

Making Sense of India's Citizenship Amendment Act 2019

Process, Politics, Protests



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Executive Summary

The objective of this paper is to go beyond the standard story of the Citizenship Amendment Act (CAA) 2019, a law passed by the Indian Parliament that offers citizenship to non-Muslim religious communities of three Muslim-majority states (Pakistan, Bangladesh and Afghanistan). The paper recognizes the CAA as a *political* phenomenon and tries to map out the ways in which CAA-related politics is played out. It asks three sets of questions: (a) What is the historical/political background that makes this law highly controversial? (b) What are the legal-technical issues related to this law and what are its political implications? (c) What has been the response of different groups, especially of the Muslim communities? What are their arguments and positions?

The paper argues that the CAA is an outcome of a new politics of *Hindutva* constitutionalism. This politics relies heavily on the legal-technical ambiguities inherent in the post-1980 citizenship framework to carve out a space for itself. The growing centralization and state control to regulate the citizenship apparatus is reflected not only in the CAA, but also in the National Register of Citizens and the National Population Register. The CAA, in this sense, stems from the notion of *New India*, a political doctrine that is based on the desirability of *responsive citizens*.

Second, the CAA is mostly concerned about the BJP's newly created *Hindutva* constituency. The non-Muslims coming from Afghanistan, Pakistan and Bangladesh will not get Indian citizenship on their arrival. The government has not yet prepared the proper mechanism to determine the level of religious persecution, a precondition of citizenship as per the 2015 rules. In fact, there is no guarantee that these migrants would eventually get Indian citizenship. This technical ambiguity, however, is politically useful. It provides an opportunity to *Hindutva* forces to reinvent the Hindu victimhood argument. Citizenship to non-Muslims of Muslim countries, in this sense, is a new long-term project of contemporary *Hindutva*.

Third, the opposition to CAA is equally fragmented. The political class does not want to go beyond the established *Hindutva* hegemony. In fact, except a few parties, the non-BJP groups found it difficult to associate themselves directly with anti-CAA protests. As a result, the creative potentials unleashed by the Muslim-dominated anti-CAA protests could not be channelized to produce any creative critique of *Hindutva* hegemony.

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Introduction

The Citizenship Amendment Act 2019 (CAA) – a law passed by Indian Parliament that offers citizenship to non-Muslim religious communities of three Muslim-majority states – Pakistan, Bangladesh and Afghanistan – is often presented as an unequivocal and explicit issue of *conflict*. On the one hand, there is a Hindu nationalist position known as *Hindutva* that envisages the CAA as an essential political doctrine to rationalize its version of nationalism. The proponents of the law – the ruling *Bharatiya Janata Party* (BJP) and the organizations committed to the *Hindutva* ideology – claim that non-Muslim religious minorities face discrimination and religious persecution in neighboring Muslim countries. The CAA, thus, provides citizenship to these persecuted religious groups on humanitarian grounds. The adversaries of the CAA – the *liberal-constitutionalists* – on the other hand, invoke the spirit of the Indian Constitution to protect the liberal secular values. They find the *selective* invocation of religion as a category legally problematic and argue that identifying the non-Muslim communities of Muslim-majority states for providing Indian citizenship contradicts the secular principles of Indian Constitution; hence, CAA is inextricably linked to the anti-Muslim *Hindutva* politics of the BJP.

This standard description of the CAA debates certainly introduces us to the emerging binary of Indian politics – *Hindutva versus liberals* – that has begun to take a concrete shape after the 2019 general elections.¹ However, portraying the CAA merely as *an issue of conflict* between two political-ideological forces is analytically unhelpful. Instead, one may focus on three critical issues, which are not given any serious intellectual attention in the recent debates. First, there is virtually no discussion on the *procedural technicalities* – the process by which the CAA as a legislative entity comes into existence. We must remember that the CAA was drafted by the Ministry of Law and scrutinized by the law departments of the government at various stages. These legal experts did discuss and make sure of its constitutional validity. The BJP's eagerness to pass this law in 2019 underlined the fact that the government was fully confident about the legal technicalities associated with the CAA. These legal-technical justifications seem to contribute directly to the political arguments of the party leaders.

1. Although the mainstream political parties have not yet formed any formal electoral coalitions on these lines, this political binary is clearly established. I discuss this point in the final section of this paper.

Second, there is a problem of *political essentialism*. The *Hindutva*-versus-liberals binary has created the impression these are the only two possible interpretations of the CAA. The liberals, for instance, tend to link the CAA with the old *Hindutva* argument that India must be declared a Hindu nation (*Hindu Rashtra*). Many anti-CAA commentators claim it is a direct attack on the idea of a secular citizenship. While there is merit in this line of reasoning, the portrayal of *Hindutva* as an anti-constitutional form of politics is misleading. Contemporary *Hindutva* does not adhere to the old Hindu nationalist rhetorical ideals such as *Dharam Rajya* (rule of principles) *Hindu Rashtra* or *Akhand Bharta* (undivided/ unbroken India). On the contrary, it wants to appropriate the Constitution for creating a new Hindu majoritarian common sense.

Third, there is no systematic discussion on the *Muslim responses* to the CAA. Commentaries on Muslim-led protests against the CAA do not give sufficient attention to the complexity of this new kind of Muslim politics. They usually fail to understand the crucial difference between *what is* and *what ought to be* the Muslim response to the CAA. As a result, old debates such as Muslim search for the right kind of leadership, lack of Muslim political representation and the socio-economic marginalization of Muslims dominate the public discussion.

The objective of this paper is to go beyond this politically correct story of the CAA. It recognizes the CAA as a *political* phenomenon and tries to map out the ways in which the CAA-related politics is played out. The paper asks three sets of questions: (a) What is the historical/political background that makes this law highly controversial? (b) What are the legal-technical issues related to this law and what are its political implications? (c) What has been the response of different groups, especially of the Muslim communities?

The paper is divided in four sections. The first section looks at the historical background of the present debate and contextualizes the changing political perceptions of Hindu nationalist discourses towards the idea of citizenship. The second section is devoted to the legal-technical story of citizenship laws in India and its relationship with the CAA. The next section highlights four most controversial questions associated with the CAA. It examines the *Report of the Joint Parliamentary Committee on the Citizenship Amendment Bill 2016* (2019) as an important source to trace the interconnections between the legal arguments in favor of the CAA and the political explanation given to it by the BJP. The fourth section deals with the Muslim reactions to the apparently exclusionary CAA-NRC-NPR (National Register of Citizenship - National Population Register) configuration.

Hindu Citizenship and *Hindutva* Constitutionalism

This section focuses upon the historical and contemporary trajectories of *Hindutva*. It examines the ways in which *Hindutva* responds to the idea of a secular Constitution, in the specific context of CAA.

India's secular definition of citizenship

The “natural right” of Hindus to become Indian citizens has been a most contentious political issue since 1947. The creation of Pakistan on a religious basis and subsequent migration of communities across borders provoked many members of India's Constituent Assembly to demand that Hindus and Sikhs should be given unconditional Indian citizenship. This line of argument did not survive however, and the Constituent Assembly finally adopted a secular definition of citizenship.² Terms like Hindu, Muslim and Sikh were replaced by overtly secular categories. Even the frequently used expression “Hindu/Sikh refugees” was intentionally excluded in the final version of the Constitution and the individuals who were coming from Pakistan were described as “migrants”.³ These secular principles of citizenship envisage a crucial distinction between the given, and somewhat fixed, religious cultural identities of an individual and his/her formal association with the State as a citizen. In this sense, an attempt was made to replace a permanent communal majority based on Hindu/Muslim distinction with what B.R. Ambedkar, the Chairman of the Constitution Drafting Committee, called a *political majority* based on rational secular principles.⁴

2. This section draws heavily from A. Roy, *Mapping Citizenship in India*, Delhi: Oxford University Press, 2010, and N. Gopal Jayal, *Citizenship and its Discontents: An Indian History*, Cambridge: Harvard University Press, 2013.

3. O. Shani, *How India Became Democratic: Citizenship and the Making of the Universal Franchise*, Cambridge: Cambridge University Press, 2017, p. 208-247.

