

Examining the Gradual Anomaly of Citizenship with a Focus on Non-Citizens and Refugees in India*

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Citizenship serves as a fundamental institution for establishing membership in nation-states and serves as a framework for the interaction between individuals, social groups, and the state, delineating a set of rights and responsibilities. While citizenship has been traditionally viewed as a means to promote Government accountability and ensure the welfare of citizens within the nation-state's boundaries, it has also been used as a tool for excluding non-citizens and marginalized groups in modern times. The Citizenship (Amendment) Act of 2019 serves as a notable illustration of this phenomenon. This Act confers Indian citizenship upon specific religious groups, including Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, based on religious persecution in Pakistan, Afghanistan, and Bangladesh while disregarding others such as Rohingyas, Ahmadiyyas, and Uyghurs. Numerous studies have explored the complex factors that led to the creation of the Citizenship (Amendment) Act (CAA), with many attributing it to the pro-Hindu and anti-Muslim stance of the ruling Bharatiya Janata Party (BJP). However, few studies have examined the historical context that led to its development. This paper aims to address this gap in the literature by highlighting the long-standing history of inclusion and exclusion in citizenship amendment acts, dating back to the origins of the Citizenship Act, 1955. Adopting a postcolonial lens to the concept of citizenship, this paper contends that the selective inclusion and exclusion of certain groups in the Citizenship (Amendment) Act of 2019 is not only rooted in BJP's politics of inclusion and exclusion but also in India's postcolonial history and citizenship practices. Furthermore, the paper hypothesizes that India's citizenship policy regarding migrants/refugees has gradually become less inclusive and, in some cases, exclusionary on religious grounds.

Keywords Citizenship, India, Non-citizens/Refugees, CAA

* The author extends her heartfelt gratitude to Professor Joyce C. H. Liu, Prof. Sabyasachi Basu Roy Chowdhury, and the reviewers for their valuable insights and expertise. Their comments and suggestions on the earlier version of the manuscript have been immensely valuable, although any errors that remain are solely my responsibility. I hereby affirm that the manuscript has been exclusively submitted to the Sixth Annual Research and Orientation Workshop on Global Protection of Migrants and Refugees, scheduled for 15-20 November 2021, organized by Mahanirban Calcutta Research Group in India.

The author declared no potential conflicts of interest concerning this article's research, authorship, and publication.

I. Introduction

Citizenship is a fundamental institution that confers membership in nation-states and serves as a channel of interaction between individuals, social groups, and the state, outlining rights and responsibilities. While citizenship has traditionally been viewed as a means of promoting Government accountability and the welfare of citizens within a nation-state's borders, it has also been employed as a tool for excluding non-citizens and other marginalized groups. The state's power to denaturalize citizens or exclude non-citizens, and the politics of inclusion and exclusion, serve as a stark reminder of how citizenship as an institution can establish new social hierarchies, exercise political control, and shape new national narratives (Chung, 2017; Chowdhory, 2018). The Citizenship (Amendment) Act of 2019 serves as a notable illustration of this phenomenon.

The emergence of citizenship based on birth and lineage and the use of religion as a criterion for granting citizenship gained explicit strength after 2014, when the BJP-led NDA Government came into power, and Narendra Modi became the Prime Minister of India.¹ The party was re-elected once more in the 2019 general election. The BJP-led NDA Government has been implementing laws and policies that prioritize Hindu nationalism, leading to the exclusion of minorities, especially Muslims. Despite violating the secular Indian Constitution, building a Hindu state based on Hindu nationalism, which promotes a majority Hindu identity and hostility towards minority Muslims, has become a political priority for Modi and his political party, the Bharatiya Janata Party. In July 2016, the current Minister of Home Affairs,

¹ The Bharatiya Janata Party (BJP), a right-wing political party, leads the National Democratic Alliance (NDA), which is a conservative Indian political alliance ranging from center-right to right-wing.

Amit Shah, introduced the Citizenship (Amendment) Bill to amend the Citizenship Act, 1955, in the lower house of Parliament (Lok Sabha). The Bill was passed in the Lok Sabha in January 2019, and by December 11, 2019, it was passed by the Upper House of the Parliament (Rajya Sabha). The Citizenship (Amendment) Act 2019 inserts provisions into section 2, sub-section (1), clause (b), and section 6, clause (d) of the Citizenship Act, 1955, which states that any person belonging to the Hindu, Sikh, Buddhist, Jain, Parsi, or Christian community from Afghanistan, Bangladesh, or Pakistan who entered India on or before December 31, 2014, and has been exempted by the Central Government from the application of the provisions of the Passport (Entry into India) Act, 1920, or the Foreigners Act, 1946, or any rule or order made there under, shall not be treated as an ‘illegal migrants’² (Government of India, 1955). Additionally, for these individuals, the aggregate period of residence or service of Government in India required under clause (d) of section 6 shall be read as “not less than five years” in place of “not less than eleven years” (ibid.).

