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Citizenship Amendment Act 2019: Analyzing the Background, Impacts and Constitutional Validity

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The Citizenship (Amendment) Act of 2019 has ignited widespread controversy nationwide, mainly due to its perceived religious bias. The Act was enacted to grant citizenship to the religious minorities - Hindu, Sikh, Buddhist, Jain, Parsi, and Christian from Afghanistan, Pakistan, and Bangladesh, and hence, the law faced accusations of discrimination. Despite the initial implementation of the Citizenship Act of 1955, subsequent amendments were introduced to address emerging issues. The Supreme Court played a pivotal role in interpreting constitutional aspects of citizenship through various judgments. The Act's primary objective is to provide refuge and citizenship to religious minorities facing persecution in three Muslim nations. However, critics challenge its constitutionality, asserting it unfairly discriminates based on religion. Numerous state governments have expressed opposition, passing resolutions against the Act. The legislation underwent modification, especially in light of its incongruence with the provisions of the Assam Accord. The government failed to communicate the Act with the people, which led to confusion and fear among Muslim citizens. This confusion, coupled with political manipulations and alleged anti-national elements, fuelled massive protests. Despite accusations, challenges, and a barrage of questions, the government has not formulated the rules governing the Citizenship (Amendment) Act. More than three years post-enactment, the absence of the rules exacerbates uncertainty surrounding the Act's provisions, contributing to the ongoing debate and discontent within the nation.

Keywords: *citizenship, Assam accord, refuge, government, rules.*

INTRODUCTION

A state comprises three major components: Territory, Sovereignty, and Citizens. Differentiating between citizens and non-citizens is very important for a country. After the partition of India, who would be the citizens, was one of the major concerns of the national leaders. The Constitution of India provides various Articles under Part II, from Article 5 to Article 11,¹ which address citizenship at the commencement of the Constitution, citizens who migrated from Pakistan to India, and vice versa, and also authorizes Parliament to regulate the right of citizenship by law. The Citizenship Act of India was first enacted in 1955 by the Parliament of India, which defined citizens and provided explicit provisions for acquiring and renouncing citizenship. After the enactment of this Act, it went through various amendments. In 1985, 1992, 2003, 2005, 2015, and the latest amendment in 2019 led to the addition, substitution, and omission of multiple provisions to the Principal Act of 1955. The Citizenship (Amendment) Act of 2019² was first introduced as the Citizenship (Amendment) Bill, 2016³ in the Lok Sabha on 19 July 2016,⁴ which was then referred to the Joint Parliamentary Committee on 12 August 2016; however, the Bill lapsed with the dissolution of the 16th Lok Sabha. It was again introduced in the 17th Lok Sabha and passed by the Lok Sabha on 10th December 2019, then passed by the Rajya Sabha on 11th December 2019 and became an Act after it got the assent of the President on 12th December 2019.⁵ Although the Act got the consent of the President, the government did not frame the Rules, which resulted in a delay in implementing the law since there was a lack of necessary details. The Citizenship (Amendment) Act of 2019 created a massive protest in the country; it was also challenged on the grounds of constitutional validity. Its exclusion of Muslims from the Act portrays its discriminatory nature, and its contradiction with the Assam Accord led to protests in Assam and other northeastern states. Many places in the country, along with Delhi's Shaheen Bagh, experienced grave violent protests against this Act, and its

¹ Constitution of India 1950, arts 5-11

² Citizenship Amendment Act 2019

³ Citizenship Bill 2016

⁴ 'The Citizenship (Amendment) Bill, 2016' (*PRS Legislative Research*) <<https://prsindia.org/billtrack/the-citizenship-amendment-bill-2016>> accessed 07 January 2024

⁵ Citizenship Act 2019

connection with NRC (National Register of Citizens) and NPR (National Population Register) created confusion and fear of exclusion among the Muslims of the country.

