

*Review Article***Reasonableness and CAA, 2019: A Critical Analysis****Diganta Biswas****How to cite this article:**

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733134, India.**Corresponding Author****Diganta Biswas**, Postgraduate,
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Raiganj, West Bengal 733134, India.**E-mail:** d78biswa@gmail.com**Abstract**

Citizenship denotes the link between an individual and a state or an association of states. The status of the Citizen is not simply a formality; citizenship carries with it a range of rights and obligations to participate in the life of the state that is denied to those who are not citizens. The CAA, 2019 has been an issue of great controversy in recent times. This paper aims to reflect test the Act of 2019 on the ground of the grounds of reasonableness.

Keywords: Citizenship, Illegal immigrants; International border; Reasonableness; Proportionality; Equality; Secularism; Basic structure.

Introduction

Citizenship is a contested and sensitive issue. The roots of the concept are in the Greek “polis” and the Roman “res publica”. The idea of citizenship implies the identity of a person with a country. Citizenship is the relationship between a private individual and a state with a condition that the individual owes allegiance and successively is entitled to its protection.¹ Citizenship is a political idea – the relationship that holds between co-citizens must be a political relationship, whether or not it involves institutions of government in their familiar form.² Citizenship denotes the link between an individual and a state or an association of states. The status of the Citizen is not simply a formality; citizenship carries with it a range of rights and obligations to participate in the life of the state that are denied to those who are not citizens. According to Linda Bosniak, there are four different ways to define citizenship which are as- the first is ‘citizenship as legal status’, the second is ‘citizenship as rights’, the third is ‘citizenship as political activity’, and finally ‘citizenship as identity’.³

Citizenship: A Historical Perspective

Citizenship meant being protected by the law rather than participating in its formulation or execution. It now “denotes membership in a community of shared or common law, which may or may not be identical with a territorial community”.⁴ It became an “important but occasional identity, a legal status rather than a fact of everyday life”.⁵ Citizenship is primarily understood as a legal status rather than as a political office and his concept is that the most privileged type of status. The Roman experience shows that the legal dimension of citizenship is potentially inclusive and indefinitely extensible.

- **Citizenship in Greek City-State:** The thought of citizenship initially arose in towns and city-states of ancient Greece, where it typically applied to property owners but not to ladies, slaves, or the poorer members of the community. A citizen in a Greek city-state was entitled to vote and was liable to taxation and military service.⁶
- **Citizenship in the Roman Empire:** The Romans used citizenship as a tool to differentiate the residents of the town of Rome from



those peoples whose territories Rome had conquered and incorporated. As their empire continued to grow, the Romans granted citizenship to their allies throughout Italy proper and then to peoples in other Roman provinces, until in AD 212 citizenship was extended to all free inhabitants of the empire. The Roman citizenship had been reduced to a judicial safeguard and the expression of rule and law. The Roman citizenship presented necessary legal privileges within the empire.

- Citizenship in England: In England, the term citizenship originally indicated membership of a borough or native municipal corporation, whereas the word subject was used to emphasize the individual's subordinate position relative to the monarch or state.
- Citizenship in Australia: Citizenship in Australia, follows a exclusionary mechanism. Access to formal citizenship determines whether a person can remain present and participate in the Australian community.⁷ The Australian Citizenship Act, 2007 (Cth) (the Citizenship Act) currently determines who is entitled to Australian citizenship, including provisions for citizenship by descent and by naturalisation.
- Citizenship in the USA: In the USA, acquisition of the citizenship runs following *solus soli*, as basic principle along with the principle of descent however subject it to strict limitations. Other countries typically adopt the *jus sanguinis* principle as their principle, supplementing it by provisions for acquisition of citizenship just in case of a mix of birth and domicile within the country of parents born there, and so on. In the USA, the followings are the successive events in reference to Citizenship –
 - ❖ 1776: Declaration of Independence protests England's limiting naturalization of foreigners in the colonies.
 - ❖ 1789: U.S. Constitution, under Article I, Congress is "to establish a uniform Rule of Naturalization," eventually giving the federal government the sole authority over immigration.
 - ❖ 1790: Naturalization Act of 1790 provides the first rules to be followed by the United States in granting national citizenship to "free white people."
 - ❖ 1865: Thirteenth Amendment abolishes slavery, although it did not grant

formerly enslaved persons the full rights of citizenship.

