

The CAA and the NRC: Exploring Possible Solutions

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Summary

India is presently embroiled in a controversy that followed the enactment of the Citizenship Amendment Act (CAA) in December 2019. Detractors of the Act have exploited the fact that Muslims are excluded from the Act and ignored that the Act is specifically aimed at giving relief to minorities from India's three Islamic neighbours who have taken shelter in India because of persecution on religious ground. There is fear among Indian Muslims that the Act is directed at them. Widespread demonstrations against the Act are being held with many of them turning violent and resulting in arson, destruction of property and casualties among the demonstrators and the police.

To address the current climate of fear and mistrust and to break the current impasse it may be useful to make a legal distinction between refugees and the illegal immigrants by enacting a national Refugee Law. The government's efforts to remove misgivings on the CAA should be further intensified and, till there is some easing of situation the proposed National Register of Citizens (NRC) should be kept on hold. Further, any process to implement the NRC, which is desirable in the national interest, should be initiated only after wide consultations with all stakeholders, including leaders from the opposition parties. Cooperation with Bangladesh should also be explored to control the illegal trans-border movement between the two countries and on taking back the nationals of either country living illegally in the other.

Introduction

The recent developments in India following the enactment of the Citizenship Amendment Act (CAA), 2019¹ have created a deep divide among the people of India. These developments have also been detrimental to India's image abroad. The ongoing protest demonstrations which have often turned violent, police action against violent protesters leading to casualties on both the sides, propaganda against Indian Prime Minister Narendra Modi's government based on half truths and twisted facts both within and outside the country and confrontations on the issue between the central and some state governments are matters of grave concern. India's adversaries are making use of these developments to denigrate India at the international level. They will not only be rejoicing at the situation but some of them must also be covertly working to further aggravate it. The entire issue, therefore, requires urgent attention and deft handling.

¹ The CAA was passed by the Parliament of India on 11 December 2019. The Act seeks to provide Indian citizenship to persons of religious minorities (Hindu, Sikh, Buddhist, Jain, Christian and Parsi community) from Afghanistan, Bangladesh or Pakistan who entered India on or before 31 December 2014. It also reduces their eligibility period to get Indian citizenship by naturalisation from 11 to 5 years.

It is a known fact that the systems/laws in India's three Islamic neighbouring countries, viz Pakistan, Bangladesh and Afghanistan, discriminate against religious minorities. Since the partition of India and its independence in 1947, a large number of persons belonging to minority communities in these countries and facing persecution there on religious grounds, have sought shelter in India. Those who came from Pakistan soon after the partition were given Indian citizenship in due course. However, this facility was not extended to those who migrated from Bangladesh post-March 1971 following their persecution on religious grounds. They were not given even refugee status through administrative orders as was done in the cases of the Tibetans from China, the Hajongs and Chakmas from East Pakistan/Bangladesh and the Tamils from Sri Lanka. They have continued to live in India as illegal immigrants and their plight has remained miserable. The CAA has sought to undo the injustice meted out to them for long by giving Indian citizenship to them and to similarly placed persons from Pakistan and Afghanistan, who arrived in India up to 31 December 2014.

In India, there is no legal distinction between a refugee and an illegal immigrant as India is neither a party to the 1951 United Nations (UN) Convention on Refugees and its 1967 Protocol nor has it developed its own Refugee Law. Consequently, in India, so far, there is no legal definition of a refugee. Therefore, instead of terming them as 'refugees' in the CAA, persons persecuted on religious ground have been identified by their religions. This is being exploited by vested interests to spread a fear among the Muslims in India that the CAA was a prelude to taking away their Indian citizenship. Pronouncements by some ruling Bharatiya Janata Party (BJP) leaders about the government's intention to prepare a nationwide National Register of Citizens (NRC)² is also being used by them to further fuel the apprehensions of the Indian Muslims.

To a large section of the educated youth, primarily in metropolitan cities, the CAA prima facie appeared 'communal' because of the exclusion of the Muslims from the Act. They are unmindful of the fact that there is no religious discrimination against the Muslims in these three Islamic countries and there may not be any Muslim citizen of these countries who would have arrived in India prior to 31 December 2014 to take asylum here because of persecution on religious grounds.

Recent Developments

Protest demonstrations against the CAA and the intended NRC are being organised at various places by college students, political parties opposed to the ruling BJP, civil rights activists, Islamic groups and some non-government organisations, in which a large number of Muslims are participating. These demonstrations have, in many cases, turned violent leading to arson, looting and destruction of private and public properties, besides injuries to a large number of police personnel. The resultant police actions, in which there were many casualties among the demonstrators, including some deaths, have also come in for criticism from human rights organisations and the forces opposed to Modi and the BJP. The constitutional validity of the CAA has also been challenged in the Supreme Court.

