

CAA Issue and Human Rights Obligations

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Recently, Citizenship (Amendment) Act was passed by the Indian Parliament and it was enacted into law on 12 December, 2019. But this led the country into a wave of protests against it as it laid down the criteria for who could be granted citizenship of the country. This protest has spread to almost every corner of the country but the reasons for the same vary with the geography. Protests have erupted not only against the passing of this act but also against the creation of National Register of Citizens (NRC).

On Tuesday, the Union Government also approved National Population Register (NPR) on 24th December, 2019. It is a register of usual residents of the country. It is being prepared at the local, sub- district, district, state and national level under provisions of Citizenship Act, 1955 and the Citizenship (Registration of citizens and issue of National Identity Cards) Rules, 2003. The objective behind maintaining NPR is to create a comprehensive identity database of every usual resident in the country.

What is CAA?

According to the CAA, Hindu, Christian, Buddhist, Jain, Sikh and Parsi migrants who have illegally entered India i.e. without visa on or before December 31, 2014 from the Muslim- majority countries of Pakistan, Afghanistan and Bangladesh and also they have stayed in the country for five years are eligible for applying Indian citizenship.

The reason for extending this provision only to people of six religions and also the reason of applying only to people coming only from these three Islamic countries, and not Muslims is that the Union Government claims that people of these six faiths have faced persecution in these Islamic countries. So it is India's moral obligation to provide shelter to them.

Now a question arises that whether this provision opens only to those who have been persecuted in the three countries?

No, CAA does not mention the term 'persecution' anywhere and since 'persecution' is not only the criteria, it does discriminate against illegal Muslim immigrants from these countries.

What is NRC?

As soon as the Citizenship Amendment Bill was passed in both houses of Parliament and given Presidential assent making it a law, loud murmurs started about another move- a National Register of Citizens (NRC). So what is exactly is the NRC?

National Register of Citizens is an official record of those who are legal Indian citizens. NRC includes all the demographic information of those who qualify to be the citizens of India as per the Indian Citizenship Act, 1955.

After the 1951 census of India, the register was first prepared and since then it was not updated. Such a database has only been maintained for the state of Assam. However, on November 20, Home Minister of India Amit Shah declared that it would extend to the entire country during a parliamentary session.

After the implementation of NRC in Assam, there has been a growing demand for the worldwide implementation. So, it effectively suggests bringing about legislation for those who have been living in India illegally by enabling the government to identify infiltrators, detain and depot them to the places they have come.

Who is a citizen of India as per Indian Citizenship Act, 1955?

As per the Citizenship Act, 1955, every person born in India:

on or after the 26th day of January 1950, but before the 1st day of July 1987;

on or after the 1st day of July 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

on or after the commencement of the Citizenship (Amendment) Act, 2003, where-

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

Will the implementation of NRC unconstitutional and against India's secular ethos discriminatory on religious lines?

Sixty- five writ petitions have been filed in the Supreme Court that challenges legal validity of CAA. Subhash Kashyap who is a constitutional expert said that there are arguments both in favor of and against the act. According to Article 14 of the Indian Constitution which states that all persons are entitled to equality but there are plethora of judgments of Supreme Court which pronounce that reasonable classification can be applied to the principle of equality. According to him. Anyone can challenge the act in the Apex Court and the future of the act will depend on whether the Supreme Court accepts the classification made within this act as reasonable enough.

The Citizenship Amendment Act has been challenged in India's top court, but experts call for international intervention.

Many international legal experts, including the United Nations special rapporteur on minorities, say India's new citizenship law is discriminatory and are calling for international intervention.

The Citizenship Amendment Act (CAA) fast-tracks nationality for non-Muslim minorities from neighbouring Pakistan, Bangladesh and Afghanistan but excludes Muslims - a step compared with US President Donald Trump's Muslim ban.

India defends CAA after UN rights chief approaches Supreme Court

Fernand de Varennes, the UN special reporter on minorities, told Al Jazeera that there is a danger that millions of members of minority groups such as Muslims will be denied citizenship.

"Many have opined that the exclusion of Muslims as a group from the ambit of the law constitutes an extreme example of discriminatory treatment and that the right of equality without discrimination - particularly if it has a 'racial' element - is one of the fundamental principles of international human rights," de Varennes told Al Jazeera.

Earlier this month, the UN High Commissioner on Human Rights, Michelle Bachelet, filed an intervention in the Supreme Court to challenge the CAA.

India's top court is also hearing a petition from Muslims and liberal Indians, who say the law is against the country's secular constitution. The case has been temporarily suspended because of the lockdown following the coronavirus crisis.

Bachelet's petition emphasises that sovereign power is not unfettered and that even decisions regarding citizenship have to conform to the principle of non-discrimination.

In February de Varennes and other UN special rapporteurs wrote an "open letter" to the Indian government expressing concerns about the discriminatory aspects of the CAA.

The letter highlights that the "arbitrary" exclusion of Muslims and other minorities from the NRC would "perpetuate discrimination against them and perpetuate a climate of uncertainty, including fears of prolonged statelessness, detention or even deportation".

'Internal matter'

The Indian Ministry on External Affairs said that the CAA was an "internal matter" of the country and "no foreign party has any standing on issues pertaining to India's sovereignty".

Experts warn that the CAA, coupled with the proposed National Register of Citizens (NRC), violates international law, specifically the prohibition on rendering people stateless.

Nearly two million people were excluded from a citizenship list in the northeastern state of Assam where the NRC exercise was concluded last year.

"What the NRC will create is a large group of stateless people, which in itself will run counter to the obligation in international law to prevent statelessness," Parvathi Menon, a lecturer at the Erik Castren Institute of International Law and Human Rights at the University of Helsinki, says.

Menon says the Indian government has already violated its international obligations by "returning" many Rohingya, claiming that they were "illegal' immigrants. Menon points to the position in Assam where "illegal immigrants" are now being housed in detention centres.

India's Hindu nationalist government has deported some Rohingya refugees to Myanmar in violation of the principles of non-refoulement under refugee law. New Delhi, which considers the Muslim refugees a security threat, has vowed to deport them.

'Doubtful citizen'

According to Indian lawyer Shruti Panday, the NRC places the burden to prove Indian citizenship on the citizen, which could mean that "every citizen becomes a doubtful citizen". The impact on marginalised groups such as Muslims will be particularly detrimental, she says.

The Indian Constitution recognises the right to equality and the equal application of the law. The 1948 Universal Declaration of Human Rights, which India is a signatory to, specifically prohibits arbitrary deprivation of nationality.

The purpose of Bachelet's intervention was to highlight the High Commissioner's concerns that the CAA does not comply with India's human rights obligations.

The citizenship law, passed last December, sparked nationwide peaceful protests largely led by Muslims, who fear millions of members of the community will be rendered stateless or disenfranchised. Dozens of people, mostly Muslims, have been killed in a police crackdown that has been criticised by rights groups.

The Supreme Court refused to strike down the legislation and gave the government headed by Prime Minister Narendra Modi time to reply to pleas challenging the constitutionality of the CAA.

How is NRC related to CAA?

The proposal of worldwide implementation which is still a proposal, if implemented will lead to targeting of illegal immigrants in India. This essentially means that all those illegal immigrants who have come from countries other than Pakistan, Afghanistan and Bangladesh will be affected by the implementation of worldwide NRC. But there is a fear that Indian Muslims will be deemed to be illegal immigrants if they fail to furnish adequate proof of citizenship as they won't be included in the CAA.