

The Indian Citizenship Amendment Act (CAA)

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Summary

On December 11, 2019, the Indian Parliament approved the Citizenship Amendment Act amending the Citizenship Act of 1955. The finalized Citizenship Amendment Act (CAA) makes foreign undocumented migrants and religious refugees (including Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) from Afghanistan, Bangladesh, and Pakistan eligible for Indian citizenship, but not if they are Muslim. As many as 125 lawmakers voted in the favour of the act whilst 99 members voted against it. The Indian government, ruled by the Hindu nationalist Bharatiya Janata Party (BJP), declared that the act only seeks to protect religious minorities who fled persecution in the aforementioned countries. However, the political opposition maintains that the act is unconstitutional because it bases citizenship on a person's religion and further marginalizes India's millions strong Muslim community. We ask: does the CAA uphold the Constitution and the provisions of International Law?

Does the Citizenship Amendment Act comply with India's Constitutional norms?

Indian citizenship is regulated by the Citizenship Act of 1955. The Act specifies that citizenship may be acquired in India through five methods: by birth within the Indian territory, by descent, through registration, by naturalization (extended residence in India), or by incorporations of territory into India. When India achieved independence in 1947, citizenship was established on the basis of Jus Solis (birth within a territory), meaning

that people were members of the political community regardless of their religion or ethnicity. In 2004, this scheme was amended by the introduction of the term "illegal migrant", which was defined as someone who enters or stays in India without legal authorization. Under the CAA, the specified classes of illegal migrants from Afghanistan, Bangladesh, and Pakistan will not be treated as illegal migrants, making them eligible for citizenship. Upon acquiring citizenship, such migrants shall be deemed to be Indian citizens from the date of their entry into India and all legal proceedings regarding their status as illegal migrants or their citizenship will be closed. However, the act provides differential treatment

to illegal migrants on the basis of their countries of origin and religion. The question is whether these factors are a reasonable basis to justify this differential treatment. This will be examined in the following section.

The CAA classifies migrants based on their countries of origin, including only Pakistan, Bangladesh and Afghanistan. While the Statement of Objects and Reasons (SoR) in the act contends that millions of citizens of undivided India were living in Pakistan and Bangladesh prior to partition, no reason has been provided to explain the inclusion of Afghanistan. The SoR also states that these countries have a state religion, which has resulted in religious persecution of minority groups. However, there are other countries which may fit into this category. For instance, two of India's neighboring countries, Sri Lanka (a Buddhist state) and Myanmar (where Buddhism is the main religion), have had a history of persecution of Tamil Eelams (a linguistic minority in Sri Lanka), and Rohingya Muslims, who have been subjected to one of the most heinous persecutions in recent times. Meanwhile, there are other religious minorities in Pakistan, Bangladesh and Afghanistan, such as the Ahmadiyya Muslims in Pakistan (considered non-Muslims by the authorities of Islamabad since 1974¹), and atheists in Bangladesh who have faced religious persecution and may have illegally migrated to India. Shia Muslim communities, particularly the Hazaras, have been subjected to severe persecution in Afghanistan because of their religious beliefs: "The CAA, however, does not require members of the listed non-Muslim religious to provide any proof of persecution, yet omits Muslim minority communities such as Shia's and Ahmadi Muslims who have faced severe persecution in Afghanistan and Pakistan due to their faith²". Despite suffering from religious persecution, these minority communities have been explicitly excluded only on the grounds of their religious faith. Given that the objective of the CAA is to provide citizenship to migrants escaping from religious persecution, it is not clear why illegal migrants belonging to other neighboring countries, or belonging to certain religious minorities from these three specified countries, have been excluded from the act. There are surely some securities considerations. Indeed, India has been hosting large numbers of refugees without

any specific law in place since 1971, when a massive flow of people came from war-torn Bangladesh. It relied on the United Nations High Commissioner for Refugees (UNHCR) recommendations. According to the UN data India takes in between 150 000 to 200 000 people a year and in the first half of 2014, the UN Refugee agency counted more than 2 million people as refugees living in India. They arrived during peak migration crisis and conflicts, including partition of 1974, the Tibet crisis of 1959, the creation of Bangladesh in 1971, civil wars in Sri Lanka and wars in Afghanistan and finally the crisis of Rohingyas in Myanmar. To counter such flows, the Indian government conceived the CAA by amending the Citizenship Act of 1955 and make naturalization process easier, except for displaced persons of Muslim faith. Further, the CAA seems to shift the basis of Indian citizenship from Jus Solis to Jus Sanguinis (by right of blood).

