

## RESCRUTINISING THE CITIZENSHIP OF INDIA

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### Abstract

The current government has been facing several controversies for its non-secular methods and religion-based bias. The recent amendment to the citizenship bill in 2019 seeks to protect illegal immigrants from minority communities of Indian origin, but a closer look at the provisions reveals a selection of beneficiaries on religious grounds. This act purportedly provides differential treatment to immigrants on the basis of their country of origin, religion, date of entry and place of residence in India, which is a flagrant violation of our certain constitutional provisions. The bill is even under criticism or eroding the secular foundation of the Indian constitution and such malice should be dealt with an iron hand in the larger public interest which otherwise leads to the normalisation of identitarian violence against Muslims and Dalits, rendering their citizenship even more precarious. This is considered as the ultimate victory of Mohammed Ali Jinnah's thinking over that of Mahatma Gandhi's, asserting that the exercise of granting citizenship on the basis of religion will reduce India to a Hindutva version of Pakistan. This paper attempts to analyse the discriminations that this Act allegedly facilitates, under the light of India's obligations towards The Constitution and the International Laws. It will mainly include a historical and political backdrop along with the legal and technical issues which not only intrude the system of justice in India but also impair the norms of the international human rights law. It also involves the responses of different groups with their arguments and positions in retaliation to the Act.

**Keywords:** Citizenship, Naturalisation, secularism, religion, discrimination, illegal immigrants, Indian Constitution, International law, CAA, NRC, BJP.

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## INTRODUCTION

India's composite culture is one of its greatest strengths. In order to understand the idea of India, we should visualise yarns of different colours, which are beautiful on their own, but when combined together to weave a pattern, the fabric becomes better as a culmination of the diversity. The individual yarns represent all the various castes, creeds, religions and regional affiliations, languages and dialects which co-exist in our vast land. The beauty in the fabric of India comes from the assimilation of all the diversity it encapsulates. The constitution of India is the force that brings these individual elements together and as a result, gives strength to the idea of India and what it means to be a citizen of this wonderful country. But this constitution is run by the nationalists, politicians, lawmakers and protectors of the law; who are governed by many other collateral ideas and propagandas other than the sole aim of upholding the constitution. The leaders of the world are mostly seen as safekeeping their side of the people instead of leading the world as a whole. All vulnerabilities hence, lie in political power which can change likely aligned minds too and concentrated political power is the most dangerous weapon on earth. Idealism is the noble toga that gentlemen drape over their will to power.

In India the idea of Akhand-Bharat has been long preached and wanted by most citizens, to be true. This must be accepted after winding up all arguments at the end of the day. The political

dominance of the brand of Hindu nationalism amongst a few, has now called into question the future viability of the country's secularist tradition and commitment to diversity. Since independence, India has been fighting to sustain democratic governance in the face of striking ethnic, linguistic and religious diversity. The Indian National Congress had sided for the Indian brand of secularism carved to hold the country's disparate communities together under one roof. The Hindu Nationalists, however, while gaining dominance, have their various ideological affiliates who harbour a starkly different view of India as a majoritarian nation-state. These tensions are becoming inherent nowadays, veiled behind the ruling party's blueprint. The promotions of these ethno-religious identities have created much chaos which was not truly the intention of the architects of this nation. Even before the Hindutva forces, the Congress party had already started crushing secularism by drawing support of different voting blocs and by stoking divisive issues of social identity. The judiciary at lower levels also had adopted a majoritarian undertone in some cases. Whether secularism can be held as the defining ideology for the country will depend on a combination of political forces – namely the government's future electoral success and the policies the opposition adopts to counter the ruling party.

