THE CITIZENSHIP (AMENDMENT) ACT, 2019 – A CONSTITUTIONAL DEFENCE

Rahul Nair[*]

Abstract

The Citizenship (Amendment) Act, 2019 (CAA) has been the subject of tense contention in India prior to, and ever since, its enactment. The Act grants protection (and a fast-track to citizenship) to certain categories of illegal immigrants. It provides citizenship on the basis of religion, most significantly excluding Rohingya Muslims, Sri Lankan Tamils, and the Ahmadiyas in Pakistan. Fears stoked by the Act, along with proposals for a National Register of Citizens (NRC) which could allegedly lead to mass deportation and atrocity have caused widespread protests. But the protests against the CAA have a common theme: a reclamation of the Constitution and constitutional values. This reclamation is misguided. A constitutional reclamation can only take place with due respect to the provisions of the constitutional text and to the specific history of its adoption. I propose a different constitutional reclamation, involving the recovery of the text, the history, and the context of the Constitution with a full

[*]Rahul Nair is a second-year student at National University of Advanced Legal Studies, Kochi. The author can be reached at nairrahul751@gmail.com.

understanding of its broad political objectives as well as the unique and contentious nature of its public persona. I attempt a constitutional defence of the CAA, based both on the low-threshold of constitutionality and the relatively higher threshold of best practices found in international law.

I. INTRODUCTION

"*[L]aw, without equity, though hard and disagreeable, is much more desirable for the public good, than equity without law: which could make every single judge a legislator, and introduce most infinite confusion*."- William Blackstone.[1]

To say that the Citizenship (Amendment) Act, 2019[2] ("**CAA**" or "**Act**") has not been well received by a large section of people would be an understatement. The widespread protests[3] against, and after, its enactment indicates that something must be terribly wrong, either with the Act[4] or with the way the Act is perceived.[5] It is nobody's case that the intent of the government behind the CAA is

[1]WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 62 (4th ed. 1770).
[2]The Citizenship (Amendment) Act, 2019 (India).
[3]Bikash Singh, *Student unions of NE universities call for class boycott against CAA*, THE ECONOMIC TIMES, (Jan 22, 2020),https://economictimes.indiatimes.com/news/politics-and-nation/student-unions-of-ne-universities-call-for-class-boycott-against-caa/articleshow/73510535.cms.
[4]Rasia Hashmi, *What's wrong with Citizenship Amendment Act*, THE SIASAT DAILY, (Dec. 14, 2019), https://www.siasat.com/whats-wrong-citizenship-amendment-act-1762596/.
[5]Baijayant 'Jay' Panda, *The protesters have got it wrong. Understand the logic of the CAA*, HINDUSTAN TIMES, (Jan 1, 2020), https://www.hindustantimes.com/columns/the-protesters-have-got-it-wrong-understand-the-logic-of-the-caa/story-qNG3578YUm7XYNfDeYBcBO.html.

extraordinarily pious. Whether the Act is desirable, however, is a distinct question from its constitutionality. In this essay, I do not seek to analyse whether the CAA is desirable, but instead to defend its constitutionality. The Act's opponents, and those injured by it, always have the recourse of protest, of democratic debate, and resistance. Instead, I will defend the CAA's constitutionality. This is, perhaps, an unpopular position. But the defence of unpopular minority positions is the *raison d'etre* of the legal profession.

Much of the Government's position rests on the intention and the scope of the CAA. Indeed, the legislative history explains why. In 2015 and 2016 respectively, the Central Government issued notifications which exempted certain communities of illegal immigrants, namely Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who arrived in India on or before December 31, 2014, from the provisions of the Passport (Entry into India) Act, 1920[6] and the Foreigners Act, 1946.[7] Those provisions authorised the Government to deport and imprison illegal immigrants for lacking valid documents. Under the prevailing law, an illegal immigrant is a foreigner who: (i) enters India without valid travel documents, like a passport or (ii) enters India with a valid passport or other travel documents but remains therein beyond the permitted period of time.[8]

The Citizenship (Amendment) Bill, 2016,[9] was introduced in the Lok Sabha on 19 July 2016, which sought to give citizenship to illegal immigrants belonging to the same six religions of the three countries by tweaking the Citizenship Act of 1955. However, the Bill lapsed with the dissolution of the 16th Lok Sabha.

