



THE HINDU CENTRE

for

Politics and Public Policy

Essay

CAA and the Devaluation of Secular India



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Congress, DMK, and NCP MPs staging a protest against the CAA, NRC and NPR on the first day of the Budget Session at Parliament House in New Delhi on January 31, 2020. Photo: R.V. Moorthy

The Citizenship Amendment Act, 2019 (CAA 2019), has touched a raw nerve among Indians who grew up in an India that was a melting pot of diversity. While there is a sense of outrage among Indians who feel that this Act goes against Indian nationhood, there also exist those who are confused over the protests and see the CAA as a piece of legislation that would not affect them.

In this Essay, Elizabeth Seshadri, a Chennai-based lawyer, places the Act in the context of Indian nationhood, its distinctly unique history, and syncretic culture, and points out why this highly divisive piece of legislation goes against the larger interests of the nation and only furthers a Hindu-majoritarian right wing agenda aimed at creating a Hindu rashtra. Tracing the CAA 2019 back to the the Citizenship Amendment Act 2003 (CAA 2003) and the rules framed subsequently, Seshadri points out that the outcome of this piece of legislation will be the moral subjugation of Muslims in India. Importantly, she explains the manner in which the objective of helping persecuted people can be met even without this legislation.

Rooted in multicultural diversities

We the people of India grew up learning that our uniqueness was in our Unity in Diversity. A multitude of races, languages, scripts, festivals, religions and communities called this land their home. The diversity came in through many routes. Many theories abound about the sources of India's diversity. The more ancient sources of this vast country's diversity are still being studied and debated. The more recent sources have been documented.

Related Resource: **Ministry of Law and Justice, Government of India. 2019. "[The Citizenship \(Amendment\) Act, 2019 \[PDF 645 KB\]](#)",** December 19.

Basic reading does give the impression that a large part of India's social and cultural beauty and diversity have come to this land at different points of time in history. Some theories state that St. Thomas Christianity took roots here in 52 AD when a group of Malayalee Namboodiris were taken in by the new philosophy brought in by St. Thomas, one of the disciples of Jesus. Some state that Zoroastrianism came here long ago when Persian Parsis fled persecution from Persia and were allowed to settle here by the goodwill of a local Prince Rana.

More recently, in the 19th and 20th centuries, the Iranis took root in India having fled persecution in Iran. The Cochin Jews are believed to have come with King Solomon's merchants. The Chennai Jews came following expulsion from Iberia in 1492. The Nagercoil Jews arrived with St. Thomas in 52 AD. The Portuguese Jews came to India when the Inquisition in Portugal commenced. The Karachi Jews community came to India during Partition. The Baghdadi Jews came from Iraq, Iran, and Afghanistan about 250 years ago. The Beni Menashe are Mizo and Kuki tribesmen who converted to Judaism. The Bene Ephraim community are Telugus who converted to Judaism. The more recent Bahai faith came in around 1850 AD when Haji Sayyid Mirza and Sayyid Muhammad, who had become Bahais after meeting the founder Bahauallah, settled and traded in Bombay. Islam came to Kodungallur, the Konkan-Gujarat coast, and Gujarat coast with newly Islamised sea-faring Arab merchants. The Maapillas in Malabar were the first community to convert to Islam. Shia Islam came in the 11th century with missionaries. The local rulers in South India received the new faith well. Muslims were allowed to build mosques, inter-marry with Indian women and very soon an Indian-Arabian community came into being. There is even a story of one Cheraman Perumal, a King of Malabar, embracing Islam in early ninth century. The Bohras took roots here when two travellers from India, Moulai Abdullah (formerly known as Baalam Nath) and Maulai Nuruddin (formerly Rupnath) went to the court of Imam Mustansar and were so impressed that they converted to Islam and came back to India to preach the Bohra brand of Islam.

Meanwhile, a series of invasions called the Turkic invasions brought in Muslim rulers to certain parts, followed by the Delhi Sultanate of the Mughals. The Turkic invasions in the 12th century brought Islam into North India. Some theories say the Aryans brought ancient Hinduism when they invaded the Indus valley. Some believe that the principles of Hinduism evolved within the groups living in the Indus valley region. Some believe in a blend theory - that the core tenets evolved from indigenous rituals and practices, but outside sources influenced it. Hinduism is a group of philosophies with different sources and periods of origin.

Pre-Vedic Hinduism with a lot of nature worship called by some as Dravidian religion was believed to be unique to the Neolithic people of South Asia before the Aryans arrived. Around 1500 to 900 BC, the compilation of the Vedas and the Upanishads saw an evolving Hinduism. Between 1000 and 500 BC the Puranas gave a different dimension to Hinduism with the trinity and the Mahapurusha ideas of Mahabharata and Ramayana emerging. Around 500 BC, Buddhism and Jainism were born out of inspiration here to thinkers and teachers like the Buddha and Mahavira. In more recent times, Sikhism was inspired here as a reformist religion to Guru Nanak who travelled wide advocating Hindu-Muslim brotherhood. The recent Keezhadi excavations near Madurai suggest a secular civilization may have been caused to migrate from North to South. It showed no traces of religious activity. Who knows, maybe formal atheism had roots here too?! The Knanaya Christians came as Persian immigrant settlers in the 4th century. The Paravar Christians came to be when the local fishing community converted to Christianity to get the help of the Portuguese to defeat Arab fleets. The Catholics and Protestants took root when Missionaries came around the 15th century with the Portuguese. The Anglo-Indians were a result of the British presence in India and rooted Protestant Christianity. Animism or nature worship continues to be practised by many communities in the interior lands of this country.

