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INTERPRETING THE CITIZENSHIP AMENDMENT ACT, 2019: IMPLICATIONS FOR AFGHAN, PAKISTANI, AND BANGLADESHI REFUGEES IN THE CONTEXT OF INTERNATIONAL REFUGEE CONVENTIONS AND THE CONSTITUTION OF INDIA

AUTHORED BY - C N MONISH

Research Questions:

1. Is the CAA a policy change in the right direction in light of the principles under India's International Refugee Conventions and Constitution?
2. What is the social impact of the CAA on Afghan, Pakistani and Bangladeshi refugees?

Introduction

The Citizenship Amendment Act, 2019 (CAA), is a milestone in India's immigration law as it has decided to provide citizenship only to some non-Muslim refugees from Afghanistan, Pakistan and Bangladesh. This action has ignited a row regarding its bearing on secularism, refugee rights and whether it aligns with international practices and the Constitution of India.

The CAA offers Indian citizenship to non-Muslims (Hindus, Sikhs, Buddhists, Jains, and Christians) from Pakistan, Bangladesh and Afghanistan who entered India before December 31st 2014, stating persecution by the majority Muslim religion as their primary reason for entry. Secularists argue that it ties the secularist line of India and questions its adherence to international documents such as the 1951 UN Refugee Convention and 1967 Protocol, despite India not being a signatory.

The purpose of this paper is to see how CAA would affect the refugees from Afghanistan, Pakistan, and Bangladesh in terms of international refugee law in India's constitutional framework. It shall also examine the provisions of this act regarding security and secularism in India. This piece will closely interrogate this rather novel judgment through the lens of Article 14, then analytically evaluate whether or not it stands up to constitutional scrutiny. Lastly, how does it affect refugee policy in India and, by extension, secularism?

Indian Citizenship Act, 2019

What does the CAA say?

The primary objective of the CAA is to provide fast Indian Citizenship to the minorities of religious groups from neighbouring countries of India, like Afghanistan, Pakistan and Bangladesh etc. It's important to know that the CAA provides citizenship based on religion and not based on refugee status. ¹The government argues that these minorities have historically faced religious discrimination in their home countries and that India has a moral obligation to offer them refuge. The Citizenship Act says on what grounds a person can obtain Indian citizenship. Before the CAA, 1955, a person could obtain Indian citizenship only if they were born in India or their parents or grandparents were born in India. The Citizenship Amendment Bill grants Indian citizenship to illegal migrants belonging to minority groups from Bangladesh, Pakistan, and Afghanistan, excluding Muslims. ²However, the provisions of the Citizenship Act do not extend to persecuted Muslim communities like Shias and Ahmedis in Pakistan, Tamils in Sri Lanka, Hazaras, Tajiks, and Uzbeks in Afghanistan, or atheists in Bangladesh. Prior to this amendment, individuals were required to reside in India for at least 11 years to be eligible for citizenship, but the amendment reduced this residency requirement to 5 years. Hindu, Sikh, Buddhist, Jain, Parsi, and Christian migrants from Afghanistan, Pakistan, and Bangladesh who entered India on or before December 31, 2014, are eligible for citizenship. The act notably excludes Muslim refugees, which has been a significant point of contention. ³Under the Citizenship Amendment Act 2019, illegal immigrants refer to individuals from other countries who entered India without valid travel documents, such as a passport or visa, or those who entered with valid documents but overstayed beyond the permitted time frame. Such individuals can be deported or imprisoned under the provisions of the Foreigners Act of 1946, and the Passport (Entry into India) Act, of 1920.

Is the CAA based on religion or not?

Yes, the Citizenship Amendment Act, 2019 (CAA) is based on religion. The act explicitly provides a pathway to Indian citizenship for six non-Muslim religious communities—Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians—from three neighbouring countries: Afghanistan, Pakistan, and Bangladesh. ⁴The Indian government considers these communities

¹ Anupriya, & Vikash Jha. (2021, 07 09). Citizenship Amendment Act, 2019. *I*(2),

² Muskaan Rawat, Poorvi Bhati, & Khushi Deshlahara. (2021, 08 25). CAA: A justified Constitutional Law. CAA: A justified Constitutional Law, 22(1), 06. Manupatra Articlcs.

