

# From inclusion to exclusion: Legal and global dimensions of the Citizenship Amendment Act and National Register of Citizens debate in India

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**Abstract:** India's Citizenship Act of 1955 was originally rooted in secular and territorial principles. The Citizenship Amendment Act (CAA) of 2019 and the proposed National Register of Citizens (NRC), however, mark a shift toward religiously selective criteria. The CAA introduces religion as a basis for naturalisation, granting expedited citizenship to non-Muslim refugees from Pakistan, Afghanistan, and Bangladesh while explicitly excluding Muslims. Simultaneously, the NRC seeks to verify citizenship status through documentation, disproportionately impacting marginalised communities, particularly those unable to furnish legal records. The CAA and proposed NRC were framed as efforts to protect national identity, especially in Assam, where anti-immigrant sentiments demanded stricter verification. Together, these policies raise concerns about secularism, legal equality, and potential mass disenfranchisement. This paper critically examines the constitutional validity of the CAA-NRC framework, analysing its implications for India's secular identity under Articles 14 and 15 of the Indian Constitution. By drawing comparisons with historical precedents in Myanmar, Israel, and Sri Lanka, the study highlights how exclusionary citizenship policies contribute to systemic discrimination, statelessness, and long-term socio-political instability. Cases from Myanmar, Israel, and Sri Lanka serve as cautionary parallels, illustrating the dangers of embedding religious or ethnic exclusions into citizenship laws.

**Keywords:** Citizenship Amendment Act (CAA); National Register of Citizens (NRC); religious discrimination; national identity; constitutional rights; secularism; India.

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## **1. Introduction: The Citizenship Amendment Act-National Register of Citizens framework and its implications**

The Citizenship Amendment Act (CAA) of 2019 (Ananda 2024) and the National Register of Citizens (NRC) (Srujana 2024) represent a fundamental shift in India's citizenship policy, raising concerns about secularism, legal equality, and statelessness. The emergence of the CAA-NRC framework is rooted in India's shifting political landscape. The Bharatiya Janata Party (BJP) positioned the CAA as a humanitarian act for non-Muslim minorities in Islamic neighbours. In Assam, historical anxieties about undocumented immigrants, particularly Bengali-speaking Muslims, were reignited post the 1985 Assam Accord, making the NRC a politically charged issue. The CAA is an amendment to India's Citizenship Act of 1955 (Government of India 1955, Government of India 2019), at granting expedited citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan, Afghanistan, and Bangladesh, provided they entered India before 31 December 2014. However, it explicitly excludes Muslims, marking the first time religion has been used as a criterion for naturalisation in Indian law (Amelia and Kartini 2023).

The NRC, originally introduced in 1951, is a citizenship verification process aimed at identifying undocumented residents. It was first implemented in Assam in 2019, where nearly 1.9 million people were excluded from the final NRC list (Sahoo 2020). While the NRC is currently not implemented nationwide, there are proposals for its extension across India, which raises concerns that millions could be rendered stateless due to lack of proper documentation (Islam 2024).

These policies have triggered widespread debate over their constitutional and humanitarian implications. Critics argue that the CAA violates Article 14 of the Indian Constitution, which guarantees equality before the law, and Article 15, which prohibits discrimination on religious grounds. Furthermore, the NRC, when combined with the CAA, creates a framework where religious identity determines access to citizenship, disproportionately affecting marginalised communities, particularly Muslims.

This paper argues that the CAA-NRC framework institutionalises a religiously discriminatory model of citizenship that undermines India's constitutional commitment to secularism and equality. By examining legal and international ramifications – alongside examples from Myanmar, Israel, and Sri Lanka – this illustrates how exclusionary citizenship policies can lead to statelessness, communal fragmentation, and long-term democratic erosion.

### **1.1. Methodology**

This paper employs a doctrinal legal research approach, focusing on constitutional provisions, statutory interpretation, and judicial decisions

relevant to the CAA-NRC framework. It also adopts a comparative case study method, drawing parallels from Myanmar, Israel, and Sri Lanka to analyse how legal exclusions have functioned in different political and legal contexts. The analysis relies on both primary sources – including constitutional texts, court judgments, and legislative records – and secondary academic literature.