Thus, just on the one aspect of religious beliefs, this country is a melting pot of so much varied philosophy. One attribute that characterised Indians was that they

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displayed in them a synthesis of civilisations and cultural diffusion. When a person says she is Indian, she will, even without making a conscious effort, reflect a bit of many

different religions and cultures in her. This is the uniqueness of India. This India belongs to all these religions; and to no one exclusively. India is a product of

much migration and diffusion. Anybody in search of the 'pure unadulterated' breed of Indian would probably never find one.

India - no stranger to persecution and refuge

Another important matter of pride for an Indian is that India has always opened its arms for the persecuted. A reality that must be dealt with is that India has seen persecution that has happened within its territories. Religious fanaticism has been the outward expression of political ambition. Every ruler had his own brand of violence against local groups to instil fear and obedience. Plunder, inquisition, murder, rapes have been used as political weapons in India's history. If anybody wants to pull out instances of persecution by any ruling group in the name of any religion, it will be possible. Persecution was done at different points of time in the name of different religions; against different religions; against different groups of people.

Yet on August 15, 1947, India awoke to a new promise of looking forward. When the Union of India was formed by uniting several kingdoms and British provinces, it consciously rejected the idea of becoming a religious state and very consciously, after debates and deliberations, chose to remain a secular country and not have an official religion, and where every individual could freely practice and profess any religion. Indians resolved to constitute themselves into a country where every person's liberty of thought, belief, faith and worship would be secure. They resolved to secure fraternity, of brotherhood and kinship with each other; assuring individuals dignity; and in the backdrop of this assurance of every individual's dignity, they resolved to secure their Unity.

So the first proposition being articulated in this article is that we are a country that promised to ourselves that we would live in brotherhood on the philosophy of Unity in Diversity.

It is against this backdrop that the objections to the Citizenship Amendment Act, 2019 (hereinafter referred to as CAA 2019) must be presented.

The objections to the CAA

The objections to the CAA 2019 have nothing to do with giving citizenship to persecuted groups. In fact, giving refuge to the persecuted is a humanitarian act and it is India's moral duty to provide refuge to persecuted persons. Offering citizenship to a refugee is a nation's choice of policy. There is no objection to this policy. So then what is the problem with CAA 2019? The second proposition being articulated in this article is that the CAA 2019 builds a narrative that Muslims are 'not sons of the soil'. This narrative is calculated to push the ideology of a 'Hindu rashtra', which is a pet theory of the right wing¹ network which is in power in India. The third proposition being articulated here is that the Vajpayee government complicated India's citizenship law in 2003 (CAA 2003). The fourth proposition is that CAA 2019 is a continuation of the mischief in CAA 2003.

CAA 2003 and the 'illegal immigrant'

Before 2003, the two categories of residents India recognised were 'citizens' and foreigners². A person became a citizen by birth or by descent. A foreigner could become a citizen by registration or by naturalisation provided certain specified conditions were met.

A political situation had been evolving in Assam from the 1970s which resulted in some drastic mistakes in the country's citizenship law. One must understand this political situation to appreciate the amendments that came in. 'Outsiders' was a term often used in Assam to whip up xenophobic sentiments. The Assamese were upset that the number of non-Assamese people in the State were increasing, and felt this was a threat to Assamese language and culture. Their anger was directed at all outsiders in their State, including people from other States. But there are theories that the anger was redirected towards the Bangladeshi immigrant. Most of the Bengali-speaking outsiders were assumed to have come in from Bangladesh. There was a movement that demanded that outsiders must be detected and deported. There were violent protests in Assam

in 1985 against migrants. The Rajiv Gandhi government entered into an Assam Accord with the leaders of the Assam movement, promising to deport all illegal migrants who had come in after March 1971 (i.e.) after the events leading to the Bangladesh liberation war commenced. An amendment was made to the Citizenship Act in 1986, by which those born after July 1987 in India could be Indian citizens by birth only if one of the parents was an Indian citizen at the time of his birth. The right-wing Bharatiya Janata Party (BJP) had built a political narrative around the detection, deletion, and deportation of illegal migrants for the elections in the 1990s. It is against this background that the amendments brought in to the citizenship laws in 2003 must be understood.

The BJP came to power in 1998. The CAA 2003 was passed with the support of several opposition parties. The Bill was discussed more as a 'Dual Citizenship Bill' for the introduction of the idea of the Overseas Citizen of India.

By the CAA 2003, a new term called 'illegal migrant' was introduced³ - a foreigner who had entered India without a valid passport or visa, or had overstayed his visa. So now a Foreigner had two subsets - the illegal migrants and the other foreigners.