It should be noted that, under the Indian Constitution, while certain rights are available only to citizens, others including the right to equality mentioned in the Constitution's Article 14 and the right to life and liberty mentioned in Article 21, was interpreted by the Indian Supreme Court in the Kesavananda Bharati Case in 1973 as available to all individuals, and not exclusively to Indian citizens. Indeed, the Indian Constitution stipulates that a non-citizen is certainly a person, and is therefore also entitled to those rights. As Atul Kumar, a Supreme Court advocate, told the India Today: "the migrants or refugees from these countries may be of any religion. Once they have come to India by whichever means then excluding Muslim refugees from the benefit of CAB 2019 would prima facie violate Articles 14 (...) Articles 14 and 15 are not confined to the citizens. It gives benefits of equality to any person within the territory of India even to a foreigner³". In other words, Article 14 is the fundamental core of Indian Constitutional law and it not does not apply only to citizens but also to non-citizens because the words used in the article are, "any person". The National Human Rights Commission Vs State of Arunachal Pradesh in 1996 centered on Chakma refugees, who were undocumented immigrants from Bangladesh. The Court observed that the fundamental rights to life and liberty guaranteed by Article 21 of the Constitution also applied to Chakma refugees, though they were not Indian citizens. In light of that, the CAA is

1. By 2012, only 7% of Pakistanis considered Ahmadis as Muslims. The World's Muslims: Unity and diversity. Pew Research Center: Religion and Public Life. August 9, 2012. <https://www.pewforum.org/2012/08/09/the-worlds-muslims-unity-and-diversity-5-religious-identity/>

2. Harrison Akins. The Citizenship Amendment Act in India. United States Commission on International Religious Freedom. February 2020. https://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0.pdf

3. Prabhash K. Dutta. Why Citizenship Amendment Bill needs to pass Article 14 test. December 9, 2019. <https://www.indiatoday.in/news-analysis/story/does-citizenship-amendment-bill-violate-fundamental-right-to-equality-1626641-2019-12-09>

unconstitutional because it violates both Articles 14 and 21 of the Constitution, as well as Article 15 concerning the prohibition of discrimination on ground of religion.

Therefore, the differential treatment of Indian residents must meet the requirements of equality before the law and equal protection of law under Articles 14 and 21 of the Indian Constitution. Indeed, the Constitution extends these rights to all persons within the Indian territory without regard to citizenship. Equal protection and the prohibition of discrimination on grounds of religion do not demand exact treatment, but they do demand that any differential treatment be reasonable and justified. The classification made in law should be rational and the differentiation must correspond with its proclaimed purpose. Faizan Mustapha, Vice Chancellor of Nalsar University of Law and Jurist on Constitutional Law, said in an interview with Huffington Post: “I agree with the honourable Home Minister that Article 14 permits classification. However, the classification has to satisfy three tests: reasonability, rational object and non-arbitrariness⁴”. From the perspective of India’s jurisprudence, the Delhi high court’s judgment in *Naz Foundation vs. Government of NCT of Delhi* in 2009 referred to the “scope, content and meaning of Article 14 as elaborated in what it called ‘a catena of decisions’⁵”. These decisions, the judgment stated, lay down that while Article 14 “forbids class legislation”, it allows “reasonable” classification for the purpose of legislation. Apart from the test of reasonableness and therefore “permissible” classification, the *Naz Foundation* judgment recommended a further test of reasonableness, requiring that the objective for such classification in the law must also be subjected to judicial scrutiny: “If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable⁶”. Citing the judgment in the *Maneka Gandhi* case (1978)⁷, the *Naz Foundation* judgment augmented protection against state arbitrariness by stressing that the law should “eschew arbitrariness in any form” since arbitrariness was antithetical to equality, both according to political logic and constitutional law. Thus, while providing a test

for reasonableness, the *Naz Foundation* judgment went beyond the procedural test of correspondence between an intelligible differentia and the objectives of law, by subjecting the objectives themselves to scrutiny. The judgment provided a substantive test of protection against the exercise of arbitrary power by the state, to say that any violation of Article 14 is in fact a violation of equality provisions in the Constitution. The restraint on state arbitrariness, according to the judgment, was to come from constitutional morality: it was the responsibility of the state to protect.

