

Citizenship Amendment Act (CAA), 2019
National Population Register (NPR)
National Register of Citizens (NRC)
and
The Constitution of India

Why is there so much controversy?
Should Citizens Worry?

Dr. V. Suresh, Advocate, Madras High Court &
Gen. Secretary, People's Union for Civil Liberties

Part 1



Context and Preliminary Explanations

An Explanatory Note

Why is there so much controversy over the Citizenship Amendment Act (CAA), 2019, National Population Register (NPR), National Register of Citizens (NRC)?

Who is right?

The Central Government which says Muslim `citizens' need not fear loss of citizenship & that the controversy is politically motivated?

OR

Others, who say the BJP Government has introduced for first time since independence in 1947, religion as a criteria to differentiate between communities, thereby changing character of Art. 14 of the Indian Constitution, which guarantees to all `persons' (not just citizens) the Fundamental Right to Equality, which for 70 years rejected religion as basis for segregation.

The Ordinary Citizen's Dilemma!!

WE DON'T KNOW THE LAW?

(In any case the law is confusing!)

HOW DO WE DECIDE WHO IS RIGHT?

SHOULD WE BE BOTHERED AT ALL?

- This presentation is to help you, the Ordinary Citizen to get an understanding of the issues so that you can come to your own conclusion about the controversy.
- We have tried to make explanation simple and non-technical. We hope you like the presentation!

Some basic principles of law ..

The Constitution of India is the 'Sacred Book' for all laws in India like the 'Gita, Koran or Bible' is for religions.

Any and all laws in India will have to be in conformity with the Indian Constitution & Constitutional Provisions.

The PREAMBLE to the Constitution spells out the dream of the Constitution Framers, led by Dr. Ambedkar, for a future India!

The 'Fundamental Rights' chapter (Part 3) is one of the most important parts of the Constitution which create the framework for protecting individuals and communities as against the Government and others.

Some fundamental rights are available for any "PERSON" in India and some fundamental rights are only for "CITIZENS".

How are laws made?

Some more basic information about laws ...

- ❖ Generally, almost all laws are introduced by the Govt— in other words the ruling party - and is passed by majority votes in Parliament or State Assemblies, after a debate.
- ❖ This means, all laws are influenced by the ruling party's political vision or perspective or agenda.
- ❖ If the ruling party has majority votes then any law the Government introduces will be passed. The difficulty is when there is no clear majority. In which case, the ruling party has to seek support of other parties.

As citizens it is important to understand this process.

aspect of law making.

Difference between `Laws' & `Rules'

- The law is referred to generally as an “ACT”.
- Along with the law, the government has to pass `Rules' which explains the procedure to implement the law.
- Without `Rules' the law, by itself, is as good as useless.
- The `Act' or law can be amended any number of times but has to be voted by majority in Parliament or Assemblies after discussion and voting .
- Generally, `Rules', are changed by Govt. through Executive Orders & not through introduction in Parliament or Assemblies. In other words, there is no discussion in Parliament about changes in rules.

Are CAA, NPR & NRC related?

CAA refers to amendments made to the Citizenship Act, 1955 (CA, 1955) in 2019.

In 2003, Citizenship Act, 1955 was amended introducing new Section 14A, regarding issue of 'National Identity Cards' and 'National Register of Indian Citizens' (sec. 14A(1) & (2)).

In 2003 itself, the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 were introduced as part of the Citizenship Act, 1955.

Rule 3 provides for "National Register of Indian Citizens" and Rule 4 is about 'Preparation of NRIC'.

Thus the CAA, NPR and NRC all arise from same law, CA, 1955

The amendments were during Vajpayee - BJP Government in 2003

Part 2



*The Framework for Examining the CAA ,
NPR & NRC Issue*

Is there politics behind the CAA, NPR & NRC ?

What are the issues?

There are three broad issues underlying the CAA – NPR – NRC controversy.

