Citizenship Amendment Act: Examining its Impact As A New Hope or Despair!

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Abstract: *The Citizenship Amendment Act or CAA is many things at the same time a political promise, a new hope, persecuted migrants, a long pending demand, and a controversial law. The Citizenship Act 1955 has been amended several times since its enactment, 2019 being the latest one, this amended act was not enforced until the year 2024 on the eve of elections making it the first religion-based citizenship test, which fast-tracks the process of acquiring Indian citizenship on meeting certain conditions. The controversy surrounding this amendment act is that the law has created two tiers of citizenship in India: non-Muslims and Muslims, which resulted in widespread protests, and sectarian violence, killing scores of people, and wounding hundreds. The law states that if any people from any of the five communities namely Hindus, Sikhs, Parsis, Jains, and Christians, belonging from these three countries namely Pakistan, Bangladesh, and Afghanistan had entered India before 31.12.2014 their process of acquiring Indian citizenship would be fast-tracked, this is the law on which the controversy and misinterpretation lie. This paper will delve deep into the myths and facts about the law, whom would this law benefit, and who would be discriminated against if at all any.*

Keywords: *Citizenship, Religion-based, Fast-track, Amendment, Controversy*

I. PRELUDE

The Citizenship (Amendment) Act, 2019 creates a pivotal stage in the legislative history of India. It reshapes the narratives of the concept of citizenship within its geographical frontiers. The statute has been enacted as an amendment 'version' of the legislation, Citizenship Act, 1955 and it introduces some key changes to the process related to naturalization by providing benefits to the 'minorities' section facing religious hostility in the neighbouring countries of India, namely, Afghanistan, Bangladesh and Pakistan.

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By setting the platform of eligibility for citizenship to the individuals belonging to the religion of Hindu, Sikh, Buddhist, Jain, Parsi and Christian, those who have faced ill-treatment in the nations mentioned earlier, the statute embedded a spirit of the notion of inclusivity and compassion. Further, the statute which came into effect in the month of March, 2024 also tried

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to provide a safe haven for all those who are in need. It streamlines the citizenship acquisition process by lowering the requirement of residency from the term of eleven years to five years.[1] The propagation of the Citizenship (Amendment) Act, 2019 from its very inception in the year 2016 to its eventual passage in the month of December, 2019 underscores the compound interplay between the legislative pathways and the societal narrations. The traces of the statute were way back to the growing tensions related to the illegal migration, specifically from Bangladesh which led to make amendments to the laws governing citizenship.[4] The recent provisions reflect a delicate balance between addressing security concerns and the promoting the values of humanitarianism along with the view of religious pluralism.

II. PRINCIPLES RELATED TO CITIZENSHIP

In India, there are two kinds of people, firstly the citizens who are full-time members of the Country and who enjoy all the rights granted by the grundnorm of the country and in return have several obligations which are the duties owed by them towards the state. Secondly, there are the aliens, in the legal aspect, they are the foreign-born resident who is the citizen of the country where they reside, by birth or naturalization, and who is still a citizen or subjects of other countries.[2] Countries around the globe have established several systems and rules that govern the accreditation of citizenship, the major ones being by birth, naturalization, or marriage. Most countries including India conform to the two following systems namely *'Jus Soli'* which means by birth in a country citizenship can be acquired also known as birthright citizenship. *'Jus Sanguinis'* means a person acquires citizenship through descent or blood ties, that is through parents or ancestors and where he/she is born is irrelevant.[3]

III. CONSTITUTIONAL PROVISIONS RELATED TO CITIZENSHIP

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[1] *India: Citizenship Amendment Act is a blow to Indian constitutional values and international standards* (April 7, 2024, 2:12 PM), https://www.amnesty.org/en/latest/news/2024/03/india-citizenship-amendment-act-is-ablowto-indian-constitutional-values-and-inte.html; *CAA Is A Parliamentary Recognition Of Neighbourhood Situation*: Sources; https://www.ndtv.com/india-news/caa-is-a-parliamentary-recognition-of-neighbourhood-situationsources5231281 (April 7, 2024, 2:45 PM)

[2] Atasi Ghosh, *What We Talk about When We Talk about Citizenship in India,* https://thewire.in/law/what-we-talk-about-when-we-talk-about-citizenship-in-india.html. (April 7, 2024, 7:45 P.M.)

