

# ILLEGAL MIGRANTS': DECODING AN UNDEFINED TERM WITH SPECIAL REFERENCE TO CITIZENSHIP POLICIES

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## Abstract:

*The Citizenship (Amendment) Act, 2019 is one of the most controversial pieces of legislation passed by the Parliament against popular opinion and amidst worldwide protests. Its prima facie discriminatory and arbitrary provisions intend to grant citizenship based on religion to people coming from selective countries. While most scholars have debated on the religious aspect, there has hardly been any debate on the vagueness in terms of definitions and implementation. This paper shall attempt to delve into these issues and analyse the manner in which these issues make the legislation short-sighted and unimplementable owing to ambiguities. Further, it shall also look into allied policy decisions that make way for the Amendment of 2019. Examining the contradictions and ambiguities in the definition, or lack thereof, of the term 'illegal migrant' and detailing the implications it holds for people seeking Indian citizenship will be the aim of this paper.*

## INTRODUCTION

Every country has its own kaleidoscopic strategy when granting citizenship and recognizing the rights of the citizens. The Drafting Committee for the Indian Constitution devoted much-required time to look at the limitations and the boundaries when formulating a working definition of citizenship.<sup>5</sup> As the grounds to grant citizenship are laid, one has to keep in mind the secular principles enshrined in the Constitution of India, and do no harm to the peace, tranquility and brotherhood amongst different religions that have so far survived the test of time. In a globalized world, granting citizenship to a person without much scrutiny can prove to be harmful for a nation. This is also a reason why the provisions of granting citizenship are strict. Amongst others, there are people who enter countries without valid proof via porous borders and remain after the expiry of their travel documents. These matters must be kept in mind while relaxing the provisions of granting citizenship, as wrongful use can be made of it. When persons are termed as illegal migrants, one should have a clear understanding as to the conditions of definition of a citizen and the people they exclude.

This paper dwells on the meaning of illegal migrants in the context of citizenship laws of India. As the issue of granting of citizenship to illegal migrants who are seeking refuge in India due to religious persecution has been in the headlines, an attempt will be made to analyse the clarity of the requirements necessary to be termed an illegal migrant in order to be eligible to apply for Indian citizenship and other incidental benefits as per the recent Citizenship Amendment Act, 2019 (hereinafter referred to as 'CAA, 2019')<sup>6</sup>. An examination of the laws that are aimed at identifying and expelling illegal migrants from India, which were suitably amended to exempt illegal migrants from their applicability and aid the implementation of CAA, 2019 will also be undertaken. This Amendment, amongst others, has stated that people who have entered India on or before 31st December, 2014 due to religious persecution, from Afghanistan, Bangladesh or Pakistan belonging to Hindu, Sikh, Jain, Parsi, Buddhist or Christian faiths "shall not be treated as illegal migrants"<sup>7</sup>. The reasons why only these religions are considered and not others, and whether this is violative of the basic structure of the Constitution is not within the scope of this research paper. This paper specifically focuses on the illegal migrant issue by attempting to analyse the definition of an illegal migrant which has been provided in the Citizenship Act, 1955 and has not been omitted in the Amendment Act of 2019. In the course of this paper, various related Acts are also examined in order to ensure that the benefit of the statute in question i.e., CAA, is to grant citizenship to persecuted people<sup>8</sup>, and that it is interpreted and implemented in a manner that ensures that the target population is legitimately benefitted. An examination of the documents required to be classified as an Indian citizen, or conversely, to be excluded from Indian citizenship, and of Indian citizenship laws will also be undertaken and questions will be raised. In the concluding section, an attempt will be made to answer these questions which seem to be creating a gridlock concerning the implementation of CAA, 2019.

## ILLEGAL MIGRANTS AND CITIZENSHIP

The provisions for Citizenship are provided in the Constitution of India in Articles 5 through 11<sup>9</sup>. To substantiate these provisions further and to provide for the acquisition and termination of Indian citizenship, the Citizenship Act, 1955<sup>10</sup> came into being. In 2019, an amendment was brought to this Act for granting citizenship to people as mentioned above. The CAA, 2019 inserting a proviso Section 2 in sub-section (1), in clause (b) of the 1955 Act, states,

*"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has 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 rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;"*

The portion that this paper focuses on is the one that states that persons who came before the said date from the three countries mentioned therein and belonging to the 6 enumerated faiths shall not be treated as illegal migrants. Now, as this is an amendment to

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<sup>4</sup>UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, 2021 Annual Report – India Chapter, available at India.pdf (uscirf.gov), (downloaded on 21.12.2021).

