

Citizenship Amendment Bill (CAB) 2019: The Construction of Great Constitutional Blunder



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Dr Aniruddha Babar 11 December 2019 Updated 11 Dec 12799 views

The citizenship Act 1955 was the first provision of the Indian government that informed about how the citizenship of India can be acquired and what could be the grounds for acquiring citizenship. According to this Act, an individual could gain the Indian citizenship if they were born in India, have resided in India for a long period or have Indian parentage.

The main aim of this legislation was to prohibit the illegal migrants from acquiring Indian citizenship. According to this Act, any individual who enters India with forged documents and invalid passport was considered as illegal migrant. In the year 2014, the Citizenship Rule was proposed to be amended by introducing a Legislative Bill, under which religion was to be considered as the explicit ground for awarding citizenship.

.....The ruling side knows why this legislation is being brought, we also know why they have come up with this legislation, the people also know... I just want to warn the government that... **itihaas ki aankhon ne wo falak bhi dekhe hain, lamhon ne galti ki aur sadiyon ne saza payi hain...** (History has been witness to episodes where eons had to pay for a momentary mistake...) Today, you are going to commit a big mistake..... ~ Shri. Manish Tiwari, Hon'ble Member of Parliament, 9th December, 2019, *Debate in Lok Sabha on Citizenship Amendment Bill, 2019*

This step was taken 'evaluating' the situation specifically of the Hindus as "vulnerable" especially in Pakistan and therefore, the Citizenship Act of 1955 was proposed to be amended specifically to accommodate Hindu migrants. In the year 2016, Citizenship (Amendment) Bill was presented in the parliament in order to bring some significant changes in the existing legislation. This bill was mainly to consider the problems that the refugee population is facing and that such population is deprived of many facilities and rights in India because of their illegal immigrant status. The existing law did not allow the immigrants to obtain the citizenship of India provided they must have resided in India or have been in the central government service for the last 12 months and at least 11 years of the preceding 14 years, and other qualifications as specified in Section 6 (1) of the Citizen Act, 1955. However, the latest amendment "in question" can bring significant changes and can increase the movement of immigrants from Bangladesh to North-East India, which is a major reason of concern for Northeastern states.

The Bill provides that, illegal migrants belonging to specified minority communities from Afghanistan, Bangladesh or Pakistan will not be treated as illegal migrants under the Act, making them all eligible for Indian citizenship. These minority communities are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. This implies that illegal migrants from these countries who are Muslims, other minorities who do not belong to the above groups e.g. Jews or Atheists who do not identify with a religious group will not be eligible for citizenship. The question is whether this provision violates the right to equality guaranteed under Article 14 of the Constitution because it provides differential treatment to illegal migrants on the basis of their religion. Article 14 guarantees equality to all persons, citizens and foreigners. It only permits laws to differentiate between groups of people if the rationale for doing so serves a reasonable purpose. The Statement of Objects and Reasons of the Bill does not explain the rationale behind differentiating between illegal migrants on the basis of the religion they belong to.

However, according to Government the increasing vulnerability of the population of the Hindus, Sikhs, Jains, Buddhists, Christians and Parsis in the neighbouring countries like Afghanistan, Pakistan and Bangladesh resulted in increasing the illegal migration of these people to India, which led to the development and formulation of Citizenship Amendment Bill 2016. This Bill had resulted in relaxing the eligibility criteria for the selection of the immigrants and included six minority communities or people, who came to India before 2014. The minimum requirement of the residency period was 11 years in the earlier Act, which is now reduced to 5 years (In 2016 Bill, it was 6 years).

The proposed amendment in the Bill has also raised some significant concerns and oppositions. The first reason of opposition is that religion has never been used as the ground for making the difference between citizen and non-citizens. Therefore, the Civil Society groups have called this bill as the “communally motivated humanitarianism”. This bill is also considered to be increasing inequality, as it does not include the Shias or Ahmadiyya’s or Mohajirs in Pakistan, who are also the oppressed, discriminated and persecuted minorities. Article 14 of the Indian constitution provides equality to everyone, however differentiating on the grounds of religion can be a significant violation of the Indian constitution. Some even believe that this bill will also stamp the countries like Pakistan, Bangladesh and Afghanistan as the institutions that perpetuate religious oppression and will also negatively affect the bilateral relations.

