

## Centre-State Rights: RSTV – Big Picture

Rajya Sabha TV programs like 'The Big Picture', 'In Depth' and 'India's World' are informative programs that are important for UPSC preparation. In this article, you can read about the discussions held in the 'Big Picture' episode on "Centre-State Rights" for the IAS exam.

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### Context:

- The opposition ruled states, such as Kerala, Punjab, West Bengal and Chhattisgarh have expressed their opposition to implement the Citizenship Amendment Act (CAA), 2019.
- The opposition by the states to implement the CAA presents a challenge to India's federal structure as the legislation has been passed by Parliament and is binding on all states after the Presidential assent.
- The states have cited the existing situation of law and order as the reason for their non-cooperation with the CAA.

### Larger Background:

- The CAA, which is an amendment to the **Citizenship Act of 1955**, was passed by the Parliament of India on 11th December 2019.
- The amendment provides a pathway to Indian citizenship for the religious minorities being persecuted in Afghanistan, Bangladesh and Pakistan. The minorities include Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities.
- The Act has been widely criticized for excluding Muslims and, has been criticized for discriminating on the basis of religion.
- The Act is a result of the election manifesto of the Bharatiya Janata Party (BJP). BJP had promised, as a part of its election manifesto, to offer citizenship to the religious minorities being persecuted in the neighbouring countries.
- The **Citizenship Amendment Bill** was introduced on July 16th, 2016, in the Lok Sabha and was referred to a joint committee.
- The Bill had lapsed with the dissolution of the 16th Lok Sabha; but, was cleared by the Union Cabinet for introduction in the Parliament after the formation of the 17th Lok Sabha.
- The Minister of Home Affairs Amit Shah had introduced the Bill in the Lok Sabha, and it was passed by both the Lok Sabha and the Rajya Sabha. The President's assent was given on 12th December, **changing its status from a Bill to an Act.**
- Congress, Trinamool Congress, Communist Party of India (Marxist) and a few other political parties have been steadfastly opposing the bill, claiming that citizenship can't be given on the basis of religion.

### Objective of CAA:

- The objective of the Act is to provide citizenship to the minority communities who are fleeing religious persecution from Afghanistan, Pakistan and Bangladesh.

### Provisions of CAA:

- India follows the rule of **Jus sanguinis**, which translates to **Law of the Blood**.
- The CAA amends the **Citizenship Act of India (1955)**, to provide that Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan will be treated as legal migrants. Thus, the migrants can apply for Indian Citizenship either through Naturalisation or Registration.
- The Act also relaxes the requirement of naturalization from 11 years to 5 years as a specific condition for applicants belonging to these six religions.
- The Act says that on acquiring citizenship:
  - Such people 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.

### Need for CAA:

- The religious persecution faced by the minority communities in the neighbouring countries necessitated the amendments to the Citizenship Act, 1955.
- Pakistan had failed to implement the **Nehru-Liaquat Pact of 1950** in the strictest sense, thereby, creating a need for the amendments to be made, especially in the light of people not being given the freedom to practise their religion. The environment created forced the minority communities to choose between converting their religion or death.
  - **The Nehru-Liaquat Pact of 1950** 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.

### Arguments for the Act:

- **The Act isn't Anti-Muslim:** The Muslims from the three countries would still be able to apply for citizenship through naturalization (provided they travel with valid documents). Minority Muslims, such as Rohingyas and Ahmediyas can still seek Indian citizenship, because India follows the principle of non-refoulement and hence, would not push them back.
  - Minorities listed would not be granted citizenship immediately. They would also need to fulfil the good character and physical residence requirement, as per the **Third Schedule to the Citizenship Act, 1955**.
- **The Act is not a violation of Article 14:** The justiciability of citizenship or laws that regulate the entry of foreigners are often treated as '**sovereign space**' where the courts are reluctant to intervene. The vesting of citizenship is completely at the discretion of the Government.
- **North-eastern states:** The CAA is applicable to the entire country and is not focussed on Assam or any of the other north-eastern states. It goes hand-in-hand with the **National Register of Citizens (NRC)**, thereby making efforts to protect indigenous communities.

### Arguments against the Act:

- It's **Anti-Muslim**. CAA does not consider **Jews and atheists** also. They have been left out of the Act.
- It's a **violation of Article 14**, which guarantees the right to equality.
- It would result in a **demographic change** in the north-eastern states, by replacing the indigenous communities.
- Countries such as Nepal, Bhutan, and Myanmar, which share a land border with India, have been **excluded from the Act**.

## Why is a legislation passed by the Parliament binding on all states?

- The Constitution has supremacy in India, unlike in countries like the UK where the Parliament has the ultimate supremacy.
- The Part-II (Articles 5-11) of the Indian Constitution deals with citizenship. It is the Union Parliament of the union legislature which is in control of citizenship.
- If the states raise opposition to fundamental issues such as citizenship, it would be seen as a compromise on national integrity and therefore, as a violation of the Constitution.