BACKGROUND OF CITIZENSHIP IN INDIA

After the partition of India, what would be the boundary and who would be the citizen was the two major concerns of the citizens and the leaders of both nations; the question of Citizenship was addressed by our leaders during the formation of the Indian Constitution, where they provided Part II that describes the eligibility criteria for Indian Citizenship on 26 January 1950. The term 'Citizen' is used in the first sentence of the preamble of the Constitution of India. It says WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens.⁶ A country needs to differentiate between citizens and non-citizens. India has witnessed several waves of immigration throughout its history, which has infiltrated many people in India. The Parsi community immigrated from Iran to India between the 12th and 20th centuries due to religious persecution; after the partition of India, people from Pakistan immigrated to India; the annexation of Tibet by China in the 1950s led to immigration of people from Tibet to India. From the 1960s to 1971, many people migrated from Bangladesh to India. After the Sri Lankan Civil War, people migrated from Sri Lanka to India. Between 2015 and 2017, the Rohingya community migrated to India from Myanmar.⁷ After gaining independence, the concept of Citizenship and its definition became more crucial, not only for accessing rights but also for national security. Part II of the constitution provides various provisions for Indian citizens at the commencement of the constitution. A citizen of a given state is a person who enjoys full membership in the political community or a state. Citizens are different from aliens or mere residents who do not have all the rights to make full membership of the state secure to the citizens. Thus, in India, aliens do not enjoy all the fundamental rights secured to the citizens, in the case of *State Trading Corporation of India v C.T.O.* The Supreme Court of India defined that Citizenship under part

⁶ Constitution of India 1950

⁷ Ruchi Singh, 'Origin of world's Largest Migrant Population, India Seeks to Leverage Immigration' (*Migration Policy Institute*, 09 March 2022) <<https://www.migrationpolicy.org/article/india-migration-country-profile#:~:text=Later%2C%20India's%201947%20partition%20with,policy%20in%20the%20decades%20since>> accessed 07 January 2024

It includes only natural persons, not juristic persons like corporations.⁸ The Supreme Court of India has also issued numerous judgments that clarified the definition, scope, and eligibility for Citizenship over the years.

CITIZENSHIP ACT AND ITS AMENDMENTS IN INDIA

The constitution of India under part II, broadly classified the four categories of citizenship: Persons domiciled in India (Article 5),⁹ Persons who migrated from Pakistan to India (Article 6),¹⁰ Persons who migrated to Pakistan from India (Article 7),¹¹ Persons who are living abroad (Article 8).¹² However, the constitution does not contain any elaborate provisions related to citizenship; it does not deal with the problem of acquisition and loss of citizenship. Article 11 of the constitution gave power to the Parliament to make any provisions for the acquisition and termination of citizenship and all matters relating to citizenship.¹³ The Parliament enacted the Citizenship Act of 1955 under Article 11 of the Constitution.¹⁴ This Act gave elaborated provisions for acquiring citizenship; it prescribes five ways, viz. birth, descent, registration, naturalization, and incorporation of territory, and deals with the loss of citizenship, viz. by renunciation, termination, and deprivation.¹⁵ The Indian constitution does not allow a person to take voluntary citizenship of another country when a person is a citizen of India; this provision is given under Article 9 of the Constitution.¹⁶

After the commencement of this Act, it went through various amendments and was amended in 1985. The Citizenship (Amendment) Act 1985¹⁷ was enacted to give specific provisions to the memorandum of settlement relating to the foreigner's issue in Assam (Assam Accord).¹⁸

⁸ *The State Trading Corporation of India Ltd. And Ors v The Commercial Tax Officer, Vishakhapatnam and Ors* (1964) SCR 4 89

⁹ Constitution of India 1950, art 5

¹⁰ Constitution of India 1950, art 6

¹¹ Constitution of India 1950, art 7

¹² Constitution of India 1950, art 8

¹³ Constitution of India 1950

¹⁴ Constitution of India 1950, art 11

¹⁵ Citizenship Act 1955

¹⁶ Constitution of India 1950, art 9

¹⁷ Citizenship (Amendment) Act 1985

¹⁸ *Ibid*

It was further amended in 1992 and became the Citizenship (Amendment) Act 1992, substituting some clauses. It provides that any person born outside the country shall be considered a citizen of India if either of the parents was a citizen at the time of his birth.¹⁹

The subsequent amendment happened in 2003 and became the Citizenship (Amendment) Act 2003 provided various provisions for overseas citizens of India; it inserted, omitted and substituted multiple provisions of the principle Act.²⁰ The Citizenship (Amendment) Act 2005 repealed The Citizenship (Amendment) Ordinance, 2005. It provides many rights for overseas citizens of India that are available to the citizens of India and also provides that OIC (Overseas Citizen of India) status is not for the person who had been a citizen of Pakistan or Bangladesh.²¹