## **2. The legal and constitutional critique of the Citizenship Amendment Act-National Register of Citizens framework**

### **2.1. Violation of Articles 14 and 15**

The Indian Constitution guarantees equality before the law under Article 14 and prohibits discrimination on religious grounds under Article 15 (Constitution of India 1950). The CAA, by excluding Muslims from its provisions, contradicts these fundamental rights (Sahoo 2020). However, the Government justifies this exclusion on the grounds of protecting persecuted religious minorities from neighbouring Islamic States, though this argument fails on multiple levels (Islam 2024).

First, the CAA displays inconsistent humanitarianism by selectively including only non-Muslim religious minorities while disregarding persecuted Muslim communities such as the Ahmadis in Pakistan, the Hazaras in Afghanistan, and the Rohingya in Myanmar (Patitundi 2021). The exclusion of these groups undermines the claim that the CAA is purely a humanitarian measure, instead exposing a selective and exclusionary approach to refugee protection (Amelia and Kartini 2023).

Second, the CAA fails to pass the reasonable classification test under Article 14, which requires that any differential treatment by the State be based on an intelligible classification with a rational nexus to its objective (Constitution of India 1950). By excluding persecuted Muslim groups, the Act fails Article 14's reasonable classification test and arbitrarily discriminates between equally vulnerable populations (Nafeesa-Usman 2022).

Finally, by prioritising certain religions in the citizenship process, the CAA institutionalises religious discrimination, eroding India's constitutional commitment to secularism (Anetherton and Sajoo 2021). If allowed to stand, this shift could establish a precedent for future policies that marginalise minority communities based on religious identity, altering the fundamental principles of Indian democracy.

### **2.2. The National Register of Citizens: A tool for mass disenfranchisement?**

The NRC was originally introduced in 1951 as a mechanism to identify undocumented residents and determine citizenship status. However, its

proposed nationwide implementation has disproportionately impacted marginalised communities, raising concerns about systemic exclusion, particularly for economically disadvantaged populations, indigenous groups, and religious minorities, including Dalits and Bengali Hindus (Islam 2024). The first major update to the NRC occurred in Assam in 2019, resulting in the exclusion of nearly 1.9 million people, many of whom have lived in India for generations, with significant legal uncertainty surrounding their fate (Sahoo 2020).

Reports indicate that 40% of rural Indians lack birth certificates, raising concerns that a nationwide NRC rollout could disproportionately exclude millions (Nafeesa-Usman 2022). Even army veterans and long-time residents were excluded over minor discrepancies (Patitundi 2021). These cases expose serious flaws in verification, risking widespread wrongful exclusion (Amelia and Kartini 2023).

A critical issue with the NRC process is the burden of proof, which rests on individuals rather than the State. Many citizens, especially in impoverished regions, lack the necessary documents to establish their ancestry, placing them at risk of disenfranchisement (Anetherton and Sajoo 2021). This disproportionately affects vulnerable groups, including indigenous communities, migrant labourers, and minorities who may not have formal records of birth or land ownership. Furthermore, the disproportionate impact on Muslims under the CAA-NRC framework exacerbates fears of religious exclusion. While non-Muslim individuals excluded from the NRC may seek relief through the CAA's naturalisation provisions, Muslims in similar circumstances face potential statelessness, effectively rendering them second-class citizens (Islam 2024).

The risk of statelessness looms large, particularly in the absence of robust legal safeguards. If implemented nationwide without corrective mechanisms, the NRC could trigger a humanitarian crisis, leaving millions, particularly Muslims, in legal limbo – without documentation, nationality, or access to fundamental rights. Consequences extend beyond disenfranchisement, affecting voting rights and public services (Nafeesa-Usman 2022). Without due process, the NRC risks creating a stateless underclass, deepening divisions and legal uncertainty (Amelia and Kartini 2023).