## Rights of States in a Federal Structure:

- According to the Constitution of India, India is a union of states, however, the distribution of rights and powers renders a federal form of government.
  - India is a federal state, however, to which extent is the federalism followed, can be assessed by two factors:
    - The residuary powers rest with the centre.
    - Power to amend the Constitution rests with the Parliament alone.
  - India adopted the federal structure of government because of:
    - The large size of the country
    - Regional and linguistic diversity
    - Division of power in the Indian Constitution.
  - The Constitution has divided the powers between the states and the centre under **Legislative, Administrative and Financial** relations.
  - The legislative subjects are divided into **List I (the Union List), List II (the State List) and List III (the Concurrent List)**.
    - The subject of citizenship, naturalization and aliens would fall under the Union List (Entry 17). It is a subject on which only the Union/Parliament can make a decision.
  - Laws enacted by the Parliament have to be implemented, and the states cannot refuse it. The elbowroom available for states is that they can delay the implementation of the act, on the grounds of a law and order situation.
    - The refusal to implement a law passed by the Parliament would indicate a breakdown of the Constitutional machinery and allow the centre to invoke Article 356.
1. **The division of power in India**
    - India is an amalgamation of British India and the princely states, and the division of power between the centre and the states ensures that the erstwhile princely states also have a say.
    - The purpose of the integration was to ensure that India does not head towards **Balkanisation**, because, no independent state of the country would be able to withstand the expansive and aggressive designs of international powers. This necessitates the union thereby making India a Union of states and not a federation of states.
    - It is essentially the reason as to why the powers are centralized within the domain of the Parliament.
    - India is a sovereign country with defined borders, and the decisions made by the Union must be respected and heeded to.

## 2. Why are certain states hesitant to implement the CAA?

- The states are hesitant to implement the CAA, based on the following arguments:
  - **Consent** of the states was not taken into account before passing the Act.
  - The consensus of the country was not taken into account, on such a sensitive and controversial issue.
  - The states feel that the implementation of this Act would compromise the interests of the residents within their territory.

### CAA and NRC:

- The confusion and unrest are mostly attributed to the muddling of waters between NRC and CAA.
- The issues of Citizenship and Naturalization fall under the exclusive domain of the Union, with the states playing the role of implementation alone.
- Part II (Articles 5-11) of the Indian Constitution deals with the topics of Citizenship and Naturalization.
- Article 11 gives Parliament the right to pass a law concerning citizenship.
  - Article 11 states that **“Nothing in the foregoing provisions (5-10) of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.”**
- Apart from the Articles 5-11, citizenship is also connected to the **Citizenship Act, 1955** and the **Foreigners Act, 1946**.
  - The Foreigners Act, 1946 is still effective despite being a colonial legislation.
- The vesting of the citizenship falls within the domain of Articles 5-11, and the Citizenship Act, 1955, whereas the deportation of illegal migrants falls within the scope of the Foreigners Act, 1946.
- Hence, NRC falls primarily within the domain of Foreigners Act, 1946 as the illegal migrants can be deported under the Foreigner’s Tribunal set up under the Act.
- The CAA falls under the citizenship rules which have been separately constituted under the framework.
  - Citizenship falls under one specific legislation coupled with provisions of the Constitution, and the aspect of deputation of illegal migrants falls under a different legislation.
  - Hence, CAA is about the **inclusion of the people** facing discrimination on the basis of religion, rather than excluding the people on the basis of religion.

### Law and Order is a state subject- can the states hide behind this?

- Dealing with a law and order situation is exclusively within the domain of the state, but it cannot be used as an excuse to prevent the implementation of a central law.
- Using law and order as an excuse might buy the states time to defer the implementation, but cannot allow them to prevent or refuse the implementation of the Act.

### Way Forward:

- **National Human Rights Commission (NHRC)** should step into the picture if, as a consequence of the non-implementation of CAA by the states, the human rights and the basic dignities of the refugees which they are entitled to as per CAA, is stalled in any manner.
  - Consideration has to be given to the beneficiaries of the Act. The refugees who are a minority in these three countries and are facing persecution, have fled their country and are living in India under miserable conditions.
  - Protests for further inclusions should not hinder the process to include the people who are currently suffering and face persecution.
- **Proper Communication:** The states and the centre should be maintaining a cordial relationship and the opinions of the states have to be taken into account before implementing any acts, as India is a union of states.
  - A national advisory council should be called and a discussion with the Chief Ministers should be held as to what measures can be taken to deal with a law and order situation.
- **Spreading Awareness:** The public needs to be made aware of the distinction between the people who have a dire need of citizenship due to persecution on religious grounds, and people who have migrated to India looking for economic opportunities.

- The government must publicize the correct information regarding the Act and its necessity, to prevent the spread of misinformation and protests.
- **Unanimity on the issue:** Citizenship has a bearing on internal security and external aggression, and thus it is imperative that states should not politicize this particular issue, as it would lead to the sacrifice of the nation's security, sovereignty, its territorial integration, and its demographic integration.

**Other Important Points:**

- Illegal migrants may be imprisoned or deported under the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920.
- However, in 2015 and 2016, the Central government issued notifications to exempt certain groups of illegal migrants from the provisions of the 1920 and the 1946 acts.
  - These groups included Hindus, Sikhs, Christians, Buddhists, Jains, and Parsis coming from Afghanistan, Bangladesh and Pakistan.
- This notification implied that these groups would not be imprisoned or deported for not possessing valid documents.

**Conclusion:**

- The CAA doesn't affect the existing Indian citizens.
- It concerns the citizenship and naturalization of particular communities facing religious persecution from Afghanistan, Pakistan and Bangladesh.
- The subject of Citizenship and Naturalization comes under the Union List and the states cannot refuse to implement the law passed by the Parliament.