Since the introduction of the Citizenship Amendment Bill in the Lower House of Parliament in 2016, there has been a significant unrest among the people from the North-East states of India. People from North-East and mainly from Assam have significantly protested against the Citizenship (Amendment) Bill. There are various social political and economic implications of the Bill that could affect the Northeast Indian states. The people from Northeast states are significantly concerned about their status in their states. They fear that this bill will increase the number of immigrants in their states that would affect the social and economic benefits that they receive. For example, the indigenous people living in Mizoram fear that the entry of the Buddhists Chakmas from Bangladesh will take the advantage of the bill and will migrate in significant number. The tribal communities from Meghalaya and Nagaland are worried about the Bengali migrants. The tribal people living in the Northeast state have developed their own social, political and economic environment. They have their own traditional and cultural system of living that could be significantly affected by the entry of migrants from Bangladesh or other countries. The government of Manipur want to implement the Inner Line Permit System in order to stop the immigrants from entering into the state. The Indigenous National party and the Indigenous People's Front of Tripura are also against the bill as they fear that their tribal status will be affected by this bill.

However, as per the latest version of Citizenship Amendment Bill, 2019 which has been introduced and passed in Lok Sabha on 9th of December, 2019 have made certain changes in the original draft of 2016 Bill. As per 2019 CAB Bill, Arunachal Pradesh, Nagaland and Mizoram, where Inner Line Permit (ILP) regime is applicable, will be kept out of the purview of the proposed Citizenship Amendment Bill (CAB). The ILP regime is under Bengal Eastern Frontier Regulation, 1873. In terms of Section 2 of the Bengal Eastern Frontier Regulations, 1873, the Inner Line Permit system is prevalent in Arunachal Pradesh, Mizoram and Nagaland. Moreover, Under the Sixth Schedule of the Constitution, autonomous councils and districts were created in tribal areas in Assam, Meghalaya and Tripura. The autonomous councils and districts enjoy certain executive and legislative powers. They will also be exempted from the purview of Citizenship Amendment Bill 2019. However, the question arises as to whether these so called 'protected' regions would also be able to escape by taking a shelter of 'Inner Line Permit System' from the 'indirect' impact of the influx of large number population in the neighbouring regions?

Demographic change is the first social, political and an economic issue that have raised the concern of the Northeast people. The decades of illegal migration have been ongoing in Tripura and Assam, but through this bill such immigration would become legal and the already existing communities will likely to lose their demographic status. People from Assam fear that their language will become secondary, their culture would be distorted and their political rights would be lost. Another reason of the significant opposition of the Bill in Assam is that this Bill is against the Assam Accord which was signed on 15th of August 1985 between representatives of Government of India and the leaders of Assam Movement in New Delhi declared “March 24, 1971” as the cut-off date for illegal immigrants; however, the proposed Bill moves the cut-off date for illegal immigrants – for only six religions - by more than 43 years to December 31, 2014. A six years long agitation followed against illegal migrants from the then East Pakistan (now Bangladesh), which then culminated with the signing of an agreement called the Assam Accord. The citizenship Amendment Bill also contradicts with the National Register of Citizens (NRC) which is a roster of all those who settled in Assam up to the midnight of March 24, 1971. It may be noted that, Bengali Hindus (from Bangladesh) who were declared illegal immigrants by the NRC are now legal by the current clauses of the bill. This nullifies the process of NRC and seriously affects the demographic character of the region.

The Assam Accord and the NRC set the cut off of the citizen irrespective of their religious status. For becoming the citizen of Assam, the tribal people and other population of the state have to prove that their ancestors were the residents of the state before March 25, 1971. However, due to the Bill, the illegal immigrants from Bangladesh, who came before 1971 would become the citizen of the state affecting the existing population and their social status.

States like Manipur and Tripura have a significant number of the Hindu population, but the Bill may result in implementing the communally driven agenda, which can result in creating a political void. The economy of the states includes the employment and job opportunities for the resident population and the existing laws provide priority to them to participate in the economic system. However, the Bill would result in making the immigrants and refugees the citizen of the states and the opportunities for employment and job would be divided between the existing citizens and new immigrant citizens.

However, on the other hand, a fact needs to be taken into consideration that, India is located in a rough neighbourhood surrounded by strategically hostile nations and fragile democracies from where influx of people due to persecution is always a possibility. Given our ethos, traditions, and practices it is surprising that India have not yet evolved a refugee policy. India do not have a national refugee law and is not a signatory to the 1951 UN Convention on the Status of Refugees and its related 1967 Protocol - which set the basic standards of treatment to be meted out to refugees of which the most fundamental is non-refoulment. However, our not signing the aforesaid Convention and Protocol does not absolve us from observing the basic humanitarian law relating to refugees including the principle of non-refoulment as we are signatories to the Universal Declaration of Human Rights (UDHR), 1948, the International Convention on Civil and Political Rights (ICCPR-1966) and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Torture Convention-1984). Also, [Article 14](#) of the UDHR, Article 13 of the [ICCPR-1966](#), and Article 3 of the [Torture Convention-1984](#), each expresses a commitment to protect refugees. Additionally, the right to refoulment is internationally recognized today as a part of customary international law. [Article 51\(c\)](#) of the Indian Constitution directs the State to respect international law and treaty obligations. Customary international law has been [held by the Supreme Court](#) to be part of international law.

