

Citizenship Amendment Act 2019 (CAA)

The Citizenship Amendment Bill was first introduced in 2016 by the Lok Sabha by amending the Citizenship Act of 1955. This bill was referred to a Joint Parliamentary Committee, whose report was later submitted on January 7, 2019. The Citizenship Amendment Bill was passed on January 8, 2019, by the Lok Sabha which lapsed with the dissolution of the 16th Lok Sabha. This Bill was introduced again on 9 December 2019 by the Minister of Home Affairs Amit Shah in the 17th Lok Sabha and was later passed on 10 December 2019. The Rajya Sabha also passed the bill on 11th December.

The CAA was passed to provide Indian citizenship to the illegal migrants who entered India on or before 31st December 2014. The Act was passed for migrants of six different religions such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. Any individual will be considered eligible for this act if he/she has resided in India during the last 12 months and for 11 of the previous 14 years. For the specified class of illegal migrants, the number of years of residency has been relaxed from 11 years to five years.

CAA 2019

- Citizenship Amendment Bill 2019 gets Parliament's nod.

What is Citizenship?

- Citizenship defines the relationship between the nation and the people who constitute the nation.
- It confers upon an individual certain rights such as protection by the state, right to vote and right to hold certain public offices, among others, in return for the fulfilment of certain duties/obligations owed by the individual to the state.

Citizenship in India

- The Constitution of India provides for a single citizenship for the whole of India.
- Under **Article 11 of the Indian Constitution**, Parliament has the power to regulate the right of citizenship by law. Accordingly, the parliament had passed **Citizenship act of 1955** to provide for the acquisition and determination of Indian Citizenship.
- **Entry 17, List 1 under the Seventh Schedule** speaks about Citizenship, naturalization and aliens. Thus, Parliament has exclusive power to legislate with respect to citizenship.
- **Until 1987**, to be eligible for Indian citizenship, it was sufficient for a person to be born in India.
 - Then, spurred by the populist movements alleging massive illegal migrations from Bangladesh, citizenship laws were first amended to additionally require that at least one parent should be Indian.
- **In 2004**, the law was further amended to prescribe that not just one parent be Indian; but the other should not be an illegal immigrant.

Who is an illegal migrant in India?

Under the Act, an illegal migrant is a foreigner who:

- Enters the country without valid travel documents like a passport and visa, or
- Enters with valid documents, but stays beyond the permitted time period.

Illegal migrants may be put in jail or deported under the Foreigners Act, 1946 and the Passport (Entry into

The scenario before the passing of the Act

- Under the existing laws, an **illegal migrant is not eligible to apply for acquiring citizenship**. They are barred from becoming an Indian citizen through registration or naturalisation.
 - The Foreigners Act and the Passport Act debar such a person and provide for putting an illegal migrant into jail or deportation.
- A person can become an **Indian citizen through registration**.
 - **Section 5 (a) of Citizenship act of 1955**: A person of Indian origin who is ordinarily **resident in India for seven years** before making an application for registration;
 - And they should have lived in India continuously for 12 months before submitting an application for citizenship.
- Under the Citizenship Act, 1955, one of the requirements for citizenship by **naturalization** is that the applicant must have resided in India during the last 12 months, as well as for 11 of the previous 14 years.

What the Act intends to do?

- The Citizenship Amendment Act 2019 aims to make changes in the Citizenship Act, the Passport Act and the Foreigners Act if the illegal migrants belong to religious minority communities from three neighboring countries of Bangladesh, Pakistan and Afghanistan.
- Simply put, the Citizenship Amendment Act will **grant the illegal non-Muslim migrants the status of legal migrants** despite them having come to India without valid documents and permission.

Features of CAA 2019

- The Act seeks to **amend the Citizenship Act, 1955** to make Hindu, Sikh, Buddhist, Jain, Parsi, and Christian **illegal migrants** from Afghanistan, Bangladesh, and Pakistan, eligible for citizenship of India. In other words, the Act intends to make it easier for non-Muslim immigrants from India's three Muslim-majority neighbours to become citizens of India.
 - The legislation applies to those who were "forced or compelled to seek shelter in India due to persecution on the ground of religion". It aims to protect such people from proceedings of illegal migration.
- The amendment relaxes the requirement of **naturalization** from 11 years to 5 years as a specific condition for applicants belonging to these six religions.
- The **cut-off date for citizenship is December 31, 2014**, which means the applicant should have entered India on or before that date.
- The Act says that on acquiring citizenship:
 - Such persons shall be deemed to be citizens of India from the date of their entry into India, and
 - All legal proceedings against them in respect of their illegal migration or citizenship will be closed.
- It also says people holding Overseas Citizen of India (OCI) cards - an immigration status permitting a foreign citizen of Indian origin to live and work in India indefinitely - can lose their status if they violate local laws for major and minor offences and violations.

Exception

- The Act adds that the provisions on citizenship for illegal migrants will not apply to **the tribal areas of Assam, Meghalaya, Mizoram, and Tripura**, as included in the Sixth Schedule of the Constitution.

