

Immigration Policy Reform: An Overview of Afghan Refugees in India

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Abstract

Thousands of Afghan nationals including Sikh, Hindu and Muslim communities have been accommodated as a refugee and asylum seekers in India since 1980. Lack of a legal framework and relaxed migratory policies in India for the naturalization of refugees, fetched them to face socio- economic challenges. India is not a member of the signatory to the 1951 convention for neither the status of refugees nor 1967 protocols, but to protect the humanity, adopted the human right declaration for the protection of individuals who feel persecution back in their origin countries and permitted the migrants to stay. Latently, the government of India made an amendment on the citizenship act 1955 that empowered the government of India to grants Indian citizenship to the religious minorities belonging to Afghanistan, Bangladesh and Pakistan that entered India before 31 December, 2014 using legal documents and residing in India as an immigrants, the policy exclude Muslim afghan refugees residing in India.

Keywords: Immigration policy Reform, Afghan Refugees, Resettlement, Repatriation, Deportation, IOM, UNHCR

1. INTRODUCTION

Policies are shaped for the improvement of life and protection of individuals in the countries and Migration policies played a vital role in the livelihood of human beings and transformation of societies (Toma & Villares-Varela, 2018). Migration of individual's happen either regular or irregular, due to socio- economic and political unrests happening in their hometown. Massive dispersion of human being took place in different periods of the history, prominently when the socio- economic and political unrests happened and individuals were enforced to start movements from their origin country and reside abroad (Ravenstein, 1889). However, in today's era fences were installed to create boundaries for the protection of the national security (Ali et al., 2020), but it brought a big challenge for the movement of individuals and prevented the irregular mobility of people within the globe (Pickering & Cochrane, 2012; Chekero, 2023). Likewise, the majority of the high income countries developed and reformed their migratory policies for the absorption of migrants and granted them citizenship to keep the harmony and solidification of humanity in the globe. Migration policies play a vital role for the governments to manage the inflow and out flow of regular and irregular migrants (UNHCR, 2019; IOM, 2021). Instead, most of the countries deny the adoption of migrants in their respective countries and formed rigid and strict migratory policies toward regular and irregular migrants (Khosravi, 2009).

India is not a part of migratory countries due to not being a signatory to conventions 1951 for refugee's status and 1967 protocols of the united nation high commission for refugees (Bentz, 2013; Bose, 2004; Valatheeswaran & Rajan, 2011). But to protect the persecution of individuals they may face in their origin country (Frilund, 2018), India signed the universal declaration of human rights and similar international instruments for the protection of human rights, which prevented the Indian government from deportation and Non-Refoulement policy of migrants who took asylum and refugee status within UNHCR and residing in India (UN, 2016). In addition, the government of India deal the migrants (foreigners) entering India with the

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general foreigner's act 1946. The act empowered the Ministry of Home Affairs to deport illegal and undocumented migrants to their origin countries (Valatheeswaran & Rajan, 2011; MHA, 2022). The immigration policies of the Indian government restricted irregular migrants entering India and controlled the borders via Air, Sea and Land to prevent undocumented migrants entering India from Pakistan, Bangladesh, Sri Lanka and Myanmar (Valatheeswaran & Rajan, 2011). Indian constitution does not permit a foreigner to attain citizenship unless until their parents, spouse or grandparents avail Indian citizenship (Citizenship Act, 1955). Despite that, the government of India relaxed the migration policy for the arrival of Tibetan and Nepalese into India by which they may seek work permits and travel across the Indian Territory (Naujoks, 2020). Restricted migration Policies of India, empowered the government to deport illegal based foreigners residing in India back to their native countries (MHA, 2021), usually comes from Bangladesh, Myanmar and Sri Lanka.