The Citizenship (Amendment) Act 2019 was criticized by many intellectuals and scholars as an ‘a discriminatory act’ and considered a result of BJP’s politics of inclusion and exclusion, as it only granted Indian citizenship to six specific categories while leaving out other groups (Poddar, 2018; Regan et al., 2019; Shitole, 2020). It was dubbed a law promoting religion-based discrimination and depicted as legally complex, as it excluded Muslims like Rohingyas, Ahmadiyyas, Hazaras, and other groups (ibid.). Some even examine the issue through the lens of “Pan-Hinduism” or the growing influence of Hindu majoritarianism, suggesting that the Act is a product of this trend (Chatterji et al., 2019; Chandrachud, 2020; Biswas, 2021).

Another scholarly perspective has criticized the Citizenship (Amendment)

² Someone who enters or stays in India without legal authorization called illegal migrant.

Act, 2019, describing it as manifestly arbitrary, unjustified, unconstitutional, and inherently discriminatory based on race and religion, citing violations of key provisions of the Indian Constitution such as Article 14³ and Article 15⁴ (Poddar, 2018; Bhat, 2019). A report published by the Congressional Research Service (CRS) on December 18, 2014, stated that India's naturalization process had introduced a religious criterion in independent India's history (Congressional Research Service, 2019). The proposal and passing of the Act sparked violent protests across various regions of the country, including Tripura, Assam, Delhi, Uttar Pradesh, West Bengal, Arunachal Pradesh, Chhattisgarh, Madhya Pradesh, and others (The Hindu, 2019).

Adopting a postcolonial lens to the concept of citizenship, this paper contends that the selective preferences of certain groups in the Citizenship (Amendment) Act of 2019 are not only rooted in BJP's politics of inclusion and exclusion but also in India's postcolonial history and citizenship practices. In India, the politics of inclusion and exclusion has played a significant role in shaping the criteria for citizenship. The paper aims to trace the historical roots of citizenship in India and describe the gradual transition from a more inclusive to a less inclusive approach, particularly towards non-citizens and refugees.

II. Research Methodology

The methodology employed in this study adopts a comprehensive approach that involves the collection and analysis of both primary and

³ The right to equality before the law or the equal protection of the laws within the territory of India.

⁴ Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.

secondary data, utilizing observation and content analysis techniques. While secondary sources such as books, journals, and newspapers are relatively easy to find and access, the acquisition of primary sources, particularly Government records and policy documents, required a more detailed and specific process. To gather primary data, a diligent and systematic approach was undertaken. The researcher embarked on a carefully planned route to access and obtain relevant Government records and policy documents. This involved engaging with Government agencies, departments, and archival repositories to ensure the collection of comprehensive and accurate information. The researcher navigated through official channels, adhering to the necessary protocols and procedures in order to access restricted or classified materials when applicable. The primary sources, which serve as vital components of this study, encompass a range of Government records and policy documents. These sources include legislative acts, official reports, administrative directives, committee minutes, and other relevant documents directly related to the Citizenship Act of 1955.

By relying on these primary sources, the study aims to uncover valuable insights, examine historical context, and assess the evolution of the Citizenship Act over time. In addition to primary sources, secondary sources such as scholarly books, academic journals, newspapers, and online archives will be utilized. These secondary sources provide valuable perspectives, critical analyses, and scholarly discussions surrounding the Citizenship Act and its revisions. A comprehensive content analysis will be conducted on these secondary sources to gain a broader understanding of the subject matter and to support and complement the findings derived from the primary sources. By employing a combination of primary and secondary data, and employing methods such as observation and content analysis, this study aims to provide a comprehensive examination of the

revisions made to the Citizenship Act of 1955. Through this meticulous methodology, a deeper understanding of the historical context, legislative changes, and implications of these revisions will be achieved.

The paper will be divided into four sections. The first section will establish a theoretical foundation for the postcolonial understanding of citizenship, which will help comprehend the politics of inclusion and exclusion in India. The second and third section will focus on the Indian postcolonial state and its varying legal frameworks for citizenship concerning non-citizens and refugees. The fourth section will highlight the Citizenship (Amendment) Act, 2019, and its discontents.

III. Citizenship in Postcolonial Societies: A Critical Perspective

Understanding the complexities and hierarchies of Indian citizenship requires an analysis of postcolonial citizenship. Postcolonial citizenship serves as a “specific lens through which we can analyze its contradictions and contingencies” (Chung, 2017; Sadiq, 2017). Intellectuals such as Erin Aeran Chung, Kamal Sadiq, Nasreen Chowdhory, and Nasir Uddin have demonstrated that postcolonial citizenship not only prioritizes collective regulation over individual rights and is subject to contingencies and social hierarchies but is also profoundly contested (Chung, 2017; Sadiq, 2017; Chowdhory, 2018; Uddin and Chowdhory, 2019). The study of postcolonial citizenship typically focuses on *de jure/de facto* citizenship and *jus soli/jus sanguinis* citizenship, as demonstrated by the works of Niraja Gopal Jayal, Joya Chatterjee, and Erin Aeran Chung (Chatterji, 2012; Jayal, 2013, 2019a; Chung, 2014, 2017).

Contemporary discussions about liberal democracies focus on including

previously excluded groups, including women and minorities. However, from a “boundary-conscious perspective,” the inclusive nature of citizenship can also have exclusionary effects by creating a division between members of the national community and outsiders (Bosniak, 2006: 102). Erin Aeran Chung (2014, 2017) highlights two aspects of citizenship from a postcolonial perspective in modern democratic states. First, citizenship implies inclusion in a self-governing political community. Second, citizenship involves belonging⁵ to a specific national community defined by territorial boundaries and cultural practices (Chung, 2014, 2017). This distinction illustrates that while one aspect of citizenship is inclusive, the other can be seen as exclusive.

