

*An Indian*

# (C)ase (A)gainst (A)mendment

*The New Citizenship Law  
& the Debate*

*First Draft dated 13th Dec, 2020*



*“The whole secret lies in confusing the enemy, so that he cannot fathom our real intent.”*

- Sun Tzu, The Art of War

In the midst of the spectacular expression of our collective will on the streets, the only effective strategy left for the government to face our certainty and resoluteness, is spreading confusion. From your casual BJP supporters all the way up to the Prime Minister himself, the noise of contradictions and misinformation may be jarring notes to our untrained ears, but pay close attention to the orchestra by the artists of power, every bit leading to the final note, their great conclusion. When lying is a profession, all contradictions, even the ones that look like mistakes, are intentional and designed to buy time. And all they need is Chaos, Time and Lots of Patience to play this right.

In order to tackle this systematic misinformation campaign by the top leadership of the government in the press, in public speeches and even in the halls of parliament, and to expose the convenient allegations upon the protestors of misunderstanding, gullibility and illiteracy, several of us on twitter (and other social media) expressed the need for an article or a document that not only explains the legal aspects of the Citizenship (Amendment) Act, 2019 (hereafter CAA) in technical detail, but also lists the range of objections to the law in order to help the uninformed, silent majority form an informed opinion. This document is an attempt to address that need, and articulates the history, legality and national implications of the law. We understand that the pages run a lot longer than most FAQs available on this topic, and in trying to capture legal nuance at the cost of simplicity, parts of it may be more complex than the much more accessible FAQs. It will be our attempt to simplify it further in the future without compromising the details.

The intended user is the educated class, in order to help them understand, simplify, and articulate these ideas in their own social circles. It will serve the movement for you to study the contents included herein, prepare your notes and give a brief lecture in your locality to spread awareness. We also encourage you to undertake translation of parts or the entire text in your regional languages, or convert this information into simpler formats like FAQ. For nearly all the arguments listed in the second half of this document, the esteemed participants of the national debates and interviews on CAA and NRC deserve credit, and it is our regret to not be able to credit them individually. We endorse these arguments fully, but we also confess to being unashamed cheats copying their answers.

Now, as an approach to understand what is the cause for these nation-wide protests, there are *three important areas of inquiry* one must undertake, the first of which deals with the proposed concept of NRC and its sociopolitical aspects. Emerging from the implications of NRC are legal terms of classifications such as ‘citizen’, ‘illegal migrants’ and ‘bona fide refugee’. The second of enquiry, therefore, is a historical understanding of the refugee question in India. The third and final is a legal analysis of the concept of citizenship and its developments since the inception of India. It is the objective of this document to consolidate these related areas of enquiry to develop a comprehensive understanding of the text as well as the context of the citizenship law in question.

This analysis is followed by an attempt to capture the nuance and reasoning of the interesting arguments, counter-arguments and their responses that form part of the public debates across the nation. One of the intentions behind the detailing of arguments in this section is to keep the debate on CAA and NRC from facing deadlocks or descending into chaos and confusion, both outcomes being favourable to the powers that be. Further, it is our intention to consistently update this section in the future versions so as to include the new facets of the arguments introduced or responses thereto.

We intend to keep this document unlike our government: authentic, reliable and free of contradictions or misleading information. Therefore, we request you to inform us of any false information, inconsistencies, and weak arguments. You are also encouraged to send us new information or arguments you discovered, and to engage with the arguments provided here by sending us your response, and we will try to incorporate them. If you know of any media or article critiquing, or responding to, any of the arguments or the documents as a whole, please send us the link. We can be contacted at [caseagainstamendment@gmail.com](mailto:caseagainstamendment@gmail.com).

Jai Hind.

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## Section I : National Register of Citizens (NRC)

### What is the National Register of Citizens?

In its popular use, the term National Register of Citizens (NRC) is used to denote two things. Technically, NRC simply refers to a register containing the names of all the people that shall be considered legitimate citizens of India. The register was first prepared in 1951 along with the Census, but these registers haven't been updated since. It must be understood that a person, in order to be included in NRC, has to be a citizen and not merely a resident who is residing within the territory of India. A citizen enjoys certain legal rights and protections not available to all residents of the nation. Currently, in order to receive the benefit of government services and welfare, government issued identity cards such as Aadhar Card, Ration Card, Voter ID etc. confirm one's citizenship in order to extend such facilities.

But the term NRC (also NRC exercise) is also used to refer to the extensive procedures carried out by officers and authorities to verify existing entries or to populate new entries in the NRC register. These procedures include exhaustive identification of all residents, a detailed scrutiny of their documents, and thereby classifying people into neat categories of citizens, foreigners and illegal migrants, and then adding all the identified citizens to the NRC list.

### Was Nationwide NRC an opposition lie?

**"Atleast first check whether anything has happened on NRC. Why are you spreading lies? Ever since my government has been in power since 2014, no discussion or debate has happened on the word NRC anywhere. It was only after the Supreme Court ordered us, we had to do it for Assam. What are you people talking about? You're spreading lies!"**

- Narendra Modi speech in Ramlila Maidan on 23 December, 2019

Well over a year ago, BJP vice president Om Mathur, in the final year of this government's first term (around August 2018)<sup>1</sup>, declared that "NRC will be implemented across the country after 2019 Lok Sabha polls".

During the next campaign, in the BJP Manifesto released in April 2019,<sup>2</sup> the party promised that **"In future we will implement the NRC in a phased manner in other parts of the country."** Elsewhere in the manifesto, it said "We will expeditiously complete the National Registration of Citizens in Assam and actively consider its **extension to other states.**"



<sup>1</sup> <https://scroll.in/latest/890314/nrc-will-be-implemented-across-the-country-after-2019-lok-sabha-polls-says-bjp-vice-president>

<sup>2</sup> [https://timesofindia.indiatimes.com/realtime/BJP\\_Election\\_2019\\_english.pdf](https://timesofindia.indiatimes.com/realtime/BJP_Election_2019_english.pdf)

Followed by the manifesto, a tweet was posted by BJP's official handle quoting Amit Shah on nationwide NRC, but recently, the 8 months old tweet was deleted when the nationwide protests broke out against CAA.

On 23rd April again on BJP Live,<sup>3</sup> Amit Shah affirmed nationwide implementation of NRC where he also explained the infamous 'chronology' of NRC immediately following CAB.

For the remaining part of the year, Amit Shah went around the country saying that nationwide NRC will be implemented. There are videos of him in rallies, TV interviews and Rajya Sabha, articulating his intentions in the most unambiguous terms.

*"NRC to be introduced throughout the country," said Amit Shah in September, 2018.<sup>4</sup> "It must be implemented across the country. The name itself is national."*

*"After the CAB is passed, NRC will come. And when NRC comes, it won't just come for Bengal. It will come for the entire nation." Amit Shah in April 2019<sup>5</sup>*

*"We will ensure implementation of NRC in the entire country. We will remove every single infiltrator from the country, except Buddha [sic], Hindus and Sikhs,"*

*- Amit Shah at Raiganj, West Bengal rally on 11th April, 2019<sup>6</sup>*

*"NRC will be implemented all across India before 2024,"*

*- Amit Shah in 17 October, 2019 News18 Interview<sup>7</sup>*

*"NRC exercise would be carried out across India. The gazette notification of September 7, 2015, which was made in the case of Assam, would be applicable to the rest of India as well." - Amit Shah in Rajya Sabha on November 20, 2019.<sup>8</sup> "The NRC exercise which was undertaken in Assam was done on the orders of the Supreme Court and under a separate Act; when NRC process is taken up in the whole country, it will be taken up again in the natural course in Assam as well"*

*"We will implement the NRC across all states of the country." - Rajnath Singh in Bokaro Rally<sup>9</sup>*

*"NRC will be rolled out across the country before 2024 polls: Amit Shah on 02 December, 2019<sup>10</sup>*

*"We have been extremely clear on this matter: NRC will be done in the country"*

*"Consider it done, NRC is coming"*

*- Amit Shah on 09 December, 2019 in Lok Sabha.<sup>11</sup>*

<sup>3</sup> <https://www.youtube.com/watch?v=zVaVPUO36s4>

<sup>4</sup> <https://timesofindia.indiatimes.com/india/nrc-to-be-introduced-throughout-country-amit-shah/articleshow/71189685.cms>

<sup>5</sup> [https://www.youtube.com/watch?time\\_continue=5&v=Z\\_6E5hPbHg](https://www.youtube.com/watch?time_continue=5&v=Z_6E5hPbHg)

<sup>6</sup> <https://indianexpress.com/elections/will-remove-every-single-infiltrator-except-buddhists-hindus-and-sikhs-amit-shah/>

<sup>7</sup> <https://www.youtube.com/watch?v=M3dY1ENlm18>

<sup>8</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/nrc-law-applicable-to-entire-india-amit-shah-in-rajya-sabha/videoshow/72140627.cms>

<sup>9</sup> <https://www.livemint.com/news/india/nationwide-nrc-to-be-implemented-before-2024-lok-sabha-polls-amit-shah-11575290024624.html>

<sup>10</sup> <https://www.livemint.com/news/india/nationwide-nrc-to-be-implemented-before-2024-lok-sabha-polls-amit-shah-11575290024624.html>

<sup>11</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/nrc-aane-wala-hai-amit-shah-makes-his-intention-clear/videoshow/72454609.cms>



Amit Shah has, therefore, repeated this in harmony with other senior BJP leaders in all forms of media as late as December 2, 2019, and then declared it adamantly in both houses of the parliament. Further, he insisted on several occasions that the process will be completed before 2024, and mentioned it on at least five separate occasions that nationwide NRC will follow CAB.<sup>12</sup>

Therefore, the BJP has not just discussed and debated a nationwide NRC, they have (a) resolved it almost a year before the Lok Sabha election of 2019, (b) stated it unambiguously in their manifesto for the said election and (c) have repeatedly declared their position in public through their top leadership, which includes their president, vice president and the home minister. Further, the most powerful and unchallenged authority within the cabinet (Amit Shah) has declared the implementation of NRC as non-negotiable on the legislative platform of Lok Sabha. It does not get much clearer than this, and Modi's denial quoted above from the Ramlila Maidan of Delhi is, to say the least, extremely confusing.

## **Why does BJP want a nation-wide NRC?**

Being a self proclaimed nationalist party, it is part of BJP's appeal to its vote bank to maintain the cultural and ethnic balance of the Indian demographic under the pretext of protecting its sovereignty. This makes BJP consistently lean towards anti-immigration rhetoric that is characteristic of right-wing politics. Although there have been brief, insignificant moves and amendments by the Vajpayee (For border villages after Kargil War) and Manmohan governments (adding Section 14A in Citizenship Act, 1955 prescribing compulsory registration of every citizen) to update the 1951 NRC, it reentered the public discussions after the NRC was conducted in Assam. The Assam NRC was a state-specific exercise based on Assam Accords for identifying and separating illegal immigrants within Assam and to keep its ethnic uniqueness unaltered. Since the release of the Assam NRC draft report near the end of 2017, the anti-immigration potential of NRC appealed to the right wing writers and commentators that began to platform the idea of a nation-wide NRC. During 2018, encouraged by the news of NRC completion, fresh allegations of massive, unabated illegal immigration from Bangladesh was introduced in the national debate and the demand for the nationwide implementation grew among the right wing groups during 2018. This prompted BJP to include it in its 2019 manifesto for the next elections. And now, many top BJP leaders including Home Minister Amit Shah are aggressively pursuing the idea despite the Assam NRC being concluded as a costly failure.

## **What happens to those excluded from NRC ?**

As per Assam model, they will have to apply to the Foreigners' Tribunals (a quasi judicial bench) to get their status clarified and corrected. If the Foreigners' Tribunal fails to or refuses to confirm the citizenship, they will be considered 'illegal migrants' that entered India without valid passport/documentation. They will have to be arrested, and put in detention camps until their country of origin is identified so that their deportation can be arranged. However, despite its commitment to deport all infiltrators, the question of the 19 lakh excluded from Assam NRC is still pending before the government, for some of whom, CAA amendment was also introduced as a remedy. The rest, lawyers say, may end up in detention camps, deported or at the very least be denied citizenship rights and government subsidies, being subjected to all kinds of harassment.

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<sup>12</sup> <https://scroll.in/article/947436/who-is-linking-citizenship-act-to-nrc-here-are-five-times-amit-shah-did-so>

## Are Detention centers a Congress conspiracy?

“No Indian Muslims are being sent to detention centres, and **neither are there any detention centres in this country**. Brothers and Sisters! **This is a white lie. This is an ill intentioned game**. Those that still believe **this myth**, I tell them that these **rumours of detention centers, spread by Congress** and Urban Naxals, are **blatant lies with the impure intention to destroy the nation. Ye jhoot hai, jhoot hai, jhoot hai!** They’re afraid that their own truth will be revealed to the world. I am astonished that these people can go to such an extent to lie.”

- Narendra Modi speech in Ramlila maidan on 23 December, 2019

Back in August 2015, the Assam government informed the assembly that 72,959 people were declared foreigners in the past 30 years and 95 of them have been arrested and **kept in detention camps**.<sup>13</sup>

At the beginning of last year (January 9th, 2019), the Central Government has circulated a Model Detention Centre/Holding Centre Manual to all the State Governments/Union Territories, reiterating various instructions issued by the Ministry of Home Affairs from time-to-time with regard to setting up of detention centres.<sup>14</sup> In the 11-page ‘2019 Model Detention Manual’, the MHA has called for the setting up of “one detention camp in the city or district where major immigration check post is located.” (Economic Times)<sup>15</sup>

Following instructions from the Union government, the Maharashtra home department began identification of land from July 2019 and wrote to CIDCO in September, the planning authority for Navi Mumbai, seeking a 3-acre plot in Nerul for detention center.<sup>16</sup>

Also, on December 11, 2019,<sup>17</sup> the Minister of State for Home Affairs, Nityanand Rai, said in Rajya Sabha that, as on November 22, 2019, **Assam already had six functioning detention centres with 988 foreigners lodged in them**. He also said that the government has approved a detention centre at Goalpara in Assam at a budget of ₹46.5 crore. According to Wikipedia, this is India's largest detention center which covers approximately 2,88,000 square feet (about the size of seven football grounds).<sup>18</sup> It is planned to have fifteen stories, with two red boundary walls of 20 and 6 feet and several watchtowers. The detention centre is planned to be ready by December 2019, and was completely approved and funded by the Modi government (that seems to have generously forgotten its own outlay).<sup>19</sup>

Karnataka as well, following the instructions provided by Union, had built its first detention center in October 2019 which opened on 24 December, 2019.<sup>20</sup>

By the end of 2019, there were a total of 10 detention centres operational in the country out of which four were outside Assam. The government had also approved the construction of three others in Assam, Punjab and Karnataka.<sup>21</sup>

<sup>13</sup> <https://www.hindustantimes.com/india/religion-data-spotlight-on-assam-accord-after-30-years/story-UfUxBTwtmp5mu6iIgLmviP.html>

<sup>14</sup> <https://mha.gov.in/MHA1/Par2017/pdfs/par2019-pdfs/rs-10072019/1943.pdf>

<sup>15</sup> [https://economictimes.indiatimes.com/news/politics-and-nation/states-told-to-set-up-centres-to-detain-illegal-migrants/articleshow/70426017.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/states-told-to-set-up-centres-to-detain-illegal-migrants/articleshow/70426017.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>16</sup> <https://mumbaimirror.indiatimes.com/mumbai/cover-story/coming-up-in-nerul-1st-detention-centre-for-illegal-immigrants/articleshow/71018439.cms>

<sup>17</sup> <https://www.thehindu.com/opinion/op-ed/mixed-signals-on-nrc/article30374536.ece>

<sup>18</sup> [https://en.wikipedia.org/wiki/Assam\\_Detention\\_Centre#Matia\\_\(Goalpara\)\\_Detention\\_Centre](https://en.wikipedia.org/wiki/Assam_Detention_Centre#Matia_(Goalpara)_Detention_Centre)

<sup>19</sup> <https://scroll.in/latest/948035/citizenship-act-protests-hundreds-gather-at-jama-masjid-march-to-pms-residence-stopped-by-police>

<sup>20</sup> <https://timesofindia.indiatimes.com/city/bengaluru/karnatakas-first-detention-centre-for-illegal-immigrants-to-open-in-january/articleshow/72409585.cms>

<sup>21</sup> <https://www.thehindu.com/data/data-where-are-detention-centres-in-india/article30451564.ece>

It is still probable that Modi himself was misled by Congress into releasing government money that was used by them to build prison-like buildings that will then be shown to 'illiterate Muslims' as detention centers being built by the government 'to incite them to burn buses'. Modi was tricked into funding anti-national activities, and by all standards should deserve our sympathies. But if you think this scenario is ridiculous, then detention centers do exist, and they exist with extremely detailed plans and fairly strong intention to use them.

## **How to avoid this free accomodation?**

In order to conclusively avoid detention (unlike the stateless 19 lakh Bengalis in Assam), the proof of you not being an illegal migrant has to be provided. The proof that you are a citizen of India (and not an illegal migrant) should satisfy the criteria laid down in the Citizenship Act, 1955, as amended in 2003 and 2019. This extremely important law determines who can be considered a citizen of India, and therefore is also the acid test for your inclusion in NRC. Let's understand this law in detail.

## Section II : Who is a citizen? The history of Indian Laws on Citizenship

### Article 5-11: An interesting debate from 1949

Back in August 1949, a gathering of the Constituent Assembly members consisting of prominent leaders of the independence movement such as Nehru, Dr Ambedkar, Sardar Patel etc. were tasked with laying the foundations for this country when they were deliberating on what conception of citizenship the new Indian State would adopt—'jus soli' (citizenship by right of birth on soil, also adopted by US) or 'jus sanguinis' (citizenship by right of descent based on ethnicity or other communal markers). After much debate, the Founding Fathers adopted the 'jus soli' approach, which, according to Sardar Patel, carried a more **"enlightened modern civilized"** character that **all progressive nations were taking**. He also stated that ethnicity-based citizenship was outdated, and could foment **communal divisions** in the country.

Throughout this debate on inserting Article 5-11 (citizenship) in the Constitution, which for the best part were discussed on 10, 11 and 12 August 1949, the ghost of Partition kept returning. Dr. PC Deshmukh called jus soli principle as making citizenship 'too cheap' and passed an amendment stating **"every person who is a Hindu or a Sikh and is not a citizen of any other State shall be entitled to be a citizen of India."** And the rationale provided is reminiscent of the CAB: "By the mere fact that he is a Hindu or a Sikh, he should get Indian citizenship because it is this one circumstance that makes him disliked by others."

"We are not debarring others from getting citizenship here. We merely say that **we have no other country to look to for acquiring citizenship rights** and therefore we the Hindus and the Sikhs, **so long as we follow the respective religions, should have the right** of citizenship in India and should be entitled to retain such citizenship so long as we acquire no other," he said on August 11, 1949.

This conception of citizenship was criticized by several members as ridiculous, outdated, and an imitation of closed countries. One Assembly member from Madras, Mr. Mahboob Ali Baig Sahib, stated his objection in these words:

"Whether it is possible or not, shall we now follow these retrograde countries like Australia in the matter of conferring citizenship rights **and say that citizenship will not be available except on very very strict conditions?** It is very strange that Dr. Deshmukh should contemplate **giving citizenship rights only to persons who are Hindus or Sikhs by religion**. He characterised the provision in the article granting citizenship rights as ridiculously cheap. I would say on the other hand that **his conception is ridiculous**. Therefore, **let us not follow the example of those countries which we are condemning everywhere**, not only here but also in the United Nations and complaining that although Indians have been living in those countries they have not been granted citizenship rights there."

Another member, Shri Alladi Krishnaswami Ayyar, said:

"We may make a distinction between **people who have voluntarily and deliberately chosen another country as their home** and those who want to retain their connection with this country. **But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another**, or one sect of persons and another sect of persons, having regard to our commitments and the formulation of our policy on various occasions."

The amendment eventually lost via vote, rejected by the majority of members including Nehru and Dr Ambedkar, and the Constituent Assembly adopted the 'jus soli' principle for Article 5.

## Citizenship Act, 1955

Dr BR Ambedkar, as Chairman of the Drafting Committee, clarified on August 10, 1949 that Article 5 only dealt with "citizenship on the date of the commencement of this Constitution" and "the business of laying down a permanent law of citizenship has been left to Parliament."

Accordingly, the Parliament of India passed The Citizenship Act in 1955, that laid down the following criteria for acquiring Citizenship:<sup>22</sup>

1. By Birth i.e. born in India and any one of the parents is an Indian citizen
2. By Descent i.e. Child born outside india and the father is an indian citizen
3. By Registration, but if a spouse is a foreigner, he or she should have stayed in india for 7 yrs
4. By Naturalisation i.e by applying for citizenship when you have stayed in India for 11 yrs
5. By Acquisition of Foreign Territory i.e. When india acquires a foreign territory

## Citizenship Amendment Act, 2003

In 2003, the Citizenship Act was amended by home minister of the Vajpayee-government, L K Advani, and the definition of "citizen" was removed from the Act to introduce the negative notion of "illegal migrant", a person who entered India without a valid passport, and therefore could be jailed or deported.<sup>23</sup> The Act also made illegal migrants ineligible for citizenship by registration or naturalisation, and also disallowed citizenship by birth for children born in India if either parent is an illegal immigrant, resulting in the problem of declaring certain classes of children born as stateless.

However, there was another interesting and relevant exchange in the Lok Sabha debate on the amendment, when Manmohan Singh, who later went on to become PM, invited attention to the risk of persecuted refugees coming within the definition of illegal migrants. In response, L K Advani agreed that **there is a clear distinction between an 'illegal migrants' and a 'bona fide refugees'**, and that the two cannot be treated at par with each other. **He also agreed that a bona fide refugee should be granted citizenship liberally.**

Thus, the question of determining citizenship has always been linked to the problem of excluding refugees. Therefore, it is important to analyse the history of India's refugee policy to understand the context of this amendment to citizenship laws.

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<sup>22</sup> <https://www.refworld.org/docid/3ae6b57b8.html>

<sup>23</sup> *ibid.*

## Section III: Refugee Policy

### India's refugee policy since Independence

Despite not being a signatory to the 1951 Refugee Convention of UN or its 1967 Protocol, and despite not having a national refugee protection framework, India has continued to grant asylum to a large number of refugees from neighbouring States and has respected UNHCR's mandate for other nationals.<sup>24</sup> It has been a host to one of the largest refugee migrations in the known history (estimated around 1 Crore) when it allowed the refugees fleeing the Bangladesh Liberation War in 1971.<sup>25</sup> At 17.5 million, Indian diaspora is the largest in the world as per one UN report that hosted 5.1 million international migrants in 2019.<sup>26</sup>

Thus despite not subjecting itself to the UN conventions, the post Independence India has had a considerably liberal policy towards migration and refugees. While the Government of India deals differently with various refugee groups, it generally recognizes the UNHCR documentation and the UN issued refugee cards.<sup>27</sup>

### Modern refugee crisis in South Asia

The recent years have seen a significant rise in persecution in South Asia, mostly in the neighbouring countries of India such as Myanmar, Pakistan, China, Sri Lanka and Bangladesh. The persecution has been mostly religious in nature, and is not specific to any faith. The UN has specifically called the persecution in Myanmar, Pakistan and China against Muslim and Hindu minorities as the most severe in the world.

According to reports, the number of refugees that have arrived in India fleeing such persecution are estimated to be around 2,00,000.<sup>28</sup>

Over one lakh among such refugees are Sri Lankan Tamil Refugees, and around 59,000 of whom are settled in refugee camps. The citizenship decision by the Government of India in their favor has been awaited for several years, and their exclusion from CAA is yet another extension to that wait. Apart from the Tamils, 40,000 Rohingyas have arrived in India as refugees and set up camps in the northern part of the country. They continue to face persecution in India as well, due to the rhetoric of the BJP and the right wing facebook pages that has caused hate crimes and harassment, while BJP continues to threaten them with deportation back to Myanmar. Additionally, India hosts around 9,200 refugees from Afghanistan, out of which 8,500 are Hindus. There are also more than 400 Pakistani Hindu refugee settlements in Indian cities. (Fair Observer).

### BJP's position on refugees before CAA

In the run up to the 2014 general election, Narendra Modi said, "As soon as we come to power at the Centre, detention camps housing Hindu migrants from Bangladesh will be done away with."

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<sup>24</sup> <https://www.unhcr.org/4cd96e919.pdf>

<sup>25</sup> [https://en.wikipedia.org/wiki/List\\_of\\_largest\\_refugee\\_crises](https://en.wikipedia.org/wiki/List_of_largest_refugee_crises)

<sup>26</sup> <https://economictimes.indiatimes.com/nri/nris-in-news/at-17-5-million-indian-diaspora-largest-in-the-world-un-report/articleshow/71179163.cms>

<sup>27</sup> <https://www.unhcr.org/4cd96e919.pdf>

<sup>28</sup> [https://www.fairobserver.com/region/central\\_south\\_asia/refugees-rights-india-south-asian-world-news-headlines-97021/amp/](https://www.fairobserver.com/region/central_south_asia/refugees-rights-india-south-asian-world-news-headlines-97021/amp/)

He further reiterated, "We have responsibility towards Hindus who are harassed and suffer in other countries. Where will they go? India is the only place for them. Our government cannot continue to harass them. We will have to accommodate them here."

In its manifesto for the 2014 Indian general election, the BJP promised to provide a "natural home" for the persecuted Hindu refugees.

However, since the campaign for Lok Sabha elections of 2014, BJP's nationalist politics and rhetoric marked a clear departure from the liberal policy of immigration and refugees of India as well as of older BJP governments. Despite the endless criticism of Pakistan for its treatment of Hindu and other minorities, BJP also blamed its own refugees for draining the resources of the country and thereby causing the decline of the nation, declaring them an increasing threat to the national security, and referring to them using derogatory words such as 'termites' and 'infiltrators'. Since the beginning of its government, it has adopted a no mercy strategy towards classes of refugees such as Rohingyas and Bangladeshis. The BJP leadership has solemnly sworn to send them back to where they came from:

Rohingyas have come from Burma (Myanmar) and will have to go there. Home ministry has issued appropriate advisory to ensure that they do not succeed in procuring any document to claim Indian citizenship: HM Shri @rajnathsingh - posted by BJP Twitter Handle <sup>29</sup>

"In elections, we have always said that we will not allow infiltrators to remain on our soil. That is our commitment. It remains. But it doesn't mean that we will follow an unconstitutional method to implement that. We will use constitutional methods to ensure that India is free of infiltrators," he said. "Infiltrators have to go. It is a general rule for every country," - BJP Spokesperson <sup>30</sup>

"Rohingya having entered into Indian territories illegally would be detected as per law and deported." - Sambit Patra on India Today Enclave <sup>31</sup>

"The illegal immigrants are like termites. They are eating the grain that should go to the poor; they are taking our jobs." - Amit Shah (BJP President, current Home Minister proposing CAA) <sup>32</sup>

"How is it right to keep foreigners in our country?...There is **no need to keep these pests in our country**. I request the central government to send them away, and if not, like they do in other countries where they shoot dangerous intruders, just like that, in India as well, whichever Rohingya or Bangladeshi does not leave India peacefully, **we need to shoot them all!**" - BJP MLA Raja Singh <sup>33</sup>

Not remaining limited to words, the BJP government deported,<sup>34</sup> in violation of international law (prohibiting states from refoulement, sending persons to nations where they risk persecution), a family of five to their home country of Myanmar in January 2019, where they will most certainly face human rights violations and imprisonment. This expulsion came on the heels of another controversial forced repatriation of seven Rohingya men in October 2018.

<sup>29</sup> <https://www.trendsmap.com/twitter/tweet/1005344215570644993>

<sup>30</sup> <https://www.indiatoday.in/india/story/ram-madhav-on-rohingya-nrc-bjp-committed-to-make-india-free-of-infiltrators-1356722-2018-10-05>

<sup>31</sup> <https://www.indiatoday.in/india-today-conclave-east-2017/story/rohingya-bjp-congress-constitution-1093645-2017-11-24>

<sup>32</sup> <https://www.reuters.com/article/us-india-politics-shah-quotes-factbox/factbox-indias-new-home-affairs-minister-amit-shah-in-his-own-words-idUSKCN1T10U7>

<sup>33</sup> <https://www.ndtv.com/india-news/assam-national-register-of-citizens-nrc-draft-shoot-bangladeshi-rohingya-if-they-dont-leave-bjp-lawm-1892848>

<sup>34</sup> <https://www.aljazeera.com/indepth/opinion/india-rohingya-shame-190125104433377.html>



Later that month, 31 refugees - including 16 children and 6 women - were left stranded in the barren "no man's land" along the India-Bangladesh border for four days after Bangladesh denied them entry and the two nations failed to agree on what to do with them. Eventually, India arrested the group on January 22. Like the others apprehended as "illegal migrants", these detainees will likely face lengthy jail terms.

Unlike other refugees, the rohingyas only sought temporary asylum, not citizenship. After being rejected by the government, they filed a petition in SC to provide them asylum until the situation in Myanmar is restored. As a potential argument for the exclusion of Rohingyas from CAA, a refutation must be provided to how, in press and in its affidavit to SC opposing their refugee status and pleading their immediate deportation, this government used 'security threat' as an excuse to malign the Rohingya refugees, without any explanation, by alleging links to terror outfits including ISIS, accusing them of taking advantage of the porous borders in the east with organised smuggling of people, human trafficking, mobilisation of hawala etc., and told SC that, unless stopped, they "would eat into the welfare meant for India's citizens."

This rhetoric followed the example and the excuse of racist, xenophobic regimes like Donald Trump's that used security reasons to legitimize his anti-immigrant stance against Syrians refugees. Also, upon closer inspection, the problem is not only immaterial, but is nothing unusual in consideration of refugee policies. India has ignored higher levels of threat, as in case of Tamil refugees after LTTE's assassination of Rajiv Gandhi, where no one was deported. Refugees are always subjected to regular security procedures, they do not represent potentially violent elements, are thankful to live even as second class citizens, and are extremely hard working. Rohingyas are victims of violence and, despite regular harassment and threats since the last few years, are trying their best to assimilate.<sup>35</sup> Some have managed to adjust their appearance and even learn Hindi well enough to pass as Indian, and as a result face relatively less harassment. Further, the Bangladeshi illegal migrants, which are a protected class under CAA, were also called "a threat to national security" by the Army Chief, Bikram Singh, back in 2014.

The risk of extremism also could be easily assessed and the youth may be subjected to higher scrutiny and skepticism, but the Rohingya refugees include children and old people as well, and are UN recognized refugees. Additionally, there was no information or warning received or any FIRs registered by any Police Station across the country against the Rohingyas (except one case of illegal procurement of identity documents like PAN and Aadhar). The Indian high commission itself contradicted this assessment of 'security threat and links to ISIS' by providing massive relief assistance of blankets, sweaters and solar lamps to the settlements of Rohingyas in Bangladesh.

This prejudice of BJP against Rohingyas was independent of the national security threat excuse. This became clear when Narendra Modi, on his visit to Myanmar in September 2017, simply expressed concern at the "loss of lives of security forces and innocent people due to the extremist violence in Rakhine State". Far from condemning the state violence forcing refugees to flee, there was no reference to the excessive and arbitrary force used by security forces on Rohingya civilians in response to the "extremist violence".<sup>36</sup>

## What happened in Assam?

Historically, in the nineteenth and twentieth centuries, the growth of the tea industry in Colonial Assam saw migrations of people from Bihar, Orissa etc. who came as plantation labor to work in the newly opened

<sup>35</sup> <https://www.aljazeera.com/indepth/opinion/india-rohingya-shame-190125104433377.html>

<sup>36</sup> <https://www.thehindu.com/opinion/op-ed/moral-ambiguity-on-the-rohingya/article27189539.ece>



tea gardens. After the Treaty of Yandaboo in 1826, colonial officers viewed annexed Assam as a “dreary and desolate wilderness” and decided that “four million immigrants should be received and settled in the province” to further the old colonial goal of maximising revenues. Special officers were appointed to oversee this migration of labour. The colonial authorities also encouraged the educated Bengalis to come to Assam to take up jobs in the lower echelons of the Provincial Government, as teachers and other such professions. The migrations radically altered the demography of the region as people from densely populated East Bengal districts such as Myamansingh, Dhaka, Pabna were settled in Assam. The 1871 census recorded major changes in Assam districts such as Goalpara, Nowgong, Darrang and Kamrup. Similarly, the availability of cultivable wastelands attracted the peasantry from the densely populated neighboring districts of Bengal like Mymenshingh, Bogra, Rangpur and Pabna, who came to Assam in large numbers in the twentieth century. (**White Paper on Assam**).

This migration subsequently intensified the competition for resources among different ethnic groups. Before 1947, provincial governments headed by Sayeed Mohammed Saadullah and Gopinath Bordoloi attempted to protect tribal land using the Line System, which drew an imaginary line between the lands of tribals and immigrants. The All India Muslim League pressed for its abolition. In 1939, the Saadulah government opened up grazing reserves to settle immigrants under a “grow more food” campaign (which Viceroy of India Lord Wavell said meant "Grow More Muslims"). The British policy of divide and rule was in full play.

In the year 1950, the first census of independent India was conducted, based on which NRC list was compiled for the entire India including Assam. The period between 1964-65 also saw an influx of people from East Pakistan due to disturbances in the region. The major influx took place during 1971 independence of east pakistan and creation of Bangladesh.

In 1979, AASU and the All Asom Gana Sangram Parishad (AAGSP) began a series of protests across the state. State educational institutes remained shut for long. Periodic strikes at times turned violent. According to official records, 860 people were killed in the agitation. In the year 1985, Assam Accord was signed to end 6 year long agitation by Assam Students Association. It stated, among other clauses, that foreigners who came to Assam on or after March 25, 1971 shall be expelled.