The Act was also amended in 2015 and became The Citizenship (Amendment) Act of 2015 modified the provisions about the Overseas Citizens of India (OIC) in the principal Act. It provided that a person can register as an Overseas Citizen of India Cardholder under subsection (1) of section 7C.²² All these amendments added, omitted, and substituted numerous provisions of the principal Act. The latest amendment was passed by Parliament and received the president's assent on 12 December 2019. The Citizenship (Amendment) Act 2019 provides provisions to allow members of six religious communities - Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan, Afghanistan, and Bangladesh to provide citizenship of India if they entered India before 31 December 2014.²³

AN OVERVIEW OF THE CITIZENSHIP AMENDMENT ACT, 2019

The Citizenship Amendment Act 2019 amends section 2 of the principal Act²⁴ and provides that 'any person belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan who entered into India in or before the 31st day of

¹⁹ *Ibid*

²⁰ Citizenship (Amendment) Act 2003

²¹ Citizenship (Amendment) Act 2005

²² Citizenship (Amendment) Act 2015

²³ Citizenship (Amendment) Act 2019

²⁴ Citizenship Act 1955, s 2

December 2014 (with certain exceptions mentioned in Passport (Entry into India) Act of 1920 and Foreigners Act of 1946) shall not be treated as an illegal migrant’.

Section 3 of The CAA 2019²⁵ provides provisions for issuing a certificate of registration or certificate of naturalization. With the date of commencement of the said Act, all the pending proceedings against a person under section 3 of the CAA 2019 regarding illegal migration or citizenship shall stand abated.

Section 3(4) states that nothing in the section shall apply to tribal areas of Assam, Meghalaya, Mizoram, or Tripura as per the Sixth Schedule of the Constitution of India. Section 4 of the Act provides that the Government can cancel the registration of a person’s OCI (Overseas Citizen of India) card if that person violates any of the provisions of the CAA 2019 or any other law.

Section 5²⁶ of the Act amends section 18 of the principal Act and provides the conditions, restrictions, and manner for granting a certificate of registration or naturalization.

Lastly, Section 6 of the Act says that a person belonging to the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community of Afghanistan, Bangladesh, or Pakistan should be residing in India for ‘not less than five years’ for being eligible for the citizenship under this Act, previously it was ‘not less than eleven years’ for being eligible to get citizenship.²⁷

RELIGIOUS DISCRIMINATION: EXCLUSION OF MUSLIMS

The Citizenship (Amendment) Act 2019 makes illegal migrants living in India from Afghanistan, Pakistan, and Bangladesh who belong to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious communities (Religious minorities of those countries) eligible for Indian citizenship. It explicitly excludes the Muslim community, alleging this Act to be discriminatory. The exclusion of Muslims is in line with the approach observed in the other measures undertaken by the government. India is not a signatory to the Refugees Convention of 1951, and India does not have any domestic refugee law, which makes any individual who is not a citizen of India and

²⁵ Citizenship (Amendment) Act 2019, s 3

²⁶ Citizenship (Amendment) Act 2019, s 5

²⁷ *Ibid*

enters India illegally ineligible to apply for Indian citizenship as an illegal migrant. Before the enactment of this Act, any person who is an illegal migrant would be subjected to prosecution, deportation, or even imprisonment. However, the provisions of this Act give an easy path for acquiring Indian citizenship to six non-Muslim communities. It also shortens the required duration of residency to qualify for citizenship from eleven years to just five years, but this provision applies exclusively to non-Muslim migrants. When these questions were raised in the parliament during the discussion of the Act, the government's position was that the countries specified in this Act are not secular; they are Muslim nations, where religious minorities mentioned in the Act face persecution. Home Minister Shri Amit Shah said, 'while discussing the Bill (now Act) in the parliament, that while nowhere does this Bill target India's minority community, no illegal immigrants would be allowed to stay in the country at any cost.'²⁸ He stressed that 'This Bill aims at granting rather than taking away someone's citizenship.'²⁹ These mentioned countries have a state religion and many religious persecution cases. These arguments seem ambiguous. Suppose the ground for giving citizenship is religious persecution. In that case, the Act should include provisions for granting citizenship to the *Hindu Tamil Eelam* ethnic groups who faced religious persecution in Sri Lanka and migrated to India, *Rohingya* Muslims who faced religious persecution in Myanmar and migrated to India, the minority Muslim sects like *Hazaras* and *Ahmadiyahs* and the Atheists, who faced persecution in Pakistan, Afghanistan, and Bangladesh.³⁰ The Act appears to contradict the country's secular principle as it discriminates against people based on their religion, granting citizenship through a fast-track process only to non-muslims while subjecting Muslims to existing more extensive procedures.