Postcolonial societies have seen citizenship rights differently than Western countries, owing to their distinct histories, state formation policies, and nation-building projects that have led to segregation and discrimination against non-citizens, refugees, and minority communities based on ‘the politics of belonging’ (Chowdhory, 2018). According to Nasreen Chowdhory (2018), in most South Asian countries, the politics of belonging is based on membership criteria determining an individual’s rights within a defined geographical territory. Membership is determined by the principle of admission and belonging, which has led to legislation and policies that discriminate not only against minority communities but also non-citizens and refugees. Quoting Sajaudeen Nijamodeen Chapparbars’ (2020) concern about citizenship and the discrimination of minorities/non-citizens in South

⁵ Nira Yuval-Davis (2006) associates the ‘belonging’ with emotional attachments such as “at home” or “feeling safe” on the one hand (Yuval-Davis, 2006, 197). On the other hand, John Crowley defines the politics of belonging as “the dirty work of border maintenance” (Crowley 1999 cited by Yuval-Davis, 2006, 204). The meaning of boundaries or border maintenance can be seen in two forms—first, the inclusive boundaries of the political community of belonging. Second, the exclusive boundaries divide the world’s population into two groups: “us” and “them” (p. 204).

Asia:

“Citizenship is being used as a tool to structurally and legally reduce minorities to second-class citizens or even to make them ‘stateless.’ Minorities are disowned by describing them as ‘outsiders,’ ‘foreigners,’ ‘infiltrators,’ ‘illegal immigrants,’ ‘intruders,’ etc. Making the ‘other’ subject to various discriminations, violent attacks, violation of human rights and stripping of citizenship” (Chapparban, 2020: 1).

The legislation concerning citizenship and the character of the state and its politics serve as significant indicators for defining the limits that determine the integration or exclusion of identities of individuals, groups, and communities. Despite abundant studies on Indian citizenship, limited research has focused on non-citizens and refugees within the context of Indian citizenship. This paper aims to fill this gap in the existing scholarship.

IV. A Gradual Anomaly in Citizenship: The Indian Postcolonial State and the Differential Legal Domain for Non-Citizens/Refugees

The partition of British India and the subsequent independence of Pakistan on August 14, 1947, and India on August 15, 1947, marked a significant turning point in the status of individuals in South Asia. This historical event, which involved the creation of nation-states and the drawing of borders, according to Roy (2010: 50), resulted in internal turmoil, ethno-religious politics, political and religious conflicts, disturbances, and struggles for independence (Roy, 2010). The outcome was the migration of millions of people from one state or country to another, giving rise to

“categories of identity” such as displaced, refugees, aliens, migrants, and stateless (Roy, 2013: 2). Moreover, this partition gave rise to a new figure of minority citizens, who were neither citizens nor aliens, but rather a hybrid subject, as stated by Chatterji (Chatterji, 2012: 1051). These individuals experienced routine *de facto* deprivations of “inclusive” but “inegalitarian citizenship,” which created a significant alteration in the status of people in South Asia and complicated the fundamental bases of citizenship criteria (*ibid.*).

As a result, the histories of partition, state formation, and nation-building projects in South Asia demonstrated a hierarchical structure based on race, class, and religion that affected not only the rights of non-citizens but also the rights of citizens, based on their politics of belonging (Chowdhory, 2018). This grammar of hierarchical rights based on the politics of belonging has proven invincible, elusive, and contested in the postcolonial Indian state formation or nation-building project. India’s independence marked the culmination of a distinct and prolonged struggle for national self-determination, which Partha S. Ghosh and Vazira Fazila-Yacoobali Zamindar describe as “a holocaust of tragedy,” characterized by persecutions, forced migrations, genocidal violence, human rights violations, and partition violence (including bureaucratic violence) (Ghosh, 2004; Zamindar, 2010). The formation of new nations and borders between them resulted in the creation of ‘refugees as a governmental category through refugee rehabilitation as a tool of planning’ and the division of families (Zamindar, 2010: 3). After the independence of British India, the primary objective was to establish a national state and draft a constitution that would promote tolerance and peace among the people of India. In January 1950, the country was declared a “Sovereign Democratic Republic and Union of States” by the Constitution of India (Hay, 2006: 98-99). The Indian nation-state rests on three key pillars: secularism, federalism, and parliamentary government. After India gained independence, Jawaharlal

Nehru assumed the role of India's first Prime Minister and led the Indian National Congress (INC)⁶ to support socialist policies. Nehru actively advocated for parliamentary democracy, secularism, and advancements in science and technology during the 1950s, significantly shaping India's path towards becoming a modern nation. Despite India's separation from Muslim-dominated Pakistan in 1947, with an 80% Hindu majority, around 200 million Muslims, representing 14% of India's total population⁷ today, hold Indian citizenship.