In the year 1999, during the reign of then prime minister Atal Bihari Vajpayee of BJP, it was decided to update the NRC as per Assam Accord. Though not much work was done in the coming years. Assam NRC was planned to be conducted in 1999 but was delayed until late 2015, primarily due to unavailable infrastructure.

The issue was revived by Congress chief minister Tarun Gogoi, in 2005, wrote a letter to the then prime minister - Manmohan Singh - demanding that the 1951 NRC for Assam be updated. Manmohan Singh government chaired a meeting to discuss updation of NRC but yet no further progress was made in this respect, but this was enough to revive the infiltrator debate, and set the stage for the BJP to took over as a champion of the game. In the year 2013, a petition filed by Assam Public Works in 2009 came up for hearing in Supreme court. It directed the centre to start updation of NRC. The process actually began in 2015, and the BJP's campaign to complete NRC against the alleged infiltrators and its commitment to drive them out played a huge role in the BJP winning the 2016 assembly election in Assam.

After publishing two drafts of NRC it was estimated around 40 lakhs people missed the NRC. Final list came only in August 2019 where 19 lakhs people excluded the list where most of them being Hindus from East Bengal, and many legislators, teachers and Army officials did not figure on the list.

BJP too was very upset with the NRC list which has punched the biggest hole in its political sling that propelled the party to power in Assam. Some leaders sought a review of the NRC list, while others expected the Narendra Modi government to bring **some legislative measures to fix what they see as a problem : as opposed to Muslims, many of those left out of the NRC were Hindus, waiting to be declared as 'infiltrators' and driven out.**<sup>37</sup>

However, when the dust settled, the only surprising thing about this conclusion was that it surprised people, as the exercise wasn't based on any focused studies or reliable data on these infiltrators it was trying to capture. That is why hypothetical figures and random estimates are easily deployed as fact in the service of politics and ethnic violence. It was through serving as a consistent player in the cycle of violence and politics in Assam that the "illegal Bangladeshi immigrant" came to prevail in the popular imagination as a threat to national security and integration of the country.

The exercise took around 10 years to complete with around 52,000 workers and as estimated cost of around 1200 crores, without bearing a fruitful result. Assam's National Register of Citizens was meant to serve as a comprehensive list of Indian citizens residing in the state. Instead, many fear it will turn into a nightmarish witch-hunt directed at the state's most vulnerable residents. Millions of mostly Muslim families are paying the price of the state's incompetent bureaucracy which is responsible for apprehending and trying people who they suspect are 'foreigners'.

## The insecurity among refugees since BJP Govt

In one incident, the current BJP government, in violation of international law (prohibiting states from refoulement i.e. sending persons to nations where they risk persecution), had planned to deport certain refugees to countries undergoing a genocidal persecution where they will certainly face grave human rights violations. On learning of their detention and the planned return, and based on credible reports that the seven men are Rohingya, UNHCR requested the Indian authorities to grant access to this group, to assess their need for international refugee protection," said Mr. Mahecic. According to the UNHCR spokesperson, the UN agency did not receive a response to its request and was unable to secure access for a lawyer from a state legal service.<sup>38</sup>

The party has also made short work of vilifying Muslims and particularly Rohingya, recasting them as terrorists through their spokespersons and laying allegations of terrorism on the basis of unnamed security agency reports that continues to call them a threat without any clear reasons. Indian authorities also ceased to recognise the UNHCR-issued refugee cards of Rohingya, effectively taking away the little amount of legal protection some 18,000 registered Rohingya refugees had in the country. Several facebook right-wing pages from India also engaged in spreading false rumours and misleading videos of crimes by the Rohingyas to inflame the anti-immigrant sentiments.<sup>39</sup>

<sup>37</sup> <https://www.indiatoday.in/news-analysis/story/assam-nrc-why-bjp-is-upset-and-protesting-over-its-own-agenda-1594560-2019-09-02>

<sup>38</sup> <https://www.newindianexpress.com/nation/2018/oct/07/unhcr-says-18000-rohingyas-currently-living-in-india-1882349.html>

<sup>39</sup> <https://www.nytimes.com/2019/06/14/technology/facebook-hate-speech-rohingya-india.html>

As a result of this poisonous rhetoric, the rohingyas have faced increased surveillance and harassment, and in some cases extortion, arbitrary arrests, detentions, and beatings. They're also barred from owning property and live near wastages that pose serious health risks to them and their children. The BJP was completely unsympathetic to the hate crimes and extreme rhetoric they faced in India such as repeated burning of their jhuggi settlements and having to repeatedly relocate, including one 'identify and kill' movement called against them in Jammu.

Also, BJP parliament has rejected a bill presented by Shahi Tharoor to establish a mechanism to consider refugee policy, and India continued to remain one of the only democracies in the world that hasn't ratified the 1951 United Nations Refugee Convention or its 1967 Protocol, which has 140 signatories, an overwhelming majority of the world's 190-odd nation. In September 2018, Amit Shah, the BJP national president, identified the Rohingyas as "illegal infiltrators" and said that the government "will not allow India to be a safe haven" for them. That month, Rajnath Singh, the union home minister, directed all state governments to collect the biometric data of all Rohingyas. In early February this year, Kiren Rijiju, the minister of state for home affairs, stated in Lok Sabha that the government has directed states to conduct surveys and deport Rohingyas in a "continuous manner".

Many refugees told the Caravan Magazine that the Indian government has created a coercive environment and that a constant fear of deportation looms over them. "The recent verification forms distributed by the government have jolted many of us back to the memories of the process that were conducted by the Burmese government just before driving us out of the country," Nezamudden, a refugee, said.

In an email response, the office of the UNHCR stated that the international agency had observed an increase in the movements of Rohingya from India to Bangladesh since late December 2018. Between 16 January and 3 February this year, the BSF arrested at least 68 Rohingyas fleeing from India towards Bangladesh, and remanded them to judicial custody. Around 1,300 Rohingyas reportedly fled to Bangladesh in January alone. Several refugees at the camps told me that in the last eight months, those who have escaped from Myanmar into Bangladesh have preferred to stay there instead of coming to India.

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Several refugees attributed the sudden surge of Rohingyas leaving India to the increasing frequency with which the government has conducted a verification of Rohingya refugees since the home minister's September 2018 directive. "From 2012 to 2014, the Indian government used to conduct head counts once every year," Mohammed Salimullah, a Rohingya refugee in the Kalindi Kunj camp, said. "In the last three to four months, at least 100 inquiries have been held." Salimullah added that the refugees were being asked to fill "various kinds of forms apart from biometric verification process, so people are scared that the government is planning to send us back to Burma," referring to the older name for Myanmar.

Due to this new environment of hostility created in the country by BJP, The number of refugees granted asylum is also on the decline for three straight years.<sup>41</sup> There was also a 996% rise in Indians seeking political asylum in the past 10 years. In 2009, only 4,722 Indians felt scared to live in India and thus applied for political asylum in other countries. By 2018, this number rose to 51,769, reveals an IndiaToday.in analysis of data collected by the office of United Nations High Commissioner for Refugees (UNHCR).<sup>42</sup>

<sup>40</sup> <https://caravanmagazine.in/communities/fearing-detentions-deportation-delhi-rohingya-refugees-flee-bangladesh>

<sup>41</sup> <https://www.macrotrends.net/countries/IND/india/refugee-statistics>

<sup>42</sup> <https://www.indiatoday.in/india/story/996-rise-in-indians-seeking-political-asylum-in-past-10-years-1552869-2019-06-21>

The statistics of the National Crime Records Bureau (NCRB) surely suggest a growing reverse migration from India to Bangladesh, especially of Muslim migrants. Indian border guards intercepted 1700 migrants trying to go back to Bangladesh illegally in 2017. In 2018, the number of such people intercepted rose to 2800. The statistics for 2019 are not immediately available but Home Ministry officials say the numbers will be much more in the year just gone by. For every interception, officials state, many more would have gotten away, suggesting that the actual numbers are likely to be significantly higher.

## Condition of Indians under Assam NRC

At a public tribunal held in Delhi on September 8-9, 2019, victims of the NRC process in Assam testified in gripping detail to the long-lasting and extreme hardships to which they had been exposed. Families were separated, and either incarcerated or put in detention centres, by an entirely arbitrary quasi-judicial process, leading to deprivation, deaths, and even suicides.

A seven-member jury of eminent citizens, including former justices of the Supreme Court and a retired Chief Justice of Delhi High Court, heard the presentations at the tribunal. They noted, *inter alia*, “It is not just mental distress which is killing people; there are inhuman processes involved in the whole NRC which is forcing people to die in most unfortunate ways. Literally millions of people were asked to appear before the verification officers in faraway places multiple times to prove their citizenship credentials. In most cases, the verifications were held outside the home district...People died in the NRC queues, in vehicle accidents attending arbitrary long-distance hearings on very short notice, and of heat strokes.”<sup>43</sup>

During its course, Assam NRC resulted in 28 deaths in detention camps and 57 Suicides. Assam’s obsessions with so-called “outsiders” has set up an entire ecosystem of lawyers who have significantly upped their fees for cases related to the NRC and the foreigner tribunal processes. Suhas Chakma, director of Delhi-based Rights and Risk Analysis Group, surveyed 62 people in Assam’s Goalpara, Baksa and Kamrup districts prior to the publication of the NRC and estimated that each family had spent Rs 19,000 in an average for just NRC hearings. The lawyers did not even hear you for anything less than Rs 50,000, and there were some ‘unscrupulous’ people in the profession who’d demand Rs 20,000-Rs 30,000 even before looking at the demands of the case. Chakma, during his survey, found that lawyers in Assam have charged up to Rs 25,000 as one-time fees to just check NRC documents of people and tell them what they needed. Daily wage labourers with no land to call their own, most of these families took loans to pay for legal fees and promised to work for free for the moneylenders till they could repay the debts.<sup>44</sup>

## Earlier solutions to the recent refugee situation in India

In attempts to formulate the long awaited refugee and asylum policy of India, there have been legislative attempts since 2006, with the introduction of The Refugees and Asylum Seekers (Protection) Bill, 2006. In late 2015, three asylum Bills were introduced in the Lok Sabha on the same day.<sup>45</sup> Of the three, Shashi Tharoor’s Asylum Bill, 2015 was the most comprehensive, which was based on the 2006 Bill, and would “put India at the forefront of asylum management in the world,” claimed Tharoor. The bill provided protection against expulsions to refugees (indiscriminately) already in India, however, it still left those at the frontiers

<sup>43</sup> <https://www.hindustantimes.com/analysis/caa-nrc-lessons-from-the-assam-experience/story-b2IvUzmyErRgMungWIKxH.html>

<sup>44</sup> [https://www.huffingtonpost.in/entry/assam-nrc-the-nightmare-that-awaits-assam-s-poor\\_in\\_5d6e3b43e4b09bbc9ef45396](https://www.huffingtonpost.in/entry/assam-nrc-the-nightmare-that-awaits-assam-s-poor_in_5d6e3b43e4b09bbc9ef45396)

<sup>45</sup> <https://thewire.in/external-affairs/shashi-tharoor-asylum-bill-2015>

vulnerable to rejections. This bill was never taken up for consideration by this government.<sup>46</sup> (It can be noticed that despite the CAA sharing its objective with these previous Bills floated by opponents of CAA, no reference is made by Amit Shah to such Bills as a defense of CAA, since CAA differs with these Bills in a very significant manner: its discrimination. The very comparison with previous law will highlight the flaw critics of CAA are pointing towards, hence that argument is never used by Amit Shah and company).

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<https://www.newindianexpress.com/nation/2017/sep/23/shashi-tharoor-slams-rainath-singhs-excuse-on-rohingyas-how-to-apply-for-refugee-status-when-there-1661296.html>

## Section IV: Citizenship (Amendment) Act, 2019

### Some developments before Citizenship Amendment Bill 2016

On 7th September, 2015, through G.S.R. 685(E) and 686(E), the Central Government amended the **Passport (Entry into India) Rules, 1950** as well as **Foreigners Order, 1948** respectively to insert the following:

"persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31 st December, 2014-

- i. without valid documents including passport or other travel documents; or
- ii. with valid documents including passport or other travel document and the validity of any of such documents has expired:

Later, on 18th July, 2016, Afghanistan was also added to the list of countries through G.S.R. 702(E) and 703(E).

These amendments were made to decriminalize the migrants of the six faiths from the three countries of the offense of entering India without a valid passport, and protecting the specified classes from deportation.

### Boring details about how CAA was enacted

The BJP government first introduced a bill to amend Citizenship Act in 2016, which would have made non-Muslim migrants from Pakistan, Afghanistan, and Bangladesh eligible for Indian citizenship. The bill was even cleared by the Lok Sabha, but following the widespread political opposition and protests in northeast India, the bill was stalled in the Rajya Sabha.

The Bill was introduced in Lok Sabha on 19 July 2016 as the Citizenship (Amendment) Bill, 2016. It was referred to the Joint Parliamentary Committee on 12 August 2016. The Committee submitted its report on 7 January 2019 to Parliament. The Bill was taken into consideration and passed by Lok Sabha on 8 January 2019. It was pending for consideration and passing by the Rajya Sabha. Consequent to dissolution of 16th Lok Sabha, this Bill had lapsed.

Following the reelection of BJP to power, on 4 December 2019, the cabinet cleared the Citizenship (Amendment) Bill, 2019 for introduction in the parliament. The Bill was introduced in the 17th Lok Sabha by the Minister of Home Affairs Amit Shah on 9 December 2019 and was passed on 10 December 2019, with 311 MPs voting in favour and 80 against the Bill.

The bill was also passed by the Rajya Sabha on 11 December 2019 with 125 votes in favour and 105 votes against it. After receiving assent from the President of India on 12 December 2019, the bill assumed the status of an act. The act came into force on 10 January 2020, but the implementation of the CAB began on 20 December 2019 itself when Union Minister Mansukh Mandaviya gave citizenship certificates to seven refugees from Pakistan.

## What does Citizenship (Amendment) Act, 2019 say?

The Amendment Act, like its 2016 precursor and the Passport rule and Foreigner order amendments discussed earlier, sought to exclude the migrants belonging to six specified faiths, and three neighbouring countries, from the definition of 'illegal migrant', but unlike the above mentioned rules, it particularly omits the requirement of shelter from 'religious persecution'. It amended the Citizenship Act, 1955, to insert the following passage:

"Provided that any person belonging to **Hindu, Sikh, Buddhist, Jain, Parsi or Christian** community from **Afghanistan, Bangladesh or Pakistan**, who entered into India on or **before the 31st day of December, 2014** and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, **shall not be treated as illegal migrant** for the purposes of this Act;"

In effect, from the enactment of this Act, the specified classes of people are no longer to be considered illegal migrants and are therefore free from the restrictions imposed by the 2003 amendment. They become eligible to apply for Indian citizenship through Registration or Naturalisation, and after the due process, they will be deemed as Indian citizens retrospectively i.e. from the date they entered into India. Further, the naturalisation period for the specified classes is reduced from 11 years to 5 years.

## What is the BJP's official statement for this amendment?

*"This bill is a bill to end the torture and sufferings of the lakhs or crores of refugees that are living their life in hell, and is a means to grant them freedom from this torturous life. And it is my great joy to declare that it provides citizenship and constitutional respect to these refugees that arrived in India having faith in this country of ours."*

*- Amit Shah in Lok Sabha, on 9 December, 2019 while introducing the bill <sup>47</sup>*

*"Bill seeks to grant Indian Citizenship to persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities on ground of religious persecution in Pakistan, Afghanistan and Bangladesh...[T]he Bill is aimed at giving a dignified life to these people who had suffered religious persecution for decades by granting Indian Citizenship to them, if they fulfil conditions for grant of citizenship."*

*- Press Information Bureau release by the Government <sup>48</sup>*

This Act has been introduced, promoted and debated by the BJP and its spokespersons as the long-awaited refugee policy of India. The details of atrocities and the plight of the refugees in the countries like Pakistan and Bangladesh have been invoked to justify the exclusivist protection of the Act. The bill has also been described as a catharsis for the mistake of Congress to allow partition on religious grounds.

Like demonetisation, the justifications for CAA gained colours as the debate progressed. What began as a benign refugee law started to become deeply defensive of its 'reasonable classification', and ended in an aggressive blame game based on certain unpopular historical narratives.

<sup>47</sup> <https://youtu.be/H1uSRmdRK0?t=188>

<sup>48</sup> <https://pib.gov.in/newsite/PrintRelease.aspx?relid=195783>



## Why the explanations don't work...

This characterization of CAA as a refugee law, however, is completely disconnected from the text of the amendment. Firstly, the act nowhere specifies refugees as the class protected by the amendment. The words 'persecuted minority', 'religious persecution' or 'neighbouring countries' are nowhere mentioned in the Act. Secondly, a refugee law is characteristically different from a Citizenship law, as the natural demand of a refugee is asylum, not immediate citizenship. After the requisite period of residence (11 years) under asylum has been completed, the existing, unamended Citizenship Act, 1955 already provided for application for citizenship by the process of Naturalisation. But, instead of passing a separate law for refugees of past, present and the future, this law intends to 'fix' citizenship act itself to account for some classes of the existing illegal migrant which lacks a reasonable explanation. Thirdly, in defense of the exclusion of Muslims from the act, one of the replies provided was 'Muslims have other countries to go to' while Hindus only have India. This explanation of the classification used in the act reveals more about the act than anything, and makes the implicit explicit. The law intends to make familiar an unfamiliar understanding of India: An India that would be last on a Muslim refugee's list, and first on a Hindu refugee's list. One can discard this justification based on empirical data to the contrary, but this reveals the idea of India as 'more natural' for Hindus than Muslims. Either it is equally natural for both, or completely unnatural for the refugees of both religions. Whether there are other countries for Hindus or Muslims is an irrelevant factor for people already arrived in India, as their deportation will be refoulement, and there are Hindu countries. And finally, the connection it shares with NRC moves its meaning completely beyond the meagre scope of a refugee law.

## Are CAA and NRC connected? Aap chronology samajh lijiye!

*"First, we will bring Citizenship Amendment Bill and will give citizenship to the Hindu, Buddhist, Sikh, Jain and Christian refugees, the religious minorities from the neighbouring nations. Then, we will implement NRC to flush out the infiltrators from our country."*

*- Amit Shah Tweet in April, 2019 <sup>49</sup>*

*"First the CAB will come. All refugees will get citizenship. Then NRC will come. This is why refugees should not worry, but infiltrators should. **Aap chronology samajh lijiye.** First CAB is going to come. After the CAB is passed, NRC will come. And when NRC comes, it won't just come for Bengal. It will come for the entire nation."*

*- Amit Shah BJP live interview in April 2019 <sup>50</sup>*

*"You can take the NRC and CAB as a combo package for West Bengal and Assam,"*

*- Himanta Biswa Sharma at India Today Conclave, Kolkata <sup>51</sup>*

*"First we will pass the Citizenship Amendment bill and ensure that all the refugees from the neighbouring nations get the Indian citizenship. After that NRC will be made and we will detect and deport every infiltrator from our motherland."*

*- Amit Shah Tweet in May 2019 <sup>52</sup>*

<sup>49</sup> <https://twitter.com/AmitShah/status/1120275890871521280>

<sup>50</sup> [https://www.youtube.com/watch?time\\_continue=5&v=Z\\_6E5hPbHg](https://www.youtube.com/watch?time_continue=5&v=Z_6E5hPbHg)

<sup>51</sup> <https://www.indiatoday.in/magazine/the-big-story/story/20191223-politicising-asylum-citizenship-amendment-bill-1627567-2019-12-13>

<sup>52</sup> <https://twitter.com/AmitShah/status/1123581776415399937>



*“The concept of NRC is connected with CAB. I want to clarify this that first CAB will come, and it will make all Hindus, Jains, Sikhs, Buddhists, Christian refugees as citizens, **and then will identify** the infiltrators in NRC....All the Hindu, Sikh, Buddhist, Christians, Gorkha they will all get citizenship under CAB...so where is the question of NRC? **We want to walk up to them and give them citizenship. They wouldn’t be asked for any documents.**”*

*- Amit Shah ABP News Interview in October 2019 <sup>53</sup>*

*“NRC will make a list of all India citizens... But, this is true and the government acknowledges that Hindu refugees, Buddhist, Jain, Sikh, Christian, Parsi refugees should get citizenship and this is exactly why we have brought the Citizenship Amendment Bill.”*

*- Amit Shah in Rajya Sabha on 11 December, 2019*

*“There is no connection between the detention centre and NRC or CAA.”*

*- Amit Shah in December, 2019 <sup>54</sup>*

*“CAA has nothing to do with NRC and it does not apply to Indian citizens, including Muslims....The CAA has absolutely nothing to do with deportation of any foreigner from India. Union Home Ministry has been working on a plan to provide Indian citizenship to all future migrants, including Muslims, "irrespective" of their numbers ‘if found eligible’ “*

*- a ‘source’ from Ministry of Home Affairs in December 2019 <sup>55</sup>*

*“There is no question of joining CAA with NRC,”*

*- Union Minister Ravi Shankar Prasad in December, 2019 <sup>56</sup>*

*(Note: There is a Twitter thread by Altnews’ Pratik Sinha of the seven occasions on which Amit Shah has, on camera, linked the CAA and NRC. <sup>57</sup>)*

## The Technicality of combining NRC with the amended Citizenship Act

In order to determine the criteria for inclusion in or exclusion from the proposed National Register of Citizenship (NRC), it is legally inevitable for the process to derive its definitions from the amended Citizenship Act. As we have seen earlier, the Citizenship Act, since 2003, no longer defines ‘citizens’ and instead has a definition for ‘illegal migrant’ from which the 2019 amendment has excluded certain classes of people. Before this amendment, the people residing in India could be divided into the following groups:

1. Citizens: These included those covered under Article 5-11, and those that have acquired citizenship through five procedures laid down in the original Citizenship Act, 1955.
2. Foreigners : Those that entered India with a valid passport or documents, and were not liable to be deported.
3. Illegal migrants: Those that entered India without valid passport or documents.

<sup>53</sup> [https://www.youtube.com/watch?v=k8-R4DOze\\_g](https://www.youtube.com/watch?v=k8-R4DOze_g)

<sup>54</sup> <https://timesofindia.indiatimes.com/india/no-connection-between-detention-centre-cao-and-nrc-amit-shah/articleshow/72958634.cms>

<sup>55</sup> <https://news.abplive.com/news/india/cao-protests-mha-plans-citizenship-to-eligible-muslim-migrants-too-1126697>

<sup>56</sup> <https://timesofindia.indiatimes.com/india/no-connection-between-detention-centre-cao-and-nrc-amit-shah/articleshow/72958634.cms>

<sup>57</sup> [https://twitter.com/free\\_thinker/status/1207956699073507328](https://twitter.com/free_thinker/status/1207956699073507328)

After the amendment, the people residing in India can be divided into the following four groups:

1. Citizens: These included those covered under Article 5-11, and those that have acquired citizenship through five procedures laid down in the original Citizenship Act, 1955.
2. Foreigners : Those that entered India with a valid passport or documents, have not applied for citizenship and were not liable to be deported.
3. **The Exempt Class: Hindu, Sikh, Buddhist, Jain, Parsi or Christian that entered India without documents, but entered before 31st December, 2014, and from Pakistan, Bangladesh and Afghanistan.**
4. Illegal migrants: Those not covered by the exemption above that entered India without valid passport or documents.

Thus the amendment has created a new class out of previously identified illegal migrants that it will treat as 'bona fide refugees'. They will be required to go through a very liberal process to acquire citizenship, that Amit Shah has clarified in Lok Sabha will not require any documents or proof. This virtually assures all residents under the exempt class their place in the National Register of Citizenship.

If you are still confused, under the Citizenship Amendment Act and going by Shah's comments, anyone without documents living in India who is a non-Muslim can just claim to be a "refugee", without any proof of being persecuted or even having migrated from another country. Any Muslim without documents will be presumed to be an infiltrator – and will be declared so when an NRC is conducted.

## For example...

To understand whether there is any linkage or not, we need to see how these two might work. We will take the numbers from Assam.

- 1) NRC is conducted. It determines how many, and who qualify to be on the register, and who do not qualify. In Assam, these figures were approximately 3.3 crores and 19 Lakhs respectively.
- 2) Of the 19 lakhs who were not found to be qualified to be included in the register, approximately 13 lakhs are estimated to be Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities (the exact breakup into these six communities is not available but it is considered a safe assumption that a majority of these are Hindus, and about 6 lakhs to be Muslims.
- 3) Theoretically, all these 19 lakhs people will have to apply to Foreigners' Tribunals to get their status clarified and corrected.
- 4) This is where the CAA comes into play. According to the amended Section 2 of the Citizenship Act, everyone "belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014... shall not be treated as illegal migrant for the purposes of this Act."
- 5) The fact of "not (being) treated as illegal immigrant" is critical because it makes that person entitled to become an Indian citizen after five years of stay in India.

The implication of item 4 above is that anyone NOT “belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan” shall be treated as an illegal migrant, making it compulsory for them to approach the Foreigners’ Tribunals to get their status clarified and corrected.

What this means in simple English is that (a) NRC will identify who are suspect, (b) CAA will enable all non-Muslims to become eligible for and get Indian citizenship, and (c) Muslims will have to go through the rigmarole of Foreigners’ Tribunals. This is how the NRC and CAA are interlinked, and in a way, this is what the home minister has been trying to hint at.

## Why Indian Citizens, especially Muslims, have every reason to worry and protest

We have been given a peek into the NRC that they ‘haven’t discussed or debated anywhere’. In an interview given to ET Now on 17th December, 2019,<sup>58</sup> Amit Shah, on being asked whether government issued identity documents like Aadhar and Voter ID signify citizenship, categorically **denied any importance to Aadhar and Voter ID**, saying “they do not decide citizenship. **And Aadhaar does not decide citizenship at all.**”. This meant that the nationwide NRC was set to be just as skeptical as Assam NRC, if not worse. However, after a week of protest, a government Q&A issued on 20 December, 2019 stated that the NRC was likely to include voter cards, passports, Aadhaar, licenses, insurance papers, birth certificates, school LC, land or home documents or other similar documents ‘so that no Indian citizen has to suffer unnecessarily’.<sup>59</sup> But as critics pointed out, this renders the entire process of NRC as useless as exchanging old 500 notes for new ones, because the government can just copy the Aadhar database as NRC and spare the nation a laborious ordeal.

An ‘infiltrator’ or ‘illegal migrant’ doesn’t have any physical characteristics that sets him apart from an Indian citizen or a person eligible for citizenship. An attempt to demolish the houses of such illegal migrants based on physical characteristics has resulted in bulldozing of hundreds of huts of labourers that had all necessary documentation and were declared Indian citizens in Assam NRC. Contrary to the political wisdom of the BJP leader, the Poha eating habits of a person also did not set them apart.<sup>60</sup>

The only thing that sets the two apart are the documents issued by various government authorities. Given the insufficiency of Aadhar and Voter ID as proof for Amit Shah, and the futility of the NRC exercise if Aadhar is one of the evidence (because government already has the Aadhar database, why not copy paste it and call it NRC?), we have valid reasons to ignore the government released FAQ that lists Aadhar etc. as one of the possible documents. And if the government released identity cards can not be the basis, a person can claim to be a citizen of India only under the following acts and through presenting the following valid documents:

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<sup>58</sup> [https://youtu.be/eNd792HSL\\_A?t=475](https://youtu.be/eNd792HSL_A?t=475)

<sup>59</sup> <https://pibindia.wordpress.com/2019/12/20/q-a-on-nrc-national-register-of-citizens/>

<sup>60</sup> <https://www.news18.com/news/india/hundreds-of-huts-of-illegal-bangladeshi-immigrants-raised-in-bengaluru-turns-out-all-are-indians-2465113.html>

| Citizenship Criteria  | Documents expected   |
|---|--|
| Article 5-11 of the Constitution  | Documentary evidence of migration to India on or before 19th July, 1948, or inclusion in NRC of 1951   |
| Under Citizenship Act, 1955   |  |
| By Birth  | <p><b>If a parent was the first citizen:</b> Birth certificate of the person; and Evidence of citizenship of one of the parents (By migration, By birth, by descent or by Naturalization or Registration); and the Evidence that the other parent is either a citizen, a foreigner or a refugee (i.e. not an illegal migrant as per CAA, 2019).</p> <p><b>If a grandparent was the first citizen:</b> Birth certificate of the person; Birth certificate of one of the parents, Evidence of citizenship of one of the parents of that parent (By migration, By birth, by descent, by Naturalization or Registration); and the Evidence that the other parent is either a citizen, a foreigner or a refugee (i.e. not an illegal migrant as per CAA, 2019).</p> |
| By Descent  | Evidence of the citizenship of the father (By migration, By birth, by descent, by Naturalization or Registration), and the Evidence that the other parent is either a citizen, a foreigner or a refugee (i.e. not an illegal migrant as per CAA, 2019).  |
| By Naturalization or Registration<br>(extremely rare)   | Certificate of Naturalization or Indian Citizenship Certificate of Registration in the name of the person  |
| Under Citizenship (Amendment) Act, 2003   | OCI Card   |
| Under the Citizenship Act, 2019<br>For Hindu, Sikh, Buddhist, Jain,<br>Parsi or Christian community<br>from Afghanistan, Bangladesh or<br>Pakistan  | <p><b>No Documents</b></p> <p>(not even the Documents to prove arrival before 31st December, 2014 is mandatory.)</p>   |
| <p><i>The people that are still left, if they are unable to provide evidence of entry into India with valid passport or if their permitted period of stay has lapsed, will be held guilty under the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 and will have to be deported or detained by law.</i></p> |  |

It can be easy to see how the last category is the most attractive option and the easiest set of documents, or lack thereof, for anyone to produce. The procedure is that there is no procedure. It is likely to involve a small declaration form where they enter their Names etc. and simply declare themselves to (a) belong to one of the six faiths and (b) migrated to India on or before 31st December 2014 from any of the three

countries. Most of the people that have lost or misplaced the documents required to prove citizenship under the criteria laid down by Article 5-11, Citizenship Act, 1955 or the 2003 amendment, or their documents contain misspellings or are in fragments, will prefer to opt for Citizenship under the one declaration form of 2019 amendment. Yogi govt's announced form.

The problem, therefore, is that the amended does not extend this declaration form to any Muslim that has lost, damaged or misspelled documents. As per the current Act, there won't be a Muslim checkbox in the religion section of these declaration forms. This leaves Muslims with the option to either lie about their faith or be legally deportable or detainable as per the law. But due to the impossibility of mass detainment or deportation, this law is like a giant laser gun being charged up to bake popcorns. People of Muslim community can be selectively harassed and collectively subjected to prejudice using the powers acquired under this Act, and in the wrong hands (not unlike the hands of BJP), this power is not to be exercised with restraint.

Additionally, even if implemented state wise in a phased manner, we are essentially talking about a massive clerical exercise with lengthy crowds of people triple the size of demonetisation, the chaos of reissue and correction of documents, the bribery, the lawyers' fees and the appeals, the stress, the suicides and the deaths, the economical impact, the handling of the excluded, the detention and deportation, until you start wondering why not just abolish all borders and beg Gujarat to stop producing politicians.

It must be pointed out that due to the lack of opposition in this parliament and its authoritarian policies and governance, BJP has the full autonomy and intention to steamroll any legislation it deems wise, as well as force its implementation onto even non-cooperative population as well. It hasn't shied away from using that power wherever resistance was expected, as evident from many of the aggressive and even undemocratic pursuits in its second term. The most radical and inconvenient policies of the government such as demonetisation and abrogation of Article 370 have been based on 'internal, uninformed wisdom' and were unilaterally imposed, resulting in widespread chaos without achieving its stated goals. Recently, in the face of nation wide protest and international condemnation, Amit Shah unflinchingly declared that CAA will be implemented regardless of the protest or opposition.<sup>61</sup> This has fostered an understanding among people that this government, when left unchecked, has a habit of using its powers to punish the ordinary population of India through unique, arbitrary procedures that, despite close adherence, punishes the innocent and still doesn't capture the guilty.

In the pages to follow, we will try to capture the nuances of the national debate on the Citizenship Amendment Act and National Register of Citizens, the allegations and arguments laid against the combination and the reasoning of such claims, common counter-arguments from the supporters of the Act and the flawed or limited understanding of the counter-arguments that remain extremely few and extremely similar due to sharing a common supplier.

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<sup>61</sup> <https://www.thehindu.com/news/national/caa-wont-go-asserts-amit-shah/article30614769.ece>

## Section V : The Debate

### Legal Arguments

#### **Basic Structure Doctrine i.e. Secularism**

The CAA, 2019 is constitutionally invalid as it violates the basic structure of the Constitution of India i.e. the Secular character of the Constitution (as laid out in the landmark case of *Keshavananda Bharti v. State of Kerala*) by defining, for the first time, the criteria of religion for acquisition of citizenship (in addition to earlier criteria of birth, descent, residence or Naturalization). In the 1973 judgement, SC held that the “basic structure of the Constitution could not be abrogated even by a constitutional amendment.” implying that the parliament can only amend the constitution and not rewrite it. The power to amend is not a power to destroy. This was a development on an earlier Judgement in the case of *Golaknath v. State of Punjab* that invoked the concept of implied limitations on Parliament's power to amend the Constitution. Even the BJP leader Himanta Biswa Sarma admitted that the Bill cannot be Secular because no Muslim was persecuted in those countries.

#### **Counter Argument: Amendment to Constitution vs Passing an Act**

Basic structure doctrine that was put in place through *Keshawnanda Bharti* (1973) is a limitation on the power of the parliament to amend the constitution. It cannot amend the constitution and thereby violate the basic structure of the constitution. And since the Citizenship Act is a law, the Basic Structure Doctrine is not attracted.

