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Citizenship (Amendment) Act, 2019 and the reconfiguration of India's Citizenship Regime

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Abstract

The Citizenship (Amendment) Act, 2019 (CAA 2019) privileges religious persecution as the basis upon which immigrants from certain religious communities have been provided with the right to apply for citizenship in India by registration or naturalization. The paper attempts to identify whether the discursive effect of privileging religious persecution as the determining principle orients India's citizenship regime towards a preferential direction, where the basis of preference is an individual's religious identity. It has been done by identifying and examining the discursive mechanisms deployed by political and juridical institutions to rationalize the classificatory category of religious persecution as essential to achieving the objective of the law. The paper delineates doctrinal studies of judgments by the Supreme Court of India and highlights the principles following which the said classificatory category has been upheld as the logical premise for the intelligible bracketing of specific religious communities by the Act. The discursive premise of the said principles is then ascertained by examining the Hindu Nationalist discourse and the literature on the Constituent Assembly Debates (CAD) of India. Thereby demonstrating which discourses concerning religious persecution have been recontextualized in the aforementioned acts, leading up to the CAA 2019. Following Mouffe, Anupama Roy argues that the outsider is constantly constituted in the delineations of citizenship as a reflection of the citizen by building a relationship of 'forclusion', which manifests itself through the dual processes of encompassment and closure. The paper deliberates upon the discursive mechanisms, expressed in the political, juridical and legal spheres, by which the incongruent relationship between the outsider and the citizen is transformed in light of the CAA 2019, consequentially leading to a transformation of the latter's identity, whereby India's citizenship regime is led towards a preferential direction.

Keywords: *Citizenship, CAA 2019, Citizenship Regime, Forclusion*

1.0 Contextualizing CAA 2019

CAA 2019 privileges undocumented immigrants belonging to six religious communities from certain neighbouring countries of India by allowing them to apply for Indian citizenship through registration or naturalization (Citizenship (Amendment) Act, 2019). The existing literature on the issue tries to justify or question it by focusing on the historical developments that led to its enactment. The former argues on the ground that it is necessary to provide relief to those suffering from religious persecution. The latter points out the Act's questionable constitutionality as it privileges communities belonging to particular faiths over others and raises questions concerning intelligible differentia and reasonable classification, which are embedded within the debate of the Act's constitutionality.

However, CAA 2019's discursive effect upon India's citizenship regime demands an inquiry into how political institutions channel juridical doctrines to rationalize the classificatory category of "persecution on grounds of religion" as essential to achieving the objective of the law. The said classificatory category has been upheld in the statement

of objects and reasons of the Citizenship (Amendment) Bill, 2019, (Citizenship (Amendment) Bill, 2019).

One requires a veritable understanding of the concept of "citizenship regime" to realize whether the instruments of the modern state are being deployed for the production of a regime where faith can become an important criterion to guide admission to the nation-state.

The following quote from Jayal's work outlines this concept effectively;

"As a bundle of features, citizenship regimes indicate who is a citizen and what the terms of inclusion and exclusion are; the nature of the identification of citizenship with nationality or cultural identity; what the recognized unit of citizenship is—individuals or groups—especially for the articulation of effective citizenship claims; the substance of citizenship rights, including and especially the rights of social citizenship; the role of the state and its policy strategies in stabilizing or undermining a particular citizenship regime; and how state and societal discourses and policies—of recognition or redistribution— shape citizenship." (Jayal, 2013)

A nation's citizenship regime determines the relation of its residents to the state. It provides the reference point of contestations around which the country's populace, whether benefitted or disadvantaged by it, positions themselves. Where the former negotiates its sustenance, and the latter contests and affects change in its nature. The citizenship regime of a state represents "the dominant consensus".

