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Conundrum of Citizenship Law: Legality and Reality

Anas Yawar & Aviral Mathur

ABSTRACT

India passed a Citizenship (Amendment) Act, 2019 is a frontispiece assault on the idea of India as being a secular, pluralist democracy nation. The Citizenship Amendment Act of 2019 is a bill which has amended the Citizenship Act of 1955. The Bill was introduced in 17th Lok Sabha by the Minister of Home Affairs Amit Shah on 9th December, 2019 and was passed on 10th December 2019, with 311 MPs voting in approval and 80 in opposition to the Bill¹. This bill provides citizenship to religious minorities from Pakistan, Bangladesh and Afghanistan though the critics and opposition says that the bill is part of a BJP agenda to marginalise Muslims².

CONCEPT OF CITIZENSHIP IN INDIA.

Indian idea of the citizenship – as embodied in the Constitution of India and the law – is in the throes of a profound and radical metamorphosis. Citizenship add up to the relationship linking individual and state. Basically, it is an idea of prohibition as it excludes non-citizens from avail oneself of various rights. Nationality is frequently used as a correspondence for citizenship in English³. In India, citizenship is synchronized by the Citizenship Act, 1955. Citizenship in India is registered in the Union List under the Constitution and thus is below the absolute jurisdiction of Parliament. Like all other modern state, India also have two kinds of people citizens and aliens. Citizens are complete members of the Indian State and owe allegiance to it⁴. They avail oneself of all the civil and political rights. Further there are two well-known principles for the grant of citizenship:

1. ‘Jus Soli’ which give out the citizenship on the grounds of place of birth.
2. ‘Jus Sanguinis’ which grant the recognition to blood ties.

The Constitution of India nowhere explain the term ‘citizen’ but details of diverse class of persons who qualify to attain the citizenship are prone in Part 2 (Article 5 to Article 11). There are four means thorough which Indian citizenship can be acquired: (a) birth, (b) descent, (c)

¹ Citizenship Amendment Bill gets President Kovind’s assent, becomes Act, available at: <https://scroll.in/latest/946676/citizenship-amendment-act-comes-into-force-after-getting-president-kovinds-assent> (last visited on October 23, 2020).

² Opinion: India's new citizenship act is unconstitutional, available at: <https://www.dw.com/en/opinion-indias-new-citizenship-act-is-unconstitutional/a-51642100> (last visited on October 23, 2020).

³ Votruba, Martin. "Nationality, ethnicity in Slovakia". Slovak Studies Program. University of Pittsburgh.

⁴ Citizenship of India, available at: <https://www.drishtias.com/to-the-points/Paper2/citizenship-of-india> (last visited on October 27, 2020).

registration and (d) naturalisation⁵. The provisions are listed under the Citizenship Act, 1955. The Citizenship Act, 1955 has been amended five times till date as in 1986, 2003, 2005, 2015 and 2019⁶.

HISTORY OF CITIZENSHIP (AMENDMENT) ACT, 2019.

The Citizen Amendment Bill was first place in front of the parliament in July 2016. The legislation freed parliament's lower house where BJP had a large majority, but it could not make through in the upper house of the parliament, after violent anti-migrant protests in north-eastern India. The protests were extremely opened in the state of Assam, which in August sawed two million residents left off a citizens' register⁷.

WHAT DOES THE CITIZENSHIP (AMENDMENT) ACT, 2019 SAY?

The CAA has amended the 64-year-old Indian Citizenship law, which currently prohibits illegal migrants from becoming Indian citizens. It grants citizenship to asylum seekers adhering to the six mentioned sects: Hindus, Sikhs, Buddhists, Christians, Jains and Parsi from Afghanistan, Bangladesh and Pakistan, who entered India on or before the mentioned cut-off date 31st December 2014⁸. The legislation applies to those who have been forced or urge to search for shelter in India because of persecution on the grounds of religion. It aims to protect only specific people from proceedings of illegal migration. The new bill has also amended the provision which says a person must have lived in India or worked for the federal government for at least 11 years before they can apply for citizenship. The objective of Citizenship (Amendment) Act, 2019 is to grant citizenship to those belonging to religion of Hindu, Sikh, Christian, Parsi, Buddhist, Jain immigrants from Pakistan, Bangladesh and Afghanistan, who have run away due to religious persecution in the three countries, may seem perfectly innocuous and praiseworthy in itself. However, the planned omission of a specific communities and neighbouring countries has raised several questions over its moral and constitutional validity. This act also states that people having Overseas Citizen of India (OCI) cards - an immigration status allowing a foreign citizen of Indian genesis to live and work in India

⁵ Section 2(1)(b) of the Citizenship Act, 1955.