While protection against the arbitrary power of the state is drawn directly from Article 14, the tests of equality and dignity can be traced back to the code of constitutional morality, which can be found running through the Constitution generally, but more specifically in the preamble and chapters III, IV and IV-A of the Constitution. These chapters relate to fundamental rights, the directive principles of state policy and fundamental duties. Nevertheless, this does not mean that there are no constitutional standards governing the purpose of policies. One such standard is that no legislation can be “manifestly arbitrary”. The Supreme Court has consistently read this requirement under equal protection to mean that no statute can be “capricious, irrational or without an adequate determining principle⁸”. Indian equality jurisprudence demands that every law, including its purpose, must not be whimsical or capricious, but should be based on a factually tenable principle and rationale. On January 23, 2020, Supreme Court hinted that it might refer the CAA to a larger Constitution bench, but that for now, it has only asked the government to reply to pending petitions.

Most importantly, the CAA seems incompatible with the ideals of Indian secularism⁹. Even though the word “secular” was introduced in India in 1976, the Supreme Court in the 1973 *Kesavananda Bharati vs State of Kerala* judgment¹⁰ had observed that secularism is part of the basic structure of the Constitution. The basic structure arguably consists of the following features: (1) supremacy of the Constitution; (2) republican and

4. Nikhila Henry. CAB : Even Hindus Must Fear the BJP’s Citizenship Law, A Legal Expert Explains Why. December 12, 2019. https://www.huffingtonpost.in/entry/citizenship-amendment-bill-why-hindus-must-also-fear-it_in_5df1b3b5e4b06a50a2e9e06f

5. *Naz Foundation vs. Government of NCT of New Delhi*. New Delhi High Court. July 2, 2009. <https://indiankanoon.org/doc/100472805/>

6. *Ibid*

7. *Maneka Gandhi vs Union of India*. Supreme Court of India. January 25, 1978. <https://indiankanoon.org/doc/1766147/>

8. *Justice K.S.Puttaswamy (Retd.) vs Union of India*, 2018 (3) SCC 797. *Shayara Bano and Ors. vs Union of India*, AIR 2017 SC 4609. and *Navtej Singh vs Union of India and Ors.*, (2019) 1 SCC(LS) 443.

9. Nikhila Henry. CAB : Even Hindus Must Fear the BJP’s Citizenship Law, A Legal Expert Explains Why. December 12, 2019. https://www.huffingtonpost.in/entry/citizenship-amendment-bill-why-hindus-must-also-fear-it_in_5df1b3b5e4b06a50a2e9e06f

10. *Kesavananda Bharati vs State of Kerala*. Supreme Court of India. April 24, 1973. <https://indiankanoon.org/doc/257876/>

democratic form of government; (3) secular character of the Constitution; (4) separation of powers between the legislature, the executive and the judiciary; (5) federal character of the Constitution. The Indian Constitution does not uphold any religious text; all individuals are entitled to freedom of religion, and particular religious beliefs are not prerequisites to holding official positions. Thus, by assigning automatic disqualification on the basis of religion, the CAA denies socio-economic and political justice, which is inscribed in the preamble of the Constitution. It also goes against the freedom of faith and worship which is incorporated in the preamble.

The Violation of Indian Engagements Under International Law

The CAA raises a range of concerns when it comes to international human rights law. These can be broadly categorized into norms which directly relate to the right to nationality, and norms which relate to human-rights violations which are taking place and are likely to continue to unfold as a result of the arbitrary deprivation of legal protection based on religious convictions. Below is a non-exhaustive look at some of the key standards and norms.

A. The Right to Nationality

The main human rights under threat as a result of the CAB are the rights to nationality. It is important to note that states are free to regulate the acquisition and loss of nationality, within the limits set by international law. In addition to recognizing the right to nationality, international law explicitly prohibits the arbitrary deprivation of nationality: these norms can be found in many international conventions. For example, the 1961 Convention on the Reduction of Statelessness (Article 9) prohibits deprivation of nationality of a person or group on racial, ethnic religious or political grounds. This Convention also restricts the freedom of states to deprive a person of his or her nationality where this results in statelessness, allowing only for specified exceptions (Articles 7 and 8), which include the possibility for a state to retain the power to deprive a person of his or her nationality where: “inconsistency with his duty of loyalty to the contracting states, the person...has conducted himself in a manner seriously prejudicial to the vital