CAA 2003 also introduced one more radical change. It said that those classified as illegal migrants could never become citizens of India.⁴ What's more, the children born out of a union of a citizen and an illegal migrant could never get citizenship.⁵ The CAA 2003 also introduced another radical idea - that of a National Register of Citizens.⁶ Another introduction in 2003 was the National Population Register⁷, which was not in the Amendment Act, but was provided in the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

It is difficult to understand why these amendments were necessitated, when Citizenship by registration or naturalisation were not by right, but were discretionary. The government always had the discretion to allow or not, any application for citizenship by registration or naturalisation. However, with the

blanket demonization of 'Foreigners without papers' in CAA 2003, India effectively made it impossible for any foreigner living without papers in India for whatever reason – fleeing persecution, economic opportunities or otherwise – to apply for citizenship. A very awkward crisis was also created under which children born out of the union of an Indian citizen and a 'foreigner without papers' could not apply for citizenship.

The amendment was touted as an attempt to stop migration into India for economic reasons. There was a discussion in Parliament to recognise that there would be cases of persons fleeing religious persecution and coming into India. However, very significantly, this distinction between bona fide refugees fleeing religious persecution and migrants for economic reason was not articulated in CAA 2003. Thus it was that persons fleeing persecution in the neighbouring countries and seeking refuge in India after crossing over were hit by the CAA 2003's bar on them applying for citizenship.

After the BJP came into power again in 2014, they set out to correct their mistake made in CAA 2003. They opened up Long term Visas for those non-Muslims fleeing Pakistan and who entered India before December 2014.⁸ Subsequently they extended the facility of Long Term Visas for non-Muslims fleeing from Bangladesh and Afghanistan. The Union Home Ministry issued a notification⁹, first exempting religious minorities fleeing persecution i.e. Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan and Bangladesh from having a passport as required by the Passport Rules. A subsequent notification¹⁰ included Afghanistan in the list of countries mentioned in the above notification. These notifications were discriminatory as they recognised only certain persecuted minorities. However, since they were Executive Orders they went largely unnoticed.

In 2016, a Bill reflecting this discrimination was introduced in Parliament, seeking exemption for Hindus, Buddhists, Jains, Sikhs, Christians, and Parsis from Pakistan, Bangladesh and, Afghanistan from being classified as 'illegal migrants'.

Thus an attempt was made to apply the concept of 'illegal migrants' of CAA 2003 only to Muslim foreigners. The 2016 Bill lapsed with Parliament's term getting over.

The BJP's manifesto for the 2019 election contained the following paras under the heading 'Nation First'.

"12. We are committed to the enactment of the Citizenship Amendment Bill for the protection of individuals of religious minority communities from neighbouring countries escaping persecution. We will make all efforts to clarify the issues to the sections of population from the Northeastern states who have expressed apprehensions regarding the legislation. We reiterate our commitment to protect the linguistic, cultural and social identity of the people of the Northeast. Hindus, Jains, Buddhists and Sikhs escaping persecution from India's neighbouring countries will be given citizenship in India."

"07. There has been a huge change in the cultural and linguistic identity of some areas due to illegal immigration, resulting in an adverse impact on local people's livelihood and employment. We will expeditiously complete the National Register of Citizens process in these areas on priority. In future we will implement the NRC in a phased manner in other parts of the country."

It is interesting to see that the BJP manifesto promised Citizenship to only Hindus, Sikhs, Buddhists, and Jains escaping persecution. The manifesto did not promise citizenship to similarly placed

Christians and Parsis. Also the manifesto did not cherry pick specific countries from the neighbourhood to identify with persecution. Some

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thinkers may find it interesting to analyse the religions in the BJP manifesto and examine them in the context of the right-wing ideology that segregates religions into 'Indian Religions' with *punya bhoomi* in India, and others. It may also be worthwhile to study the political compulsions that made 'Christians and Parsis'

get included in the notifications and in the CAA 2019. Another interesting study would be how all the other countries in the neighbourhood, especially Sri Lanka and Myanmar got excluded in the notifications and in CAA 2019.

The BJP won the Parliamentary elections in 2019 with a huge majority. The CAA 2019 on the same discriminating lines came to be passed with no widespread public consultations and spaced over just three days in two Houses of Parliament.

The fifth proposition is that while it is good that CAA 2019 undid the damage of CAA 2003 and removed the tag of 'illegal migrants', it is horribly wrong and is calculated mischief and is discrimination intended to humiliate that it has removed the tag of 'illegal migrants' selectively from some people only. This selection is unjustifiably based purely on the religious criteria.

The questions that pop up on the selective removal of 'illegal migrants' tag are:

1. Why are Muslims excluded from the above?

The government tried to answer that question by saying that Muslims are a majority in Pakistan, Bangladesh, and Afghanistan. So there is no chance of them facing religious persecution there.

However, it is a known fact that there are different sects in Islam too, just as there are in other religions, and it is known that certain sects face severe persecution in Pakistan. It is a known fact that Shia Muslims, ex-Muslim atheists, Sufis, and Ahmadiyya Muslims are amongst the minorities facing persecution in Pakistan at the hands of the Sunni Muslim majority community. In fact Pakistan passed a law in 1974 declaring the Ahmadiyyas as non-Muslims. President Zia-ul-Haq prohibited the Ahmadis from calling themselves as Muslims. Their mosques have been attacked and members of the community have been removed from government office. Shia Muslims have been called "the greatest infidels on earth" by anti-Shia militant groups in Pakistan. They have been selectively pulled out of buses and massacred. Sufi shrines have been bombed. Blasphemy laws are

freely used against atheists. Liberal bloggers in Bangladesh have lost their lives for questioning religious practices. The Taliban in Afghanistan have been perpetrating a genocide against the Hazara Shia Muslims.

