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Citizenship Amendment Act: A Threat to the Secularism of the Nation

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ABSTRACT

Citizenship in a nation is as important as the nature of the state. It provides an individual with a sense of belonging. Indian citizenship has always been a matter of dispute since India's independence. 70 years down the road, even so, the matter is cause for contention. The recent 2019 Citizenship Amendment Act stirred up debates and protests in the public sphere. This document is an attempt to understand the provisions of the Citizenship Amendment Act and the threat it poses to the nation's core value system. This document argues that recent changes in the nature of citizenship are discriminatory based on religion and unconstitutional with respect to Article 14 of the Indian Constitution.

Keywords: CAA, Secularism, Article 14, Constitution of India, Hindutva

Citizenship is the status of an individual recognized under the law or customs as being a legal member of a nation or a sovereign state. It can be described as a relationship between an individual and a state to which the individual owes allegiance and, in turn, is entitled to defend their rights in front of the governmental authority. The nature of citizenship is as important as the nature of the state. In a democratic nation such as ours, citizenship is of crucial importance as it provides its citizen with all civil and political rights related to representation, religious freedom, right against discrimination, the right to freedom of speech and expression, the opportunity to participate in the election process, the right to vote and run for government office, etc. Non-citizens, on the contrary, do not have any such rights or opportunities to participate in the democratic processes that are of interest to both state and its participants.

While nations can have articulated rules and laws related to the citizenship of the individuals born in the same country, national citizenship becomes much more important when it comes to the integration of immigrants in the host society due to the two great challenges: first, the pressure exerted on the state; and second, the different possibilities to acquire citizenship. Both challenges lead to drastic changes in the nature of citizenship.

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The purpose of this paper is multifaceted. It is an attempt to understand the concept of citizenship in India and trace the evolution of Indian citizenship from independence to modern times. It places special emphasis on the recent Citizenship Amendment Act 2019 (CAA) and studies it in the context of the citizenship provisions in the Indian Constitution. The document argues that the recent change in citizenship is a discriminatory step against Muslim immigrants, by making religion a basis for acquiring citizenship. It further argues that discrimination based on religion is a threat to secularism, the basic principle of a democratic nation.

The right of citizenship came into existence only after the independence of India in 1947, as far as the history goes. Before independence, the Indians hardly had any rights during the British Rule. Their rights were governed by the British Citizenship and Foreign Rights Act of 1914, which was later amended and finally repealed in 1948.² There was no citizenship law in India as well. The same dilemma arose even when the Indian constitution was adopted and endorsed by the Constituent assembly on twenty-sixth November 1949 because there was no prevailing law that dealt with matters related to acquisition and termination of citizenship, or other matters that related to citizenship.³

The Indian Constitution deals with matters relating to citizenship between Articles 5 and 11 of Part II. However, it does not contain permanent or elaborate provisions in this regard, and only identifies the people who became citizens of India in the beginning. Article 5 states that "any person" who has a domicile in the territory of India and - (a) who was born in the territory of India; or (b) any of whose parents were born in the territory of India; or (c) who has habitually resided in the territory of India for not less than five years immediately before its commencement, shall be a citizen of India.⁴ Article 6 establishes the citizenship rights of certain people who have emigrated to India from Pakistan. Article 7 establishes citizenship rights for certain migrants to Pakistan. Article 8 establishes citizenship rights for certain persons of Indian origin residing outside India. Article 9 states that if a person voluntarily acquires citizenship of a foreign State, he will no longer be a citizen of India. Article 10 stipulates their continuity as citizens subject to the provisions of any law that Parliament may make. Article 11 empowers Parliament to make any provision regarding the acquisition and termination of citizenship and all matters related to it. Although the Indian Constitution spoke of citizenship in Part II, it was mainly limited to the start date, that is, January 26, 1950.

² Report of the Joint Committee on the Citizenship Amendment Bill, 2016, Lok Sabha Secretariat, 8.

³ Ibid. 9.

⁴ Constitution of India, Article 5.

As the Constitution under Article 11 gives the Parliament powers to enact a law that complements the provisions of the Constitution, a law was passed in 1955 and appeared in the Statute Book as 'THE LAW OF CITIZENSHIP, 1955'. After the enactment, the Law went through ten amendments. This law of citizenship provided for the acquisition of citizenship after the beginning of the Constitution, by birth, descent, registration, naturalization, and incorporation of the territory. It also included the necessary provisions for the termination and deprivation of citizenship in certain circumstances.

