

CITIZENSHIP AMENDMENT ACT, 2019 & ITS DISCONTENTS

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ABSTRACT

The Citizenship Amendment Act, 2019 and its protest movement in India continued for almost three months (Dec,2019 – March-2020). It hogged up media headlines. The movement largely remained non-violent and middle class urban centric. It appears difficult to conclude that whether the movement has finally ended or temporarily withdrawn due to Corona Pandemic. It can reoccur after Corona since apprehensions against the Act. have yet not been addressed. The irritants should be sorted out during the truce period to avoid its reoccurrence.

Keywords : CAA, NRC, NPR, Passive revolution

The Discontents against Citizenship Amendment Act, 2019 paraphrased as CAA acquired Centre stage in Indian politics. People from metropolitan cities to small towns came on road and blocked to protest against the above Act. The celebrated centres of learning became epicenter of intellectual criticism and opposition to the Act passed by the Modi 2.0 Government in Dec.-2019. A large number of students from IITs, IIMs, universities, journalists, cinematic celebrities, women and social activists participated in the movement. But the most significant feature of this anti-citizenship Act movement was that it emerged as quite spontaneous. It was purely a leaderless and a-political middle class movement in which millennial took large part.

It was unique movement of this millennium. The discontent became so popular that it captured headlines in Media. The Citizenship Amendment Act (CAA), National Register of Citizens (NRC) and National Population Register (NPR) became buzz words. Some places like Shaheen baag, Jantar-Manter, Jamia, and Lalbaag etc. became hotspot for the movement. The discontent was visible throughout India. In spite of large participation, the movement remained largely peaceful before it got politicized along communal lines.

The movement has many perceptions. Different

parties and groups perceived it differently. For example, the Government looked the agitation as a construct of opposition and carried out on their instigation. The opposition, on the other, found some conspiracy against Muslims in Act. It was antithetical to secularism. The constitutionalists castigate this Act against the basic structure of the Indian Constitution. The left intellectuals brand this Act as a Bourgeois Law to deprive common men from citizenry rights. The production of desired documents of citizens would be difficult for common men. The poor might be victims of corruptions. The Government defends the Act and argues that the Act would be able to identify illegal inhabitants and expatriate them especially Rohingyas and Bangladeshi. It would reduce infiltration-insurgencies, contain terrorism and save employment opportunities for legally Indian citizens. The Act would also invite and allow oppressed minorities belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian from Afghanistan, Pakistan and Bangladesh living in India as refugees since 31st December 2014. The non inclusion of Muslim imparted opponents and secular critiques an opportunity to brand the Act as anti Muslim. This non inclusion of Muslims remained as major factor responsible for anti CAA, 2019 movement.

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Debate on Citizenship :

The concept of citizenship originated in Greek city state. Aristotle propounded theory of citizenship in his treatise the politics. In Greek city states, citizens were the privileged class entitled to participate in law making, execution and adjudication. A large number of women, slaves and aliens were deprived of citizen rights. But things changed after city states merged into Roman Empire. The deprived hitherto got citizenship rights. The history moved onwards in Republican and mediaeval phase. Citizenship could not be discussed much during this period. But with emergence of modern liberal states, the citizenship again began to acquire centre stage. Modern democratic liberal and Marxist school started to deliberate on this in 19th and 20th century. The view of T. H. Marshal and Anthony Giddens are important in case of evolution of citizenship.

Development of Citizenship in India :

Citizenship in India is a western import and developed in a process of piecemeal democratization and democratic promotion in colonial and post-colonial India.

The colonial period is divided between rule by East India Company (1765-1857) and by the British Crown (1858 – 14th August 1947). The evolution of citizenship during colonial period has been analyzed in detail by Prof Neeraja Gopal Jayal in her book Citizenship And Its Discontents(2013). As per available evidences, it is commonly believed that not much could be achieved on granting citizenship rights to Indian subjects during Company's phase. Some steps were taken to prepare population register through first time Census in 1771. Although it was sectarian Census based on caste, sub-caste and religion. Political scientists and historians sometimes attempt to locate this census as first step for citizenization of Indian and overseas Indian subjects by rulers of the Company. Further, Acts were passed in 1793, 1784, 1793, 1813, 1833 and finally in 1858 before first war of independence and shifting of command from the Company to Crown in 1858. Next 90 years India was ruled by the Crown. During this rule, Crown passed half a dozen of Government of India Acts like Government of India Act in 1858, 1893, 1909, 1919, 1935 and India's Independence Act, in 1947. These Acts proved

catalyst in democratization of India. Indians were given representation in national and state Legislative Councils. Many of these representatives were nominated and many were elected. Indians were initially allowed only to seat in the councils and watch to learn. They did not have voting rights. Their suggestions too were not mandatory on the British Government. Notwithstanding it seems that first forty year of Crown rule initiated process of democratic promotion like permission to form political parties and also for Indian participation in national and state legislative councils.

