

## 10. The Citizenship (Amendment) Act, 2019: Dismantling India, Imperilling South Asia

12<sup>th</sup> December 2019

### 1. Introduction

On 11<sup>th</sup> December 2019, Indian Parliament passed the Citizenship (Amendment) Bill 2019, (CAB) legislating far-reaching changes to India's citizenship regime. The law, expected to be notified anytime now, makes illegal migrants in India from Pakistan, Afghanistan and Bangladesh eligible for Indian citizenship by (i) granting Hindus, Sikhs, Jains, Buddhists, Parsis (Zoroastrians) and Christians among them, those that entered India before 31<sup>st</sup> Dec 2014, amnesty, thus opening a path to their naturalisation as Indian citizens (Section 2) and (ii) relaxing for them the residence requirement for naturalisation, from 11 years to 5 years. (Section 6). Ostensibly, the law seeks to protect persecuted minorities from the region and offer them shelter in India.

In fact Citizenship (Amendment) Act 2019 (henceforth CAA), by introducing a 'religion test' in India's citizenship legislation - excluding Muslims and other persecuted minorities in similar circumstance from any protection, while offering it only to the named faith groups - strikes a body blow to the basic structure of Indian constitution, specifically its secular character; is wholly arbitrary, and violates principles of equality and non-discrimination, including on FoRB principles; besides contravening international law. The amendment will have direct and immediate impact on the 1.9 million persons excluded from National Register of Citizens in (NRC) Assam. Potentially, the legislation also does harm to the named minority groups still in Afghanistan, Bangladesh and Pakistan, by making their claims to citizenship in their own home countries precarious, rendering the groups vulnerable to targeting and discrimination. Finally, by fashioning India as the home for the region's Hindus, the legislation encourages homogenising tendencies in India, whilst undercutting the already restricted diversity in the three neighbouring countries. These developments jeopardise the wellbeing of minorities across South Asia, aggravating divides, imperilling the region. On the day the lower house of Parliament passed CAA 2019, US Commission on International Religious Freedom (USCIRF) voiced 'serious concern', going on to recommend sanctions against Indian leaders.<sup>296</sup>

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<sup>296</sup> 'USCIRF raises serious concern and eyes sanction recommendations for Citizenship (Amendment) Bill

## 2. The constitutional case against Citizenship (Amendment) Act, 2019

Constitutional experts have pointed to four basic flaws with CAA 2019, all centred around it being selective without justification, hence arbitrary and discriminatory<sup>297</sup>:

- i. Privileging religious persecution, over all forms of persecution of minorities. By limiting scope of the changes only to religious minorities from so-called Muslim-majority countries, the law disregards victims of persecution (in the region) based on ethnicity (Tamils from Sri Lanka, Rohingyas from Myanmar; Baloch from Pakistan, and Hazara from Afghanistan, among others); and language and culture (Urdu-speaker from Bangladesh and Lhotsampas from Bhutan).<sup>298</sup> They are all worthy of protection.
- ii. Privileging the persecution of the specified religious minority groups over other faith groups in similar circumstance. For example, Ahmadi and Shia Muslims fleeing religious persecution in Pakistan or Hazara (Shia) Muslims from Afghanistan, who are equally persecuted – data in fact shows, more – from the scope of the scheme<sup>299</sup>. As would Tibetans and Uighurs from China, suffering years of racial and religious targeting. Also those persecuted because they profess no religion. Tasleema Nasir<sup>300</sup> from Bangladesh or secular bloggers<sup>301</sup> from that country, too would be ineligible.
- iii. Privileging persecution in the three countries over that in other countries in the region. Rohingya Muslims facing extreme persecution in Myanmar, and of who, according to UNHCR, over 20,000 are in India, are not covered by this scheme, nor are Muslims in Sri Lanka increasingly feeling the heat

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which passed Lower House today'. <https://www.uscirf.gov/news-room/press-releases-statements/uscirf-raises-serious-concerns-and-eyes-sanctions>

297 Refer Bhat, Mohsin A. 2019. 'The constitutional case against the Citizenship Amendment bill' *Economic and Political Weekly*, Vol IIV, No 3. & 'The proposed citizenship law is immoral; will unleash a legally sanctioned regime of discrimination'. *Indian Express*. 7th Dec. 2019. <https://indianexpress.com/article/opinion/citizenship-amendment-bill-union-cabinet-strangers-in-their-own-land-6154534/>