- ❖ 1868: Fourteenth Amendment grants that all persons born or naturalized in the United States are citizens and are guaranteed "equal protection of the laws."
- ❖ 1898: U.S. Supreme Court rules in *United States v. Wong Kim Ark*⁹ that any child born in the United States, regardless of race or parents' citizenship status, is an American citizen.
- ❖ 1996: The Illegal Immigration Reform and Immigrant Responsibility Act, 1996
- ❖ 1997: The Nicaraguan Adjustment and Central American Relief Act, 1997
- ❖ 2001: USA Patriot Act amends the Immigration and Nationality Act to broaden the scope of aliens, ineligible for admission or deportation to include terrorist activities.

Citizenship and India

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). The President of India is termed the first Citizen of India. The conferment of Citizenship of India, to a person is governed by Articles 5 to 11 (Part II) of Indian Constitution. The legislation related to this matter is the Citizenship Act 1955, which has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, and the Citizenship (Amendment) Act, 2005. Article 9 of Indian Constitution says that a person who voluntarily acquires citizenship of any other country is no longer an Indian citizen. Also, according to The Passports Act, a person has to surrender his Indian passport if he acquire citizenship of another country, it is a punishable offense under the act if he fails to surrender the passport. Indian nationality law largely follows the *jus sanguinis* (citizenship by right of blood) as opposed to the *jus soli* (citizenship by right of birth within the territory). Further, Article 11 the Parliament of India to regulate the right of citizenship by law.¹⁰ Thus Citizenship Act 1955 as enacted by the Parliament, is an act that provides for the acquisition and termination of Indian citizenship, and the same acts speaks about citizenship of India after the commencement of the Constitution. The Citizenship Act, 1955 is the most

important legislation concerning to offer citizenship to people. Acquisition of Indian Citizenship as per the Citizenship Act 1955: Indian Citizenship can be acquired under the following ways: (1) Citizenship at the commencement of the constitution of India¹¹ (2) Citizenship by birth;¹² (3) Citizenship by descent¹³ (4) Citizenship by registration¹⁴ (5) Citizenship by naturalization¹⁵ and Incorporation of the territory. However, the nationality may be obtained by Birth and Inheritance. The following incidents also seem to be relevant for discussion-

- In September 2015, the government, through an executive order, exempted non-Muslim illegal migrants from the three countries from the operation of the Foreigners Act, 1946.¹⁶ This provided immunity to this class of migrants from any adverse action by the state due to illegal entry and stay.
- In 2016, the Ministry of Home Affairs vide a series of notifications¹⁷ exempted persons belonging to aforementioned communities from Afghanistan, Bangladesh, and Pakistan who have taken shelter in India on or before 31 December 2014 due to the fear of religious persecution, from Passports (Entry into India) Act, as well the Foreigners Act 1946.
- On 23 October 2018, the Ministry of Home Affairs issued a directive that provided a separate and accelerated process for non-Muslim legal migrants from the three countries to get citizenship. The directive extended this policy that was already in place since 2016.¹⁸

Controversy Over Citizenship Law

Judicial review of legislative and executive action has been one of the most important developments in the field of public law in the last century. The concept of judicial review was developed way back in 1803 in the famous case of *Marbury v. Madison*.¹⁹ To achieve this limiting function of judicial review, common law systems and civil law systems reacted differently and developed different processes. In common law jurisdictions the concept of secondary review was developed to achieve this limiting function of judicial review. Under the concept of secondary review the courts would strike down administrative orders only if it suffers the vice of *wednesbury* unreasonableness²⁰ which means that the order must be so absurd that no sensible person could ever dream that it lay within the powers of the administrative authority. Lord Diplock beautifully sums up "Wednesbury unreasonableness" as a principle that applies to a decision which is so

outrageous in its defiance of logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it.²¹ The broad contours of the external structure of judicial review have been laid down by Lord Diplock in the case of *Council of Civil Service Unions. v. Minister for the Civil Services* as: illegality, irrationality and procedural impropriety.²²

