THE CITIZENSHIP AMENDMENT ACT, 2019: DO WE NEED EQUALITY?

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Introduction

The modern conception of citizenship implies membership in a political community. Citizenship, which is often conceptualized in abstract and universal terms, is the product of the social and political milieu. Though citizenship seeks to define the terms of engagement between individuals and the state, it also defines the boundaries of exclusion. Nowhere has this been more starkly observed than in the Indian subcontinent, where citizenship has been understood in the backdrop of the historical narratives of the Partition. The discourse around citizenship in India has always been a reflection of the partition of the Indian subcontinent and the consequent social, legal, and political developments.

Though the conception of Indian citizenship was based on individualist, liberal, and universal values at the time of the commencement of the Constitution of India, the competing sets of nationalism post-partition led to the emergence of different forms of ethnic particularisms in the public domain. Further, the unabated flow of Bangladeshi migrants into India has also largely shaped the citizenship discourse in India in recent years. It is imperative to understand that a targeted intervention through CAA was necessitated, in part, by the fact that India does not have a specific law that deals with refugees or grants citizenship to refugees. And the state has broad discretion in treating foreigners in India as held in *Sarbananda Sonowal vs Union Of India.* Although, it needs to be noted that the law has put non-citizens into different categories such as foreigners, illegal migrants, and refugees, which questions the extent of the application of Article 14 on these people.

The Indian Constitution ascribes to a notion of differentiated citizenship where, in addition to recognizing the individual as a citizen and bearer of rights, the group and historical factors are also considered a relevant collective unit of the social and political life of the nation. Even as the Constitution guarantees certain rights to all individuals, it also empowers the state to make

special provisions in favour of certain groups that have a long history of social discrimination and oppression. In some special cases, the Constitution also tied this group-based notion of citizenship to territory and autonomy.

The project focuses on the constitutionality of CAA 2019 along with its history and background moving beyond any reductionist argument. It will also be seen along with the partition of India and the events surrounding it.

Literature Review:

Articles:

- Uneasy citizens: CAA, NRC, and indigeneity in Assam, GAURAV RAJKHOWA- From this article, the author will examine the relationship between the CAA and the issue of the indigeneity of Assam.

- The Citizenship Debate in India: Securing Citizenship for the Stateless, Pratik Dixit- From this article, the author examines the argument made in favour of the stateless and how the amendment harms them.

- Article 14: A Flawed Argument, J Sai Deepak- From this article, the author will examine the various aspects of citizenship revolving around the constitution which goes beyond the argument of equality.

Books:

- Unbreaking India: Decisions on Article 370 and the CAA, by Sanjay Dixit

In this book, the author will look at the history and background of the amendment going back to the partition and commencement of the constitution.

- Citizenship Debate over NRC and CAA: Assam and the Politics of History, by Nani Gopal Mahanta

In this book, the author will look at the Citizenship Amendment Act, 2019 in light of the issue of migration in Assam.

Research Objectives:

- To understand the multiple aspects of citizenship in light of the Citizenship Amendment Act, 2019.
- To understand the historical factors particularly the partition behind the Citizenship Amendment Act, 2019.

Hypothesis:

The analysis of CAA should not be reduced to mere equality under Article 14 when there are many important facets of citizenship which are important for the state to consider and cannot be ignored.

INTRODUCTION

The issue of citizenship in India has always been tied to the partition of India in 1947 which happened along with its Independence from Britain. Huge influx of people from West Pakistan and more so from East Pakistan (Bangladesh) into newly partitioned India created mass presence of immigrants which shaped the citizenship discourse in India till now. Due to partition, millions of Hindus and Sikhs were forced to be displaced from Pakistan to India and Muslims from India to Pakistan. But the problem got more complicated when millions of Muslims along with Hindu refugees came to India from Bangladeshi before and after 1971 Indio-Pak war. Our legal literature indicates that our policies regarding citizenship has been deeply influenced by partition.