They are:

- ❖ Constitutional & Legal dimension - Dilution of Right to EQUALITY?
- ❖ Ethical / Moral Issue – People flee persecution for various reasons including political belief, gender issues, cultural differences. When so, Is it proper to differentiate between “persecuted” people, only in terms of religion ?
- ❖ Is there any politics behind BJP Government’s introduction of CAA – NPR – NRC?

Part 3



**Constitutional & Legal dimension
Dilution of Right to EQUALITY?**

The Indian Constitution and Citizenship

THE CONTEXT

- Issue of Citizenship by Religion was the basis for Partition.
- Since Pakistan became an Islamic Theocratic State, what is wrong with India, with majority Hindus, becoming a Hindu Rashtra?

FRAMING OF THE INDIAN CONSTITUTION – 1947-50

- Firm rejection of theocratic state as basis for new Republic
- Recognition of Diverse Communities – based on religion, castes, languages, regions, and the need to adopt a Secular Credo – where the state will remain aloof from any religion.

The Indian Constitution and Citizenship

Part II: Articles 5 to 11

Dawn of the New Republic @ 26th Jan, 1950

Art. 5: Citizenship at Commencement of Constitution

Citizenship for all those Domiciled in India – Or born in territory of India – (or) either of whose parents was born in territory of India – normally resident in India for 5 years before Constitution.

Art 6: Rights of Citizenship of persons migrated to Pakistan

People who had migrated to Pakistan during partition but chose to return to India were also considered for grant of citizenship

Condition: Birth (of person or parents or grand parents) in territory of India – ordinarily resident in India, if migrated into India before 19.7.1948

Art 11: Parliament to regulate right of citizenship by Law.

The Constitution framers left it for a future Indian parliament to frame citizenship laws for future citizens.

Fundamental Rights: Right to Equality

Article 14

“***The State*** shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Note: The article applies to all PERSONS, not just Citizens.

Thus, a foreign migrant, irrespective of religion, can expect to be treated equally when once in India.

Art. 15: Prohibition of Discrimination on grounds of religion, race, caste, sex or place of birth

Art. 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth or any of them.

Art. 15(2): No citizen shall on grounds only of religion, race, caste, sex or place of birth or any of them be subject to any disability, liability, restriction or condition with regard to access to

Art. 15(3) Nothing shall prevent the state from making special provisions for women and children.

This protection is only for citizens not “persons”.

Article 19:

- 19(1) - “(1) All citizens shall have the right-
 - (a) to freedom of speech and expression
 - (b) to assemble peaceably and without arms
 - (c) to form associations or unions;
 - ...
 - (g) to practise any profession, or to carry on any occupation, trade or business.”

Note: The term used is CITIZENS. So these freedoms are not available to foreigners.

Article 21

Right to Life

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Note: The term used is PERSON, hence available even to foreigners.

Based on this provision, Kasab was given the right to stand trial for participating in Bombay 28/11 terrorist shooting instead of being summarily executed.

Will CAA Violate Art. 14 and 21?

The test of Equality Clause

- When once people fleeing persecution in their country enter India, is it right to distinguish between & amongst them, in terms of their religion?
- Isn't fear of life the same irrespective of whether you are Minorities in Muslim Countries of Pakistan, Bangladesh and Afghanistan or you are a persecuted Sect like Ahmadiyas or Shias or Baluch or other sects?
- What about Sri Lankan Hindus who have fled ethnic persecution in Sri Lanka? Or Rohingyas or Karens from Myanmar?

The Tangle of Laws relating to Citizenship

There are 3 laws which have to be read together to understand Citizenship Laws in India.

They are:

1. Citizenship Act, 1955 with the Citizenship Rules, 2009 and The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.
2. The Passports Act, 1967 & Passport (Entry into India) Act, 1920 and 2 Rules,
3. The Foreigners Act, 1946, including Foreigners Order, 1948 and 3 Rules.

CAA, NPR & NRC are part of same law, The Citizenship Act, 1955 (CA, 1955)

In 2003, Citizenship Act, 1955 (or CA, 1955) was amended introducing new Section 14A, about issue of 'National Identity Cards' and 'National Register of Indian Citizens' (sec. 14A(1) & (2)).

