

## INDIA'S CITIZENSHIP AMENDMENT ACT (CAA) OF 2019: A CASE STUDY OF ANTI-MUSLIM SENTIMENT IN INDIA

### *AKTA PINDAAN KEWARGANEGARAAN 2019 INDIA: KAJIAN KES SENTIMEN ANTI-MUSLIM DI INDIA*

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#### ABSTRACT

Ethnic violence has long been prominent in India, especially among Hindus and Muslims. Debates have taken place over the value of India's secularist principle, as Muslims in India are continuously faced with discrimination. They are subjected to hate crimes with the rise of Hindu Nationalism. The government's legislature and policies must embody national unity rather than fuelling the already existing divisions among Hindus and Muslims as a secular state. This study examines India's Citizenship Amendment Act of 2019 and how it has led to anti-Muslim sentiments in the country. Drawing from the concept of Nationalism, the research will focus on the relation between Hindu nationalistic ideals and the Citizenship Amendment Act. The analysis results revealed that the Citizenship Amendment Act was flawed and had overtones of anti-Muslim sentiments. Further analysis revealed that the Citizenship Amendment Act had violated Articles 13, 14, and 25 of the Indian constitution directly and indirectly. In addition to this, the study also showed the link between ultra-Hindu Nationalism and the Citizenship Amendment Act. It also found that the intention of the Act to protect minorities facing religious persecution has failed as India lacks proper refugee laws. The overall research of this study concludes that the Citizenship Amendment Act has led to anti-Muslim sentiments in the country and furthered the identity crisis Muslims face in India.

#### KEYWORDS

Citizenship Amendment act, anti-muslim sentiment, India

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**ABSTRAK**

*Keganasan etnik telah lama tercetus di India, terutamanya dalam kalangan penganut Hindu dan Islam. Banyak perdebatan telah berlaku mengenai nilai prinsip sekularisme India, kerana umat Islam di India terus berhadapan dengan diskriminasi. Mereka berhadapan dengan jenayah kebencian daripada kebangkitan nasionalisme Hindu. Badan perundangan dan polisi kerajaan perlu mewujudkan perpaduan bukannya menyemarakkan perpecahan yang sedia ada dalam kalangan penganut Hindu dan Islam sebagai sebuah negara sekular. Kajian ini meneliti Akta Pindaan Kewarganegaraan India 2019 dan bagaimana ia telah membawa kepada sentimen anti-muslim di negara tersebut. Berdasarkan konsep nasionalisme, kajian ini memberi tumpuan kepada hubungan antara cita-cita nasionalistik Hindu dan Akta Pindaan Kewarganegaraan. Keputusan analisis mendedahkan bahawa Akta Pindaan Kewarganegaraan adalah cacat dan mempunyai kesan sentimen anti-muslim. Analisis lanjut menunjukkan bahawa Akta Pindaan Kewarganegaraan telah melanggar Perkara 13, 14 dan 25 perlembagaan India secara langsung dan tidak langsung. Di samping itu, kajian menunjukkan hubungan antara nasionalisme ultra-Hindu dan Akta Pindaan Kewarganegaraan. Kajian juga mendapati bahawa tujuan akta untuk melindungi golongan minoriti yang menghadapi penganiayaan agama telah gagal kerana India tidak mempunyai undang-undang pelarian yang baik. Secara keseluruhan, kajian ini menyimpulkan bahawa Akta Pindaan Kewarganegaraan telah membawa kepada sentimen anti-muslim dan meningkatkan krisis identiti yang dihadapi oleh umat Islam di India.*

**KATA KUNCI**  
Akta Pindaan  
Perlembagaan,  
sentiment anti-  
muslim, India

**1.0 Introduction**

The violence on the streets of Delhi in February 2020 could be the most brutal to occur in the past decade in India. The controversial CAA has provoked alarming rates of violence – passed on 9th December 2019. The Citizenship Amendment Act of 2019 was proposed to protect minorities facing persecution in neighbouring countries. India consists of a multi-ethnic population with democratic and secular principles in the constitution. Therefore, the state power is to be separate from any religious influence and must not differentiate among different religious groups. However, the developing issue of the CAA presents the deeply rooted bias against Muslims by the government.

