

Illegal Migration and Issues of Citizenship in India: A Critical Review

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Abstract

The citizenship is a subject of entry 17 of Union List of Seventh Schedule of the Constitution and the Govt. of India has amended the Citizenship Act, 1955 in a number of occasions to address the issue relaxing the norms. Migrating population from one country to another is a global problem. Not only India but some developed countries like United Kingdom, the United States of America and Canada are facing the heat of migration particularly from Asian countries. In India, the situation is really grim. Ever since the birth of Bangladesh in 1971, there has been continuous influx of Bangladeshis into India from our Eastern Border while More than 80,000 refugees from West Pakistan, largely Hindus, have been living in Kashmir since Independence without citizenship rights. This paper aims to study the different issues in connection with illegal immigration and scope of citizenship.

Key words: *Migration, Citizenship, Integration and Assimilation, Allocation of Resources, Expulsion.*

I. Introduction

Illegal migration is a problem even for the resourceful countries. The probable result of the free movement of individuals across the border may be considered “casual aggregates” devoid of any internal cohesion and incapable of being a source of patriotic sentiments and solidarity.²In India the picture of illegal migration is very grim. Our population growth is already high, 17.19% in a decade according to last Census of 2011.³With more than 130 crores of

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²Walzer, M., 1983, Spheres of Justice. A Defense of Pluralism and Equality, New York: Basic Books.

³Available at https://www.business-standard.com/article/economy-policy/census-2011-population-growth-rate-declines-to-17-111040100090_1.html, accessed on 25th June, 2020 at 1.14 PM.

population our resources are over stretched, infrastructures are bursting to the seams. There is water shortage, fewer works for hands. The trains and roads are overcrowded. While there is urgent need of curbing our growth rate of population through the adoption of the policy of birth control, the influx of illegal migrants from bordering countries is aggravating problem. This paper aims to discuss the various effects of illegal migration through border and study the system of immigration in India in the backdrop of the Citizenship Amendment Act, 2019.

II. Reasons for the Inflow of Migrants

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. The continued influx of Bangladeshi nationals into India has been on account of a range of reasons together with religious intolerance and economic. There are several push and pull factors responsible for continuous influx of illegal immigration in India which are as under-⁴

The important **Push Factors** on the part of include: -

- steep and continuous increase in population;
- the sharp deterioration in land-man ratio;
- low rates of economic process significantly poor performance in agriculture;

The **Pull Factors** include: -

- ethnic proximity and kinship enabling simple shelter to the immigrants;
- porous and simply negotiable border with Bangladesh;
- better economic opportunities;
- interested religious and political elements encouraging immigration;

III. Meaning of Migration and Consequences thereof

The probable result of the free movement of individuals across the border would be “casual aggregates” devoid of any internal cohesion and incapable of being a

⁴ Report filed by the Government of India in Writ Petition No. 125 of 1998.

source of patriotic sentiments and solidarity.⁵ Generally, the illegal migrants may be classified as- a) *those who came with valid visa/documents and overstayed*; b) *those who came with forged visa/documents*; and c) *those who entered surreptitiously*. In India, the term illegal migrant has been defined as⁶a foreigner who entered India-

- (i) without a valid passport or other prescribed travel documents or
- (ii) with a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time.

Now, let's have a discussion over some of the most important effects:

A. Social Consequences

Issue of integration and assimilation

Integration does not strictly entail assimilation⁷; it can be accomplished through additive acculturation, a process whereby immigrants learn what is necessary to adapt to their new environment without forfeiting the practices and values that constituted their identity prior to immigration. Public order arguments includes inter alia, the arguments relating to its cultural integrity or way of life. The integration principle may be subject to two qualifications. **First and most obviously** the principle applies *only other things being equal and other things may not be equal* if the very lives of prospective immigrants are under threat and there is no reasonable way of allaying the threat other than by granting them refuge, a compelling moral argument to do so will hold regardless of how difficult it might be to integrate them. The **second** is *the chauvinism of the native community – its racism or religious prejudices*, for example – and the moral relevance of that fact might be captured in an anti-chauvinist proviso.⁸ Migration across state boundaries necessarily involves moving from one

⁵Walzer, M., 1983, Spheres of Justice. A Defense of Pluralism and Equality, New York: Basic Books.

⁶Section 2(1)(b), The Citizenship Act, 1955.

⁷ Assimilation involves leaving one culture and joining another. And so what we count as assimilation depends on what we take “culture” to mean in this connection.

⁸ Eamonn Callan, IMMIGRATION, INTEGRATION, AND ASSIMILATION, Available at <http://www.mit.edu/~shaslang/mprg/CallanIIA.pdf>, accessed on 27th March, 2020 at 4.55 PM.

political and societal culture to another, though for more privileged individuals it may involve little or nothing in the way of assimilation. Hence, after Micheal Dummett, any country has the right to limit immigration if its indigenous population is in danger of being rapidly overwhelmed.⁹

Multicultural Issues

Emmanuel Kant spoke about perpetual peace as one of the most important objectives to be attained by the states. When different sections of people with different cultural backgrounds join together, a cultural shock may be experienced by the communities which many a time leads to conflicts. In this context the idea of **Multiculturalism** views that cultures, races, and ethnicities, particularly those of minority groups, deserve special acknowledgement of their differences within a dominant political culture.

