

Citizenship (Amendment) Act, 2019: The Pernicious Outcomes of the Altering Equation of Citizenship in India

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Citizenship has played an essential role in addressing societal alteration and defining the relationship between the nation-state and the individuals in the contemporary world. Citizenship law establishes not only legal but also constitutional recognition of citizens of a nation-state. This essay briefly focuses on the recently amended Citizenship (Amendment) Act, 2019 of the Citizenship Act, 1955. On the one hand, it grants Indian citizenship to illegal immigrants from six religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians) living in India; who had escaped religious persecution or the possibility of religious persecution in Pakistan, Bangladesh, and Afghanistan before December 2014. On the other hand, this Act is considered by some as unfair or unjustifiable as it not only violates the Indian Constitution but it also excludes other illegal immigrants (such as Rohingyas or Buddhist Tibetan). As a result, this controversial Act led to outrage and protests not only across India but also overseas. In India, political organizations, educational institutions, civil society, and Muslim organizations are among the institutions that dogmatically opposing the Act. This Act faced several criticisms and its dissatisfaction was explicitly seen among the people at the national and international levels. The passage of the Act forthwith provokes the question, is it promoting discrimination based on religion? This article briefly argues that the Citizenship (Amendment) Act, 2019, is unconstitutional and unjustified under religious grounds.

Keywords: Citizenship, India, Discrimination, Religion, Protests

Introduction

Citizenship has been a significant factor in understanding societal alteration in nation-states in the contemporary period (Roy, 2010). In India, the legal and constitutional terminology and citizenship conundrum indicate that citizenship ambiguously oscillates between the notion of inclusion and exclusion in the sphere of legal, social, political institutions, which is referred to as 'crisis in citizenship' (Roy, 2010) or as 'disturbed zones of citizenship within' (Chatterjee, 1997). The multidimensionality of inequality and the various poles of disadvantages must be determined and calculated in the process of democratic citizenship. On the one hand, the state's inability to act for the people's benefit (including citizens and non-citizens) and the subsequent crisis of legitimacy reflects one of the aspects of the 'disturbed zones of citizenship within' (Chatterjee, 1997). On the other hand, the mentioned issue of the Citizenship (Amendment) Act, 2019 in India also reflects one

of the gestures of the 'disturbed zones of citizenship within.' In brief, two legislations define India's citizenship. First, Part II of India's Constitution (ranged from Article 5 to 11), titled "citizenship," deals with the question of citizenship. Second, the Citizenship Act, 1955 with consecutive amendments in 1986, 1992, 2003, 2005, and 2019.

The Citizenship (Amendment) Bill, one of the amendments of the Citizenship Act, 1955, was proposed in Parliament in July 2016. The lower house of the Parliament of India (*Lok Sabha*) passed the Citizenship (Amendment) Bill on January 8, 2019, despite the intense dissent and resistance from the opposition, including social, educational, and political organizations (Government of India, 2019). The Bill was also passed by the Parliament's upper house (*Rajya Sabha*) of India on December 11, 2019. The Citizenship (Amendment) Act, 2019, an Act to amend the Citizenship Act of 1955, was enacted by the Parliament in the seventieth year of the Republic of India.

The proviso shall be inserted in the Citizenship Act, 1955, in section 2 (1) (b):

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as an illegal migrant* for the purposes of this Act" (Government of India, 2019).

Another, the proviso shall be inserted in the Citizenship Act, 1955, in section 6 (d):

"Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as 'not less than five years' in place of 'not less than eleven years'" (Government of India, 2019).

The Act is not only under controversy for allegedly undermining the secular foundations of the Indian Constitution by making a classification based on religion or religion-based discrimination by excluding other communities (for instance, Muslim Rohingyas from Buddhist-majority Myanmar, Buddhist Tibetan, Muslim Uighurs from China, Jews, Muslim minorities (Shias particularly, Hazaras and Ahmadiyya's)) but also violating the principle of equality enshrined in article 14 of the Constitution of India (Poddar, 2018).