#### **Response: SC says even a law can be violative of Basic structure**

There are several SC judgements that held that even a law can be violative of the basic structure of the constitution. In *I. C. Golakhnath Case*, the Court held that the ‘amending power’ and the ‘legislative power’ of the Parliament were essentially the same. Therefore the amendment of the Constitution must be deemed law as used under Article 13.

#### **Counter Argument: Secularism wasn't in the original constitution**

The word ‘Secularism’ was slipped into the constitution during the emergency period along with ‘Socialist’ and wasn't part of the original preamble.

#### **Response: Making the implicit explicit**

It has been the opinion of the majority of legal experts (including Judges such as Mr. Justice Fali S Nariman) that although the word secular was not there expressly, it was very much there implicitly in unequivocal terms that is in the preamble itself in terms of the words Liberty of belief, faith and worship.

Hence, as per the reasoning given during that time of the amendment bill as well, the word secular was added to make explicit what was implicit since the beginning.

At that time it wasn't needed to be included. It was obvious, agreed upon and understood. Although now, since Indira Gandhi added it and it became a political flashpoint, one can easily understand why she felt the need to add it to make it clear to people that kept interpreting the constitution in their xenophobic colors.

**Counter-Argument:** Constitution is only applicable to citizens, while CAA deals with people that are not citizens

**Response :** Several Articles of the Constitution (Article 14, for example) apply to all persons and not citizens only. The articles that apply only to citizens, mention citizens explicitly (e.g. Article 15)

### **A rejected criteria of Citizenship (Articles 5-11)**

CAA is violative of Article 5-11 that provided original citizenship on the 'jus soli' approach, which according to Sardar Patel, carried a more "enlightened modern civilized" character that all progressive nations were taking. And that ethnicity-based citizenship was outdated, and could foment communal divisions in the country.

### **Counter Argument: Not applicable to Citizenship Act**

The Constitution under Article 11 expressly left acquisition and termination of citizenship and all other matters relating thereto to the Parliament by way of legislation. Article 11 clearly states that "Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship." Therefore, it confers power instead of restricting it.

### **Response: The Scope of legislative power must be defined by Articles 5-11**

As the power granted to the parliament is granted under the clause of the constitution which was subjected to debate and deliberations by the Constituents Assembly at the time of insertion, and several interpretations of the nature of citizenship, and thereby of our nation, were presented and rejected as 'cannot be the basis of citizenship for the nation' i.e. denoting a permanence and not a temporary criteria. The amendments approved by the members of the Constituent Assembly, therefore, also create the scope within which the Citizenship law must be legislated, and the power granted becomes the power to establish further procedures in this regard.

### **A law for Inequal treatment and discrimination (Article 14)**

CAA is constitutionally invalid because it is in violation of article 14, "Equality before law and Equal protection of the laws." which is extended to every person, whether or not he is a resident or citizen of India. The Act discriminates among different classes of refugees as well as different classes of illegal immigrants.

### **Counter-argument : Reasonable Classification**

Article 14 does not provide for absolute mathematical equality. Constitution allows for reasonable classification/intelligible differentia, and the classification of Hindus in Muslim

countries is in accordance with the conditions of classification based on intelligible difference between minorities and the majority, and consistent with the objectives of the act i.e. saving minorities from religious persecution. (Ram Krishna Dalmia vs Justice S R Tendolkar), and is also non-arbitrary as per E. P. Royappa (1973)

**Response: The criteria for reasonable classification**

This response has become as popular as the Article 14 itself, and therefore the doctrine of reasonable classification needs to be adequately explained:

In the same judgement of Ram Krishna Dalmia, three explicit conditions are mentioned in order for any classification to be considered reasonable :

- Statement of objects and reasons of this bill should be non-arbitrary
- Intelligible differentia i.e. ability to separate the protected and unprotected)
- And a Rational nexus between the above two

*The first condition* (of a non-arbitrary statement of object and reason) fails as the Act excludes victims of political and cultural persecution (eg. Tibetans and Tamils) and also as it excludes other persecuted minorities belonging to other religions. Further, the Act does n (and instead, includes non persecuted from 6 faiths as it doesn't even mention the criteria of religious persecution for exempting Non Muslims from illegal migrant definition)

*The second condition* of Intelligible differentia (able to separate the protected and unprotected) also fails as, in the absence of any mention of persecution in the Act, the differentia of Muslims and Non Muslims as a means to judge the persecution is not intelligible, as non-persecuted minorities or members within such minorities are also protected.

*The third Condition* of Rational Nexus between the above two - failed as well as the decision to differentiate only three countries from others and only six faiths from other persecuted faiths appears to have no nexus with the stated object of protection of persecuted religious minorities in neighbouring countries and is completely arbitrary. Even the criteria stated to avoid the charge of arbitrariness, such as classification of countries that have religion in their constitution or that used to be part of India, are not only inconsistent (Sri Lanka, Nepal), but have no rational nexus with the achievement of the stated objective, and are therefore classifications irrelevant to the fact of religious persecution. (e.g. Myanmar should get first treatment as the severity makes it imperative to protect them for any meaningful attainment of its objectives, regardless of whether or not the constitution of Myanmar is religious).

*“The arbitrary inclusion of some groups while excluding others would only be permissible ... if the classification is founded on an intelligible differentia between the group excluded and the group that is included, and (ii) the differentia has a rational relation to the objects sought to be achieved by the Act, The [CAA] claims religious persecution as the ground of reasonable classification, but then arbitrarily excludes several similarly situated and widely persecuted religious minorities such as Ahmadiya Muslims and Shia Muslims from Pakistan and Bangladesh, Rohingyas from Myanmar, Hazaras from Afghanistan from its protective ambit. It*



*therefore does not meet these criteria under the Indian constitution and international law.”*

*- International Commission of Jurists*

*The Impugned Act has classified the persons who have illegally entered into India in two classes, viz. migrants from the three specified countries and migrants from other countries like Sri Lanka, Bhutan, Myanmar, Tibet and China. It is submitted that the reasoning for this classification is religious persecution, but the said classification ignores the fact that migrants from excluded countries could also be victims of religious persecution.*

*Further, the classification also divides these migrants on the basis of religion, while Hindus, Sikhs, Buddhists, Jains, Parsis or Christians are included within the Impugned Act, Muslims and Jews have been excluded. The said classification is arbitrary as it has no nexus with the object sought to be achieved by the Impugned Act. The said classification has been made whimsically and capriciously, ignoring the fact that in Afghanistan, Pakistan and Bangladesh, Muslim minority sects like Ahmadiyyas, Shias and Hazaras have also been victims of persecution. Further, no rationale has been provided to exclude the victims of religious persecution from other neighboring countries like Tamilian Hindus from Sri Lanka and Rohingya Muslims from Myanmar.*

*- Petition filed with Supreme Court*

To clarify further, there are two levels to the Article 14 objection of CAA:

The official narrative of CAA continues to argue for the reasonableness of classification between Muslims and Non Muslims of the three nations. That classification, although still not reasonable due to being inconsistent with the objective of the Act by leaving out religiously persecuted sects, **is only part of what is being criticized**. The main objection is this Act discriminates against a lower number of illegal migrants facing more severe persecution by excluding them in favor of a larger number of people under relatively lesser severity of persecution and possibly no persecution at all. In the absence of the religious persecution as a stated criteria, the main beneficiary of this Act and the people sought to be protected by this classification (the reason religious persecution was omitted from CAA unlike Passport Rule and Foreign Order) are the Bengali Hindu migrants in Assam, most of whom, as per the General's report, have entered India not fleeing religious persecution, but either fleeing war or in pursuit of economic opportunities.

Additionally, there is no reason to classify refugees of religious persecution from other forms of persecution, such as political and cultural persecution (e.g. Tibetans) faced just as severely by communities in neighbouring countries, and is therefore another unreasonable classification by the act to make its objective only the protection of persecuted religious minorities and is therefore violative of Article 14.

Following are the various criteria used in debates to argue for the reasonability of the classification made in the CAA, 2019:

*(Tip: In discussions and debates, instead of listing all of the following as soon as reasonable classification is invoked, ask whoever is defending the constitutional validity to identify/define the criteria he considers is used to reasonably classified/protected, and then cite examples of classes excluded from that criteria and conclude how the object is not achieved.)*

1. **All Minorities are covered by the classification since Muslims can't be a religiously persecuted in a Muslim country:**

The classification covers all persecuted minorities from the three countries, excluding none. Further, in the words of Amit Shah, "it is impossible for a Muslim to be persecuted in these countries."

**Response: Ahmadiyyas and Shias from Pakistan:**

"Adherents of the [Ahmadiya] faith are subject to an ongoing campaign of threats and intimidation and acts of violence and terrorism, with little or no protection from authorities." - UN Human Rights Expert <sup>62</sup>

**Counter Argument : Other Countries**

"As far as Ahmadiyas and Shias are concerned, they would any day prefer going to Iran, which is a Shia country, or Bahrain, where Ahmadiyas are accepted as Muslims...so they cannot come into this category.. I don't think a Pakistani Muslim wants to leave and come to our country. So there is no need to include them also..., " said Subramanian Swamy.

**Response: No Country for Persecuted Men**

This argument is based on the misunderstanding that the act gives protection to future migrants. The Pakistani Ahmadiyya and Shia refugees have already arrived in India before 2014 and are living in camps along the north eastern states. They have already, by effect, not preferred to go to Iran or Bahrain. Also, the Rohingyas have already flooded Bangladesh beyond its capacity and the state of Bangladesh has begun to refuse any further intake of Rohingya refugees.

**Counter Argument: No Ahmaddiyyas in India**

I agree that Ahmedias and Shias are persecuted in Pakistan, but can you show me A SINGLE MEDIA REPORT that talks about Ahmedias or Shias living in some refugee camps in India?<sup>63</sup>

**Response: Economic Times**

<sup>62</sup> <https://www.rabwah.net/un-rights-expert-condemns-pakistan-over-systematic-persecution-of-ahmadis/>

<sup>63</sup> <https://www.opindia.com/2019/12/nrc-cao-cab-faqs-debate-liberal-idiots/>

While most of [Ahmadiyyas] are Indian citizens, a few are living as refugees, including those who came here through marriage and are seeking citizenship. [ET]<sup>64</sup>

**Response: Hazaras from Afghanistan**

The Hazara have long suffered oppression and persecution in Afghanistan. They are now often targeted by groups swearing allegiance to ISIL. In the 1990s, thousands were killed by al-Qaeda and Taliban fighters. Earlier, the Taliban declared them as "non-Muslims" during their rule from 1996 to 2001.

**Response: Atheist Bloggers from Bangladesh**

Secularist and atheist bloggers regularly face threats of violence and attacks by Islamist groups in Bangladesh, several of whom have left Bangladesh after the killing of various famous speakers of atheism. The government of Bangladesh, despite the constitution allowing for freedom of religion, discourages criticism of religion.

**2. Countries that were in India before partition:**

Since historical reasons (partition) may justify differential treatment of separate geographical regions provided it bears a reason and just relation to the matter in respect of which differential treatment is accorded (Clarence Pais & Ors vs Union Of India), Only the countries which used to be a part of India were included.

**Response: Afghanistan v/s Myanmar**

Afghanistan wasn't a part of India before partition. Also, Myanmar was a part of India as late as 1935. Further, the Act does not discriminate against geographical regions, but the people belonging to such regions that have already arrived and sheltered in India.

**3. Neighbouring Countries / Sharing Border:** Only countries whose border touches ours are included in the classification to signify 'neighbouring countries'.

**Response: Afghanistan v/s Myanmar and China**

The small portion of border that Kashmir shares with Afghanistan lies, despite being claimed by India, in Pakistan occupied Kashmir currently. While the borders of Myanmar and China are shared with India but the same are excluded from the classification.

**Counter: Rohingyas not a religious minority**

Rohingyas can't be protected by the objectives of the Act as they are an ethnic minority, not a religious one.

**Response: Their persecution is religious**

The Rohingyas are persecuted due to complex ethno religious tensions, that qualifies them as a persecuted religious minority and are treated as such.

State Peace and Development Council/State Law and Order Restoration Council (SPDC/SLORC) policies since the 1990s appear to be aimed at reducing the presence of Muslims in Rakhine State through a series of discriminatory policies

The religious activities of these minorities have also severely curtailed. Many mosques and religious schools have been demolished since the 1980s, and repairs to them are often prohibited. There have been substantiated reports of waqf land (mosque land) and Muslim cemeteries being appropriated by authorities, as well as Muslim monuments, place names and historical sites being destroyed.<sup>65</sup>

4. **Degree of harm:** The Act classifies minorities from these three countries because compared to other minorities within our neighbourhood, they are the most persecuted.

**Response: Rohingyas are the most persecuted minority in the entire world**

UN has declared that the world's most persecuted minorities are Rohingyas of Myanmar that are excluded and even opposed by the government, the military and are facing a possible genocide.

China and Myanmar also occupy the top place in the list of countries with the Least Religious Freedom.<sup>66</sup> In Myanmar, the bloody conflict, between Government and Rohingya Muslims, has resulted in some 70,000 people fleeing to Bangladesh for refuge, and about 23,000 people in Myanmar internally displaced. To many, it appears that the Myanmar government is actively involved in a horrific ethnic cleansing operation against the Rohingya.

In China, there are widespread reports of attacks on other sects, most infamously the non-violent Falun Gong and the Uighur Muslims. According to the State Department's 2016 report, there have been claims the government "physically abused, detained, arrested,

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<sup>65</sup> <https://www.refworld.org/docid/49749cdcc.html>

<sup>66</sup> <https://bigthink.com/robby-berman/the-10-countries-in-2017-with-the-least-religion-freedom>

tortured, sentenced to prison, or harassed adherents of both registered and unregistered religious groups.”. Also, China's takeover of Tibet, and removal of unfriendly Buddhists there, is also an issue of religious persecution, regardless of its underlying motivation.

5. **Secular Constitutions:** Only the countries covered by the classification favor a religion in their constitution, or are theocratic.

**Response: How is this relevant to the objectives of the Act?**

This is no reason or empirical data to suggest that the existence or severity of the religious persecution depends on whether or not the constitution mentions any religion or not. In 2010, a *High Court decision in Bangladesh upheld the secular principles* from the Constitution of 1972, but the persecution still continues. China is another example of a country that is constitutionally religion-neutral and yet is persecuting its minority. In Myanmar, there is no official state religion, but the government continues to show preference for Theravada Buddhism, the majority religion of the nation and continues to allow the persecution of its religious minority. This criteria is exactly the type of arbitrary classification that the SC criteria would declare unreasonable.

**Response: Sri Lanka endorses Buddhism in its constitution**

Sri Lanka's constitutional policy regarding religion affords a 'foremost place' to Buddhism and obligates the State to protect and foster the Buddha Sasana,

**Counter Argument: Sri Lankan Tamils are a racial minority, not a religious one**

Sri lankan Tamilians did not come to India because of religious persecution but because there was a full-fledged war.

**Response: Religion is race in Sri Lanka**

Religion is intrinsically linked to ethnicity in Sri Lanka: Buddhists are mostly Sinhalese, Hindus are mostly Tamil, and to be Muslim is both an ethnic and religious identity.<sup>67</sup>

**Counter Argument: Sri Lanka refugees are fleeing war not persecution**

Sri lankan Tamilians did not come to India because of religious persecution but because there was a full-fledged war.

**Response: Post-war Persecution**

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<sup>67</sup> <https://minorityrights.org/country/sri-lanka/>

The war was a civil war, and the hostility against the Tamil Hindus remains even after the civil war that ended in 2009 but there are continuing allegations of atrocities being committed by the Sri Lankan Military and the rebel Liberation Tigers of Tamil Eelam during its final months....the end of the civil war has not improved conditions as press freedom is not restored and the judiciary is under political control.<sup>68</sup>

**Response: Bengali Hindus**

A significant part of migrants within the Bengali Hindus that the Act seeks to protect (by not mentioning religious persecution) came to India fleeing the Liberation War. Further, the war is irrelevant to the persecution they would face when they are deported now, an outcome the Act explicitly intends to avoid as its objective.

**Response: Nepal also used to be a Hindu nation**

For the purpose of this the period covered by this Act (upto 2014), even Nepal should be considered a religious nation as it was officially a Hindu nation until as late as January 2007 when it was declared secular.

6. **Indigenous Religions:** The religions are classified based on whether they originated in the land of India. Since Hinduism, Sikhism, Buddhism and Jainism originated in India, they can reasonably be distinguished from Islam which originated in Arabia.

**Response : Christians and Parsis**

The Act covers followers of two other religions that did not originate in India i.e. Christians and Parsis.

**Response : Persecuted by Indigenous religions**

The introduction of indigenous religion and 'Muslim countries for Muslim refugees' within this debate is problematic for the supporters themselves, as the very recognition of Buddhism as the indigenous religion of India makes refugees persecuted by Buddhists (Rohingyas & Tamils) a problem created by India, and therefore makes them a responsibility of India due to being persecuted by India's indigenous religion.

**Reponse : Yardstick**

Anwar Ali Sarkar, 1952 (SC) : there must be a yardstick to measure those included and excluded, and Justice Indu Malhotra, in her judgement on Section 377, infused

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<sup>68</sup> [https://en.wikipedia.org/wiki/Sri\\_Lankan\\_Tamils](https://en.wikipedia.org/wiki/Sri_Lankan_Tamils)

article 15 grounds into article 14, insisting that the yardstick must be reasonable. And it is reasonable only if it is not based on the core trait of an individual. Religion and place of birth are such core traits which cannot be the basis for classification.

**Counter Arguments: Treatment of unequals as equals**

If creamy layer among backward classes were given the same benefits as Backward classes, it will amount to treating equals unequally. Equality is a basic feature of the constitution of India and any treatment of equals unequally or unequals as equals will be a violation of basic structure of the Constitution of India. (India Sawhney v. Union of India)

**Response: Treatment of equals as unequals**

All classes of persecuted immigrants, due to the similarity of circumstances (e.g. wealth for creamy layer is also a circumstance), shall be regarded as equals based on this doctrine and shall be given the same benefits. There can be no inequality of treatment or discrimination among two classes of illegal immigrants, which this Act very explicitly intends.

**Counter Arguments: A policy decision by the government**

How far and wide the government seeks to extend its immigration policy is a policy decision in which the court cannot interfere, but within the three countries the classification is reasonable.

**Response: Reasonable classification among countries**

In fact, the very decision to classify between countries must be based on some reasonable classification that is consistent with the objectives of the Act.

**Response: Reasonable classification within countries**

Using the examples of religiously persecuted minority sects within the majority (Ahmadiyya, Shias, Hazaras etc), it has been demonstrated that the Act does not apply reasonable classification within the three countries as well.

**Response: Courts can interfere**

On 2 February 2012 the Supreme Court, on petitions challenging the 2008 allotment of 2G licenses, cancelled 122 2G licenses, because the Supreme Court ruled that the Government cannot follow first come first serve policy. Therefore, the government doesn't have absolute freedom of policy, and SC can question the wisdom of the parliament and executive.

**Counter Argument: Policy decision is unavoidable in immigration**

The decision of immigration policy is never done on a broad basis, but is always done on a case to case basis, and the security concerns are a factor.

**Response: This makes CAA not just discriminatory, but also racist**

This argument to discriminate among faiths based on security concerns implies that followers of some faith and persecuted minorities from some countries pose a greater threat to national

security. Far from being constitutionally reasonable, this is a blatantly racist classification that is a product of the hate rhetoric by BJP. Army Chief of India, Bikram Singh, also called Bangladeshi migrants a threat to national security, but this law doesn't discriminate against them.

Thus, it can be concluded that only by mentioning no classification at all and simply mentioning persecuted minorities from neighboring countries can the act pass through article 14.

### **Classification on the basis of religion (Article 15)**

CAA is constitutionally invalid because it is in violation of article 15, "Classification on the basis of religion, place of birth"

#### **Counter Argument : Only for Citizens**

Article 15 (No discrimination based on religion or place of birth) only applies to citizens, not any person. Foreigners not eligible for protection under Article 15.

#### **Response: A legal precedent of its use**

Justice Indu Malhotra, in her judgement on Section 377, infused article 15 grounds into article 14, insisting that the yardstick used in Article 14 must be reasonable. And it is reasonable only if it is not based on the core trait of an individual. Religion and place of birth are such core traits which cannot be the basis for classification.

### **Violation of Right to dignity (Article 21)**

CAA is constitutionally invalid because it is in violation of article 21: "Right to life and personal liberty and dignity", by stripping, arbitrarily, the rights of some people.

#### **Counter Arguments: Only for India**

Article 21 (Right to life and personal liberty and dignity) only applies to people in India, not people coming from abroad.

#### **Response: Examples**

But Rohingyas and Tamils are people already in India and it deprives their rights under Article 21.)

#### **Counter Arguments: Acceptable violation based on legislative precedents**

Even the previous citizenship acts (1955, 2003) allowed no person to migrate, including the six faiths now allowed. If Article 21 is to be interpreted as freedom of migration, then even the original citizenship act becomes unconstitutional. Article 21 is not violated as it isn't about equality, just extension of rights, and migrants already have no rights under earlier citizenship acts.

### **Violates freedom of religion (Article 25)**

CAA is constitutionally invalid because it is in violation of article 25, "all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion". As per



this amendment, Illegal migrants from other than the six faiths, the spouses in interfaith marriages and their children would be incentivized to identify as belonging to faiths other than Islam in order to avoid being classified as 'illegal migrant' and to secure citizenship, and thus violates Article 25 that promises the freedom of conscience and free profession, practice and propagation of religion.

### **Violation of Signed UN Convention on Stateless Children (Article 50C)**

CAA is unconstitutional because it violates Article 50(C) and 51(C). Thus Section 3(1) of CAA, 2003 provides for different treatment to children as per their date of birth and renders certain category of children stateless on the basis of classification on date of birth, which is manifestly arbitrary. Further treatment of the excluded children as stateless is also violative of United Nations Convention on the Rights of the Child, 1990 to which India is signatory as well as international obligations of India under inter alia the UDHR, United Nations Convention on the Rights of the Child, 1990 and also United Nations Convention on the reduction of statelessness, 1961 (being customary international law). Further the Impugned Act and Section 3(1) are in violation of Article 50 (c) of the Constitution of India, which imposes a duty on the state to foster respect for international law and treaty obligations. Thus, the impugned provisions being completely in the teeth of Article 51 (c) and also in contravention of Article 37 which stipulates that the principles enshrined in part IV of the constitution are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. However, by enacting the impugned provisions, the Respondent Union has failed in its duty under Article 37 read with Article 51(c).

### **CAA is violative of Assam Accords.**

Centre had signed the Assam Accord in 1985, which has put the date of detection and deportation of foreigners as March 25 1971. CAB has now moved this cut-off date to 2014, which is a clear violation of the accord. Further, as opposed to the agreed upon deportation, the CAA makes the NRC redundant and bestows citizenship to the illegal immigrants that the Accord promised to deport.

CAA is also violative of the doctrine of **colourable legislation** as established in *K.C Gajapati vs state of Orissa*, when it prohibits violation of federal structure by proceeding to legislate indirectly what it cannot do directly.

### **Counter Argument: CAA will not impact the Accord**

The Asom Gana Parishad says Clause 6 of the Assam Accord will insulate Assam from CAB's adverse impact.

### **Response: The impact is not the problem, the promise is**

The very implementation of CAA to Assam has the effect of making illegal immigrants citizens which is violative of Clause 6 and a contradiction of the promise of detection and deportation of foreigners from Assam by moving the date forward. The adverse impact is not in the question.

### **The resolution to conflict between Parliament and Constitution**

India is a constitutional democracy, and not a majoritarian one. This means the constitution is binding even on a democratically elected government. And in the event of a conflict, the loyalty of a citizen must lie with the constitution, and not to the government. Thus, when the government is in

violation of the constitution, then it is a duty and responsibility upon the citizen to not cooperate with the government in such violation.

### **The idea of India as it was founded**

As discussed in the history of Citizenship Laws section, a similar amendment has already been discussed for 3 days, and was opposed by the majority of Constituent assembly including Nehru and Ambedkar, and was subsequently rejected.<sup>69</sup> One of the opponents went so far as to state “It is very strange that Dr. Deshmukh should contemplate giving citizenship rights only to persons who are Hindus or Sikhs by religion. He characterised the provision in the article granting citizenship rights as ridiculously cheap. I would say on the other hand that his conception is ridiculous.”<sup>70</sup> This Act is a resurrection of that strange notion of India being a religion based nation.

### **Can a king question his king maker’s credentials ?**

As for NRC, If the voter ID is denied as proof of being Indian Citizen, this government ceases to be legitimate government democratically elected by the true citizens of Indian and shall dissolve itself effective immediately, and let the Judiciary order the Bureaucracy to carry out, under its supervision, the necessary procedure to determine the true citizens of India so that India can be truly democratic through reelection. Otherwise the very power that the government has used to legislate citizenship has been given to it by potential illegal immigrants, that, if the BJP is to be believed, are too many.

### **On what grounds was the standing committee’s suggestion rejected**

Interestingly, many constitutional experts invited by the standing committee to examine the Citizenship (Amendment) Bill in 2016 such as Subhash Kashyap asked the law to be drafted to give the benefit of citizenship to “persecuted minorities” instead of naming specific religions from neighbouring countries. Subhash Kashyap even warned against naming specific religions, and held the view that the term “persecuted minorities” was enough to cover all those whom the legislation aimed to cover. “The word minority has not been defined in the constitution. I would submit that minority does not mean only religious minority. It may be minority on other grounds.” This suggestion, despite meeting the official explained objective of the act, was rejected by this government. The reasons are not too far to seek.<sup>71</sup>

## **The Political Cost of CAA**

### **International Reputation and Foreign Relations**

#### **Since BJP’s rise to power**

Since the rise of BJP to power, India has consistently faced a decline in international rankings of religious unrest and violence. In 2015, in a research, India ranked fourth worst country for religious violence, only next to Syria, Nigeria and Iraq.<sup>72</sup> India is among the countries whose Social Hostility Index (SHI) based on cases of hate crimes, mob or communal violence, use of force to prevent religious practice, women’s religious dress code and violence over conversion or proselytizing, has

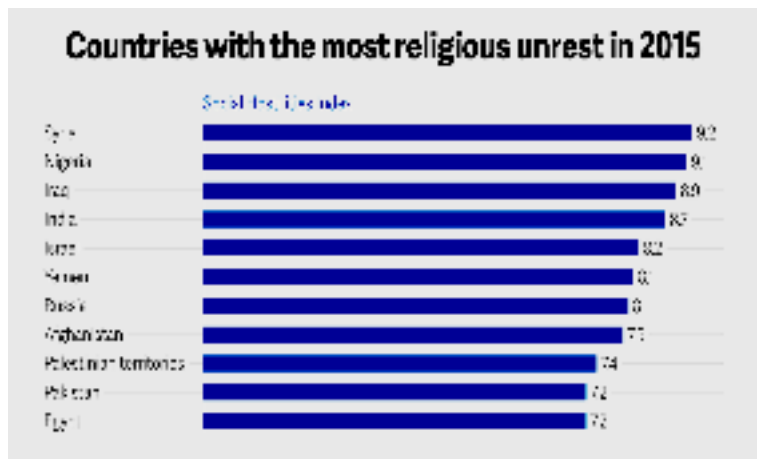
<sup>69</sup> <https://www.livelaw.in/top-stories/when-constituent-assembly-rejected-a-move-to-define-citizenship-on-religious-lines-150826?infinitemscroll=1>

<sup>70</sup> [https://eparlib.nic.in/bitstream/123456789/763022/1/cad\\_12-08-1949.pdf](https://eparlib.nic.in/bitstream/123456789/763022/1/cad_12-08-1949.pdf)

<sup>71</sup> <https://thewire.in/politics/by-listing-religions-modis-caa-broke-atal-manmohan-left-concord-on-persecuted-minorities>

<sup>72</sup> <https://qz.com/india/959802/india-is-the-fourth-worst-country-in-the-world-for-religious-violence/>

worsened from 2007 to 2016,<sup>73</sup> while the countries like Pakistan, Afghanistan and Bangladesh (which, ironically, CAA claims to be concerned about) have improved their rankings significantly. Even back in 2016, India secured a 9.7 on a 10 point scale for religious unrest.



| Country     | GRI  |      | SHI  |      |
|-------------|------|------|------|------|
|             | 2007 | 2016 | 2007 | 2016 |
| India       | 4.8  | 5.1  | 8.8  | 9.7  |
| Afghanistan | 5.3  | 6    | 8.5  | 7.1  |
| Bangladesh  | 4    | 4.9  | 8.3  | 7.6  |
| Bhutan      | 4.4  | 4.6  | 1.9  | 0.4  |
| China       | 7.8  | 8.8  | 0.9  | 1.3  |
| Sri Lanka   | 4    | 4.1  | 7.8  | 5.9  |
| Nepal       | 3.4  | 5.2  | 4.2  | 5    |
| Myanmar     | 7.9  | 6.9  | 4.9  | 5.1  |
| Pakistan    | 5.8  | 6.5  | 8.9  | 6.9  |

“Officials of the Bharatiya Janata Party (BJP) at both the central and state government levels made statements that India should be exclusively Hindu,” said Katayoun Kishi, the lead researcher. “Minority communities, including Muslims, Christians and Sikhs, complained of numerous incidents of harassment by Hindu nationalist groups.”

UN Human Rights chief Michelle Bachelet, in her annual report to the UN Human Rights Council, criticized India over its ‘divisive’ politics: “We are receiving reports that indicate increasing harassment and targeting of minorities – in particular Muslims and people from historically disadvantaged and marginalised groups, such as Dalits and Adivasis.”<sup>74</sup>

The introduction and implementation of CAA marks a new low in this hostility which will affect not only the Social Hostility Index negatively, but also lose our gains in the Government Restriction Index (GRI) that analyzes cases of laws, policies and actions by officials that restrict beliefs and practices. The legislative violation of Article 25, as explained in the Legal Arguments, will set a dangerous precedent for the laws in the future that will continue to sink the GRI further.

### Since passing of the CAA

In its Press Briefing on India after passing of CAA, the UN stated:

*“India’s new Citizenship (Amendment) Act 2019 is **fundamentally discriminatory** in nature...The amended law would **appear to undermine the commitment to equality before the law** enshrined in India’s constitution and India’s obligations under the International Covenant on Civil and Political Rights and the Convention for the Elimination of Racial Discrimination, to which Indian is a State party, which prohibit discrimination based on racial, ethnic or religious grounds.”*

<sup>73</sup> <https://www.thehindu.com/data/data-persecution-of-minorities-among-indias-neighbours/article30338662.ece>

<sup>74</sup> <https://www.firstpost.com/india/un-human-rights-chief-michelle-bachelet-warns-india-over-divisive-policies-harassment-of-minorities-particularly-muslims-6208261.html>

UN Secretary General Antonio Guterres said he was personally concerned about the future of the religious minorities in India after the enactment of the new citizenship law, which may render a large number of Muslims as stateless.

Following this statement, a draft resolution has recently been moved on January 22 by the 154-member Socialists and Democrats (S&D) group of the European Parliament, citing instances of violence and deaths during protests, especially in Uttar Pradesh, urged the Indian government to address the grievances leading to the protests, and called upon the EU to raise the issue of ethnic and religious minorities' discrimination in their dialogues with the Indian authorities. They expressed "deep regret" over the adoption and implementation of the CAA "which is discriminatory, dangerously divisive and may potentially create the largest statelessness crisis in the world and cause widespread human suffering."

A total of five such resolutions have been moved in EU by several groups representing 626 out of 751 member of the European Parliament that call the CAA 'fundamentally discriminatory' or 'dangerously divisive' and criticize the government for its handling of the protests.<sup>75</sup>

The Human Rights Watch (HRW) has urged the Centre to immediately repeal the Citizenship (Amendment) Act in view of nationwide protests against it, and said there should be an independent probe into police "brutality and excesses" against students and other protesters across the country.

The US Congress' thinktank, Congressional Research Service(CRS), has observed that the CAA may affect the status of India's Muslims. In its most recent report, CRS says: "In tandem with a National Register of Citizens planned by the federal government, the CAA may affect the status of India's large Muslim minority of roughly 200 million."

### **Lautenberg Amendment vs CAA**

Some supporters of the Act have pointed out that Lautenberg Amendment, first enacted in 1990 as part of the U.S. foreign operations budget to facilitate resettlement of Jews from the former Soviet Union, and later extended to other parts of the World was itself a law like CAA and therefore the US criticism is hypocritical at best. However, the criticism of CAA goes much beyond the benign implications of the Lautenberg, and therefore the comparison seems a little hastily drawn. Unlike the CAA, Lautenberg is a flexible, ongoing program, not a one-time deal. Its underlying purpose is to create a mechanism to rescue the most vulnerable religious groups in the world at any given time. Hence, the law has to be reauthorized every year at which point lawmakers have the option of revising the list of groups needing help. In 2004, Lautenberg was extended to Iran — and not just the Jews and Christians in the country but also the Baha'is, a religious sect that is considered heretical by Iran's religious establishment. The difference that gives CAA its power for widespread discrimination is its status as a precursor to the promised NRC. Lautenberg also was introduced in addition to existing laws to protect refugees not fast-tracked by the law to avail normal channels. Lautenberg only relaxed standards for some refugees to admit more in, while the CAA admits not a single extra refugee. Furthermore, once admitted, refugees in America have a pretty straightforward path to citizenship. But India's existing refugee and citizenship channels are a sick joke. As we go into more details, the American law was initially passed only to provide protection to Jews which were not a majority

<sup>75</sup> <https://www.outlookindia.com/website/story/india-news-fundamentally-discriminatory-eu-groups-move-resolution-on-caa-in-parliament/346279>

within America, the law did not deal with the Jews that had already arrived in America, and it did not seek to exclude any other refugee that has already arrived in the US. Combine that with the regime implementing CAA being one with a historical agenda and practice of discrimination against Muslims and Dalits, and the result is a law that has almost nothing in common with Lautenberg Amendment.

