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**Centre for  
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**CENTRE FOR NEW ECONOMICS STUDIES**

# **CONVERSATIONS IN DEVELOPMENT STUDIES**

## **PERSPECTIVES ON CITIZENSHIP: INDIA'S AMENDED CITIZENSHIP ACT**

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# CONVERSATIONS IN DEVELOPMENT STUDIES (CIDS)

## Volume 2: Issue II Perspectives on Citizenship: India's Amended Citizenship Act

### ABOUT CIDS

CIDS is a peer-reviewed, quarterly research publication produced by the Centre for New Economics Studies, O.P. Jindal Global University. The student-led editorial journal features solicited research commentaries (in the range of 2500-3000 words) from scholars currently working in cross-sectional domains of development studies.

Each published CIDS Issue seeks to offer a comprehensive analysis on a specific theme identified within the scope of development scholarship. The editorial team's vision is to let CIDS organically evolve as a space for cultivating creative ideas for research scholars (within and outside the University), to broaden the development discourse through conceptual engagement and methodological experimentation on contemporary issues.

Any published research commentary, in general, features: a) brief review of the literature on a given research problem; b) the argument made by the author with details on the method used; c) observed findings and relevance of them in the larger scope of the literature; and (in some instances) d) a brief policy action plan for agencies of the state (to address the issue-highlighted in the commentary).

There are no pre-identified limitations or restrictions to methodological frameworks used by solicited scholars (writing the commentary). However, the method incorporated in any accepted submission must be explained along with its relevance in context to the nature of the study undertaken.

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## ABOUT THIS ISSUE

### Perspectives on Citizenship: India's Citizenship Act

In 2019, the Government of India adopted the Citizenship Amendment Act which added a new provision for obtaining citizenship in India to the primary legislation on the subject. The amendment provided an exemption to certain religious communities from the neighbouring countries of Afghanistan, Pakistan and Bangladesh from being categorized as illegal immigrants. Amongst these religious communities, however, the Muslim communities were not included. The justification for the same as provided in the statement of objects of the Act, was due to the three countries being Muslim majority communities and the purpose of this Act was to grant an exemption to those communities facing religious persecution. This exclusion from exemptions triggered several protests across the country after the Act was passed by both the Houses. The protestors looked at a conjoint reading of two policies, the 2019 Amendment Act (CAA) and the National Register of Citizens (NRC) as a move to leave refugee Muslims stateless and detained in detention camps.

Prior to the passage of this Act, the National Register of Citizens was implemented in the North-Eastern State of Assam on the order of the Supreme Court of India between 2013-14. The result of this exercise was published in August 2019 with allegedly over 1.9 million being left out. The Union Home Minister, Amit Shah has since announced the implementation and completion of the NRC across India before the 2024 elections. As a result of the opposition to the passage of CAA, the protests triggered across the country saw mass involvement of university students as participants. This resulted in violent clashes occurring in and outside the campus of Jamia Millia Islamia University, Delhi on 15th December. Several other universities have also been grounds for clashes between protestors and law and order forces with there being multiple instances of detentions being undertaken by police forces across the country. The series of protests and responses to the CAA have displayed the emergence

of a unique type of discourse that had been lacking until now in the Indian polity. What makes this discourse unique is mainly the student involvement in demonstrations and protests, the use of social media, and the overall discussion on the debate of citizenship and the religious identity of the conflict. The complexity of the issue, however, arises with the conflict between long term-short term impact, conservative-liberal debate and the overall issue of majority vs minority-based policies.

To capture these complexities as well as the above dilemmas emerging from this discourse, the present issue of the Journal will undertake a conversation with the Stakeholders who have been involved in the emergence of the present discourse on Citizenship. The said conversation will be recorded by principal investigators who shall utilize a list of questions as their primary interjections to capture the complexity of this issue. The commentary thus emerging would be a transcript of the mentioned conversations between the investigator and the stakeholder. The journal will aim to capture four major perspectives emerging from focussed group discussions, namely, the international law perspective, constitutional law, political aspect and the perspective of student-activists on the issue.

The first commentary, *Secularism and Citizenship: Understanding the Citizenship Amendment Act from a Constitutional Lens* critically analyses the legislative and political history of the Citizenship Amendment Act.

The second commentary, *Reformulation Based on Religious Identities: A Comparative Analysis of the Indian Citizenship Amendment Act and Principles of International Human Rights Law* reviews the international legal obligations of India and examines any legal ramifications at an international level.

The final commentary titled *Conversations on Citizenship: A Political Understanding of the Citizenship Amendment Act* tries to capture the perception of different political scientists and protestors on the Citizenship Amendment Act.