## AN INSIGHT INTO THE ACT

Amongst the many deuces that India has been negotiating, one is between the marked and the unmarked citizens and it is this form that will be our centre of concern here. We will discuss here the citizenship regime and laws of India while mainly focusing on the latest Citizenship Amendment Act of 2019 and its repercussions on the people of India along with its political effects. The citizenship regime of India was crafted in the aftermath of the subcontinent's partition which took place deeply upon a religious base, and coloured a lot of discussion on the Indian Citizenship that took place in the Constituent Assembly.<sup>1</sup> The Citizenship (Amendment) Act 2019 was passed on 11 December 2019 by the Indian Parliament. The Act of 1955 was amended by providing a path to Indian citizenship for illegal immigrants of Hindu, Sikh, Buddhist, Jain, Parsi and Christian religious minorities, who suffer persecution in Pakistan, Bangladesh and Afghanistan before December 2014.<sup>2</sup> Muslims from those countries however were not given such eligibility as it is clear from the language of the Act. This is the first instance where religion is being overtly used as a criterion for Citizenship under the Indian Law.<sup>3</sup> Thus, shortly, illegal immigrants<sup>4</sup> are not eligible for citizenship by naturalisation,

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<sup>1</sup> Constituent Assembly of India debates vol. IX, 10 Aug 1949-12, Aug 1949.

<sup>2</sup> Citizenship Amendment Bill: *India's new anti-Muslim law explained*, BBC News, Dec 11, 2019.

<sup>3</sup> Slater, Joanna, *Why protests are erupting over India's new citizenship law*, Washington Post, Dec 17, 2019.

<sup>4</sup> Citizenship Act 1955, no.57 of 1955, Acts of Parliament (India), sec.2, cl.(b.)

being specifically excluded under s.6 of the Act and the Government has issued a notification exempting such migrants from identified religious groups from the three countries from the provisions of the Foreigners Act 1946, and the Passport (entry into India) Act 1920, which earlier used to govern the Citizenship issues in India, exempting them from imprisonment and deportation thereunder.<sup>5</sup> Secondly, the bill also adds a proviso for the qualification of naturalisation that requires a minimum of 11 years of residence in the country<sup>6</sup> which basically makes the identified religious groups from the three mentioned countries eligible for citizenship by naturalisation after only 6 years of residence instead of 11; while similarly placed, Muslim immigrants will not be eligible without waiting the full 11 years, which is downright discriminatory.

This Act of 1955 has gone through several amendments in the past in 1986, 1992, 2003, 2005, 2015 and finally, in 2019 which gave rise to large scale protests recently. The 1986 amendment confined citizenship by birth by requiring at least one parent to be an Indian citizen. The 2003 amendment further restricted that aspect by requiring a parent to not be an illegal immigrant and also mandated the government of India to construct a National Register of Citizens. Then

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<sup>5</sup> Passport (entry into India) amendment rules 2015; Foreigners (amendment) Order 2015; Passport (entry into India) amendment rules 2016; Foreigners (amendment) Order 2016.

<sup>6</sup> The Citizenship Act 1955, no.57 of 1955, Acts of Parliament (India), third schedule, cl.(d).

came the 2019 amendment which provided an easier pathway to citizenship for selected persecuted minorities from the neighbouring Muslim majority countries of Pakistan, Afghanistan and Bangladesh. This way the current Indian nationality law follows the *jus sanguinis* (citizenship by descent) as opposed to *jus soli* (citizenship by right of birth within the territory) which was practiced during Nehruvian times.

The Trump administration's discriminatory immigration ban<sup>7</sup> in 2017 stole the focus in secular debates and attracted major criticisms worldwide; the Indian Government's latest amendments to the Citizenship Act is at par with this at the global stage. Debates and suspicions arise on the issue of why Muslims have been seen as a segregated community, and specifically omitted from the Act. The government defends its position by steering to extend protection of those minorities who fled religious persecution in the neighbouring Muslim majority countries.<sup>8</sup> The preamble of the Act itself clarifies that it does not concern all religious minorities in all neighbouring countries and this does not sit well with the government's seemingly noble intent. It excludes many other communities that are similarly persecuted like

the Rohingyas<sup>9</sup>, Hazaras, Ahmadis, Buddhist Tibetans and, Uighurs. The concept argued here relates to why Muslim minorities, who are similarly persecuted, are not being reached out with such help by India when Islam is the second-largest religion in India comprising of 14.2%<sup>10</sup> of the country's population. The Act has faced opposition for violation of Article 14 of the Indian Constitution that grants the right to equality to all persons, and thus provides differential treatment to illegal migrants based on religion. It also supposedly violates India's non-discrimination obligations under public International Law, the ICCPR (International Covenant on Civil and Political Rights); disappoints the Human Rights Commission and these are inconsistent with Article 51(c) of the Constitution that requires India to respect its international obligations.