The United States Commission on International Religious Freedom (USIRF) raised concerns over the proposed legislation even before it was endorsed by the Rajya Sabha. It conceived of the bill as using religion as a pathway to citizenship to be against the core tenet of “religious pluralism”. Describing the bill as a “dangerous turn in the wrong direction,” the USIRF maintained that the bill undermined “the most democratic tenet”. It went on to demand sanctions against “Amit Shah and other principled leadership”.

Malaysian Prime Minister Mahathir bin Mohamad questioned the “necessity” of the CAA and lamented the “withering of secularism” in India. Instead of providing a public rebuttal to the question, India’s MEA went a step further and summoned the Charge D’ Affairs of the Malaysian embassy to express discontentment.

With protests against CAA gaining momentum across the world in locations like Boston, Chicago and Hague among others, India’s global image as the world’s largest liberal democracy is under question, as India slipped 10 places lower in the prestigious Democracy Index of 2019 issued by Economist Intelligence Unit recently.

“Cumulative effect of a series of actions, including what happened in Kashmir. We seem to know we are isolated,” said the former National Security Adviser and Foreign Secretary Shivshankar Menon. “Global public opinion on India has shifted if you see the international press. It’s a self-inflicted goal. Bangladesh Foreign Minister said ‘let them fight among themselves’. If this is how our friends feel, what must our adversaries feel,” said Mr. Menon.

### **How do our friends feel?**

Speaking of friends, the Prime Minister of **Bangladesh**, a country that has extremely cordial relations with India, has said that while the Citizenship (Amendment) Act was an internal matter for India, she was puzzled about the rationale of the legislation. “We don’t understand why [the Indian government] did it (CAA). It was not necessary,” she said in an interview published in Gulf News.

The CAA has furthered complicated India-Bangladesh ties. Highlighting the need for the CAA in the parliament, Amit Shah, instead of using the general expression of ‘neighboring countries’, chose to specifically name Bangladesh as places where non-Muslim minorities face persecution. This has not been welcomed by Bangladesh, as soon after the CAA was passed, their Foreign Minister A.K. Abdul Momen cancelled his scheduled visit to India. This was followed by the cancellation of Bangladeshi Home Minister Asaduzzaman Khan’s visit and postponement of two meetings on river management between officials from the two countries in New Delhi.<sup>76</sup>

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<sup>76</sup> <https://thediplomat.com/2020/01/indias-citizenship-moves-may-impact-relations-with-its-neighbors/>

The other country with which India's relationship may be affected is **Nepal**. Unlike Bangladesh, Nepal is a Hindu-majority country so it is not mentioned in the CAA. However, according to media reports, between 70,000 and 100,000 Gurkhas were excluded from the NRC list in Assam, while other people from other ethnic groups with roots in Nepal have adopted India as their country for decades. There are also marital relations between people living along the India-Nepal border. Since after the unofficial blockade along the Indian border in 2015-16, these ties are already on shaky grounds which the CAA will add turbulence to.<sup>77</sup>

Experts suggest that the act can be perceived by another friendly neighbour as a criticism towards its government: **Afghanistan**. Among the opinions on CAA from the nation, the former Afghan president Hamid Karzai said that the victims of religious intolerance in Afghanistan are not only Sikhs or Hindus, but also Muslims themselves. The Afghan Ambassador, Tahir Qadiry, expressed himself in no uncertain terms when he declared, in an interview with a leading Indian magazine, that there has been no persecution of minorities since the Taliban were thrown out of power.<sup>78</sup>

## **The Damage**

### **The image of a country sympathetic to refugees**

The Indian government has previously raised the issue of persecuted minorities in neighbouring countries on international platforms and has provided asylum to the Hazaras and Shias from Pakistan and Afghanistan. It has also criticized the earlier governments of the respective nations for not being able to curtail such persecution. This has solidified India's international image as a nation sympathetic to the cause of refugees, as is admired in this respect. With the introduction of CAA, the Indian government's refusal to identify the persons belonging to certain categories as bona fide refugees is changing its international image from a country sympathetic to the victims of persecution to a country exercising discrimination in its refugee policy. Further, the BJP government's harsh stance on Rohingya refugees is legalized through this act, which further consolidates this image.

### **The secular image of India vis a vis Pakistan**

India has been recognized by the international community as a country formed on secular principles and that has adhered to this secularism in its internal policies and politics. This had put India in stark contrast with its neighbouring countries, particularly Pakistan, that were either structurally or unofficially unsecular in their governance and practice. This first attempt to link citizenship through law will be seen by the same community as a move away from this secular image and a move towards imitating its neighbours. This is seen in the context of Modi's closeness to and admiration of right-wing leaders of a specific exclusionist rhetoric such as Trump and Bolsenaro, including the recent convoy to Kashmir from European right wing figures. Also, in the international opinion, due to Amit Shah's emphasis on partition, this act may represent an affirmation of the two nation theory, and India's first step towards becoming a Hindu Pakistan.

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<sup>77</sup> [ibid.](#)

<sup>78</sup> <https://www.thehindubusinessline.com/opinion/indias-neighbours-havent-taken-kindly-to-the-citizenship-act/article30337345.ece>



## Foreign treatment of Indian migrants

Losing the moral high ground of a country having liberal immigration policy, and the derecognition of 'economic immigrants' by CAA, will have a significant effect on the policy considerations of foreign government while making decisions about the large population of Indian 'economic migrants' that have settled in Canada, US and UK and even in Muslim majority Gulf nations. Further, this will fuel the anti-immigration rhetoric of the right wing groups in such countries that have gained significant popularity in recent years. This causes an increase in the level of hostility against immigrants from South Asia that sometimes materializes into violent attacks.

## The Economic Impact of International image

Since his re-election in May, Prime Minister Narendra Modi "has focused primarily on his social agenda at the expense of economic reform," said Akhil Bery, South Asia analyst at risk consultancy Eurasia Group, which downgraded India's political trajectory to neutral from positive.

Microsoft CEO of Indian Origin, Satya Nadella, was quoted by BuzzFeed as saying, "I think what is happening in India is sad...just bad...I would love to see a Bangladeshi immigrant who comes to India and creates the next Unicorn in India or becomes the next CEO of Infosys."

Billionaire US philanthropist George Soros Thursday cited India as an example to illustrate the rise of nationalism, which he called the "great enemy" of open society. Addressing the World Economic Forum in Davos, Soros, an advocate for international cooperation, said the "biggest and most frightening setback" was in India.

"The biggest and most frightening setback occurred in India where a democratically elected Narendra Modi is creating a Hindu nationalist state, imposing punitive measures on Kashmir, a semi-autonomous Muslim region, and threatening to deprive millions of Muslims of their citizenship," he said.<sup>79</sup>

American billionaire Tim Draper recently tweeted that, "India choosing one religion over another makes me seriously concerned about my plans to fund businesses there."

## Local Political implications

### What do BJP's friends within India say?

Even the allies of the BJP and those who voted in favour of the CAB in Parliament have joined the opposition bandwagon. At least 10 of 13 allies of the BJP in the ruling NDA have changed their stance - most of them have openly rejected pan-India NRC, while some have even reversed their stand on the CAA. Only three NDA allies - the Republic Party of India (RPI), Pattali Makkal Katchi (PMK) and Apna Dal -- have not taken a public stand on pan-India NRC. However, RPI leader and Union minister Ramdas Athawale recently said there was no plan for pan-India NRC.<sup>80</sup>

<sup>79</sup> <https://indianexpress.com/article/india/most-frightening-rise-of-nationalism-is-in-india-says-billionaire-george-soros-at-davos-6232648/>

<sup>80</sup> <https://www.indiatoday.in/news-analysis/story/caa-nrc-bjp-allies-mukhtar-abbas-naqvi-police-protests-1632553-2019-12-30>

Prafulla Mahanta, the former chief minister of Assam and a member of the BJP ally Asom Gana Parishad, has said his party could withdraw support to the Assam government over the controversial Citizenship Amendment Act. "It was unfortunate that we voted in favour of Citizenship Amendment Bill in the Lok Sabha and Rajya Sabha," he said. "We are mulling over option of withdrawing support from [BJP coalition] government in Assam."<sup>81</sup>

### **What do BJP's friends within BJP say?**

BJP's Assam chief minister Sarbananda Sonowal also tweeted out his unwillingness to accept the CAA in his state. "My commitment towards Assam and the Assamese society will forever remain...and [I] will never forget that, even if I am in a national party," he tweeted.<sup>82</sup>

Former Union Minister and BJP leader Yashwant Sinha will take out a 'Gandhi Shanti Yatra' in Mumbai to protest against the currently passed Citizenship Amendment Act (CAA) and also the implementation of National Register of Citizens (NRC). This protest march will also be joined by Former BJP MP Shatrughan Sinha, will begin from the Gateway of India to reach at the Raj Ghat in Delhi on January 30.

This march would cover six states, and will demand repealing of the amended Citizenship Act, probe by a sitting judge of the Supreme Court into the JNU campus violence, and also an assurance from the Central government about there being no nationwide NRC. He termed the JNU campus violence on January 5 as a 'state sponsored' incident.

BJP Mla from MP, Narayan Tripathi, said in an interview, "I am from a village and I am speaking on the basis of the circumstances of the village that I observed in the past few days. The first thing is whether we should follow the constitution of Baba Saheb Ambedkar, respect it or tear it down. It has been said in the constitution that there will be no partition on the basis of religion in a secular nation, even then it is being done. One thing is proved in this, either you are with the constitution or you are against the constitution".

He further added, "People have stopped looking at each other. Muslims live in my village and used to wish us every time they saw us but these days they do not even like to see us. Peace is not possible in such circumstances. We talk of Vasudhaiva Kutumbkam (whole earth is one family) and if we divide people on the basis of religion, then this country will not be able to run." The MLA said that this is his personal opinion and not related to the party.<sup>83</sup>

West Bengal BJP Vice-President Chandra Bose, grandnephew of Netaji Subhash Chandra Bose, urged the center to grant citizenship even to Muslims under CAA.<sup>84</sup>

### **What did the BJP use to say?**

<sup>81</sup> <https://www.indiatoday.in/india/story/former-assam-cm-prafulla-mahanta-citizenship-amendment-act-withdraw-support-bjp-government-1628658-2019-12-16>

<sup>82</sup> <https://timesofindia.indiatimes.com/india/bjp-cms-nda-partners-not-accepting-cao-but-pm-hm-continue-to-abuse-oppn-congress/articleshow/73085312.cms>

<sup>83</sup> <https://www.indiatoday.in/india/story/bjp-mla-opposes-cao-says-people-should-not-be-divided-in-name-of-religion-1640961-2020-01-28>

<sup>84</sup> [http://punemirror.indiatimes.com/news/india/bjp-leader-chandra-bose-wants-muslims-included-in-citizenship-amendment-act/articleshow/73440129.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpps](http://punemirror.indiatimes.com/news/india/bjp-leader-chandra-bose-wants-muslims-included-in-citizenship-amendment-act/articleshow/73440129.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps)



The bill stood in opposition to the stance of the earlier BJP government, as espoused by L K Advani when he, as then Home Minister, amended the citizenship Act in 2003 to include the new term 'illegal migrants'. Manmohan Singh brought his attention to the need for more liberal grounds in order to grant citizenship to people facing religious persecution, and L K Advani agreed that there is a difference between an 'illegal migrants' and a 'bona fide refugees'. He argued:

*"We always say that a person who has to flee because of religious persecution is a refugee, bona fide refugee, and he cannot be regarded on par with the illegal immigrant who may have come for any reason, even for economic reasons. If he is an illegal immigrant, he is an illegal immigrant. So, I take note of what has been said and endorse it."*

This new law, however, intends to use the same term 'illegal migrants' to delegitimize entire categories of UN recognized, bona fide refugees (such as Rohingyas) by excluding them from the protection of this act. This is not merely a departure from the earlier position of the BJP, but a clear misuse of the 2003 Amendment by applying the term 'illegal migrant' against its intended use.

### **A dangerous precedent**

This act isn't and hasn't been explained as the one last necessary step towards solving the refugee crisis. Instead, due to its utter disregard for constitution and its explicitly discriminatory language, will set a dangerous precedent for what can be considered 'allowable' within the powers of parliament, and will introduce the principle of permissible discrimination to allow for blatantly racist and prejudiced legislative practices in the years to come. By allowing this act to be smoothly implemented, one can expect a series of colourful and highly questionable laws that will end up eroding the constitutional identity of the nation and turn it into an unfamiliar nation.

### **The sunset of democracy**

Within the political case, it needs mentioning how this government has very little regard for the voices of India beyond electoral seasons. Strangely enough, this government is revered by its supporters for its 'Iron Will' and its ability to impose its wisdom on an unwilling population. This makes the range of their rhetoric oscillate between the softened language in attempts to increase support for their actions and uncompromising hard positions in the face of opposition to appeal to its followers.

However, recently, Amit Shah unflinchingly declared, in the face of nation wide protest and international condemnation, that CAA will be implemented regardless of the protest or opposition.

<sup>85</sup> Earlier as well, he announced that he won't move back an inch on CAA even if all parties unite against it. Apart from the sheer absurdity of this over-antagonistic rhetoric in defense of a refugee law, this language marks a tilt of the scales towards the authoritarian end. Writing for Indian Express, famous academic and political analyst Pratap Bhanu Mehta wrote:

*"India is governed by a regime whose sole raison d'être is to find an adversarial rallying point and crush it by brute force...The current political regime cannot exist unless it finds a new enemy. It now legitimises itself, not by its positive accomplishments, but by using the enemy as*

<sup>85</sup> <https://www.thehindu.com/news/national/caa-wont-go-asserts-amit-shah/article30614769.ece>

*a rallying point. The targeting of enemies — minorities, liberals, secularists, leftists, urban naxals, intellectuals, assorted protestors — is not driven by a calculus of ordinary politics. It is driven by will, ideology and hate, pure and simple.”<sup>86</sup>*

Regardless of the validity of the policies, this utter dismissal of the public opinion is indicative of a government that considers itself untouchable, and its powers independent of public support. This indifference to public consciousness should also be seen in the context of the ridicule and mischaracterization of protestors by supporters of CAA all the way up to Prime Minister himself, that claims to identify them based on their clothes, calls them by pejorative, conspiratorial names like urban naxals, and makes fun of their intelligence.

*"The bigger question all of this raises is, these are seasoned politicians and you have to grant them the fact that they have come on the backs of a major electoral victory, what does it say about us as a democracy at this point, that these politicians have the confidence not just that they can get away with saying these things, but somehow saying these things is actually going to be a way of consolidating power behind them. That's a difficult question we have to confront. We are accepting it, and frankly, we are looking for almost any and every excuse to give it a clean chit."*

*- Pratap Bhanu Mehta, in an interview to The Wire*

### **Terrible Timing**

This Act comes at a time where the attention and resources of the government cannot afford to move away from the challenges of the economy and employment.

## **Moral Arguments against CAA:**

### **The India of Vivekananda's imagination**

In his famous Chicago address in 1893, Swami Vivekananda declared, "I am proud to belong to a nation which has sheltered the persecuted and the refugees of all religions and all nations of the earth." The Indian refugee policy since independence is an affirmation of and adherence to this vision of India, which the CAA intends to commit to history.

### **Setting the country up for division and failure**

It is clear that CAA, as a law, is the first to link citizenship of India to a specific set of religions, predominantly to Hinduism. More than being a refugee policy, this act intends to redefine the nature of Indian nationality, which seeks to promote the understanding that members of certain faith will be regarded as 'natural residents' of this nation, while residents belonging to others faiths, predominantly Islam, despite being ethnically Indian, should be considered Indian but 'unnaturally'.

<sup>86</sup> <https://indianexpress.com/article/opinion/columns/inu-delhi-violence-abvp-bjp-jnusu-6203243/>

This is a clear departure from the idea of citizenship based on birth which, as described by Sardar Patel, carried a more “enlightened modern civilized” character that all progressive nations were taking. CAA intends to reconnect the idea of citizenship to religion or ethnicity that was condemned by Sardar Patel as “outdated, and could foment communal divisions in the country.” Several members of the Constituent Assembly warned against the idea of connecting citizenship with religion, requesting us, “Let us not follow the example of those countries which we are condemning everywhere, not only here but also in the United Nations.”

These disgraced countries that are founded on the basis of religion or ethnicity continue to collapse and reappear to this day. Countries like Pakistan, Saudi Arabia and Israel, continue to be condemned across the globe by nations including India, and a majority of them are failed states with horrifying records of human rights violations against minorities as well as the followers of state religion.

### **The True Ownership of India**

Mahatma Gandhi, in his book Delhi Diary, had said: “If Pandit Jawaharlal, the Sardar and people with their ideas had forfeited their respect and confidence, they (people) could replace them by another team that had their confidence. But they could not and should not expect them to act against their conscience and regard that India belonged only to the Hindus. That way lay destruction.”

Maulana Azad, giving his famous speech at Jama Masjid, asked the Muslims, “Where are you going and why? Raise your eyes. The minarets of Jama Masjid want to ask you a question. Where have you lost the glorious pages from your chronicles? Was it only yesterday that on the banks of the Jamuna, your caravans performed wazu? Today, you are afraid of living here.” Talking about the Muslims that had left for Pakistan, he said, “Today, if they have jerked their hand free from yours, what does it matter? Make sure that they have not run away with your hearts. If your hearts are still in the right place, make them the abode of God. I do not ask you to seek certificates from the new echelons of power. I do not want you to lead a life of sycophancy as you did during the foreign rule. I want you to remind yourself that these bright etchings which you see all around you, are relics of processions of your forefathers. Do not forget them. Do not forsake them. Live like their worthy inheritors, and, rest assured, that **if you do not wish to flee from this scene, nobody can make you flee.**”

Khan Abdul Ghaffar Khan of the Khudai Khidmatgar viewed the proposal to partition India as un-Islamic and "contrary to the history of Muslims in the subcontinent, who had for over a millennium considered India their homeland." Mahatma Gandhi opined that "Hindus and Muslims were sons of the same soil of India; they were brothers who therefore must strive to keep India free and united." Khaksar Movement leader Allama Mashriqi opposed the partition of India because he felt that if Muslims and Hindus had largely lived peacefully together in India for centuries, they could also do so in a free and united India.

Muslims of the Deobandi school of thought "criticized the idea of Pakistan as being the conspiracy of the colonial government to prevent the emergence of a strong united India" and helped to organize the Azad Muslim Conference to condemn the partition of India.

On December 19, 1947, after an ethnic cleansing, when Muslim Meo refugees from Alwar and Bharatpur in Rajasthan stayed at a camp on their way to Pakistan, Gandhi went to the camp and urged the Muslims to stay back.

“He addressed us using a microphone,” recalls 97-year-old Maulvi Ilyas of Jamalgarh in Punhana. “He urged us not to migrate to Pakistan, while promising a dignified life. But, nothing has changed in seven decades since.”

Every December 19, Meo Muslims, who have long been the target of a campaign of communal violence unleashed by Hindutva groups, in Haryana have been commemorating Mahatma Gandhi’s visit to Ghasera village in Mewat district as Mewat Diwas, where they gather recall how Gandhi had called the Meos “Iss desh ke reed ke haddi” or the backbone of India.

“The women of Mewat used to sing a song – ‘Bharosa utth gaya Mevan ka, goli lagee hai Gandhiji kay chathee beech.’” The Meos have lost their trust, now that a bullet has pierced Gandhiji’s chest.

“The Meos told Gandhiji that we would prefer to die than go to Pakistan,” said Ahmad from Banarsi village in Mewat district. In the ballads sung by the Meo mirasins (folk singers), Gandhi is said to have ended that meeting with a statement that “he too would prefer to die with those who want to die in their motherland and were unwilling to leave her”.

The Muslim population in India is made of such small ethnic groups scattered across India that are living on those promises in the face of a contradictory reality. It is well documented in history that Muslims remained in India because they felt that with Gandhi and Nehru at the helm, the Hindutva forces remained a tolerable cost to the homeland. In fact, in the India Gandhi has dreamt, despite partition, no Muslim should have left India. The was the dream of the freedom fighters that suffered the oppression and went to jail, but did not quit, or of the rebel that wrote “Kuch aarzu nahi hai, hai aarzu to ye hai, Rakh de koi zara-si khake-watan kafan me.” and “Dar-o-deewar pe hasrat se nazar karte hain, Khush raho ahle watan hum to safar karte hain” before he was hanged. We, the people, are still keeping their dreams alive, long after they’re gone.

According to RSS ideologue, Golwalkar, the RSS kept aloof from the freedom struggle because, “Territorial nationalism implies that the Indian nation is formed of all those people who reside in this land... An effort was consistently made to look upon Hindus, Muslims, Christians as ‘nationals’ and forge them into an integrated force against the foreign rule.” and called martyrdom as not “the highest point of greatness to which men should aspire”. For, after all, [the martyrs] failed in achieving their ideal, and failure implies some fatal flaw in them.

Savarkar, the founder of Hindutva and whose portrait was put by this government in Parliament House facing the very man he had conspired to kill, wrote to the british within 6 months of being imprisoned, “I am ready to serve the Government in any capacity they like...Where else can the prodigal son return but to the parental doors of the Government?”. In another petition, he wrote, “my brother and I are perfectly willing to give a pledge of not participating in politics for a definite and reasonable period that the Government would indicate.” In the minutes of meeting with a

british Viceroy, he pledged, "our interests were now the same and we must therefore work together"; against Gandhi and the Congress, of course.

Over the span of his imprisonment, Savarkar wrote several mercy petitions to the British, pleading for a release in return for serving the British interests, a promise he kept after he was released. Compare that Shaheed Bhagat Singh, who refused to seek clemency from the British against the suggestions of well-wishers and family members. In his last petition and testament, he demanded that the British be true to the charge they laid against him of waging war against the colonial state and execute him by firing squad and not by hanging, where he also lays out his vision for an India whose working people are free from exploitation by either British or **Indian "parasites"**.

While the RSS, formed to hasten the spread of Hindu patriotism and to petition for the establishment of a Hindu national home, has the thesis that "Hindus and Muslims are two different nationalities and that India is the holy land and birthplace of the Hindus. Anybody else who wants to live here had to pay a penance. Except all that was committed to paper. They never found the spine to suffer for it, let alone take it from the british.

But now, the website of the BJP reads: "Hindus are at last free. They control their destiny now ... India in turn is finally free." Free at what cost and at who's cost? Don't even ask.

This ownership of India that we the people recovered, through the blood of Bhagat Singh and the sweat of Gandhiji, is being robbed at the gunpoint of fascism and authoritarianism by the ideological descendants of these paper tiger nationalists: Golwalkar, Savarkar and Godse; that were obviously too cowardly to bleed and too lazy to sweat, yet greedy enough to claim what isn't theirs.

### **A Blow to the Pride of Indian Muslim**

Despite being a controversial figure within India, Asaduddin Owaisi has long attacked Pakistan's attempt to use the condition of Indian Muslims against the idea of India. Even recently, when Imran Khan posted a fake video alleging a pogrom by UP police, Owaisi said, "Mr Khan, we would like to tell you, don't ever remember us. We have rejected the wrong theory of Jinnah, we are proud Indian Muslims and till the day of judgement will be proud Indian Muslims No power on earth can take away my Indianness. No power on earth can take away my religious identity. Why? Because the Constitution of India guarantees me that," he said, advising Khan to provide security to the Sikhs in Pakistan."

Earlier as well, in a famous clip of a debate on Geo TV News between a panel of Pakistani politicians and Indian politicians, on the question by Dr Farid on BJP's Hindutva ideology and RSS's anti-Muslims stand, Owaisi said, "Our Indian Constitution, from which all Indians abide by, says that India is a secular nation. India's fundamental rights on minorities believe in pluralism and are strong." He further mocked him to "stop worrying about Indian Muslims as they decided 60 years ago, that India is their nation".

When Musharraf came to India, and began the same line of critique, prominent Muslim leader Mehmood Madani made sure he received his reply. After his speech, Mehmood Madani confronted him, saying: "Population of Muslims in India is more than the total population of Pakistan. You

should be knowing this. And if you do, you should also know that Indian Muslims are capable of solving their problems... We don't need your advice. Don't try to alienate Indian Muslims by your remarks, here or in Pakistan."

Given the turmoils and conditions in Pakistan since independence, there has been a self-righteous pride among Indian Muslim for having taken the right decision to trust the nation and stay back. The source for this pride is an active enforcement of the constitutional spirit and protection to its minorities by Indian government despite the ever-present poison of Hindutva rhetoric and sporadic violence. The advent of BJP since 2014 in general, but the CAA in particular if it goes through the apex court and is institutionalised, marks a seemingly irreversible shift in that balance.

### **The Final Service of Savarkarites to the British Agenda**

The British policy of divide and rule worked a great deal in keeping the population distracted enough in mindless discussions and endless violence. This secured the position of the British as a population that exercised at the gym of communal violence was already too exhausted to carry out a rebellion. This made people fear their fellow soldiers more than they feared the enemy. It is not the Congress but the Muslim League and the Hindu Mahasabha and other such elements that took this 'useful myth' of the British to its delusional conclusion, and caused the devastations of the partition of 1947 in their obsessions to live out this division as a way of life. Leaders like Gandhi woke us up from this nightmare before it was too late, but seven decades later, those same people are trying to finish that same Anglican dream because, as the British explained to their 'prodigal son', it must be impossible to live with people unlike you.

### **Political use of the Pakistani refugee situation**

It must be noted that the idea of creating a natural homeland for Hindus and to legislate refugee policy to give shelter to the persecuted minorities (including Hindus) of the neighbouring countries are two distinct causes, and through this act, the BJP intends to use the refugee crisis of Pakistani Hindus to further its own agenda of a natural homeland (as stated in 2014 manifesto). This political use of refugee cause under the guise of sympathy makes one question BJP's commitment even to the Hindus among refugees.

### **This law says both Pakistan and Partition were right**

By supplying this old, rejected idea of a natural homeland in a new bottle, this act follows absurd justifications to not state its intentions clearly. To give you an example, a Muslim that left for other countries during partition but soon returned, realizing his mistake of forsaking his own nation (like popular stories of people returning from railway stations and people of Mewat being called back by leaders like Gandhi after they had left) will never be allowed to rectify his mistake, while the Hindus that chose to stay in neighbouring countries and were nativists of that nation will become 'more Indian' than the indigenous Muslim that returned. More than an inconsistency or a petty attempt to punish the returned Muslims, this discrimination is the beginning of another redistribution of the pre-partition population along the religious lines. By adding legal flavour to the hostile environment prepared by the BJP leaders' hate speeches and the ground work of violence and lynchings by the right wing outfits, some with ties to the government, this law is well timed to

initiate a slow expulsion of its 'unnatural population' of Muslims to their 'natural homelands' of Pakistan & Bangladesh (a trend already visible in recent reports), until India is left only to Hindus with a negligible, insecure Muslim population. Thus the 'mistake' of partition by the congress, will be rectified by redefining the pre-partition India into neat, unsecular countries based on the religion of the majority. Absurdly enough, as Shashi Tharoor and Kapil Sibal pointed out, instead of being a correction of congress, this act is a validation and a celebration of the idea of Jinnah and Pakistan. As declared this act, Pakistan wasn't a mistake, India was. And we should stop these 70 years of trying and admit that Jinnah and Pakistan were more intelligent and foreseeing between the two of us.

### **This Charity Doesn't Begin At Home**

The CAA seeks to take foreign nationals and grant them Indian citizenship, while NRC takes indigenous, established Indian citizens and calls them illegal migrants on the grounds of not having the documents. And the BJP seeks to implement the two together. Through this series of thoughtless legislations, a large chunk of the Indian population will join the 19 lakh stateless Bangladeshis in Assam in the name of a law to confer citizenship to a tiny number of refugees from other nations.

### **An absurd attempt to solve the problem of one Pakistan by creating 2 Pakistans**

By discriminating among refugees based on faith, the law encourages legislative practices to control the influx of 'other religions' into the country. Instead of preserving the current demographic, this is an attempt to start shaping the future landscape of India towards a single shade. This slow move towards uniformity, affirmation of certain religions being indigenous, and a commitment to act as the default country of residence to certain faiths solidified our position as a nation deeply wishes to be theocratic or ethno-nationalist, but is unjustly restricted by its constitution. India + CAA + Time - Constitution = Pakistan.

### **Fighting discrimination with discrimination**

It is strange of this Act that it considers Pakistan and Bangladesh's anti-secular values as the problem that resulted in the persecution of its minorities and the flight of refugees, but in the same breath suggests that the only way to provide them shelter is for India to become unsecular. Wouldn't that unsecular India itself will increase the recent persecution of Indian minorities that will now have to flee to other countries than will pass their own discriminatory citizenship laws in order to filter out Hindu faiths like Dalits etc. This is the death knell of destabilization in the region and the outcome will be more persecution and refugee crisis.

### **The protected vs the unprotected : Who will this Act benefit?**

The Intelligence Bureau (IB) while responding to a JPC query on the number of persons belonging to minority communities who would benefit from the proposed Amendment had said that 31,313 persons belonging to minority communities would be the immediate beneficiaries. These include 25,447 Hindus, 5807 Sikhs, 55 Christians, 2 Buddhists and 2 Parsis who have been given Long Term

Visa (LTV) on the basis of their “claim of religious persecution in their respective countries and want Indian Citizenship.”<sup>87</sup>

However, due to an interesting absence of any mention of terms like ‘minority’ or ‘persecution’ in the Act, and without any prescribed criteria or guidelines laid down to determine the ‘religiously persecuted’ from the ‘illegal migrant’, the real beneficiaries of the act are expected to be protected by this Act are the Bangali people (Bangali Hindus, to be precise) that were excluded from the Assam NRC (estimated to be around 5-6 Lakhs at least). And since a Bengali Hindu will not have to prove that he was persecuted, the same will be presumed on his behalf (No document required: Amit Shah) whereby the Hindu illegal or economic migrants will also be presumed to be a refugee and enjoy protection under this act. In reality, as per the report made by the Governor of Assam (Lt. General Retd.) S.K. Sinha in the year 1999, the majority of Bengali illegal migration to Assam “has been taking place primarily for economic reasons.”<sup>88</sup>

Thus, despite the careful branding of the Act’s benign humanist intentions, this Act intentionally leaves real, bona fide refugees fleeing genocide unprotected to protect those that came to India simply in pursuit of better economic opportunities.

### **Why are the refugees after 31st December, 2014 left unprotected?**

Why should an arbitrary date like 31st December, 2014 be used to discriminate against the refugees that fled to India, as the migration of the classes specified in the Act is a continued phenomenon and has been consistent since 2014 as well. The use of particular dates are not unusual in legislation (e.g. Article 5-11) but the dates either signify a major decline in the cause of the problem or are set in the present or near future to expedite the migrants’ influx. This arbitrary setting of date does not signify either of the two scenarios, and the amendment extends no protection to such bona fide refugees from being treated as ‘illegal migrants’ contrary to the intended purpose of the concept as explained by its proponent L K Advani.

In fact, upon closer inspection, it becomes clear that the date of 31st December, 2014 is not arbitrary after all. The reason this date found its way in the law was because most of the smaller number of refugee migrations towards India of Muslim minorities like Hazaras and Rohingyas took place after 2014. It must be highlighted that their situation involved a much more severe persecution than any other class of refugees, involving systemic crackdowns since 1970 where refugees have reported rape, torture, arson and murder by Myanmar security forces. In the case of Rohingyas that the UN has declared ‘the world’s most persecuted minority’, this persecution has begun to resemble genocide.<sup>89</sup> Any sense of responsibility towards religious persecution in our neighbourhood should begin with the rohingya refugees, but instead, in the name of an act that claims to provide protection to the persecuted and the oppressed, the government is tying its own hands to legally be unable to help them, and their deportation, in the middle of state sponsored and military executed ethnic cleansing and a potential genocide in violation of UN laws, remains their only destiny. The hypocrisy is that the Act didn’t just forget to include Rohingyas, instead it resorted

<sup>87</sup> <https://www.thehindu.com/news/national/citizenship-amendment-bill-may-benefit-declared-foreigners/article30196956.ece>

<sup>88</sup> [https://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/illegal\\_migration\\_in\\_assam.htm](https://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm)

<sup>89</sup> <https://www.unrefugees.org/emergencies/rohingya/>



to incorporating crafty criteria and unreasonable classifications, only to exclude rohingyas from the Act and to retain the rohingyas as non negotiably illegal infiltrators.

Somehow, despite being the most deserving of this motherly compassion BJP seems to have discovered for persecuted religious minorities, the BJP's answer to Rohingya question began with hate speeches, and is concluded using this mockery of their suffering. Through this Act, the BJP has proved itself to be a party that is bigoted even in its sympathies: some refugees are more natural than the others.

### **The injustice against a newborn Child by calling him Stateless**

The Stateless children are often labelled as “invisible” children since they do not appear in any official documents. They do not hold the nationality of any country, and the country they are born in refuses to recognize their citizenship by birth. This lack of citizenship is the origin of a variety of discrimination, these children have no access to medical care, education or child protection authorities.

“Compared to Myanmar we are safe. We are not facing any situation like that over there. My grandfather was a headmaster of a school. My father was given an NRC, that is National Registration Card. But when it came to my turn, I was not even given a birth certificate. I was called a stateless person” said Kyaw-naing, a Rohingya born in India.

The 2003 amendment introduced the concept of ‘illegal migrant’ and disqualified their children from citizenship by birth. From the moment these children gain consciousness, they do not have any social security or rights, and are discriminated against simply for being ‘born in the wrong place to the wrong parents’. This current amendment seeks to find these illegal migrants and make a list of them in order to deny their children citizenship, declaring potentially millions as born stateless.