4. Ambedkar said: “In India, the majority is not a political majority. In India the majority is born; it is not made. That is the difference between a communal majority and a political majority. A political majority is not a fixed or a permanent majority. It is a majority which is always made, unmade and remade. A communal majority is a permanent majority fixed in its attitude. One can destroy it, but one cannot transform it”. B. Ambedkar, *Dr. Babasaheb Ambedkar: Writings and Speeches* (Vol. 1), New Delhi: Education Department, Government of Maharashtra, 1979, p. 377.

The Constitution, broadly speaking, conceptualizes the idea of Indian citizenship in two ways. First, it sets out four broad context-specific principles to define the nature of Indian citizenship: Citizenship to inhabitants (the persons who were residing in India at the commencement of the Constitution would have to be treated as its citizens with some caveat); Citizenship to migrants (the persons who were coming from Pakistan after the Partition of British India); Citizenship to the persons of Indian origin (who were residing outside India) and the idea of single citizenship (if a person voluntarily acquires citizenship of a foreign State, he/she would not be treated as an Indian citizen).

Second, the Parliament is empowered to regulate the right of citizenship (Art. 11). In other words, the Parliament is recognized as an ultimate authority to define Indian citizenship in a comprehensive manner following the four broad constitutional principles. Following this mandate, a wide-ranging law, the citizenship bill, was introduced in the Lok Sabha (the lower house) on 2 May 1955. The bill was thoroughly debated in both houses of Parliament and finally passed in December 1955 as the Citizenship Act, 1955. The Act adhered to the principles set out by the Constitution. It did not use religious categories such as Hindu, Muslim and Sikh. Instead, it gave a secular definition of citizenship and created a legal mechanism to offer citizenship on the bases of birth, descent, registration and naturalization. The Act did not link the idea of Indian citizenship with Hindus living in Pakistan. It thus deviated significantly from the post-partition political narrative that Hindus should have a natural right to Indian citizenship.

This did not mean, however, that the plight of migrant communities and/or the minorities who stayed back in India and Pakistan after 1947 was ignored. The famous Nehru-Liaquat Pact of 1950 reflected the concern of Indian establishment towards minorities in Pakistan. Both governments agreed to give citizenship rights to all communities and to protect the interests of minorities, irrespective of religion.⁵ This secular conception of citizenship in India was followed in the preparation of the National Citizenship Register (NRC) in 1951.⁶ Prime Minister Nehru successfully launched a massive and overtly secular rehabilitation program for accommodating migrant populations, mainly Hindu and Sikh, into the nation-building process in the early 1950s.

5. See: Agreement between the Governments of India and Pakistan Regarding Security and Rights of Minorities (Nehru-Liaquat Agreement), New Delhi, 8 April 1950, available at: <https://mea.gov.in>.

6. See: Office of the State Coordinator of National Registration, "Who is Eligible for Inclusion?", Government of Assam, available at: www.nrcassam.nic.in.

In contrast, Pakistani authorities refused to take Muslim migrants from India in later years, as they saw them as an economic and social liability.⁷ In fact, Pakistan did not commit itself to grant citizenship to all Muslims of South Asia. Even after 1956 when Pakistan was officially declared an Islamic state, it did not offer citizenship to any individual only on the basis of his/her Islamic identity.⁸ Bangladesh followed similar principles and did not give any preference to Indian Muslims. The Muslim citizens of India have to obtain a visa to visit Pakistan or Bangladesh. There is no official provision that allows them unrestricted access to these countries. The argument that Pakistan/Bangladesh is a “Muslim homeland”, therefore, is misleading.

The Hindu Nationalist position from the 1950s to the 1990s

The Indian citizenship issue, nevertheless, was not settled. Hindu nationalist organizations – Hindu Mahasabha, Rashtriya Swayamsewak Sangh (RSS) and Bhartiya Jan Sangh (BJS) – reinvented the idea of citizenship for political purposes.⁹ Although the Hindu Mahasabha and BJS did not subscribe to any common political program of action, there was an ideological consensus that Hindus must be treated as preferred and natural citizens of India. Despite being an insignificant political force in the 1950s, Hindu nationalist groups were keen to appropriate the post-partition trauma of Hindu and Sikh refugees. The citizenship issue, in this sense, was an important point of reference to question the legitimacy of the secular Constitution. Let us look at the positions of RSS and BJS to elaborate this point.

The RSS was very critical of the symbols of the newly created Republic of India, especially its Constitution. For instance, *the Organizer*, RSS's journal, lamented in its editorial of 30 November 1949 that the Constitution did not refer to the laws contained in the sacred texts of Hinduism:

7. V. Fazila-Yacoobali Zamindar, *The Long Partition and the Making of South Asia: Refugees, Boundaries, Histories*, London: Penguin/Viking, 2007, p. 82-85.

8. See: *The Pakistan Citizenship Act, 1951*, available at: www.refworld.org.

9. The RSS (Rashtriya Swayamsewak Sangh) was established in 1925 as a cultural-social organization committed for the Hindu cause. It was banned by the government on several occasions. The BJS (Bhartiya Jan Sangh) was established in 1951 as a political party by a second generation of RSS workers. It would later become the BJP (Bharatiya Janata Party). The RSS describes the BJS and BJP as RSS-inspired organizations. See: RSS, “Vision and Mission”, 22 October 2012, available at: <http://rss.org>.

[...] in our constitution there is no mention of the unique constitutional development in ancient Bharat {India}. Manu's Laws were written long before Lycurgus of Sparta or Solon of Persia. To this day his laws as enunciated in the *Manusmriti* {Laws of Manu} excite the admiration of the world and elicit spontaneous obedience and conformity. But to our constitutional pundits that means nothing.¹⁰

The BJS, on its part, proposed an interesting critique of the secular Constitution. Its 1951 manifesto called upon voters to establish a “*Dharam rajya* based on Rule of law” for the revival of *Bharatiya* culture and revitalization of true *Bharatiya* nationalism.¹¹ Although it began to appreciate a few constitutional ideals in later years, the BJS continued to raise the citizenship issue. For instance, its 1957 manifesto demanded that there be no visa restrictions for Hindus migrating from Pakistan.¹² Its 1964 manifesto also demanded that Hindu Pakistanis be given Indian citizenship:

There has been a continuous exodus of non-Muslims, especially Hindus from Pakistan due to its anti-Hindu policy [...] it is government's responsibility to rehabilitate and compensate them [...] BJS will [...] implement various schemes made in this regard [...] Citizenship rights will be conferred in the course of rehabilitation.¹³

Three inferences can be drawn from these early Hindu nationalist claims. First, Hindu nationalist organizations invoked the language of minority/majority to justify the use of religious categories, Hindus and Muslims. This Hindu/Muslim binary helped them to defend their political imagination of *Hindu India* and *Muslim Pakistan*. Second, a clear distinction was made between Muslims and non-Muslims migrants. Muslim migrants were designated as *Pakistani infiltrators* while Hindus and Sikhs were addressed as *refugees*. This distinction underscored the Hindu nationalist argument that India was a natural homeland for Hindus.¹⁴ Third, the plight of Hindus in Pakistan was used strategically to target Indian Muslims, who were called Pakistani spies or the *fifth column*.¹⁵ The constitutionally granted minority rights and secular citizenship status of Muslims in India were often described as institutional

10. S. Islam, *Know the RSS: Based on Rashtriya Swayamsevak Sangh Documents*, Delhi: Pharos Publication, 2017, p. 7.

11. BJS, *Party Documents, 1951-1972*, Vol. 1, New Delhi, BJS Publication, 1973, p. 49.

12. *Ibid.*, p. 93.

13. *Ibid.*, p. 156.

14. N. Parveen, *Contested Homelands: Politics of Space and Identity*, London-New Delhi: Bloomsbury, 2020.

15. See for instance: RSS Resolution, 1964.

“appeasement”. This “Muslim appeasement” thesis was used to question the credibility of Indian secularism and to express an explicit critique of the Constitution.¹⁶

Contemporary *Hindutva*'s constitutionalism

One may see the CAA as the logical outcome of these Hindu nationalist assertions and, therefore, as an organized attempt to establish a Hindu nation in India. This simplified reading is misleading. In the 1990s, Hindu nationalist forces reinvented a unified idea of *Hindutva* as a refined political project, which has been successfully accommodated in the realm of competitive electoral democracy. In the 1990s for instance, the BJP did not use the rhetoric of *Hindu Rashtra* or pseudo-secularism to oppose the secular character of the Constitution. Instead it demanded a *comprehensive review* of the working of the Constitution. The CAA, in this sense, emerges out of this new *Hindutva*, which had already recognized citizenship as a political issue even before the Citizenship Bill 2016 was introduced in Parliament.