<sup>5</sup>See generally, Dr. P. S. Deshmukh, C.A.D. Vol. IX 11th Aug. 1949; Rammarayan Singh, C.A.D. Vol. XI 18th Nov. 1949.

<sup>6</sup>The Citizenship (Amendment) Act, 2019, Act No. 47 of 2019.

<sup>7</sup>Ibid., Section 2 (1) (b).

<sup>8</sup>Supra note 3, Objects and Reasons of the Act.

<sup>9</sup>INDIA CONSTI., Part II, Citizenship, Art. 5-11.

<sup>10</sup>The Citizenship Act, 1955, Act No. 57 of 1955.

the Citizenship Act, 1955, (hereinafter 'Principal Act') for the definition of the term illegal migrant, we shall look to the Principal Act. A thorough reading of the Principal Act reveals that the definition of the term "illegal migrant" has not been provided in the Act, either in definitions or in any other provision and can only be understood only through assumptions and interpretations. As this remains a missing piece in the puzzle, it becomes pertinent to ask the question: who can be called an illegal migrant?<sup>2</sup>

The proviso mentioned above states that these persons have been exempted by Section 3 (2) (c) of Passport (Entry into India) Act, 1920<sup>11</sup> or from provisions of the Foreigners Act, 1946<sup>12</sup>. The Passport (Entry into India) Act, 1920 in Section 3 grants power to the Central Government to make rules which in Sub-Section (2) Clause (b) provides for an exemption to any person or class of persons from Rules made under the Act<sup>13</sup>. It establishes that though the Central Government has the power to make rules for the purpose of the Act, it can exempt certain persons from the application of the Rules and further, from the application of the Act, which mandates the requirement of a passport to enter India<sup>14</sup>. In the context of illegal migrants, the Section 3(2)© of the Passport (Entry Into India) Act, 1920<sup>15</sup> read with Rule 4(1) of the Passport (Entry Into India) Rules, 1950<sup>16</sup> has been suitably amended by Section 2 of the CAA, 2019 to exempt a class of persons, namely the Hindu, Sikh Buddhist, Jain, Parsi and Christian communities who have entered India from Afghanistan, Bangladesh or Pakistan on or before the 31st day of December, 2014, from being required to hold a passport to enter India. Moreover, by amending the Third Schedule of the Citizenship Act, 1955, the requirement of aggregate period of residence for these exempted classes of people has been reduced from eleven years to five years. Thus by necessary implication, these classes of persons cannot be treated as illegal migrants.

The Foreigners Act, 1946, was made for the purpose of regulating the entry of foreigners into India. The CAA provides that any person exempted from the application of this Act will not be an illegal migrant<sup>17</sup>. The Foreigners Act defines a foreigner as "a person who is not a citizen of India,"<sup>18</sup>. Now, if a person is not a citizen of India, he is deemed a foreigner<sup>19</sup>. To ascertain the said person's country of origin, whether they have in their possession the necessary documents, or whether they are unable to produce those documents, Section 8 of the Act titled "Determination of Nationality" prescribes the required procedure<sup>20</sup>. Section 2 of the CAA, 2019

has also declared that by passing orders under Section 3A of the Foreigner's Act, 1946, the Central Government shall exempt the aforesaid classes of persons from the application of the Foreigner's Act<sup>21</sup>. Now, if a person is exempted from the application of the Foreigners Act, 1946 it means that they are no longer required to undergo the scrutiny of the statute as well as the Indian Evidence Act 1872 to prove their nationality where their nationality cannot be determined by the Central Government. Alternatively, the Central Government is also no longer under any statutory obligation to identify the nationality of any foreigner and as a result, to pass any orders under Section 3 to arrest, detain, confine or deport them.

