INDIA'S CITIZENSHIP AMENDMENT ACT 2019: A STUDY ABOUT IMPACT OF NEW CITIZENSHIP ACT AND NATIONAL REGISTER OF CITIZENS.

CONTENTS

ABBREVIATIONS

- AASU- All Assam Students Union
- AGSP- Asom Gana Sangram Parishad
- AIUDF- All India United Democratic Front
- CAA- Citizenship Amendment Act
- CPRD- Clinical Practice Research Datalink
- CRC- Convention on the Rights of the Child
- ICCPR- International Covenant on Civil and Political Rights
- IIT- Indian Institutes of Technology
- IMDT- Illegal Migrants Determination by Tribunals
- LPG- liquefied petroleum gas
- NPR- National Religious Party
- NRC- National Register of Citizens
- NRI- Non Resident Indian
- PIP- Prevention of Infiltration Process
- UIDAI- Unique Identification Authority of India
- UDHR- Universal Declaration of Human Rights

CHAPTER-1
INTRODUCTION

The Citizenship Amendment Act, 2019 (CAA) is an act that was passed in the Parliament on December 11, 2019. The 2019 CAA amended the Citizenship Act of 1955 allowing Indian citizenship for Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities who fled from the neighbouring Muslim majority countries of Pakistan, Bangladesh and Afghanistan before December 2014 due to "religious persecution or fear of religious persecution". However, the Act excludes Muslims. Under CAA 2019 amendment, migrants who entered India by December 31, 2014, and had suffered "religious persecution or fear of religious persecution" in their country of origin, were made eligible for citizenship by the new law. These type of migrants will be granted fast track Indian citizenship in six years. The amendment also relaxed the residence requirement for naturalization of these migrants from eleven years to five.

There have widespread protests across the country including the national capital region and north-eastern states against the CAA amendment. The protest in Assam and other north-eastern states turned violent over fears that the move will cause a loss of their "political rights, culture and land rights" and motivate further migration from Bangladesh. The agitators say that new amendment in Citizenship Act discriminates against Muslims and violates the right to equality enshrined in the Constitution of the country. Sects like Shias and Ahmedis also face persecution in Muslim-majority countries like Pakistan but are not included in the CAA. Questions were also raised on the exclusion of persecuted religious minorities from other regions such as Tibet, Sri Lanka and Myanmar.

Several petitions have been filed challenging the constitutional validity of the Citizenship Amendment Act, 2019, including by RJD leader Manoj Jha, Trinamool Congress MP Mahua Moitra and AIMIM leader Asaduddin Owaisi. Several other petitioners include Muslim body Jamiat Ulama-i-Hind, All Assam Students Union (AASU), Peace Party, CPI, NGOs 'Rihai Manch' and Citizens

Against Hate, advocate M L Sharma, and law students have also approached the apex court challenging the Act.

STATEMENT OF PROBLEM

The citizenship amendment act 2019 was passed by the parliament of India on 11 December 2019. It amended the citizenship act 1955 by providing a path to Indians citizenship for illegal migrants of Hindu, Sikh, Buddhist, Jains, parsis, and Christian religious minorities who had fled religions persecution from Pakistan, Afghanistan and Bangladesh before 31st December 2014. Muslim from those countries where not given such eligibility. The act was the first time that religion had been overtly used as a criterion for citizenship under Indian law. The Citizenship Act was first amended in 1985 after the Assam Accord was signed, wherein the Indian government of Prime Minister Rajiv Gandhi agreed to identify foreign citizens, remove them from the electoral roles, and expel them from the country. Thus the study aims to analysis the incumbent government is tactfully using the legal or constitutional provision to make religion as a criterion for Indian citizenship. By this act the government attempt to exclude Muslims.

SIGNIFICANCE OF THE STUDY

The significance of the study about C.A.A is that it is discriminatory in nature, the act violate the secular principles enshrined in the constitution of India. Which provides a clear cut demarcation of who qualifies to be an Indian citizen from other nationals, who have been illegally living in India. C.A.A & N.R.C together pose a serious threat to India's constitutionality abiding provisions and principles. Ironically, it will create a situation where being a Muslim bill deprive citizenship right and stateless that will end up in damaging the democratic echoes and constitutional fabric of India. The critics argument that the newly proclaimed C A.A is a toxic cocktail. The study provide vivid picture about history, constitutional provisions, discriminating nature of the current citizenship act and N.R.C in Indian democracy.

OBJECTIVES

- To understand the historical facts and various legal provisions regarding the Indian citizenship amendment act.
- To analyse the constitutionality of C.A.A and N.R.C.
- To examine how C.A.A and N.R.C violate secularists principles of Indian constitution.
- To find out Muslim elimination process of the Citizenship Amendment Act 2019.

HYPOTHESIS

- C.A.A and N.R.C is clearly violate the basis structure of the Indian constitution.
- C.A.A gives eligibility for Indian Citizenship to illegal migrants who are non-Muslims from Pakistan, Afghanistan and Bangladesh who reached India before 2015.
- C.A.A fundamentally violates Article 14.
- C.A.A is contrary to India's obligation under international human rights law.

METHODOLOGY

The methodology adopted for this study is historical and analytical. The primary and secondary data is mainly used for this study. Data were mainly collected from books, government orders, journals, articles, newspapers and websites.

LIMITATIONS OF THE STUDY

As an academic enquiry, the study has its own following limitations. First, non availability of adequate literature and official records on the topic has been a constraint in conducting the study. Secondly, no previous serious research has been so far conducted in the concerned topic. The last and main limitation of this study is that the insufficient time and cost.

CHAPTERISATION

The study has been divided into five chapters including introduction and conclusion. The first chapter consist of "GENERAL INTRODUCTION" which briefly narrates the intention of the study and its significance.

The second chapter is entitled as " CITIZENSHIP AMENDMENT ACT- HISTORY" describes about the basic theoretical structure that provides support to the research study.

The third chapter is titled as "GEOPOLITICAL OF THE N.R.C – C.A.A IN ASSAM" describes about geo- political changes of N.R.C and C.A.A in north east India mainly in Assam.

The fourth chapter titled as "STATELESSNESS IN INDIA- DISFRANCHISED OF MUSLIMS" includes a detailed picture C.A.A.

The fifth chapter is "CONCLUSION" encompasses the findings of the study, validation of objectives and hypotheses, summary of the study and suggestions for the further studies.

REVIEW OF LITERATURE

Citizenship in India' (2016) a book written by Anupama Roy lucidly describes the history of citizenship in India and it traces the amendments citizenship

act, 1955 and argues that the legal and framing of the citizen involves simultaneous production of its other- the non citizen.

Filzah Belal' s article ‘NRC or CAA : Dual Road to Indian Citizenship' (2020) deals with the citizenship law in India, which were given a new dimension with the introduction of citizenship Amendment Act 2019. For the first time a law legitimize outside as citizen although with reservations was drafted. However, this law, claimed to be inclusive in nature, is contradictory to the process of NRC.

Mihir Desai in his article ‘ CAA - NRC- NPR and its Discontents' (2020) analyses the discriminatory and arbitrary provisions of the citizenship Amendment Act 2019. And about the toxic combination of CAA and NRC, which would produce consequences that are detrimental to the stable and harmonious functioning of the Indian society and democracy.

‘India’s citizenship Amendment Act (CAA) : Citizenship belonging in India' (2019) an article written by Syantani Chatterjee and Natasha Raheja deals with the controversial citizenship act of 2019. It states that the new act seeks to cohere Indian citizenship around and idealized Hindu identity and the work of Hindutva in making Indian citizenship appear achievable to only for selected population.

Niraja Gopal Jayal's article ‘ The CAA and NRC together will reopen wounds of partition and then India into a majoritarian state',(2020) this paper deals with the constitutional provisions of citizenship in India and it secular nature of sanction of it.. The religious demarcation for Indian citizenship by new law is capable to recall the wounds of partition. It also deals with the problem and prospects of NRC exercise in Assam.

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CHAPTER- 2

INDIAN CITIZENSHIP AMENDMENT – HISTORY

The Parliament of India passed the Citizenship (Amendment) Act 2019 (CAA) in December 2019, and since then the Supreme Court has been inundated with a litany of petitions challenging its constitutional validity. The ostensible purpose of the Act is to facilitate the process of granting Indian citizenship to six religious minorities that have fled persecution from Afghanistan, Bangladesh or Pakistan. The CAA is politically divisive; its introduction in the Parliament fomented protests & candlelight vigils, dissidence of many members of the legal fraternity was clear, various scholars inveighed against the Bill, but nothing chastened the Government. There are accusations now that the true purpose of the Act is to make it difficult for Indian Muslims to retain or maintain their citizenship rights. Similarly, the aim of advancing renascent 'hindutva' is attributed to coupling the CAA with the National Register of Indian Citizens (NRC) scheme. The petitions challenging the vires of the Act further asseverate that it not only violates the constitutional guarantee of equality by creating irrational classifications, but also imperils the Constitution's commitment to secularism; whereas, the Government maintains its belief that the regulation of citizenship is a matter of state policy, a domain beyond judicial evaluation. Under the Constitution, there are fundamental rights available only to Indian citizens: right against discrimination on the grounds of religion, race, caste, sex or place of birth; right to equality of opportunity in matters of public employment; freedom of speech and expression, assembly, association, movement, residence and profession; cultural and educational rights; and the right to vote and eligibility of membership in legislative bodies. Several constitutional offices like the President of India, the Vice-President of

India, judges of the Supreme Court and various High Courts, Governor of a State, Attorney General and Advocate General can also be occupied by citizens only. Apart from this, the law advantages citizens over non-citizens in sundry other domains. This constitutional pedestalling of a citizen for exclusive access to certain constitutional rights and privileges suggests the gravity of depriving individuals of citizenship. This significance of the CAA has prompted a blizzard of articles by apostles on both sides of the debate expatiating on the constitutionality of the Act. On both sides, scholars tend to fall back on sophistry and trite arguments to justify their positions without dispassionately responding to the reasoning of the other side. This inexorably creates confusion.

This article analyses provisions of the CAA against constitutional rights to evaluate whether or not its enactment is ultra vires and argues that a convincing case can be made for the constitutional abhorrence of these provisions. The article addresses arguments advanced by various legal scholars who support CAA and identifies the inconsistencies in their arguments. It also breathes new life into the debate by clarifying misconceptions surrounding the jurisprudence on Article 14 and the applicability of the 'under-inclusivity is no ground for challenge' defence. Section 2 provides a brief overview of the different legal pathways to Indian citizenship to contextualize the changes made by the CAA. Section 3 scrutinizes the CAA's constitutionality by evaluating it against the constitutional benchmark of equality and secularism, while illuminating misapprehensions on what that benchmark ordains. Section 4 further explains the conceptual and enforcement problems in determining if an individual is a member of a religious group that is listed in the CAA. Section 5 of the article examines the question of the veracity of the argument that the joint application of CAA and NRC will deprive Indian Muslims of their citizenship; and Section 6 discusses the role of international legal instruments on the determination of the CAA's constitutionality and provides an account of the incompatibility between the international legal regime on refugee law and the CAA. This article concludes by noting that arguments in favour of the CAA's constitutionality are based on a fallacious understanding of applicable principles, and that in view of constitutional law on equality and secularism as it stands in 2020, CAA's religion-based provisions carry out a communalization of secular citizenship law.