[3] *Ibid*

The articulation of citizenship in India's Constitution was a conscientious process, filled with debates, and considerations, and influenced by colonial heritage and the aftermath of Partition, the makers of the Constitution drafted a unified citizenship structure inclusive of the safeguards of the citizens against the illegal immigrants. Part II of the Indian Constitution from Article 5-11 deals specifically with the concept of citizenship, though there is no clear definition of citizenship that has been provided under the Constitution. Citizenship is the subject matter of the Union list specified in the 7th Schedule and Parliament alone holds the power of making laws relating to citizenship.[4]

a) Article 5- Citizenship at the commencement of the Constitution

- Persons who were domiciled and born in India were given citizenship
- Citizenship was also given to
  - People domiciled in India but not born in India, but either of their parents had taken birth in India.
  - Anyone who has ordinarily resided in India for five years immediately before the commencement of the Constitution.

b) Article 6- Citizenship of certain persons migrated from Pakistan

- People who migrated to India before the date of 19 July 1949 were considered citizens of India if either of their parents or grandparents had been born in India.
- People had to go through the process of registration if they migrated to India from Pakistan if they had entered after the above-specified date.

c) Article 7- Citizenship of some persons migrated to Pakistan

- Any person who has migrated from the territory of India to Pakistan shall not be a citizen of India, but
- If that said person returns under the permit for resettlement or permanent return issued by or under the authority of any law, then he will be considered an Indian citizen.

d) Article 8- Persons of Indian Origin residing outside India

[4] *Constitution of India*, 1950.

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This article mentions that any person of Indian origin residing outside India, or either of whose parents or grandparents were born in India could register themselves as an Indian citizen with Indian Diplomatic Mission.

e) Article 9- Single Citizenship

This article asserts the notion of single citizenship. It states that any person who had voluntarily acquired the citizenship of a foreign State will no longer be a citizen of India.

f) Article 10- Continuation of Citizenship

This article reaffirms that any person who has received Indian citizenship under any of the provisions of Part II of the Indian Constitution shall continue to be a citizen and will be subjected to any law made by the Parliament of India.

g) Article 11- Citizenship as a subject matter of Union List

This article mentions that any laws regarding the acquisition and termination of citizenship can only be made by the Parliament of India.

All the above factors do not in themselves grant the citizenship status of India to the individuals, but fulfilling those conditions makes the individual eligible for the application process of acquiring citizenship.

IV. HISTORICAL BACKGROUND OF THE INDIAN CITIZENSHIP ACT

The concept of Indian citizenship came into the limelight post India's Independence in 1947. Before that period, during British colonial rule, Indians were not granted any individual citizenship rights and were categorized as British subjects. The status was regulated by the British Nationality Act of 1914 until it was revoked in 1948. The partition of India in 1947 resulted in notable population movements between India and Pakistan which demanded a framework for determining the citizenship of India. In its inception, the Constituent Assembly addressed this matter to regulate the citizenship of migrants. Eventually, the Indian Parliament passed the Citizenship Act 1955, which laid down the specific and clear provisions and the eligibility criteria for acquiring Indian citizenship.[5]

[5] *A Critical Analysis of the Citizenship Act, 1955* https://legalvidhiya.com/acriticalanalysis-of-the-citizenship-act-1955/html. (April 8, 2024)

V. NEED FOR THE CITIZENSHIP ACT OF 1955

The Citizenship Act of 1955, is also referred to as the Indian Nationality which holds notable importance as a key piece of legislation that depicts the interconnection between individuals and the nation of India. This legislation is the main authority deciding the eligibility criteria for Indian citizenship, putting forward the privileges, obligations, and commitments with acquiring citizenship of the country. This Act was passed by the Indian Parliament on 30th December 1995 and stands as both important and foundational legislation that defines the boundaries of Indian citizenship, with a pivotal role in safeguarding the welfare and the liberties of Indian citizens.[6] There are several modes provided under this act through which Indian citizenship can be acquired and determined by fulfilling the diverse circumstances, majorly there are four methods:

☐ Birth- Any individual born within the geographical limits of India by default qualifies for Indian citizenship, but certain circumstances need to be met. Citizenship under this head can be acquired only if these criteria are fulfilled:

- Any person born in India on or after 26.01.1950 but before 01.07.1987 is an Indian citizen irrespective of the nationality of their parents.
- Any individual born in India between 01.07.1987 and 02.12.2004 is a citizen of India provided that either of his or her parents was an Indian citizen at the time of that specific individual's birth.
- Any person born in India on or after 03.12.2004 is a citizen of India only if both the parents of the said individual are Indians or at least one parent is an Indian citizen and the other is not an illegal migrant at the time of his or her birth.[7]

☐ Registration- Any individual with Indian lineage can apply for the citizenship of India through this method. Citizenship under this can be acquired only if these criteria are fulfilled-

- A person who is of Indian origin and who resided in India for seven years can apply for the registration.

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[6] *Ibid*

[7] *Id.*

- Any individual who is married to an Indian citizen and is ordinarily residing in India for seven years before applying for registration.
- Minor children of persons who are citizens of India.[8]

☐ Descent- This method of acquiring citizenship is provided only to persons who are born outside India, but whose parents are of Indian origin. Citizenship under this head can be

- Any individual born outside India on or after 26.01.1950 is a citizen by descent if his or her father was a citizen of India by birth.
- Any person born outside on or after 10.12.1992 but before 03.12.2004 then if either of his parents is a citizen by birth.
- If the individual is born outside, India on or after 03.12.2004 can acquire citizenship only on the declaration from his or her parents that the minor does not hold a passport of another country and his or her birth is registered at an Indian consulate within one year of that individual's birth.[9]

☐ Naturalization- Any person can acquire citizenship of India through this method if he or she is an ordinarily resident of India for 12 years (12 months preceding the date of application and 11 years in aggregate out previous 14 years.)

This period of 11 years out of the 14 years has been reduced to five years out of the 14 years in the Citizenship Amendment Act 2019.[14]

VI. REQUIREMENT FOR THE AMENDMENT ACT OF 2019

The Citizenship Act, 1955 had been amendment through the Citizenship (Amendment) Act, 2019 which highlights several changes. The amendment statute allows certain groups of individuals particularly belonging to these communities Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from neighbouring three countries, such as Afghanistan, Bangladesh or Pakistan to be eligible to apply for the citizenship in India, if they have entered India on or before the 31st day of December, 2014 and subject to meet certain criteria by making change in the provision of Section 2(1)(b) of the Citizenship Act, 1955 which dealt and defined the

[8] *Id.*

[9] *Id.*

concept of 'illegal migrant'.[13] Thus, the new legislation aims to streamline the concept of citizenship and its procedure related to it much easier for the 'undocumented immigrants' to stay and acquire the citizenship right of India. The amended legislation reduced the requisite period of 'naturalization' from the term of eleven years to five years for all the applicants belonging to the specified religions contributes towards facilitating the integration of these communities into the society and soil of India. Further, important to be noted that the 'cut-off' date of the entire procedure has been fixed on and from 31st January, 2014 which ensures that those who have been living in India for an extended period and also subject to have faced persecution in their home countries are given the opportunity to regularize their status and to become a citizen of India.[10]

The Citizenship (Amendment) Act, 2019 apart from providing citizenship, also provides a ambience of security by closing all legal proceedings regarding the 'illegal' migration to the eligible individuals. Insertion of a new provision, *Section 6B* in the Citizenship Act, 1955 apart from outlining the process of granting certificate of registration, also includes provision for the abatement of pending proceedings upon the conferment of citizenship on that individual. The amended statute is also required to address the status of Overseas Citizens of India (OCI) cardholders. Section 7D of Citizenship Act, 1955 deals with the cancellation of registration granted to the Overseas Citizens of India. However, the amended legislation directs that OCIs can lose their status, after giving the opportunity of being heard, if there is any violation of the laws of this Act. This in turns highlight that statute also create the ground that the individuals should have to abide by the laws and regulations of this country and in turn it fosters the sense of responsibility as well as accountability among the foreign citizens having Indian origin. The Citizenship (Amendment) Act, 2019 thus reflects a pragmatic and humanitarian approach to handle the refugee problem along with making a balance between safeguarding the national interests and ensuring compliance with the legal rules and procedures.