## HISTORY

As it is envisioned under the Indian constitution that the concept of citizenship has gone through several transformations and it is not the first time that religion is being considered for the bestowal of citizenship in India. Even our country itself was partitioned on the basis of religion and then became secular; that is the reason part 2 of the Indian constitution

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<sup>7</sup> Exec Order no. 13769, 82 Fed Reg 8977, (USA), (1 Feb 2017).

<sup>8</sup> Anita Joshua, *Trump order parallel in Modi bill – Citizenship bill before House panel criticised for religious discrimination*, The Telegraph (New Delhi), Jan 30, 2017).

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<sup>9</sup>Vignesh Radhakrishnan, Data | Minorities within majority face persecution in Indian subcontinent (20 DECEMBER 2019 12:29 IST) <https://www.thehindu.com/data/data-persecution-of-minorities-among-indias-neighbours/article30338662.ece/amp/>

<sup>10</sup> 2011 census data (Firstpost. 26 Aug 2015).

specifically deals with the concept of citizenship<sup>11</sup> (Art. 5-11) and Art. 11 gives the fractured power to the parliament to regulate all matters related to citizenship. In 2004, the citizenship rules were amended such that the terminology of illegal immigrants was done away with for “minority Hindus with Pakistani citizenship”.<sup>12</sup> This was the first time that religion was made an explicit ground to grant citizenship, cementing the move away from the religion-neutral constitutional provisions.<sup>13</sup>

Religious persecution, which is the systematic mistreatment of an individual as a response to their religion, belief or affiliation, caused large scale migration of people into India from its neighbourhood countries. For instance, the influx of Parsis from Iran to India because of religious persecution between the 12<sup>th</sup> to the 20<sup>th</sup> century; not only that, but in 1947, when India got independence there was a gigantic scale movement of people across the border of India and Pakistan which too caused religious persecution of minority communities. At that time in 1950, to settle everything, an agreement between the Indian Prime Minister Jawahar Lal Nehru and Pakistani Prime Minister Liaquat Ali Khan<sup>14</sup> was signed to secure the rights of the minorities in each country. It was signed

because there was massive communal rioting such as the East Pakistan riot and the Noakhali riot and as per estimates over a million Hindus and Muslims migrated to India. During Bangladesh’s freedom movement in 1960-71, the Soviet war in Afghanistan that lasted for a period of 9 years from December 1979 to February 1989 caused large scale migration of people into India. There was a similar situation in the period between 1980-2000 when Tamils from Sri Lanka and Rohingyas from Myanmar in 2015-17 also migrated to India. But, according to the census of 2001, migration from Pakistan, Bangladesh and Afghanistan were in large numbers and all the above mentioned countries are Islamic with a Muslim majority and have caused the religious persecution of minority communities which is continued till date. Ultimately, people are displaced from their native land and they are doomed to suffer physically, mentally and socially.

In rush of a large number of people in India coming from different countries affected the whole country, especially the north-eastern states which triggered deep anxieties among the people including fear of demographic change, loss of livelihood, loss of opportunities and the fear that their indigenous culture would be destroyed. To discuss historically, there are various incidents that had taken place that enlarged the fear of people, such as when there were tea plantations in the 1820s and 1830s, there was large scale immigration from East Bengal to Assam whereby the expansion of the

<sup>11</sup> Constitution of India – 1950.

<sup>12</sup> Citizenship Amendment Rules 2004, sec. 3, cl. 2; Citizenship rules 1956, rule 8A.

<sup>13</sup> NIRAJA GOPAL JAYAL, CITIZENSHIP, (Sujit Choudhary, Madhav Khosla and Pratap Bhanu Mehta (eds)), *The Oxford Handbook of the Indian Constitution* (Oxford University Press 2016) 163–179.