Moreover, it needs to be reiterated that the intention and motivation regarding the Bill which the central government have been reflecting can best be resolved by India ratifying the UNHCR Refugee Convention. Surprisingly India is one of the only democracies in the world not to have signed the Convention. This has led to inconsistent approaches in dealing with refugees and economic migrants. The Refugee Convention provides clear guidance on all refugees, including repatriating them voluntarily to home countries once conditions for such repatriation become feasible.

The Lok Sabha passed the controversial Citizenship (Amendment) Bill on 9th December, 2019 which is the big blow to the Constitutional fabric of India as it is in straight and direct violation of Art. 14, Art.15, Art. 21 and also the Basic Structure of Constitution as given by the Supreme Court of India in *Keshavananda Bharti Vs State of Kerala* wherein Chief Justice Sarv Mittra Sikri, writing for the majority, indicated that the basic structure consists of the supremacy of constitution, A republican and democratic form of government, The secular character of the Constitution, Maintenance of the separation of powers, The federal character of the Constitution. Moreover in *S.R. Bommai Vs Union of India* hon'ble Supreme Court observed that.... *"Notwithstanding the fact that the words 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of Secularism was very much embedded in our constitutional philosophy....."*. The observations that the Supreme Court of India made support us to reflect upon the true character of the constitution. Secularism is not simply a dead word, but rather it is a spirit that should form a part of every action that government takes in the name of 'The People of India'. Secularism must be understood as a basic feature of our Constitution. The words and the clauses of Citizenship Amendment Bill, 2019 does not reflect the secular spirit that the Constitution of India had born with. Moreover, this Bill does not stand Constitutional with the defence of the doctrine of '*Reasonable Classification*'. At the outset, it should be made clear that the Article 14 of the Constitution of India does not forbid reasonable classification of the target population (for the purpose of legislation) which must not be "arbitrary, artificial or evasive" but must be based on some real and substantial bearing a just and reasonable relation to the object sought to be achieved by the legislation. In the light of CAB 2019 being violative of Art. 14 it may further be noted that the Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals

are treated differently, Article 14 does not apply. Which simply mean that 'EQUALS CANNOT BE TREATED UNEQUALLY' This position of law has been well settled in different cases like *D.S. Nakara V. Union of India*, *Madhu Limye V. Supdt. Tihar Jail Delhi*, *Sanaboina Satyanarayana V. Govt of Andhra Pradesh*, *Tamiladu Electricity Board V. Veeraswamy*.

It needs to be understood that Citizenship Law defines a country's political and constitutional identity and character. Laying down rules that determines membership in our political community only on the basis of one's religious beliefs completely violates this principle. The bill is not "religion and country neutral". Linking religion with citizenship issue is against the spirit of our history, civilisation, culture and of our Constitution. A great nation like India that has welcomed everyone with open arms throughout its history of thousands of years can't afford have a very narrow version of 'Universal Brotherhood'. Citizenship can't be linked with state, religion, caste, creed and be country specific. It should be universal.

A compact association of South Asian nations, with free movement of people, ideas, cultures and commodities can be founded only on the basis of respecting and protecting the diversity of the region. As people from Assam and other CAB affected regions believe, that while on the one hand the present Indian government seeks to divide refugees on the basis of religion, on the other hand, it has turned the clause 6 of Assam Accord (originally designed to protect the Assamese and other indigenous communities) into a complete non-operational mode. The Citizenship (Amendment) Bill, 2019 may have far reaching consequences in the entire Eastern India which seeks to erode the very basis of unity centering on language of different nations and nationalities and replace it by so called cultural unity based on religion.

In the present form, despite the fact that the Bill has been passed in the Lok Sabha it is not yet ready to become an Act. Many people from the affected areas including that of Assam believe that the Bill is rushed, ill-conceived, politically motivated, anti-constitutional and ambiguous and in its present form it would do more harm than good. Moreover, any Law or a Policy that threatens the identity of people needs to be widely debated on every possible public platform. The Constitution of India upholds the Principle of Equality. When the Constitution of India which has been drafted by Dr. B.R. Ambedkar that exists on the pillars of the eternal principles of Justice, Equality, Liberty and Fraternity, does not permit any sort of discrimination among the citizens of India, then on what ground-legal or moral, can the discrimination be made by the government while granting citizenship?

(Author expresses his humble gratitude to Madam Asela Rothrong for taking out time from her busy schedule to review this article)



Dr Aniruddha Babar

Dr. Aniruddha Babar, Dept. of Political Science, Tetso College, Dimapur, Nagaland,
E-mail: aniruddha.v.babar@gmail.com

BY DR ANIRUDDHA BABAR

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