

Citizenship Amendment Act: India's Nuremberg Moment?

Bharath M R¹ Rajath R²

ABSTRACT

The Citizenship Amendment Act, 2019, is facing a great level of backlash from a large spectrum of the society. The government of India passed the act with the objective of fast-tracking the process of granting Indian citizenship to Hindus, Jains, Sikhs, Buddhists, Christians and Parsis. These are the persecuted minorities of Pakistan, Afghanistan and Bangladesh. The study is pertaining to the very validity of the act in the eyes of Constitution (Article 14) and the secular fabric of the Indian Society. The aim is to study the aspect of granting citizenship to the religious refugees fleeing persecution. There is a narrative set by comparing the similar citizenship provisions in United States of America and with one anarchical Indian bill that was scrapped because of a united opposition put up across party lines. This is an attempt to provide a holistic view of the Act and the factors that make this Act reasonable.

I. INTRODUCTION

On December 9, 2019, the Citizenship Amendment Bill was tabled and passed in the Lok Sabha. The Rajya Sabha on December 11, 2019, passed the act.³ The President of India on December 12, 2019, signed it.⁴ The Citizenship Amendment Act, 2019 seeks to fast-track citizenship for persecuted minorities of Pakistan, Afghanistan and Bangladesh. The minority groups that have been specifically mentioned are Hindus, Jains, Sikhs, Buddhists, Christians and Parsis⁵.

At the time of partition in 1947, almost 23 percent of Pakistan's (East and West Pakistan) population was comprised of non-Muslim citizens. In 2011, the proportion of non-Muslim population has declined to approximately 3 percent.⁶ The minority population over the years has seen a drastic and an unprecedented fall under an oppressive, intolerant and theological

¹ I LLb, St. Joseph's College of Law.

² I LLb, St. Joseph's College of Law.

³ Arfa Javaid, *From CAA to Revocation of 370: Lists of civil Bills passed in 2019*, Jagran Josh (Dec. 31, 2019, 17:54), <https://www.jagranjosh.com/general-knowledge/list-of-civil-bills-and-acts-1577795736-1>.

⁴ The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

⁵ The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

⁶ Farhanaz Isphani, *Cleansing Pakistan Of Minorities*, Hudson Institute (Jul. 31, 2013), <https://www.hudson.org/research/9781-cleansing-pakistan-of-minorities>.

regimes that has religious and cultural homogeneity as its biggest corner stone, a medieval mindset that led to bifurcation of Pakistan within 25 years of its existence causing it to lose half of its landmass, population and its most prosperous and promising half both in terms of geographical resources and demographic dividends.⁷ India, as one of the very few successful secular power houses, not just in the subcontinent but in the larger Asia Pacific Theatre, has the onus of providing safe refuge to the masses of minorities that are fleeing persecution because of their religious beliefs especially in the regions that were part of the erstwhile undivided nation that has absorbed and nurtured different groups of people fleeing oppression all through the annals of time.

The primary misconception that has to be cleared is the branding of these hapless minorities as ‘Immigrants’, while in reality they are refugees. United Nations defines refugees as, “*A refugee is someone who has been forced to flee his or her country because of persecution, war or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries.*”⁸ These refugees fall comfortably under this definition as they have abandoned their ancestral lands to cross some of the most heavily guarded international borders (western region)⁹ or one of the most porous borders that are dominated more by human traffickers than border patrol (eastern region)¹⁰, not for a better standard of life but for dear life itself.

The sort of systematic culling these refugees go through can be seen in three famous and most recent cases. First is the case of Aasia Bibi, a Christian women who was sentenced to death for blasphemy in 2010, her only crime was that she drank water from the same vessel the women from majority community drank while working on the fields.¹¹ She was imprisoned until 2018 when the Pakistani Supreme Court acquitted her of these false charges

⁷ Richard Cincotta and Elizabeth Leahy Madsen, *Bangladesh and Pakistan: Demographic Twins Grow Apart*, Newsecuritybeat (Oct. 10, 2018), <https://www.newsecuritybeat.org/2018/10/bangladesh-pakistan-demographic-twins-grow/>.

