

CAA-NRC Relationship and Right to Equality: Discussion of Religious Classification under Article 14 of the Indian Constitution

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ABSTRACT

Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws to all 'persons'. Constitutional analysis of the Citizenship (Amendment) Act, 2019 (CAA) has been done on the basis of Article 14. This tests the three-tier classification of religion, nationality and date of entry included in the CAA on the basis of the well-established principle of reasonable classification and the principle of anti-arbitrariness, it analyses the co-impact of the CAA with the proposed National Register of Citizens (NRC), while also raising questions about whether the combined outcome of both measures creates an asymmetric impact against the Muslim community, due to which it cannot stand the test of Article 14. This has also been shown through a comparative analysis of the decision of the Constitutional Bench of the Supreme Court in 2024 on Section 6A of the Citizenship Act, 1955 relating to Assam. The paper examines how the court justifies the regional-historical classification what that discussion indicates for the future decision of CAA.

KEYWORDS

Article 14, Reasonable Classification, Comprehensible Discrimination, Principle of Arbitrariness, Religious Classification, Citizenship Amendment Act

INTRODUCTION

The Right to Equality under Article 14 of the Fundamental Rights of the Constitution is the basic soul of the Indian Constitution without which democracy cannot be imagined.² Article 14 guarantees equality before the law and equal protection of the law not only to the citizens of India but also to every 'person'. The Citizenship (Amendment) Act, 2019 was passed by amending the Citizenship Act, 1955.³ The Act gave a quick path to provide citizenship to illegal immigrants from Pakistan, Afghanistan and Bangladesh, including people of Hindu, Sikh,

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² INDIA CONST. art. 14.

³ Citizenship (Amendment) Act, No. 47 of 2019 (India).

Buddhist, Jain, Parsi and Christian religions. This is what has faced the most serious challenge in testing it on the basis of Article 14. There are more than 200 petitions on the basis of Article 14, and 21 in which the main petition among illegal immigrants is the Indian Union Muslim League pending in *Indian Union Muslim League v. Union of India* (2019).⁴ The petitioners argued that under the Citizenship (Amendment) Act, 2019 (CAA), the criteria for granting citizenship on the basis of religion violates the principle of equality under Article 14.⁵ This research attempts to examine Article 14 purely within its theoretical framework. Its purpose is to test whether the classification given in the CAA meets the test of Article 14, the twin criteria of 'intelligible discrimination' and 'reasonable relationship' and whether it is declared unconstitutional under the principle of 'arbitrariness'. It also analyses the co-effects of the CAA and the proposed NRC which may create structural inequality.

Theoretical framework of Article 14: Principle of Reasonable Classification

The Supreme Court in the case of *State of West Bengal v. Anwar Ali* said that Article 14 is not the principle of absolute equality but it establishes the principle of 'equal' treatment among equals.⁶ This gives freedom to the legislature to make appropriate and rational classification. However, the classification made by the legislature should not be arbitrary.

In the case of *R. K Garg v. Union of India*, the Supreme Court further clarified this principle and a two-tier test was propounded.⁷ First, the classification should be based on some perceptible difference, that is, identification of the group which is being separated from others should be possible on a clear and objective criterion. Second, this distinction must have a reasonable relation to the legislative objective to achieve which the Act has been made.

The practical application of this principle can be clearly seen in the case of *D.S. Nakara v. Union of India*.⁸ The government memorandum was declared unconstitutional because it was giving the benefit of liberal pension scheme to the retired employees only after a certain date. The discrimination on the basis of date had no reasonable relation with the objective of the pension scheme i.e. making the life of the retired employees dignified. This decision proves that discrimination on the basis of date or class, no matter how convenient from the

⁴ Indian Union of Muslim League & Ors. v. Union of India & Ors., WP (C) No. 1470/2019 (Pending).

⁵ The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).

⁶ State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.

⁷ R.K. Garg v. Union of India, AIR 1981 SC 2138.

