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LEGISLATIVE ANALYSIS OF THE CITIZENSHIP AMENDMENT ACT 2019

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ABSTRACT:

Citizenship is an important facet of a person's right to life. It implies that a person is having an allegiance to a sovereign state is entitled to protection from such a state. Citizenship is associated with exclusive benefits guaranteed by the constitution, such as right to vote, right to freedom of speech and expression etc. Article 14 of the Indian Constitution, deals with general principle of equality and no discrimination can be allowed, unless it is in consonance with the constitutional framework.

This article aims to analyse the constitutional validity of the proviso to Section 2 of the Citizenship Amendment Act 2019 (CAA). It determines whether the exclusion of Muslim illegal immigrants from Bangladesh, Afghanistan and Pakistan from availing the benefit under the proviso to Section 2 is constitutionally valid under Article 14 and whether it is in consonance with the international conventions. This article also aims to understand the implications of such proviso in the Act.

INTRODUCTION:

The Citizenship Amendment Act 2019 (CAA) was introduced in Parliament by Mr. Amit Shah, Union Home Minister of India. It was passed by the Parliament of India on 9th December 2019, and was subsequently converted into a full-fledged Act, after it received the President's assent on 12th December 2019.

The Act was introduced to amend The Citizenship Act, 1955 (The Act) in order to make the illegal migrants of Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities from Afghanistan, Bangladesh, and Pakistan, eligible for citizenship of India.

MAIN FEATURES OF THE ACT:

In the Act a proviso was inserted as follows to Section 2, in sub-section (1), in clause (b),

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of

sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;".

This proviso, aims to provide citizenship to those illegal migrants belonging to the religious communities of Hindu, Sikh, Buddhist, Jain, Parsi or Christian from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014.

Clause d of the Third schedule of the Citizenship Act 1955 was amended, where the illegal migrants belonging to the exempted religious communities will be granted fast track Indian citizenship if they have completed six years of residence instead of the previous standard of twelve years of residence for acquiring citizenship by naturalisation.

However, the newly inserted clause 6B, sub-clause 4, states that the tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873 will be exempted from the purview of this Act.

ANALYSIS:

1) VALIDITY UNDER ARTICLE 14:

Article 14 of the Indian constitution embodies the principle of equality before the law and equal protection of law. Equality before the law postulates the application of same laws alike and without discrimination to all persons similarly situated.

Even though, Art. 14 provides for equality before law, it still permits classification. Persons belonging to different sections cannot be treated equally because they may differ in their needs, their circumstances, their requirements etc. and so mechanical equality before law or applying same rules of law on these different sections of people will lead to injustice. However, it is mandatory that such a classification should be reasonable, substantive and should be able to

achieve the object¹. To elaborate it should pass the test of reasonability. The reasonability of the classification is determined by satisfaction of two conditions:

- a) That there should be an intelligible differentia
- b) That there should be a reasonable nexus between the classification and the object that is to be achieved.²

A) Intelligible Differentia:

The first requirement is that classification should be based on intelligible differentia i.e. difference capable of being understood. In the said situation, the amended legislation classified the communities into two groups – illegal migrants belonging to the community of Hindu, Sikh, Buddhist, Jain, Parsi or Christian from Afghanistan, Pakistan and Bangladesh and illegal migrants belonging to the Muslim community from Afghanistan, Pakistan and Bangladesh. Such a difference is made on the basis of majority group and minority groups facing persecution, in the said countries.

B) Nexus Between The Classification And The Object:

Before determining whether there is a reasonable nexus between the classification and the object of the Act, it is pertinent to understand the object of the act and on the basis of which the classification is made.

Object - Even though the Act does not specify the object. Based on the discussions in the Parliament, it can be said that the actual legislative objective was to curb the influx of illegal migrants. However at the same time, some of these people are given citizenship on the grounds that they are facing religious persecution in the Muslim majority countries.

So the legislative aim was not only to curb to the influx of illegal migrants but also to provide citizenship to the illegal migrants who constitute religious minorities and face religious persecution in the neighbouring nations of Afghanistan, Pakistan and Bangladesh.

¹ Laxmi Khandasari v State of Uttar Pradesh AIR 1981 SC 873

² Union of India v N.S. Rathnam and Sons, AIR 2016 SC 1273

The Hindus, Christians, Parsis and Sikhs constitute religious minorities in the said nations, which are Muslim nations. It is said that these religious communities were being persecuted on the basis of their religion.