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The Pernicious Outcomes of the Altering Equation of Citizenship in Citizenship (Amendment) Act, 2019

The enactment of the Citizenship (Amendment) Act, 2019, has various pros and cons. Shitole (2020) mentioned that many pro-groups and anti-groups are involved in the discussions of the Citizenship (Amendment) Act, 2019. Pro-groups see the Act as a step into protecting vulnerable religious groups. As explicitly seen, Pakistan, Afghanistan, and Bangladesh have a proven track record in the persecution of religious minorities, which can be seen as a continuous decrease in the minority population since the 1950s. Due to which millions of religious minorities have not only lost their freedom but also risked their lives and escaped to take refuge in the neighbouring countries. Some of them also came to India and had been struggling for their existence for decades. According to pro-groups, as a democratic nation, India has a moral obligation to not only protect such vulnerable refugees and migrants but also to assist and care for them. Justifying the Act on this basis, pro-groups consider it to be a 'special class of religious minorities or minority-based classifications' (Shitole, 2020), not a religion-based classification.

Anti-groups have questioned the adoption of 'religion' (Shitole, 2020) as a citizenship rule in this Act, which is clearly visible from the inclusion of some groups and exclusion of others. India is a secular nation, and 'secularism' comes under the basic foundation of the Indian Constitution. And the explicit introduction of 'religion' in the Citizenship (Amendment) Act, 2019 is entirely against the character of India's Constitution. The crux of the issue is the 'fundamental right to equality.' Part III of India's

Constitution provides the 'right to equality (both citizens and non-citizen) before the law under Article 14 and 'equal protection of law' under Article 15, which prohibits discrimination, including discrimination based on religion, race, and class (Shitole, 2020). The protection of citizens and non-citizens can be explicitly seen in India's Constitution's preamble (justice, liberty, and equality). On the one hand, no legislation should be unconstitutional and unjustified based on the grounds of religion, race, and class. On the other hand, the classification must not be based on "palpable arbitrariness" rather based on "an intelligible principle having a reasonable relation to the object which the legislature seeks to attain" (Chandrachud, 2020, 23). Mihika Poddar writes, "the differentiation might be permissible if based on substantial factual difference, but the aims cannot be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind" (Poddar, 2018, 9).

Instead, the Act states contrary elements of the dignity of the Constitution of India without any substantial factual difference. That is why Alam Bhat expressed his concern that this Act violates India's Constitution because the classification it adopts is clearly unjustified, unfair, and unconstitutional (Bhat, 2019). However, Abhinav Chandrachud also found this Act's provisions against the backdrop of the citizenship provisions of the Indian Constitution (Chandrachud, 2020). He stated four persuasive arguments that the Act is unconstitutional, unfair, and unjustified. First, it includes six religious communities (Hindu, Sikh, Buddhist, Jain, Parsi, and Christian) but turns a blind eye towards other religious communities. Second, the inclusion of Pakistan, Bangladesh, Afghanistan and the exclusion of neighbouring countries like Nepal, Sri Lanka, Bhutan, or the non-neighbouring countries. Third, the limitation of the time period in the Act's proviso. Fourth, the relaxation in residence requirements.

The newly enacted Citizenship (Amendment) Act, 2019, had violent consequences in which people's dissatisfaction was seen explicitly in nationwide protests to oppose the enactment of this Act. Aggressive demonstrations shook several parts of the country. The issue of unconstitutionality and the religious factor in the Act provoked political oppositions, educational institutions, civil society, and Muslim organizations (The Hindu, 2019a). The nationwide protests started in Assam and spread to Delhi, Tripura, Mangalore, Bangalore, Meghalaya, Arunachal Pradesh, Chennai, Uttar Pradesh, Ahmedabad, Hyderabad. The solidarity with the protesters was seen not only in India but also overseas (Acharjee, 2020). The demonstrations intensified when anonymous mobs targeted respected institutions such as Jamia Millia Islamia, Jawaharlal Nehru University, and the Aligarh Muslim University (The Hindu, 2019b). The leaders of the student federation were brutally assaulted, and the institutions were vandalized. And more than 200 students were injured and 100 detained by the police (Sangeetha & Jacob, 2020). The States of Maharashtra, Jharkhand, Telangana, Panjab, Kerala, Chhattisgarh, West Bengal, Delhi, Madhya Pradesh, Puducherry have vociferously declared that the Act will not be implemented in these states; which eventually resulted in a tug-of-war between the Centre and the States (Sangeetha & Jacob, 2020). As a result, this Act not only gave rise to negative feelings among non-citizens in India but also questioned their protection.