<sup>14</sup> Nehru- Liaquat pact, 8 Apr, 1950.

industry in the 1850s led to a large number of jobs being provided. To grab such job opportunities, many labourers came from different parts including Bengal. After that, at the beginning of 1920s, the Muslim population had increased rapidly. Assam was affected by an illegal influx of Muslims from East Bengal and these illegal immigrants encroached upon lands being used as grazing reserves which were supported by the communal policies of the Assam Provincial Muslim league under the leadership of S.M Sadullah. In 1930-40 in Assam, when M.P Hiralal Patwari died and there was a need for re-election to fill his seat in the Mangaldoi Lok Sabha, the registered voter's list was viewed. It revealed to the public that the list included a large number of illegal immigrants. The concern of an increasing number of refugees arriving from East Bengal, which later was the newly formed East Pakistan in the 1940s, created tensions among indigenous Assamese people as a result of which the Assam movement against illegal immigrants was led by the All Assam Student Union (AASU) and the All Assam Ganga Sangram Parishad (AAGSP). They demanded that the election be postponed until the names of the foreign nationals were deleted from the electoral rolls. They also developed a program of protest to compel the Indian government to identify and expel illegal immigrants as a result of which the Assam Accord was implemented by the government. According to this, those who came to Assam after 24<sup>th</sup> March, 1971, will not be considered as

a citizen of Assam, irrespective of their religion<sup>15</sup>. This was done in order to protect and provide constitutional, legislative and administrative safeguard to the indigenous Assamese people.

In 1983, after a massive influx of migrants from Bangladesh, the Illegal Migrants (Determination by Tribunal) Act (IMDT Act) was laid down to detect them and this, was applicable only in Assam. Hence, the statutory framework to deal with migration in Assam was the IMDT Act, 1983 and section 6A of the Citizenship Act of 1955. This IMDT Act was challenged in the Supreme Court in the case of Sarbananda Sonuwal v. Union of India<sup>16</sup>, because it made certain departures from the Foreigners Act 1946 and Foreigner Tribunal Order 1964. Hence, IMDT was struck down and held as unconstitutional but illegal immigration and political turmoil continued in Assam. This decided the contours of the discourse on the NRC. Sonuwal was the BJP Chief Minister of Assam and a former president of the AASU.<sup>17</sup>

The initial public reaction to the draft NRC that rejected the citizenship claims of four million and 12% of the residents of Assam was muted. Now that Bengali-speaking Hindus who felt

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<sup>15</sup> Vignesh Radhakrishnan, *Data / Minorities within majority face persecution in Indian subcontinent* (20 DECEMBER 2019 12:29 IST) <https://www.thehindu.com/data/data-persecution-of-minorities-among-indias-neighbours/article30338662.ece/amp/>.

<sup>16</sup> AIR (2005) SC 2920.

<sup>17</sup> V. Venkatesan, *The NRC case: The Supreme Court's role* (Oct 11, 2019),

persecuted in East Pakistan – thereafter Bangladesh - can now come into Assam and become Indian citizens under the new legislation<sup>18</sup>. The Assamese Hindus have been hit hard because now they are fighting two intruders.

After the elections in 2019, all the North-Eastern states have chief ministers who are a part of the BJP-led North-East Democratic Alliance (NEDA) formed in 2016. However, when there should have been the saffron party's hour of glory in the region, there is a state of turmoil. This is because BJP will pursue its national agenda even if it clashes with the imperatives in the North-east and also, being clearly focused on its core beliefs; it is yet to grasp the unique complexities of the region.<sup>19</sup>

According to **Aristotle** "The State is a compound made of citizens; and this compels us to consider who should properly be called a citizen and what a citizen really is, so that they can't be disregarded with their rights; but the concept of citizenship in our country is very disputed which was indispensable to be recognized by the government."<sup>20</sup>

#### EFFECT ON NORTHEAST

<sup>18</sup> Subir Roy, *In Its Hour of Glory, Why Is the BJP in Turmoil in the Northeast* (February 7, 2019) accessed July 15, 2020, <https://thewire.in/rights/in-its-hour-of-glory-why-is-the-bjp-in-turmoil-in-the-northeast>.

<sup>19</sup> Ibid.