a. Crisis of Identity

A person crossing the international border illegally firstly will suffer from crisis of identity. Prof. Amartya Sen expressed, that the identity as a basis of violence due to- *Civilizational clash, Religious rivalry, West and anti-West, Cultural differences, Opposition to globalisation*. He opined, at the background of ‘Clash of Civilizations’, it is doubtful whether these civilizations actually clashes and the basis for unique categorisation into different civilizations is under question.¹⁰The inflow of immigrants creates a crisis of identity among the native section of individuals. Their cultural survival many a time tends to in jeoardy, their political management is weakened and their employment opportunities are undermined by such illegitimate migration.

b. Cultural integrity and Assimilation

Integration and Assimilation of the migrated section of people with the community migrated, is a very important issue to address. The two primary theories or models of multiculturalism as the manner in which different cultures are integrated into a single society which is namely, the “melting pot” and the

⁹ Michael Dummett, *On Immigration and Refugees*, Routledge, 2001, p. 52

¹⁰ Amartya Sen, *Identity and Violence: The Illusion of Destiny*, Penguin Books. London, 2006.

“salad bowl” theories. The *melting pot theory* of multiculturalism assumes that various immigrant groups will tend to “melt together,” abandoning their individual cultures and eventually becoming fully assimilated into the predominant society. The tragedy of multiculturalism revolves round a story of two confusions. The first is the confusion between cultural conservatism and cultural freedom and secondly, ignoring the fact that, while religion may be an important identity for people there are other affiliations and associations – political, social, economic – that people also have reason to value.¹¹ For example, the U.S. *Indian Reorganization Act of 1934* forced the assimilation of nearly 350,000 Indians into American society without any regard for the diversity of Native American heritage and lifestyles.¹²

c. *Cultural Conflicts*

Sometimes, the problem of illegitimate migration led to agitation and unrest and the government even fails of the govt. to retort the same. The outstanding example of this can be the Assamese unrest beneath the leadership of All Assam Gana Sangram Parishad (AAGSP) and every one Assam Student’s Union (AASU). Assam witnessed governmental instability, sustained direct action campaigns and worst cases of ethnic violence. Assam Accord was the results of this agitation.¹³ The *salad bowl theory* describes a heterogeneous society in which people coexist but retain at least some of the unique characteristics of their traditional culture. Like a salad’s ingredients, different cultures are brought together, but rather than coalescing into a single homogeneous culture, retain their own distinct flavours. In the United States, New York City, with its many unique ethnic communities like “Little India,” “Little Odessa,” and “Chinatown” is considered an example of a

¹¹ Amartya Sen, Multiculturalism: unfolding tragedy of two confusions, available at <https://www.ft.com/content/c90fd530-313b-11db-b953-0000779e2340>, accessed on 26th march, 2020 at 12. 37 PM.

¹² Available at <https://www.thoughtco.com/what-is-multiculturalism-4689285>, accessed on 26th march, 2020 at 12. 01 PM.

¹³ J. Das & D Talukdar (2016) Socio-Economic and Political Consequence of Illegal Migration into Assam from Bangladesh. J Tourism Hospit 5: 202. doi:10.4172/2167-0269.1000202 at pg. 3.

salad bowl society.¹⁴The French and the Germans are very doubtful of the wisdom of the approach, and Denmark and the Netherlands have already reversed their official policies. Even Britain is full of misgivings.¹⁵The Commission on Integration and Cohesion anointed by the government of India to study the status of the illegal Bangladeshi immigrants in India, particularly in Assam, found that even after staying such a long time in Indian territory, tension sometimes exists with the presence of high levels of migration mix with alternative kinds of social exclusion like economic condition, poor housing etc. Sometimes, the problem of illegitimate migration led to agitation and unrest and the government even fails of the govt. to retort the same. The outstanding example of this can be the Assamese unrest beneath the leadership of All Assam Gana Sangram Parishad (AAGSP) and every one Assam Student's Union (AASU). Assam witnessed governmental instability, sustained direct action campaigns and worst cases of ethnic violence. Assam Accord was the results of this agitation.¹⁶

Collective consciousness

International migration produces a “mismatch between citizenship and the territorial scope of legitimate authority” with “citizens living outside the country whose government is supposed to be accountable to them and inside a country whose government is not accountable to them”.¹⁷The “political community is probably the closest we can come to a world of common meanings. Language, history, and culture come together to produce a collective consciousness”¹⁸. Politics itself, moreover, as a set of practices and institutions that shape the form

¹⁴ Longley, Robert. "What Is Multiculturalism? Definition, Theories, and Examples." ThoughtCo, Feb. 11, 2020, [thoughtco.com/what-is-multiculturalism-4689285](https://www.thoughtco.com/what-is-multiculturalism-4689285). accessed on 26th march, 2020 at 12. 01 PM.

¹⁵ Amartya Sen, Multiculturalism: unfolding tragedy of two confusions, available at <https://www.ft.com/content/c90fd530-313b-11db-b953-0000779e2340>, accessed on 26th march, 2020 at 12. 37 PM.

¹⁶ J. Das & D Talukdar (2016) Socio-Economic and Political Consequence of Illegal Migration into Assam from Bangladesh. J Tourism Hospit 5: 202. doi:10.4172/2167-0269.1000202 at pg. 3.

¹⁷ Available at <https://plato.stanford.edu/entries/citizenship/>, accessed on 21st January, 2020 at 5.02 PM.

