

# The Politics of Perception and the Citizenship Amendment Act 2019

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The contours of politics often get shaped not so much on the basis of the actual impact of certain policies but more by the perceptions about their impact by different stakeholders. The Citizenship Amendment Act of 2019 and the controversy it has created is an important example in this regard. As Assam, Kerala, Tamil Nadu and West Bengal gear up for State Assembly elections this year, the CAA is back in public discourse and will possibly be a turning point in deciding the electoral outcomes in at least some states, if not more. Some analysts have argued that the CAA is likely to have an important impact in the elections of Assam as the CAA-NRC controversy has its genesis in Assam and because the sentiment against the ‘foreigner’ has been the highest in the region since several decades now owing to historical reasons.

As is the case with several contemporary debates in India, the outlines of the CAA-NRC discourse continue to be framed within the binary walls of secularism vis-à-vis communalism. What appears to be missing in this debate is a serious intellectual reflection on how the CAA validates or deflects from the conceptual idea of citizenship in contemporary times. The larger normative rationale behind the objective of protecting the rights of religious minorities fleeing persecution from neighbouring countries has also been side-lined. While several analysts have criticised the CAA for being unjust to the north eastern states and for violating the Assam Accord, the question of refugees fleeing from erstwhile East Pakistan and Bangladesh has not been sufficiently well examined. In this essay I do two things: First, I seek to argue that the

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Citizenship Amendment Act 2019 should be re-examined through the lens of contextualised citizenship by reflecting on the normative objections to the Act. Second, I dwell on the specific objections to the Act with regard to its impact on Assam and draw attention to the refugee question that has been completely ignored in this discourse. Finally, I draw upon the recent developments in Assam in light of the upcoming elections and reflect on the possible impact of the CAA on the outcome of the elections.

### **Differentiated Citizenship and the CAA**

There have primarily been three normative objections to the CAA 2019. The first argues that the Act is unconstitutional as it violates the Right to Equality under Article 14 of the Indian Constitution which ensures that the “state shall not deny to any person the right to equality before law or the equal protection of laws within the territory of India”. By singularly excluding Muslims from the ambit of this law, critics allege that, the State has violated this very fundamental principle of equality. The case of Muslim sects such as Shias and Ahmediyas, who face routine persecution in Pakistan and the recent persecution of Rohingya Muslims by the neighbouring state of Myanmar are highlighted in this regard.

The second important objection against the Act is that it is allegedly ‘anti-secular’ and sectarian as it makes citizenship conditional to one’s religious adherence. The fact that the Act does not specify Jews, Muslims and atheists as legitimate categories of persons deserving of this protection is also considered problematic by critics. The argument is that as the Indian state is a secular state, the CAA 2019 is violative of the basic spirit of the Constitution. The Supreme Court’s verdict in the *S.R. Bommai Vs. Union of India* case 1994, where the Court declared secularism to be a basic feature of the Indian Constitution has been cited to make this point.

The third objection is to the alleged under-inclusivity of the Act. The first question that critics have raised in this regard is why the Act covers only three countries, i.e., Afghanistan, Bangladesh and Pakistan and no other neighbouring countries like Myanmar or Sri Lanka where the persecution of religious and ethnic minorities has been a reality. The second question is with regard to why only ‘religious persecution’ has been considered but not mentioned explicitly in the Act and why other forms of persecution such as those based on ethnicity or language

have not been covered. Linked to the other criticisms, the third question is with regard to why only six religious communities have been considered eligible for the benefit and finally the fourth question is with regard to why has the cut-off date been chosen as 31st December, 2014.

On the other hand, supporters of the Act have hailed it as redemption for persecuted religious minorities in Afghanistan, Bangladesh and Pakistan and believe that justice will finally be delivered to the victims of Partition, who for no fault of theirs, were left on the wrong side of the border.