EXPLORING THE PROTESTS AND CONTROVERSIES CAUSED BY THE ACT

The Citizenship (Amendment) Act of 2019 appeared discriminatory towards Muslims. The government's lack of clarity while presenting the Act to the public generated numerous

²⁸ 'Parliament passes the Citizenship (Amendment) Bill 2019' (*Press Information Bureau*, 11 December 2019) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=195783>> accessed 07 January 2024

²⁹ *Ibid*

³⁰ Jhalak M Kakkar, 'India's New Citizenship Law and its Anti-secular Implications' (*LAWFARE*, 16 January 2020) <<https://www.lawfaremedia.org/article/indias-new-citizenship-law-and-its-anti-secular-implications>> accessed 07 January 2024

misunderstandings, ultimately leading to extensive protests against the Act. The clash was initially between the government and the people; later, it got the support of the opposition parties, as this protest intertwined with politics, and it became a massive protest. It started in the Capital, New Delhi, and spread nationwide. There were two major focal points for the demonstration; first, in the country's north-eastern regions, the protests primarily revolved around the Act's application in the north-eastern parts of the country (Which was later excluded from the Bill). They were concerned about the influx of immigrants, which could change the local demography and affect the north-eastern state's unique cultural and linguistic heritage. Second, in the other parts of India, such as Delhi, west Bengal, and Kerala, the protest was for the Act's exclusion of Muslims, and this exclusion contradicts the ethos of the Constitution.³¹

These protests turned into riots, especially in Delhi's Shaheen Bagh, which was the epicentre of the protest. The Muslim community blocked the entire road for several months, which caused immense problems for the ordinary citizens using that road. The demonstrations started as a gathering at the Aligarh Muslim University, Jawaharlal Nehru University, and Delhi University student organizations, eventually becoming a nationwide protest. The NRC (National Register of Citizens) link to the Citizenship (Amendment) Act of 2019 served as the base for the demonstration. NRC identified the illegal immigrants from Assam, but Because of the Citizenship (Amendment) Act of 2019, a large number of non-Muslim immigrants will be excluded from NRC, and the majority will be Muslim immigrants, which raised concerns among the Muslim community. The opposition parties have claimed that provisions of the Act are ultra vires as per Article 14 (Equality before law),³² Article 15 (Prohibition of Discrimination on the grounds of religion, race, caste, sex or place of birth),³³ Article 21 (Protection of Life and

³¹ Samiya Latief, 'What is citizenship law and why people are protesting against it' *The Times of India* (17 December 2019) <<https://timesofindia.indiatimes.com/india/what-is-citizenship-amendment-act-and-why-has-it-triggered-protests/articleshow/72759793.cms?from=mdr>> accessed 07 January 2024

³² Constitution of India 1950, art 14

³³ Constitution of India 1950, art 15

Liberty),³⁴ Article 25 (Freedom of conscience and free profession, practice and propagation of religion)³⁵ and Article 26 (Freedom to manage religious affairs)³⁶ of the Constitution.

EXPLORING THE NEXUS BETWEEN NRC, NPR, AND CAA IN INDIA

The protests began amid concerns within the Muslim community, specifically regarding their exclusion from the nation after the commencement of the Citizenship (Amendment) Act with the possibility of the National Register of Citizens. The NRC (National Register of Citizens), NPR (National Population Register), and the CAA [Citizenship (Amendment) Act 2019]³⁷ needed to be clarified among the citizens. The Citizenship Act of 1955,³⁸ the Foreigners Act of 1946,³⁹ and the Passport Act of 1920⁴⁰ clearly defined and distinguished between citizens and aliens.

Under Section 3 of the Foreigners Act of 1946,⁴¹ the central government can expel all illegal immigrants from India. Now, the question arises, 'How do we calculate the number of immigrants?' The NRC and NPR are used to calculate the number of citizens and the number of aliens. According to the Citizenship Rules of 2003,⁴² The NPR is the initial stage of creating the National Register of Citizens (NRC). Once a list of residents is established, a nationwide NRC can verify who is a citizen and who is not. However, unlike NRC, NPR doesn't focus on identifying citizens alone; it also records information about foreigners living in India for over six months. The concepts of NRC and NPR were initially provided in the Citizenship (Amendment) Act 2003.