While the rest of the world continue to observe the unrest in India regarding the CAA, this research aims to identify the key problems in the CAA which will affect Muslims all over India. Additionally, thorough examination of the events that unfolded after the introduction of the CAA such as the National Register of Citizens (NRC), will help to strengthen the argument that anti-Muslim sentiments in India exist to a great extent. Furthermore, it is crucial to analyse the political agenda behind the CAA as BJP continues to incorporate the beliefs of the Hindutva in the laws and policies of India. It is vital to explore the topic at hand as the anti-Muslim sentiments continue to grow in this unprecedented time of covid-19 where the RSS and BJP push to implement the CAA in India, which can affect millions of Muslims already suffering from the pandemic. Additionally, this could become a method used by Islamophobic politicians all over the world in order to push their agenda and hate towards the Muslim community.

## 2.0 A Divisive Past: Citizenship Laws in India Post-Partition

The creation of Pakistan in 1947 – a Muslim homeland – provides a crucial background to the current state of Citizenship in India. Sharma (2019) states that the study of laws and policies after the Partition regarding citizenship confirms that Indian citizenship has been always based on the claimed belief that India is for Hindus. After the Partition, a narrative of Hindu pride developed a logic which argued that Muslims identify with Pakistan whereas Hindus, Christians, Buddhists, and others would identify with India (Sharma, 2019). This led to the creation of biased citizenship laws which were hostile towards Muslims.

In the wake of the Partition, policies and laws were adopted by both nations regarding mobility between the two nations. India – seen as the homeland for Hindus – adopted policies that differentiated between the eastern and western borders; the Permit System was introduced in the western border in 1948, whereas in the east, such a document was not required (Sharma, 2019). The Permit System included permits for temporary visits, permanent return to India, repeated journeys, permanent resettlement (Sharma, 2019). Chandrachud (2020) suggests that the difference in treatment was mainly due to the fact that migration of most Hindus from West Pakistan had already been complete before the introduction of the permit; whereas in East Pakistan there were still around 16 million Hindu's left to migrate to India. The Permit System is a prime example of how laws and policies were designed to differentiate between people crossing the borders solely on their religion without explicitly mentioning religious identity in the law itself (Sharma, 2019). This outlines that religious identity has been central to the formation of citizenship laws and policies in India and religious-based discrimination in citizenship is not an unfamiliar conduct.

Sharma (2019) states that Articles 5 to 7 of the constitution specified the approach to decide citizenship of persons migrating between India and Pakistan between 19th July 1948 and 26<sup>th</sup> January 1950 which presents the subtle challenge Muslims had to face. The criteria for citizenship in Article 5 included domicile and birth in the territory of India; however, Muslims returning to India could not benefit from Article 5 due to Article 7 of the constitution which specifically dealt with persons of displacement in Partition (Sharma, 2019). The Article 7 established that persons who migrated to Pakistan territory from India after 1<sup>st</sup> of March 1947 would not be qualified to be citizens of India (Sharma, 2019). Moreover, Article 9 of the Constitution of India noted that if persons voluntarily acquired a foreign passport, they would not be citizens of India automatically. The argument presented by Sharma (2019) is that under Article 9, Muslims who acquired a Pakistani passport were scrutinised and suspected on their loyalty whereas ease of access was provided for Hindus with Pakistani passports.

According to Chandrachud (2020), the Citizenship Act of 1955 provided numerous ways of citizenship in India; through birth, descent, registration, naturalisation and when India obtains a foreign territory. The Act of 1955 and the Citizenship Rules of 1956 primarily provided a basic legal framework on citizenship in India, especially regarding the procedures for the registration of evacuees, displaced persons, and returnees from Pakistan on permanent resettlement visas or entry permits as citizens of India (Roy, 2008). However, the referred 'evacuees and displaced person' were mostly Hindu minorities from Pakistan and returnees were Muslims who migrated to Pakistan during Partition and wished to return. As previously mentioned, the process of acquiring permits under the Permit System was made difficult for Muslims. However, Hindus continued to migrate with ease through permits and as evacuees and displaced persons. Roy (2008) argues that it was politically motivated as during the framing of the Citizenship Rules of 1956, the Deputy Secretary of Home Affairs had issued instructions to make 'immediate arrangements' to register displaced person under the Act of 1955 and stressed the need to

enable the displaced persons who have yet not become citizens of India to vote in the next general election (Roy, 2008). Hence, the laws regarding citizenship introduced after the Partition presents to be politically motivated and includes subtle discrimination towards Muslims, which has continued and escalated under the current Citizenship Amendment Act of 2019.

### 3.0 Changes in the Citizenship Amendment Act?

Muslims have been one of the most marginalized religious groups in India for decades; they have long been excluded from Indian politics, education system and economic sector. This alienation has been amplified by the Citizenship Amendment Act (CAA) of 2019 which excludes them from seeking sanctuary as people escaping religious persecution.