(1) Contextualizing the Change: India's Citizenship Regime

The Constitution established who is a citizen of India on the date of the Constitution's commencement, the 26 January 1950. For the acquisition of citizenship after 26 January 1950, Parliament has the authority to enact legislation governing citizenship. The Citizenship Act 1955 provides various paths to Indian citizenship: birth, descent, registration, naturalization and by incorporation of foreign territory. The notion of an 'overseas citizen of India cardholder' was introduced via a series of amendments to the Citizenship Act in 2004 and 2015. These cardholders can enjoy those rights which the central government specifies by notification, except the rights of holding certain governmental offices and voting rights.

- **Routes to Indian Citizenship**

The overall structure of India's citizenship laws denotes a shift from jus soli to jus sanguine. Before the 2004 amendment, any person born in India after 26 January 1950 was an Indian citizen, irrespective of whether one or both of her parents were illegal migrants. After the 2004 amendment, an individual born in India after 26 January 1950 but before 1 July 1987 is a citizen of India irrespective of whether one or both of her parents were illegal migrants. However any person born in India on or after 1 July 1987 but before 3 December 2004 would be a citizen only if both her parents are Indian citizens, or, if one parent is an Indian citizen and the other is not an illegal migrant at the time of that person's birth. The descent path to Indian citizenship is applicable to those who are not born in India. Complex rules regulate this path. Here, a person born outside India before 26 January 1950 can become a citizen if either of her parents was a citizen at the time of her birth. A person born outside India after 26 January 1950 but before 10 December 1992 is a citizen if her father was a citizen at the time of her birth. A person born outside India on or after 10 December 1992 can be regarded as a citizen if either of her parents was a citizen at the time of her birth. However, if the father or mother were Indian citizens by descent only, then either birth outside India had to be registered at an Indian

consulate within a specific period of time or, the parent must have worked for the Indian government. After 3 December 2004 registration of a person as an Indian citizen by descent is not possible unless her birth is registered at an Indian consulate within a specified time.

In general, the path of citizenship by registration is intended for persons of Indian origin and the spouses or children of citizens of India. Citizenship by naturalization is a route meant for those who have no ancestral relation to India. Also, if a new territory is incorporated into India, the central government has the power to specify who shall be Indian citizens by virtue of their connection to such a newly incorporated territory, by way of an order notified in the official gazette.

It must also be noted that the 2004 amendment foreclosed any possibility of an 'illegal migrant' obtaining Indian citizenship by registration or naturalization. The term 'illegal migrant' has been defined to refer to a foreigner who enters or stays in India illegally, that is enters lacking valid travel documents or enters with valid travel documents but stays beyond the permitted time period. The CAA amends this complex legal regime on citizenship to carve out an exception for individuals belonging to select communities.

➢ The 2019 Amendments

The CAA seeks to amend the parent Citizenship Act 1955 to pave the way for extending Indian citizenship to illegal migrants belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian faiths (notably excluding Islam), who escaped persecution from Pakistan, Bangladesh and Afghanistan and entered India before 31 December 2014. Section 2 of the CAA amends Section 2(1)(b) of the Citizenship Act 1955 by holding that illegal migrants (as defined above) would not be considered illegal migrants for the purposes of the Citizenship Act 1955. Illegal migrants belonging to select faiths from selected jurisdictions can now seek Indian citizenship by registration or naturalization. Prior to the CAA, a person classified as an illegal migrant had no scope for legal conferment of citizenship. In fact, the Indian Supreme Court has held that in respect of illegal migrants, the Government of India has unfettered and absolute powers of expulsion. But, by virtue of Section 2, the covered class of illegal migrants

is governed by a different legal regime contained within Sections 3, 5 and 6 of CAA. Section 6 of CAA reduces the residence requirement for Indian citizenship by naturalization. An applicant for citizenship by naturalization, generally, must reside in India for a twelve-month period before the date of her application. In addition to that, she must reside in India for at least eleven out of the fourteen years prior to the twelve-month period. The CAA reduces this residence requirement from eleven to five years for individuals covered by Section 2. This substantially eases the citizenship requirements for individuals who belong to one of the enumerated faiths, fled from the three specified jurisdictions and have migrated to India before the cut-off date. As per the Government, this bestowal of legislative largess was actuated by the desire to provide much needed succour to victims of persecution who had suffered at the hands of oppressive theocracies.

(2) The Constitutional Validity Dispute of the CAA

The Constitution was framed in the crucible of an arduously attained independence and the communal pogrom that followed undivided India's partition. The framers of the Constitution aimed to codify the 'Indian dream' in the grundnorm; highlighting the features of the kind of social system they resolved to build. They did this by myriad ways including protection for equality rights, particularly pertinent in a community rife with caste and class based discrimination; by guaranteeing secularism in a nation fraught with communal antagonism and violence; and placing responsibility on the State to promote education in a country having a literacy rate of approximately 18 percent at the time of independence.

In light of that constitutional legacy, the CAA has been condemned for breaching the right to equality because of its use of invidious classifications and its assault on the secular character of Indian citizenship law. The strength of these claims can only be assessed with a clear picture of what the Constitution prescribes; it is imperative therefore, to probe the canons of equal protection and secularism, and then apply them to the CAA.

- **Disinterring the Ignored Evolutionary Process: The Nature of the Article 14 Enquiry**

Article 14 of the Constitution synthesizes Dicey's conception of rule of law with the equal protection clause of the US. It guarantees every person in the territory of India the fundamental right of equality before law and equal protection of the law. This implies that non-citizens are entitled to rights under Article 14 if they are within Indian territory. A key component of this right is the entitlement of equal treatment for all those who are similarly situated; equals ought to be treated equally. Bearing that in mind, the Supreme Court has repeatedly held that judicial review of legislation and administrative action is a basic feature of the Constitution, including in the context of Fundamental Rights, it has developed a rich jurisprudence on the right to equality under Article 14 of the Constitution. As early as 1952, the Supreme Court started elucidating doctrinal tests for determining whether an impugned enactment survives the scrutiny of Article 14. It is now well settled that under Article 14, 'class legislation' is verboten, but 'reasonable classification' for the purpose of achieving specific ends is not In State of West Bengal v Anwar Ali Sarkar, the Supreme Court held that equality mandates two inquiries to determine whether a classification contemplated by an impugned statute is reasonable. First, the Court must assess the existence of an 'intelligible differentia' or a yardstick that separates elements within the class from those outside the class. And second, the Court will scrutinize the presence of a rational nexus between the yardstick of differentiation and the object that the statute seeks to achieve. This 'nexus test' has been applied and reiterated in numerous cases over the years. In 1960, however, the Supreme Court observed that the repetition of the test has become mechanical and hackneyed. The Court even wondered if 'fanatical reverence' to the test would decimate the 'glorious content' of Article 14.

In response to academic criticism on the narrowness of the nexus tests, in Ajay Hasia v Khalid Mujib the Court enlarged the contours of Article 14 by holding that arbitrariness strikes at the very heart of the right to equality. Since then, 'protection against arbitrariness' has become a basic part of the equality doctrine under Article 14. But jurisprudential advancement on the determining factors of judicial review through Article 14 did not cease.

Two changes in recent history are a watershed in the development of constitutional equality. First, the Supreme Court in Nagpur Improvement Trust v Vithal Rao, held that establishing a rational nexus between the 'differentia' and the 'object' would not fetch judicial imprimatur if the object of the classification is itself discriminatory. This explicitly expanded the scope of Article 14's enquiry beyond a mere nexus assessment to adjudicating on the constitutional repugnance of the legislature's objective in enacting a law. Second, in Navtej Singh Johar v Union of India, the Supreme Court added yet another caveat to the nexus tests. In this case, the Court was determining the constitutionality of Section 377 which criminalized sexual intercourse between consenting homosexuals. The Court rejected such criminalization and reasoned that a law that discriminates on the basis of an 'intrinsic and core trait of an individual' cannot be said to represent 'reasonable classification'.50 By this logic, the Court examined the 'constitutional relevance' or 'reasonableness' of a yardstick of classification, which in that case was sexual orientation, thereby holding that in case the yardstick is itself unreasonable, the impugned law would be contra legem. These two landmark developments signify an expansion in the scope of Article 14's enquiry in the nature of widening the reach of the scrutiny from determining mere intelligibility of the classification, whether its yardstick is discernible/understandable, to reasonableness, an analysis of which also requires a determination of whether the basis of the classification is just as per Navtej. This doctrinal evolution has transformed Article 14 into a bulwark against governmental iniquitousness.

- **Reasonableness and Iniquitous Classifications: Never the Twain Shall Meet**

The CAA's framework of granting privileges is predicated on two explicit classifications: the faith classification, only illegal migrants belonging to the six faiths enumerated earlier are worthy of protection via the citizenship path; and the nation classification, an illegal migrant only from Afghanistan, Pakistan or Bangladesh can benefit from the CAA. Albeit, the government has tried to defend these classifications per its counter affidavit filed before the Supreme Court in response to the petitions challenging the law, but considered alongside the implicit premises of the CAA's

structure, a cogent argument against its incongruence with Article **1**4's standards can be made.

1. Analyzing the Faith Classification

The abhorrence of the CAA's classifications becomes evident when the faith classification is examined. In the government's affidavit, it has been argued that the six faiths chosen are demographic minorities in Afghanistan, Pakistan and Bangladesh. Premised on this is the proposition that only religious minorities are persecuted on the basis of their religious beliefs in the specified countries. What follows from that proposition is that as long as one is a Muslim, irrespective of any specific sect, she is not persecuted in theocratic states with Islam as the State religion. This institutional ignorance of persecution of minority sects, like Ahmadiyyas and Shias, within Islam, in the three specified countries is logically repulsive, and expresses a bigoted prejudice against minority Muslim sects. It is imperative to highlight in this regard that the persecution of Ahmadi minority Muslim sect in Pakistan has repeatedly received legal sanction. The Second Amendment to the Constitution of Pakistan (enforced in 1974), Ordinance XX promulgated by the Government of Pakistan in 1984 and the Twelfth Amendment of Azad Jammu and Kashmir are legal instruments that declare Ahmadis to be non-Muslims and effectively deprive them of religious freedom. The penal code makes it an offence for Ahmadis to propagate their religion or even identify as Muslim. In light of these verities, the justification for the faith classification appears to be characterized by lamentable blind spots. The presumption that only inter-religious minority communities in theocratic states face persecution is baseless and the case of Ahmadi Muslims in Pakistan and that of other Islamic sects in the three countries rebuts it.

It has also been stated in the government's affidavit that the CAA's faith classification is intended only for inter-religious persecution. Interreligious is understood as implying a concern between two wider faiths, for example, Hindus and Muslims. In contrast are intra-religious concerns, like those between Sunnis and Ahmadis; both groups have a meaningful connection to Islamic doctrine to be considered a part of the same faith's umbrella. It is further explained that the persecution of the Ahmadiyyas or Shias or any other Islamic sect in the three countries

is based only on a differing understanding of Islam, as such, the persecution is intra-religious and not inter-religious. However, the distinction between intra religious and inter-religious persecution is a matter of semantics and ignores the key element of religious-based persecution. The intra/inter religious distinction serves no legitimate aim as it is irrelevant for protecting a group from persecution anchored in religious fault lines. Furthermore, there is nothing to indicate why intra-religious persecution should not warrant protection just as much as inter-religious persecution. It is well established that there should be no prejudice against one person compared to another who is similarly situated, if their position regarding the subject-matter of the legislation, is the same. In no way is the persecution faced by Ahmadi and Shia Muslims in Pakistan or in the other chosen jurisdictions incommensurable to the persecution of Hindus in the three countries, and therefore, as a matter of constitutional obligation, the exclusion of Ahmadi and Shia Muslims from the CAA is repugnant to the canons of equality. Moreover, the distinction drawn in the government's affidavit between intra-religious and inter-religious persecution does not explain why the CAA excludes atheists and agnostics, groups that are clearly not a part of Islam, but form discrete inter-religious minority groups. For many, such questionable justifications proffered by the government uncloak the fact that the CAA's purported humanitarian purpose is only being trumpeted to gloss over its pernicious classifications.