Section 14 A was inserted in the Principal Act of 1955.⁴³ This section is about the issuance of national identity cards to the citizens. It provides the legal foundation for creating the NPR and

³⁴ Constitution of India 1950, art 21

³⁵ Constitution of India 1950, art 25

³⁶ Constitution of India 1950, art 26

³⁷ Citizenship (Amendment) Act 2019

³⁸ Citizenship Act 1955

³⁹ Foreigners Act 1946

⁴⁰ Passport Act 1920

⁴¹ Foreigners Act 1946, s 3

⁴² Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003

⁴³ The Citizenship (Amendment) Act 2003, s 14A

connects it to the Census and NRC. Section 14A of the Citizenship Act provides that 'the central government may compulsorily register every citizen of India and issue a national identity card to him.' Clause 2 of section 14A states,⁴⁴ 'The Central Government may maintain a National Register of Indian Citizens and establish a National Registration Authority for that purpose.' It further provides that the Registrar General India shall act as the National Registration Authority and the Registrar General of Citizen Registration, which means that the Registrar General functions as the Census Commissioner of India.⁴⁵ NPR is different from the Census; its objective is a comprehensive identity database that includes demographic and biometric data of individuals.⁴⁶ Currently, the National Register of Citizens (NRC) is only conducted in the state of Assam after the order of the Supreme Court in the case of *Assam Public Works v Union of India*,⁴⁷ the Supreme Court passed an order to update NRC in Assam in 2013, and the recent NRC was held in 2019.

CONSTITUTIONAL CHALLENGES OF THE CITIZENSHIP (AMENDMENT) ACT OF 2019: A COMPREHENSIVE ANALYSIS

The Indian Constitution incorporates the concept of secularism and guarantees equal legal protection to all individuals in India, regardless of their citizenship status. These are essential constitutional principles that all Indian laws must adhere to. Hence, when citizenship is granted based on religion, it goes against the fundamental principle of secularism enshrined in the preamble of the constitution of India. However, the preamble is not a legally binding document. Therefore, the CAA does not stand unconstitutional or ultra vires constitution on this ground.

There are many doubts regarding the constitutional validity of the Citizenship (Amendment) Act of 2019 among the citizens and the opposition. Article 15⁴⁸ of the Indian Constitution states that the Government cannot discriminate against citizens based on religion, race, caste, sex, or

⁴⁴ *Ibid*

⁴⁵ *Ibid*

⁴⁶ Prabhash K Dutta, 'CAA, NPR and NRC: Confusion and connection explained' *India Today* (26 December 2019) <<https://www.indiatoday.in/news-analysis/story/caa-npr-nrc-confusion-connection-explained-india-1631534-2019-12-26>> accessed 07 January 2024

⁴⁷ *Assam Public Works v Union of India and Ors* AIR ONLINE 2019 SC 2258

⁴⁸ Constitution of India, art 15

place of birth unless the distinction is reasonable and transparent. Hence, Article 15 is enjoyed exclusively by citizens of India. Therefore, it is clear that the CAA does not ultra vires Article 15 because the Act exclusively talks about illegal migrants who are not citizens.⁴⁹ Article 14⁵⁰ mandates that no person shall be denied equality before law or the equal protection of law, and there must be a rational relation between the distinction and the object under consideration,⁵¹ which means the question of ‘why’ and ‘what’ must be answered.

The Government's stance is that the provided religious communities are religious minorities that went through extreme religious persecution in Afghanistan, Bangladesh, and Pakistan, and the mentioned countries have Islam as their state religion. The social object is to protect the people who are being persecuted. A reasonable distinction can be made, and special provisions could be provided to them, i.e., an easy path to citizenship. The criterion for identifying these people is religious persecution.⁵² Hence, it is proved that it does not contradict Article 14 and Article 15. However, there are still many drawbacks attached to this Act; one of the major disadvantages is that it does not consider ‘illegal immigrants’ who entered India after facing non-religious persecution (persecution based on sexual orientation, political views, etc).