## ACKNOWLEDGEMENT

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# Secularism and Citizenship: Understanding the Indian Citizenship Amendment Act from a Constitutional Lens

Prithviraj Khanna\*

*The increase in globalization and capital flows in the contemporary era has led to a simultaneous increase in government expenditure on border control and security. The curbing of illegal immigration has led to certain policies and legislation being adopted under the veil of national security and state interest. The Indian legal system has done the same through three legislations, the Foreigners Act, Passport Act, and the Citizenship Act. In addition to these legislations, the Constitution of India has extended some of its fundamental rights to non-citizens as well. In December 2019, however, the Parliament of India passed the Citizenship Amendment Act, through which certain religious identities were exempted from being considered as illegal immigrants if they had entered India before 2014. This triggered several protest movements across India to express their dissent against the aforementioned legislation. The following commentary will try to provide a critical analysis from a constitutional law perspective about the Indian Citizenship Amendment Act, 2019. The first half of the commentary provides an insight into the legislative history of citizenship and the second half looks at the NRC exercise in Assam along with the key arguments against the Citizenship Amendment Act, 2019.*

## INTRODUCTION

In 1945, during the negotiations between the Indian polity and the British representatives, several ideas regarding the decolonization and the future of India were put forward. The two key factors amidst these negotiations were religion and the overall federal structure to be followed, keeping in mind the religious demographic represented in the self-rule politics and

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the existence of numerous princely states. While the existence of princely states had an impact on the overall federal structure of contemporary India, the bigger ripples felt was that of the religious propaganda, triggered mostly due to the idea of separate electorates implemented in the early 20<sup>th</sup> century. The resultant communal undercurrents provided a strong base to the idea of 'two states', ultimately culminating in a demand for a separate state based on 'religious' identity. Once the creation of separate states from the then Indian dominion was clear, religion became a very important assertion during negotiations with certain princely states over which of the two new states to be a part of. However, such assertions caused major problems of majority and minority in those areas that were in converse to the religious identity of the new state that they were a part of, for example, the state of Kashmir and Hyderabad.

This overshadowing of religion in the creation of states was what led to secularism and equality to be preached as an important component of the new Republic of India and was often stated by leading politicians of the time. The Objective Resolution which was moved by the first Prime Minister of India, and later went to form the preamble of the Constitution also mentioned the idea of equality and freedom, based on which the idea of what India should be was envisaged. This idea becomes important in the backdrop of the Partition where India faced its first challenge from refugees, coming majorly from Pakistan and belonging to a non-Muslim religious identity with the premise of fearing religious persecution and isolation in the new Islamic state of Pakistan. While the Indian government devised several policies of ensuring proper rehabilitation of such refugees and ensuring access to rights, religion was not perceived to be an important factor at the stage.

## REFUGEE SPILLOVER AND THE ISSUE OF ASSAM

The next challenge, however, clearly brought the religious identity of the refugees to the forefront as a factor influencing policymaking. The context of this challenge revolved around the 1971 Indo-Pak war that emerged from the freedom struggle of Bangladesh, which was then the eastern part of Pakistan. The war, which already followed an exodus of refugees from Bangladesh to India triggered a massive refugee spillover majorly in the two states of India bordering Bangladesh, West Bengal, and

Assam. The relations of north-eastern states with the federal government were tense at that time, due to various other political factors that were deeply rooted in the identity politics of the region that lead to the overall demand for autonomy. This identity politics, however, saw a stronger display due to the aforementioned refugee spillover that saw the majority tribal population of Assam specifically facing a threat of being converted into a minority. The display was done primarily by an organization that went on to become a crucial stakeholder in the politics of the region, the All Assam Student Union who protested and generated a movement against the inflow of illegal immigrants from the region of Bangladesh. The negotiations thus triggered between the AASU and the Union Government culminated into an important agreement known as the Assam Accords of 1985, in which the Government agreed to undertake several measures of border protection and monitoring. Amidst these measures was the promise of identifying and deporting all the illegal immigrants that entered Assam before March 1971.

While the Indian legislative framework does not have a specific law on refugees, several indirect legislations attempt to govern the same through certain tools, for example, citizenship. The Indian Citizenship Act was enacted in 1955 and tackled the issue of illegal immigration through identification and separation of citizens and non-citizens, as it provided the answer of who is an Indian citizen. Another important legislation in this context that answers the latter half of the issue, regarding what the State can do about illegal immigrants is the Foreigners Act, 1946. This legislation, which remained in force after independence, gave the Executive the power to issue a crucial executive order known as the Foreigners (Tribunal) Order, 1964 that created arguably a powerful entity known as the Foreigners Tribunal. While the order mainly empowered the tribunal to look into the question of the political status of any individual in the country, it also gave the Executive the power to detain and deport any person found to be an illegal immigrant. The above-explained legislative framework does not cover the idea of refugees as it sticks to the binary of citizens and illegal immigrants, however at the same time, the present tools of citizenship are utilized to create a class of “legal refugees”. This idea was taken forward while dealing with asylum seekers and on various occasions was the same reflected through amendments to the Indian Citizenship Act, 1955.