### **Can We Expect Humane Treatment of The Excluded at the hands of Savages?**

Gandhi defined his Ramrajya as a democracy in which "the meanest citizen could be sure of swift justice without an elaborate and costly procedure,". We have come a long way and and too far from those ideals, as our democracy has been turned into a vengeance machine to be used against its own citizens, not before declaring them 'enemies of the state'. But in this race to the bottom, there are people that this government treats worse than us: the immigrants. The language used by Amit Shah, among other leaders and spokespersons, has attracted global condemnation, referring to them as termites, as infiltrators that “we will throw in the Bay of Bengal”. One can express anti-immigration sentiments without being poisonous and hateful, especially when the immigrants are already the targets of verbal and physical assault on a regular basis. This is a clear indication that, for him, making the immigrants leave is not an undesirable outcome that we would not carry out if it wasn't for the security or prosperity of the nation. Instead, the immigrants are made to leave for the simple reasons that the Home Minister personally hates them. This hateful language with the awareness that it leads to anti-immigrants sentiments, exposing the immigrant families to live in the environment of fear of public violence; and the threatening language like "throw them in the Bay of Bengal" makes encouraging anti-immigrant hatred as somehow necessary to have

anti-immigrant policies. This criminal disregard for the lives of lakhs of immigrants by a person accused of countless encounters, a person so despicable as to be once driven out from his own home state, is our own making, who is going to set his legion of hate-bred dogs on immigrants that will drive them out of India only after they have inflicted as much injury on them as would satisfy their bloodthirst. The spike in hate speech after CAA itself is evident that this party is made up of murderous crooks, that believe in hate more than they believe in law.

Here, no one expects us to change our political judgements to pro-immigration or open borders, but it should be our conscientious decision not to wash our hands of these illegal immigrants' blood and leave them at the mercy of this unruly bunch of criminals, and then expect them not to act out their fantasies. India's recent position on immigration has been fairly centrist with a reasonable mix of anti-immigrant voices, therefore anti-immigrants should wait for another, more civilized government to devise humane processes through which these immigrants are allowed to leave peacefully.

### **Should We Wait Some More or Finally Speak**

A paper as respected as New York Times, in its first article on Hitler published on November 21, 1922, explained his politics in the following words:

“But, several reliable, well-informed sources confirmed the idea that Hitler’s anti-Semitism was not so genuine or violent as it sounded, and that he was merely using anti-Semitic propaganda as bait to catch masses of followers...A sophisticated politician credited Hitler with peculiar political cleverness for laying emphasis and over emphasis on anti-Semitism.”

The article went on to explain that anti-semitism was only used by Hitler as an easier way to gaining support and power in lieu of having to explain the entire policies to the people, and that there were no real consequences expected from such rhetoric. Of course, the consequences turned out to be all too real, and the advocates of this charitable defense of hate and discrimination had to live with the fact that they helped maintain the silence while they slowly lost control over what transpired.

To mark the 75th anniversary of the liberation of one of the concentration camps, Auschwitz, a Memorial was held last week in Poland, where several of the survivors spoke. "Auschwitz did not fall suddenly from the skies, it was all tiny steps approaching until what happened here behind me did happen," one of them said.

Horror could happen again, he said, in places where the past is stretched to meet present political needs, or where the majority is indifferent to minorities being stripped of their rights.

“Do not be indifferent when any power or government infringes on extant social rights and do not be indifferent,” said Turksi. “Otherwise you won’t even notice when you and your heirs suddenly see an Auschwitz falling down from the sky, straight on them.”

It must also be pointed out that the german laws didn't start explicitly, they all had benign statements of objective or intention as reasons for popular support and as explanation for the international community. We must judge the intention of a law from the text in the file, not the

governmental slip on the file. Further, it's possible that in order to finally spring into action, our collective naivete may be waiting for a law that makes Muslims into second class citizens in clear terms. They expect that BJP has another bill in the working that starts as: *"notwithstanding anything contained in any other act, a Muslim or a person following the religion of Islam within India shall hereby be downgraded to second class citizenship for all intents and purposes, including the extension of benefits such as social welfare, personal security and constitutional protection. The rights of such a class must be secondary to the rights of a Hindu or a follower of Hindu religion, and no mechanism of Justice or welfare is allowed to favor them over a Hindu."*

### **Letting Only Legality Dictate Your Morality**

Legality is a matter of power, not a proof of morality. The Holocaust was legal. Apartheid was legal. Slavery was legal. Segregation was legal. The brave woman who cared for and hid a 6 year-old in an attic in Budapest was a criminal. She broke the law. It is true that legality is not morality, and sticking to the law is necessary for good citizenship, but it is not sufficient. Oskar Schindler that saved the lives of 1,200 Jews during the Holocaust by employing them in his factories was guided by his morality to go against the 'common sense' hatred and even the spirit of the Law. Legality, or hate, can never become a guide for morality.

To quote the example given by Chomsky, "if I drove through the red traffic light to prevent somebody from machine-gunning a group of people", the act is illegal as per all books of law, and still no sane judge would convict you for such an action.

### **Our Responsibility towards Non-Indians**

Regardless of the constitutional obligation, it is our moral responsibility to recognize that our collective responsibility, as a nation, to share this land, its resources and the plentiful gifts it provides us with those in need to the extent it doesn't stress our future. Anything below that is beneath any upright morality, including discrimination among them on principles of ours and theirs. When they are chased and come knocking on our door, our responsibility towards a Rohingyas and a Bangladeshi Hindus becomes the same, and we should do whatever is within our power to keep people from meeting our fate due to our action or inaction. Just like pain or hunger, the suffering of a Hindu is not more tragic than the suffering of a Muslim. When the discrimination based on religion is considered injustice within India, what makes the same become just outside our borders? This applies even to the people that subscribe to the idea of a natural homeland for Hindus. If India is the homeland for Buddhists, and Buddhists are persecuting Hindus in Sri Lanka or Muslims in Myanmar, causing them to abandon their own homes to seek shelter among strangers, there is some responsibility of a father to use the family land that was to be inherited by his sons, to shelter the families whose own homes were uprooted and taken over by the mischief of the same wayward sons that he could not control anymore.

### **We should listen to Amit Shah...**

Amit Shah said in the parliament introducing this very bill, "If in a neighbouring country, a minority is being persecuted on the basis of religion, then India cannot remain a silent spectator.

They have to be saved.” Listen to his call to conscience. Let us not remain silent as the Rohingyas, Tamils, Ahmadiyas, Hazaras, Shias, Uighyrs and Atheists are persecuted on the basis of religion, and provide shelter to all such refugees that entered India, even after 31st December, 2014. A law that teaches you to remain a silent spectator while they are being persecuted is a law against that spirit. They have to be saved.

### **Taking matters of faith from private to secret**

So far, the question of religion of a resident of India has been a question of significance for welfare, not for security reasons. By introducing religion as a criteria to judge how close one can be to be deprived of his rights and property, even be deported, put extra pressure on a person in India to not be identified as belonging to certain faiths. This incentivizes lying by Muslims and Jewish people without paper to declare that they came from other nations due to persecution in order to become eligible for citizenship, while punishes a muslim professing his faith for the same lack of documents.

### **Muslims As Unworthy Of All Things Indian**

There have been recent developments that have, under the pretext of poorly argued Supreme Court judgements and questionable Constitutional workarounds, undermined the struggle and injustice of the centuries by redistributing the Babri Masjid as well as breaking up the state of Kashmir, including the lesser agreed upon issues of Beef ban and triple talaq. The rights of Muslims to eat, to practice the fundamentals of their faiths, to have access to one of their historical mosques, and other similar rights promised at the ascension of the nation state have been, under various pretexts, rebranded through propaganda as 'an oppression on the majority or themselves' and such other creative excuses to first remove the reality of such rights, and then legislating to remove its legal status while the majority watches ambivalently. Through these set of laws, coupled with the heated xenophobic rhetorics of the leadership, the image of Indian Muslims has been fixed as so unworthy of the culture, tradition and heritage of the land of India, that even his patience and faithful adherence to the legal procedures and the democratic processes is not sufficient for him to deserve justice against a crowd of lawless, hateful arsonists. The CAA comes at the tail end of a series of legislations aimed at minorities, to finally seal the Muslim image as unworthy of all things Indian, including its citizenship. Any silence in reaction to this law is, therefore, a ratification of this entire series of prejudiced laws that this government has inflicted Muslims and minorities with, while a support for NRC is a proposal to inflict the same harm, alienation and humiliation on all of the minority groups once again to remind them of their place in this new society or social order.

### **The State Must Be Allowed To Have Unnecessary Powers**

Since the arbitrary, unexplained imposition of Section 144 in various parts of India following the CAA protests, the debate about Indian law's permissibility of oppressive governance strategies has reentered the debate. Whenever the State is unquestioningly allowed to reserve excessive powers for itself, that power is deducted from the common people's account and redistributed in order to insulate governments from democratic interference from common folks. This is why, with each decision of the government giving itself certain powers (e.g. the power to redefine the citizenship), the first consideration must be with regards to 'how many procedural restrictions and conditions

has the government placed on the authority exercising such power', and the reasonability of the justifications provided, or the lack thereof. After such a consideration, the principle of a healthy law is the most conservative approach possible (i.e. the most restrictions and least arbitrariness, within the limits of reason, practicability and effectiveness). However, a society that does not engage with these questions with respect to the laws implemented by its government is on the fast lane to be taken over by truly 'anti-national' elements to make it serve their interests. CAA is a law through which the government has reserved for itself the power to determine citizenship, based on arbitrary criteria that empowers the state to decide the 'desirability' of a migrant based on what mood they're in, and this ambiguity in law is not only a lack of freedom, but also will result in widespread discrimination and prejudice during its implementation by the babus, but also allows itself to be interpreted in completely xenophobic terms if a more prejudiced government comes to power in the future, and will lead to 'legalized authoritarianism' like the use of British Section 144 by Modi. Amit Shah and Yogi Adityanath are easy examples to consider this.

### **Those that don't have a clue about partition, can't fix the problem of Partition**

If one is familiar with BJP's absurd views on the history of Partition coupled with tactics like suppression of evidence and evidence from intention, History hasn't been their A subject. The first thing taught at a mechanical school is understand the blueprint before you take apart a machine. BJP learns quick and forgets even quicker. Which is why, when BJP is calling for CAA 'to fix the partition', the event of Partition itself would not want to be interpreted, let alone be fixed, by their indelicate hands. BJP is bad at history, and even worse at fixing things. By explicitly stating his twisted Idea about both partition and India, Amit Shah has sampled the turbulent journey that lies ahead, where he is going to fix the partition in his own twisted ways by carving out a Hindu Rashtra.

### **All It Takes to Reject CAA Is Any One Of These Reasons**

In order to reject the 3 pages of CAA as they exist, you only need any one of the several reasons (Constitutional, Political, Moral, Technical and Financial etc.) listed in this document. But to support the passing of the law, you declare that none of the arguments presented here have a thing to say. That's almost too much to disagree with, unless you don't like to think too much.

### **An Appeal To The BJP Supporters**

The BJP supporters are supporting this Act just like every other regular Act of their party which they see as particular policies towards the general goals that they agree with. Like all of us, they also base their decisions on predictability instead of the actual facts because facts can be complicated or simply too much data to be processed. This is why, they also processed the CAA as another regular law passed by the BJP for the betterment of India, and the protestors are simply out to oppose as they always do because they hate the government's guts. And one can't blame them for holding onto that habit because the government has been very careful in its response to the protests which ranges from complete denial of implications to blaming the oppositions for using the Muslims and others as tools for their political plans by explaining CAA to their illiterate and simpleton brains as laws to deport them and creating a scare. To the BJP supporters that believe this narrative, we request a little more of your time and attention this time, at the other times we can both make predictable decisions, but the predictable decision making under extraordinary circumstances

should not be reasonable, and these are extraordinary times. With the international community condemning us, Modi contradicting Amit Shah, the hateful support campaign by BJP that followed CAA, the reluctance of the government to go into the details of the act or to engage the protestors in a dialogue, it is no longer a matter of 'opposition leading the illiterates'. These are signs of extraordinary times, and we kindly request your extraordinary attention. Understand the actual arguments and grievances, instead of the convincing caricatures supplied by the BJP. Let this be a favour between us, I'm sure we will find an opportunity in the near future to lend an ear to your grievance.

## Technical Impossibility of these laws

### Lack of Information on how many

Government's history of passionate and misinformed judgements like Demonetization, babri masjid excavation and Assam NRC is highly problematic for this government to conduct NRC, specially since the government has no data on such minorities.<sup>90</sup>

India Today filed a Right to Information (RTI) request with the Ministry of Home Affairs to find an answer to this key question: exactly how many illegal immigrants have been identified in the last twenty years. They received a response full of official jargon with not a single fact that answers the RTI queries that have been raised. No number was provided for illegal immigrants, no information provided on their original country or if one were to go looking for them then where should one go to meet illegal immigrants in India. Instead, the home ministry replied saying, "The required information is not centrally maintained. You may approach the State Governments/UT Administrations for getting the information."<sup>91</sup>

### Old Errors In The existing Documents

By arresting the entire village for murder, this law puts the default state of any resident of India as 'illegal immigrant' unless he can prove himself to be a citizen on the basis of documents free of any clerical error. Since all Indian identity issue processes have an error rate of over 5%, just due to clerical error some municipal clerk made 30 years ago, there will be 5 people per 100 Indians that will not be able to pass this test. Under CAB, The Muslims among them, despite being an indigenous Indian whose ancestors are buried here, will be treated at par with an illegal immigrant. During Assam NRC, Riyazul Islam says he had to produce family documents going back to 1951 to prove he was an Indian and not an illegal Bangladeshi immigrant, but like many others that were excluded due to a spelling error in their names or a mistake in their age in documents offered for proof of citizenship, he was excluded from the list.<sup>92</sup> As soon as NRC is declared, these erroneous document holders will feel threatened and swarm the local municipalities and municipal corporations to get these documents corrected, resulting in chaos, bribery and even agents' fee to get the work done that could last weeks.

<sup>90</sup> <https://www.indiatoday.in/india/story/govt-has-no-data-on-minorities-who-faced-religious-persecution-ghulam-nabi-azad-1627520-2019-12-11>

<sup>91</sup> <https://www.indiatoday.in/india/story/dhoondte-reh-jaoge-how-many-illegal-residents-are-there-in-india-rti-query-1629063-2019-12-17>

<sup>92</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/in-indias-citizenship-test-a-spelling-error-can-ruin-a-family/articleshow/65434885.cms>

## The Magnitude of Error in the Exercise

If the government executes the task exceptionally well, such as for voter identity, and has an error rate of just 5%, 67.5 million people will face action, equalling the human displacement caused by World War II. Most Indian systems have a far higher error rate. The State Of Aadhaar Report 2017-18 by IDinsight, covering 2,947 households, found that 8.8% of Aadhaar holders reported errors in their name, age, address or other information in their Aadhaar letter. In the NRC, a spelling mistake can deprive one of citizenship and 8.8% affects over 12 crore people. If the Indian state outsources the project's execution to an organization with capacity equalling Scandinavian government systems, with a very low error rate of 1%, 1.35 crore Indians would still be erroneously excluded, equalling the human displacement caused by Partition.

## Floods

Every year floods cause damage to millions of property and leave millions traumatised and in the hunt for a new home. Billions have been lost due to floods and millions of lives have gone missing.<sup>93</sup> NRC in floods or in flood prone areas becomes a tussle between saving a life or saving citizenship. In the current state of Assam where people faced one of the worst monsoons and floods, people in these submerged houses are unwilling to move to places of safety. They have the noose of a July 31 deadline tightening around their neck. The final National Register of Citizens (NRC) will be published at the end of this month, barely two weeks from now. Till then, flood-affected people – however vulnerable they are to rising, perilous waters – are resolved to guard their documents. The situation is a toss-up between life and citizenship. You may survive the floods but still not be able to prove your bonafide claim to go on living in the country you have inhabited for decades. What would the survivor of a natural calamity do if she cannot escape the punitive fiat of a “strong” state? She may find herself transported to a detention camp, reduced to the status of a stateless refugee, having to move from place to place filled with anxiety and fear. Her destiny lies in the documents that may or may not prove her citizenship.<sup>94</sup> As unrealistic and uncanny as it may sound but saving the document under a foot of water is nearly impossible.

It becomes an arguable questions to the government how would these people be treated, on one side destroyed by rain, with a hope waiting to start a new beginning with little or no help from the government and on the other side a serious misplanned activity to decide their fate, which was jeopardised due to nature. What more can be injustice to these people, on one hand due to inept government facilities and safeguards against the natural calamities of the same government asking them to prove their loyalty.

## Corruption

Corruption has been a long battled enemy since the oldest of times. As the government proclaims to eradicate corruption, on the other hand it consistently offers opportunities for corrupt practices. Consider the situation in Assam, where a former co-ordinator has been accused of corruption in the NRC process. Assam Public Works has also filed an FIR with the Central Bureau of investigation's Anti Corruption branch regarding illegalities and financial irregularities in the entire process.<sup>95</sup> A

<sup>93</sup> <https://www.indiatoday.in/india/story/loss-due-floods-india-people-killed-crop-houses-damaged-in-65-years-1591205-2019-08-27>

<sup>94</sup> <https://thewire.in/rights/assam-flood-nrc-life-citizenship>

<sup>95</sup> <https://www.ndtv.com/india-news/month-after-transfer-former-assam-nrc-coordinator-accused-of-corruption-2140409>

report submitted by CAG on the NRC carried out in Assam estimates 108 crore of financial irregularities.

As the updation of the NRC in Assam is an extremely important and sensitive matter which has to be carried out with the highest levels of diligence, efficiency and honesty, the findings of the AG (Audit) is of serious concern since the findings may be symptomatic of serious procedural loopholes and lapses in the entire NRC updation exercise," AG observed in its finding a senior official in state finance department said Around Rs 905.72 Crore was released between 2013-14 to 2017-18 (upto 12/2017).

The report observed, "An amount of Rs 52,07,99,238 was released as Mobilisation Advance (MA) to the System Integrator (SI), Wipro Ltd which led to the loss of interest amounting to Rs.9,49,36,632. Non recovery of penalty led to undue benefit to Wipro and consequence loss to government exchequer amount to Rs 2.91 Crore." The audit report observed "The system integrator submitted bills for procurement of software "Oracle standard one edition" and "oracle Intelligence Server Enterprise Edition" and an amount of Rs 1.27 crore was paid to the integrator for this. However the system was not found in the IT system. State Coordinator, NRC (SCNRC) has procured original HP Toner Cartridges of two types amounting to Rs. 3434.38 lakh for HP printer. However the rate of procurement was much higher to the 'prodot' toner cartridges being used in the SCNRC office for the same HP printers. The said procurement was also made without NIT and assessing/ascertaining actual requirements. Due to procurement of the HP toner cartridges instead of prodot' toner cartridges an extra financial burden of Rs 19,43,93,362 has occurred. There are 6140 unused stock of tonners valued at Rs. 2,89,07,850 at 33 districts."<sup>96</sup>

The Modi Government is also accepting of the fact that irregularities were observed in the due process of NRC.<sup>97</sup> In such cases the question stands as to how the government tackles this issue, citizenship can be sold and names be included in the NRC list just for a few bucks of money. Is there a concrete plan to avoid this? Such questions stand tall and in the midst of ongoing economic slowdown this could hit a bad impact on public spending and also public favour.

## Financial

NRC is not just the issue related to law and order or moral prejudice but also one of many unplanned decisions the current government has taken. For example, we have seen Demonetisation and its effects, that are still being felt after several years. An unplanned exercise like NRC would derail an already paralysed Indian Economy with declining growth estimates. Important to note here is that it is a direct targeting of poor people and favouring the wealthy sections of society.

Questions may arise: how and why there would be any financial implications. Well, the answer lies in the reality of Assam. NRC as an exercise was first introduced in Assam in the year 1951, since then till today there has been loss of 855 lives and an estimated cost of about 1600 crores. This figure is just an estimate while the actual can go higher with the kind of planning with which this government is trying to implement NRC. The actual cost for conducting NRC is not yet known, but

<sup>96</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/auditor-general-detects-financial-irregularities-of-rs-108-crore-in-nrc/articleshow/72395158.cms>

<sup>97</sup> <https://www.nationalheraldindia.com/national/modi-govt-admits-to-corruption-in-nrc-process-wants-to-engage-senior-officers-for-re-verification>



in Assam with multiple failures and minimal accuracy, a lot of effort was required. Considering the impact on a nationwide NRC with billions of people it would be nothing short of a disaster.<sup>98</sup>

“The NRC in the state of Assam alone took almost a decade, required the involvement of over 50,000 government employees and cost more than Rs. 1,200 crore. This is a state that has less than 3% of the country’s total population. A nationwide NRC would take up the services of a huge proportion of state and Central government officials and require expenditure several orders larger than that in Assam. For the duration of the process, a large part of government functioning in India would be diverted to this, making the already understaffed government system essentially non-functional in other forms of service provision.”<sup>99</sup>

The cost does not end with conducting NRC exercise and continues thereafter. Will those who were not cleared be put in Detention centers? And how would such centers be maintained? The scale of the problem would be larger than that of Jews in Germany as the number of people estimated to be out of NRC is in millions. Some 19 lakhs people excluded after efforts of 70 years is enough to explain just one time exercise would be insufficient and also will include large populations. There are no estimates with respect to maintenance of detention centers. The Citizens who could Asset of the country will be turned as prisoners making them of no use. Losing such millions of people is also a cost that cannot be estimated. Major portion of tax payers money would be wasted in maintenance of detention centers whereas all those prisoned could have added to the economy and wealth.

An estimate says that conducting this humongous exercise would cost 50,000 crores in administrative expenses and 2 to 3 lakh crores for construction and maintenance of detention camps. It would further require 36,000 crores to feed millions detained. These figures are rough estimations, considering its actual impact will multiply the amounts to greater extents.<sup>100</sup>

Just a rough calculation made on the basis of cost in Assam, it cost Rs 533 per person to conduct NRC which would be somewhere 71,000 crores for 130 crores of population. In order to help us understand the magnitude of this amount, such amount could alternatively be used for any of:

- 1) Feeding 10 crore underprivileged childrens
- 2) 73 Moon missions
- 3) Debt of 67 Lakhs farmers, this could make all the farmers debt free.
- 4) 117 IIMs and 69 IITS such institutions could change the educational statistics in our Country.
- 5) Open 35,444 Schools
- 6) Yamuna cleanup budget can be increased 16 times, and many other rivers can be cleaned.
- 7) 35,44,450 toilets can be build
- 8) 157 Mars Missions.
- 9) Increase mid day meals budget by 7 times.<sup>101</sup>

These are just a few statistics, as proper usage of taxpayers money would change many things in our country. Considering the NRC process produces the expected result and millions of people are declared non-citizens, the government itself believes that those people are not going anywhere.

<sup>98</sup> <https://pib.gov.in/newsite/PrintRelease.aspx?relid=178400>

<sup>99</sup> <https://thewire.in/economy/all-india-nrc-costs>

<sup>100</sup> <https://www.nationalheraldindia.com/opinion/does-amit-shah-even-understand-what-nrc-will-cost>

<sup>101</sup> <https://www.scoopwhoop.com/opinion/other-things-we-could-do-with-nrc-money/>

They will not be “expelled”. They will remain as a vast disenfranchised underclass. What are these people going to do? Some will be detained in the inhumane “detention camps” being set up across the country. But these camps can never hold more than a tiny fraction of this population.

## *Section VI : Common 'Dialogues' in favor of CAA:*

In a lot of the following dialogues, appeal can be made to Murphy's law with explanation that granting legal power must be conservative, the quote on ambiguity in law, and how bureaucratic exploitation follows generosity in conferring legal powers.

### **Not discriminatory**

**"CAA is a law to give citizenship, not take it away."**

This particular objection is absurd from the start: if the argument is that the law doesn't explicitly mention 'taking away' of citizenship, then it also has no mention of conferring citizenship. If interpretation of Statute is only allowed literally, then this is an act to legitimize certain classes of 'illegal immigrants', not to 'give citizenship', as explained in Section IV.

Another question that follows this 'dialogue' is how do you know, and what is the difference? The reason this response is popular is this has been the leader's way of convincing 'their own' that the concern over this law is completely misplaced. And therefore, it is most likely repeated verbatim without any clue about the underlying logic. The answer to the first is unexpected, while the answer to the second is unavailable. A law to 'give' citizenship, as long as it leaves any class of population unprotected, is also a law to take away their citizenship. Another approach can be taken to explain that CAA is the law to give, and NRC is the law to take away. If followed by "but NRC hasn't been planned yet", you can let him know of the BJP party line, NRC in 2003 amendment, and NRC through NPR for starters. Unless you don't discriminate at all, a law to give citizenship to some is also a law to take the citizenship of others.

**"Muslim is not even mentioned in the Act." - Amit Shah in Lok Sabha**

That is exactly the Problem, Sir. Thank you for joining the cause. Let's add a few more things that aren't mentioned in there: 'religious persecution', 'minorities', 'refugees' or 'neighbouring countries'.

**"This is a law to give citizenship to the people that have suffered persecution..."**

"This is a law to give citizenship to the people that have suffered persecution in their countries, and are living in hell here. Do you not care for the people that this law will benefit? What hell have they lived in and how terrible their quality of life is, even in India? "

There is a misconception about who will benefit from this Act, and the government itself has clearly lied in this regard. Neither has the CAA mentioned any such criteria of the protection of classes designated as refugees by the UN, nor is Amit Shah willing to impose any verification of this condition through procedural requirements. He has clarified that no documents are required, along with the assurance that 'everyone' from the specified classes will get citizenship. But this relaxation alone doesn't prove prejudice unless the law is compared with the refugee situation in India, as the protected classes are not the only refugees that entered into India fleeing persecution. The text of the act, however, is not only indifferent to the refugee status within the protected classes (as it also covers economic migrants), but is also indifferent to the plight of the bona fide UN acknowledged refugees outside of such protected classes which will

continue to be treated as 'illegal migrants'. This government has been constantly in denial about the suffering of such refugees, and this Act is that denial converted into a law. The anti-CAA movement does not seek exclusion. It seeks for the Hindu minorities from the specified countries to be covered, and it further wants other refugees from the neighbouring countries (whose borders touch India) to be included by simply inserting (instead of a list of religions) the word 'persecuted minorities' or 'bona fide refugees' and replacing the list of countries' names with the word 'neighbouring countries'.

Therefore, in this particular debate we are having, the opponents of CAA are the people that refuse to remain silent while other countries persecute its minorities simply due to their faith, while the supporters of CAA are actively choosing to remain silent in the face of bloody persecutions in their neighbourhood despite having the power to help them by having their government change a few words from the Act.

The persecution of Hindu minorities in Pakistan, Kashmir or Bangladesh should concern an Indian Muslim as much as it concerns an Indian Hindu, just as the persecution of Muslim minorities should concern a Hindu as much as it concerns a Muslim. Do not let CAA dictate this innovative morality of only empathizing with people of your religion. The predicament of Hindu refugees at the hands of extremists are documented in new stories and interviews, available on youtube, of the Hindu families that have escaped such circumstances and now live in border states under horrible conditions that affect their lives, security and health. It should be our moral responsibility to not only welcome them as our long lost brothers that were forced to be separated from us due to cruel and corrupt schemes of a few, but to alleviate what they had to suffer and pay for as the cost of hatred in the past. Let's bring each one of them back, but this inhumane Act is not our only road.

**"There were 22 per cent Hindus in Pakistan at the time of Partition (in 1947)..."**

"There were 22 per cent Hindus in Pakistan at the time of Partition (in 1947). Now, due to persecution, rapes and constant torture, their population has reduced to just 3 per cent. That is why Hindus want to come back to India. We are doing what the Congress was supposed to do to help these distressed Hindus. And when we are doing it now, you are opposing it."

- Gujarat CM Vijay Rupani

"After the partition in 1947, 23% non-muslims stayed back in West Pakistan and nearly 30% non-muslims stayed back in East Pakistan. There is a lot of debate of percentages, however, the numbers should be around this and it cannot be totally wrong. "

- Jaggi Vasudev (Sadhguru)

"Pakistan had a Non-muslim minority population of 23 percent in 1947 which was reduced to 3.7 per cent in 2011. While Bangladesh's non-Muslims comprised 22 percent of its population and their share in 2011 fell to 7.8 percent. Where did all these people go? Either they were converted into Islam, or they were killed or driven out and came to India"

- Amit Shah in Lok Sabha

In fact, the census or even the statistics of 1947 is a myth propagated by BJP leaders and unofficial spokespersons like Jaggu Vasudev (Sadhguru) whose clarification was forwarded by none other than Modi himself as 'lucid explanation' and 'calling out misinformation' (unironically). Since there was no official census conducted in 1947 which could have provided details of non-Muslims who stayed back in Pakistan

(both West and East Pakistan), there are no reliable sources from 1947 to get the exact figures. However, just four years later, the first census of Pakistan was conducted in 1951. As per this census, the share of Muslims in Pakistan's overall population in 1951 was 85.80 per cent, while the share of non-Muslims was 14.20 per cent, out of which, the West Pakistan only had 3.44% of Non-Muslim population. In other sources, Bina D'Costa's book states that Hindus constituted 1.6% of the population in West Pakistan and 22% in East Pakistan in 1951. (Before separation, Pakistan of today was called West Pakistan while today's Bangladesh was referred to as East Pakistan).

In summary, Pakistan never had a 23% population, and its non-Muslim population has, contrary to the BJP's claim, seen a slow rise from 2.8% to 3.7% since the last decline registered in 1961 census. Also, the decline in the Hindu population of Bangladesh stands at 9.4% (not 7.8%), and is caused by a combination of factors including religious persecution, but more importantly greener economic opportunities in India that has been strong push factors in Bangladesh for thousands of illegal immigrants who entered and settled here.

### **"It isn't possible for a Muslim to be religiously persecuted in a Muslim country."**

This was a defense offered by Amit Shah and other BJP leaders such as Himanta Biswa Sarma. In fact, there are several minority sects (Hazaras in Afghanistan, Ahmadiyyas and Shias in Pakistan etc.) that are considered Muslim by the Indian laws and this Act, but they are persecuted by the majority sects within within their respective countries.

### **"The Hindu will also be required to prove something."**

"The Hindu will also be required to prove that he or his forefathers fled Pakistan, Afghanistan or Bangladesh. Government will ask 'where is your refugee card'? Or 'where is that train or bus ticket from Lahore'? So both the Hindu and the Muslim without documents will further need to prove something."

Amit Shah has clarified twice (once in Lok Sabha) that citizenship will be given to ALL people of six faiths for always without any registration, verification, card or documents.<sup>102</sup>

### **"After 31st December, 2014, even Hindu refugees won't get automatic citizenship."**

If there are no documents required from Hindus, there is no reason for them to claim that they came after 31st December, 2014.

## **Discriminatory but won't affect you**

### **"The CAA has nothing at all to do with anyone who is already a citizen of India"**

How can a law of citizenship have nothing to do with the citizens of India? Also, as of now, the 1951 NRC is too old to have the names of anyone around 70 years of age. Therefore, for the purpose of CAA, only people

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<sup>102</sup> <https://twitter.com/dillidurast/status/1207191726785323008?lang=en>

around 70 years of age are citizens in India. In short, there are no ready made citizens of India. We are all expected to go through the verification procedure to be considered a citizen, and any flaw or error in any of the steps will result in you being categorized as a doubtful citizen. Thus, for NRC, no one is an 'India citizen' yet. And therefore, what this 'dialogue actually says is: CAA has nothing at all to do with people that don't exist. And this objection isn't based on fear-mongering by the opposition. This is exactly what happened in Assam NRC, where even sons of Army legends, BJP politicians etc. were excluded from the final list of NRC. How does that sound for an assurance? And the scary part is there is no way to conduct NRC without this nightmare, and there is no reason to believe that this government doesn't love imposing nightmares on Indian population.

### **"The Muslim Citizens of this nation need not worry at all. " - Modi**

'Ordeal by water' was a practice by the witch hunts of the 16th and 17th centuries, where women accused of witchcraft were hung by the neck into water to test if they were witches. The women who sank were considered innocent, while the women that floated were considered witches due to weird religious reasons. It is not difficult to imagine someone like Modi going around in the crowd, encouraging random women to participate in this great new test that is so scientific, rock solid and convincing the women that they have nothing to lose since they're not witches. Hundreds of witches were killed (usually by burning) since for some reason, they didn't drown during the test. In short, this assurance is like assuring a medieval woman that she doesn't need to fear drowning as she's not a witch. First, he imagines this abstract group of self-assured 'Indian Muslims' that are so obviously Indian-looking, or are so sure of meeting any impossible demand the government makes or any crafty test the government designs. Then, Modi imagines them being comforted by his words of assurance to not be worried about his decision to arbitrarily decide whether they are an Indian Muslim or an Infiltrator Muslim. "I see this as a new and unique challenge," said the Indian Muslim. "But I like challenges."

### **"India regularly provides citizenship to Muslims from these countries."**

"Look at Adnan Sami. How many people know that a Muslim woman with Pakistani Citizenship was given Indian Citizenship in December? She chose to return to India after her husband died."

CAA is irrelevant to people that apply for citizenship of India by Naturalization. It deals with illegal migrants, not foreigners that are eligible to apply for citizenship. Illegal migrants don't have any option of citizenship, as the 2003 amendment disqualified them from applying for citizenship through any method.

## **Discriminatory but won't affect people**

### **"They may not deport them. Instead, they will set up tribunals..."**

This explanation suggests that instead of deporting, the Foreign Tribunals will ask the rejected or excluded people to apply and then grant them citizenship on case to case basis. However, Amit Shah has been very clear on the deportation of 'infiltrators' i.e. People excluded from NRC. And I sincerely believe that you don't want deportations to happen, but how do you plan to influence this government's decision when Amit Shah carries out his promise.