interests of the State”. The Convention also states that the deprivation of nationality must always be in accordance with the law and allow for the right to a fair hearing. On a similar note, the Convention on the Rights of the Child (Article 8) and the International Convention for the Protection of All Persons from Enforced Disappearances (Article 25.4) each recognize the right of every child to preserve his or her identity, including nationality, and to have this re-established if it is illegally removed. Article 6 of the Convention on the Reduction of Statelessness protects children and spouses from deprivation of nationality as a consequence of the loss of citizenship of the father or husband, in order to protect them from becoming stateless. In 1996, the UN General Assembly with the approval of India, recognized the prohibition of arbitrary deprivation of nationality as a fundamental principle of international law. From 1997 onwards, resolutions on human rights and arbitrary deprivation of nationality have been adopted periodically by the Commission of Human Rights and subsequently the Human Rights Council and have also been recognized by the authorities in New Delhi. These resolutions have formed the basis for a number of studies by the Office of the High Commissioner for Human Rights and the Secretary-General¹¹. A report published in December 2009 offers a helpful overview of the legal framework applicable to the prohibition of arbitrary deprivation of nationality: “While the question of arbitrary deprivation of nationality does not comprise the loss of nationality voluntarily requested by the individual, it covers all other forms of loss nationality, including those that preclude a person from obtaining or retaining a nationality, particularly on discriminatory grounds, as well as those that deprive a person of a nationality by operation of the law, and those acts taken by administrative authorities that result in a person being arbitrarily deprived of a nationality¹²”. The report also recalls important elements in the interpretation of the concept of arbitrariness, a term that “applies to all state action, legislative, administrative and judicial, and guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of human rights law and should, in any event, be reasonable in the particular circumstances¹³”.

11. UNHRC. Report of the Secretary-General, Human rights and arbitrary deprivation of nationality. A/HRC/13/34. December 14, 2009. <https://www.refworld.org/pdfid/4b83a9cb2.pdf>

12. Ibid. Paragraph 23.

13. Ibid. Paragraph 24

B. The International Human Rights Standards

South Asia director at Human Rights Watch, Meenaksi Ganguly asserted that the Citizenship Amendment Bill “uses the language of refuge and sanctuary, but discriminates on religious grounds in violation of international law¹⁴”. This form of the CAA violates the Article 3 of the Convention of New New York of 1984 on Torture, prohibiting parties from returning, extraditing or refouling any person to as state where there are substantial grounds for believing that they would be in danger of being subjected to torture. Although, India has not ratified the Convention against the torture, it comes under the customary law. Therefore, its provisions should be respected or India runs the risk of violating the Jus Cogens and Obligatio Erga Omnes principles of International law.

The contentious CAA also undermines the norm of international human rights law and refugee law. Though India has neither ratified the Refugee Convention of 1951 nor its 1967 Additional Protocol, nevertheless, it has extended constitutional protection to refugees without any religious discrimination. Indeed, India became a member of the Executive Committee of the High Commissioner’s Program (EXCOM) in 1995 which supervises the material assistance program of the United Nations High Commissioner for Refugees. Membership of the EXCOM indicates greater commitment to refugee jurisprudence. Apart from this, India voted affirmatively to adopt the UN Declaration on Territorial Asylum in 1967 and accepted the principle of non-refoulement as acknowledged as a Jus Cogens which is binding on all nation-states irrespective of they have signed the refugee convention or not. Being a signatory to the Vienna Convention on the Law of Treaties and most significantly the Convention against Torture, India is under an obligation to provide asylum to persons who fears persecution, irrespective of the religion of the person. The CAA also conflicts with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which signed in 1965 and which has the basic premise that any form of discrimination and denial of religious freedom should be nullified and ensures recognition of all religious and cultural groups. Further, under international law, the right to equality

14. Human Rights Watch. India: Citizenship Bill Discriminates Against Muslims. December 11, 2019. <https://www.hrw.org/news/2019/12/11/india-citizenship-bill-discriminates-against-muslims>

and non-discrimination is guaranteed by a number of instruments ratified by New Delhi, in particular Article A of the United Nations Declaration of Human Rights and Article 1.3 of the UN Charter. The ICERD in its entirety is devoted specifically to overcoming discrimination based on race, color, descent, national, religious or ethnic group. The right to non-discrimination is not limited to direct discrimination, but also applies to indirect discrimination that disproportionately affects particular groups. In 2016, with India as a member, the Human Rights Council adopted by consensus a resolution on human rights and arbitrary deprivation of nationality¹⁵, which reaffirmed that the international community shall “refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrary deprive persons of their nationality on grounds of race, color, language and religion, especially if such measures and legislation render a person stateless¹⁶”.

