

## THE LEGALITY AND APPLICATIONS OF CITIZENSHIP AMENDMENT ACT, 2019

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### INTRODUCTION

The Citizenship (Amendment) Act, 2019, one of the Indian Parliament's most divisive reforms, was enacted on December 11 by the Indian legislature. On December 12, 2019, the law received presidential approval. The bill aims to change the 1955 legislation by retrospectively providing Indian citizenship to unauthorised immigrants from Afghanistan, Pakistan, and Bangladesh who are Buddhists, Hindus, Sikhs, Jains, Persians, Christians, and Afghans.<sup>1</sup> The Lok Sabha's winter session saw the introduction of the Citizenship Amendment Bill. Later, 125 delegates voted in favour of passing the measure. The bill sparked heated debate shortly after its passage and eventually led to widespread protests across the country. These rallies were heavily supported by a large number of activists and international human rights organisations, who also severely decried the Indian government's response to them. The Citizenship Amendment Act's characteristics are covered in this article along with a brief overview of its effects. The most recent legal developments are also included in the article.

### CITIZENSHIP IN INDIA

The different processes for obtaining citizenship in India are governed under the Citizenship Act, 1955. The law also enumerates the reasons for terminating and relinquishing citizenship. The four forms are birth, descent, registration, naturalization, and territorial incorporation.

**Birth:** This category offers citizenship to those who were born in India, as the name implies.

**By Descent:** Within this categorization, citizenship is offered to a person born outside India to Indian parents.

**Citizenship/Registration:** The Ministry of Home Affairs grants citizenship.

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<sup>1</sup>Vedika Goel, *Citizenship (Amendment) Act, 2019*, ipleaders, <https://blog.ipleaders.in/citizenship-amendment-act-2019/>

**After Land Acquisition/Merger:** Any nation or territory that joins India falls under this category, and the central government issues an official gazette declaring them to be a part of the Union of India.

The statute outlines the aforementioned requirements for obtaining citizenship, only making it clear that dual citizenship is prohibited under Indian law. The law also provides for the registration of citizenship certificates for foreigners in foreign countries, the rights of citizens in foreign countries and the cancellation of citizenship certificates in foreign countries.

Article 5 to Article 11 under Part 2 of the Constitution of India lays down rules relating to Indian citizenship. Article 5 establishes citizenship from the inception of the Indian Constitution, while Article 11 empowers the Indian Parliament to regulate the rights of citizens by law. This brought into force the Citizenship of India Act, 1955. The Citizenship Act of India 1955 was amended 6 times in 1986, 1992, 2003, 2005, 2015 and the last time in 2019. The amendments narrowed the options for obtaining citizenship through universal principles such as birth.<sup>2</sup>

### **THE SITUATION PRIOR TO THE ACT BEING PASSED**

Under the current law, illegal immigrants do not have the right to claim citizenship. They are not eligible to register or naturalise as Indian citizens. The Immigration and Passport Act prohibits such persons from entering and provides that illegal immigrants will be imprisoned or deported.

Anyone can become an Indian citizen by registering. According to Section 5(a) of the Citizenship Act of 1955, applicants for citizenship must be people of Indian descent who have resided continuously in India for 12 months and have been usually residents of India for seven years prior to submitting their registration application. According to the Citizenship Act of 1955, one criterion for naturalisation is that the candidate must have spent the previous 12 months and 11 months of the previous 14 years living in India.

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<sup>2</sup>Vedika Goel, *Citizenship (Amendment) Act, 2019*, ipleaders, <https://blog.ipleaders.in/citizenship-amendment-act-2019/>

## WHAT DOES THE ACT AIM TO ACCOMPLISH?

The Citizenship Amendment Act, 2019, aims to change the Citizenship Act, the Passport Act, and the Aliens Act in the situation of unauthorised immigrants who identify as religious minorities and come from Bangladesh, Pakistan, and Afghanistan, three nearby countries.<sup>3</sup>

### **The characteristics of Citizenship Amendment Act, 2019**

The Act's goal is to change the Citizenship Act of 1955 so that unauthorised immigrants from Afghanistan, Bangladesh, and Pakistan who are Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians can become citizens of India. To put it another way, the measure intends to make it simpler for those who have been subject to persecution in India's bordering nations to get citizenship. The legislation applies to people "who have been forced or compelled to seek refuge in India as a result of religious persecution". This is to protect these individuals from the illegal immigration process. The amendment lowers the naturalisation requirement for people of these six religions from 11 to 5 years as a special condition. The application deadline for citizenship is December 31, 2014, thus candidates must arrive in India by that date or earlier.

### **The law stipulates that after granting citizenship:**

All legal actions against such individuals for illegal immigration or citizenship will be dropped as of the date of entrance into India, and they will be regarded as Indian citizens. Additionally, it warned that owners of Overseas Citizen Indian (OCI) cards, which grant holders the indefinite right to reside and work in India, might lose their identities if they break the country's criminal and misdemeanour laws.<sup>4</sup>

## EXCEPTIONS

The legislation further specifies that the tribal regions of the states of Assam, Meghalaya, Mizoram, and Tripura, which are listed in the Constitution's Sixth Schedule, are exempt from the citizenship rules for illegal immigrants. These include the Tripura Tribal District, Garo Hills, Chakma District, and Karbi Anglong Tribal District in Assam. Additionally, it does not apply to locations where local licences are required by the 1873 East Bengal Boundary Rules.

