

**CITIZENSHIP (AMENDMENT) BILL 2016: A CRITICISM****-SONAL BENIWAL<sup>1</sup> & PALLASH SHANKHDHAR<sup>2</sup>****ABSTRACT**

*Citizenship (Amendment) Bill, 2016 seeks to change the definition of illegal migrants by providing citizenship to the illegal migrants from Afghanistan, Bangladesh and Pakistan, who are of Hindu, Sikh, Buddhist, Jain, Parsi and Christian extraction also reducing the requirement of 11 years of continuous stay in the country to 6 years. However, the Act has no provision for the Muslim community. Never before has religion been specifically identified as the ground for distinguishing between citizens and non-citizens, hence raising a question on the secularity of the nation. This article aims to delve into the turmoil caused in the Northeastern states due to the introduction of the said Bill while giving a timeline of the history of nuisance in the said region particularly in the state of Assam. After providing the complete background the article questions the Constitutionality of the Act on the grounds that it violates Article 14, of the Constitution while going against the Basic Structure itself. Although the Bill has lapsed in the Upper House of the Parliament which gives a ray of hope to the people in the Northeast, this battle between the government and the people of Northeast still prevails.*

*KEYWORDS: Article 14, Assam Accord, Foreigners Act 1946, Illegal Migrants, Indigenous Tribes, National Register of Citizen (NRC).*

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**I. INTRODUCTION OF THE BILL**

Part II of the Constitution of India (Articles 5-11) deals with the Citizenship of India. Article 5 speaks about citizenship of India at the commencement of the Constitution (Nov 26, 1949). Article 11 gave powers to the Parliament of India to regulate the right of citizenship by law. Thus Citizenship Act 1955 was enacted by the Parliament. It is an act to provide for the acquisition and termination of Indian citizenship, and the same acts speaks about citizenship of India after the commencement of the Constitution.

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In India, an individual is granted the citizenship by the following ways:<sup>3</sup>

1. by birth
2. by descent; and
3. by naturalization

The objective behind the introduction of the Citizenship Amendment Bill 2016, is to grant the citizenship of India to communities namely Hindus, Jains, Sikhs, Parsis, Buddhists and Christians from three specific countries namely, Bangladesh, Pakistan and Afghanistan. The main highlights of the bill were amendment of section 2 and amendment in the third schedule of the Citizenship Amendment Act, 1955. Amendment in Section 2 provides the definition of the term 'illegal migrants' as follows:

*In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (1), after clause (b), the following proviso shall be inserted, namely:—* “Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have 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 order made thereunder, shall not be treated as illegal migrants for the purposes of this Act.”<sup>4</sup>

Further the Bill makes an amendment to the third schedule of the Act, which reads as follow: “*In the principal Act, in the Third Schedule, in clause (d), the following proviso shall be inserted, namely:—* 'Provided that for the persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, the aggregate period of residence or service of a Government in India as required under this clause shall be read as "not less than six years" in place of "not less than eleven years".’<sup>5</sup>

The statements and reasons given by the government for such amendments are given below : Amendment in Section 2 changed the definition of illegal migrants “*Under the existing provisions of the Act, persons belonging to the minority communities, such as Hindus, Sikhs,*

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<sup>3</sup> Article 5 of the Indian Constitution

<sup>4</sup>THE CITIZENSHIP (AMENDMENT) BILL, 2016. BILL NUMBER 172/2016

<sup>5</sup>THE CITIZENSHIP (AMENDMENT) BILL, 2016. BILL NUMBER 172/2016

*Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have either entered into India without valid travel documents or the validity of their documents have expired are regarded as illegal migrants and hence ineligible to apply for Indian citizenship. It is proposed to make them eligible for applying for Indian citizenship. There are people in India who are applying for the citizenship of our nation but aren't able to do so because of lack of proof. The amendment made in Schedule 3 of the Act was made by giving the reasoning that “.....This denies them many opportunities and advantages that may accrue only to the citizens of India, even though they are likely to stay in India permanently. It is proposed to amend the Third Schedule to the Act to make applicants belonging to minority communities from the aforesaid countries eligible for citizenship by naturalization in seven years instead of the existing twelve years.”<sup>6</sup>*

Further, the bill also provides a provision for the cancellation of citizenship of the Overseas Citizens of India in the way that the Bill allows cancellation of OCI registration for violation of any law. But the offences covered under this have not been mentioned, hence, OCI can be cancelled for petty offences.

