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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.

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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.