## FROM ASSAM ACCORDS TO THE CITIZENSHIP AMENDMENT ACT, 2003

When the Assam Accords were signed in 1985, the government amended the Citizenship Act to introduce a new clause that reflected the promise of the Government in the Accords. This clause has two crucial elements. Firstly, it granted citizenship to all individuals of Indian origin residing in Assam till before 1966. Secondly, it created legal refugees by granting almost equal rights to all those people that entered Assam between the period of 1966 and 1971. This legal status provided to illegal immigrants, dubbed as foreigners in the Act, who registered themselves accordingly was valid only for a period of 10 years. The impact of this legislative amendment was enhanced when the Bhartiya Janta Party came to power in 1998 with the objective of identification and deportation of illegal immigrants as an essential policy promise. The idea of registration was further developed to create a new tool that was implemented through another Constitutional Amendment in 2003, called the National Register of Citizens. Certain essential legislative changes that came with the introduction of this new tool included the definition of illegal migrants within the act, modification of the citizenship by birth clause and most importantly, the idea of issuing national identity cards to citizens.

Before the formation of this idea of NRC, which seems like an essential tool for implementing the Assam Accords, the Congress government implemented another legislation known as the Illegal Migrant (Determination by Tribunal) Act, 1983. The same was implemented in Assam but had several controversial cases emerging from its execution due to the convoluted procedure for identification and deportation. This led to the provisions of the Act being challenged before the judiciary which went on to strike down the Act in 2005. This order of striking down the Act led to the judiciary becoming an important entity in the overall issue of illegal immigrants in Assam. The reason behind this importance can be illustrated by the Judicial involvement in the issue in 2012 through public interest litigation that later went on to trigger the implementation of the NRC exercise in Assam upon the orders of the Judiciary itself.

The National Register of Citizens exercises started in 2015 after the Supreme Court issued an order through which the office of the State Coordinator for NRC was established. The Registrar General of India released the schedule and rules for the commencement of updating the NRC. The exercise was implemented in certain phases, the first starting with the publication of legacy data, based on which applications for inclusion of the names of people in the register were filed. For this inclusion, the provisions of the Citizenship Act are followed. Based on the applications received and decided upon through verification, the first draft of the NRC was released. The same procedure of application was followed again for those who were left out in the first draft followed by verification of documents and publishing of the final list of the NRC in August 2019. According to the statistical data published, more than 1.9 million people were left out, meaning that their applications were not accepted for inclusion into the NRC. The remedy left for these individuals was to approach the Foreigners Tribunal and appeal their inclusion in the NRC through the tribunal itself.

#### THE 2019 AMENDMENT ACT AND THE EMERGENCE OF THE ANTI-CAA PROTEST

The above NRC exercise between 2015-19 conducted under the orders of the Court faced severe criticism concerning the overall lapses that emerged resulting in the statistical exclusion of the aforementioned people. In the context of the above NRC exercise, in December 2019, the Central Government introduced a new amendment bill of the Citizenship Act on the floor of the Rajya Sabha. This bill attempted to insert another category of legal refugees as discussed above in the context of the Assam Accords through Article 6B. In this, exemptions were provided to a certain class of people, from specific countries, from the application of the Foreigners Act, thus providing them a streamlined process to qualify for citizenship. The amendment allowed all Hindu, Sikh, Buddhist, Jain, Parsi or Christian community members from Afghanistan, Pakistan or Bangladesh to be the class of people eligible for the stated exemption. The statement of objects given with the amendment bill and clarified through parliamentary proceedings laid down the fear of religious persecution, given the minority of these mentioned religious groups in the countries, as a justification for the Bill.

The introduction and more importantly the adoption of the Bill lead to a series of protests and dissent regarding the overall exclusion of Muslims and other religious identities from this exemption of the Bill. Given the importance of the provisions, the Citizenship Amendment Act (CAA) contains for the NRC exercise, coupled with the intent showcased by the Central Government through multiple statements released for the implementation of a nation-wide NRC, formulated the context for the dissent expressed against CAA. Several universities emerged as the hub for protests across India due to wide-spread involvement of students in the display of dissent against the legislation. Apart from students, several members of the legal fraternity were also a part of the new group of people termed as Anti-CAA protestors.

Several arguments have emerged from the dialogue of dissent against the Citizenship Amendment Act on a constitutional law level. The first tranche of arguments target the main rationale behind the exclusion of the Islamic religion from the Act itself is unclear from both the statement of objects, given how several minority Muslim communities face persecution as well but have not been provided the exemption. The terms used in the statement of objects have a wide definition which creates ambiguity due to its broad nature. This ambiguity amplifies when the regional limitation of the exemption is looked at to see how certain other religious groups are excluded from this amendment. Examples of such exclusion are the Rohingya Muslims, the Tibetan Buddhists, and Sri Lankan Tamils. The rationale of this two-prong prioritization, the first being based on religion and the second based on the region, was not clarified specifically when compared to the explicit secular provisions of the Constitution.