## **II. CONTROVERSY REGARDING THE BILL**

### **A. ASSAM ACCORD**

It was a long struggle by the people of Assam, 02 February 1980 was beginning of the talk between the then Prime Minister Indira Gandhi and All Assam Student Union. Where the student body demanded the expulsion of migrants as per the 1951 NRC, whereas the government's stand on it was to consider the date of 24.03.1971 as the cut-off date to verify migrants from Bangladesh. The government wanted 1971 to be the cut-off year as per the settled provisions of the Nehru-Liaquat pact as Indian citizens, along with those who had arrived as per the Indira-Mujib agreement of March 19, 1972.<sup>7</sup>

There was another attempt in April of 1980 to hold a meeting to consider 1967 as the cut off year for verification of migrants. “The suggestion regarding 1967 was made seeing that 1964 and 1965 were peak years for the refugee influx (from East Pakistan) and the Centre had issued

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<sup>6</sup>THE CITIZENSHIP (AMENDMENT) BILL. 2016. BILL NUMBER 172/2016

<sup>7</sup>Liaqut-Nehru pact April 8, 1950 and Indira-Mujib agreement March 19, 1972

instructions to register them as citizens. The electoral rolls of 1967 should, therefore, provide the nearest definite document which can be drawn upon to determine citizenship,”<sup>8</sup> After various attempts finally, AASU and AGSP settled on 24.03.1971 as the cut-off date. Stating that those who entered the state between 1966-1971 will not be considered citizens of India, keeping the base date to be 01.01.1966. If anyone entered after 24.03.1971 they will not be considered as the citizen of India.

During the British Raj, the migration between the two countries was active but only after independence it took a communal stance, following with 1964-1965 at which time the refugee influx from East Pakistan was at its peak, adding its population in 1971 after East Pakistan got divided, and Bangladesh came into existence. Since 1971 there has been a constant influx of refugees which has created a major problem for the minorities living there.

Sanjib Baruah in his book *India Against Itself: Assam and Politics of Nationality* mentioned: “I would like to refer to the alarming situation in some states, in the north eastern region, where from reports are coming regarding large scale inclusion of foreign nationals in the electoral roll. In one case, the population in 1971 census recorded an increase as high as 34.98% over 1961 census figure, and this figure was attributed to influx of a large number of persons from foreign nationals..... a stage would be reached when that state may have to reckon with the foreign national who maybe, in all probability, constitute a sizable percentage in not the majority of population in the state.”<sup>9</sup> Incidents of agitation were reported like the Nellie massacre. It was aimed at illegal Bangladeshi immigrants. The violence was due to the conflict over ethnic identity, Assam’s old struggle to remove illegal migrants. It was during the 1983 election that Nellie massacre happened which is still considered to be the most violent agitation, 1979 Lok Sabha MP Hiralal Patwari died necessitating by-election and the leader of AASU along with people of Assam lead to the boycotting of the elections in 1983 because of the large number of migrants in Assam constituency. People of Assam called for boycotting the election.