[6]The Passport (Entry into India) Act, 1920(India).
[7]The Foreigners Act, No. 31 of 1946(India).
[8]The Citizenship Act, No. 57 of 1955(India).
[9]The Citizenship (Amendment) Bill, 2016(India).

Subsequently, the Citizenship (Amendment) Bill, 2019, was tabled in the Lok Sabha in December 2019, enacted on 12 December 2019, and came into force on January 10, 2019. The Act deviates from the original Bill in two ways. First, it excludes certain areas in the North-East. Second, it reduces the minimum threshold required to undergo the process of naturalisation, from at least 11 out of 14 years to at least 5 out of 14 years, thus, providing an accelerated path to acquire citizenship.

II. ARTICLE 14 – THE PRIMARY BONE OF CONTENTION

Since it is well established that the CAA does not violate Article 15 of the Constitution of India as it is enjoyed exclusively by the 'citizens' of this country, a term which illegal immigrants fail to qualify, the author would now analyse from the purview of the constitutionality and conformity with Article 14, and the subsequent arguments that are made out of it. Article 14 of the Constitution mandates that no person shall be denied equality before the law or the equal protection of the law within the territory of India.[10] Article 14, and the concomitant classification tests, have acquired a normative prestige.[11] This doctrine resolves the seemingly paradoxical demand of legislative right to classify and the principle of constitutional generality. The two-pronged test that has been laid down by the Supreme Court to test whether a classification is reasonable is as follows –

[10]The Constitution of India, Art. 14 (India).
[11]Makhan Lal Malhotra v. Union, (1961) 2 S.C.R 120; Bishnu Charan Mukherjee and Anr. vs. State of Orissa, AIR 1952 Ori 11.

i) The classification must be founded on an intelligible differentia that differentiates one group (that is included) from the other (that is left out).[12]

ii) Such differentia must have a nexus with the object that is sought to be achieved.[13]

Thus, what is necessary is that there must be a rational relation between the distinction that is drawn and the object under consideration.

Employing the equality before the law principle in a mechanical manner, notwithstanding the fact that not all persons are equal by nature, attainment or conditions may result in injustice.[14] The equality jurisprudence maintains that equal protection of the law could be granted to all persons who are similarly placed against each other. This form of an Aristotelian reading implies that equals should not be treated unlike and unlike should not be treated alike. Likes should be treated alike. [15]

Since a large section of people believe, however erroneously, that the CAA could not come under the wide umbrella of reasonable classification, it is imperative to list out the propositions that are established under this exception to gain clarity about the concept:

i) Reasonable classification does not necessarily require mathematical nicety and perfect equality;[16]

ii) Even a single individual may be in a class by himself on account of some special circumstances or reasons applicable

[12]The State of West Bengal vs Anwar All Sarkarhabib, 1952 SCR 284.
[13]Budhan v. State of Bihar, AIR 1955 SC 191; Harakchand v. Union of India, AIR 1970 SC 1453.
[14]Binoy Viswam Vs Union of India & Ors, AIR 2017 SC 2967.
[15]State of Karnataka v. B. Suvarna Malini, AIR 2001 SC 606 (India); Bihar Motor Transport Federation v. State of Bihar, AIR 1995 Pat 188.
[16]N.P. Basheer vs State of Kerala, (2004) 3 SCC 609.

to him and not applicable to others; a law may be constitutional even though it relates to a single individual who is in a class by himself;[17]

iii) that the legislature is free to recognize the degrees of harm and may confine the classification to where harm is the clearest.;[18]

iv) that there is always a presumption of constitutionality of an enactment and the onus is upon him who attacks it to show that there has been a clear violation of the constitutional principles;[19]

v) Geographical bases or according to objects or occupations or the like could also be reasonable ground for classification;[20] (it could also be established on the distinction between people).[21]

The intelligible differentia that the State makes under CAA is based on two distinct classification – First, the religion of the target community that has undergone religious persecution, which is a form of persecution that is internationally recognised. Second, this particular exercise limits its scope to only those neighbouring countries that have Islam as its state religion.

From the point of the nexus test, the author submits that the CAA fulfils the 'why' element, i.e., the social object, which is to protect the people who are being atrociously persecuted; it fulfils the 'what' element, i.e., the special treatment that would be provided, by granting the status of citizenship, and the 'whom' element, i.e., the criterion for identifying the class subjected to special treatment, by formally recognising religious persecution.