³ Pujarani Behera. (2021, 07 28). A detailed study on Citizenship Amendment Act 2019. Manupatra Articles, 14

⁴ Anupriya, & Vikash Jha. (2021, 07 09). Citizenship Amendment Act, 2019, *I*(2),

to have faced religious persecution in their home countries. The CAA identifies six specific religious groups—Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians—and excludes Muslims. This religious distinction is central to the law, as it aims to provide expedited citizenship to those fleeing religious persecution, but excludes Muslim refugees from the same countries. The three countries listed in the CAA—Afghanistan, Pakistan, and Bangladesh—are Muslim-majority nations, and the law suggests that religious minorities in these countries are particularly vulnerable to persecution due to their non-Muslim faith. Before the 2014 Lok Sabha elections, the BJP promised to grant citizenship to Hindus from neighbouring countries and provide refuge to those seeking asylum. The Citizenship Amendment Act (CAA) does not impact existing Indian citizens. However, several parties, including NGOs, Congress, and the All India United Democratic Front, opposed this act. They argued that the amendment discriminates based on religion and that religious persecution, defined as the "mistreatment of people or groups based on their religion," is a concern.⁵ The "Indian Union Muslim League" (IUML) was the first to file a petition against the Citizenship Amendment Act (CAA), arguing that it violates the "Right to Equality." The IUML claimed that the Act discriminates against Muslims by excluding them from the benefits of Indian citizenship, basing its provisions on an unreasonable religious distinction. According to the petition, the Act unfairly focuses on migrants from just three countries—Pakistan, Afghanistan, and Bangladesh—while ignoring other neighbouring countries like Sri Lanka, Myanmar, Nepal, and Bhutan. The petition emphasised that laws concerning illegal migrants should not be based on religion. Additionally, IUML argued that the CAA contradicts the principle of secularism, which forms part of the "basic structure" of the Constitution, and violates fundamental rights such as the "Right to Equality, Life, and Liberty." The petition pointed to a breach of Article 14 of the Indian Constitution, which guarantees that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." IUML claimed that the CAA results in a "denial of equal treatment" to all religions under the law. Persecution, defined as the "mistreatment of people or groups based on their religion," is a concern.

Impact on Muslims

The Citizenship Amendment Act, 2019 (CAA) has significant consequences for Muslim refugees, as it explicitly excludes them from the fast-tracked path to Indian citizenship that it provides to non-Muslim groups from Afghanistan, Pakistan, and Bangladesh. This exclusion

⁵ Indian Union Muslim League v. Union of India, 2019

has sparked intense debate over the legal, social, and constitutional impacts on India's secular principles and refugee policies. Muslim refugees, even those facing persecution in their home countries, are not covered under the CAA's provisions. This includes marginalised communities such as Ahmadi Muslims in Pakistan, who are persecuted and legally classified as non-Muslims, as well as Shia Muslims from Afghanistan and Pakistan, who endure sectarian violence and targeted attacks. As a result of their exclusion from the CAA, Muslim refugees remain particularly vulnerable to deportation or continue to be classified as illegal immigrants under the Foreigners Act of 1946, and the Passport (Entry into India) Act, 1920. Without the protections afforded to other religious groups, Muslim refugees face significant challenges, such as:

- Difficulty in obtaining legal residency or citizenship.
- Lack of access to welfare programs, education, and employment rights.
- Persistent fear of deportation or legal consequences under India's strict immigration laws.

The Indian Constitution, 1950

Is the CAA unconstitutional?

⁶The Citizenship Amendment Act (CAA) seeks to grant citizenship to illegal migrants from Afghanistan, Pakistan, and Bangladesh based on their religion, which critics argue violates "Article 14 of the Constitution." Although the government has defended the law by claiming it is based on reasonable classification, opponents contend that this classification is not justified. The CAA is also said to violate the "Preamble of the Constitution" and various other constitutional provisions, including Articles 15, 25, 29, 30, 51C, and 253. Key rights such as the "Right to Equality under Article 14" and the "Right to Life and Liberty under Article 21" are violated by the CAA, both of which are available to all persons within Indian territory. In the case of ⁷NHRC vs State of Arunachal Pradesh, the question arose as to whether Chakma refugees were entitled to rights under Articles 14 and 21. The court held that the "fundamental right to life and liberty" applied to Chakma refugees as well, even though they were not Indian citizens. This case is often cited to argue that the Citizenship Amendment Bill violates Articles ⁸14 and 21 of the Constitution. Additionally, the CAA is considered unconstitutional under "Article 15 of the Constitution," which prohibits discrimination on the grounds of religion,

⁶ Anupriya, & Vikash Jha. (2021, 07 09). Citizenship Amendment Act, 2019, 1(2)