On 02 February 1982, Indira Gandhi was adamant to hold elections in Assam and this led to Assam agitation. Nellie massacre was a fallout of the decision by the government to hold assembly election of 1983. On 18<sup>th</sup> February 1983, there was violence in Muslim dominant

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<sup>8</sup>TS MURTY IN HIS BOOK ASSAM THE DIFFICULT YEAR

<sup>9</sup>India Against Itself : Assam and the Politics of Nationality , Sanjib Baruah , chapter 6 page 120

villages, people marched with armed weapons which led to bloodshed. After a series of violent riots in Assam constituency in 1985, the government and AASU signed an agreement popularly known as Assam Accord in presence of Prime Minister Rajiv Gandhi. The highlights of the accord were-

1. Clause 5:

This clause states that base year for expulsion of foreigners will be 1.01.1966, migrants who came after 01.01.1966 and 24.003.1971 will be detected and sent back. *Names of Foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.*<sup>10</sup> Government will consider the problem expressed by AASU/AGSP

2. Clause 6:

*“Constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.”*<sup>11</sup>

These two provisions clearly adhere to the demand of the AASU.

***Introduction of the bill leading to violation of Clause 6***

After a careful reading of the Clause 6 of the Assam Accord, it can be clearly seen that the clause was inserted to provide protection and safeguard the socio-political rights and culture of the "indigenous people of Assam"

The said Clause is protected under the Fundamental Right of Article 29 (1) of the Indian Constitution which states as follows:

*"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."*

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<sup>10</sup> Clause 5 of Assam Accord 1985

<sup>11</sup> Clause 6 of Assam Accord 1985

The violation of the Bill in regards to Article 29 (1) majorly concerns the issue of the indigenous communities of Assam and how they have a Fundamental Right to protect their cultural identity against the problem of illegal migrants in their region.

Clause 6 of the Accord was introduced to provide protection to the Assamese indigenous communities from the problem of illegal migrants. The Bill, if introduced, will be defeating the whole purpose of the said clause in itself.

## **B. PROBLEMS DUE TO ILLEGAL MIGRANTS**

The problem of illegal migrants has a socio-cultural and economic dimension in the state of Assam. The problem has arisen due to the influx of refugees in Assam region due to which their social and cultural identity is at stake, even the economic tension created in the state is a big issue which needs to be tackled.

In a report to the then President of India K R Narayanan in the year 1998, the then Governor of Assam, Lieutenant General (Retd.) S.K. Sinha warned that the illegal Bangladeshi migration influx *"poses a grave threat both to the identity of the Assamese people and to our national security. Successive governments at the Centre and in the State have not adequately met this challenge."*<sup>12</sup>

### ***Estimations of the Total Migrants in the Northeastern part of India:***

There is no consensus of estimation regarding the number of total migrants in the Northeastern part of India. Besides, the whole of Northeast with exception to Manipur, Tripura and Sikkim had been within the fold of undivided Assam till 1963. This process of separation from Assam had completed only in 1986 with the separation of Mizoram and Meghalaya. Therefore, the lack of sufficient information and evidence had been a major challenge while writing about the Northeast Issues.

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<sup>12</sup> Report on Illegal Migration Into Assam, Submitted to the President of India, By Governor of Assam, 8th November, 1998

Census of India, 1921 has estimated the total number of migrants in Assam at 411941 during 1911-1921.<sup>13</sup>In the same manner, Anil Saikia, A Goswami and H Goswami have estimated the number of foreign migrants in Assam at 1337015 during 1951-1991.<sup>14</sup>Amalendu Guha, another individual researcher, has also estimated that the number of post-1951 settlers with questionable citizenship status would in no case exceed the value of 13 lakhs.<sup>15</sup> All Assam Students Union and Gana Sangram Parishad have also estimated the number at 45 Lakhs.<sup>16</sup>Susanta K Das believes that the population growth in Assam from 1901-1951 “has been the second highest in the world, exceeded only by Brazil”<sup>17</sup>

### ***1. The cultural identity of indigenous people of the North East***

Allowing the entry of the mentioned illegal migrants into the Republic of India (as proposed in the Passport (Entry into India) Amendment Rules, 2015 & The Foreigners (Amendment) Order, 2015), the government would be violating the Assam Accord signed in 1985. The people of Assam have had a long withstanding history of suffering from the influx of illegal migrants.

After a careful analysis of the Assam Accord, it can be clearly seen that the treaty was signed on the agreement that it would help the indigenous population of Assam in preserving their social, linguistic and cultural identity.