The multi-ethnic society of India has been dissevered by religious intolerance and government favouritism based on religious grounds in the CAA. The CAA revises the Citizenship Act of 1955, introducing changes to the citizenship rules of India. The Citizenship Act of 1955 has been amended previously on four different occasions in 1992, 2003, 2005, and 2015. The current amendment includes a revised definition for *illegal migrants* as foreigners without a valid passport or travel document, or those who have overstayed the permitted time (BBC NEWS, 2019). Additionally, the CAA states that applicants for citizenship must have lived in India or worked for the federal government for at least 11 years. However, amendments brought to the Act presents the deep-rooted religious bias in the government's attitude towards citizenship in India. Under the Act the Section 2 subsection (1), clause (b) of the Citizenship Act 1955 is revised as:

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of subsection (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;".

As established by the CAA, an illegal immigrant is ineligible to apply for citizenship through naturalisation. However, the above amendment brought to the CAA provides an exception to certain religious groups from specific countries, providing that they "shall not be treated as illegal immigrant(s)". The conditions provided in the above proviso and section 6 of the Act makes illegal immigrants ineligible to apply for citizenship by naturalisation (Poddar, 2018). However, people from Hindu, Sikh, Buddhist, Jain, Parsi or Christian religious groups from Afghanistan, Bangladesh or Pakistan are exempted from the application of the provisions under the Passport Act of 1920 and Foreigners Act 1946 which clears these religious groups from imprisonments and deportation unlike their Muslims counterparts (Poddar, 2018). Muslims who match the same eligibility required by the identified religious groups from the three countries remain ineligible for citizenship by naturalisation and are considered illegal immigrants. Additionally, the revised Act adds to the qualification for naturalisation which requires a minimum of 11 years residency in the country, but the specified groups receive another advantage in achieving citizenship. The amendment to the Third Schedule clause (d) of the Act of 1955 states that:

'Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years".

This added proviso again exempts Hindus, Sikhs, Buddhists, Jains, Parsis or Christians from Afghanistan, Bangladesh, and Pakistan from waiting the full 11 years for citizenship by naturalisation; being eligible just after 6 years of residence while Muslims require the full 11 years to be eligible (Poddar, 2018).

In the Bill proposed in Lok Sabha the following *statement of objects and reasons* are noteworthy:

“It is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries. Some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents.”

This presents the government’s *noble* intent to protect minorities and provide a sanctuary for those facing persecution in neighbouring countries. However, this is limited only to certain religious groups; while similar conditions have been subjected to religious groups such as Ahmadis in Pakistan, Rohingyas in Myanmar, and Uyghurs in China all face persecution in their home country (Poddar, 2018). It is important to note that these countries share a border with India as well.

“Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947” – this statement remains entirely true, however the undivided citizens of India do not only amount to the specified religious groups. In specifying certain religious groups, the CAA has – to some extent – implied that the *acceptable* citizen from the former undivided India must belong to these religious groups. Numerous Indian Muslims migrated to Pakistan after the Partition and wished to return to India but were scrutinised for their *disloyalty* to the country – this shows that India is selective regarding citizenship among different religions. As mentioned earlier, the citizenship laws concerning the Partition were flawed and the permit system was not favourable towards Muslims – a similar case is happening again, where citizenship is being associated with religion.

#### 4.0 Hindu Nationalism as a Driving Force of the Citizenship Amendment Act

The concept of nationalism is vital in addressing the question of why Muslims face discrimination in the Indian society. Nationalism can be referred to as national self-determination or as an idea in the shape of a strong sense of identity or organisations seeking to realise this idea through movements (Baylis, Smith and Owens, 2017).

Under this concept, the study will mainly focus on Hindu nationalism in India. According to Varshney (1993), Savarkar (ideological father of Hindu nationalism) defines a Hindu as “a person who regards this land, from the Indus to the Seas as his fatherland as well as his Holyland”. Despite the ideology dating back to centuries, the institutional core of Hindu nationalism is the Rashtriya Swayamsevak Sangh (RSS) created in 1925 (Varshney, 1993). The RSS continues to influence the politics of India and has integrated Hindu ideals in the laws and policies of India. The political strategy taught by the founders of the RSS is known as Hindutva (Narula, 2003). The RSS’s objective has been to base the entire social life of India on Hindu nationalism which has led to the creation of political, social, and educational wings under RSS – collectively known as the Sangh Parivar (Narula, 2003). Bharatiya



Janata Party (BJP) – the current ruling party of India – is a major actor in the Sangh Parivar which allows the questioning of the integrity of the CAA.