- These tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.
- It will also not apply to the areas under **the Inner Line Permit under the Bengal Eastern Frontier Regulation, 1873**.
 - The Inner Line Permit regulates the visit of Indians to Arunachal Pradesh, Mizoram, and Nagaland.

Criticism

It is against Muslims

- The fundamental criticism of the Act has been that **it specifically targets Muslims**. Thus, the religious basis of citizenship not only violates the principles of secularism but also of liberalism, equality and justice.
 - It fails to allow Shia, Balochi and Ahmadiyya Muslims in **Pakistan** and Hazaras in **Afghanistan** who also face persecution, to apply for citizenship.
 - A key argument against the CAA is that it will not extend to those persecuted in Myanmar and Sri Lanka, from where Rohingya Muslims and Tamils are staying in the country as refugees.
 - Neither is religious persecution the monopoly of three countries nor is such persecution confined to non-Muslims.

It violates Article 14

- Critics argue that it is **violative of Article 14** of the Constitution, which guarantees the right to equality.
 - The CAA is in the teeth of Article 14, which not only demands reasonable classification and a rational and just object to be achieved for any classification to be valid but additionally **requires every such classification to be non-arbitrary**.
 - The **Act is an instance of class legislation**, as classification on the ground of religion is not permissible.

Why North East is objecting to CAA?

- In the **Northeastern states**, the prospect of citizenship for massive numbers of illegal Bangladeshi migrants has triggered deep anxieties, including **fears of demographic change**, loss of livelihood opportunities, and erosion of the indigenous culture.
- The Act appears to **violate the Assam Accord, both in letter and spirit**.
 - The Assam Accord, signed between the then Rajiv Gandhi-led central government and the All Assam Students' Union (AASU), had fixed March 24, 1971, as the cutoff date for foreign immigrants. Those illegally entering Assam after this date were to be detected and deported, irrespective of their religion.
 - The Citizenship Amendment Act moved the cutoff date for six religions to December 31, 2014, something that is not acceptable to the Assamese-speaking people in Brahmaputra Valley, who insist that all illegal immigrants should be treated as illegal.
- There is also an **economic problem**. If tens of thousands leave Bangladesh and start staying legally in Assam and North East, the pressure will first show in the **principal economic resource—land**.
 - Also, since these will be legitimate citizens, there will also be more people joining the queue of **job hopefuls** that can potentially lower opportunities for the indigenous and the locals.
- It also boils down to the **political rights** of the people of the state. Migration has been a burning issue in Assam.
 - There is a view that illegal immigrants, who will eventually become legitimate citizens, will

be determining the political future of the state.

Other issues surrounding CAA

- CAA does not consider Jews and atheists. They have been left out of the Act.
- The basis of clubbing Afghanistan, Pakistan, and Bangladesh together and thereby excluding other (neighbouring) countries is unclear.
 - A common history is not a ground as Afghanistan was never a part of British India and was always a separate country. Being a neighbour, geographically, is no ground too as Afghanistan does not share an actual land border with India.
- Countries such as Nepal, Bhutan, and Myanmar, which share a land border with India, **have been excluded**.
 - The reason stated in the ‘Statement of Objects and Reasons’ of the Act is that these three countries constitutionally provide for a “state religion”; thus, the Act is to protect “religious minorities” in these theocratic states.
 - The above reasoning fails with respect to **Bhutan, which is a neighbor and constitutionally a religious state with the official religion being Vajrayana Buddhism**.
 - Non-Buddhist missionary activity is limited, construction of non-Buddhist religious buildings is prohibited and the celebration of some non-Buddhist religious festivals is curtailed. Yet, Bhutan has been excluded from the list.
 - Focus only on religious persecution:
 - On the classification of individuals, the Act provides benefits to sufferers of only one kind of persecution, i.e. religious persecution neglecting others.
 - Religious persecution is a grave problem but **political persecution is also equally existent in parts of the world**. If the intent is to protect victims of persecution, the logic to restrict it only to religious persecution is suspect.
 - The seemingly unconstitutional provisions of the CAA will **deny equal protection of laws to similarly placed persons who come to India as “illegal migrants”** but in fact grant citizenship to the less deserving at the cost of the more deserving.
 - The provisions of CAA might lead to a situation where a Rohingya who has saved himself from harm in Myanmar by crossing into India will not be entitled to be considered for citizenship, while a Hindu from Bangladesh, who might be an economic migrant and have not faced any direct persecution in his life, would be entitled to citizenship.
 - Similarly, a Tamil from Jaffna escaping the atrocities in Sri Lanka will continue to be an “illegal migrant” and never be entitled to apply for citizenship by naturalization.
 - There is also a reduction in the residential requirement for naturalization — from 11 years to five. The reasons for the chosen time frame has not been stated.