### **3. Comparative analysis: Lessons from global precedents**

#### **3.1. Myanmar: The Rohingya exclusion and statelessness**

Myanmar's 1982 Citizenship Law (Government of the Union of Burma 1982) excluded the Rohingya Muslim minority from full citizenship, rendering them stateless (Lewa 2009). This legal exclusion facilitated decades of State-backed persecution, marked by systemic discrimination,

movement restrictions, and denial of fundamental rights such as access to education, healthcare, and employment (HRW 2020).

The legal marginalisation of the Rohingya not only exacerbated their vulnerability but also contributed to recurring violence, most notably in 2017, when mass atrocities forced hundreds of thousands to flee to Bangladesh (UN 2018). These actions have been widely condemned as ethnic cleansing. The 1982 Citizenship Law was passed under Myanmar's military regime, embedding racialised definitions of citizenship into law. Domestic courts have not overturned the law, leaving the Rohingya with no legal recourse within the country (Brett and Kyaw Yin Hlaing 2020). However, it has been challenged before the International Criminal Court for violations of international law (ICC 2020).

The parallels between Myanmar's exclusionary policies and India's CAA-NRC framework are concerning. Both policies institutionalise a hierarchical citizenship structure that disproportionately targets marginalised communities (Islam 2024). The NRC's implementation in Assam led to the exclusion of nearly 1.9 million people, many of whom now face an uncertain future, akin to the plight of the Rohingya (Sahoo 2020). By drawing a legal distinction based on religion and documentation status, India risks creating a situation where certain populations – particularly Muslims – are deprived of their nationality, access to State resources, and legal protections, mirroring the trajectory of exclusion seen in Myanmar (Patitundi 2021).

### **3.2. Israel: The Law of Return and national belonging**

Israel's Law of Return of 1950 (Knesset 1950, sec. 1) grants automatic citizenship to Jewish individuals worldwide, reinforcing the State's identity as a Jewish homeland (Gavison 2010). However, it systematically excludes Palestinians, including those displaced during the 1948 Arab-Israeli War and their descendants, from the right to return to their ancestral lands (Masalha 2012). This policy has been widely criticised for institutionalising a legal hierarchy of belonging, privileging one ethno-religious group over others and entrenching demographic imbalances (Abu-Laban and Bakan 2019).

The exclusion of Palestinians under the Law of Return has broader implications for national identity and the principles of equal citizenship. While Israel frames the law as essential for Jewish self-determination, critics argue it denies Palestinians equal recognition and entrenches division (Peleg and Waxman 2011). The international community, including the United Nations (UN), has raised concerns over the law's discriminatory nature and its impact on long-term regional stability (UN 2019). Israel's Supreme Court has upheld the Law of Return as central to the country's Jewish identity (*Rufiesen v. Minister of the Interior* 1962). Despite this, it continues to face criticism from international legal and human rights bodies for creating an ethno-religious hierarchy in citizenship law.

The CAA-NRC framework, though not identical, mirrors similar patterns by redefining Indian citizenship along religious lines, effectively creating a two-tiered system of national inclusion (Islam 2024). By favouring non-Muslim refugees, the CAA sets a precedent where religion dictates citizenship rights (Sahoo 2020). The NRC further compounds these concerns by requiring extensive documentation, affecting marginalised communities (Patitundi 2021). If implemented nationwide, this framework risks institutionalising exclusionary citizenship policies, akin to the disparities seen under Israel's Law of Return, raising concerns about the erosion of secular and democratic principles (Anetherton and Sajoo 2021).

### 3.3. Sri Lanka: Ethnic exclusion and sectarian conflict

The Ceylon Citizenship Act of 1948 (Government of Ceylon 1948, sec. 5) disenfranchised nearly a million Tamil plantation workers in Sri Lanka, rendering them stateless and effectively stripping them of their basic civil and political rights (Peiris 1974). The Act primarily targeted Tamil labourers of Indian origin, many of whom had resided in Sri Lanka for generations but were denied legal recognition as citizens (Jeganathan 2019). This State-sanctioned exclusion reinforced ethnic divisions, contributing to decades of socio-political instability and exacerbating tensions between the Sinhalese majority and Tamil minority (DeVotta 2004). The Act was introduced during Sri Lanka's early post-independence period, dominated by Sinhalese majoritarian politics. Legal remedies were limited, and full citizenship came only decades later through 1988 and 2003 amendments (Minority Rights Group International 2021; UNHCR 2004).