Suppose we argue that it should provide citizenship to all illegal immigrants who have faced persecution from any country. In that case, it runs counter to the Law Commissions Report that notes that the entry of illegal immigrants and other undesirable aliens into India has aggravated the employment situation, distorted the electoral rolls, and poses a grave threat not only to our democracy but also to the security of India especially in the eastern part of the country and Jammu and Kashmir.⁵³

⁴⁹ Constitution of India 1950, art 15

⁵⁰ Constitution of India 1950, art 14

⁵¹ *Ibid*

⁵² Rahul Nair, ‘The Citizenship (Amendment) Act, 2019 – A Constitutional Defence’ (2020) 9(2) NLIU Law Review <<https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-IX-Issue-II-71-90.pdf>> accessed 08 January 2024

⁵³ Law Commission, *One Hundred Seventy Fifth Report on The Foreigners (Amendment) Bill, 2000* (Law Com No 175, 2000)

Another argument against the CAA is that it does not consider religious groups like Jews and persecuted Muslim minorities such as *Shia* and *Ahmasdiya* from Afghanistan, Pakistan, and Bangladesh. Pakistan has only 745 registered Jewish families,⁵⁴ and there is just one remaining Jew in Afghanistan, Zablou Siminto v Concerns were also raised for the inclusion of *Rohingya* Muslims from Myanmar who have migrated to India due to religious persecution, but what needs to be taken into consideration is the imminent threat to national security by this community. The reports show that *Rohingya* terrorists are fighting alongside Pakistani terrorists in Kashmir.⁵⁵ These are matters of public policy, not constitutional validity. The questions are also raised against the cut-off date of 31 December 2014, but it lies within the executive domain unless it is discriminatory or arbitrary.

CITIZENSHIP (AMENDMENT) ACT'S IMPACT ON NORTHEASTERN STATES AND ASSAM ACCORD

The North-Eastern states would be more significantly impacted by the Citizenship (Amendment) Act 2019 if it were to be enforced compared to the rest of the country. The North-Eastern states have their cultural and linguistic heritage and unique cultural identity, which will be primarily affected by the influx of immigrants and will lead to a change in demography. The issue of illegal immigrants is ancient in the northeast, specifically in Assam.⁵⁶ After independence, the issue of illegal immigration from East Pakistan (Bangladesh) raised concerns among the natives of Assam, which forced the government to bring immigrants (Expulsion from Assam) in 1950.⁵⁷

⁵⁴ Danish Hussain, 'Pakistani man wins right to change religion from Islam to Judaism' *The Express Tribune* (19 February 2017) <<https://tribune.com.pk/story/1366268/man-interfaith-parents-wins-right-religion-choice/>> accessed 08 January 2024

⁵⁵ Dipanjan Roy Chaudhury, 'Rohingya terrorists linked to pro-Pak terror groups in Jammu & Kashmir' *The Economic Times* (12 July 2018) <<https://economictimes.indiatimes.com/news/defence/rohingya-terrorists-linked-to-pro-pak-terror-groups-in-jammu-kashmir/articleshow/55046910.cms?from=mdr>> accessed 08 January 2024

⁵⁶ Prabash K Dutta, 'What is Assam Accord of 1985 and how amended citizenship law challenges it?' *India Today* (13 December 2019) <<https://www.indiatoday.in/news-analysis/story/what-is-assam-accord-of-1985-and-how-amended-citizenship-law-challenges-it-1627965-2019-12-13>> accessed 08 January 2024

⁵⁷ Immigrants (Expulsion from Assam) 1950

NRC was prepared based on Census 1951; various protests started against illegal immigration because of their inclusion in the voter's list; these protests held for several years.⁵⁸ After many years of protest, the government of India signed a memorandum of settlement with AASU (All Assam Students Union) and AAGSP (All Assam Gana Sangram Parishad) on the foreigner problem issue on 15 August 1985, and the agreement was called 'Assam Accord.'⁵⁹

Clauses ⁶⁰ of the Assam Accord provide provisions for foreigner's issues, prevention of encroachment of government land, and registration of birth and death. Clause ⁶¹ provides a cut-off date of 1 January 1966 and allows citizenship to persons who entered Assam before the cut-off date. Those who entered Assam after the cut-off date shall be detected, and their names will be deleted from the Electoral Rolls. Foreigners who came to Assam after 25 March 1971 shall continue to be seen, deleted, and expelled by the law.⁶²