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There is no reason why any person from any of these communities, when facing persecution, must be treated any differently by India than it would treat a Hindu, Sikh, Christian, Jain, Buddhist, or Parsi facing persecution.

Sikh, Christian, Jain, Buddhist, or Parsi facing persecution. A Pashtun activist against the Taliban in Pakistan called Malala Yousafzai and a liberal secular writer in Bangladesh called

Taslina Nasreen and a secular activist blogger in Bangladesh called Naimuddin Samad should be treated the same as a Christian Asia Bibi or any Hindu or Sikh or Buddhist or Jain or Parsi.

Now it is pertinent to ask why the Ahmadiyyas, the Hazaras, the Shias, the atheists, the liberals, the Sufis have been excluded. Their exclusion furthers a popular narrative that suits the right-wing methodology – that Muslims persecute non-Muslims. This narrative will be diluted if it is shown that Muslims also face persecution.

2. Why are Myanmar, Bhutan, Nepal, Sri Lanka and China excluded from the list of countries?

In Bhutan, where Mahayana Buddhism is the dominant religion, Hinduism is practiced mainly in the south. Many allege that the government rarely gives permission to build Hindu temples. Before 2008, Christians in Bhutan were not allowed to practice their faith outside their homes. In Nepal, the 'conversion' complaint has been used to oversee violence against Christians.

In Myanmar, a systematic state-sponsored persecution of the Rohingya Muslims led by Buddhist monks has been happening for decades. In 1982, the government in Myanmar introduced citizenship laws that required residents to prove

ancestry origins from before 1823! Most Rohingya Muslims got excluded in this process as they were Bengali migrants who went from British India to work during British colonialism. A systematic genocide of the Rohingyas, burning down of their mosques, widespread looting, arson, and rape by Myanmar's security forces has ensured the survivors have fled the country. The Kachin Christians also face increasing persecution now in Myanmar. Buddhist monks play substantial roles in the persecution of the Muslims and Christians in Myanmar.

China has unleashed a severe wave of persecution on an ethnic minority group the Uyghurs, who had embraced Islam, including detaining them *en masse* in 're-education camps'. Some of the horror stories of these camps that are trickling out include one of compulsory blood samples registration of the Uyghurs and detenus being murdered for organ trade with wealthy international recipients when matches are found.

In Sri Lanka, the majority Buddhist Sinhalese population have, for decades, been in conflict with a predominantly Shaivite Hindu Tamils, the Folk Hindu Tamils and the Roman Catholic and Methodist Tamils in the island. In 1948, the then government of newly independent Sri Lanka stripped the Indian Tamils of their citizenship. With intervention talks by India, Sri Lanka granted citizenship to some of the Indian Tamils. Most of the remainder were sent to India. This ethno-communal divide in Sri Lanka caused many Tamils to flee the persecution and come to India.

It is visibly clear that persecution, and specifically religious persecution happens in practically every country in the South Asian subcontinent. Yet, the CAA 2019 picks and chooses just three countries from our neighbourhood - all majority Muslim countries - to build the narrative of Muslims being persecutors.

The omission of Myanmar, Sri Lanka, and China help build the narrative by suppressing the fact that many Muslim minority groups are being persecuted just

as much. It also suppresses the fact that persecution is being done in the name of other religions too. Thus an anti-Islam narrative runs through the CAA 2019.

The injustice of the CAA 2019 is that it is yet another weapon to indoctrinate the gullible mind with a theory of "Muslims are persecutors" which suits the anti-Mughal narrative that sustains

a large part of the BJP's support base. The injustice of the CAA 2019 is also that it consciously leaves out the opportunity to show that

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religious persecution is a tool that is universally employed and is not Muslim-specific. The objective of CAA 2019 should be to offer a helping hand to all those facing persecution. However, the objective comes across as being to create another opportunity to do some Muslim bashing with a selective storyline of persecution in the subcontinent.

3. Why was Afghanistan included?

The specific inclusion of Afghanistan furthers this anti-Muslim narrative. Afghanistan was not part of British India. Yet got included. Myanmar was part of British India pre-1935. The Rohingyas are Bengalis who migrated to Burma from British India. Yet Myanmar is excluded so that persecution by the Buddhists does not dilute the anti-Muslim narrative.

4. Why were Christians and Parsis included?

There is an argument being floated around in support of the discrimination in the CAA 2019 that Hindus have no country to go to except India; but Muslims have so many Islamic countries to go to. This argument finds its roots in the right-wing ideology of India being the '*punya bhoomi*' of the Hindus, and hence should be a Hindu rashtra.

V.D. Savarkar, the right-wing's ideologue has included Sikhism, Jainism, and Buddhism in his idea of Hinduism, calling them all as 'Indian Religions'. However, the flaw in this 'Indian Religions' argument is visible by the inclusion of Christianity and Zoroastrianism, both of which originated in the Middle East. There are many Christian countries in the world, just as Muslim countries. Yet Christianity got included in CAA 2019. The Parsis have a recorded recent history of migration from Persia; and yet got included. The absurdity of this argument of "having other places to go to" can be shown when asked to imagine if a Taslima Nasreen is better suited to live in India or in Saudi Arabia.

