

# **Besieged by sophistry: The CAA is constitutionally sound and is unfairly picked apart by its enemies**

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Stripped of the web of deception, spun by its detractors of both the tendentious and ill informed variety – The Citizens Amendment Act [The Act] serves the twin purpose of resolving a long neglected issue of statehood to refugees to India and doing so in a manner which is wholly compliant with constitutional morality.

There are essentially two canards leveled against the act and its provisions.

First that it is discriminatory in as much as, it opens the door for conferment of citizenship to refugees of six (6) religious communities who were victims of religious persecution and who sought sanctuary in India before 31st December, 2014, while denying it to similarly placed persons belonging to the Muslim community. (The Discrimination Canard)

Second that it is arbitrary for that its scope is restricted to those fleeing religious persecution from three neighboring countries viz Pakistan, Afghanistan and Bangladesh [PAB] and excluding those facing such persecution in other neighboring countries, predominantly Myanmar and Sri Lanka. (The Arbitrariness Canard)

For these two reasons it is alleged the Act violates Articles 14 and 21 of The Constitution of India.

## **The Discrimination Canard**

The basis of the Discrimination canard is that while PAB are admittedly Islamic Republics at least two of them – Pakistan and Afghanistan have persecuted not merely non-Muslims but two religious sects within the Muslim community – the Ahmadiyas and Shias in the case of Pakistan and Shias (mainly Hazaras) in the case of Afghanistan.

As far as Ahmadiyas are concerned , all Indians should be aware that one of the chief architects of the creation of Pakistan was Sir Zafarullah Khan, one of the most prominent members of the Ahmadiya community in pre-partition India. It was Zafarulla Khan who authored the infamous Lahore Resolution of 1940, which called for creation of a separate homeland for muslims, in which he specifically used the word “Pakistan” as the name for that homeland. He was one of the leading voices in Pakistan’s first Constituent Assembly and the seeds of Pakistan’s rapid transformation from an independent nation with early secular hopes into an Islamic Republic

brutal in its treatment of its minorities were sown during the debates of its very first Constituent Assembly.

Notwithstanding his pernicious two nation theory Pakistan's founding father – Jinnah envisaged a secular constitution for Pakistan, as is unambiguous, from his August 11th 1947 speech to the constituent assembly of Pakistan in which there were representatives of every Muslim sect and every non-muslim community. Jinnah's words ...”

... We are starting with this fundamental principle that we are all citizens and equal citizens of one state...we should keep that in front of us as an ideal and you will find that in course of time Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, because that is the personal faith of each individual, but in the political sense as citizens of the State ...”

... undoubtedly encouraged non-Muslims to choose Pakistan as their home in the legitimate expectation that they would have the freedom to practice and profess their respective religions and be secure in life and property.

If Pakistan had any hope of being a future secular State at all, that hope died with the premature death of Jinnah in 1948. Liaquat Ali Khan who succeeded Jinnah presided over and lent strong support to the infamous 'Objectives Resolution' of March, 1949. That resolution proclaimed that the future constitution of Pakistan would be modelled on the ideology and faith of Islam. Every non-muslim member of the Constituent Assembly vigorously opposed the resolution and voted against it. The Objectives Resolution effectively rendered non-muslims second class citizens and later formed the basis of Pakistan's constitutional theocratic doctrine which proclaimed Pakistan as an Islamic Republic. What is most significant however is that the Objectives Resolution was supported by Shias and Ahmadiyas too. In other words Islamic theocracy was the wish of every Muslim in Pakistan irrespective of sectarian allegiance.

What ensued in Pakistan pursuant to the Objectives Resolution was a ringing vindication of the prophetic words of Sris Chandra Chattopadhyay, the Dhaka born leader of the opposition in the constituent assembly on March 12, 1949

“The state religion is a dangerous principle. Previous instances are sufficient to warn us not to repeat the blunder. We know people were burnt alive in the name of religion.”

Ever since the Objectives Resolution non-muslims in Pakistan – Hindus, Sikhs and Christians were subjected to abominable atrocities of every kind- violence and murder; appropriation and arson of property; abduction and rape of women; forcible conversions and the destruction and

burning of their places of worship. Undoubtedly many of these acts were the work of a Sunni majority imbued with the Wahabi fervor that a Deobandi Ulema imparted to them. But at the very least Shias and Ahmadiyas who first connived at the passing of the Objectives Resolution stood idly by at this barbaric treatment of their fellow countrymen at the hands of their co-religionists. The final denouement of the Objectives Resolution was the ethnic cleansing of the non-muslim citizens of Pakistan. Whereas in 1951, the non-muslim population of Pakistan was 3.44% of the total population as per the Pakistan Census of 1951, the non-muslim population (excluding Ahmadiyas) today has declined to barely 1.5%

True the chickens did ultimately come home to roost, as a State governed by theocratic majoritarianism, had to find new “others” once they almost obliterated a non-muslim minority. Thus, early attacks post partition on the Ahmadiyas grew in number and intensity and led ultimately to them being declared as non-muslims or apostate by a Statute of 1974. The ultimate irony is the frequent subjection of Ahmadiyas to the blasphemy law if they so much as dared to hold themselves out as being Muslims.