² The NRC is the National Register of Citizenship as envisaged under Section 14A of The Citizenship Act, 1955. This section was inserted in the Citizenship Act in January 2004 vide CAA, 2003 and, besides the NRC, it also provides for the issue of national identity card to all Indian citizens.

The move by some state governments to recover the cost of properties destroyed in these violent demonstrations from the miscreants is also being opposed by Modi's critics, notwithstanding the fact that it is being done in line with the judicial pronouncements on the subject. It may not be a mere coincidence that almost all the violent demonstrations were held in states ruled by the BJP and its allies or in Delhi where the law and order come directly under the central government. In non-BJP ruled states, the demonstrations were generally peaceful and, in many cases, were sponsored by the ruling dispensation.

While in the rest of India, the CAA is being opposed because of its alleged communal character, in the north-eastern states, particularly in Assam, the resentment against the CAA is because it gives citizenship to a large number of the non-Muslim illegal immigrants from Bangladesh living there. This is perceived by the locals as a violation of the 1985 Assam Accord.³ While the Assam Accord envisaged that all illegal immigrants in Assam, who came there after 24 March 1971 will be deported, the CAA regularises the stay of the non-Muslims among them who arrived there up to 31 December 2014 by granting them Indian citizenship. They apprehend that the non-Muslim immigrants who arrived there post-2014 will also get Indian citizenship in due course and will continue to live there. This, combined with the uncertainty over the deportation of the Muslim illegal immigrants, has further agitated them. These issues need to be addressed to their satisfaction in order to restore normalcy in the north-east.

The government has tried to allay the fears of Muslims by repeatedly emphasising that the CAA does not take away citizenship of any Indian but intends to give citizenship to only those from Pakistan, Bangladesh and Afghanistan, who had taken shelter in India up to 31 December 2014 due to religious persecution. It has also clarified that no decision has yet been taken on the nationwide NRC and that such a step will be taken only after wide consultations. It has also launched a campaign to educate masses about the CAA and remove their apprehensions. Pro-CAA demonstrations are also being held at different places.

Some states have declared that they will not implement the CAA and Kerala's state assembly has even passed a resolution opposing the CAA and demanding its withdrawal. Some other states ruled by parties opposed to the BJP may also follow suit. Under the Constitution of India, state governments are bound to implement the laws passed by the Parliament and the central government can give them directions under Article 256 to do so. It can even dismiss them under Article 356 if they fail to follow these directions.

With the sustained efforts of the government to clear the doubts about the CAA and the exposure of false narratives used to organise protest demonstrations, the law and order situation has, by and large, come under control. However, some peaceful protest demonstrations are still continuing and neither side, at present, appears to be in a mood to make any adjustment to break the impasse. Such a situation is not in India's larger interest and is prone to exploitation by its adversaries.

³ The Assam Accord, signed in the presence of then-Indian Prime Minister Rajiv Gandhi in August 1985, was a Memorandum of Settlement between the Government of India and the leaders of the Assam Movement, a popular movement against illegal immigrants in Assam state.

The Way Forward

Against this backdrop, there is an urgent need to contemplate whether there could be a possible way out which will

- i. Address the issue of giving citizenship to the persons from Pakistan, Bangladesh and Afghanistan, who have taken shelter in India because of persecution on religious grounds, without giving it a perceived communal colour;
- ii. Deal with the problem of illegal immigration to India from neighbouring countries in a comprehensive, legally tenable and internationally acceptable manner;
- iii. Avoid confrontation between the centre and the states on the issue;
- iv. Allay the fear in the minds of the Muslims in India;
- v. Address the problems of people of Assam in a holistic manner; and
- vi. Ensure that the security of the country is not compromised.

A set of measures discussed below could be a small step in this direction.

Enact a Refugee Law

India has been receiving refugees/illegal migrants from its neighbouring countries ever since gaining independence in 1947. So far, it has handled the problem of refugees through administrative measures as in case of Tibetan, Hajong, Chakma and Sri Lankan Tamil refugees. However, to deal with this problem in a systemic and comprehensive manner, it is imperative for India to develop a national Refugee Law and make a legal distinction between a refugee and an illegal immigrant.

There seems to be no valid reason for various governments to refrain so far from enacting a national Refugee Law. In the context of recent developments, the need to enact such a law has become even more acute. Besides addressing various issues relating to refugees, the proposed law should also take into consideration the national security concerns as well as the interests of local population.