2. Examining the Nation Classification

The reasonableness of the nation classification is shrouded in mystery since the government's affidavit only provides a mishmash of incomplete ideas. There are consistent and long-standing reports of linguistic, ethnic, and religious persecution in China, Sri Lanka, and Myanmar. A thoroughgoing explanation as to why religious persecution in these countries has been left out has still not been provided. There appears to be no nexus between the humanitarian object of the CAA and the nation classification. Since it is unclear what yardstick the government selected to make this classification, all possible arguments alluded to in the government's affidavit are examined below.

(a) The Civilizational Responsibility/Neighborhood Yardstick: if it is said that the three specified countries are the ones that disintegrated from India in recent history, and

therefore India owes a special civilizational responsibility to the people of these countries, then it does not pass rational scrutiny because Afghanistan does not fulfil that criteria as it has never historically been a part of the Indian nation-state. Further, the classification cannot be based on the claim that the chosen countries share a boundary with India or are its neighbors, because that does not explain the exclusion of Nepal, Bhutan, China, Myanmar and Sri Lanka. The constitutional relevance of such superficial yardsticks would still be a matter of suspicion because arguendo, even if this yardstick is taken to be reasonable, it does not explain why a civilizational responsibility/neighborhood connection is relevant to provide a higher legal entitlement to citizenship to individuals coming from these countries.

(b) The Theocratic State Yardstick: it can be argued that the three countries have been chosen on the ground that as neighboring theocratic states, the propensity of persecuting individuals on the basis of their religion is higher. That may not be the masterstroke that it may seem ex facie, because as the Chinese and Burmese cases have shown, propensity for religious persecution is not contingent upon the state's espousal of theocracy. Apart from that, the operation of this yardstick still leaves out two other neighboring countries, namely Sri Lanka and Bhutan, that are theocratic states, with accusations of severe religious persecution .Preposterously, it may also be argued that the CAA's yardstick is limited to Islamic theocracy. Even in that case, no concessions to the reasonableness of such a yardstick can be made, since the lived experience of persecution in a Buddhist theocracy remains the same for the purpose of determining whether victims of either of the two theocracies are similarly situated in material terms relevant for legislative benefaction.

(c) Violent Conflict Yardstick: absurdly, the government's affidavit also states that the three specified countries have in the recent past been embroiled in armed conflict. This assertion does not explain the connection between a violent history and excluding other countries from the purview of the CAA. It can reasonably be conceded that antecedents of communally charged armed conflict in theocracies exacerbate the manifestation of religious persecution, but that still does not justify turning a blind eye to other countries like Sri Lanka and Myanmar, which have similar chronicles of hostility.

It is evident that none of the possible differentiae properly separate the subjects that are included from those that are not, nor do they spell out their constitutional relevance or reasonableness for a legislation avowing humanitarian protection.

3. Addressing the Detractor's Morass of Cavils

Various scholars and advocates have directed their efforts towards proposing a defence to the enumerated faiths and specific nations in the CAA. Lamentably, propositions advanced to support the CAA lack logical potency. The first one of these arguments asserts that these classifications pass the requirements of Article 14 as long as there is a nexus between the two classifications and the object of the Act, namely the protection of the six religious communities of the three specified countries. This does not afford any vindication to the CAA as long as it is kept in mind that the object itself cannot be discriminatory. For that reason, it cannot be successfully contended that the Article 14 tests are met as long as the object of the CAA is defined in terms of the choice of its beneficiaries, that is, defining it in terms of protecting only the six religious communities of the three specified nations. To clarify, a law which grants the privilege of liability exemption under the penal code to a blonde haired person cannot be justified by saying that the object of the law was to provide the exemption only to blonde haired persons. This is a classic example of the logical fallacy circulars in demonstrando. This is because the argument under consideration seeks to justify the questionable classifications of the CAA by relying on the statute's object; and the object's definitional characterization derives its validity from the tenor of the classifications that the law creates. Circularity in reasoning is evident, since it is a case where A is sought to be justified on the existence of B, and B has a valid existence because it originates in A. Similarly, the argument that the CAA is based on a pattern of comprehending persecution as membership of majority religious community and minority religious communities does not pass muster with rationality since it presupposes that as long as the legislature has a clear and fixed basis of classification, the basis is valid. Therefore, it assumes the very element it must prove.

Second, it is argued that as per precedent, the law-makers have the authority to restrict the bestowal of privileges based on their determination of degree of harm and where the harm is deemed to be the clearest. That in and of itself does not lend any

constitutional credence to the CAA's classifications. While it is true that the legislature does have this power, but in this matter, it is this very determination of harm that is in question for being discriminatory. Merely because the legislature has the power to determine the degree of harm does not authorize it to make that determination unfairly; especially when it is evident that excluded groups are similarly situated to the ones that have been included. It may also be said that illegal migrants do not have any right to claim citizenship. However, the Supreme Court has already given an answer to that argument by declaring that once the State decides to grant a privilege or right which it is not obligated to grant or bestow, then it cannot grant that privilege or right in a manner which is discriminatory.

Third, it has been wrongly argued that Navtej does not lay down an absolute prohibition on a classification based on religion. This argument attacks a straw man. Arguendo, even if that argument is accepted, it still does not establish why the case's doctrinal extension of the nexus tests beyond mere intelligibility to the determination of the reasonableness of the yardsticks is bad in law. The enlargement of the scope of Article 14's analytical framework is a natural corollary of the Court's reasoning in that judgment. As long as that is not controverted, it is safe to say that questioning the constitutional relevance of the selection criteria is a part of the Article 14 enquiry. Furthermore, even the shield against arbitrariness under Article 14 furnishes the same scope.

Fourth, it has been contended that an analysis of the classifications ought not to be pedantic in that one starts to look for a single coherent yardstick that justifies the classification; instead, the collective effect of all possible explanations should be taken into account for a pronouncement on the reasonableness of the yardsticks. This argument is reminiscent of Amartya Sen's exposition on the concept of 'plural grounding' -— the idea that various reasons can collectively undergird a decision without there being a single dominant reason for why that decision has been taken. Even taken together, the yardsticks that the affidavit provides do not produce a sound cause for excluding similarly situated faith communities or countries. At best, this argument is fruitful only to persuade a court to subject the CAA to specific criticism as against rejecting it in toto.

Finally, advocates of the CAA's validity invoke Chief Justice Patanjali Sastri's remarks that Article 14's scrutiny does not insist on a classification that is 'scientifically perfect or logically complete'. This argument is based on a misunderstanding of the Justice's remarks. In the case where Chief Justice Sastri made these statements, the petitioner had challenged the constitutionality of a West Bengal enactment that established special courts to try specific criminal offences listed in the statute. The purpose of this Act was to deal with corrupt public officials who, during the period after World War II, were overseeing essential supplies, war account adjustments etc. The petitioner's counsel argued that the offences that had been clubbed together to be tried by the special courts were not all offences associated with monetary gain to the accused. Crimes such as forgery or counterfeiting seals should not be clubbed with pecuniary offences for the purpose of legislative classification. The Chief Justice rebuffed this argument and explained that offences like forgery and counterfeiting seals are often committed to facilitate the perpetration of pecuniary offences listed in the impugned statute, thus, it was justified to group them together. It was in this context that the Chief Justice said that Article 14 does not require surgical precision in classification. However, as has been traced in Section 2, the Article 14 requirements have undergone a significant evolution since the 1950s. Judicial remarks must not be applied out of context to whittle down the equality clauses of the Constitution.

- **The 'Under-Inclusivity is No Ground' Defense: A Meaningless Extrapolation**

The Supreme Court has repeatedly held that it would view an over inclusive classification with disfavor, but would be more tolerant of an under-inclusive one. The former is one that confers benefits or imposes burden on members of the selected group as well as others who are not similarly placed, whereas the latter is one that leaves out some who are similarly placed. Apostles of the CAA's constitutionality say that this principle supplies the Act with immunity against a critique of its classifications. A careful reading of the Supreme Court's case law reveals the weaknesses in this argument. Every judgment that has highlighted this broad statement of the Court's general attitude towards an under-inclusive law has been refined with a proviso. The

pith and core of this proviso is that the Court shall exercise restraint unless it is evident that there exists no 'fair reason' for why the law has not been extended with equal force to similarly placed persons who have been left out of its scope. This signifies that the Court, precisely in the kind of situation that the CAA's classifications put the citizenship law in, would not stomach unfair under inclusion. Therefore, summoning this argument to advance the proposition of immunity does not appear to be anchored to the Court's jurisprudence.

- **Bright Line Rules and the Cut-Off Date**

The CAA stipulates that individuals of the subject communities from the specified nations are entitled to benefits under the Act only if they entered India before the specified cut-off date, 31 December 2014. The Supreme Court has held that the State has wide latitude in fixing cut-off dates and that it will strike them down only when they are arbitrary and do not bear a rational nexus with the aim of the Act. The Court has also exhibited a trend in favour of preserving the State's decision on fixing cut-off dates.

Since the object of the CAA is to provide security to those who have escaped persecution or its threat, the cut-off date appears to undermine the professed humanitarian purposes of the Act as there appears to be no reason for denying protection to a person who entered India after the marked date. The government's affidavit explains that India's citizenship law has never been open ended. However, in view of the Supreme Court's insistence on a reasonable justification for arriving at a specific cut-off date, the government's legal team will have to do more than just echoing historical practice.

Nevertheless, bright-line rules are known to appear arbitrary in general; from voting age to the age of sexual consent, an argument can be made against all of them that the positions of a person one day under the prescribed age and of a person a day over it are not substantially different to warrant dissimilar treatment. But the main objective of such rules is imbuing the legal system with some form of uniformity. The philosophy behind such rules is that law requires that a line be drawn somewhere to avoid chaos. Scholars justify it in jurisprudence as a lesser evil. Therefore, the question of incompatibility between the cut-off date and constitutional standards permits greater

scope for a decision in favour of the State compared to such a possibility in adjudicating the two key classifications.

- **The Precipice of Smothered Secularism**

India was founded on the pillar of secularism by rejecting the two-nation theory and embracing the principles of diversity, pluralism and inclusiveness. It has been held that secularism is an integral part of India's constitutional morality and the basic structure of the Constitution. It would be instructive to note that the Indian conceptualization of 'secularism' is remarkably different from other jurisdictions. In contrast to strict separation of Church and State in the US, coexistence of theocratic vestiges and preservation of non-believers' rights in the UK's model, and confining religion to the private sphere of a citizen's life in the French model, the Indian version is one that permits State reform of regressive or discriminatory features of religion. For instance, the Indian Constitution abolished the practice of untouchability and allowed the State to throw open Hindu places of worship to all, without prejudice to the entrant's caste– to reform the Hindu caste system. The Supreme Court declared the Islamic customary form of divorce by triple talaq as ultra vires in pursuance of this constitutional vision of secularism. What follows from this constitutionally consecrated idea is that religious belief should not interpenetrate secular affairs of the State.