Arguments put forward by supporters of the Act

It is not against Muslims

- The Ahmediyas and Rohingyas can still seek Indian citizenship through naturalization (if they enter with valid travel documents).
 - In any case, since India follows the principle of non-refoulment (even without acceding to the Refugee Convention 1951), they would not be pushed back.
 - If a **Shia Muslim** is facing persecution and is in India seeking shelter, his case to continue to reside in India as a refugee shall be considered on its merits and circumstances.
 - With **regard to Balochi refugees**, Balochistan has long struggled to be independent of Pakistan and including Balochis in the CAA could be perceived as interference in Pakistan’s internal affairs.
 - The CAA, therefore, does not exclude Muslims from Pakistan, Bangladesh and Afghanistan

to apply for Indian citizenship. They can continue to do so in the same way singer Adnan Sami, for example, applied for citizenship.

- It is important to note that even minorities shall not be granted automatic citizenship. They would need to fulfill conditions specified in the Third Schedule to the Citizenship Act, 1955, namely, the good character requirement as well as physical residence in India
- **Harish Salve, one of India's biggest names in national and international law**, has stated that the Citizenship Amendment Act is not anti-Muslim
 - Salve stated that the countries specified in the CAA have their own state religion and Islamic rules. He added that Islamic majority nations identify their people as per who follows Islam and who does not. Addressing governance problems in neighbouring countries is not the purpose of the CAA.
 - Over the issue of Rohingyas, Salve stated that a law that addresses one evil does not need to address all the evils in all countries. It is notable here that Myanmar, though a Buddhist majority nation, does not have a state religion and Myanmar does not feature in CAA.

The Act is not a violation of Article 14

Sovereign space

- To begin with, the justiciability of citizenship or laws that regulate the entry of foreigners is often treated as a 'sovereign space' where the courts are reluctant to intervene.
 - Thus in **Trump v Hawaii No. 17-965, 585 U.S. (2018)**, the US Supreme Court upheld travel ban from several Muslim countries holding that regulation of foreigners including ingress is "fundamental sovereign attribute exercised by the government's political departments largely immune from judicial control."
 - Indian courts have generally followed a similar reasoning. In **David John Hopkins vs. Union of India (1997)**, the Madras High Court held that the right of the Union to refuse citizenship is absolute and **not fettered by equal protection under Article 14**.
 - Similarly in **Louis De Raedt vs. Union of India (1991)**, the Supreme Court held that the right of a foreigner in India is confined to Article 21 and he cannot seek citizenship as a matter of right.

With respect to North East

- Citizenship Amendment Act does not dilute the sanctity of the Assam Accord as far as the cut-off date of March 24, 1971, stipulated for the detection/deportation of illegal immigrants is concerned.
- Citizenship Amendment Act is not Assam-centric. It is applicable to the whole country. Citizenship Amendment Act is definitely not against National Register of Citizens (NRC), which is being updated to protect indigenous communities from illegal immigrants.
- Further, there is a cut-off date of December 31, 2014 and benefits under Citizenship Amendment Act will not be available for members of the religious minorities who migrate to India after the cut-off date.

Historical Connections

- The Act does not give a carte blanche to Hindus and Christians and Sikhs from other countries to come to India and get citizenship. Just these three countries. Why?
- Because each of these has been civilizationally tied with India. The circumstances in which they were partitioned from India have created a situation where Hindus and other minority population have been dwindling ever since the partition took place.
- Regarding including other countries in the neighbourhood the argument could be that we can deal with them separately if the need arises as we did in the case of persecuted Sri Lankan Tamils.

Conclusion

The parliament has unfractured powers to make laws for the country when it comes to Citizenship. But the opposition and other political parties allege this Act by the Government violates some of the basic features of the constitution like secularism and equality. It may reach the doors of the Supreme Court where the Supreme Court will be the final interpreter. If it violates the constitutional features and goes ultra-wires it will be struck down, if it is not we will have a new law.

But one thing that is most important is, an equilibrium has to be attained by New Delhi as this involves neighboring countries too. Any exaggerated attempt to host the migrants should not be at the cost of goodwill earned over the years. India being a land of myriad customs and traditions, a birthplace of religions and the acceptor of faiths and protector of persecuted in the past should always uphold the principles of Secularism going forward.

Nehru-Liaquat Pact

- It was an agreement between the Governments of India and Pakistan regarding **Security and Rights of Minorities** that was signed in Delhi in 1950 between the Prime ministers of India and Pakistan, Jawaharlal Nehru and Liaquat Ali Khan
- The need for such a pact was felt by minorities in both countries following Partition, which was accompanied by massive communal rioting.
- In 1950, as per some estimates, over a million Hindus and Muslims migrated from and to East Pakistan (present-day Bangladesh), amid communal tension and riots such as the 1950 East Pakistan riots and the Noakhali riots.

Under the Nehru-Liaquat pact

- refugees were allowed to return unmolested to dispose of their property
- abducted women and looted property were to be returned
- forced conversions were unrecognized
- minority rights were confirmed

What did India and Pakistan agree upon?

- “The Governments of India and Pakistan solemnly agree that each shall ensure, to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality,” the pact said.
- “Members of the minorities shall have equal opportunity with members of the majority community to participate in the public life of their country, to hold political or other office, and to serve in their country’s civil and armed forces. Both Governments declare these rights to be fundamental and undertake to enforce them effectively.”

Context

- Amit Shah referred to the Nehru-Liaquat pact on a few occasions in Parliament to justify the Citizenship Act.

