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CAA: CONSTITUTIONAL OR NOT?

AUTHORED BY - CHIRANJEEV DUBEY & YASHRAJ SINGH

Introduction

"In a jurisdiction where the constitutional framework neglects the principle of secularism, the essence of democracy becomes interwoven with strands of inequality and discord." The Indian Constitution, consisting of 395 articles spanning 4 parts, is meticulously crafted to address the nation's diversity, thereby emphasizing inclusion for its legitimacy. Nevertheless, this utopian vision of inclusion was not a by-product of actions like general public representation which were taken by the nation instead it finally led to the creation of a constitution whose faultiness manifested even its theoretical underpinnings, for any form of classification among citizens within such an assorted nation inherently results in discrimination. Discrimination has tainted not only the constitution but also several other successive legislations including the contentious Citizenship Amendment Act 2019.

The Citizenship Amendment Act, 2019

The Citizenship Amendment Act of 2019 (CAA), was an awaited amendment adopted by the Parliament on December 11, 2019, which aimed at a simplification of the process for the grant of citizenship to the nation through the amendment of the Citizenship Act, 1955. Its motive was to speed up the process of naturalization for persecuted minorities from selected countries, who, because of their religious affiliation, were traditionally at risk of a much more complex path to citizenship. This particular legislative step through the Amendment Act was made to recover from shortcomings of the original act, especially those embedded in religious denominations. The Citizenship Amendment Act of 2019 addresses these lacunae through its provisions for the acquisition of citizenship by Hindus, Sikhs, Jains, Buddhists, Parsis, and Christians belonging to Afghanistan, Pakistan, and Bangladesh. There is a relevant point that the religion-based schemes that should be established for some other communities come up because of it. In this regard, other well-known constitutional rights are contradicted, especially Article 14 of the Constitution of India which guarantees equal treatment before the law to all individuals. Besides questioning the status of citizenship in India, these inquiries conflate the notion of secularism, but this paper aims to address them widely.

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Secularism and its violation

Secularism is one of the most fundamental principles intricately carved in the preamble of the Indian constitution. In India, secularism refers to the state's neutrality on any specific religion and its commitment to not discriminate against any religious community. Secularism which was seen as the foundation of the Indian constitution, was missed in the picture of its utopian prediction and it could be seen through its preferential treatment towards specific religious beliefs in the country. In short, some sectors of people gained benefits purely due to the fact of being born into an advantageous religion. One such example of differential treatment can be found in the citizenship procedure. Post-partition India had witnessed two waves of partition. In the first wave, which started on 1 March 1947, many Hindus and Sikhs arrived from West Pakistan in India. In the second wave in 1948, many Indian Muslims who had migrated to West Pakistan sought to return to India. This second wave of immigration created troubles like hostility for the Indian government. The homes of Indian Muslims who had migrated to West Pakistan were being used to house Hindu and Sikh refugees who had arrived in India from West Pakistan. This return of Muslims would wreak havoc due to lack of residence and thus cause chaos.

As a consequence of this, Sardar Vallabhbhai Patel communicated with Jawaharlal Nehru that the general public and other ad hoc individuals were expressing their frustration and dissatisfaction with the inability of the Indian government to cope with the inflow of Muslims from Pakistan. Patel, by reporting to Nehru's office, raised the question of whether Indian Muslims going back to their houses would augment social tensions, escalating the activities of RSS as well as other organizations, and providing a peril to the emotional well-being of Delhi. To avoid such future concerns, the Indian Government implemented a permit system for the issuance of papers for allowing the return of the Muslim community from West Pakistan. The framework implemented by the government of India resulted in the establishment of a policy for issuing permits on July 19, 1948, specifically targeting immigration from West Pakistan to India. This permit system was not extended to East Pakistan, a discriminatory decision driven by the predominant migration of Hindus and Sikhs from that region. To prevent potential chaos associated with their migration, the permit system was selectively enforced, revealing its clear discriminatory intent and purpose.

Even as Abhinav Chandrachud noted in his well-crafted masterpiece these arguments, he also mentions that this scheme made it possible for earlier applicants for citizenship from Pakistan

to India, mostly Hindu and Sikh Religion people, to become naturalized if they had resided in India since the end of their migration to that country before the permit system was enacted. On the other hand, those arriving post permit station implementation among other groups of Muslims had to register for their citizenship.

Only Indian Muslims returning from Pakistan encountered difficulties in obtaining citizenship due to these stringent permit requirements. This disparate treatment of Muslims based on the timing of migration serves as a testament to the lack of secularism in India from the inception of its legal foundation, i.e., the Constitution. Similar grounds of discrimination can be found in CAA 2019, we see that the act by not including Muslims, clearly depicts that the act itself is very exclusionary as it violates the secular principles enshrined in the Indian Constitution.