¹⁸Walzer, M., 1983, Spheres of Justice. A Defense of Pluralism and Equality, New York: Basic Books.

and outcome those distributive conflicts take, “establishes its own bonds of commonality”.¹⁹ The probable result of the free movement of individuals would be “casual aggregates” devoid of any internal cohesion and incapable of being a source of patriotic sentiments and solidarity. In a world of neighbourhoods, membership would become meaningless. The upshot of this is that we should recognize the political community’s right to regulate admission with a view to securing its cultural, economic and political integrity. To reject political communities’ right to distribute the good of membership is to undermine their capacity to preserve their integrity.

Environmental Plunder

Offering of citizenship even to the illegal migrants may cause Environmental plunder which 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. Those who are privileged make their fortune by means of hidden process. At this, the owners of such resources must be responsible to cause pollution, congestion, noise and accidents; the poor suffer the most. 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.

B. ECONOMIC CONSEQUENCES

Capability of Allocation of Resources

The division of the world into states is arguably justifiable on functional grounds, to the extent that states appear as “first approximations of optimal units for allocating and producing the world’s resources” (Coleman and Harding 1995, 38). The State being the trustee of natural resources must not cause

¹⁹Walzer, M., 1983, *Spheres of Justice. A Defense of Pluralism and Equality*, New York: Basic Books.

burden to the allocation of resources which may cause over- exploitation to meet the demand of a recognised citizen. If we think that states matter simply as local units of efficient production and distribution, then this would be the main consideration when evaluating immigration policies. The Roman origin, public trust doctrine, states that and the public at large is the real owner of the sea shores, running waters, air, forests and ecologically-fragile lands, while the state is only a custodian.²⁰ Hence, it would be completely unjustified to make them a subject of private ownership unless it is allowed by the public at large.

Disruption in the Economy

Illegal immigration if it happens in mass 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.²¹

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.

²⁰**N.D. Jayal** and Anr. v. **Union of India**, [2002] 2 SCC 333.; [Naeem Sadig](#), Environmental plunder and the right to know, available at <https://tribune.com.pk/story/447919/environmental-plunder-and-the-right-to-know/>, accessed on 26th March, 2020 at 8.58 AM.

²¹Camarota, Steven. "The High Cost of Cheap Labor." Center for Immigration Studies (2004). 8 Dec. 2007 <<http://www.cis.org/articles/2004/fiscalexec.html>> accessed on 26th March, 2020 at 9.58 AM.

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. Moreover, illegitimate staff will take up near to any reasonably work as long it guarantees a steady income. It doesn't matter however arduous or unsafe it's. Illegal migrants can't sue and hardly complain regarding work-related problems. Interestingly, the employers are usually happy while, it's frustrating for the citizens who find difficulty in finding moderately paying jobs. For instance, those without high school diplomas are the ones who are most affected. It is estimated that undocumented immigrants' lower wages by approximately 3 to 8 percent for low-skill jobs. Furthermore, Americans who compete with immigrants for these jobs stand to make an additional \$25 a week if undocumented immigration were to be severely cut down.²² Immigration has a negative effect on U.S. workers without a college degree. That's especially true in agriculture and construction. In 2014, immigrants held 33% of agricultural jobs and almost half of those were documented, according to the Pew Research Center. In construction, 24% of the jobs went to immigrants, and half of them were documented. The biggest share was domestic workers. There, 45% were immigrants and less than half of them were documented. 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.²³

²²Davidson, Adam. "Illegal Immigrants and the U.S. Economy." National Public Radio (2006). 8 Dec. 2007, available at <http://www.npr.org/templates/story/story.php?storyId=5312900>.

²³Pew Research Center. "[Immigrants Don't Make Up A Majority of Workers in Any U.S. Industry](#)," accessed on 27th March, 2020 at 9.58 AM.

C. Political Consequences

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)²⁴ Hobbesian nation-state is threatened by migration to a degree that its survival is uncertain, it has a legitimate reason to restrict migration.²⁵The Governor of Assam in his report dated 8th November, 1998 sent to the President of India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security. 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

²⁴Kymlicka, W., 2001, “Territorial Boundaries: A Liberal-Egalitarian Perspective”, *Boundaries and Justice. Diverse Ethical Perspectives*, D. Miller, S. H. Hashmi (eds.), Princeton and Oxford: Princeton University Press, 249–276.

²⁵ Harald Bauder, *The Possibilities of Open and No Borders*, *Social Justice* Vol. 39. No. 4, (130) (2014)

easy to track and prosecute illegal criminals.²⁶The 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.²⁷

Reduced motivation for Legal Immigrants

Many people are keen to follow the proper procedures for immigration. However, they may commit to take shortcuts if they're convinced that it's doable and maybe even additional pleasing, to get into a country illegally.

Injury and Illness

The pursuit of better-quality life is that the primary explanation for illegitimate immigration. This can be largely achieved through employment within the destination country and therefore the desperation for employment drives illegitimate migrants to figure in dangerous industries like construction and agriculture since they need restricted ability to uphold safety at work.

Return of Migrants

Return of migrants is an important consequence. Sometimes back, Israel facilitated the entry of a packed plane load of Ethiopian Jews as part of its 'right

²⁶Available at <https://www.earthclipse.com/issue/causes-effects-illegal-immigration.html>, accessed on 5th July, 2019 at 4.57 PM.

²⁷SarbanandaSonowal v. Union of India (UOI) and Another, No. 131 of 2000

of return' policy for all Jews throughout the world. The 'right of return' is a foundational doctrine of Israel. UK, Ireland and Germany too have conceded the rights of individuals who can demonstrate national ancestry to settle in these countries. Indeed, after Brexit there has been a rush of people of Irish origin living in the UK to acquire Irish passports.²⁸ Bangladesh doesn't fully agree to follow the Policy of right to return of the refugees in India.