Granting citizenship in a secular nation, like India, therefore, is supposed to be a secular affair. When scrutinized against this backdrop, it is apparent that the CAA has perverted the secular character of India's citizenship law. First, it has elevated religious persecution, out of a pool of myriad forms of persecution, to the pedestal of the only type of persecution that would be grave enough to warrant a claim to citizenship for an illegal migrant. This creates a classification where individuals who are persecuted on grounds other than religious beliefs are excluded. This implies that in the eyes of Indian law, persons who are persecuted on account of their political views, sexual orientation, race or ethnicity are less deserving of citizenship rights. This is a dangerous approach for equality and secularism for two reasons. One, in terms of the suffering of individuals who are persecuted on grounds not included in the CAA, they would be situated similarly to those who are persecuted on religious grounds as regards the nature, character and effects of persecution, for example, Sri Lankan Tamils. And two, this

implies that the Indian legal system incorporates a preference for religious causes in the conferment of citizenship.

(3) The CAA-NRC: A Dangerous Synergism

As pointed out in the introduction, critics of the CAA have maintained that its hidden intent is to deprive Indian Muslims of their citizenship rights and to make them stateless. This theorizing has arisen out of ministerial discussions on implementing a nationwide NRC. To understand the basis of this argument against CAA, it is necessary to provide a contextual background for the NRC.

- **The Genesis of NRC: A Step Back in Time**

The Indian State of Assam has been a focal point for illegal migrations largely from East Pakistan (now Bangladesh) ever since India's independence in 1947. The situation severely worsened in the 1960s, leading up to the Indo-Pak War of 1971 which led to the creation of Bangladesh. Even after the war, illegal migration continued, which led to acrimonious disputes between autochthonous Assamese people and the migrant community. This sparked the Assam movement (1979-85) which protested the conferment of voting rights on illegal migrants. To placate the agitators, the central government struck the Assam Accord with the leaders of the movement and amended the Citizenship Act in 1985.

As per the amended regime, individuals of Indian origin who entered Assam before 1 January 1966 from Bangladesh and were residing in Assam since then were considered Indian citizens. Individuals of Indian origin who entered Assam on or after 1 January 1966 but prior to 25 March 1971 and had been residing in Assam ever since, if found to be foreigners, were to receive citizenship of India and all its rights except the right to vote for a period of ten years, and even that right subsequently. Any person who arrived in Assam thereafter was to be deported.

As mentioned above, the government has absolute discretion and power to expel foreigners from India. Since the task of identifying and deporting foreigners in Assam was reeling under severe neglect, the Supreme Court intervened to enforce the amended

provisions of the Citizenship Act. Thereupon, the central government issued a notification to the effect that 'minority communities' defined as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians in Pakistan, Bangladesh and Afghanistan who had entered India before 31 December 2014 to flee persecution or its threat would not be deported for illegal entry or overstaying.

An NRC was prepared for the first time in the 1951 census. Rules under the Citizenship Act were enacted in 2003 to facilitate the preparation of an NRC for India and Assam, and they were amended in 2009. Through a concatenation of orders, the Supreme Court directed the Assam NRC to be updated. In this court-supervised updating of Assam's NRC, around 1.9 million people were excluded. The religious demography of the people who were excluded was: roughly 1.1 million Bengali Hindus, 0.7 million Muslims and the rest included local ethnic groups and tribes.

- **Exploring the CAA-NRC Ramifications: Malignant or Benign?**

It is widely believed that the ruling Bharatiya Janata Party has ties to the right-wing, Hindu fundamentalist organization called the Rashtriya Swayamsevak Sangh (RSS). Accordingly, those who oppose the CAA suspect that it was introduced to smooth the path of regaining citizenship for non-Muslims and keeping Muslims deprived; the same logic is applied to the central government's insistence on preparing an NRC for the entire nation. The CAA's critics warn that once a nation-wide NRC is conducted, out of those who would be excluded on account of not being able to prove their citizenship because they lack the requisite documents, the ones who do not belong to Islam, that is persons belonging to the six faith communities of the CAA, would stand to regain their citizenship entitlement under the CAA. This process would render only Muslim Indians stateless as NRC would first exclude them for not having the required documents and the CAA would provide them no succour. The crux of the argument is that even if the CAA's taxonomical defects are cured by including more groups that deserve inclusion like Ahmadiyas, Shias, Tamil Hindus of Sri Lanka etc., the Act's operation coupled with NRC would still result in discriminatory statelessness of Muslim Indians. This prognosis of the effects of the operation of the CAA and NRC is widely believed amongst the protestors and has been accepted as axiomatic by many.

Per contra, a recent influential piece on the CAA's constitutionality argues otherwise. It asserts that it is fallacious to think that the CAA will confer citizenship on non-Muslim Indians who were excluded from the NRC for two reasons. First, it says that accessing the CAA's benefit would require them to prove that they migrated from any of the three specified countries before the cut-off date. Chandrachud wonders how non-Muslim Indians would be able to prove something that never happened, but in the same breath, he concedes that in view of the presumptions under Section 8 of the Foreigners Act, proving that might still be possible. The main thrust of Chandrachud assertion lies in his second reason. He writes that despite being able to establish some connection to one of the three specified countries, proving one's presence in India for fear of religious persecution in Afghanistan, Pakistan and Bangladesh would not be a simple task for a non-Muslim Indian since the persecution claim would feature veridical weakness on account of the fact that such person has never really been to any of the three specified countries, let alone faced persecution there. Based on these arguments, he concludes that the CAA/NRC scheme is equally perilous for non-Muslim Indians, which in turn means that the speculations of the protestors are misconceived.

Before these arguments are dissected, it is pertinent to correct Chandrachud's understanding of what considerations apply to which category of foreigners in the determination of their nationality under Section 8 of the Foreigners Act. Clause (1) of Section 8 stipulates that: (a) in case a 'foreigner is recognized as a national by the law of more than one foreign country', then such a foreigner would be 'treated as the national of that country with which he seems most closely connected in interest and sympathy' but, (b) in case a foreigner's nationality is uncertain, he would be considered a national of that country with which he was last connected. Oblivious of the subtleties of semantics, Chandrachud wrongly assumes that the close connection factor applies to 'case (b)'. It's an aberration in as much as the close connection factor does not work for a foreigner of uncertain nationality. Consider this hypothetical – X is a foreigner whose nationality is uncertain. If the government official applies the close connection factor to determine her nationality, the person might just get herself a declaration of being treated as an American merely because she is able to successfully demonstrate how closely her interest or sympathy aligns with the stereotypical American life.

Chandrachud's comprehension of the section is faulty by reason of reductio ad absurdum. The absurd implications of his interpretation warrant its dismissal.

Turning to Chandrachud's reasoning on the CAA/NRC regime, it must be stated at the outset that his premises are misguided. The kernel of his first reason is that even a Hindu Indian who is excluded from the NRC will have to prove that he is a national of one of the three specified countries, and that on the impossibility of proving a lie, the benefit of the CAA would not extend to a Hindu Indian. This is a deceptive argument because the CAA opens the gates of citizenship for illegal migrants, that is individuals who enter India without the requisite identity documentation. A law that recognizes that its beneficiaries do not have necessary documents will not obligate their production for availing its entitlements. In fact, the 2015 notification of the Ministry of Home Affairs provides in crystal clear terms that those who entered India 'without valid documents including passport or other travel documents' prior to the cut-off date are exempt from deportation'. This provides sufficient context to unravel what the CAA does and does not require to be proved. The production of a national identification document of one of the three specified nations has also not been made a condition precedent to avail the CAA's protection. With that, it seems that determination of nationality would more likely be governed by self-declaration. However, what non-Muslim Indians would still have to prove is that they were in India before the cutoff date. The Act's provisions do not insist on the proof of the specific date of entry into India. The focus is merely on one's presence in the country before the cut-off date, proving which is easy for those who have always lived in India.

The second reason advanced by Chandrachud is even more astounding as it bespeaks a misinterpretation at best and ignorance at worst. The very spirit of the CAA is that it does not require one to prove that she has been persecuted or that she was under a threat of persecution, if the person fulfils the classificatory criteria. The law is grounded on the policy presumption that persons belonging to one of the faith communities in the specified countries are under a threat of persecution, which is why it confers benefits on them, to make the process of obtaining Indian citizenship easy. Therefore, his conjecture that the CAA would require someone who is able to prove that they are Hindu and that they have a connection with one of the three specified

countries, along with presence in India before the cut-off date to additionally establish that they faced fear of persecution, is farcical. It is glaringly conspicuous that the critics of the CAA were right in asserting that the CAA/NRC undertaking only leaves out Indian Muslims, and that it has been designed to make it wide enough to encapsulate non-Muslim Indians within the sphere of its selected beneficiaries. The exclusion of Muslims sanctions Islamophobia and is only fodder for those seeking to incite hatred.

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CHAPTER-3

GEO-POLITICS OF THE N.R.C-C.A.A IN ASSAM

The objective of this article is to analyse the various aspects of the burning issue of illegal immigration from Bangladesh into Assam and to consider the practical viability of the various suggested policies in light of historical reality and international relations. The article begins with the historical background of the Assam Movement (1979-1985). This is followed by a discussion of the Assam Accord signed in 1985 and a critical examination of how practical and realistic the provisions of the Assam Accord are. It then examines the controversy regarding the estimated number of migrants from Bangladesh to Assam during the last 40 years and reviews some recent work. This is followed by an analysis of the progress of the implementation of the provisions of Assam Accord, which critically notes the failure of the Government of Assam and that of the Central Government to implement some important agreed clauses of the Accord. Then the article discusses the political consequences and the likely impacts of the perceived large-scale immigration from Bangladesh on the identity of the indigenous people followed by a critical analysis of geopolitical implications of the same. Lastly, it examines policies that have been put forward by various sections of the Assamese society and makes some concluding remarks suggesting a relatively conciliatory stance in view of historical osmosis and human rights.