Not surprisingly the next new ‘other’ are the Shias who now face the brunt of Sunni oppression. As suicide bombers exterminate Shia populations when they gather in large numbers for prayers or processions and destroy their places of worship, the question being asked both inside and outside Pakistan, today is how soon will it be before the Shias with their sharp differences with the Sunnis on the question of succession to the Prophet are declared by the now theocratic Sunni majoritarian state as heretics outside the Muslim fold?

In the light of the above brief excursion into Pakistan’s constitutional origins, its fallout and those responsible for it would it be fair to condemn the Citizens Amendment Act as discriminatory against persecuted Muslims like the Ahmadiyas and Shias? The statement of objects and reasons for the enactment of the Citizens Amendment Act is that the Constitution of PAB provides for a specific state religion and hence the six specified religious communities faced persecution on the grounds of religion. This is a statement of fact based on empirical evidence. Grant of Indian citizenship to those facing religious persecution in neighboring theocratic states is by itself a rational classification with a reasonable nexus to the objects which the Act seeks to attain ie to grant citizenship to persons who are refugees in India on account of religious persecution.

The Discrimination canard however is based on the present plight of Shias and Ahmadiyas in Pakistan. Infact the Act is not discriminatory against persons belonging to these sects seeking citizenship on the ground of religious persecution for atleast three compelling reasons ...

a. That Ahmadiyas and Shias are hoist by their own petard. At the time of their country’s (Pakistan) independence they consciously eschewed a secular constitution and opted for an

Islamic Republic which relegated non-muslims to the status of second class citizens. Worse they connived in or stood idly by while their non-muslim brethren were subjected to a process of slow ethnic cleansing. As Indian critics of the Act never tire of reminding the nation our constitution is a secular one. Would it thus be subversive of our constitution if parliament in its wisdom deemed it inappropriate to grant citizenship to members of persecuted communities who had no commitment to secular principles, had a strong allegiance to a theocracy of their own religion, were insensitive to the rights of minorities and whose consciences appear not to have been stirred in the face of atrocities and even ethnic cleansing of their fellow countrymen merely because their religious beliefs were distinct?

b. Although the Indian government officially recognized Ahmadiyas as an Islamic sect in 2011 census, not only do Indian muslims not consider Ahmadiyas as muslims but have indulged in acts of acute hostility and violence towards them as is evidenced by some circumstances reproduced below:

1. In June 2008 prominent muslims led by none other than AIMM chief Assauddin Owaisi called upon the then Andhra Pradesh Chief Minister YSR Reddy to demand that Ahmadiyas be denied permission to hold a public meeting in Hyderabad. The CM ordered the police not to permit Ahmadiyas to hold the conference.

2. The Majilis Tahaffuze Khatme Nabuwat (MTNK), a prominent body of religious scholars, slammed the Central Government for treating the Ahmadiyas as part of the Muslim community in the 2011 census. According to MTNK, the Ahmadiyas cannot be considered an Islamic sect and they follow a different religion.

3. In September 2011 in Delhi, a Koran exhibition held by Ahmadiyas was called off after shrill protests from the Jama Masjid Imam – Ahmed Bhukari.

4. Ahmadiyas are not allowed to sit on All India Muslim Personal Law Board, a body of religious leaders that the central government recognizes as representatives of Indian muslims.

5. In February 2012, the Andhra Pradesh Waqf Board issued a decision to take over Ahmedi mosques and graveyards since “sunni or shia mosque cannot be administered by a non-muslim”.

6. In March 2012, an Ahmedi mosque was attacked in Saidabad, Hyderabad by the aforementioned MTNK.

7. In May 2012, Jamat-e-Islami-Hind called for a complete social boycott of Ahmadiyas during a public meeting in New Delhi

8. In May 2012, the Grand Mufti of Jammu and Kashmir requested that the J&K State Assembly pass a law that would deem Ahmadiyas to be non-muslim.

