

“Fault Lines of Citizenship: How Legal Frameworks Erode Constitutional Democracy”

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Abstract

India's pluralism, entrenched in its Constitution, embodies unity amid multiplicity. India boasts a plethora of cultures, languages, traditions and religions, where pluralism is ingrained as more than just an idea but as a fundamental aspect of daily existence. The Indian Constitution stands as an extraordinary manuscript, safeguarding the principles of democracy, secularism, parity, and impartiality for all. It secures essential liberties for every individual regardless of their caste, faith, belief, or gender, affirming the reverence and acknowledgment of multiplicity. A defining characteristic of India's diverse community lies in its secularism, deeply embedded within the constitutional framework. Diverging from numerous nations, India abstains from endorsing any singular state religion. India's journey towards embracing pluralism begins with the voices and choices of its people. At the heart of this pluralistic ethos lies the fundamental principle that the citizens, as the very subscribers of the constitution, shape the diverse tapestry of the nation. The acknowledgment and appreciation of citizens through citizenship should ideally reflect and uphold the principles of pluralism within a nation. However, the Citizenship Amendment Act of 2019 has sparked concerns as it appears to challenge this notion. This amendment raises questions about the integrity of India's pluralistic fabric, as it potentially undermines the inclusive essence of citizenship by introducing selective criteria based on religious identity. This paper aims to elucidate the derogatory impact of the Citizenship Amendment Act 2019, how this legislation undermines India's constitutional values by introducing discriminatory criteria based on religious identity and threatens the essence of pluralism by giving more importance or privileging certain religions over others.

Keywords: Pluralism, Multiplicity, Democracy, Secularism, Citizenship Amendment Act

Prelude

The Indian Constitution, born out of decolonization, embodies the essence of pluralism with its opening line declaring India, or Bharat, as a union of states. This foundational principle underscores the nation's rich tapestry of cultures, languages, religions, and identities. Reflecting the diverse mosaic of its populace, India's constitution champions inclusivity, accommodating various communities, castes, creeds, and religions. By embracing multiplicity in its widest sense,

India upholds the ethos of unity in diversity. Thus, the Indian Constitution stands as a testament to the nation's commitment to pluralism, fostering harmony and cohesion among its varied constituents.

The Constitution of India serves as the bedrock of not just legislative but also executive and judicial functions within the country. It is the guiding force that shapes the framework of governance, ensuring that any legislation aligns harmoniously with its values and principles. Therefore, any proposed legislation must adhere to the ethos enshrined in the Indian Constitution, maintaining a delicate balance with its fundamental rights, directive principles, and fundamental duties. However, if any legislation has been deviated from the moral compass set by the Constitution, it cannot be deemed as reflective of India's legislative approach. India's identity is inexorably tied to its Constitution, and any divergence from its values undermines the essence of the nation's democratic ethos.

The foundation of India, as the world's largest democracy, rests upon its people. This is evident from the preamble of the Indian Constitution, which begins with "We, the people of India," and concludes with the declaration that the Constitution is adopted, enacted, and given to ourselves by the people. The entire framework of the Indian Constitution revolves around its citizens. Citizenship is defined in Part 2 of the Indian Constitution. The Citizenship Act of 1955 elaborates on the concept of citizenship, serving as the primary and comprehensive evidence of the acknowledgment of the people by the Indian nation-state. Indian citizens are the cornerstone of the Indian Constitution, as they are its primary subscribers and sole subject matter. The Constitution's provisions, rights, and responsibilities are designed to govern and protect the citizens, reflecting the democratic principles upon which India's governance is founded. And if any legislation or Amendment on that legislation derogates citizenship rights or interprets laws inconsistent with the core values of the Indian Constitution can be seen as undermining fundamental democratic principles and the sanctity of citizenship. It's crucial for legislation to uphold the principles of equality, justice, and individual rights enshrined in the constitution.

Several Amendments took place in the Citizenship Amendment Act, 1955 like in the year of 1986, 2003, 2015, 2019. The Citizenship Amendment Act (CAA) of 2019 amended the Citizenship Act of 1955 to provide a path to Indian citizenship for members of certain religious minorities from Afghanistan, Bangladesh, and Pakistan, specifically Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, who had entered India before December 31, 2014. However, it excluded Muslims from this provision, which directly discriminates Muslims and violates the principle of equality before the law enshrined in the Indian Constitution. This selective exclusion based on religion undermines the secular fabric of India and goes against the principles of equality and non-discrimination. This amendment undermines the principles of the Indian Constitution, especially the ideals of equality before the law and equal protection regardless of religious affiliation.