According to Niraja Gopal Jayal (2013), the history of Indian citizenship in the 20th century reflects a new way of thinking about the relationship between individuals and the state, drawing from colonial, constitutional, and postcolonial perspectives (Jayal, 2013: 12). After the Partition of British India, citizenship was defined as a comprehensive movement based on a shared identity of a sovereign self-governing people who came together as a community of equals with an overarching national identity in the form of India and Pakistan (Roy, 2010: 50). It took almost two decades after partition to adequately define the laws, rules, and regulations that would determine who could and could not become citizens, as the territories of India and Pakistan were mapped and delineated (Roy, 2013: 3).

The concept of citizenship in India has evolved, as described by Niraja Gopal Jayal (2013), reflecting the colonial, constitutional, and postcolonial eras (Jayal, 2013). When India's Constitution came into force on January 26, 1950, citizenship was based on the principle of secular *jus soli*, meaning that anyone born in India and having a domicile shall be considered a citizen (Government of India, 1950). This was because *jus sanguinis* (citizenship by

⁶ The Indian National Congress is one of the two prominent political parties in India, alongside its primary competitor, the Bharatiya Janata Party.

⁷ Please refer to the following link for more information: <https://censusindia.gov.in/census-website/data/census-tables>.

bloodline) was considered an implausible foundation in the very pluralistic culture of India. The Constitution's Part II, consisting of Articles 5 to 11⁸, deals explicitly with citizenship, distinguishing between citizens and non-citizens. These articles outline the criteria for citizenship, such as birth and domicile, and also address the citizenship rights of specific categories of migrants and non-resident Indians, such as those who were migrating from India to Pakistan or Pakistan to India or others. It was clear that the markers of citizenship in India, as outlined in Articles 5 to 7, were based on birth and domicile criteria and addressed the citizenship of people migrating to India from Pakistan or vice versa. Parliament can regulate citizenship rights through laws, as stated in Article 11 of the Constitution of India.

The concept of citizenship in India has been continuously reshaped and reproduced based on the politics of belonging, leading to new exceptions and classifications, reflecting the primary fault line of religious differences between Hindus and Muslims over time (Jayal, 2013). The partition resulted in a persistent influx of immigrants, which posed challenges for the Indian Government and the citizenship claims of those who migrated. The consideration of citizenship claims under Articles 6 and 7 of the Constitution of India has faced explicit criticisms due to the ambiguity and disparity. While Article 6 was "uncontroversial," which relates to refugees who fled from Pakistan after Partition to escape the communal violence and extermination, was mainly Hindus, Article 7, which deals with

⁸ (Article 5) – Citizenship at the commencement of the Constitution.

(Article 6) - Rights of citizenship of certain persons who have migrated to India from Pakistan.

(Article 7) - Rights of citizenship of certain migrants to Pakistan.

(Article 8) - Rights of citizenship of certain persons of Indian origin residing outside India.

(Article 9) - Persons voluntarily acquiring citizenship of a foreign State not to be citizens.

(Article 10) - The continuance of the rights of citizenship.

(Article 11) - Parliament to regulate the right of citizenship by law.

citizenship for those who fled from India to Pakistan to escape and later decided to return to India under the provisions issued by the Government was mostly Muslims (Jayal, 2013: 58). This clause has been referred to as an “obnoxious clause,” and these people were “euphemistically described as ‘migrants’ (ibid.). The significant citizenship claims of these groups, “Hindu refugees and Muslim migrants,” were treated or performed differently (ibid.). The citizenship claims of Migrants, mostly Muslims, under Article 7 were deeply contested with allegiance, loyalty, volition, and intent, compared to the citizenship claims of Hindus. However, as Leah Verghese and Harish Narasappa (2019) noted, returning Muslims faced repeated questioning of their intention to return to the Constituent Assembly and in judicial decisions (Verghese and Narasappa, 2019). Some had to wait ten years to become eligible to apply for citizenship by naturalization. The claims of legal citizenship began to be affected by the burdens of self-identification, identity documentation, and religion in western India (Raheja, 2022b, 2022a). Based on it, scholars argue that the tension between *jus soli* and *jus sanguinis* has been extant in the conception of citizenship from the commencement of the Republic (Roy, 2010; Jayal, 2013).

After the Constitution was enacted, there was a “legal vacuum or hiatus” period between 1950 and 1955 regarding citizenship (Roy, 2010: 51). During this interregnum, citizenship occupied a liminal zone that represented a legal-institutional space of uncertainty, including marginalized and “othered” individuals, which complicated the idea of the nation-state (ibid., 42). These groups included displaced persons, minors, and alien women/registered/Pakistani wives, whose identities were contested and indicative of the ambiguous nature of citizenship (ibid., 52). This created a sense of indeterminacy and ambiguity in the state-formation process and the question of national belonging.

V. Revisiting the Citizenship Act of 1955: Exploring Various Amendments to this Legislation

The Citizenship Act of 1955 was enacted after a gap of five years since the commencement of the Constitution of India to address the identity-related issues of citizenship that arose during this period. The Act introduced various categories for acquiring citizenship, namely citizenship by birth (Article 3), descent (Article 4), registration (Article 5), naturalization (Article 6), and incorporation of territory (Article 7). As per Section 3, any person born in India after January 26, 1950, would be deemed a citizen of India by birth. Section 4 stipulated that a person born outside India could become a citizen of India by descent if the birth were registered within one year at an Indian consulate or at the time of the commencement of the Act (Government of India, 1955). However, the introduction of blood-based descent into the Citizenship Act of 1955 represented a departure from the universalist and egalitarian conception of citizenship embodied in the Indian Constitution, indicating a subtle shift in the legislative and legal framework governing Indian citizenship over time.

