

RGICS Legislative Brief

The Citizenship (Amendment) Bill, 2016

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RGICS LEGISLATIVE BRIEF

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The Citizenship (Amendment) Bill, 2016

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PART I : Background

The Minister of Home Affairs, Mr. Rajnath Singh, introduced The Citizenship (Amendment) Bill, 2016 in the Lok Sabha this year and it was passed by the lower house. The Bill adds to the amendments made by The Citizenship (Amendment) Bill, 2015 last year which was passed by both the houses. The purpose of the Bill was to amend the provisions under The Citizenship Act, 1955 which related to citizenship by registration and naturalization, grounds for Overseas Citizen of India cardholders, merger of Overseas Citizen of India and Persons of Indian Origin schemes and conditions for cancellation or revocation of overseas citizenship.

The objective of the new Bill is to make persons belonging to the minority communities, such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have either entered into India without valid travel documents or the validity of their documents has expired, who were regarded as illegal migrants and hence ineligible to apply for Indian citizenship, eligible for applying for Indian citizenship. Further, the Bill wishes to reduce the criteria for naturalization for these minority communities from twelve years to seven years. It also aims to empower the central government to cancel the registration of Overseas Citizens of India under special circumstances. The move to amend the Act comes in response to a 2012 petition by two NGOs, which pleaded that Hindu and other minorities who migrate to India from Bangladesh to escape religious persecution must not be bracketed with illegal migrants and sent back to that country under the Assam Accord. In 2013, the matter came up for hearing in the Supreme Court and became a national issue, with the bench observing that the problem of religious minorities coming from Bangladesh was not confined to Assam alone.

Even though the Act seems to be addressing a human rights issue, the provisions of the Bill could promote communalism and discriminate against Muslims. The Bill, if passed in its current form, would lead to internal tensions as the border-states would have to accommodate the migrants also, it would create tensions between India's neighbors as, the policy targets neighboring Muslim dominated countries. Overall, the legal standing of the Bill is also in question as it goes against secularism enshrined in the Constitution thus, making it unconstitutional.

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PART II: Provisions

The Bill aims to make changes in the following areas:

- **Who is an Illegal Migrant?**

The current definition of 'Illegal migrants' can be found under Section 2 of the Citizenship Act, 1955. It provides that an illegal migrant is a foreigner who has entered India without a valid passport or other travel documents or, has valid passport and travel document but, they have overstayed their permitted time period. The aim of the Bill is to remove the religious minorities such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, from the purview of the definition of illegal migrants.

- **Naturalization**

Under the Citizenship Act, a person can apply for citizenship by naturalization if they meet certain qualifications. One of the qualifications is that the person should have resided in India or been in service of the central government for at least eleven years before applying for citizenship. The Bill aims to reduce it to six years for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan.

- **Cancellation of Registration of Overseas Citizens**

Section 7D of the Citizenship Act provides that the government may by order, cancel the registration granted to overseas citizen of India, if they find as follows:

- It was obtained by fraud, false representation or by concealment of material facts,
- By showing disaffection towards the Constitution of India,
- By unlawfully trading, communicating, or being associated in any commercial activity that assists an enemy in a war that India is engaged in.
- The citizen, within five years of the registration, has been sentenced to imprisonment of more than two years.
- It is necessary to do so in the interest of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public.

The Bill aims to add another clause to cancel the registration of the overseas citizen. If the cardholder violates any of the provisions of the Citizenship Act or provisions of any other law which are in force in India, then the registration can be cancelled.

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PART III: Critique

Mr. Modi's 2014 election rally promised the Hindu Bangladeshis citizenship and that they would be removed from the camps. Citizenship to Hindu refugees and that India would be a 'a natural home for persecuted Hindus' are some other claims made by Mr. Modi in his manifesto. In the same manifesto, the Government recognizes that many minority communities in India suffer due to poverty and makes special mention of Muslim minorities yet, they were not included in the Bill. Since then, the current government has taken many steps which seem controversial as, they make them seem pro-Hindu and anti-Muslim. Following the same trend, the provisions of the The Citizenship (Amendment) Bill, 2016 seems to be aimed towards making India a haven for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. But, the provisions also run the risk of seeming like the current government's attempt to increase its Hindu voter count. The BJP government's website about Hindutva ideology clearly states that it idolizes Israel and wishes to do the same for Hindus in India. Israel's law of return seems like the basis for the current Bill as, only Jews were allowed to return to Israel. This policy in the Indian context would be contrary to the secularism and pluralism and thus, unconstitutional. The following points shed some light on the other aspects of the Bill.

