



E-ISSN: 2664-603X
P-ISSN: 2664-6021
IJPSG 2025; 7(5): 44-47
www.journalofpoliticalscience.com
Received: 02-03-2025
Accepted: 06-04-2025

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Discrimination or humanitarianism? A moral assessment of the citizenship amendment Act 2019

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DOI: <https://doi.org/10.33545/26646021.2025.v7.i5a.524>

Abstract

The Citizenship Amendment Act (CAA) of 2019 has ignited widespread ethical and political debate, with supporters framing it as a humanitarian gesture toward persecuted minorities and critics denouncing it as a discriminatory law that undermines the secular fabric of the Indian Constitution. This paper offers a moral assessment of the CAA by analyzing its selective inclusion of non-Muslim migrants from Afghanistan, Bangladesh, and Pakistan. Using ethical frameworks such as utilitarian welfare and human rights principles, the study interrogates whether the Act's religious criteria for citizenship align with moral principles of equality, justice, and universal human dignity. It explores the tension between state sovereignty in defining citizenship and the moral imperative to protect vulnerable populations without discrimination. The article concludes that, while the CAA appears humanitarian on the surface, its exclusive nature raises serious moral difficulties that call into question India's constitutional commitment to secularism and equality.

Keywords: CAA 2019, NRC, Articles 11, secularism, protective-positive discrimination, moral rights

Introduction

The Citizenship Amendment Act (CAA) 2019 intends to resolve a historical injustice for a specific group of refugees who have been facing tremendous hardships due to religious persecution in their home countries. This law offers a fast track to Indian citizenship for non-Muslim minorities from Pakistan, Bangladesh, and Afghanistan. The haunting relocation of Indians occurred during the religious-based partition of India, which resulted in such a statute in recent years. Thus, the CAA was enacted in response to the struggles of several religious minority groups from the three nations, particularly Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians. Many of these exiles fled to India in search of safety and better lives, and to escape religious persecution in their own countries. In this context, the present government led by the Bharatiya Janata Party (BJP) decided to provide a lawful avenue to citizenship for people who have suffered persecution in the three Muslim-majority countries. On 12 December 2019, the Indian Parliament passed the Citizenship Amendment Act under the authority of Article 11 of our Constitution to confer citizenship on the above-mentioned six religious minority migrants from Pakistan, Afghanistan, and Bangladesh who arrived in India before December 31, 2014. This act modified the Citizenship Act (1955) ^[1]. However, the broader conversation surrounding the law's implementation and impact on India's inclusive identity is more complex and raises significant concerns. One key critique is the law's selective nature in granting citizenship based on religion.

Therefore, the CAA has recently sparked significant debates and controversies in India, primarily due to its selective application based on religion and the exclusion of Muslim refugees from neighbouring countries ^[2]. The amendment specifically states that citizenship is not available to Muslim immigrants and other religious minorities from these three and other nearby nations. The critics of the law argue that it discriminates against Muslims and violates the secular fabric of the Indian Constitution.

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¹ Parliament Passes the Citizenship (Amendment) Bill 2019," Press Information Bureau, December 11, 2019, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=195783>.

² "Citizenship (Amendment) Act, 2019, Gazette of India, December 2019, <https://egazette.nic.in/WriteReadData/2019/214646.pdf>.

As a result, the law has sparked significant discussion, protests, and legal challenges ^[3].

The present BJP government has justified in the House that the CAA is aimed at addressing the human rights of the people belonging to minority communities who faced persecution for their beliefs and religious practices and who have been living in India without documents. The CAA makes clear that millions of citizens once lived in the undivided India under one religion, i.e., Hinduism, but were scattered due to the persecutions meted out by various medieval monarchs due to their religious beliefs and practices. Thus, to help migrants from six distinct religious minorities who have been residing in India without documentation, this Act was passed ^[4].

Proponents of the Act are of the opinion that the Citizenship Amendment Act is a humane and moral action taken by the Government of India to alleviate the long-standing suffering of the persecuted minority uprooted by Partition and other reasons. With only 31,313 individuals qualified under the Act, their presence places no demographic or economic impact on the country. Rather, the Act grants them the dignity of lawful citizenship, enabling them to fully integrate into Indian society. For years, these people have lived in impoverished conditions—often in slums—with little access to essential services or security, always fearing deportation. Their children have been deprived of education, and adults have no official identity documents like Aadhaar, PAN cards, voter IDs, or driving licenses. As a result, they have been forced into informal jobs with meagre wages or have had to rely on charity for survival. The CAA seeks to end this cycle of uncertainty and hardship by recognizing them as rightful citizens ^[5].

Humanitarian Aspect of CAA: Criticism and debate are healthy in a democracy, provided they are informed by facts and grounded in context. India has a long tradition of offering refuge to those in need, such as the Tibetans in the north, to the Tamils from Sri Lanka in the south. That tradition is carried on by the CAA. The CAA is not an exclusionary law. It is a remedial one-one that finally gives persecuted individuals the rights to call India their home, not just in spirit, but also in law.

