



International Utopia MUN'20

# All India Political Parties Meet

Deliberating the Constitutionality of the Citizenship Amendment Act of 2020  
and its impact on society with special emphasis on the Delhi Riots of 2020

The Citizenship Amendment Act of 2019 is an amendment to the Citizenship Act which was passed by the Indian parliament in 1955. The purpose of this act is to define the eligibility criteria for, and the process of acquiring citizenship of India.

Over the course of many years, multiple amendments have been made to this act. This is the Fifth Amendment to the Citizenship Act since its inception.

## **KEY CONCEPTS IN REFUGEE LAW**

To properly understand the Citizenship Amendment Act (CAA) and to analyze its legislative intent it is imperative that some key terms of citizenship law are understood. Any argument on the CAA would involve argument over the intent and purpose of implementing the act, therefore understanding the legal definitions of “refugees” and “illegal migrants” would greatly aid in understanding the agenda.

To this end, delegates must read through the 1951 Refugee Convention – a key legal document in the field of refugee law. The Refugee Convention defines a refugee as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”. In short, a refugee is someone who flees their home country due to reasonable fear of discriminatory persecution. Another important aspect to keep in mind is that, in the majority of cases refugees face a serious threat to life and liberty if they return to their home country. This is why the international legal principle of non-refoulement exists. The principle of non-refoulement, enshrined in Article 33 of the Refugee Convention, prohibits expulsion or return of a refugee by the ‘receiving state’ (the state to which the refugee migrates).

Another important term to understand in the context of this agenda is ‘illegal migrant’. The most important change in law caused by the CAA has to do with expediting the citizenship process for a certain class of ‘illegal migrants.’ Therefore, to understand and interpret the CAA, one must understand the legal definition of an illegal migrant. The UNHCR Guide to International Refugee Protection and Building State Asylum Systems defines a migrant as “someone who chooses to move, not because of a direct threat to life or freedom, but in order to find work, for education, family reunion, or other personal reasons”. The term ‘illegal migrant’, therefore, means a migrant who enters the country for the same reasons, but illegally i.e. without legitimate papers, whereas, a

refugee is someone who migrates due to persecution or a fear of persecution. This is the most important difference between an illegal migrant and a refugee. It means that an illegal migrant has no fear of persecution in his/her home country.

## **THE REFUGEE PROBLEM**

The refugee problem in India can be divided into two eras.

The first era of the refugee problem started during the partition, which caused the displacement of people starting from 1947 and continuing for years.

The second era was from late 1960s to quite some time after the liberation war in 1971.

During this era, and especially prior to India declaring war on West Pakistan, the refugee influx in India was considerably large. Even after the war ended, the refugee problem persisted and millions of Bangladeshis stayed in India. This problem creates waves of unrest even today, especially in the north-eastern states of the country like Assam.

Apart from Bangladeshi refugees, India has also hosted a large number of Rohingya refugees. The Rohingya crisis that gained momentum in the early 2010s is, however, much more stagnant since the deportation of the Rohingyas in 2014. There are no accurate reports on how many Rohingyas were deported or about the number of them which remain in India.

The only accurate estimate of how many “refugees” India has is a 9 year old census record which indicates that India has about 5.5 million refugees as of 2011, most of which have arrived pre or during the liberation war. This estimate however does not include the refugees which have come after 2011 or the estimate of “illegal migrants” which are present in India.

Kiren Rijiju, the then minister of state for home affairs in 2016 claimed that there were approximately 20 million refugees in India at that time.

Even though the problem of illegal migrants is spread throughout the country, the concentration of these illegal migrants is majorly in West Bengal, North Eastern states (particularly Assam), and Jammu and Kashmir.

## **THE ASSAM ACCORD**

The Assam Accord was drawn up after a prolonged struggle by the All Assam Students' Union and its purpose was to conserve and strengthen the state's native population, culture and political identity by identifying and deporting illegal migrants in the state. Section 6A of the Citizenship Act reflects this purpose and recognises the Centre's role in executing the provisions in the Assam Accord

According to the Assam Accord, any foreigner entering into the state illegally after December 24, 1971 were to be considered as "illegal immigrants" and were liable to be deported. Those who arrived between January 1966 and December 1971 were to be given citizenship after 10 years of residing in India.

## **PROVISIONS OF THE CITIZENSHIP AMENDMENT ACT**

Although all the provisions of the amendment are listed explicitly in the CAA published in the Official Gazette, following are the most important amendments under the new CAA:

1. This act inserts a new clause under Section 2 of the Citizenship Act of 1955, exempting any individual belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December 2014 (Provided that they have been exempted from the foreigners act and passport act), from being considered an "illegal migrant".
2. Clause 6B is added to indicate that the new category of people mentioned in the above sub clause "may" be granted citizenship provided they fulfil the requirements mentioned in section 5 and schedule 3 of the act.
3. 2 sub-clauses under clause 7D are added but are only a technical insertion which deal with the cancellation of registration as an overseas citizen of India for certain offenders.
4. Insertion of a clause in section 18 of the original act is also made for specifying that rules made under section 18 may provide for the conditions, restrictions and manner for granting certificate of registration or certificate of naturalization under sub-section (1) of Section 6B.

5. The final provision is inserted in section 6 which specifies qualification for naturalization. Clause “d” of this section specifies that individuals belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years”.