<sup>20</sup> Aristotle, *Aristotle's Political Theory*, (first published Wed Jul 1, 1998; substantive revision, Tue, Nov 7, 2017. Accessed 7 July 2020), <https://plato.stanford.edu/entries/aristotle-politics/>

The sole aim of CAA, NRC and NPR has always been to divide the people communally behind the propagandist agendas of politicians just like these are now being used to fool people nationwide. There is no correct political position to be assumed on this issue, except the one which aims at addressing long-standing historical demands without resulting in mass displacement and injury to anyone.<sup>21</sup>

Now, the situation in North-east India regarding this is starkly different as they face other kinds of unthinkable discriminations based on their tribe, caste, creed, etc. With this, the definition of the indigenous in each state will begin a new political puzzle. This is the double tragedy: while tribal rights have been under attack for centuries (The Tribal areas of Assam, Meghalaya, Mizoram and Tripura have been excluded from the applicability of CAA)<sup>22</sup>, we cannot ignore the plight of non-tribal citizens of the Northeast, many of whom have fled due to persecution and massacres during the partition and the 1971 genocide.<sup>23</sup>

Now the threat of loss of the cultural and linguistic identities of the North-Eastern

<sup>21</sup> August 8, 2018, (accessed 12 July 2020) *Riot Collective*, <http://www.raiot.in/do-the-tribals-of-assam-have-an-opinion-on-nrc/>.

<sup>22</sup> Sangeeta Ojha, *Citizenship Amendment Act: Govt busts myths*, (Dec 10, 2019), <https://www.livemint.com/news/india/citizenship-amendment-act-govt-busts-myths-11576477654256.html>.

<sup>23</sup> (15 July 2020) <https://thewire.in/rights/caa-protest-northeast-indigenous> Jan 5.

communities has been topped with the determination of citizenship on religious lines. The new CAA is supported by the government but it rejects the updated NRC in Assam. It also violates the cut-off date provided in the Assam Accord. Now the non-Muslim Bangladeshi immigrants who came after the cut-off date will take benefit of this to claim citizenship. The Inner Line Permit (ILP) under the Bengal Eastern Frontier Regulation, 1873, to prevent outsiders from intruding these North-Eastern states is being pushed only in Manipur excluding the others by the government which has spurred a lot of retaliation.<sup>24</sup> Therefore, the long rounds of protests by the people of North-east are not baseless.

### DOES THE CAA HAMPER CONSTITUTIONAL PROVISIONS?

There are five different ways<sup>25</sup> of acquiring citizenship of India by birth, descent, registration, naturalisation and incorporation of some territory into India. But, shockingly the recent Citizenship Amendment Act-2019 provides citizenship in an entirely different genre which is not only being said to be discriminatory under Art.14<sup>26</sup> but also against the fundamental philosophy of the Constitution of India. The defence of “Reasonable Class-

ification” that has been taken by the government under Art. 14 of the Indian constitution is not suitable as the government has excluded minorities in Muslim sects such as the Shias, Balochs and Ahmediyas who also face maximum religious persecution but no intellection for such exclusion was given for this. The government also has nothing to say regarding why the others persecuted communities like Rohingyas from Myanmar, Madhesis from Nepal, Tamil Elam from Sri Lanka and Muslims from China have been conspicuously ignored from the purview of this Act. The government has made class legislation which is in contravention of the principles of Constitution. The class includes people who are Hindus, Jains, Parsis, Buddhists, and Christians who have come to India from Pakistan, Afghanistan and Bangladesh.

The core matter is regarding the classification on the basis of which citizenship will be given in India. This is fundamentally unconstitutional. It is in contravention of the Preamble as well as Article 15<sup>27</sup>, Article 25<sup>28</sup>, Article 29<sup>29</sup>, and Art. 253 of the Indian Constitution which puts upon India an obligation to respect the International Law in its true spirit. The bill is a complete violation of our constitutional principles which explicitly prohibit religion-based discrimination under the above mentioned articles. The act is

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<sup>24</sup>Sushanta Talukdar, *CAA: The north-eastern quagmire* (July 17, 2020) <https://frontline.thehindu.com/cover-story/article30431616.ece>.

<sup>25</sup> Citizenship Act of 1955, no.57 of 1955, Acts of Parliament (India).