The above democratization created pan India awareness that alarmed Britishers. They began now to ponder to weaken Indian national movement. As a result, divide and rule policy was adopted and implemented. The Bengal was partitioned, Muslim league was formed, Congress got split. Hindu Mahasabha was formed. Muslims were given separate representation in legislative bodies through the Act in 1909. The divisive agenda and expansion of democratization continued simultaneously. The Sikhs too started demand for separate representation. The decade of 1910-20 marked a new benchmark with coming of Mahatma Gandhi, unification of Congress –Muslim League, and introduction of dyarchy in India through Government of India Act, 1919. The base of national movement became wider with Gandhi's approach to involve peasants, farmers, harijans and bringing villagers into mainstream national movement hitherto dominated by urban high caste western educated middle class. The Government sharpened its strategy of division by allowing Dr. Ambedkar for articulating his demand for separate representation for scheduled castes in councils like Muslims and Sikh popularly known as Communal Award. Somehow this trick could not work due to mutual wisdom of Bapu and Baba that culminated into Poona Pact in 1930. The Crown Government made a penultimate effort to introduce a system of Provincial Autonomy through Government of India Act, 1935 and for election in Indian provinces. The elections were held in eleven provinces. Congress was elected in seven and Muslim League in four states. This was the first electoral exercise howsoever on the basis of limited franchise and narrow citizenry rights. Then second world war was declared that ended in

1945. India did not support it. On the other, Gandhi gave a call to Quit India. Situation changed after the war and UNO pressurized colonial powers to grant independence to colonies. The process began. British masters proposed to elect Constituent Assembly for drafting a Constitution. The election for the Constituent Assembly was held and drafting process started. But in the mean time Jinnah expressed his inability to stay with India that made partition inevitable. It had support of British masters too. Finally Colonial Government came with the last Government of India Act, in 1947 to grant Independence of India, to divide the Nation and also to then working Constituent Assembly. Muslim League members left the Assembly. Remaining members drafted Constitution for India. After detailed debate and deliberation, (Granville Austin, 1966) this Constituent Assembly completed and gave constitution to the people of India. This was adopted largely on 26th Nov 1949 and finally on 26th January, 1950. It would be apt enough to briefly discuss constituent assembly debate on citizenship

Constituent Assembly Debate on Indian Citizenship :

The architects of Indian Constitution extensively debated on the issue of Citizenship in Constituent Assembly. A closer look reflects differences of opinion on issues. The assembly debated on viability of common and differentiated citizenship. Members were debating as to whether constitution grants a uniform citizenship to all are to different groups and communities differently. Another problem that drawn controversial attention of the assembly was regarding opening of citizenship to migrants of Pakistan. The issue was as to whether migrants to Pakistan should be allowed to grant Indian citizenship if they wish to return and settle as citizen in India. Many members were quite apprehensive that this open citizenship for all would create problems of infiltration in porous border adjacent to either side of Pakistan or both. Sh Choudhary was very worried for possible illegal entry of Bangladeshis in Assam and other North Eastern states. Another member of the Constituent Assembly Sh Desmukh was advocating citizenship for Sikhs living in any country and willing to relinquish for adopting Indian citizenship through proper process prescribed by the Assembly. Besides, longer duration of 12 years living in India was proposed must to get

citizenship. Precisely various kinds of views were contested and countered before finally enshrining articles for Citizenship in the Constitution of India.