One notes the resonance of the idea of citizenship being an effective instrument by which the state exercises its sovereignty in Anupama Roy's argument that the instrument of citizenship laws, rules and policies enable the state to determine its members and their terms of membership. Contributing to its establishment as the singular locus of power, where the forms and terms of citizenship will depend upon the nature of affiliation to the state. (Roy, 2022) Roy (2022) and Nani Gopal Mahanta (2021) acknowledged in their work that the citizenship policies of India have been preferential, where the inclusion of Hindus within the ambit of citizenship has been preferred over others in various forms and sites. To gather a more comprehensive understanding of the developments of India's citizenship regime requires understanding the CAA 2019 in a proper historical context.

The CAA 2019 declares that people belonging to the Hindu, Jain, Parsi, Buddhist, Christian and Sikh community, who had fled Afghanistan, Bangladesh and Pakistan, and had entered India on or before 31st December 2014 will not be treated as illegal migrants, and will be entitled to apply for citizenship by registration or naturalization. (Citizenship Amendment Act, 2019) Mahanta justifies its requirement on the ground that, while the National Register of Citizens (NRC) exercise in Assam legitimized a large number of Muslim immigrants (possibly illegal) under a regime of documentary citizenship, under which they were able to claim citizenship by acquiring necessary documents, irrespective of the means; Bengali Hindus who had been excluded in the process, were persecuted minorities fleeing religious persecution. They were unable to prove so and needed a safety net. However, Mahanta also discusses about the preferential treatment that has been provided to Hindu refugees in Assam by India's citizenship policy, the initiation of which can be traced to the Immigration (Expulsion from Assam) Act of 1950, which empowered the Union government to order the expulsion of such individuals, who had been residing outside India, but had entered Assam, and whose presence was detrimental to the people of India, or any Scheduled Tribe in Assam. But in case such a person is the victim of a civil disturbance in any area forming Pakistan (including erstwhile East Pakistan), and hence had to leave or had been displaced from his original place of residence, this Act does not apply to him. Mahanta acknowledges that this proviso within the Act was included to ensure the protection of Hindu refugees from East Pakistan who had entered Assam on account of communal tensions in their country. This aspect of preferential treatment towards Hindu refugees has also been highlighted by Roy in her recent work on the CAA 2019 and the NRC. Roy emphasizes it by emphasizing the Standard Operating Procedure (SOP) that was put in place by the Citizenship (Amendment) Rules, 2004, to empower District Collectors in Rajasthan and Gujarat to "grant citizenship" to the Hindu migrants from Pakistan. In 2021, several District Collectors from Chhattisgarh, Haryana and Punjab were also provided with similar executive powers to grant citizenship certificates to minorities from Pakistan, Bangladesh and Afghanistan. Roy states that the SOP supplemented the Long-Term Visa (LTV) provisions, which were often deployed by the Ministry of Home Affairs to facilitate the stay of

minority refugees from these countries in India. (Roy, 2022) However, to inquire whether the political discourse around CAA 2019, is indicative of the continuation and intensification of India's preferential citizenship regime, one needs to effectively analyze the question of intelligible differentia and reasonableness of the classifications that have become the basis of justification for the Act, as Bill, 2016 (JPC).

Before the enactment of the CAA 2019, there had been three major precursory changes in the laws and rules, that are of significance to India's citizenship policy. The first among them was the Citizenship (Amendment Act), 2003 (CAA, 2003), which among other changes, limited the purview of citizenship by birth for ones born after the commencement of this Act, to those persons whose both parents are Indian citizens, or whose either parent is an Indian citizen and the other is not an illegal immigrant. (Citizenship Amendment Act, 2003) Moreover, this Act prohibited the acquisition of citizenship by registration or naturalization for those found to be illegal immigrants. (Citizenship (Amendment) Act, 2003) The other two changes were the Passport (Entry into India) Amendment Rules, 2015, and the Foreigners (Amendment) Order, 2015, which legally permitted the entry of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, from Bangladesh and Pakistan into Indian territory, who are fleeing their home country without proper travel documents, due to or for the fear of religious persecution. (Passport (Entry Into India) Amendment Rules, 2015), (Foreigners (Amendment) Order, 2015) Moreover, they exempt them from the purview of the Foreigners Act 1946, hence protecting them from being prosecuted as illegal immigrants. Thereby, it is ensured they do not face the kind of prosecution that other illegal immigrants face. CAA 2019 furthers this preferential treatment by enabling the acquisition of citizenship by such immigrants. Hence, on one hand, undocumented immigrants from the enlisted communities are allowed to apply for citizenship, whereas other such immigrants are declared illegal.