⁶ CAA: Changes in Citizenship criteria since 1955 till date, available at: <https://www.indiatvnews.com/fyi/caa-citizenship-criteria-changes-since-1955-till-date-580760> (last visited on October 17, 2020).

⁷ Assam NRC: What next for 1.9 million 'stateless' Indians?, available at: <https://www.bbc.com/news/world-asia-india-49520593> (last visited on November 3, 2020).

⁸ Section 2 of The Citizenship (Amendment) Act 2019.

considerably - can lose their status if they violate the local laws for major and minor offences and violations⁹.

THE LEGAL BATTLE OF CITIZENSHIP (AMENDMENT) ACT 2019.

The first thought which come in our mind after listing about Citizenship (Amendment) Act 2019 is that “Can the religious criterion for giving citizenship be a case of rational classification under Article 14 and 15 of The Indian Constitution under the chapter on Fundamental Rights that violate equality before the law to every person within the territory of India?” It should be noted that under the Indian Constitution 1949 while certain rights, like some mentioned in the Article 15,16 and 19, are available only to citizens of India. The Right to equality before the law as specified in Article 14 and the Right to Life and Personal Liberty, as acknowledged under Article 21 are accessible to all citizens further it is also convenient to the foreigners who fall out to be within the territory of India. A non-citizen without a doubt is a person and also enable to those rights. A counterstatement to this is that Article 14 of the Indian Constitution permits for a particular classification. This classifying establishes on an intelligible differentia, on condition that the differentia has an unbroken nexus to the object looked to be achieved by the statute in question. This simply means a distinct class of people can be construct (non-Muslim immigrants in this case) by a legalizing law and only if there is a precise classifying factor which is not built on the discriminatory grounds.

An magnificent example of such sanction legislation would be a reservation policy for the underprivileged people of the community, which would or else has been the direct contravention to the freedom of equality talked about under the Article 15 of the Indian Constitution further accommodating people in detention centres is arguably also paradoxical to the Article 21 of the Constitution which give assurance of the Right to Life and Personal Liberty. The two-nation theory was suggested by the leader of the Muslim Association, Mohammad Ali Jinnah, who was a hard believer of the certitude that Hindus and Muslims can no longer stay together. He strictly alleged that there existed an ardent demand for a separate nation clearly expressed and clear-cut meant for the Muslims only. This thought more or less was rejected by all the freedom fighters as they strongly believed that Hindus and Muslims can coincide together. The idea of India was not at all formed on the basis of religion. Many being

⁹ The Citizenship (Amendment) Act, 2019, India available at: <http://egazette.nic.in/WriteReadData/2019/214646.pdf> (last visited on October 17, 2020).

in the opinion that with this Act coming into effect, India has compromised the secular character of its Constitution. The most blazing problem with this ratification is that it does not define religious persecution, nor is it established on any actual estimation of such oppression. If the worry for the persecuted were the only motive, then this Citizenship (Amendment) Act 2019 could have been addressed to a broader grouping of persecuted minorities. Such point of view could also have dealt with the religious victimization of atheists/non-believers. Not only does the CAA keep out the Muslim migrants from the provisions for accelerate citizenship, Indian Muslims who are in depth citizens by birth, have also been facing the abrogation of their constitutionally guaranteed rights of equivalent citizenship. And yet, the government continues to say that it does not discriminate or violate the right to equality of any citizen¹⁰.

IMMIGRANTS FROM PAKISTAN, BANGLADESH AND AFGHANISTAN.

