DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume I Issue IV is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis
EDITORIAL TEAM

EDITORS

Ms. Ezhiloviya S.P.
Nalsar Passout

Ms. Priya Singh
West Bengal National University of Juridical Science

Mr. Ritesh Kumar
Nalsar Passout

Mrs. Pooja Kothari
Practicing Advocate

Dr. Shweta Dhand
Assistant Professor
ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench.

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.
THE CITIZENSHIP AMENDMENT ACT, 2019- A MISAPPREHENSION

(By Niharika Goel)

ABSTRACT

The Citizenship Amendment Act passed by the parliament in 2019, orchestrated a widespread agitation. The research article, on the contrary, unveils how the pseudo secularist arguments asserting the act as arbitrary, ultra vires and unconstitutional are fallacious and hollow.

The article unravels the Constituent Assembly debates of leaders with otherwise unmistakable secular credentials, like Nehru and Ambedkar, subject to the days of dominionship and partition, asserting the disposition of the leaders to fulfil the perpetual demand for refuge to persecuted minorities. The impugned act is proved reminiscent of the ideologies behind the ad hoc amendable citizenship provisions and Article11, List I of Article 246 further substantiate the competence of the parliament, thereof.

The inclusionary nature of the act, subject to the Joint Parliament Committee Report, is run parallel to three Principles of Natural Justice, right to life and norms of secularism. It’s potential to pass the twin test of intelligible differentia and nexus with respect to impugned geographical, religious and cut off division is determined, justified by the historic communal environment, contemporary eventuality, humanitarian ground and national security.

The asseverations of Assam are countered by the congruence of the act with the Assam Accord, 1985 for the sole purpose of safeguarding the identity of the indigenous people of the state, and the provisions of the Passport Entry Act, 1920 and Foreigners Act, 1946 guide to establish distinct conformity and competence of the act.

The hollow assertion of the unconstitutionality of the act in juxtaposition of ICCPR, ICESR and Global impact of migration are countered by the jus cogen nature of the principle of non-refoulement, Doctrine of Transformation, Article 253 and the convention relating to the status of refugees, 1951.

Keywords: Citizenship, refugees, Constituent assembly, Assam, International conventions, non-refoulement
INTRODUCTION

National citizenship formulates an essential and enduring feature of modern life in terms of politics, elections, welfare state benefits, and all-round integration. Such liberal democracies rely upon the universal language of human rights and association, yet also demarcate exclusive territorial and political boundaries, witnessing a paradox of internal inclusion and external exclusion.¹ In the absence of a distinct citizenship clause post-Independence, India lead to The Citizenship Act, 1955 which deals with matters relating to the acquisition, determination, and termination of Indian citizenship after the commencement of the Constitution. Every person who was at the commencement of the Constitution (26 January 1950) domiciled in the territory of India, who was born in India, or either of whose parents were born in India, or who has been ordinarily resident in India for not less than five years, became a citizen of India.²

Pertaining to the historical communal environment, the partition era on religious nexus, and contemporary eventuality, there have been quite notable developments that have impinged upon the rights of refugees formerly. The ‘refugees’ are governed under the provisions of disparate Parliamentary enactments, namely, the Passport (Entry into India) Act, 1920, the Passports Act, 1967, the Registration of Foreigners Act, 1939, the Foreigners Act, 1946, the Citizenship Act, 1955 and the Extradition Act. A notification dated 29.12.2011, set up a standard operating procedure for dealing with foreign nationals who claim to be refugees, persecuted on account of race, religion, sex, nationality, and ethnic identity, membership of a particular social group or political opinion. “The claim made by such foreign nationals are examined carefully and if found justified Long Term Visa (LTV) is granted which is renewable subject to the general perceived condition in the home country of the people belonging to the community of the foreigner making the claim.”³

India, despite the absence of major statutory bodies and direct legal provisions, has stood out uniquely for providing asylum to almost all the persecuted religions, time and again. It must be noted that the government by amending the Passport (Entry into India) Rules, 1950 and the Foreigners Order, 1948 have already regularized the entry and stay of persons belonging

---

¹ Indian Constitutional Law MP Jain Lexis Nexis, Eighth Edition
² Know India, citizenship
https://knowindia.gov.in/profile/citizenship.php
³ The gazette of India, Notification by the Government of India, November 29, 2012
to the said six identified minorities from Afghanistan, Bangladesh, and Pakistan, since it grants exemption from the application of provisions of the Foreigners Act, 1946, i.e., absence of valid documents or after the expiry of such documents. However, the inability of these immigrants to establish their Indian origin compelled them to apply under Article 6(1) for citizenship which needs twelve years residency period in India despite being otherwise eligible for citizenship under Section 5(1)(a) which needs seven years residency period in India.