These changes highlight how the ideology and institutional practises of citizenship in India have shifted through time, and the migrant figure has been central to this process. As it happens, the Indian Constitution, written in the wake of the Partition of British India, also defined citizenship in terms of migration. Later legislation, including the Citizenship Act of 1955 and the Citizenship Rules of 1956 formed under it, expanded the legal foundation for citizenship, but nevertheless allowed for the registration of evacuees, and returns from Pakistan on a permanent resettlement visa as citizens of India. The ‘authentic citizen,' the minority citizen,' and the 'non-citizen,' who was sometimes the evacuee and other times the refugee, were all categories created by partition. After much back and forth over the citizenship provisions in the draught Constitution, Nehru finally gave in and admitted that these sections had undergone

more deliberation and scrutiny than any others. The seven articles that make up the chapter on "Citizenship" in the Indian Constitution were not added on purpose or as an afterthought; rather, they were included as a necessary and frustrating exercise due to the impact of Partition and the need to define citizens who would be entitled to certain rights in the new republic. There was both a liberal and an ethnonationalist definition of citizenship in the many articles that were written throughout time. An inclusive citizenship principle and provisional clauses allowing for restrictive laws to limit population mobility in the latter days of Partition paved the way for the uneasy collaboration. The second phase of migration restriction was to be implemented using the permit system that was adopted in July 1948.

The 2019 amendment amends the Citizenship Act of 1955 to include provisions of citizenship for 'illegal migrants' from Afghanistan, Bangladesh, and Pakistan who identify as members of certain religious communities (Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians are specifically named). To understand the reasoning behind this exclusive Citizenship Act amendment, one need only examine the historical development of Indian citizenship as a legal status as set forth in the Constitution, the Citizenship Act of 1955, and the adjudication of citizenship claims of people who migrated from Pakistan to India in the first few decades after independence. Partition and the postcolonial enterprise of the Indian nation state necessitated a shift from the liberal framing of citizenship on the principle of *jus soli* (birthright citizenship) to the more conservative *jus sanguinis* (citizenship by blood) as seen in the constituent assembly debates.

Protests against the law's passage were the largest and most widely reported in India in recent history. In 2016, during the previous time in office, the government led by Narendra Modi wrote the Citizenship Amendment Bill (CAB). After the Lok Sabha voted in favour of the Citizenship Amendment Bill in January 2019, the legislature was unable to renew the bill before its term ended in May. In December of 2019, the new CAB was approved by the House and the Senate. Five times before (1986, 1992, 2003, 2005, and 2015) the Citizenship Act, 1955 has been changed; three times by Congress-led administrations and twice by BJP-led governments. It is no exaggeration to say that The Citizenship (Amendment) Act,2019 has been the source of a great deal of controversy in many different countries.

But the Act should be scrutinised dispassionately to arrive to the truth of the matter at hand. In the following chapters the Act will be examined through the legal and constitutional standards

along with the historical and political context.

The why of CAA: The Partition and the Constitution

Between India and Pakistan, unrestricted movement existed until June 19, 1948. An Ordinance was passed on May 19, 1948, instituting a provision of permit for anybody entering India from Pakistan after that date. On 12 August 1949, the Constituent Assembly of India addressed the topic of citizenship for the first time, eventually adopting a resolution on the topic after voting on and rejecting between 130 and 140 amendments. Parliament was given the right to make citizenship laws. India's hazy grasp on the legal position of religious minorities like Hindus and Sikhs (one can count the number of Buddhists, Jains, Parsis, and Christians on one's fingers) in an Islamic state meant that the vexing citizenship issue could not be addressed to everyone's satisfaction.

The Partition

The status of minorities could only be zimmis, or second-class citizens, once Pakistan stated its intention to receive its authority conferred from Allah. Every treaty, accord, and arrangement between Pakistan and India must be relegated to second place to Sharia law. The establishment of Bangladesh further complicated the issue of citizenship. The Hindu population of Bangladesh was a primary target of the Pakistani Army's genocide. The official Pakistani military stance held that Hindu influence had corrupted the Muslims of Bengal, and that they needed to be converted to mainstream Islam, West Pakistan style. Since then, Assam, Tripura, and West Bengal have seen a dramatic increase in the number of Hindu refugees seeking safety there.