It is worth noting that RSS, and for that matter BJS/BJP, were not comfortable with the term *Hindutva* to describe their ideology before the Ram temple-Babri Masjid issue.¹⁷ The term was always associated with V.D. Savarkar and his organization, the Hindu Mahasabha.¹⁸ It was only after the famous *Hindutva* judgement of the Supreme Court in 1997 that the BJP formally accepted *Hindutva* as its philosophy.¹⁹ These ideological ambiguities around the term were finally resolved by Mohan Bhagwat, the chief of the RSS, in 2018, when he delivered three lectures on RSS's version of *Hindutva*. Bhagwat described RSS as an open, flexible and change-oriented network. He offered new meanings to the term *Hindutva* from RSS's viewpoint and even went on to reject some formulations of M.S.

16. H. Ahmed, *Siyasi Muslims: A Story of Political Islams in India*, Delhi: Penguin Random House, 2019.

17. The Babri Masjid – a 16th century mosque in the north Indian city of Ayodhya – was allegedly located on the site where Hindu God Lord Rama was born. In 1997, the BJP launched a movement for constructing a Hindu temple on the site. The mosque's structure was demolished by a Hindu mob led by a few BJP leaders in 1992. The Supreme Court finally gave its verdict in favour of Hindus on a few technical grounds in 2019. See: H. Ahmed, *Muslim Political Discourse in India: Monuments, Memory, Contestation*, London-New Delhi: Routledge, 2014.

18. The term was coined by V.D. Savarkar in 1923. In his book *Hindutva*, Savarkar identifies a few characteristics of the Hindu nation – a marked geography, a common language (Sanskrit), a common culture and a belief that this land is a holy land. See: V.D. Savarkar, “Essentials of Hindutva”, 1923, available at: <http://savarkar.org>.

19. The Supreme Court defined the term *Hindutva* as a way life in its 1997 judgement. This actually gave a legal justification to *Hindutva* politics in later years. H. Ahmed, *Siyasi Muslims*, *op. cit.*

Golwalkar, one of the RSS' most respected ideologues. These lectures help to understand at least three aspects of the CAA controversy: *meanings of citizenship*, the *imagination of a Hindu nation* and the *status of the Constitution* in contemporary India.

Bhagwat did not invoke the issue of citizenship in a formal sense. Instead, he made a few observations about the *core values of Hindutva*:

According to us, Hindutva has three basics: patriotism, glory of our ancestors and respect for culture [...] The collective notion of values belonging to the religions (*sampraday*) that are sprung from the entirety, that is India, is known as Hindutva. [...] This is the mark of India. And, India belongs to that.²⁰

Bhagwat seemed to upgrade the *punyabhumi* (holyland) argument of Savarkar, who invoked a crucial distinction between the Indian origin of a few religions as *originally Indian* and the alien religion such as Islam and Christianity. But unlike Savarkar, he remained kind towards Muslims and asserted that there would be no *Hindutva* without Muslims!²¹ Bhagwat did not make this comment to *appease* Muslims. On the contrary, his objective was to cherish *Hindutva* openness and suggest that Muslims enjoyed political equality in India despite the fact that their religion did not originate here. This *Hindutva generosity* argument must be seen in relation to a resolution passed by the RSS in 2013 about “persecuted Hindu, Sikh and Buddhists minorities” of Pakistan and Bangladesh. This resolution called upon to the Indian government to provide citizenship to these groups, noting that:

The government cannot shy away stating that it is an internal matter of the respective governments. [...] In Bharat every Constitutional measure was invoked to accord not only protection and security but also many special provisions amounting to appeasement in favour of the so-called minorities. They are well-placed in our country today in terms of their demographic, economic, educational and social status [...] the Hindus of Bangladesh and Pakistan have been subjected to continuous persecution.²²

This *new Hindutva* conceptualization of *core* Indian values, *original* religions/communities and its imagination of persecuted minorities, especially of Hindus under Muslim rule appear to be the ideological sources, which are given a legal interpretation in the CAA. In order to justify this revised version of *Hindutva*, Bhagwat made a crucial distinction

20. M. Bhagwat, “Bharat of Future – An RSS Perspective (Day 1)”, 18 September 2018, available at: <http://rss.org>.

21. H. Ahmed, *Siyasi Muslims*, *op. cit.*, Chapter 4.

22. Archives of RSS, available at: www.archivesofrss.org.

between State and nation. He rejected the western idea of nation-State as it empowered the political entity called the *State* over the cultural identity, which is *nation*. In his opinion, the nation-State framework was not applicable in the Indian context for historical reasons. There had been various kinds of states in India; but this political diversity could not have any impact on India's national identity in cultural terms. Realization of this intrinsic Indian cultural identity, according to Bhagwat, was *Hindutva*.²³ This conceptualization helped *Hindutva* forces to argue that Hindus living outside India, especially in Pakistan, were inseparable part of the *Hindutva* nation on cultural basis.

Bhagwat's take on the Constitution was the most fascinating aspect of his lectures. He strongly argued that the RSS was not interested in changing the constitutional structure of the country and emphasized upon the need to evolve a national consensus in favor of his interpretation of *Hindutva*. He envisaged the Constitution as a tool and a mechanism to achieve a new national consensus through a legal process.

This radical defense of the Constitution is not surprising. Narendra Modi as the BJP's Prime Ministerial candidate began his election campaign with a bold declaration that the Constitution was a "holy book".²⁴ This fascination for the Constitution as a "sacred doctrine" continued after the impressive victory in the 2014 election. In October 2015, the government declared that 26th November, the day when the Constituent Assembly adopted the final draft of the Constitution in 1949, would be celebrated as *Samvidhan Divas* (Constitution Day) every year. In a speech dedicated to the greatness of the Constitution, Modi went on to say, "if there is any creation made by man, which is immortal, it's India's Constitution".²⁵

The CAA is linked to this pro-Constitution attitude of *Hindutva* forces in two ways. First, it is not exclusively about migrating Hindus. It covers the non-Muslim religious minorities of neighboring Muslim states. Unlike the Hindu nationalist arguments of the 1950s, which used terms like Hindu/Muslims and minority/majority interchangeably, the CAA employs a more sophisticated legal language. Its emphasis on the term *religious minority* corresponds to the established legal-constitutional framework and provides it an *inclusive* character.

23. M. Bhagwat, "Bharat of Future – An RSS Perspective (Day 1)", *op. cit.*

24. N. Modi, "Sabka Saath, Sabka Vikas: Collective Efforts, Inclusive Growth", 9 May 2014, available at: www.narendramodi.in.

25. N. Modi, "Our Constitution Has Kept Us United", 26 November 2017, available at: www.narendramodi.in.

Secondly, the CAA is also an attempt to revise the minority-majority debate.²⁶ Since 2014, the BJP government has tried to appropriate the minority idea to legitimize its *Hindu victimhood* argument.²⁷ In 2017, a BJP leader even filed a Public interest litigation (PIL) in the Supreme Court to demand that Hindus must be declared a minority in nine Indian states (Lakshadweep, Mizoram, Nagaland, Meghalaya, Jammu and Kashmir, Arunachal Pradesh, Manipur and Punjab). It argued that the minority rights of Hindus were “being siphoned off illegally and arbitrarily to the majority population because neither Central nor the State Governments have notified Hindus as a ‘minority’ in these states”.²⁸ The CAA, in this sense, extends the scope of this kind of legal arguments.