The CAA certainly highlights a significant concern in providing legal recognition and citizenship to refugees who have faced tremendous hardships due to religious persecution in their home countries. We need to change our perspectives and see CAA on moral grounds, because the CAA prioritizes individuals over politics ^[6].

From the utilitarian welfare point of view, the overall outcome of the CAA could be seen as a moral good because it has reduced suffering and improved the lives of persecuted groups. There is no doubt that the law helps

thousands of individuals secure legal rights and dignified living conditions. Thus, the supporters of this law justify it as an ethical benefit. Therefore, as a strong sovereign nation, India stands by those whose lives have been shattered by circumstances beyond their control. From this perspective, the CAA seeks to address a specific humanitarian crisis by providing citizenship and the opportunity for a better life in India.

On the other hand, due to the Act's selective inclusion, offering protections only to non-Muslim minorities raises ethical questions about why suffering Muslims from the same countries are excluded, especially when there is ample documentation of persecution of groups like Shia Hazaras, Ahmadis, and Rohingya Muslims. By creating a religion-based citizenship path, the CAA undermines the secular ethos of the Indian Constitution. Besides, it can erode social cohesion, instilling fear and uncertainty among minority communities, especially Indian Muslims.

The supporters justify that the whole world has known for decades that Pakistan, the Taliban in Afghanistan, and Bangladesh are increasing oppression on their minorities. As a result, Pakistan has 2.4% Hindus (as of 2023) ^[7], Bangladesh in 1951 had 22% ^[8] and 9.5% ^[9] in 2011 while Afghanistan had only 50 Hindus in 2020. The Government of India evacuated many Sikhs and Hindus out of the country due to the Taliban takeover. As a result, only one Hindu priest and a few followers remain in the nation today, also acting as the Temple guard. He refuses to abandon Afghanistan's ancestral temple; saying that he will consider it 'Seva' even if the Taliban kills him ^[10].

Much has been said by the critics about this law, but what often gets lost in the noise is the deeply humanitarian purpose it serves. The CAA is, above all else, an overdue recognition of pain endured and lives displaced. It would be inhuman to send them back to their own countries from where they have fled. Thus, the government provided an augmented route by relaxing the citizenship requirement from 11 years to 5 years for these communities to become eligible for Indian citizenship ^[11].

NRC-CAA link controversy: One of the most contentious issues, and a fear that is rising in the entire country is that, the CAA will be clubbed with NRC (National Register of Citizens). However, there is no concrete evidence so far that can prove the link between CAA and NRC. The NRC is an effort to identify and expel illegal migrants from India. While the government has denied any connection between the CAA and NRC, public perception and widespread speculation have led to protests and fear, particularly among Muslims. It is just a speculation and a rumour, which is unhealthy for the country.

Does the CAA have constitutional standing?

The true spirit of our Constitution is not just to ensure democracy, but to make it meaningful by protecting the

³ The Exclusionary Nature of India's Citizenship Amendment Act. *Hindus Human Rights*, Mar 14, 2024,

⁴ Kumar, Atul, 9 December 2019, Why Citizenship Amendment Bill needs to pass Article 14 test, www.indiatoday.in

⁵ Gautam Bhatia, "A Bill that Undercuts Key Constitutional Values," *The Hindu*, October 7, 2019, updated April 14, 2021, <https://www.thehindu.com/opinion/lead/a-bill-that-undercuts-key-constitutional-values/article29611770.ece>.

⁶ Hardeep S Puri, "What the CAA is; what it is not | Opinion" - *Hindustan Times*, Aug 12, 2020 <https://www.hindustantimes.com/analysis/what-the-caa-is-what-it-is-not/story-nKYKU0TouIHqFeQisEsdN.html>

⁷ https://en.wikipedia.org/wiki/demographics_of_pakistan

⁸ 1951 – <http://www.bharat-rakshak.com/monitor/issue6-2/sridhar.html>

⁹ <http://www.bharat-rakshak.com/monitor/issue6-2/sridhar.html>

¹⁰ "last Hindu priest refuses to abandon Afghanistan ancestral temple, says 'will consider it seva even if Taliban kills me'". *Zee news*. 17 August 2021. Archived from the original on 3 November 2021. Retrieved 3 November 2021.

¹¹ Parthasarathy, s., January 13, 2020, "Why the CAA violates the constitution", the India forum: a journal-magazine in contemporary issues, p-2

most vulnerable, especially minorities. The framers, especially leaders like Dr. B.R. Ambedkar and Jawaharlal Nehru, were very intentional about ensuring India remained a pluralistic, inclusive democracy. Let us try to understand CAA carefully, because the constitutional validity of the CAA, 2019, is one of the most debated legal and ethical issues in recent Indian history. Article 11 of the Indian Constitution empowers the Parliament to make laws regarding citizenship, including the acquisition and termination of citizenship, and all other matters related to citizenship^[12].