⁸ Refugee, UNHCR The UN refugee agency.

⁹ Amber Pariona, *The most dangerous borders in the world*, World atlas (Jun. 19, 2019), <https://www.worldatlas.com/articles/the-most-dangerous-borders-in-the-world.html>.

¹⁰ Afrose Jahan Chaity, *Trafficked to India: Unspoken tales of Bangladeshi girls and women*, Dhaka Tribune (Jul. 23, 2018, 01:35 AM), <https://www.dhakatribune.com/bangladesh/crime/2018/07/23/trafficked-to-india-unspoken-tales-of-bangladeshi-girls-and-women>.

¹¹ Shumaila Jaffery, *Asia Bibi Pakistan's notorious blasphemy case*, BBC (Feb. 01, 2019), https://www.bbc.co.uk/news/resources/1dt-sh/Asia_Bibi.

and even then her family was under threat for life, forcing her to flee to Canada.¹² She was granted asylum in France on 29th February, 2020,¹³ because of the grave threat from radical Islamists that she and her family still faces in their home country. Second case is that of a Sikh Gurudwara which was under siege even after the focus from international media.¹⁴ This was because of the complaint lodged by a Sikh family against those who had kidnapped their daughter in order to marry her by forcefully converting here. The aggressors shamelessly proclaimed in front of media that the community will not be spared for having the audacity to lodge a complaint. In the third case, a minor Hindu girl, Mehak Kumari, was abducted, raped and forcefully married to one Ali Raza Solangi. Her marriage and conversion was nullified by the Supreme Court after she testified that the conversion and marriage was under threat to life. Radical Islamists and the clergy in Pakistan have demanded her beheading ever since, because they say she has committed apostasy.¹⁵ The court has, contrasting to all logic, placed the minor under state ‘child care’, instead of reuniting her with her estranged family which serves to highlight the pogrom they have to face each day. Their fate in Bangladesh is not much better, with the 1964 riots, Pakistani era genocide, etc. The less said about war torn, formerly Taliban ruled Afghanistan, the better.

II. CONSTITUTIONAL VALIDITY

The Citizenship Amendment Act is facing an enormous amount of backlash from the opposition and media on the notion that the act is violative of article 14 of the Indian Constitution. Article 14 of the Constitution of India reads as under:

“The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India.”¹⁶

The said article is evidently in two parts – while it commands the state not to deny to any person ‘Equality before law’, it also commands the state not to deny the ‘Equal protection of

¹² Harriet Sherwood, *Asia Bibi begins new life in Canada – but her ordeal may not be over*, The Guardian (May. 8, 2019, 11:04 AM), <https://www.theguardian.com/world/2019/may/08/asia-bibi-begins-new-life-in-canada-but-her-ordeal-may-not-be-over>.

¹³ Jon Henley, *Asia Bibi- Pakistani woman jailed for blasphemy claims asylum in France*, The Guardian (Feb. 28, 2020, 20:33), <https://www.theguardian.com/world/2020/feb/28/asia-bibi-pakistani-woman-jailed-for-blasphemy-claims-asylum-in-france>.

¹⁴ Yudvir Rana, *Mob Attacks Sikh shrine Nankana Sahib in Pakistan*, The Times of India (Jan. 4, 2020, 06:11 AM), <https://timesofindia.indiatimes.com/world/pakistan/muslims-mob-attack-gurdwara-nankana-sahib-with-stones/articleshow/73088062.cms>.

¹⁵ Loveena Tandon, *Justice for Mehak Kumari*, India Today (Feb. 26, 2020, 09:10 AM), <https://www.indiatoday.in/world/story/justice-for-mehak-kumari-protest-un-office-uk-1650045-2020-02-26>.