The second tranche is based more on the speculative impact of the NRC exercise when conducted in coherence with the new Citizenship Act if the amendment stands. As noted above, several politicians including the Home Minister of India have mentioned the intention of conducting a nation-wide NRC exercise. The overall issue with the NRC revolves around the ramifications of exclusion from the Register, mainly the disfranchisement of individuals who are then supposed to appeal the same before the Foreigners Tribunal. However, as noted in Assam, the concept

of doubtful citizens, under which such people who are excluded were placed face a high risk of detainment by local authorities during the pendency of their appeal before the Tribunal. The overall threat of disfranchisement that emerges from the amended provisions of the Citizenship Act is severe from a nation-wide perspective given how certain non-citizens do not enjoy all the fundamental rights provided by the Constitution. This thread of argumentation is strengthened when the principle of equality amongst all religions is disturbed by the provisions of the CAA which further empowers the Government to undertake disenfranchisement based on religion.

### NEED FOR JUDICIAL INTERVENTION

As of now, there are several petitions pending before the Judiciary challenging the constitutional validity of CAA, filed by State Government as well as several Non-Governmental Organizations. Although the Supreme Court usually hears such matters through the jurisdiction created by Article 32 of the Constitution, the Court has in previous situations exercised suo moto jurisdiction based on media reports to address the violation of fundamental rights.

Two major limbs of argumentation on the constitutional validity that are anticipated to be presented as a part of the petitioners challenging CAA are based on Article 14 of the Constitution. The Judicial understanding of this article has increased its scope by transforming it into the constitutional bedrock for several important principles, including the principle of equality before the law and the rule of law. Commonly referred to as the right to equality clause, this fundamental right ensures that no legislation discriminates against any person and equal protection of the law is extended to all. The first limb of argumentation relies on the bare reading of the term "any person", making Article 14 one of the few fundamental rights applicable to non-citizens as well, which may include the religious groups excluded from CAA. The second limb goes on to challenge the Act based on the test that has been developed by the Courts for checking whether legislation is in contravention to the fundamental right. It is important to note that the subsequent articles post article 14, allow the government to undertake certain affirmative actions for a certain class of people with the overall rationale of upliftment in society. The

Court, therefore, developed the test of reasonable classification, under which legislation conducting positive discrimination must first have an intelligible differentia, that is the differentiation done must be on a particular basis that creates a specific class of people. This intelligible differentia must further have a nexus or a connection to the overall purpose of the legislation creating this differentiation. Due to the issue of ambiguity in the statement of objects of the CAA, as explained above, the intelligible differentia made under which certain religious groups are excluded is not clear, for, the reason for this differentiation has not been justified. Moreover, on some occasions, the Court has not been receptive to the invocation of this Test, specifically intelligible differentia being done based on religion, given the overall secular fabric of the Constitution, which prohibits discrimination based on religion.

#### IMPACT OF THE ANTI-CAA PROTESTS ON CENTER-STATE RELATIONS

While the above section discusses the receptiveness of the Judiciary towards individual/ organization filed petitions, another important source of dissent has come from Constitutional institutions as well, namely, State Governments. Although this is not the first time that there have been disputes between the Center and the State, what makes this path of dissent unique is the overall formal actions undertaken by various state governments through the passing of resolutions in Legislative Assemblies as well as filing petitions. This becomes problematic from a judicial perspective because the earlier clashes either challenged the vires of the legislation on the grounds of it being excessive or colorable legislation. However, in this case, the competency of making this legislation is not challenged but instead, the focus is on the overall content of the legislation, terming the same to be unconstitutional.

The open and public challenge by the States to the CAA presents a difficult hurdle for the Central government that will require state assistance for implementing the new provisions of the CAA when the nation-wide NRC exercise is conducted. To properly conduct the NRC exercise, the Central Government will also require State assistance for the establishment of detention camps through logistical and financial support, given the overall cost of this entire exercise. While the exercise itself will

be devoid of state government intervention, as the appointments under the NRC exercise will be done through the central government apparatus, this form of indirect support becomes crucial for the streamlined implementation of any Central government program.

Although such expression of dissent may be termed as political maneuvers, there is very little scope of exercising such non-cooperation tactics with the Central Government, with the only proper recourse being Judicial intervention. The Constitution itself gives the Central Government the power to ensure state compliance through the provisions of Article 246, which showcase how states cannot refuse validly adopted Central legislations. The other ground of extra-territorial application that could be argued for an interim refusal also fails given the proper jurisdiction of the operation by the CAA.