Therefore, the Citizenship Amendment Act, 2019 is a legal exercise to further reiterate the said facilitation, ostensibly designed to grant a benevolent pathway to Indian citizenship for these six minorities that fled religious persecution in Pakistan, Bangladesh, or Afghanistan. The act seeks to amend the definition of ‘illegal migrant’, to enable acquisition of Indian Citizenship by members of minority communities namely Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan who were forced or compelled to seek shelter in India due to religious persecution or fear of religious persecution in their countries. A second proviso proposed to be appended to the section provides for the abatement of proceedings pending against the exempted minority communities before the commencement of the Bill. The Bill merely seeks to cushion the process of citizenship by expediting the naturalization of the said class of persons by relaxing the qualification to seven years for the same. And, the registration as overseas citizens of India cardholder may stand subject to cancellation in case of violation of the law, thus not compromising the national security.

It is essential to discern, that the Constitution of the said three theocratic neighboring states viz. Pakistan, Afghanistan, and Bangladesh have modified their constitutions in recent decades to declare Islam their official state religion. Persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian minority communities in those countries are at the mercy of the state religion and have faced persecution and atrocities on grounds of being non-Muslims who do not follow the state religion.

---

4 The Gazette of India: Extraordinary, MINISTRY OF HOME AFFAIRS NOTIFICATION New Delhi, the 7th September, 2015, G.S.R. 685(E).
HISTORICAL BACKGROUND

It is a matter of common knowledge that the independence of India came with tragic communal violence which engulfed the life of more than a million, amidst the demand of Partition. The partition attributed almost one-third of the Indian Territory to one-fifth of the Muslim population, and thus refugees were exchanged. Post Indo Pakistan war and the Bangladesh liberation, the 1971 Nehru-Liaquat pact and Indira-Mujib pacts were signed with the said countries, to ensure the rights of respective minorities, condemn colonialism and racialism of all forms, and ensuring independence sovereignty, and international peace.

However, unfortunately, the extent of vulnerability of minorities across the border on both sides is known across the spectrum. The scale of atrocities has been evident in the resignation letter of first law minister of Pakistan, Shri Jogendranath Mandala, a Hindu Dalit leader who had to return to India and lead his entire life as a Bengali Hindu refugee in the country. Further, The conditions of these persecuted religious minorities who had fallen on the side of ‘Islamic Territory’ namely Pakistan, Bangladesh including Afghanistan, have no option other than to take shelter in India as their umbilical cord is attached with ours. Therefore, as stated under Rajya Sabha during the India independence act, the brunt of the consequences subject to atrocities and brutal treatment has to be borne by the country itself, ultimately. If there was a way of preventing their exodus, their influx, into this country it should be found out. But if there is no way, then the door has to be kept open for these people. This determines how the act is a yearning provenance for the rectification of a historic wrong and is a historic commitment fulfilled.

COMPETENCE and THE INTENTION OF THE CONSTITUENT ASSEMBLY

Primarily, the assertions of the incompetence of the parliament subject to the citizenship amendment act, 2019 can be rendered fallacious as Article 11 positions the parliament empowered to make any provisions related to acquisition and termination of citizenship and any such matter thereof.

The Constituent Assembly debates of leaders with otherwise unmistakable secular credentials, like Nehru and Ambedkar, subject to the days of dominionship and partition,

5 Sri Guljarilal Nanda, Union Home Minister on 5th March 1964 in the Rajya Sabha
assert the disposition of the leaders to fulfill the perpetual demand for refuge to persecuted minorities by empowering parliament under Article 11. According to B.R. Ambedkar, “It is not the object of the provision to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship for this country. The business of laying down a permanent law has been left to parliament, to determine by any law as they deem fit. The powers confer that the parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this constitution but the parliament may altogether make a new law embodying new principles. All we are doing is decide ad hoc for the time being.”