India, a former colonial state of British Empire, inherited from British India, chose to retain the common law system without much change. The civil law jurisdictions on the other hand developed the concept of proportionality based review (primary review) which is a much more intensive form of judicial review. The principle of proportionality ordains that the administrative measure must not be more drastic than is necessary for attaining the desired result.²³ The very concept of proportionality originated in nineteenth century Prussia.²⁴ This nineteenth century Prussian concept prescribed various tests. In the words of jurist Günther Heinrich von Berg, "the police law may abridge the natural freedom of the subject, but only insofar as its lawful goal requires."²⁵ The doctrine of proportionality has been explained into two directions, viz. British Model and European Model. Under the British Model, as expounded by Lord Stynn in *R v. Secretary of State for the Home Department ex parte Daly*²⁶ finds its origin in the judgment of the Privy Council in *de Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing*.²⁷ In that case, Lord Clyde while deciding an appeal from Antigua and Barbuda, used South African and Canadian jurisprudence to formulate a three stage test for proportionality review. According to the court a decision is proportionate if:

1. The legislative (or executive) objective is sufficiently important to justify limiting a fundamental right.
2. The measures designed to meet the legislative (or executive) objective are rationally connected to it.
3. The means used to impair the right or freedoms are no more than necessary to accomplish the objective.

In the case of *Union of India v. G. Ganayutham*, the Supreme Court after extensively reviewing the law relating to *wednesbury* unreasonableness and proportionality²⁸ prevailing in England held that the *wednesbury* unreasonableness will be the guiding principle in India, so long as fundamental

rights are not involved.²⁹ The standard model of proportionality review consists of three or four steps, depending on who is doing the counting. Courts inquire successively into the (1) legitimacy, (2) suitability, (3) necessity, and (4) proportionality strict sensu—in the strict sense—of a challenged measure. Those were accepted by the European Court of Justice in *R v. Minister of Agriculture, Fisheries and Food, ex parte Federation Europeenne de la SanteAnimale (FEDESA)*.³⁰ Based on this case Julian Rivers outlines a four stage test as:³¹

1. Legitimacy: Does the act (decision, rule policy etc) under review pursue a legitimate general aim in the context of the right in question?
2. Suitability: Is the act capable of achieving that aim?
3. Necessity: Is the act the least intrusive means of achieving the desired level of realisation of the aim?
4. Fair balance or proportionality in narrow sense: Does that act represent a net gain, when the reduction in enjoyment of rights is weighted against the level of realisation of the aim?

The Supreme Court India, in the case of *Omkumar v Union of India* accepted the doctrine of proportionality as a part of Indian law.

Citizenship Amendment Act, 2019

The Union Cabinet cleared the Citizenship (Amendment) Bill, 2019, on 4th December 2019 for introduction in the Parliament. The Citizenship (Amendment) Bill 2016 was introduced in the Lok Sabha on 19 July 2016 and was referred to a joint committee of both Houses of Parliament, which presented its report on 4 January 2019, recommending the bill. The Bill was introduced in 17th Lok Sabha by the Minister of Home Affairs Amit Shah on 9th December 2019 and was passed on 10th December 2019, with 311 MPs voting in favour and 80 against the Bill. The Bill was subsequently passed by the Rajya Sabha on 11th December 2019 with 125 votes in favour and 105 votes against it. Additionally, the Rules framed in 2003 provided for the creation of a national register of Indian citizens, have been in place for the last 16 years but are yet to be operationalised.

Now let's have a look over the basic issues covered by the CAA, 2019 are as under-

- The CAA has now added a proviso to Section 2(b) which defines 'illegal migrants.' The proviso creates an exception to the category

of 'illegal migrants' by providing that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community from Afghanistan, Bangladesh, or Pakistan, who has entered India before 31st December 2014 shall not be treated as an illegal immigrant.

- The Central Government of India may issue a certificate of registration as citizenship to the persons covered under provision to section 2(b), on an application made by them and provided that they fulfill the conditions under Section 5 of the Citizenship Act 1955.