The contestations against the Act have primarily targeted the bases of such preferential treatment. The major one being the privileging of "religious" persecution by the government. Mihir Desai argues that the Act is ignorant of persons who have suffered and are suffering from other forms of persecution in the neighboring countries. (Desai, 2020) In a similar vein, Mohsin Alam Bhat regards that such privileging is "manifestly arbitrary" where the Act remains ignorant of persecution based on race, language, ethnicity and so on. He provides the example of Tibetans in China, Tamils in Sri Lanka and so on. (Bhat, 2019) However, before being voted on in the Parliament, the CAA 2019 or the Citizenship Amendment Bill, 2016 (CAB 2016), as it was known then, was entrusted for consideration to the Joint Committee on the Citizenship (Amendment) Bill, 2016 (JPC), comprising members of the Parliament. The JPC report stated that the reply of the Ministry of Home Affairs to such a query was that replacing the focus on religious persecution with a focus on all "persecuted minorities" would dilute the objective of the bill, where the former would be "lost sight of". Moreover, the bill had been based on the MHA notifications of the Passport (Entry into India) Amendment Rules, 2015 and the Foreigners (Amendment) Order, 2015 which mention religious persecution. (Joint Committee on Citizenship (Amendment) Bill 2016, 2019) In the Lok Sabha, Amit Shah argued that the objective of the bill is to protect a particular "class" of immigrants. He also cited the fact that the Nehru-Liaquat pact, which aimed at providing protection and equal opportunity to minorities irrespective of religion, had been violated in Pakistan and Bangladesh. The bill aims at fixing the damage caused by such violations.

Desai (2020) and Bhat (2019) in the course of their contestation have argued that the Act's intelligible differentia is faulty and is devoid of a determining principle, which incapacitates it from providing equal protection under the law, and renders the classification as arbitrary causing violation of Article 14. However, apart from the fact that Article 11 of the Indian Constitution empowers the Parliament to make any provision relating to all matters of citizenship, the JPC argues against the accusation that the Act violates Article 14 of the Constitution on the ground that its intelligible differentia follows the principle of reasonable classification. Drawing its justification from Supreme Court judgments on the *State of West Bengal v. Anwar Ali Sarkar, 1952* and *Ram Krishna Dalmia v. Justice S R Tendolkar, 1958*, the report relied on the argument that a legislative body has the right to provide differential treatment to a class of people (classified by common criteria) based on their specific circumstances, provided that the classification has a causal relation to the objective being sought by the law. In such a situation, the classification is regarded to be reasonable and the statute is not considered as a violation

of Article 14. Roy argues that the JPC reduced the test of reasonableness to a procedural requirement of mere correspondence between the classification and objective of law while leaving out the aspect of substantiveness. The Supreme Court in the Anwar Ali Sarkar case had laid down the substantive conditions for fulfilling the criterion of reasonableness, where it must not fail the test of 'equality before law' and 'equal protection of law' (core principles of the right to equality) through any form of discrimination and arbitrariness.(Roy, 2022) This mandates an analysis of the question of the justificatory basis of the Act's classifications to determine its discursive effect on India's citizenship regime.

2.0 Doctrinal Study of Court Judgments

Doctrinal analysis of Supreme Court judgments has been conducted to uncover the juridical principles upheld by the Indian judiciary that affect the question of reasonable classifications in law. It portrays how the structure of the Act discursively determines who gains what kind of citizenship rights and who does not. The inquiry needs to focus on how the reasonableness of the classificatory category of religious persecution is produced while interacting with the juridical principles established by the Indian judiciary. As discussed previously, various justifications have been provided by state representatives (JPC report and the Home Minister) for the classificatory category to prove its reasonableness in the context of CAA 2019. An inquiry into those justifications will unravel how they interact with the juridical principles upheld by the Indian judiciary at a discursive level and affect India's citizenship regime. The following judgments have been studied as part of this analysis:

- *State of West Bengal v. Anwar Ali Sarkar*, 1952 to understand the juridical principles that determine whether a classification is based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained by the law. (Supreme Court Cases, 1952)
- *Ram Krishna Dalmia v. Justice S R Tendolkar*, 1958 to understand how the state interprets the existence of a "rational relation" between the basis of the classification and the objective sought by the law. (Supreme Court Cases, 1958)

The two judgments have been referred to in the Joint Parliamentary Committee (JPC) report to justify the principles of reasonable classification that have been followed in CAA 2019.

Their doctrinal analysis guides an inquiry into the discursive effects of the Act as a result of positioning religious persecution as a reasonable basis of classification following the standards set by the Indian judiciary. A study of the judgments in the two cases throws light upon how state representatives have deployed legal doctrines to rationalize the relation between the classifications (enlisted religious communities from the three neighboring countries) and the objective of the law (protection of victims of religious persecution). It enables one to understand how a law, that privileges only certain victims of 'religious persecution', can be rationalized.

The JPC undertook three "Study Visits" between 2016 and 2018 in Jodhpur, Ahmedabad and Rajkot, and, Guwahati, Silchar and Shillong. Informal discussions were held with stakeholders including migrants, NGOs, public representatives and others to obtain grassroots information concerning the issues of religious persecution in the neighbouring countries and the condition of refugees in India. The report presented the religious persecution of Hindus by privileging the following indices, forced conversion and assimilation, discrimination in education and employment, greater threat of anti-social activities, destruction of temples and their conversion into Mosques, and finally cultural suppression.

The Supreme Court judgment in the case of Anwar Ali Sarkar led to the dismissal of an appeal by the West Bengal government against a Calcutta High Court judgment. The case involved the trial of Anwar Ali Sarkar under the West Bengal Special Courts Act, 1950. The objective of the Act as declared in its preamble, was "to provide for speedier trial" for certain "cases" or "offences" or "classes of cases" or "classes of offences" and to empower the state government to constitute special courts with procedures for trial, which were different from those laid down in the Criminal Procedure Code. The Act was rendered unconstitutional for violating Article 14 because the need for a "speedier trial" was a vague criterion of classification, as what determined the necessity for a speedy trial of particular cases was unclear. The object of the Act could not be rationally associated with the basis of classification, lending unrestrictive and arbitrary power in the hands of any state authority that would be endowed with the

responsibility of classifying such cases solely based on subjective judgment. (Supreme Court Cases, 1952) This led to the establishment of two major juridical principles. First, a classification has to be based on some clear and substantial distinction bearing a just and reasonable relation to the objects sought to be attained by the law. It has to be ensured that there is no unrestricted discretion on the part of the governing authority that will carry out such classification. Second, there has to be a discernible method of guiding the classification to prevent arbitrary exercise of such power.

The judgement in the case of *Ram Krishna Dalmia v. Justice S.R. Tendolkar* raised concerns regarding the constitutionality of the Commission of Inquiry Act, 1952. It was argued that this Act granted the government extensive powers to investigate the affairs of private individuals and companies under the guise of addressing matters of "public importance", potentially infringing upon Article 14. Despite these contentions, the court upheld the validity of both the Act and the notification issued on its basis. Along with the criteria of intelligible differentia which distinguishes certain cases from others, and that of a rational nexus between the classification and the objective of the law, the case highlighted other principles that the decisions of the Supreme Court had established concerning the question of constitutionality of reasonable classification in law. First, a law relating to a single individual can be held as constitutional. Special circumstances that are only applicable to such an individual can make him/her eligible to be treated as a class by himself/herself. Second, an act is always already presumed to be constitutional and he/she who challenges it has the responsibility of proving otherwise. Third, it is presumed that any requirements of the people are already understood and appreciated by the legislature. The laws made by it aim to resolve challenges created by manifest experience. Hence the discriminations followed by it are legitimate and necessary. Fourth, the legislature can freely determine the degree of harm in any particular case and treat it accordingly as per its need. Fifth, to determine the constitutionality of any act the court can consider "matters of common knowledge, matters of common report, and the history of the times" and "may assume every state of facts which can be conceived as existing at the time of legislation". Finally, if the court finds that there is a lack of evidence or cause that effectively rationalizes a classification, then the presumption of constitutionality of an act becomes unsustainable. (Supreme Court Cases, 1952)