¹⁶ India Const. art. 14.

laws'. Equality before law prohibits discrimination. The idea of 'equal protection of the laws' requires the state to give special treatment to persons in different situations in order to establish equality amongst all. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.¹⁷

Therefore, equality, as guaranteed in our Constitution, not only conceives of providing formal equality but also to provide for real and absolute equality.

This act does not necessarily go against the secular values of the Constitution. The statement of objects and reasons of the act states that the Constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. The people professing different faiths have faced persecution because of the existence of state religion.¹⁸ The Constitution allows for a wide spectrum of exceptions for the protection of classes officially perceived as backward due to historical socio-economic reasons. This has been the ground for ever increasing caste- and economy- based reservations in government education and jobs, for the setting up of Union Ministry for Minority Affairs, religion based exceptions for application of laws (The Right Of Children To Free And Compulsory Education Act, 2009,¹⁹ Tax benefits given to Hindu Undivided Families,²⁰ etc) and the writ of various personal laws still running strong in the country (with the exception of Goa) to name a few.

The Prevention Of Communal And Targeted Violence (Access To Justice And Preparations) Bill, 2011,²¹ better known as Communal Violence Bill, in principle was a commendable attempt to curb large-scale violence and riots. But it was a bill which was fundamentally flawed in many aspects and it did not go through due to the vehement and all out opposition raised by various political parties irrespective of their political ideologies and political

¹⁷ Supriya Dash, *Equality for equals*, Legodesk (Jan. 14, 2020), <https://legodesk.com/legopedia/article-14-of-the-indian-constitution/>.

¹⁸ *The Citizenship (Amendment) Act*, The Hindu Centre (Dec. 19, 2019, 12:10), <https://www.thehinducentre.com/resources/article30327343.ece>.

¹⁹ The Right Of Children To Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 2009.

²⁰ Ramalingam Kalirajan, *Income tax benefits 2020*, Financial express (Jan. 03, 2020, 07:53 AM), <https://www.financialexpress.com/money/hindu-undivided-family-know-the-tax-benefits-available-to-huf/1811230/>.

²¹ *Prevention Of Communal And Targeted Violence Bill, 2011*, <https://www.prsindia.org/uploads/media/draft/NAC%20Draft%20Communal%20Violence%20Bill%202011>.

alliance. The real impish part was section 3(c)²² when read with section 3(e)²³ and 3(j)²⁴ which meant that the only people who could be victims of communal violence were members of minority religious/linguistic groups or scheduled caste or scheduled tribes. The aforementioned people could never be the perpetrators of any violence and people belonging to the national majority or the non-scheduled classes could never be the victims, irrespective of the ground realities or the facts of the violence. This is what real targeted picketing and marginalisation of particular demographic groups through legislative means look like, which is very much unlike the Act in question that seeks to fast-track legal relief to refugees who have reached a dead end in their run for their Right to Live and Right of Religion.

III. DISMANTLING CRITICISMS

The Citizenship Amendment Act is facing a lot of criticism on various grounds. The Opposition is expending all its strength to make people rally behind the government to have the act quashed. In a democratic framework, it is a fundamental right of people to voice their dissent.

Criticism one, *it disenfranchises the Muslims in India*. This amendment, just like all the other previous Citizenship Amendments, does not touch the citizens of India. It deals with how an alien can obtain Indian citizenship with not a single reference to an existing citizen. Anybody who is repeating this often repeated point is just blindly operating based on hear-say. India has witnessed Citizenship amendments before and no Indian Citizen has faced any hardship simply because the Citizenship Amendments have nothing to do with the Citizens of India. The false narrative on the Citizenship Amendment Act affecting the Indian Citizens has left a considerable chunk of our society in an unreasonable state of scare. This is indeed harming the social fabric of our beloved country. Those feeding this narrative have constructed a strong sense of insecurity in the minds of people.

Criticism two, *it is India's equivalent of Nazi Germany's anti-Semitic policy*. This has been the weapon of choice in the arsenal of the critics of the present Indian Government.