⁷ NHRC V. State of Arunachal Pradesh, 1996

⁸ The Indian Constitution, 1950

race, sex, place of birth, and caste. It also violates "Article 25," which guarantees the right to freedom of conscience and the right to freely profess, practice, and propagate one's religion. Critics argue that the CAA is unconstitutional because it violates Article 14's guarantee of "equality and equal protection of the law" by excluding certain religious groups from its provisions. Questions have been raised about why Muslims are specifically excluded from benefiting under the Citizenship Amendment Act (CAA).⁹ One argument is that there are over 50 countries where Islam is the state religion, and many of these countries follow Sharia law. In contrast, India is home to a majority of Hindu religious sites, making it the only country where Hindus can seek refuge, as they have no other option. Furthermore, India is a signatory to the Convention against Torture, which prohibits turning away refugees fleeing persecution or threats to their lives. This international obligation means that refugees facing such dangers should not be denied protection, regardless of their religion. Critics argue that by excluding Muslims, the CAA undermines this commitment and discriminates against those who may also be fleeing persecution in their home countries. But, still, this is not a very good moral reason for not helping a religious group. How hard can it be to add a religion name on a piece of paper and help a thousand people's lives? Logically, the government's reason for not adding Muslims to CAA is that there are other Muslim countries, but what if not everyone can get citizenship there due to various reasons? Being the country of people coming is majority Muslim the number of people will be less, and the Indian resources won't be affected that much.

Impact on India's Secularism

Secularism is a cornerstone of the Indian Constitution, explicitly mentioned in the Preamble, which describes India as a "sovereign, socialist, secular, democratic republic." Secularism, in the Indian context, is not merely the separation of religion from state affairs but ensures equal treatment of all religions by the state. The Preamble, alongside Articles 25 to 28, guarantees freedom of religion to individuals and religious communities. Article 25 grants the right to freely profess, practice, and propagate religion, and Article 26 grants religious denominations the freedom to manage their affairs. In landmark cases such as ¹⁰S.R. Bommai v. Union of India (1994), the Supreme Court of India upheld secularism as a basic structure of the Constitution, which cannot be amended or violated even by Parliament. The court emphasised that the state must remain neutral in matters of religion, and no law should favour or

⁹ Anupriya, & Vikash Jha. (2021, 07 09). Citizenship Amendment Act, 2019, 1(2)

¹⁰ S.R. Bommai v. Union of India, 1994

discriminate against any particular religious community. The law potentially undermines this secular framework by enacting the CAA with a clear distinction based on religion. The religious criteria applied in the CAA challenge the very foundation of Indian secularism, raising concerns about preferential treatment for certain religious groups.¹¹ Article 14 of the Constitution guarantees equality before the law and equal protection under the laws. It prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. The exclusion of Muslim refugees from the CAA has led to widespread criticism that the law violates Article 14 by discriminating based on religion. Article 14 allows for reasonable classification if it is based on an intelligible differentia that distinguishes persons or things that are grouped together from others left out of the group. However, this classification must have a rational nexus with the objective of the law. The government justifies the CAA by arguing that the chosen religious minorities face persecution in the three Muslim-majority countries, and thus, the law offers them refuge. However, critics argue that the exclusion of persecuted Muslim sects (such as Ahmadis and Shias in Pakistan, or Rohingya in Myanmar) does not hold up to the constitutional requirement of equality. The CAA provides selective protection to non-Muslim minorities while ignoring other persecuted groups, creating a distinction that is difficult to reconcile with Article 14's promise of equality. This raises the question of whether the classification made in the CAA is arbitrary and based on an unconstitutional preference for certain religions.

¹²By explicitly excluding Muslims from the benefits of the CAA, the law has sparked fears that India may be drifting toward a majoritarian conception of citizenship. In this view, the state favours the religious majority (Hindus and other non-Muslim groups) while sidelining religious minorities, particularly Muslims. This approach stands in contrast to the pluralistic and inclusive character of the Indian republic envisioned by the framers of the Constitution. The CAA has been seen as part of a broader trend where India's secular identity is being diluted in favour of majoritarian policies. This includes laws and policies that emphasise the cultural and religious identity of the majority community while marginalising minorities. The act has thus become a flashpoint for debates about the Hindutva ideology, which envisions India as a Hindu nation rather than a secular republic. The passage of the CAA has exacerbated religious and social divisions in India. Protests and counter-protests related to the CAA, often involving violent clashes, reflect the deep societal rift over the question of citizenship based on religion.

¹¹ The Indian Constitution, 1950

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

Critics argue that the CAA is symptomatic of a larger political agenda that seeks to redefine the boundaries of Indian citizenship along religious lines, which could undermine the constitutional principle of inclusive nationalism.