The CAA process could also amount to cruel, inhuman or degrading treatment or punishment. Muslim refugees from Pakistan, Bangladesh and Afghanistan, or citizens declared as foreigners by the Foreigners Tribunal, will be put into detention camps and face deportation, while being more and more isolated. A recent enquiry by a special monitor from India’s National Human Rights Commission (NHCR) into the detention center in India’s Assam state provides a chilling account¹⁷. The indefinite nature of such forms of detention, and the conditions of detention, can both contribute to cruel, inhuman or degrading treatment. As stated by the UN Special Reporter on the Human Rights of Migrants: “Substandard detention conditions may potentially amount to inhuman or degrading treatment, and may increase the risk of further violations of economic, social and cultural rights, including the right to health, food, drinking water and sanitation¹⁸”.

15. Human Rights Council. Third Second Session. Agenda item 3. Resolution adopted by the Human Rights Council on 30 June 2016: 32/5 Human rights and arbitrary deprivation of nationality. <https://www.refworld.org/docid/57e3dc204.html>

16. UNHRC, Res 32/5 (2016) (no 22), paras 2 and 4

17. Jyoti Punwani. “This is not atonement for partition”. The New Indian Express. January 9, 2019 / Also NHRC, Report on NHRC Mission to Assam’s Detention Centres from 22 to 24 January, 2018. <https://hrln.org/wp-content/uploads/2019/06/Report-of-Public-Hearing-on-NRC-and-CAB.pdf>: Annex No. 2)

18. François Crépeau. Report of the Special Rapporteur on the Human Rights of migrants. Human Rights Council. Twentieth session – Agenda item 3. Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. April 2, 2012. Para. 26. https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf

Another concern is the impact this process will have on children. Article 3 of the CRC (Children Rights Convention) considers the best interest of the child and is a foundational principle that guides the interpretation and implementation of the international conventions. It is also relevant to the interpretation of other treaties relating to children. The concept of the best interest of the child in the context of refugees and statelessness entails the duty to make the interest of the child a primary consideration and to protect children by guaranteeing their fundamental rights to life, education and security. The Committee on the Rights of the Child states that the concept of the best interest principle, like all rights laid down in the CRC, applies to all children, irrespective of their nationality or residential status¹⁹.

The Hindu Nationalist Agenda of the BJP Party

The political opposition says that the CAA is another example of how India's prime minister Narendra Modi and his BJP party have pushed an agenda of Hindu nationalism onto secular India, at the expense of the Muslim population. In the wake of Britain's colonial rule, India's democracy was conceived as secular in nature, with a civic form of citizenship. Yet, when Modi's BJP came to power in 2014, critics warned of the challenges that democratic institutions were set to face. The BJP has roots in the Rashtriya Swayamsevak Sangh (RSS), a right-wing organization founded in 1925 that promotes a vision of a Hindu nation. The political doctrine of the movement was fundamentally at odds with the principals of the Indian nationalist movement, led by Mahatma Gandhi and his disciple Jawaharlal Nehru, who would become the first prime minister of India after the independence. Gandhi, though deeply religious, advocated for Hindu-Muslim coexistence. Nehru, a staunch secularist, had supported religious pluralism. The first Hindu nationalists sought to make Hinduism, an ancient religion which has no single holy text, no overarching set of beliefs and no single place of pilgrimage, into a homogeneous, organized faith based upon a set of common religious tenets. During the early years of the Indian Republic, following

its independence from British colonial rule in 1947, the ideology of Hindutva and its adherents gained little appeal traction among the Indian electorate. However, since the 1990s, the BJP has become stronger in both the electoral and social arenas. Electorally, it was in power as the dominant partner in a coalition from 1998 to 2004. Later, in 2014 it emerged as a majority in parliament with substantial numbers of followers.

When Prime Minister Modi came to power in 2014, he has made three key elections promises: first, he would overturn the autonomous status of Kashmir, second build a temple to the Hindu god Ram at the holy site of Ayodhya, and finally impose a uniform civil code that would create one law for all, regardless of religion. Six months after Modi was elected in May 2019 for his second term, the Hindu nationalists had already made headway in achieving two of their aims. In August 2019, the Indian government stripped the Muslim majority state of Kashmir of its autonomous status, essentially giving New-Delhi more control over the region's affairs. That same month, nearly two million people in Assam on the border with Bangladesh, were left off a controversial new national Register of Citizens, which critics feared could be used to justify religious discrimination against Muslims in the state. Indeed, the National Register of Citizens (NRC) is a list of people who can prove they came to India before 24 March 1971, a day before neighboring Bangladesh became an independent country. Many indigenous groups in Assam fear that giving citizenship to large numbers of immigrants, who came over the porous border with Bangladesh following independence in 1971, would change the unique ethnic make-up of the region and their way of life, regardless of religion, considering that illegal migration from Bangladesh has long been a concern in the state.