The procedure to do this was provided by the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

These Rules are part of the Citizenship Act, 1955.

Rule 3 is titled "National Register of Indian Citizens" and Rule 4 is about 'Preparation of NRIC'.

***These amendments were during
Vajpayee - BJP Government in 2003***

Citizenship Act, 1955

For First time in 2003/04,

1. Term ILLEGAL MIGRANT was defined (sec. 2(1)(b)(i) as person

without passport or valid visa (or)

Who has overstayed visa in India.

NO OTHER CONDITION WAS IMPOSED IN 2003

2. Sec. 14A was introduced: Issue of National Identity Card.

3. Citizenship (Registration of Citizens and Issue of National Identity Card) Rules, 2003 prescribed 'Doubtful Citizens' list. This term was not defined..

Citizenship (Registration of Citizens and Issue of National Identity Card) Rules, 2003.

Effective 10.12.2003 – the Rules introduced:

- National Identity Card (NIC)
- National Identity Number (NIN)
- National Register of Indian Citizen (NRIC)
- Population Register (PR)

All Citizens had to compulsorily provide information to officials.

Under Rule 3(3) the NRIC required 12 types of information from every Citizen including “Date of Registration as Citizen”.

Clearly compulsory registration as Citizen was part of 2003 law.

Standard Operation Procedures, 2011 (SOP) for grant of Long Term Visas

On 29.12.2011, the Standard Operating Procedures (SOP) provided for grant of Long Term Visas (LTVs) to foreigners / illegal migrants who had entered India on account of:

Well founded fear of persecution

Of (1) Race, (2) Religion, (3) Sex, (4) Nationality, (5) Ethnic Identity, (6) Membership of Particular Social Group or (7) Political Opinion.

Specifically LTVs were not to be given to foreigners not fearing persecution but come to India in search of economic opportunity.

Passport Act - Rules Amended in 2015

Wef 07th September, 2015, without much publicity, amendments were made to

Passport (Entry into India) Rules, 1950

R.4(1)(ha) stated that persons belonging to minorities from Bangla Desh & Pakistan (Hindus, Christians, Sikhs, Buddhists, Jains, Parsis) compelled to seek shelter due to religious persecution or fear of, ..

Passport Rules will not apply.

ON 18.7.2016, this was further amended to include Minorities from Afghanistan.

Since only Rules amended, not introduced in Parliament!

Foreigners Act .. Rules Amended 2015

Wef 07.9.2015

The Foreigners Order, 1950 was amended

Cl. 3A: Exemption of Certain Class of Foreigners.

6 minorities from Bangla Desh and Pakistan who were compelled to seek shelter in India due to religious persecution or fear of religious persecution, shall be granted exemption from application of Foreigners Act, 1946.

This means, such foreigners need not be sent to Detention Centres where normally Foreigners who are illegal migrants are sent to.

Amendments to Rules not Placed in Parliament

The 2015 - 16 Amendments were made to only RULES:

1. The Passport (Entry into India) Rules, 1950

And

2. The Foreigners Orders, 1948.

Since these Amendments were not to the respective laws, but to the Rules, they were not placed before Parliament and therefore there was no discussion in Parliament. In other words these amendments escaped public scrutiny and debate.

To Complete the project ...

Citizenship Amendment Bill, 2016 introduced

- ❑ In 2016, the Citizenship Amendment Bill, 2016 was introduced in Parliament with almost similar provisions.
- ❑ The Bill was referred to a select Joint Parliamentary Committee which took 2 years to complete enquiry.
- ❑ The Report was submitted to Parliament on 4th January, 2019.
- ❑ There were dissent notes from members. The Modi government did not have requisite numbers in RS. Also elections were due.
- ❑ The Bill was allowed to lapse.

CAA, 2019 and NPR – NRC: Part of the same law!!