The said treaty is protected under the Fundamental Right of Article 29 (1) of the Indian Constitution which states as follows:

*"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."*

Clause (1) of Article 29, gives protection to every section of citizens having a distinct language, script or culture by guaranteeing their right to conserve the same. If such sections desire to preserve their own language and culture, the State would not stand in their way.

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<sup>13</sup>SanjibBaruah, op. cit., p-57

<sup>14</sup>Anil Saikia, H Goswami and A Goswami, *“Population Growth in Assam 1951-1991 with Focus on Migration”*, Akansha Publishing House, New Delhi, 2003, p-114.

<sup>15</sup>Abu NasarSaiied Ahmed, *“Nationality Question in Assam: The EPW 1980-81 Debate”*, Omeo Kumar Das Institute of Social Science and Development (Guwahati) and Akansha Publishing House, New Delhi,2006, p-93.

<sup>16</sup>Ibid, p-93.

<sup>17</sup>As Quoted in SanjibBaruah’s *“India Against Itself”*, Oxford University Press, 2011 (reprint), p-50.

The Bill violates Article 29(1) of the Indian Constitution that is enjoyed by the communities in Assam in the manner that their right to protect their cultural identity has been guaranteed to them through this Article. And this cultural identity of theirs is under a threat due to the influx of illegal migrants into their homeland.

In the case of *Jagdev Singh Sidhanti vs. Pratap Singh Daulta*<sup>18</sup>, the Apex Court observed that, "*Right to conserve the language of citizens includes the right to agitate for the protection of the language. Political agitation for conservation of the language of a section of the citizen cannot therefore be regarded as a corrupt practice within the meaning.....Unlike Article 19(1), Article 29(1) is not subject to any reasonable restriction*"

The court also said that the right under Article 29 (1) is an absolute right.<sup>19</sup>

## **2. Communal Tension**

The Nellie Massacre, Bodo-Santhal conflict<sup>20</sup>, Bodo –Muslim conflict<sup>21</sup> are some of the examples of communal tensions in Assam. These communal tensions have affected the peace and secular motto of our country.

Increased financial burden, displacing native workers, decreased wages with increased population.<sup>22</sup> Illegal Migrants are adding up each year, which is putting pressure on our resources like land. Due to illegal migration, the job opportunities for the citizens are decreasing because the migrants are willing to work for lower wages.

## **C. NRC (National Register of Citizens)**

Lieutenant General S.K. Sinha, the then Governor of Assam, submitted a report to the then President of India on the threat posed by the constant influx of migrants from Bangladesh. He said:

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<sup>18</sup> AIR 1965 SC 183

<sup>19</sup> Id. at P 188

<sup>20</sup>In December 2014, a series of attacks by militants resulted in the deaths of more than 76 people in India.

<sup>21</sup>In July 2012, violence in the Indian state of Assam broke out with riots between indigenous Bodos and Bengali speaking Muslims

<sup>22</sup>Socio-Economic and Political Consequence of Illegal Migration into Assam from Bangladesh , Das J and Talukdar

*“The silent and invidious demographic invasion of Assam may result in the loss of the geo-strategically vital districts of lower Assam. The influx of illegal migrants is turning these districts into a Muslim majority region. It will then only be a matter of time when a demand for their merger with Bangladesh may be made. The rapid growth of international Islamic fundamentalism may provide the driving force for this demand. In this context, it is pertinent that Bangladesh has long discarded secularism and has chosen to become an Islamic State. Loss of lower Assam will sever the entire land mass of the North East, from the rest of India and the rich natural resources of that region will be lost to the Nation.”<sup>23</sup>*