The ruling Bhartiya Janata Party (BJP) government expostulate that the act is intended to offer sanctuary to non-Muslim minorities who run away because of religious persecution from Muslim-majority in the neighbouring countries. The act presumes that every migrant of a non-Muslim temptation from the three neighbouring countries is a refugee in require of safeguard. Giving citizenship to illegal migrants approaching from only Pakistan, Bangladesh and Afghanistan the disagreement extended to justify the only concern of these three neighbouring countries is that because these are Islamic Republics, or have Islam as a state religion and, hence, the six communities as introduced in earlier face the threat of religious persecution. However, by this argumentation, immigrants or shelter seekers from Sri Lanka (Buddhist State Religion)¹¹ and Bhutan should also be shield covered as these two countries also have a proclaim state religion, that is Buddhism and have a history of mistreatment to Tamil Eelams (a linguistic minority in Sri Lanka), and also the Rohingya Muslims.¹² A large cardinal number

¹⁰ Citizenship (Amendment) Act 2019: What is it and why is it seen as a problem, available at: <https://economictimes.indiatimes.com/news/et-explains/citizenship-amendment-bill-what-does-it-do-and-why-is-it-seen-as-a-problem/articleshow/72436995.cms> (last visited on October 12, 2020).

¹¹ Article 9 of the Constitution of the Democratic Socialist Republic of Sri Lanka states: “The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).”

¹² N Sathiya Moorthy, “Why Lankan refugees are reluctant to go back home”, The Times of India, August 29, 2018, available at: <https://timesofindia.indiatimes.com/city/chennai/why-lankan-refugees-are-reluctant-to-go-back-home/articleshow/65591130.cms> (last visited on October 29, 2020). Also see, Myanmar Rohingya: What you need to know about the crisis, available at: <https://www.bbc.com/news/world-asia-41566561> (last visited on October 29, 2020).

of Tamil (Hindus as well as Muslims) immigrants i.e. outsiders from Sri Lanka are staying in the refugee bivouac in India, and there have been many occurrence of minority communities are being earmark by majoritarian forces in Sri Lanka and additionally the Bhutanese Christians are also excluded from this Citizenship (Amendment) Act 2019 . In the month of September 2015 and July 2016, the central government spared certain batch of illegal migrants from the essence of being imprisoned or deported¹³.

These are illegal asylum seekers who have come into India from Afghanistan, Bangladesh, or Pakistan on or before December 31, 2014, and should also belong to the Hindu, Buddhist, Parsi, Jain, Sikh, or Christian religious communities. Also, in a customarily ahistorical methodology, there is an outright turndown to acknowledge the persecution and maltreatment of Muslim minority belonging to sections like Ahmadiyya's and Shias (Hazaras) in Pakistan¹⁴ and Afghanistan, apart, as is the case with Rohingyas in Myanmar (Primacy to Buddhism)¹⁵. While refugee safeguarding is admittedly a noble intent, it is inexplicable why religious minorities cladding the persecution and discrimination near India are debarred and what of the victims and sufferers of other forms beyond religious persecution?

WHY IS THE CITIZENSHIP (AMENDMENT) ACT 2019 SO CONTROVERSIAL?

The BJP (Central Government) contend that only these minority groups have come to get away from religious persecution in Muslim-majority nations. However, the dialectic of BJP Government is not congruous, the bill does not safeguard all religious minorities, nor does it put an application to all the neighbouring countries. The Citizenship (Amendment) Act 2019, is just alike the Illegal Migrants (Determination by Tribunal) Act, 1983 that was adjudged unconstitutional by the Supreme Court of India. This act is territory-specific and spare certain north-eastern states from its purview. The court had also governed that the IMDT's targeted, to reduce illegal immigration, and was not served by authorizing such touchstone for Assam

¹³ State of West Bengal vs Anwar Ali Sarkar, AIR 1952 SC 75.

¹⁴ The Second Amendment to the Constitution of Pakistan passed in 1974 effectively declared Ahmadiyyas as non-Muslims.