The government contends that those granted citizenship are persecuted from specific nations. However, persecution isn't confined to religion; it extends to various grounds and forms, including political or other issues. Thus, the amendment's narrow interpretation overlooks broader aspects of persecution. And granting citizenship solely based on grounds specified in the Citizenship Amendment Act 2019 may tarnish India's international reputation. Narrow interpretation of citizenship criteria risks portraying India unfavorably to the global community.

Constitutional Interpretation of Citizenship rights:

The Constituent Assembly played a monumental role in shaping the nation's democratic ethos, governance structures, and constitutional principles. Constituent Assembly Debates are the debates and discussions held by the Constituent Assembly members in the process of drafting a constitution for the liberty of India. It was adopted with the specific purpose of drafting a constitution. It existed for near about three years from 1946 to 1949 when the Constitution of India was being prepared.¹

During the initiation of Constituent Assembly Debates, several arguments relating to citizenship rights were reverberating. At the time of partition of India, the debate on citizenship in the assembly was overshadowed which created difficulties in making constitutional provision for citizenship on certain defined criteria. The Constituent Assembly, which was formed before India got Independence, faced the major challenge of not simply drafting a constitution but also doing in such a way that diversities are taken care of. It was an unsettling task, and it almost took three years to complete. In spite of importance for the sovereign modernist state which the founding father sought to achieve, was not being fully debated in the beginning, whereas issues concerning minorities reverberated through the assembly right from the beginning to the end of the debates. The debate on citizenship took place on August 10, 1949, just after Article 269 was amended and passed. Articles 5 and 6 were put before the Assembly for discussion, and Dr. Rajendra Prasad, the president of the Constituent Assembly informed the House that there had been 130 or 140 amendments, and then requested B. R. Ambedkar to move the articles, as he had reframed them in the light of the proposed amendments. After giving some introductory details, Ambedkar moved the amended articles.²

According to Article 5 – (a) the one who was born in the territory of India; or (b) either of whose parents born in the territory of India; or (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement, shall be a citizen of India, provided that he has not acquired the citizenship of any foreign State.

¹ “CAA rules out: How Constituent Assembly debated the questions of citizenship, tying it to religion”, The India Express, www.theindianexpress.com , 12th March 2024

² “Citizenship and minorities in the Constituent Assembly Debate: Making sense of the present” , volume 71 issue 1 (7-23) 2022, Judge Paramjit S.

The seven articles that enunciated various provisions related to citizenship were so aggressively debated and deliberated that it took two years to finalize them.

Commenting upon it, BR Ambedkar said, “Except one other article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved because I feel that this is the draft which satisfies most people, if not all”.³

Articles related to citizenship were debated at a time when the country was facing the issues created by the Partition. The huge cross-border migration and influx of refugees and securing their citizenship rights were playing at the mind of the framers of the Constitution. Article 6, which provide for the limits of the constitutional provision of citizenship, says “Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all matters relating to citizenship”. The partition, riots led to a massive migration of people across newly created boundaries, in the case of western Pakistan, in which the Hindus and Sikhs from Pakistan and Muslims from northern parts of India exchanged without any official or political agreements. According to Article 7, the person who migrated after 1 March 1947 from the Indian territory to the territory included in Pakistan “shall not be deemed to be citizen of India”. Article 8 provides for the rights and condition if citizenship whose grandparents were born in India then by registration through diplomatic and councilor means, he /she can become citizen of India. The most importantly article 9, which states that if the persons who voluntarily acquire citizenship of a foreign state will not be the citizens of India. Article 10 states the continuance of the rights of citizenship. And lastly Article 11 provides the parliament to regulates the right of citizenship by law.

Along with Part 2 of the Indian Constitution from Article 5 to 11 the Citizenship Act, a legislative measure, safeguards the rights and responsibilities of citizens. This legislation ensures individuals within the nation hold Indian citizenship, which is governed by the Constitution of India and enacted by Parliament and came into effect on December 30, 1955.