People of Assam faced communal tension. This forced the government to take an action to detect and deport all the illegal migrants in the state of Assam. National register of citizen (NRC) is a method adopted by the government to keep the record of the population of India and remove the illegal migrants in the country. A National Register of Citizens was prepared in 1951 after the conduct of the Census of that particular year. The Register included particulars of all the persons enumerated during that Census. As per statutes governing NRC updates were in The Citizenship Act, 1955 and The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (As amended by 1. G. S. R. 803(E), dated 9th November, 2009 (with effect from 9/11/2009.) 2. Ministry of Home Affairs (Office of Registrar General, India), Order No. S.O. 596(E), dated 15th March, 2010, published in the Gazette of India, Extra, Part II. No. 504 S.3(ii), dated 16th March, 2010 p.1.) NRC updating process has started in Assam in 2015.<sup>24</sup> The NRC is now being updated in Assam to include the names of those persons (or their descendants) who appear in the NRC, 1951, or in any of the Electoral Rolls.<sup>25</sup> *“In this context, it is submitted that detection of illegal migrants, who belong to the same ethnic stock as Indians is not an easy task. However, large-scale illegal migrants from Bangladesh have not only threatened the demographic structure of the area but have seriously impaired the security of the nation, particularly in the present circumstances. The need for expeditious identification of illegal migrants is more pressing now than ever. It is not a matter of dealing with a religious or linguistic group. It is a question of identifying those who illegally crossed*

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<sup>23</sup> Report on Illegal Migration into Assam, submitted to the president of India, by governor of Assam, 8<sup>TH</sup> November 1988.

<sup>24</sup> Government of Assam, Office of State Coordinator of NRC, Assam

<sup>25</sup> Election Commission of India

*over the border and continue to live in India contrary to the Indian law and the Constitution.*"<sup>26</sup>

In the petition filed by the *Assam Sanmilita Mahasangha & Ors. vs. Union Of India*, the main contention by the petitioner was that the action of election commission is oblivious to the fact that updating the NRC is in its final stage, the petitioner submits that without updating the NRC and without subsequent changes of the electoral roll i.e. deleting the names of illegal migrants, is to ensure 2016 State Legislative Assembly election will not prove to be disastrous in nature and won't affect the national security as well as demography of the nation, destroy the demography of the state and would have effect on the national security.<sup>27</sup>

The list of National Register of India was released by Registrar General of India Sailesh and NRC coordinator Prateek Hajela which left behind a large number of population. The NRC update was done on the basis of Citizenship Act 1955, Foreign Tribunal and Foreigners Act 1946.

The Citizenship (Amendment) Bill 2016 intended to change the definition of illegal migrant in section 2 of The Citizenship Act 1955 which defeats the purpose of the earlier NRC. *"Probably the most important event in the province during the last 25 years- an event, moreover, which seems likely to alter permanently the whole feature of Assam and to destroy the whole structure of Assamese culture and civilization has been the invasion of a vast horde of land-hungry immigrants mostly Muslims, from the districts of East Bengal. ... wheresoever the carcass, there the vultures will gathered together"*<sup>28</sup>

Assam took a stand against this amendment because provisions of this amendment do not solve their problem of illegal migrant and the updated list of 2018 gets nullified and it will take them nowhere but lead to disastrous consequences. But since the amendment bill has lapsed in the upper house, it bought a sense of hope in the people of Assam.

### **III. THE VIOLATION OF THE BASIC STRUCTURE AND ARTICLE 14**

#### **A. VIOLATION OF THE BASIC STRUCTURE**

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<sup>26</sup> Counter-affidavit by Shri Jatinder Bir Singh, Director, Ministry of Home Affairs

<sup>27</sup> WRIT PETITION (CIVIL) NO. 562 OF 2012

<sup>28</sup> Politics of Migration by Dr. Manju Singh, Anita Publications, Jaipur, 1990, Page 5

The Basic Structure Doctrine which was famously put forth in the landmark judgment of *Kesavananda Bharti vs. State of Kerala*<sup>29</sup>. The doctrine thus forms the basis of a power of the Supreme Court to review and strike down constitutional amendments and acts enacted by the Parliament which conflict with or seek to alter this "basic structure" of the Constitution. The basic features of the Constitution have not been explicitly defined by the Judiciary, and the claim of any particular feature of the Constitution to be a "basic" feature is determined by the Court in each case that comes before it. Thus it gives extra power to the court to review and strike down any constitutional amendment and act enacted by the Parliament. When the constituent history of the preamble was brought to the notice of the Court in *Kesavananda Bharti* case, it held that "*the preamble of the Constitution was part of the Constitution* and the observations to the contrary in *Berubari Union* case<sup>30</sup> were not correct".