Aggression

Sometimes migration leads to aggression. The word "aggression" is a word of very wide import. Various meanings to the word have been given in the dictionaries, like, "an assault, an inroad, the practice of setting upon anyone; an offensive action or procedure; the practice of making attacks or encroachments; the action of a nation in violating the rights especially the territorial rights of another nation; overt destruction; covert hostile attitudes.

IV. Illegal Migration and International Law

Article 1 of Chapter 1 of the Charter of the United Nations gives the purposes of the United Nations and the first is to maintain international peace and security, and to that end : to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustments or settlement of international disputes or situations which might lead to a breach of peace. On account of use of expression "acts of aggression" it was thought necessary to define "aggression" and explain what it exactly means. The countries acceded to the 1951 Convention or 1967 Protocol, they agree to protect refugees on their territory and under their jurisdiction, in accordance with the terms of these instruments. Now let's have a look over the issues covered under these two instruments-

²⁸Swapan Dasgupta, West is selective on refugees, so why scoff at India for CAA?, Available at <https://timesofindia.indiatimes.com/blogs/right-and-wrong/west-is-selective-on-refugees-so-why-scoff-at-india-for-caa/>, accessed on 24th February, 2020 at 12.19 PM.

A. The 1951 Convention and 1967 Protocol

The 1951 Convention and 1967 Protocol cover three main subjects:

- The refugee definition²⁹, along with provisions for cessation of, and exclusion from, refugee status;
- The legal status (rights and obligations) of refugees in their country of asylum. This encompasses the duty of refugees to respect the laws and regulations of the country of asylum and their rights in that country, including to be protected from refoulement; and
- States' obligations, including to cooperate with UNHCR in the exercise of its functions and to facilitate its duty of supervising the application of the Convention.

The National Parliamentarians have been urged to monitor the following issues in the context of refugees³⁰-

- To oversee national budget appropriations, and can ensure that adequate and cost-effective funding is provided both to national refugee protection systems and to UNHCR, as the international agency mandated to protect refugees and promote durable solutions to their problems.
- To encourage accession to the 1951 Convention and its 1967 Protocol, and to other relevant international and regional agreements. They can design and adopt national legislation and promote State asylum systems that conform to international standards, and oversee their implementation.

²⁹ According to the 1951 Convention, a refugee is someone who:

- Has a well-founded fear of being persecuted because of his or her: Race; Religion; Nationality; Membership of a particular social group; or Political opinion.
- Is outside his or her country of origin or habitual residence;
- Is unable or unwilling to avail him- or herself of the protection of that country, or to return there, because of fear of persecution; and
- Is not explicitly excluded from refugee protection or whose refugee status has not ceased because of a change of circumstances.

³⁰ Available at <https://www.unhcr.org/3d4aba564.pdf>, accessed on 24th February, 2020 at 4.56 PM.

India has not signed both the Convention and Protocol as yet.

B. International Covenant on Civil and Political Rights, 1966

Article 13 of the International Covenant on Civil and Political Rights, 1966, states if an alien lawfully in a State's territory may be expelled only in pursuance of a decision reached in accordance with law. In *Attorney-General for Canada v. Cain*³¹, where Lord Atkinson said, "One of the rights possessed by the Supreme power in every state is the right to refuse to permit an alien to enter that state, to annex what conditions it pleases to the permission to enter it, and to expel or deport from the state, at pleasure, even a friendly alien, especially if it considers his presence in the state opposed to its peace, order, and good government, or to its social or material interests." In *Rex v. Bottrill*³², it was said that the King under the Constitution of United Kingdom is under no obligation to admit into the country or to retain there when admitted, any alien. Every alien in the United Kingdom is there only because his presence has been licensed by the King. It follows that at common law the King can at will withdraw his license and cause the Executive to expel the alien, whether enemy or friend. In *Chae Chan Ping v. United States*³³, the United State Supreme Court held: "The power of exclusion of foreigners being an incident of sovereignty belonging to the Government of the United States, as a part of those sovereign powers delegated by the Constitution, the right to its exercise at any time when, in the judgment of the Government, the interests of the country require it, cannot be granted away or restrained on behalf of anyone. The powers of Government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest. The exercise of these public trusts is not the subject of barter or contract. "This principle was reiterated in *Fong Yue Ting v. United States*³⁴, where the court ruled "the government of each state has always the right to compel foreigners who are found within its territory to go away, by having them taken to the frontier. This right is based on the fact that, the foreigner not making part of the

³¹ [1906] AC 542.

³² (1947) 1 K.B. 41, [Ed: [1946] 2 All E.R. 434].

³³ 1930 U.S. 581

³⁴ 149 U.S. 698

nation, his individual reception into the territory is matter of pure permission, of simple tolerance, and creates no obligation. The exercise of this right may be subjected, doubtless, to certain forms by the domestic laws of each country; but the right exists none the less, universally recognized and put in force."

C. The Convention against Torture, 1984

Article 3 of the Convention against Torture has expanded the scope of the protection against expulsion since it explicitly prohibits States parties to "expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". It must be noted that, in contrast with article 33 of the 1951 Convention, article 3 of the Convention against Torture does not include any public security exception: every person is protected against expulsion to face torture, regardless of what he or she is or may have done in the past. In addition, according to article 3 of the Convention against Torture, the ill-treatment need not be connected to one of the five grounds enumerated in the 1951 refugee definition (i.e. race, religion, nationality, membership of a particular social group or political opinion).³⁵ India has not acceded the Convention

D. Cartagena Declaration, 1984

The Declaration reaffirms the centrality of the 1951 Convention and its 1967 Protocol, the principle of non-refoulement, as well the importance of international cooperation to solve refugee problems. It recommends that the definition of a refugee used throughout the region be enlarged beyond persons who fulfil the 1951 Convention definition to include those who have fled their country "because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, 1985:³⁶The Declaration on the Human

³⁵ OHCHR Discussion paper, Expulsions of aliens in international human rights law, Geneva, September 2006..