Though the constitutionality of the Act is sub-judice a few reflections on the above are not unwarranted here. I begin my reflection on the CAA 2019 by drawing attention to the idea of differentiated citizenship as this seems to be at the core of the controversy. In this regard, a brilliant paper by Eric J Mitnick<sup>1</sup> provides an interesting entry point to this discussion. Mitnick begins by drawing attention to how constitutive theory and contextual methodologies have become entrenched in legal scholarship and how it has given rise to the idea that law is ‘constitutive of social reality, of relations among persons in society, and even of human identity itself’<sup>2</sup>. In the same paper he introduces two distinct models of citizenship; one based on the classic liberal universalistic conception of citizenship which emphasizes on formal quality and the other known as differentiated citizenship which calls for dissimilar treatment to members of different social groups, evident in the works of multicultural theorists such as Will Kymlicka, Joseph Carens and Iris Marion Young. In the remaining part of the paper Mitnick builds a case for differentiated citizenship by arguing that ‘an enhanced sensitivity to context’ acknowledges that marginalized groups that have been oppressed are differently located in public life and therefore must be treated unequally in ‘order to be treated equally’.<sup>3</sup> Mitnick’s primary argument is that formal equality fails to capture the ‘complex moral calculus inherent in differentiated citizenship policy’<sup>4</sup>. Mitnick concludes eloquently by arguing that if one were ‘to be true to political life, as it is actually lived, there must be a place within political theory for the non-ideal, the historically contingent, the concrete’.<sup>5</sup> It is little wonder therefore that most modern nation-states, including developed western liberal democracies, have favoured a model of differentiated citizenship in some form or another.

India too makes room for differentiated citizenship in the form of affirmative action for citizens belonging to Scheduled Castes, Schedules

Tribes, other Backward Classes, women in Panchayati Raj Institutions and more recently for the Economically Backward Classes. Despite its merits, the obvious drawback of this model is that it takes into account structural disadvantage as a starting point for affirmative action. While recognizing structural disadvantage is by itself not problematic, it may lead to two kinds of problems; first, because the disadvantaged community is not homogenous, it may lead to preferential treatment for those members within the group who are not actually disadvantaged and second that it excludes those members from other communities who may be equally or more disadvantaged than those identified for special treatment. These problems however are not sufficient reasons to dismiss the rationale for providing unequal treatment to marginalized groups. For instance, before the legislation for granting reservations to Economically Backward Classes was passed, one could have made the argument that there may be a miniscule percentage of upper-caste persons who maybe be economically and socially, more or equally backward than a person belonging to the SC or ST community and hence reservations for SCs and STs are discriminatory in nature and that they violate Article 14 of the Indian Constitution. One intuitively realizes that despite some merit to the argument, the logic and ethics of this proposition is not entirely tenable because policies are made not on the basis of exceptions but on the basis of existing norms. One only needs to go through the Constituent Assembly Debates in order to understand the grounds on which differential treatment towards Scheduled Castes and Schedules Tribes were envisaged. Why, for instance, were political safeguards provided for SCs and STs but dropped for minorities (both religious and linguistic) while protecting their cultural and education rights?<sup>6</sup> As will become evident from models of citizenship prevalent in modern states, unequal treatment of citizens and refugees has precisely been the method to ensure substantive equality for those who are perceived to be more marginalized than the others owing to historical reasons.

If one were to apply a similar analytical logic to the CAA 2019, it would become clear that the objections to its alleged under-inclusivity and discriminatory character are not tenuous simply because the very basis of differentiated citizenship is unequal treatment for structurally disadvantaged marginalized groups and the tenets of formal equality do not apply here. Is persecution on the basis of religion a reality in the three countries mentioned in the Act? No one in their right minds

would perhaps negate this. Is the persecution of religious minorities largely a result of the Partition of 1947? If so, then there are definite historical reasons to provide for preferential treatment to those communities who have been victimised. Are there other forms of persecution that people in these countries are being subjected to and are there other neighbouring countries where religious persecution is taking place? Obviously so. But that by itself cannot be a compelling reason to label the CAA 2019 as being discriminatory or anti-secular.

