

# THE NATION ROARS

## VOL - I



P E N A C C L A I M S

# **“The Nation Roars”**

**(Volume -1)**

**ISBN: 9798616330765**

**Anthology of,**

**‘3<sup>rd</sup> National Essay Writing Competition’**

***Powered by,***

**“Pen Acclaims”**



## **Preface**

**A thought that has been enduring in mind when becomes real, is truly an interesting and exciting experience. This book is one such cherished work that has its roots in the persuasion of many authors, contributors and also mentors which has now embellished to become the snapshot of the innumerable efforts put in since months. This book serves to reinforce increased awareness, improved interaction and integration among all of us.**

**As the Editor of this book entitled “The Nation Roars (Volume 1)”, I wish to thank all researchers across the globe, who have submitted their contributions. The main aim of this book is to enhance knowledge among researchers, students and the legal fraternity at large and to provide an opportunity for creative research and multi-level consideration of broader issues related to legal insight from both national and interdisciplinary perspective.**

**It has been indeed a pleasure going through the journey of compiling this book. This maiden issue will surely inspire all of us for a new beginning and enlighten the minds of young scholars with hope, confidence and faith.**

**Happy reading!**

**Dr. Pooja Dasgupta  
Chairperson  
Pen Acclaims**

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## **“Analysis of Citizenship Amendment Act, 2019”**

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### **Introduction**

The Citizenship Amendment Act, 2019 (CAA) has occupied the crux of the contemporary Indian political scenario marred by intense polarisation. The CAA provides citizenship to Hindu, Buddhist, Sikh, Jain, Christian and Parsi minorities from Pakistan, Afghanistan and Bangladesh who have entered India on or before December 31, 2014.<sup>1</sup> The Act, however, excludes Muslims from the ambit of citizenship, a point that has stoked widespread political debate. It has raised concern whether the Act is anti-democratic or more specifically, anti-secular targeting a particular religious group and as such feeds into the purportedly exclusivist agenda of Hindu Rashtra of the ruling Bharatiya Janata Party (BJP).

The CAA cannot be divorced from the National Register of Citizens (NRC) in Assam, an instrument designed to identify “foreigners” or “illegal immigrants” or “non-Assamese outsiders” from the citizenship framework.<sup>2</sup> On 31<sup>st</sup> August, 2019, the final list of the NRC was published which saw over nineteen lakh people excluded.<sup>3</sup> Therefore, it is argued that while the NRC excludes the “non-Assamese”, the CAA excludes Muslims resulting in a dangerous concoction of Assamese ethno-nationalism and pan-Indian Hindu nationalism.

To contextualise the intersecting politics of the CAA, this essay will dissect two strands of thought that pervades mainstream debate and political opinion surrounding the CAA and its ramifications.

### **CAA: Constitutionality amidst a “Mainland” Viewpoint**

The anti-CAA protests in Assam and the Northeast have taken on a veritable motive vastly different from protests that have engulfed the rest of the country, often termed as the “mainland”. The anti-CAA protests in Assam involve a strong support of the NRC and are guided by feelings of ethno-nationalism whereas the anti-CAA protests in “mainland” India are a protest against the “communal” character of the Act and its purported violation of the Constitution along with its opposition to the NRC. On the surface, the CAA appears to be unconstitutional as it violates the right to equality guaranteed by Article 14 of the

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<sup>1</sup> Citizenship Amendment Act, 2019, No. 47, Acts of Parliament, 2019 (India), §2.

<sup>2</sup> Angshuman Choudhary, Suraj Gogoi, *Citizenship Amendment Act and NRC are the two sides of the same coin; both seek to alienate India's Muslims*, FIRSTPOST (Dec. 17, 2019, 03:15 PM), <https://www.firstpost.com/politics/citizenship-amendment-act-and-nrc-are-two-sides-of-same-coin-both-seek-to-alienate-indias-muslims-7781461.html>.

<sup>3</sup> INDIA TODAY, *Assam Final NRC List released: 19,06,657 people excluded, 3.11 crore people make it to citizenship list* (Aug. 31, 2019, 01:16 PM), <https://www.indiatoday.in/india/story/assam-final-nrc-list-out-over-19-lakh-people-excluded-1593769-2019-08-31>.

Constitution.<sup>4</sup> In order for a legislation to be in consonance with Article 14, it cannot be arbitrary<sup>5</sup> but needs to have an intelligible differentia where there should be a reasonable nexus between the provisions of the legislation and the aim of the law.<sup>6</sup>

The CAA can be said to be arbitrary on several grounds. According to the Centre, CAA aims to give citizenship to those who are facing religious persecution in the neighbouring countries of Pakistan, Afghanistan and Bangladesh, implying that CAA does not cover all neighbouring countries. The reason for selecting these countries, according to the Government, is that during Partition, when the territories of present-day Pakistan and Bangladesh were separated on religious lines, there were people who were unable to migrate and were forced to stay in these countries. When these countries adopted Islam as the official religion, they became minorities in their own country and were discriminated against. Therefore, they should be given citizenship on humanitarian grounds in order to protect them from further persecution. However, this logic does not sustain since Afghanistan was never a part of pre-partition India.<sup>7</sup> Moreover, neighbouring countries like Myanmar and Sri-Lanka have been left out of the scope of the CAA, countries that were also governed by the British. If the reason for granting citizenship is indeed a humanitarian ground then the Rohingyas of Myanmar need to be accommodated as well. The approach of the Government is selective and becomes questionable. Another reason that has drawn criticism is the fact that there is no mention of the word “persecution” in the CAA<sup>8</sup>. When the sole legislative aim of the Act is to save people from persecution, it is ironic that the Act fails to include the very term. Furthermore, the Act has been criticised for setting 31<sup>st</sup> December, 2014 as the deadline for granting citizenship<sup>9</sup> as there is no explanation for the same. Another reason of grave concern is the effect of the Act on those who are genuine citizens but do not possess the necessary documents required to prove their citizenship.....

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<sup>4</sup> NDTV, *Activists, Academicians Move Supreme Court Against Citizenship Law* (Dec. 17, 2019, 05:09 AM), <https://www.ndtv.com/india-news/caa-citizenship-amendment-act-activists-academicians-move-supreme-court-against-citizenship-law-2149902>.

<sup>5</sup> *Mahabir Vegetable Oils (p) Ltd. v. State of Haryana* (2006) 3 SCC 620.

<sup>6</sup> *U.P Power Corpn. Ltd. v. Ayodhya Prasad Mishra* (2008) 10 SCC 139.

<sup>7</sup> THE ECONOMIC TIMES, *Citizenship (Amendment) Act 2019: what is it and why is it seen as a problem* (Dec. 31, 2019, 10:55 AM), <https://economictimes.indiatimes.com/news/et-explains/citizenship-amendment-bill-what-does-it-do-and-why-is-it-seen-as-a-problem/articleshow/72436995.cms>.

<sup>8</sup> Gaurav Moghe, MEDIUM NEWSLETTER, *there is no mention of persecution or minority in the Citizenship Act-the Govt. had lied to us* (Dec. 20, 2019), <https://medium.com/@gaurav007moghe/there-is-no-mention-of-persecution-or-minority-in-the-citizenship-act-the-govt-had-lied-to-us-8a6335b932f2>.

<sup>9</sup> Citizenship Amendment Act, 2019, No. 47, Acts of Parliament, 2019 (India).



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