This discussion raises the question as to whether nationality and citizenship are different from each other. The Citizenship Act, 1955 provides the definition of citizen stating "citizen", in relation to a country specified in the First Schedule, means a person who, under the citizenship or nationality law for the time being in force in that country, is a citizen or national of that country;..."<sup>22</sup>. This definition provides for a distinction between citizenship and nationality. It uses the conjunction "or" in between, which according to interpretation doctrines means two distinct terms having two different meanings<sup>23</sup>. Nationality has a reference to a jural relationship which may arise of consideration under international law. Nationality determines the civil rights of a person, natural or artificial, particularly with reference to international law; citizenship, on the other hand, has reference to the jural relationship under municipality law and is intimately connected with civic rights under the municipality law<sup>24</sup>. Citizenship is a more political term meaning that a person has political rights within a country such as the right to vote and protection of fundamental rights within the country and so on. In light of the Foreigners Act, 1946 which talks about the determination of nationality as different from citizenship, it leads to an asymmetry in the application of the Foreigner's Act to that of the application of the Citizenship Act, 1955. Any person who is exempted from the operation of the Foreigner's Act, 1946 is no longer considered a foreigner. A perusal of Section 2(a) of the Act defines "foreigner" as "a person who is not a citizen of India"<sup>25</sup>. Therefore the amendment made by Section 2 of the CAA, 2019 to exempt certain classes of people from Afghanistan, Pakistan or Bangladesh would automatically mean that such persons would be considered citizens of India. Therefore, a necessary corollary to this would be that there was perhaps no requirement for the Parliament to introduce CAA, 2019 at all. Merely the passing of an order by the Central Government under Section 3A of the Foreigner's Act, 1946 exempting the specified classes of people coming from the specified countries would have had the effect of deeming them as citizens of India. Even though a person's nationality may be determined, as he is exempted from the operation of the Foreigner's Act, 1946, he is not required to prove his nationality as per the Foreigners Act, 1946 and Passport (Entry into India Act), 1920 and the rules made thereunder including amendments. In this scenario, it cannot be conclusively established whether the intended beneficiary of the CAA, 2019 is actually an illegal migrant belonging to the specified community from the specified countries. Therefore, the entire objective of the CAA, 2019 stands frustrated. The fact that the Rules pursuant to the CAA, 2019 are yet to be framed and notified makes the exercise of conferring citizenship under the CAA, 2019 fail to achieve the nexus which is the objective that the Parliament seeks to achieve.

<sup>11</sup>The Passport (Entry into India) Act, 1920, Act No. 34 of 1920.

<sup>12</sup>The Foreigners Act, 1946, Act No. 31 of 1946.

<sup>13</sup>Passport (Entry Into India) Act, 1920, Section 3. Power to make rules- (1) The Central Government may make rules requiring that persons entering [India] shall be in possession of passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may- (c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

<sup>14</sup>The Passport (Entry into India) Act, 1920, Act No. 34 of 1920, Long Title. "An Act to take power to require passports of persons entering [India]. WHEREAS it is expedient to take power to require passports of persons entering [India]"

<sup>15</sup>Supra note 8, Sec. 3(2)©.

<sup>16</sup>The Passport (Entry into India) Rules, 1950, Rule 4(1).

<sup>17</sup>Supra note 3.

<sup>18</sup>The Foreigners Act, 1946, Act No. 31 of 1946, Section 2 (a), Subs. by Act 11 of 1957, s. 2, for the former clause (w.e.f. 19-1-1957)

<sup>19</sup>Ibid.

<sup>20</sup>The Foreigners Act, 1946, Act No. 31 of 1946, Section 8: "Determination of nationality.—(1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected:

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognized as entitled to protection by the government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court:

Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision."

<sup>21</sup>Supra note 3, Sec. 2

<sup>22</sup>Supra note 7, Section 2 (b).

<sup>23</sup>Justice L.P. Singh, P.K. Majumdar, Judicial Dictionary, 3rd Edition, Reprint 2010, ORIENT PUBLISHING COMPANY, p. 1026.

<sup>24</sup>Id. At p. 969. <sup>25</sup>Supra note 9, Sec. 2(a).

Section 3 A of the Foreigners Act, 1946<sup>26</sup> grants power to the Central Government to exempt citizens of the Commonwealth countries and other persons from application of the Act. The effects of this exemption, especially after the formulation of the citizenship rules, will be dealt with in the next section. However, what is of essence here is the word ‘*citizen*’. Apart from the definition of foreigner, the word ‘citizens’ is used in the phrase ‘citizens of Commonwealth countries’. Other provisions of the Act, such as the previously-discussed Section 8, talk about nationality. Does the usage of the word ‘citizens’ imply that citizens of commonwealth countries must not only be citizens of their countries in every political and legal sense, but also that they must prove it before they can be exempted from the application of this Act? If that is the case, then which documents will be required to prove their citizenship? If they can prove that they are citizens of another country, then they will be classified as ‘*Foreigners*’ as per its definition in the Foreigner’s Act, 1946. This nationality and citizenship dilemma is further substantiated by the provision that grants additional power to the Central Government to make rules, a provision which is also provided in Rule 3.