However, in November 2019, India's Supreme Court in a unanimous decision, granted Hindus permission to build a temple at the centuries-old Ayodhya holy site (a religious flashpoint for more than 400 years), while giving Muslim representatives a separate five acres of land in the town, ending one of the country's most politically-charged land disputes. The ruling on the Ayodhya site was a blow to Muslims and came at a time when Muslims increasingly see themselves as second-class citizens. To settle the ownership question, India's top court was asked to consider ancient texts, including a 500-year-old diary written by a Mughal emperor, travelogues from medieval merchants, and colonial-era surveys and archaeological

19. See CRC, General comment No 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3(1)), (29 May 2013), CRC/C/GC/14; UNHRC, Report of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration (5 July 2010), A/HRC/15/29

records. The Islamic Waqf Board, an elected legal body that oversees Sunni Islamic properties endowed for religious or charitable purposes, argued that there is no proof that a temple was ever destroyed to build the mosque, but stated that they respect the Supreme Court's decision. However, the group of Hindu monks called Nirmohi Akhara, claimed the land in its entirety and asked for the right to build a temple there. The Hindu deities Ram Lalla Virajman have also claimed that: "the deity of Lord Ram has jurisdictional rights and as such its right could not be divided and the entire piece of land should be handed over to the deity²⁰".

Now, some wonder how long it will be until civil code is imposed. Indeed, Muslims in India are the world's largest minority, and if they were a country, they would be the seventh-most populous in the world. But in the political imagination of Hindu nationalism they are seen as a threat. The Modi government is likely to table a Uniform Civil Code Bill²¹, which mandates implementing a common set of laws for all Indian citizens irrespective of their faith and abolishing Legal Pluralism: "Currently, India has separate marriage, property and adoption rules for people from different religions, but a code would wipe those out. That particularly worries the Muslim community, as it could mean that Sharia Law no longer governs their marriage, inheritance and succession rights²²". Certainly, Modi's promise of economic reforms while restoring traditional Indian values to whom, but Indian leaders also promoted religious nationalism, and the UCC Bill is part of the BJP party outlook for "one India". The editor Kapoor's about the health of the world's biggest democracy concerns are broader: "I think it's bad for democracy. Especially the secular democracy we were brought up on, we were told it would be fair to minorities, fair to everybody...the government has a clear idea about where they want to take India and it has nothing to do with secularism²³".

The International Community's Reaction to the Citizenship Amendment Act

There has been international condemnation of India over the CAA. In the United States, a US federal panel on religion has urged the United States administration to consider sanctions against India's Minister of Home Affairs Amit Shah, who said in 2018 that Muslim immigrants and asylum seekers from Bangladesh were termites and promised to rid India of them if New Delhi adopted legislation that provides a path to citizenship for religious minorities from its neighbors, but excludes Muslims. In another statement, the US Commission on International Religious Freedom reiterated similar concerns over the legislation, saying the then act: "enshrines a pathway to citizenship for immigrants that specifically excludes Muslims, setting a legal criterion for citizenship based on religion²⁴". This commission raised concerns over the proposed legislation even before it was endorsed by the Rajya Sabha (India's upper house). It conceived of the bill as using religion as a pathway to citizenship to be against the core tenet of "religious pluralism". Describing the bill as a "dangerous turn in the wrong direction²⁵", the American commission maintained that the bill undermined "the most democratic tenet²⁶" and to demand sanctions against "Amit Shah and other principled leadership²⁷". Alongside the US Commission on International Religious Freedom, the US Ambassador-at-large for International Religious Freedom, and the House Foreign Affairs Committee similarly expressed their concern about the law²⁸. However, Donald Trump during his visit in India last February, nevertheless hailed Modi as a defender of religious freedom: "we did talk about religious freedom, and I will say that the prime minister was incredible on what he told me. He wants

20. Helene Regan, Swati Gupta and Manveena Sura. Hindus allowed to build on disputed holy site, India's Supreme Court rules. CNN. November 9, 2019. <https://edition.cnn.com/2019/11/08/asia/ayodhya-dispute-india-ruling-intl-hnk/index.html>

21. Uniform Civil Code by 2020? Modi government likely to table UCC Bill in parliament in December 2019. October 09, 2019. <https://www.timesnownews.com/india/article/uniform-civil-code-by-2020-modi-govt-likely-to-table-ucc-bill-in-parliament-in-dec/501855>