Substantially, India is the biggest contributor of the international migrants in the world with a share of over seventeen million international migrants residing in USA, Canada, Australia, United Kingdom, and gulf countries (UNDESA, 2020). Besides, India receives the highest remittances around the globe with approximately ninety billion US dollars in 2022 (Tejada & Bhattacharya, 2014), and the inward remittances increased to 125 billion dollars in 2024 (World Bank, 2023). In addition, India is the largest exporter of high-skilled, semi-skilled and low-skilled labor around the globe. Likewise, India is one of the major countries in the South Asian region by having an estimated population of 1.4 billion (World Bank, 2023). According to the latest figures indexed by the ILO, the unemployment rate reached to 4.8 % in India (ILO, 2024), which forced thousands of individuals to leave India and choose migration toward high income countries to attain better socio-economic opportunities.

The convention 1951 and 1967 of the United Nation high commission for refugees provided a legal framework for the status of migrants residing abroad and granted them a legal right for the resettlement in other countries. The United nation high commission for refugees and their allies bestowed pride and dignity to the individuals dispersed from their native countries. Frequently, reforms in migration Policies helped nations to attain socio-economic transformation and develop a multicultural diversity in their countries. Most of the High income countries such as USA, Canada, Australia, Germany and the United Kingdom relaxed their migratory policies to absorb and naturalize migrants within their respective countries, their key goal is to sustain humanity through a naturalization programs to assist migrants to receive the equal dignity and their basic rights of being a human. Substantially, According to the United Nations data related to the flow of migrants, around 281 million people around the world are in migration that constituted around 3.6 percent of the global population (IOM, 2021) which portray the will of international cooperation regarding the management of migrants within the globe. Inversely, the Indian legal framework does not allow migrants to seek work permit or to attain employment in India, specifically afghan migrants are not allowed to seek work permit due to unrelaxed migratory policy (MHA, 2021).

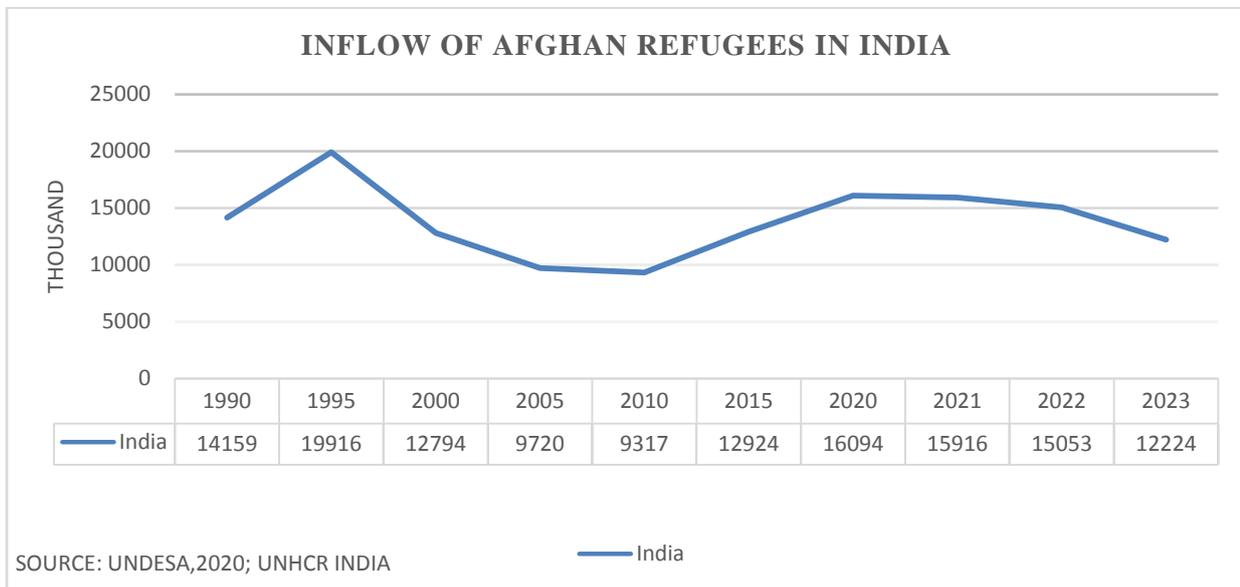
The paper discusses the citizen amendment act policy (CAA 2019) framed by the government of India for the adoption of Hindu, Sikh, Jain, Parsi and Christian except Muslim afghan migrants and critically examines the lack of legal framework and relaxed migratory policies toward migrants, that made a big challenge specifically for the afghan refugees residing in India. The literature and data used for the present study includes published research papers, articles and books related to the migration studies, and reports of the united nation high commission for refugees, international organization for migration, policies and laws of Indian government and updated news concerning the migrants residing in India are followed to enrich the current study.