#### AMENDMENT TO CERTAIN RULES AND ITS NEXUS TO CAA, 201

The power of the Central Government to make rules under the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946 to exempt certain persons or class of persons from the application of the Act has already been discussed. Using this power, an amendment has been made by the Central Government in 2015 firstly to the Passport (Entry into India) Rules, 1950 by inserting Clause (ha) in Rule 4 Sub-Rule (1) after Clause (h) stating,

*“persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution and entered into India on or before the 31st December 2014-*

*(i) Without valid documents including passport or other travel documents; or*

*(ii) With valid documents including passport or other travel document and the validity of any such documents has expired.”<sup>27</sup>*

are exempted from Rule 3 of the Passport (Entry into India) Rules, 1950 which provides that “no person from any place outside India shall enter, or attempt to enter, India ...

*(a) Unless he is in possession of a valid passport...”<sup>28</sup>*

The question that this amendment proposes is that whether a Rule under the Act can go against the principles of the Act itself, which in its objects and reasons has mentioned that it is:

*“An Act to take power to require passports of persons entering [India].*

*WHEREAS it is expedient to take power to require passports of persons entering [India];”<sup>29</sup>*

<sup>26</sup>Ins. by s. 4, *ibid.* (w.e.f. 19-1-1957). Section 3A-“ Power to exempt citizens of Commonwealth Countries and other persons from application of Act in certain cases.—(1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to—

(a) the citizens of any such Commonwealth Country as may be so specified; or  
(b) any other individual foreigner or class or description of foreigner.

(2) A copy of every order made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.

<sup>27</sup>The Passport (Entry into India) Amendment Rules, 2015, Ministry of Home Affairs Notification, G.S.R. 685(E). [F.No. 25022/50/2015-F.1]

<sup>28</sup>The Passport (Entry into India) Rules, 1950, Rule 3.

<sup>29</sup>The Passport (Entry into India) Act, 1920, Act No. 34 of 1920, Long Title.

Exempting such persons from entering without a passport should categorise them as illegal migrants in general terms. However, the CAA, 2019 provides they shall not be treated as illegal migrants. Now, if persons enter without valid documents or passports, how will it be ascertained from which country they have migrated into India? As they are also exempted under the Foreigners Act, though they are foreigners according to the definition of the Foreigners Act, Section 8 of the Act dealing with the determination of nationality will not apply to them<sup>30</sup>. Even if they are nationals of the countries they are from, without documentation, it is extremely difficult to determine whether they are or were citizens of said countries before entering India. These issues further obfuscate the undefined term “*illegal migrants*”.

Secondly, the Foreigner (Amendment) Order, 2015<sup>31</sup>, amending the Foreigner Order, 1948<sup>32</sup>, Rule 3 which provides for “*Power to grant or refuse permission to enter India*”<sup>33</sup> adds Rule 3A to it stating,

*“3A. Exemption of certain class of foreigners-*

*(1) Persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution and entered into India on or before the 31st December 2014-*

*(a) Without valid documents including passport or other travel documents and who have been exempted under Rule 4 from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950, made under Section 3 of Passport (Entry into India) Act, 1920 (34 of 1920); or*

*(b) With valid documents including passport or other travel document and the validity of any of such documents has expired, are hereby granted exemption from the application of provisions of the Foreigners Act, 1946 and the orders made thereunder in respect of their stay in India without such documents or after the expiry of those documents as the case may be, from the date of publication of this order in the Official Gazette.”*

The argument made above in pursuance of the Passport Act is also applicable to the present Rules made under the Foreigners Act. An express exemption granted by this Amendment to the Rule further substantiates the paper’s query of who qualifies as an illegal migrant, specifically if all persons take protection under the amendment of CAA, 2019. There is no mechanism to determine the citizenship of a person if they do not produce the required documents. The other mechanism of determining nationality has been rendered inefficient due to inapplicability of the Foreigners Act to persons of the listed communities from the countries listed in the act. Having examined these contradictions, the undefined term “*illegal migrant*” becomes more unclear.