International Refugee Convention (IRC), 1951 & 1967 Protocols

Comparison of CAA to IRC

The 1951 Refugee Convention, along with its 1967 Protocol, is a key international legal instrument for the protection of refugees. It defines who a refugee is and outlines the rights of individuals who are granted asylum, as well as the responsibilities of nations that grant asylum. Central to the convention is the principle of non-refoulement, which prohibits the return of refugees to a country where they face serious threats to their life or freedom.¹³ The 1951 Refugee Convention, under Article 1(A)(2), outlines various grounds on which individuals can claim refugee status, including "religious persecution." However, the Citizenship Amendment Act (CAA) excludes certain groups of individuals from seeking refuge in India based on their religion, labelling them as "illegal migrants" instead of refugees. This has effectively closed the door to many people, including Muslims facing persecution, who might otherwise qualify for protection.¹⁴ The Indian government may argue that it has neither signed nor ratified the 1951 Refugee Convention, but its obligation to protect asylum seekers and refugees extends beyond the specific refugee law regime. This duty arises from broader human rights obligations, which transcend the boundaries of refugee law. The connection between refugee law and human rights law is also reflected in the preamble of the 1951 Refugee Convention. The preamble serves as a crucial interpretative tool for treaties, as outlined in Article 31 of the Vienna Convention on the Law of Treaties, 1969, which emphasizes the importance of considering the preamble for understanding the object and purpose of a treaty. Therefore, despite not being a party to the 1951 Refugee Convention, India's human rights commitments under international law require it to protect those fleeing persecution. Furthermore, the definition of refugees under the 1951 Refugee Convention aligns closely with the civil and political rights protected under the International Covenant on Civil and Political Rights (ICCPR). As a result, any law or policy, including the Citizenship Amendment Act (CAA),

¹³ Alexander, A. (2022, February 9). Evaluating the Citizenship Amendment Act, 2019 in India: Perspectives From International Refugee Law. Search eLibrary:: SSRN. Retrieved September 6, 2024, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3751593

¹⁴ Alexander, A. (2022, February 9). Evaluating the Citizenship Amendment Act, 2019 in India: Perspectives From International Refugee Law. Search eLibrary:: SSRN. Retrieved September 6, 2024, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3751593

must be evaluated through the lens of human rights principles. The overlap between refugee protections and civil and political rights highlights the need for a rights-based approach when addressing the status of refugees. This brief write-up will provide a glimpse into how the CAA intersects with refugee law, emphasising the human rights obligations that must be considered in its application and implications. The core human right violated by the Citizenship Amendment Act (CAA) is the freedom of religion. Since religion is a recognised ground for seeking asylum, even though the term "religion" is undefined in both human rights law and refugee law, the UNHCR interpretative guidelines advocate for a broad interpretation. This encompasses religious belief, identity, and way of life. Moreover, the right to freedom of religion is a non-derogable human right, as stipulated in Article 4.2 of the International Covenant on Civil and Political Rights (ICCPR), meaning that even national security concerns cannot justify the suspension of this right. The government should reconsider the CAA, as it derogates from the right to seek asylum on the basis of religion. Additionally, General Comment 22 on Article 18 of the ICCPR emphasises that the right to freedom of religion is absolute, allowing individuals to manifest their religion in any form. While Article 18(3) of the ICCPR permits limitations on this right for reasons of public safety, order, health, or the rights and freedoms of others, these limitations must be strictly interpreted and should not undermine the fundamental essence of the right itself. Thus, the CAA's exclusion of certain religious groups contradicts these human rights standards.¹⁵ The 1951 Refugee Convention, unlike other international legal regimes, is not self-contained. It relies heavily on human rights law for its authority and enforceability. While the Refugee Convention outlines the substantive aspects of refugee protection, it is the domestic law of individual countries that ensures its implementation and remedial actions. In the case of the Citizenship Amendment Act (CAA), its validity is likely to be challenged in India's Supreme Court. However, since India has not signed the 1951 Refugee Convention, it is not legally bound by its obligations toward refugees under this treaty. Another potential remedy exists within the Refugee Convention itself under Article 38, which allows disputes between signatories about the interpretation or application of the convention to be referred to the International Court of Justice (ICJ). However, India's non-signatory status, coupled with its reservations on the jurisdiction of the ICJ, makes it nearly impossible for India to be brought before the ICJ on refugee matters, either through special agreement or the optional clause under Article 36 of the ICJ statute. Aside from these legal remedies, the United

¹⁵ Alexander, A. (2022, February 9). Evaluating the Citizenship Amendment Act, 2019 in India: Perspectives From International Refugee Law. Search eLibrary:: SSRN. Retrieved September 6, 2024, from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3751593

Nations High Commissioner for Refugees (UNHCR) could provide guidelines or commentary on the legality of the CAA. It is also anticipated that the CAA could become a subject of debate at the United Nations Human Rights Council (UNHRC), as refugee issues have been discussed there before. For example, China's policy toward North Korean refugees has previously been examined by the UNHRC, showing that such matters are regularly deliberated on this platform. Therefore, the UNHRC may take up the CAA issue, especially given its implications for human rights and refugee protection. Finally, the UN (United Nations) has called the CAA “fundamentally discriminatory”, as it does not extend protection to all refugees, regardless of religion.

