

# A BILL THAT UNDERCUTS KEY CONSTITUTIONAL VALUES

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Last week, while speaking about implementing a National Register of Citizens in West Bengal, Home Minister Amit Shah said, “I want to assure Hindu, Sikh, Jain, Buddhist and Christian refugees, you will not be forced to leave India by the Centre.” These words sparked an immediate backlash as Mr. Shah had evidently omitted one religious community, Muslims, from his statement. But his statement was not merely a communal dog-whistle: he was echoing the provisions of the Citizenship Amendment Bill, which the previous National Democratic Alliance government introduced in Parliament before the last election, but was unable to enact because of widespread protests in the North-east Indian States. Mr. Shah made it clear, however, that the new government would re-introduce, and pass, the Bill in the next parliamentary session, or soon thereafter.

So, what is the Citizenship Amendment Bill? As its name suggests, it makes an amendment to the Citizenship Act, the umbrella law that sets out the elements of Indian citizenship. The Amendment stipulates that “persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan... shall not be treated as illegal migrants for the purposes of that Act”. These individuals are made eligible for naturalisation as Indian citizens, and furthermore, the normal precondition for naturalisation — having spent 12 years in the country — is halved to six years. In simple language, therefore, the Citizenship Amendment Bill does two things: it shields a set of individuals from being declared illegal migrants (and, by extension, shields them from detention or deportation); and it creates a fast-track to citizenship for these individuals. The problem, of course, is that it does so on an explicitly communal basis: it categorically excludes Muslims from its ambit. The implications are clear: if the government goes ahead with its plan of implementing a nation-wide National Register of Citizens, then those who find themselves excluded from it will be divided into two categories: (predominantly) Muslims, who will now be deemed illegal migrants, and all others, who would have been deemed illegal migrants, but are now immunised by the Citizenship Amendment Bill, if they can show that their country of origin is Afghanistan, Bangladesh or Pakistan.

The last bit is important, because it shows that non-Muslims who are left out of a hypothetical nation-wide NRC will not immediately receive legal immunity, but will have to jump through further hoops before they are protected. That apart, however, the fact remains that by dividing (alleged) migrants into Muslims (but also, as we shall see below, Jews and atheists) and non-Muslims, the Citizenship Amendment Bill explicitly, and blatantly, seeks to enshrine religious discrimination into law, contrary to our long-standing, secular constitutional ethos.

Of course, neither the Bill nor the government directly admits that it is targeting Muslims. Both the text of the Bill and its ‘Statement of Objects and Reasons’ refers to “minority communities” from Afghanistan, Bangladesh and Pakistan. The logic appears to be that as these three countries are Muslim-majority, they may be subject to persecution on account of their faith, and, therefore, need refuge in a country such as India.

If that is the logic of the Bill, however, then it is so evidently flawed that it borders on irrationality. First, as the PRS Legislative Research website points out, if the objective is the protection of minorities, then there is no explanation for why Jews and atheists (to take just two examples)

have been left out. Second — and more importantly — there are Muslim religious minorities within these countries who are subjected to grave and serious persecution: the classic example is that of the Ahmadis in Pakistan. And third, there is no explanation for why only these three countries have been singled out. Lately, the Rohingya community in Myanmar, another neighbouring country, has been subjected to prolonged persecution, ethnic cleansing, and potentially genocide. However, the government has been openly hostile towards the Rohingyas and has even argued for their deportation before the Supreme Court.

It is therefore evident that the protection of minorities is not the genuine objective of the Citizenship Amendment Bill: the gap between that stated objective and the actual text of the Bill is wide enough that a ship can sail through it. But if that is not the objective, then there remains no conceivable justification for the language of the Bill: it is religious discrimination, plain and simple.

Now, some people have argued that even if this is true, Article 15 of the Constitution — that bars religious discrimination — applies only to citizens. But what these arguments forget is Article 14 of the same Constitution, which guarantees to all persons equality before the law, and the equal protection of law. Discriminatory treatment and especially, discrimination that is arbitrary, and classifications that are unreasonable violate the essence of the equal treatment clause. A state that separates individuals and treats them unequally on palpably arbitrary grounds violates the prescription of Article 14, and the heart and soul of the Indian Constitution: respecting the dignity of all.

Beyond issues of strict constitutionality, there are other disturbing issues raised by the Citizenship Amendment Bill. The first is how it dramatically seeks to alter the basis of citizenship in India. During the framing of the Indian Constitution, it was agreed that the primary basis for Indian citizenship would be *jus soli* — or, citizenship by birth (in the territory of India). Over the years this principle has been diluted to an extent, with citizenship by descent replacing *jus soli* in certain respects. The Bill, however, will be the first time that religion or ethnicity will be made the basis of citizenship. That would do grave damage to the very idea of India as an inclusive and diverse polity, where religion has no bearing on who can become a full member of society.

Second, the Citizenship Amendment Bill is closely linked to plans for a nationwide National Register of Citizens. The link was explicitly drawn by the Home Minister: that the Citizenship Amendment Bill is required to protect (predominantly) non-Muslims who are excluded from the NRC.

However, apart from the now-public knowledge of how flawed the NRC process has been in Assam, there is a key question: why do we need to have a national NRC? Mr. Shah has stated that it is required for national security, and that India cannot “run smoothly under the weight of so many intruders”. However, there is absolutely no evidence to suggest that there is a huge influx of illegal migrants into India: in fact, recent evidence suggests that the rate of migration has been declining. The Assam NRC arose out of a very specific historical experience, and Assam’s own position as a border State; however, for the rest of India, Assam’s own experience shows that an exercise such as this — flawed and riddled with errors as it is — will only lead to misery and exclusion on a national scale, with no reason whatsoever to justify it.

The coming months, therefore, will present a serious challenge to fundamental constitutional values. A nationwide NRC will replicate the flaws of the Assam NRC on a much larger scale; and for those who find themselves on its wrong side, the discriminatory Citizenship Amendment Bill will protect some — but only some — based on their religion. Both exercises, therefore, need to be urgently challenged, at the level of popular movements, in the domain of Parliament, and of course, before the sentinels charged with guarding our fundamental rights — the courts.

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