[17]Shri Ram Krishna Dalmia vs Shri Justice S. R. Tendolkar, AIR 1958 SC 538.
[18]*Id.*
[19]*Id.*
[20]*Id.*
[21]H. M. SEERVAI, CONSTITUTIONAL LAW OF INDIA, 455 (4th ed. Vol. 1, 2013).

III. ALL PERSECUTION, ALL COUNTRIES?

Of the many reasons given as to why this particular amendment is unconstitutional, some of them are that the CAA fails to consider 'illegal migrants' who entered India after having faced non-religious persecution – e.g., persecution based on sexual orientation or political views and that it ignores those sets of illegal immigrants, who might have not necessarily come from India's neighbouring countries, but might still face some kind of persecution.[22]

This kind of distorted, unfair characterisation and misrepresentation of this particular policy is a classic example of a solution in search of a problem. This line of reasoning, for all practical purposes, suggests that for CAA to become constitutional, *inter alia*, it needs to grant citizenship to all illegal immigrants who have faced any kind of persecution coming from whichever part of the world. This conceptual utopian structure, which endorses the global citizenship model, severely limits and thereby undermines the sovereignty and integrity of India. It runs counter to the Law Commission Report, which notes that the entry of illegal immigrants and other undesirable aliens into India has aggravated the employment situation, distorted the electoral rolls and poses a grave threat not only to our democracy but also to the security of India, especially in the eastern part of the country and Jammu and Kashmir.[23] It flies squarely in the face of judicial pronouncements,[24] blatantly dilutes the intricate

[22]Abhinav Chandrachud, *Secularism and the Citizenship Amendment Act* (January 4, 2020). Available at SSRN: https://poseidon01.ssrn.com/delivery.php?ID=528094093074028102095006072093066027051081060000028091094064073023096064009064066087049101030035000120107087008006123064076076020058046015033064094003029093119093088020033042127002096078074003003100124029075002117100102102104004111094100072073077081106&EXT=pdf.

[23]B.P. Jeevan Reddy, One Hundred Seventy Fifth Report on The Foreigners (Amendment) Bill, 2000, 2, (2000).

[24]Sarbananda Sonowal v. Union of India, AIR 2005 SC 2920 (India).

jurisprudential nuances of the principle of equality, and disregards the mandate that the Constitution grants to the Parliament,[25] apart from being logically untenable.

Also, concerning the term political persecution, no administrative agency or Court has coined a uniform and coherent definition as to what could be considered as persecution based on political opinion. Thus, in the absence of such clear standards and tests, it would be difficult to discern the actual groups that are politically persecuted from those individuals who are taking advantage of this sweeping term that is an omnibus in itself.

IV. OVERLOOKING OTHER RELIGIOUS MINORITIES

Another proposition against CAA, that could be bifurcated into two parts is – Firstly, the CAA overlooks religious communities like Jews, and Muslim minorities like Shias and Ahmadiyas, who may have been persecuted in Afghanistan, Pakistan or Bangladesh.[26] Secondly, the fact that Muslim immigrants in India might not vote in favour of the Hindutva policies of the regime presently in power at the centre in India renders the CAA even more suspect.[27] In response, with regard to the exclusion of Jews, to lay bare some facts, according to a top National Database and Registration Authority ("**NADRA**") official of Pakistan, there are only about 745 registered Jew families in Pakistan[28] and Zablon Simintov is the one and only remaining Jew in

[25]The Constitution of India,Art. 11(India).
[26]*Supra* note 22.
[27]*Id.*
[28]Danish Hussain, *Pakistani man wins right to change religion from Islam to Judaism*, THE EXPRESS TRIBUNE, (March 27, 2017), https://tribune.com.pk/story/1366268/man-interfaith-parents-wins-right-religion-choice/.