Historical Background

When the British partitioned the Presidency of Bengal in 1905, the province of East Bengal was merged with Assam, which then was a Chief Commissioner's province. Migration to Assam from the then East Bengal (later East Pakistan from 1946 till 1971 when it became

Bangladesh), which was a Muslim majority province, began from 1906, when the All India Muslim League was formed in Dhaka, as an aftermath of the partition of the province of Bengal. Nawab Saleemullah Khan exhorted the Muslims to migrate to Assam. The territorial merger raised alarm amongst the indigenous population of Assam about losing their Assamese identity. Realizing the widespread consternation,

the British restored Assam as a separate Lieutenant Governor's province in 1911. However, a strong trend was established for the East Bengal residents to migrate to occupy fertile land in Assam, so much so, that the British Census Superintendent, C. S. Mullen, found it judicious to note the following in his 1931 Census Report on Assam. After the 1937 Provincial election, Gopi Nath

Bordoloi led the Coalition Government in Assam from September 1938 and tried to stop the flow of migrants from East Bengal to Assam. However, following the Congress party policy, Bordoloi resigned in 1939 and Sir Muhammed Saahdullah, President of the Muslim League Party of the Brahmaputra Valley, formed a Coalition Government. During the period from 1939 to 1941, the Saahdullah Government allotted one lakh bighas of land in Assam valley for settlement of the East Bengal immigrants. This was done under the "grow more food" slogan. On this, Viceroy Archibald Wavell made the uncharacteristically trenchant remark that the Muslim ministers wanted to increase immigration of the Muslim population into Assam under the pretence of that slogan, and that the real motive was "to grow more Muslims". The 1946 Provincial Election in Assam was won convincingly by the Congress party with 50 seats. A Congress Government was formed under Gopinath Bordoloi as premier who took a firm stand on eviction of Bangladeshi immigrants. The reaction of the Muslim League is to demand the inclusion of Assam in Pakistan; and Abdul Hamid Khan took on the role to execute the League plan to transform Assam into a Muslim-majority province. Bordoloi's efforts were hampered, as he had to fight to save Assam from being a part of Pakistan. After the partition of British India in 1947, a large number of Hindu Bengalis from East Pakistan moved to Assam, West Bengal and Tripura as refugees to escape religious persecution. The Muslim population decreased to a certain extent as Sylhet was included in East Pakistan; but some Muslim people moved to Assam for economic reasons. The unabated flow of people from East Bengal/East Pakistan continued. During 40 years from 1901 to 1941, population7 of Assam increased by 103%, that is, more than doubled. During the next 30 years from 1941 to 1971, Assam's population increased by 118%, that is, doubled in 30 years, indicating a degree of acceleration of the flow of immigrants. This is not because Assam's fertility rate was exceptionally high, but because of immigration. Bangladeshi independence movement and the resulting crackdown by the Pakistani army led to further movement of population from

East Pakistan to Assam. During the period of 20 years from 1971 to 1991, population of Assam increased by 52%. However, during the next 20 years from 1991 to 2011, population increased by 40%. A historical deceleration of the flow of immigration to Assam is discernible here. The large-scale emigration from East Pakistan/Bangladesh is also chronicled by the steep decline of Hindu population of 27% in 1947 to 14% in 1971, and then to 10% in 1991. Hindu population in Bangladesh is only 8.5% of the total population in 2011. It should also be noted that immigrants to Assam include both Nepalis and Beharis, although in relatively small numbers.

Serious attempts were made in the early sixties to evict illegal migrants from East Pakistan. The state police followed a strategy which involves having a meeting with the Muslim village elders from the old settlers and persuading them to disclose information voluntarily. One IPS officer who was SP of Nowgong district managed to evict more than one lakh East Pakistanis in two years. However, the evicted East Pakistanis settled in areas close to the East Pakistan-Assam border, and they began to push out Hindus into Assam. Anti-Hindu riots erupted in 1964, and thousands of Hindus fled East Pakistan and became refugees in the North East and West Bengal, and ultimately they were allowed to settle. Prime Minister Nehru wrote to Bimala Prasad Chaliha to ease deportations, but the Chief Minister resisted. Nevertheless, after the 1965 war, Pakistani border guards refused to accept evicted East Pakistanis.

As surreptitious infiltration went on, the Government of India passed the Prevention of Infiltration from Pakistan" (PIP) Act in 1964. Bimala Prasad Chaliha wanted to use the provisions of this Act, but the Chief Minister's political survival depended on 20 Muslim members of the Congress Legislative Party. The rebel Muslim members made it clear to Chaliha that his Ministry would fall if he used PIP to evict Muslims. Thus political expediency forced PIP into backburner.

The Indian Emergency, when President Fakhruddin Ali Ahmed declared a state of emergency on 25th June 1975 under Article 352 of the Indian Constitution, effectively transferred power to Indira Gandhi to rule by decree for 21 months (till 21st March 1977). The Emergency changed the dynamics of politics in Assam and it had debilitating effects on the Congress party of Assam. The issue of illegal immigrants, especially when a lot of them surreptitiously obtained voting rights, once again became

a burning issue. An emerging dangerous trend was that the political parties began to demand inclusion of names of the migrants who were not Indian citizens in the electoral lists. The problem came to the fore when a revision of electoral lists for the Mangaldoi Parliamentary constituency revealed more than 60,000 names of recently registered people who could not prove their Indian identity. This revelation triggered strong demands for revision of the electoral rolls on the basis of the 1951 National Register of Citizens (NRC).The All Assam Students Union (AASU) along with Assam Gana Sangram Parishad (AGSP) launched a movement in 1979 to get rid of illegal migrants or foreigners under the rallying cry "Save Assam to Save India". This now historically is known as the Assam Movement or Assam Agitation, which continued till 1985.

The Assam Movement and the Assam Accord

The six-year Assam Movement had overwhelming support of the people of Assam. AASU wanted a resolution of the foreigners' problem within the provisions of the Indian Constitution. The agitation had some brutal consequences in terms of number of deaths both because of Indira Gandhi's crackdown on the agitators and riots against Bengali Muslims. An estimated 855 Assamese people died as sahids, and an estimated 1753 Bengali Muslims were massacred brutally by the Lalungs (Tiwas) who felt dispossessed of their land because of Bangladeshi encroachment. Assam virtually became ungovernable, and the state administration became dysfunctional. Indira Gandhi imposed the 1983 elections, despite AASU's strong opposition to it, without proper scrutiny of the electoral rolls; and the run up to the elections saw a lawless situation with bridges burnt, houses burnt, deaths in riots and death of 130 people in police firings. AASU also stopped the 1981 census. As the Assam Agitation reached a highly volatile and violent stage, delegations from Assam went to Delhi to find solutions. In the end, AASU and AGSP decided to negotiate with the Government of India, and finally, after 27 rounds of talks, under the leadership of Rajiv Gandhi, the Assam Accord was signed on 15th August 1985. People's hope for a solution and expectation for peace were raised. Assam Accord is fundamentally a "Memorandum of Settlement"; it was not discussed and passed by the Parliament; and this being so, it does not seem to carry much constitutional weight. However, it contained formidable proposals and served Assam well as it brought temporary peace at least in one front.

On the Bangladeshi issue, the main conclusion is the following: subject to "constitutional and legal provisions, international agreements, national commitments and humanitarian considerations", foreigners who came to Assam after 25th March 1971 will be detected, deleted from the electoral roll and expelled in accordance with law. All foreigners who entered Assam prior to 1st January 1966 will be entered in the electoral rolls. Nevertheless, all foreigners who came to Assam after 1st January 1966 but before 24th March 1971 will be detected and deleted from the electoral rolls, but after a period of 10 years following the detection, the names of all such persons will be included in the electoral rolls. Irregular issuance of Indian Citizenship will be looked into, and certificates will be issued only by the authorities of Central Government. To stop further infiltration, the border will be made more secure with barbed wire fencing, patrols by security forces on land and riverine routes will be intensified, and adequate number of check posts will be set up. A road along the international border will be constructed to facilitate patrolling. Furthermore, relevant laws for prevention of encroachment of Government lands and lands in tribal belts and blocks will be strictly enforced, and encroachers will be evicted. On the economic front, the Accord promised to establish an Oil Refinery and one I.I.T, and to help to reopen Ashok Paper Mill and Jute Mills.

The Accord was constrained by the Indira-Mujib Treaty of 1971 whereby India agreed to take responsibility of all migrants who entered India on or before 24th March 1971. Thus, the illegal immigrants who entered before that cut-off date obtained citizenship automatically. The detection-deletion-deportation process as envisaged in the Accord does appear to be only an aspiration rather than a firm policy of action in view of the fact that nobody knew how many illegal Bangladeshis were in Assam at that point of time and therefore the scale of the administrative and judiciary resources required to implement that policy were hardly considered. In addition, not a moment's thought was given to whether Bangladesh would accept returnees at a large scale from Assam because no international agreement or treaty on this exists between India and Bangladesh. The detect-delete-deport policy was clearly not implementable without some form of international treaty with Bangladesh, and a reality check should have been done at the level of Central Government before signing the Accord. This throws some doubts about whether the Government of India was serious about achieving a

satisfactory resolution to the Bangladeshi issue or whether the Central Government signed the Accord simply to placate the people of Assam. On the other hand, it was a blatant mistake not to include representatives from the tribal communities, the Adivasis and the Assamese Muslims. Their non-participation in the process of negotiations weakened the Accord's political relevance and legitimacy. These groups of people largely distanced themselves from the Accord over time. The economic hand-outs of an oil refinery and an I.I.T, however, were concrete actionable proposals.

Implementation of the Assam Accord Provisions

Election in Assam took place soon after the completion of the Assam Accord, and the newly formed AGP won the election convincingly, and the student leader formed a new government. It is now apparent that the AGP Government failed to implement the provisions of the Accord. In 1985, ASSU claimed that 7.7 million foreigners were in Assam. The AGP government could not even evict 7700 in five years. The efforts to detect and deport is pathetic. For example, it was reported on 9th December 2009 in Assam Assembly that during the period from 2001 and October 2009, only 10,597 persons were identified as foreign nationals, and only 105 of them could be deported ; and the whereabouts of the rest 10,492 persons was not known to the government. This is what is going on for the last 28 years.

The biggest hurdle in deporting illegal immigrants is the Illegal Migrant (Determination by Tribunals) Act 1983 (IMDT Act) which was passed by the Congress Government. The transparent flaw of the Act was that the onus of furnishing proof against a suspected foreigner rests on the complainant and not on the accused. Furthermore, the complainant has to pay a punitive charge to complain. And worse, a ration card is taken as sufficient proof of domicile status. The IMDT Act was, as Ravi (2012) says, "mischievously legitimized" in the Assam Accord. Sinha (1998) suggested to the President of India that the IMDT Act should be repealed and that the Foreigners' Act of 1946 should be used for detection and deportation of foreigners. In 2005, after 22 years, the Supreme Court of India struck down the IMDT Act and observed that the Act "has created the biggest hurdle and is the main impediment or barrier in the identification and deportation of illegal migrants".

It may be noted that 11 Tribunals were established in Assam under the Foreigners (Tribunals) Order 1964 in order to identify foreigners of 1966-71 stream; and these Tribunals declared 24,376 as foreigners26. The Tribunals established under the IMDT Act 1983 have not been operating very efficiently. Although tripartite (ASSU, Assam Government, and the Central Government) meetings occasionally take place to monitor the progress of the implementation of the Accord, the border fencing has not been completed. The fencing work started seven years later in 1992. Assam has 262 km border with Bangladesh and 92 km of that is riverine. The proposal of establishing 19 police stations of the river police has not been implemented; also, the 1999 decision of establishing a second line of defence to detect illegal migrants has not been implemented. The border still remains porous, and this must be considered a serious failure after 28 years.

Some other proposals have been completed. Numaligarh Oil Refinery, one Indian institute of Technology, two Central Universities, LPG Bottling Plant in Bongaigaon, and three Industrial Growth Centers have been established. Ex-gratia payments have been made to the next of kin of those who died in the agitation. But the main objective of detection, deletion and deportation has failed, and in our opinion, for reasons which are imbedded in the Accord, specifically that the Accord did not spell out a robust institutional structure with commensurate resources to handle a complex problem notwithstanding the IMDT Act 1983. In addition, there is no international treaty and there have been no discussions with the Bangladeshi Government on an international procedure that will allow India to send back the illegal Bangladeshi migrants from Assam. The President of India in his Independence Day message to the nation in 2012 said: “concrete attempts have been made to heal the wounds of Assam; including the Assam Accord…...We should revisit them, and adapt them to present conditions in the spirit of justice and national interest”. Many critics point out this is an implicit acknowledgement of the failure of Assam Accord. should revisit them, and adapt them to present conditions in the spirit of justice and national interest”. Many critics point out this is an implicit acknowledgement of the failure of Assam Accord.