Therefore, in conclusion, the objection is not that some are eligible to be given citizenship under the CAA 2019. The objection, specifically, is that some others

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are made not eligible to be given citizenship by a combination of CAA 2003 and CAA 2019. Since only Islam as a religion has been excluded, it directly affects the identity of the Indian Muslim.

It humiliates the religion of the Indian Muslim. It places those citizens with the Muslim identity at a second class level, compared to the other religions. It pushes a false narrative of 'these religions are Indian religions', while Islam is not. It needlessly creates social tension. It is mischievous as it is calculated to divide society into superiors and inferiors.

It is also pertinent to question the rationale behind the cut-off date of December 31, 2014, in CAA 2019. How did the government assume that persecution has stopped after this date? In fact there are newspaper clippings and videos being circulated that suggest persecution continues even now. The attack on the Nankana Sahib Gurudwara last month was also being cited as an example of persecution. Why then should those Hindus or Sikhs fleeing persecution after the cut-off date not be welcomed in India, just as those who fled prior to that date?

Since a cut-off date is mentioned, it may be assumed that the CAA 2019 is intended for those who have already entered India and have already been given Long Term Visas by our government. If that be the case, there must be a set of recorded numbers of such Long Term Visas issued. The government has not come out with this number yet. However reports of an IB Report to the Joint Parliamentary Committee put this number at 31,313. Out of this, there are 25,447 Hindus, 5,807 Sikhs, 55 Christians, 2 Buddhists and 2 Parsis. Pertinently, there are no Muslims in the 31,313. But there are no Jains either. But the CAA 2019 included Jains and excluded Muslims. So if we are looking at CAA 2019 as a humanitarian measure against persecution, the cut-off date just does not make sense as persecution continues.

CAA 2019 goes against India's fundamental value system

It is, however, highly doubtful that the CAA 2019 is intended to help the 31,313 Long Term Visa holders only. Over the last many years the NRC process in Assam was leading to many undocumented people being locked up in the detention centres for years together. It shocked many that this documents-based regime of citizenship scrutiny was resulting in many, many Hindus getting locked up in the detention centres. When the final NRC was released it was found that out of the 19 lakh persons who were not on the the citizens register, 12 lakh were Hindus and only 7 lakh were Muslims. The State unit of the BJP was visibly upset by these statistics.

There is a theory that the CAA 2019 is intended to save the Hindus left out of the NRC in Assam; while at the same time, offering no relief to the Muslims. However, ironically, the Assamese people have been protesting against the CAA 2019 for this precise reason – they object to its intention to save anybody and give them citizenship once they have been found to be undocumented. One must remember that in Assam the xenophobic sentiment had been channelized against the 'Bangladeshi' – his religion did not matter to the Assamese. The religion of the 'Bangladeshi' mattered only to the State unit of the BJP.

The above view that the CAA 2019 is intended to save the 'Bangladeshi Hindus of Assam' is believable in the light of a statement made by Nityanand Rai, Union Minister of State for Home in the Lok Sabha on February 6, 2019 in response to specific questions. He said,

"However, in January, 2016, the Centre had advised Assam to examine the cases of all persons covered by various court cases filed in Gauhati High Court and release them from detention centres if they satisfy the conditions and requirements of the two notifications issued by the central government on September 7, 2015, exempting such persons by or under clause (c) of subsections (2) of sections 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."

These are the executive notifications that had brought in religion-based discrimination in the manner by which foreigners should be exempted from the tag of 'illegal migrants'.

An important aspect of the CAA 2019 is that it does not mention the phrase 'religious persecution' anywhere within it. The phrase has only been used in public discourse and when the Bill was introduced. So, this is a situation where the Act is being presented to the public portraying it as intended to protect those who suffer religious persecution, but in effect it simply makes a discriminatory religious classification for all migrants - those who came in for economic or other reasons as well. Therefore, now there is no difference between the illegal migrant fleeing persecution or an illegal migrant for any other economic or other reason. They all are treated the same. They are just divided on the basis of religions and one set is allowed citizenship and the other is not.

In Assam, the effect will be that out of the 19 lakh persons who are declared illegal migrants, the 12 lakh Hindus can now apply for citizenship. But the 7 lakh Muslims cannot. That is quite a poignant application of the CAA, because it very blatantly demonstrates a narrative of Hindu rashtra. Another example of the

application of the CAA arose recently when the Bangalore High Court granted bail to Archana Purnima Pramanik, a Christian and an undocumented immigrant from Bangladesh, based on the CAA 2019 as she was of Christian faith and the CAA 2019 exempted her from the 'illegal migrant' tag. The discrimination becomes poignant when one considers this: If she had been a Muslim, she would not have got bail on this ground.

One hypothetical application of the CAA 2019 using the reference of an incident in history may be revealing. The Ugandan dictator, Idi Amin, ordered in 1972 that all Indians in Uganda, mostly Gujaratis, should leave Uganda in 90 days. Most of these Indians had fled to Uganda around the time of partition in 1947 and had made Uganda their home. Now imagine that population of 80,000 being a microcosm of India. Assuming Uganda was included in the list of countries in the CAA 2019, then the Indian-origin Muslims within that 80,000 would be 'illegal migrants' but the Indian-origin Hindus would be eligible to apply for Indian citizenship. This is the unfairness of CAA 2019. The Indian Constitution secures to every individual the liberty of conscience, thought and faith. It is founded on the principle of equality of all citizens and the equal protection of the laws to all citizens.