2. Inflow of Afghan refugees in India

India became the safe shelter for the Afghan refugees since 1980 (Valatheeswaran & Rajan, 2011; Bentz, 2013). Besides, India is the key destination and transit country for the Afghan refugees (Bose, 2004). India has hosted over twenty thousands of Afghan refugees who fled from Afghanistan after the political conflicts occurred since 1980. However, the refugees belonging to different ethnicities of Afghanistan moved to India such as Hindu, Muslim and Sikhs that mostly settled in Delhi (Ghosh, 2016). Majority of the afghan migrants residing in India are registered as an immigrant by the government of India and UNHCR with estimated number of 30000 in 2009 and 11400 in 2011 included both refugee and asylum seekers (Bentz, 2013). Moreover, the flow of Afghan migrants increased after the relaxed visa policy toward Afghan nationals between years 2001 - 2021 which accelerated the numbers of Afghan refugees in India (MHA, 2019). Similarly, execution of more than eight flights daily between Kabul and Delhi transferred thousands of Afghans to enter legally (MHA, 2019) into India and most of them took asylum within UNHCR. However, the normal flow of Afghans into India was interrupted after the collapse of the state in 15, August 2021 in Kabul and prohibited the entrance of Afghan passport holders into India (The Hindu, 2023). Furthermore, India did not permitted thousands of

Afghan students holding student visas (The Hindu, 2023) and patients holding medical visas to arrive back to India to complete their remaining educational programs and medical check-ups.

Chart.1. Inflow of Afghan Refugees registered in India



At first, religious minorities like Hindus and Sikhs made up the bulk of the Afghan refugees that came to India to seek international protection. Furthermore, hundreds of Afghan Muslim communities were counted among the refugees. The number of Afghan refugees in India increased based on the degree of violation toward religious minorities and other communities during the internal conflict held between years 1990-2021. However, the decrease in the numbers depends on willingly repatriation back to Afghanistan or resettlement of the Afghan refugees toward high income countries. Majority of the Afghan refugees use India as a transit country toward destination countries due to lack of relaxed migratory policies in India and motivated them to leave India toward high income countries.

3. Immigration Policies for Refugees in India

Movement of individuals in today’s era becomes easier due to moderation of migration policies of the countries and accessibilities of transportation for traveling around the globe (Parsons, 2022). International migration enabled individuals to choose movements regularly, based on legal documents toward high income countries and most of them receive citizenship after a period of the time. However, the human trafficking for the movement of millions of the irregular migrants toward high income countries increased due to socio-economic devastations in low income countries (Farivar, 2024), and Thousands of human beings lost their valuable lives during irregular movements by crossing the borders via sea, mountains and underground canals (Pickering & Cochrane, 2012). Human Beings are not ready to leave their mother land and to choose migration unless they feel violation or discrimination on the basis of religion or socio- economic ruins. Eventually, facing the violation and inequalities in the home countries, forced peoples to disperse toward uplifted and wealthiest societies for the permanent resettlement.