- This is the larger political context in which we should locate the introduction of the CAA, 2019 and its relevance to NPR – NRC.
- Having encountered no resistance to amendments to Passports Act Rules and Foreigners Act Rules, the government was emboldened because of its majority in LS and RS to introduce the CAB in December, 2019.
- We should recognise that all the three: The amendments giving immunity and protection only to non-Muslim minorities from 3 countries, NPR and NRC ALL are part of the same law, the Citizenship Act, 1955

CAA, 2019 - Amendment to sec. 2(b)(ii) Proviso

Interesting or Intriguing aspects?

Citizenship Amendment Act, 2019 introduced new PROVISO to sec.2(b) OF Citizens Act, 1955 regarding 'Illegal migrant' which provided that persons belonging to Hindu, Sikh, Buddhist, Jain, Christian and Parsi Communities of Afghanistan, Bangla Desh & Pakistan who entered India before 31.12.2014 will not be treated as illegal migrants.

CAA, 2019 itself does not directly refer to issue of religious persecution. To read this, the CAA refers to sec. 3(2)(c) of the Passport (Entry into India) Act, 1920 and Foreigners Act, 1946.

Summing up: Is it valid to discriminate between those fleeing religious persecution?

1. The deviousness embodied in the CAA is difficult to ignore.
2. The key amendments made in 2015 – 16 to Foreigners Act and Passport (Entry into India) Act were made by Executive Orders and not amendments to the laws, to escape public scrutiny.
3. The cut off date of 31.12.2014 for having entered India is not explained and appears arbitrary.
4. The issue still remains: there are Ahmadiya Muslims not recognised as Muslims by Pakistan who are routinely killed and targetted, Shias and Baluchs, all of whom have fled persecution seeking refuge in India. Sri Lankan Tamil Hindus in TN, Rohingyas & Karens from Myanmar and others. India which gave them all safe refuge till now is giving preferential treatment to certain minority religions alone. Why the differential treatment, is an issue to ponder over.

Part 4



Is there politics behind the CAA, NPR, NRC?

CAA and NPR/NRC Process in Assam

What is the link?

- Many people are confused – how is the CAA connected with the NPR/NRC in Assam?
- The Prime Minister, Shri Modi and Home Minister, Shri Amit Shah have in 2019 election rallies and in Parliament always spoken of CAA being part of introduction of nationwide National Population Register (NPR) and National Register of Citizens (NRC) in a manner similar to how NRC was finalised in Assam.
- The Home Minister has spoken numerous times of weeding out Muslim illegal migrants and opening more than 1,000 Detention Centres for Muslim illegal migrants across India.

NRC in Assam ...

- The NRC process was pushed through between 2015 to 2019 and final list published on 31st August, 2019.
- In June, 2018, out of about 3.12 crore people in Assam as per 2011 Census, over 40 lakh people were found to be “Doubtful Citizens” as they did not have proper documentation to prove they were Indians. Many were shifted to camps.
- Final list of NRC @ 31.8.2019:
- 19,06,657 lakh persons out of NRC list. Of this approximately 12 + lakh are Hindus, 7 Lakh are Muslims

NRC Process – Traumatic and a humanitarian crisis

- The NRC Process in Assam was a very chaotic and traumatic exercise.
- Lakhs of people were desperately running from pillar to post to somehow locate documents to prove citizenship
- Families were divided with some members outside NRC list like for example brothers and sisters of same family included or excluded.
- Family members of former President of India, Fakruddin Ali Ahamad and Kargil war hero and retired Army Officer, Mohammad Sanaullah were not in NRC list.

Implications of 19.06 Lakh people excluded from NRC List

- ❑ The 19.06 Lakh people excluded from NRC can appeal to prove their exclusion was wrong.
- ❑ The implication is that these people are automatically considered illegal migrants/ foreigners and can be shifted to Detention Centres.
- ❑ Already 28 people have died in Detention Centres.
- ❑ Is it a sign of efficiency that 40+ Lakh excluded people has been reduced to 19.06 Lakh persons?
- ❑ Or does it show height of inefficiency that 40+ Lakh people were declared excluded from NRC in first place.
- ❑ Tremendous insecurity prevails in Assam.