Voter Demographic

The provisions of the Bill would affect over two lakh Hindus from Pakistan and Bangladesh and their migration into the border states of India would change the voter demographics in the region. The BJP government came to power in Assam for the first time in 15 years by using the agenda of ending illegal migration from Bangladesh. According to the 2011 census, 34.2% of Assam's population is Muslim and the census shows that there has been a 4% rise over the past five years. The BJP government used that as the basis of their campaign to gain votes in the region and if the Bill is passed, in its current form, then the border regions would face an influx of Hindu migrants which would change the voter demographic in the region. This would weaken the stronghold of Badruddin Ajmal, leader of the All India United Democratic Front, in the region by increasing the Hindu votes.¹

- **Non- Secular Policy**

The Bill aims to save religious minorities from violence and blasphemy laws in Pakistan, Bangladesh and Afghanistan. The rationale for selecting just these three countries, which are Muslim dominated countries, seems to be cause for concern. The Bill at first glance seems like a humanitarian effort to help persecuted minorities but, it only seeks to help Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the neighboring Muslim countries. The Muslim minority communities facing oppression in the region have been completely ignored. If the Bill was really an attempt to provide a safe haven for minorities facing violence in their countries then, it would also offer the same provisions to the minority Muslim community in China and Myanmar as well. The Rohingya Muslims in Myanmar and the Ahmaddiya Muslims in Pakistan and Bangladesh have been facing persecution for years. Further, the Burmese Hindus have also been ignored in the Bill.

¹ Rahul Karmakar, 'Census 2011 data rekindles 'demographic invasion' fear in Assam', Hindustan Times, August 26, 2015, Available at :<http://www.hindustantimes.com/india/census-2011-data-rekindles-demographic-invasion-fear-in-assam/story-oZUhBaXPNUpGBmGQirjVOI.html>

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India is not a signatory of the United Nation Refugee Convention therefore, we are not required to provide safe haven to people seeking asylum from persecution in other countries. Yet, the BJP refugee cell asked the government to expedite the Citizenship Amendment Bill, 2016. The move is suspicious as no attempts have been made by the government to debate the issue of joining the United Nation Refugee Convention. That would have been the natural step to take if the government was indeed interested in formulating a humanitarian refugee policy. Further, the provisions of refugee protection cater to minorities fleeing countries due to a humanitarian crisis but, India is giving citizenship based on their religious predilections. The Bill, if passed in its current form, seeks to give preference to Hindu refugees over Muslim refugees migrating to India which is unconstitutional as, the preamble of the Constitution confirms India as a secular state. The refugees who will actually benefit from this policy are living in abject poverty with no sanitation and infrastructure facilities. The government instead of using a blanket refugee policy has made it a communal issue with a veiled political agenda which would be counterproductive to the seemingly humanitarian goal of the Bill. A member of the ruling Pakistan Muslim League-Nawaz (PML-N), Dr Ramesh Kumar Vankwani revealed in the National Assembly that around 5,000 Hindus migrate from Pakistan to India every year.² In the year 2015, BJP government approved citizenship for 4,230 Hindus and Sikhs from Pakistan and Afghanistan who sought refuge in India.³ The Bharatiya Janata Party had earlier claimed that they had granted Indian citizenship to 4,300 Pakistani nationals during 2014-'15.⁴ However, a response to a query filed under Right to Information by Seemant Lok Sanghthan showed that only 289 Pakistani Hindus were granted Indian citizenship in this period. This furthers the argument that the Bill's political agenda supersedes its humanitarian goals. It is also interesting to note that BJP's stance on refugees has completely turned around in the last decade as, in 2003 when 213 'Bangladeshi citizens' were stranded in the no man's land between India and Bangladesh, neither country accepted them. BJP, in 2014, declared itself as a 'natural home for persecuted Indians' and extended long term visas in various states and provided citizenship to Hindus from Pakistan and Afghanistan. The constant emphasis on granting refuge on the basis of religion is in keeping with the Hindutva ideology popularly advocated by the current government.