Article 14

Another step taken by the government to be inclusive was Article 14. Article 14 states that "Equality before law - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth". Article 14 prohibits class legislation, but it does not prohibit legislative classification. The principle of equality does not require every law to apply universally to all individuals who are not in an identical situation due to nature, achievement, or circumstances. Article 14 allows for reasonable classification of persons, objects and transactions by the Legislature to achieve specific ends. Classification to be reasonable should fulfil the following two tests –

1. It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped in the class from others left out of it. It has been established in the case of Ajay *Hasia v. Khalid Mujib* where the Court broadened the interpretation of Article 14. They said that fairness and avoiding arbitrariness are crucial elements of equality. Since then, the idea of protection against arbitrariness has become a fundamental part of the equality concept under Article 14.
2. The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question. A classification need not be scientifically perfect or logically complete. The person who pleads Article 14's violation, must not only prove that he has been treated differently from others, but he has also been treated differently from persons similarly circumstanced. This

"classification test" was found in the case of the *State of West Bengal v. Anwar Ali Sarkar*. In this case, the Supreme Court explained that to determine if a classification in a law is reasonable, two things need to be considered. Firstly, there must be a specific standard or clear difference that separates the affected party from not affected ones. Secondly, there should be a logical connection between this difference and the purpose the law is aiming at. Abhinav Chandrachud highlights these cases as well and states how they aided in founding and establishing the intricacies of the nexus test.

Both of these tests have been applied and enhanced in court under various cases. One such case mentioned in the piece of Jaideep Singh Lalli is the Nagpur Improvement Trust where the Supreme Court said that even if a law seems to have a logical connection between its purpose and the groups it affects, it won't be accepted unless the purpose itself is discriminatory. This means the court can now question the fairness behind a law. It has specified the nexus test and aided in defining it more intricately.

Considering the same rationale as used in the judgment above, the CAA's objective was to protect religious minorities from being persecuted in neighboring nations. Thus, their objective is that Muslims are a majority in these theocratic nations thus they won't be persecuted. But in Pakistan, laws like the Second Amendment to the Constitution and Ordinance XX declare Ahmadis as non-Muslims and restrict their religious freedoms. This means they can't even identify themselves as Muslims or practice their religion freely. This shows that persecution isn't limited to just non-Muslims in these countries. Hence the CAA does have a logical connection between purpose and the group it affects. However, its object is discriminatory as Muslims are still excluded and yet being persecuted in a theocratic nation i.e. Pakistan itself. (*OHCHR* 2020)

After understanding the two tests of Article 14, the discrimination in the roots of this article becomes quite prevalent. The religion-specific classification refers to the amended section 2(1)(b) which excludes 6 religions (Hindus, Sikhs, Christians, Jains, Parsis and Buddhists) from the definition of illegal migrants. On the other hand, the country-specific classification refers to limiting the scope of the citizenship being acquired by migrants belonging to minorities from 3 nations (Afghanistan, Pakistan and Bangladesh). These classifications in the CAA are arbitrary and in contradiction with Article 14 of the constitution. Since they leave out minority groups which are the majority in these selected nations, thus proven to be unconstitutional.

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Furthermore, they have excluded minorities belonging to neighboring countries for example Myanmar and Sri Lanka which were a part of British India and British Empire respectively. As even stated by Abhinav Chandrachud it is a very persuasive argument due to the arbitrary nature of these elements of the section which supports CAA's unconstitutionality.

Furthering to country-specific classification where the only criteria for selecting a nation was that they should be neighboring yet they excluded Sri Lanka and Myanmar which do neighbor India. This exclusion played a vital role during the British rule era and seemed arbitrary and unreasonable if the criteria were just that people of undivided Indian origin should be included then only Pakistan, Bangladesh and Myanmar could have been included. However, by including Afghanistan and not Myanmar the criteria seem to differ, thus applying the intelligible differentia which is an important factor in the rational nexus test one can see that there is no nexus with the motive that is sought to be achieved which to reprieve from persecution for the minority communities in the above-mentioned nations. Rohingyas in Myanmar and Tamil refugees in Sri Lanka both have yet faced religious persecution further asserting the argument.

CONCLUSION

To summarize, it is undeniably evident that the government's alleged claim of an altruistic purpose behind the Citizenship Amendment Act (CAA) can only be considered as a facade; this claim does not stand scrutiny when one analyzes it on grounds of constitutional morality. As highlighted in the work of Jaideep Singh Lalli, the CAA's rationale for safeguarding particular religious groups is ambiguous due to the absence of clear guidelines on how membership within these groups should be determined, leaving room for uncertainties about who can be identified as Hindu, Jain, Sikh, or any other mentioned category according to the Act. In addition, the Act's exclusion of other religious minority communities from neighboring countries, as well as its arbitrary cut-off date for persecution being December 31, 2014, lacks a cogent nexus between its objects and the stated exclusions. Hence, it is clear that the CAA's selective inclusivity and omissions do not meet the constitutional validity test, illustrating where political wars are fought behind the veil of religious hatred.