As per the generally accepted international norms, refugees are people who leave their country of origin to take shelter in another country because of persecution on religious, ethnic, political or any other ground. Leaving a country for any other reason, including economic reasons, does not come within the definition of a refugee. While suitably incorporating it in the proposed law and defining the rights and privileges of refugees, provisions can also be made to restrict their movement. They can be kept either in designated camps/areas or barred from sensitive areas like north-eastern states, Jammu and Kashmir, and districts adjoining the international borders.

The proposed law should also include the concept of the 'first country of refuge', making an asylum seeker ineligible for refugee status in cases where India is not their first country of refuge. This will help in addressing the problem relating to the Rohingyas who first take refuge in Bangladesh and, on finding living conditions difficult there, illegally move to India. Further, it should be mandatory for the asylum seekers to report to the designated centres within a specified time period and their failure to do so may render them ineligible for the refugee status.

Those given refugee status would constitute a separate category and should be dealt with as per the provisions in the Refugee Law. Others, who do not seek asylum or whose request for asylum is rejected, would come in the category of the illegal immigrants. They will need to be dealt with under the provisions of the Foreigners Act, 1946, or any other law enacted for the purpose. Biometric records of both refugees and the illegal immigrants should be maintained. They should also be provided with smart identity cards containing their particulars and indicating their status, pending their repatriation to their home or a third country or grant of Indian citizenship as the case may be.

In the case of refugees, the generally accepted international norms should be followed. The return of refugees to their country of origin is the preferred option for which the UN High Commissioner for Refugees and various countries work. They do so by engaging with the country of origin and encouraging it to create conditions conducive for safe return of refugees. Even though the 1951 UN Refugee Convention envisages 'voluntary' repatriation, India, in the proposed law, may provide for 'safe' rather than 'voluntary' return as some refugees might be reluctant to return even after the situation normalises in their country of origin.

Other options in case of refugees are a third country settlement or granting of citizenship. While the proposed law should have provisions for that, the government should have full discretion as to when and how to go for these options for the different categories of refugees.

In case of the illegal immigrants, they need to be repatriated to the country of their origin. They should be shifted out of areas notified, from time to time, as sensitive areas, which may include north-eastern states, Jammu and Kashmir and districts adjacent to the international borders. Pending repatriation, they may either be kept at designated centres or given work permits to earn their livelihood.

Engage all Stakeholders in the NRC Process

Another related issue which is presently being debated is the NRC. Some people are opposing it because of their apprehension that the NRC could be used to target a particular community. Although the bulk of the opposition to the NRC is due to political reasons, the government will have to take necessary steps to allay this apprehension.

The preparation of the NRC and providing the national identity card to all its citizens is important from both the developmental and security point of view. Most countries have either national identity cards or some other identity document for their citizens.

In South Asia, all countries except India either have national identity cards for their citizens or are in the process of completing this exercise. Sri Lanka, Pakistan, Bangladesh and Bhutan have the national identity card system for its citizens for a long time. Afghanistan and Nepal have also commenced this process in 2018 and soon all their citizens will also have national identity cards. In India, the provision for the NRC and national identity cards for its citizens was made in 2003 by adding Section 14A in the Indian Citizenship Act, 1955, through the CAA, 2003, but no headway till date has been made in that direction. For India, which is a major power in the region, not to have a record of all its citizens beats all logic.

Bangladesh, which has a long porous border with India and from where most of the illegal immigrants in India have come, has a national identity card system for its citizens since 2006. From 2016, it has replaced the paper-based laminated identity card with a biometric and microchip embedded smart card. It is mandatory for all Bangladesh citizens above 18 years of age to have this identity card. Since national identity card is required in most day-to-day activities, it has now become almost impossible for an illegal foreign national to survive in Bangladesh. This has security implications for India. Rohingya refugees in Bangladesh, who do not go to the refugee camps there or decide to leave the camps, find it difficult to survive in Bangladesh and are likely to trickle into India.

Therefore, India also needs to go for the NRC and provide smart national identity cards to all its citizens. However, in the current surcharged environment when the misgivings about the CAA still persist, it may not be prudent to start the process in a hurry. It should be done after wide consultations and when the situation normalises to some extent. Once all the countries in the region have biometric national identity cards for their citizens, it will be relatively easy to identify the illegal immigrants from other countries.