In contrast to the western part of India, the eastern region has witnessed social unrest and political turbulence, especially in East Pakistan (now Bangladesh) during the pre-and post-independence era. The turmoil led millions of Hindu and Muslim refugees and migrants to India, primarily in Assam (Hay, 2006). This migration, which started in 1947 and peaked in 1971, caused demographic shifts and a feeling of insecurity among the locals about their identity, access to resources, and language. The issue of Bangladeshi migration has consistently been a contentious topic for political parties, with the Congress party facing accusations of pseudo-secularism⁹

⁹ A negative term used to describe policies that are perceived to prioritize the appeasement

and the BJP being accused of engaging in divisive politics targeting minorities and migrants. This was also the period when the Bharatiya Janata Party (BJP) initiated a national campaign against the “illegal” migration of Bangladeshi migrants (Gillan, 2002). The BJP called for the “identification, detention, deportation” of immigrants, which involves identifying and removing them, erasing their names from the voters’ lists, and sending them back to Bangladesh (Krishnan, 2019). Each political party has utilized the issue of Bangladeshi migration as a means to gather political backing in the eastern state of West Bengal and Assam. The state of Assam has been significantly impacted by the large-scale influx of individuals from Bangladesh, including both refugees and migrants, leading to widespread unrest, which ultimately gave rise to the Assam movement (Nath, 2021; Firoz, 2022). The Assam Movement, also known as the Anti-Foreigners Agitation, was a widespread protest in the Indian state of Assam between 1979 and 1985. The movement’s primary objective was to urge the Government of India to identify, disqualify, and expel undocumented immigrants from the region. The movement was spearheaded by the All Assam Students Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) and lasted for six years, marked by sustained acts of civil disobedience, political turmoil, and violent clashes between different ethnic groups (ibid.). Eventually, the movement culminated in the signing of the Assam Accord in 1985. The Assam movement that ensued culminated in the Assam Accord of 1985, which brought a political settlement between the Government of India and the leaders of the Assam Movement, along with an amendment to the Citizenship Act of 1955 in 1986.

The Citizenship (Amendment) Act, 1986, made every person born in India between January 26, 1950, and July 1, 1987, whose parent was an Indian

of minority groups.

citizen at the time of their birth, a citizen of India, except for some minor exceptions (Government of India, 1955). It also introduced Article 6A, which contains special provisions for the citizenship of persons covered by the Assam Accord. According to this article, those who migrated to India before 1966 were granted Indian citizenship, those who migrated between 1966 and 1971 were deprived of their political rights for ten years and had to live under the situation of deferred citizenship, and those who migrated after 1971 were deemed illegal immigrants and subjected to deportation (Government of India, 1955). The Citizenship (Amendment) Act 1986 introduced the concept of ‘different yet equal or differentiated citizenship,’ with a difference in Indian citizenship based on the chronological boundaries of belonging (Roy, 2010: 124-126). Anupama Roy (2010) figured it out as “making a way for the sixth type of citizenship applying to the state of Assam” (ibid., 54). The legal framework of Indian citizenship included an exception, which created a hierarchical model, leading to a dilemma. Migration, which had previously been the condition of passage into citizenship, was explicitly associated with illegality in 1986, unlike its incorporation in the Constitution of India at the commencement of the republic (ibid., 202-203). India hosts a significant number of refugees, with a particular challenge posed by refugees from neighboring countries in South Asia. Among these countries, the influx of refugees from Bangladesh, a densely populated nation, has been a persistent issue. During a BJP national executive meeting in 1992, a resolution was adopted asserting that within a few years, more than 15 million individuals from Bangladesh had entered India illegally. The resolution stated:

... this influx has led to a variety of socio-economic tensions in the North-East, in West Bengal, parts of Bihar and even in far-away Delhi and Bombay. All this constitutes a serious strain on the national economy, a severe stress on the

national society, and, withal, a serious threat to the stability and security of the country. And yet the Congress takes no action to stem this flood or push back illegal immigrants because it views them as its vote bank (Gillan, 2002: 77).

The growing influx of Bangladeshi migrants in North East India and West Bengal and the BJP's ongoing opposition to "infiltration" as a political agenda has prompted yet another amendment to the Citizenship Act. Another amendment was made to the Citizenship Act 1955, known as the Citizenship (Amendment) Act 2003.