The concept of nationalism is important to this study as it helps to provide an understanding of the narratives of Muslims and Hindus in India. Exploring nationalism can provide insight into the justification given by Hindus for the treatment of Muslims in India and prove the bias in the CAA. The movement of nationalism in India is a huge factor which has contributed to anti-Muslim sentiments in India.

The hatred Muslims faced in India increased after the 9/11 attacks which labelled Muslims as terrorists and acts of violence was associated with them (Hussain, et al., 2019). According to Narula (2003) following the 9/11 attack, Former Prime Minister Atal Vajpayee stated that “where there are Muslims, they do not want to live in peace with others. Instead of living peacefully, they want to propagate their religion by creating terror in the minds of others”. These words by the head of the government are surely to reach every corner of India, intensifying the tension between Hindus and Muslims. Hussain, et al. (2019) states that India as a diverse society claiming to be secular has failed to provide Muslims with basic human rights and observes that Muslim communities were discriminated in education and economic development. The study highlights that marginalization and hate crimes towards Muslims residing in India are fuelled by political parties and their agendas as well (Hussain, et al., 2019).

To further the argument, Hussain, et al. (2019) states that BJP has continued to facilitate the identity crisis and insecurities of life among Muslims all over India. The study done by Hussain, et al. (2019) provides vital observations of social marginalization of Muslims in the society, political involvements of BJP which has extended the hostility between Muslims and Hindus, and presents evidence of hate crimes against Muslims such as the Bombay riots in 1992 and Gujrat riots of 2002. In 2002, in the Indian state of Gujarat (then governed by the current Prime Minister Modi), Hindu nationalists retaliated to an alleged Muslim attack on a train which killed 58 Hindu pilgrims; by killing, raping, and looting the Muslim population for a continued period of over three months (Mishra, 2012). More than 2000 Muslims were reportedly murdered in this incident while over 10,000 were left homeless (Mishra, 2012). This will be essential to the study as it is important to investigate the escalating tension and can help to establish that anti-Muslim sentiments have always been prominent in India.

Moreover, Bhargava (2007) provides a study based on the under-presentation of the Muslim community in the politics of India. The author examines different arguments against the political representation of Muslims in India, claiming that Muslims are at a significant disadvantage due to the structural properties of the Indian society. To support this argument, Narula (2003) explores the involvement of Rashtriya Swayamsevak Sangh (RSS), Vishwa Hindu Parishad (VHP), BJP and the Bajrang Dal in the attack on the western state of Gujarat in 2002. It is important to note that the organisations and parties mentioned above are associated with the Sangh Parivar which represents the Hindu Nationalist movement of India – which will be discussed further in the analysis of this study. Narula (2003) states that the Sangh Parivar agenda possesses an extensive influence over the educational, social, defence and anti-terrorism policies. This presents the question as to why a secular nation's laws and policies are being influenced by a Hindu nationalist organisation.

The CAA could possibly be the biggest step towards achieving a complete Hindutva state through more influx of Hindus, or in this case less Muslims. According to World Population Review (2021), Hinduism accounts for approximately 80% of the population whilst Islam accounts for about 13% of the population. Muslims are the second largest religious population of India after Hindus. Hence, the biggest threat to achieving the goal of basing the entire social life of India on Hindu Nationalism are the Muslim population of India.

Bharatiya Janata Party (BJP) has been the political face of the Hindu Nationalistic movement long before Prime Minister Narendra Modi won the 2014 election. According to Malik and Singh (1992) the

ideological premise of BJP can be traced back to the very origin of the Hindu Nationalistic movement in the 19th century. It is generally stated that the premise of BJP is that the national identity of India is rooted in Hindu culture – namely because Hindus are the dominant majority of the population and “nations are built on the basis of common culture and ideology.” (Malik and Singh, 1992). In the 1989 general elections, BJP emerged as a force that threatened the Nehruvian secular political ideology – which was so widely accepted and considered and sacred that criticizing it meant being subjected to ridicule by India’s intellectual establishments; nevertheless, the ideology of the BJP pleased the emotions of Hindus in working class and led to the emergence of BJP as a new political force (Malik and Singh, 1992). Balraj Puri – a human rights activist and journalist – wrote that the general elections of 1989 were a “concern for the stability and the integrity of the country; consciousness of community, caste, and ethnic identities; resentment against corruption and scandals; and an urge for socio-economic equality,” and added that the result of the elections showed that “Hindutva, Hindu consciousness, Hindu backlash, anti-minorityism, or whatever name might be given to the phenomenon, has emerged as the most significant new force in the politics of India.” (Malik and Singh, 1992). This shows that concerns were raised by many as to the fact that the rise of BJP was a threat to the multicultural community and the secular principles of India.