The Citizenship Amendment Act, 2019 has awarded the 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 that Act and shall be eligible to apply for naturalisation under section 6." Migrants from these communities were earlier given protection against legal action in the years 2015 & 2016 and long term visa provision was made for them.³³ The CAA, 2019 paves way for a legal and constitutional basis for leaving out Muslim immigrants who entered the Indian territory and stayed in this country longer than they were permitted to remain in the country, without having proper documentation.³⁴

Test of Proportionality and CAA, 2019

If we analyse the CAA from the context of proportionality, it is pertinent to analyse the following issues-

- Legitimacy or Constitutionality of the Act
- Necessity of the introduction of the Act;
- Rationality behind the introduction of the Act,
- Does that act represent a net gain, when the reduction in enjoyment of rights is weighted against the level of realisation of the aim?

Constitutinality of the CAA, 2019

The recently enacted Citizenship Amendment Act, 2019 received huge uproar from different parts of the world. Alongwith the huge opposition from the Muslim Countries in the World, the Amnesty International has commented that stands in

"clear violation" of the Constitution of India and international human rights law and "legitimises discrimination" on the basis of religion.³⁵ Prof. Amartya Sen commented "My reading of the (amended) law is that it violates the provision of the Constitution. He highlighted that citizenship on the basis of religion had been a matter of discussion in the constituent assembly and it was finally decided

that "using religion for this kind of discrimination" would not be acceptable.³⁶ The main issues of opposition of the CAA basically revolves round the issues which may be summed up as under-

- Principle of Equality
- Ideals of Secularism
- Basic structure

S. No.	Contentions	Responses
1.	Principle of Equality (Principle of Intelligible differentia ³⁷)	<p>Citizen- non citizen Differentiation</p> <p>Selective in choosing neighbouring countries- rise in the number of incidents of religious persecution on minorities.</p> <p>Preference to protect rights of minority groups- International obligation (The UN Declaration on Minority Rights, 1993), Nehru- Liaquat Pact, 1950</p> <p>Non inclusion of some minority groups- the Nehru- Liaquat Pact, 1950 these communities had not been mentioned as the minority communities and they may be easily migrated in any of the neighbouring Muslim Countries peacefully.</p> <p>To restrict migration due to huge pressure of population</p> <p>The people from all communities could be allowed eliminating the border or making the same opened also but we do not follow such policy since independence or any time thereafter with the countries mentioned in the Act.</p>
2.	Ideals of Secularism ³⁸	<p>The Act never intends to interfere into regulating the practice- profess and propagating any religion like the neighbouring countries e.g. Pakistan, Bangladesh, and Afghanistan.</p> <p>The concept of secularism is one facet of the right to equality woven as a central golden thread in the fabric depicting the pattern of the scheme in our Constitution.³⁹</p> <p>Under the Act no religion has been declared as State Religion. Nor the Act puts special attention to a single religious community while it speaks about different religious communities which are not recognised as state religion in the neighbouring countries.</p> <p>The amendment, when viewed in the context of the Nehru-Liaquat Pact, concerns itself with the minorities as existed back then, and Ahmadis were declared a minority group only as late as in 1974 vide the Second Amendment to the Pakistan Constitution. Shias, in essence, continue to not be considered as a minority group by the Pakistani government.</p>
3.	Basic Structure ⁴⁰	<p>Government of laws and not of men or rule of law</p> <p>The Citizenship Amendment Bill (CAA Bill) was first introduced in 2016 by the Lok Sabha by amending the Citizenship Act of 1955. This bill was referred to a Joint Parliamentary Committee, whose report was later submitted on January 7, 2019. The Citizenship Amendment Bill was passed on January 8, 2019, by the Lok Sabha which lapsed with the dissolution of the 16th Lok Sabha. This Bill was introduced again on 9 December 2019 by the Minister of Home Affairs Amit Shah in the 17th Lok Sabha and was later passed on 10 December 2019. The Bill was introduced in 17th Lok Sabha by the Minister of Home Affairs Amit Shah on 9th December 2019 and was passed on 10th December 2019, with 311 MPs voting in favour and 80 against the Bill. The Bill was subsequently passed by the Rajya Sabha on 11th December 2019 with 125 votes in favour and 105 votes against it.</p> <p>Sovereign democratic republic status</p> <p>Equality of status and opportunity of an individual</p> <p>Secularism and freedom of conscience and religion</p> <p>Essential features of the individual freedoms secured to the citizens</p> <p>Judicial review</p> <p>Unity and integrity of the nation</p> <p>Already discussed</p> <p>Right to freedoms guaranteed by the Constitution is not taken away through the legislation.</p> <p>The CAA, 2019 is not out of the ambit of Judicial Review.</p> <p>The CAA, 2019 is not against the unity and integrity of the nation.</p>