Incorporating Article 3(1)(c), the 2003 Amendment Act stipulated that with a few exceptions, any individual born in India on or after the Act's commencement would be considered a citizen of India if either both parents are Indian citizens or one parent is an Indian citizen, and the other is not an illegal migrant at the time of birth (Government of India, 1955). The primary aim of this amendment was to tighten the acquisition of Indian citizenship and prevent illegal migrants from obtaining citizenship via registration or naturalization. Additionally, the amendment introduced new sections 7A, 7B, 7C, and 7D for the registration of overseas citizens¹⁰ (ibid.). However, the 2003 Citizenship (Amendment) Act was exclusionary, promoting an exclusionary trend in the Citizenship Act of 1955. The Act facilitated dual/transnational citizenship by introducing the notion of belonging and descent through overseas citizenship, as per Roy (2010: 57). Transnational citizenship or universalized de-territorialized citizenship, on the one hand, legally recognizes the Indian identity of those living overseas based on their descent and sense of belonging. On the other hand, it creates differentiated citizenship with ambiguity and indeterminacy

¹⁰ Individuals of Indian origin from sixteen countries in 2002 were registered as Persons of Indian Origin. And the category of Overseas Citizen of India (OCI) were introduced in 2005.

regarding migrants/illegal migrants. Anupama Roy (2010) characterizes this duality (inclusion/exclusion) in Indian citizenship as “the deception of de-territoriality” (p. 171). She observed the changing form of Indian citizenship beyond the notion of inclusion/exclusion and identified it as an “ideological shift” (p. 171) in the citizenship laws, particularly the growing preference for the principle of *jus sanguinis* over the principle of *jus soli*. Niraja Gopal Jayal (2013) argues that this shift towards *jus sanguinis* or exclusionary tendencies is particularly evident in the treatment of Bangladesh (Muslim) immigrants and the accommodation of claims made by wealthy diasporic Indians (primarily Hindus) (Jayal, 2013: 14). She emphasizes that this move from *jus soli* to *jus sanguinis* undermines India’s fundamental commitment to pluralism, making legally plausible what is socially implausible and civically repugnant (ibid., 14). The Citizenship (Amendment) Act 2003 marks a clear departure from the religious-neutral definition of citizenship and establishes the basis for a religious-based exception in the statute and the Constitution.

The Citizenship Rules of 1956 were further amended in 2004 with section 8A, which granted the authority to register individuals as citizens of India to the district collectors. This provision applied specifically to minority Hindus who had migrated from Pakistan intending to permanently settle in India and live there for more than five years (Verghese and Narasappa, 2019: 166). The religious identity of the immigrants was explicitly mentioned in this amendment, indicating a differential treatment based on religion, with Hindus being categorized as “belonging” and Muslims as “other.” As per Niraja Gopal Jayal (2013), “this amendment makes an open declaration of the religious identity of the immigrants” (p. 66). For a limited period of time and in specific jurisdictions like Rajasthan and Gujarat, the Union Government amended the Citizenship Rules, 1955, to enable district collectors to provide citizenship to these immigrants who were referred to

as “minority Hindus with Pakistani citizenship” rather than being labeled as “illegal migrants.”

The Citizenship Act of 1955 underwent several significant amendments, the most important of which were made in 1986, 2003, and 2019. These amendments introduced several key provisions related to *jus soli* and *jus sanguinis*, which are as follows:

- a. ‘Special Provisions as to Citizenship of Persons Covered by the Assam Accord’ (Ins. by Act 65 of 1985, s. 2, w.e.f. 7-12-1985).
- b. ‘Overseas Citizenship’ (Ins. by Act 6 of 2004, s. 7, w.e.f. 3-12- 2004).
- c. The exclusion of ‘illegal migrants’ from Citizenship by birth, Citizenship by registration, and Citizenship by naturalization (Subs. by Act 6 of 2004, s. 5, for sub-section (1), w. e. f. 3-12-2004).
- d. ‘Special provisions as to the citizenship of person covered by the proviso to clause (b) of subsection (1) of section 2’ (Ins. by Act 47 of 2019, s. 3, w.e.f. 10-1-2020).

VI. Citizenship (Amendment) Act, 2019 and its Discontents: A well-thought-out strategy

After the BJP government came into power, its stance on illegal migration has become more assertive, as reflected in the tone and direction of its agenda. The recent Passport (Entry into India) Amendment Rules, 2015, and Citizenship (Amendment) Act, 2019, provide a prime illustration of this pattern. The Passport (Entry into India) Amendment Rules, 2015, introduced an exception for minority communities, exempting them from the requirement of having a passport to enter India. This exemption applied to members of six minority communities from Pakistan and Bangladesh - Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians - who were forced to seek refuge

in India due to religious persecution or fear of persecution and arrived in India on or before December 31, 2014.¹¹ The Citizenship (Amendment) Bill, 2016 extended this provision to include these same communities from Afghanistan. These amendments addressed the citizenship claims of six minority communities from Pakistan, Afghanistan, and Bangladesh who crossed India's eastern and western borders. They were eligible to acquire citizenship through naturalization by residing in India for a minimum of five years. CAA allows for granting Indian citizenship to specific religious groups, as discussed above. Yet, Muslim immigrants from the same countries are stigmatized as illegal immigrants. In addition, the Act excludes other groups, such as Rohingyas from Myanmar, Ahmadiyyas from Pakistan, and Uighurs from China. Thus in the CAA, Muslims, Jewish, and Atheists are excluded from guaranteed citizenship. While Pakistan, Afghanistan, and Bangladesh are specified in the Act, the neighboring countries such as Sri Lanka and Myanmar are excluded.

