

FODO PT - 2020

The Citizenship (Amendment) Bill, 2019

Current status: Passed by the Lok Sabha (Dec 9)

Passed by Rajya Sabha (Dec 11)

Key features of the bill:

- The CAB seeks to **amend the Citizenship Act, 1955**, in order to grant **citizenship to non-Muslims from Bangladesh, Pakistan and Afghanistan** who came to India **on or before December 31, 2014**. They include **Hindu, Buddhist, Christian, Parsi, Jain and Sikh** who **face persecution in the three countries**.
- The Citizenship Bill says **the six non-Muslim communities** “shall **not be treated as illegal migrant**”. The Bill also proposes to protect the applicants under this category from all pending legal cases, with regard to illegal migration.
- The **beneficiaries** would be the **non-Muslims** out of the over 19 lakh people **who were excluded from Assam’s NRC**, published on August 31, 2019.
- The Bill will **enable** a person from the six communities to **apply for citizenship**, even **without a proof of birth**, just by **staying in India for five years**. However, the Citizenship Bill shall not apply to tribal areas of **Assam, Meghalaya, Mizoram and Tripura**. as included in the **Sixth Schedule** to the Constitution. These tribal areas include **Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District**.
- It shall **not apply** to **Arunachal Pradesh, Mizoram and Nagaland** that are protected by **Inner Line Permit (ILP)**. As per the **Bengal Eastern Frontier Regulation 1873**, **citizens of other States require ILP to visit the three States**.

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- The Bill also **makes amendments** to provisions related to **Overseas Citizens of India (OCI) cardholders**. A foreigner may register as an OCI under the Citizenship Act 1955 if they are of Indian origin (e.g., former citizen of India or their descendants) or the spouse of a person of Indian origin. This will entitle them to benefits such as the right to travel to India, and to work and study in the country. **The Bill amends the Act to allow cancellation of OCI registration if the person has violated any law notified by the central government.** Therefore it provides wide discretion to the government to cancel OCI registrations for both major offences like murder, as well as minor offences like parking in a no-parking zone or jumping a red light

Concerns of the Northeast States

The proposed legislation has polarised the Northeast and triggered a process of social and political realignment. Most disquietingly, it threatens to expose the faultlines that had led to the **rise of sub-nationalist politics** in the region in the 1980s. The bill is leading to following issues in North east:

- The Citizenship Amendment Bill has not been sitting well with the Assamese as **it will nullify the provisions of the Assam Accord of 1985**. The Assam Accord fixed March 24, 1971 as the cut-off date for deportation of all illegal immigrants, irrespective of religion. Northeast States oppose the CAB saying that granting citizenship to foreign refugees might create demographic or ethnic changes there.
- There are an estimated **20 million illegal Bangladeshi migrants in Assam** and they have inalienably **altered the demography** of the state, besides putting a severe strain on the state's resources and economy.
- Mizoram fears **Buddhist Chakmas and Hindu Hajongs from Bangladesh** may take advantage of the Act.
- Meghalaya and Nagaland are **apprehensive of migrants of Bengali stock**.
- Groups in Arunachal Pradesh fear the new rules may benefit **Chakmas and Tibetans**.
- Manipur wants the **Inner-line Permit System** to stop outsiders from entering the state.

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Legal fallacies in the proposed law:

- The Citizenship (Amendment) Bill also fails on the tenets of **international refugee law**.
- Although **India is not a signatory to the 1951 UN Refugee Convention**, granting refuge based on humanitarian considerations is arguably a norm of customary international law.
- Shelter to individuals of a select religion defeats not only the intention but also the rationality of refugee policy.
- Muslim are considerably discriminated against and exploited in the neighboring countries of China, Sri Lanka & Myanmar. The 36000 Rohingyas Muslims from Myanmar which fled to India in the wake of 2015 insurgency is just one such example.
- Rohingya Muslims fleeing persecution in Myanmar are not offered such hospitality. The only way for them to live in India is by obtaining a valid visa and refugee status.

Whether differentiating on grounds of religion is a violation of Article 14

The Bill provides that illegal migrants who fulfil **four conditions will not be treated as illegal migrants** under the Act. The conditions are:

- (a) they are Hindus, Sikhs, Buddhists, Jains, Parsis or Christians;
- (b) they are from Afghanistan, Bangladesh or Pakistan;
- (c) they entered India on or before December 31, 2014;
- (d) they are not in certain tribal areas of Assam, Meghalaya, Mizoram, or Tripura included in the Sixth Schedule to the Constitution, or areas under the “Inner Line” permit, i.e., Arunachal Pradesh, Mizoram, and Nagaland.

Article 14 guarantees **equality to all persons, including citizens and foreigners**. It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose.

The **question is whether this provision violates the right to equality under Article 14** of the Constitution as it provides differential treatment to illegal migrants on the basis of

- (a) their country of origin,
- (b) religion,
- (c) date of entry into India, and
- (d) place of residence in India.

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Consequences

- CAB has introduced religion as a new principle into the citizenship law.
- By marking out Muslims as a residual category, it reiterates the narrative of partition, without incorporating the principles of inclusion which were present in both the Constitution of India and the Citizenship Act of 1955 at its inception.
- While religious persecution is a reasonable principle for differentiation, it cannot be articulated in a manner that dilutes the republican and secular foundations of citizenship in India, and goes against constitutional morality.

Way Ahead

India has to undertake **a balancing act here**. India's citizenship provisions are derived from the perception of the country as a secular republic. In fact, it is a refutation of the two-nation theory that proposed a Hindu India and a Muslim Pakistan. Independent India adopted a Constitution that rejected discrimination on the basis of religion and the birth of Bangladesh undermined the idea that religion could be the basis of a national community. Also we need to **balance the civilization duties to protect those who are prosecuted** in the neighborhood.

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