¹⁵ Articles 361 and 362 of the Constitution of the Republic of the Union of Myanmar state the following. "361. The Union recognizes special position of Buddhism as the faith professed by the great majority of the citizens of the Union. 362. The Union also recognizes Christianity, Islam, Hinduism and Animism as the religions existing in the Union at the day of the coming into operation of this Constitution

alone, and thus this Act violates the fundamental right given under Article 14 of the Indian Constitution¹⁶. Additionally, The Citizenship (Amendment) Act 2019 is also a geographic delimitation ostracism of Inner Line Permit States or Areas from its scope and has no nexus with the general objective of the Act, i.e., helping the asylum seeker who were persecuted on the grounds of religion in only three next to door countries. This matter is less about take away the Muslims outside the scope of the CAA and more about the infringement of the Assam Accord that was under-written in 1985 between the Rajiv Gandhi Government and All Assam Students' Union (AASU) at the tail end of six yearlong bloody Assam Agitation¹⁷. Immigrants who came after March 24, 1971, no matter what of their faith, are to be detected and extradite¹⁸. This new Citizenship Law makes religious affiliation one of the basis for citizenship, violating the basic structure of the Indian constitution. By extension, the act makes it easier for the government to terrorize, imprison and deport Muslim migrants.

Amit Shah currently serving as Minister of Home Affairs says that the Citizenship (Amendment) Act 2019 would not have been obligatory if the Congress did not have gone along with the partition of India on the foundation of religion. However, everyone knows that India was not originated on the basis of religion, but Pakistan was. Only the Muslim Alliance and the Hindu Right supports that the two-nation theory of Hindu and Muslim nations, which led to the partition of both countries. All the prime mover of India was perpetrated to a secular state, where each and every citizen no matter what the religion shall enjoy full membership. Nevertheless, this logic of Citizenship (Amendment) Act 2019 also fall to pieces because Afghanistan was not segment of Pre-Partition India. Citizenship (Amendment) Act 2019 also won't apply to the regions under the sixth schedule of the Indian Constitution which deals with self-governing tribal-dominated domains in Assam, Meghalaya, Tripura and Mizoram¹⁹. Further, this act also not apply to states that have the inner-line permit regime (Arunachal Pradesh, Nagaland and Mizoram).

¹⁶ Faizan Mustafa & Aymen Mohammed, "The great Indian citizenship mess" The Hindu, January 21, 2020.

¹⁷ Prasanta Mazumdar, "Citizenship Act: Northeast in an existential conundrum" The New Indian Express, December 22, 2019.

¹⁸ Clause 5 of Assam Accord; with the provisions of The Foreigners Act, 1946 & The Foreigners (Tribunals) Order 1964.

¹⁹ Sec. 3 (6B) (4) of The Citizenship (Amendment) Act 2019.

THE SHADES OF NATIONALISM.

The politicisation of religious pinpointing, detecting articulation and expression in and through the law, is a panic portent for the base vision of Indian nationalism which was energetically civic-national in form. This is nothing at all less than a revisionist re-invention of the preoccupation of India that enlightened and encourage the freedom struggle and found incorporation in the Constitution of India. The background of the anti-immigrant discussion that elementary the NRC, and the discriminatory approval of the persons “treated as illegal migrants or asylum seeker” that reinforce the CAA is important. It demands a considerable disenfranchisement of the Muslim community, a normalisation and reason of violence both of them discursive and physical in opposition to it, and changing India into the shape of a Hindu Rashtra in which this minority lives depends on permissiveness and also must make ready themselves for everyday discrimination, legally and socially. In contrast in the middle of the anti-immigrant and Islamophobic eloquence of populist politicians across the world, it is rarely recognized that the “other” in India is absolutely, historically and organically Indian, and not a present-day beginner or stranger as in Europe or the United States²⁰.

In a civilization as a multiple and diverse as that surrounded by the territorial borderline of the Indian nation, the pursuit to make the dividing line of religion and nation coincide is as good as to opening up the pockmarks of the Partition of 1947. This cannot be accomplished without vandalizing the elegant balance in a society distinguished by the multiple heterogeneities of language, region, and caste and even of religious sections. The fall of a polity is the loss of humanity, for only to belonging in the political community, i.e. citizenship, can hand individual of what Arendt famously called the “Right to have Rights”. In Assam, backing the NRC, 1,145 people by this time have been placed in six detention centres in Assam, living in sub-human environment; 335 of these individual have spent three years in these camps; 25 persons declared “foreigners” have so far died in these detention camps; and an estimated of 33 persons have been driven to suicide²¹ by the fear of not possessing papers.