Comparing an act that seeks to give a fresh lease of life to a group of people who have lost

²² *Prevention Of Communal And Targeted Violence Bill, 2011*,
<https://www.prsindia.org/uploads/media/draft/NAC%20Draft%20Communal%20Violence%20Bill%202011>.

²³ *Prevention Of Communal And Targeted Violence Bill, 2011*,
<https://www.prsindia.org/uploads/media/draft/NAC%20Draft%20Communal%20Violence%20Bill%202011>.

²⁴ *Prevention Of Communal And Targeted Violence Bill, 2011*,
<https://www.prsindia.org/uploads/media/draft/NAC%20Draft%20Communal%20Violence%20Bill%202011>.

everything to one of the darkest acts committed upon mankind, that is, hatred and persecution based on the faith that they follow. Nazi Germany's policies against Jews were very harsh and they tried to uproot the religion of Judaism from not just the German society, but the world.²⁵ Jews were brutally killed, merely for their existence. Comparing this inhumane sequence of events in Germany with that of the Citizenship Amendment Act is nefarious. This Amendment in no way is trying to uproot a particular community out of the Indian society. It is trying to accommodate the sects of people who are facing the inhumane hardship because of the faith they follow.

Criticism three, *Citizenship Amendment Act paired with National Register of Citizens and National Population Register, is trying to render Indian Muslims Stateless*. The narrative of Citizenship Amendment Act paired with National Register Citizens and National Peoples Register, being detrimental to Muslim interests is just like crying wolf when there is none. There is no official draft for National Register of Citizens and National Population register.²⁶ The Assamese exercise was the implementation of the three and a half decade old Assam Accord²⁷ signed between the then Prime Minister Rajiv Gandhi and the Assam State leaders of the time and the rules of that exercise was dictated by the Accord signed way back in 1985. The election mode bravado of the present Union Home Minister and Prime Minister about the 'coming soon' National Register of Citizens is just the hollow talks and air castles to get cheers from the plebs. Unlike what people would like to believe, they are not the law nor the system. Without an official draft or bill they are nothing more than an urban legends and the usual political rants to give supporters and detractors alike something to rant about just to generate news bytes.

Criticism four, *the selection of countries is arbitrary*. The selection of countries in the act is far from being arbitrary. All the three mentioned countries have historically been a part of a greater civilisation that was slowly severed from its roots through the course of history. Afghanistan was ruled by the Kabul Shahis who were Indian for all practical purposes, with

²⁵ WW2: *The Holocaust year by year*, BBC, <https://www.bbc.co.uk/teach/the-holocaust-year-by-year/zkxwggwx>.

²⁶ *'Till Now, No decision on Nationwide NRC': Home Ministry's first official confirmation*, Outlook (Feb. 04, 2020), <https://www.outlookindia.com/website/story/india-news-till-now-no-decision-on-nationwide-nrc-home-ministrys-first-official-confirmation/346741>.

²⁷ *Statement by MEA on National Register of Citizens in Assam*, Ministry of External Affairs (Sep. 02, 2019), <https://www.mea.gov.in/Speeches-Statements.htm?dtl/31782/Statement+by+MEA+on+National+Register+of+Citizens+in+Assam>.

the demography being mostly Buddhist with a fair amount of Hindu population.²⁸ Eastern Afghanistan was a part of the Sikh empire and until the rise of the Taliban, a considerable chunk of Sikhs lived around Kabul,²⁹ their capital city. Pakistan was a post-Colonial creation, unscientifically carved out of India as a necessary ransom for independence from the British. The fallacy of a purely theocratic state in the subcontinent became abjectly clear when within a couple of decades the former East Pakistanis, as different as chalk and cheese from their western counterparts apart from a common religion, rose in rebellion when their leader was denied of his constitutional right of leading their nation just because he was a Bengali and created Bangladesh with the aid of India.³⁰ Hence, all these countries once stood for the same principles and was populated with the same people until the advent of the neo-religious fanatic mindset. Considering the only secular and tolerant nation that can afford to not care for their scorn in the vicinity is India, this country is the only and obvious safe haven these people can hope to find to live in.