In India, secularism has again been recognized by Supreme Court of India to be a part of the basic structure of the Constitution in the case of *S.R. Bommai vs. Union of India*<sup>31</sup> and cannot be done away with even by a constitutional amendment.

The Preamble of the Constitution, in its own words, declares India to be a secular nation, after the introduction of the 42nd Amendment of the Constitution, hence having no particular religion and treating all religions equally. The bill, if passed in its current form, seeks to give preference to Hindu refugees over Muslim refugees migrating to India, which is unconstitutional as the Preamble of the Constitution confirms India as a secular state.

India is a secular state. The grant of citizenship on the basis of religion goes against the settled principle of secularism in India. Although the term religion is not explicit in the text but it is deeply embedded in it.

The laws implicitly require the state and its institutions to recognize and accept all religions, enforce parliamentary laws instead of religious laws, and respect pluralism.<sup>32</sup>

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<sup>29</sup>(1973) 4 SCC 225

<sup>30</sup>AIR1960SC845

<sup>31</sup> AIR 1994 SC 1918 (1994)

<sup>32</sup>Rajagopalan (2002), "Secularism in India", in Editor: William Safran, *The Secular and the Sacred - Nation, Religion and Politics*, Chapter 13

**B. VIOLATION OF ARTICLE 14**

Article 14 of the Indian Constitution guarantees the right to equality to all. The protection of this right is available to all irrespective of their nationality and citizenship. But the Bill goes against the well-settled principle of reasonable classification enshrined in Article 14 of the Indian Constitution. The Bill provides for an opportunity to a particular community to seek citizenship of India and denies the same to the other communities despite the fact that the fundamental right of equal treatment is available to each and every person whether citizen or non-citizen.

The question is whether this provision violates the right to equality guaranteed under Article 14 of the Constitution because it provides differential treatment to illegal migrants on the basis of their religion. Article 14 guarantees equality to all persons, citizens and foreigners. It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose.<sup>33</sup> The Statement of Objects and Reasons of the Bill does not explain the rationale behind differentiating between illegal migrants on the basis of the religion they belong to.

Article 14 of the Constitution, applies to both **citizens as well as non-citizens**. According to this definition of Article 14, the right to be treated equally under the law has been provided to *everyone* irrespective of their nationality or religion.

By the introduction of the Bill, the government will be explicitly going against the Article that provides right to equality as it is explicitly providing citizenship on the basis of religion to certain communities and ruling out certain communities. The Bill is prima facie discriminatory in nature especially towards the Muslim community and shall not be brought into force for it will be a big blow towards the secularity and the rule of law that governs the law of the land.

It is submitted that the current Bill shall be put to the test of the doctrine of arbitrariness.

The origin of this test can be traced to the case of *E. P. Royappa v. State of Tamil Nadu*,<sup>34</sup> wherein Justice Bhagwati, in his famous paragraph, stated that,

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<sup>33</sup> G.S.R. 685 (E) and G.S.R. 686 (E), Gazette of India, September 7, 2015.

<sup>34</sup> E.P Royappa v. State of Tamil Nadu, 1974 SCR (2) 348.