298 The South Asia Collective. 2018. *South Asia State of Minority Report 2018 and 2016*. New Delhi: Books for Change. <http://thesouthasiacollective.org/annual-reports/>

299 The South Asia Collective. 2018. *South Asia State of Minority Report 2018 and 2016*. New Delhi: Books for Change. <http://thesouthasiacollective.org/annual-reports/>

300 Taslima Nasrin on a rebellious childhood, facing death and being a woman in Islamic Bangladesh. 12 October 2018. *Readers Digest*. <https://www.readersdigest.co.in/features/story-storytelling-event-readers-digest-taslima-nasrin-124570>

301 'Inside Bangladesh's Killing Field: Bloggers and Outsiders targeted by fanatics'. *The Guardian*. 12 June 2016. <https://www.theguardian.com/world/2016/jun/11/bangladesh-murders-bloggers-foreigners-religion>

of the rising Sinhala nationalism in the country. Lhotsampas of Hindu Nepali descent in Bhutan – who have suffered one of the worst forms of persecution, with over 100,000 disenfranchised and made stateless in the 1990s - are also not covered.

- iv. Finally, the privileging of those already in the country, having entered India before 31<sup>st</sup> Dec 2014, against those that came after, or indeed those still in their home countries and who might want to make use of this scheme, as a route to asylum. Research also shows that those that the law seeks to regularise to make them eligible for citizenship, might have entered India for various purposes - persecution or fear of persecution, but also for economic reasons, pilgrimage, and business trips – and then stayed on.<sup>302</sup> The law does not provide a definition nor a yardstick for persecution.

Introducing CAA 2019 in the lower house of Parliament, Home Minister Amit Shah refuted charges of arbitrariness, by claiming that religious persecution was a valid ground for 'reasonable classification'; and that was the basis of his proposal too.<sup>303</sup> It is clear that the classification, rather than being rational, is arbitrary, irrational and discriminatory, designed specifically to exclude Muslim refugees from the possibility of amnesty and citizenship. Of the 1.9 million left off the Assam NRC, the named minority groups will have a pathway to Indian citizenship, while excluding Muslims. Media reports have just revealed that a figure of 700,000 is likely.<sup>304</sup> This selective application is in contravention of international law, in particular the right to nationality "without distinction as to race, colour, or national or ethnic origin" (Article 5, International Convention on Elimination of all forms of Racial Discrimination - CERD), and against India's Constitution which guarantees equality before the law and equal protection of the law (Article 14). It also violates rights of illegal migrants not covered to freedom to practice religion under (Article 25), Indian Constitution's FoRB provisions that are available to non-citizens too. It is clear that since the law makes no effort to define persecution or to provide a threshold for its determination, it seeks less to offer India as a haven for persecuted minorities - a worthy cause – rather, more to create India in a

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302 For this, refer Jayal, Niraja. 2013. 'Citizenship and Its Discontents: An Indian history' New Delhi: Permanent Black and Ghosh Parthasarthy. 2016. Migrants, Refugees and the Stateless in South Asia. New Delhi: Sage

303 'Amit Shah wins round one of CAB debate in LS...' FirstPost. 10 December 2019. <https://www.firstpost.com/politics/amit-shah-wins-round-one-of-cab-debate-in-ls-by-blunting-oppositions-attack-but-deft-touch-will-be-required-in-rs-7760221.html>

304 'Five lakh Bengali Hindu NRC rejects will get citizenship' 11 Dec. 2019. The Times of India. <https://timesofindia.indiatimes.com/india/five-lakh-bengali-hindu-nrc-rejects-will-get-citizenship/articleshow/72465093.cms>

certain majoritarian image. By regularising illegal migrants of specific persuasion already in India, the legislation also serves immediate vote bank politics.