There are several reports which show the plight of the minorities in that region. The United Nations (UN) and different human rights organizations such as Amnesty International have highlighted human rights violations faced by the religious minorities in the neighbouring nations of Afghanistan, Pakistan and Bangladesh.

There are numerous instances of vandalization of the religious places belonging to the minority communities, attacks of the religious minorities and women being brutally raped and killed. Pakistan is known to promote religious discrimination against Hindus through bigoted "anti-blasphemy" laws where strict punishment is given to any person speaking against Islam. As a result there is a sharp decline in the population of minorities in these nations.

Further, the proviso to the Act was incorporated additionally on the basis of the Nehru-Liaquat pact. In 1950, this pact was signed between India and Pakistan. The agreement was signed when there was both India and Pakistan witnessed exodus of people belonging to minority communities in the wake of attacks by the majority communities in their respective territories.

One of the points agreed upon was that the rights of the minorities in both the countries will be fully recognized. Further it was agreed upon that the Minorities in both the countries will be given citizenship regardless of their religion and security would be offered to their lives. Other rights such as freedom of movement, freedom to practice religion, occupation was also agreed to be provided to the minorities.

India to a great extent was successful in adhering to this pact by providing sufficient rights and protection to the minorities. However, Pakistan for vested interests failed to successfully implement the pact.

As a result, the CAA was introduced by the Parliament in order to provide citizenship to such minorities who sought asylum in India as a result of religious persecution faced by them in their country.

Article 355 of the Indian Constitution makes it mandatory for the Centre to protect the states from internal disturbance and external aggression. It is been questioned that if the aim of the Act is to grant citizenship to the illegal migrants who constitute the religiously persecuted minorities in their respective countries, then Tamil Hindus from Sri Lanka should not be excluded as they are also religiously persecuted minorities in Sri Lanka. The Act also excludes the Muslim community from the said countries and the Rohingya Muslims from Myanmar who faced religious persecution.

However, if the state is to grant citizenship to a vast majority of the illegal migrants, then there would be internal disturbance in the different states. By granting citizenship to the all the illegal migrants, the demographics of the states in India will be impinged. This will affect the political, economic interests of the original inhabitants of the states.

Also if all the illegal migrants are granted citizenship, such illegal migrants, will make a claim on the limited resources offered by the state in terms of job opportunities, educational opportunities and other infrastructure. In the process, the existing population of that particular state can be deprived of their rights which are otherwise available had not the religious minorities been granted citizenship.

Keeping this impact in mind, the legislation has sought to minimize the impact of the influx of the illegal migrants, by granting citizenship to the religiously persecuted minorities of Afghanistan, Bangladesh and Pakistan, on the basis of the common demographics in the Muslim nations and on the basis of Nehru – Liaquat pact.

Classification - Taking the intent of the legislature into consideration, the religious groups were classified as majority religious group and minority religious group based on the demography of all the three nations. The minority communities included Hindus, Christians, Parsis, Buddhists, Jains and the Sikhs and the majority included the Muslims.

The legislature allowed the religious minorities only from the three nations considering the fact they are neighbouring countries having declared Islam as their official religion and also all the six communities mark their presence in these neighbouring nations. Additionally, these religious minorities also face gross human rights violation in these nations, due to their religion.

However, in other neighbouring countries like Myanmar or Nepal neither all the six communities are present, nor do these countries have declared any religion as their state religion. Further, there are no reports which highlight any incidents of religious persecution of the six communities.

Considering these facts, these nations have been kept out of the ambit of the proviso.

Is There A Reasonable Nexus Between Classification And The Objective?

Even though the classification can be termed reasonable, the main objective behind the amendment cannot be achieved.

The main objective of the legislation is to curb the influx of illegal migrants. If the illegal migrants belonging to the exempted communities are granted citizenship, then the very purpose of this Act is defeated.

Further, such a proviso was added to the CAA under the assumption that people belonging to these communities are religiously persecuted minorities in the Muslim nations. However, it cannot be conclusively said that every illegal immigrant is a victim of persecution.