Conclusion

The Citizenship Amendment Act, 2019 (CAA), has sparked considerable debate due to its religiously selective provisions and the legal, constitutional, and human rights concerns it raises. By offering citizenship to certain religious minorities from Afghanistan, Pakistan, and Bangladesh while explicitly excluding Muslims, critics argue that the CAA undermines India's secular framework and violates constitutional guarantees of equality. These concerns focus particularly on potential violations of Article 14 (Right to Equality), Article 21 (Right to Life and Liberty), and India's commitment to secularism under the Basic Structure Doctrine. The exclusion of Muslim refugees from the CAA has prompted questions about whether the law discriminates based on religion, contravening international human rights obligations and India's constitutional commitment to equality. The act has also been criticised for threatening India's pluralistic and inclusive identity by appearing to favour non-Muslim religious groups, potentially marginalising Muslim refugees who also face persecution in their home countries.

The Indian government has defended the CAA as a humanitarian effort to protect persecuted religious minorities, but its religious distinctions have led to widespread legal challenges and social unrest. Several petitions have been filed before the Supreme Court of India, questioning the constitutional validity of the act. The long-term impact of the CAA on India's refugee policy, its international legal standing, and the preservation of constitutional secularism will largely hinge on the judiciary's rulings and the ongoing public discourse.

In essence, the CAA represents a critical moment in India's legal and political evolution. To ensure alignment with constitutional principles and international human rights standards, the law may need to be revisited to adopt a more inclusive and non-discriminatory approach to

citizenship and refugee protection. This would allow India to uphold its secular ethos and reaffirm its commitment to safeguarding vulnerable populations, regardless of their religious affiliation. In simple terms, the CAA is technically and logically correct and ethically and morally wrong.

Research Answers:

1. The Citizenship Amendment Act, 2019 (CAA) has been criticised for its selective approach to citizenship based on religion, which is contrary to India's constitutional commitment to secularism and equality. According to the research paper, the CAA provides expedited citizenship to non-Muslim refugees from Afghanistan, Pakistan, and Bangladesh, while explicitly excluding Muslims. This exclusion has sparked legal and constitutional challenges, particularly under Article 14 of the Indian Constitution, which guarantees equality before the law and prohibits discrimination on the grounds of religion. Furthermore, the CAA does not align with the 1951 UN Refugee Convention and its 1967 Protocol, which focus on the principle of non-discrimination in the protection of refugees. Although India is not a signatory to these conventions, its historical practice of offering asylum based on humanitarian grounds has been undermined by the CAA's selective approach. The act does not offer citizenship based on refugee status but instead focuses on religious identity, which raises questions about whether it adheres to international human rights standards. The exclusion of persecuted Muslim groups like Ahmadis and Shia Muslims from Pakistan further complicates its alignment with India's constitutional principles and international obligations.
2. The social impact of the Citizenship Amendment Act (CAA) on refugees from Afghanistan, Pakistan, and Bangladesh is profound, especially for non-Muslim refugees who benefit directly from its provisions. The law offers an expedited path to citizenship for religious minorities—Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians—who entered India before December 31, 2014. This legal recognition provides these groups with opportunities for legal residency, access to welfare benefits, employment, and social security, significantly improving their integration into Indian society. However, the exclusion of Muslim refugees from the same benefits has created a stark social divide. Muslim refugees remain vulnerable under India's strict immigration laws, facing potential deportation without the protections afforded by the CAA. This legal uncertainty leaves them without access to essential resources like welfare, healthcare, or the right to work, contributing to their continued marginalisation.

The exclusion of Muslims also fuels social marginalisation and heightens sectarian tensions, deepening the already polarised discourse around religious identity in India. This division has been a catalyst for widespread protests and social unrest, with critics arguing that the CAA undermines India's pluralistic and secular foundation. By favouring certain religious groups while excluding others, the law has led to concerns about its impact on India's long-standing traditions of diversity and inclusion.

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