Immigration policies toward refugees differ from nation to nation and are frequently influenced by the regional specifics, international accords, and domestic legislations. Legal, social, and humanitarian measures are all used in the treatment of refugees. The Indian constitution does not permit foreigners to obtain Indian citizenship, except a person of Indian origin, whose families and ancestor’s belonging to India or their spouse avail Indian citizenship (citizenship act, 1955). However, India has continuously upheld its commitment to principles like Non-Refoulement, which forbids the forcible return of refugees to a location where their freedom or lives may be in danger. India typically takes each case of a refugee individually. This means that different refugee groups might get different amounts of assistance and acknowledgment (MHA, 2022). India has a long history of refugees from its surrounding nations, especially Afghanistan, Sri Lankans, Pakistan, Bangladesh and Tibet. The United Nations High Commissioner for Refugees (UNHCR), which collaborates with the Indian government to provide documentation and facilitate assistance to refugees, is typically in charge of the registration process for refugees in India. The basic rights and protection of refugees in India may face difficulties in the absence of a specific legal framework, as migrants face problems with getting work, education, and other necessities of daily needs in India (Bentz, 2013). India has a number of laws, rules, and administrative

policies that deal with various aspects of immigration. The entry and duration of foreign nationals in India are governed by the immigration laws (Foreigners Act, 1946). These laws contain provisions pertaining to various visa categories, work permits, and residency requirements. An important part of carrying out these rules is done by the Ministry of Home Affairs under the Bureau of Immigration (BOI). There isn't a comprehensive national law in India that is devoted to refugees. The lack of such a law implies that refugees in India may have different rights and legal statuses.

There isn't a single immigration policy in India that applies to all migrants including asylum seekers and refugees; instead, different immigration rules were developed by the government of India for each migrant's community living in India. However, the government of India, granted refugee status to the Dalai Lama and over eighty thousands of their followers fled from Tibet in 1959 and permitted the leader to form a government in exile in dharamshala, but India did not recognize yet as a government (Naujoks, 2020). Similarly, during the invasion of Afghanistan by the Soviet Union over thousands of Afghans including Hindu, Sikh, Christian and Muslim fled to India to seek safety from persecution (Bentz, 2013), but majority of them dispersed to destination countries due to lack of naturalization policy in India. In addition, the control of capital Kabul by the Taliban regime on 15-August 2021 forced Afghan minorities and elite to enter India (Bharti, 2022), lacking a clear cut policy for immigrants in India, enforced majority of the Afghans asylum seekers left India toward third countries to obtain refugee status. Latently, the government of India took initiative toward naturalisation of refugees residing in India and introduced the citizenship amendment act 2019 (CAA), that empowered the government of India to grant citizenship for Hindu, Sikh, Christian, Parsi and Jain that entered India before 31-12-2014. The bill does not include Muslim migrants belonging to Afghanistan, Bangladesh and Pakistan (MHA, 2022). Moreover, the NPR and NCR are programs that are designed to build an extensive database of Indian citizens to identify the undocumented immigrants, whereas the NPR is meant for all residents residing in India. The framed policies by the Indian government pressurized the existence of irregular migrants in India.

4. Policies Handle Immigrants and foreigners in India

According to the legal framework and immigration policies of India, there is no difference between a foreigner and a migrant. All the refugees and migrants residing in India are termed as foreigners. The government of India under Ministry of Home Affairs (MHA) deals with immigrants residing in India under (Foreigner's Act, 1946). Several bills and resolutions enacted by the legislatures to manage foreigners and migrants entry, exit, movements and stay in India. The foreigner's act 1939, 1946 and Passport act 1920 empowers the (MHA) to facilitate types of visa, and stay permits to all foreigners residing in India (GOI, 2023). The policies and legal arrangements facilitated work permits, employment visas, student visa, medical visa, business visa and tourist visas to foreigners in India. According to the policy, all the migrants and refugees residing in India are treated under foreigners act and there is no specific and clear framework formed to manage refugees and migrants registered within UNHCR. The foreigner is not able to change the purpose of his stay without confirmation from the Bureau of Immigration (BOI) under ministry of home affairs (MHA) India. Some major policies of Indian government toward migrants residing in India as below:

4.1 Passport Act 1920: The primary legal framework in early British India for the management of foreigners framed as passport act 1920. The act termed as Passport entry into India, which enacted for the entering of a foreigner's in to India using a legal issued passport by their respective countries. This act allows foreigners to enter India using land, water and air. Under this act the police can arrest a foreigner that is suspicious or contravened any rules of the Indian government and the police officer is directed to report without any delay to the senior officer or jurisdiction. The act empowered the government of India to remove any foreigner who entered India without having a passport and valid issued visa (Passport Entry act, 1920).