Since then, BJP has been working towards establishing a support base that guarantees votes in every election to come. In order to do so, BJP has supported the Hindu claim of *Ram Janmabhoomi* – the birthplace of Lord Rama – making the promise to construct a Hindu temple in place of Babri Mosque in Ayodhya (Malik and Singh, 1992). This Hindu temple – *Ram Mandir* – is currently in construction under the supervision of Prime Minister Modi’s government. Hence, it could be argued that the same strategy is being used in the case of the current case of the CAA in India. The influx of Hindu migrants through the CAA provides a new support base as they will be eligible for citizenship through naturalisation, gaining the right to vote. It is important to note that the next general election will be held in 2024 – which allows criticism of the rush to implement the Act while the world is going through the Covid-19 pandemic.

## 5.0 Does the Citizenship Amendment Act Violate the Indian Constitution?

In a study done by Poddar (2018) it was found that religion-based discrimination and violation of international laws were facilitated by the CAA. Poddar explores the violation of Article 26 of ICCPR by the Indian government in the provision of citizenship by naturalisation under CAA. Article 26 of the International Covenant on Civil and Political Rights (ICCPR) provides that “All persons are equal before the law and are entitled without any discrimination to the equal protection of law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status” (United Nations, 1976, p.179). Hence, as a signatory of the ICCPR, India has failed its obligation to uphold international human rights laws (Poddar, 2018).

Moreover, the CAA violates the Article 14 of the Indian constitution as it states that “State shall not deny any individual equality before the law or equal protection of the laws within the territory of India”. (India, Constituent Assembly, 1949, p.6 ) Furthermore, the CAA act has led to the government’s violation of Article 51 Clause (c) of the Indian constitution as it states that “The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another and encourage settlement of international disputes by arbitration.” (India, Constituent Assembly, 1949, p.24). Poddar’s paper provides room for further research on the violation of international law and Indian constitution by the CAA. However, the analysis of this study will focus solely on the violation of the Indian constitution by the CAA.

India has constantly been promoted as a culturally diverse country; a nation that does not shy away from embracing its multiculturalism in religion, language, and gender. The amendments brought to the CAA in 2019 presents a step away from this multicultural society of India, suggesting violations of the Indian constitution and the fundamental rights of citizens. The Act of 2019 embody obvious preferences towards certain religious groups which violates the Indian Constitution. Despite previous literatures' focus solely on Article 14, this study will focus on the Articles 13, 14, and 25 of the Indian constitution. The Article 14 of the Indian constitution states the following:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." (India. Ministry of Law and Justice: Legislative Department, 2020).

It is important to note that the above clause states, "any person" and "within the territory of India", indicating that any person residing in India has the right to equality before the law or equal protection of the laws. This allows the argument that the CAA is unconstitutional due to the preference of religion in the Act. Bhat (2019) states that the Act violates the constitution as the classification it has adopted is "manifestly arbitrary and unjustified".

Article 25 of the Indian constitution focuses on the right to freedom of religion, stating:

"Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." (India. Ministry of Law and Justice: Legislative Department, 2020).

This in no doubt proves that India is a constitutionally secular nation. This means that as a secular state the government must not mix state power and religion i.e., the government must not have a bias towards a specific religion. The CAA poses a challenge to the secular principles of the Indian state as it carries a clear preference towards particular religious groups; namely, Hindu, Sikh, Buddhist, Jain, Parsi and Christian groups. Poddar (2018) argues that the naturalisation process introduced in the Act suggests a greater sectarian agenda which casts doubts on India's proclaimed "secular" status. Hence, the Indian state has failed to secure its secular principles and has violated the Article 25 of the Indian constitution.

The Article 13 of the Indian constitution has to do with the "laws inconsistent with or in derogation of the fundamental rights" (India. Ministry of Law and Justice: Legislative Department, 2020). Article 13(2) states the following:

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." (India. Ministry of Law and Justice: Legislative Department, 2020)

This section of Article 13 states that any law in the territory of India shall not be inconsistent with the fundamental rights provided in the Indian Constitution, which includes Articles 14 and 25. Therefore, by violating the fundamental rights, the Act has violated the Article 13(2) of the Indian Constitution as well which presents the fact that the CAA of 2019 shall be null and void. The National Register of Citizens (NRC) is a measure to confirm the citizenship of India, intending to identify the illegal migrants residing in the state of Assam over the years (India Today, 2019). In 2015, the process of updating the NRC in the state of Assam began for the first time since 1951 (India Today, 2019). The results of the process published in 2019 left out approximately 1.9 million applicants, of which 0.7 million were Muslims and 0.5 million were Bengali Hindus while the rest were local Hindus (Asian Lite News, 2019).