Table 1: Hindu nationalist politics of citizenship

	Hindu nationalist position 1950-1990	Contemporary <i>Hindutva</i>
Citizenship	Hindus have a natural right to claim Indian citizenship (1950s)	Non-Muslim persecuted minorities (incl. Hindus) of 3 neighboring Muslim-majority states must be given citizenship on technical ground. (2019)
Indian Constitution	Replaced/amended: It should be replaced by <i>Dharm Rajya</i> (1952) Revised: It should be revised thoroughly to evaluate its working (1999)	Revered: it should be treated a holy book (2014)
Hindu nation and Muslims	There is a need to <i>indianize</i> Islam and <i>nationalize</i> Muslims.	Indian Muslims enjoy equal rights as minority; hence, offering citizenship to non-Muslim persecuted minorities of Muslim states is legitimate and justifiable.

Source: Author.

26. P. deSouza, H. Ahmed, S. Alam, *Democratic Accommodations: Minorities in contemporary India*, New Delhi-London: Bloomsbury, 2019.

27. H. Ahmed, “Why Minorities Feel Alienated in India”, *The Hindu*, 3 June 2019, available at: www.thehindu.com.

28. Live Law News Network, “PIL In SC For Granting Minority Status To Hindus In 8 States [Read Petition]”, 31 October 2017, available at: www.livelaw.in.

Changing Contours of Indian Citizenship and the CAA

To understand the legal-technical story of the CAA, one must look at three issues that actually determine the political contours of this law: (a) The changes introduced in the citizenship law in the post-1980s; (b) the Assam accord and the National Register of Citizenship - National Population Register (NRC-NPR) debates; and (c) the Overseas India Card (OIC) holders debate.

The Assam accord of 1985: changes in the citizenship law

The Assam Accord of 1985 was the result of a six-year student movement against the migration of Bangladeshi refugees in Assam. The movement demanded that the government identify illegal immigrants so as to protect the rights of indigenous Assamese people. It successfully ended when its leaders signed a Memorandum of Settlement with Indian government representatives on 15 August 1985.²⁹

The Assam accord paved the way for a significant restructuring of Citizenship Act, 1955. For the first time, a cut-off date was introduced to determine the citizenship status of an individual (Art. 3 of the 1955 Act). All persons born in India on or after 26 January 1950, but before 1 July 1987, were recognized as Indian citizen by birth. However, a new condition was added for those who were born after the cut-off date. It was now mandatory for them to prove that at least one of his/her parents was an Indian citizen at the time of his/her birth. This criterion was modified again in 2004. A new subsection [3(ii)] was added in the 1955 Act, which clarified that a child would only be recognized as an Indian citizen by birth if one of the “parents is a citizen of India and the other is not an illegal migrant at the time of his birth”. The cut-off date was also changed from 1 July 1987 to 30 June 2004.

29. Accord between AASU, AAGSP and the Central Government on the Foreign National Issue (Assam Accord), 15 August 1985, available at: <https://peacemaker.un.org>.

The introduction of Article 6 (A) in the 1955 Law was the second major legal issue. Following the Assam Accord, a new provision of citizenship was enacted to clarify the status of two types of persons: (a) the migrants who entered Assam from Bangladesh before 1 January 1966 and continued to reside in the state were to be recognized as Indian citizens; (b) the migrants who entered Assam between 1 January 1966 and 25 March 1971 would be entitled to Indian citizenship if they spend 10 years in Assam and register with the concerned authorities. Following the spirit of the Assam accord, this amendment meant that those who had migrated to Assam after 25 March 1971 would not be entitled to Indian citizenship. The Assam Accord (section 5.8) actually said: “Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected [...] and practical steps shall be taken to expel such foreigners”.³⁰

The National Register of Citizenship-National Population Register (NRC-NPR) plans

The 1985 Assam Accord rejuvenated the National Register of Citizenship (NRC) debate. Technically, NRC is the official register containing the names of all Indian citizens. It was prepared in 1951 after the publication of the first postcolonial Census.³¹ It became relevant in the post-1986 Assam context when the citizenship law was amended to determine the status of migrants in the state.³² However, in 2004 a new provision (Art. 14A) was added in the 1955 Act, which noted that the government “may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority”. It also mentioned that the government would issue national identity cards to all legitimate citizens. In other words, the NRC, which was reactivated in the post-1986 period with a view to implement it only in Assam, was extended, at least technically, to the whole of India in 2004.

This expressed commitment for NRC led to the notion of National Population Register (NPR). The objective of the NPR was to create a comprehensive identity database of every *usual resident*, defined as “a person who has resided in a local area for the past six months or more or a person who intends to reside in that area for the next six months or

30. *Ibid.*

31. Office of the State Coordinator of National Registration, “In a Nutshell”, Government of Assam, available at: www.nrcassam.nic.in.

32. A. Roy, “Ambivalence of Citizenship in Assam”, *Economic and Political Weekly*, Vol. 51, No. 26/27, 2016, p. 45-51.

more”.³³ The Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003, made it mandatory for every usual resident of India to register in the NPR. Data for NPR was collected in 2010 and updated in 2015. The relationship between NPR and NRC is obvious: NPR is expected to be basis for an all-India NRC.³⁴

The Overseas Indian Card

The Citizenship Amendment Act, 2005 introduced a new category, Overseas Citizen of India Cardholder (Section 7A). This provision applied to persons of Indian origin living outside India, especially in western countries, but clarified that “no person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may [...] specify, shall be eligible for registration as an Overseas Citizen of India Cardholder”.³⁵ Instead of offering dual citizenship to overseas Indians, OIC card was introduced to provide them a legally recognized special status. OIC card holders are given three main facilities: multiple entry and multi-purpose life-long visa to visit India; exemption from reporting to Police authorities for any length of stay in India; and parity with Non-Resident Indians in financial, economic and educational fields.³⁶ However, these individuals are not entitled to rights enjoyed by Indian citizen such as right to vote.

Implications for the CAA: limiting the scope of Indian citizenship and undermining citizenship as a right

These changes in the citizenship law had two implications for the CAA. First, the scope of Indian citizenship, especially the citizenship by birth, has been significantly limited over the years. A child born to an Indian parent and an *illegal migrant* cannot claim Indian citizenship as a right. Technically speaking, he/she is a stateless person, whose existence as a citizen does not even come under the category of *doubtful persons*. These new provisions legalize the term *illegal migrants* as a principle criterion of citizenship and contribute directly to the political rhetoric of *infiltration*.

33. Office of the Registrar General & Census Commissioner, “Introduction to NPR – 2010”, Ministry of Home Affairs, Government of India, available at: <http://censusindia.gov.in>.

34. “Government to prepare NPR to lay foundation for pan-India NRC”, *India Today*, 3 August 2019, available at: www.indiatoday.in.

35. Section [7 a (d)] of the 2005 amendment.

36. Overseas Citizens of India, available at: <https://ociservices.gov.in>.

The CAA seems to draw inspiration from this distinction between legal and illegal migrants. This is exactly what Home Minister Amit Shah said in an election rally in 2019:

[...] infiltrators are termites and we will weed them out when we come back to power [...] The BJP would introduce NRC across the country and grant citizenship to each and every Hindu refugee in the country.³⁷

Second, the revised Citizenship Rules had a direct impact on the idea of *citizenship as a right*. These rules made it mandatory for the inhabitants/citizens of India to get their citizenship status officially verified. In fact, citizenship as a fundamental right is replaced by an official *duty* imposed on every citizen to produce evidences in support of his/her claim, while the government – especially the local bureaucracy – is empowered to classify the population into *citizens* and non-citizen. The official commitment to provide citizenship card, as it appears, was a strategic move to have an all-India NRC as a procedural mechanism to identify citizens on case-to-case basis. The CAA 2019, in this sense, is a political outcome of this legal restructuring, which does not treat citizenship as a right. An observation made by a Law department's representative during a discussion with the *Joint Parliamentary Committee on the Citizenship Amendment Bill 2016* is relevant in this regard. He said:

Citizenship cannot be given as a matter of right. *It is not anybody's fundamental right*. It is something that the nation and the country as a whole has to decide based on the Constitution and other Acts made in pursuance of the power given by the Constitution (emphasis added).³⁸

37. P. Mondal, "Infiltrators Are Termites, BJP Will Weed Them Out, Says Amit Shah", *The New Indian Express*, 12 April 2019, available at: www.newindianexpress.com.

