

# Politics | Criticisms of the CAB do not stand close scrutiny

Abhijit Iyer-Mitra, 13<sup>th</sup> December, 2019

**The legal criteria for the singling out of Pakistan, Afghanistan and Bangladesh in the citizenship Act stands on a solid legal criteria, and not some arbitrary concocted one.**

There seem to be several arguments against the Citizenship Amendment Bill (CAB), 2019 — which on December 12 became a law with the President signing it. Unfortunately, much of it is caught up in rhetoric rather than cold hard facts. This is why it is necessary to analyse each one systematically. When one does this from a first principles perspective, one finds that each of the arguments against the CAB starts falling through.

The primary guiding principle of the CAB is ‘State Denomination’ — that is to say does the country officially identify itself, through its legal name (not in practice) as a denominational state. After all one could legitimately ask why just Pakistan, Afghanistan and Bangladesh?

It is correctly pointed out that some of the worst humanitarian crises in the neighbourhood are in fact in China (Uighur concentration camps) and Myanmar (Rohingyas) and, albeit in past tense, the Tamil issue in Sri Lanka. However this misses one simple fact that the CAB does not address all persecution, but rather persecution emanating from States that officially have a religious denomination. Indeed this could be regarded as the first principle’s basis of the CAB.

For example: China is officially an atheist state and is neither the Confucian republic of China, nor the Taoist Republic of China, but the People's Republic of China that does not discriminate on the basis of religion. It has cracked down on Tibetan Buddhists, on the Falun Gong, on the Turkic Muslim Uighur and the

ethnically Chinese Muslim Hui, and in the past saw the wanton destruction of religious structures belonging to the Confucian and Taoist beliefs.

Similarly, we have Sri Lanka and Myanmar, which both have a Theravada Buddhist majority, but do not have denominational governments. Sri Lanka, for example, is officially Democratic Socialist Republic of Sri Lanka while Myanmar is Republic of the Union of Myanmar.

Indeed, if this was aimed at ‘Muslim majority countries’ to show up Islam as being bad somehow, how does one explain the exclusion of the Maldives but the inclusion of Bangladesh neither of which are an ‘Islamic Republic’, rather the Republic of the Maldives and the People’s Republic of Bangladesh? While Bangladesh does not include Islam in its name, the Supreme Court has repeatedly [held](#) that it is an Islamic Republic despite petitions to overturn the status of Islam.

What about the Maldives then? Why is the Maldives excluded from the CAB? It’s because the Maldives [does not have](#) any non-Muslim citizens. To be a citizen one has to be a Muslim as per its constitution.

What this means is that the legal criteria for the singling out of Pakistan, Afghanistan and Bangladesh stands on a solid legal criteria, and not some arbitrary concocted one, and including the Maldives in this list, would actually be legislating for a non-existent population.

From this derives the second of the first principle that guides this law — what constitutes a ‘minority’? There are two aspects of this — State definition and self-identification.

This may seem particularly valid since a case may be made that Hazaras are routinely slaughtered by the Taliban; that Shia mosques get bombed in Pakistan; and Ahmadis are in practice (not in law) deemed ‘*waajib ul qatl*’ (fit to be killed)

in Pakistan due to their status as non-Muslims; and the Baloch are targeted ethnically despite being Sunni. Yet again, we must go back to the laws of these countries. They are 'Islamic' Republics, not 'Sunni' republics, not 'Shia' republics, not 'Salafi' republics, not 'Hanafi' republic.

What this means is that there is not an institutionalised law specifically persecuting Hazaras and other Shias and the Baloch are an ethnicity anyway, not a religion. This is where the Ahmadis come in, for are they not 'persecuted'? Legally they are not, because they are simply recognised as non-Muslim — the same as Christians, Sikhs and Hindus. This is where the second criteria — that of self-definition, comes in.

While the State may not recognise the Ahmadis as Muslim, the Ahmadis themselves do, have a caliph, voted for Partition, and do not oppose either the religious denomination of Pakistan, nor the slew of legislation that discriminated against minorities. Far from it the second Ahmadi caliph, actively criticised the Khilafat movement of Gandhi, for "turning to a Hindu for leadership". Also to note is that none of these communities seek to end the Islamic nature of the State — rather they seek inclusion in the ranks of the privileged and do not oppose State discrimination against non-Muslims as defined by them.

Finally, we have established principles of law that hold that if you pass specific legislation for one, you do not have to pass specific legislation for them all. All up, the CAB satisfies the test of first principles against which every (good) law should be measured so as to avoid contradictions and implementation problems. It, therefore, rests on solid legal ground.

The only glaring gap then — on which it can be accused of having made a grievous error — is the exclusion of the most persecuted group of them all —

atheists and apostates whose very existence draws the death penalty. This group must be recognised and included immediately.

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