

‘Between Myth and Reality’: Demystifying Citizenship (Amendment)

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Abstract

The persecution and displacement of religious minorities from countries sharing border with India, viz Pakistan, Bangladesh and Afghanistan have become the focus of intense debate and demonstration in north-east India following the passage of the Citizenship Ammendment Act, 2019. These responses to the Act are centred around certain myths.

This brief objectively explores the various myths and the reality .

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INTRODUCTION

The persecution and forced migration of minority communities from ‘specified territories’ had become part of mainstream political discourse, especially in north-eastern India where politics had been fed by this debate since independence.¹ Therefore, the introduction and passage of the Citizenship Amendment Bill, a highlight of the B.J.P. manifesto, was redeemed with the assent of the President of India and its notification as an Act in a Gazette on 12th December, 2019.

The Myths

The Passage of the Bill was the beginning of some sporadic protests and a campaign on four cardinal myths.

Myth 1.

It was the transgression of the Constitutional mandate by the Government of India including the Assam Accord.

The Reality

Article 11 in Part II of the Constitution of India categorically points out that “Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make **any** provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.”

The Hon’ble Supreme Court speaking through Justice Gajendragadkar, in *Izhar Ahmad Khan vs Union of India* as early as 1962 (AIR 1962 SC 1052) had held that, “... it is important to bear in mind that Article 11 been included in Part II in order to make it clear that the sovereign right of the Parliament to deal with citizenship and all questions connected with it is not impaired by the rest of the provisions of the said Part’ Therefore, the sovereign legislative competence of the Parliament to deal with the topic of citizenship which is a part of Entry 17 in List I of the Seventh Schedule is very wide and not fettered by the provisions

of Articles 5 to 10 of Part II of the Constitution...” Incidentally, Article 6A, which was added to the Constitution post- Assam Accord, is also included between Article 5 and Article 10.

Further in *State of Madhya Pradesh vs Pir Mohd. And Another*, the Hon’ble Supreme Court speaking through Justice Gajendragadkar (AIR 1963 SC 645) again, reaffirmed the ratio of the *Izhar Ahmad Khan Case* in so far as the exclusive jurisdiction of the Central Government to legislate on questions of Citizenship was concerned. (Para 8.) Many more judgements have since reiterated this position. There cannot be therefore any doubt on legislative competence of the central government.

Myth 2.

It was an attempt to open the floodgates of cross-border migration across the Indo-Bangla borders into Assam and North-East India from 2014 onwards.

Reality

As late as 1986, the figures of actual number of migrants from Bangladesh into Assam was not quantified by any authority in India unlike in 1949 when the figures were more definite.ⁱⁱ While conjectures contended against each other, demands by members of Parliament calling upon the Government to engage in ‘Census in Assam to determine the actual number of infiltrators or immigrants into Assam’ were met with a stoic silence from the Government of India, then. Figures continued to vary between ‘no immigrants in Assam’ (1992)ⁱⁱⁱ to ‘more than 50 lakhs.’ (2004) While the recently concluded NRC in Assam has given rise to a definite figure of 19 lakhs of persons who found themselves outside the Register, the State was within its powers to create classification among these people on the basis of the Citizenship Amendment Act, 2019.

It has to be pointed out that this Act of 2019 is not an invitation to new entrants from across the border but a definite attempt to close the conundrum of citizens vs migrants permanently by fixing a definite, reasonable retrospective cut off of 31st December 2014, as against an unreasonable cut off of 25th March, 1971, as envisaged in the Assam Accord of 1985 which was neither democratic nor implementable at least till now. By fixing 2014 as the final cut off, it attempts to bring a definite closure to the immigration question in more reasonable intervention at least in the midst of an informed debate, unlike in 1985.

Myth 3

It was, a violation of Article 14 of the Indian Constitution,

Reality

The contention is hardly tenable as Article 14 makes an intelligible difference between equals and unequal. In this case there cannot be equality between citizens and ‘prospective’ citizens residing beyond the country’s frontiers. Even on the question of protection of Fundamental rights being applicable to foreigners, the Supreme court in *Mr. Louis De Raedt & Ors vs Union of India And Ors*, AIR 1991, SC 1886 states that, “The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country.”

On the question, the Government of India under Article 11, Part II, holds unfettered powers not only to grant citizenship to certain categories of people, it cannot be seen as discriminatory. Every nation state can decide on the nature and classification of its constituents. Its noteworthy to highlight that between 1964 and 1987, about 15 lakh Sri Lankan Tamils (classified as persons of Indian origin born on the soil of Sri Lanka) were granted Indian citizenship, which was admitted by members across party lines, the debates on the Citizenship Amendment Bill, 1986, in Lok Sabha in the debate in November, 1986. Incidentally, at that time, no such liberty was granted to any prospective migrant from the minority community from East Pakistan (till 1971) or Bangladesh (since 1971).

Myth 4

The Act grants citizenship to the Hindus while denying it to the Muslims coming from across the border.

Reality

In fact the Act does not automatically confer citizenship to anyone- neither people of certain specified communities nor Muslims from across the borders.

The Act of 2019 seeks to engage only with people who are already residing within Indian territory as the new cut off (on or before 31st December, 2014) vide Section 2 of the Amendment Act, 2019 is retrospective and not prospective by any stretch of imagination. Moreover, it does not in any case infringe on the right, constitutional or otherwise, of the Muslim citizens of this country.

What it does is that for people from certain specified communities as in Section 2 (1) (b), the gestation period for eligibility to apply for Indian citizenship has been shortened to six years on fulfilment of the conditions for Indian citizenship as specified under section 5 of the Citizenship Act, while for the others, it would continue to be 11 years. The only exception in the case of specified communities is these communities already residing in India would get the benefit of long-term visas and shall not be treated as foreigners under the Foreigners Act 1946 and the Passport Act 1920.

In Lieu of a conclusion

It was declared that for the north-eastern region, the Act was especially sensitive to the sentiments of the indigenous communities as it addressed their concerns by exempting “the tribal area of Assam, Meghalaya, Mizoram and Tripura as included in the Sixth Schedule to the Constitution and the areas covered under ‘the Inner Line’ notified under the Bengal Eastern Frontier Regulation, 1873”^{iv} from the purview of the operation of the Act.

Therefore, there is no doubt that the Act of 2019 is a bold and positive step in reconciling the lingering baggage of partition in north-east India. It is important to point out that the Act is a major corrective to the citizenship conundrum of the region unleashed in Assam since 1950, for a more pragmatic solution.

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Notes and References

ⁱ For detailed discussion on this background see AsConMonograph Series No.005 Binayak Dutta, ‘Recovering the Other Side of Silence’, Shillong, 2020.

ⁱⁱ According to the special Refugee Census taken by the Government of India of the displaced persons from East Pakistan in July 1949, there were 24,600 families of displaced persons in Assam or approximately 114,500 persons.

ⁱⁱⁱ Hiteshwar Saikia quoted by S.K.Sinha’s Report to the President of India dated 9.11.1998, p.9.

^{iv} *The Citizenship (Amendment) Act, 2019*, Section 4, The Act No.47 of 2019.