Politics, Culture and Identity

Large-scale immigration always and everywhere creates political, cultural and social problems. Assam is no exception. The indigenous people have to absorb and cope with people with different religion and language. First, consider the districts that have high (above 50%) Muslim population27 in 2001 (percentages in parenthesis): Dhubri (74%), Goalpara (53%), Barpeta (59%), Marigaon (48%), Nagaon (51%), Karimganj (52%) and Hailakandi (58%). Dhubri borders along north- east of Bangladesh; Goalpara, Barpeta are in the west of Assam (closer to Bangladesh); Marigaon and Nagaon are in central Assam; Karimganj and Hailakandi are in the south of Assam, but north-west of Karimganj borders Bangladesh. Now consider the annual average annual rate growth of Muslims during 1971-1991 and 1991-2001 in the following high growth districts (first and second figure respectively for 1971-91 and 1991 2001):Goalpara (4.0%, 2.9%), Kamrup (3.8%, 2.8%), Darrang (5.7%, 3.3%), Lakhimpur (4.9%, 2.8%), Nagaon (3.9%, 3.1%), Sivasagar (3.6%, 2.6%), Karbi Anglong (5.6% 7.4%), and North Cachar Hills (20.5%, 4.0%) and Cachar (2.3%, 2.7%). These figures reveal that, with the exception of Nagaon, the rate of growth of Muslim population during the 1990's is higher in districts where the proportion of Muslim population is relatively lower. This indicates that immigrants move to newer territory (with lower proportion of Muslim population) in Assam. Second, not only the districts bordering Bangladesh, namely, Dhubri and Karimganj, have higher ratios of Muslim population, but also from Dhubri, Muslim population has spilled over to the other western districts, namely, Goalpara and Barpeta, and from Karimganj to Hailakandi. The population density has increased in these districts. The population density in Bangladesh is 1100 per km2. It is indicative of land as a magnet.

District concentration of Muslim population has strong political impact in a democracy. The alleged use of Bangla votes to prop up the Congress to form state government will have some truth in it, if it is found that politicians encouraged foreigners to get registered in the voting rolls. Names of foreigners in the voting lists were found at least in one case, which triggered the Assam Movement. Secondly, with the advent of a strong Muslim political party, namely, the All India United Democratic Front (AIUDF), with the pledged mandate that they will look after the welfare of the Muslims (both Bangladeshi and indigenous Assamese Muslims), the politics of Assam has radically changed as the Muslim party have safe seats in Assam Assembly, and the

leader of opposition now comes from AIUDF. It is now openly discussed that AIUDF may form the Assam government in 2016. Reportedly, the Assam Congress Party may take AIUDF as a coalition partner or the other way round.

Land attracts migrants to Assam, but vast areas of land are protected land for the tribal people. Many people are not aware of Chapter X of the Assam Land Revenue and Regulation Act, 1886 (amended in 1947) which is an important piece of legislation that protects the land rights of the tribal people. On the basis of this Act, 45 Tribal Belts and Blocks have been created till 1984, and these areas must be constitutionally protected by the State Government from illegal occupation. The problem can be highlighted with an example of Bodoland, comprising four districts, namely, Kokrajhar, Chirang, Baksa and Udalguri. The Bodoland Territorial Council administers a Tribal Autonomous area; and Schedule VI of the Indian Constitution guarantees protection of the Bodo culture and their tribal land. The root cause of the recent violent disturbances in Bodoland lies in illegal occupation of Bodo land by Bangladeshi migrants. An area of 16,455 bighas of land in the Binji Tribal block in Kokrajhar District has been encroached by about 3000 illegal non- tribal families. This is not a fiction of imagination; one can visit this area for confirmation of facts. Thus, the Government of Assam has failed its constitutional obligations.

There is a further complication here. When riots took place recently in Bodoland against the Muslim Bangladeshis, the indigenous Muslims also became victims of violence. But the land rights of the indigenous Muslims must also be protected. All over rural Assam, the land rights of the indigenous population is the crucial issue created by legal or illegal migrants' illegal occupation of land. The root cause of the Nellie violence was also triggered by land rights of the Lalungs. The indigenous communities in Assam do fear that their identity is threatened, specifically when alleged Jihadi forces28 protect the illegal Muslim migrants.

An ethnically heterogeneous Assam is progressively getting ethnically divided in terms of tribe-specific autonomous councils, and many demand their own states to be carved out of Assam. This ethnic balkanization is fundamentally a consequence of policy of appeasement to emphatic assertion of tribal ethnicity, when the emphatic assertion takes the form of violence perpetrated by organized terrorist groups.

Therefore, when one says that the Assamese identity is threatened by the migrants, it is not clear who are included as being Assamese. During the British Raj, and specifically during the independence struggle, a form of social osmosis developed as all ethnic groups were fighting for a single cause; but soon after independence, the social political cohesiveness steadily disintegrated over two or three decades. This is largely because the "mainstream" middle class Assamese, who dominated the politics of Assam in the post independence days, failed to accommodate the aspirations of the tribal people. Even after the Assam Movement, the AGP government, formed by the young leaders of the movement, did not accommodate, for example, the aspirations of the co-leaders from the Bodo community.

In a state where multitude of ethnic groups lived for centuries while maintaining its own cultural ethnic identity, one has to refer to the Assamese culture as the combined collection of all the cultures, with minimum cultural mix. "Who is an Assamese?" is a very difficult question to answer. Does language or religion bind us together? Assamese language is pre-dominant, but many ethnic groups will not describe Assamese as their own mother tongue as they have developed their own language and literature. In Britain, if you live in Britain and you have British citizenship, you are British; but you could be British Assamese or British Ugandan. Thus, we can argue that one who lives in Assam and who is an Indian citizen is an Assamese; one could be Assamese Punjabi or Assamese Gujarati. But language plays an important role in the definition of who an Assamese is. A person who does not speak Assamese will not be referred to as an Assamese in the context of India with a multitude of provincial languages. Religion is an over-arching pan-India factor that does not bind the Assamese as a cultural group, perhaps with the exception of the rejuvenated Sankari culture involving not only the "mainstream" Assamese but also many from the ethnic minorities. Muslim culture is different from the Hindu culture, and even among the Hindus, the Vaishnavs are different from the Brahmins. The core Assamese culture historically is based on the contributions of Mahapurush Srimanta Sankardev.

Can the Brahmaputra and Rongali Bihu, romantically associated with Assam, override the dividing forces of ethnicity and religiosity and inspire to form or define Assamese identity (jati) or sub-nationalism in concordance with Indian nationalism?

During the Assam Movement, the Assamese nationalism manifested itself in large processions and other non-violent protests, because there was a cause that bound people from all ethnic groups together. But, as Baruah (1999) points out, Assamese nationalism must correlate to Indian nationalism, and one cannot exist without the other. However, after the Assam Movement, Assamese sub-nationalism broke into various ethno-nationalisms, and putting it back together is a major challenge.

The process of ethnic balkanization is endogenously generated; and Bangladeshi migration is not a contributing factor, although one observes that the whole process of ethnic disintegration started mainly after the Assam Movement with the proliferation of scores of ethnic terrorist groups. This has led to a social and political situation of separate development in the shape of the many Autonomous Councils. The large-scale migration from Bangladesh has led to stronger integration of the Muslim communities under dedicated leadership.

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CHAPTER – 4

STATESTATELESS IN INDIA – DISENFRANCHISED OF MUSLIMS

Statelessness

Article 1 of the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) defines a ‘stateless person’ as someone “not considered as a national by any state under the operation of its law.” The bond of nationality, a legal bond between an individual and a State, denotes membership which results in reciprocal rights and duties. There are two main doctrines for granting nationality at birth: jus soli, which is conferred on the basis of birth in the country; and jus sanguinis, which is conferred based on parents’ nationality. The implications of lack of (effective) nationality leaves stateless persons disenfranchised, making them victims of ineffective governance and discrimination, and other violations of fundamental human rights.

Despite advances in international law regarding the protection of stateless persons, India has been reluctant to incorporate them into national legislation. Thus, it is not surprising that there is a gap in the literature and data regarding statelessness in India. In fact, Indian nationality laws have become even more restrictive since independence in 1947. Decolonization led to partition of British India and creation of two sovereign States: India and Pakistan. This caused a large mass migration of approximately 14 million people who became displaced, moving either to Pakistan (mostly Muslims) or to India (mostly Hindus and Sikhs). Grounds for granting Indian citizenship were based on legal status, depending on when they entered India.

Decolonization also affected the legal status of many Indians who were sent to Sri Lanka during colonial times, and were rendered stateless upon Independence. To this day, many individuals and communities are still recovering from the legal implications of decolonization, especially stateless persons. Furthermore, over recent years, thousands of refugees—including stateless refugees—fleeing persecution such as Rohingyas and Tibetans have sought shelter in India. While India has a long-standing history of hosting a large number of refugees and stateless persons, it does not legally recognise them, which creates problems of integration. This article will examine to what extent relevant international human rights provisions and international standards for the identification and protection of stateless persons, and the prevention and reduction of statelessness have been applied into India's national legislation.

Nationality in the Indian Legal Framework

- **The Constitution of India, 1950**

After Independence in 1947 but before the enactment of the Constitution in 1950, Indians were still British subjects by virtue of Section 18(3) of the Indian Independence Act. With the introduction of the Constitution, the following could be citizens of India: persons born and resident in India; persons resident in India and whose parents were born in India, persons resident in India for more than five years since the start of the Constitution, persons resettling to India from Pakistan after 1 March 1947, persons who migrated to India from Pakistan before 19 July 1948 or those who came afterwards and have been resident in India since immigration, persons resident outside India but if either parent or grandparent was born in India.

The Constitutional provisions concerning citizenship appear relatively inclusive and consider people's freedom of choice post partition. The provisions primarily concern themselves with two broad categories of persons: residents at the time of independence, and 'migrants' whose citizenship was determined by where they intended to reside in light of the complex nature of mass migrations that took place between India and Pakistan. However, between the enactment of the Constitution in 1950 and the enactment of the Citizenship Act in 1955, there was a 'legal vacuum': while the nationality framework was being formulated, the people who had been moving across the borders between India and Pakistan had to be taken into consideration. Thus, when the Citizenship Act came into force, their citizenship status was determined by 'intent' and followed by attributions of legality and illegality.

- **The Citizenship Act, 1955**

The Constitution left future matters of citizenship to be regulated by the Parliament. Accordingly, the Parliament enacted the Citizenship Act ('Principal Act') in 1955. As per the Act, Citizenship could be acquired by birth, descent, registration, naturalisation and by incorporation of territory.

The Citizenship (Amendment) Act, 1986 transformed the system from a jus soli regime to a system largely based on jus sanguinis. Thus anyone born after the commencement of the Constitution on 26 January 1950 but before 1 July 1987 would be a citizen; however anyone born on or after 1 July 1987 would only be a citizen by birth if either parent is an Indian citizen. This was in response to the large influx of migrants and refugees that were coming into India and raising concerns of national interest, particularly in the state of Assam. This led the Government to become more stringent on the provisions of its nationality laws by introducing the Citizenship (Amendment) Act, 1986. The Act also inserted Article 6(A) which created special provisions as per the Assam Accord. Anyone of Indian origin entering Assam before 1 January 1966 from a "specified territory", and resided in India since were deemed Indian citizens. On the other hand, those entering Assam on or after 1 January 1966 but before 25 March 1971 from the specified territory, were ordinarily resident in Assam and identified as a foreigners could register for citizenship. The second category of persons would have

the same rights as citizens except for voting rights. Persons who did not qualify for either of the two were considered illegal migrants and rendered stateless.

