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Implications of Citizenship Amendment Act, 2019 and the Socio-Economic Unrest Caused by its Combination Effect with the National Registry of Citizens.

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ABSTRACT

India, one of the selected few countries that boast itself to be secular in nature recently passed a bill termed as the Citizenship Amendment Bill in 2019 which was passed by both the Lower House and Upper House and has acquired the President's consent to it to, renaming itself as the Citizenship Amendment Act of 2019 has caused a heap of social dissent from the masses at large due to its interference with the Fundamental Rights of a particular section of the country's population. Many references are made abrogating India's polarisation of religion just like how the German-Ottoman empire fell. India is a secular state and it is the government's duty to ensure that the basic structure of the constitution remains unaltered. In addition to this there are almost more than a million people in detention camps living under harsh conditions, only to prove their identity as an Indian. The international standards of human rights are questioned due to the exhilarating non-compliance of them in the sub due to the National Registry of Citizens. Many lawyers and student associations have moved to the Supreme Court of India for its verdict that may or may not over turn the passing of the bill. The research will try finding out whether or not this is a direct cause of communal riots. This paper shall determine the constitutional validity of said Act by exhibiting legal arguments and will shed light on the social unrest caused by the same. In addition to this, this paper shall also validate dissents shown by various and prestigious institutes all over the world and how the image of the Republic of India is portrayed in the global scenario.

INTRODUCTION

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The CAA is a glass half full and a partially good legislation but partially discriminatory as it excludes one major section that constitutes a persecuted Muslim minority from these Muslim majority countries of South Asian Association for Regional Cooperation (SAARC) on religious lines. CAA should have used the words "persecuted minorities of the Southern Asia" instead of existing expression "any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan" as it violates the Constitution of India per se. Historically, India has been a melting pot for different cultures and civilizations and has been active in addressing humanitarian crises that include the reception of refugees fleeing persecution from many parts of the world including SAARC region.

Today, India rightly aspires for a global leadership role but it lacks the global political will to address the problem of refugees based on a duly enacted legal framework. Recently, 181 countries voted in favour of the Global Compact on Refugees including India at Marrakesh in Morocco in December 2018. The United States and Hungary were the only two nations who voted against it. However, India is a party (not ratified but signed) to host of international human rights treaties including 1984 UN Convention on Torture (CAT) that prohibits under its Article 3 any forced expulsion or deportation of foreigners to their dangerous territories/homelands. Though, India has not acceded to the 1951 UN Convention relating to the Status of Refugees and (UNCSR) along with its 1967 Additional Protocol, nor does it have a national law for refugee protection.

India boasts of adhering to the principle of non-refoulement (no-forced expulsion/deportation) and securing refugee protection under the holistic and liberal construction of Article 21 of the Constitution of India that protects all classes of human existence as per the jurisprudence produced by the Supreme Court of India. Therefore, religious predilections cannot be allowed to govern and prevail over constitutional scheme of human equality called fundamental rights and duties in any democratic political set up anywhere in the world including India, citizenship can never be contemplated on the basis of religion and it is in contravention of International Human Rights Law and international human rights treaty obligations backed by Customary International Law (CIL).

However India, as an emerging global player of international politics, must initiate a dialogue in the country to shift the focus from religion-driven refugee policy to diversity-driven refugee policy in its political discourse. Therefore, a sustainable refugee policy requires the engagement of different types of stakeholders and actors. These are primarily the Government of India (GoI) and UNHCR but may also include NGOs and other members of refugee advocacy groups and the research institutions.²

India's Polarisation of Religion

The current exclusion of Muslims comes from Islamophobia that is deep rooted in India. Though India is a declared secular country, the current government is an ideological child of RSS (RashtriyaSwayamsevak Sangh) which is a Hindu Nationalist and Hindu Supremacist with a purpose of extending Hindutva. The majority party that forms the current government, that is the Bharatiya Janata Party, has its roots in Jan Sangh a political right wing party to counter Nehru and his leftist ideas which were not accepted by RSS.