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

<sup>4</sup>*Ibid*

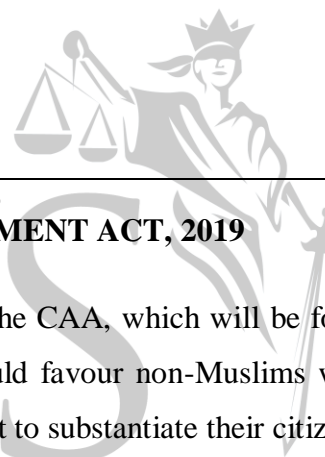
**COMPARISON BETWEEN THE CITIZENSHIP (AMENDMENT) BILL, 2019, AND  
THE CITIZENSHIP (AMENDMENT) BILL, AS ENACTED BY THE LOK SABHA**

<b>The Citizenship (Amendment) Bill, 2016 (as passed by Lok Sabha)</b>	<b>Citizenship (Amendment) Bill 2019</b>
<ul style="list-style-type: none"> <li>• Citizenship eligibility for certain illegal immigrants: According to the Act, unlawful immigrants are not allowed to become citizens of India. Foreigners who enter India without a valid passport or other travel document or who remain longer than is authorised are considered illegal migrants.</li> <li>• According to the bill that amended the Act, Christians, Buddhists, Jains, Parsis, Sikhs, and Hindus from Afghanistan, Bangladesh, and Pakistan are not considered to be illegal immigrants. They needed to be exempt from both the Passport (Entry into India) Act of 1920 and the Foreigners Act of 1946 in order to receive this privilege from the central government. Foreigners must have a passport according to the 1920 Act, and the 1946 Act governs their admission and exit from India.</li> <li>• The Bill further specified that any ongoing legal procedures against such an illegal immigrant shall be</li> </ul>	<ul style="list-style-type: none"> <li>• The Bill introduces two new clauses on citizenship for unauthorised immigrants from these three nations who practise these religions.</li> <li>• Acquiring citizenship has the following effects, according to the bill: (i) Such individuals will be considered Indian citizens as of the date of their entrance, and (ii) any legal actions taken against them in connection with their unauthorised immigration or citizenship will be dropped.</li> <li>• The Bill also declares that the tribal nations of Assam, Meghalaya, Mizoram, and Tripura—which are mentioned in the Constitution's Sixth Schedule—are exempt from the rules governing citizenship for illegal immigrants. These tribal areas are located in Assam, Meghalaya, Mizoram, the Tripura Tribal Areas District, Chakma District, Garo Hills, and Karbi Anglong. Furthermore, it won't apply to the areas governed by the</li> </ul>

<p>terminated as of the date it becomes effective.</p>	<p>"Inner Line" of the Bengal Eastern Frontier Regulation of 1873. An Inner Line Permit is required for Indian tourists travelling to Arunachal Pradesh, Mizoram, and Nagaland.</p>
<ul style="list-style-type: none"> <li>• Citizenship by naturalisation: If a person satisfies specific requirements, they may apply for citizenship by naturalisation under the Act. One of the requirements is that the applicant must have been employed by the central government for at least 11 of the 14 years before and have resided in India for the last 12 months.</li> <li>• The Bill provides an exemption for Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan with regard to this provision. For these people, the 11-year barrier will be dropped to six years.</li> </ul>	<ul style="list-style-type: none"> <li>• The Act further shortens the naturalisation process for this group of people, reducing it from six to five years.</li> </ul>
<ul style="list-style-type: none"> <li>• The Act states that the central government may revoke OCI registrations on five grounds, including registration through fraud, showing disapproval of the Constitution, engaging with the enemy while at war, a necessity in the interest of India's sovereignty,</li> </ul>	<ul style="list-style-type: none"> <li>• Lok Sabha passed the bill the same as in 2016.</li> </ul>

security of the state, or the public interest, or if the OCI has already received a two-year-or-longer prison sentence within five years of registration. The sixth ground was added by the Bill.

- When the Bill was updated and approved by the Lok Sabha, the disqualification was only applicable to violations of the Citizenship Act or of any other statute that had been so informed by the federal government. An opportunity for the cardholder to be heard is also required.



### **ASSOCIATED ISSUES WITH CITIZENSHIP AMENDMENT ACT, 2019**

**Targeting specific communities:** There are concerns that the CAA, which will be followed by a nationwide National Register of Citizens (NRC), would favour non-Muslims who are left out of the register while forcing Muslims who are left out to substantiate their citizenship.

**Trouble in the Northeast:** Violates the Assam Convention of 1985, which mandated the deportation of illegal immigrants of any religion from Bangladesh after March 25, 1971. An estimated 20 million undocumented Bangladeshi immigrants live in Assam, changing the demography of the state and severely straining the nation's resources and economy.