The proposed nationwide NRC should not be confused with the NRC done recently in Assam. While the latter was done as per the Assam Accord to identify the illegal immigrants from Bangladesh who had come to Assam after 24 March 1971, the purpose of the former would be to prepare a register of all Indian citizens and provide them secure national identity card. Rather than blindly opposing the NRC, its detractors should come out with constructive suggestions to make it an inclusive, just and transparent exercise with adequate safeguards against any possible misuse of the process. The government should also undertake wide consultations with all stakeholders before embarking on this exercise and it should be ensured that no Indian citizen is left out. In a country of India's magnitude, problems will arise in implementing the process whatever precautions one may take. However, they can be handled as and when they arise. Implementing the NRC is in the larger national interest and should be done without any undue delay.

Cooperation with Bangladesh

The bulk of illegal immigrants in India have come from Bangladesh and because of the long porous border between the two countries, this ingress may continue in future as well. There may also be some instances of persons from India entering Bangladesh illegally. India should, therefore, seek cooperation from Bangladesh to deal with this problem. The two countries have excellent relations and hence all bilateral issues need to be resolved

amicably and in a mutually-acceptable manner. Any attempt to push back the illegal immigrants without taking Bangladesh into confidence would be counterproductive. To initiate this cooperation, the two countries should work on a bilateral agreement to take back their nationals living illegally in the other country after a mutually-agreed verification process and follow it up with other necessary measures required to address the problem.

Conclusion

In order to break the current impasse and deal with the problem of illegal immigration in a sustained, comprehensive, legally tenable and internationally acceptable manner, the enactment of a national Refugee Law appears to be a necessary first step. This should be done at the earliest, possibly in the next session of the parliament itself. National security and other concerns should be taken into consideration while drafting the bill.

The government may, in the meanwhile, go ahead with the process of implementing the CAA. However, once the Refugee Law is in place, it may consider suitably amending the CAA by replacing the words “persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan” with “refugees from Afghanistan, Bangladesh or Pakistan who have taken shelter in India because of persecution on religious grounds”. This will certainly help in countering the propaganda, both within India and abroad, about the alleged communal intent of the Modi government and help in creating an environment in the country conducive for expediting the NRC process.

As far as the demands of the people of north-eastern states are concerned, efforts should be made to implement the Assam Accord to the extent possible. Those getting the Indian citizenship under the CAA should be offered financial and other incentives in terms of land, money and jobs to move out of the north-east. Refugees awaiting grant of citizenship (those who arrived after 31 December 2014) and the illegal immigrants should be shifted out from there through a combination of incentives and disincentives and any new arrival should not be allowed to settle there. Once the NRC scheme is implemented and national identity cards are provided to all citizens, the detection of the new illegal immigrants will get facilitated.

In the preparation of the NRC, special care should be taken to ensure that no Indian citizen is left out. However, the process will certainly result in the detection of a number of illegal immigrants. It will not be easy to suo moto repatriate them to the country of their origin. Most of them are likely to be from Bangladesh and the two countries will have to negotiate to decide their future. Pending that, they may continue to live in India as stateless persons and given identity papers to pursue their livelihood here. The concept of stateless persons is not new to the region. Following independence of Sri Lanka (then Ceylon), the government there had declared Indian Tamils in plantation areas, who were taken there by the British and were living there for over 100 years, as stateless. Their fate was settled with the signing of the Sirimavo-Shastri Pact in 1964,⁴ under which around 280,000 of them were taken by India and given Indian citizenship while the remaining received Sri Lankan citizenship.

⁴ The Sirimavo-Shastri Pact, also known as Agreement on [Persons of Indian Origin in Ceylon](#), was signed between then-Sri Lankan Prime Minister Sirimavo Bandaranaike, and then-Indian Prime Minister Lal Bahadur Shastri.

Bhutan had also denied citizenship to Illegal migrants from Nepal living in southern Bhutan and in that case most of them were ultimately accommodated in third countries.

Modi's government is known to be a decisive one and does not hesitate to take tough decisions. Further, it is also not wary of making course corrections if that is required in the larger national interest. This, combined with his emphasis on *sabka sath, sabka vikas, sabka vishwas* (together with all, development for all, the trust of all), makes it certain that he will go all out to remove all misgivings about the CAA and restore confidence among the people who feel threatened by it or have doubts about its intention. On the proposed NRC too, Modi is likely to engage with all stakeholders including opposition leaders before finalising its framework. However, the country being perpetually in the election mode and the 'no holds barred' attitude of Modi's detractors are two formidable impediments for any forward movement in that direction. This is a testing time for India and its success to come out of the present impasse will largely depend on the extent of precedence Indians give to national interest over personal prejudices and political interests.

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