The controversy around this law is regarding the first and final insertions which have made a classification on the basis of religion and the country that the “illegal migrants” belong to.

The criticism around this law includes claims of it being discriminatory and that it violates the “Right to Equality” guaranteed by the Constitution to every person, even non-citizens.

Further, as of March 2020 the UN Commissioner for Human Rights has asked the Supreme Court of India to make the UNHRC an “Amicus Curiae” in the petition filed to the court against the act.

Further the Office of the UN High Commissioner for Human Rights has called the CAA “fundamentally discriminatory in nature”.

## CRITICISMS OF THE CAA

For a detailed analysis and critique of the Citizenship Amendment Act please refer to the citation in the footnote<sup>1</sup>.

The following are the main criticisms of the CAA:

1. The CAA inhibits the rule of law in the country.
2. The CAA is discriminatory on religious grounds and prejudiced against Muslims.
3. The CAA is driven by discriminatory nationalist agendas of the BJP and fails as a citizenship law.
4. The CAA is in violation of Articles 14 and 21 of the Indian Constitution (Fundamental Rights).
5. The effects of the CAA may amount to electorate manipulation in the long term .
6. The addition of Section 6B to the Citizenship Act reverses the effects and prospected outcomes of the Assam Accord.
7. The CAA is unlawful according to provisions of International law such as Article 33 of the Refugee Convention, Article 14 of the UDHR, the International Covenant on Civil and Political Rights, and General Recommendation No. 32.
8. The CAA is not an amnesty program as it extends to illegal migrants and not refugees.

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<sup>1</sup> Moitra, Sanmay; The Citizenship Amendment Act's Incompatibility with the Indian Constitution, Politics, and International Law; 2020; Social Science Research Network (SSRN); LINK: <https://poseidon01.ssrn.com/delivery.php?ID=174093090115101067026069089093096027052072023065091036126124066087082098005124004086061123008063054013023107083101071104006002041010074040047005103023075113020007112084061005103005098122085118075074113001084069026031079012000027026114024109098023112095&EXT=pdf>

## **SUPPORT OF THE CAA**

For a detailed analysis and support of the Citizenship Amendment Act please refer to the citation in the footnote.<sup>2</sup>

1. The CAA serves essential national security and political elements.
2. The CAA is constitutional as Article 14 of the Indian Constitution does not affect non-citizens of India.
3. The CAA provides for an amnesty program to religious minorities persecuted in Muslim majority countries.
4. The CAA is an internal matter and thus complies with International Law through the principle of *lex specialis*.
5. The historical and political context of the CAA justifies its practical requirement to safeguard Indian heritage and culture.
6. The CAA does not prejudice, and all it does is simply expedite the citizenship process for a certain group of people while not inhibiting the process for anyone else.

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<sup>2</sup> Narayan, Krishna; An Exhibition Of Legal Obliviousness And Political Naiveté; 2020; Academia.edu; LINK: [https://www.academia.edu/44542765/An\\_Exhibition\\_Of\\_Legal\\_Obliviousness\\_And\\_Political\\_Naivet%C3%A9](https://www.academia.edu/44542765/An_Exhibition_Of_Legal_Obliviousness_And_Political_Naivet%C3%A9)

## **BRIEF INFORMATION ON PROTESTS IN DELHI**

Protests in Delhi and across the country erupted immediately after that bill was passed in the Lok Sabha.

Protests were observed all over the country, but went violent in West Bengal and some parts of Uttar Pradesh and most noticeably in Delhi. Unlike in Delhi, however, the violence in Uttar Pradesh and West Bengal was lower in scale.

Violence was carried out by college students and politicians on both sides; and the police was accused of not taking enough measures to control it.

In Delhi protests were carried out in two major sites Nizamuddin and Shaheen Bagh - two Muslim majority regions in Delhi. These protests had a portion of Muslim population of Delhi take part including a large number of Muslim women. Both The Congress and the Aam Aadmi party protested at Shaheen Bagh and publicly expressed disapproval over the CAA. The protests in Shaheen Bagh, therefore, were to the greatest extent civil and free from violent encounter

The Supreme Court issued a notice asking protesters to stop blocking public roads and that any resolution to this problem would be done only once peace was reestablished. This however, failed to effectively contain the protests and the protests continued until the early stages of the coronavirus pandemic in India.

## **QUESTIONS TO PONDER**

Q1. IS THE CAA'2019 CONSTITUTIONAL?

Q2. WHO IS RESPONSIBLE FOR THE DELHI RIOTS?

Q3. ARE THE DELHI RIOTS REPRESENTATIVE OF THE PEOPLE'S DISBELIEF IN THE SUPREME COURT AND THE GOVERNMENT?

Q4. HOW CAN THE CAA BE REVOKED AND WHY SHOULD IT BE?

Q5. WHAT DOES THE DELHI RIOT CHARGESHEET INDICATE?

Q6. HOW CAN THIS ISSUE OF SELECTIVE SECULARISM BE TACKLED?

Q7. IS CAA PROOF OF MINORITY MARGINALISATION, OR BASED ON A CONSTITUTIONALLY RECOGNISED PRINCIPLE?

Q8. WHICH CRITICISMS AND SUPPORTS OF THE CAA HOLD TRUE AND WHY OR WHY NOT?