

UNEQUAL, UNSECULAR: ON CITIZENSHIP AMENDMENT BILL

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to The Preamble, Union & its Territories and The Citizenship

The [Citizenship \(Amendment\) Bill, 2019 \(CAB\)](#), is brazenly discriminatory and it is only a matter of time before its constitutionality is subjected to severe judicial scrutiny. The government's obstinacy in going ahead with it, despite opposition in Parliament, as well as from enlightened sections, is unfortunate. In both its intent and wording, the proposed amendment singles out a community for hostile treatment. In short, the Bill chooses to open its citizenship door to non-Muslims from three nations with a Muslim majority — Pakistan, Bangladesh and Afghanistan. The ostensible reason: an opportunity to members of minority communities from these countries who had entered India prior to December 31, 2014, to apply for citizenship through naturalisation. The residential requirement for this category for naturalisation is reduced from 11 years to five. The Bill carefully avoids the words 'persecuted minorities', but the Statement of Objects and Reasons says "many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religions" in these three countries. Further, it refers to [Home Ministry notifications in 2015-2016](#) through which it had exempted these undocumented migrants from the adverse penal consequences under the Passport (Entry into India) Act, 1920, and the Foreigners' Act, 1946. The CAB creates a category of people on the basis of their religion and renders them eligible for its beneficial effects.

A key argument against the CAB is that it will not extend to those persecuted in Myanmar and Sri Lanka, from where Rohingya Muslims and Tamils are staying in the country as refugees. Further, it fails to allow Shia and Ahmadiyya Muslims, who also face persecution, to apply for citizenship. The exemption from the application of the CAB's provisions in tribal areas in Assam, Meghalaya, Mizoram and Tripura, and the Inner Line Permit areas in Arunachal Pradesh, Nagaland and Mizoram, with Manipur to be added soon, is clearly based on political expediency, even if it is in line with the constitutional guarantees given to indigenous populations and statutory protection given to ILP areas. It demonstrates the need for careful and meaningful categorisation, something that the main provisions fail to do. The central feature of the equal protection of the law envisaged in Article 14 is that the basis for classifying a group for a particular kind of treatment should bear a rational nexus with the overall objective. If protecting persecuted neighbourhood minorities is the objective, the classification may fail the test of constitutionality because of the exclusion of some countries and communities using religion. It would be a sad day for the republic if legislation that challenges its founding principles of equality and secularism is allowed to be passed.

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