Necessity of the Introduction of the Act

Though the right of a sovereign nation to determine who to allow settling and working has never been seriously contested, the Government of India, in terms of citizenship, always has taken a soft stand.⁴¹ Illegal migration is caused by several factors, together with economic condition, overpopulation, trade liberalisation, and wars in countries of origin. It will have serious impacts on the economy of the destination country similarly as on the lives of the illegal migrants themselves. From the above discussions, it may be perceived that the introduction of the CAA was necessary on the grounds as under-

- Determination of the status of illegal migrants: The Act conclusively determines the fate of the millions of illegal migrants residing in India.
- Addressing NRC Issue in Assam: The NRC in Assam rendered 1.9 million citizens, mostly Hindus, stateless. In this routinely flood ravaged state, where, like most of India, hospitals and schools are still a dream in remote areas, it is impossible to get documents to prove birth or ancestry. This unrealistic requirement cost the unlettered and the poor, across religious lines, their citizenship. The fate of spending the rest of their lives in detention camps awaits them. Many in Assam committed suicides only in anticipation of being excluded from the NRC and being torn apart from their loved ones and family. Many have died in the inhumane conditions that describe the detention centres. At this, the CAA is a tool devised to grant citizenship to the Hindus excluded from the NRC in Assam.

Rationality behind the Introduction of the Act

The points of rationality behind the introduction of the Act are as under-

- Environmental Plunder: Offering of citizenship even to the illegal migrants has the potential to create a 'disguised violence' to environment of a nation as a whole as it slowly but surely poisons the lives and livelihood indirectly. In a majority of times, it has been noticed that the massive areas of forest land were encroached upon by the immigrants for settlement and cultivation which may ultimately cause to environmental degradation.
- Difficulty to spot the illegitimate migrants:

Many a time, due to the similar language is spoken by illegitimate migrants' e.g. illegal migrants living in Assam, Tripura and West Bengal, it becomes difficult to identify and deport the illegal migrants in the region.

- Disruption in the economy: Illegal immigration if it happens in amass causes havoc toll to the economy of a state. If an undocumented immigrant has a child born in the country, where they have immigrated, that child is a citizen of that country, and therefore, has the rights to these government services.⁴²
- Loss of Tax Revenue: Most undocumented workers receive their payments in cash, and therefore, in most of the times that is out of the purview of tax deductions or their contributions are insignificant. The loss of tax income undermines government programs while the government needs to increase the expenditure on education and health facilities to the immigrants.
- A strain on Public Utility Services: Many people argue that these immigrants are costing our government a substantial amount of money by receiving benefits such as education, health care, food assistance programs, and welfare. The illegitimate immigrants usually use public services like health facilities, public colleges, transportation, parks and each alternative service one considers while, they don't pay taxes for the building and maintenance of those utilities.
- Problems in the domestic labour market: Illegitimate immigrants in per annum are adding a decent range of individuals. it's one in all the most reasons for the population explosion. Illegal immigrants are usually desperate for a supply of financial gain and don't mind operating for fewer pay which might wouldn't preferably be taken by native folks. Hence, employers within the destination country don't have to be compelled to rent staff whom they have to pay the quality rates/ minimum wages. In those industries, immigration lowers wages and drives out native-born workers. That pushes native-born workers into jobs like sales and personal services that require superior communication skills.⁴³
- Political integration and assimilation: The capacity of the polity to integrate newcomers