The statistics tend to steer some observers in the wrong direction as more Hindus seem to be at a disadvantage than Muslims with some even raising the question as to how Muslims are being ill-



favoured by the Indian government. This is where the correlation between CAA and the NRC exists; as a separate body, the NRC does not favour any religious group. However, the 0.5 million Hindus left out in the NRC are eligible to apply for citizenship under the revised CAA if they have been residing in India for at least 6 years and have been escaping religious persecution. In contrast, the 0.7 million Muslims are not qualified for this application unless they have been residing in India for over 11 years.

According to Asian Lite News (2019), ruling party BJP has included the implementation of NRC in the entire country by 2021 as a part of their manifesto, which could have lasting deadly impacts on the Muslim population. For instance, there are over 40,000 Rohingyas displaced across India with only 18,000 registered as refugees under UNHCR India (The London Story, 2021). Rohingyas – a minority group escaping religious persecution – have been migrating to India since the beginning of violence in Myanmar in 2012, with some living in India for more than 6 years. However, they have been denied citizenship simply due to their religious identity.

The intention of the government to implement both the CAA and the NRC simultaneously presents the argument that the Act violates the Indian constitution. Despite the link between both NRC and the CAA being indirect, it adds to the biased treatment against Muslims which violates Article 14 and 25 of the Indian constitution. Hence, it is clear that the CAA of 2019 violates the Indian constitution both directly and indirectly and should either be amended or nullified.

## 6.0 The Citizenship Amendment Act and the Anti-Muslim Sentiment in India

India's history of violence between Hindus and Muslims suggest that anti-Muslim sentiments have existed long before the introduction of the Act of 2019. However, the Act has certainly fuelled the already existing differences between Hindus and Muslims, inciting violence in the nation and ultimately intensifying the anti-Muslim sentiment in India.

Looking at past events related to anti-Muslim sentiments, there are two incidents which are noteworthy: the case of *Babri Masjid* or *Ram Mandir* and the Gujarat riots. In the 1980s, the Hindutva organisations held the political spotlight by using the Ram Janmabhoomi movement which pledged to construct a temple in place of the Babri mosque – with the belief that the site is the birthplace of Rama and that the Mughal emperor Babar had torn down the previously existing Hindu temple (Ramachandhran, 2020). In 1992, over 150,000 supporters of BJP, RSS, and the Shiv Sena joined in demolishing the mosque (Narula, 2003). This resulted in rampant violence across the country as the police refused to intervene; over 1700 people were killed, close to a 1000 people suffered injuries and girls and women were raped, of which the majority were Muslims (Narula, 2003). This is a case that could have been easily avoidable with intervention from law enforcement which would have caused zero casualties on both sides. This incident is a prime example of anti-Muslim sentiments in India as this was not just two religious groups clashing; rather, this was aided by the very people who had sworn to protect all peoples of India. As over 150,000 Hindu nationalists hammered down a mosque, the government and the police force gave a blind eye to the violence.

In 2002, several Hindu activists were travelling in the Sabarmati express which was set on fire, which killed at least 58 people (Narula, 2003). In retaliation to this, the Gujarat riots occurred as Hindu nationalists led by the BJP, RSS, and Shiv Sena went on a killing spree of Muslims in Gujarat (Narula, 2003). This marked one of the worst religious conflicts between both groups as over hundreds of Muslims were killed while tens of thousands were homeless and displaced, along with the looting and burning of Muslims homes and shops and rape, mutilation and killings of girls and women (Narula, 2003). This incident falls into the same pattern as the Babri mosque violence as state officials were involved and once again, the police failed to intervene and stop the violence from escalating further.

This depicts the life of a Muslim in India, as they are faced with anti-Muslim sentiments every day of their lives, which has been further intensified by the CAA of 2019.

In December 2019, nation-wide protests against the CAA erupted in cities such as Mumbai, Delhi, and the states of Assam and Maharashtra. In Maharashtra alone, over 60,000 people took to the streets and over 4000 amassed in the city of Mumbai (CNN, 2019). Different people protested the Act for different reasons; some against the presence of Muslim marginalisation in the Act, and others against the influx of migrants that could change the demographic of the area and their way of life (CNN, 2019). During the protests there were numerous reports of damage to public property such as police stations and buses set on fire (CNN, 2019) The protestors faced vilification by the media and were labelled as “anti-national” and “jihadi” (Khan and Chakrabarty, 2021). Human Rights Watch (2020) revealed that BJP officials mocked, threatened, and described the protestors as “traitors” who should be shot. As a consequence of these protests, Muslims were categorically targeted by Hindu Nationalistic mobs and state police.