**Against fundamental rights:** Critics claim it contradicts both the secularism contained in the Constitution's preamble and Article 14, which provides equal rights for citizens and immigrants.

**Inherent Discrimination:** India hosts many other refugees, including Tamils from Sri Lanka and Hindu Rohingyas from Myanmar. It is not protected by law.

**Administrative difficulties:** The government will have difficulty distinguishing between illegal and persecuted immigrants.

**Impairment of Bilateral Relations:** This statute highlights the religious discrimination that occurs in these three nations, which might deteriorate our current level of bilateral ties with them.

**Constitutionality:** Another important concern that arose was the constitutionality of the law. An act that only extended invitations to illegal immigrants on the basis of religion was in violation of both secularism and Article 14 of the Indian Constitution, which ensures equality before the law. The 42nd Amendment of 1976 added the word "secular" to the preamble of the Constitution, making it clear that the country could not be ruled by one religion, but all religions would be respected equally. It also means that no politics will support any religion. It is clear that the CAA does not take into account religious minorities other than the six religious minorities.

There is still another defence offered against Articles 25 and 26 of the Indian Constitution. Everyone is allowed to practise the religion of their choosing in accordance with Articles 25 and 26, which recognise religious freedom. However, religious minorities from other groups won't be able to practise their faith freely since they risk being coerced into switching to a different religion in order to receive the benefits provided by the CAA 2019.<sup>5</sup>

### **THE CAA'S AFTER EFFECTS**

Numerous areas of the nation saw large protests against the CAA Act 2019. After the bill was passed, chaos reigned across the country, from rallies to protests. Not only in India, this bill had been condemned all over the world. Protests had taken place as far away as Washington and North America, and protesters in India have taken to the streets to voice their concerns over the bill. Even students from various universities participated in these protests and rallies. The government's response to these protests shocked the nation. The police's aggressive and cruel use of tear gas and batons against protesters was widely condemned. Violent rioting in Northeast Delhi on February 24, 2020, resulted in more than 200 injuries and almost seven fatalities. It is estimated that at least 27 people perished in the violent demonstrations in Kanpur and Uttar Pradesh. Protests in the prominent Muslim community of Shaheen Bagh have become the epicenter of the anti-union movement. Violent protests broke out in Assam after news that the law would be passed in 2019. Around five people have died in the protests in the state of Assam. Guwahati remained at the center of protests in the northeast amid

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<sup>5</sup>Drishtiiias, <https://www.drishtiiias.com/to-the-points/Paper2/citizenship-amendment-act-2019>

concerns that the bill will distort the topography of the northeastern states by granting citizenship to people of different cultures and languages.

The Covid-19 pandemic has stopped these protests. The Unlawful Activities (Prevention) Act of 1967, which was infamous for its stringent security regulations, was used to arrest numerous new activists despite the epidemic. UNHCR, the United Nations High Commissioner for Refugees, has openly stated that the Indian government has violated its right to object to the discriminatory measure by detaining activists and students, and has extensively criticised the arrests.

### **WHAT DOES MHA CLARIFY ON CAA?**

**Indian Citizens Exempt:** Indian citizens are not covered by the CAA. Therefore, it does not in any way restrict or take away the rights of any Indian citizen.

**Laws Regarding the Acquisition of Indian Citizenship Remain in Effect:** Furthermore, the Citizenship Act of 1955's current procedure for attaining Indian citizenship by any foreigner of any type is still in effect, and the CAA makes no changes of any kind to its legal status.

As long as they meet the requirements currently outlined in the legislation for registration or naturalisation, legitimate immigrants of any faith from any nation will carry on to get citizenship in India.

Solving the Issues in North-East India another attempt was made to calm concerns about the law in the Northeast in the annual report, which claimed that the exclusion of regions covered by the Constitution's Sixth Schedule and the Inner Line Permit system would ensure the safety of the local native and tribal communities.<sup>6</sup>

### **CONCLUSION**

Without question, the Citizenship (Amendment) Act, 2019 shocked the nation. While one community supported the action, it was roundly attacked and condemned by the other community. The country was divided over religious issues once more. This Act was the catalyst for the rift between the Muslim and non-Muslim communities. Protesters and students demonstrated against the Bill while the administration made every attempt to defend its passage. In addition to being cruel, the government's response to the protesters was also

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<sup>6</sup>Drishtiiias, <https://www.drishtiiias.com/to-the-points/Paper2/citizenship-amendment-act-2019>



shockingly disrespectful. Additionally, it demonstrates a general disrespect for its citizens' life. The people must always stand together and put pressure on the government to give priority to their citizens' fundamental rights. The populace must call for a secular and democratic at all times. Any overzealous endeavour to accommodate the migrants shouldn't come at the expense of the reputation built up over time. India should always defend the values of secularism moving forward because it is a country with a wide variety of heritage and conventions, the origin of religions, the acceptance of beliefs, and the protector of those who have been oppressed in the past.