After Bangladesh was freed from Pakistani rule, Indira Gandhi was so generous that she appeased Mujib-ur-Rahman, only to have him turn on her later. Although the **Nehru-Liaquat Pact**[1] made no allowance for the illegal immigrants who made up the majority of the East Pakistan/Bangladesh population, it was agreed that citizenship in Assam would be counted with a cut-off date of **25 March 1971.** It was on this day that the Pakistani army launched Operation Searchlight, also known as the genocide against the Bengali people. This effectively meant that all illegal Muslim immigrants who arrived in India prior to the genocide would be

[1] India Bilateral Treaties and Agreements, Vol. 1, Pp. 244-246

integrated into Indian society, but that Hindus who fled the country during the genocide in 1971 would be left out in the cold. In essence, that was the meaning of this one-sided deal.

The Liaquat-Nehru Pact, also known as the **Delhi Pact,** was struck on April 8, 1950, with the goal of ensuring the safety of minority groups in both nations. This was the rationale Pakistan used to cease accepting Muslim refugees from India in 1951, leaving India with a Muslim population of approximately 9% while reducing the percentage of non-Muslims living in West Pakistan to below 4%. This context is essential for appreciating the disadvantage a non-Muslim is inevitably going to face in an Islamic State, and it is for this reason that the Citizenship (Amendment) Act, 2019, applies only to these three neighbouring countries. The Mountbatten Plan of 3 June 1947, agreed by the Congress and the Muslim League, and published the same day in the British Parliament by Prime Minister Clement Attlee, expressly stipulated that undivided India would be partitioned into a Muslim and a non-Muslim State (and not into Muslim and Hindu). Based on the results of the 1941 Census, the Indian Independence Act, 1947, as ratified by the British monarch on 18 July 1947, stipulated that India would be divided into Muslim- and Hindu-dominated regions. Therefore, it is dishonest to argue about the motivations behind this 2019 Act, which specifically targets non-Muslims in neighbouring countries with a Muslim majority population.

Hindus and Sikhs accounted for around 15% of the population in West Pakistan before Partition, but that number has been steadily dropping ever since. Around 30 percent of East Pakistan identified as Hindu, primarily made up of the *Rajbongshi* and *Namashudra Dalits* who, under the tremendous influence of their leader Jogendra Nath Mandal, voted for the Muslim League in Bengal's provincial elections in 1946. The Bengali **bhadralok** had the wherewithal to either relocate to India or to purchase peace in East Pakistan. The Dalits did not have quite as much good fortune.

The majority of Hindus in modern-day West Pakistan may be found in the province of Sindh, as well as in the major urban centres of Karachi and Hyderabad. Rahimyar Khan is a district in southern Punjab that is home to several hundred thousand Hindus. About 20,000 Hindus call the provinces of Baluchistan and Khyber Pakhtunkhwa (KPK) home in Pakistan's south-western and northern-western regions, respectively. The city of Peshawar and the surrounding area in the KPK province are home to the majority of Pakistan's Sikh community. Twenty thousand to thirty thousand people live there. Baluchistan and Sindh are also home to several

thousand Sikhs. Most Hindus and Sikhs have fled to India, the Middle East, or the West to escape the hostile people and the state's lack of protection. So many people have been converted or killed. Teenage girls in Sindh are a particularly vulnerable group of persecuted Hindus since they are often kidnapped, raped, converted to Islam, and then forced into marriage with a retard or a handicap. These deeds are carried out by the wealthy and influential Muslim landowners known as "Vaderas" in the area. They run the local madrasas where young Hindu females are converted, thereby making themselves kind of a government into themselves. Some examples of infamous Vaderas include Miyaan Mitthu of Bharchundi Sharif and Ayub Sirhindi. Both Sufi leaders have made it clear that they want to see no Hindus left standing and everyone convert to Islam. About 2% of Pakistan's current population is Hindu or Sikh as a result of the deliberate genocide and conversions that have been going on for the past seven decades and still persists today. There are now about 8 or 9 percent of them left in Bangladesh. Since Pakistan's census is only conducted infrequent and irregular manner at most, and the government apparatus is too corrupt and ineffective to capture and collate the data accurately, there is no credible means of knowing the precise number of Hindus living in Pakistan now. Furthermore, for apparent reasons, the Pakistani leadership minimizes the population of Hindus in the country. According to a study in the Pakistani newspaper Dawn, 51 percent of Hindus, predominantly Dalits, work as bonded labourers in the country. Pakistan has thereby committed a blatant breach of the Liaquat-Nehru Pact[2].