- **Legal Standing**

The Bill, if passed and made into an act, can be challenged and struck down by the judiciary later because of its unconstitutional nature as the provisions go against secularism enshrined under the preamble. The government's stance of helping the refugees only if they fall under the category of persecuted religious minorities is heavily biased. The 1951 Refugee Convention has not been ratified by India. India has not shown any interest in ratifying it either even though considering its sudden interest in protecting refugees; it

² 'India mulls granting citizenship to Pakistani Hindu migrants', Dawn, April 18, 2016, Available at:

[http://www.dawn.com/news/1252665/india-mulls-granting-citizenship-to-pakistani-hindu-migrants?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+dawn-news+\(Dawn+News\)](http://www.dawn.com/news/1252665/india-mulls-granting-citizenship-to-pakistani-hindu-migrants?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+dawn-news+(Dawn+News)). Accessed On: 3.8.2016

³ Rahul Tripathi, 'Steep rise in citizenship to Hindus and Sikhs from Pakistan and Afghanistan under PM Modi-led government', May 21, 2015, Available at: http://articles.economictimes.indiatimes.com/2015-05-21/news/62459829_1_indian-citizenship-citizenship-requests-citizenship-act, Accessed on: 3.8.2016

⁴ Uzair Hasan Rizvi, 'Hindu refugees from Pakistan encounter suspicion and indifference in India', Dawn, September 10, 2015, Available At: <http://www.dawn.com/news/1206092/hindu-refugees-from-pakistan-encounter-suspicion-and-indifference-in-india>, Accessed on : 3.8.2016

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would be the most logical move to make. Instead, India has chosen to amend its own citizenship act. The relevance of this move lies in the fact that the refugees coming to India cannot avail the benefits of the convention as India is not a signatory but, the Hindus and other communities mentioned under the Bill will have almost all the rights of a citizen, even electoral rights. This sheds light on the political agenda hiding behind the purported humanitarian aspect of the Bill. Further, the basis for protecting the minorities has been religious persecution but, the report by Amnesty International's State of the World's Human Rights 2014/15 and the US State Department's Country Reports on Human Rights Practices for 2014 conclude that societal violence occurs in India, Bangladesh and in Pakistan as well but, these instances have not been attributed to religious persecution. There has been no evidence stated which would support the governments belief that just Hindus are being persecuted in these countries.

- **Overseas Citizens**

The current Bill adds one more ground for cancelling registration of OCI's, that is, if the overseas citizen has violated any law that is in force in the country. One of the unexplored implications of this would be the status of LGBQ communities of Indian origins abroad. If this Bill is passed, if someone was granted the Overseas Citizen of India card, their card could be revoked and the government would be within its rights to cancel the registration of the overseas citizen for being a member of the LGBQ community on their visit to India. Section 377 of the Indian Penal Code criminalizes homosexuality in India and while many attempts have been made to change the legal standing of the minority community in India, there has been no change. This Bill while making an attempt to protect religious minorities would be alienating Indian sexual minorities abroad at the same time.

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PART IV : Conclusion

The Citizenship (Amendment) Bill, 2016 may be presented as a move to protect the religious minorities in other countries from being persecuted but, the underlying issue is clearly that the Bill is meant to address the BJP's stated objective of making India the "Hindu Homeland". The provisions blatantly ignore the Muslims in the protection clauses and mention only the Muslim dominated countries. The legal standing of the Act is also going to be questioned by the judiciary for being unconstitutional. Further, the Bill will change the demographic of the border states. The Bill adds to an ominous trend of a government which is not afraid of pushing a religious agenda, even when it is in contravention of the Constitution, in order to further its own political agenda.

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