#### CAN ILLEGAL MIGRANTS BE DEFINED?

The lack of clarity regarding the term illegal migrant is further highlighted by recent developments that have rendered it more difficult to ascertain its true meaning, as it is defined neither in the Citizenship Act, 1955 nor in the CAA, 2019. According to the principles of interpretation, if a term is not defined in the statute, it can be found in the

<sup>30</sup>Supra note 17. Section 8

<sup>31</sup>Foreigners (Amendment) Order, 2015, Ministry of Home Affairs Notification, G.S.R. 686(E). [F.No. 25022/50/2015-F.1]

<sup>32</sup>Foreigners Order, 1948, Ministry of Home Affairs Notification No. 9/9/46-Political (EW).

<sup>33</sup>Ibid., Rule 3.

General Clauses Act or in another special statute dealing with the subject in particular. As it has not been defined in the General Clauses Act, the only special statute in India that defines the term is the Illegal Migrants (Determination by Tribunals) Act, 1983<sup>34</sup>.

There have been intense debates on whether the terms citizenship and nationality are interchangeable or whether certain fundamental differences exist<sup>35</sup>. Citizenship as a concept is complex and is quite narrow. It refers to a specific legal relationship between a state and a person, in which the person is bestowed with certain rights and responsibilities<sup>36</sup>. Nationality on the other hand refers to the membership of a state that is acquired by birth or adoption, marriage or descent and has its foundation in international law<sup>37</sup>. These criteria may differ from one country to another. International Law recognizes the concept of nationality under Article 15 of the Universal Declaration of Human Rights (UDHR) by declaring every person's right to a nationality and that no human being shall be deprived of the same<sup>38</sup>. Further, it also states that the right to change one's nationality shall also not be denied. However, nowhere is the term citizenship mentioned under such qualifications. Therefore, it has been argued by scholars such as Hemant More that citizenship does not have to accompany nationality<sup>39</sup> and examples have been cited of Latin American countries such as Mexico, wherein nationality is acquired by birth but citizenship is only bestowed only upon attaining the age of eighteen. The children of those countries are therefore nationals but not citizens<sup>40</sup>.

According to the International Justice Resource Center, nationality is a pre-requisite to acquiring citizenship<sup>41</sup> and the concepts of *jus soli*, *jus sanguinis*, registration or naturalization determine the acquiring of nationality. Further, the citizenship laws of different countries determine which of these concepts are to apply in the said country and the requirements for citizenship. For instance, in countries recognizing *jus soli*, citizenship is acquired by birth within the territory of the country. Countries have the power to set one or more of these criteria to bestow citizenship<sup>42</sup>. The question that arises is whether the omission of all criteria but one, or any of the above-mentioned criteria that tends to make an individual unable to acquire citizenship, would be violative of international law. Since nationality can be acquired by all or any of the above-mentioned ways, an individual may not be eligible to be a citizen as per the law of the country despite qualifying as a national. As international law only recognises the right to a nationality and not to citizenship, addressing this situation proves to be a challenge.

<sup>34</sup>Illegal Migrants (Determination by Tribunals) Act, 1983, Act 39 of 1983.

<sup>35</sup>Swati Chawla, Jessica Namakkal, Kalyani Ramnath, Lydia Walker, *Who Is a Citizen in Contemporary India?*, EPICENTER Blog, Weatherhead Center For International Affairs, HARVARD UNIVERSITY (Feb 11, 2020), available at *Who Is a Citizen in Contemporary India?* | Epicenter (harvard.edu) (last accessed on 23.12.2021). Also read Prachi Raj, *Understanding Citizenship and Refugees' Status in India*, ECONOMIC & POLITICAL WEEKLY, Vol. 55, Issue No. 23, 6 June, 2020, ISSN (Online) – 2349-8846. Also Read Ornit Shani, *Conceptions of Citizenship in India and the 'Muslim Question'*, *Modern Asian Studies* 44, 1 (2010) pp. 145-173, CAMBRIDGE UNIVERSITY PRESS 2009, available at <http://www.jstor.org/stable/27764650>.

<sup>36</sup>Supra note 23.

<sup>37</sup>Supra note 23.

<sup>38</sup>UN General Assembly. "Universal Declaration of Human Rights." United Nations, 217 (III) A, 1948, Paris, *udhr.pdf* (un.org) (last accessed on 23.12.2021)

<sup>39</sup>Hemant More, *Concept of Domicile, Nationality, and Citizenship*, THE FACT FACTOR (April, 2019), available at *Citizens and benefits of their citizenship, Concept of domicile, nationality* (thefactfactor.com) (last accessed on 23.12.2021) See also S.W.L., *What is the difference between nationality and citizenship?*, THE ECONOMIST (Jul 10, 2017), available at *What is the difference between nationality and citizenship?* | The Economist (last accessed on 23.12.2021)

<sup>40</sup>S.W.L., *The Economist explains What is the difference between nationality and citizenship?*, THE ECONOMIST (Jul. 10, 2017), <https://www.economist.com/the-economist-explains/2017/07/09/what-is-the-difference-between-nationality-and-citizenship>

<sup>41</sup>Citizenship & Nationality, INTERNATIONAL JUSTICE RESOURCE CENTER (May. 3, 2020, 1:45 PM), <https://ijrcenter.org/thematic-research-guides/nationality-citizenship/>

<sup>42</sup>Id.