It's been essentially the same in Bangladesh. Jamaat-e-Islami Bangladesh gets active and starts harassing the minority Hindu community, most of whom are again from the lower classes, whenever there is an Islamist government in Bangladesh, notably the one under Begum Khaleda Zia. While the 1972 Constitution of Bangladesh declared that Bangladesh was a secular State, the country's appearance was drastically altered in 1977 when Islam was announced as the State religion and the Doctrine of secularism was replaced by an absolute religion and trust in Almighty Allah. It needs to be remarked that the Hindu population had dwindled from 20% to 9.2% following the successful war of independence that established the People's Republic of Bangladesh in 1971. As a result, the Liaquat-Nehru Pact was in shambles, and it became urgent to make adjustments so that Pakistani and Bangladeshi minorities could be safeguarded effectively. After the Taliban wiped down their homeland and made it unsafe

[2] Sanjay Dixit, *Unbreaking India: Decisions on Article 370 and the CAA,* (Garuda Prakashan Private Limited, 2020)

for minorities to live there, the government of India helped relocate 75,000 Sikhs who had to flee to India.

The Constitution

That's on top of the assurances Mahatma Gandhi and other administrations gave that non-Muslim minorities were welcome to move to India. When looking at the speeches and arguments that took place during partition, when a full population swap was being demanded, we can see that even Congress leadership was sceptical of Pakistan's pledge to give protection to the non-Muslims who were left behind. In light of this situation, on November 25, 1947, the Congress Working Committee met and passed a resolution calling for citizenship for the non-Muslim refugees of Pakistan: “The Congress is bound to afford full protection for all those non-Muslims from Pakistan who have crossed the border and come over to India, or may so in the future to save their life and honour." As a result of this concern, the architects of our Constitution decided, in Article eleven of the Constitution of India, to provide future authority over citizenship decisions to Parliament. Dr. Shyama Prasad Mukherjee and a few other prominent Congress leaders had their suspicions confirmed. Following partition via the Nehru-Liaquat pact in 1950, the newly formed Muslim majority Asian country began oppressing its non-Muslim minority. Since then, the poor, the underclass, and victimised minorities of Pakistan, modern-day Bangladesh, and Afghanistan have taken measures to ensure their safety and respect. As a result of persistent persecution at home, where their lands are being taken and their lives and dignity are in grave danger, many minority have sought refuge in India. Afghanistan's situation after gaining independence from the British Empire in 1919 and the persecution of religious minorities is strikingly similar to Pakistan's. For the same reason that the remaining Afghan minority have been relocating to India for decades, Afghanistan is included in this Act. The Durand Line caused the same problems for the non-Muslim populations in Afghanistan that the Radcliffe Line did for those still living in Pakistan.

Articles 5 and 6 of the Constitution were the subject of heated debate beginning on the 11th of August, 1949. Participating members overwhelmingly supported limiting citizenship rights and favoured a welcoming stance for Hindu and Sikh refugees. Dr. P. S. Deshmukh, the Minister of Agriculture in Jawaharlal Nehru's first cabinet, said that India should not let its acceptance of secularism in principle prevent it from maintaining laws that are favourable to Hindus who face discrimination in nations that are not as secular as Bharat. He successfully argued that

India did not discriminate against anybody who wanted to become a citizen, but that the Sikhs and Hindus already had no other country to call home. Pandit Thakur Das Bhargava had presented his analysis of the issue of citizenship. According to him, the refugees should have no trouble acquiring Indian citizenship. His another contention was that anyone who wanted to become Pakistani citizens on August 15, 1947, or who left India for Pakistan with their eyes wide open and the words to "*Hanske liya Pakistan; Ladke lenge Hindustan*"[3] in their mouths should not be allowed to return to India as citizens. It's too late for them to apply for citizenship today.