²⁰ The CAA and NRC together will reopen wounds of Partition and turn India into a majoritarian state, available at: <https://scroll.in/article/947458/the-caa-and-nrc-together-will-reopen-wounds-of-partition-and-turn-india-into-a-majoritarian-state> (last visited on October 30, 2020).

²¹ PASSPORT TO KILL, available at: <https://www.news18.com/news/immersive/assam-nrc-suicides.html> (last visited on October 22, 2020).

NATIONAL REGISTER OF CITIZENS LINK WITH THE CITIZENSHIP AMENDMENT ACT 2019.

The National Register of Citizens (NRC) is a list perpetuated by the Government of India having the names of only legal citizens and to the point information for the recognition of Indian citizens. The official list of NRCs was made straightforward for Assam only. Although, on 20th November 2019, the Home Minister of India announced during a parliamentary sitting that the National Register of Citizens would be extended to the entire country. NRC and CAA these two are closely linked, because the Citizenship Amendment Act 2019 will only aid to secure non-Muslims who are excluded from NRC and face the menace of deportation or incarceration. The NRC was updated on 31st August 2019 through an enormous exertion monitored by the Supreme Court of India, and it established that 1.9 million of 329 million, who had pertained for insertion of their names in NRC, were not competent for the Indian citizenship and leaving them at fear of being stateless or deported. With the perspective of Citizenship Amendment Act 2019 means that the thousand and millions of Hindus, Sikhs, Buddhists, Christians, Jains and Parsi migrants' people who were not included in the NRC can still get citizenship to stay on in Assam state.

The BJP Government has been propelling the plan of executing the nationwide NRC, then all those people who will find themselves excluded from it will be split-up into two categories: (predominantly) Muslims, who will now be considered as illegal migrants, and every other person, who would have been regarded as illegal migrants, but are now inoculated by the Citizenship Amendment Act 2019 but only if they can manifest that their country of origin is either Afghanistan, Bangladesh or Pakistan. This act, together with other neoteric BJP government initiatives²², will sow the seeds of long-lasting mistrust among the 200 million Muslims living in India and put a match to the fires of extremism, fanaticism, bigotry, and it risks starting a cold-blooded and callous cycle of violence. The National Register of Citizens and Citizenship Amendment Act 2019 have the perspective of transforming India into a majoritarian polity with gradations of citizenship rights²³.

²² Shashi Tharoor, "India's Democratic Dictatorship" Project Syndicate, The World's Opinion Page, September 13, 2019.

²³ Citizenship Amendment Bill: India's new 'anti-Muslim' law explained, available at: <https://www.bbc.com/news/world-asia-india-50670393> (last visited on October 28, 2020)

IS THERE ANY NECESSITY FOR THIS RULE?

The reason for the rule of Parliament not employing religious markers while legislating citizenship laws were the Constituent Assembly debates wherein the employment of religious markers was contested and expressly rejected. Further, the non-employment of religious markers must also be conceived as an integral part of that Constitution which endorses grand principles such as republicanism, secularism, equality, non-discrimination and inclusion. Hence, the Parliament should not employ religious markers for legislating citizenship laws is answered. Therefore, in the light of the Jennings test which establishes the constitutional convention of Indian Parliament not using religious markers for legislating citizenship laws and the precedents set by the Supreme Court of India which struck down laws for being violative of the constitutional convention; one can conclude that the Citizenship Amendment Act, 2019 Act is unconstitutional for not just being violative of Article 14, Article 25 and Basic Structure Doctrine but also for an equally significant reason of breaching the Constitutional convention of not mentioning religious markers while legislating citizenship laws.

THE STUDENT PROTESTS AGAINST CAA AND NRC.