Following the juridical principles set by these judgments, certain premises in CAA 2019 are discursively underlined. The rules concerning the implementation of the Act were published by the Ministry of Home Affairs on 11th March 2024. The rules declare that an Empowered Committee has to be set up in all States and Union Territories which will be headed by a Director of Census Operations of the respective State or Union Territory. Its task would be to scrutinize the applications made through an affidavit along with an eligibility certificate from a locally reputed community, confirming the applicant's claims, and supported by documents that are required to prove that the applicant is a national of any one of the three enlisted countries in CAA 2019 and that he/she entered into Indian territory on or before the cut-off date present in the Act. The rules also provide for a District Level committee headed by a Designated Officer. It will fulfill the task of verifying the documents submitted by the applicant and administering the oath of allegiance to the applicant. Once the application is forwarded by the District Level Committee to the Empowered Committee, the latter will possess the discretionary power to make necessary inquiries in coordination with security agencies, to ascertain the suitability of the application. Upon satisfaction with the said inquiry, shall the Empowered Committee grant Indian citizenship to the applicant (Citizenship (Amendment) Rules, 2024). The intricacies of the application vary depending on whether one seeks citizenship through naturalization or registration, however, the overall procedure remains uniform. The significant point to be noted here is that the burden to prove that an applicant is not feigning his religious identity and that he/she has been a victim of religious persecution is upon the Empowered Committee. Moreover, considering that even the fear of religious persecution is recognized as a valid ground for applying for citizenship, the JPC report stated that even oral statements can be regarded as evidence by the Ministry of Home Affairs.

Limiting the law to a group classified based on special circumstances of religious persecution that is manifestly experienced with a substantial degree of harm, determined by the legislature, underlines that only the six minority religious communities can experience religious persecution to such degree. No other minority religious

community can face a similar degree of harm and have a similar experience. The presumed constitutionality of the classification, which can be sustained by inquiring into matters of common knowledge, common reports, and history of the times, underlines that the JPC considers religious persecution as a constitutional classification on such grounds. However, the question remains whether such persecution is faced only by the six enlisted communities. Critics of the act across the board have argued that communities including the Ahmadiyas and Hazara Shias, despite following the Islamic faith, have faced persecution on religious grounds in Pakistan and Afghanistan. Criticism along the same line is raised by highlighting the case of Rohingya Muslims in Myanmar, who have been facing not just persecution but displacement due to their religious identity. (Desai, 2020) It is clear from the literature highlighting the case and condition of the aforementioned minorities, that religious persecution along similar indices has been a sustained occurrence in their lives. This brings one to the question of why CAA 2019 limits its function to only six communities, requiring one to delve into the ideological sphere of the government that enacted it. The ideological base of the Bharatiya Janata Party (BJP), the majority party in the ruling alliance that enacted the Act, is *Hindutva*, the most popular form of Hindu Nationalism in the contemporary political landscape of India. Despite ruminations taking place during the 19th century, the ideology attained concrete shape in the writings of V.D. Savarkar and M.S. Golwalkar. Savarkar, in his text *Hindutva*, defines Hindusthan as the land of the Hindus that lies between the geographical territory of *Sindhu* to *Sindhu*, or from the Indus to the Indian Ocean. A Hindu is not only a citizen of the nation by birth and other factors, but, as per the principle of *Jus sanguinis*, through ancestral ties as well. The citizenship of a Hindu is based on blood or descent. He conceptualizes Hindus as ones who regard *Hindusthan* or *Bharatvarsha* as their "*Pitribhumi-Punyabhumi*" that is their "fatherland" and "holy land", and possess common blood. By holy land he refers to one's land of worship, thereby one shall not only regard it as the land of his forefathers, that is his fatherland, but also the land of his Gods, angels, prophets, and seers. The history of the land shall be his mythology. (Savarkar, 1923) Hence, only the people whose seat of religion and belief systems is indigenous to India, and whose sense of history as a people correlates to the history of India can revere the land as their holy land. Hindutva discourse considers only those communities as a part of the Hindu fold which adhere to the belief systems, cultural practices, and forms of religion that have originated in the geographical territory of Hindusthan. India is identified as the land of the Hindus, possessing an inherent Hinduness. Sanatan Dharmis, Sikhs, Buddhists, Jains, indigenous communities, and all other communities whose religion, culture, and belief systems have originated in the sub-continent can be regarded as Hindus.