9. There have been reports of attacks on Ahmadiyas in Tirupur, Tamil Nadu and West Bengal.

The protesting students of Jamia Islamia University and Aligarh Muslim University in their opposition to the CAA have never declared whether they consider Ahmadiyas to be part of the Muslim fold and would want them to be granted citizenship if they so desired on the grounds of religious persecution. But it is at least undeniable that a very significant section of muslim leadership in social, political and religious spheres not merely consider Ahmadiyas as apostate but are willing to express their opposition to their very presence in India through violent and disruptive methods. The treatment of Ahmadiyas by prominent and powerful individual muslims/institutions representing them reveals that the grant of citizenship to Ahmadiya refugees is fraught with grave risk in as much as it has the potential to foment acute sectarian strife. The Indian government would accordingly be ill advised to open the doors for conferment of citizenship to Ahmadiyas as it would result in grave threat to public order and law & order.

c. Should India grant citizenship to victims of intra- religious sectarian disputes based on esoteric and post-Koranic differences which while they may be of great significance to the protagonists of those debates are meaningless to a host country and which in a civilized world ought to be resolved by a rational consensus between the respective clergy of the protagonists and not by the imposition of the will of those entrusted with governance?

As regards Hazara refugees from Afghanistan – these number about 500 to 700- most of who are settled in Delhi. The Hazaras are not victims of religious persecution by the Islamic State of Afghanistan. The Hazaras have fled Afghanistan mainly on account of persecution by the Taliban during the period when they ruled Afghanistan between 1996 to 2001. It is true that the attacks on the Hazaras continue till the present day by the Taliban and the Islamic State. But since 2001, however Hazaras are not victims of religious persecution by the Islamic State of Afghanistan and the Hazara community has carved out a thriving urban enclave in West Kabul. It is perhaps even safe for Hazaras to return to Afghanistan in present times.

### **The Arbitrariness Canard**

The constitutional challenge based on arbitrariness on the ground of the exclusion of other religious countries like Myanmar and Sri Lanka from the scope of this Act is misconceived. The CAA has limited the scope of its operation to Pakistan, Afghanistan and Bangladesh on the grounds that these are self-proclaimed Islamic Republics. Myanmar has no state religion but its constitution does sanction the promotion of Theravada Buddhism practiced by 90% of the country's population, though freedom of Religion and Worship by minorities is permitted by the

constitution. Sri Lanka's Constitution while declaring that the Republic of Sri Lanka shall give to Buddhism the foremost place nevertheless by Article 10 & Article 14 grants freedom of religion to all persons in the widest possible terms. The Supreme Court of Sri Lanka has categorically asserted that Sri Lanka is a secular country. However, it must be conceded that countries professing secularism as their constitutional creed can persecute religious minorities. The critics of the CAA highlight the persecution of Rohingya Muslim community in Myanmar and Tamils in Sri Lanka. The question is that does the CAA pass the test of constitutionality by excluding these two countries from its scope.

Essentially the Rohingya crisis is an issue between two neighbors friendly to India i.e. Myanmar and Bangladesh. Rohingyas were originally inhabitants of Bangladesh but after the British took control of Burma in 1824 they felt the need for migrant labour to cultivate the fertile rice fields of that country. Thus they transported Rohingya labourers from Bangladesh to the Rakhine region in Burma. When Burma attained independence in 1948 one of the vexed issues that arose was entitlement to citizenship of its residents. The Burmese never regarded Rohingyas as original inhabitants of Burma and after the Burmese military took over the reins of power in 1962, the Rohingyas were not recognized as citizens both by the Constitution of 1974 and by Citizenship Act of 1982.

The opposition of the state of Myanmar to grant citizenship to the Rohingya inhabitants of Rakhine state is not in virtue of the fact that they are Muslims but on the ground of their origins being in Bangladesh and their presence in Myanmar being transient on account of British labour policy. Moreover, culturally the Rohingyas have greater affinity to Bangladesh in as much as they speak the Bengali dialect common in the Chittagong Area of Bangladesh and not Burmese. On the other hand, there are other Muslims in Myanmar whose presence is to be found all over the country including Rakhine state. These Muslims are ethnically distinct from the Rohingya Muslims and speak the Burmese language. These Muslims have not been subjected to any religious persecution during the 2 waves of Rohingya exodus that occurred in 2012 & 2017. In other words the Rohingya refugee crisis which has engulfed India and other countries does not stem from religious bigotry or persecution but is more akin to an Assam- type "outsider" issue and is in fact a clash of conflicting claims to citizenship. The genesis of the Rohingya problem in as much as it does not stem from a Buddhist- Muslim divide is de hors the scope of the CAA which deals with grant of citizenship to minorities fleeing religious persecution.