*“Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.”*

Unequivocal support to the test of arbitrariness and its applicability to all State action was in **Ajai Hasia v. Khalid Mujib Sehravardi**<sup>35</sup>, wherein a Constitution Bench of the Supreme Court stated that,

*“It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not para-phrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality..... Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of “authority” under Article 12, Article 14 immediately springs into action and strikes down such State action. The influence of the concepts of reasonableness and non-arbitrariness pervade the entire constitutional scheme and is a golden thread which runs through the fabric of the Constitution”*

In **Subramaniam Swamy v. CBI**<sup>36</sup>, it was stated that,

*“The differentia which is the basis of the classification must be sound and must have reasonable relation to the object of the legislation. If the object of classification is itself discriminatory, then an explanation that the classification is reasonable having a rational relation to the object sought to be achieved is immaterial”.*

It was further affirmed that Article 14 combats and repels arbitrariness in State action and ensures fairness and equality of treatment.<sup>37</sup>

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<sup>35</sup>AjaiHasia v. Khalid MujibSehravardi(1981) 1 SCC 722.

<sup>36</sup>Subramaniam Swamy v. CBI (2014) 8 SCC 682.

<sup>37</sup>Maneka Gandhi vs. Union of India (1978 (1) SCC 248 )

Article 14 guarantees equality to all persons, citizens and foreigners. It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose.<sup>38</sup> The Statement of Objects and Reasons of the Bill does not explain the rationale behind differentiating between illegal migrants on the basis of the religion they belong to.

### **The Bill does not pass the Test of Arbitrariness**

The Bill promises to provide citizenship to 6 specific religions from 3 specific countries. As per the statement of object and reasons mentioned in the Bill the amendment has been proposed to make eligible the abovementioned persons of the minority community for applying for Indian Citizenship since their presence in India is illegal hence they are ineligible to apply for the same. The other object is that so many persons including the aforesaid minority are unable to produce proof of their Indian origin; hence they have to apply for citizenship by naturalization under Section 6 of the Act, which requires a minimum residency of 12 years. Therefore, the amendment proposes to reduce this period to 7 years. Lastly, the Bill aims at registration of Overseas Citizen of India (in short OCI) cardholders may be cancelled if they violate any law. Now, while religious persecution may, in the given facts and circumstances, be a reasonable principle for differentiation, it cannot be articulated in a manner that dilutes the republican and secular foundations of citizenship in India. Such differentiation on the ground of religion goes against constitutional morality. Granting citizenship on the basis of religion is in itself violative of the secular policy of the state, in addition to this, the government is planning to grant it only to 6 specific communities in 3 specific countries. The government claims that they are bringing forth the said Bill to help these communities, who are a minority in their home countries, the question needs to be asked about the Rohingya community who are a minority in their country as well. Another such community is the Ahmadia community who are a Muslim minority in Pakistan<sup>39</sup> and have been facing religious persecution for ages and provide them refuge in our country if the government is planning to help illegal immigrants relating to minority communities. Therefore, it can be argued that pursuing positive actions in favour of only the six non-Muslim communities is discriminatory. In all the actions that the government has taken regarding the status of illegal migrants relating to the Muslim community it can clearly be seen

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<sup>38</sup> State of West Bengal vs. Anwar Ali Sarkar, AIR 1952 SC 75.

<sup>39</sup> Pakistan Census 2017 by religion

that the government has been acting in a discriminatory manner towards a particular religion and hence such a Bill shall be stopped at its genesis.

#### **IV. CONCLUSION AND SUGGESTIONS:**

The foregoing discussion makes it amply clear that the Government of India is trying to confer citizenship on foreigners on the basis of religious pretext. The proposed amendment is unprecedented. Till date religion has never been identified in the citizenship law as a ground for distinguishing between citizens and non-citizens. It is against the principle of secularism. As suggested in the article, religious persecution may well be a reasonable principle of differentiation, in the given circumstances, but it cannot be articulated in a manner that it dilutes the secular policy of the nation. If this Bill is truly a humanitarian move then the benefits under the bill should be conferred to all religious communities and not to some selected few. The bill has currently lapsed in the Rajya Sabha and hence failed its approval giving hope to the secular nature of the country. The government shall not forget the philosophy of Indian people and Indian saints and sages of vasudev kutumbkam which means that the entire world should be treated like a family. It leaves no scope for discrimination to the government.