Some laws don't have to help everyone; sometimes it's better to target a select group to provide better results. Our system gives those who are weak and marginalised preferential treatment in areas like public employment and education, despite the fact that these are needs shared by all members of society. Similar to the futile challenge to the CAA, 2019 based on the grounds that it discriminates against Muslims, no other challenge will succeed. Even while it explicitly leaves out Muslims, it gives preferential treatment and unique means for granting citizenship to the exact group of illegal migrants who have been living in India as a non-Muslim community for a long time.

Moving Beyond Equality

Before moving to examine the new amendment on the anvil of equality principle contained in Article 14 of the Constitution, it is essential to have an understanding that a focused intervention through the CAA was needed in part due to the fact that India does not have a special statute that deals with refugees or grants citizenship to refugees. It's well knowledge at this point that India processes asylum claims from non-citizens in accordance with a Standard Operating Procedure (SOP) dated December 29, 2011. According to this Standard Operating Procedure (SOP), State Governments/Union Territory administrations may recommend cases to the Ministry of Home Affairs for grant of Long Term Visa (LTV) after due security verification if the applicant has a well-founded fear of persecution based on race, religion, sex, nationality, ethnic identity, membership in a particular social group, or political opinion. In light of the current situation, the CAA should be understood as a narrow modification to the Citizenship Act, 1955 that prioritises granting citizenship to refugees from Pakistan, Bangladesh, and Afghanistan who identify as members of the Hindu, Sikh, Buddhist, Jain,

[3] Nani Gopal Mahanta, *Citizenship Debate over NRC and CAA, (*SAGE Publications India, 2021).

Parsi, or Christian faiths. Therefore, it is a narrowly tailored amendment conferring a limited benefit to solve a narrowly tailored issue that affects a narrowly tailored group of individuals from a narrowly tailored group of nations sharing a common character. None of the basics of the Citizenship Act, which are outlined below, have changed as a result of this.

Following are the benefits of the new amendment to its beneficiaries:

- Members of the six communities from the three countries who entered India on or before December 31, 2014 and who have been granted an exemption from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder by the Central Government shall not be considered illegal migrants for the purposes of this Act, as per the newly inserted proviso to Section 2(1)(b). Further, any proceedings related to unlawful migration or citizenship that were underway against a beneficiary of the CAA prior to the date of the CAA's implementation would be considered abated upon the conferral of citizenship to such beneficiary.

- Beneficiaries of the CAA are exempt from the notion of "illegal migrant," but this does not equate to citizenship. It is crystal clear that such members will need to apply for naturalisation and satisfy "the conditions, restrictions, and manner for granting certificate of registration or certificate of naturalisation under sub-section (1) of section 6B" after reading the newly added Section 6B, Section 18(2)(eei) of the Citizenship Act 1955, and the proviso to Clause (d) of the Third Schedule to the Act.

Beneficiaries of the CAA need only prove "not less than five years" of residency in India or work in the Indian government, whereas non-beneficiaries need to show "not less than eleven years." Thus, it is fair to say that the CAA does not confer citizenship on its recipients automatically but rather helps expedite the citizenship process. The contention that the CAA is violative of the Constitution is based on the assumptions that (a) Article 14 forbids the sort of targeted intervention that the CAA engages in, and (b) Article 14 requires the Indian State to apply the same standard to those seeking Indian citizenship as it does to its citizens, since Article 14 refers to "persons" and not just "citizens."

These claims rely on Article 14, but let’s examine Articles 5-11 and 19 first. First, we'll look at Article 19, which is located in the same part of the Constitution as Article 14: Part III, which is devoted to the protection of basic liberties.