This substantiates how the intention of the drafters of the constitution was a considerate ideology to create ad hoc amendable citizenship provisions, conferring enormous powers in the hands of the parliament. The subject matter of citizenship can also be found under List-I of Article 246 under the VIIth Schedule of the constitution. The aforesaid segments of the constitution adequately illuminate the wide extent of authority to the parliament to enact the act, thereof.

**NOT VIOLATIVE OF THE BASIC STRUCTURE OF THE CONSTITUTION**

Though India is not a signatory to the Convention on the Status of Refugees, 1951, or its 1967 Protocol, the constitution of India does enlist certain fundamental rights, providing some basic guarantees in respect of refugee protection, as interpreted through judicial decisions. The rights enshrined in part III of the constitution guarantees right to equality and equal protection under the law. A wholesome bundle of human rights can be applied including the right to life and personal liberty along with the DPSPs and International laws encompassing the right to live with dignity, right to food, water, and decent environment, and protection from threats to leave the state. Thus, the inclusionary nature of the citizenship amendment act, 2019 is run parallel to three Principles of Natural Justice, the right to life, and norms of secularism. It’s potential to pass the twin test of intelligible differentia and nexus is established, followed by the exposition of asseverations of the indigenous people of Assam. The juxtaposition of the act with the international convention concerning the interface between international and municipal law are also reposed.

---

6 Volume 9 Constituent Assembly debates, 10th August 1949
Article 14, Rule of law and Principles of Natural Justice

The constitution is wedded to the negative and positive concept of equality, for equality is one of the magnificent cornerstones of Indian democracy. Article 14 of the Indian constitution embodies the negative and positive concept of equality, for propagating reasonable and equitable principles. The former runs collateral to the Dicean concept of the rule of law subjecting everyone equally to the law of land, while the latter demands universal application irrespective of circumstantial eventuality. It embodies the principle of non-discrimination.  

However, it is not a free-standing principle, for it has to be read in conjunction with rights conferred by Article 21, and is a necessary corollary of the Rule of Law which pervades the Indian Constitution. The content of Article 14 is expanded to recognize the principles to comprehend the doctrine of promissory estoppel non-arbitrariness, eschewing irrationality. However, owing to the diverse needs of the different classes subject to nature, attainment, or circumstances, the legislature seeks to attain a particular object for legislation. This is done by way of distinguishing, classifying, and selecting since mechanical equality would result in injustice. 

As propounded by a seven-judge bench under the state of West Bengal v Anwar Ali. The legislature is entitled to make a reasonable classification based on an intelligible differentia to put a section of people in one class on equal footing, forming a nexus thereof. The impugned act was established violative of the spirit of article 14, holding the division based on geography, religion, and a cutoff date to determine the eligibility of the immigrants to seek citizenship, arbitrary. When an administrative action is attacked as arbitrary, and discriminatory, the impugned act must be scrutinized for any discernable principle and if so, the test of reasonableness must be applied.

Potential to pass the twin test of differentia and nexus

Attention is drawn to the true meaning of Article 14 reiterated under the judgment of Ram Krishna Dalmia v. Justice SR Tendolkar, establishing the grounds for permissible classification for the purpose of the legislation.

---

7 Eighth Edition Indian Constitutional Law MP Jain Lexis Nexis
9 Chiranjeet Lal v. Union of India AIR 1951 SC 41
10 AIR 1952 SC 75
11 1959 SCR 279
1. “that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and”

2. “that that differentia must have a rational 44 relation to the object sought to be achieved by the statute in question.”

Therefore, the act can be established on the aforesaid grounds of twin tests of intelligible differentia and nexus concerning impugned geographical, religious, and cut off division which can be justified by the historic communal environment, contemporary eventuality, humanitarian ground, and national security. The spirit of Article 14 is not violated merely because the basis of classification does not appear on the facet of law, for the court may refer to relevant material like objects and reasons appended to the bill, parliamentary debates affidavits of the parties matters of common knowledge the background circumstances leading to the passage of the act.