The proposed Citizenship (Amendment) Bill, 2019 (Now Act) provided religious persecution as the basis for giving citizenship in Assam and other parts of the country; it also offered provisions to change the cut-off date from 25 March 1971 to 31 December 2014. However, other states, such as Assam, do not agree with the central government, which makes it an exception. These issues raised widespread protest in Assam, and in response, the government omitted the proposed provision from the Bill and inserted a new section, i.e., Section 6B(4),⁶³ excluding the tribal area of Assam, Meghalaya, Mizoram, or Tripura as included in the Sixth Schedule to the Constitution and the area covered under 'The Inner Line' notified under the Bengal Eastern Frontier Regulation of 1873.⁶⁴

⁵⁸ Dutta (n 56)

⁵⁹ Assam Accord 1985

⁶⁰ Assam Accord 1985, cl 1

⁶¹ Assam Accord 1985, cl 5

⁶² 'Assam Accord' (*Government of Assam*) <https://www.nrcassam.nic.in/assam_accord.html> accessed 08 January 2024

⁶³ Citizenship (Amendment) Act 2019, s 6B(4)

⁶⁴ Citizenship (Amendment) Act 2019

ANALYSING STATE RESPONSES TO THE CITIZENSHIP (AMENDMENT) ACT OF 2019

The Citizenship (Amendment) Act of 2019 received much criticism from the opposition and the people. The Bharatiya Janata Party (BJP) led government developed this Act, and the states having the government of BJP supported the Act; on the other hand, states ruled by the opposition parties stood against the Act. Parties like the Indian National Congress, Trinamool Congress (TMC), and Communist Parties of India (Marxist) [CPI (M)] prominently opposed the Act, which led to massive protests in various states and the imposition of Section 144 of the Code of Criminal Procedure ⁶⁵ in many cities. Many petitions were also filed in the Supreme Court; The Supreme Court adjourned the petitions challenging the Citizenship Amendment Act of 2019 to December 6, 2022—a bench comprising Chief Justice U.U. Lalit, Justice Ravindra Bhat, and Justice Bela M. Trivedi heard the matter.⁶⁶ The CPI (M) led the Kerala government in passing a resolution in the Kerala Assembly demanding the scrapping of the controversial Citizenship Amendment Act (CAA), and it became the first state in the country to do so. The State of Kerala has also challenged the CAA 2019 ⁶⁷ in an original suit under Article 131 of the Constitution of India.⁶⁸ The case, *The State of Kerala v Union of India*, is still pending in the Supreme Court. Several states, including Kerala, Punjab, West Bengal, and Rajasthan, passed resolutions against the Citizenship (Amendment) Act 2019, and the Telangana government is also planning to pass a resolution against CAA.⁶⁹

FUTURE IMPLICATION: WHY DELAY IN THE IMPLEMENTATION

The Ministry of Home Affairs, in its 2021-22 Annual Report, mentioned that it has delegated powers under the Citizenship Act to grant citizenship under the CAA 2019. 'The delegation will

⁶⁵ Code of Criminal Procedure 1973, s 144

⁶⁶ Padmakshi Sharma, 'Supreme Court adjourns hearing of petitions challenges Citizenship (Amendment) Act to December 6' *Live Law* (31 October 2022) <<https://www.livelaw.in/top-stories/supreme-court-adjourns-hearing-of-petitions-challenging-citizenship-amendment-act-to-december-6-212820>> accessed 08 January 2024

⁶⁷ Ajoy Karpuram, 'SC's Top Cases 2012: Rights of Non-Citizens' (*Supreme Court Observer*, 22 December 2021) <<https://www.scobserver.in/tag/citizenship/>> accessed 09 January 2024

⁶⁸ Constitution of India, art 131

⁶⁹ Manogya Loiwal, 'Mamata Banerjee's West Bengal becomes 4th state to pass Anti-CAA resolution' *India Today* (27 January 2020) <<https://www.indiatoday.in/india/story/anti-caa-resolution-west-bengal-mamata-banerjee-1640574-2020-01-27>> accessed 09 January 2024