NPR & NRC rollout across India ..

problems

NPR Rollout across India will cover over 1.3 Billion or 133 crore people each of whom will have to prove with documents their origin and proof of citizenship!

Crores of Indians have suffered mass evictions, disasters like floods, communal and caste conflicts, migration and with homes destroyed and cannot produce documents.

‘Doubtful Citizens’ – if Hindu and non-Muslim need not be sent to ‘Detention Centres’. All found to be Muslims will have to be kept in ‘Detention Camps’ for illegal migrants.

If poverty level is assumed @ 30% this will work out to about 30+ Crore people!

The question ... do we need such a process??

- The crucial lesson that the Assam NRC Exercise has taught is that this process is extremely expensive both in money and human costs.
- During Parliamentary debate to discuss the Citizenship Amendment Bill, 2019, the Home Minister clearly linked CAA with rollout of NPR and NRC. The Government clearly sees all of these processes together?
- What is the financial cost of keeping 30% of India in continual situations of insecurity after spending huge amounts of money?

As a nation do we need the CAA, NPR and NRC – financially, in terms of human costs and constitutionally?

Is there politics behind the CAA Amendment?

Is there politics in changing the laws – Citizenship Act, Foreigners Act, Passport Act – to bring in religion as a criteria for differentiation?

Is it purely coincidental that these changes have been brought about or is it part of a larger plan?

Are we reacting and seeing ghosts where there are none?

Is the real intention to SHIFT from being a SECULAR State to becoming a theocratic – Hindu Rashtra?

CAA, the BJP Manifesto and RSS

Agenda

The BJP and RSS have been consistent about their stand regarding abrogation of Art. 370, UCC (Universal Common Code) and the Citizenship Act Amendment to give preferential treatment to non-Muslim communities.

The BJP / RSS have also very clearly spoken about their disdain for Muslims as 'minorities'. The Prime Minister, Shri Narendra Modi, Home Minister Shri Amit Shah have always spoken of rolling out NRC throughout India and weeding out Muslim illegal migrants out of India. Speeches are in election meetings & Parliament also.

This has caused huge sense of insecurity amongst Muslim communities.

MS Golwalkar founder of RSS in 'We or Our Nationhood Redefined' (1938)

“ ... The non-Hindu People in Hindustan must either adopt the Hindu culture and language, must learn to respect and revere Hindu religion, must entertain no idea but the glorification of the Hindu nation i.e. they must not only give up their attitude of intolerance and ingratitude towards this land and its age old traditions, but must also cultivate the positive attitude of love and devotion instead: in one word they must cease to be foreigners or may stay in the country wholly subordinated to the Hindu nation claiming nothing, deserving no privileges, far less any preferential treatment not even citizen's rights”. (emphasis added)

Echo of 1938 in 2019

- "...The son of mother India, whether he may speak any language, from any region, follow any form of worship or not believing in worship of any is a Hindu... In this regard, for Sangh all the 130 crore people of India are Hindu society," Mohan Bhagwat, RSS Chief, 26 Dec, 2019, Hyderabad.
- (<https://www.indiatoday.in/india/story/for-rss-all-130-crore-indians-are-hindus-says-mohan-bhagwat-1631485-2019-12-26>)
- Is there any connections between Golwalkar's formulation of 1938 with speech of Mohan Bhagwat considering the RSS influence on BJP ?

A call to your conscience

- At the root of the CAA-NPR-NRC conflict is a very fundamental question: What is the type of India we want to have? – An India which recognizes diversities, respects difference, treats all communities as equal – In short, a secular, egalitarian, equitable, inclusive, safe and sustainable India (or)
- A India based on the tenets of India being a Hindus majority Nation ?
- You the reader will have to decide.