But this does not prohibit the State from challenging the legislation before the Courts, where they may have the proper standing of presenting one of the most powerful arguments to support their refusal of implementation, the basic structure doctrine. This doctrine was laid down by an extremely renowned landmark judgment known as the Kesvananda Bharti case that limited the power of the Government to amend certain parts of the Constitution comprising of its basic structure. One of the elements which were added to this doctrine through judicial development over a period of cases included the principle of secularism, which could be contended by the State Government to be violated by the CAA.

## CONCLUSION

The legislative history of amendments passed on citizenship laws along with their context showcases how refugee problems faced by the nation saw its resolution through the tool of citizenship, thus creating legal refugees for interim periods and limited rights. The main issue around this methodology is the severity of the consequence following such a binary of citizens and non-citizens creates, as it disfranchises people who do not qualify as citizens or interim citizens/ legal refugees. The NRC exercise in Assam was a clear example of how disfranchisement has a dire consequence on people who may be legitimate citizens when they are excluded from such convoluted legislative implementation. While the

NRC exercise in Assam was in pursuance of a proper Accord and rationale for amendment in the Citizenship Act, the 2019 CAA poses a completely different issue. The scope of ambiguity emerging from the terminology of certain terms which are not backed by proper justification has led to wide-scale dissent to arise.

Even if most of the argumentation against CAA is speculative, the type of responsiveness on the part of the Central Government, as well as the reaction of the State governments both, increases the probability of judicial intervention in this entire issue. Therefore, the constitutionality of this controversial piece of legislation will tantamount to the kind of justifications the Government of India may provide when asked to justify its intelligible differentia before the Supreme Court.

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# Refoulment Based on Religious Identities: A Comparative Analysis of the Indian Citizenship Amendment Act and Principles of International Human Rights Law

Prithviraj Khanna\*

*The present legislative framework of India on the topic of citizenship has been exposed to a wide spectrum of dissent due to a controversial amendment being adopted by the Indian Parliament to the Citizenship Act. This framework dealt with a binary of classifying individuals as citizens or illegal migrants with there being no legislative policy of refugees. The following commentary aims to present an analysis of the Citizenship Amendment Act, 2019 with the framework established under international human rights law, to understand the international obligations India may have in this context. Certain key concepts such as the principle of non-refoulment, arbitrary deprivation of nationality and overall treatment of illegal immigrants have been particularly focused on due to their wide international recognition.*

## INTRODUCTION

The Indian Parliament in December 2019 adopted the Citizenship Amendment Act (CAA), which created an exemption for certain religious communities hailing from certain countries to not be considered as illegal immigrants under the citizenship law of India. By the virtue of creating such exemptions for a select group of communities, certain other groups of illegal immigrants were excluded, either due to their religion or due to their nation of origin. This preferential treatment of certain groups in CAA has been regarded by many to be a discriminatory act and the reason behind wide-spread protests across the country, specifically the exclusion of the Muslim community.

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One of the contentions against the Amendment was the possible ramification that could emerge if another government scheme was implemented as well, namely, the National Register of Citizens. The composition of the Register would be based on including only those people who qualify as citizens as per the provisions of the Citizenship Act, leaving those excluded to be doubtful citizens or as illegal immigrants. These excluded people could either appeal against their exclusion before the Foreigners tribunal set up under the Foreigners Act, 1946 or risk deportation to their suspected country of origin. The NRC exercise also saw its first proper implementation in the State of Assam and was completed over a period of four years, commencing from 2015 and culminating with the publication of the final register in 2019. The Central government during the discourse around the 2019 CAA has mentioned its intent of conducting a nation-wide NRC exercise, which if carried out with the present exemptions could generate a greater risk of statelessness of people belonging to certain religious identities.

#### REFUGEE CONVENTION AND THE PRINCIPLE OF NON-REFOULMENT

An examination of the current Indian legislative framework reveals the lack of any specific laws granting rights to refugees. This emerges from the overall abstention of India from the international treaties on Refugees, including the Refugee Convention of 1951 as well as the 1967 protocol to the aforementioned convention. Data published by the United Nations High Commission for Refugees also reveals that the absence of such refugee laws in India has created certain legal hurdles leading to political asylum seekers not preferring India as a host country.

The absence of codified legal obligations in the domestic framework limits the scope of Judicial intervention that can be relied upon by refugees if they are deprived of the basic rights recognized internationally. Although certain fundamental rights mentioned in the Constitution of India are available to non-citizens and the Indian Courts have recognized the same, they cannot be availed if a crucial international humanitarian law norm is not observed. This norm has been codified under Article 33 and is a core principle of refugee law, known as the principle of non-refoulement, meaning that a state cannot send back or expel a refugee to a

country where they face a threat based on their religion, race, nationality, social group or political ideas.