**“People, including those excluded by this Act, used to and still can get citizenship.”**

According to this view, citizens that are excluded can still apply for citizenship through Naturalization, but this is a clear misreading, as any legal expert will tell you. Once declared ‘illegal migrant’, a person and his children become ineligible to acquire Citizenship of India through any method, as the 2003 amendment stated. The policy of Central Govt seems not too lenient regarding the same, especially in the light of detention camps and venomous rhetoric. The term illegal migrant also labels one an offender under Passport (Entry into India) Rule and foreigner Order, in addition to requiring an additional stay of six year’ in detention camp in order to become eligible for application under other rules.

**“India was the only country in the world for Hindus...”**

“India was the only country in the world for Hindus while there were several for Muslims where they can go and get citizenship.” - Nitin Gadkari

“While Muslims can choose any one of the 150 Islamic countries in the world (for residence), India is the only country for Hindus.” - Gujarat CM Vijay Rupani

This Act doesn't deal with people that haven't yet decided the country they will flee to. This Act is concerned with the people that have already made chose India over other Muslim countries. This Act won't deport them to 'other Muslim countries' but to their countries of origin where they might still face persecution. Some can't even go to Muslim countries, like the Rohingyas that first went to Bangladesh but were ill treated and refused to be registered or given refugee status. Even today Bangladesh is refusing to take the Rohingyas as they await at the border. UNHCR gave them refugee status in India, or they would have to go back to rohingya. And BJP's bigotry says, "Well, if *their own people* aren't taking them, why should we?" There is a clear racism in BJP's idea of all nations of the world as having 'loyalty' only to their own religion that has now become so normalized that it is undetectable, and a clear error in applying the criteria of 'having other countries to go to' by including Christian and Buddhist refugees that also have several other countries to receive them.

Senior BJP leader Nitin Gadkari said that the constitution of many countries provide for giving shelter to Muslim refugees, but he couldn't recall India having a history and ideology that made it a point to be that type of country. India can still provide citizenship to all Hindus without this Act, including Hindus refugees after 31st December, 2014. These explanations make the Act into a declaration that India is ‘not a country for Muslims’ and is a confirmation of Yogendra Yadav’s interpretation that the Act tells Hindus 'me casa su casa' while asking Muslim refugees 'What were you thinking?'

Also, as pointed out in the legal section, the introduction of indigenous religion and 'Muslim countries for Muslim refugees' within this debate is problematic for the supporters themselves, as the very recognition of Buddhism as the indigenous religion of India makes refugees persecuted by Buddhists (Rohingyas & Tamils) a problem created by India, and therefore makes them a responsibility of India due to being persecuted by India's indigenous religion.

And no, there aren't 150 Islamic countries.

## Discriminatory but Anti-immigration

### “Should we give citizenship to all Muslims...”

“Should we give citizenship to Muslims coming from all over the world? How can we run the country like this?” - Amit Shah <sup>103</sup>

If we forget all we know about his malevolence, it seems from Amit Shah’s answers as if he hasn’t understood the problem he’s trying to solve or the bill that he claims to have drafted, let alone the obvious implications that people are trying to point out. To respond with this on being asked about the exclusion of Muslims should then mean that the Bill gives citizenship to all people of the six faiths including Christianity, which is the largest religion in the world with 31.4% population, with 50 crore more people than Islam.

### “We simply don't want immigrants at all.”

This is not an argument in favor of CAA, as as an anti-immigration policy proposal, one can present a reasonable plan to extradite the illegal immigrants. Bangladesh has already said that it will take back undocumented immigrants who may have crossed into India, and has even asked Indian government for a list of such people. Apart from this, immigration is not even a major issue for India anymore due to the reverse migration and treatment of refugees and minorities, all credit due to the current government.

However, what even the anti-immigrant group should allow is to let the government legislate to take some of the immigrants it considers ‘suitable’ for India based on its own prejudices while forcing the others to leave. There are only three viable and consistent positions on this issue: anti-immigrant, pro-refugees, and pro-immigrants. And this bill creates a fourth category called ‘pro discriminatory immigration’.

### “Demographics of the border states are rapidly shifting due to immigration.”

There are population statistics circulating the social media about the change in religious demographics of the border states that have seen the higher influx of immigrants, which shows an increase in the percentage of Muslims within such states as increasing at abnormal rates. One such claim says that the proportion of Muslims in West Bengal has grown from 19.85% in 1951 to 27.01% in 2011, and goes on to ask how is it possible to make all these people Citizens of India.

What the message highlights is an increase of 36% in the Muslim population of West Bengal across six decades, which is still considerably lower than the national average of 44% increase in the Indian Muslim population (from 9.85% in 1951 to 14.23% in 2011). This is clear evidence that the increase in the population of West Bengal is due to the higher birth rate among Muslims and has nothing to do with immigration, as was confirmed by Assam NRC when the majority of those excluded from NRC were not Muslims. Now, one can easily shift the argument towards the Muslim birth rates and ‘gaddaro ki badhti aabadi’, but then CAA itself is an act to ‘increase the population of India’ by not deporting its illegal migrants.

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<sup>103</sup>

[https://economictimes.indiatimes.com/news/politics-and-nation/citizenship-amendment-bill-amit-shah-says-indian-muslims-have-nothing-to-fear/articleshow/72481306.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/politics-and-nation/citizenship-amendment-bill-amit-shah-says-indian-muslims-have-nothing-to-fear/articleshow/72481306.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)



**“Immigrants were taken in by regional parties to increase their vote bank.”**

And CAA is BJP’s attempt to join the same vote bank politics in Bengal. If you truly hate vote bank politics of this kind, then you should stop the BJP’s sneaky attempt to continue this game and oppose this Act.

For the anti-immigration group, it must be highlighted that immigration is an issue propped up by the BJP without any data. The statistics of the National Crime Records Bureau (NCRB) suggest a growing reverse migration from India to Bangladesh, especially of Muslim migrants. Indian border guards intercepted 1700 & 2800 migrants trying to go back to Bangladesh illegally in 2017 and 2018 respectively. The statistics for 2019 are not immediately available but Home Ministry officials say the numbers will be much more in the year just gone by. For every interception, many more would have gotten away. Further, the immigration to India has been on the decline since three consecutive years. Even the Indian are starting to seek asylum abroad as the number of applications to other countries rose exponentially. A study of the data on this issue would help you see through the use of the immigration question by BJP for political ends.

## **Discriminatory but denial of NRC**

**“NRC hasn’t even been presented or discussed in the parliament, let alone passed.”**

This is one of the most naive views that arises out of a mix of excessive faith in the government, short term memory and unfamiliarity with activism, legislative procedure or even the older amendments of 2003. If not, this view can simply be blamed for being misled by none other than the Prime Minister of the country.

Let’s first deal with the question of whether the NRC has been presented, discussed and passed in the parliament. Section 14A. Which was inserted in Citizenship Act by 2003 amendment, reads:

"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.

So yes, the previous BJP government has already passed the NRC law and has delegated to the Central Government (Ministry of Home Affairs) the power to establish the NRC Authority. The only relevant question is does this BJP government have the intention to use Section 14A of Citizenship Act? All the BJP leaders have answered that in a resounding yes, as covered in the first few pages. The NPR itself has already been legislated as the basis for NRC, and as will be discussed later, the new NPR form includes questions that will determine citizenship of the person. What exactly do they mean when they say NRC is not a law?

Secondly, it is an interesting suggestion to tell the Indian people to wait until a law is passed through the parliament before they should protest. What parliament was Demonetisation passed through?

And lastly, what time do they think is reasonable to protest and why? This government, which has the parliamentary majority made of thoughtless robotic yes sir ministers that will vote any bill into legislation without even reading it, just to remain in good graces of their supreme leader; this government that

implements its oppressive laws by imposing Section 144, cutting off the internet and locking up any and every potential opponents of its laws; this government that refuses to acknowledge millions of its own people protesting on the streets and says that it won't move an inch; do you expect this government to give you an opportunity to protest before it implements NRC? Aap na bhole bahot ho, aaj din bhar debate karte reh jaoge kal subah se sarkar documents leke line me laga degi !

**“CAB is an independent bill, and should be discussed as an independent bill until NRC.”**

Why? When Amit Shah and BJP discussed them as necessary and chronologically related, why should we just ignore the person that made the law and listen to you? In fact, without NRC, CAA as a law that protects people from NRC, will be utterly useless. It would be called 'Refugee Asylum Act, 2019' or something. And no laws are considered independent unless it explicitly excludes other laws' application by overriding them. In order to argue for a law being independent of another law, one has to argue for such a clause of exclusion within CAA, or demonstrate the independence of implementation. The former doesn't exist, and the latter was denied by Amit Shah himself. If the argument is that such a connection was not intended, you are uninformed as well as inexperienced. The link between the two acts was explained by Amit Shah no less than six times. Also, legally speaking, every law is read with other laws, and the Citizenship Act has already been amended to include the NRC provision (Section 14A). Hence, not only is NRC related to the Citizenship Act, it is also mentioned within the text of Citizenship Act. What more dependence requires proof?

Recently, MHA has filed a statement in Lok Sabha saying that they have 'no plans yet' to implement NRC, while a two months younger Home Minister declared from the same platform that "We have been extremely clear on this matter: NRC will be done in the country....Consider it done, NRC is coming." I guess we are now being asked to distinguish the intention to do NRC, which the Home Minister most definitely has, from the detailed plan to do NRC which he doesn't have. But either way, India is not interested. Take back the CAA, abrogate Section 14A of Citizenship Act, send another written notice to Lok Sabha calling NRC off, and we might start trusting your words again.

**“BJP had no intention to do Assam NRC either. It had to because of the Supreme Court order.”**

This lie is also straight from the speech of the Prime Minister. BJP, in its Assam Vision Document 2016, mentioned "Scrutinizing the citizenship of all suspected residents of the state in conformity with the upgraded National Register of Citizens (NRC)".<sup>104</sup> Many governments before the BJP were also forced by the Supreme Court, on petitions from Assamese interested parties, to carry out and complete the NRC exercise. In order to gain popular support during the run-up to the elections, however, the BJP projected itself as the real champion of the indigenous people in the state and engineered political fortunes out of this proclaimed distinction between 'citizens' and the 'indigenous people of Assam'.<sup>105</sup> This was one of the leading factors in the victory secured by BJP in 2016 Assembly Elections of Assam.

**“The documents haven't been decided yet.”**

<sup>104</sup> [https://mmscmsguy.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/mmscmsguy\\_webcomindia\\_org\\_oid\\_2/this\\_comm/vision-document.pdf](https://mmscmsguy.assam.gov.in/sites/default/files/swf_utility_folder/departments/mmscmsguy_webcomindia_org_oid_2/this_comm/vision-document.pdf)  
<sup>105</sup> <https://journals.sagepub.com/doi/abs/10.1177/0049085716683114?journalCode=scha>

What has been decided is the documents that won't be acceptable. Amit Shah has already disqualified Aadhar Card and Voting Card, while in a recent judgement by Gauhati High Court also denied Electoral Photo Identity Card as proof of Indian citizenship.

## **Discriminatory, NRC related & Affects People but Business as usual**

**“Every nation has a Register of Citizens, even Congress was planning on one.”**

India is a country with certain ground realities that make its citizenship question distinct from the ‘other countries’. For the reasons discussed in the Technical arguments section, the NRC exercise in India, not just expectedly, but will most certainly result in serious disaster and mismanagement until it will develop to be declared as pointless as demonetisation. Apart from the impossibility of NRC exercise, conducting NRC exercise after passing CAA will result in an exercise asking one religion more documents than the others. Now this NRC exercise makes India less like ‘most of the countries’, and more like countries such as Israel that have lesser rigor when vetting certain religions over others.

It is true that NRC and NPR were to be implemented by the Congress as well, and it would still be a useless exercise unless NRC is copied directly from the Aadhar database overnight. But it will certainly be interesting to watch one argue that Congress would have passed a law like CAA before the NRC exercise. In summary, NPR and NRC without CAA is useless and inconvenient, but not discriminatory, and that was the Congress version of NRC.

**“This is just a continuation of the old NDA and UPA policy that everyone agreed upon.”**

It isn't. By Listing Religions, Modi's CAA Broke Atal-Manmohan-Left Concord on Persecuted Minorities as discussed in the section about the 2003 amendment.

## **Last Straws**

**“We have faith in this government. It can't do something so unusual.”**

This sentiment can be sympathized with by every voter. In the modern political culture, with the lack of information, we the people are always in the dark. Each one of us, not just BJP followers, has no other choice but to put his faith in some leader or party to avoid total decision paralysis. But that faith must also be questioned at reasonable intervals. A congress supporter, after the several high level scams were revealed, did not have any reason to trust his government, and all the 2014 supporters were unreasonable if they continued to put their faith in Congress. Similarly, due to the degree of protests, a supporter of this government must also reevaluate his decision to trust instead of continuing to trust his decision.

The issue of whether this government can be trusted with CAA may be analysed using a few simple questions: Can we trust them to speak the truth? Does this government have the wisdom to decide or the efficiency to execute such laws? Can we trust them not to use this law against Muslims and Dalits, or is this another mile in their agenda against the minorities? And finally, if the law is intended to be harmless, why refuse to change the language to be harmless as well?

Once these questions are evaluated with data and objectivity, the decision to trust them has become unreasonable since quite some time. As rightly said by an analyst, “anyone that says he knows what's really going on in BJP is either lying or is one of Modi or Amit Shah.” And on this matter, even they have done their best to confuse the people with blatant lies and prejudice. So this decision to trust is nothing short of blind faith. The track records of this government in wisdom to judge threats and efficiency of exercises are easy to judge using the examples of Demonetisation and Assam NRC. Also, the retention of blatant hate speech leaders during the last six years, its silence and lack of action on atrocities, the appointment of terror accused to the Parliament, the communalisation and hate speeches in defense of CAA (which was ironically also defended an unbiased law), and its demonisation of protestors using dog whistles and doublespeak of Gaddar, Jinnah, Pakistan and Biryani, its violent crackdown on protesters including shooting 27 people including innocent bystanders or beating students in library, no part of their actions reassures faith in their sympathy towards minorities. And finally, there is a disparity in the stated objective and the text of the Act, and the same was highlighted by the parliamentary standing committee before the bill was even presented. But the government not only refused to take the simplest of recommendations from the committee, it continued to take an aggressive stand against any changes in the bill. This unwillingness to match the text of a law with their own declared objectives, to refuse to put in the written text of the law what they only orally speak, is sufficient for any reasonable man to become suspicious. And to have faith when there are reasons to doubt is simply...not...intelligent.

In the coming section called 'the ultimate plan', we have established the hidden agenda of this regime beyond any reasonable doubt. But proving an agenda only answers half the question, one must still prove that this law is a step towards that agenda. The burden of proof in this case is placed so high that unless a law passed by BJP explicitly talks about the deportation or derecognition of Indian Muslims, it cannot be a discriminatory law. As discussed earlier, this criteria will not blame BJP until it makes a law that reads :

*"notwithstanding anything contained in any other law, a Muslim or a person following the religion of Islam within India shall hereby be downgraded to second class citizenship for all intents and purposes, including the extension of benefits such as social welfare, personal security and constitutional protection. The rights of such a class must be secondary to the rights of a Hindu or a follower of Hindu religion, and no mechanism of Justice or welfare is allowed to favor them over a Hindu."*

This is simply not how the discriminatory laws have been implemented historically. It has patience, and it walks with tiny, unnoticeable steps across an entire decade until you're too small to stop the descent into madness that swallows us all. There's a famous case study here.

Ettore Ovazza, a Jewish Italian banker, was a committed Fascist from the very start. He took part in the March on Rome in October 1922; in 1929 he was invited to meet Mussolini as a part of a delegation of Jewish war veterans. He later described the encounter:

*"On hearing my affirmation of the unshakeable loyalty of Italian Jews to the Fatherland, His Excellency Mussolini looks me straight in the eye and says with a voice that penetrates straight to my heart: 'I have never doubted it'. When Il Duce bids us farewell with a Roman salute, I feel an urge to embrace him, as a fascist, as an Italian, but I can't; and approaching him at his desk I say: 'Excellency, I would like to shake your hand'. It is not a fascist gesture, but it is a cry from the heart...Such is The Man that Providence has given to Italy."*

In the 1920s and 1930s, even as the Fascist attitudes to the Jewish population began to shift, Ovazza actively lent his support to the fascists by defending their actions, starting newspapers to platform their inclusivity, recruiting and ensuring only fascist people hold the key positions of power, and even offering himself for the military service.

In 1938, when a series of anti-semitic laws banning Jewish people from marrying 'Aryan', owning property, going to state school or joining the army were passed, the Ovazza family were hit hard. Two of his brothers left the country and advised him to do the same, but he was reluctant to leave the country, hoping that the Duce would alter his views. In an anguished letter he wrote to Mussolini, he asked:

"Was it all a dream we nurtured? I can't believe it. I cannot consider changing religion, because this would be a betrayal - and we are fascists. And so? I turn to You - DUCE - so that in this period, so important for our revolution, you do not exclude that healthy Italian part from the destiny of our Nation."

At the end of the war, the Nazis intercepted his vehicle close to the Swiss border, took him away and shot him and his family. He took his faith in the government or Mussolini to his grave, because he didn't stop them when he could.

**"At least some refugees are being saved. If the government is saving some refugees instead of all refugees, it is still a humanitarian act and should be appreciated."**

Through CAA, the government is not only deciding to leave some refugees, it is deciding to leave the most deserving refugees that are facing the worst persecution of all. As an equivalent, consider a patient that arrived in an ambulance due to heart attack being told by the doctor to fill the forms and wait in the line of patients, where he waits for hours but then right before his turn comes, the doctor closes the clinic. This government is not assessing the severity of the need to asylum, it is asking for the religion to judge the need for asylum. Since the government can accommodate 19 lakh residents through this act, what is another 1.5 lakh residents that are more deserving of this accommodation due to religious persecution.

But this simple request totally eludes our Home Minister, who addressed the Lok Sabha opposition's objection with "This is surprising to me that there is no appreciation for including as many as six religions, instead I'm being asked why did Islam not included." (Mere liye aashcharya ki baat hai, ke 6 religions ko include Kiye uska koi appreciation nahi hai, Islam kyu nahi hai ye sawal pucha jaaraha hai.)

**"The opposition (especially Congress) is misleading the Protestors."**

This is a strange claim as all the misleading on this issue (lies, backtracking and contradictions) has exclusively been a weapon in BJP leadership's arsenal, including this misleading claim of misled protesters. The real Congress, not the monstrous octopus of Modi's imagination, continues to play a marginal, infrequent role in the protests. The protests haven't been claimed by any party of the opposition despite obvious political potential.

Secondly, the protestors aren't the only level at which the act is being opposed. Even BJP leaders, many state leaders, majority of well read lawyers, legal experts and law students, Parliamentary standing committee, International Commission of Jurists, European Union, even United Nations is opposed to this

law. Are all of them being misled by the opposition. Is opposition also sitting in UN, in US, Canada, EU Parliament etc. Are legal experts, including parliament's own committee, which recommended changing the law before it was tabled, being simply 'misled by the opposition'? If opposition is so powerful, how can this government even survive this far?

**"If congress didn't allow partition on the basis of religion, this law would not be necessary."**

The short answer is: Congress didn't allow partition on the basis of religion, and therefore this law is unnecessary as per Amit Shah himself.

The longer answer must draw our attention to a four step trick common with this government to manufacture the consent of common people to make their decisions serve the party's vested interests. First, they go back to some unfortunate event within India's modern history (Partition, Article 370, Shah Bano Case, Babri Masjid stay) and claim it as a fatal mistake, not a misfortune. Two, they blame, without giving explanations or having to prove any real alternatives, the old leadership (mainly Nehru and Gandhi) and today's opposition as their ideological descendants (mainly Congress) for forcing India into these outcomes. Three, popularizing these strange notions of history as having far reaching consequences into the 21st century and the problems faced by the country are a direct result of these mistakes. And finally, packaging completely unrelated policies and offering them to common Indians as their only chance at redemption and the only opportunity to rectify the wrong that was done to them. This historical approach to manufacture consent is the most frequent tool of this government simply because it works like charm.

Let's see the same mechanism being used in this case. Everyone agrees that the historical event of partition was not the idea of congress, and was in fact fiercely opposed by the congress as its core ideological stance was a nation not based on religion. For this stance, the congress was heavily criticised by two camps: The Muslim league as well as Hindu Mahasabha, whose founder and ideologue Savarkar himself pushed for religion-based nation. Ambedkar called Savarkar 'in complete agreement with Jinnah' for insisting on a Hindu and a Muslim nation. It was like a mutual divorce or separation between two spouses that had mutually decided that their marriage won't work while the Congress was like the divorce court arbitrator that insisted that things could still work out. The only thing congress can be blamed for was its inability to persuade Jinnah against separation, while the Hindu right that the BJP claims to be ideological descendants of is as guilty for partition as Jinnah, if not more. Congress didn't just not allow the partition, it opposed it and rescued India from falling into the error of a religion-based partition, while the Hindu right reiterated and actively supported it throughout the first half of 20th century in their quest for a religion-based nation of their own under Hindu nationalism.

But according to this new version of history, Congress didn't do enough to stop the religion based partition, and thereby 'allowed' it. I think what BJP means is it should have imposed section 144 in the entire nation, cut off the phone lines and jammed the radio frequencies (old internet ban equivalent), locked up all the leaders including Jinnah and then wait for a few years until they either started to trust India or forgot their own demands. In either case, Amit Shah doesn't bother to give us his expert opinion on what should have been done, like the rest of his reactionary right. I have a solution, though. What India should have done, in my opinion, is take Savarkar and Jinnah, along with their followers, and give them a state each while the rest of us that have no 'enemies within' just live in what is left of India. Let them play out their delusion of utopia until they come to their senses (like Pakistan is) and join the rest of us.

Next, this history is then narrated to the Congress leaders of today when they oppose the CAA in Lok Sabha, by implying that the Congress is not even allowing the government to correct the mistakes of its own leaders. Whereas, it was the very idea of India being the 'natural homeland for Hindus' that led to religion-based partition, and the same can be found in BJP's manifesto of 2014. Far from being a rectification of Congress's mistake, this is an attempt by the Hindu right to repeat its mistake, and this time to draw the lines of Partition more clearly and firmly in the religion against all the efforts of initial Congress. Calling religion-based partition a mistake while making a religion-based India required much more intellectual gymnastics than the amount offered by Amit Shah and as a result, all the contradictions are apparent.

This blame is then used to connect the problem of 'persecuted Hindus' in the partitioned Muslim countries as a problem created by Congress through partition. But persecution is not a problem specific to religion-based nations. India has the problem of persecution of Dalits and other minorities despite being a secular country, so does Bangladesh that, despite going through a brief theocratic phase, was and continues to be secular for most of its life, but the problem of persecution has been a consistent issue there. Secondly, having control over a territory does not automatically allow the government to uproot the persecution. India had troops in Kashmir when the Kashmiri pandits were threatened, persecuted and driven away from their homes with their families and children. Ability of the state to tackle the problem of persecution with precision is extremely limited, especially when it is not systematic. But according to BJP, simply not having a religion based partition would have safeguarded the lives of all Hindus currently living in Pakistan.

And finally, CAA is proposed and popularized as a time machine solution to the problem of partition. The reasoning? It goes like this: the only way to solve the problem of a Muslim Nation is to create a corresponding Hindu Nation. Isn't that what Jinnah and Savarkar also agreed on? Isn't BJP also legitimizing the fear Jinnah had of Indian system which will, under the influence of Hindu right, slowly turn against its own largest minority i.e. Muslims? And if religion based nations result in persecution, wouldn't a religion-based India (or a natural homeland for Hindus India) also become an exporter of refugees like Muslims and Dalits to neighbouring countries, especially in the light of the unprecedented rise in instances of mob lynching, attack and level of hate that shows the early sign of persecution with 996% rise in asylum applications by Indians to other countries? Why not simply provide asylum and citizenship to the refugees of neighbouring countries without changing the nature of India into a natural homeland for some and unnatural for others? In the answer to these questions lies the blueprints of the real reasons for the introduction of this law, a discussion that has to wait till the end.

## Broken Straws

*Note : From here onwards, the arguments are no longer justified positions to hold in any case (for reasons explained thereunder), and are clear indicators of a prejudiced person. However, it must be our task to deal with every question without judgement or hostility, and deliver our message in the hopes of getting a hostile person to at least start explaining where he disagrees with us.*

**"Protestors are violent and therefore should not be listened to."**

"You're too ignorant to read and you're out on the streets damaging property, burning buses"

Let's just agree that it is a common sense thing to understand that the use of violence during any protest is detrimental to the cause of such protests due to three reasons. Firstly, it takes the focus away from the issue by off putting people that are genuinely curious as to the reason people are protesting. Secondly, it gives the state machinery a reason to unleash violence through its police and military arms, and the citizens can never match the state's capacity for violence. And finally, the rarest instance of violence is enough for the opportunist opponents of a movement to label it a movement inspired by hate and aspiring to anarchy, undermining their real demands and its legitimacy.

Also, the CAA protestors and the Delhi Police both share two things in common (the protesters more justifiably than the police) : They both don't know who set fire to those buses, and both share the opinion that the culprit should be punished as per the law. There is a lot of ambiguity regarding the torching of buses, as they took place at considerable distance from the protests.

But still, if you say that all the protestors should be condemned for the action of the few rotten apples among them, then let's be consistent and apply that logic to this Government as well. The company that Modi keeps, even the ministers that make up his cabinet, have indulged in hate speeches, have revered rapists, are terror accused in a bomb blast case, have pictures with people that have been found guilty of hate crimes and bomb blasts. What should this all mean, then? Are you saying we should stop listening to Modi? Shouldn't he have the opportunity to be heard or to pass laws? I hope that before introducing this inventful principle of guilt by association, the supporters of CAA at least look at who will be the first casualty.

In either case, one would be hard pressed to meet a single anti-CAA protester, and there are millions of them, that will speak in support of damaging public property, and this is also clear from their actions as the instances of violence have also been in less than 0.1% of rallies taken out across the nation. And it is also not hard to understand why: it is against their own interests to support, let alone carry out, such actions. Only side such instances serve is the state that can finally scratch its itch to unleash systemic violence against an entire movement under the pretext of curbing such random instances of violence. And the state has used it effectively to violently crack down on the Jamia students using tear gas and lathi charge even on students in the library, where one student even lost his eye. In another state run by an extremist BJP leader, the several protestors have been beaten by the police and even the cost of lathis broken while beating them have been notified to be recovered from the property of random protestors, while the police of the same state has been caught on camera breaking into houses and markets in the silence of the night, looting the shops and breaking the houses, including smashing the CCTV cameras. They have lied about the use of firearms, use of teargas, entering libraries and beating kids, and also damaging the properties on campuses and other areas. Over 27 protestors and innocent bystanders have been killed at the hands of police, and many more were shot, whereas the violence linked with protestors have cost the nation no lives (apart from the cremation of two buses). The BJP leaders actively and publicly engaged in inciting crowds to unleash violence, and disgraced spokespersons of BJP like Sambit Patra, in their attempt to justify the violence, have posted video clips where Muslim leaders are falsely accused of inciting violence by intentionally mishearing clear words. Even before all the naked communalisation during the Delhi election, in its campaign to demonize anti-CAA protestors, BJP caused a 733% rise in VIP hate speech by its leaders. All the pro-CAA protests talked of 'goli maaro saalo ko', until inspired by this rhetoric of dehumanization, a 17 year old gunman of Hindu outfit, left messages on his social media, went to the protests at Jamia and shot at the protestors, injuring a student. No BJP leader has been arrested for hate



speech against the protestors, and no police officer has received the wrath of the state for these instances of organized property damage. None of this category of violence, despite its scale and organized nature, would even find a mention in those that accuse every protester they meet for setting fire to some buses he didn't even know existed.

But none of this is surprising. After the Black Lives Matter movement gained momentum in the United States in 2016, and nation-wide protest against the frequent police violence against unarmed black people erupted, the right wing in the United States also decided to attack the entire movement on the basis of the sporadic instances of violence in the news where some shops in remote areas were vandalised, instead of addressing the claims and arguments of the regular protestors. Why, you ask? Simply because it is the easiest way to stop a movement you can't argue with. You don't even have to read and understand and think of responses to the arguments of all, if you can simply condemn them for the action of some. They were never interested in listening, and crazy people finally become an excuse to not listen.

In response to this hypocrisy, American actor, Jesse Williams, had a thoughtful reply in his Oscar acceptance speech, when he simply asked that *“If you have a critique for our resistance, then you better have an established record of critique of our oppression.”*

It would be completely unreasonable of us to consider everyone that criticizes the movement for being violent as a mindless follower of BJP and Hindutva ideology that reserves the right to violence only for its own kind. Violence within movements is a problem that should be dealt with strictly but justly, after all we are followers of Mahatma Gandhi that, despite opposition from Congress workers and Nehru, halted the non cooperation movement immediately after the Chauri Chaura incident resulted in the death of over 20 policemen. Violence, once tolerated by movements, can consume them wholly and keep them derailed from resulting in change they set out to make.

However, what Jesse Williams offered in his speech is a simple test to separate sincere criticism from an attempt to silence. If the person condemning the violence can offer an established record of him protesting, condemning, denouncing, criticizing or acting to change the condition every time someone's rights were violated, or an injustice was done upon any oppressed class by the system or an unruly mob, when someone was harassed, beaten, injured, raped or killed by a mob, or a hate speech was made against an entire class of people, then they at least have the right to explain their reasons for how these protests are producing violence and how can it be curbed. But if they don't, and this is the first time you're criticizing any violence at all, or your sympathies are only reserved for mechanical objects like buses, congratulations on the last six years of sleep and instead of shouting at us, lull yourself back to sleep. The police are already doing their investigation, and unless you know the masked guy with the kerosene, you'll just be wasting everyone's time.

There is another interesting similarity between Black Lives Movement and anti-CAA protests. A research release in 2018 revealed that the Black Lives Matter protests were more likely to occur in localities where more black people have previously been killed by police. Meanwhile, the violence in the anti-CAA protests have also consistently taken place only in states where the police is under the control of a BJP government (e.g. UP, Delhi, Bengaluru etc.) and has reported to have clearly used excessive violence.

In any case, this line of criticism is just a cute trick for the detractors to secure a ready-made moral high ground without having to debate anything, to silence the people fighting for their rights by comparing

them with nutcases that decided to pelt stones and light fires. Just because a bus was burned, religious discrimination in CAA isn't a problem anymore? This is nothing but moral cowardice with transparent justifications. These will be the last people to stand up for anything but their self interests, and will sink any boat they sail in. They want to, but don't matter, and we shouldn't pretend otherwise. For those that are sincere, there is a simple question to ask yourself: tomorrow, when the NRC (that these protests are there to stop) will be implemented, and thousands, if not lakhs, of poor, resourceless Indian people's rights will be randomly stripped (exactly like the Assam NRC), and they spend their days in detention camps without enough money to fight their case, can we expect these same detractors that cry over two buses to come find them and fight their case to get them out of there? To tell you the truth, we cured our ignorance as soon as the tragic stories from Assam arrived in the national press, but for those that still can't bring themselves to act, there is no cure for cowardice that looks for excuses not to act.

### **“Why don't the students study? Why do they have to protest?”**

Around 1973-74, a students' agitation helped members of the Rashtriya Swayamsevak Sangh and student wing Akhil Bharatiya Vidyarthi Parishad to establish themselves in politics; Prime Minister Narendra Modi was one of them. In December 1973, in Gujarat, students at the LD Engineering College in Ahmedabad began raising their voices over campus grievances, like canteen charges. The police used force during the student protests, which backfired - protests blew up on other campuses. In January 1974, Narendra Modi, who was just 24 years old and a member of RSS, had played a significant role in organizing events, transportation and meetings. It seems that this government itself wasn't sincerely studying in its college days.

But if the future of these students really concerns you, take the effort to go to a students' protest and tell a student that you will carry his placard and raise his slogans, so that he can go rest assured that, despite his suspicions, the nation is alive enough to not let injustice happen. The reason students have to come out on the streets and face police firing, tear gas and lathi charge is because the rest of India is sleep walking into a disaster.

Also, as far as using students for political purpose is concerned, Members of BJP approached a Gujarat school with postcards. As a result, the teachers asked students to write congratulatory messages for Prime Minister Narendra Modi in support of the Citizenship Amendment Act and PMO's address. Teachers wrote the text on blackboards and asked students from Class 5 to Class 10 to copy it on postcards. A parent alleged that students from Class 10 were threatened with losing grades in internal examinations they were currently taking if they did not write the postcards.<sup>106</sup> Why aren't these students allowed to study, why are they used as support for the government ?

### **“The protests are engineered by political forces exploiting students...”**

“The protests are engineered by political forces (Anti National Universities, Urban Naxals and Tukde Tukde Gang) through exploiting students and education establishments, even supplying them tools for arson.” - BJP's stance

I think it is reasonable to expect any government to not give ground to the opposition or enemies to 'exploit' students in this manner, or even enact policies that give them an excuse to act out their violent

<sup>106</sup> <https://amp.scroll.in/latest/949274/gujarat-school-asks-students-to-write-congratulatory-pro-caa-postcards-to-pm-modi-report>

plans. Let's ask the government to withdraw this Act and pass a simple refugee law or amend it simply based on what the respected authorities like the parliamentary standing committee already recommended. That way the government won't be caving into the pressure, but simply accepting a recommendation that it was 'deliberating on'. And while they're at it, send a representative to Shaheen Bagh and expose their baseless grievances as well, making the entire opposition look silly for protesting against nothing at all. Why does BJP continue to promise this clear advantage to opposition and anti-national forces, through its words and action? The answer lies in a brilliant RTI filed by Saket Gokhale to the Home Ministry asking them for information on this omnipresent 'Tukde Tukde Gang' of Delhi that Amit Shah promised to teach a lesson and punish. The unequivocal reply received said "Ministry of Home Affairs has no information concerning tukde-tukde gang", confirming its use as political scaremongering and not to be taken seriously.<sup>107</sup>

Just out of curiosity, how do you identify the difference between a real protest and a manufactured one? Also, if all violence is organized and orchestrated, I wonder which opposition is ordering the police to go loot, ransack and then smash the cameras of colleges, libraries, houses and even markets, and then lie about it in official statements?