³⁶ Hurst Hannum, THE STATUS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW, Available at

Rights of Individuals Who are not Nationals of the Country in which They Live was adopted by the General Assembly, in resolution 40/144 on 13 December 1985, to which the Declaration is annexed. Article 4 of the Declaration states that the Aliens shall observe the laws of the State in which they reside or are present and regard with respect the customs and traditions of the people of that State. In the Declaration, non-citizens have been termed as aliens. As enumerated below, Article 5-10 talk about the rights to be enjoyed by them –

Nature of Treatment as Nationals of the Country in which they Live

The aliens will receive same treatment in respect to-

- a.** right to life and security of the person, including freedom from arbitrary arrest or detention;
- b.** Protection against arbitrary or unlawful interference with privacy, family, home or correspondence;
- c.** Equality before the courts, including the free assistance of an interpreter;
- d.** The right to retain language, culture and tradition;
- e.** The right to transfer money abroad.

Limited Rights

The following rights must be granted to aliens so long as they do not interfere with *national security, public safety, public order, public health or morals or the rights and freedoms of others*:

- a.** The right to leave the country
- b.** The right to freedom of expression
- c.** Liberty of movement and freedom to choose their place of residence within the borders of the country

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.26_Declaration%20on%20the%20Human%20Rights%20of%20Individuals%20who%20are%20not%20nationals.pdf, accessed on 31st March, 2020 at 11.30 AM.

- d.** The right of spouse and minor or dependent children to join a lawful alien, as provided by national law

Conditional rights

Aliens lawfully residing in the country must be granted the following rights so long as they observe the country's laws and respect the customs and traditions of the people:

- a.** The right to safe and healthy working conditions, fair wages, and equal pay for equal work
- b.** The right to join trade unions
- c.** The right to social services, health care, education, and social security

Additional rights

The following additional rights of aliens are particularly enumerated in the Declaration-

- a.** Protection from torture or cruel, inhuman, or degrading punishment
- b.** Freedom from being subjected to medical or scientific experimentation without the alien's free consent
- c.** Protection against arbitrary or unlawful expulsion from the country
- d.** The right to defend oneself from expulsion, except where compelling reasons of national security require otherwise
- e.** The right to communicate at any time with the consulate or diplomatic mission of the country of which he or she is a national.
- f.** A State may not arbitrarily imprison an alien, or confiscate property without compensation, or make no effort to protect aliens from any foreseeable trouble that may face.

In *Mavrommatis Palestine Concessions, Greece vs. Britain*, [(1924) PCIJ Reports, Ser. A, No.2,], it has been held that as an elementary principle of International law, a State is entitled to protect its subjects, when injured by acts contrary to international law by another State, for whom they have been unable to obtain satisfaction through the ordinary channels.

E. The Draft International Convention for the Protection of All Persons from Enforced Disappearance

Article 16 of the draft Convention expressly prohibits any State party to “expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance”.³⁷ The provision adds that “for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law”.³⁸ This follows the practice of the Committee against Torture.

F. UN Draft Articles on the Expulsion of Aliens, 2014

When the General Assembly of the United Nations created the ILC in 1947, it delegated its mandate under Article 13(1)(a) of the Charter of the United Nations to "*initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification.*" Accordingly, on the issue of expulsion of aliens it has drafted a Document. The most important provisions of the Draft Document are as under-

- A State has the right to expel an alien³⁹ from its territory. Expulsion shall be in accordance with the present draft articles, without prejudice to other applicable rules of international law, in particular those relating to human rights. (Article 3)
- The grounds for expulsion have been enumerated under Article 5⁴⁰, while it prohibits the expulsion of refugees save on grounds of national security or public order under Article 6⁴¹ of the Draft Document.

³⁷ General Comment no.6, 1 September 2005, para.28.

³⁸ E/CN.4/2005/WG.22/WP.1/REV.4, 23 September 2005

³⁹ “alien” means an individual who does not have the nationality of the State in whose territory that individual is present. Art 2(b), Draft Declaration, 2014.

³⁹ Art. 5(2)-

- A State may only expel an alien on a ground that is provided for by law.
- The ground for expulsion shall be assessed in good faith and reasonably, in the light of all the circumstances, taking into account in particular, where relevant,

- State shall not expel a stateless person lawfully in its territory, save on grounds of national security or public order.(Article 7)
- A State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her. (Article 8)
- A State is prohibited from of both collective⁴² and disguised expulsion⁴³. Article 9&Article 10.

the gravity of the facts, the conduct of the alien in question or the current nature of the threat to which the facts give rise.

- A State shall not expel an alien on a ground that is contrary to its obligations under international law.