⁸ D.S. Nakara & Ors. v. Union of India, AIR 1983 SC 130.

administrative point of view, cannot stand the test of Article 14 if it is not related to the legislative objective.

The Supreme Court also made it clear in *Sharma Transport v. Andhra Pradesh* that there must be a rational principle behind every administrative or legislative decision, otherwise it would be considered arbitrary and a violation of Article 14.⁹ In the case of *Maneka Gandhi v. Union of India*, Justice Bhagwati said that the principle of equality under Article 14 is not limited only to classification-test, but it is also a comprehensive principle of legislative and administrative 'protection against arbitrariness'.¹⁰

In *E.P. Royappa v. State of Tamil Nadu*, the Supreme Court took this principle forward and said that equity and arbitrariness are contradictory.¹¹ Because where there is any arbitrary action, that action inevitably gives rise to inequality even if it is correct on formal classification test. The Supreme Court further established the principle of arbitrariness as 'manifest arbitrariness' in the cases of *Shayara Bano v. Union of India* and *Joseph Shine vs. Union of India*.¹² The principle propounds that even if a law is correct on the classification test or if it appears to be extremely uncontrolled, illogical or inconsistent, then it can be declared unconstitutional.

Three-tier Structure of Classification in CAA

If the classification structure of the Citizenship (Amendment) Act, 2019 is examined properly, it clearly discriminates at three levels. First, it discriminates on the basis of religious identity as it qualifies only Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities. Second, it discriminates on the basis of country of origin, it only makes migrants from Afghanistan, Bangladesh and Pakistan eligible but does not make migrants from Sri Lanka, Myanmar, Nepal or Bhutan eligible. Thirdly, entry-date only makes migrants who entered India till 31 December 2014 eligible.¹³ The contention is that this three-tier classification must be tested independently and jointly on the twin criteria of intelligible distinction and reasonable relationship, and that serious discrepancies exist at each level.

CAA on the Criterion of Intelligible Discrimination

In *Indian Union Muslim League & Ors v. Union of India*, the petitioner argued that religion in itself is an 'inherent and core identity', which cannot be accepted on the basis of Article 14 as

⁹ *Sharma Transport v. Government of Andhra Pradesh & Ors.*, AIR 2002 SC 329.

¹⁰ *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

¹¹ *E.P. Royappa v. State of Tamil Nadu & Anr.*, AIR 1974 SC 555.

¹² *Shayara Bano & Ors. v. Union of India & Ors.*, AIR 2017 SC 4609 ¶101; *Joseph Shine v. Union of India*, AIR 2018 SC 4898 ¶36.

¹³ The Citizenship (Amendment) Act, 2019, § 6A, No. 47, Acts of Parliament, 2019 (India).

the basis for determining fundamental legal status like citizenship especially when this classification depends on a subjective declaration of religious identity.¹⁴ In the petition of *All Assam Students Union*, it has been specifically stated that this Act provides excessive discretion to the executive, thereby taking the form of ‘unchecked and arbitrary’ power since it does not specify any clear guidelines or authority for identifying religious persecution.¹⁵

In response, the supporters of the Act argue that religion can be a cognizable discrimination. But the condition is that it should be related to some legitimate legislative purpose such as protection of particular religious minorities. The government has also argued that date of entry and nationality are objectively verifiable criteria and religious declaration has been kept under the documentary verification process due to which it is no longer a purely subjective decision. Critics say that this response does not address the original objection because the question is not whether religious identity is verifiable or not, but whether religion in itself can be made a valid criterion for determining citizenship.