VII. REASONS FOR THE DELAY IN THE IMPLEMENTATION

The Citizenship (Amendment) Act, 2019 was passed by the Parliament of India on 11

[10] *Citizenship Amendment Act (CAA) 2019 - Background & Controversies* https://byjus.com/free-ias-prep/citizenship-amendment-bill-2019/ (April 15, 2024)

December, 2019 and it received the Presidential assent on the very next day i.e. December 12, 2019. However, the Government of India took a month time to notify it in the official gazette on 10 January, 2020. From then onwards, the implementation of the Citizenship (Amendment) Act, 2019 has been marred by a series of delays and subsequent extension sought by the Ministry of Home Affairs (MHA) from the Parliamentary Standing Committees on Subordinate Legislation in Lok Sabha and Rajya Sabha. Finally covering a delay of 1,521 days to frame rules for Citizenship (Amendment) Act, 2019, on March 11, 2024 the Ministry of Home Affairs (MHA) notified the Citizenship (Amendment) Rules which would lead to the implementation of the Citizenship (Amendment) Act, 2019.

The concerned authority justified that their stand for the prolonged delay in the implementation of the amended statute. They pointed towards the impact of the Covid-19 pandemic which harmed the normal operations and also created challenges in the procedure of drafting and finalizing the necessary rules and regulations. Further, the decision of the government to notify about the rules just before the declaring of the announcement of the schedule of the Lok Sabha election added criticisms.[11]

VIII. THE MISCONCEPTIONS SURROUNDING THE CITIZENSHIP AMENDMENT ACT OF 2019

This specific amended legislation has been the centre of debates, controversies, protests, and in the limelight since its inception in the year 2019. On March 11, 2024 the central government notified the Citizenship Amendment Rules 2024 to implement the CAA after four years since its enactment. The Union government notified to process the applications under CAA both at State and in Union territories, but before this there are several misconceptions which needs to bust. The misconceptions are as follows:

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a) CAA is against the secular structure of the Constitution: The amendment faced severe backlash as it instils in the minds of the people that this legislation underscores the idea of secular structure embedded in the Constitution of India as it only favours certain specific communities and discriminate the Muslims who are not considered as the vulnerable and unprotected groups in any part of the world.[12]

[11] Why is India's Citizenship Amendment Act so controversial; https://www.aljazeera.com/news/2024/3/12/why-is-indias-citizenship-amendment-act-so-controversial.html *(April 13, 2024)*
[12] Indian Citizenship (Amendment) Act, 2015

b) Citizenship Act,1955 is repealed: People has conceived the notion that the amendment act is a separate legislation than that of the principal act of 1955. Thus, it underscores a repercussion that the repealing citizenship Act of 1955 would cause distress among the migrants who are could have been eligible to acquire the citizenship under the mentioned criteria in the previous act.

c) CAA is discriminatory against the Muslims: Another misconception regarding the Citizenship (Amendment) Act, 2019 is that it treats Muslims unfairly. As, it is mentioned in that amended statute that it would provide citizenship for individuals from minority groups such as, Hindus, Sikhs, Buddhists, Jain, Parsis, Christians and there is no mention of Muslims, thus critiques say that as there is no mention of 'Muslims' so probably Muslims those who have fled from religious persecution in Pakistan, Afghanistan and Bangladesh and arrived India on or before the mentioned date would probably not get citizenship.

d) CAA will create mass influx: As per the opinion of some critique, CAA would trigger a mass influx among the people those who came as a migrant from the Bangladesh, Afghanistan, Pakistan. Stringent protocol to receive citizenship acts as a catalyst for this opinion. Thus, there is a sudden upsurge of fear among the migrants.[13]

e) CAA is against the federal structure of the Country- This misconception is that the amended law is against federalism and that State is being denied the right to make any law upon citizenship and only Parliament is making all the changes and State is being debarred from making any law.