38. Joint Parliamentary Committee (JPC), *Report of the Joint Parliamentary Committee on the Citizenship Amendment Bill 2016*, Lok Sabha Secretariat, Government of India, 2019, p. 47.

Four Controversial Questions Associated With the CAA

Four controversial issues associated with CAA have been seriously debated in Parliament and in public discussions. In order to understand the official positions and justification given by the government on these issues, we examine the 2019 *Report of the Joint Parliamentary Committee on the Citizenship Amendment Bill 2016* (JPC Report). This report introduces us to those technical-legal points, which contribute to the political arguments of the BJP.

The legal criterion for selecting the specific cases of Pakistan, Bangladesh and Afghanistan

The selection of three Muslim-majority countries to identify the persecuted non-Muslim minorities is the first critical question. The inclusion of Afghanistan in this list looks strange. Pakistan and Bangladesh were the outcome of the two partitions of the subcontinent in 1947 and 1971, which led to massive migration of population. These countries also share borders with India, which makes the question of illegal immigration politically relevant. However, the case of Afghanistan is different. It does not share borders with India and it did not have any direct political-historical continuity with the Indian republic.

Although the Ministry of Home Affairs (MHA) did not spell out its legal criterion for selecting three specific cases, the official response revolved around the idea of *religious persecution of religious minorities* in these Muslim countries. This justification was also invoked to rationalize the inclusion of Afghanistan in this list. The JPC report clarified that “a number of persons belonging to minority communities in Afghanistan have also come to India on account of religious persecution or fear of religious persecution. Hence, it was decided to include Afghanistan” in the ambit.³⁹ This religious persecution of non-Muslims was also seen in relation to the wider Indian interest in Afghanistan, as the report asserted that “there have been multiple attacks against Indian interests in Afghanistan by the

39. *Ibid.*, p. 37.

Pakistan [...] sponsored LET, Haqqani Network and Taliban', hence [...] minority communities are facing [...] atrocities due to their Indian origin".⁴⁰

The MHA, however, underlined that it did not ignore the plight of minorities in other neighboring countries such as Sri Lanka and Myanmar. The report emphasized that the government followed a *Standard Operating Procedure (SOP)* since 2011 for dealing with foreign nationals. The SOP, therefore, was a legal procedure available to all refugees in India, allowing them to reside in India as legal immigrant. These individuals may apply for Indian citizenship as per the rules spelt out in the Citizenship Act 1955.⁴¹

In other words, there are six non-Muslim religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis or Christians) of three Muslim countries (Afghanistan, Bangladesh or Pakistan) who are separated from the other migrants. However, these six minorities do not become Indian citizens only on the basis of *religious persecution*. The Legislative Department of the Ministry of Law notes that the CAA "does not directly confer citizenship on these persons [...] it merely provides [...] the opportunity to be considered for the grant of certificate of naturalisation".⁴² The CAA enables the *illegal migrants* belonging to six specified communities from Afghanistan, Pakistan and Bangladesh to apply for Indian Citizenship in two categories, *Registration* [Section 5 (1) (a)] and *Naturalisation* (Section 6).⁴³ For this purpose, the Third Schedule of the 1955 Act was also amended to reduce the residence requirement from eleven to five years. It simply means that the six non-Muslim minorities are given a particular kind of *relaxation* under the CAA.

The idea of minority

The CAA 2019 does not use the term "minority". Instead, it identifies six non-Muslim communities. The naming of communities on religious basis actually goes against the established Constitution principles. The Constitution introduces terms such as *minority*, *Scheduled Caste (SC)* and *Scheduled Tribe (ST)* as secular administrative categories. For instance, if a social group is culturally/religiously/linguistically distinct and numerically inferior, it might be recognized as a "minority". If a social group had experienced caste discrimination and/or untouchability in the past, it would be included in the 'Scheduled Castes' list. And, indigenous

40. *Ibid.*, p. 35-36.

41. *Ibid.*, p. 36.

42. *Ibid.*, p. 40.

43. *Ibid.*

communities or tribes are to be officially recognized as 'Scheduled Tribes'. Since minority, SCs, and STs (and later the Other Backward Classes, the OBCs) are conceived as open, secular, administrative templates, no social group, technically speaking, would become a permanent constituent of these official-secular classifications.⁴⁴

The JPC report also highlights this point. In fact, a constitutional expert criticized the CAA for not using the expression minority, arguing that:

If you want to be on the safer side, we would have to omit reference to religions like Hindus, Sikhs, Parsis etc. [...] if we use the term 'persecuted minorities' the purpose would be served. As compared to communities, minorities would perhaps be more useful from the legal and constitutional point of view.⁴⁵

The Legislative Department, however, did not subscribe to this view and justified the use of religious categories:

Using persecuted minorities from the neighbouring countries instead of its current form may negate the objectives of the Bill. As there is a possibility for wider scope of interpretation, it may be construed to include other communities (religious or otherwise). Moreover, the aspect of 'religious persecution' would also be lost sight of.⁴⁶

It is obvious here that the official purpose of the CAA is to provide legitimacy to the idea of religious persecution. Interestingly, however, the term *religious persecution* is not included in the final text of the CAA, 2019. This strategic lapse requires some explanation. The process to enact the CAA, we must remember, began with an official notification issued in 2015. The six non-Muslim communities were given visa relaxation by amending the Visa rules (See Table 2). The term *religious persecution* was invoked in this notification as a legal plea in defense of the amendment. The MHA and the Legislative Department forcefully argued that the CAA was based on the gazette notification of 2015, hence there was no need to use the term religious persecution in the text of CAA.⁴⁷ The JPC accepted this rather vague explanation and did not ask a crucial follow-up question: if *religious persecution* could be used in an official administrative order as a legal plea, why couldn't it be accommodated in the text of a bill presented for legislative scrutiny?

44. P. deSouza, H. Ahmed, M. Sangeer Alam, *Democratic Accommodations*, *op. cit.*

45. JPC, *Report of the Joint Parliamentary Committee on the Citizenship Amendment Bill 2016*, *op. cit.*, p. 37.

46. *Ibid.*

47. *Ibid.*

The official mechanism to determine religious persecution in a foreign land is equally ambiguous. The MHA gave an evasive response to the JPC in this regard, saying that inputs from security agencies along with other “corroborative evidence in the print/electronic media would help to establish religious persecution in a foreign land”.⁴⁸ It informed that a new Standard Operating Procedure (SOP) would be in place in future to streamline this process:

As per the Standard Operating Procedure (SOP) under preparation by MHA, for an applicant who applies [...] mentioning that he/she was compelled to migrate to India due to religious persecution or fear of religious persecution, along with other supporting documents, a detailed enquiry will be conducted by Foreigners Regional Registration Office [...] to verify his/her claim. If the affidavit is not supported by documents, the case will be referred to Foreigners Tribunals to be constituted for this purpose [...] for verification of the claim regarding religious persecution.⁴⁹

There are inherent weaknesses in the official explanation. How is it possible for the government to protect the interest of persecuted non-Muslim religious minorities without having a well-defined legal-administrative apparatus determining the nature of religious persecution in a foreign territory?⁵⁰ This question becomes more complicated when we know that the number of persons seeking citizenship of India for fear of religious persecution is almost insignificant.⁵¹

Exclusion of Muslims

The CAA excludes Muslims in two ways. It highlights the persecution of non-Muslims in neighboring Muslim countries and, at the same time, does not include Muslims in the list of preferred migrants. This exclusion is seen as a violation of Article 14 (equality before law) and Article 25 (Freedom of religion). The JPC also raised this question. The Legislative Department, however, made two broad arguments in defense of the constitutional validity of the CAA. First, it said the law was justified on the basis of a legal doctrine called *reasonable classification*. According to this doctrine, if there is a special law that is applicable only to certain sections/groups, the court is entitled to “enquire whether the *classification is founded on a*

48. *Ibid.*

49. *Ibid.*

50. M. Prasad, “Left to the Whims of the Executive”, *The Hindu*, 18 December 2019, available at: www.thehindu.com.

51. As per the Intelligence Bureau, there were 31,313 persons belonging to minority communities (25,447 Hindus, 5,807 Sikhs, 55 Christians, 2 Buddhists and 2 Parsis) who wanted Indian Citizenship. JPC, 2019, p. 39.

reasonable basis [...] or is arbitrary" (Emphasis added). The reasonableness of classification, in this sense, can only be questioned if a law violates the rights of other persons/communities, which are outside the scope of its legal ambit. The classification of migrants into *persecuted minorities* and others, by this logic, is called reasonable because it does not affect the rights of Muslim citizens in India.

