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Citizenship (Amendment) Act, 2019

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Why is in news? CAA: Issues in the legal challenge to the law

More than four years after Parliament passed The Citizenship (Amendment) Act, 2019, the Ministry of Home Affairs on 11th March, **notified the Rules to implement the law.**

The CAA, which had led to widespread protests in the winter of 2019-20, is also under challenge before the Supreme Court.

About the Act:

In December 2019, Parliament passed an **amendment to The Citizenship Act, 1955**, to include a provision for grant of citizenship to migrants belonging to the **Hindu, Sikh, Buddhist, Jain, Parsi, or Christian** communities who entered India **before December 31, 2014** from Pakistan, Afghanistan, or Bangladesh.

They will be **granted fast track** Indian citizenship **in 5 years** (11 years earlier).

The Act also provides for **cancellation of Overseas Citizen of India (OCI) registration** where the OCI cardholder has violated any provision of the Citizenship Act or any other law in force.

In essence, the amendment **relaxed the eligibility criteria** for certain classes of migrants (on religious lines) from three neighbouring Muslim-majority countries

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- It inserts **December 31, 2014, as the cut-off date** for members of the Hindu, Buddhist, Christian, Parsi, Jain and Sikh communities from Pakistan, Bangladesh and Afghanistan **to be eligible to get Indian citizenship**

- It will not apply to the **tribal areas of Assam, Meghalaya, Mizoram and Tripura** as included in the Sixth Schedule of the Constitution and to **Arunachal Pradesh, Mizoram and Nagaland, which are protected by the Inner Line Permit**

- **All cases against a non-Muslim illegal migrant** before any authority, including foreigners tribunals or courts, **shall stand abated**

- It will enable a person who does not have proof of birth of his parents in support of his being of Indian origin to apply for citizenship by **naturalisation on completion of six years residency**

- It reduces the **mandatory requirement of 12 years stay to five years** to be eligible for citizenship

Eligibility:

The CAA 2019 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 **cut-off date** for citizenship is **December 31, 2014**, which means the applicant should have entered India on or before that date.

The act **will not apply to areas covered by the Constitution's sixth schedule**, which deals with autonomous tribal-dominated regions in Assam, Meghalaya, Tripura, and Mizoram.

Additionally, the act **will not apply to states that have an inner-line permit regime** (Arunachal Pradesh, Nagaland and Mizoram).

Defining Illegal Migrants:

Status under Present Laws: Existing laws prohibit illegal migrants from acquiring Indian citizenship.

CAA's Definition: CAA classifies an illegal migrant as a foreigner who enters India without valid travel documents (passport and visa) or overstays beyond the allowed period.

Penalties: Illegal migrants can face imprisonment or deportation under the **Foreigners Act, 1946, and The Passport (Entry into India) Act, 1920**.

Concerns with CAA:

Targeting a Particular Community: There are apprehensions that the CAA, followed by a country-wide compilation of the National Register of Citizens (NRC), **will benefit non-Muslims excluded from the proposed citizens' register**, while excluded Muslims will have to prove their citizenship.

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Issues in the North-East: It contradicts the Assam Accord of 1985, which states that illegal migrants, irrespective of religion, heading in from Bangladesh after 25th March, 1971, would be deported.

There are an **estimated 20 million illegal Bangladeshi migrants** in Assam and they have inalienably altered the demography of the state, besides putting a severe strain on the state's resources and economy.

Against the FR: Critics argue that it **violates Article 14 of the Constitution** (which guarantees the right to equality and is applicable to both the citizens and foreigners) and the principle of secularism enshrined in the preamble of the constitution.

Discriminatory in nature: India **has several other refugees** that include Tamils from Sri Lanka and Hindu Rohingya from Myanmar. They are **not covered under the Act**.

It will be **difficult for the government to differentiate** between illegal migrants and those persecuted.

The Act throws the light on the religious oppression that has happened and is happening in these three countries and thus, may **worsen our bilateral ties** with them.

Constitutionality Check:

The challenge may rest primarily on the grounds that the **law violates Article 14 of the Constitution** that guarantees that no person shall be denied the right to equality before law or the equal protection of law in the territory of India.

The Supreme Court has developed a **Two-Pronged Test** to examine a law on the grounds of Article 14.

First, any differentiation between groups of persons must be founded on "intelligible differentia"

Second, differentia must have a rational nexus to the object sought to be achieved by the Act

Simply put, for a law to satisfy the conditions under Article 14, it has to **first create a "reasonable class" of subjects that it seeks to govern under the law**.

Even if the classification is reasonable, any person who falls in that category has to be treated alike.

Impact on Assam and Assam Accord:

Intersection with Section 6A: The CAA intersects with Section 6A of The Citizenship Act, 1955, which determines citizenship criteria in Assam.

Section 6A of the Act allows foreign migrants who came to Assam **after January 1, 1966 but before March 25, 1971**, to seek Indian citizenship.

Assam Accord: Section 6A, linked to the Assam Accord, sets criteria for determining citizenship in Assam, posing potential conflicts with the CAA's provisions.

Base Cut-off Date and Regularization: The Assam Accord establishes a base cut-off date for identifying and regularizing foreigners in Assam, impacting the implementation of the CAA in the state.

Way forward:

India is a constitutional democracy with a basic structure that assures a secure and spacious home for all Indians.

Being partitioned on religious grounds, India has to undertake a balancing act to protect the religious minorities in its neighbourhood.

These minorities are under constant threat of persecution and vandalism.

India needs to balance its civilization duties to protect those who are prosecuted in the neighbourhood.