### **3. Hidden agenda: Aiming for Akhand Bharat**

For long, the ruling Bharatiya Janata Party (BJP) and its parent organisation, the Rashtriya Swayamsevak Sangh (RSS), have seen India as an inherently Hindu nation,<sup>305</sup> and the partition of India in 1947 into India and Pakistan, as a great Hindu tragedy. RSS sees its endgame as the consolidation of what it calls Akhand Bharat (undivided Bharat or India), that not only includes undivided India – Pakistan and Bangladesh - but also Afghanistan, as the historical Hindu land that must be reintegrated, by force if necessary.<sup>306</sup> Until that vision is realised, RSS seeks to fashion India as a natural home for the region's Hindus. BJP manifesto in 2014 promised "India shall remain a natural home for persecuted Hindus and they shall be welcome to seek refuge here."<sup>307</sup> This was driven home by Home Minister, Amit Shah, while he argued for CAA 2019 in Parliament:

Persecuted minorities have nowhere to go but India "which is their natural, civilizational and ancestral home".<sup>308</sup>

On being elected to office on the back of a landslide victory back in 2014, BJP took the first steps to realising this vision. In 2015, Government of India decreed (through an executive order), to allow Afghan, Bangladeshi and Pakistani nationals who were Hindu, Sikh, Jain, Buddhist, Parsi and Christians to stay on in India even without proper documentation, on "humanitarian considerations".<sup>309</sup> While Hindus – besides some Sikhs - were the main beneficiaries of the intended amnesty, including Christian, Jains, Paris and Buddhists provided a fig leaf of respectability,

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305 'India is a Hindu Rashtra; It is non-negotiable' RSS Chief Mohan Bhagwat. India Today, 1st October 2019. <https://indianexpress.com/article/explained/rss-akhand-bharat/>

306 RSS leader talks of Akhad Bharat: Seeks Pak merger by 2025' 17 March 2019. Business Standard [https://www.business-standard.com/article/pti-stories/rss-leader-talks-of-akhand-bharat-sees-pak-merger-by-2025-119031700555\\_1.html](https://www.business-standard.com/article/pti-stories/rss-leader-talks-of-akhand-bharat-sees-pak-merger-by-2025-119031700555_1.html)

'RSS and the idea of Akhand Bharat'. Indian express. 4 Jan., 2016. <https://indianexpress.com/article/explained/rss-akhand-bharat/>

307 Full text: BJP manifesto for 2014 Election. <https://www.news18.com/news/politics/full-text-bjp-manifesto-for-2014-lok-sabha-elections-679304.html> Following the section is that on 'cultural heritage', with the following entries: Ram Mandir, Ram Setu, Ganga, Cow and its progeny

308 'Amit Shah wins round one of CAB debate in LS..' FirstPost. 10 Dec. 2019. <https://www.firstpost.com/politics/amit-shah-wins-round-one-of-cab-debate-in-ls-by-blunting-oppositions-attack-but-deft-touch-will-be-required-in-rs-7760221.html>

309 "India to Allow Minorities from Pakistan, Bangladesh to Stay without Papers." The Economic Times, 7 Sept., 2019. <https://economictimes.indiatimes.com/news/politics-and-nation/government-to-allow-pakistani-hindus-to-buy-property-open-bank-accounts/articleshow/51863383.cms>

couching the concession in minority protection terms.<sup>310</sup> The following year, the process of granting citizenship to the specified groups was decentralised to local authorities. In July 2016, central government introduced in Parliament the Citizenship (Amendment) Bill 2016 (CAB, 2016) to make illegal migrants from the stated groups – already permitted long term residence – eligible for citizenship. BJP did not have a majority in the Rajya Sabha, upper house of Parliament, and Government failed to carry the bill through. CAB 2016 eventually lapsed in June 2019.

#### **4. Assam NRC: Exploiting an opportunity – Furthering divides**

Publication of the draft National Register of Citizens (NRC) for Assam in July 2018, and reports of the exclusion of large number of Hindus among the total 4.1 million left off the list, provided BJP an opportunity to garner support for CAA from another quarter – the eastern Assam state, which over the past years has been updating the NRC in an effort to weed out 'illegal migrants'. NRC updation in Assam is part of a Supreme Court of India - monitored administrative process, seeking to implement the Assam Accord of 1985, that brought to an end, years of often violent unrest, centred around the 'foreigners' issue in that state. Not being on the draft NRC created panic for such large numbers in Assam of all faiths and ethnicities, bulk of them being Bengali-speaking Hindus and Muslims. BJP used the opportunity to package CAB 2016 – still languishing in Parliament then – as a safety net for those excluded from NRC, but only selectively for Hindus. Whilst campaigning in Assam's Bengali Hindu-dominated Silchar district, during General Elections in April 2019, Prime Minister Narendra Modi declared that his party was committed to passing the CAB 2016, offering excluded Hindus a lifeline to citizenship.<sup>311</sup> Since after the publication of the final NRC (on 31<sup>st</sup> Aug 2019), with 1.9 million excluded in the final reckoning, BJP leaders have been clearer in their messaging. Visiting Assam early in September 2019, first time since the publication of final NRC – when fears had been stoked that the bulk of the excluded were Hindus – Home Minister Shah assured that CAB had not been consigned to oblivion and would be tabled in Parliament again. He declared in the same breath that Centre intended to expel all illegal immigrants not just from