**"Shaheen Bagh, and CAA protests are an uprising by the people that made Kashmiri Pandits leave Kashmir by atrocities, even rape and murder."**

"Lakhs of people gather there (Shaheen Bagh) and this fire can anytime reach households of Delhi. People of Delhi need to think about it and decide. These people will enter your house, will abduct your sisters and mothers, rape them, kill them...Delhi's public knows that the fire that engulfed Kashmir a few years ago, sisters and mothers of Kashmiri Pandits were raped, after that that fire took over UP, Hyderabad, Kerala. The same fire has taken over a corner of Delhi." - BJP MP Parvesh Verma

"Shaheen Bagh, and CAA protests in general, are an uprising by the *same type of people* that made Kashmiri Pandits leave Kashmir by atrocities, even rape and murder. This is a continuation of the same sentiment or movement where Muslims don't want Hindus to receive Indian citizenship because of security reasons, or because of their plans to become a big enough majority (24%, some say) to drive the Hindus out, the same way they drove the Kashmiri Pandits out."

The red herring within this equation is not only to draw attention away from the discriminatory law and the attitude of this government, but also to erase any distinction between a Pakistani militant and an Indian Muslim protesting for his rights provided by the constitution.

Militants also targeted several Muslims, including leaders like Yusuf Halwai or Moulana Masoodi, who were either members of the pro-India NC or worked for spy agencies and the Armed Forces. As a general trend, far more Muslims were targeted by militants than Kashmiri Pandit.<sup>108</sup> Militancy in Kashmir has been a useful weapon for Pakistan to infiltrate the enemy territory and expand their borders since the last few decades. But their use of religion has been stressed by the right wing, including BJP and the current government, to weaponize the pain of Kashmiri Pandit against Kashmiri Muslims. With the issue being

<sup>107</sup> <https://www.indiatoday.in/india/story/have-no-information-on-tukde-tukde-gang-home-ministry-in-rti-reply-1638593-2020-01-20>

<sup>108</sup> <https://theprint.in/pageturner/excerpt/right-wing-exaggerates-number-of-kashmiri-pandits-killed-militants-targeted-muslims-more/271666/>

raised in CAA debates, the intention to use this weapon against all Indian Muslims has also been made clear.

**"Who is the Shaheen Bagh being supported by, in terms of food etc, if not opposition or Pakistan?"**

Since December, there has been consistent preparation of langar, a community meal prepared for those people who have been sitting in protest. Advocate DS Bindra is one such person who is trying to ensure that food is available to protesters at Shaheen Bagh.

DS Bindra, in order to arrange money for the said langar, decided to sell one of his three flats. He said his children suggested using money set aside for donation in gurdwaras for such works. He said while the Income Tax department wonders how he is arranging for langar, he has the documents which have the date of sale and the amount paid for the flat. Now if Pakistan has bought his flat at inflated price to finance India's agitation, that should be fairly easy for the Income Tax Department to figure out, and follow the money.

**"Being pro-India sometimes requires being anti-constitution."**

Sure, but then who decides what is pro-India? Based on this logic, is a Muslim, Dalit, Christian, Sikh, Farmer, Communist or Tribalist also allowed to be anti-constitutional in order to promote his own idea of pro-India?

## **BJP Commercials since Protests**

**"Tu Indian Hai to dar kaisa, aur tu dar gaya to tu Indian kaisa?"**

(If you're Indian, you can't be afraid. If you're afraid, you can't be Indian.)

Bhai ye political debate hai, Mountain dew ka advertisement nahi. Agar Indian koi cheez se nahi darta, to Police karti kya hai? Jail banayi hi kyu? Indian jab darta hi nahi, to Sarkar bhi iska kuch nahi bigad sakti. Army kyu khadi hai border pe? India me wahi ghusega jisko maar khaana hai. Aane do, dekh lenge! Assam ke Indian Citizens jo detention camp me missing documents ki wajah se mar gaye na, unka problem ye tha ke wo darte bahot the. "Mountain Dew peete, to aaj zinda hote."

**"Jab TC aata hai to wahi darte hain jinke paas ticket nahi hota."**

(When the Ticket Checker arrives, only those that don't have the ticket are afraid.)

Wo bhi darte hain jinka pocket maara gaya hai aur uske sath ticket bhi gaya, magar wo nahi darte jinke paas 100 rupees hai TC ko rishwat dene. But NRC isn't the government asking you for a ticket, NRC is government asking you we haven't decided ham kya check karne wale hain, isliye aap har jaga apne Abba aur Dada ko sath leke travel karna. Aap bolte ho TC ji, Abba ko Goa trip pe laane ki kya zarurat hai, ye lo ticket, aapke railway ne hi issue Kiya hai. TC bole ga nahi, even railway issued sab tickets valid nahi hote.

Extending the same analogy further, CAA is like a TC coming into your bogey with full zeal and announcing, "Jo koi Sai Baba ka bhakt hai uska ticket maaf." Ab aap nahi bhi ho bhakt to chalti train se utarne ka to irada hai nahi aapka. Magar wo bolta hai, "Bhakt bano, ya chalte bano."

Aur suno, pichli baar jab TC aaya tha na Assam express me, isne ticket walo ko bhi chalti train se phuk diya tha. Unme se kuch to aaj tak nahi mile, aur jitne mile abhi tak recover nahi hopaye! Abhi bhi time hai, usko andar aane mat do!

**"It is only this government that can stop 'these people' from raping our daughters."**

"Lakhs of people gather there (Shaheen Bagh) and this fire can anytime reach households of Delhi. People of Delhi need to think about it and decide. These people will enter your house, will abduct your sisters and mothers, rape them, kill them, that's why today is the moment. Modi won't come to save you tomorrow, Amit Shahji won't come. Today is the time, if people of Delhi wake up, it will be good for them. Delhi's public knows that the fire that engulfed Kashmir a few years ago, sisters and mothers of Kashmiri Pandits were raped, after that that fire took over UP, Hyderabad, Kerala. The same fire has taken over a corner of Delhi." - BJP MP Parvesh Verma

"Opposing CAA means opposing the government, and we should stand in solidarity with the government. It is this government alone that can stop 'these people' from entering your houses and raping your daughters. We must support and protect this government at all costs!"

This government has been in power for six years, and that is exactly how long the Hindu has been in danger. Since independence all the way to 2014, 'these people' had full time jobs instead of scheming to enter houses and rape people. If this government is the necessary condition for the security of Indian houses and protection or sanctity of Indian daughters, then who was doing it for the last 6 decades? This government is like the tailor that is charging you visible cash for an invisible dress.

In fact, there is strong data to indicate that this government is not protecting India's daughters. Despite its slogans and inaugurations, in the national data on crime was released by the MHA's National Crime Records Bureau (NCRB), the crimes rose from 3,793 per million in 2016 to 3,886 per million in 2017. According to the NCRB data for 2017, which was released after a delay of more than a year, the maximum cases were registered in the BJP ruled state of Uttar Pradesh (56,011) and Maharashtra (31,979). Assam, where BJP came to power last year, recorded the highest crime rate of 143 in the country in 2017. The response of the cabinet minister, Shri G. Kishan Reddy, to this data is a clean denial that there is "no trend of increasing crimes against women in India".<sup>109</sup> So with this government than has ministers garlanding rapists, I'm not sure that the rapists are deterred from entering houses and raping women.

**"CAA is a sacrifice asked by our mother India."**

CAA is vote bank politics for Bengal Assembly Elections with one foot on the constitution and another on the mother India. A sacrifice by mother India would necessarily include things that improve the condition of its sons by working to remove poverty, improve health, education and employment.

**"Main ne Aapko Jawaab de diya hai."**

\*Awkward Silence\*

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<sup>109</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=1594856>

## Section VII: The Agenda

### Bad Influences

#### Hitler's use of citizenship laws in Nazi Germany

In Hitler's Germany, what led to the Holocaust and the extermination of 6 million Jewish population started with what was known as 'the Jewish Question'. After years of racist and xenophobic propaganda against the Jewish population in Germany through politicians and media, including a notorious German newspaper *Der Stürmer*, the Nazi regime was somewhat successful in creating an ambivalent attitude among the majority of German population towards the life and security of their Jewish population. After Hitler rose to power, an Advisory Committee for Population and Race Policy met at the Ministry of the Interior to discuss **a new citizenship law** to exclude the Jews from having full citizenship rights.

What followed was the Denaturalization Law passed on July 14, 1933. As a result of this law, the Reich **government could take away the citizenship of those who were deemed "undesirable"**. Those who saw the results of this law first were the "150,000 Eastern Jews in Germany". Violence and economic pressure were used by the regime to encourage Jews to voluntarily leave the country. Legislation passed in July 1933 stripped naturalised German Jews of their citizenship, **creating a legal basis for recent immigrants** (particularly Eastern European Jews) **to be deported**.

At their annual party rally held in Nuremberg in September 1935, the Nazi leaders announced a set of three new laws to further exclude Jews from German Society. These laws, now known as the Nuremberg laws, served also as the legality for the arrests and violence against Jews that would come to follow. Citizenship rights were to be granted to those who were citizens of the Reich, which were only individuals classified as **being of "German or related blood"**; therefore, Jews were excluded from any and all citizenship rights, becoming Staatsangehörige or state subjects, essentially making them foreigners in their own country. The Nuremberg Laws were created in response to **Hitler's demands for broadened citizenship laws** that could "underpin the more specifically racial-biological anti-Jewish legislation". They were made to reflect the party principles that had been outlined in the points Hitler had written in the National Socialist Program in 1920.

This was followed by the second phase during 1938, which saw de-certification of all Jewish physicians (Kafil Khan), Jews forbidden from owning private gardens (Gujarat), a decree was enforced stating all streets in Germany needed to be renamed (Prayagraj and Babar Road), Jews were forbidden from attending movie theaters, the opera, and concerts, Jewish children barred from attending public schools, finally forcing all Jews to turn in all jewelry of any value. In this second wave of legislation, Jews were ostracized even further from society, with strict restrictions living under "a German regime that practiced terror and arbitrariness through the judicial system".

#### Reaction to Germany in India

M. S. Golwalkar, the man that was appointed successor by the founder of RSS himself, is also known as Gurujī within RSS and is the biggest influence on its thought. Founded in 1925, RSS is the world's largest organisation with a right-wing, Hindu nationalist agenda. The current Prime Minister of India, Narendra

Modi, has served as a volunteer in this organisation since the age of 8 and later joined as a full time worker in 1971. He served in RSS for over 40 years before joining politics, and was an active member when RSS was under the charge of M. S. Golwalkar. Modi has also written a book of adulation, Jyoti Punj, in Gujarati on 16 eminent persons who had inspired him. One of the essays, 'Pujniya Shri Guruji (Revered Shri Guruji)', is on Golwalkar and is the longest in the book. Golwalkar, who the current PM of India hailed as his 'ideological mentor', reacted to Germany in the following words:

“German Race pride has now become the topic of the day. To keep up the purity of the Race and its culture, Germany shocked the world by her purging the country of the Semitic Races—the Jews. Race pride at its highest has been manifested here. Germany has also shown how well-nigh impossible it is for Races and cultures, having differences going to the root, to be assimilated into one united whole, a good lesson for us in Hindusthan to learn and profit by.”

- M. S. Golwalkar in We Or Our Nationhood Defined

Also, RSS was the brainchild of KB Hedgewar, VD Savarkar and BS Moonje. All of them were great admirers of Fascism and Nazism. The Italian researcher of Indian politics, Marzia Casolari ('Hindutva's Foreign Tie-up in the 1930s-Archival Evidence') has done pioneer work in tracing the fraternal links between RSS founders on the one hand and Fascism and Nazism on the other. She has traced the linkages between the two after a laborious perusal of Moonje diaries which are available at Nehru Memorial Museum and Library, New Delhi.

The other great mentor of RSS, VD Savarkar also had great liking for Hitler's Nazism and Fascism of Mussolini. While delivering the Presidential address to the 22nd Session of Hindu Mahasabha in 1940 at Madura he said:

“There is no reason to suppose that Hitler must be a human monster because he passes off as a Nazi or Churchill is a demi-God because he calls himself a Democrat. Nazism proved undeniably the saviour of Germany under the set of circumstances Germany was placed in...The very fact that Germany or Italy has so wonderfully recovered and grown so powerful as never before at the touch of Nazi or Fascist magical wand is enough to prove that those political “Isms” were the most congenial tonics their health demanded. “

## **India : The Natural Homeland for Hindus**

Golwalkar believed that only those qualified to be Indians whose pitrubhoomi (fatherland) and punyabhoomi (sacred land) was in India. Those whose pitrubhoomi was in India but punyabhoomi elsewhere could not be regarded as true Indians. In other words, people following Semitic faiths were barred from being Indians. They could live only at the sufferance of the majority community.

V D Savarkar, the founder of Hindutva ideology and admired by both BJP and RSS, said in his book:

"These are the essentials of Hindutva—a common nation (rashtra), a common race (jati) and a common civilisation (sanskriti). All these essentials could best be summed up by stating in brief that he is a Hindu to whom Sindhusthan is not only a pitrbhu but also a punyabhu. For the first two essentials of Hindutva nation and jati—clearly denoted and connoted by the word pitrbhu while the third essential of sanskriti is pre-eminently implied by the word punyabhu, as it is precisely



sanskriti including sanskaras i.e. rites and rituals, ceremonies and sacraments, that makes a land a Holyland.”

- V D Savarkar in ‘Who is a Hindu?’

Thus, in becoming a Hindu, one has to not only belong to the Indian race, he also has to partake in the rites and rituals, ceremonies and sacraments of the civilization that are deeply rooted in, even inseparable from, the religion of Hinduism. Due to the self-inflicted impossibility of this compromise, Savarkar declared that “the Hindus are the Nation in India and the Moslem minority a community” just as “the Turks are the Nation in Turkey and the Arab or the Armenian minority a community.” Golwalkar wrote in 1938: “The non-Hindu people of Hindustan ...may stay in the country, wholly subordinated to the Hindu nation.”

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Aditya Mukherjee, a noted historian, commented on the CAA bill as follows :

“The concept of religion-based nation stems from Savarkar’s idea of pitrubhu and punyabhu. I do not agree with the Home Minister when he says, the Bill is only enabling; it is not keeping anybody out. The CAB, by itself, seems innocent, aimed at giving relief to persecuted minorities seeking asylum here. But it cannot be seen in isolation. Seen with the NRC, it will disenfranchise a section of society. They want to reduce the land to a Hindusthan, but there was never a sthan, it was always Hindustan. They are going back to their core ideology. They have been pushed by the Assam situation, no doubt. After the NRC results, they had no option. They had to make Hindus acceptable, Muslims not. Thus, they came up with the CAB afresh. Earlier, they allowed the Bill to be put in cold storage.”

## Search for the ‘Other’

### Manufacturing the Muslim Question

Although there has always been an approximate image of ‘the Muslim’ in our collective consciousness as an identifiably separate and behaviourally peculiar people, the Hindutva forces have consistently been the embodiment of this thought and responsible for its continuation into post independence society. The Muslims of today, despite their impoverished social status, continue to be seen through the lens of history as the descendants of the barbaric invaders that put an end to India’s golden age (before 7th century) and are too dogmatic in their faith to consider the superiority of Indian culture. Hindutva, as compared to multi-nationalist Indian nationalism of the founding fathers, prescribed a sub-nationalism with “The Muslims, The Christians and The Communists” (Golwalkar) as the ‘other’ or the internal enemy. This same lines of reasoning continues to this day when, after the Naxalite-Maoist violence on the decline during the last decade, right-wing narrative of national-security has shifted the focus of its rhetoric towards conspiracy theories about ‘Urban Naxals’ based on a book of the same name by a filmmaker that ‘exposes’ the secret plot of students that study in major city universities to weaken the government from within through academia and dissent.

<sup>110</sup> <https://scroll.in/article/913310/from-savarkar-to-modi-what-explains-hindu-nationalists-admiration-for-israel>

The Christian violence has also been on the rise since Modi rose to power, with a recent incident where Hindu extremists targeted Christians in the village of Perigaon in Rayagada district, Odisha state, on November 24, bursting into the church during a Sunday service.

However, Muslims are uniquely threatening from the Hindutva perspective due to a combination of two reasons: responsibility for the partition, and the higher fertility rate. Being the largest minority in India (around 14%), the population concern leads to the another set of conspiracy theories about the plan to make India a Muslim majority country by simply breeding. This conspiracy also travelled upwards to two elected representatives of the Bharatiya Janata Party (BJP), including a union minister, that cited rising Muslim population as a threat, despite data suggesting a decline in fertility rates.

The partition concern suggests an ulterior political agenda among the Muslims that always aspires to create a Muslim state. The partition is used as the clearest manifestation of this will to sovereignty. By arguing the decision to stay back as forced by circumstances, they continue to question the loyalty of the Indian Muslims under absurd reasonings and paranoia:

“Have those who remained here changed at least after that? Has their old hostility and murderous mood, which resulted in widespread riots, looting, arson, raping and all sorts of orgies on an unprecedented scale in 1946-47, come to a halt at least now? It would be suicidal to delude ourselves into believing that they have turned patriots overnight after the creation of Pakistan. On the contrary, the Muslim menace has increased a hundred fold by the creation of Pakistan which has become a springboard for all their future aggressive designs on our country.”

Thus, within the Hindu nationalist framework, the only two options to a Muslims is to efface his distinct Muslim identity or be a part of the conspiracies to destroy India from within. There is no middle ground. Due to certain aspects of this cultural imposition demanding the effacement of Muslim identity being unreasonable, irreconcilable with Muslim faith or being rooted in Hindu religion, the demand is an impossible one. But despite their recognition of the need to preserve Indian culture and tradition, the mainstream independence movement did not reiterate this demand. Still, the cognizance of this ‘tension’ that threatened India forced Hindutva ideologues to meditate solutions to the Muslim question. Golwalkar wrote in one of his works on what he calls ‘the minority problem’ :

“It is worth bearing well in mind how these old Nations solve *their minorities (sic) problem*. They do not undertake to recognize any separate element in their polity. Emigrants have to get themselves naturally assimilated in the principal mass of the population, the National Race, by adopting its culture and language and sharing in its aspirations, by losing all consciousness of their separate existence, forgetting their foreign origin. *If they do not do so, they live merely as outsiders, bound by all the codes and conventions of the Nation, at the sufferance of the Nation and deserving no special protection, far less any privilege or rights. There are only two courses open to the foreign elements, either to merge themselves in the national race and adopt its culture, or to live at its mercy so long as the national race may allow them to do so and to quit the country at the sweet will of the national race. That is the only sound view on the minorities problem. That is the only logical and correct solution. That alone keeps the national life healthy and undisturbed. That alone keeps the nation safe from the danger of a cancer developing into its body politic* of the creation of a state within a state. (emphasis added)

- Golwalkar in *We Or Our Nationhood Defined*

Savarkar went on to support Hitler's anti-Jewish pogroms and on October 14, 1938, he suggested a German solution for the Muslim problem in India: "A Nation is formed by a majority living therein. What did the Jews do in Germany? They being in minority were driven out from Germany." Instead of dismissing, he highlights the innocence of Jews as inconsequential to the decision of their expulsion.

This isn't just an exercise in digging the graves of dead ideologues. The ideas of Golwalkar and Savarkar continue to be live, celebrated as the two most influential thinkers of the Hindu nationalist movement. As the 'ideological mentor' to the PM himself, this government is set to portray this hitherto unfamiliar figure of Golwalkar in national consciousness as a great philosopher and a champion of "robust nationalism". So far confined to RSS literature as a tall ideologue, Golwalkar's views on nation, dharma and "Hindu Rashtra" held on an official platform at a seminar sponsored by the Centre-run Indian Council of Philosophical Research (ICPR). The Indian Institute of Public Administration, another government institute, organised the seminar titled "Nation and Nationalism in the thoughts of Shri M.S. Golwalkar".

### **The First experiment with Nazi methods**

There have been earlier attempts to emulate the Nazi rise to power by BJP. L.K.Advani, the former Deputy Prime Minister of India was greatly inspired by Adolf Hitler's *Mein Kampf*, a book on the essence of Nazi ideology, Hitler's 'world view', the techniques of Nazi propaganda, the plan for destroying Marxism, eliminating Jews from German society, and the concept of a future National Socialist State.

Kushwant Singh says that when Advani was imprisoned during the Emergency declared by Mrs. Indira Gandhi in 1975, he spent his time studying the Nazi dictator's techniques. Advani's prison diary which was published as *A Prisoner's Scrap-Book* in 1978 and republished 24 years later in 2002, has frequent references to Hitler's *Mein Kampf* which he quotes to compare fascism with the 'draconian laws' Mrs. Gandhi had imposed. In *A Prisoner's Scrap-Book*, Advani also makes references to other fascists like Mussolini of Italy and Franco of Spain, which clearly indicate the extent of the influence of European Fascism, especially Nazism on L.K.Advani.

Advani sensed a shift in the political landscape of India when it was undergoing its worst economic crisis since its independence. The economic situation and stability of India wasn't unlike post-war Germany. This sparked the idea in Advani's head to work India into a communal frenzy using the issue of Babri Masjid. This was symbolic of Hitler's 1930 campaign where he traveled the country delivering dozens of major speeches to successfully mobilize the youth and garner popular support. Hitler realised the importance of targeting the Jews, the religious and racial minority to focus the hatred of the majority. For Advani, the task of finding such a community in India was not too difficult – the Muslims. For Advani it suited to cash in on the historic resentment against the Muslims. His Rath Yatra from Somnath to Ayodhya was designed to achieve that.<sup>111</sup> Using chants referring to Muslims as Babur Ke Santan (children of Babur) raised in the rally, the Muslim community as a whole was held responsible for acting against the Hindu faith. The Babri Masjid was thus embedded in Hindu consciousness as a symbol of Muslim aggression against the Hindus and their religion. It also represented the collective humiliation of Hindus which remained unmitigated for centuries. Ayodhya therefore became a site for constructing Hindu solidarity and avenging the Muslim wrong.<sup>112</sup>

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<sup>111</sup> [https://www.academia.edu/38368084/Historical\\_Origins\\_of\\_Hindutva\\_or\\_Hindu\\_Nationalism\\_-\\_Dr.\\_J.\\_Kuruvicara](https://www.academia.edu/38368084/Historical_Origins_of_Hindutva_or_Hindu_Nationalism_-_Dr._J._Kuruvicara)

<sup>112</sup> <https://www.jstor.org/stable/3520346?seq=1>

On 6 December 1992 the VHP and the BJP organised a rally at the site involving 150,000 volunteers, known as kar sevaks. The rally turned violent, allegedly incited by the leaders of the BJP including Advani, and the crowd overwhelmed security forces and tore down the mosque. A subsequent inquiry into the incident found several leaders of the BJP and the VHP responsible. As the fallout of this first experiment with Nazism, several months of intercommunal rioting between India's Hindu and Muslim communities poured on the streets, causing the death of at least 2,000 people. Retaliatory violence against Hindus also occurred in Pakistan and Bangladesh. But more importantly, the razing of the mosque on this day 25 years ago was meant to convey to Muslims of their unequal and helpless status against the imposing will of India's majority. Muslims took up the case with the judiciary, and, in a verdict last year, lost the land.

### **Manusmriti : An alternate Constitution**

BJP MP Nana Patole, who is from a Backward Caste, resigned from Parliament stating that "When I was demanding a separate ministry for the OBCs, it was Mr. Modi who had shouted at me and questioned its need saying that the OBCs don't need it. I also come from a backward caste but when I raised the issues of my people, you shout at me."

During his lifetime, Dr Ambedkar was humiliated and insulted by RSS for proposing to bring radical changes in the society through the Constitution. A letter published in the RSS mouthpiece, 'Organiser', on January 11, 1950 demanded that Manu Smriti should be the basis of the Indian Constitution and called Dr Ambedkar a "Lilliput" for not following the ancient text. The letter states that Dr Ambedkar cannot be called the Modern Manu as it "is an instance of depicting a Lilliput as a Brobdingnag. It borders on ridicule to put Dr Ambedkar on par with the learned and god-like Manu...". The Indian Constitution, which is appreciated world over for its progressive content, was a disappointment for the RSS. The Organiser had stated in the November 30, 1949 issue:

"The worst about the new constitution of Bharat is that there is nothing Bhartiya about it. The drafters of the Constitution have incorporated elements of British, American, Canadian, Swiss and sundry other constitutions. But there is no trace of ancient Bhartiya constitutional laws, institutions, nomenclature and phraseology in it...But in our constitution, there is no mention of the unique constitutional development in ancient Bharat. Manu's Laws were written long before Lycurgus of Sparta or Solon of Persia. To this day his laws as enunciated in the Manusmriti excite the admiration of the world and elicit spontaneous obedience and conformity. But to our constitutional pundits that means nothing."

As late as 2005, K Sudarshan, ex-RSS chief, called to "throw away the outdated Indian Constitution which speaks of British legacy." While conservative Hindus see Manusmriti as a document that "excite(s) the admiration of the world", the laws of Manu really need to be examined to see what it has to say about women, the lower castes and the "untouchables".

The Manusmriti is a law-book that prescribes rules and regulations for the four varnas (Brahmin, Kshatriya, Vaishya and Shudra) as well as avarnas or the "untouchables" or the chandalas. The book bestows privileges upon the Brahmin men, which is what the RSS leadership is made of.

To Brahmanas he assigned teaching and studying (the Veda), sacrificing for their own benefit and for others, giving and accepting (of alms). The Kshatriya he commanded to protect the people, to bestow gifts,

to offer sacrifices, to study (the Veda), and to abstain from attaching himself to sensual pleasures; The Vaisya to tend cattle, to bestow gifts, to offer sacrifices, to study (the Veda), to trade, to lend money, and to cultivate land. One occupation only the lord prescribed to the Sudra, to serve meekly even these (other) three castes". (The Laws of Manu, Translated by G.Buhler, PP 3)

To Golwalkar, the "Guru Ji" of RSS, the argument that caste weakened India is unadulterated nonsense. On the contrary, it was the absence of caste that invited calamity. "We know as a matter of history," he states, "that our north-western and north-eastern areas, where the influence of Buddhism had disrupted the caste system, fell an easy prey to the onslaught of Muslims.... But the areas of Delhi and Uttar Pradesh, which were considered to be very orthodox and rigid in caste restrictions, remained predominantly Hindu even after remaining the very citadels of Muslim power and fanaticism." He had the same views on caste as our middle class does today. For example, he felt that using phrases like Scheduled Caste and Scheduled Tribe produces separatism. Why shouldn't everyone just be called 'Hindu'? To Golwalkar, the problem of temple entry was not that of discrimination but of maintaining anonymity. If Dalits do not announce their background, then the priests will let them pray. To him, stories of atrocities on Dalits are exaggerated. The answer, therefore, was a strong practice of the caste system prescribed by Manu. Golwalkar had fondly quoted Manu as 'Bhagwan' and the 'greatest law giver' in many of his texts. He not only called Manu the supreme law giver but has also referred to him at various places to cite the supremacy of Brahmins:

"It is this fact which made the first and greatest law giver of the world - Manu, to lay down in his code, directing all the peoples of the world to come to learn their duties at the holy feet of the "Eldestborn" Brahmans of this land." (We, Our Nationhood Defined)

In the world imagined by 'the greatest law-giver', there were no rights at all for women, lower-castes and untouchables. He prescribes what they can eat; what property they can own; what should be their clothing, and how and where they should live. Within 50-56 of Penguin translation, Manusmriti states that the lower castes should live near mounds, trees, and cremation-grounds, or in mountains, while the 'Fierce' Untouchables and 'Dog-cookers' should be outside the village; they must use discarded bowls, and dogs and donkeys should be their wealth. Their clothing should be the clothes of the dead, and their food should be in broken dishes; their ornaments should be made of black iron, they should not be contacted by the dutiful; must do business only with one another and marry with those who are like them. They should not walk about in villages and cities at night, only in the day to do their work but should be recognizable by distinctive marks; they should carry out the corpses of people who have no relatives; this is a fixed rule. In 31, it requires that the name of a servant should breed disgust.

For women, Manu writes that "Her father guards her in childhood, her husband guards her in youth, and her sons guard her in old age. A woman is not fit for independence."

As a result of its pronouncements, on December 25, 1927, Babasaheb Ambedkar burned Manusmriti as a symbol of rejection of the religious basis of untouchability. He called Manu "a staunch believer in social inequality who knew 'the danger' of admitting religious Equality. "If I am equal before God," he asked, "why am I not equal on earth? Manu was probably terrified by this question."

## The Implementation

### The Muslim Question under the new BJP

The public position of Narendra Modi on the Muslim question extends briefly beyond his alleged complacency during the 2002 pogrom, followed by his absurd justifications and silence in the press. Despite overwhelming evidence of involvement, let alone complacency, Modi has neither been tried, nor been exonerated, for his role in the violence.<sup>113</sup> Much has been written on his role in instigating the riots, his role in perpetuating it, the cover up, and the investigations thereafter. However, Gujarat pogrom can tell very little about his views on the Muslim Question. For that, we need to reach back to the beginnings of his political career.

In a rare interview, preserved by a right wing channel for its own purposes, we can see Narendra Modi in a national TV debate immediately after 9/11 attacks where, within his opening statement, he congratulated the TV channel on finally allowing the term 'Islamic Terrorism' as 'popularised by the western media but missing from our national discourse'. He went on to passionately declare that "This mission to raise its flags across the globe began 1400 years ago, and it is the result of this that we have such circumstances."

But this moment of clarity came in the middle of a strange set of benign non sequiturs on religious extremism, the 'good within Islam' and the misuse of Islam that continued to be used throughout the debate to contextualise and qualify his overtly bigoted statements. On being taken up by the fellow panelists and audience on the connection he made between Islam and terrorism, or by linking religion to terrorism, he recoiled by saying, "I myself said, nothing to do with Islam." Later, he attacked another panelist for repeating the same thing (Islam has nothing to do with Terrorism) by asking in whose name did the Taliban destroy the statue of Buddha. The whole interview is a mess of conflicting voices within himself, but once you've read Golwalkar, these moments of spousing two irreconcilable positions at once are not rare within Hindutva discourse. On being asked whether he thought all religions indulged in violence, he claimed that Hinduism, despite not being a religion, is the only religion that doesn't have a history of violence against other faiths. Finally, he went back to alternatively indicting 'the some' and 'the whole' of the Muslim community:

"You have to understand that **the Muslims**, and when I say Muslims it doesn't mean Islam, have a political roadmap. They have categorised the world into three parts. First, Darul-Aman. Second, Darul-Harb. And Third, Darul-Islam. Darul Amn means land of peace, where Islam has already reached, there should be peace. Or where Islam doesn't have the power to do anything, there must be 'Darul-Aman'. Then 'Darul-Harb', 'land of conflict', where you have the power, there you must strive to raise your flag. Third, 'Darul-Islam', converting the whole world into Islam. With these intentions, **some political activists**, those that belong to Islam, are doing these activities. Unless we understand the people, we can't understand terrorism."

Later, on September 9, 2002, during a Public Speech delivered by him in Gujarat as the Chief Minister, he taunted the relief camps for the survivors of the infamous pogroms, saying "What should we do? Run relief camps for them? Do we want to open baby-producing centers? Hum paanch, humaare pachhees. [We five, our 25]", the 'We five' being a clear remark to the polygamy permissible upto four wives among Muslims.

<sup>113</sup> [https://narendramodifacts.com/faq\\_courts.html](https://narendramodifacts.com/faq_courts.html)

How cheap these comments actually were can be judged from the fact that the refugee camps he is blaming for increasing the population were set up for the traumatised survivors of the Gujarat pogrom that, according to him, were too busy having sex instead of recovering. Later in the speech, he added that “There is a need for **teaching a lesson to those people** that are expanding their population.”<sup>114</sup> If the context of the speech is studied, these statements are preceded by ridiculing secularists for filling dams during ramadan, (“We brought Narmada waters during Shravan, but the Congress would have wanted it in Ramzan.”) and are followed by criticism of the increase in Muslim schools (Madrasas) for depriving Muslim kids of primary education.

In another Interview, Modi said, “I’m not in favour of dividing Hindus and Sikhs. I’m not in favour of dividing Hindus and Christians. All the citizens, all the voters, are my countrymen.”. This also follows the same formulation as CAA where Muslims do not warrant a mention, despite being larger than Sikhs and Christians in population.<sup>115</sup>

In an interview Modi gave to the Shahid Siddiqui, editor of the Urdu weekly Nai Duniya in 2012, he mentioned in all sincerity : “Your mouths are watering these days at the prospect of creating a Muslim-majority nation in the name of Akhand Bharat. And getting all Muslims together, **with the Indian Muslims at their head**, to create strife. Isn’t this a dream of yours?”<sup>116</sup>

Last year, despite a consistent involvement of Hindutva outfits in Bomb blasts and assassinations, Narendra Modi accused the Congress of hatching the 'Hindu terror' conspiracy to defame the country's religious heritage. “No Hindu can ever be a terrorist,” he declared.<sup>117</sup> In the same year, his home ministry said that it is into terror funding “for Islamist & Sikh Terrorism.”<sup>118</sup>

These are the public instances of a man that has now silenced himself to avoid controversial quotes, where he discussed the Muslim Question, and his twisted beliefs that marked a clear influence of, and ideological lineage up to, his ideological mentor, M S Golwalkar.