All these misconceptions not only created confusions or tensions among the migrants those Subsequently became eligible to get the citizenship, it also created a panic and chaos which ultimately lead to a dead end and unnecessary commotion. But the government through its response clarified several of the misapprehension which led to this hue and cry.[14]

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IX. RESPONSE FROM THE GOVERNMENT

The misconceptions mentioned earlier had been clarified from the part of the government with proper justification and the centre clarified that it gives the utmost priority in upholding the

[13] *Ibid*

[14] CAA myths Busted: MHA Clears Air, says 'Indian Muslims Need Not Worry'; https://www.firstpost.com /india/caa-myths-mha-indian-citizenship-muslims-13748277.html (April 13, 2024)

rights of the citizens of India without having any biasness upon any religion and kept the focus on granting Indian citizenship to those individuals who had faced religious ill-treatment in the countries namely Afghanistan, Pakistan, Bangladesh. The responses of the misconceptions are:

a) CAA upholds the 'secular fabric' of the nation- The idea of secularism is a rooted concept in the soil of our nation. Secularism is the basic structure of the Constitution, and if any law violates the principle of secularism, then it would be void and would never be implemented. Further as per the response of the government CAA provides relief to the ill-treated migrant minorities from the humanitarian ground, without having any alteration in the status of the existing citizens of the nation.[15]

b) CAA is only an amendment to the existing law of 1955- The amended legislation of 2019 did not make Citizenship Act, 1955 obsolete. It had only altered six provisions of the principal Act of 1955. As a result, it not extended the ambit of citizenship but created a stage of legal humanitarian migration which was lacking in the main act.[16]

c) CAA is not an 'anti-Muslim' law- Mr. Amit Shah, the Hon'ble Home Minister of the Government of India stated in an interview that he believes it is the moral and constitutional responsibility of the government to give shelter to all those people who once were the part of 'Akhand Bharat' and faced sufferings of religious tyranny. He further added that the three countries are the Muslim countries and therefore there is a less chance of persecution of Muslims in those countries and the minority communities face a lot of religious persecution. Also, India unlike the other three countries is a secular nation and nobody is discriminated against any religious here, also the Muslims can become eligible under the principal law of 1955 if they fulfil any of the criteria of acquiring the citizenship.[17]

d) CAA does not grant automatic citizenship**:** The amended legislation clearly mentions that those who have entered India on or before December 31, 2014, everyone would not get the citizenship automatically but only the naturalization process's tenure has been reduced for those mentioned minority and it only makes then eligible for acquiring

[15] *Ibid*

[16] *Ibid*

[17] *Id*

citizenship. The eligible individuals would still have to go through the stringent process of verification to get the citizenship of India. Therefore, the fear of the mass influx is baseless.[18]

e) CAA is not against the federal structure- The Constitution of India under Article 11 clearly mentions that the Union that is the Parliament holds the sole power to make laws as citizenship is the subject matter of the Union list under Schedule VII. Therefore, the states in no way can make laws in any matter surrounding citizenship.[19]

X. LOOPHOLES IN THE LAW

The Citizenship (Amendment) Act, 2019 may be considered as the first instance in the recent era where the 'refugee legislation' has been shaded by the notion of 'biasness' and 'prejudice'. The amended statute pay attention to the historical context of the Partition of India in 1947. Hence, by considering the ambit of the statute, the communities those who have been affected by the Partition can be referred as the 'special religious groups' (SRGs)[20] and specifically, the amendment statute grants aid to those 'SRGs' those who came to India with or without proper documents before the mentioned date i.e. 31st December, 2014. Among many loopholes, firstly, the mentioned 'cut-off' date has been fixed on December 31, 2014. However, the date itself creating a vague stand point as there is no proper explanation from the part of the Government for fixation of that date and it is obvious that it can't be said that after the mentioned date there would be a less chance of been persecuted of the specified minority communities from the three neighbouring countries.

Secondly, CAA grants the citizenship to the individuals from the mentioned country citing them as the individuals from the minority community who has faced religious tyranny but the amended statute failed to acknowledge the fact that there are Muslims victims also in the neighbouring countries of India namely, the Rohingya Muslims in Myanmar, Ahmadiyya Muslims in Pakistan, Hazara Muslims in Afghanistan, Tamils in Sri Lanka still have to wait

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[18] *Id*

[19] *Id*

[20] *India Needs a Proper Refugee Law, Not a CAA Suffused With Discriminatory Intent,* (April 14, 2024) https://thewire.in/law/india-needs-a-proper-refugee-law-not-a-caa-suffused-with-discriminatory-intent.html (April 14, 2024)

for the period of 11 years under the 1955 Act to become eligible for acquiring the Indian citizenship.