The policies of the German state unfolded in the wake of World War I, which witnessed the fragmentation of multinational empires like the Ottoman Empire following widespread inter-ethnic and inter-religious violence, including the Armenian genocide of 1915-'16. The Eastern European successor states like Poland and Czechoslovakia were granted recognition by the League of Nations provided they submitted themselves to an internationally monitored and enforced minority rights regime. The regime required the states to guarantee cultural rights, like freedom of religion, to ethnic and religious minorities. Unlike contemporary individual human rights, these rights were vested in collective ethnic and religious groups. They were directly enforceable by the League against the state.

The Weimar Republic passed laws to castrate Jewish people constitutionally and a parallel can be drawn from the current scenario.³ As with the passing of CAA and its combination effect along

²<https://www.indiatoday.in/india/story/expert-view-does-india-need-caa-npr-nrc-1635665-2020-01-10> Dr.Nafees Ahmad on CAA and NRC.

³<http://www.bl.uk/learning/histcitizen/voices/info/decrees/decrees.html> Anti-Jewish Decrees from the British Library.

with NRC it is in the hand of an already established Islamophobic party to grant citizenship to Muslims all over the country.⁴

How Democratic Processes Damage Citizenship Rights: The Implications of CAA-NRC

Currently there are four ways to become an Indian citizen: birth, descent, registration and naturalisation. The Citizenship Bill, 1955 does not allow any of the refugees to acquire citizenship but the newly founded amendment allows non-Muslim minorities escaping persecution from Afghanistan, Pakistan and Bangladesh. The CAA welcomes Hindus, Sikhs, Christians, Parsis, Buddhists and Jains who arrived in India on or before 31 December, 2014 to escape religious persecution from their native countries. The CAA, however, does not include Muslim minorities like the Rohingyas of Myanmar (with whom we share a border) or the Tamil Sri Lankans facing adversities since time immemorial.

It is not yet clear as to how and what kind of documentary proof is required to prove citizenship under the current laws because the exercise shall be conducted by state governments, and perhaps each state government could have its own specifications. Let's assume that one of the documents is a birth certificate. UNICEF figures from 2012 report that about 40% of urban births and 65% of rural births are not registered in India.⁵ A similar picture is probably the case for the older generations. In Assam, reports suggest that large numbers (about 19 lakh people) did not possess the necessary documents in the recently conducted NRC exercise under the supervision of the Supreme Court. Detention camps have already been set up in Assam.

In a manner, the current government is allowing persecuted refugees to take home in India, but the such statements like 'We want to root out illegal infiltrators coming from Bangladesh and other neighbours to other parts of India,' the Union Home Minister Amit Shah has already said while defending their intention to carry out the NRC. He has also made public threats that those who cannot produce the necessary documentation will be herded into detention camps. Such

⁴<https://www.outlookindia.com/newscroll/amid-anticaa-protests-bjp-deletes-its-tweet-on-nrc/1690545> BJP's deleted tweet on nationwide implementation of NRC.

⁵<https://www.cprindia.org/news/8339>.

statements indirectly point out the resting Islamophobia of the government and much hatred for the same.

Other Implications

With the NRC exercise, the CAA is not simply an amendment to provide safe haven to persecuted minorities, none of them being the highly discriminated Muslims in our own country. There are countless hate crimes against both Muslims and Hindus, but India having a dominance for 80% of population being Hindus it would be more precise to say that the CAA is pro-non-Muslim persecuted minorities.

More crucially, the CAA-NRC combine inflicts a dark stain on the constitution's sacred fabric. It would cause the 'mischievous of Partition' to happen all over again even after its descent over 70 years ago.

There have been several inhumane news reports on how the new exercise has impacted the poor.⁶ People who are not privileged are always known to suffer the most, these cannot be only termed as collateral damage, but I believe, these are unnecessary hamperment to deliberately make a statement. With the GDP derogating with each fiscal year, we must be relocating our focus on making the market work. The estimate of implementing NRC nationwide is rounded off to a whopping 8 lakh crores.⁷ This amount of money can be used to repair or rather reconstruct the entire taxpaying system which is broken, and Ganga Action Plan which the current Hon'ble Prime Minister had promised to take up. It is the government's intermittent job, to provide taxpayers with clean water and air and ensure welfare of the citizens and not unnecessarily waste resources on non-required exercises.

