading like fire, people protesting at Shaheen Bagh are not ready to wind-up the protests as according to them there is no other virus more dangerous than CAA. Petitions have already been filed in SC to look into this matter.

The voice of Judiciary in the parallel narrative of petitions against CAA by opposition parties and other organizations has remained absent at the initial part but later SC issued notice to the center for hearing on 22nd January. Total 144 petitions, 142 were against CAA and 2 were for CAA, were served on SC's table.

In the hearing of January 22, SC has refused to order any stay or postponement of CAA without first hearing about what Centre has to say. Govt. was granted with four weeks for replying to all the petitions. SC will also examine petitions related to Assam and Tripura separately from the petitions against CAA across India. The matter will be heard by a five-judge constitutional bench. SC also ordered that no High Courts will take up this matter while SC is already addressing it. On the intervening night of 22-23 February 2020 clashes broke out at anti-CAA protests at Jafraabad in North East Delhi but on SC hearing on February 26, regarding Shaheen Bagh Case, SC didn't address this present situation in Delhi. According to SC, it will limit its scope only to the question raised in Shaheen Bagh's petitions that whether it is appropriate to block roads for protests or not? It asked Delhi High Court to look into the present matters of Delhi Protests while for cases piled up against CAA, SC has taken different footing and has taken all the matter in its own hands as stated earlier. SC also gave the date for Shaheen Bagh Case hearing i.e. 23rd March, 2020.

Every Indian is now impatiently waiting for the decision to be taken up by Supreme Court on these two crucial matters firstly, against CAA and secondly, Shaheen Bagh road blockage case. There will be much more unpacking and understanding that where CAA and the Protests stand after these hearings.

## 9. Conclusion

Citizenship (Amendment) Act, 2019 is presumptuous, every person who criticized this Act is criticizing it based on its implementation, which has yet not been done. The Act is misconceived in so many ways for example, the term “Illegal Migrants” is mixed with refugees. Muslim citizens are put in the category of Illegal Muslim residents, by the critics. Reasonable classification empowered in Article 14 can be held on a different basis, out of which some basis are, geographical basis, historical basis, nature of persons, etc. and if we look into the Amendment, it is done on a reasonable basis only. The population of Hindus in Bangladesh has reduced steadily over the years, from 28% in 1940 to 8.96% in 2011. Two periods can be marked out when the population has declined sharply- first during the partition of 1947 and another during the Liberation War of 1971. However, after the making of Bangladesh, there has been a nearly 33% decline in the Hindu population which if seen in demographic terms, is huge and enormous. This demographic data with the dwindling population is a clear indicator of the hostile environment for Hindus that is prevalent in the country.<sup>118</sup> This is just an example of one of the three countries, which have been mentioned in the Amendment, and studies tell that in the coming 30 years there will be no Hindus left in Bangladesh. This makes the CAA very important and regarding in India. The Communist Party of India (Marxist) supported NRC and is ready to welcome the final list of NRC, Assam which excluded 2 Million people.<sup>119</sup> CPM, secretary of Assam, Deben Bhattacharya opined that NRC has come into exercise only after the hard labor of 52,000 employees and patience of Assamese people. He urged the Government to provide identity cards to 3,11,21,004 people been included in the list as early as possible. The party while justifying NRC Assam said, “NRC in Assam has been updated after specific political and historical circumstances”.<sup>120</sup> Spiritual leader Sadhguru said that, “In my opinion CAA is two little compassion coming.” Thus I conclude this research that this Amendment Act is a gate to give refuge to many communities in India, which have no other way to go, in regard with Muslims, only those who are illegal will be deported back to the countries where they have come from whereas resident Muslims having citizenship have

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<sup>118</sup> See <https://www.sundayguardianlive.com/opinion/may-no-hindus-left-bangladesh-30-years>

<sup>119</sup> See <https://www.telegraphindia.com/states/north-east/pleased-with-nrc-outcome-assam-cpm/cid/1702388>

<sup>120</sup> See <https://cpim.org/pressbriefs/nrc-assam-ensure-justice-excluded>

nothing to be feared of. All those communities not mentioned in the Amendment can also get Citizenship of India by the different ways described in the principal Act of 1955. It is just that being presumptuous and misinterpreted, the Act has been wrongly put in the public, which has led to mindless acts and fear. The Act is waiting to get its validation after the Corona pandemic leaves India saving Indians from Illegal Migrants who are not just a threat to the geopolitics of India but also economic, social, and cultural threats to Indian diversity.