The Citizenship Act of 1955 talks about the citizenship of India after the beginning of the Constitution. It provides several ways to acquire citizenship and regulates who can acquire Indian citizenship and for what reason. The provisions include:

- a) A person born in India after January 26, 1950, would be a citizen of India, except for the children of enemy diplomats and foreigners who cannot be citizens of India **by birth**⁵
- b) Any person born outside of India after January 26, 1950, shall be a citizen of India **by descent** if his father is a citizen of India at the time of his birth⁶
- c) Certain categories of citizens can acquire citizenship **by registration** in a prescribed manner⁷
- d) Foreigners can acquire Indian citizenship **by naturalization** under certain conditions⁸
- e) If any territory becomes part of India, the Government of India could specify the conditions for them to become citizens, that is, **by incorporating the territory into India**.⁹

Besides, it regulates the registration of **Overseas Citizens of India (OCI)** cardholders and their rights. Some benefits, such as a lifetime and multiple entry visas to visit India are the exclusive entitlements given to the OCIs. Furthermore, the law has made provisions that prohibit illegal immigrants from acquiring Indian citizenship. An **illegal immigrant** is a foreigner who: (i) enters the country without valid travel documents, such as a passport and visa, or (ii) enters with valid documents, but remains beyond the allowed period.¹⁰

Ever since the Constitution of India was framed, the Constituent Assembly widely discussed issues related to citizenship. A couple of important questions on the table were: Who are the

⁵ Citizenship Act of 1955, Section 3.

⁶ Citizenship Act of 1955, Section 4.

⁷ Citizenship Act of 1955, Section 5.

⁸ Citizenship Act of 1955, Section 6.

⁹ Citizenship Act of 1955, Section 7.

¹⁰ Citizenship Act of 1955, Section 2 (1) (b).

Indians? What is the nature of Indian citizenship? While discussing the idea of citizenship in August 1949, Alladi Krishnaswami Ayer revealed two ideas of citizenship: one based on race (*jus sanguinis*) and the other one based on place of birth (*jus soli*). Citizenship of continental countries is based on race: it has nothing to do with the birth of a person in a particular place. Whereas, in the Anglo-American system, if a person is born in a particular place, he/she obtains his/her citizenship.¹¹ The Indian leadership favoured the enlightened concept of *jus soli* where the place of birth becomes the primary determinant to the acquisition of citizenship.

Over time, Parliament amended this law and reduced the broader and more universal principles of citizenship based on the fact of birth.

The 1986 amendment to Section 3 of the Citizenship Act included less the *jus soli* principle. The amendment has added the condition that those born after July 1, 1987, in addition to their own birth in India, can obtain citizenship only if one of their parents was an Indian citizen at the time of birth.

The 2003 amendment made the previous condition more stringent, taking into account the infiltration of Bangladesh and a slew of immigrants trying to cross the borders. Now the law would necessitate that, for those born as of December 4, 2004, in addition to the fact of their birth, both parents must be Indian citizens or one of the parents must be an Indian citizen and the other must not be an illegal immigrant.¹² Howsoever justifiable these amendments had been at the time, but with these restrictive amendments, India has almost veered towards the narrow principle of *jus sanguinis* or blood relationship.

The recent amendment in 2019 stirred up the debates and discussions around the idea of citizenship. To understand the implication of this act, we must adopt the provisions that moved the nature of citizenship as a political tool.

The amendment stipulated that Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan, who entered India on or before December 31, 2014, will not be treated as illegal immigrants. It grants immunity to the aforementioned immigrants from Afghanistan, Bangladesh, and Pakistan from any legal case against them related to their immigration status. It also provides relaxation for these communities in the qualifications required to acquire citizenship through registration or naturalization.

¹¹ Debates of the Constituent Assembly, April 29, 1947, vol. III. <http://164.100.47.194/Loksabha/Debates/cadebatefiles/C29041947.html>

¹² Citizenship (Amendment) 2003 (Law No. 6 of 2004).

Under the 1955 Act, to obtain citizenship by naturalization, one of the qualifications is that the person must have resided in India or been in the service of the central government for at least 11 years before applying for citizenship. But this amendment creates an exception for Hindus, Sikhs, Buddhists, Jains, Parsees, and Christians from Afghanistan, Bangladesh, and Pakistan, from this rating. For these groups of people, the 11-year requirement is reduced to five years.

By making changes to existing laws to include illegal immigrants, who were facing religious persecution in their countries, the government has taken a positive step by providing protection and a safe heaven to lead a stable lifestyle. However, it has also used a new filtering method for acquiring citizenship, which poses a bigger problem and overshadows the good side of the Law.

This amendment added a new dimension in access to citizenship, which is RELIGION. It makes a distinction based on religion. Before this amendment, the right to citizenship could be gained either through birth or descent. But the new amendment brings citizenship to new light by looking at a person's religion. This resulted in large-scale upheaval at the national level.

The reason to extend this provision only to people of six religions and also the reason to apply only to people who come only from these three Islamic and non-Muslim countries is that the Union Government claims that people of these six religions have been persecuted in these Islamic countries. Therefore, it is the moral obligation of India to provide them with refuge.