Second, the Legislative Department said the CAA was also justified on the basis of freedom of religion (Art. 25). It argued that this law aims to protect the religious rights of persecuted minorities seeking Indian citizenship. At the same time, it does not have any impact on the right to worship and religion of other Indian citizens, including Muslims. This line of reasoning actually finds a clear political overtone in the speeches of BJP leaders.

This legal defense of the CAA as a special law becomes unconvincing when it is read in relation to NCR and NPR. As already explained, NCR and NPR are inseparable constituents of the established legal framework of Indian citizenship. The classification of usual residents into citizens and doubtful persons gets a radically different interpretation after the enactment of the CAA. It is important to remember that unlike the NPR 2010 exercise, NPR 2020 aims to collect additional data such as Aadhar card number and parents' birthplace.⁵² It is mandatory for the usual residents to provide this information. However, if a resident fails to submit sufficient documents to NPR officials, including the proof that his/her parents were/are Indian citizens, his/her citizenship may become doubtful. He/she would be listed in the 'D' category of the proposed NRC. The government has not yet evolved any mechanism to deal with such cases.⁵³ The CAA offers a clear-cut answer to these ambiguities. It is easier for a *doubtful* Hindu, Jain, Sikh, Parsi, Buddhist and Christian person/resident to apply for Indian citizenship even if he/she does not have sufficient documents. He/she may justify his/her application by citing the term *religious persecution*. However, a *doubtful* Muslim would eventually be treated as a *foreigner* as he/she is excluded from the list.

52. Office of the Registrar General and Census Commissioner, "Instruction Manual for Updation of National Population Register (NPR)", Ministry of Home Affairs, Government of India, 2020, available at: <https://cjp.org.in>. The debate on these *additional questions* intensified anti-CAA protests. Many Indian states passed resolutions against CAA and refused to conduct NPR. See: K.P. Sai Kiran, "After West Bengal, Kerala Too Suspends Updation of National", *The Times of India*, 20 December 2019, available at: <https://timesofindia.indiatimes.com>; S. Daniyal, "Scroll Investigation: Amit Shah's All-India NRC Has Already Begun – With The NPR", *Scroll*, 17 December 2019, available at: <https://scroll.in>.

53. The NRC exercise in Assam is a good example. Officials didn't accept documents like Aadhar Card, Ration Card and Voter list as evidence of citizenship. In many cases, residents were asked to produce certificates/papers that could demonstrate their parents were also born in India and had legitimate Indian citizenship.

Although Prime Minister Modi categorically denied any relationship between CAA and the NRC-NPR, Home Minister Amit Shah explained the *CAA-NRC-NPR chronology* in his various speeches and interviews⁵⁴. He said:

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.⁵⁵

In another interview, he clarified that the purpose of the CAA and NRC was to deal with the problem of *infiltrators* at the national level:

All the Hindu, Sikh, Buddhist, Christians, they will get citizenship [...] We want to walk up to them and give them citizenship. They wouldn't be asked for any documents.⁵⁶

Shah's *political* explanation of the CAA-NRC-NPR actually goes against the legal-technical arguments presented by the MHA to JPC. In the backdrop of this apparent political clarification, the legal reasonableness invoked by the MHA to defend CAA (as a special law that deals with a special group of people—persecuted minority) becomes completely irrelevant.

The relationship between the Assam Accord and the CAA⁵⁷

As pointed out earlier, the Assam Accord was an important political phenomenon that redefined the contours of the citizenship framework in India.⁵⁸ The CAA goes against the spirit of the Assam Accord in two ways: it modifies the cut-off date from 1971 to 2014; at the same time, it makes a distinction between Muslim and non-Muslim migrants. These changes offer an opportunity to non-Muslim migrants of Bangladesh to apply for

54. Modi's speech in the parliament is very relevant. N. Modi, "Our Government Has Brought New Thoughts and New Approach to the Governance", 6 February 2020, available at: www.narendramodi.in.

55. A. Shah, Twitter, 1 May 2020, available at: <https://twitter.com>.

56. R. Venkataramakrishnan, "Who Is Linking Citizenship Act To NRC? Here Are Five Times Amit Shah Did So", *Scroll*, 20 December 2019, available at: <https://scroll.in>.

57. C.K. Sarma and O.B. Hazarika, "Anti-CAA Protests and State Response in Assam: Identity Issues Challenge *Hindutva*-based Politics", *Economic & Policy Weekly*, Vol. 55, No. 14, 4 April 2020, available at: www.epw.in.

58. The updating of the NRC on the basis of the changes introduced in the citizenship laws in the 1980s has been a highly controversial political issue in recent years. The names of those persons (or their descendants) that appear in the NRC, 1951, or in any of the official documents up to the midnight of 24 March 1971 which would prove their presence in Assam, are to be recognized as Indian citizens. The draft NCR published on 30 July 2018 excluded around 400,000 people living in Assam.

Indian citizenship even if they had entered Assam after 1971. The JPC, it appears, dealt with this issue delicately and asked the government to respect the sentiments of the people of Assam and the north-east:

The Committee feel that in view of the anxieties and concerns expressed by the civil society groups in Assam and other North-Eastern States, the State and Central Governments should formulate rules and regulations under this Clause (6A) to ensure that the identities of indigenous peoples are not threatened in any way by unintended consequences of the Citizenship Bill.

The final version of the CAA, it seems, accommodated these suggestions. Section 3(4) of the new Law makes it clear that the changes introduced by the new amendment will not apply to “tribal area of Assam, Meghalaya, Mizoram or Tripura... and the area covered under *The Inner Line*”.

Table 2: Chronology of the CAA

Year	Amendments/ approvals/ notifications	Explanation
2015	The Passport (Entry into India) Rules, 1950 and the Foreigners Order, 1948 amended	An official gazette notification issued by the Central government on 7 September 2015 allowed the “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 December 2014, to stay in India without valid documents”. This amendment in rules changed the status of these migrants from illegal migrant to persecuted minorities.
2016	The Passport (Entry into India) Rules, 1950 amended to include Afghanistan	To facilitate the citizenship status to non-Muslim persecuted minorities of Afghanistan Passport Rules were amended on 18 July 2016.
2016	Lok Sabha	The very next day, 19 July 2016, the Citizenship Amendment Bill was tabled in the Lok Sabha.
2016	JPC	Considering the wider significance of this bill, it was referred to the Joint Parliamentary Committee in August 2016. The Committee submitted its report in January 2019.
2019	Lok Sabha (lower house)	The bill was again presented in the Lok Sabha on 9 December 2019. The House passed the bill on the same day.
2019	Rajya Sabha (upper house)	The Rajya Sabha also passed the bill on 11 December 2019.
2019	President of India	The President of India approved the bill on 14 December 2019.
2020	MHA notification	The provisions of the Citizenship Amendment Act (CAA) came into effect on 10 January 2020.

Source: Author.

Table 3: Legal justifications and political arguments

Controversial Issue	Legal-Technical justifications	Political Arguments
Why only three Muslims countries?	<ul style="list-style-type: none"> • State is empowered to invoke legal reasonableness to make laws for a set of people. • Refugees coming from other countries, including Muslims from these three countries may apply through the standard SOP system 	<ul style="list-style-type: none"> • Hindus have only one country on Earth to look for; while Muslims have over 60 countries to take shelter. • We are giving citizenship to persecuted minorities; it won't affect the citizenship of Indian citizens.
How to determine religious persecution in a foreign land?	<ul style="list-style-type: none"> • No one gets automatic citizenship; it depends on IB reports and other documents etc. • Five-year time is required for persecuted minorities; while for others it is 11 years. • Home Ministry is preparing a new SOP to deal with this question on case to case basis. 	<ul style="list-style-type: none"> • It is a well-known fact that non-Muslims face religious persecution in Muslim countries.
Is it anti-Muslim?	<ul style="list-style-type: none"> • It does not contradict with Art. 14 and Art. 25. 	<ul style="list-style-type: none"> • CAA will be followed by NRC/NPR throughout India.
Does it ignore the Assam Accord?	<ul style="list-style-type: none"> • CAA deals only with persecuted minorities— not all illegal migrants. • It does not contradict with Inner Line law. 	<ul style="list-style-type: none"> • Committed to protect the regional/national identity of Assamese people.