The legal marginalisation of Tamil plantation workers had far-reaching consequences, particularly in shaping Sri Lanka's ethnic conflict that ultimately culminated in a protracted civil war (1983–2009) (Tambiah 1986). Statelessness left these communities vulnerable to systemic discrimination, economic deprivation, and restricted access to public services, which in turn fuelled grievances and demands for greater political representation (Mampilly 2011).

India risks encountering similar long-term instability if the CAA-NRC framework fosters institutionalised discrimination against marginalised communities. By embedding religious identity into citizenship determination, the CAA-NRC framework may create new social fissures, particularly for populations unable to furnish documentary proof of lineage. Historical precedent from Sri Lanka underscores the perils of legally enforced exclusion, serving as a cautionary example of how citizenship policies can escalate into broader sectarian conflicts if left unchecked.

Each of the cases examined – Myanmar, Israel, and Sri Lanka – demonstrates how exclusionary citizenship policies result in long-term socio-political

instability. Myanmar's legal exclusion of Rohingya Muslims led to mass statelessness and genocide. Israel's Law of Return institutionalised religious hierarchies, marginalising Palestinians. Sri Lanka's denial of citizenship to Tamil plantation workers fuelled ethnic tensions, eventually culminating in civil war. India's CAA-NRC framework exhibits troubling parallels, particularly in its potential to create a stateless underclass and deepen communal divisions.

#### **4. Socio-political implications of the CAA-NRC framework**

The CAA and NRC have had profound socio-political ramifications, exacerbating religious polarisation, triggering nationwide protests, and deepening communal divisions. By introducing legal distinctions based on religion, they reinforce a divisive narrative that undermines India's pluralistic ethos (Islam 2024). The policies have drawn widespread international criticism, with organisations such as the UN and the United States Commission on International Religious Freedom (USCIRF) condemning them as discriminatory and in violation of global human rights obligations (USCIRF 2020; UN 2019).

This diplomatic fallout has strained India's relations with Muslim-majority countries and risks damaging its global reputation as a secular democracy. Legal challenges to the CAA and NRC are pending in the Supreme Court of India (Patitundi 2021). Given the Court's historical role in upholding secular principles, a ruling against these policies could set a significant precedent reaffirming India's constitutional values (Anetherton and Sajoo 2021). If left unaddressed, the CAA-NRC framework risks fostering long-term social unrest and undermining the foundational principles of equality and secularism that define the Indian republic.

From an international law perspective, the CAA-NRC framework potentially violates Article 26 of the International Covenant on Civil and Political Rights, which guarantees equality before the law. It may also contravene Articles 1 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. Though India is not a signatory to the 1951 Refugee Convention, its exclusionary framework conflicts with global norms of non-refoulement and non-discrimination.

#### **5. Policy recommendations and conclusion**

Failure to address the exclusions inherent in the CAA-NRC framework could result in widespread disenfranchisement, deepening religious and social divisions while eroding India's secular democratic foundations. Mounting legal challenges, along with condemnation from international bodies – including the UN and global human rights organisations – underscore the urgent need for policy correction (UN 2019). The framework undermines constitutional secularism and likely breaches India's human rights obligations (USCIRF 2020).

To uphold constitutional secularism and prevent long-term socio-political instability, India must take immediate corrective measures. This includes either repealing or amending the CAA to ensure equal protection for all persecuted minorities, including Ahmadiyyas, Hazaras, and Rohingya Muslims. Additionally, the NRC must incorporate safeguards to prevent mass disenfranchisement, ensuring that citizenship determination does not disproportionately impact vulnerable populations. A more sustainable solution would be a universal refugee law based on humanitarian, non-discriminatory principles.

Beyond legislative action, the role of civil society, legal advocacy groups, and judicial review will be crucial in ensuring that citizenship remains a fundamental right, free from religious bias. Failing to act could entrench discrimination, trigger legal crises, and weaken India's global democratic credibility (UN 2021). Upholding secularism is essential for preserving national unity and international legitimacy (USCIRF 2020).

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