A palpable question arises: how are the migrants from Afghanistan, Bangladesh, and Pakistan different from other neighbours such as Sri Lanka which is largely a Buddhist nation, or Myanmar where too Buddhism is prominent. Sri Lanka has its fair share of history with the persecution of the Tamil Eelam – who were a linguistic minority in the country. Similarly, our neighbour in the east – Myanmar has seen a religious minority falling prey to persecution – the Rohingya Muslims.¹³ There have been multiple reports outlining that the two communities – the Tamil Eelam and the Rohingya Muslims fled their respective countries in pursuit of refuge in India.¹⁴

Moreover, many religious minorities from Afghanistan, Bangladesh, and Pakistan have faced religious persecution and have migrated illegally to India looking for a safe harbour. There have been reports of murders of atheists in Bangladesh, and persecution of Ahmadiyya Muslims in Pakistan. The very fact that the 2019 Citizenship Amendment Act (CAA) remains

¹³ “Myanmar Rohingya: What you need to know about the crisis”, BBC News, April 24, 2018, <https://www.bbc.com/news/world-asia-41566561>.

¹⁴ “Why India is refusing refuge to Rohingyas”, Times of India, September 6, 2017, <https://timesofindia.indiatimes.com/india/why-india-is-refusing-refuge-to-rohingyas/articleshow/60386974.cms>.

silent about these communities only raises the concern of selective discrimination against illegal immigrants.

The idea of including religion as the basis for granting citizenship is not new. It was widely discussed during the elaboration of the Constitution. In August 1949, the Constituent Assembly ruled out including religion as a criterion for accessing citizenship because it went against the guiding principle of the nation.

Citizenship constitutes the fundamental basis of our Constitution. Article 14 guarantees equality to all people, including citizens and foreigners¹⁵. The new amendment violates Article 14 of the Constitution, as it provides differential treatment to illegal immigrants based on (a) their country of origin, (b) religion, (c) date of entry into India, and (d) place of residence in India. The current Indian nationality law largely follows *jus sanguinis* (citizenship by descent) as opposed to *jus soli* (citizenship by birthright within the territory).

The government is challenging the secular principles of the constitution and the very foundation that it was built on by implementing CAA that discriminate against citizenship based on a person's religion and reflect on Hindu, or Hindutva, nationalist ideology. The ideological framework of Hindutva sees India as a Hindu state (with its definition of Hinduism expanded a little to assimilate Buddhists, Jains, and Sikhs) and Islam as a foreign and invasive religion. Hindutva's political rhetoric questions the legitimacy of Indian citizenship to Muslims and also perpetuates the marginalization of this community.

However, the term 'secularism' was added to the Indian Constitution in 1976 by the 42nd Constitutional Amendment Act. The governing philosophy prevailed from the beginning of the Constitution, by guaranteeing the fundamental right to freedom of religion (Articles 25 to 28) under Part III of the Indian Constitution. Secularism in a layman's term means 'no affiliation with religion'. The term secularism connotes two aspects: the negative and the positive. In negative secularism, the state is separated from religion and religious institutions. In the case of India, we practice positive secularism treating all religions on an equal footing. Secularism is the cornerstone on which this nation rests. India, Being one of the nations with the greatest religious and cultural diversity in the world, it remains upright and straight due to its fundamental values. By embracing positive secularism, our constitution promotes harmony among different religious groups. However, CAA attacks the base on which this nation is located.

¹⁵ Constitution of India, Article 14.

CAA is simply a reflection of the government's stance towards the Muslim community. The conflict between Hindus and Muslims is as old as the birth of this nation. India gained its independence at the grave of communal unrest. The vision of the famous "Two Nation Theory", which was highly defended by MA Jinnah during the 1940s and acted as a catalyst in the partition of India, was seen in CAA. The step taken by the NDA government is one step closer to annihilating the nation's fundamental and democratic principles. CAA is condemned not only nationally but also internationally.

Recently, in the month of April, the United States Commission for International Religious Freedom (USCIRF), a separate bipartisan commission separate from the State Department's Office of International Religious Freedom, has lowered India to the highest-ranking low, "country of special concern", along with other countries such as Pakistan, North Korea, China, and Saudi Arabia. In its 2020 annual report, USCIRF noted that India took a sharp downturn in 2019, which included specific concerns about the Citizenship Amendment Act, the proposed National Citizen Registry, anti-conversion laws, and the situation in Jammu and Kashmir¹⁶. India is falling out of its status of religious freedom on a global scale and figures alongside countries like Pakistan and North Korea.

India had the opportunity to act as an older brother to its neighbouring countries by providing refuge and protection to those facing religious persecution by opening their door, regardless of considering the person's religion and the place from which the person is migrating. So, only in the real sense, this act would have been a symbol of compassion and inclusion.

¹⁶ United States Commission on International Religious Freedom, Annual Report, 2020
<https://www.uscirf.gov/countries/india>