The non-participation of India from the treaty regime of the Refugee convention does help the state avoid any codified obligations but does not render it completely free of the same. The essential nature of this norm has helped it gain a customary nature in international jurisprudence, given the consistent observation in state practice of this norm.

The application of this principle as an obligation for the Indian state in the context of CAA, however, is not simple. On the face of it, the amendment operates as an exercise of the principle of non-refoulment, offering exemption from being considered as illegal immigrants to those religious groups who may constitute minorities in the mentioned countries. However, the preference of certain religious groups over others and the regional limitation does create a question of equality not being followed by the State. At the same time, it must be acknowledged that the CAA is not refugee legislation and each State has complete sovereignty in determining the method of granting its citizenship. The State can also in this context avail the exception of national security and interests of its citizens from performing the obligations emerging out of the principle of non-refoulment. This banner of national security, which does not have any rigid definition gives a flexible scope for enacting any such type of legislation and executing the same free from any international intervention.

## STATELESSNESS AND INTERNATIONAL OBLIGATIONS OF INDIA

The Universal Declaration of Human Rights, which is regarded as the codified source for international human rights law, enumerates multiple rights that showcase how the CAA may be acting in contradiction to this declaration. Article 15(2) of the Declaration states that no person shall be deprived of his citizenship arbitrarily. Based on this article, the international community created two treaty regimes to implement the essence of the article formally, namely, the Convention Relating to the Status of Stateless Persons, 1954 and the Convention on Reduction of Statelessness, 1961. Although the government has not commented on the

model of NRC that may be followed, the legislative dependency of the NRC on the CAA for its creation in itself renders a threat of statelessness for individuals who may be excluded or fail to register themselves in the NRC. This form of statelessness that emerges can be seen as a violation of the above-mentioned treaties that guide member states to not employ any discriminatory measures in treating stateless people.

However, India is not a member state to any of the mentioned treaties, rendering enforcement of the same to be difficult in both domestic and international courts. This abstention from the codified regimes of international law on statelessness also limits the role of international actors who may have used the pre-cursor of arbitrary deprivation of statelessness is a customary international law. The UNGA has also held this to be a fundamental principle of international law, however, there is a lack of overall consensus that can be derived from the non-participation from multiple countries in these treaty regimes. The abstention of India specifically from these international regimes also deprives rights to individuals, especially children, born in India, who may face a detriment from the disenfranchisement of their parents.

One of the few avenues remaining where India does have international obligations is the right of equality, which is enshrined in several international conventions, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). India is a signatory to both of these regimes, which enumerate the right to non-discrimination as a part of the right to equality, including indirect methods of discrimination that affect certain groups based on their ethnicity. The premier body of the United Nations on human rights, the United Nations Human Rights Council (UNHRC) has also released resolutions on the arbitrary deprivation of nationality, with India as a member of the HRC during the adoption of such resolutions. One of the key points that can be viewed as an overlap of the ICCPR and the Convention on Reduction of Statelessness is how States should not undertake any discriminatory measures through enacting or maintaining legislation arbitrarily depriving persons on the ground of religion, race, color, language, among other factors. Although as mentioned above, the conventions on statelessness cannot be relied on, certain other treaties can be substituted which give a

wider coverage under the umbrella of non-discrimination. Another example of such an umbrella is the Convention on the Elimination of All Forms of Racial Discrimination (CERD). The UNHRC organized an expert meeting on interpreting the 1961 statelessness convention and avoiding statelessness resulting from loss and deprivation of nationality. In the report released, an important observation was made regarding how any decision that may create a loss or deprivation of nationality should be proactive and predictable, and therefore cannot be retrospective in effect. However, if the CAA is implemented with any model of NRC, there will be some form of retrospective effect that will emerge given there is a cut-off date for creating the class of the exempted people.

The entire court-mandated-NRC exercise showcases the possibility of violations that can emerge by the virtue of how the combined exercise of NRC, Citizenship Act and the Foreigners Tribunal can lead to arbitrary deprivation of nationality, irrespective of how they are structured. The functional result of disfranchisement that emerges from simply being excluded from the NRC itself showcases arbitrariness. In this context, the abstention of India from the treaty regime on statelessness becomes problematic, as the treaty regime categorically balanced the consequences of deprivation of nationality with the interests of the state. It considered several factors such as the link of the person in question with the State, their economic, cultural and linguistic ties with the community and their length of residence, something which the NRC exercise in Assam showcased the Foreigners tribunal does not consider.

After the NRC exercise in Assam, reports of detention camps being set up to detain the illegal immigrants found were disclosed, with the National Human Rights Commission reporting abuse and ill-treatment of detainees. Any model of NRC followed will result in a certain number of individuals being categorized as illegal immigrants and will be detained in camps while awaiting deportation. Even if the country of origin of the individual is identifiable, the process of deportation can create a situation where individuals may be detained indefinitely, which creates scope for inhuman and cruel conditions to emerge. This clearly can be seen in contravention to other provisions of the ICCPR, that clearly state that no individual should be subject to any torture or cruel, inhuman treatment. Observance of international state practice in this context showcases how

several countries exploit the stateless nature of the individuals detained in such camps, given the lack of access to rights that accompany citizenship and the assurance of enforcement, either by the judiciary of the detaining state or the foreign ministry of the country of origin.