It may also be useful to remember that the Indian state has enabled affirmative action for targeted groups in a progressive fashion. While SCs and STs were identified as the initial beneficiaries for affirmative policy, similar reservations for other groups like OBCs, women in PRIs and Economically Backward Classes were progressively announced over a period of time. It is only possible that going forward, similar policies will be made to provide preferential treatment to other targeted communities not covered by the CAA 2019. The CAA 2019 cannot be considered anti-secular as it covers not only Hindus but also five other religious communities that routinely face persecution in the three said countries. More importantly, nothing in the Act says that Muslims, Jews or atheists from these states will not be allowed to apply for citizenship through the existing route of naturalization. Finally, the claim that the BJP has a majoritarian agenda and that there is a likelihood that the CAA-NRC combine could possibly be used as a tool to turn India into a Hindu Rashtra cannot be considered to be a valid rationale to oppose the Act simply because a legislation cannot be opposed on the basis of suspicions regarding the intentions of the government but only on the basis of whether or not it violates constitutional provisions.

The most glaring gap in the discourse surrounding the CAA controversy is that the oppression of religious minorities in the context of Partition has not been spelt out sufficiently. In the subsequent section I dwell on the historicity of this problem in the context of Assam and the likely impact of the CAA on the Assam elections.

### **Assam and the CAA**

One of the strongest resistances to the CAA 2019 has come from the state of Assam. While the other northeastern states too were up-in-arms against the CAB 2016, their apprehensions and fears have been quelled by the announcement that the CAA 2019 will not apply in the regions covered by the Sixth Schedule of the Constitution and Inner Line Permit

(ILP) as notified under the Bengal Eastern Frontier Regulation of 1873. As Arunachal Pradesh, Mizoram, Nagaland and Manipur enjoy ILP status, and as large parts of Meghalaya and Tripura fall under the Sixth Schedule, they have been insulated from the CAA. However, given that only three small regions of Assam- Bodo, Karbi Anglong and Dima Hasao- are covered by the Sixth Schedule, the resentment has been the highest in Assam.

The primary objection to the CAA 2019 from Assam has been that it violated the Assam Accord which had set March 24th, 1971 as the cut-off date for detection and deportation of illegal immigrants. Representatives of the All Assam Students Union (AASU) and the Asom Gana Parishad (AGP) have argued that the BJP has communalised the issue of illegal migration by rendering support to the Bengali Hindu immigrants while Bengali Muslims are being targeted as they do not constitute BJP's vote bank. They have also argued that Assam had already borne the burden of the Partition by allowing for millions of refugees to settle therein and that the implementation of the CAA would further change the demography such that the indigenous people would become minorities in their own land.

While several media reports have adopted a sympathetic position towards the anti-CAA protestors in Assam, the violent and day to day non-violent silencing of Bengali Hindu voices in post-colonial northeast India has been conveniently forgotten. When the Partition of India happened, apart from Punjab on the western side, both the regions of Bengal and Assam were partitioned too. I have argued elsewhere<sup>7</sup> that the politics surrounding the 'foreigner's problem' in Assam and the subsequent demand for updating the NRC can be traced to the Sylhet Referendum of 1947 that led to the Partition of the state of Assam. Unlike the case of Punjab, the partitions of Bengal and Assam were not immediately followed by similar scales of rioting and the Hindu refugees of East Pakistan did not all cross the border overnight but were forced to flee their homes in the subsequent years in order to escape repeated persecution. It is a well-known fact that despite the signing of the Nehru-Liaqat Pact in 1950, which Prime Minister Nehru in his naivete believed would solve the problem of minority persecution in Pakistan, the condition of Hindus in East Pakistan continued to deteriorate drastically. It is estimated that a staggering 9.5 million people had migrated from East Bengal to India from 1946-1971 of which 7.1 million moved to West Bengal, 1.4 million to Tripura, 0.7 million to Meghalaya and 0.3 million to Assam.<sup>8</sup>