There is an argument floating around that the CAA 2019 does not treat the Indian Muslim differently, because it is about migrants only. The self-righteous arrogance of this argument is shown in the fact that all over India Muslims and secular minded Indians have got out on the streets to protest the indignity and humiliation that the CAA 2019 brings to the Indian Muslim. Don't these people know when they are being humiliated?

If a law has to discriminate, the state must be able to explain how it arrived at the classifications; these classifications must appear reasonable; why the differentiation between the different classifications is necessary and why therefore the unequal treatment is necessary. So far no sensible explanation has

come into the public domain that explains why persecuted people need to be classified according to their religions and treated differently.

In Conclusion: Was there a better way to do this?

So how can we help persecuted people without the mischief of the CAA 2019?

Keeping with India's stature in the international community, it is high time that India signs the UN Refugee Convention of 1951. The country also holds a moral duty to promote peace, stability, and diversity in its neighbourhood as many of the communities being persecuted are from British India. One of the ways to begin is by role-modelling unity in diversity.

Regarding offering citizenship, the law as it stood pre-2003 would have taken care of the citizenship needs of any foreigner. A foreigner could become a citizen by following the prescribed residency period and other stipulated conditions. Citizenship by registration or naturalisation was discretionary. Foreigner spouses of Indians could apply for citizenship by registration if they reside in India for seven years. Foreigners who wished to become Indian citizens by naturalisation had to show residence in India for about 11 years, good character and knowledge of an Indian language. These types of citizenship are discretionary and not a matter of right. The government of the day controls the exercise of the discretion.

It was the 2003 mistake of bringing in the concept of 'illegal migrant' that made things messy for those fleeing persecution. They were barred from citizenship by the 2003 amendment. If the government simply repeals the concept of 'illegal migrant' and the bar on them applying for citizenship, the law will revert to a position where any

If the government simply repeals the concept of 'illegal migrant' and the bar on them applying for citizenship, the law will revert to a position where any foreigner can apply for Indian citizenship under regulations made by the government.

foreigner can apply for Indian citizenship under regulations made by the Indian government. There will be no law that uses discriminatory language based on

religion. The government exercises discretion in grant of citizenship. The government at its discretion looks into the papers of the applicant.

The CAA 2019 introduced a new process for the specified religions that required them to show residency for only 6 years. All such discriminations must go. Let the process be uniform for all those seeking citizenship. The sixth proposition here is that the government should repeal the CAA 2019 and instead introduce an amendment to CAA 2003 that repeals Sec. 2(b) that introduced the idea of illegal migrant and remove the references to 'illegal migrant' in Sections 3, 5 and 6 that placed a bar on their eligibility to apply for citizenship.

Post-script: Cleaning the cobwebs around this discussion

The right-wing's propaganda of '*punya bhoomi*' by which it encourages people to see religions with discriminatory lenses, has over the years resulted in so much hatred entering India's social blood stream. It is normal now to find anybody with a Christian-sounding name being attacked on social media with phrases like 'Ricebag convert' and 'Go back to Jerusalem'. Similarly, those with Muslim-sounding names are told to 'go to Pakistan'. A false and malicious narrative has been injected into our society of certain religions not being entitled to be equal stake-holders in India.

There are some in the BJP who have been referring to the CAA as the "unfinished business of Partition". It is pertinent to remember that India's citizenship by

It is pertinent to remember that India's citizenship by naturalisation laws were more than sufficient to welcome persecuted persons from Pakistan or Bangladesh.

naturalisation laws were more than sufficient to welcome any persecuted person from Pakistan or Bangladesh. While Pakistan chose to be a separate nation for Muslim

majority, and in a few years after Partition even chose to declare itself an Islamic state, India chose not to declare itself as a religious country. It chose to be a country where individuals were assured of their liberty of conscience and could choose to profess (or not profess) any faith they chose. While Pakistan was

created on a pro-Muslim sentiment, India was not created on an anti-Muslim sentiment. The Muslims who chose to remain in India or migrate into India are as much Indian as the non-Muslims who chose to remain in India or migrate into India.

The right wing has used the weapon of cultural nationalism to make many people think that their religious affiliation and their national identity are the same. This was easy to do against the backdrop of British colonialism, when a freedom movement was building up. To develop the religious identity, they had to point out to another religion as an outsider enemy - the Muslim was an easy enemy to paint. It was easy to consolidate the Hindu sentiment when an "outsider enemy" was pointed out. Thus the right-wing network grew.

However, the British have left. Indians don't need "outsider enemies". They need good governance, a strong economy, more jobs, and a happy, peaceful society. They cannot afford to be spending their energies clawing at each other in the name of a false and imaginary enmity, which is fed using selectively picked stories from history. India needs a confident society that focuses on looking forward, growing stronger in science and technology, erasing human poverty, looking after its environment – there are so many things to do! Yet Indians get pulled into an 'othering' drama – by being fed a false sense of victim hood and a fear-mongering threat of 'Muslim marauders of Hindu wombs'! It is truly an evidence of the power of 'othering' as a weapon that finds so many educated Indians falling for this war technique just as easily as many uneducated.