Secondly, the rights enshrined in Part 2 of the constitution have been held by Supreme Court to be subject to reasonable restrictions such as security of the state. While there has always been tension between Rohingyas and non Rohingyas in Rakhine State, the first major flare-up resulting in displacement of Rohingyas occurred in June 2012 on account of the gang-rape of a Rakhine woman by the Rohingya Muslims. This led to sectarian violence, deaths of both

Rohingya and non Rohingya and the burning of both Rohingya and non Rohingya homes in equal measure. The incident led to the first exodus of about 90,000 Rohingyas from Rakhine State. Thereafter there was no outbreak of violence till October 2016 when a group called Arakan Rohingya Salvation Army (ARSA) attacked a police post in Rakhine State, killing 9 police officers. The situation spiralled out of control when on 25/08/ 2017 ARSA carried out an even more virulent attack on around 30 Myanmar security posts. These attacks were carefully planned & co-ordinated. The Myanmar security forces responded with brutal grossly disproportionate violence marked by killings, rape, sexual violence & burning of entire villages (Amnesty International).

As a result of this retaliation more than 750,000 Rohingyas fled the Rakhine state to seek refuge in neighboring countries-the largest contingent fleeing to Bangladesh where they now live in camps in Cox's Bazaar.

Amnesty International reports that almost immediately after the 25/8/2017 incident & after ARSA again carried out terrorist attacks against innocent Hindu villagers in the village of Kha Maung Seik in northern Maungdaw township in Rakhine killing 99 of them. The Myanmar Government has designated ARSA as a terrorist organization. The International Crisis Group (ICG) also says that ARSA militants have trained abroad & released a report in 2016 saying the group was led by Rohingyas living in Saudi Arabia. The ICG also says ARSA's leader is Ata Ullah who was born in Pakistan & raised in Saudi Arabia. Indian intelligence inputs disclose that global jihadi groups such as Islamic State & Al-Qaeda & also Pakistan's ISI & its proxies are sponsoring ARSA terrorism. These inputs also suggest that Lashkar-e-Taiba is seeking to recruit Rohingyas in India for their jihadist activities within India.

India is not alone in viewing Rohingya refugees as potential sources of terrorist recruitment. In November 2019 addressing a three day "Global Dialogue 2019 Conclave in Dhaka, Bangladesh Prime Minister Sheikh Haseena stated that more than 1.1million Rohingyas of Myanmar who fled to Bangladesh in the face of persecution were a threat not only to security of Bangladesh but for the entire region. In Indonesia where Rohingyas have travelled by boat and settled in the Indonesian province of Aceh on the North-West tip of Sumatra Island, Indonesian counter-terrorism officials are worried about possible retaliatory attacks by the country's violent extremist fringe or extremist outreach to ARSA in the interest of sending Mujahideen to Myanmar. The Indonesian government is worried that with many Indonesians now visiting camps in Cox's bazaar, some Indonesian extremists will eventually make contact with ARSA militants [The Institute of Policy Analysis for Conflict (IPAC)].

Thus, there is no doubt that a persecuted, displaced & totally impoverished refugee population is a fertile breeding ground for Jihadist footsoldiers. The Indian state is not unjustified in

excluding Myanmar & the Rohingyas from the scope of the CAA on the further ground that the continued Rohingya presence constitutes a threat to the security of the state.

As far as question of Sri Lanka's Tamilian refugees in India is concerned, the refugee problem has arisen as a result of a three decade long civil war and ethnic conflict between the Sinhalese and the Tamilians. Tamilians have fled to India from time to time during those 3 decades to escape either war or persecution and most have settled in either Tamil Nadu or Kerela. Again, the Sinhalese- Tamil conflict is not religious but an ethnic one; it is not a case of Buddhists persecuting Hindus and Christian Tamils.

In any event since 2009, sectarian conflict in SL has ended. The civil war and the ethnic conflict was largely the result of the call for a separate Tamil state called Eelam by the LTTE in the north and east. With the defeat and the disappearance of the LTTE, peace and tranquility has returned to the island country. Tamils now constitute 11% of Sri Lanka's population, a majority in the Northern Province and are present throughout the rest of Sri Lanka. In view of the absence of tensions between Sinhalese and Tamils, it is safe for Tamilians to return to their homeland and reportedly several Tamil refugees have been returning home voluntarily with the help of UNHCR.

Those Tamilians who wish to acquire Indian citizenship can do so and they can be conferred citizenship by naturalization by the Indian government if they fulfill the requisite criteria for such grant. The exclusion of Sri Lanka from the scope of the CAA is thus wholly justified; it is a friendly neighbor, a secular state, its previous ethnic tensions have sharply declined and its Tamil population is presently safe and secure in the country.

In the light of all that is stated above, the CAA is constitutionally valid. It is a humanitarian piece of legislation, which offers citizenship to certain persons who have been refugees in this country and stateless for far too long. The Act is not anti-Muslim: Muslims can apply for citizenship by naturalization under a separate section of the Citizenship Act. Indeed more than 600 Muslims have been conferred citizenship through this route in recent times. The limited scope of the Act is based on both – compelling principles of constitutional morality as also public policy. With the greatest respect, the Act is not divisive; unfortunately its motivated opponents are.