⁴¹ Article 6: Prohibition of the expulsion of refugees: The present draft articles are without prejudice to the rules of international law relating to refugees, as well as to any more favourable rules or practice on refugee protection, and in particular to the following rules:

(a) a State shall not expel a refugee lawfully in its territory save on grounds of national security or public order;

(b) a State shall not expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where the person's life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion, unless there are reasonable grounds for regarding the person as a danger to the security of the country in which he or she is, or if the person, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

⁴² Article 9: Prohibition of collective expulsion:

1. For the purposes of the present draft article, collective expulsion means expulsion of aliens, as a group.
2. The collective expulsion of aliens is prohibited.
3. A State may expel concomitantly the members of a group of aliens, provided that the expulsion takes place after and on the basis of an assessment of the particular case of each individual member of the group in accordance with the present draft articles.
4. The present draft article is without prejudice to the rules of international law applicable to the expulsion of aliens in the event of an armed conflict involving the expelling State.

⁴³ Article 10: Prohibition of disguised expulsion:

1. Any form of disguised expulsion of an alien is prohibited.
2. For the purposes of these draft articles, disguised expulsion means the forcible departure of an alien from a State resulting indirectly from an action or omission

- The expulsion of an alien for the purpose of confiscating his or her assets is prohibited. (Article 11)
- A State shall not resort to the expulsion of an alien in order to circumvent an ongoing extradition procedure. (Article 12)
- All aliens subject to expulsion shall be treated with humanity and with respect for the inherent dignity and the human rights of the human person at all stages of the expulsion process. (Article 13)
- The expelling State shall respect the rights of the alien subject to expulsion without discrimination of any kind on grounds such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status, or any other ground impermissible under international law. (Article 14)
- Children, older persons, persons with disabilities, pregnant women and other vulnerable persons who are subject to expulsion shall be treated and protected with due regard for their vulnerabilities and respecting best interests of the child. (Article 15)
- The expelling State shall protect the right to life of an alien subject to expulsion. (Article 16). The expelling State shall not subject an alien subject to expulsion to torture or to cruel, inhuman or degrading treatment or punishment. (Article 17). The expelling State shall respect the right to family life of an alien subject to expulsion. It shall not interfere arbitrarily or unlawfully with the exercise of such right. (Article 18)
- The detention of an alien for the purpose of expulsion shall not be arbitrary nor punitive in nature. (Article 19)⁴⁴

attributable to the State, including where the State supports or tolerates acts committed by its nationals or other persons,

⁴⁴ Article 19: Detention of an alien for the purpose of expulsion: 1. (a) The detention of an alien for the purpose of expulsion shall not be arbitrary nor punitive in nature. (b) An alien detained for the purpose of expulsion shall, save in exceptional circumstances, be separated from persons sentenced to penalties involving deprivation of liberty.

2. (a) The duration of the detention shall be limited to such period of time as is reasonably necessary for the expulsion to be carried out. All detention of excessive duration is prohibited. (b) The extension of the duration of the detention may be decided upon only by a court or, subject to judicial review, by another competent authority.

- The expelling State shall take appropriate measures to protect the property of an alien subject to expulsion, and shall, in accordance with the law, allow the alien to dispose freely of his or her property, even from abroad. (Article 20)
- The expelling State shall take appropriate measures to facilitate the voluntary departure of an alien subject to expulsion. (Article 21) An alien subject to expulsion shall be expelled to his or her State of nationality or any other State that has the obligation to receive the alien under international law, or to any State willing to accept him or her at the request of the expelling State or, where appropriate, of the alien in question. (Article 22)
- No alien shall be expelled to a State where his or her life would be threatened on grounds such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status, or any other ground impermissible under international law. (Article 23. 1)
- A State that does not apply the death penalty shall not expel an alien to a State where the alien has been sentenced to the death penalty or where there is a real risk that he or she will be sentenced to death, unless it has previously obtained an assurance that the death penalty will not be imposed or, if already imposed, will not be carried out. (Article 23. 2)
- A State shall not expel an alien to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment. (Article 24)
- An alien lawfully present in the territory of a State, who is expelled by that State, shall have the right to be readmitted to the expelling State. (Article 29)

3. (a) The detention of an alien subject to expulsion shall be reviewed at regular intervals on the basis of specific criteria established by law. (b) Subject to paragraph 2, detention for the purpose of expulsion shall end when the expulsion cannot be carried out, except where the reasons are attributable to the alien concerned.

- The expulsion of an alien in violation of the expelling State's obligations entails the international responsibility of that State. (Article 30).

G. UN Declarations in Indian Perspective⁴⁵

Several Indian cases have specifically referred to the Universal Declaration, which was adopted the year before the Indian constitution and is widely held to have provided the model for the latter's human rights guarantees. "The [Universal] Declaration [of Human Rights] may not be a legally binding instrument but it shows how India understood the nature of Human Rights" at the time the constitution was adopted.⁴⁶ Thus, although the Supreme Court has stated that the Declaration "cannot create a binding set of rules" and that even international treaties "may at best inform judicial institutions and inspire legislative action,"⁴⁷ constitutional interpretation in India may be strongly influenced by the Declaration.⁴⁸ At the same time, an early Indian case made clear that the Universal Declaration of Human Rights cannot be taken into account where it conflicts with clear provisions of the Indian Constitution.⁴⁹

V. Illegal Migration and Indian Law

Migrating population from one country to another is a global problem. Not only India but some developed countries like United Kingdom, the United States of America and Canada are facing the heat of migration particularly from Asian countries. In India, the situation is really grim. Ever since the birth of

⁴⁵Available at

<https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?referer=https://www.google.co.in/&httpsredir=1&article=1396&context=gjicl>, accessed on 31st March, 2020 at 11.45 AM.