The Citizenship (Amendment) Act of 1992 brought a positive change in relation to gender discrimination in India's citizenship law. Section 4 of the Principal Act provided that a person born after 26 January 1955 but before the commencement of the Act is an Indian citizen by descent if the father is Indian at the time of birth. This provision was amended by the Citizenship (Amendment) Act of 1992 which provided that persons shall be Indian citizens if either of his/her parents is Indian. It further replaced all references made to "male persons" with "persons" thus bringing India in line with Article 9(2) of the Women's Convention which requires States to grant women equal rights regarding the nationality of their children.

The Citizenship (Amendment) Act, 2003 (6 of 2004) made major changes to the Principal Act. The Act originally required residency in India or service of a Government in India for twelve years for periods amounting in the aggregate of a minimum of nine years to be eligible for naturalization; this was increased to fourteen years and eleven years respectively by the 2003 Act thereby leaving many stateless persons in a legal limbo. The First Schedule was omitted and the term 'citizen' in relation to a 'specified country' in the First Schedule was substituted by 'illegal migrant' which is defined as a foreigner entering India. This poses a challenge for stateless persons in India to acquire nationality, as they often do not possess the necessary documents. Thus matters of legal status complicate eligibility as their very condition creates an obstacle to legal means to citizenship. Moreover, the amendment affected provisions to Section 5 that made 'illegal migrants' and their children unqualified

for registration, i.e. the application for registration of minors under Section 5(1)(d) requires a copy of valid foreign passport, a copy of the valid residential permit but also proof that each parent of the minor is an Indian citizen. These conditions bar stateless minors to attempt to naturalize as they usually do not possess such documents. Moreover, it does not consider circumstances where one parent is an Indian citizen and the other is not.

Regarding naturalization, there was a minor but very significant step towards avoiding statelessness. The Principal Act originally required that an applicant for naturalization

renounces their nationality before application, which was substituted by the applicant "undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted." This is an significant as it provides a safeguard that in case an application for Indian citizenship is denied; the applicant still has his/her former nationality. This is in accordance with the 1930 Hague Convention (Article 16), and the 1961 Convention (Article 7(1) and (2)).

- **Citizenship by birth**

Section 3 of the Citizenship Act provides for the ascription of citizenship via jus soli if both or one of the parents is an Indian citizen, as long as the other is not an irregular migrant. However, the law does not provide jus soli safeguards if the child would be otherwise stateless. Furthermore, since the law provides that even if just one parent is an illegal migrant, the child's eligibility to acquire the nationality from the other parent, whether by birth or by descent, would be denied. Moreover, Section 3(2)(b) states that in situations where the birth takes place in a territory that had then been under occupation by 'the enemy' and either of the parents are an 'enemy alien', the child would not be able to obtain Indian citizenship by birth. However, the Act does not provide a definition of 'enemy alien' and thus this provision is liable to changes in times of war; and secondly, the provision does not make any reference to scenarios where either or both of the parents may be 'enemy alien(s)' but the birth takes place in the territory of India not under occupation by the enemy. In terms of citizenship by birth, it can be established that it is very unlikely that section 3 of the Citizenship Act would grant nationality via jus soli to children born in the territory of India who are vulnerable to statelessness. This is not in line with Article 1 of the 1961 Convention which requires States to "grant nationality to a person born in its territory who would otherwise be stateless", to which India is not a state party. Before 1986, every person born in India on or after the commencement of the Constitution was considered an Indian citizen by birth on the territory (unconditional jus soli). As mentioned earlier, this was replaced by a stricter jus sanguinis doctrine with the introduction of the Amendment Act, 1986 (see section 1.3). Although India is not party to the 1954 or 1961 Conventions, the lack of safeguards against statelessness at birth are in contravention of CRC (Article 7), ICCPR (Article 24), CPRD (Article 18) and the Convention on Migrant Workers

(Article 29) which assert the right of a child to be registered immediately after birth and the right to acquire a nationality, under which India has not filed any reservations. From the perspective of stateless children, this is a shortcoming under Indian citizenship laws.

- **Citizenship by descent**

Section 4 of the Citizenship Act divides citizenship by descent (jus sanguinis) into three categories: persons born outside India between 26 January 1950 and 10 December 1992 if the father was an Indian citizen at the time of birth; persons born outside India between 10 December 1992 and 7 January 2004, if either of the parents is an Indian citizen at the time of birth; and children born after 7 January 2004 if either of the parents is an Indian citizen and the birth is registered at an Indian consulate within one year. Section 4 also requires births to be registered at an Indian consulate within one year and that the minor does not hold another nationality. This is aligned with Article 4 of the 1961 Convention, which requires states to grant nationality to persons born outside the country of his/her parents nationality, if (s)he would otherwise be stateless. In comparison to citizenship by descent described above, it becomes clear that Indian laws make it is easier for persons of Indian descent born outside of India to gain Indian citizenship than for persons born in India.

- **Citizenship by registration**

Section 5 of the Citizenship Act provides Indian citizenship through registration for the following categories of persons: (a) a person of Indian origin who is currently resident in India for seven years before making an application for registration; (b) a person of Indian origin who is ordinarily resident

in any country or place outside undivided India; (c) a person who is married to an Indian citizen and is ordinarily resident in India for seven years before making an application for registration; (d) minor children of persons who are citizens of India; (e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6; (f) a person of full age and capacity who, or either of his/her parent, was earlier a citizen of Independent India, and has been residing in India for one year immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an Overseas Indian Citizen for five years and has resided in India for twelve months before making an application for registration.

The registration of minors in Section 5 (1) (d) of the Act requires a declaration from the parent of the child, however the term 'parent' has not been clarified for instance whether the term covers adoptive parents or children born out of wedlock. Thus it remains unclear what happens if one parent is an Indian citizen and the other is stateless. So, it can be said that Indian citizenship by registration does not really consider those who are stateless. Although stateless persons may fulfil the requirement of duration of residency in India, they are still not eligible for citizenship by registration under Section 5 as they are not considered of Indian origin, married to an Indian citizen or children of Indian citizens.

- **Citizenship by naturalisation**

Section 6 in conjunction with the Third Schedule of the Citizenship Act provides for the acquisition of Indian citizenship through naturalisation. The requirement that persons shall not be 'illegal migrants' introduced by the 2003 Act already disqualifies most stateless persons from acquiring citizenship via naturalisation. Furthermore, the fact the individual has not previously renounced nor been deprived of Indian citizenship seals the barrier for most stateless persons from being able to naturalise in the future as well. Nevertheless, the condition in Section 6(1) provides that the Central Government may waive any of the conditions from the Third Schedule for individuals that have rendered distinguished service to "the cause of science, philosophy, art, literature, world peace or human progress generally." Ultimately, the Central Government has the discretion to decide whether the person has fulfilled such service, and thus plays a key role in the reduction of statelessness in India. However it seems very unlikely that stateless persons would have the possibility to render such distinguished services as they are usually marginalised and lack resources to excel in such fields.

Another potential barrier to naturalisation is that Rule no.10 of the Citizenship Rules requires applicants to have "adequate knowledge" of at least one language specified in the Eight Schedule of the Constitution. This can be burdensome for many stateless

persons who do not know any of the specified languages, which is the case for many Rohingyas.58 The obligations under Article 2(1) of the ICCPR states that all rights and freedoms must be guaranteed "without distinction of any kind such as language". Additionally, Article 29(c) and Article 30 of the CRC states that education of the child shall be directed to "the development of respect for the child's parents, his or her own cultural identity, language and values" and that children belonging to "States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist" shall not be denied to practice their language. For a socio-linguistically diverse country like India, Rule No.10 adopts an exclusionist approach to naturalisation. Moreover, those who are stateless most likely have no formal education or documents to prove their qualifications and thus such requirement could be an impediment if they fulfil all other requirements.

Naturalisation may be the only alternative for stateless persons who are not eligible for other avenues to Indian citizenship. Article 32 of the 1954 Convention requires States to "as far as possible facilitate the assimilation and naturalisation of stateless persons in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings." Instead of facilitating naturalisations of stateless persons, the criteria laid out in the Citizenship Act concerning naturalisation are simply too rigid to consider stateless persons. Although the provisions in the Citizenship Act concerning naturalisation do not create statelessness per se, they do sustain the problem as they bar stateless persons from obtaining Indian citizenship through naturalisation.

- **Renunciation of Citizenship**

Section 8 of the Indian Citizenship Act provides for the renunciation of Indian Citizenship. This is aligned with Article 15 (2) of the UDHR which states that everyone has the "right to change their nationality." However the procedure does not at any point request authoritative proof or assurance of the subsequent nationality that the person has acquired or intends to acquire; the declaration form merely requires the applicant to mention '(second) nationality'. In circumstances where citizenship renunciation is registered before the person has successfully acquired the nationality of another State, the person is vulnerable to the risk of statelessness. This is not in line with Article

7(1)(a) of the 1961 Convention which requires States to not permit the renunciation of nationality unless the individual possesses or acquires another nationality.

According to the Tunis Conclusions, States must ensure that renunciation of citizenship would not result in statelessness by "providing for a lapse of the renunciation if the individual concerned fails to acquire the foreign nationality within a fixed period of time." As a result the renunciation should be considered void, thus preventing the risk of statelessness. The Conclusions noted that some Contracting States require applicants intending to naturalise to have renounced their former nationality and give assurance that the naturalisation would be granted followed by proof of renunciation of their foreign nationality. There is an implicit obligation in the 1961 Convention that once issued, assurances should not be withdrawn on grounds that conditions of naturalisation are not fulfilled, as this could result in statelessness. As an alternative to issuance of an assurance, some States provide that naturalisation is granted against a pledge by the individual to renounce his/her foreign nationality and set a fixed timeline for submitting the proof of the renunciation, which if not submitted, renders the naturalisation application null and void. In light of this it can be said Indian provisions on voluntary renunciation of nationality are not aligned with the international legal standards.

Another consequence is that the renunciation of Indian citizenship as a parent would have a direct effect on the nationality of his/her child. Section 8(2) of the Act provides that where a person ceases to be an Indian citizen via renunciation, "every minor child of that person shall thereupon cease to be an Indian citizen." There is no clarification provided on the status of the child where one parent renounces their Indian citizenship while the other does not. The lack of safeguards provided under Section 8 have the potential to create childhood statelessness which is in contravention of Article 6 of the 1961 Convention requiring states not to deprive children of their nationality until they possess or acquire another nationality, and Article 8 of CRC which requests states to preserve the identity of the child, including his/her nationality.

- **Termination of Citizenship**

The Tunis Conclusions clarified the distinction between the terms 'loss' and 'deprivation' of nationality in the 1961 Convention. 'Loss' is used in Articles 5-7 of

the Tunis Conclusions when referring to the automatic withdrawal of nationality by operation of law (ex lege); while 'deprivation' is used in Article 8 referring to situations where the withdrawal is initiated by the authorities of the State. The UN Human Rights Council has established that 'deprivation' in the UDHR also includes arbitrary ex lege loss of nationality. The Indian Citizenship Act, 1955 considers both 'loss' and 'deprivation' of nationality and addresses them in two provisions: Section 9 considers the 'termination of citizenship' or loss of citizenship by operation of law; while Section 10 considers the 'deprivation of citizenship' initiated by Governmental action.

