

## CAA and Politics of Refugees in India

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The recent amendment of the Citizenship Act 1955 of the Indian Constitution commonly known as Citizenship Amendment Act (CAA) 2019 has erupted massive protests, demonstration, resistance, registered dissent and representation against such reprehensible law. The civil rights, human rights activists, common masses, students, liberal Hindus, Buddhists, Dalits, Muslims, Sikhs, and other political organizations across the national and international borders joined the protests to protect the secular and democratic legal fabric of India. The protest were also significant in resisting the legalizing the communal discrimination. There were different debates and demonstrations to convenience the ruling government to include Muslim refugees also within the ambit of newly amended citizenship law. But unfortunately, their voices were not heard and lost in the shadow of bullets, tear gas, lathi-charge, sedition charges, and the arrest of the demonstrators. The anti-CAA protests were silence down by the state administrative apparatus by hook or by crook. Amidst the CAA protest the COVID-19 waves emerged and the protest against CAA faded and the attention of public and media diverted.

The saddest part of the story was that some of the right-wing outfits staged the counter protests to support the CAA and demanded to deport Muslim refugees. One of the protests against Rohingya refugees in Jammu organized by Jammu Chamber of Commerce and Industry (JCCI) called for “identify and kill” Rohingyas. Ironically, the organizer of the protest Rakesh Gupta himself was once a refugee from Pakistan.

The CAA would have been one of the remarkable constructive steps towards providing the legal protection to the refugees in the entire South Asian region because except Afghanistan no country in the region is signatory to the UN Conventions for refugees. It was aimed at provide citizenship embedded legal, civic and political rights to refugees. But it's discriminatory and exclusionary legal engineering spoiled whole sanctity of its formulation for refugees by excluded Muslims from its realm. It added further vulnerability to those who are already vulnerable refugees of South Asia and also alarmed the Muslim citizens of this country because of it's would be implications on them. Although the mainstream narratives argued that the inclusion of select religious community (Hindu, Sikh, Buddhist, Jain, Parsi and Christian) from select countries namely Muslim dominated countries (Afghanistan, Bangladesh and Pakistan) is based on their minority status and religious persecution in those respective countries but it was nowhere mentioned in the gazette of amendment. The section 2 states, “Provided that any person belonging to community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act” (CAA Gazette). Although Muslims are also religious minorities not only in the countries like Myanmar, Nepal, Bhutan, Sri Lanka and India but also in the entire South Asian region and they are also persecuted and discriminated on the religious ground. There are minority Muslims within the broader Muslim category such as Amediyas, Shia, Hazras, etc. who are

often discriminated within and outside the Muslim circle. Despite this Muslims were excluded from the CAA. The recent cases of violence against Muslims in countries like Sri Lanka and Myanmar are live textbook examples of the religious persecution of Muslims.

It is not that the citizenship act of India amended first time in 2019. There were amendments earlier too prior to 2019 such as the amendment in 1986 (to point of foreigners and illegal migrants purely on the basis of documents) and in 2003 (to include Indian descendant and their children). But this time in 2019 religion became discursive parameter to citizenship or consider for citizenship as it was in the case of Israel's 1952's Law of return. Because of this paradigm shift the basis of granting Indian citizenship shifted from *jus soli* and *jus sanguinis* to *jus religionis*. Although this law enforced but it violates the fundamental rights enshrined by the Constitution of India, a sovereign secular democratic republic. There are many articles in Indian Constitution such as Article 14 and 15 which protects individuals from discrimination and adhere to the equality before law. [Article: 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, 15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, 16. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State].

Here are some of the major reasons d'être for why the CAA 2019 was much debated, contested, and forcefully implemented. This law is one of the first laws for refugees in the subcontinent but unfortunately it failed to address the issues of all refugees in general and selectively discriminate them on the basis of religion. It further branded the not mentioned religious refugee minorities as 'illegal', thus, their holding of the UNHCR documents or entering country through proper channel would be void before this law. That's the reason why Rohingya refugees in India are always branded as "illegal" despite their UNHCR status. It is an onslaught on the democratic and secular character of the world's largest democracy and its constitution and most importantly the CAA nexus with NRC (National Register for Citizens). As the present amendment law did not include Muslims in its preview of granting citizenship or considering for being citizens of India, those Muslims who would not be able to produce required documents under the NRC process would automatically be turned as "illegal" and would be easily associated with the "illegal migrants" from neighbouring states. There is calamitous probability of disowning the Muslim citizens of India if they failed to produce required documents by the state because they are not given space in the CAA. Thus, once proved "illegal" they cannot claim their rights to citizenship as other refugees and undocumented citizens could do under the CAA provision. This ambiguous and grey aspect of the CAA and nefarious nexus with NRC further worsen the worries of millions of minority Muslim citizens. Therefore, they are afraid of being stateless within their own homeland. The opacity of government's stand and cluttering statements make the entire phenomenon non-transparent and intricate. The CAA and NRC also became political tools to threaten the minority Muslims in the political rallies and election campaigns in India amidst the growing communal polarisation. By granting citizenship to select mostly Hindu and other refugees the ruling government is attempting to increase its Hindu vote bank as well as appease the majority Hindu population in the name of pro-Hindu nationalism.

In a nutshell, there is a growing religious nationalism in the South Asia which is also taking a legal shape to discriminate minorities and impose its whims and fancies on the minorities in the guise of nationalism and domestic policies. There are similar laws of citizenship in countries like Myanmar, Sri Lanka, and Bhutan which also legally excluded Hindus and Muslim minorities from the citizenship. Yet, the CAA is just another attempt to add new

chapter in the episode of existing discriminatory laws in South Asia. The government of India still can think of reconsidering and accommodating Muslims in the CAA to protect the democratic and secular spirit of this nation. But it is quite tougher challenge for the present government to choose between the Hindutva aspiration and appeasement and its inclusive policy and the secular image of Indian legal system. The reassessing of this law would also ease the worries of millions of minority Muslims of this country who are living under the hanging sword of the NRC and the CAA. It will further reduce the communal polarization and divide not only in India but also in the entire South Asian region. The modification in the law would also revoke the branding of select South Asian Muslim majoritarian countries and strengthen the sustaining meaningful South Asian regional cooperation, peaceful bilateral relations and coexistence.