⁴⁶*Kesavananda Bharati v. State of Kerala*, 1973 A.I.R. (S.C.) 1461, 1510 (India) (holding that the constitutional power of amendment does not extend to altering the basic structure, including the guarantee of fundamental rights, of the Indian constitution). See also, e.g., *Bombay Educ. Society v. State of Bombay*, 1954 Born. 1333; *Maneka Gandhi v. Union of India*, 1978 A.I.R. (S.C.) 597.

⁴⁷*Jolly George Vargheese*, 1980 A.I.R. (S.C.) at 474 (India).

⁴⁸*Kishore Chand v. State of Himachal Pradesh*, [1991] 1 S.C.J. 68, 76.

⁴⁹*Biswambhar Singh v. State of Orissa*, [1957] A.I.R. (Orissa) 247, reprinted in 24 I.L.R. 425.

Bangladesh in 1971, there has been continuous influx of Bangladeshis into India from our Eastern Border. The illegal immigrants pose serious threat. Assam is worst hit. Quite obviously, there is no scope of illegal migrants to get the citizenship in India as far as the Citizenship Act, 1955 is concerned. Apart from 31,313 individuals-25,447 Hindus, 5,807 Sikhs, 55 Christians, two Buddhists and two Parsis-living in India on long-term visas, as far as the various reports are concerned. The illegal migrants in India are as under⁵⁰-

- More than 80,000 refugees from West Pakistan, largely Hindus, have been living in Kashmir since Independence without citizenship rights.
- Hindu Bangladeshi immigrants in West Bengal-mostly from the Matua community who entered India after 1971. As per the 2011 Census, Matuas comprise 17 per cent of the state's population of 100 million. They have voting rights, but are yet to get citizenship certificates.
- Nearly a 1.4 million Hindus and 500,000 Muslims in Assam as has been excluded from Assam's NRC.

In addition to the above documentary records a healthy number of people spreaded as migrant laborurers which remains unrecorded.

A. Constitution of India

In India, the very first entry, namely, Entry 1 of List I of the Seventh Schedule speaks "Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilization". In fact, entries 1 to 4 of List I of Seventh Schedule mainly deal with armed forces. Article 355 of the Constitution of India reads as under- "*It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.*" The word "aggression" is a word of very wide import. Various meanings to the word have been given in the dictionaries, like, "an assault, an inroad, the practice of setting upon anyone; an offensive action or procedure; the practice of making attacks or encroachments; the action of a

⁵⁰Available at <https://www.indiatoday.in/magazine/cover-story/story/20200120-who-is-not-a-citizen-1635189-2020-01-10>, accessed on 1st April, 2020 at 4.40 PM.

nation in violating the rights especially the territorial rights of another nation; overt destruction; covert hostile attitudes."

B. The Illegal Migrants (Determination by Tribunals) Act, 1983

The term has further been defined under the Illegal Migrants (Determination by Tribunals) Act, 1983, under Section 3(1)(c) as a person in respect of whom each of the following conditions is satisfied, namely: -

- (i) he has entered into India on or after the 25th day of March, 1971;
- (ii) he is a foreigner⁵¹;
- (iii) he has entered into India without being in possession of a valid passport or other travel document or any other lawful authority in that behalf;

The Preamble of the Act says that "the continuance of such foreigners in India is detrimental to the interests of the public of India." In *Union of India v. Ghaus Mohammed*⁵², the Chief Commissioner of Delhi served an order on Ghaus Mohammad to leave India within three days as he was a Pakistani national. He challenged the order before the High Court which set aside the order by observing that there must be prima facie material on the basis of which the authority can proceed to pass an order under Section 3(2)(c) of the Foreigners Act, 1946. In appeal the Constitution Bench reversed the judgment of the High Court holding that onus of showing that he is not a foreigner was upon the respondent. In *Sarbananda Sonowal v. Union of India (UOI) and Another*⁵³ 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. In *KangshariHaldar v. State of West Bengal*,⁵⁴ the IMDT Act, was challenged in

⁵¹ Foreigner" means a person who is not a citizen of India; (Section 2 (a) of THE FOREIGNERS ACT, 1946).

⁵² MANU/SC/0072/1961.

⁵³No. 131 of 2000.

⁵⁴ MANU/SC/0047/1959

which 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.*"

VI. Illegal Migrants and India

Over the years, diverse groups of refugees have made different parts of the country their primary settlement zones. From Hindu and Sikh migrants settling in Delhi, Rajasthan and J&K after Partition, to Bangladeshis forming the largest immigrant group from a particular country in West Bengal and Assam perhaps, Buddhist Chakmas and Hindu Hajongs from Bangladesh concentrating in Arunachal Pradesh, Tamil Nadu hosting Sri Lankan Tamil refugees and Buddhist Tibetan settlements in Dharamshala, Delhi and Odisha, India has welcomed them all. The home ministry has created 'standard operating procedures' for various refugee groups. The rights and facilities afforded to them remain erratic, decided on a case-to-case basis e.g.⁻⁵⁵

- Refugees from some groups, like the Tibetans, have been given land, granted Aadhaar and PAN cards, been allowed to open bank accounts and work in the country. Their children can claim citizenship if they were born between 1950 and 1987.
- Since 2015, Pakistani and Afghan nationals belonging to the six minority communities, living here on a "long-term visa" can have

⁵⁵Available at <https://www.indiatoday.in/magazine/cover-story/story/20200120-who-is-not-a-citizen-1635189-2020-01-10>, accessed on 1st April, 2020 at 4.40 PM.

driving licences, access to education and healthcare facilities and buy "small dwelling units for self-occupation or self-employment".