Right to Enter India:

It is essential to remember that Article 19 only applies to "citizens," not to "non-citizens" or "persons," and that the rights listed therein are limited to those who are legally recognised as citizens. As part of the package of basic rights provided to "citizens" by said Article, the freedom to roam within the territory of India and the freedom to remain and settle in any part of the Indian territory are specifically foreseen in Sub-clauses (d) and (e) of Article 19(1). It is widely known that no constitutional right is inviolable and that all rights must yield to the reasonable restrictions imposed by the Constitution. There is no need to look farther than Article 19 to support this claim. Since these are both broadly worded categories of purposes, it is clear that the right to move freely throughout India and the right to reside and settle in any part of India, which is available only to citizens, is clearly capable of being reasonably restricted in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

The fundamental right to enter India must be a part of the broader freedom to travel freely across India. As a result, the ability to enter India is a fundamental right that is guaranteed to citizens alone and can be restricted in compliance with Article 19. (5). Certainly, no reasonable person would argue that non-citizens enjoy greater legal protections than citizens, particularly in questions of admission into India. In this regard, in the case of *Hans Muller Of Nurenburg vs Superintendent, Presidency Jail, Calcutta*[4] held that Indian citizens have the freedom "to move freely throughout the territory of India" and "to reside and settle in any part of India" thanks to Article 19 of the Constitution, with the caveat that these liberties are subject to laws that impose reasonable restrictions on their exercise for the benefit of the public or the protection of the interests of any Scheduled Tribe. The same privileges are not extended to non-citizens. The only thing the law can do for them is to preserve their lives and freedoms. This is granted under Article 21, which reads as follows: "No individual shall be deprived of his life or personal liberty unless pursuant to procedure prescribed by law." It was further held that the authority to remove foreigners from India is codified in the Foreigners Act, 1946. Since the Constitution contains no provisions limiting the Central Government's discretion, the latter's unrestrained ability to expel persists.

[4] *Hans Muller Of Nurenburg vs Superintendent, Presidency Jail, Calcutta,* 1955 AIR 367

Similarly, in *Mr. Louis De Raedt & Ors vs Union of India And Ors*[5], which reiterated the above case and held that only citizens have the right to live and settle in this nation, as stated in Article 19(1)(e). A foreigner's basic rights are limited to Article 21's protection of life and liberty. In light of these Supreme Court rulings, which recognise the Government's near-absolute control with respect to entry and removal of foreigners, opponents of the CAA's simplistic reliance on Article 14 of the Constitution is apparently a standing that lacks nuance and goes against the express rulings of the Supreme Court. That is not to claim that Article 14 has no bearing on the subject at hand; rather, it is correct to assert that the scope of application of the aforementioned Article is restricted in questions of admission and expulsion of foreigners given the exceptional discretion bestowed to the Centre by the Constitution.

Categories of 'Persons'

The same result may be reached by looking at Articles 5–11 of both the Citizenship Act of 1955 and the Foreigners Act of 1946 together. Part II of the Constitution, which includes Articles 5-11, deals explicitly and precisely with the question of Citizenship. The Parliament has the express ability to "make any provision with respect to the acquisition and termination of citizenship and all other issues connected to citizenship" (Article 11), which is how the Citizenship Act was passed without being limited by Articles 5-10. When the Citizenship Act is compared to the Foreigners Act, the absurdity of the opposition's use of Article 14 becomes more apparent. The opponents' viewpoint is predicated on the word "persons" in Article 14, yet they ignore the Foreigners Act, which defines "Foreigners" as follows: foreigner" means a person who is not a citizen of India. In other words, the very existence of the notion of foreigners would constitute a violation of Article 14, rendering the Foreigners Act invalid, if the opposition's claim based on Article 14 were to be adopted. This viewpoint would have the absurd result of invalidating Section 2((1)(b) of the Citizenship Act, 1955, which defines "illegal migrant" as a foreign national who has entered India without proper documentation, whose documents are no longer valid, or who has overstayed the allotted term. If the opponents are correct in their interpretation of Article 14, then the ideas of foreigners and illegal migrants would be rendered meaningless and unlawful, since "all individuals" must be treated equally before the law and must get equal protection of Indian laws. Therefore, according to the critics, there is no legal distinction between a citizen, a foreigner, an illegal migrant, and a refugee.