Petitions Filed to The Supreme Court

⁶<https://www.outlookindia.com/magazine/story/india-news-twenty-six-deaths-in-assams-detention-centres-magnify-fallacy-of-nrc-exercise-but-who-cares/302284>.

⁷<https://www.nationalheraldindia.com/opinion/does-amit-shah-even-understand-what-nrc-will-cost>.

The Supreme Court of India is the watchdog of the Indian Constitution. With recent historic judgements passes such as the Decriminalisation of LGBTQ+ and the Sabarimala Review, the citizens have immense hope from the Supreme Court for that matter. As for the constitutionality of the CAA, which has already been challenged, the Supreme Court judges will probably decide using the concepts of 'intelligible differentia' and 'rational relation to the goal' in Article 14 (equality before the law).

The specification of the minority communities in the CAA could be challenged in court on two grounds:

- a) That citizenship eligibility of these migrants pertains to religious attributes and excludes ethnic and racial ones. Ahmedis and Shias of Pakistan suffer discrimination but will not be eligible under the CAA because they belong to the majority religion (though Ahmedis have been categorised as 'non-Muslims' by the Pakistani laws).
- b) That the exclusion of ethnic attributes was deliberate in the Act because including it would allow Rohingyas (who are mainly Muslim) to apply for Indian citizenship.

There are currently 144 petitions filed with the Supreme Court which were heard on 22nd of January which has led to the following developments

- 1.** A Supreme Court bench headed by Chief Justice SA Bobde was hearing a batch of 144 pleas challenging the validity of CAA, including those filed by the Indian Union Muslim League (IUML) and Congress leader Jairam Ramesh.
- 2.** The court has also ruled that no high court should be hearing petitions on the Citizenship Act until all the petitions in Supreme Court are heard.
- 3.** With a massive number of petitioners and their lawyers lobbying in the courtroom, the Supreme Court said the petitions must be segmented into sections also that some might be needed to be heard separately.

4. CJI Bobde said the Supreme Court will create categories of the cases against CAA and the issues from Assam and Tripura - both states who have state accords of their own - will come under a separate category and will be heard separately.

5. The Supreme Court also said that the cases from Uttar Pradesh will be segregated into another case.

6. Attorney General KK Venugopal, appearing for the Centre, told the Supreme Court bench that the government has been given copies of around 60 pleas on CAA out of the 143 petitions.

7. Venugopal said that the Centre wants time to respond to the pleas which have not been served on it, following which the Supreme Court granted them 4 weeks' time to respond. The cases will again be heard in the fifth week from now.

8. Senior advocate Kapil Sibal urged the Supreme Court bench to put on hold the implementation of CAA and postpone exercise of the National Population Register (NPR) for the time being.

9. The Supreme Court said it will not grant any stay on CAA without hearing the Centre on the matter.

10. The CAA seeks to grant citizenship to migrants belonging to Hindu, Sikh, Buddhist, Christian, Jain and Parsi communities who came to the country from Pakistan, Bangladesh and Afghanistan on or before December 31, 2014.

The Citizenship Amendment Act (CAA) seeks to grant citizenship to migrants belonging to Hindu, Sikh, Buddhist, Christian, Jain and Parsi communities who came to the country from

Pakistan, Bangladesh and Afghanistan on or before December 31, 2014. President Ram Nath Kovind gave assent to the Citizenship (Amendment) Bill, 2019 on December 12, turning it into an Act. Since then violent and consistent protests have rocked the country with students, civil

society, actors, artistes, politicians and Opposition coming together to condemn the move to grant citizenship to some and exclude others.⁸

Students are out on the roads, women and children are out on the roads, people have begun to lose faith in democracy in the largest democracy of the world. Once acclaimed to be the 'Person of the Year' in 2016.⁹ Mr. Prime Minister has also garnered support from the Time Magazine to have United the country like no other person,¹⁰ to being the country's "Divider in Chief"¹¹ within a span of 4 years alone.

Communal Riots

Hong Kong's protests have raged for seven months after being sparked by a now-abandoned proposal to allow extraditions to the authoritarian mainland, where the opaque legal system answers to the Communist Party.

They soon morphed into a wider movement calling for greater freedoms in what is the most concerted challenge to Beijing's rule since the former British colony's 1997 handover. The frequency and ferocity of Hong Kong's protests have died down over the last month, but signs of the political unrest are everywhere, from graffiti daubed on walls to huge fences surrounding government buildings.