in the political culture is considered when setting admissions policies. Under the situation of radical inequality, however, restrictive policies of immigration allow richer countries to “hoard an unfair share of resources” with the idea that “we care equally about the well-being of all individuals, wherever they are born, and however little we interact with them” (Kymlicka 2001, 271)⁴⁴ Hobbesian nation-state is threatened by migration to a degree that its survival is uncertain, it has a legitimate reason to restrict migration.⁴⁵ The CAA, 2020 clearly intends to say that the current political system doesn't have the willingness to integrate newcomers particularly belonging to a particular religion in the political culture of the country. There may be different reasons. One of the important reasons is that the nature of treatment of religious minorities in the neighbouring countries. Another reason may be pressure of existing population in the country.

- Rise in Law and Order and Terrorist Activities: While a significant number of the illegitimate immigrants are solely searching for employment opportunities, a decent range among them are found involved into criminal activities e.g. The MS-13 The MS-13 gang, which comprised of Central American immigrants, is a good example of illegal immigrant turned criminals. In India, the huge influx of illegal migrants over the decades from Bangladesh has created danger for law-abiding residents. Moreover, it is not easy to track and prosecute illegal criminals.⁴⁶ The very first sentence of the Statement of Objects and Reasons of the IMDT Act, 1983 says "the influx of foreigners who illegally migrated into India across the borders of the sensitive Eastern and North- Eastern regions of the country and remained in the country poses a threat to the integrity and security of the said region." The Preamble of the Act says that "the continuance of such foreigners in India is detrimental to the interests of the public of India." The Supreme Court of India, in 2005 made the following ruling on illegal immigration: "The apex court held the Illegal Migrants (Determination by Tribunal) Act (IMDT) as unconstitutional while, with reference to the Sinha Report, maintained that the impact of the "aggression" represented by large-scale illegal migration from Bangladesh had made the life of the people of Assam

specially one of seven sister which is Tripura the land of tiprasa "wholly insecure and the panic generated thereby had created fear psychosis" in other north-eastern States.⁴⁷

Does the Act Represent a net Gain

The Act represents a net gain the way as under-

- The newly enacted legislation as giving a backdoor entry to illegal immigrants, a large part of which are Bangladeshi Hindus who were excluded from the NRC in Assam. The same fate is waiting for such illegal immigrants residing in other states.
- The CAA, 2019 allows Hindus, Christians and other religious minorities who are in India illegally to become citizens if they can show they were persecuted because of their religion in Muslim-majority Bangladesh, Pakistan and Afghanistan (All these country's state religion is Islam). The nature of protest against the law marks the strongest show of dissent against the government which claimed nearly 70 lives (Assam- 5⁴⁸, UP- 23⁴⁹, Delhi- 42⁵⁰, Mangalore- 2).⁵¹
- The NPR is a register of usual residents of the country. It is being prepared at the local (village/sub-town), sub-district, district, state and national level under provisions of the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003. A usual resident is defined for the purposes of NPR as a person who has resided in a local area for the past 6 months or more or a person who intends to reside in that area for the next 6 months or more.⁵²
- Even if the state governments have no powers to reject the implementation of the Citizenship (Amendment) Act as the legislation was enacted under the Union List of the 7th Schedule of the Constitution, and the National Population Register the chief ministers of West Bengal, Punjab, Kerala, Madhya Pradesh and Chhattisgarh announced that the CAA was "unconstitutional" and has no place in their respective states.⁵³

Hence, it may be submitted that the extent of reduction in enjoyment of rights if is weighted against the level of realisation of the aim, it has mixed response rather at a negative indices currently. But if we closely notice, the Citizenship Act, 2019 doesn't intend to takeaway citizenship status from anyone or a legislation to expel anyone

from India or to curb any privileges which the immigrants are enjoying and those whose right of citizenship is established by the Act. But in view of the pressure of current population, scarcity of resources, reduced per capita income etc. the legislation may prove to be successful in future if implemented properly.