Source: Author.

The Protests

Broadly speaking, there were four kinds of protests against the CAA: the formal protests led by the political parties inside the Parliament/assemblies; the protests led by the civil society groups/coalitions such as *We the People*; those in the north-eastern states, especially Assam⁵⁹; and mass protests by Muslims in different parts of the country. There were also a few pro-CAA *protests* led by groups associated with BJP/RSS. This paper does not discuss pro-CAA protests primarily because they reiterated the BJP's official position. Instead, it focuses on the nature of Muslim protests against the CAA for two reasons. First, this vantage point helps to make sense of the changing attitude of non-BJP parties on this controversial law. Second, the analysis of *Muslim reactions* gives an overview of the popular anti-CAA protests. Civil society organizations, as it is well known, worked very closely with Muslim protestors and provided intellectual as well as logical support to them. The famous *Shaheen Bagh* in Delhi is a relevant example in this regard.

The calculated positions of political parties on the CAA/NRC/NPR

The Congress-led coalition, United Progressive Alliance (UPA) and some other opposition parties have always been critical of this law. Even the non-BJP parties of the ruling coalition, the National Democratic Alliance (NDA), were not comfortable with the Citizenship Amendment Bill in 2016. However, the success of BJP's pro-Hindu politics in recent years has forced the entire political class to change its position on *Hindutva*-driven issues simply to attract Hindu votes. Electoral calculation is the major factor determining the nature of their protest against this law. The manner in which CAA was passed in the Rajya Sabha – the Upper House of Parliament where the BJP did not have a clear majority – is a good example in this regard.

59. Anti-CAA protests in Assam require a detailed analysis. While there is growing resentment against the state government, the agitation politics in the post-NRC/CAA period has not yet evolved into a unified movement. See: M. Bujarbaruah and R.K. Bhattacharya, "The Time Has Come For India to Recognise Why Assam Protests Against CAA", *The Wire*, 16 January 2020, available at: <https://thewire.in>.

The BJP government did not have any difficulty in the Lok Sabha. With 303 seats in this House, it was bound to get the required majority for the bill. However, in the Rajya Sabha, there were 104 NDA members (including 75 BJP members) and the government needed at least 121 votes to get this law passed. Despite this lack of majority, the government was able to secure 125 votes in its favor (99 members voted against the bill). The All India Anna Dravida Munnetra Kazhagam (*AIADMK*), Janata Dal (United, JDU) and Biju Janata Dal (BJD) helped the BJP directly. At the same time, Shiv Sena, Nationalist Congress Party (NCP) and the Bahujan Samaj Party (BSP) did not participate in voting. Their strategic absence enabled the government to manage the number game.

Mainstream political parties, then, embarked on politics of protests and followed three different trajectories. Opposition-ruled states passed resolutions against the CAA. Kerala was first, followed by Congress-ruled Punjab. These resolutions seemed to question the ultimate authority of the Parliament on moral political grounds. Second, the parties that had opposed this law in Parliament and voted against it, have made a distinction between the CAA 2019 and the NRC/NPR exercise. These parties remained silent on CAA but opposed NRC/NPR overwhelmingly. The resolution passed by the Aam Admi Party (AAP) government in Delhi is a revealing example.⁶⁰

The third response is equally complex. The non-BJP parties of the NDA, who had voted in favor of the government, changed their position in the aftermath of anti-CAA protests. The JDU, BJD, Telegu Desham Party (TDP) and YSR Congress Party have asserted they would oppose the NRC/NPR 2020. The Bihar Assembly, in fact, passed a resolution in this regard. The position of Akali Dal is also very interesting. Although in Parliament, it went with the BJP and voted in favor of CAA, it demanded that the Muslims be included in the list of communities.

These responses clearly demonstrate that electoral considerations force political parties to take a selective and calculated position on the CAA/NRC. While the BJP is keen to portray CAA as a pro-Hindu law – simply to protect and consolidate its *Hindutva* constituency, the other parties make favorable configurations to maintain political equilibrium. The reluctance of non-BJP parties to take a clear position on CAA/NCR/NPR and their inability to provide leadership to the Muslim-dominated popular anti-CAA protests is an important aspect of the political story of the CAA.

60. Legislative Assembly National Capital Territory of Delhi, Session Review, 7th Assembly, 13 March 2020, available at: <http://delhiassembly.nic.in>.

Muslims' reactions

The presence of Muslims in anti-CAA protests throughout the country was seen as a powerful, symbolic, and even strategic Muslim assertion. The Muslim communities, who had not responded to the aggressive *Hindutva* politics in the post-2014 period, became vocal and assertive.⁶¹ The State's violent and brutal reaction towards Muslim protestors also underlines the significance of this new radical Muslim politics. Two clarifications are important here. First, Indian Muslims do not constitute a single political community. Like any other religious group, they are divided on caste, class, regional and even religious lines. This is also true about their political responses.⁶² They support different political parties, including the BJP, and participate in Indian public life in a variety of ways. Muslim responses to the CAA must be seen in relation to this political heterogeneity. Second, the story of Muslim reactions should not be reduced to the Shaheen Bagh phenomenon. Although it is true that Shaheen Bagh—a protest site near the Jamia Millia Islamia University—acquired a powerful symbolic status, Muslim protests in different parts of India reflected remarkably nuanced political attitudes and assertions. Let us discuss three facets of Muslim protests.

The non-party character of anti-CAA protests is the first distinctive aspect of contemporary Muslim assertions. Muslim protestors drew inspiration from grassroots politics and people's movements (such as movement against displacements, Dalit/ Adivasi movements and the farmers' agitations) in two significant ways. They identified the Constitution as a legitimate political source for asserting their citizenship status. The liberal values of the Constitution, especially the Preamble, were creatively interpreted to question the government's disruptive agenda. At the same time, they tried to represent anti-CAA protest as a non-party political agitation. This conscious move helped them to get rid of the *BJP versus Congress* framework. It also allowed them to portray anti-CAA protest as an inclusive movement for social change.

The invocation of national symbols is the second aspect of anti-CAA protests. The national anthem, the national flag and even the copy of the Constitution were not merely seen as intellectual resources; Muslim protestors also used them as political *symbols*. This creative reinterpretation of national symbols is a relatively new phenomenon in Indian politics. The anti-corruption movement of 2011 was the first major political event when official national symbols were recognized as legitimate

61. On the *silent Muslims* in the Modi era, see: H. Ahmed, *Siyasi Muslims*, *op. cit.*

62. *Ibid.*

sources of political agitation. Muslim protestors, however, expanded the scope of this symbolism. The photographs of Ambedkar and Gandhi were placed side by side along with the copy of the Constitution; religious texts—Bhagwat Geeta, the Quran, the Bible and the Guru Grath Sahib—were recited in order to assert the postcolonial *sarvdharmasambhav* tradition (unity of all religion); *havans* (a Hindu ritual) were organized for communal harmony; and the national anthem was sung to on the stairs of the historic Jama Masjid in Delhi. This creative rearticulating of symbolic nationalism takes us beyond the given imaginations of Muslim political identity. The Muslim communities, who are often treated as religiously inward looking and politically untrustworthy, seem to reassert the point that their Muslimness is an inseparable part of their Indian identity.