A. Illegal Migration and Issues of Citizenship

Citizenship means being protected by the law rather than participating in its formulation or execution. The "political community is probably the closest we can come to a world of common meanings. To reject political communities' right to distribute the good of membership is to undermine their capacity to preserve their integrity. It is to condemn them to become nothing more than neighbourhoods, random associations lacking any legally enforceable admissions policies. The citizenship is a subject of entry 17 of Union List of Seventh Schedule of the Constitution and the Govt. of India has amended the Citizenship Act, 1955 in a number of occasions to address the issue relaxing the norms. Acquisition of Indian Citizenship as per the Citizenship Act 1955 is possible under the following ways: (1) Citizenship at the commencement of the constitution of India (2) Citizenship by birth; (3) Citizenship by descent (4) Citizenship by registration (5) Citizenship by naturalization and Incorporation of the territory. The legislation has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, the Citizenship (Amendment) Act, 2005, and the Citizenship (Amendment) Act, 2019. At this, it may be stated that the foremost duty of the Government is to defend the borders of the country, prevent any trespass and make the life of the citizens safe and secure.

B. Citizenship by Assam Accord⁵⁶

In 1951, owing to unabated illegal immigration from Bangladesh (then East Pakistan), the NRC was prepared in Assam as a non-statutory process. Recording the particulars of all persons enumerated during the 1951 Census, the 1951 NRC identified nearly 1.5 million illegal immigrants, one-sixth of Assam's population at the time. However, there is no account of what happened to those illegal immigrants. Citizenship under the Assam Accord is as under-

- ✚ All persons of Indian origin who came before the 1st January, 1966 to Assam whose names were included in the electoral rolls used for

⁵⁶Section 6A, the Citizenship Act, 1955.

the purposes of the General Election to the House of the People held in 1967) and

- ✚ All persons who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India.
- ✚ every person of Indian origin who—
 - ✓ came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and
 - ✓ has, since the date of his entry into Assam, been ordinarily resident in Assam; and
 - ✓ has been detected to be a foreigner;

shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

Three decades later, at the end of a six-year-long agitation against illegal immigrants from Bangladesh, the Centre and student leaders signed the Assam Accord in 1985. The accord accepted any illegal migrant entering the state before March 25, 1971, as a legal Indian. This apex court-monitored exercise in 2019, costing the exchequer to Rs 1,220 crore, excluded 1,906,657 persons on being identified as illegal immigrants in Assam (of these, 80 per cent are estimated to be Hindus). Apart from these exercises, between 1964 and 2008, for instance, 461,000 Tamils from Sri Lanka were given citizenship.⁵⁷

C. National Register of Citizens (NRC)

NRC is a roster of all those who settled in Assam up to the midnight of March 24, 1971. In 1978-79, several local leaders spotted a rapid increase in the number of Muslims in electoral rolls. A six yearlong agitation followed against illegal migrants from Bangladesh, which culminated with the signing of an agreement called the Assam Accord.

⁵⁷Kaushik Deka, Who is (not) a citizen? Available at <https://www.indiatoday.in/magazine/cover-story/story/20200120-who-is-not-a-citizen-1635189-2020-01-10>, accessed on 1st April, 2020 at 5.17 PM.

D. CITIZENSHIP AMENDMENT ACT, 2019

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 6.⁵⁸ Moreover the 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.⁵⁸ Interestingly, the Government of India unlike any other country in the world has taken a positive stand by recognising a huge number of illegal migrants particularly belonging to the religious minorities who have been subjected to religious persecution in those neighbouring countries in neighbouring countries as citizens of India through the Amendment of 2019.

In response to the, exclusion of illegal migrants of some of the religious communities coming from different neighbouring nations under the Citizenship Amendment Act, 2019, it may be stated that the country of their origin is a country where by the Constitution the Country is Religious Country e.g. Pakistan and Bangladesh are Muslim Country recognised by the Constitution and those religious communities are religious minorities in those countries. They in those country such religious groups of people are better protected. Hence, it may be submitted that if any Muslim person illegally crossing the border of e.g. Pakistan and claiming that he/ she came to Indian since he/ she had been subjected to religious persecution over there, it is really an unfortunate state of affair involving law and order issue in that country and which is linked to the failure of constitutional machinery of that nation and it cannot be a ground for extension of rights of citizenship to such people by a neighbouring country.

Further, the CAA, 2019 doesn't negate the provision of Citizenship by Naturalisation under Section 6 of the Citizenship Act, 1957. Hence, a person

⁵⁸Available at https://www.business-standard.com/article/current-affairs/explained-citizenship-amendment-bill-vs-nrc-vs-clause-6-of-assam-accord-119010900621_1.html, accessed on 8th March, 2019 at 22.11 PM.

who is residing in India for a long time with sufficient evidence of his staying and interested to apply for citizenship, may apply for the Indian Citizenship. Thus, in none of the way the rights of any person is curtailed under the CAA, 2019 while, it has opened a new vistas to become Indian Citizen for the people belonging to religious minorities or more specifically, for the people whose religious orientation is different from that of the State Religion in our neighbouring countries.

VII. CONCLUSION

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 and there is no obligation for a state to give equal weight to the interests of non- members. The obligations towards migrants and asylum-seekers 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. At this, through the CAA, 2019, the Government of India unlike any other country in the world has additionally recognised a huge number of illegal migrants particularly belonging to the religious minorities who have been subjected to religious persecution in those neighbouring countries in neighbouring countries as citizens of India through the Amendment of 2019 while other provisions of obtaining the status of Citizenship remains intact.