

AN ACT THAT FAILS THE CONSTITUTIONAL TEST

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

After reading opinion page articles in this daily such as [Time to defend India's secularism](#), by Kerala Chief Minister Pinarayi Vijayan (December 18, 2019), and [A premature denouncement of the Citizenship Act](#), (December 21, 2019), by Member of Parliament and former Union Minister Subramanian Swamy, one cannot avoid the feeling that the issues require more corroboration and expansion.

Mr. Vijayan has argued that the [Citizenship \(Amendment\) Act \(CAA\), 2019](#), is violative of Article 14 of the Constitution and impinges on the very ideals of our freedom struggle. He tries to establish that the CAA, being divisive and discriminatory, manifestly violates human rights, and is an attempt to impose the politics and philosophy of Hindutva, to accomplish its vision of a "Hindu nation".

Dr. Swamy has attempted to rebut these arguments on three premises: that of the aims and objects of this piece of legislation passed by both Houses of Parliament with a large majority; the historic context for the legislation; and the equation of "Hindutva" with 'secularism'. The arguments in the December 21 article appear hollow on multiple grounds and mandate rebuttal.

Quite often, conceivably discriminatory laws are camouflaged by language. What requires analysis is a reasonable scrutiny of the cumulative effects of the legislation, read not in isolated silos. Dr. Swamy argues that the need for this Bill arose partly because the Islamic theocratic nations, of Pakistan, Bangladesh, and Afghanistan, have brutally persecuted non-Muslim minorities since 1947. However, India's official position on a number of occasions necessitate us to make a nuanced observation. While exercising its Right of Reply at the 38th Session of the UN Human Rights Council, in 2018, the Indian representative said of Pakistan's stand: "In its obsession with puritanism, it has unleashed systematic persecution against its own Muslim minorities including Shias, Ahmadiyas, Ismailia and Hazaras, who have been reduced to second class citizens."

[Video: Amit Shah says no link between NRC and NPR | Fact check: Is the government right in denying NPR-NRC link?](#) | [Podcast: Will the NPR be the start of the NRC?](#)

In the course of justification, Dr. Swamy has argued that "no Muslims or Jews came to India over the last 70 years on grounds of religious persecution". It is devoid of constitutional logic because as per the Indian Constitution, even in the absence of an actual claim, rights of an individual persist. The Supreme Court of India has held that "Article 14 was founded on a sound public policy recognised and valued all over the civilised world, its language was the language of command and it imposed an obligation on the State of which no person could, by his act or conduct, relieve it." It signifies that even if a Muslim or a Jew might not have approached for last 70 years, it cannot be considered as a ground for waiver of right to equality enshrined in Article 14. In order to vindicate the patently unreasonable classification under the CAA, Dr. Swamy appears to have misquoted the Congress Party Working Committee's resolution of 1947 and former Prime Minister Manmohan Singh's statement of 2003 in terms of intent. It is worth noting that their premise for a lenient and humane approach was not based on the specific ground of religion, but persecution.

Dr. Swamy's opinion that "on religious persecution, the Muslims of Pakistan, etc., are not similarly placed" lacks academic rigour. Arriving at a concrete definition of "religious persecution"

is a difficult task.

Explained: What connects the NPR, NRIC and Census?

In the context of persecution, religion has to be understood not from the believer's point of view; rather it is about what it means to its adversaries. For instance, the treatment meted towards an atheist or agnostic gets completely ignored under the parochial understanding of the CAA. Even the agents of persecution can be of various types, including state agencies persecuting one or more religious communities, religious organisations persecuting other religious communities or, individual puritans enforcing conformity on their own people.

As an illustration, UN experts and special rapporteurs have reported, *inter alia*, that “the current legal requirement for a separate electoral list for the Ahmadis, who have to declare themselves as non-Muslims in order to vote, is of particular concern”.

On the aspect of human rights, the words of statesman-philosopher Dr. Radhakrishnan should suffice: “This view of religious impartiality, of comprehension and forbearance, has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life.”

Drawing parallels between Hindutva and secularism appears to be a complete misadventure as minor incidental overlappings may exist between two diametrically opposite philosophies. Contrary to many misinformed, aggressive and irresponsible statements made by some parliamentarians on the issue of Partition and a Hindu Rashtra, let us remind ourselves that the Partition of 1947 did not take place on religious lines. Rather, it was based on a philosophical understanding of the nature of society citizens and leaders wanted. Pakistan opted for a theocratic nature of governance, but our founding fathers coveted a plural, inclusive and modern society based on democratic and secular credentials. The CAA has witnessed large-scale, non-violent protest by both the masses and intellectuals. It is hoped that the Government will display an accommodative approach. To conclude by paraphrasing Edmund Burke, “Magnanimity in politics is not seldom the truest wisdom; and a great democracy and little minds go ill together.”

Anmolam is a lawyer, running a non-profit organisation BDLAAAW. Farheen Ahmad is a research scholar at the South Asian University, New Delhi

You have reached your limit for free articles this month.

Register to The Hindu for free and get unlimited access for 30 days.

Already have an account ? [Sign in](#)

Sign up for a 30-day free trial. [Sign Up](#)

Find mobile-friendly version of articles from the day's newspaper in one easy-to-read list.

Enjoy reading as many articles as you wish without any limitations.

A select list of articles that match your interests and tastes.

Move smoothly between articles as our pages load instantly.

A one-stop-shop for seeing the latest updates, and managing your preferences.

We brief you on the latest and most important developments, three times a day.

*Our Digital Subscription plans do not currently include the e-paper ,crossword, iPhone, iPad mobile applications and print. Our plans enhance your reading experience.

Why you should pay for quality journalism - [Click to know more](#)

Please enter a valid email address.

Subscribe to The Hindu now and get unlimited access.

Already have an account? [Sign In](#)

Sign up for a 30-day free trial. [Sign Up](#)

To continue enjoying The Hindu, You can turn off your ad blocker or Subscribe to The Hindu.

[Sign up for a 30 day free trial.](#)

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com