Thirdly, though there are constitutional provisions which guides the concept of 'citizenship, but the amended legislation faced challenges on the ground that it is violative of Article 14 of the Constitution of India. Though before the Court of Law, the concerned authority i.e. the Union Government of India would not only be tested just for picking the three neighbouring countries to retain the Muslims out of the sphere but also it has created strong ground of uncertainty among the various other eligible classes as mentioned earlier by without notifying any proper rules or guidelines for them which somehow reflects an 'unequal' treatment.

Fourthly, the Citizenship (Amendment) Act, 2019 also has another loophole that it is exempted in the regions which fall under the Sixth Schedule of the Constitution of India, deals with autonomous tribal-influenced areas in the State of Assam, Meghalaya, Tripura and Mizoram.[21] Also, the statute is also not applicable to the States which have inner-line permit regime, such as Arunachal Pradesh, Nagaland and Mizoram. As these regions are largely populated with a tribal population, so, this loophole creates a tension in socio-cultural aspect. As a consequence of these loopholes, the Citizenship (Amendment) Act, 2019 has been a subject matter of debate and controversy.

XI. ANALYSIS OF THE LAW

CAA endorses the principle of humanitarianism and upholds India's stand as a preserver of religious freedom and minority rights, by providing citizenship to the persecuted minorities seeking refuge in India from neighbouring countries. This legislation reinforces the dual principles India holds as a fundamental right for all individuals that is equality before the law and equal protection of the law, which is ultimate equity done to all irrespective of what religion they belong to. The analysis of the amended legislation involves the examination of its aims and objectives, application, and implementation within the frontier of this diverse nation by dissecting its social fabric. Considering the humanitarian ground, the statute boosts the potential to make alterations to the democratic ethos of India. Though there is a space for 'selective acceptance,' the Citizenship (Amendment) Act, 2019 elevated the gesture of

[21] What are the drawbacks of CAA; https://byjus.com/ias-questions/what-arethedrawbacks-of- caa/#:~:text= Mizoram.html (April 14, 2024)

humanitarianism by setting its aim to provide citizenship to the persecuted communities from three neighbouring Islamic countries. It purports the easiness of granting citizenship to all those eligible people, who have traditionally and historically faced religious persecution by accelerating the process of naturalization. However, the exclusion of Muslims from the amended procedure posed significant legal as well as ethical questions and at the same time undermined the principles of equality correlated with the idea of non-discrimination and the notion of secularism embedded in the Constitution of India.

Proponents argue that the Citizenship (Amendment) Act, 2019 does not exert influence on the secular character of our nation as it does not prohibit Muslims or any religious communities from applying for the citizenship of India through the prevalent legal channels. However, preferential treatment which is explicit for certain religious groups over others raises a concern regarding the true application of the spirit of secularism in the future pathways of this system. Citizenship (Amendment) Act, while providing citizenship to eligible candidates excludes illegal immigrants who without any reason or proof of refugee status are staying within the territory of India. This exclusion is done so that the national security of our country is maintained and those specific individuals do not become a threat to the security of our nation in the near future, therefore this Act also tends to radicalize the stringent process for giving citizenship to only the eligible residents who came to India on or before 31st December 2014.

The amended legislation endorses India, taking proactive steps to protect ill-treated individuals in the international arena. Though India asserted the role of a guardian in the global Perspective by extending the Act through its amendment as a shelter for minorities, nevertheless, the modified statute intrigued international criticism for subverting commitments of India towards the norms and guidelines of the international humanitarian block as it included non-refoulment and non-discrimination through the act of potentially isolating India from the global democratic circle. Despite certain pros and cons in the Citizenship (Amendment) Act, 2019, the legislation is one of the needs of an hour. The issue of 'illegal migrants' has been properly addressed and apprised in the law.

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XII. CONCLUSION

The Citizenship (Amendment) Act, 2019 holds a balance between the security of the nation and the humanitarian ground protecting the rights of every individual across the globe steered by the principles of justice, equity, inclusivity and secularism. To further expand the ambit of

the debate related to the Act, it confronts more with the burden of the population over its present state of over 141.72 crores. So, the administration needs to have strict hands in the implementation of the legislation with proper scrutiny before allowing individuals in this nation. To quote Nelson Mandela, *"To deny people their human rights is to challenge their very humanity"* – this is the notion which CAA uplifts by providing citizenship to people who are in dire need of it due the tyranny which they had faced in their own countries and to protect their basic needs.

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