In February 2020, another bout of violence erupted in Delhi as Hindu mobs attacked Muslim neighbourhoods, resulting in over 53 deaths, with more than 250 people injured and over 2000 more displaced; majority of them were Muslims (Khan and Chakrabarty, 2021). The Delhi Minorities Commission (DMC) – an independent body tasked to protect the rights of religious minorities – concluded that the violent events of February 2020 fit into the term “pogrom” (Khan and Chakrabarty, 2021). This meant that the violence that took place in February 2020 was organised and systematic – CCTV cameras that could identify the culprits were destroyed and Muslim homes and businesses were identified prior to the attack (Khan and Chakrabarty, 2021).

Several witness testimonies revealed that police aided the Hindu mob and refused to investigate BJP party leaders who were accused and had a hand in inciting the violence (Khan and Chakrabarty, 2021). Video evidence showed police being complicit in the attack; a particular incident should be noted where police officers beat a group of five Muslim men, one of which later passed away due to injuries was caught on camera as well (Human Rights Watch, 2020). Additionally, Muslim women were threatened with rape by police officers and their hijabs were pulled or removed during the attack (Khan and Chakrabarty, 2021). The degree of violence that took place in February 2020 has been compared to that of the Gujarat riots, some arguing that this event was even more violent than those of 2002. This attack is similar to the ones that took place years ago as they remain systematic with the support of government officials and police.

The CAA of 2019 has led to anti-Muslim sentiments in India due to the marginalisation of Muslims in the provisos introduced in the Act. The Act itself embodies an anti-Muslim attitude as the Act excludes Muslims facing persecution from acquiring citizenship in India as to their counterparts – Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan. The exclusion of Muslims from the Act portrays the marginalisation and separation that Muslims face in the country. The Act has opened the door to multiple religious groups facing persecution but insist on excluding Muslim minorities such as Ahmadis, Rohingyas, and Uyghur Muslims who are in the same situation. Additionally, the Act of 2019 also led to anti-Muslim sentiments as it caused the attitude towards Muslim communities to worsen – Muslims were targeted as a direct result of the protests despite them not being the sole group of protestors. This was further fuelled by government officials who labelled Muslims as traitors and anti-national. For Hindu mobs, the Act indicated that Muslims were second class citizens in India. The protests against the Act provided a conducive excuse for Hindu mobs to attack Muslims without fear of any repercussions. Although anti-Muslim sentiments in India have existed since the Partition and have been continuing for generations with Muslims at a constant disadvantage, the CAA

has been one of the more divisive acts that have increased islamophobia in the country since 2002. Hence, it can be said that the CAA had a direct hand in leading to more anti-Muslim sentiments in India.

It is important to note that anti-Muslim sentiments continue as Muslims are being blamed for spreading coronavirus deliberately and are accused of carrying out “corona-jihad” (Ramachandran, 2020). However, the violence has declined as more movement restrictions are being enforced to combat the covid-19 pandemic since 2020. Poddar (2018) states that the preference given to certain religious identities and the exclusion of Muslims present a sectarian agenda and questions the secular principles of the country. Similar to this argument, Hussain et, al., (2019), states that the Indian government led by BJP includes Hindu nationalistic ideals and presents religious prejudice toward Muslims. The assessment of the relation between Hindu nationalism and the CAA presents a fair argument as following the Partition, India’s history has been overwhelmed with violent confrontations between Hindus and Muslims – this has painted a narrative of Hindus versus Muslims in India. This finding fits into the concept of Nationalism discussed in this paper regarding the CAA of 2019.

The connection between the CAA and Hindu nationalistic ideals has been continuously fuelled by the BJP – a party based on Hindutva ideology. The Hindutva goal is to realise the Hindu dream of an all Hindu-state in India. Hence, the exclusion of Muslim minorities facing persecution in the CAA presents the argument that the CAA is a tool used jointly with NRC to reduce the incoming Muslim migrants and refugees and manipulate the demographic of states to be Hindu-majority. The consequence of this is heavily felt by the Muslim community of India, as they remain unprotected and at risk of being *illegal* in their own home country. The systemic violence aided by the government and the police of India collectively demonstrate the extent of anti-Muslim sentiments in India.