Afghanistan.[29] It is judicially established that as long as the extent of over-inclusiveness or under-inclusiveness of the classification is 'marginal,' the Constitutional vice of infringement of Article 14 would not infect the legislation.[30] Such conceptually quixotic attitude of subjecting every law to the impossible perfectionist requirement has never found support from the Indian judiciary. Hence, this 'marginal' under-inclusiveness that would arise out of the absence of Jews under CAA would not vitiate the classification. Furthermore, while dealing with the case of Shias and Ahmadiyas, the distinction that is drawn is between religious persecution and sectarian violence. The Act concerns itself only with the 'religiously' persecuted minorities. While the legal drafting may sometimes be imperfect, but often the imperfection is the outcome of a compromise that is not the function of the courts to upset- or to make impossible for the future by dismissing the words used in the statutory law.[31] Deviating from the text of the act would only result in the occurrence of inconsistencies with the textually manifest object of the Act.[32] Moreover, citing Hindutva policies, political ideologies or election manifesto of a political party, when stripped of rhetoric, has no relevance and cannot be taken into account for determining the constitutional validity of any enactment, whether made by State or by Centre, as it is a purely legal issue and lies within the domain of the judiciary.[33]

[29]Aneesa Shaheed, *Afghanistan's Only Jew 'Worried' About The Country's Future*, TOLO NEWS, (30 May, 2018), https://tolonews.com/afghanistan/afghanistan%E2%80%99s-only-jew%E2%80%98worried%E2%80%99-about-country%E2%80%99s-future.
[30]*Supra* note 13.
[31]ANTONIN SCALIA & BRYAN A. GARNER, READING THE LAW: INTERPRETATION OF LEGAL TEXTS (2012).
[32]*Id.*
[33]*Supra* note 24.

V. A CASE OF SELECTIVE INCLUSION OF COUNTRIES

The issue of non-inclusion of, among others, Rohingyas from Myanmar and the Sri Lankan Tamils have been raised quite often, which the author believes are legitimate, yet poorly established concerns. While dealing with the Rohingyas, what needs to be taken into consideration is the imminent threat that this particular group poses to the security of the State. Bangladesh Prime Minister Sheikh Hasina stated that the over 10 lakh Rohingyas who fled from Myanmar to Bangladesh in the wake of 'persecution' are a 'threat to the security' of the entire region.[34] There have been reports that suggest that Rohingya terrorists have been fighting alongside Pakistani extremists in the Kashmir Valley.[35] In such an unsafe scenario, the Indian government has the discretion to decide on the interest of the State, protect the integrity of this land, and preserve its essence without its decision being cribbed and confined by a misplaced sense of arbitrariness, constitutional righteousness, and sanctimony.

There is no constitutional requirement that any such policy must be executed in one go. Policies are capable of being actualised in a staged way. More so, when the policies have a sweeping implementation and are dynamic in nature, their execution in a phased way is welcome, for it receives gradual and systematic willing acceptance and invites lesser resistance. The execution of such policy decisions in a phased manner is suggestive neither of arbitrariness nor

[34]PTI, *Rohingyas 'threat' to national and regional security*, says Bangladesh PM Sheikh Hasina, HINDUSTAN TIMES, (Nov 12, 2019, 06:23 IST), https://www.hindustantimes.com/world-news/rohingyas-threat-to-national-and-regional-security-says-bangladesh-pm-sheikh-hasina/story-HwYL5yrMda7yfa6IGZddRM.html.

[35]Dipanjan Roy Chaudhury, *Rohingya terrorists linked to pro-Pak terror groups in Jammu & Kashmir*, THE ECONOMIC TIMES, (Jul 12, 2018,), https://economictimes.indiatimes.com/news/defence/rohingya-terrorists-linked-to-pro-pak-terror-groups-in-jammu-kashmir/articleshow/55046910.cms?from=mdr.

of discrimination.[36] These are matters of public policy and not constitutional validity. The government might be of the view that after the end of the civil war in Sri Lanka, the situation of Sri Lankan Tamils has improved. Even if that is not the truth, there is nothing that stops the government from making a law in the future for absorbing those illegal immigrants (Sri Lankan Tamils), if the situation so warrants.

VI. THE CUT-OFF DATE – IN CONSONANCE?

The legal validity of the cut-off date is also being questioned as it appears to be discriminatory to the casual eye.[37] What needs to be taken into consideration is that any date chosen as a cut-off period does tend to be arbitrary to a certain extent, which is only inevitable.[38] Furthermore, there is no discrimination if the law applies by and large to all persons who come within its ambit as from the date on which it is made operative, regardless of it being prospective or retrospective in effect.[39] The Court should not normally interfere with the fixation of cut-off date by the executive authority as it lies within the domain of the executive unless such order appears to be on the face of it blatantly discriminatory and arbitrary.[40] There may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed, which could include, *inter alia*,

[36]Javed and Ors v. State of Haryana, AIR 2003 SC 3057: (2003) 8 SCC 369; Lalit Narayan Mishra Institute of Economic Development and Social Change v. State of Bihar, AIR 1988 SC 1136; Pannalal Bansilal Pitti v. State of AP, AIR 1996 SC 1023: (1996) 2 SCC 498.