Under Section 9 of the Citizenship Act, any Indian citizen who either by naturalisation, registration or otherwise voluntarily acquires/acquired the nationality of another country, ceases to be an Indian citizen. The Central Government may determine the issues as to whether, when or how any Indian citizen acquires the citizenship of another country with due regard provided in Schedule III of the Citizenship Rules, 2009; the onus of proving otherwise lies with the person in question. If such citizen has obtained a passport from another country, it shall be conclusive proof of his/her having voluntarily acquired the citizenship of that country before that date. The Citizenship Rules also state that where an Indian citizen leaves India for a period exceeding three years without a travel document issued by the Central Government, (s)he shall be deemed to have voluntarily acquired the citizenship of the country of his residence. This contravenes Article 7(3) of the 1961 Convention which provides that a nationals should not lose their nationality on the ground of "departure, residence abroad, failure to register or on any similar ground."

➢ Deprivation of Citizenship

While Article 8(1) of the 1961 Convention prohibits States from depriving persons of his/her nationality if it would render him/her stateless, there are some exceptions. Article 8(2)(a) allows deprivation based on prolonged period of residency abroad without notification to relevant authorities. Article 8(2)(b) allows deprivation if nationality has been obtained by misrepresentation or fraud. Article 8(3) provides States

the right to deprive individuals' nationality where the individuals conduct is found to be inconsistent with his/her duty of loyalty to the State. Nevertheless, the Convention requires that such deprivations should be exercised in accordance with law and shall provide the individual concerned the right to a fair hearing before a court.

Section 10 of the Citizenship Act provides circumstances where the Central Government may deprive individuals from Indian citizenship. Said include: (a) registration or certificate of naturalisation obtained by fraudulent means; (b) behaviors constituting disloyalty to the Constitution of India; (c) unlawful trading, communication, engagement or association with an enemy during war;(d) imprisonment in any country within five years after registration or naturalisation; and (e) residing outside India for a continuous period of seven years without having annually registered in the prescribed manner at an Indian consulate to retain citizenship.

Some of these grounds for deprivation are vague and even harsh. With regards to Section 10(a) of the Act, the Tunis Conclusions required the existence of causality between the misrepresentation or fraud and the grant of nationality. Thus deprivation should not be allowed if nationality would have been acquired regardless of the misrepresentation or fraud. The Tunis Conclusions noted that "due consideration should be given to the motivation of the individual such as why a person committed the act(s) in question". One example provided related to provision of incorrect information during a naturalisation procedure because the applicant feared that use of their full and correct identity would endanger family members in another country. Another area of concern is the often poor quality of supporting identity documents from civil registration systems and other administrative registries. These documents often contain minor errors or discrepancies relating to the identity of individuals. These realities need to be taken into account in assessing cases of alleged misrepresentation or fraud." It also clarified that deprivation cannot be justified if the person did not know or could not have known that the information provided was untrue. Section 10(b) makes it unforeseeable which acts would amount to disloyalty towards the Constitution, and thus could be used arbitrarily.

Regarding Section 10(d), imprisonment in any country within five years of registration or naturalisation is also an unfair ground for deprivation as it does not distinguish

between serious and less serious crimes, thus appears only to further punish said individual. Section 10(e) can also be seen as a punitive measure for those residing abroad beyond seven years. This could be a concern for many Non-Resident Indians (NRIs), which is a large population. The Tunis Conclusions recognized that deprivation of nationality based on prolonged residence abroad is not justified where the result is statelessness and the impact on the individual outweighs the objective sought by the state. By virtue of Section 10(3), the Central Government ultimately decides on said deprivation depending on whether it is "satisfied that it is not conducive to the public good." This is a highly subjective criterion and it is probable that the government could use this section arbitrarily and discriminatorily. So although it appears as though precautions are provided in the procedure before deprivation takes place, the discretionary power of the Central Government to disregard the report of Committee of Inquiry undermines the judicial character of the procedure which has the potential to create statelessness.

Identification of persons in India

➢ Section 14A, Citizenship (Amendment) Act, 2003

Section 14A of the Citizenship (Amendment) Act, 2003 created a method of mapping Indian citizens by making it compulsory that every Indian citizen is registered and issued a national identity card. Rule no.4 of the Citizenship Rules of 2003, provides that in cases where during the verification process, the individuals citizenship is doubtful, further examination will take place. Rule no.5 further elaborates upon this that the person or family shall be given the opportunity to be heard by the Sub district or Taluk Registrar of Citizen Registration before a final decision is made, while Rule no.7 provides for the opportunity of an appeal to be made. Still, there is no remark on the status of individuals whose citizenship remains doubtful even after the verification process is over. While Section 13 provides that in cases of doubt, the Central Government if it thinks appropriate may issue a certificate of citizenship. However for this to be possible, it still requires that citizenship was not obtained by means of fraud, false representation or concealment of any material fact. Thus, it remains unclear which degree of discretion would be given to authorities in respect of stateless persons with regards to Section 13.

➢ Aadhaar

While the abovementioned registrar is a database for Indian citizens only, the National Population Register (NPR) and Unique Identification Number of India (UIDAI) are in currently in progress to collect and store the demographic data of residents into a centralized database while issuing an Aadhaar, a unique 12-digit identity number to each resident. Although this is a great step in storing an identity database for residents in the country, it is still unclear what the potential implications of this would be on stateless persons. It is likely it will be just another system in which stateless persons do not exist and thus there would be no data providing how many of them there are.

➢ Foreigners Act, 1946

The Foreigners Act (1946) is the primary law regarding non-nationals in India. This Act gives the Central Government the authority to prohibit, regulate or restrict entry of foreigners into and out of India. The act defines a 'foreigner' as someone who is "not a citizen of India." Section 8 of the Foreigners Act on the determination of nationality considers the situation of a foreigner recognized as a national by the law of more than one foreign country or a foreigner whose nationality is uncertain. Such a foreigner "may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected." If the foreigner has a nationality by birth, (s)he shall be deemed to retain that nationality unless the Central Government directs otherwise or where the individual proves that (s)he has acquired by naturalisation or otherwise the nationality of another country. Section 8 does not clarify the status or treatment of foreigners who appear to have no nationality upon the completion of the determination procedure, which again leaves stateless people in a legal grey zone and thus result in further human rights violations. The assumption of nationality can be very dangerous, the Geneva Conclusions provide the mechanisms for determining who is a stateless person, and the status and appropriate standards of treatment for such persons.

➢ Passports Act, 1967

Under Article 28 of the 1954 Convention, States are required to "issue stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence." The Passports Act, 1967, issues three types of documents: passports, travel documents and certificates of identity. Under Part II of the Passport Rules, 1980, "stateless persons residing in India, foreigners, whose country is not represented in India, or whose national status is in doubt" may qualify for a 'Certificate of Identity'. The Passports Act is by far the most advanced Indian legislation relating to statelessness, as it is the only law so far that recognises such persons in their own category and provides them with an identification document. Nevertheless, clarifications can be made to improve the Act. For instance, a residential permit is required for the application for the issuance of Certificate of Identity. The Rules do not clarify the procedure or criteria for obtaining such residential permit and thus it remains unclear whether a stateless person would be qualified for it. Moreover, the form requires the applicant to provide the information as to his/her "last permanent address abroad, "which is based on the presumption that the individual is a migrant from abroad and fails to consider individuals who may have been residing in India but do not have the necessary documents to prove it, thus this section could be removed or altered.

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CHAPTER – 5

CONCLUSION

It is perhaps a first time in independent India's political history. The protest against citizenship Amendment Act 2019 was spread to every corner of the country, yet the reasons of the protest vary with geography. Some are protesting because the CAA allegedly violates the secular identity of the nation while other fear that it will endanger their linguistic and cultural identity. Yet others believe that the CAA itself is innocuous, combined with the proposed nationwide National register of citizens (NRC), an exercise that runs in the controversy in Assam, it will become a tool to exclude Muslim population of the country. That the union government has been hit hard by this allegation is evident from the fact that Prime Minister Narendra Modi has publicly contradicted Home minister Amit Shah's assertion that A nationwide NRC will be prepared by 2024.

According to the citizenship Amendment Act 2019, Hindu, Christian, Buddhist, Jain, Sikh and Parsi migrants who have entered India illegally that is without a visa- on before December 31, 2014 from the Muslim majority countries of Pakistan, Afghanistan and Bangladesh and have stayed in the country for 5 years are eligible to apply for Indian citizenship. The union government claims that the people of these six faith have faced persecution in these three Islamic countries Muslims haven't. It is therefore India’s moral obligation to provide them shelter. The government says that this is a time bound provision to provide relief to immigrants who have suffered in Islamic countries because India got divided on religious lines. India has from time to time provide at citizenship to immigrants of religions from different countries. Sri Lankan Tamil Hindus to where given citizenship in the 1970 and 80s. The union government has openly said that the Rohingyas are a threat to National Security even an Islamic country is like Saudi Arabia has deported Rohingyan migrants. The BJP’s logic is that the Hindu migrants are only India to fall back on while Muslim migrants have several Islamic countries to seek shelter in.

The Indian Constitution embeds the principle of secularism and send it entitles every person in India, not only citizens, to the equal protection of the law. Basic fundamental constitutional principles that any Indian law has to comply with. The principle of equal protection and treatment of law prohibits the government from distinguishing between two groups of people unless the distinction is reasonable and in non-arbitrary, and a clear purpose can be provided by the government for making the classification. The citizenship Amendment Act painfully contradicts this important constitutional principle. While certain groups of people from three countries are granted immunity from being deemed illegal migrants, and are given fast track to Indian citizenship, another group of from these countries will continue to be prosecuted as illegal migrants. In response to any potential challenges to the law before Indian Supreme Court, it is unclear what constitutionally adequate rationale the government will provide for treating the illegal migrants differently based on their religion.

There is another dimension to the protesters across India – its implication for Indian citizens. Most centrally, protestors are worried about the combined effects of the CAA and governments controversial plant to create a national register of citizens (NRC). The basis for the NRC comes from both a 2003 amendment to the 1955 citizenship act and the rules issued in 2003 to operationalize the amendment. The NRC require every individual across India to demonstrate that they are Indian citizens through certain specified documents., the individuals will have to show proof of their residence and date and place of birth as well as citizenship of their and ancestors, going back to a cut off date specified by the government. In large parts of India the people are poor and illiterate and lack the kind of documents that will be required to prove citizenship. Those who are from poor and marginalized communities will disproportionately bear the burden of the implementation of the NRC. While there is no official link between the CAA and NRC there are concerns that the government is cloaking the CAA empathetic and inclusive legislation protecting those illegal migrants who have faced religious persecution but that it will in fact be strategic Lee used domestically to protect individuals from 10 vi non- Muslim religious who may be excluded from the Indian citizenship under the NRC.

Findings

1) The Citizenship Amendment Act 2019, clear violates the basic and secular principles enshrined in the Indian Constitution.

2) Citizenship Amendment Act and National Register of Citizens is intertwined and it will together pose a great threat to India's secular fabric and democratic principles.

3) It is perhaps the first time in independent India' Political history the Citizenship will be determined on the basis of religion.

4) The recent citizenship act violates India's obligation under international human rights law.

Suggestions

1) The new citizenship act should be restructured in way by abiding the basic provisions and principles of the Indian Constitution.

2) determination of citizenship based on religion is unconstitutional and immoral, it should be avoided.

3) the incumbent union government should address the concern of the minorities aroused due to the enactment of CAA.

4)At present the union government should set aside all the process related to CAA and NRC and focus on the effective tackling of the Covid - 19 pandemic.

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