Citizenship Laws in India:

Citizenship Act 1955, a sole legislation regarding citizenship in India. It defines who can be the citizen and outlines the way in which citizenship can be acquired, terminated, or conferred. The act was based on the recommendations of the Drafting Committee of the Constituent Assembly, chaired by B.R. Ambedkar. During The British Rule 1947, before India gained Independence,

³ “CAA Rules: What Constituent Assembly Debated About ‘Special Privileges’ to Communities on Citizenship”, Shishir Tripathi, 14 March, 2024

citizenship and nationality were governed by British government. After the Independence, the issue of citizenship became crucial for defining the legal status of individuals in the newly formed Republic of India. The Indian government recognized the need for a comprehensive law to define citizenship rights and duties.⁴

Acquisition of citizenship is the process by which an individual legally obtains citizenship of a particular country. This process can occur through various means, such as birth, descent, marriage, or naturalization. The rules and requirements for acquiring citizenship vary widely between countries and can depend on factors like birthplace, ancestry, length of residency, and specific laws governing citizens there. There are several grounds under which the individuals can acquire citizenship:

1) Section 3 of Citizenship Act 1955 states that every person born in India after the 26th of January 1950, but before the commencement of the Citizenship (Amendment) Act, 1986,

either of whose parents is a citizen of India at the time of his birth can be considered as a citizen of India. But a person shall not be such a citizen by virtue of this section if at the time of his birth-

(a) his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President will be not considered as a citizen of India or;

(b) his father is an enemy alien and the birth occurs in a place which is occupied by the enemy.

2) Citizenship by descent under Section 4 of the Citizenship Act, 1955, pertains to the acquisition of Indian citizenship by persons born outside India but having at least one Indian citizen as a parent or grandparent.

Applicable Criteria: Citizenship by descent applies to individuals born outside India on or after January 26, 1950, but before December 10, 1992, if their father was an Indian citizen at the time of their birth.

Post-1992 Scenario: For persons born outside India on or after December 10, 1992, citizenship by descent is applicable if either of their parents is an Indian citizen at the time of their birth.

Registration Requirement: To claim citizenship by descent, the person must register themselves as an Indian citizen with an Indian consulate within a prescribed period after turning 18 years old.

Conditions for Registration: The registration process involves fulfilling certain conditions, such as providing evidence of Indian citizenship of the parent/grandparent and establishing the relationship through relevant documents like birth certificates, passports, or other legal documents.

⁴ “75 Years: Laws that shaped India”, www.drishtiias.com, 24th March 2024

Provisions for Further Generations: Citizenship by descent can also extend to subsequent generations born outside India, subject to certain conditions and as per the guidelines specified in the Citizenship Act.

3) Citizenship by registration under Section 5 of the Citizenship Act, 1955, allows certain individuals to acquire Indian citizenship through an application process rather than by birth or descent.

Eligibility Criteria: Section 5 of the Citizenship Act specifies the categories of persons who are eligible for citizenship by registration. These categories typically include: (a) Persons of Indian origin who are ordinarily resident in India for seven years before making the application. (b) Persons of Indian origin who are residing in any country or place outside undivided India. (c) Persons who are married to Indian citizens and have been ordinarily resident in India for seven years before making the application.

Application Process: Individuals eligible for citizenship by registration need to apply to the prescribed authority using the specified application form. The application should include necessary supporting documents and evidence to prove eligibility.

Conditions and Requirements: The application for citizenship by registration is subject to certain conditions and requirements, such as: absence of criminal record or intention to reside in India or maintain strong ties with India.

Decision and Grant of Citizenship: After the application is submitted, the concerned authority will process the application and may grant citizenship by registration if all conditions are met, and the applicant is deemed eligible under the Citizenship Act.

Rights and Privileges: Persons who acquire Indian citizenship by registration enjoy similar rights and privileges as citizens by birth or descent, including the right to vote, own property, and avail other benefits under Indian law.

4) Citizenship by naturalization under Section 7 of the Citizenship Act, 1955, allows foreign nationals to acquire Indian citizenship through a process of naturalization.

(a) Where an application is made in the prescribed manner by any person of full age and capacity not being an illegal migrant for the grant of a certificate of naturalization to him, the Central Government may, if satisfied that the applicant is qualified for naturalization under the provisions of the Third Schedule, grant to him a certificate of naturalization: Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(b) The person to whom a certificate of naturalization is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalization as from the date on which that certificate is granted.