## Turning the Heat up

A delegation of this skillful art of delivering hate speeches took place after Modi chose to take the throne and became media averse, but his successors proved too crude and unrefined. A few months after Modi's victory in 2014 on the back of a massive campaign, RSS pracharak and BJP leader Rajeshwar Singh declared that, “Muslims and Christians will be wiped out of India by December 31, 2021.”

On many occasions, BJP leader and Rajya Sabha member Subramanian Swamy has repeated that Muslims who do not acknowledge their Hindu ancestry (whatever that means) should be stripped of their voting rights. In 2017, Anant Kumar Hegde, a BJP minister, also unveiled the methodology when he stated that the BJP-led government was in power to “change the constitution,” as to remove the word ‘secular’ from it. Back in 2016, he had said, "As long as we have Islam in the world, there will be no end to terrorism. If we are unable to end Islam, we won't be able to end terrorism."

<sup>114</sup> <https://www.sabrangindia.in/article/hate-speech-text-and-analysis-speech-delivered-then-cm-gujarat-narendra-modi-mehsana>

<sup>115</sup> <https://in.reuters.com/article/india-modi-gujarat-bjp/special-report-the-remaking-of-narendra-modi-idINDEE96B00Y20130712>

<sup>116</sup> <https://webcache.googleusercontent.com/search?q=cache:qkiETfQbJw8J:https://tribune.com.pk/index.php/story/680511/the-delusional-narendra-modi>

<sup>117</sup> <https://scroll.in/latest/923539/no-hindu-can-ever-be-a-terrorist-says-prime-minister-narendra-modi>

<sup>118</sup> <https://caravanmagazine.in/religion/elections-2019-hindu-terror-islamic-sikh-terrorism-mac-narendra-modi>



Senior BJP leader Giriraj Singh, back in 2016, expressed concern over the population in his own unique words. “Population rules have to be changed, only then will our daughters be safe. Otherwise, like Pakistan, we too will have to keep our daughters under the veil,” he said.

Vinay Katiyar, the founding president of Bajrang Dal and a member of the Rajya Sabha from Uttar Pradesh, had said that “Muslims have been given their share (of land). They should go to Bangladesh or Pakistan”.

The examples cited above are the most relevant of the hate speeches, definitely not the most extreme ones. Based on the finding of NDTV, in the first four years of BJP from May 2014 upto April 2018, there have been 124 instances of VIP hate speech by 45 politicians, compared to 21 instances under the previous regime, marking an increase of 490%.<sup>119</sup> During the UPA’s term, the BJP had participated in 86% of hate speech; the Congress in the remaining 14%. During NDA’s term, the BJP’s participation in the 124 instances of hate speech soared to 90%.<sup>120</sup>

Despite this unprecedented surge, not a single minister has been sacked, or demoted from his position for imitating the PM’s past. Some continue to climb up the parliamentary ladder and continue to hold key positions per usual. Every time the media has put pressure on Modi for this prolific rate of hate speeches among his ministers, the best he could do was to plead to opposition that “this is a message to all of us to not cross the limits of dignity”, or the worst he could treat them was saying “he could never forgive them despite their apology”. It must be pointed out that in none of the cases, keeping these members were essential for BJP to secure a majority in parliament.

This inaction or lack of consequences on hate speech has had a trickle down effect on the streets where the studies show that hate crimes have steadily risen over the past five years. Amnesty International India documented 721 such incidents between 2015 and 2018. Last year alone, it tracked 218 hate crimes, 50 of which were against Muslims. Among the more common hate crimes was ‘cow-related violence’, that was rare earlier but has become more frequent over the past five years.<sup>121</sup> According to Hate Crime Watch, crimes based on religious identity were in single digits until 2014, when they surged from nine in 2013 to 92 in 2018. Of the 291 incidents mentioned by the website, 152 occurred in Bharatiya Janata Party (BJP)-ruled States, 40 in Congress-ruled States and the rest in States ruled by regional parties or coalitions.<sup>122</sup>

## Attacks on the Judiciary

The Supreme Court of India had grown considerably in power and stature during the two decades since 1990, earning the epithet “the most powerful court in the world”. The pre-2014 apex court was not hesitant in going against the Central executive in matters involving high political stakes. This was evident in the 2G licenses cancellation cases and coal scam cases, during which the court passed several oral remarks (including the now famous “CBI is caged parrot” remark), badly stinging the government. The interventions of the court drew a lot of cheers from the media and public, which hailed judiciary as a crusader against corruption and misgovernance. No law ultra vires the constitution would see the light of implementation as long as the Supreme Court remained as powerful and independent.

<sup>119</sup> <https://www.ndtv.com/india-news/under-narendra-modi-government-vip-hate-speech-skyrockets-by-500-1838925>

<sup>120</sup> <https://thewire.in/politics/bjp-leaders-hate-speech-list/>

<sup>121</sup> <https://www.thehindu.com/opinion/lead/the-growing-power-of-the-lumpen/article28335539.ece>

<sup>122</sup> *ibid.*



In August, 2014, in the first Parliament session after Modi came to power, the Parliament sought to replace the collegium system of appointments, in which judges appoint other judges, with a commission consisting of representatives from the judiciary, legislature and executive. This attempt to compromise the independence of the judiciary was unsuccessful as the supreme court struck down the law.

There have been unusual instances of indirect interference with the judicial appointment. Enemy judges that have given verdicts or fought a case against BJP or its leaders, such as advocate Gopal Subramaniam was forced to withdraw. The recommendation of another Judge, KM Joseph, who had given an unfavourable order that cost BJP a chance at forming a state government four years earlier, was resisted by pressurizing the collegium to reconsider until the recommendation was taken back, leading to KM Joseph losing his seniority in the Supreme Court. These reputed figures were denied their due positions while judges including one judge with allegations of money laundering who was about to face impeachment, was moved up the ladder.

Another case that would lead to open revolt by several judges came up before the Supreme Court. A petition demanding an investigation into the death of former Maharashtra judge BH Loya, who was at the time of his death handling the Sohrabuddin fake encounter case, led to the press conference that split the court right down the middle. On January 12, judges Chelameswar, Ranjan Gogoi, Madan Lokur and Kurian Joseph addressed what is still known as just “the press conference”, an unprecedented occasion in which top judges were directly addressing the media, accusing the chief justice of failing to uphold the independence of the Supreme Court.

Emboldened by its brute majority, the Modi government has embarked on open confrontation with the judiciary over several matters. The collision course with the political wing over five years has left the judiciary battered and enfeebled. Coupled with it, the controversies emanating from the court (medical college bribery case, master of roster issue, impeachment motion against former CJI Dipak Misra) made it look like a divided house and resulted in the erosion of moral authority it once enjoyed among public.<sup>123</sup>

And, therefore, the post-2014 SC presented a meeker version of itself when it came to dealing with cases which could prick the political interests of the ruling party. The verdicts in politically charged cases such as Sahara-Birla, Loya, Bhima-Koregaon, Rafale, Aadhaar etc have invited a lot of criticism that when it comes to taking on the system, the Court acts hesitant.<sup>124</sup> Recently, the Babri Masjid decision has been highly criticized for its non-legal, and even absurd dealing of the question, while in another sexual harassment case in which, then Chief Justice Ranjan Gogoi, presided over a case in which he himself was accused. Evidence of political pressure being applied on the victim also exists. The apex court has been unsuccessful in curbing the undemocratic advances of this regime such as abrogation of Article 370, and the faith of people in its ability to protect the constitution against this government has considerably diminished.

## Twisting the Media's Arms

These hate crimes are not just encouraged within the party, there has been an active attempt by this government to discourage news reporting on such crimes. Bobby Ghosh, editor of the Hindustan Times, resigned from the newspaper as the government was purportedly unhappy with a tracker that was

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<sup>123</sup> <https://thewire.in/law/supreme-court-modi-years>  
<sup>124</sup> *ibid.*

launched under his leadership to chronicle hate crimes in India. Since his exit, that tracker has been pulled down.

During May 2018, a sting operation by an outfit called Cobrapost showed that some 25 of India's leading media organisations, including giants like The Times of India, The New Indian Express, and the India Today Group were willing to participate in propaganda for the BJP. Other outlets recorded in the sting even agreed to spread communal hate in return for cash from the ruling party.

As a result, reporters in India have over the past five years regularly had their mobile numbers circulated on WhatsApp groups, and been subjected to a deluge of sexually explicit messages, death and rape threats, and other forms of online intimidation.

“The pattern of trolling has led many to speculate whether there is an organising hand at work. There is. The BJP has a wide network of volunteers and paid workers scattered across the country and in their offices in Delhi's Ashoka Road which sends daily instructions on WhatsApp. Each troll has a contact point in the Ashoka Road central cell,” Swati Chaturvedi, journalist and author of ‘I Am a Troll: Inside the Secret World of the BJP's Digital Army’, wrote in the Gulf News.

The government hasn't always hidden behind the smokescreen of social media. There have been more blatant attempts to arm-twist media proprietors. Raiding news channels, boycotting prime-time debates, and stopping government advertising—a significant source of revenue for the industry—have been among the common tactics used by the Modi regime. Unwillingness to toe the line has often led to high-profile editorial sackings. One such ousted anchor, Punya Prasun Bajpai, wrote an exposé for The Wire's Hindi website, detailing the grave degree to which the situation had deteriorated in India's newsrooms.<sup>125</sup>

### The Muslim Question through the TV Media

Senior journalists and commentators from India told Gulf News that, “Prime time television in India has become a platform to peddle hatred against Muslims, where they are openly targeted and ridiculed on live television debates and in reporting,” The mainstream media, they said, is pursuing an agenda to vilify Muslims and projecting the entire community as backward and disloyal to India.<sup>126</sup>

On live television, they are openly called “anti-national” and these sustained, daily attacks on Muslims are causing fissures in the society. Moreover, this hatred has acquired primetime legitimacy due to the massive reach of these channels.

“Yes, I do believe that sections of the media in India have contributed greatly to growing intolerance in our country. These sections have sought to portray a seventh of India's population — comprising Muslims and other minorities - as second class citizens, which is in keeping with the ideology of many in the ruling regime,” Paranjoy Guha Thakurta, independent journalist, author and publisher told Gulf



<sup>125</sup> <https://qz.com/india/1570899/how-narendra-modi-has-almost-killed-indian-media/>

<sup>126</sup> <https://gulfnews.com/world/asia/india/how-indian-news-channels-are-peddling-hatred-against-muslims-on-primetime-tv-1.67265166>

News. "This is a form of Islamophobia that has been spread. In particular, I would like to name a few television anchors who have contributed to the recent toxicity in Indian society, and they include Anjana Om Kashyap of Aaj Tak, Sudhir Chaudhary of Zee News, Amish Devgun of Network 18 Hindi and Gaurav Sawant of India Today TV," Thakurta added.

To be fair, hate-filled news programmes are not limited to a few channels or some anchors mentioned by Thakurta. Hundreds of news channels follow the same format. "Night after night, TV debates focus not on holding the government to account but communal rifts – real or perceived – between Hindus and Muslims," independent website Scroll said in a media commentary recently.

This kind of programming is cleverly built around news events and saw a spike last week when the Supreme Court concluded arguments in Ayodhya dispute between Hindus and Muslims, the Scroll said.

"Leading the majoritarian charge on television on Wednesday night was Aaj Tak, owned by the Indian Today group. If his birthplace and Ram is ours, where did these masjidwala's come from?" the channel bluntly asked. "The use of the possessive pronoun made it clear that Aaj Tak considered this broadcast only for one community," the Scroll article added.

"These channels pretend to talk about protecting interests of Hindus by raising the bogey of Ram temple, just look at their language. They are spreading poison in the society and poisoning people's thought process. They are working on a plan to spread hatred against Muslims and to make Hindus insecure," Ravish Kumar told Gulf News. "Indian media was never so communal and I am worried that the media is turning Hindu youth into a mob. Youngsters who want jobs, good education, want to become doctors are being turned into rioters to support a particular political party. Today's media has become Hindu media and they don't follow ideals of journalism."

While the TV industry does claim to have a self-regulatory mechanism to monitor inflammatory content, there is little evidence that channels are following any guidelines or that any institutions are monitoring the content. Take the example of Sudarshan TV, a news channel owned by Suresh Chavhanke, who himself appears on his channel and warns viewers about "conspiracy to turn India into an Islamic country".

"There is a conspiracy to marry Hindu girls to Muslim boys," screams Chavhanke in one such video. "The speed at which Muslim population is growing is not good for India," he says in another clip.

ABP news channel anchor Sumit Awasthi interviewed the mother of a right-wing leader who was murdered in Lucknow. While the old woman names individuals who she thinks are responsible for her son's death, Awasthi ignores her and attempts to bring a Hindu-Muslim twist. Awasthi was rebuked by the woman who warned him for trying to build a communal narrative.

Rajdeep Sardesai, Consulting Editor, India Today Group, told Gulf News: "I think a large section of the Indian media, especially TV, has played a pernicious role in amplifying bigotry towards minority groups. It is shameful and reflects a moral degradation in the search for TRPs."

Political commentator Tehseen Poonawala said: "There is no doubt in my mind [that] the media is out to create a religious divide. Indian media is at its lowest...it knows what it is doing is incorrect and harmful, yet it continues to be a divisive force rather than one that acts like a pillar of democracy."

Social media user Celine Mary compared Indian media with 'white Southern' press. "The Indian media is playing the role of the white Southern press during the bloody 19th and 20th century in US. Like the Southern press, Indian media prepares ground for Muslim alienation by click-baits like 'Ram Hamare, Masjid Wale Kahan Se Padhare' (Ram is ours, from where Muslims came from). While the Southern Press called coloured people, 'fiends' and 'brutes', Indian media allows calling Muslim representatives Mulla and Jinnah with impunity, in their own studios. "

Shajahan Madampat, Cultural Critic and Commentator based in Abu Dhabi, wondered about the potential impact of the highly poisonous anti-Muslim discourse on India's 'national' TV channels on Indian and Pakisatani communities living abroad. "It is a matter of shame that a considerable segment of the media in our country [in India] has degenerated into a willing tool for communal mobilisation," he said.<sup>127</sup>

### **Formulating the Muslim Image through Movies**

In recent years, Indian cinema has seen a surge in films under the historical and military genre with prominent Bollywood cast that are dialling up patriotism into a clash-of-civilizations rhetoric. From Padmaavat to Uri to Tanhaji, every historical narrative is a lesson on how nothing is more important than protecting the motherland.

"You can see a change," says Rana Safvi, an author and historian documenting India's syncretic culture, about the Panipat and Tanhaji trailers. "It's becoming slightly more Islamophobic. It's a more aggressive tone." In Padmavat, Ranveer's redering of Alauddin Khilji (a Muslim king that invaded India) only draws attention to a characterization that leans far too heavily on Muslim invader tropes. The real Alauddin was certainly a tyrant, but the Alauddin of Padmaavat is a sadist, a psychopath and a rapist who stages an eight-month-long siege so he can enslave one woman. The image that seems to have stuck with everyone most is of him biting into hunks of meat. "It seemed very barbaric," said Safvi.

In Akshay Kumar starrer 'Kesri', the film's chief antagonist, a fanatical religious leader named Khan Masud, order the beheading of a woman who tries to run from her abusive husband. On several of the beheadings within the film, the villain recites surah Al-Fatiha—the most common prayer of the Muslims but with meaning completely out of sync with a beheading. Masud also calls for jihad (holy war) and repeatedly takes Allah's name while discussing battle plans.

In recent historical films, Hindus are more visibly Hindu. The Tanhaji trailer shows Devgn sitting beside a fluttering bhagwa dhwaja—the saffron standard of the Marathas. But there's an addition: the Om symbol, while the original Maratha flag had nothing printed on it. Muslims in such movies have also seemed more Muslim on screens in 2019: Kohl-lined eyes followed viewers from Gully Boy to Uri to Kalank to Panipat, and have been filmed in dark lightings with red overtones, while the Hindu Kings are all lit up.

Padmaavat and Kesari are set several centuries apart, but in each the protagonists are brave patriots, and the antagonists barbaric Muslims. It remains to be seen how Abdali and his people are portrayed in Panipat but the Afghanistan embassy to India has already expressed concerns about "insensitive/distorted depiction of (Abdali's) character". The trailer shows the Afghan king with a blood-streaked face, ranting

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<sup>127</sup> <https://gulfnews.com/world/asia/india/how-indian-news-channels-are-peddling-hatred-against-muslims-on-primetime-tv-1.67265166>

about conquering Hindustan, while Arjun Kapoor's smooth-cheeked Maratha general talks about defending his land.<sup>128</sup>

Admittedly, these movies represent a much more subtle influence on society than politics, but the truth is with their star studded cast, these Bollywood films are commercially successful and are watched by millions of impressionable people both within India and abroad. The Bollywood is catering to this divisive sentiments within Indian society by feeding it instead of using its creativity and influence to rectify it.

But the case of regional Pop Hindi Music is much worse, where Hindutva pop, New York Times reported, amplifies a wave of Hindu nationalism dance tracks are mixed with calls for religious warfare.<sup>129</sup>

"Every house will be saffron!" the singer, Laxmi Dubey, yelled into her microphone, referring to the color representing Hinduism. "We have to make terrorists run from our blessed land!" The crowd cheered when she added a throat-slitting hand gesture. She is one of the biggest stars driving the rise of Hindutva pop music in India over the past few years. The songs are amassing huge numbers of views on YouTube — Ms. Dubey's most popular song has more than 50 million on its own — and a growing fan base among the young. "Hindus used to be too innocent and docile to understand that Muslims are the biggest threat," Ms. Dubey said. "They needed someone like Laxmi Dubey to wake them up." Her goal, she said in NYT interview, is to recruit foot soldiers to make India a Hindu nation. One of the BJPS states, Chhattisgarh, where Ms. Dubey often sings, the culture department confirmed that his office had paid for some of her concerts. Ms. Dubey and several people who work for her said she regularly performs for officials from BJP. "We go wherever B.J.P. leaders invite us to perform," Ms. Dubey said. "That's because the B.J.P. is helping to propagate Hindutva."

The Quint reported another singer, Varun Bahar, that released his terribly autotuned song "Jo Na Bole Jai Shri Ram Bhejdo Usko Kabristan," (Whoever does not chant Shriram, send him to the Muslim graveyard.) Jai Shriram, although benign in its meaning, has come to symbolize the Hindutva virulence and became a war cry of Hindu nationalists which their victims are forced to chant to avoid being beaten up.

The Quint report on this new genre of Music includes several other samples. JantaMusic uploaded a song video with lyrics, "Get your sword and come out, and let's have 'the end' of those that promote Love Jihad". Love Jihad being another conspiracy theory that Muslim youths with their 'bikes and phones' have a systematic plan to entice Hindu girls into relationship and thereby converting them to Islam. The singer, Sandeep Acharya, claims to be the pioneer of the genre and enjoys as many as over a lakh views on his youtube songs of which he uploads 2-3 each month. He also performs for Hindu groups and earns around 2 lakhs a month. Another prolific singer, Prem Krishnavasnsni, has his less popular channel where he sings, "Hindustan belongs to Hindus, traitors go to Pakistan", and enough of Hindu-Muslims Brotherhood.

## A Solution At Last

Unless one denies this trend altogether, the obvious question follows: Where is all of this leading to? The 1992 communal frenzy that was directed towards Babri Mosque resulted in its destruction. The sneaky remarks of Modi after Sabarmati Express incident in 2002 resulted in the rape, torture and killing of thousands of 'Gujarati Muslim' in Godhra riots. Where is this national level frenzy going to its release?

<sup>128</sup> <https://www.livemint.com/mint-lounge/features/how-bollywood-is-rewriting-history-11575043190061.html>

<sup>129</sup> <https://www.nytimes.com/2019/11/10/world/asia/india-hindutva-pop-narendra-modi.html>



The Muslim question is not an insignificant question for BJP. In fact, it is a question on which bjp leaders have spoken frequently and consistently, and more than any policy decisions (with the possible exception of demonetisation). For several of its leaders, the Muslim Question must be the only responsibility of the BJP.

Considering the first solution posed by Golwalkar (of assimilation), there has been no indication that the Muslims population has become any less 'Muslim' in the recent years. In fact, a Muslim can't be good in groups. In fact, the BJP position is that Islamist terrorism is thriving in the country under the label of 'tukde-tukde gang' (break-India gang) and are generously funded by the dilapidated Pakistan. We have a Prime Minister mentored by Golwalkar's ideology that thinks Indian Muslims are part of a plot to join Pakistan and Bangladesh and create a unified Muslim State, and we have a government full of ministers that say the same out loud.

Despite no solutions being put forth in this regard, the Muslim Question continues to be repeated as a problem or concern. This silence, as opposed to the typical criticism by the Gandhians, marks an adoption of Golwalkar's solution for Muslims : "to live at its mercy so long as the national race may allow them to do so and to quit the country at the sweet will of the national race."

The signs of the silent arrival at this conclusion can be seen in the rhetoric of this regime. The BJP manifesto of 2014 declared India as 'a natural home for persecuted Hindus', indirectly introducing its own idea of India under the excuse of refugees. Due to this promise, concerns were raised back in 2014 as to what kind of government Modi will usher in. Since then, the concerns of its leadership has been consistently towards Islamist terrorism, the calls for Indian Muslims to go to Pakistan, and the 'rising population of Muslims'.

During June 2019, a public meeting in Delhi was called to discuss population control, which was attended by the chief activist on the population question, BJP MP Giriraj Singh, that also began his padayatra (Population Control March) to Delhi later that year. In the meeting, songs such as "Hamko gaddaro ki Badhti aabadi se khatra hai" (We are in danger because of the rising population of traitors.) were sung in the presence of the BJP leader and to a cheering crowd.

### **A Commentary On The Doublespeak And The Dog Whistles**

This brings us to the widespread use of doublespeak in Hindutva rhetoric. Words like Ghuspaithiye (Infiltrators) and Gaddar (Traitors) have become commonplace within the ambiguous calls to violence or removal. Consider this statement by Amit Shah as the reason for NRC: "We will remove every single infiltrator from the country, except Buddha, Hindus and Sikhs." In the unusual structure of the sentence, the word infiltrator is first used in its literal sense where a foreigner that entered India without legal means should be considered infiltrator. But then he calls from the Buddhist, Hindu and Sikh 'infiltrators' to not be removed despite committing the same crime. And this does not defer to any distinction between 'refugees' and 'infiltrators', as Amit Shah blanketly declares elsewhere that "All the Hindu, Sikhs, Buddhists, Jains and Christian came from the neighbouring countries are refugees."<sup>130</sup> This seeks to promote the view that Buddhists, Hindus or Sikhs can never be 'infiltrators' in India. After this modification, the only group that can be considered an 'infiltrator' in India is a Muslim, who can never be a refugee. CAA is merely the

<sup>130</sup> [https://twitter.com/free\\_thinker/status/1207956699073507328](https://twitter.com/free_thinker/status/1207956699073507328)

legalisation of this rationality. After establishing and legislating this, he is free to ask harmless questions even with an aggressive intent, “You tell me, these infiltrators that have arrived, should we expel them or not? Speak up! Should we expel them or not?”, or to clarify that, “No refugee should be concerned.<sup>131</sup> And all infiltrators must be concerned,” or “No refugee will be allowed to leave, and No infiltrator will be allowed to live.”. Even threats like “It will be the task of BJP to identify each infiltrator and throw him in the Bay of Bengal,” will not be labelled a hate speech as it merely talks about ‘infiltrators’.

This careful doublespeak seems to blunt the attacks of opposition and media that struggle to connect the hate speeches with the subsequent hate crimes due to a lack of explicit provocation of a particular group. For this purpose, a line of enquiry and question must be established to expose this doublespeak. In Hindutva discourse, through clear developments, the word Infiltrator has been made to represent Muslims that arrive from outside India, while the term Traitor (Gaddar), as used in the anti-population song mentioned earlier, is a commonplace word for Hindutva’s internal use to refer to Muslims present within India that have not yet assimilated into its culture (i.e. everyone but M. A. Naqvi). As per the theory subscribed by the PM Modi himself, they are steadily waiting and increasing in population for their infiltrator ‘brothers from Pakistan’ to declare the insurgency so they can take over India like Kashmir and make it an Islamic State. After a recent combination of hate speeches by several BJP leaders in Delhi campaign where in a public speech, the Junior Finance Minister led a chant of ‘Shoot the [expletive] Traitors”, which led to three incidents of shooting in the protest location in Delhi. During debates, the usual defense was employed by BJP spokespersons of rumoured ‘anti-national activities’ among protests and by saying ‘Traitors’ does not refer to ‘Protestors’, and asking how can anyone object to ‘Traitors’ being shot.

Creating another angle of doublespeak, Amit Shah, despite visibly struggling with it, kept mentioning the entire list of religions that will get citizenship without any documents or trouble. The only reasonable explanation for going through the trouble of listing the six religions individually around 20 times across various speeches is that he wanted groups of people to be relieved, one by one, and not be listening until the end to notice the omission of Muslims from the easy citizenship category. Eventually, when the problem of citizenship begins, CAA would no longer be opposed by these communities due to being saved by it. Thereafter, NRC as well should be a matter agreed upon by the people of the protected faiths, or at least should not concern them. This unity would help the government move against the unprotected decisively.

Another example is the BJP manifesto of 2014 which sought to make India the ‘natural home for persecuted Hindus’, indirectly introducing its own idea of India under the excuse of refugees. The obvious implication of this notion was that due to its place of origin, Hinduism was the most naturally Indian among all the religions in India, and the people of other countries following Hindu religion must get priority treatment in citizenship. The reason it is a doublespeak and an excuse is the question of Hindu refugees is a non-issue, which most of the Muslim communities would support. But instead of calling for a liberal policy on Hindu refugees, the BJP pretends as if changing the very nature of India is the only way for it to have a liberal refugee policy. Secondly, once India is legally a natural Homeland for ‘Hindu’ religion as opposed to the Indian race, all the people of the Indian race that follow other religions become ‘unnatural’ citizens simply because they chose to follow religions that originated in other lands. The India this road leads to is an actualization of the Savarkarian dream of having, within India, not just one ethnicity, but within that

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<sup>131</sup> <https://twitter.com/i/status/1207956803566202881>

ethnicity only one religion (civilization). In no uncertain terms, this first step of religion based citizenship is the foundation stone of the Hindu Rashtra.

### **Tacit Admission of the Agenda**

The Lok Sabha debate on this Act, although not ideal, was extremely important in pushing the government to the point where the attack mounted by the sparse opposition frustrated the Home Minister enough to let his mask of composure and sanity slip. In the debate, the BJP struggled to keep control of the narrative of this Act as a benign refugee policy, and as the debate progressed, the continuous mention of constitutional invalidity made BJP move the discussion towards historical and other basis to justify the reasonableness of its classification. During this phase, the bill has also been described as a catharsis for the mistake of congress 'to allow partition on religious grounds'. Then, in the final phase of the debate, the exclusion of Muslims were justified using absurd, unsatisfactory statements like 'Muslims cannot be persecuted in Muslim countries' and 'Muslims have other countries to go to'.

In his 'aggression' to mount a robust defense for his Act, Amit Shah forgot to check himself against the first principle of being a professional racist: Never Lose you Composure. After an effective cornering of the Home Minister by the opposition, several Anti Muslims remarks found their way into a frustrated Amit Shah's arguments such as "to kya saare Muslims ko jaga de de kya?" (Should we make place for all the Muslims around the Globe?). This delivered two very important impressions to the otherwise uninterested streets: First, that the BJP could not defend this Act or tacitly admitted to its communal nature, and Second, the aggression of Amit Shah's responses showed the government's intention to impose this new 370-like law on the entire India, come what may. Therefore, the Lok Sabha episode accelerated the debate a lot faster than it would have if the parliament proceedings took place without any reaction from the cabinet, and the people were left to speculate whether the law is in fact problematic.

### **The Fallout of Lok Sabha Debate**

After the true reason of the Act was unintentionally admitted, the BJP threw its entire weight behind justifying this admitted grounds. Modi himself used religious symbolism to appeal to Hindus that 'children of Maa Bharti are in trouble', and calling the act 'atonement for partition'. BJP leader Himanta Biswa Sharma said that 'NRC's purpose is to weed out the Jinnahs.' and several spokespersons of BJP such as Shubrashtra alluded to other conspiracy theories of Ghazwa e Hind in her NDTV debate.

The pivotal moment came when, during an anti-CAA protest by the students of Jamia Millia Islamia (JMI) and Aligarh Muslim University (AMU), excessive use of violence by the UP and Delhi police, in violation of police guidelines, led to more than 100 students being injured and dozens arrested. After this incident, the protests began to gain traction in the national media. Per usual, Modi gave a speech accusing Congress of fuelling the violence, saying the opposition's actions prove that the decision to pass the bill was "1,000 per cent correct". This was followed by one of the clearest dog whistles by him in a long time when he taunted that those indulging in arson "can be identified by their clothes". Although one must admit that as a defense for a bigoted law that identifies the persecuted by their religion, this remark is consistent.

Since the police crackdown, students from other prominent institutes across India such as Indian Institutes of Technology (IITs), Lucknow's Nadwa College, Delhi University etc. held protests in solidarity with the Students of JMI and AMU. After immediate articulation of the implications of CAA by leaders like Yogendra



Yadav, Shashi Tharoor and Assaduddin Owaisi, protests erupted across the nation within a matter of days, that, on rare occasions, turned violent as well. Several of the leaders, intellectuals, historians taking to streets to articulate their objections and to join the protest were detained, arrested or even house-arrested. The violence of the police on protesters continued in the states of UP, Delhi and Bengaluru where the police even used fired at the protestors. This increased the protests further, and facing this unexpected blowback, the leadership of the BJP began its familiar game, and things got real ugly real fast. The right wing organisations (like Sanatana Sanstha) supporting the government also sprung in action, promoting the most stretched interpretations of the Act that appealed to its own extremist base in order to consolidate support from its worst element who took out support as the first step towards Hindu Rashtra and abolition of the secular constitution. They're the only reliable supporters of this bill, because they are supporting it entirely, word by word, without any ifs and buts, or require any explanations.

What followed was a complete whitewash of the people fighting for inclusion among the protected classes of the act as people seeking exclusion of the protected classes. Thus protests of people fighting for an attack on their security and fundamental rights became a protest of heartless people that didn't care about the persecuted refugees wanting to send them back in the middle of atrocities. In order to remove the plain agenda of this bill from discussions, the government began to assign an ulterior, unstated agenda to the protests themselves of breaking India up or protesting against Hindu refugees because it postpones the Muslim plans to overtake the Hindu population to become the majority by 2050.

The entire right-wing vocabulary of labels (Urban Naxals, Congress, Opposition, Tukde-Tukde gang, anti-national elements, Traitors, Illiterate Muslims etc.) were exhausted against the protestors in order to mobilize the entire right to effectively push back against the movement. Of course the protestors bring Muslims helped initially as in the current hateful environment, any Muslim dissenting is at best dissenting without any good reasons, or at worst dissenting for anti-national reasons. But the unique problems BJP faced in this pushback was The Shaheen Bagh protests, that is an ongoing 24/7 sit-in protest using non-violent resistance which began with the CAA and the ensuing police violence and has completed its 50 days. This protest is led predominantly by women, and with the students slowly taking a marginal position, Shaheen Bagh has become the center of resistance against CAA, leading to similar women-led sit-ins named after the Shaheen Bagh in other cities of India like Prayagraj, Kanpur, Kolkata, Patna, Pune and Gaya etc. among others. This leadership by women rendered the existing vocabulary of the right-wing (consisting of labels primarily used to label the archetypal college student with toxic rage and a rebellious, masculine appearance) as redundant and even ridiculous. But instead of taking the day off, the BJP strategists worked overtime to come up with 'the women at Shaheen Bagh were paid 500 to 1,200 rupees daily along with promises of refreshments by the Congress party' and 'Kejriwal distributed biryani to Shaheen Bagh protestors, getting Pakistani's support'. Why couldn't Kejriwal fund a biryani party for 500 women without getting funds from Pakistan, must be added to the list of questions this protest wants answered.

This has proved a disastrous miscalculation by the BJP in this move. A change in variables of the experiment produce different results, and India has proved that the expectations of a 20th century German silence or ambivalence from a 21st century Indian majority was extremely unreasonable. And as people from all faiths and classes have joined the Muslims and Dalits on the streets to protest against the act, the minorities are relieved to know that they do not remain the only custodians of the dream. As to the BJP's decision to set all pretensions of civility aside and get in the game, all the poisonous rhetoric will remain etched in the perfect facade that BJP used to maintain. The lawmakers sitting in the houses of parliament

are being given a lesson in constitution from the streets, and the CAA will go down in history as a failed attempt to link India's familiar reality with an unfamiliar future.

## **Conclusion: Our Demands**

- 1) Repeal/Withdraw CAA unconditionally and pass a resolution in parliament that there is no intention or plan to conduct NRC, directly or indirectly through NPR exercise. Restoration of NPR Form of 2010.
- 2) Restore the distinction between illegal migrants and bona fide refugees as intended by the 2003 Amendment.
- 3) For refugee policy, either consider the Refugees And Asylum Seekers (Protection) Bill, 2006, The Asylum Bill, 2015 or ratify UN conventions, or pass CAA accommodating the parliamentary recommendatory committee's Subhash Kashyap's request that the law be drafted to give the benefit of citizenship to "persecuted minorities" instead of naming specific religions from neighbouring countries, as the term "persecuted minorities" was enough to cover all those whom the legislation aimed to cover.
- 4) Fair and independent investigation into police brutalities and action against the guilty on both sides. We aren't BJP that only sees extremism in the opposition.

Thank you for your attention,  
Regards.