[37]Varun Kannan, *The Constitutionality of the Citizenship (Amendment) Act – A Rejoinder*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY,(Jan 3, 2020), https://indconlawphil.wordpress.com/2020/01/03/guest-post-the-constitutionality-of-the-citizenship-amendment-act-a-rejoinder/.

[38]Union of India v. Parameswaran Match Works, 1975 SCR (2) 573.

[39]Hathising Mfg. Co. v. Union of India, AIR 1960 SC 923.

[40]Govt. of AP v. N. Subbarayadu (2008) 14 SCC 702.

administrative considerations. The Court cannot annul a statutory provision on the plea of unreasonableness, arbitrariness, etc. as it contains a certain level of subjectivity. Otherwise, the Court will be effectively substituting the wisdom of the legislature with its own, which is impermissible in our democratic constitutional framework.[41] Therefore it is expected that the Court would exercise judicial restraint and leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.[42] Also, after relaxing the naturalisation process for availing citizenship from 11 years to 5 years, it is only logical for the government to fix 31 December 2014 as the cut-off period, which effectively ensures that no targeted individual has to wait before benefitting from such a State measure, thereby making the cut-off date manifestly conjoined with the object that is sought to be achieved.

VII. THE UNKEPT PROMISE

It may not be out of place to mention here the Nehru-Liaquat agreement. This agreement, contracted between the governments of India and Pakistan in 1950, had provisions which enshrined, among other things, a full sense of security in respect of life and personal honour of the minorities of both sides.

This pact conferred a 'bill of rights' for the minorities of both countries which intended to address the following three issues,[43]

i) To alleviate the fears of the religious minorities on both sides.

[41]K.T. Plantation Pvt. Ltd. &Anr vs State of Karnataka, AIR 2011 SC 3430.
[42]*Supra* note 39.
[43]*Liaquat-Nehru Pact*, STORY OF PAKISTAN, (June 1, 2003), https://storyofpakistan.com/liaquat-nehru-pact/.

ii) To elevate communal peace.

iii) To create an atmosphere in which the two countries could resolve their other differences.

This agreement, as seen in subsequent years, was not implemented by Pakistan in its real spirit.[44] The result of the failure to honour the above bilateral commitment is the organised religious persecution taking place in Pakistan, that the world is witnessing today.[45]

In Lok Sabha, the members sat and debated at length on 13.02.1964 about the Nehru-Liaquat agreement and how it had failed to secure to the minorities of Pakistan their democratic and human rights. Our then Home Minister, Gulzari Lal Nanda voiced his concern about the status of the minority communities in Pakistan and stated that if Pakistan was failing to discharge its responsibilities, on human considerations, India will have to do something about it because India cannot take a purely legal and constitutional view.[46]

He further said that if they (the minority community) find it impossible to "*breathe the air of security in their country and they feel that they must leave it, then we cannot bar their way. We have no heart to tell them, 'You go on staying there and be butchered'. We cannot say that. We have no heart to say that. We cannot just see that they are perishing in the flames of communal fire and let them perish. No. It will be inhuman to do.*"[47]

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[44]LOK SABHA DEBATES, Third Series, No. 4, (Feb 13, 1964) (speech of Gulzari Lal Nanda).
[45]PTI, *Religious persecution remains a silent feature of Pakistan: Rights activists,* THE ECONOMIC TIMES, (Oct 23, 2019), https://economictimes.indiatimes.com/news/international/world-news/religious-persecution-remains-a-silent-feature-of-pakistan-rights-activist/articleshow/71717526.cms.
[46]*Supra* note 43.
[47]*Supra* note 43.

There was thus no ambiguity about the intention of the Parliament concerning the matter of minorities in its neighbouring countries. The above debate provides an insight into the Parliament's thinking about the issue from the very beginning, which unsurprisingly culminated into a legislative bill (Citizenship Amendment Bill, 2019), that was later ratified. Thus, the CAA is, or so it seems, that alternative method that the government has adopted, which recognises and seeks to remedy the historical injustices meted against these minority communities of neighbouring countries without whittling down the rights of any other person.