Four out of the six communities enlisted in CAA 2019 have originated in the Indian sub-continent, rendering them integral to the Hindu fold. The findings from the Study Visits showcase that it is only the Hindus who have borne the brunt of religious persecution in the enlisted countries, thereby ignoring the cases of minorities like Rohingyas, Ahmadiyas, and Hazara Shias. The privileging of religions belonging to the Hindu fold discursively directs India's citizenship regime in a preferential direction based on a religious identity that is considered to be essentially Hindu in the Hindutva discourse. However, the inclusion of Christians and Parsis amongst the six religious communities in the Act becomes a point of contention as neither the Christian nor the Zoroastrian faith is indigenous to the sub-continent. Here, one shall note that the Hindutva discourse has long been approving of the Zoroastrianism faith, as Parsis are considered as a people who have accepted the essential Hinduness of India. Jesse Buck argues that the Hindu society is considered as an essentially plural society in the Hindutva discourse. Any school of thought which considers itself as plural, but simultaneously is built on the pillar of otherization of specific communities, requires a model minority. Having settled in India after being driven out of their homeland, Iran, due to expansive Islamic aggression in the region, Parsis serve that purpose. They are considered to be loyal residents who have significantly adopted India's Hinduness. (Buck, 2017)

On the other hand, M.S. Golwalkar in his writings highlights Christianity as a proselytizing faith and hence, a threat to India's Hinduness. Beneath the garb of humanitarian endeavors, the actual project of Christian missionaries is to spread their faith through conversion, which has resulted in the departure of large sections of tribal groups from the Hindu fold. (Golwalkar, 1966) Despite this manifest hostility, the Christians are a part of CAA 2019. A significant aspect of the Act is that persecuted minorities from the neighboring

countries of only Pakistan, Bangladesh, and Afghanistan (all Muslim majority countries) can apply for citizenship. Myanmar, a Buddhist-majority country, has not been included in the list despite sharing a border of more than 1500 kilometers with India, where the Rohingya Muslims are an internationally recognized persecuted religious minority. Here the messaging of the law becomes clear as it underlines that religious persecution against non-Muslims is something that is primarily limited to the Muslim-majority countries of the subcontinent. The inclusion of Christians within the list of persecuted minorities hence becomes an example of realpolitik, which serves the projection of the Muslim majority countries as essentially intolerant. Moreover, the rules of the Act discursively presume that persons belonging to the Hindu fold are always already persecuted in the Muslim majority nations, rendering it unnecessary for them to substantially prove that they have been real victims of religious persecution.

3.0 Past Reverberations

While the shifting of India's citizenship regime towards a preferential direction based upon religious identity has gained momentum since the assumption of power by the proponents of Hindu Nationalism, the resonance of the discourse was present in the Constituent Assembly Debates (CAD) and later on in several ordinances and acts passed by the Indian government.