Firstly, the act establishes geographical classification, seeking to enable acquisition of Indian citizenship to the persecuted minorities of Pakistan, Afghanistan, and Bangladesh. The contempt of the Nehru Liaquat pact and Indira Mujib pact left the minority communities at the mercy of these Islamic theocratic countries. Besides the partition era, abrogation of the post-independence pacts, the Committee observed that the Government decided to include Afghanistan along with Bangladesh and Pakistan within the ambit of the Notification issued on 7th September 2015 followed by two more Notifications on 18th July 2016. Addressing the concern over the inclusion of Afghanistan which is not a part of undivided India, the inclusion was justified by stating that there have been multiple attacks against Indian interests in Afghanistan by Pakistan sponsored Haqqani Network, Taliban, etc. for which several persons belonging to the minority communities in Afghanistan have come to India on account of or fear of religious persecution.

The judgment propounded under case Clarence Pais v. Union of India serves as a guiding light to further vindicate the aforesaid, where differential treatment of separate geographical

---

13 Jagdish Pandey v Chancellor Bihar University 1968 AIR 353, 1968 SCR (1) 231
14 LOK SABHA, REPORT OF THE JOINT COMMITTEE ON THE CITIZENSHIP (AMENDMENT) BILL, 2016, (SIXTEENTH LOK SABHA)
15 (2001) 4 SCC 325
regions was propounded justified, provided a sufficient nexus is drawn. Judicial observations provide support to the policy decision to such an extent that the power of judicial review is said to have not extended to determine the correctness of such a policy decision or to indulge in the exercise of finding out whether there could be more appropriate or better alternatives. Provided, the difference between the geographical units has a reasonable relation to the object sought to be achieved, geographical classification is not forbidden.\textsuperscript{16}

\textit{Secondly}, the act also brings forth a cutoff date of 31 December 2014 to establish eligibility for citizenship. It is primarily highlighted that the executive authority and the court do not normally interfere with the fixation of cutoff date by executive authority unless the order appears to be on the face of it blatantly discriminatory and arbitrary.\textsuperscript{17} Yet to establish its non-conformity with arbitrariness it is determined that the date is evaluated in concern with national security. It is, as established under the Joint committee report, to prevent the possibilities of vested interests in the neighboring countries taking advantage of this provision for further influx into India. This creates a rational nexus with the object sought to be achieved, with the national security being the pitch and substance thereof. Attention is drawn to judicial observations, wherein classification for historical, geographical, and cut off dates was upheld as being reasonable in the light of the object of the Act. In Parents' Assn. v. Union of India\textsuperscript{18}, the distinction drawn between treatment of the pre-1942 settlers and the post-1942 settlers in Andaman & Nicobar Islands by the Central Government on consideration of the historical background of the Island was upheld, against other affluent groups, on the ground that they belong to a separate category due to their struggle/ suffering and were considered as backward, socially and educationally. Since, the provisions of the Bill appear to have made a classification, for the object of facilitating all such minority communities without any discrimination who, subject to partition era and persecution religion had to seek refuge in India without valid travel documents.

\textit{Thirdly}, The assertions on the religious bias of the act, as a concrete step to establish a Hindu Rashtra, are baseless. The amendment limits itself to the Muslim-majority neighbors of India and takes no cognizance of the persecuted Muslims including Ahmadiyyas – \textit{a Muslim sect who have been "viciously hounded in Pakistan as heretics"}, and the Hazaras – another

\textsuperscript{16} Parisons Agrotech Ltd. v. Union of India (2015) 9 SCC6157
\textsuperscript{17} Govt. of AndhraPradesh & Ors. v. N Subbarayudu (2008) 14 SCC 702 (703)
\textsuperscript{18} (2000) 2 SCC 657
Muslim sect who have been murdered by the Taliban in Afghanistan. The exclusion of the Ahmadiyyas was defended, by saying that Subject to prior judicial observations, first the constitution of India considers these sects of Islam as Muslims, and the matter is of an internal conflict of Islam which does not concern India. Since Pakistan, Afghanistan, and Bangladesh are Muslim-majority countries that have modified their constitutions in recent decades to declare Islam their official state religion, non-Muslim populations have experienced discrimination and persecution. Therefore, Muslims in a Muslim majority country do not fall under the definition of a minority which throws religious bias, and anti-secular asseverations out of the question.

According to the joint committee report, “What may hold the constitutional scrutiny is the fact that there are 50 countries which have broadly a State religion of Islam and 11 of them follow the Shariat so, where is the option? That is the issue that may hold the State in terms of it because the persecution being the angle on which you are bringing it or granting them the possibility of citizenship and eventually granting them citizenship, that would form the critical objective. People in the name of persecution can seek citizenship even in western countries as they do, in parts of Europe and America, etc.”