4.2 Foreigner's Registration Act 1939: Annually, thousands of the foreigners entering India for different purposes such as, tourism and travel, business deals, medical, studies and employment. The Registration of Foreigners Act, 1939, directs the registration and management of foreign nationals living in India. Although it has undergone revisions throughout time to reflect evolving requirements and circumstances, the Act was passed during the British colonial era and is still applicable today. The Act requires foreign nationals entering India or staying there for a predetermined amount of time to register. After arriving in India, foreign nationals have a specific amount of time to register with the relevant authorities, such as the Foreigners Registration Officer (FRO). Foreign visitors receive registration certificates upon registration that include personal information such as name, nationality, passport data, residence in India, and length of stay. These documents function as evidence of registration and could be needed for a number of things, including opening a bank account, applying for visas, and using government services. Foreign nationals who have registered under the Act must give the authorities notice within a certain time frame of any changes to their personal information or

circumstances, such as address, employment, or marital status. Foreign nationals who give false information or disregard the registration procedures may face fines under the Act. There could be penalties, deportation, or other legal repercussions if the registration requirements are not followed. The Act's registration requirements may not apply to some foreign nationals, including diplomats, representatives of foreign organizations, and those with official government-issued visas or special permits. The Act provides selected authorities, like FROs and law enforcement organizations, the authority to carry out investigations, enforce the registration requirements, and take other necessary steps to guarantee legal compliance (Foreigners registration act, 1939).

4.3 Foreigner's Act 1946: The Foreigners Act, 1946, governs the admission, stay, and departure of foreign nationals from India. The Act, which was passed during the British colonial era, is still an important piece of legislation that controls immigration and foreigners in India. A "foreigner" is defined by the Act as any individual who is not an Indian citizen. This covers both stateless people, irregular and regular migrants and people who are citizens of other nations entering India. The Act gives the government the authority to specify the terms and limitations that apply to foreigners entering India. It also covers the issuing of visas and other travel authorization to foreign nationals in order to allow them to enter India. The Act forms requirements and limitations that foreign residents must follow in order to live and remain in India. It gives the government the authority to issue directives regarding the movement, registration, and oversight of foreign nationals living in India. The Act gives the government the power to expel or expunge any foreign national who violates the law or whose presence is thought to be detrimental to India's sovereignty, public interest, or security. It also allows for the imprisonment of foreign nationals while their deportation is being processed. The Act gives specified authorities, including police, immigration, and other government employees, the authority to carry out investigations, enforce the Act's provisions, and take other required steps to control the presence of foreigners in India. Foreign nationals who enter India without the required authorization, extend their visa, or participate in activities that are illegal are subject to penalties under the Act. Violations of the Act may lead to fines, incarceration, deportation, or other legal repercussions (Foreigners act, 1946).