Politicians, especially those from ruling BJP and its ally AGP are at the receiving end of people's anger. The protests in opposition to the amended Citizenship Act have led the way to violent clashes at many places including the Jamia Millia Islamia University in New Delhi and Aligarh Muslim University in Uttar Pradesh. Police measure in the Jamia and AMU campuses guided to more protests in other universities and places in Uttar Pradesh, Telangana, West Bengal, and Bihar etc. Jamia Millia Islamia University campus of Delhi, however, prevailed the centre of students' protest and disagreement in against to the Citizenship Act that was amended last week with Parliament passing the Citizenship Amendment Act 2019. The protestors being in the opinion of that the banishment of Muslims and a nationwide NRC are spin-off of the same school of thought. The maltreatment and discrimination complex in case of "outsiders" and "infiltrators" rings strong in both accounts, though by the government's own estimates, the citizenship act will help a little over 31,000 people²⁴.

²⁴ The Constitutional Conundrum of the Citizenship Amendment Act, available at: <https://bitmesra.ac.in/naps/caa/> (last visited on October 15, 2020)

LACK OF REFERENCE DOCUMENT THAT LISTS THE DOCUMENTS AS LEGAL PROOF OF CITIZENSHIP.

It is sarcastic that despite of having numerous documents, paper and legal records, there is hardly any instructions which can once and for all demonstrate the Indian citizenship of an individual. It appears to be that these documents and papers are perhaps supplement of one another depending upon the state of affairs of an individual is in. There is no such law which states that these certain documents are the proof and evidence of citizenship. Had there been legislation, then things would have been clear as to which documents are proof of citizenship and which are not. In India, no law has ever been drafted or proceed on the white paper that can be accounted for as a proof of citizenship of an individual²⁵. Hence, the case depends upon the circumstances and various other factors and also the frame of mind of the judge dealing with the case is important on what he or she is thinking about the citizenship.

The bench comprising justices Manojit Bhuyan and Parthivjyoti Saikia adjudicating on *Munindra Biswas v. Union of India and 4 Others*²⁶ on 12 February said that an Electoral Photo Identity Card is not a conclusive proof of citizenship also in the case of *Narbada Devi Gupta v. Birendra Kumar Jaiswal*²⁷ the Supreme Court has recapitulate the legal position that disfigure of documents as indicate and their proof are two different legal concept of notion. Mere producing and discolour of the documents as manifest cannot be held to be due proof of its gratified. In *Rupjan Begum Vs. Union of India*²⁸, The high court in its judgment stated that the "certificates issued by a Village Gaon Bura can never be the proof of citizenship of a person" and that "such certificate can only be used by a married woman to prove that after her marriage, she had shifted to her matrimonial village and in the case of *Md. Babul Islam Vs. Union of India*²⁹ it has already held that PAN Card and bank documents are not proof of citizenship." It also added that "land revenue paying receipts do not prove citizenship of a person".

²⁵ Simantik Dowerah, "Conflicting judgments, absence of guidelines, litany of documents: India's citizenship conundrum is a mess" First Post, February 22, 2020. available at: <https://www.firstpost.com/india/conflicting-judgments-absence-of-guidelines-litany-of-documents-indias-citizenship-conundrum-is-a-mess-infinitude-7788131.html> (last visited on October 15, 2020)

²⁶ Case No.: WP(C) 7426/2019; Decided on 12 February, 2020.

²⁷ (2003) 8 SSC 745

²⁸ (2018) 1 SCC 579; Manowara Bewa alias Manora Bewa v. Union of India and 3 Ors. WP(C) No. 2634 of 2016.

²⁹ [WP(C)/3547/2016]

Due to the paucity of proper regulations, the same document is once battered as the proof of citizenship but rejected in another case by the same court. In Assam, if an individual's name is part of a voter list prior to 1971 it is a proof of citizenship. When cases are categorized in the Foreigners' Tribunals, the accused are needed to submit documents and various legal papers prior to 1971³⁰. If the accused submits the voter list of 2019 having his or her name at any court in Assam, the court won't undertake it neither they will count it on. There is no judgment or shrewdness till date which establish the valid documents as a proof for citizenship. For illustration, The Guwahati High Court does not appraise or undertake documents such as passport, voter ID card etc. as proof of citizenship³¹. There are many loopholes and inadequacy in the government machinery which has led the way to these uncertainties and it cannot be the accountability of the individual who has obtained a particular document. Many of them could indeed be 'citizens.

EROSION OF TRUST IN JUDICIARY.