Reasonable Relationship Test: Purpose Versus Exclusion

The stated objective of the CAA is to provide protection to minorities suffering on the basis of religious persecution in Muslim-majority neighboring countries. The petitioners’ argument is that if that is the real objective, then why does the Act exclude the Ahmadiyya community of Pakistan, the Shia and Hazara communities of Afghanistan, the Rohingya Muslims of Myanmar and Bangladesh, and the Eelam Tamils of Sri Lanka. All these communities have been facing serious religious or caste oppression. It has also been stated in the petition of the Indian Union Muslim League that Sri Lanka itself has the state status of Buddhism. Selecting three countries only for being ‘Islamic nations’ and leaving out the rest of the neighboring countries is in itself an inconsistent and unprincipled classification. Additionally, the Supreme Court itself has held in various prior judgments, including the *Assam Sanmilita Mahasangh v. Union of India* case, that the economic circumstances and population and not religious persecution have been the main reason for migration from Bangladesh to Assam.¹⁶

If this fact is true, then the entire ideological basis of CAA, i.e. migration from religious persecution, becomes factually doubtful. Due to which the test of rational relationship becomes even weaker. Thus, in the view of the petitioners, even if the CAA somehow passes the test of

¹⁴ IUML v. Union of India, WP (C) No. 1470/2019 (n5).

¹⁵ All Assam Students Union & Anr. v. Union of India & Ors., WP (C) No. 1490/2019 (Pending).

¹⁶ Assam Sanmilita Mahasangha & Ors. v. Union of India & Ors., (2015) 3 SCC 1.

intelligible discrimination, it appears to fail on the test of reasonable relationship, as the chosen classification neither fully achieves the stated objective nor is applied consistently.

Analysis under the Principle of Arbitrariness

The Supreme Court in *Shayara Bano* and *Joseph Shine* cases propounded the traditional classification test under the principle of ‘manifest arbitrariness’.¹⁷ From this principle, it is seen that the law is highly inconsistent, illogical or irrational. The selection of three countries, six communities in the Act, as well as the exclusion of other similarly situated communities, is so inconsistent and unprincipled that it stands unconstitutional even independently on the test of ‘manifest arbitrariness’, no matter what the outcome on the traditional test of intelligible discrimination or reasonable relationship.

In contrast, the government has argued that the legislature has wide discretion. The questions are related to international relations, diplomatic priorities and administrative feasibility and the court should refrain from interfering in the policy making area of the legislature. This argument is based the fundamental question of whether the intensity of judicial review should be more stringent in matters of fundamental legal status such as citizenship. Another point of discussion is should the legislature be given the same wide latitude here as in general economic administrative legislation.

Co-impact with NRC: A Question of Structural Inequality

It would be inadequate to limit the analysis of the Citizenship Amendment Act, 2019 under Article 14 to the mere words of the Act.¹⁸ Rather, it should be seen jointly with the proposed National Register of Citizens (NRC).¹⁹ Then it would be clear that the real test is constitutional. The petitioners argue that if the All-India NRC is implemented in the future, then those people will be excluded due to lack of documents. Among them, under CAA, people from non-Muslim community will be available an alternative route to obtain citizenship. Whereas, individuals from the Muslim community in similar circumstances will have no such option. These are asymmetric consequences which are not directly caused by the Act. Rather, it lies in its practical effect. Makes the principle of ‘indirect discrimination’ relevant under Article 14.

¹⁷ *Shayara Bano v. Union of India*, AIR 2017 SC 4609 (n17); *Joseph Shine v. Union of India* (2019) 3 SCC 39 (n17).

¹⁸ *Id.* at 3.

¹⁹ Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (India).

It is also to be noted that India is not a member of the Refugee Convention, 1951.²⁰ This convention prohibits discrimination on the basis of religion. Article 15 of the Universal Declaration of Human Rights, 1948 recognizes the right of every individual to a nationality.²¹ At the same time, Article 26 of the International Covenant on Civil and Political Rights prohibits discrimination on any basis, including religion.²² The Supreme Court itself has held in the case of *National Human Rights Commission v. State of Arunachal Pradesh*, that the State can punish any person whether he is a citizen of India or not.²³ He cannot be deprived of the protection of life and personal liberty under Article 21 of the Constitution of India. In light of these international and domestic principles, the question of structural inequality arising from the CAA-NRC co-effect demands a broader constitutional examination than traditional taxonomic analysis.