VIII. OBLIGATION AND DISCRETION OF THE STATE

India has no obligation, neither constitutional nor international, to introduce an all-encompassing policy to grant the status of citizenship to any illegal immigrant, let alone a whole community of them. It is not a signatory to the Convention and the Protocol, which would have allowed for intrusive supervision of the national regime by the UNHCR.[48] It is crucial to note that the Refugee Convention recognises a well-founded fear of religious persecution as a form of persecution.[49] What the CAA has done is that it has taken this particular international principle and put it into a certain, specific context of India. Thus, the yardstick that is applied here cannot simply be disregarded as a mark of line based on whimsical grounds as it is not a generic, universalisable norm, but a specific formulation of standard. It seeks to protect a specific class of people by addressing a specific issue that is recognised by the International Convention

[48]UN High Commissioner for Refugees (UNHCR), The Refugee Convention, 1951: The *Travaux préparatoires* analysed with a Commentary by Dr. Paul Weis, art. 35, 1990, available at: https://www.refworld.org/docid/53e1dd114.html (25 January 2020).
[49]*Id.*

itself. Indeed, India does have a legal obligation to uphold the principle of non-refoulment, which plays a pivotal role in customary international law and to treat the illegal immigrants with a minimum amount of dignity and respect, while not violating any of the basic human rights at the same time. The CAA, it should be obvious, while granting citizenship to a certain set of people, violates no such international principle. By explicitly stating that the Act shall not be applicable in the tribal area of Assam, Meghalaya, Mizoram or Tripura and Manipur (later added)[50] and the area covered under *"The Inner Line"* notified under the Bengal Eastern Frontier Regulation, 1873, CAA ensures that it is not violative of the Assam Accord and also strives to preserve the indigenous cultural identity of the Northeast as a whole.

It is commonly acknowledged that issues on nationality fall within the domestic jurisdiction of States and form part of *domaine réservé*, whereby the State enjoys unfettered discretionary powers.[51] This was further reiterated in the case of *Daivid John Hopkins v. Union of India*, whereby the Court held that the Government of India enjoys unbounded power to refuse citizenship to anyone without assigning reasons whatsoever.[52] It was further of the opinion that Section 14(1) of the Citizenship Act, from which the Government derives the above powers is not ultra vires Article 14 of the Constitution of India.[53] Furthermore, if one were to peruse the Constituent Assembly Debates, it becomes quite clear as to the extent of deference that was shown by the framers of our Constitution to the Parliament in matters

[50]PTI, *Inner line permit regime extended to Manipur; President signs order*, THE ECONOMIC TIMES, (Dec 11, 2019), https://economictimes.indiatimes.com/news/politics-and-nation/inner-line-permit-regime-extended-to-manipur-president-signs-order/articleshow/72472117.cms.
[51]Mónika Ganczer, *International Law and Dual Nationality of Hungarians Living Outside the Borders*, 53 Acta Juridica Hungarica 316, 318 (2012).
[52]Daivid John Hopkins vs The Union of India and Others, AIR 1997 Mad 366.
[53]*Id.*

concerning citizenship. The relevant extract of the debate, as stated by Dr. B.R. Ambedkar is as follows–

"*The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of Article 6 as I have moved the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit*." He further states, "*The effect of Article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date of the commencement of this Constitution by the provisions of Article 5 and those that follow, but Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind by who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide ad hoc for the time being*."[54]

It is to be noted that Article 5, which Ambedkar refers to, corresponds to the present-day Article 11 of our Constitution,[55] which authorises Parliament to 'regulate the right of citizenship by law' and enables it to make 'any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship'. The above quotation of Ambedkar serves to illustrate his view on matters pertaining to citizenship and exposes the sheer untenability of the critics' argument that questions the prerogative and discretionary power that is vested in the Parliament.

[54]Constituent Assembly Debate, Vol. IX, 177-178.
[55]The Constitution of India,Art. 11 (India).