Conclusion and Suggestions

To sum up, the state is constitutionally bound to pay due importance to the protection of its citizens, the foreign nationals need permission from the destination country before they come and stay. Violation of the country's immigration laws renders them illegal migrants. There is no obligation to give equal weight to the interests of non-members. The obligations towards migrants and asylum-seekers go well beyond this and call for a policy of open borders and/or deny the state's right to decide alone who exactly, and how many people, may enter its territory. However, the government should clarify its stand on the following matters e.g.-

- The modalities for assessing the people migrated due to reasons of religious persecution and those who migrated due to other forms of persecution like racial or ethnic persecution.
- The illegal immigrants as to who had come in for the lure of better economic prospects and a brighter future.

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- on an implicit bargain between subjects and sovereign, whereby the former submit to the rule of the latter so that the sovereign can advance their common welfare. But if this bargain is the source of the state's authority to act, it also sets the outer bounds of the state's authority: the state is justified in acting only to the extent that its action promotes the public welfare.
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 37. "Article 14 does not insist that every piece of legislation must have universal application and it does not take away from the State the power to classify persons for the purposes of legislation, but the classification must be rational, and in order to satisfy this test (i) the classification must be founded on an intelligible differentia which distinguished those that are grouped together from others, and (ii) that differentia must have a rational to the object sought to be achieved by the Act." *State of West Bengal vs Anwar Ali Sarkar*, 1952 AIR 75, 1952 SCR 284. In *Kangshari Haldar v. State of West Bengal*, MANU/SC/0047/1959, 1960 AIR 457, 1960 SCR (2) 646, Gajendragadkar, J. (as His Lordship then was) held as under: "In considering the validity of the impugned statute on the ground that it violates Article 14 it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process the preamble to the Act and its material provisions can and must be considered. Having thus ascertained the policy and the object of the Act the court should apply the dual test in examining its validity: Is the classification rational and based on intelligible differentia; and, has the basis of differentiation any rational nexus with its avowed policy and object? If both these tests are satisfied, the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied, the statute must be struck down as violative of Article 14."
 38. In *Kesavananda Bharati vs State of Kerala*, (1973) 4 SCC 225 it has been held by the Supreme Court that secularism is a basic structure of the constitution and it cannot be altered by a constitutional amendment. The Court stated- A secular State, that is, a State in which there is no State religion. in the *SR Bommai vs Union of India*, [1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1. the Supreme Court held secularism undeniably sought to separate the religions from the politics. Basically, the conception of a secular state involves three distinct but interrelated sets of relationships concerning the state, religion, and the individual. The three sets of relations are: (a) Religion and the individual (freedom of religion), (b) The state and the individual (citizenship), (c) The state and religion (separation of state and religion). In *Ziauddin Burhamudin Bukari Vrs. Brijmohan Ramdas Mehra and Bros.* AIR 1975 SC 1788, the Supreme Court held that: "The secular state rising above all differences of religion, attempts to secure the good at all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to citizens of all castes and creeds."
 39. *M. Ismail Faruqui vs. Union of India*, AIR 1995 SC 605 (630).
 40. The basic structure doctrine is an Indian judicial principle, most notably propounded by Justice Hans Raj Khanna, that the Constitution of India has certain basic features that cannot be altered or destroyed through amendments by the parliament. *Kesavananda Bharati vs State of Kerala*, (1973) 4 SCC 225.
 41. Hungary has consistently defied all EU directives and refused to settle any refugees from Iraq, Syria and North Africa on the grounds that such people wouldn't fit in. Other East European countries such as Poland, the Czech Republic and Slovakia have also made their displeasure at having to accommodate these refugees quite apparent. If we look into the practice of offering Citizenship in different countries, recently, the United Kingdom announced its new immigration policy. Loosely based on the points system that is in vogue in Australia, it is aimed at ensuring that individuals with skills and those who will not

- burden the welfare system are accorded priority. Additionally, under the new policy importance has been attached to a potential immigrant being familiar with the English language amidst criticisms. Available at <https://timesofindia.indiatimes.com/blogs/right-and-wrong/west-is-selective-on-refugees-so-why-scoff-at-india-for-cao/>, accessed on 24th February, 2020 at 12.19 PM.
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