<sup>26</sup> Right to equality under The Indian Constitution.

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<sup>27</sup> Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

<sup>28</sup> Freedom of conscience and free profession, practice and propagation of religion.

<sup>29</sup> Protection of interests of minorities.



also against the guidelines for the federal institutes governing the states of India (DPSP) under Art. 51C of the Indian constitution. Both Fundamental Rights and DPSP, as per the Supreme Court judgment in the *Minerva Mills case*<sup>30</sup>, are complementary and supplementary to each other and are the basic structure of the Indian constitution. Even the idea of our nation as given by Mahatma Gandhi, Jawaharlal Nehru, Maulana Azad and Dr. Ambedkar says that religion cannot determine nationhood but the Citizenship (Amendment) Act, 2019 undermines this fundamental tenet of the Constitution.<sup>31</sup>

Under the Indian constitution there are certain fundamental rights which are available to the citizens like Art.19. A few of them, like Art.14 or Art.21 are available to both citizens as well as non-citizens, except the alien enemies and in certain other cases.<sup>32</sup> For example, when the question arose about the Chakma refugees being undocumented immigrants from Bangladesh; the court observed that the fundamental right to life and liberty guaranteed by Article 21 of the Indian Constitution is also available to the Chakmas, though they were not Indian citizens. In this light, the CAB is unconstitutional as it

violates both Articles 14 and 21 of the constitution.

India has always protected human rights, minority rights and provided social justice and thus, has maintained a global position as a world leader since independence. But, after the enactment of the Citizenship Amendment Bill - 2019, India has lost its position in the eyes of other International Organisations and nations who also, at certain points, ridiculed this Act. The CAA is extremely dangerous for India's unity, diversity and its secular identity and is also defying the doctrine of Basic Structure as propounded by the Supreme Court in *Keshvanand Bharti (1973) case*<sup>33</sup>, hence it is ultra-vires ab-initio.

## RELEVANCY TO THE INTERNATIONAL LAWS

India's former foreign secretary Shivshankar Menon himself spoke at an event where he said that, "The government's amendment to the Citizenship Act was a self-inflicted goal which has only isolated India and has resulted in the country being hyphenated with Pakistan as an intolerant state".<sup>34</sup>

When several political and military disturbances that revolve around ethnic and religious

<sup>30</sup> *Minerva Mills v. Union of India*, AIR (1980) SC 1789.

<sup>31</sup> *Fundamentally Unconstitutional: Congress Opposes Cabinet's Citizenship Amendment Bill*, 04 Dec 2019 04:53 PM (IST), (ABP news bureau) <https://news.abplive.com/news/india/citizenship-amendment-bill-congress-on-union-cabinet-parliament-winter-session-1118505>.

<sup>32</sup> *National Human Rights Commission v. State of Arunachal Pradesh*, 1996 SCC (1) 742.

<sup>33</sup> *Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr.* (1973) 4 SCC 225.

<sup>34</sup> Shivshankar Menon, *India has 'isolated' itself through CAA*: Former foreign secretary, (Jan 3, 2020, 08.08 PM IST) <https://economictimes.indiatimes.com/news/politics-and-nation/articleshow/73083435.cms>.

identities in different parts of the globe are making news, the non-discrimination obligations under international law gain prime importance.

The tales of the unjust nature of the current CAA have reached far beyond India and have intruded the International Justice system too, involving remarks and judgements from various nations and international organisations of the World, which makes quite an impact. The global response to CAA has not been very positive. It is being discussed worldwide about how this Act contradicts certain human rights which are recognised internationally<sup>35</sup> and also contravenes some international treaties and agreements, which India is a signatory to. The perception of India has changed after this contentious law was passed. It violates Art. 3 of the Convention on Torture, 1984 of which India is a signatory and which says that no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, which is not ratified but considered as customary law. Hence, it should be followed by signatory parties or else it will be against the principle of international law (*jus cogens* and *obligatio erga omnes*). The Indian Constitution too, under Art. 51C imposes a duty on the state to respect international laws and treaties together with Art 253, which talks about giving effect to international law. Under the Indian Constitution

(Art.246) the parliament has the exclusive power to make laws concerning treaties and agreements with foreign countries. In a case<sup>36</sup>, Justice Shah rightly observed that the effect of Art. 253 is that if a treaty, agreement or convention with a foreign state deals with a subject within the competence of the state legislature, the parliament alone has, notwithstanding Art. 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body.

