

Cloud on citizenship

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The CAA has nothing to do with Indian citizens, irrespective of their religious affiliation. It is an attempt to help persecuted minorities who have been victims in neighbouring Islamic nations

The statements of six Chief Ministers belonging to parties opposed to the Bharatiya Janata Party (BJP), that they “will not allow” the implementation of the Citizenship Amendment Act (CAA) in their States, poses an open and grave challenge to the Constitution and to India’s unity and integrity.

The opposition to the amended Act began with West Bengal Chief Minister Mamata Banerjee. Soon thereafter, Kamal Nath, Bhupesh Baghel and Amarinder Singh, the Congress Chief Ministers of Madhya Pradesh, Chhattisgarh and Punjab joined in, followed by Pinarayi Vijayan of Kerala and Arvind Kejriwal of Delhi. All of them have said that they “will not allow” the amended Act to be implemented in their States. These statements smack of recklessness and do not augur well for the preservation of national unity and integrity.

The CAA grants citizenship to six non-Muslim communities from Pakistan, Bangladesh and Afghanistan, who are victims of religious persecution in these Islamic nations. They are identified as Hindus, Sikhs, Jains, Buddhists, Parsis and Christians, who fled these nations and entered India until December 31, 2014. The amendment says they will not be treated as illegal immigrants any more.

The legislative powers of the Centre and the States are clearly demarcated in the Union List, the State List and the Concurrent List in the Seventh Schedule of the Constitution. Entry 17 in the Union List says, “Citizenship, naturalisation and aliens,” meaning that all matters pertaining to these issues are wholly within the legislative competence of the Union Government.

Under the Constitution, no State has the right to reject a law made by the Centre within the legislative sphere allotted to it. Speaking on Centre-State relations, BR Ambedkar had told the Constituent Assembly on November 4, 1948, that “the basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States, not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does.”

Those who are opposing the amendment argue that it violates Article 14 of the Constitution, which guarantees equality before law and the equal protection of the laws. In their view, the exclusion of Muslims from these three nations constitutes an infringement of this Article. Several individuals are already knocking on the doors of the Supreme Court, questioning the vires of the amendment and one will have to await the opinion of the apex court in the matter.

This law has nothing to do with Indian citizens, irrespective of their religious affiliation and those who oppose it are aware of this. This amendment does not deny the protection of Article 14 to any citizen of India. It appears the argument against the amendment is that it infringes on the rights of Muslim citizens of Pakistan, Bangladesh and Afghanistan. Is any nation obliged to ensure Constitutional guarantees to the citizens of other nations?

Second, while the amendment speaks of six communities, they are actually a class of persecuted people, not merely adherents of certain religions. There are also decisions of the Supreme Court that Article 14 provides for reasonable classification.

The Centre's decision to reach out to these communities must be welcomed for two reasons. First, India has always been hospitable to persecuted communities for millennia. The arrival of Zoroastrians in the 12th century is an example of that tradition. In recent times, after the Chinese moved into Tibet, India saw a flood of Tibetan refugees numbering over 80,000 in 1959-60. Thereafter, there has been a steady flow of Tibetan refugees into India and the Union Government made special provisions for their settlement in Dharamshala and in other parts of the country, including Karnataka. Given the manner in which India handled the Tibetan refugee issue, one would presume this would be the template to accommodate those coming in from the Islamic nations.

In other words, they will be accommodated in other parts of the country. The fears that these people will be a burden on Assam is, therefore, misplaced. Since this amendment talks about a cut-off date of December 31, 2014, the fear of fresh migrations is baseless. The benefits of this amendment will not be available to those who cross into India in future.

Further, it is not realised that this amendment is consequential to a couple of notifications issued by the Central Government in 2015 and 2016. The first notification said that individuals from these six persecuted communities, who entered India before December 31, 2014, would be exempted from the penal provisions of the Passport Act and The Foreigners Act. This meant that such people would not face criminal proceedings even if they did not have passports and other valid documents. Their entry and stay were regularised.

Thereafter, the Central Government gave these people the facility of long-term visas. The amendment became necessary because despite these notifications, these people were still "illegal migrants" as per the definition in the citizenship Act. Until this amendment is made, these people cannot apply for Indian citizenship.

The real issue is not why such a law has been brought in now. The question to ask is: Why was it not done earlier? Why did India, largely under the Congress' rule since independence, turn a blind eye to the plight of adherents of Indic religions and Christians in these Islamic nations? Further, why has the Congress, which has encouraged Bangladeshi Muslim migrants and used them as a vote-bank all these years, now protesting over this law.

The attitude of the Congress is in line with its Muslim appeasement policy even though it is giving it diminishing returns. This party, which ruled the country for much of the post-independence era, is unable to digest its marginalisation and is adopting an “after me the deluge” kind of an attitude. The only Constitutional option available to the opponents of the amended law is to challenge it in the Supreme Court, which has been done.

When the Congress encourages its Chief Ministers to openly declare that they will not implement a Central law, the party is playing with fire. It will be wholly responsible for the consequences.

(The writer is the Chairperson of Prasar Bharati & an author specialising in democracy studies. Views expressed are personal.)