People hold the persistent notion that all forms of discrimination are unconstitutional. Many forms of discrimination are constitutionally permissible. For instance, discrimination in favour of SCs, STs, and OBCs; discrimination in favour of women; discrimination in favour of minorities; discrimination in favour of rural areas. In admission to medical institutes in certain regions, discrimination in favour of certain Scheduled Areas, discrimination in favour of the physically handicapped, etc. This amendment is merely a relaxation on a few grounds that do not in any way contravene the Indian Constitution. Therefore, discrimination for the protection of a minority or the preservation of their culture, script, or language is constitutionally valid under the Indian Constitution. Therefore, giving oppressed and underprivileged groups preferential treatment is referred to as "protective" or "positive" discrimination. Protective discrimination is now strongly encouraged in our society as a constitutional concept for the defense and upholding of women's and minorities' rights. However, many of the critics in contemporary times came forth to contend that the principle of protective discrimination is antithetical to the rule of fairness enshrined in the Constitution^[13].

The main question in this discussion is whether this controversial law is causing us to lose our impeccable standing on the international scene. The controversial Citizenship Law passed by the Indian parliament, according to critics, damages India's impressive international standing. The controversial citizenship bill has been described by the U.S. government commission on international religious freedom as essentially anti-Muslim and dangerously veering off-course since it goes against India's long history of secularism and pluralism. The United Nations and other international organizations have also criticized the CAA, stating that it may breach international commitments such as the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights^[14].

The CAA has triggered a constitutional crisis in India as well. Citizenship in India has been decided on the *jus soli* principle, which implies that a person must have been born in India or have parents who were born here to be considered an Indian citizen. Religion is not a barrier. However, with the CAA, this idea is abandoned in favour of

the bloodline-based *jus sanguinis* theory. The CAA is based on the "law of return," which is widely accepted in Israel and holds that Jews from all around the world should naturally settle in Israel^[15]. In its 2019 election manifesto, the BJP had again reaffirmed its political stance that India is the natural home of Hindus worldwide (BJP.ORG, 2019)^[16]. Thus, this implies that citizenship is decided by religion, which is contrary to both constitutional morality and the fundamental tenet of the Indian Constitution.

On the other hand, the current administration thinks that citizenship is a sovereign concern and that the CAA is a restricted humanitarian measure. The law does not prevent Muslims from obtaining citizenship through other lawful means. The statute is meant to aid individuals who have been forced to from their home nations due to religious persecution. The argument is that because the law focuses on assisting persecuted minorities in neighbouring nations, there is no need for Muslims from these countries to be included^[17].

Therefore, the supporters of the bill counter that the CAA is not anti-secular. For instance, there are 566 Muslims from Pakistan, Afghanistan, and Bangladesh who were given citizenship since 2014^[18]. They argue that the CAA rule does not impact the rights of Muslims worldwide, who are free to apply for citizenship just like anybody else, and that it is intended to assist religious minorities who have been persecuted in their own countries. Additionally, they contend that India has the authority to set its own immigration and citizenship regulations as a sovereign state. This Act is sub-judice before the Supreme Court (SC). Thus, it is not fair to pass any comments or react based on one's assumption or escalate violence in society until the SC verdict is passed. Whatever the verdict, the government and society need to engage in constructive dialogue to address the concerns of all communities and ensure that India's secular and democratic values are preserved.

The Citizenship Amendment Act of 2019 presents a serious moral dilemma. While aiding a persecuted minority could appear to be a humanitarian objective, the law's exclusivity raises ethical concerns. The Act favours some religious identities while marginalizing others, which is in opposition to the universal values of equality, human dignity, and secularism.

Finally, we can conclude that the CAA may provide people with real relief, but its discriminatory structure calls into question its morality. A truly humanitarian approach would offer refuge based on persecution and need rather than religious affiliation. It is unclear how the government will carry out this Act without undermining the Indian constitution's pluralism and secularism, which protect the rights of the nation's true citizens. India must strive to maintain the moral high ground as the world's greatest

¹² <https://constitutionofindia.in/article/11>, "nothing in the foregoing provisions of this part shall derogate from the power of parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship".

¹³ Nath P., Protective Discrimination under the Constitution of India, 1, AIJACLA, 338, 338-345, (2021), <https://www.aequivic.in/post/aijacla-protective-discrimination-under-the-constitution-of-india>.

¹⁴ United States Commission on International Religious Freedom, Press Release Dt 09.12.2019 also available on <http://www.uscifr.gov/news-room>

¹⁵ Dabhade N., 2019 "Citizenship Amendment Act, 2019: A step towards undoing the Indian secular democracy." Heinrich Böll Stiftung.

¹⁶ BJP.ORG. (2019, April 8), from BJP.Org: <https://www.bjp.org/en/manifesto2019>, accessed on December 22, 2019

¹⁷ Forced to Flee: Universal Right to Asylum - Tahiri Justice Center Jul 28, 2023 <https://www.tahiri.org/news/forced-to-flee-universal-right-to-asylum>

¹⁸ The Times of India, "Muslims from Pakistan, Afghanistan & Bangladesh too got citizenship: Nirmala Sitharaman" 20 January 2020 <https://timesofindia.indiatimes.com/india/muslims-from-pakistan-afghanistan-bangladesh-too-got-citizenship-nirmala-sitharaman/articleshow/73400160.cms>

democracy by passing laws that reflect inclusive justice rather than limited sympathy.

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