22. Manveena Sura. In Secular India, it's getting tougher to be Muslim. November 20, 2019. CNN. <https://edition.cnn.com/2019/11/19/asia/india-muslim-modi-intl-hnk/index.html>

23. Manveena Sura. In Secular India, it's getting tougher to be Muslim. November 20, 2019. CNN. <https://edition.cnn.com/2019/11/19/asia/india-muslim-modi-intl-hnk/index.html>

24. United States Commission on International Religious Freedom. December 9, 2019. <https://www.uscirf.gov/news-room/press-releases-statements/uscirf-raises-serious-concerns-and-eyes-sanctions>

25. Prithvi Iyer. Analyzing global response to the controversial Citizenship Amendment Act. Observer Research Foundation. December 26, 2019. <https://www.orfonline.org/expert-speak/analyzing-global-response-to-the-controversial-citizenship-amendment-act-59529/>

26. Ibid

27. Ibid

28. Harrison Akins, The Citizenship Amendment Act in India. United States Commission on International Religious Freedom. February 2020. https://www.uscirf.gov/sites/default/files/2020%20Legislation%20Factsheet%20-%20India_0.pdf

people to have religious freedom, and very strongly²⁹”.

The European Union (EU) on the other hand has adopted a relatively neutral stance. The official statement of the EU in response to abrogate Article 370 of Constitution concerning the autonomous status of Kashmir stressed the: “importance of steps to restore the rights and freedoms of the population in Kashmir³⁰”. The EU’s stance was mirrored by its response to the CAA. The EU’s ambassador to India Ugo Astuto hoped that the act would be in accordance with the “high standards” of the Indian Constitution. The rapidly evolving EU-India strategic alliance based on shared interests could explain this neutral position. Previously deemed as a “loveless arranged marriage”, the Brussels-New Delhi alliance has strengthened in recent decades and the EU-India Summit in 2017 that cemented bilateral ties on sustainable urbanization and climate change, amounted to an investment of €800 million in Indian solar projects. The EU’s big stakes in India thus partially explain its hesitation to take an explicit stance in condemning the CAA and Indian actions in Kashmir.

More surprising was the reaction of China, which preferred to issue a joint statement with Pakistan. The paper is opposed “any unilateral sanctions that complicated the situation”. New Delhi, often considered a “natural balancer” to Beijing growing influence, was particularly sensitive to Chinese dissatisfaction. In the meantime, Japanese Prime Minister Shinzo Abe, cancelled a December 2019 visit to Guwahati in Assam, amid violent protests in the northeast over the CAA. A Japanese media report had said he may consider cancelling the visit amid violent protests. After Japan, Bangladesh Foreign Minister AK Abdul Momen and the country’s Home Minister also called off their visits to India. The Organization of Islamic Cooperation (OIC), declared that it was “increasingly concerned³¹” by the CAA because of its apparent discrimination against Indian Muslims. The Islamic institution has already expressed a sympathetic view towards disenfranchised Muslims as demonstrated

29. Peter Baker – Michael Crowley and Jeffrey Gettleman. Trump Sees Commitment to Religious Freedom in India as Riots Break Out. February 27, 2020. <https://www.nytimes.com/2020/02/25/us/politics/trump-modi.html>

30. European Parliament. Situation in Kashmir (Debate). September 17, 2019. https://www.europarl.europa.eu/doceo/document/CRE-9-2019-09-17-ITM-018_EN.html

31. Kabir Taneja. The Muslim 5 Summit and the OIC take on India’s Citizenship bill protests. Observer Research Foundation. December 24, 2019. <https://www.orfonline.org/expert-speak/the-muslim-5-summit-and-the-oic-take-on-indias-citizenship-bill-protests-59470/>

in their desire to exclude primarily Muslim groups in fighting for liberation against oppressive regimes from the definition of terrorism.