Citizenship (Amendment) Act 2019 infringes the Articles 14 and 15 of the India Constitution 1949, which guarantee equality before the law and non-discrimination on religious grounds. Apart from the confusion, it is also the faith of the people in the judiciary that is shaken when no definite solution emerges to problems that actually deals with an individual's identity. There is a possibility that due to political influence or government intervention the judgments are conflicting many a time. The common people always look up to the judiciary for the protection of their rights. If the judiciary itself is not compatible with its views and thoughts of how will the common people hold on their trust in the judiciary? The judicial system is called independent because it can put a scan and bar on the political motives and wrong ideology of the government. These irregularity and inconsistencies by the judiciary will ultimately erode and destroy the faith of the people both in the legislative and judicial system. The government is making this whole controversy so big that the people are engrossed with things like which document proves citizenship. They get diverted from their actual work to scrutinise the performance of the government for which it was actually voted for. There are so many people

³⁰ Assam Accord, India, available at: <https://assam.gov.in/en/main/ASSAM%20ACCORD> (last visited on November 2, 2020).

³¹ Simantik Dowerah, "Conflicting judgments, absence of guidelines, litany of documents: India's citizenship conundrum is a mess" First Post, February 22, 2020. available at: <https://www.firstpost.com/india/conflicting-judgments-absence-of-guidelines-litany-of-documents-indias-citizenship-conundrum-is-a-mess-infinite-7788131.html> (last visited on October 15, 2020).

in the country who have lived in India since their birth, whose ancestors might have lived here since ages but they can now only be Indian by spirit and not by documents. The non-appearance of a basic norm for determining citizenship has guide to a political fiefdom in the country for different parties only to proselytize them for political dividends. It is time the judiciary and the legislative get down to brass tacks and build a guard rail through a set of norms that can act as standard-bearer to protect bona fide citizens from losing their citizenship.

CONCLUSION

For the first time in the history of India, legal sanction has been given to the make-over of India as a Hindu majoritarian nation where minorities, especially Muslims, are made to feel as second-class citizens. The Citizenship Amendment Act 2019 clearly undermines the basic tenets of India's democracy. Attaching citizenship rights to religious affiliation runs counter to the letter and spirit of India's constitution and constitutional morality. It will permanently damage India's pluralistic social fabric. The CAA in spirit, not only contravene the constitutional values of secularism and freedom of religion, but also nullify the principle and concept of equal protection and non-discrimination. The CAA ring fenced the Muslims identity by announcing India a welcome refuge to all other religious communities. It seeks to legally create Muslims as a second-class citizen of India by providing preferential and privileged treatment to other groups. Further it also degrades every one of these fundamental values and openly layout the wings of "Hindutva," or Hindu nationalism, in this so-called secular country by creating religion the key to citizenship. We must create separate and independent citizenship tribunals under the preview of Citizenship Act to inspect such cases, leaving the burden of proof on the state to justify and explain their exclusion.

A repudiation of citizenship, which is everyone's 'Right to Rights', must be through a procedure that should be crystal-clear, fair, reasonable, just and non-arbitrary. Foreigners' tribunals are nothing but kangaroo courts. Migrants will keep approaching to India from Pakistan, Bangladesh and Afghanistan. The CAA is a blind blanket invitation. The constitutional mandate in India has successfully experienced many challenges. But the current onslaught looks more perilous and dangerous than anything before given the expanded mandate for the BJP government and its shameless showcase the agenda to turn India into a Hindu

nation³². The updated Citizenship Amendment Act 2019 is the institutional inauguration of this process. The act is a stark regression of the trajectory of India as a mature constitutional democracy.

Finally, if the purpose of the CAA is to look after the spirit of Vasudhaiva Kutumbakam (The world is one family), why does the government does not enact a comprehensive refugee law that would bestow for a fair and objective course of action to determine the 'persecution' and allow only the eligible refugees who seek asylum? By conflating asylum with citizenship, the CAA sadly prioritises politics over persecuted people.

“Passage of CAB, a victory of Jinnah’s thoughts over Gandhi’s” - Shashi Tharoor.

³² India’s new citizenship act legalizes a Hindu nation, India, available at: <https://theconversation.com/indias-new-citizenship-act-legalizes-a-hindu-nation-129024> (last visited on November 5, 2020).