Citizenship has been a contested category since the very inception of the nation. The discourse supporting India as the natural homeland of people belonging to the Hindu fold by descent can be traced in the CAD. In his address of 11th August 1949, P.S. Deshmukh proposed that a Hindu and Sikh, who is not a citizen of any other country, shall be entitled to be a citizen of India. Jaspat Roy Kapoor, K.T. Shah, Thakur Das Bhargava, and Bhupinder Singh Maan were in various degrees opposed to the proposal of allowing the (Muslim) returnees from Pakistan to retain their citizenship without clearing a test of loyalty and proving their intention of permanent resettlement in India. They argued that prior residence in India and acquiring a permit for resettlement or permanent return should not be held as sufficient ground for those whose migration to Pakistan was a clear sign of their allegiance to the new nation. There was also a clear apprehension that the returning Muslims would lay claim to the immovable properties that were evacuated by them in the process of migration and which were now being used to shelter the Hindu and Sikh refugees from Pakistan. Nonetheless, despite the initial assertion by Nehru and other leaders that the restoration of evacuee properties to the returnees would be fully supported by the government, the same did not happen. The compulsions of post-partition India where refugees in large numbers had already assumed control of the evacuee properties and were being supported in this act by a section of sympathetic lower administration and police, reduced the chances of proper restoration. Eventually, the passing of the Evacuee Property Act of 1950 nationalized all evacuee property, further reducing the chances of restoration. Thereby discursively affirming the position taken by those who were in favour of sheltering the Hindu and Sikh refugees in the evacuee properties at the cost of the Muslim returnees.

Moreover, Jaspat Roy Kapoor and Rohini Kumar Chowdhury upheld civil disturbance, a category resonating with religious persecution and its indices, as a ground for providing Indian citizenship to those who migrated during partition due to such disturbance. Chowdhury posed arguments for excluding the ones who had "set up the struggle for Pakistan" but later entered Assam and "mixed themselves with their brethren" with the malicious motive of exploiting the province. Though this proposal was not incorporated into the Constitution initially, it was later implemented by the Immigration (Expulsion from Assam) Act of 1950. The appropriation and recontextualization of this exclusionary discourse have been conducted by the proponents of Hindutva, leading to its embedding within CAA 2019. The Act empowered the Union government to order expulsion of such individuals, who had been residing outside India, but had entered Assam, and whose presence was detrimental to the people of India, or to any Scheduled Tribe in Assam. However, in case such a person is the victim of civil disturbance in any area forming Pakistan, and hence had to leave or had been displaced from his original place of residence, this Act does not apply to him. Mahanta acknowledges that this proviso within the Act was included to ensure protection of Hindu refugees from East Pakistan who had entered Assam on account of communal tensions in their country. (Mahanta, 2021)

4.0 Conclusion

Following Mouffe, Werbner, and Yuval-Davis, Anupama Roy argues that the outsider is discursively

and constitutively present in the delineations of citizenship as a reflection of the citizen by building a relationship of 'forclusion'. It manifests through the dual processes of encompassment and closure, existing in a paradoxical relation, which comes into play in the practice of citizenship. Roy states that in the process of encompassment, universalism remains the overarching framework within which difference unfolds while being in a dialectical relationship with the former. Following the framework of universal citizenship, a moment of encompassment opens up the space for the articulation of difference that exists contextually, though its progress is immediately restrained through the process of closure. Roy portrays closure as the,

"Simultaneous differential experience of citizenship which accompanies each liberating moment of encompassment." (Roy, 2010)

CAA 2019 construed itself as a moment of encompassment along the lines of universal citizenship by privileging religious persecution as a condition for the passage of migrants into citizenship. The law addressed the unique position of migrants who had entered India due to such persecution. However, closure, as the differential experience of citizenship, followed closely when the condition's application was limited to communities considered a part of the Hindu fold with India as their natural homeland. The JPC report, the Act and its rules discursively ensure such framing of the law by emphasizing the persecution of Hindus and reconfiguring India's citizenship regime in a preferential direction. The passing of CAA 2019 in the Indian Parliament by the NDA government witnessed massive protests across the country, especially in the state of Assam, despite facing backlash from the state's repressive apparatus. Protestors in Assam were apprehensive that the legislation could lead to further marginalization of the Assamese identity. The arguments made by those opposing it in other parts of the country were based upon the Act's questionable constitutionality as it is still apprehended that it violates the fundamental right to equality of the Indian Constitution, which guarantees equality before the law and equal protection under the law, along with non-discrimination on part of the state on any ground.

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