Comparative Insights from Section 6A Judgment (2024)

In October 2024, the Supreme Court constitutional bench upheld Section 6A of the Assam Citizenship Amendment Act, 2019 by a 4:1 majority.²⁴ The special cut-off date of 25 March 1971 is fixed for Assam. The Court also held that keeping in mind the specific historical and demographic circumstances of the State of Assam, separate classification under Article 14 was justified. The Court also specifically clarified that the date of March 25, 1971 is linked to the beginning of Operation Searchlight. There is a clear, fact-based and historical logic behind which satisfies both the criteria of 'conceivable discrimination' and 'reasonable relationship' under Article 14.

Comparing this decision with the Citizenship Amendment Act, 2019 (CAA), an important distinction emerges: the classification in Section 6A of the Citizenship Amendment Act, 2019 is based on geo-historical facts.²⁵ The Court itself also acknowledged that Section 6A should be applied with caution based on minority-majority logic. This comparative analysis indicates that the Court has been liberal in accepting classification on regional-historical grounds. However, that doesn't necessarily prove that religion-based all-India classification will also

²⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, art 3.

²¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) art 15.

²² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 26.

²³ *National Human Rights Commission v. State of Arunachal Pradesh* (1996) 1 SCC 742.

²⁴ *In Re: Section 6A of the Citizenship Act 1955* (Supreme Court of India, Constitution Bench, 17 October 2024).

²⁵ The Citizenship (Amendment) Act, 2019, § 6A (n 18).

receive equal leniency. This is because the nature of both classifications-geographical-historical versus religious-identity based is fundamentally different.

The Government's Arguments and Counter-Objections

For fairness, it is also necessary that the arguments of the government and the supporters of the Act should also be given due place. The opposite side may argue that the Citizenship Amendment Act, 2019 does not take away the citizenship of any person. It only provides an alternative route to grant citizenship to an additional class. This does not in any way affect the rights of the citizens of India irrespective of their religion. At the same time, every sovereign nation has the sovereign right to determine whom do they grant citizenship to.

Third, the legislature has more information and discretion than the court on economic and policy matters, especially those related to foreign policy. Therefore, the court should use judicial review under Article 13 in a restrained manner. However, this does not provide a complete solution to the objection. If it appears to the court that the actual effect of the classification is to place people belonging to a particular religious community in an unequal position in the process of determining citizenship. So the argument of 'sovereign discretion' cannot replace the constitutional criterion of Article 14. This tension between sovereign discretion and constitutional equality is the core of the question of constitutional validity of CAA pending in *Indian Union Muslim League v. Union of India (2019)* before the Supreme Court.²⁶

CONCLUSION

An analysis of the CAA based on well-established principles under Article 14 shows that the question of validity of this Act on the basis of the Constitution does not depend on any one criterion. Rather, it depends on the test based on the three combined principles of intelligible discrimination, reasonable relationship, and manifest arbitrariness under Article 14. Where the government argues that protection from religious persecution is a legitimate and humanitarian objective. The petitioners argue that this classification, limited to three selected nations and six communities, is neither consistent nor does it fully achieve its stated objective, and its co-effect with the NRC may create a structural inequality, which is contrary to the spirit of Article 14.

The 2024 decision regarding Section 6A of CAA related to Assam has made it clear that the court is ready to justify the geographical-historical classification. But this does not give any

²⁶ IUML v. Union of India, WP (C) No. 1470/2019 (n5).

definite indication about the fate of religious-identity based classification. Ultimately, this paper comes to the conclusion that in examining any citizenship-related classification under Article 14, formal logic and consistency alone are not enough, but it should also be tested on the broader criterion of practical impact, structural consequences, and constitutional morality to truly protect the right to equality.