## CONCLUSION

Several international entities such as the High Commissioner for Refugees, Amnesty International, and other countries have criticized the discriminatory nature of CAA. However, the dependency of international law on municipal law for its primary mode of enforcement creates a limitation on the international community in providing any form of intervention. The ambiguities of the legislation in question are strongly complemented by the abstaining nature of India's international human rights law obligations in the context of refugees and stateless persons. The inherent issue emerging from this approach of India is the complete deprivation of rights of any individual that may be deemed as an illegal immigrant from an arbitrary process of disfranchisement. Neither the judiciary of India nor the international community can directly intervene in the executive actions that the government can conduct under any form of NRC exercise following the present CAA. The only plausible solution of determining whether CAA is discriminatory is challenging the Act on the grounds of whether it violates the Constitution of India, which guarantees equality as a fundamental right to all individuals.

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# Conversations on Citizenship: A Political Understanding of the Citizenship Amendment Act

Tarini Mehtani and Abhay Almal\*

*The establishment of the NRC and CAA challenged and highlighted multiple elements of India's democracy. Several facets were brought into question and are amid being redefined: the notion of citizenship and what it takes to become a citizen of India, what the constitution means, how it is to be interpreted and what is considered constitutional, what is national and anti-national, the role of citizens in showing dissent, and lastly the overall relationship between the state and its citizens. These terms mean different things to different groups of people to the extent that it has caused a polarization of a large portion of the population in terms of their religious identities. The result of these ideological differences has manifested into violent clashes between the two wings and between the government and its citizens. This commentary is divided into two parts. The first half of this commentary explores the nature of each ideological clash in the definitions of the terms mentioned above while the second half explores the features of the protests. The commentary aims to understand these two facets to explore what it means for India's democracy. The findings of this commentary are based upon interviews and conversations with protestors and academics in Political Science.*

## INTRODUCTION

Democracy is about representation. The fundamental requirement of democracy is that every person's interests must be represented. The contract between the state and its citizens is that the citizens give up their power to the state and in return the state caters to their needs and interests. When representation fails to fulfil or violates people's interests, it is their right to seize back the power given to the state. This is enabled by the right to freedom of speech which allows and requires dissent to be expressed in a democracy. When the government is not checked or held accountable, power is abused. If dissent is not expressed and demands are not voiced out, the interests of several groups, especially marginalized communities, are put at risk to be neglected and harmed. It is then not just the people's right, but their duty to express their dissent against the government. This can be done through the judiciary and the media, however when they become insufficient, the final alternative is for the people to protest.

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The CAA has been interpreted by the ideologically left-wing supporters to be discriminatory against the interests of Muslims seeking refuge in India. The NRC which was made for Assam consisted largely of Muslim names, signaling a bias against both Muslims living within and those seeking to live in India. Their interests therefore are being harmed by the CAA/NRC. This makes them obliged to protest to reinforce representation by the state.

### WHO IS A CITIZEN?

It is the citizens residing within a territory that form a nation. Citizenship is what ties an individual's allegiance to the government of that country and gives them the right to be protected by the state. Changing the definition and understanding of what is required to be a citizen has a larger impact on fabric of a nation as this change is likely to result in a change in the idea of the nation itself. By prioritizing citizenship to six religious minorities in other countries excluding Muslims, CAA acts to solidify religious identity as a criteria for citizenship by penning it in our legal doctrine. This is indicative of an ethno-nationalist idea of citizenship whereby those that share a common faith and ancestry form a nation. It does not align with the criteria for citizenship as laid out by the original Citizenship Act of 1955 which provides for acquisition of citizenship through birth, descent, naturalization and registration. The definition of the term 'secular' is also being challenged as people of different religions are being treated differently where one religious community is being excluded from the rest. To shift to a differential treatment does not align with the secular principle of equal treatment for people of all faiths. It is then not just a change in definition but change in the meaning of what makes a person eligible to be an Indian citizen. This, as a result, will have a direct effect on India's democratic and secular fabric.

### NATIONALISM

Taking to the streets however has sparked a debate of what is 'nationalist' and 'anti-nationalist'. The current rhetoric claims those who are in favour of the government are nationalist and while those that express dissent are anti-nationalist. Those that are 'pro-CAA' view those that are 'anti-CAA' as anti-nationals. The debate is not just about who is eligible to be an Indian national as discussed above but also what actions are loyal and disloyal to the nation. The fundamental right to free speech and debate and the citizen's duty to uphold the democracy through practices including inquiry and dissent is made conditional to the ideological position they take and the political party they speak against.