According to the provision given in the ICCPR 1966<sup>37</sup>, each state party to the present covenant agrees to respect and to ensure to all individuals, within its territory and subject to its jurisdiction, the rights recognised in the present covenant, without distinction of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or any other status. Our constitutional provision<sup>38</sup> also discards discrimination on any ground and guarantees to all persons equal and effective protection against discrimination on any ground.

The examination of the jurisprudential approach regarding the legality of the said bill must be done. Rudolf Stammner, who was mainly responsible for the revival of natural law theory in the contemporary world, rightly said, “The

<sup>35</sup>

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>. Accessed 8 July 2020.

<sup>36</sup> Maganbhai Ishwarbhai patel V. Union of India [1966] 1 S.C.R. 430.

<sup>37</sup> Article 2(1) of ICCPR, 1966.

<sup>38</sup> Indian Constitution, Art. 26.

purpose of law is not to protect the will of one but to unify the purpose of all”.

The CAA also purportedly impairs the norms of the international human rights law and refugee law. Though India has neither ratified the Refugee Convention (1951) nor its 1967 Additional Protocol but, nevertheless, it has extended constitutional protection to refugees without any religious discrimination. India became a member of the Executive Committee of the High Commissioner's Programme (EXCOM) in 1995 which supervises the material assistance programme of the United Nations High Commissioner for Refugee (UNHCR). Membership of the EXCOM indicates a greater commitment to refugee jurisprudence. Apart from this, India voted affirmatively to adopt the UN Declaration of Territorial Asylum in 1967 and accepted the principle of non-refoulement, as envisaged in the Bangkok Principles 1966, and acknowledged the jus cogens which is binding on all nation-states, irrespective of whether the state has signed the refugee convention or not. Thus, being a signatory to ICCPR, ICESCR, CEDAW and most significantly the Convention against Torture (CAT) 1984, India is bound to provide asylum to a person who has any fear of persecution, irrespective of their religion. The present form of CAA is also against the principles of the International Convention on the Elimination of All Forms of Racial Discrimination, which was signed in 1965 and entered into force in 1969. The basic premises of

the ICERD 1965 is to build a world order that nullifies all forms of citizenry discrimination, denial of religious and cultural freedom and ensures recognition of human rights of all religious and linguistic groups.

### **PROTESTS AND AGENDAS**

The philosophy of citizenship today is one of creating a group of second-class citizens based on caste and religious identity, and implicitly continuing the position of the poor as the lesser citizens they have always been. After the proposed CAB got assent to become an act, tremendous protests and strikes spurred across the country against it. Students, on their own level, came together to raise their voice against the crushing of equality that this Act was purported to be doing. Citizens from all backgrounds had started questioning its constitutionality.

During these nationwide protests, deadly violence had erupted in February in the capital, New Delhi, in which 53 people, mostly Muslims, were killed. Many anti-CAA activists were arrested in connection with that and later charged under the Unlawful Activities (Prevention) Act (UAPA), a stringent anti-terror law. In all this, we must not forget that each protest has its own source and pain point that cannot be subsumed under other issues. The attack on students in Jamia Millia Islamia is no less or more than the attack on students in Guwahati (four dead in police firing, 175 arrested, more than 1400 detained, according to

India Today).<sup>39</sup> Several police brutalities were reported during this time but none was managed efficiently. To control the protesters many casualties had occurred and during the clashes, lathi-charges, tear gas, lynching and even firing were resorted to. Both, protesters and policemen were killed during this chaos. Not even women or young students were spared. The firing incidents in Shaheen Bagh, Jawaharlal Nehru University (JNU) and Jamia University was criticised worldwide.<sup>40</sup> In response to these fatalities, even more unabated waves of protests started as the voice of democracy cannot be suppressed. All this violence in Delhi was merely communal violence to pursue the already long-existing Hindu-Muslim differences due to which many innocent people died. Continuing with such protests, which feed communal violence, is not in the interest of either party. This should have been dealt with proper policing by the government instead of just calling upon the police to do their job.