4.4 Citizenship Act 1955: After the independence in 1947, the government of India on its constitution framed a legal piece which enabled the government to perform the grant of citizenship to its citizens. The Act, 1955 establishes the legal foundation for Indian citizenship, defining the obligations, rights, and benefits that come with it as well as offering instructions on how to apply for and receive citizenship. The Act, 1955, is a significant part of legislation controlling Indian citizenship. According to the Act, Indian citizenship can be obtained, determined, and terminated in accordance with the Citizenship Act of 1955. It describes the different ways in which citizenship can be obtained as well as who is deemed an Indian citizen. The Act outlines a number of methods for obtaining Indian citizenship, such as: Citizenship by birth, Citizenship by descent, Citizenship by registration, Citizenship by naturalization and Citizenship by incorporation of territory. The Citizenship Act of 1955 further specifies how Indian citizenship can be renounced and terminated. If someone wants to renounce their Indian citizenship, they have to go through the official procedure, and after that is done, their citizenship is cancelled. For some groups of people, including those of Indian descent living abroad, those born in India either before or after independence, and those married to Indian nationals, the Act contains unique citizenship-related requirements. The Citizenship Act, 1955, allows eligible individuals who meet certain requirements such as residency requirements, good character, and purpose to live in India to be granted citizenship by registration and naturalization. The Citizenship Act of 1955 has undergone multiple amendments throughout the years to accommodate modifications to the laws pertaining to citizenship to tackle new concerns. The Citizenship (Amendment) Act, 2019, which modified the requirements for naturalization as a means of obtaining citizenship, is one of the noteworthy reforms (Citizenship act, 1955).

4.5 Citizenship Bill 2003: A proposed law in India called the Citizenship (Amendment) Bill, 2003 aimed to modify the Citizenship Act, 1955. The Citizenship (Amendment) Bill, 2003's main goal was to amend the Citizenship Act, 1955 so that certain groups of undocumented immigrants from nearby nations could be granted Indian citizenship. The Citizenship Act, 1955's Section 2, which formed, who qualifies as a "foreigner" and who is eligible for Indian citizenship, was to be amended by the Bill. It aimed to enact laws that would offer citizenship to immigrants from Afghanistan, Bangladesh, and Pakistan who were Hindu, Sikh, Buddhist, Jain, Parsi, and Christian and who arrived in India on or before December 31, 2002. The purpose of the Bill was to shield and assist these adjacent countries' oppressed religious minorities who were subjected to discrimination in their origin countries. Critics of the Citizenship (Amendment) Bill, 2003 included human rights organizations, civil society organizations, and political parties. Opponents claimed that by awarding citizenship only to those who fit a particular religious profile, the Bill was discriminatory and went against the secular ideals of the Indian Constitution. The Bill raised concerns since it excluded Muslims from the list of eligible recipients, undermining India's secular fabric and marginalizing Muslim populations. The Citizenship (Amendment) Bill, 2003

encountered strong opposition and was subsequently withdrawn by the government as a result of the lack of agreement and strong criticism, despite the administration's best attempts to push for its passage. In the years that followed, comparable iterations of the Citizenship (Amendment) Bill were presented with the goal of granting citizenship to marginalized groups from nearby nations. Notably, the Citizenship (Amendment) Act, 2019 was eventually passed into law and allowed for the naturalization of some religious minorities from Bangladesh, Pakistan, and Afghanistan (citizenship amendment act, 2003).

4.6 Citizenship Amendment Act 2019(CAA): The government of India under ministry of law and justice notified a policy termed as Citizen Amendment Act (CAA) 2019, and started to implement on 2020 to grants citizenship for the minorities included Hindu, Sikh, Buddhist, Christian, Jain and Parsi from Afghanistan, Pakistan and Bangladesh who had come to India before 31/12/2014. The policy covers all the minorities except Muslims migrants from Afghanistan, Pakistan and Bangladesh residing in India. The Citizenship (Amendment) Act, 2019's main purpose was to make amendments in the Citizenship Act, 1955 to grant citizenship to other nationals belonging to religious minorities from Afghanistan, Bangladesh and Pakistan. The amendment covers certain types of undocumented immigrants from nearby nations who may be granted Indian citizenship. By amending the Citizenship Act, 1955, the CAA aims to offer expedited citizenship to immigrants who identify as Hindu, Sikh, Buddhist, Jain, Parsi, Christian, and who came to India on or before December 31, 2014, from Afghanistan, Bangladesh, and Pakistan. The Act seeks to provide citizenship to these bordering countries' persecuted religious minorities who were subjected to religious persecution back home. The CAA's exclusion of Muslims from the list of eligible beneficiaries is one of its most divisive features, drawing criticism and charges of discrimination based on religion and a transgression of India's secular values (CAA, 2019). According to the latest report of UNHCR, over fifteen thousands of afghan refugees registered within UNHCR and residing in India. Majority of the Afghan migrants residing in Delhi (Bose, 2004), and engaged with interpreting for Afghan patients reached India for medical checkups or assistance of Afghan traders and businessmen. Lack of a clear policy and legal framework in respect to the work permit of afghan migrants, created a big gap in socio-economic life of afghan refugees in India. According to the act 1946, foreigners are not allowed to seek jobs in India by having tourist visa, medical visa, student visa. Moreover, the act 1966 prohibited the change of purpose of visa status in India and suspected them as illegal foreigners. Refugees and registered migrants within UNHCR do not avail work permits by the government of India.