The problem with allowing historical narratives determine a nation's morality is that history is only as correct as what has been unearthed so far. Ancient history will keep changing as new facts are unearthed. The Keezhadi excavations are a case in point. It appears that the similarities observed so far between the discovered Tamil

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Brahmi script and the Indus script may support a theory that the newly discovered Vaigai civilization migrated from the North to the South. Importantly, Keezhadi has shown a secular society, with no evidence of religious activity. Who knows, Indian atheists may want to claim that this land belongs to them, if going by a historical narrative! Therefore nationhood cannot be on ancient historical facts only. When a historical narrative changes because of emergence of a new fact, will the idea of nationhood have to change? Obviously no! India is more than just claims based on history. India is a feeling; an emotion; an indescribable unity in diversity – it has to be experienced to know it. To experience it, one must embrace the diversity; not fear it.

If this principle of the idea of India is understood, one can immediately recognize that the CAA 2019 is a mischievous, mean piece of legislation. The CAA 2019 is another weapon in the 'othering' armoury of the right wing. The bluff on this 'illegal migrant' bogey must be called. The CAA 2003 or CAA 2019 does not stop illegal migration. The Citizenship Act is only about who can apply for citizenship, not about who can reside in India. So the CAA 2003 or CAA 2019 are unnecessary. The Foreigners Act allows the detection, policing, and deportation of foreigners. If this power is already in the Foreigners Act, there is no need for a separate legislation.

Further this fear-mongering or bogey of illegal migrants must be understood in perspective. When resources are scarce, scapegoats are sought after. If the focus is on strengthening the economy, India will be a cosmopolitan country where such issues do not raise collective anxieties. A strong country is one that focuses on strengthening its borders, rather than create internal disturbances by asking its population to queue up for a regime that wants to try a fancy documents-based and retrospective scrutiny of citizenship. A population as diverse as India's and as unorganised and steeped in poverty and lack of education need not be put through an exercise which has proven to cause untold misery in Assam.

Indians also do not want to see themselves being subjected to the humiliation of having to rely on the discretion of some local party worker designated to collect their information on whether to mark us them Doubtful Citizens or not. They do not want a regime where representatives of a Population Registrar decide to pick on them with a 'Doubtful endorsement' because they didn't like the sound of a name or the smells from a kitchen or the way *kumkum* is worn on a forehead or that he wasn't paid enough.¹¹ If the bogey of 'illegal migrants' is allowed to take over the psyche of Indian society, the country is headed in that direction.

Two recent examples will illustrate this possibility.

- The right wing ideology had injected a venomous theory into its gullible followers' minds of 'Muslim marauders out to impregnate Hindu wombs'. Stories of way back in Indian history of Mughal times and the Turkic invasions were used to perpetrate this fear and caution people to 'protect your womenfolk from the Muslim'. Recently this madness was articulated as a lot of hue and cry about 'Love Jihad'. The National Investigation Agency (NIA) was put to the task of investigating the Love Jihad angle of what ultimately turned out to be a genuine romance and marriage of an inter-faith couple. The Ministry of Home affairs admitted in Parliament in February 2020 that there are no love jihad cases as earlier claimed. However, substantial damage had been done to the psyche of gullible Indian society with this term.
- Another example is the very recent episode where one self-righteous gentleman made an anonymous video in Bengaluru from an apartment balcony of a large space filled with tin sheds of workers. He claimed it was a settlement of Bangladeshis and they were 'a law unto themselves' and that state agencies were not allowed to enter there, and so on and so on. The video went viral and raised the hackles of those prone to the disease of xenophobia. Overnight civic authorities came with excavators and flattened the tin-shed homes of at least 2,000 migrant workers and their families. Not one of these workers were found to be foreigners or illegal

migrants. Now the Karnataka High Court is doing a post-mortem investigation of the event, amidst several rumours including of 'illegal migrants' having been a bogey to grab the property by a local legislator and of the local corporation claiming ignorance of the episode. Ultimately though, the damage to the lives of the poor has been done.

This story caught the public eye because it happened in Bengaluru. One only has to look for the stories of the Assamese families who have sold all their properties to get documents or to fight cases for years to get their loved ones released from the detention centre. It will always be India's civil society's shame that it woke up too late to recognize what was happening in Assam – the extent of xenophobia that had been allowed to build up there and the extent of human misery that had resulted.

The seventh and most intense proposition I urge here is that as a civilization, our common enemy is this political tool of xenophobia and 'othering' that is misused by some to turn us against each other. The enemy is not one particular religion. The enemy to be kept away is the mentality of people to bring religion into the public spaces and create politics out of it.

Religion and associated xenophobia and 'othering' are mere weapons of politics. It is easy to build a vote bank by painting a picture of an imagined enmity with another group. A constant storyline of being threatened by 'outsiders' makes people gravitate towards leaders who appear strong because they can spew venom against the so-called enemy. People in power have led societies to persecute one another by creating imagined stories of enmity.

This Article is intended to be a discussion of the CAA on a stand-alone basis. The CAA gets even more dangerous when combined with a documents based exercise of NPR-NRC, as the example of Assam shows. That issue will require another article.