The United Nations also condemned this “draconian Citizenship Amendment Bill³²” and asked for its immediate review. On Monday 2 March, UN Commissioner for Human Rights (UNHCR) Michelle Bachelet informed India that her office has filed an application urging the Supreme Court to make the UN body a third in a petition filed by a former civil servant against the law³³. The news has elicited a strong reaction from Raveesh Kumar, India Ministry of External Affairs spokesman: “our permanent mission in Geneva was informed yesterday (March 2, 2020) evening by the UN High Commissioner for Human Rights that her office has filed an intervention application in the Supreme Court of India in respect to the 2019 CAA...The CAA is an internal matter of India and concerns the sovereign right of the Indian Parliament to make laws. We strongly believe that no foreign party has any locus standi rights on issues pertaining to India sovereignty³⁴”. The intervention of the UNHCR in the CAA highlights not only the International Law arguments that must be taken into account, but also serves to signal how seriously the issues of citizenship and religious freedom are being taken by the international community. Amnesty International, said the bill, while inclusionary in its stated objective, is counterproductive in its structure and intent: “welcoming asylum seekers is a positive step, but in a secular country like India, slamming the door on persecuted Muslims and other communities merely for their faith of fear-mongering and bigotry³⁵”, said Avinash Kumar, Executive Director of Amnesty India. The UNHR’s spokesperson, Jeremy Laurence, said in Geneva: “We are concerned that India’s new Citizenship (Amendment)

32. Narender Nagarwal. The Poisonous Law: The Citizenship Amendment Act 2019. December 2019. https://www.researchgate.net/publication/337948797_The_Poisonous_Law_The_Citizenship_Amendment_Act_2019

33. Priya Pillai. Intervention of the UN High Commissioner for Human Rights at the Indian Supreme Court: International Law and the Citizenship Amendment Act. *OpinioJuris*. March 5, 2020. <http://opiniojuris.org/2020/03/05/intervention-of-the-un-high-commissioner-for-human-rights-at-the-indian-supreme-court-international-law-and-the-citizenship-amendment-act/>

34. Suhasini Haidar and Kallol Battacherjee. UN rights body to move Supreme Court on Citizenship Amendment Act. *The Hindu*. March 4, 2020. <https://www.thehindu.com/news/national/un-rights-body-to-move-supreme-court-on-citizenship-amendment-act/article30970693.ece>

35. India : New Citizenship Amendment Bill ‘reeks of fear-mongering and bigotry’. Amnesty International UK. December 12, 2019. <https://www.amnesty.org.uk/press-releases/india-new-citizenship-amendment-bill-reeks-fear-mongering-and-bigotry>

Act 2019 is fundamentally discriminatory in nature³⁶. The Office of the UNHCR hoped that the new law will be reviewed by the Supreme Court of India and that the court will carefully consider the compatibility of the law with India's international human rights obligations. Deteriorating relations with bordering countries cannot be ruled out. India's relations with both Sri Lanka and in particular Pakistan who has reacted predictably and laughably, even passing a resolution against the CAA in its parliament³⁷.

Thus, the regional strategic environment is not going to be very conducive for the India-Pakistan dynamic. The endgame in Afghanistan will probably see greater contestation between the two countries, in addition to new alignments. The China factor will continue to loom over South Asia, not just in the context of CPEC but also the Indo-Pacific strategy. The more India hedges China by engaging in the Indo-Pacific with the US and its allies, the more Beijing will rely on Pakistan to keep India unsettled. Even if India doesn't play ball on Indo-Pacific, the Chinese are unlikely to stop leaning heavily in propping up Pakistan against India, regionally and globally. The US too will use Pakistan to focus India's attention on itself and its Indo-Pacific strategy³⁸.

Conclusion: The Poisonous Law

Since independence, India has disproved projections that its democracy would crumble, by accommodating its diverse set of many constituencies and their various languages, ethnicities, castes and religions. While the state can indeed frame its citizenship laws, this is not absolute. There are a corpus of international legal obligations and principles that place limits on the types of laws that can be enacted. So to indicate that a state has sole purview with no check on the manner of its citizenship law is wrong. The sovereign right to determine nationality is not absolute, and there are a number of obligations a state needs to adhere to which emanate from multiple sources, including a variety of international treaties that India has committed to adhere to. That's why we wonder if the authorities of New Delhi will apply the CAA in reality or is it just a post-electoral populist decision.

36. Jeremy Laurence. Press Briefing on India. United Nations Human Rights Office of the High Commissioner. December 13, 2019. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25425&LangID=E>

37. Sushant Sareen. Pakistan is fishing in troubled waters by protesting against CAA. Observer Research Foundation. December 26, 2019. <https://www.orfonline.org/research/pakistan-is-fishing-in-troubled-waters-by-protesting-against-caa-59542/>

38. Sushant Sareen. Yesterday once more: India and Pakistan relations in the new decade. Observer Research Foundation. December 26, 2019. <https://www.orfonline.org/expert-speak/yesterday-once-more-india-and-pakistan-relations-in-the-new-decade-59743/>

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