More importantly, in the north eastern states, this community faced a compounded disadvantage as they became the target of several indigenous language and ethnic movements that surfaced in various forms and most prominently in the language riots of 1960s and the Assam movement from 1979-1985. The Bangladesh Liberation War of 1971 was another watershed event that further escalated this exodus when after two million Bengali Hindus were killed by the Bangladeshi army, over eight million were forced to flee to India. Though a large segment of these refugees, especially those belonging to the upper castes/ classes, who possessed some social capital could acquire legal citizenship and could negotiate their hardships with a certain amount of confidence, a large section, especially from the downtrodden sections continued to struggle. Many belonging to the latter segments have found themselves in the most inhuman of circumstances whereby despite having been in refugee camps for years, have not received legal citizenship from the Indian state.

The history of Partition coupled with continuous immigration has led to the rise of multiple dual identities combining linguistic and religious markers in Assam which constitute important vote banks for political parties. As the state is gearing up for elections, one witnesses a variety of different alliances based on diverse permutations and combinations that are likely to cater to one or more of these identity groups. While the BJP has joined hands with the AGP and the United People's Party Liberal (UPPL), the Congress has stitched a 'mohajut' (grand alliance) with All India United Democratic Front (AIUDF), Bodo People's Front, three Left parties and a newly formed regional party named Anchalik Gana Morcha which emerged during the anti-CAA protests of December 2019. Two other parties that were born during the anti-CAA protests- the Assam Jatiya Parishad (AJP) and Rajjor Dal (RD) -have come together to fight the elections.

Going by recent developments, the perceptions surrounding the CAA rather than the actual provisions of the Act are likely to play a critical role in deciding the outcomes of the elections. As is evident, the BJP has gone unnaturally quiet on the CAA since the past few months as it has possibly sensed that this strategy may backfire. While the Assamese and tribal communities are already resistant to the idea, around 12 lakh Hindus whose names have not featured in the final NRC list are likely to feel betrayed by the party. If the NRC process had already created dissatisfaction and resentment across the board, the

delay in the enactment of the CAA Rules and the perception that the BJP is engaged in the delicate balancing act of placating to Assamese linguistic sentiments vis-à-vis religious sentiments of the Bengali Hindus may result in the latter's vote being split. Given that Bengali Hindus do not constitute more than 25 % of the state's population, the split may not be significant for the BJP's victory. Irrespective of the outcome of the election, it is evident that the fault lines between different religious and linguistic groups in the state are going to become even more layered than before. In this regard, the merits of differentiated citizenship are likely to be more than offset by the politics on the ground. More importantly, the election will make it clear as to whether the cleavage of language which has been the primary pivot of the politics of Assam since long is going to triumph over other political cleavages like religion.

#### Notes

- <sup>1</sup> Eric J. Mitnick, 'Differentiated Citizenship and Contextualized Morality', *Ethical Theory and Moral Practice*, Apr., 2004, Vol. 7, No. 2 (Apr., 2004), pp. 163-177.
- <sup>2</sup> Ibid, p. 165.
- <sup>3</sup> Ibid, p. 173.
- <sup>4</sup> Ibid, p. 175.
- <sup>5</sup> Ibid.
- <sup>6</sup> Shefali Jha, 'Rights versus Representation: Defending Minority Interests in the Constituent Assembly', in R. Bhargava, ed. *Politics and Ethics of the Indian Constitution* (New Delhi: Oxford University Press, 2008).
- <sup>7</sup> Malini Bhattacharjee, '73 yrs ago, Sylhet Referendum left a Hindu community homeless between Assam and Bangladesh', *The Print*, 6 July 2020. Available at <https://theprint.in/opinion/73-yrs-sylhet-referendum-hindu-community-homeless-between-assam-bangladesh/455233/>
- <sup>8</sup> P.N. Luthra, 'Problem of Refugees from East Bengal', *Economic and Political Weekly*, Dec. 11, 1971, Vol. 6, No. 50 (Dec. 11, 1971), p. 2467.