5. Need to Reform Migration Policies for Naturalization of Refugees

Most of the countries placed reforms in their immigration policies to resolve international issues of human movements and urgencies due to political unrests and protection of human beings from violation and persecutions. European Union and most of the high income countries such as: USA, United Kingdom, Canada and Australia (Bagavos, 2019) relaxed their migration policies (Dzordzormenyoh & Boating, 2022) toward Ukrainians after the Ukraine was envisioned on 24 February 2022 by the Russian forces. Besides, due to socio-economic and political unrest held in Ukraine, over six million Ukrainians moved to Europe and over four lakh individuals dispersed beyond Europe. Globally dispersion of Ukrainians reached to Over 6.5 million (ODP, 2024). In addition, relaxed migration policy of European Union, USA(Gonzalez Benson, 2021), Australia, United Kingdom and Canada empowered mentioned countries to resettle thousands of Afghans, after the state collapsed in 2021 and contribute as humanitarian assistance of international communities toward afghan refugees.

In spite of the fact that the citizen amendment act (CAA) performed a positive action of the Indian government toward migrants and refugees residing in India, the policy granted the full right of being a citizen to the thousands of migrants who reached India from Afghanistan, Pakistan and Bangladesh. The bill enabled the government of India to naturalize the Sikh, Hindu and Christian refugees from Afghanistan residing in India after the political unrests late in 1989-2010. The citizen amendment act 2019 (CAA) included all the minorities that were covered by the bill after the date 31/12/2014 reached to India (CAA, 2019), excluded Muslim afghan migrants.

Moreover, some of the Afghan Sikh, Hindu, Muslim and Christian moved to India (U.S. Department of State, 2022) to avoid persecution and attain safety after the Taliban takeover of the capital Kabul on 15 August 2021. The citizen amendment act 2019(CAA) includes all the minorities that reached India before 2014 from Afghanistan, Bangladesh and Pakistan, and exclude the Muslim migrants that took asylum after the mentioned

date. Besides, the policy does not cover the Afghan Muslim migrants residing in India before and after the mentioned date in the policy introduced by the government of India.

6. Conclusion

Relaxed migration policies should be formed by the countries to naturalize the refugees and grant them equal rights as other citizens. Transformation of technology and enhancement of socio-economic diversity in a country, needed to regularize migrants within the society. The government of India took an initiative toward refugees residing in India and formed the Citizenship Amendment Act 2019 (CAA) as a legal framework to naturalize the migrants belonging to minorities included Hindu, Jain, Parsi, Sikh, Christian from Afghanistan, Bangladesh and Pakistan. The policy does not include Muslim refugees and migrants residing in India belonging to mentioned countries. Moreover, the policy does not cover the Afghan Sikh, Hindu, Christian and Muslim refugees who reached India after the state collapsed in August 2021. Besides, the policy termed as an unfairness act of the government of India toward Muslim Afghan refugees residing in India.

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