Since there are no strict guidelines regarding the documents illegal migrants belonging to the exempted communities to show any proof of persecution, it is possible that this lacunae will be taken advantage by those people who have migrated for economic reasons. This same loophole can be taken advantage by terrorists who have entered the territory of India under the guise of religiously persecuted victims.

The said proviso in CAA does have serious lacunae. Firstly, it might be detrimental to some Muslim Indians. Even though the CAA does not affect the citizenship of any Indians, but when it is clubbed with the National Register of Citizens (NRC), some of them might lose their citizenship. NRC requires citizens to prove their citizenship through valid documents. Many times, the original inhabitants, especially those belonging to the socially and economically backward communities, might not possess the valid documents to prove their Indian citizenship.

This might lead to their exclusion from the NRC. However those people who belong to the exempted communities mentioned in the proviso may take advantage of the proviso and regain their citizenship by claiming to be illegal migrants from Afghanistan, Pakistan and Bangladesh. The veracity of this claim cannot be guaranteed as there are no strict guidelines regarding the

documents to be provided. However, the members of the Muslim community, if they are unable to prove their citizenship, will be excluded from NRC.

Secondly, the problem of conversion is not taken into consideration. If the illegal migrants belonging to the Muslim community convert themselves and become a part of the exempted communities, then even they can be eligible for citizenship, which can defeat the purpose of the legislation, as each conversion cannot be proven.

2) VALIDITY UNDER THE ASSAM ACCORD:

The inclusion of the new clause in the CAA also violates the Assam Accord. The Assam Accord was signed in 1985 between the Centre and the leaders of the All Assam Students' Union (AASU), to tackle the issue of illegal migrants. Clause 5 and Clause 6 of the Accord are relevant to the issue.

Clause 5 of the Assam Accord deals with the detection and deletion of foreigner's name from the voter's list and their deportation.

According to the clause, the foreigners were classified under three heads for identification and differential treatment. Those illegal migrants who entered Assam till December 31, 1965 were to be granted citizenship with voting rights immediately. Those illegal migrants who came to Assam between 1966 and March 24, 1971 were to be disenfranchised and registered as foreigners under the Registration of Foreigners Act, 1939. The rest of the illegal migrants were to be expelled and no consideration on the grounds of religious persecution was made.

However, the inclusion of the proviso to Section 2 of CAA, which grants citizenship to those illegal migrants belonging to the religious communities of Hindu, Sikh, Buddhist, Jain, Parsi or Christian from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014, violates this clause.

Clause 6 of the Assam Accord says that constitutional, legislative and administrative steps will be taken by the Centre to "protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people".

Assam was created on the basis of language. By granting citizenship to the illegal migrants of the said communities, there is a possibility that indigenous people of Assam might be overshadowed

by the Hindu Bengali migrants from Bangladesh who are allegedly the majority amongst the illegal migrants. The indigenous people of Assam can be pushed to the minority status just like the tribal people of Tripura. Thus this violative of not only clause 6 of the CAA but also against the fundamental right of the minorities to preserve their culture, language and script, guaranteed under Article 29(1) of the Indian constitution.

3) VALIDITY UNDER INTERNATIONAL CONVENTIONS:

Article 14(1) of the Universal Declaration on Human Rights (UDHR), states that every person who is facing religious persecution, has the right to seek asylum in the other countries. Keeping this provision in mind, asylum was granted in the form of citizenship only to the illegal migrants belonging to the Hindu, Sikh, Buddhist, and Jain, Parsi or Christian communities from Afghanistan, Bangladesh or Pakistan. The Muslim community from the said nations were excluded from availing this benefit.

Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), allows the State to freely determine their economic, political and social status. By the virtue of this Article, the State can exercise its discretion in determining its social status through its Citizenship laws. Thus, considering its social situation, the State can make laws regarding the modes of which citizenship can be acquired.

However, in doing so, it cannot arbitrarily decline citizenship as it would be a violation of Article 7 of UDHR, which states that all are equal before the law and are entitled without any discrimination to the equal protection of laws.

In this case though, classification can be justified, its objective cannot be deemed sufficient.

CONCLUSION:

The classification made in the proviso to Section 2 of the CAA, though satisfies the conditions laid down by the constitution, there is no reasonable nexus between the classification and the object.

Permitting such a classification cannot not only help the legislature in achieving the object but also it can threaten the demography of the Indian states and the national security.