Criticism five, *Citizenship Amendment Act is telling that Islamic theological states are oppressive to non-Muslims, thus risking the relationship India has painstakingly nurtured with other Islamic countries over the decades.* This is indeed the one contention placed on table that had some credibility and this too has turned out to be dud too. Very few countries have even deemed it appropriate to comment on our internal issue and most of those that have spoken about this have said in clear terms that this is an internal matter of India and that they won't condemn or support it. The only exceptions of note are Turkey, which under its current President is quickly turning from a secular country into an unabashedly radical state, and Indonesia, which has had very close military connections with Pakistan and has in the past helped it in Indo-Pakistan wars.³¹

Criticism six, *the word 'Minorities' could have been used instead of explicitly mentioning the names of religions, thereby appearing exclusionist.* This contention has some credibility at the face of it but the practical aspect is shaky enough to negate this opposition too. Whose definition of minority will we be using if it is 'for' religious refugees? The Pakistani State

²⁸ Inderjeet Singh, *Shahis of Punjab and Kabul: Last native rulers of Punjab in the medieval ages*, Sikhnet (Jan. 29, 2016), <https://www.sikhnet.com/news/shahis-punjab-kabul-last-native-rulers-punjab-medieval-ages>.

²⁹ Rupam Jain, *'We cannot live here': Afghanistan's Sikhs weigh future after suicide bombing*, Reuters (Jul. 02, 2018, 2:42 PM), <https://www.reuters.com/article/us-afghanistan-sikhs/we-cannot-live-here-afghanistans-sikhs-weigh-future-after-suicide-bombing-idUSKBN1JS0VZ>.

³⁰ Haroon Habib, *Bangladesh salutes Indira Gandhi*, The Hindu (Aug. 16, 2016, 21:00), <https://www.thehindu.com/opinion/op-ed/bangladesh-salutes-indira-gandhi/article2290625.ece>.

³¹ Anas Malik, *Political Survival in Pakistan: Beyond ideology* 84 (2010).

does not recognise Ahmadis, a sect of Islam that was instrumental in the creation of Pakistan as Muslim³² just because they believe that the promised rebirth of Prophet Mohammed to lead the believers through the judgement of time has already taken place in the form of Mirza Ghulam Ahmed whereas in India they are as much Muslim as any. Moreover the Indian definition of minority is driven by political demands and dividends. For example, the Jain Community was given the status of minority only in 2013³³ in the runup to the Lok Sabha elections of 2014 only with an eye on reaping some electoral benefit by the party that has ruled the country for most of its post-colonial history, in such a manner that it was a new discovery that the Jains number less than five million in a country of over 1.2 billion people as per the census of 2011. Jews, despite their long association and residence in this country, albeit in a small number, aren't recognised as minorities. The demand of declaring the veerashaiva-lingayat community as a separate religion by some vested interests and the support it got from the then ruling party of the state of Karnataka is another stark reminder that in India any well intended policy will be used by politicians for narrow minded and myopic gains.³⁴ When this is the reality, it is totally logical that nothing is left ambiguous and open to interpretation, lest it be misused by lesser individuals in the future who will misuse any such wriggle room.

Criticism seven, *this Act introduces a 'religion test' for getting citizenship*. This is just surface skimming to say the least. What is a more accurate description of this Act is saying it introduces a 'victimhood test' for already existing refugees on this soil.

IV. LAUTENBERG-SPECTER AMENDMENT

This leads us to inevitably compare our Citizenship Amendment with two very similar amendments that were passed in the world's oldest democracy, fifteen years apart and in two different global landscapes. We are of the opinion that it is a rational thing to have this comparison since our Supreme Court³⁵ and even our very own constituent assembly³⁶ have

³² Peter Gottschalk, *Who are Pakistan's Ahmadis and why haven't they voted in 30 years*, The Conversation (Aug. 08, 2018, 8:36 PM), <http://theconversation.com/who-are-pakistans-ahmadis-and-why-havent-they-voted-in-30-years-100797>.