Under section 10, any citizens of India who obtained citizenship through naturalization or certain specific provisions of the Constitution or Citizenship Act, excluding those who acquired citizenship by birth or descent. The Central Government can deprive a citizen of their Indian citizenship if it determines that:

- i) The citizenship was obtained through fraud, false representation, or hiding important information.
- ii) The citizen has shown disloyalty or disaffection towards the Constitution of India through actions or speech.
- iii) During a war involving India, the citizen engaged in unlawful activities that assisted an enemy.
- iv) The citizen was sentenced to imprisonment for at least two years within five years after acquiring citizenship.
- v) The citizen has been continuously residing outside India for seven years without maintaining ties to India through education, government service, or regular registration at an Indian consulate.

The Central Government must be convinced that it is not in the public interest for the person to retain Indian citizenship before taking such action. Before issuing an order to deprive someone of citizenship, the Central Government must provide written notice detailing the reasons. The affected person has the right to apply, a prescribed process, to have their case reviewed by a committee of inquiry, especially if the decision is based on certain grounds.

This section ensures that the process of depriving someone of Indian citizenship is based on specific grounds and follows a defined legal procedure, including the right of the individual to challenge the decision through an inquiry committee.

Citizenship act 1955 has been amended several times so far:

- i) 1957: This amended provides the details regarding the citizenship acquired by Birth, Descent , Registration and Naturalization .
- ii) 1960: The agreement between government of India and Pakistan settled certain boundary disputes relating the borders of state Assam , Punjab, West Bengal and Tripura and their Citizenship.
- iii) 1985 (Assam accord): Foreigners who entered Assam before 25th March 1971 were to be given citizenship.

- iv) 1986: It is not just adequate to be born in India to get citizenship. At the time of birth either one of the parents has to be an Indian citizen.
- v) 1992: A person born outside India would be demanded Indian citizenship if either of the parents were Indian.
- vi) 2003: One of whose parents is a citizen of India and the other is not an illegal migrant at the time of birth, shall be citizen of India by Birth.
- vii) 2005: Amendment regarding overseas citizenship.
- viii) 2015: Reduce the term of residence from 11 years to 5 years for citizenship by naturalization for migrants.
- ix) 2019: Migrants entered before 31st December 2014 and suffered religious persecution of fear of religious persecution in their country of origin were made eligible for citizenship.

This act amended the Citizenship Act of 1955 to provide expedited citizenship to certain religious minorities from Pakistan, Bangladesh, and Afghanistan who entered India before December 31, 2014. Specifically, it aimed to grant citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from these countries, excluding Muslims, who faced religious persecution in their home countries.

The Citizenship (Amendment) Act, 2019 (CAA) was passed by the Parliament of India on 11 December 2019. It amended the Citizenship Act, 1955 by providing stimulation to Indian citizenship for persecuted religious minorities from Afghanistan, Bangladesh and Pakistan who arrived in India by 2014. The eligible minorities were stated as Hindus, Sikhs, Buddhists, Jains, Parsis or Christians. The law does not grant such eligibility to Muslims from these countries. The act was the first time that religion had been overtly used as a criterion for citizenship under Indian law, and it attracted global criticism.

The CAA 2019 Dilemma and it's Ripple Effect:

*"I want to unequivocally assure my fellow Indians that CAA does not affect any citizen of India of any religion. No Indian has anything to worry regarding this Act. This Act is only for those who have faced years of persecution outside and have no other place to go except India."*⁵ (Narendra Modi, Prime Minister of India)

PM Modi's reassurance that the Citizenship Amendment Act (CAA) won't affect Indian citizens, but the law's reliance on religious criteria for citizenship acquisition undoubtedly stirs disharmony. CAA Bill was passed in Parliament on December, 2019 and sparked nationwide protests.

Protests emerged in Assam and Tamil Nadu, with no reports of violence or clashes with authorities. In Chennai, demonstrators held a peaceful candlelight march to voice their opposition to the law.

⁵ Narendra Modi on twitter.com (Now 'X'), 2.04 PM, December 16, 2019

The Communist Party of India (Marxist) in Kerala called for statewide protests, with Chief Minister Pinarayi Vijayan denouncing the law as "*communal and divisive*." New Delhi remains vigilant for potential unrest, having been a focal point of protests in 2019. AIMIM leader Asaduddin Owaisi expressed concerns about the timing of the CAA's implementation, suggesting it seeks to sow division akin to Nathuram Godse's ideology.⁶

In every discussion on Citizenship Rights, NRC (National Register of Citizens) becomes pivotal. NRC is a register maintained by the Govt. of India containing names of all genuine Indian citizens. The implementation of the NRC in India has resulted in the identification of individuals deemed to be residing illegally in India. As a consequence, many of these individuals have been detained and placed in detention camp.