IX. CLASSIFICATION ON HISTORICAL GROUNDS

It is well established that reasonable classification may also be based on historical reasons or events.[56] In *Mohan Lal's* case, the court said: "*It is easy to see that the ex-rulers formed a class and special legislation was based upon historical consideration applicable to them as a class. A law made as a result of these considerations must be treated as based upon a proper classification of such Rulers. It was based upon a distinction which could be described as real and substantial and it bore a just relation to the object sought to be attained*."[57]

The Statement of Objects and Reasons in the Citizenship Amendment Bill, 2019 states the following -

"*It is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on the grounds of religion in those countries. Some of them also have fears about such persecution in their day-to-day life where the right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and*

[56]Bhaiyalal v. State of M.P., AIR 1962 SC 981; Lachman Das v. State of Punjab, AIR 1963 SC 222 (223).
[57]Mohanlal v. Man Singh, AIR 1962 SC 73.

continued to stay in India even if their travel documents have expired or they have incomplete or no documents."[58]

We can call this the truth without pausing to fight over the factual accuracy of the above section. It is precisely because of this interpretive cannon embedded in an unjust past and the historical background based on the aftermath of India's partition and the ensuing trans-border migration that continues to influence the contemporary political and regional issues, in ways of atrocious religious persecution which is still alive and kicking, that such an amendment was legislated, which has now become a law.

X. THE PROBLEM OF CONVERSION

Amongst the numerous criticisms that are being levelled against the CAA, there exists a nuanced proposition or a question of law which the author believes warrant a detailed analysis. Assume the following – a Pakistani Sikh woman, after being subjected to extreme religious persecution in Pakistan, flees that place and enters the Indian territory in the year 2012 and has been living as an illegal immigrant in India ever since. In the year 2013, she converts for reasons best known to her, to the religion of Judaism. While the Act reads –"*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*";[59] the

[58] ¶2, Statement of Objects and Reasons, The Citizenship (Amendment) Bill, 2019.
[59] The Citizenship (Amendment) Act, 2019 §2(1)(b) (India).

question that needs to be answered is whether this woman in our example would be eligible to get citizenship under the Act. The author is of the opinion that a blend of textual and purposive interpretation of the Act needs to be undertaken to arrive at a decisive and informed conclusion. By adopting a strict textualist approach to the above section of the Act, it could be inferred from the *prima facie* reading that the relevant matter that should concern the executive, in this case, is whether the individual (illegal migrant) at the time of entry into India (on or before the 31st day of December 2014) belonged to any of the six communities mentioned in the Act. If that criterion is met, then the benefit of this Act must extend to that individual. Even if the textual meaning of the provision is discarded (though highly unlikely), it could be substituted with the idea of purposivism, which has been called 'the basic judicial approach these days'.[60] In such cases of ambiguity, the concerned authority must interpret the Act in such a manner that it infuses meaning into it. If an interpretation is made which effectively prohibits, say a religiously persecuted Buddhist who got converted to Judaism from obtaining citizenship, then such an interpretation, as is apparent, would have a debilitating and self-defeating effect. Thus, even a purposive approach would take us down a similar road of concluding that regardless of the act of conversion, the religion that one belonged to, at the time of entry into India, ought to be the one that needs to be the determining factor.

XI. CONCLUSION

When providing an expeditious process of availing citizenship to persecuted minorities belonging to Afghanistan, Pakistan and

[60]SUMMER R. S. ET AL., LEGAL REASONING AND STATUTORY INTERPRETATION: ROTTERDAM LECTURES IN JURISPRUDENCE, (Arnhem, Gouda Quint, 1989).

Bangladesh, one has to necessarily come to the conclusion that it has to be non-Muslims, and thus, it is not the other way around. While the concept of secularism, enshrined in the Preamble, is being repeatedly invoked, one must understand that the Preamble in itself is not a legally binding document. Hence, even if CAA is found to be violative of the Preamble, it couldn't be struck down based on that ground.

To say that CAA does not hold up to the high standards of public morality and therefore, one could completely disregard it as it is not a just law is wrong. However, to argue that this is what the law is, hence it is what it ought to be is too an incorrect position to hold.

Distinguishing these glaring conceptual errors, though important, would lead us nowhere. Viewing from an objective and dispassionate standpoint, it could be said that owing to its thriving democratic framework and secular credentials, India believes that it is its obligation to share the burden of the world by assisting those set of people who have been persecuted due to their religious identity. A classification made, *inter alia*, on religious lines meets the required international standards and falls within the four corners of our constitutional framework, and hence it stands validated.