Needless to say, the act is, in fact, inclusionary in nature and not exclusionary since the report underscores, a Standard Operating Procedure (SOP). As regards the non-inclusion of other neighboring countries like Sri Lanka, Myanmar, etc., the Ministry of Home Affairs clarified that the guidelines of the Standard Operating Procedure (SOP) issued on 29th December 2011 would take care of the migrants/refugees from other countries including Sri Lanka and Myanmar. Not only that, but it was specified if any Muslim individual applies for the same, it will be considered with an open mind. “I want to assure this House that this Bill will only bring justice to the people who have been waiting for it for 70 years. It is not targeting anyone and will do no injustice.”

This conformity of the impugned Act with the principles of secularism is clearly established by the fact that the act is inclusionary in nature and not exclusionary for the purpose of any injustice. The mere grounds of hardships countered by the other immigrants are not sufficient grounds. When the policies have far-reaching implications and are dynamic in nature, their

19 [The Indian government states:] The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion.
20 LOK SABHA, REPORT OF THE JOINT COMMITTEE ON THE CITIZENSHIP (AMENDMENT) BILL, 2016. (SIXTEENTH LOK SABHA)
implementation in a phased manner is welcome for it receives gradual willing acceptance and invites lesser resistance.\textsuperscript{21} The act merely facilitates the process of citizenship putting these particular sects of people in one class on equal footing with respect to the historic communal environment, the contemporary eventuality of persecution, demand of refuge, humanitarian grounds, and national security. This establishes how the act establishes an intelligible differentia and rational for the purpose of the legislation, forming a nexus thereof.

**Right to Freedom of Religion**

Article 25 provides for the constitutional guarantee of freedom of conscience to all persons and the right to freely profess practice and propagate religion, subject to certain restrictions. The said Article only provides protection to all persons or religious groups without any favor or discrimination. The enabling provisions in the Bill apparently seek to facilitate the specified class of people to acquire citizenship and does not appear to violate the intent and spirit of the Article.

**Right to Life and Personal Liberty**

Article 21, being an inherently natural right for the purpose of life and personal liberty, is applicable to citizens as well as foreigners. The citizenship amendment act could be declared unconstitutional only when it has a “direct and inevitable effect” on the fundamental rights and not mere hardships causing the incidental and indirect effect.

It is imperative to look at “the pitch and substance” or “true character and nature” of the legislation to determine its true scope. It is necessary to examine the provision as a whole to ascertain its true nature and character. The impugned act provides conditions and procedures for citizenship of India. It must be considered in this regard that the legislative intent behind the enactment is to redress the problems faced by the minority communities from these three countries who are compelled to seek shelter. It must be noted that the aforesaid mentioned six minorities, despite being exempted\textsuperscript{22} from the application of provisions of the Foreigners Act, 1946 still continued to be termed as 'illegal migrants'. Facilities have not been extended to immigrants who have been living in India for the last 20 years. The immigrants have been

\textsuperscript{21} Javed And Ors. vs State Of Haryana And Ors, AIR 2003 SC 3057, 2003 (4) AWC 2920 SC, 2003 (3) CTC 620

\textsuperscript{22} The Gazette of India: Extraordinary, MINISTRY OF HOME AFFAIRS NOTIFICATION New Delhi, the 7th September, 2015, G.S.R. 685(E).
facing lack of facilities such as drinking water, electricity, gas connections, hospital, BPL/caste certificates, ration card, Adhaar card, bank account, etc.

Since the legislative intent is clearly out of judicial scrutiny but is a relevant factor to assess the constitutionality of the provisions, and the intention behind the enactment is to ensure that these religious minority communities are considered for naturalization to enjoy basic amenities necessary for the well being, establishes how the act has distinct conformity with article 21.

Article 21 read with persistence with directive principles of state policy and international charters on human rights encompasses the right to live with dignity, right to livelihood, food, water, and a decent environment. Genocide, persecution, and attacks were an infringement of their rights under Article 21.

However, if these immigrants were to be deported without so much as giving them a notice of fair hearing or elements of due process, it would be arbitrary and violative of Article 21. Although the citizens of India also enjoy fundamental rights, one competing claim cannot always be made to yield to another, and thus no hierarchy can be established between the two conflicting rights.

