

Indian Citizenship Law and Muslim Question

According to India's 1955 Citizenship Act, there are many ways to acquire Indian citizenship including by birth, descent, naturalization, registration and acquisition of a foreign territory. Under this law, any person who was born in India from 1950 to 1987 was considered to be Indian citizen by birth. In 1986 however, this Citizenship Act was amended as the result of a six-year movement against the Bangladeshi immigrants in Assam (Ahmed, 2020). The 1986 Citizenship Amendment Act (CAA) came into force on 1 July 1987. The criterion of citizenship by birth was narrowed by the condition of proof that at least one parent of the child was an Indian citizen at the time of his/her birth. The citizenship scheme was again amended in 2004 and a new term "illegal migrant" was added for the first time, defined as a person who entered and stayed in India with no state authorization. The new amendment states that a child would only be recognized as an Indian citizen by birth if one of his/her 'parent is a citizen of India and the other is not an illegal immigrant at the time of his/her birth.' This amendment emerged from the government's fear that Bangladeshi Muslim migrants would get Indian citizenship. After this amendment, children born in 2004 onwards with one parent being illegal migrant would be denied citizenship by birth. Illegal migrants were also disqualified from obtaining Indian citizenship through any means whatsoever (Chandrachud, 2020). By virtue of the 2004 amendment to Citizenship Act, "illegal migrant" is defined as a person who may have entered India illegally, without any valid travel document.

The 2019 CAA narrows India's path to citizenship and calls into question the secular beliefs of the state. The CAA is aimed to carve out an exception for some of the "illegal migrants" on the basis of religion, under the pretext of fear of religious persecution. The real agenda behind this legislation is to deprive Muslim migrants from citizenship on discriminatory basis. The Assam Accord was the major shift which deprived migrants from obtaining Indian citizenship. The amendment to the Citizenship Act means that those who had migrated to Assam after 1971 would not be granted Indian citizenship. Section 5.8 of the Assam Accord states: *"Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected [...] and practical steps shall be taken to expel such foreigners"* (Assam Accord, 1985).

The CAA in its spirit contradicts the Assam Accord, by altering the age cut-off date from 1971 to 2014, and by differentiating between Muslim and non-Muslim immigrants. This change actually allows non-Muslim illegal immigrants from Bangladesh to apply for citizenship even if they may have entered India after 1971, which goes against the spirit of the Assam Accord.

Civil society groups in Assam expressed their concern about the CAA, labeling it as the violation of the 1985 Assam Accord. These groups have argued that the Accord has a nature of 'public law contract' between the people of Assam and the Indian state. Any changes influencing this public law contract must have the 'consent' of the people of Assam. There is a growing suspicion among the people of Assam who are worried about their cultural identity and their special status under the category of Scheduled Tribes in the region. This fear of losing an identity and special status across the North Eastern states of India was the trigger of many protests. People in all the eight states of North East India showed apprehensions about the negative impacts of the legislation on their cultural identity and economic interests of the people in the region (Roy, 2019).

The main rejection is related to the violation to the 24 March 1971 cut-off date, imposed to detect and deport all illegal immigrants. All Assam Students Union (AASU) and Asom Gana Parishad (AGP) have alleged that BJP is using the CAA on communal lines. They have also blamed that BJP is rendering support to illegal Bengali Hindu immigrants by granting them Indian citizenships, as they constitute BJP's vote bank. They also believe that Muslim immigrants are targeted by BJP as they do not constitute its vote bank (Bhattacharjee, 2020). The indigenous population of Assam has argued that granting citizenship to illegal Hindu migrants will change the demography of the state and within a few years the indigenous people of Assam would become a minority in their own land.

The CAA is also criticized as sectarian and anti-secular in essence. The Act has made the citizenship conditional to a person's religious identity. The very nature of the CAA is violating the right to equality granted by Article 14 of the Indian Constitution which reads that the *"state shall not deny to any person the right to equality before law or the equal protection of laws within the territory of India."*

The CAA has also been criticized by legal experts providing sound arguments proving that it is

constitutionally null and void. When such Act provides right to citizenship to the immigrants from Hindu, Sikh, Jain, Parsi, Buddhist and Christian communities, yet excludes persecuted immigrants from Muslim community, it violates the principle of secularism, which is the fundamental part of the Indian Constitution. So clearly the Indian government has violated the fundamental principle of equality of its own constitution.

Secondly, the CAA only mentions 'illegal immigrants' from three neighboring countries namely Afghanistan, Bangladesh and Pakistan, who may have faced any kind of religious persecution, ignoring religious asylum seekers who may be facing religious persecution in their respective countries. One such example is the Rohingya Muslims from Myanmar who are facing the worst kind of religious persecution and have been forced to flee their country.

Thirdly, the CAA cut-off date says people who entered India before 31 December 2014 have the right to Indian citizenship. It excludes people who may have faced religious persecution after this date undermining the humanitarian face of the Act. Finally, the legislation ignores the people who have faced political persecution and were forced to enter the Indian borders illegally. Religious persecution is only one of the persecutions that people may face, but the CAA has totally ignored persecutions based on ethnicity, race, nationality and membership of a particular political or social group (Chandrachud, 2020).

According to B. R. Ambedkar, head of India's constitutional drafting committee, constitutional morality is crucial for any democratic constitution to survive. He argues that administration in a democratic state must be appropriate to - and in the same sense as - the constitution. He had called for a firm observance to the constitutional morality and fears that administrative decisions and misuse of legislative authority will result in contradiction with the spirit of constitution and its morality. The CAA in letter and spirit goes against the understanding of constitutional morality and checked executive and legislative powers in a state which claims to be a democratic state in ideals and actions (Roy, 2019).

BJP's central government is constitutionally bound to get involved and must measure the impact of the 2019 Citizenship Amendment Act on India's most vulnerable groups such as the Scheduled Caste (SC), Scheduled Tribes (ST), Other Backward Class (OBC), Divyangjan, and other minorities, particularly the Muslim minority. The Indian Constitution has introduced terms like minority, SC and ST as secular administrative categories, which must have been used in the 2019 CAA instead of identifying these categories as religious communities. Naming any community on the basis of its faith and religion contradicts the recognized and established principles of the Indian Constitution. It is also necessary for the right-wing government to scrutinize the National Register of Citizens (NRC), which was enacted in 2003, for a complete understanding, analysis, and explanation of the 2019 Citizenship Amendment Act. The National Register of Citizens was created by an amendment to the 1955 Citizenship Act in 2003. NRC records are said to contain all valid Indian citizens, and a basis to expel unlawful immigrants from the country. With its initial scrutinization in Assam in 2013-2014, the BJP government planned to impose it throughout the country in 2021, although it has not yet materialized.

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