The refined idea of political representation is the third aspect of contemporary Muslim assertiveness. Muslim protestors were not led by any particular Muslim organization or individual. It is true that the Hyderabad-based All India Majlis-e-Ittehad-ul-Muslimeen (AIMIM) organized a number of anti-CAA protests and Muslim religious bodies such as the Jamiat-Ulama-e-Hind and Jamat-e-Islami Hind have been very critical of this law. However, these established Muslim organizations were not given any formal recognition. The Muslim protests, in this sense, redefined the idea of representation in two possible ways. First, they asserted, in fact rather stridently, that political anxiety associated with CAA and NRC should not be represented exclusively by Muslim politicians. The presence of Dalit and Sikh religious leaders in the Muslim-dominated anti-CAA protests throughout India demonstrated the fact that Muslim communities refused to make the CAA an exclusive Muslim issue. Secondly, and perhaps most importantly, Muslim women – who were always depicted as victims of Islamic patriarchy – led these protests. The active participation of ordinary Muslim women in sit-ins and demonstrations as well as their vocal critique of the citizenship law underline a new form of Muslim self-representation, one that challenges the authority of Muslim leaders (primarily male!) to speak on behalf of common Muslims.⁶³

63. G. Jamil, "They Need No Saviours, They Are the Saviours: What the Resolute, Unafraid Presence of Muslim Women Tells Us", *Outlook*, 17 February 2020, available at: www.outlookindia.com.

Conclusion

This critical overview of the *process, politics and protests* associated with the CAA brings us to our three broad arguments. First, the CAA is an outcome of a new politics of *Hindutva* constitutionalism, which relies heavily on the legal-technical ambiguities inherent in the post-1980 citizenship framework. The growing centralization and state control to regulate the citizenship apparatus goes well with the CAA/NRC/NPR configuration. The CAA, I argue, stems from the notion of New India, a political doctrine of the BJP that is based on the desirability of *responsive citizens*.⁶⁴ CAA politics, therefore, must be seen in its entirety. For this purpose, one has to separate the legal justifications given by the government to JPC from the political arguments of BJP leaders.

Our discussion has shown that the non-Muslim migrants coming from three Muslim countries will not get Indian citizenship on their arrival. The government has not yet prepared the proper mechanism to determine the level of *religious persecution*, a precondition of citizenship as per the 2015 rules. There is no guarantee these migrants would eventually get Indian citizenship. This technical ambiguity, however, is politically useful. It provides an opportunity to *Hindutva* forces to reinvent the Hindu victimhood argument. As the conventional *Hindutva* issues – Ram temple, Article 370, Triple Talaq/UCC – have been more or less settled, it could be difficult for the BJP to mobilize Hindu voters on these lines.⁶⁵ Citizenship to non-Muslims of Muslim countries, in this sense, is a new long-term project of contemporary *Hindutva*.

This new project has two advantages. First, the citizenship issue has a long history that goes back to the founding moments of Indian republic. The post-2014 political obsession of the BJP with *Partition, Patel (India's first Home Minister) and Pakistan* provides a perfect background to reclaim Hindu victimhood in a more sophisticated manner and to nurture the *Hindutva* constituency. The BJP does not offer citizenship to migrating Hindus to create its vote bank at the national level; rather, it wants to use the plight of migrating Hindus of Pakistan to validate its claims of *Muslim*

64. H. Ahmed, "Beyond Secularism & Fascism: CAA Gives Opportunity to Re-Imagine Clichés About Idea of India", *The Print*, 14 February 2020, available at: <https://theprint.in>.

65. BJP had three core *Hindutva* issues: to build a Ram Temple on the site of the Babri Masjid in Ayodhya; removal of Article 370 so as to terminate the special status of Jammu and Kashmir, the only Muslim-majority state of the Union; and implementation of a Uniform Civil Code.

appeasement in secular India. Secondly, the citizenship issue has a remarkable political capacity. It appears that the BJP is keen to recognize citizenship as a point of reference to legitimize its interpretation of nationalism through popular support. This is exactly what Mohan Bhagwat calls the *national consensus*. This is my second argument: the BJP is not interested in declaring India a *Hindu Rashtra*; rather, its aim is to use the existing legal-constitutional framework to expand the scope of *Hindutva* hegemony.

The opposition to CAA has been highly fragmented. The political class, it seems, has accepted the significance of *Hindutva* hegemony as the dominant narrative of politics.⁶⁶ This has been the reason why except a few parties, non-BJP groups find it very difficult to take a confident position on CAA. This uncritical acceptance of *Hindutva* hegemony is not entirely speculative. A comparative analysis of changing public perceptions is relevant to elaborate this point. The CSDS-NES survey (conducted in April-May 2019, see Table 4 below) shows that an overwhelming majority of respondents supported the argument that India does not belong only to Hindus. In fact, 74% Hindus rejected the *Hindutva* propaganda that India is a natural Hindu homeland while only 6% Muslims appeared to have lost faith in the secular promise.

However, the Delhi election 2020 survey highlights a very different set of opinions. This survey was conducted in January-February 2020, when anti-CAA protests were going on throughout the country and Delhi's Shaheen Bagh had become the epicenter of this politics of protest. Table 5 shows that a majority of respondents supported the CAA and NCR, with a clear communal divide on this issue. Almost 80% Muslim respondents opposed the CAA-NRC, while the majority of Hindus (62%) did not find any problem with these issues. Interestingly, this serious conflict of perception did not affect their political choices as voters. The BJP could not get any political advantage out of it and its pro-CAA-NRC campaign virtually failed while AAP emerged as the first choice of voters and the communal divide on CAA-NRC did not affect its performance.

66. S. Palshikar "Toward Hegemony: The BJP Beyond Electoral Dominance", in A.P. Chaterji, T. Blom Hansen, and C. Jaffrelot (eds.), *Majoritarian State: How Hindu Nationalism is Changing India*. London-Noida: Harper Collins, 2019, p. 101-116.

Table 4: India belongs to whom?

	India primarily belongs to only Hindus	India belongs to citizens of all religions equally, not just Hindus	Can't say/No response
1: Hindu	17	74	9
2: Muslims	6	87	8
3: Christian	5	85	11
4: Sikh	3	88	9
5: Buddhist /neo-Buddhist	2	74	24
6: Jain	12	84	5
8: No religion	7	53	40
9: Others	23	68	9
Total	15	76	9

Source: NES, 2019, CSDS-Lokniti Data unit (Figures may not add up to 100 percent due to rounding off. N=12196).

Table 5: CAA/NRC and Hindutva Hegemony

	Fully support	Somewhat support	Somewhat oppose	Fully oppose	No response
CAA*	46 (Hindus 62%)	8	5	27 (Muslims 80%)	12
NCR**	46 (Hindus 61%)	8	5	26 (Muslims 79%)	13

Source: Delhi election Survey 2020, CSDS-Lokniti Data unit (Figures may not add up to 100 percent due to rounding off. N=3335).

*: Do you support or oppose CAA under which Hindus, Sikhs, Christians, Jains, Buddhists and Parsis coming from Pakistan, Bangladesh and Afghanistan can get India's citizenship but not Muslims coming from those countries?

** : If NRC is implemented, then every person living in India will have to provide documentary proof of their citizenship to the government. Do you support or oppose such an NRC?

These two conflicting findings demonstrate the multifaceted political universe of contemporary India.⁶⁷ The BJP has emerged as a legitimate stakeholder of Hindu interests. It has also been successful in linking the CAA-NRC with its *Hindutva* hegemony. This political polarization, however, has not transformed the Hindu communities into a political entity or a vote bank. That is the reason why the idea of religious co-existence still survives. The non-BJP parties actually struggle to adjust themselves in this complex configuration. I argue that the success of AAP in Delhi and BJD in Odisha highlight the fact that BJP's electoral defeats do not affect its political dominance at the national level.⁶⁸

The anti-CAA protests also faced a similar kind of political-intellectual problem. They rely on the argument that Indian Constitution is a self-explanatory political text and its secular character is protected and unquestionable. This over-reliability on the Constitution as a source of politics is problematic. The liberal intelligentsia fails to understand the emerging politics of *Hindutva* constitutionalism. As a result, the CAA protests were reduced to identity-based issues that revolved around the old communal-secular binary. In fact, the creative potentials unleashed by the Muslim dominated anti-CAA protests could not be channelized to produce any creative critique of *Hindutva* hegemony.

67. H. Ahmed, "Demystifying Muslim Votes", *Seminar*, No. 720, 2019, p. 70-74.

68. H. Ahmed and S. Gyanrajan, "Elections Results in Odisha: Welfarism Versus Hindutva", *Economic and Political Weekly*, No. 33, 17 August 2019, p. 13-15.



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