**The Assam Accord, 1985.**

The Assam accord was signed in 1985 in regards to detect and deport foreigners for the purpose of creating legislative, constitutional, and administrative safeguards to preserve the cultural, linguistic identity, and cultural heritage of the state. Certain primary factors and terminologies of the accord supersede the citizenship amendment act, 2019.

Primarily, attention is drawn to the infamous judgment by the Apex Court under the Re-Education Bill\(^{23}\) which defined minority as a community which is less than 50 percent of the total population. Following the said dicta, the population of Assam cannot be considered a minority, since the community is not a specific percentage of the state’s population, rather is the entire population themselves. Even though Assam differs in regards to language and culture from other parts of India, but it must be noted that the states in India were reorganized based on linguistic differences. Therefore, the unit for determining a linguistic minority is done with respect to Assam only, and not the whole of India.\(^{24}\)

---

\(^{23}\) Re Education Bill v Unknown AIR 1958 SC 956

Illuminating Article 29 of the constitution which confers an absolute right on citizens of a state to protect their linguistic, and cultural identity.\(^{25}\) Not conceding that Assam is entitled to protection under Article 29(1), however, the state must only make sure that there is no such action which is specifically designed to curtail this right.\(^{26}\) Thus, it is established that the citizenship amendment act that has been established to safeguard persecuted minorities does not curtail the rights of indigenous people of Assam, nor does it violate the Assam accord, 1985.

**Firstly**, The Assam Accord, 1985 is sought to address the mass immigration and thereby provided the provision which reads, **“Foreigners who came to Assam on or after March 25, 1971, shall continue to be detected deported and expelled in accordance with the law”**. Accordance with law shall be interpreted as the declaration of its subjugation to the law of the land. The validity of the Act is derived from Section 11 of the Constitution, which is the supreme authority in the country. Similarly, the Constitution grants the Parliament exclusive power to legislate in the matter of citizenship, naturalization, and illegal immigrants.\(^{28}\)

Furthermore, under Section 3(2)(c) of the Passport (Entry into India) Act, 1920 which reads, **“Without prejudice to the generality of the foregoing powers such rules may –...c) provide for the exemption either absolutely or any condition, of any person or class of persons of any provision for such rules”** and similarly the Foreigners Act, 1946 under its section 3 provides, **“Power to make orders - (1) the Central Government may by order make provision, either generally or with respect to any particular foreigner or concerning all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.”** It is evident from the reading of both the laws that the Parliament is empowered and the Act is an application of the said provisions, which are held to be fair and reasonable and not violative any constitutional provisions\(^{29}\).

---

\(^{25}\) The constitution of India, Article 29 clause (1)


\(^{27}\) The Citizenship Amendment Act, 1958, Section 6 subsection (A) clause (2)

\(^{28}\) The Constitution of India, 1950, Entry 17, Seventh Schedule

\(^{29}\) Sarbananda Sunowal v. Union of India (2005) 5 SCC 665 : AIR 2005 SC 2920
In *Jolley George Verghese v. Bank of Cochin*, Justice Krishna Iyer asserted that the positive commitment of the State parties ignites legislative action by the Parliament but it does not automatically make the agreement an enforceable part of the corpus juris of the land. Thus, there is a change in the circumstance with the lapse of time in the implementation of the provisions of the pact. The government of India, as well as the national and international landscape, has been changed. The government cannot be held to be bound by the policies of the prior government.

And *secondly*, the primary object of the Assam Accord, 1985 was to safeguard the identity and interest of the Indigenous people of Assam. The Citizenship Amendment Act, 2019 has not deviated from that. The Act has inserted Section 6(B) whose Clause 4 excludes the tribal areas in the few north-eastern provinces of India as per the Sixth Schedule of the Constitution. The said provision also excludes the area covered under “The Inner Line”, which is also a tribal area, in regards to safeguard the indigenous people of Assam. It is evident that the amendment does not adversely affect the object of the Assam Accord, 1985. The provision inserted by the Act does not affect the interest of the indigenous people and therefore, it is not in violation of the Assam Accord, 1985.