In addition, Mihika Poddar (2018) noticed another issue that the Act breaches India's obligation for non-discrimination under the covenant of international laws, especially the International Covenant on Civil and Political Rights (ICCPR). Moreover, it is also incompatible with Article 51(c) of the Indian Constitution, which requires India to respect its international obligations (Poddar, 2018). Under the law of the right to equality, Article 14 in India's Constitution, no legislation should be unconstitutional and unjustified under religious grounds. To eliminate other religious communities on the Act's proviso

demonstrates discrimination on the ground of religion, race, and class. The Act excludes neighbouring countries such as Nepal, Sri Lanka, Bhutan, or non-neighbouring countries, from where oppressed members of specified religious groups may also be in India, reflecting the unconstitutional behaviour and unjustified classification of the Act. By restricting the time period, those who enter after December 31, 2014, have no rights even if they have suffered religious persecution in their countries. Hence, it can be said that this Act not only ostensibly undermines India's humanitarian purpose and moral obligations but also gesticulates the legislation's discriminatory behaviour. Under this Act, the residency requirement for citizenship for these six religious minorities has been reduced from eleven to five years. However, excluded communities still have to reach eleven years of residency requirement for citizenship by naturalization.

In the 21st century, India is an emerging power and has played an essential and vital role globally through its democratic and secular credentials. The Act is not just an internal affair but also has a prominent international reach. The ill-decision under secular democracy tarnishes the image of the country across the world. The United Nations Human Rights Office staunchly opposed the discriminatory Act and termed it "fundamentally discriminatory in nature" (Lauren, 2019, para. 1). The nature of the Act is utterly biased as it legitimates the discrimination based on religious grounds. However, India's current prime minister stated that the Citizenship (Amendment) Bill aims to give justice to these religious minorities in mentioned countries who faced religious persecution or feared persecution and took refuge in India. He added that "the passage of the Citizenship (Amendment) Bill by Parliament is a landmark day for India and its ethos of compassion and brotherhood" (The Economic Times, 2019). Consequently, the Act will alleviate the suffering of many who have faced persecution for years (Regan et al., 2019). Although helping immigrants is undoubtedly a decisive move on humanitarian grounds, it cannot be limited to cherry-picking by making classifications based on religion (Shitole, 2020). That's why the overarching chaos of upheaval in India against the Act is driven by questions of its constitutionality and religious factor of the inclusion of particular groups and excluding others based on religious grounds.

Conclusion

The Act represents a broader sectarian agenda by giving preferences to non-Muslims beneficiaries. Various arguments indicated that the Act is unconstitutional, unjustified, and unfair in its nature because it provides differential treatment to illegal immigrants on religious grounds, which counters the countries' democratic principles enshrined in its own Constitution. Political upheavals and social outrages against the Act are motivated by a deep commitment to constitutionalism and democratic values in India. More concrete solutions, like a codification of the appropriate refugee law that is still absent in India, should have been examined by the government. Surprisingly, India has not yet developed any proper refugee policy; there is no parliamentary legislation that explicitly ensures the recognition or enforcement of refugees' rights or deals with the issue of illegal immigrants in India. India is home to a significant immigrant community; it should follow the humanitarian grounds in the treatment of refugees and illegal immigrants, including the non-refoulement concept.

Notes

* Illegal immigrant is a foreigner who enters India illegally; i.e., without a valid travel document like a visa and passport or enters India legally, but stays beyond the period permitted in their travel documents.

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