

India's Citizenship Amendment and its Muslim Minority

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Does India's recent Citizenship Amendment Act target the nation's Muslim minority? If so, in what precise ways?

On December 11, 2019, India's parliament passed an amendment to the nation's citizenship law, originally framed in 1955. Called the Citizenship Amendment Act (CAA), the new law provides fast-track citizenship to the members of "persecuted minorities", who entered India before December 31, 2014, from Pakistan, Bangladesh and Afghanistan. The law not only specifies these three countries, but also lists communities it designates as persecuted minorities: Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. It leaves out only the Muslim immigrants. The government's argument is that Muslims, by definition, cannot be persecuted in these countries for they have a Muslim majority and Islam is also their state religion.

Hindu-Muslim riots broke out in the national capital recently. Otherwise, anti-CAA protests have been primarily non-violent, and have continued for over two and a half months. They have raged in cities and towns virtually all across the country. Muslims have been at the forefront of protests, but a large number of non-Muslims have also participated.

The protesters not only view CAA as a challenge to the fundamental properties of India's Constitution and polity, but also one which might render a large number of existing Muslim citizens stateless and take away their basic rights, making the community highly vulnerable to oppression and discrimination. India is about 80% Hindu and a little less than 15% Muslim,

which adds up to about 180-190 million Muslims.¹ The threat is serious and the implications quite horrendous. Something deeply injurious to the Muslim minority can happen, once their citizenship rights are taken away.

In this testimony, I will concentrate on three issues.

The first issue is one of fundamental constitutional principles. India's original 1955 citizenship law drew no religious distinction between Muslims and others. As a nation, Pakistan was indeed conceptualized as a Muslim homeland, where non-Muslims could be citizens but would have fewer rights. However, India was never envisioned by its Constitution-makers as a Hindu homeland. All religions were equal. In those early days, even Muslims, who had gone to Pakistan but returned, could reclaim Indian citizenship. India under Prime Minister Nehru (1947-64) was lauded worldwide for its constitutionally enshrined inclusive citizenship. If America's constitutive ideals were freedom and equality, India's founding values were equality, including religious equality, diversity and tolerance.

The second issue is whether it is true to say that no Muslim communities in Pakistan, Afghanistan and Bangladesh are persecuted, and whether persecution is confined in South Asia, India's neighborhood, to only these three countries. The case of Ahmediyyas in Pakistan is only too well known. Since the mid-1970s, the Pakistani state has treated them, legally and politically, as non-Muslim, which makes them easy targets of persecution. Some would also add the Hazara to the list of the persecuted communities in Pakistan.

In addition, the Buddhist-majority Sri Lanka and Myanmar are beyond the ambit of CAA, though both are India's neighbors and have had a history of discrimination, even persecution,

¹ The exact 2021 census numbers will arrive next year.

against their minorities. The persecution of the Rohingya, who are Muslim, in Myanmar has attracted worldwide attention. The Tamils in Sri Lanka have also often complained of discrimination, if not persistent persecution.

The Government of India is thus denying, on one hand, the well documented existence of persecuted Muslim minorities in Muslim-Majority countries, and also implying, on the other hand, that the oppression of religious minorities does not mark societies, where Muslims are not a majority. Both can be shown to be wrong.

But it is the third issue that is most threatening to India's Muslim minority. The government's citizenship move consists of two steps. In 2019, the Minister of Home Affairs announced several times that (i) a National Registry of Citizens (NRC) would be created as a sequel to (ii) the CAA in the next few months. Whether after the unending citizen protests an NRC will finally be legislated in parliament, or announced as an executive decree, remains an open question, but the awfully exclusionary implications for the Muslim minority ought to be clearly understood.

The key issue is how an NRC will be created, and what documents will be necessary to prove citizenship. The government has not announced which documents it will ask for. The fear is that if the existing Muslim citizens of India are unable to produce documents of Indian ancestry, which simply can't be ruled out until we know what documents are required, the NRC, using CAA, can easily call them "infiltrators", a term repeatedly used by the Home Minister. That, in turn, will make them an object of internment or expulsion, and/or deprive them of the right to vote. In contrast, if the Hindus have a similar documentary deficit, they would neither be interned, nor expelled, nor disenfranchised. They can simply claim they are welcome only in

a Hindu homeland and persecuted elsewhere in South Asia, which will open the door for an Indian citizenship for them.

In short, using CAA, the NRC can render stateless a large number of Muslims, even if they were born in India and have lived in the country for decades, as have their ancestors. That is an important reason the protests have not ceased. The protesters can clearly visualize extreme Muslim marginalization and its attendant negative consequences, should NRC become the law of the land.