**Interface With The International Law**

Primarily, the attention is drawn to the disposition of the courts towards domestic law, during international and municipal conflicts. India follows the dualistic theory of International law and accordingly treats the domestic law and international law as two distinct, separate, and self-contained legal systems. Therefore, the national court cannot apply a rule of International Law until that law has been deliberately transformed (Doctrine of Transformation) into national law by legislation. The dissenting opinion of Justice H.R. asserts further stating that the court should give effect to the domestic laws in the case that there is a conflict between the Customary International Law and the municipal law. However, in *Gramophone Company of India Ltd. v. Birendra Bahadur Pandey*, the court has applied customary International law but only to an extent that it is not inconsistent with any domestic law. Therefore, It is evident by the judgments that the court has maintained the

---

30 AIR 1980 SC p. 470  
31 Section 6B (4), Citizenship Act, 1955  
35 AIR (1984) SC 667
primacy of the domestic law over the customary International Law. This in its entirety throws ICCPR and ICESR out of frame.

Regardless, the Application of International Laws primarily brings into light the Status of Refugees Convention, 1951 which define a refugee as a person who “ owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable or owing to such fear, is unwilling to avail himself of the protection of that country.”  

In the dicta of Dongh Lian Kham and Ors. v. Union of India and Ors. puts the principle of non-refoulement under the ambit of Article 21 as it protects the life and liberty of refugees apprehending threat in their native country, so long as the national security is not compromised. Needless to submit, despite not being a signatory to the 1951 United Nations Refugee Convention not it’s 1971 protocol, India has been kind and has harbored such refugees that have migrated to our country in the times of strife. Thus, it shall be noted that India, though not by a separate statute or body of law, has largely conformed to such International laws over the course of post-independence governance.

Further chapter 7 of UNHRC’s ‘Solution for refugees’ puts forwards solutions available to host countries, which include voluntary repatriation, resettlement, and local integration. Since repatriation and resettlement are tedious and inhumanity pertaining to the consistent persecution, local integration shall be logical and effective. Thus incorporating the people who have turned to India in a bid of protection from the impugned fear of religious prosecution, and considering the refugees have largely peacefully incorporated themselves to the society, non-refoulement can unequivocally be applied in this ambit.

36 The Convention Relating to the Status of Refugees, 1951, Article 1-A(2)
37 226 (2016) DLT 208
CONCLUSION

The current refugee crisis is undoubtedly one of the worst humanitarian crises and India is yet to come up with a comprehensive legislative framework dealing with the issue of refugee protection. However, the Citizenship Amendment Act, 2019 is a step to rectify seventy years of injustice towards the minorities who were left at the mercy of these theocratic Islamic states. The Act’s seemingly discriminatory character subject to geographical, religious and cut off division nevertheless becomes invisible upon deeper scrutiny and unprecedented munificence as it succeeds to measure up to the standard of equality envisaged under the Constitution of India. The Joint Committee of the Parliament that was set up to examine these issues vis-a-vis The Citizenship (Amendment) Bill, 2016 which has strongly established it’s correlation with the notifications dated 7th September, 2015 and with the Standard operating procedures (S.O.P.) of 26.11.2012 further appreciates the point. The aforesaid basis of classification and secularism as a tenable challenge to the constitutionality of the Bill are reposited by the potential of the act to pass the twin test of intelligible differentia and nexus. Non exclusion of any other minority illuminate the inclusionary nature of the act for the mere purpose of facilitating the process of citizenship for the said minorities who are put into one class on equal footing subject to historical communal environment, contemporary eventuality, humanitarian grounds, call for refuge and national security. The deprivation of the Right to life and personal liberty despite prior exemption from the requirement of the valid documents further establish the bonafide intention of the act in conformity with part III of the constitution. The distinct assertion of the indigenous people of Assam concerning the Assam Accord, 1985 is also not ignored, but reposited with the fair operation of precedents judicial interpretations, Joint Committee Reports, and legislative intent. The hollow assertion of the unconstitutionality of the act in the juxtaposition of ICCPR, ICESR, and Global impact of migration is effectively countered. Beginning with the interface between municipal and international law, digging into the norms for the protection of refugee by the jus cogens nature of the principle of non – refoulement, Doctrine of Transformation, Article 253, and the convention relating to the status of refugees, 1951 further substantiated the aforesaid. In its entirety, the Act is established to be a competent, constitutional rectification of historic wrong and a historic demand fulfilled.