Citizenship and the Indian Constitution :

As established from the days of Greek city states that citizens are privileged group of inhabitants within the state and entitled to take part in governance like in law making, its execution and adjudication etc. These citizens alone are eligible to join civil, police, military and paramilitary services. This is a dynamic concept and system of inclusion and exclusion continues. Provisions for inclusions are there in constitution to grant citizenship through marriage, registration, naturalization, and inclusion of territories. It happened in inclusion of Goa in 1962, Daman, Diu, Dadra, Nagar and Haveli and Pondichery and Sikkim in 1975. Recently, the Government of India proposed to extension of dual citizenship to pravaasi Bhartiya. Due to these changing circumstances, the Citizenship Act has been amended in 1955, in 1986 and now in 2019 known as the Citizenship Amendment Act, 2019 to grant citizenship to people practising Hinduism, Buddhism, Jainism, Sikhism, parsi and Christianity and victimized by Government of Pakistan, Bangladesh and Afghanistan and have come as refugee and been living in India on or 31st before 31 December 2014. This process of continuity for inclusion and exclusion of citizenship is to be continued as per need of the hour. Some scholars argue that the Passive revolution in India has also been catalyst factor responsible for changing nature of citizenship in India.

The Constitution of India is sole source of Citizenship. The Constitution prescribes three kinds of citizenship from Article 5 to 11. These include (a) citizenship by birth (b) citizenship by descent, and (c) citizenship by naturalization. The birth mentions territorial and associational belongings. According to this, persons who were born in the territory of India at the time of commencement of the Constitution of, either of whose parents were born in the territory of India or who have been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution. Further, there are provisions to adjust those migrants who went to Pakistan

and decided to come back and settle in India as citizen. Looking into it, citizenship was extended to migrants to independent India before 19 July 1948 and continued to reside in India after migration. Citizenship to be granted to those who migrated after 19 July 1948 but before the commencement of the Constitution and registered themselves as citizen of India before the concerned authority. Besides, those having gone to Pakistan and returned to the territory of India under a permit for resettlement or permanent return issued by competent authority. These provisions related to migrants are of non-denominational nature. The Constitution also provides citizenship to outsiders of Indian origin whose parents or grandparents should have been born in India as defined in the 1935 Act and they should have been registered as citizen of India before the diplomatic or consular authority, before or after commencement of the Constitution. The only condition is that they should abandon citizenship of other country. This type of granting of citizenship comes under category of citizenship by naturalization. These prescriptions to grant citizenship to people of Indian origin living outside are of ethnic and associational nature,

Termination and deprivation provisions are part of the Indian constitution related to citizenship. The 1955 Act prescribes for the renouncing of citizenship voluntarily before the prescribed competent authority in prescribed manner, After declaration, one ceases to be citizen of India. If such declaration is made during war time in which India too is engaged, such declaration may be withheld until Central Government directs otherwise. Any body can be deprived of citizenship if acquires citizenship of another country voluntarily by naturalization, registration or otherwise. The central Government has major role in such decisions. Further any full fledged citizen can be deprived of citizenship if (a) found guilty of producing false documents (b) concealment of facts (c) disloyalty or disaffection towards the Constitution of India (d) being associated with an enemy that India is at war with (e) being imprisoned for a term of less than two years after registration or naturalization, (f) being ordinarily resident out of India for a continuous period of seven years and, (g) Central Government decides citizenship of such person is not

conducive to public good.

Above provisions of granting and depriving citizenship were adopted and amended in the interest of the national unity and integrity of India including in 2019. Our country remained united and integrated since independence. We have concept of single citizenship. The credit goes to the Constitution of India, the Cornerstone that has worked well since its inception and expected to be effective in solving our teething problems in future as well. (Austin, Granville). Due to this strength of the Constitution, the idea of abandoning it got dropped.

Citizenship Amendment Act, 2019 :

No doubt the idea of having a new constitution is dropped, but the idea of changes and amendments continued. Our Constitution has been amended over hundred times. Some of the amendments remained of landmark nature that invited controversies, debate in media, public and courts. The Citizenship Amendment Act, 2019 also falls in this category.

The Constitution of India provides provisions for granting and terminating citizenship from Article 5 to 11. These provisions have been amended from time to time like in years 1955, 1962, 1966, 1971, 1986, 1992 and now in 2019. The idea of this 2019 amendment came with coming of the BJP government headed by Modi. The first effort was made during first term in 2016 and bill was passed also in Lok Sabha, but stuck in Raj Sabha. The term of 16th Lok Sabha expired. Fresh election for 17th Lok Sabha was held in May 2019 and Modi 0.2 government was formed again. This time Amit Shah became home minister who took up the matter with new vigor. As a result, this Citizenship Amendment Bill (CAB) was placed and passed in Lok Sabha on 10th Dec 2019 and in Raj Sabha on 11th and got presidential signature on 12th December to convert bill in to Act. This is how CAB became Citizenship Amendment Act, 2019 (CAA).

