

## “CAA: Under the Ambit of the Constitution”

*Aman Sharma*

*O.P. Jindal Global University*

The CAA has been at the center of the national discourse ever since its passage in the Parliament. While its detractors are calling the law unconstitutional and discriminatory, it's time to explore the ambit of CAA under the constitution.

To understand the Constitutional position of CAA one needs to examine the Article 11 of the Constitution which deals with “acquisition and termination of citizenship and all other matters pertaining to citizenship”<sup>1</sup>, in consonance with the Article 14 which provides for “equality before law and equal protection of law”<sup>2</sup> to any person. It prohibits class legislation but not legislative classification based on the two pronged test of the *doctrine of reasonable classification*. According to this doctrine, a law satisfies the test of the Article 14 if there is an *Intelligible differentia* which means the basis of classification should be able to distinguish between persons grouped together and the individuals omitted and this intelligible differentia should have *reasonable nexus with the object* as has been held in the 7-judge bench of *Kathi Raning Rawat vs The State of Saurashtra*<sup>3</sup>. Thus, when the doctrine of reasonable classification is applied to CAA, *Intelligible Differentia* is formed by the persecuted minorities who are Hindus’, Sikhs’, Jains’, Parsis’, Christians’ and Buddhists’ living in Pakistan, Afghanistan and Bangladesh. Its object of improving the lives and protection of persecuted minorities from Pakistan, Afghanistan and Bangladesh is achieved by according citizenship to them and is by no means violative of the Article 14 of the Constitution.

Further, there is a submission that the present law is also in violation of the Article 15 of the Constitution. This argument is without any merit as the Article 15 is only for Indian citizens and by no means applies to non- citizens as has been categorically stated in it. CAA in its essence deals with relaxing the criteria of according citizenship to non-citizens. Hence, CAA does not fall within the ambit of the Article 15.

It has been held by the 7-Judge bench in *Maneka Gandhi v. Union of India*<sup>4</sup> that the law must be must be "right and just and fair" and not arbitrary, fanciful or oppressive otherwise, it would be no procedure at all. Therefore, it would be ultra vires of the Article 21 of the constitution. CAA is an Amendment to The Citizenship Act, 1955 and not an act by itself, which is something usually not acknowledged. Therefore, it is imperative to examine the Citizenship Act, 1955. An oft repeated argument against the CAA is that since it excludes Muslims/ Rohingyas from its ambit, the law is inherently discriminatory.

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1. *The Constitution of India* [India], 26 January 1950, available at: <https://www.refworld.org/docid/3ae6b5e20.html> [accessed 20 April 2020]

2. Ibid.

3. 1952 AIR 123, 1952 SCR 435

4. 1978 SCC (1) 248

However, the Citizenship Act regulates and prohibits the grant of citizenship to non-citizens unless it has been provided for by it. The CAA is an exception to this law where persecuted minorities in Pakistan, Afghanistan and Bangladesh would not be considered illegal immigrants and would have certain relaxations in obtaining citizenship in India. However, the amended Citizenship Act denies citizenship to the other illegal immigrants which in itself cannot make the amendment or the amended act arbitrary, fanciful or oppressive.

The idea of “secularism” has become part of the basic structure of the constitution, as has been held in 9-judge bench in *S.R. Bommai vs Union Of India*<sup>5</sup>. However, before quoting *S.R. Bomani* judgment one also needs to understand it comprehensively. The deliverance for minorities, whose daughters were being kidnapped and raped<sup>6</sup>, whose places of worship continue being ransacked and destroyed<sup>7</sup>, who are being killed<sup>8</sup> in my understanding has to fall within the ambit of what secularism entails. Further, in *S.R. Bommai vs Union Of India*, it was held “The term '**Secular**' has advisedly not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined.”<sup>9</sup> Hence, secularism is a subjective concept and its understanding may differ from person to person. Its contours remain undefined and should be used with caution.

The Article 25 of the constitution bestows freedom to practice, propagate and profess religion by any person<sup>10</sup>. We are unable to understand the way in which grant of citizenship to persecuted minorities, which is a humanitarian act, in nations having a state religion restricts right of *Muslims* of India to practice, propagate or profess their religion.

Even if the argument that granting citizenship to persecuted minority would violate the Article 25 of the Indian Constitution is accepted on its face value, one should remember that the Article 25 is not an absolute right but is subject to morality. In *Indian Young Lawyers Association and Ors. v. The State of Kerala and Ors.*, it was held, “the term public morality has to be appositely understood as being synonymous with constitutional morality.”<sup>11</sup>

In *Manoj Narula v. Union of India*, constitutional morality has been defined as, “The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the Rule of law or reflectible of action in an arbitrary manner.”<sup>12</sup>

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5. 1994 SCC (3) 1

6. ACHR 7 Sept. 2005; *International Religious Freedom Report 2005* 8 Nov. 2005, Sec. 2; *Mayer Dak* 2005).

7. Ibid.

8. Ibid.

9. 1994 SCC (3) 1

10. *The Constitution of India* [India], 26 January 1950, available at: <https://www.refworld.org/docid/3ae6b5e20.html> [accessed 20 April 2020]

11. MANU/SC/1094/2018

12. (2014) 9 SCC 1

In *Navtej Singh Johar and Ors. v. Union of India and Ors.*, the definition of constitution morality has been elaborated further, “It embraces within itself virtues of a wide magnitude such as that of ushering a pluralistic and inclusive society, while at the same time adhering to the other principles of constitutionalism.”<sup>13</sup>

Hence, it becomes conspicuous that the principle of constitutional morality provides for an inclusive society imbibing humanitarian principles in it. Accordingly, CAA provides for a means to that end, by granting citizenship for persecuted minorities. In *I.R. Coelho (Dead) By Lrs vs State Of Tamil Nadu & Ors*<sup>14</sup>, it was held that the separation of powers between Legislature, Executive and the Judiciary is one of the basic features of the Constitution. It is the right of the legislature to decide who are to be its citizens and under what circumstances would there be any relaxation, if any, in granting citizenship. The Supreme Court of India cannot direct the legislature to form laws after it has been found that the law is not *ultra vires* of the provisions of the constitution. As CAA falls within the ambit of the constitutional safeguards present in the constitution and which have been elaborated by the Supreme Court, it is unwarranted to categorise it as discriminatory.

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13. AIR 2018 SC 4321

14. (1999) 7 SCC 580