³³ *Jains granted minority status*, Business Line (Jan. 20, 2014), <https://www.thehindubusinessline.com/news/national/Jains-granted-minority-status/article20713804.ece>.

³⁴ Arun Dev, *Demand for a Lingayat religion and politics around it*, Bloomberg (May. 09, 2018, 04:03 PM), <https://www.bloombergquint.com/politics/explained-demand-for-the-lingayat-religion-and-politics-around-it>.

³⁵ *Emmanuel v State of Kerala*, (1987) AIR. 748.

³⁶ *Constitution Day: borrowed features in the Indian Constitution from other Countries*, India Today (Nov. 26, 2019), <https://www.indiatoday.in/education-today/gk-current-affairs/story/constitution-day-borrowed-features-in-the-indian-constitution-1622632-2019-11-26>.

looked at the actions taken by other liberal nations when faced with questions that have had no indigenous precedents to fall back to. The Lautenberg Amendment (officially, Public law 101-167) of 1989,³⁷ called thus because it was introduced and spearheaded by one of the American senate's most proactive and progressive members, Frank Lautenberg, was a law enacted to grant immediate citizenships to Jews and Evangelical Christians fleeing anti-Semitism from Soviet States. A similar law was passed in 2004, known popularly as the Specter Amendment, extends this benefit to minorities (Jews, Christians and Baha'is) from Iran. These are jointly called as the Lautenberg-Specter Amendment³⁸ and have to be renewed every year to remain a law,³⁹ something which all the Governments of United States have done religiously notwithstanding the party or President in office. Another point to observe here is the fact that this has received no strong or sustained opposition from any quarter, even from all those who have come out all guns blazing against the Citizenship Amendment Act. Unlike the Lautenberg-Specter Amendment, The Citizenship Amendment Act is not a perpetual getaway for refugees to obtain legitimacy in their country of redemption nor does it grant them instantaneous citizenship in theory. Only the ones who have entered India before the 31st December, 2014,⁴⁰ are subject to application of this and the only relaxation that they get is the reduction of the period of residence from eleven years to five years,⁴¹ all other conditions remain unchanged. This corollary provides ample justification that a country reserves the right as to how they will deal with their refugees.

V. NEHRU-LIAQUAT AGREEMENT, 1950

“The Governments of India and Pakistan solemnly agree that that each shall ensure, to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality.”⁴²

³⁷ *US Policies*, HIAS, <https://www.hias.org/what/us-policies>.

³⁸ Dipanjan Roy Chaudhury, *CAA has Corollary in US' Lautenberg Amendment*, *The Economic Times* (Jan. 18, 2020, 08:21 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/caa-has-corollary-in-us-lautenberg-amendment/articleshow/73347361.cms?from=mdr>.

³⁹ *US Policies*, HIAS, <https://www.hias.org/what/us-policies>.

⁴⁰ The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

⁴¹ The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

⁴² Agreements between the Governments of India and Pakistan regarding Security and Rights of Minorities (Nehru – Liaquat agreement), <https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.pdf>.

This was a pact signed between the then Prime Minister of India, Jawaharlal Nehru, and Prime Minister of Pakistan, Liaquat Ali Khan, in 1950. This pact even dealt with the smooth migration of migrants moving either ways.⁴³ If this pact was upheld by the other signatory, the need of Citizenship Amendment Act would be obsolete.

VI. CONCLUSION

To conclude, we are of the opinion that The Citizenship Amendment Act does not violate any set norm, be it that of due process or that of constitutionalism. Was this Act something that needed to be passed at this juncture? No. Does this pose a threat to the idea of India, its constitutional principles and its heritage? Definitely not. This is just a well-intentioned Act passed at an inconvenient timing.

⁴³ Agreements between the Governments of India and Pakistan regarding Security and Rights of Minorities (Nehru – Liaquat agreement), <https://mea.gov.in/Portal/LegalTreatiesDoc/PA50B1228.pdf>.