Many scholars and activists have criticized the BJP-led NDA government's plan of action regarding the CAA from ideological, legal, and policy perspectives, focusing on academic scholarship. The CAA has caused significant political upheaval and is the latest law to be introduced as part of the ruling regime's ambitious legislative reform agenda. Abhinav Chandrachud has characterized the CAA as a ploy by the Hindu political right to deprive Indian Muslims (immigrants and refugees) of their citizenship rights (Chandrachud, 2020). In addition, Narender Nagarwal has also linked the CAA to the BJP's Hindutva¹² ideology and described it as discriminatory

¹¹ India: Passport (Entry into India) Amendment Rules, 2015; Foreigners (Amendment) Order, 2015 [India], 7 September 2015, available at: <https://www.refworld.org/docid/5e2574ba4.html> [accessed 12 October 2021].

¹² Hindutva is a political ideology that advocates India's identity as a Hindu nation, upholds Hindu racial dominance, and interprets Indian culture through Hindu cultural values. Its

and unconstitutional. He argues that it legalizes hate against minorities, particularly Muslims, and allows for their persecution and discrimination through a legalized process (Nagarwal, 2022). He states that the CAA's prerequisite qualification of religion for Indian citizenship violates the fundamental principles of the Constitution. The Act goes against the secular spirit and structure of the Indian Constitution and discriminates unequivocally against Muslim citizens.

Since 2014, the Hindu right in India has openly called for the rejection of secularism and embraced political "Hindutva." Recently, BJP's legislative policies have tended towards "muscular majoritarianism," with actions such as revoking the special constitutional status of the Muslim-majority state of Jammu and Kashmir (through the abrogation of Article 370), enacting laws related to cow slaughter, criminalizing the practice of triple talaq in Islam, anti-conversion laws, opposing the Supreme Court's decision to allow menstruating women to enter the Sabarimala temple in Kerala, and the Unlawful Activities Prevention Act of 1967 (amended in 2019) (Nagarwal, 2019, 2022; Chandrachud, 2020). Many of these laws were enacted with the intention of targeting minorities, especially Muslims. The CAA not only permits discrimination against individuals based on their religion but also represents a significant departure from the secular values of India, as it promotes hate and religious persecution against Muslims (Jayal, 2022). Critics have raised concerns about the ideological and political motives of the Hindu Right-wing Indian Government led by Prime Minister Narendra Modi (Bhattacharjee, 2020; Waghmore, 2021). For them, the CAA represents a deliberate strategy by the BJP to transform India into a Hindu Rashtra or Hindu Nation.

The BJP's vision for India is based on the ideological framework of the

ultimate objective is to establish India as a Hindu state.

Rashtriya Swayamsevak Sangh (RSS), which has inspired the party's statecraft scheme. However, the current form of the CAA prioritizes politics over the plight of persecuted individuals, as different forms of religious discrimination have been introduced during the BJP-led governments' tenure (Vanaik, 2020). Additionally, Jaffrelot (2019) argues that the CAA manifests the shift towards ethnic democracy, where Hindu nationalism is combined with populism to generate support for a Hindu nation-state (Jaffrelot, 2019). Additionally, Yengde (2020) has highlighted how the CAA is not only anti-Muslim but also anti-Dalit and anti-*adivasi* (Yengde, 2020). The BJP's plan of action has always been closely linked to the Hindu right ideology of *Hindutva*, which is emphasized in the party's political ideology.

In Jayal's (2019) analysis, the implementation of the CAA and NRC¹³ signifies a significant shift in India's social and political identity, as well as its understanding of citizenship and the political community (Jayal, 2019b). These policies propose an ethno-nationalist model of citizenship that not only alters the criteria for Indian citizenship but also challenges India's pluralistic and multicultural character (Ponnaganti, 2022). The NRC-CAA, which differentiates between supposed immigrants based on their religious identity and origin, contradicts India's constitutionally enshrined secular citizenship. Critics such as Amit Ranjan and Devika Mittal argue that the NRC-CAA aims to turn India into a predominantly Hindu nation and further marginalize Muslims as unequal citizens (Ranjan and Mittal, 2023). Similarly, Farrah Ahmed contends that the NRC-CAA seeks to exclude Muslims, both citizens, and immigrants, from citizenship by introducing a nationwide process of citizenship verification similar to the NRC in Assam (Ahmed, 2020).

¹³ The National Register of Citizens (NRC) is a system designed to record the names of all Indian citizens, with the aim of identifying and deporting illegal immigrants. Initially, it was introduced in the state of Assam to tackle the problem of continuous immigration. Although, the intention of the current ruling BJP Government is to implement it nationwide.

The fear generated by the Act and proposals for the NRC has sparked widespread protests, as there are concerns that the Government may abuse its rule-making powers to exclude citizens and immigrants it disfavors (Jayal, 2019b).

Recently, legislative developments in India have raised concerns about the country's commitment to democratic values, secularism, and human rights, which are central to the Indian Constitution. Scholars like Abhinav Chandrachud and Farrah Ahmed have argued that the Citizenship Amendment Act (CAA), 2019, not only supports the agenda of the Hindu right but also undermines the principle of equality enshrined in the Constitution (Ahmed, 2020; Chandrachud, 2020). While Chandrachud notes that the CAA is reminiscent of policies from the time of India's partition, he emphasizes that it is unconstitutional today because the conditions that existed then no longer apply (Chandrachud, 2020). Baruah (2019) goes even further, characterizing the CAA as a "historic departure" from India's rejection of the two-nation theory that led to the creation of Pakistan (Baruah, 2019). The Act violates Article 14 of the Constitution, which guarantees equality before the law to all persons within India's territory, as well as the freedom of life and liberty under Article 21 and the prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth under Article 15 (Poddar, 2018; Shitole, 2020).