The Act allows for granting Indian citizenship to all refugees who came from Afghanistan, Bangladesh and Pakistan due to being victim of just for professing Hinduism, Jain, Buddhist, Sikh, Parsis and Christians and living in India before or on 31st December 2014 without documents. The Act did not cover Tamilian Hindus and Christians from Srilanka. nor Ahmaadia Muslims. This

exclusion of Muslim became major grounds of anti-CAA agitation among Muslims .The tribals in North –Eastern states too became suspicious of this Act due to threat to their specific culture in spite of special Inner Line Permit. The demand for new permanent assets and land records related documents to prove domicile durability caused another source of irritants against the Act. Many did not have. Their procurement from old land record offices could be difficult, expensive, and cumbersome. The introduction of National Register of Citizens (NRC) and National Population Register (NPR) as an integral component of CAA generated additional fear among people. These above apprehensions imagined , instigated or real prepared fertile ground for discontents against CAA,2019

Discontents Paradigm :

The discontents against this Amendment sparked immediately after enactment on 12th December 2019.The opposition started from student community like from JNU. Jamia Milia ,Osmania, BHU,IITs and IIMs, Later, artists , intellectuals ,.Millennial and women too jumped into it. .Jantar mantar .saheen bagh ,Jama masjid in Delhi and many maidans in Indian cities turned into hotspots of agitation .Political parties tried to hog up but were not allowed and therefore movement remained largely apolitical .It was large in scale due to volume of participation and its all India span. The largest involvement was of white middle class. It failed to penetrate at village level .it was urban or sub urban movement. Muslim participated in largest number due to direct deprivation and exclusion from beneficiaries list of the Act .Another significant feature of this anti-CAA agitation was its civil disobedience non violent nature. Agitation remained nonviolent and semi Satyagrah type. This is why judiciary justified it except on blocking public pathways. But gradually it became violent and acquired communal color that created serious law and order problem in February ,2020 when American President Trump was on visit to India .It was immediately followed by Covid 19 that disallowed gathering due to lockdown and social distancing. The

anti- Citizenship Amendment Act movement was withdrawn. Now blame game started between AAP & BJP (TOI, 20th Aug, 2020 ,pp 8) .It is difficult to say that whether the agitation has ended or withdrawn temporarily .But this truce phase should be utilized to address grievances related to the Act to make it popularly acceptable by all the people .This alone is in the larger interest of what preamble calls “The People of India”.

References :

1. Austin Granville (1966); *The Indian Constitution ;Cornerstone of A Nation* ,Oxford University Press ,New Delhi
2. Austin, Granville, (1999); *Working A Democratic Constitution: The Indian experience*, Oxford University Press, New Delhi.
3. Barker, Earnest (1958) *The Politics of Aristotle*, Oxford University Press, New Delhi.
4. Choubey, Shivani Kinkar, (2011) *Bhartiya Samvidhan Rachna evam Karya*, National Book Trust, New Delhi.
5. Jayal, Neerja Gopal (2013) *Citizenship and its Discontents*, Haward University Press, London.
6. Kumar , Ramesh(2020)*Nagriкта Kanoon par Gandhiwadi Nazaria in Global Multidisciplinary Research Journal*, Vol 4, Issue 2 published by Global Developmental Society, Firozabad, pp10-14
7. Marshall, T. H. (1965) *Citizenship and Social Class*, Cambridge University Press, Cambridge.
8. Menon, Nivedita (*Citizenship and the passive Revolution in Rajeev Bhargava;(2008 Ed) Politics and Ethics of The Indian Constitution*, Oxford University Press, New Delhi.
9. Rodrigues, Velerian *Citizenship and The Indian Constitution in Rajeev Bhargava (2008 Ed)Politics and Ethics of the Indian Constitution*, Oxford University Press, New Delhi
10. Shaheen Bagh: War of Words Continues between AAP, BJP, Times Of India, August . 19 2020 Delhi, PP7