speed up the process of granting Indian citizenship to the category mentioned above of migrants as the decision would be taken at the local level.’⁷⁰ The report clearly states that ‘the Central Government at this moment directs that powers exercisable by it, for registration as a citizen of India under section 5,⁷¹ or for grant of certificate of naturalization under section 6,⁷² of the Citizenship Act 1955, in respect of any person belonging to the minority community in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians.’⁷³ Citizenship is a subject under the Union List under Part 11 of the Constitution. So, only the central government can make laws regarding citizenship, and states have no role in the matter of citizenship enacted through amendment of the Constitution.⁷⁴ States can ask the Central government to postpone implementing any citizenship-related decisions due to concerns about the law and order situation within the state. However, if they are reluctant to implement the changes. In that case, they can, at most, impede their enforcement but cannot outright refuse to do so.⁷⁵ The complex and lengthy process, which includes identification and verification of the migrants, could be considered as a reason for the delay, the political opposition to this Act, and the politics attached to this Act could be considered as a reason for the delay. The central government sought various extensions for framing the rules. Centre seeks six months to frame Citizenship Amendment Act Rules.⁷⁶ In a media conclave, Home Minister Amit Shah stated that the Rules of the Act were under construction and the delay occurred due to the pandemic.

⁷⁰ Government of India, *Ministry of Home Affairs: Annual Report 2021-2022* (2022)

⁷¹ Citizenship Act 1955, s 5

⁷² Citizenship Act 1955, s 6

⁷³ ‘IUML Moves SC Against Centre’s Notification Seeking Applications From Non-Muslim Refugees’ *The Wire* (01 June 2021) <<https://thewire.in/law/iuml-moves-sc-against-centres-notification-seeking-applications-from-non-muslim-refugees>> accessed 09 January 2024

⁷⁴ ‘Granting citizenship is centre’s call, states have no say: Experts’ *The Times of India* (14 December 2019) <<https://timesofindia.indiatimes.com/india/granting-citizenship-is-centres-call-states-have-no-say-experts/articleshow/72564874.cms>> accessed 09 January 2024

⁷⁵ *Ibid*

⁷⁶ Vijaita Singh, ‘Centre seeks six months to frame Citizenship Amendment Act Rules’ *The Hindu* (07 January 2023) <<https://www.thehindu.com/news/national/home-ministry-seeks-another-extension-of-six-months-to-frame-caa-rules/article66350317.ece>> accessed 09 January 2024

CONCLUSION

The Citizenship (Amendment) Act, which led to numerous challenges for the government and the public, was enacted to address the concerns of immigrants but instilled apprehensions among citizens. The definitions and criteria for citizenship established by various legislative acts serve as clear distinctions between citizens and those who are not. The multiple amendments to the principal Act i.e. the Citizenship Act 1955 shows the significance of adapting legal provisions to align with the needs of the country. The Act provides various provisions regarding citizenship.

Citizenship (Amendment) Act 2019 grants citizenship to religious minorities from Afghanistan, Bangladesh, and Pakistan who reside in India as illegal migrants. This appears contradictory to the Preamble of the Constitution of India, which says India is a secular nation, and Articles 14 and 15 of the constitution; however, the Preamble is not legally binding under the constitution, so it does not ultra vires the preamble. Articles 14 and 15 also address, with exceptions, that only citizens of India enjoy Article 15. Therefore, it is clear that CAA does not ultra vires Article 15 of the constitution because the Act exclusively talks about illegal migrants. Article 14 has an exception for the distinction that there must be a rational relation between the distinction and the object under consideration. This Act also appeared to be Anti- Muslim Act, but the government's stance is that the included communities are from Islamic nations, where they are being persecuted. The government deems it necessary to grant them citizenship when they reside in India as migrants. The contradiction between the Assam Accord and the Citizenship (Amendment) Bill of 2019 garnered criticism and protests. Eventually, it led the government to remove the contradictory provision and add a new section 6B (4) to the Bill, which later became the Act. The Act's connections with the NRC (National Register of Citizens) and NPR (National Population Register) were very ambiguous, which needs the government's clarification. Various opposition parties led by state governments opposed the Citizenship (Amendment) Act. Many states passed resolutions against the Act in their assemblies. The State of Kerala went one-step ahead, challenging the Citizenship (Amendment) Act 2019 in an original suit under Article 131 of the Constitution of India in the Supreme Court. It has been more than three years after the

enactment of the Act, but the government has not framed the Rules, which will further clarify the provisions of this Act. The government sought various extensions for communicating the rules. The reason given by the government for delaying the formation of Rules is the Pandemic, which is not a proper justification for not preparing the Rules after three years of enactment of an Act.