The finding of the connection between the CAA and Hindu Nationalism has allowed the study to provide further explanation of the ideals and motives behind the Act. This examination further led to the exploration of the rise of Hindu nationalism and the relation of this movement to the Act. The connection between CAA and Hindu Nationalism allowed the research to determine that anti-Muslim sentiments were present prior to the CAA due to Hindu Nationalistic ideals. These ideals are currently present in the Indian society and is a big part of the ruling party, hence, the CAA led to anti-Muslim sentiments and worsened the case for Muslims in India.

## 7.0 The Citizenship Amendment Act and the Lack of Refugee Laws in India

Another key finding of this study is that the CAA of 2019 is flawed and require further amendments; (1) to eliminate the anti-Muslim sentiment present in the act; (2) to eliminate the violation of the Indian constitution. The study has identified that the CAA of 2019 exhibits anti-Muslim sentiments.

The CAA should eliminate the requirements specified on the grounds of religion. Discrimination on the grounds of religion is against the Indian constitution [under Article 25-Article 28](#) and international law which weakens the legitimacy of the CAA of 2019. This discrimination present in the Act can be removed by amending the specific groups of religion – Hindu, Sikh, Buddhist, Jain, Parsi or Christian – to religious minorities facing persecution on the grounds of religion in neighbouring countries without the exclusion of Muslims. The CAA of 2019 cannot be considered a genuine effort to protect religious minorities without further amendment to include Ahmadis from Pakistan, Rohingyas from Myanmar and other religious minorities facing persecution.

In addition to this, India requires specific legislation regarding the protection and monitoring of refugees and asylum seekers. The government needs to identify whether people moving from neighbouring countries due to persecution are refugees or migrants as these two terms are not interchangeable and require different policy implications (Sharma, 2019). The Indian state’s failure to introduce refugee laws

in the nation only leads to legal ambiguity regarding the difference between illegal migrants and refugees which has led the government to – more often than not – label refugees as illegal migrants and deporting them. Case in point, Kamdar (2020) reports that the Indian government argued the need for the deportation of over 40,000 Rohingya refugees stating that they are a “national security” threat. Moreover, India remains to be one of the few liberal democracies that is not a party to the United Nations Refugee Convention of 1951 nor a party to its 1967 protocol (Kamdar, 2020). Hence, the lack of legal structure to protect and monitor refugees and asylum seekers in India suggests that the country requires refugee laws prior to the implementation of a citizenship law such as the CAA that offers protection to Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Bangladesh or Pakistan facing religious persecution.

This demonstrates that refugees and asylum seekers are not necessarily protected in India and suggests that the CAA of 2019 does not have a *noble* intention of protecting minorities facing persecution. Hence, refugees are at a great risk as without refugee laws, the legal ambiguity can allow the government to label refugees and asylum seekers as *illegal migrants* without facing any legal consequence.

## 8.0 Conclusion

Since the Partition of 1947, Hindu nationalists have been driven by the narrative of a Hindu homeland in India and the Citizenship Amendment Act of 2019 remains to be merely an instrument to achieve this. The analysis of the CAA and Hindu nationalism constructs the conclusion that the Act presents Hindu nationalistic ideals and is potentially a tool used by the ruling party – BJP – to gain the favour of the Hindu population of India.

The analysis of the study shows that anti-Muslim sentiments present in the form of violence has generally been planned with the encouragement from government officials and the state police. This study does not include a detailed analysis on the relationship between the government of India and the anti-Muslim sentiments faced by Muslims in India. However, the study argues that the current government of India has legitimised the use of violence by Hindu mobs against the Muslim community. As mentioned in this study, state officials, police officers, and political leaders were involved in the violence that occurred during the *Ram Janmabhoomi* movement, Gujarat riots, and the violence that occurred after the announcement of the CAA of 2019.

The concept of Nationalism proved to be crucial as this study presents that Hindu Nationalism plays an extensive role in the anti-Muslim sentiments Muslims face in India. The study has identified that overall, the connection between the CAA and Hindu nationalism provides an understanding of what the CAA is and what this means for the Muslim population residing in India. In addition to this, it clarifies the religious and political agenda behind the Act against Muslims.

It was crucial for this research to identify the flaws of the CAA as it helps to recognize how the Act leads to anti-Muslim sentiments in the country. The identification of the flaws of the CAA and the lack of refugee laws disproves the *noble* intent argument the government provided in Lok Sabha as *statement of objects and reasons* during the proposal stage of the Bill. Additionally, the flaws present in the added provisos presents that the Act itself is discriminatory and leads to anti-Muslim sentiments in India.

The Citizenship Amendment Act has led to an uncertain atmosphere for Muslims residing in India. This study concludes that the Citizenship Amendment Act violates the Indian constitution of India and has led to anti-Muslim sentiments in the country to a great extent.

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