In Assam NRC cost approximately 1200 crores rupees and took over 10 years and more than 2 million people have been recognized as 'illegal migrant'.⁷ The situation presents a dilemma for both the legislative and executive branches as the implementation of the NRC along with the CAA. The enforcement of the NRC has led to a grave scenario wherein numerous people are unfairly stripped of their citizenship, consequently branding them as '*Illegal Migrants*'. Moreover, the Citizenship Amendment Act (CAA) discriminates by conferring citizenship upon specific individuals solely based on their religious beliefs. This flagrant bias not only undermines the fundamental concept of equality enshrined in Article 14 of the Indian Constitution but also exacerbates a stark inequality within society, dismantling the pillars of equity and impartiality. The BJP and its NDA alliance advocated for "*Sabka saath, Sabka vikas*," purportedly signifying progress for all segments of society. However, with the enactment of the Citizenship Amendment Act (CAA), it's clear that their focus is not on holistic development but rather on favoring specific segments of society. This selective approach to development highlights a clear agenda to prioritize the interests of certain sections over others, contradicting the inclusive rhetoric initially promoted.

"I am proud to belong to a religion which has taught the world both tolerance and universal acceptance" - Swami Vivekananda.

Swami Vivekananda's philosophy emphasizes India's deep-rooted tolerance and inclusive ethos. However, modern narratives often highlight religious discrimination in India, which contradicts its foundational principles of harmony and acceptance. The government's argument revolves around providing citizenship to religious minorities facing persecution in Islamic nations like Afghanistan, Pakistan, and Bangladesh through the CAA. However, there's a stark contrast in the treatment of Rohingyas, as India refuses them shelter. This distinction reveals that the CAA isn't solely driven by humanitarian concerns but rather aims to favor specific religious groups or sections of society.

⁶ "CAA Protests: Why are the people opposing the Citizenship Amendment Act?", www.livemint.com , March 12, 2024

⁷ "Why the CAA, NPR and NRC is a toxic cocktail for everyone", <https://cjp.org.in> , April 6, 2024

The 2023 Global Hunger Index gives India a rank of 111 out of 125 countries⁸, not only that there are 1.77 million homeless people in India, or 0.15% of the country's total population⁹, unemployment rate in India inched higher to 7.45% in February 2023 from 7.14% in January 2023, taking the total number of unemployed in the country to 33 million compared to 31.5 million in January.¹⁰ India ranks low on the hunger index and has million homeless individuals. Unemployment has been a persistent issue for decades. The Citizenship Amendment Act (CAA) allows migrants from other countries. However, it raises questions about how a country with insufficient resources for its own citizens can adequately provide food, jobs, and housing for those coming from other nations.

The Citizenship Amendment Act (CAA) has been criticized for its perceived discrimination against certain religious groups, which goes against the foundational principles of India as not just a nation state, but an idea rooted in tolerance, equality, and pluralism. The enactment of CAA raises concerns about undermining the essence of a pluralistic and equal India.

Conclusion

India, as a pluralistic nation with diverse languages, religions, cultures, and peoples, upholds values of tolerance, equality, political democracy, and social justice. It opposes any legislation that contradicts these principles. The Citizenship Amendment Act (CAA), perceived as discriminatory and derogatory toward certain groups and religions, appears incompatible with India's constitutional framework and moral fabric. The Citizenship Amendment Act (CAA) has sparked concerns regarding its potential impact on India's pluralistic ethos. Pluralism, which celebrates diversity and inclusivity, clashes with the CAA's perceived favoritism towards specific religious communities. By granting expedited citizenship to certain religious minorities while excluding others, the CAA undermines the principle of equal treatment under the law and risks deepening religious divisions. This selective approach goes against the inclusive nature of pluralism, as it marginalizes communities based on religious identity. Moreover, the controversy surrounding the CAA has heightened tensions and strained trust among various religious and cultural groups, posing a challenge to India's pluralistic fabric. India upholds the principle of '*Sarva Dharma Sambhava*', emphasizing equality among all religions, rejecting the notion of superiority where any one religious aspect dominates over others.

⁸ Global Hunger Index, www.globalhungerindex.org , 18th of March 2024

⁹ Indiaspend, www.indiaspend.com ,14th March 2024

¹⁰ The Economic Times, <https://m.economictimes.com> ,5th March 2024