[5] *Mr. Louis De Raedt & Ors vs Union of India And Ors,* 1991 AIR 1886

Article 14 as an argument was used in the most counterproductive, irrational, and unconstitutional way imaginable.

Can a foreigner who has not yet entered Indian territory legitimately assert rights under Article 14 considering that Article 14 itself utilises the phrase "within the territory of India" in ensuring equality before the law or equal protection of laws? Citizens of India living abroad are, at best, a "exception to the norm of territoriality" under certain situations. However, it is inconceivable that aliens on land to which the Indian Constitution does not apply should be afforded such protections. Opponents of CAA have not yet shown legally sufficient evidence that Article 14 extends to foreign nationals residing outside the territory of India, particularly with respect to the award of citizenship. A foreign national's claim to Article 14 rights cannot be based on the fact that he or she desires admission into India for the purpose of acquiring Indian citizenship. As a result, foreigners who are not physically present in India cannot even raise Article 14 as a defence. Further, it might be said that Article 14 does not limit the Indian government's ability to treat individuals as it sees fit, provided that it does so with respect for their dignity.

People from other countries may be broken down into two distinct groups: legal and illegal immigrants to India. A person who enters the country illegally has no legal standing to demand citizenship or refugee status; such authority rests solely with the Union Government, as established by the Constitution and upheld by the Supreme Court. As with every country, the Indian government has the discretion to weigh the risks involved with providing citizenship or refugee status to any given group or individual. No matter how coldhearted it may sound, it is not a right to which one is entitled. Consequently, Article 14 does nothing to support the citizenship or refugee status of unlawful migrants or refugees without using India's discretionary filters. In fact, in view of the Supreme Court's precedent in this area, it could be plausible to argue that the Supreme Court has no jurisdiction over the CAA beyond the concerns of competency and due process.

Despite what has been said above regarding the discretion afforded to the Executive in matters of admission into and expulsion from India, it is important to recognise that the Indian State's exercise of discretion can be called into question if it is used to compromise India's integrity by allowing in groups whose presence could be detrimental to the interests of Indians. The Supreme Court's decision in *Sarbananda Sonowal vs. Union of India and others*[6] (*2005*), which

[6] *Sarbananda Sonowal and Ors vs. Union of India and Ors*, (2007) 1 SCC 174.

was delivered in the context of a challenge to the validity of the **Illegal Migrants (Determination by Tribunals) Act, 1983** on the grounds that it violated Articles 14 and 355 of the Constitution, lends credence to this line of reasoning[7]. In particular, Article 355 imposes on the Union the responsibility to defend its member states against both external invasion and domestic disruption. The Court invalidated the IMDT Act because, despite its ostensible intention to speed up the deportation of illegal migrants from Assam, its provisions and Rules actually frustated the process. As a result, the Indian government's discretion to allow or ignore the migration of groups at the detriment of Indian interests can be challenged under the Constitution.

Conclusion

The paper discussed the historical and social factors behind the law of citizenship in India that how partition of India provided the background to citizenship articles in the constitution. We got to know the ideas of some of the members of the constituent assembly from their discussion on the migration of people during the partition. Then, the paper tried to portray the picture of condition of minorities in these three Islamic states for which the new amendment is made.

The paper has tried to move beyond the reductionist argument of Article 14 in analysing the constitutional validity of the CAA, 2019 by referring to the judgments of the Supreme Court and various aspects of citizenship that always operate in the background. In fact the matter of citizenship in a county like India can't be divorced from the social and historical factors existing in the Indian subcontinent. The legislation on citizenship in India can have non-constitutional factors as in the present case which are tied to the ethos, culture and history of the subcontinent. It is not to say that the constitution considers such factors as totally irrelevant but that the Constitution may not has the required scope to cover such factors. And it also doesn't necessarily mean that such factors work against the Constitutional principles, in fact, they may be bolstered by some of the principles.

[7] J Sai Deepak, '*Article 14: A Flawed Argument'*, https://openthemagazine.com/essays/article-14-false-argument/ accesses 5 November 2022

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