Despite India's commitment to being a secular and democratic nation, the Citizenship Amendment Act (CAA) has brought to light the biased denization process based on religious tendencies. Narender Nagarwal has denounced the CAA as a "poisonous law" against India's secular foundation and challenges its celebrated epitomes of secularism (Nagarwal, 2019). Nagarwal has also examined the CAA from a human rights jurisprudence perspective, stating that it infringes on the fundamental human rights of citizens, violates the guarantee of equal treatment under Article 14,

and threatens secularism. The CAA's provisions violate the Constitution's fundamental values, undermine the freedom of religion, and negate secularism.

The CAA's discriminatory character also violates several international legal standards, such as the 1951 Refugee Convention, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the UN Convention against Torture, 1985 (McAdam, 2007; Poddar, 2018). Furthermore, it is inconsistent with Article 51(c) of the Indian Constitution, which mandates India to respect its international obligations.

On the one hand, this Act has led to a shift from the principle of *jus soli* towards *jus sanguinis*, entrenching a majoritarian and exclusionary notion of citizenship. As Jayal (2019) argues, the Citizenship (Amendment) Act 2019 represents a fundamental transformation, replacing the existing pluralistic and inclusive conception with a majoritarian and exclusionary one (Jayal, 2019a). It is a recent example of the ongoing politics of inclusion and exclusion based on religious identity in India's citizenship criteria. On the other hand, proponents of the CAA argue that its objective is not to 'exclude' Indian Muslims but rather to provide Indian citizenship to 'persecuted' religious minorities from Afghanistan, Bangladesh, and Pakistan. However, this Act has divided public opinion in India, with critics believing it mainly targets Muslims, while supporters see it as a means of helping vulnerable minorities. Those in favor of the CAA also contend that it does not affect the citizenship status of Indian Muslims.

VII. Conclusion

Following India's independence in 1947, the Indian Constitution detailed the fundamental rights and responsibilities of citizens and non-citizens regarding citizenship. At that time, India's citizenship policy was primarily inclusive and based on the *Jus soli* principle, which was perceived as an instrumental foundation of India's secular commitments. However, five years after the Constitution's commencement, the Citizenship Act 1955 was enacted to address various identity-related issues of Indian citizenship through legal means. Over time, India's citizenship policy has undergone numerous consecutive amendments to the Citizenship Act of 1955, including the Citizenship (Amendment) Act of 1986, the Citizenship (Amendment) Act of 2003, and the Citizenship (Amendment) Act of 2019. Each of these amendments has not only challenged Indian secular norms but has also moved away from *jus soli* citizenship norms, resulting in a shift toward blood-based *jus sanguinis* citizenship norms, indicating a move from inclusive to less inclusive citizenship.

The partition of British India and the subsequent establishment of nation-states and national identities have created political geographies delineated by religious, ethnic, and political factors. This historical experience has shaped the region's contemporary landscape. The paper argued that the Citizenship (Amendment) Act 2019, which includes certain groups and excludes others, has its roots in postcolonial citizenship practices. From a postcolonial perspective, the conception of citizenship has gradually shifted towards a more exclusionary, blood-based principle, with amendments to the Citizenship Act 1955 based on the politics of belonging and inclusion/exclusion. While religious differences were implicitly present in earlier amendments, the Citizenship (Amendment) Act 2019 makes them explicit. Niraja Gopal Jayal (2013) notes, "changes in the laws and rules reflecting

the advances made by exclusionary tendencies in Indian society and politics since independence” have led to a shift towards a *jus sanguinis* regime in citizenship (Jayal, 2013: 14). The CAA has significant implications for Indian society as it seeks to redefine and reshape Indian citizenship. Some have questioned why India has not enacted a comprehensive law to address the refugee crisis in neighboring countries, which could provide a fair and impartial process to determine persecution and enable eligible refugees to seek asylum and citizenship. If the CAA truly intended to offer humanitarian assistance to immigrants, such a comprehensive law may be a more appropriate solution.

It is evident that the continuous amendments made to the Citizenship Act 1955, which deviate from the religiously-neutral definition of citizenship, serve as the basis for a “religious-based deviation” in the law and undermine the “de-territorialized and space-liberated notion of citizenship ... and even primacy over the principle of *jus soli* or birth” (Roy, 2010: 171). Legislative changes that implicitly and explicitly aim to insert religious distinctions based on the politics of belonging into India’s religion-neutral citizenship law also challenge the equal status of citizenship. As Niraja Gopal Jayal notes, “the politics of religious identity remain central to the framing of citizenship in the political state” (Jayal, 2013: 79). This issue is further compounded by the fact that “the nation-state itself produces illegality to make the legal” (Uddin and Chowdhory, 2019: 41), which is referred to as “the post-secular shift in the global politics of citizenship” (Chapparban, 2020: 1). The emergence of exclusionary discourses threatens the existence of inclusive and secular ideals.

Submitted: November 17, 2022. | Revised: May 30, 2023 | Accepted: July 31, 2023

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