In the context of CAA, 2019, it is necessary for uniformity regarding nationality and citizenship and whether they are recognized as synonymous or are meant to be different. Whether a national who is not recognized as a citizen of the countries mentioned under Section 2 of the CAA, 2019 would also be eligible to apply for Indian citizenship is a question left unanswered. Most often, the proof of nationality is manifested in the citizenship of a person. Therefore, for the purposes of CAA, 2019, making amendments to the Foreigners Act and the Passport (Entry into India) Act and dispensing with the requirements of possessing passports and other necessary documents would not waive off the requirement of producing some kind of citizenship proof of the countries from which applicants claim to have fled religious persecution. Concerning whether the Indian government has devised any mechanism to ascertain the legitimacy of these applications, a senior Home Ministry official stated: "*that is a cause of concern. There is no proof, we will see.*"<sup>43</sup>. Therefore, the Amendment is a very haphazard policy decision of the Indian government and was passed without proper parliamentary scrutiny. The text of the CAA, 2019 goes into a confusing circle owing to a lack of proper definitions. The definition of the same in the IMDT Act, 1983, if consulted, clearly states that such person "*is a foreigner*<sup>44</sup> and has entered India without being in possession of a valid passport or other travel document or any other lawful authority in that behalf"<sup>45</sup>. Further, the Foreigners Act, 1946 defined foreigner as a person who is not a citizen of India<sup>46</sup>. This implies that the persecuted minorities listed in the Amendment would have to be recognized citizens of the five listed countries and only upon the production of evidence of the same, shall they be eligible to benefit from the CAA, 2019.

## CONCLUSION

Throughout this paper, an attempt has been made to point out the ambiguities and loopholes in the recently concluded CAA, 2019. Aside from the political implications and popular opposition to the same, an attempt has been made to objectively scrutinize the Act to show how ill-drafted and haphazard it has been. The Central Government had exempted illegal migrants from the purview of their respective Principal Acts much before the Citizenship Amendment Bill, 2016 and the CAA, 2019 were ever tabled or passed by the Parliament by passing the Passport (Entry into India) Amendment Rules, 2015 and the Foreigners (Amendment) order, 2015. The same Orders have also been called into question before the Hon'ble Supreme Court in the matter of *Tripura People's Front v. Union of India*<sup>47</sup> and is currently at the stage of reply to notice<sup>48</sup>. At this stage therefore, the matter is *sub-judice* and hence any implementation of this Act without determining the validity of the Orders based on which CAA, 2019 is effected would be a

<sup>43</sup>Vijayta Singh, *Common documents enough to prove citizenship: Home Ministry*, The Hindu (Dec. 20, 2019), <https://www.thehindu.com/news/national/no-indian-will-be-harassed-by-asking-to-submit-old-documents-to-prove-citizenship-mba/article30360670.ece> (last visited on May. 3, 2020, 1:59 PM)

<sup>44</sup>Illegal Migrants (Determination by Tribunals) Act, 1983, Sec. 3(c)(ii), Act 39 of 1983.

<sup>45</sup>Ibid.

<sup>46</sup>The Foreigners Act, 1946, Act No. 31 of 1946, Section 2 (a), Subs. by Act 11 of 1957, s. 2, for the former clause (w.e.f. 19-1-1957)

<sup>47</sup>*Tripura Peoples Front v. Union of India*, W.P.(C). 62/2019.

<sup>48</sup>Samanyaya Rantray, *Changes to Passport, Foreigners Acts still pending in top court*, THE ECONOMIC TIMES (Dec. 6, 2019, 7:04 AM), <https://economictimes.indiatimes.com/news/politics-and-nation/changes-to-passport-foreigners-acts-still-pending-in-top-court/articleshow/72392806.cms>. See also: *Supreme Court notice to Centre on plea challenging passport rules*, HINDUSTAN TIMES (Jan. 25, 2019, 11:14 PM).