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Endnotes:

1. Right wing in this article refers to those who have conservative views about society and social structures; wants to go back to the way things were before; a traditionalist; resists reform or change.

2. 'Foreigner means a person who is not a citizen of India' – Section 3 (a) of The Foreigners Act, 1946.

3. Section 2(b) introduced by CAA 2003: 1[(b) "illegal migrant" means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;]

4. Section 5 Citizenship by registration:

(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely:—

(a) a person of Indian origin who are ordinarily resident in India for seven years before making an application for registration;

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for 2[one year] before making an application for registration. 3[one year] before making an application for registration

Section 6. Citizenship by naturalisation.—

1. Where an application is made in the prescribed manner by any person of full age and capacity 1[not being an illegal migrant] for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

5. Section 3: Citizenship by birth.—

1. Except as provided in sub-section (2), every person born in India,—
 - a. on or after the 26th day of January, 1950, but before the 1st day of July, 1987;
 - b. on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;
 - c. on or after the commencement of the Citizenship (Amendment) Act, 2003, where—

i. both of his parents are citizens of India; or

ii. one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

2. A person shall not be a citizen of India by virtue of this section if at the time of his birth—

a. either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

b. his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.]

Section 4. Citizenship by descent.—1

1. A person born outside India shall be a citizen of India by descent,—

a. on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or

b. on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth: Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

a. his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

b. his father is, at the time of his birth, in service under a Government in India: Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—

a. his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

b. either of his parents is, at the time of his birth, in service under a Government in India: Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed,—

i. within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, whichever is later; or

ii. with the permission of the Central Government, after the expiry of the said period: Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.

(1A) A minor who is a citizen of India by virtue of his section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.

2. If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

3. For the purposes of the proviso to sub-section (1), any 2[person] born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

6. 14A. Issue of national identity cards.—

1. The Central Government may compulsorily register every citizen of India and issue national identity card to him.
2. The Central Government may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority.
3. On and from the date of commencement of the Citizenship (Amendment) Act, 2003, the Registrar General, India, appointed under sub-section (1) of section 3 of the Registration of Births and Deaths Act, 1969 (18 of 1969) shall act as the National Registration Authority and he shall function as the Registrar General of Citizen Registration.
4. The Central Government may appoint such other officers and staff as may be required to assist the Registrar General of Citizen Registration in discharging his functions and responsibilities.
5. The procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed.

7. Rule 2(l) of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003: "Population Register" means the register containing details of persons usually residing in a village or rural area or town or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) within a ward in a town or urban area.

8. Notification dated 15.12.2014. It mentions Hindus, Sikhs, Christians & Buddhists only.

9. Notification dated 07.09.2015 amending Rule 4(1)(h) of the Passport (Entry into India) Rules, 1950.

10. Notification dated 18.07.2016 amending Rule 4(1)(ha) of the Passport (Entry into India) Rules, 1950.

11. Rule 4 of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003: Preparation of the National Register of Indian Citizens.—

1. The Central Government shall, for the purpose of National Register of Indian Citizens, cause to carry throughout the country a house-to-house enumeration for collection of specified particulars relating to each family and individual, residing in a local area including the Citizenship status.
2. The Registrar General of Citizen Registration shall notify the period and duration of the enumeration in the Official Gazette.
3. For the purposes of preparation and inclusion in the Local Register of Indian Citizens, the particulars collected of every family and individual in the Population Register shall be verified and scrutinized by the Local Registrar, who may be assisted by one or more persons as specified by the Registrar General of Citizen Registration.
4. During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.
5. (a) Every person or family specified in sub-rule (4), shall be given an opportunity of being heard by the Sub-district or Taluk Registrar of Citizen Registration, before a final decision is taken to include or to exclude their particulars in the National Register of Indian Citizens.

(b) The Sub-district or Taluk Registrar shall finalize his findings within a period of ninety days of the entry being made, or within such reasonable extended time for which he shall record the reasons in writing.

6. (a) The draft of the Local Register of Indian Citizens shall be published by the Sub-district or Taluk Registrar, for inviting any objections or for inclusion of any

name or corrections for the family or individual particulars collected and proposed to be finally entered in the National Register of Indian Citizens.

(b) Any objection against a particular entry or for inclusion of a name, or corrections if any, in the Local Register of Indian Citizens may be made within a period of thirty days from the date of publication of the draft of the Local Register of Indian Citizens, spelling out the nature and reasons for the objection in such form as may be specified by the Registrar General of Citizen Registration.

(c) Subject to the provisions contained in clause (a) of sub-rule (5), the Sub-district or Taluk Registrar shall consider such objections and summarily dispose off the same within a period of ninety days, and thereafter submit the Local Register of Indian Citizens so prepared to the District Registrar of Citizen Registration who shall cause the entries in the Local Register of Indian Citizens, to be transferred to the National Register of Indian Citizens.

7. (a) Any person aggrieved by the order of the Sub-district or Taluk Registrar under sub-rule (5) or sub-rule (6), may prefer an appeal within thirty days from the date of such order, to the District Registrar of Citizen Registration.

(b) The District Registrar of Citizen Registration shall take a final decision, after giving an opportunity of being heard to the person so aggrieved, within a period of ninety days from the date of appeal.

(c) In case the appeal is allowed, the particulars shall be entered in the National Register of Indian Citizens.