One part of the rhetoric of the pro-CAA and anti-CAA debate has been the demand to prove one's nationalism. The anti-CAA protestors have, as a result, used national symbols including the national flag, singing of the national anthem and reading of the preamble of the constitution at protests to appropriate the symbols of their opposition to not just prove their loyalty to the nation but also to delegitimize the opposition's claim to dismantle their movement. However, the idea of nationalism which opposes dissent and the increasing demands to prove one's loyalty to the nation is indicative of a change in the leading understanding of nationalism from a democratic form to consist of more ethno-centric and authoritarian elements.

### STATE LEGITIMACY

The trust the population has in the state and its institutions along with the ruling government is another factor that has been questioned during this movement. With a population that has been affected with the low availability of jobs, increase in unemployment rates and the declining economic growth, a sense of resentment and dissatisfaction has been growing. It can be argued that the CAA and NRC and the polarized responses towards them were tipping points to amplify the question of the government's legitimacy, which sparked the anti-CAA movement across the nation.

This resentment has also caused what has begun to be a renegotiation of the relationship between the state and its citizens. Those that are politically left and centre appear to be demanding for greater accountability from the government, are reclaiming their fundamental right to dissent and more importantly, demanding equal treatment and representation for all people based on secular principles. On the other hand, the groups that are in favour of the CAA and NRC are demanding a redefinition of India and an 'Indian National' based upon ethno-religious identities.

At the same time, the state's role in managing dissent as seen by the reports of police brutality and violence by the police upon protestors and universities has raised questions about the integrity of the police and riots in the states of Uttar Pradesh, New Delhi, Meghalaya among others has fuelled the distrust in the government. The state's attempts to suppress dissent using violence and the threat of violence upon citizens and members of the media displays a differing understanding of the responsibility the state has in allowing dissent.

## THE IMPACT OF A FACELESS MOVEMENT FOR THE NATURE OF PROTESTS

These protests have two distinct features which are significant in describing the state of India's democracy. The protests which began from 15th December 2019 till present do not have a specific leader and are hence 'faceless'. As a result, people who do not come from political backgrounds are given the stage to set the agenda and shape the direction of the movement. People from different castes, class and religions have gathered together to protest the CAA/NRC. The absence of a distinct leader has encouraged more women to lead the protests which has caused them to be more assertive of their role in the public domain. This is increasing democratic participation of women, especially Muslim women who were otherwise confined to the realm of their households. A face to the movement, many argue, would make it easier for opposing groups to delegitimize and dismantle the anti-CAA movement and so it is the facelessness that has played a large role in sustaining the protests for over two months. Most importantly though, the facelessness shows an increase in overall democratic participation as people do not need to rely on a leader for support or direction to shape the movement. Rather, the trajectory of the resistance has been formed by multiple groups across the nation which has added strength to it.

## LOCATION

The careful selection and creation of new protest sites during the movement has played a key role in sustaining the protests for over two months. While traditionally assigned protest sites such as Jantar Mantar and India Gate in New Delhi were used, the transformation of numerous Muslim ghettos such as Shaheen Bagh into protest sites has been symbolic for the movement.

These sites have garnered national and international attention as, firstly, they are not usual designated protest sites but are residential lower to middle income colonies and secondly because as they are Muslim colonies, they are physical representations of what the Anti-CAA/NRC movement has been ideologically saying. These reasons are also why sites like Shaheen Bagh have sustained for over eighty days and have been protected from being appropriated. Shaheen Bagh has become a symbol of the anti-CAA movement which shows the relevance a location can have on carrying forward a protest.

## FUTURE OF PROTESTS

The absence of a leader and of a strong opposition to the ruling party is likely to pose as a limitation to the future of the movement. A leader will be required in

the long run to channelize the movement into an independent political party or organisation to prevent its appropriation by other political parties. As observed in the history of protests in India dating back to the time of the Emergency, the student protests led by J.P. Narayan led to the creation of the Janata Party. The movement led by Anna Hazare led to the creation of the Aam Aadmi Party. Movements which did not transition into independent organisations such as the Occupy Movement in 2011 dissembled due to the lack of unity and direction to hold together supporters with varying interests. Therefore, it is imperative for the sustenance of the voice of dissent that has arisen, a unique political organisation is created that can act as a strong opposition to the current government, to maintain democracy.

### CONCLUSION

The CAA/NRC has not only redefined the state's relation with its citizens and the ideas of nationalism but has sparked a movement and highlighted the role of protests. This has in turn challenged the nature of protests and have brought citizen participation to the frontlines. After seventy years of India's existence as an independent nation state, the year 2019-2020 marks the dawn of a new age for the democracy in which the idea of nationalism, citizenship, dissent, and the relationship between the state and its people are being negotiated.

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