⁸<https://www.indiatoday.in/india/story/no-stay-on-caa-larger-supreme-court-bench-to-hear-140-petitions-1639020-2020-01-22>.

⁹<https://www.thehindu.com/news/national/Modi-wins-reader%E2%80%99s-poll-for-TIME-%E2%80%98Person-of-the-Year%E2%80%99/article16763421.ece>.

¹⁰<https://time.com/5595467/narendra-modi-india-unite-prime-minister/>.

¹¹<https://economictimes.indiatimes.com/news/politics-and-nation/time-magazine-calls-modi-indias-divider-in-chief-in-its-international-edition/articleshow/69266218.cms?from=mdr>.

Meanwhile in India, the passage of the CAA in Parliament triggered nationwide protests, which turned violent at some places, including in Uttar Pradesh and West Bengal. CAA's critics say the law is discriminatory and violates the core values of the Constitution.¹²

India always had a global stature because of its enduring reputation of being the world's largest democracy and of being a stable country. Modi's actions of Muslim baiting such as the repeal of Article 370 in Kashmir, taking away its special status and reducing the only Muslim state in India to a Union Territory, the continuing communications lockdown in Kashmir, which has now lasted four months and the brutal crackdown on the largely peaceful protest against the bigoted National Register of Citizens (NRC) has made India lose its democratic sheen.¹³

Oxford, Yale, MIT and Harvard and several other major ivy leagues have shown dissent on the police brutality incurred upon students of Jamia Millia Islamia and Aligarh Muslim University, almost 400 students from all over the US have released a joint statement of solidarity with the two aggrieved universities.

Constitutional Validity of the Citizenship Amendment Act, 2019

While considering the case of non-citizens – 'aliens' – the doctrinal approach of determining 'intelligible differentia', coupled with a 'rational nexus', need not be adopted at all. Undoubtedly, 'person' in Article 14 of the Constitution covers 'aliens' as well. However, a crucial distinction that must be specified here is that such rights would pertain only to those people who have lawfully and legally entered the Indian territory. Every sovereign State, and so too the Republic of India, has the exclusive right to allow, refuse entry, or expel any alien/non-citizen. The equality clause, as per Article 14 of the Constitution of India, insofar as it guarantees rights to every 'person', insofar as it pertains to aliens, would only operate where it is not subject

¹²<https://www.indiatoday.in/business/davos-2020/story/have-kaa-protests-impacted-india-s-global-image-he-re-s-what-imf-chief-economist-gita-gopinath-has-to-say-1638634-2020-01-20>.

¹³<https://gulfnews.com/world/asia/india/kaa-nrc-narendra-modis-dreams-of-an-image-as-global-statesman-and-good-days-for-india-are-history-1.1576999781483>.

to any other disability emanating by way of any provisions of the Constitution and so too a lawfully enacted statute/legislation/bye-law/rule.¹⁴

In *Budhan Choudhary v. State of Bihar*, the Court in 1955 summed up the test as follows:

In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. The contention now put forward as to the invalidity of the trial of the appellants has, therefore to be tested in the light of the principles so laid down in the decisions of this Court.

To some, the test of reasonable classification might appear too rigid. It could even be plausibly argued that it takes away from the moral axiom inherent in Article 14. Indeed, Justice Subba Rao, in a dissenting opinion, in *Lachman Das v. State of Punjab* (1963) was keen to point out that the doctrine of classification was merely a subsidiary rule: “Over emphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the article of its glorious content,” he wrote. “That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law, and equal protection of the laws may be replaced by the doctrine of classification.”

But the test has entrenched itself in our jurisprudence chiefly because it works—it allows the judges to practically conceive what equality really demands. And, here, in the case of the CAA,

¹⁴<https://theprint.in/opinion/why-supreme-court-of-india-wont-strike-down-modi-govts-citizenship-amendment-act/342781/>.

it shows us, beyond all doubt, that the law, if it is allowed to stand, will prove patently discriminatory. The Supreme Court ought to need no other reason to strike it down.¹⁵

¹⁵<https://www.theindiaforum.in/article/why-caa-violates-constitution>