In all this, one must not actually discount the security threats that CAA poses, as stated by the Research and Analysis Wing (R&AW).<sup>41</sup>

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<sup>39</sup> Assam CAA protest: 4 dead in police firing, 175 arrested, more than 1400 detained, (Dec 16, 2019), <https://www.indiatoday.in/india/story/assam-cao-protest-4-dead-in-police-firing-175-arrested-more-than-1400-detained-1628545-2019-12-16>.

<sup>40</sup> T.K Arun, *Lift Shaheen Bagh now, carry on with the protest in other forms*, (17 July, 2020) <https://economictimes.indiatimes.com/news/politics-and-nation/view-lift-shaheen-bagh-now-carry-on-with-the-protest-in-other-forms/articleshow/74302377.cms>.

<sup>41</sup> Shemin Joy, *Enemies may use CAB to push own people: R&AW*, (17 July, 2020)

The UN human rights experts said that the police also failed to act against the ruling Bharatiya Janata Party (BJP) leaders and supporters accused of incitement to hatred and violence.<sup>42</sup> Also, according to the recent changes in the syllabus for CBSE classes 9 to 12, the chapters on democratic rights, secularism, citizenship, 5-yr plans, food-security, etc. have been dropped.<sup>43</sup> This is yet another example of how visionless the centre is turning out.

## CONCLUSION

Summarising all of the above, we egregiously come to the inference that, the idea of India as an inclusive, rather than a denominational state, is a core principle of the liberal democratic vision of India that infuses the Constitution and the nation-building project initiated during the Freedom Movement and in its wake, the CAA-NRC project undermines this vision of India and it affects every opponent of the two-nation theory that created Pakistan and animates the proponents of Hindu Rashtra. The construction of Hindus as the natural and normal citizens of

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<https://www.deccanherald.com/amp/national/national-politics/enemies-may-use-cab-to-push-own-people-raw-783713.html>.

<sup>42</sup> (Dec 2019) <https://www.aljazeera.com/news/2020/06/human-rights-experts-urge-india-release-anti-cao-protesters-200626105916987.html> Dec2019.

<sup>43</sup> Roshni Chakraborty, (July 7, 2020, 20:01 IST) <https://www.indiatoday.in/education-today/news/story/cbse-syllabus-changed-check-full-new-cbse-syllabus-2020-21-1668012-2020-04-17>.

India is not just a debasement of the idea of India that joined fourteen million people together; it is also a transgression of the Universalist and inclusive conception of citizenship contained in the Indian Constitution.

The Home Minister Amit Shah has already called the four million people left off the NRC list as termites and illegal infiltrators who must and will be disenfranchised and deported.<sup>44</sup> „Infiltrator“ has become a metonym for Muslims, and feeds the xenophobia that provides cover for the yearning to get rid of even Indian Muslims. Our India is slowly losing the basic tenets of democracy including freedom of speech and expression and, freedom of press.<sup>45</sup> These academic and artistic freedom, have also become vulnerable to threats by vigilante censors and troll armies on social media. The fundamental principles of the Rule of Law are being abandoned in the race for political supremacy. Ultimately, preparations for the nation-wide NRC excluding Assam will begin when NPR 2020 is in place, which together would put the filtered ones into detention centres. This will also lead to new chaos in the future and hamper the unity and the

idea of India. There is a need for a wider lookout.

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<sup>44</sup> Infiltrators in Crores Entered Country, Eating It Like Termites: Amit Shah”, The Indian Express (30 Nov. 2018)

<https://indianexpress.com/article/india/amit-shah-100-crore-infiltrators-entered-country-eating-it-like-termites-5371011/>, accessed 17 July 2020]

<sup>45</sup> Cancellation of the registration of Greenpeace India. Center Cancels Greenpeace India’s FCRA Registration, The Indian Express (4 Sept. 2015) <https://indianexpress.com/article/india/india-others/greenpeace-indias-fcra-registration-cancelled-govt/>, accessed 18 July 2020.