A cruel choice before us:
Secularism or a Hindu Rashtra

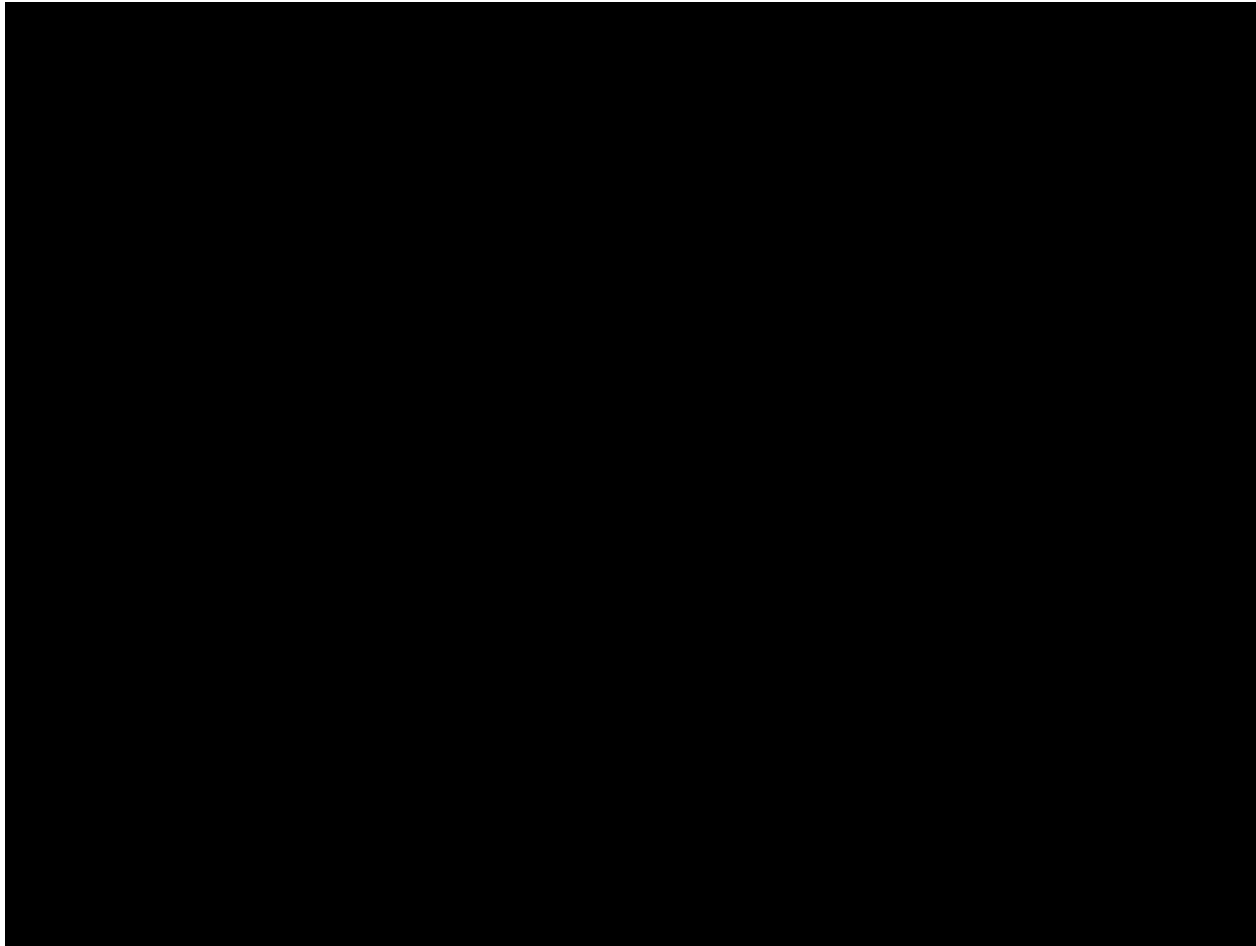
Should we wait to replicate the Assam NRC, marked by Chaos, Human Misery and the depths of inhumanity.

We have little choice but to stand up, be counted and challenge the CAA, NRC and NPR and religion based discrimination.

It'll destroy the Constitution which Ambedkar and others gifted us.

So what should we do?

Why People are Protesting Against All India NRC...



Source: <https://www.youtube.com/watch?v=EqjMGL5i3JU>

The Quint