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310 Official data reveals that 1595 Pakistanis (of all religions) were granted Indian citizenship between 2015 and 2018. Since 2018, when religion-wise data began to be made public, 295 Hindus and Sikhs from Afghanistan and Pakistan were granted Indian citizenship (as of February 13, 2019). Press Information Bureau, February 13, 2019. <https://pib.gov.in/PressReleaselframePage.aspx?PRID=1564254>.

311 'Modi Shah pitch for vexed CAB, NRC on campaign trail'. 11 April 2019. Business Standard. [https://www.business-standard.com/article/pti-stories/modi-shah-pitch-for-vexed-cab-nrc-on-campaign-trail-in-assam-119041101207\\_1.html](https://www.business-standard.com/article/pti-stories/modi-shah-pitch-for-vexed-cab-nrc-on-campaign-trail-in-assam-119041101207_1.html)

Assam but the entire country.<sup>312</sup>

Shah then upped the ante. In October this year, at an election rally in West Bengal – which has historically hosted the highest numbers of migrants from Bangladesh and where BJP is seeking to make inroads in a state where it has historically had only a thin presence – he confided to his audience:

*"I want to assure all Hindu, Sikh, Jain, Buddhist and Christian refugees that you will not be forced to leave India by the Centre. Don't believe rumours. Before NRC, we will bring Citizenship Amendment Bill, which will ensure these people get Indian citizenship."*<sup>313</sup>

At the same public event, Shah asserted:

*"each and every infiltrator in India will be shown the door"*<sup>314</sup>

Often using the term ghuspetia (intruder), Shah had, during 2019 General Election campaigning earlier in the year, described illegal migrants as termites.

*"They are eating the grain that should go to the poor. They are taking our jobs."*<sup>315</sup>

Illegal migrants is a dog whistle term for BJP leaders to target Muslims. For BJP, illegal migrants are exclusively Muslim.

*"The illegal Bangladeshi Muslims pose security threat to the inhabitants of the state and the country" (Dilip Ghosh, BJP State President for West Bengal, Sept. 2019)* <sup>316</sup>

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312 'CAB to brought again: Amit Shah'. 10 Sept. 2019. Arunachal Times. <https://arunachaltimes.in/index.php/2019/09/10/cab-to-be-brought-again-amit-shah/>

313 'Will throw out Intruders: Amit Shah's big NRC push in West Bengal'. 1 Oct. 2019. India Today. <https://www.indiatoday.in/india/story/amit-shah-nrc-speech-kolkata-bjp-elections-citizenship-illegal-immigrants-1605194-2019-10-01>

314 'NRC: Amit Shah vows to eject illegal migrants from West Bengal' 1 Oct. 2019. BBC. <https://www.bbc.com/news/world-asia-india-49890663>

315 'Illegal migrants are like termites, Will throw them out if BJP comes back to power'. 11 April 2019. India Today. <https://www.indiatoday.in/elections/lok-sabha-2019/story/bjp-amit-shah-hindu-refugees-mamata-bannerjee-1499691-2019-04-11>

316 'Exclusion of Hindu Bengalis from Assam NRC gives TMC advantage over BJP'. 22 Sept 2019. The New Indian Express. <http://www.newindianexpress.com/nation/2019/sep/22/exclusion-of-hindu-bengalis-from-assam-nrc-gives-tmc-advantage-over-bjp-2037411.html>

Since publication of final NRC in August 2019, the 1.9 million persons excluded from the list – of all faiths and background – wait in anticipation to appeal their exclusion before Foreigners Tribunals. There has been no word from authorities when the appeals process will kick off. Rather, and dramatically, anxieties were raised many notches, especially for Muslims, when on 20<sup>th</sup> November 2019, HM Shah told the Parliament that government was planning to carry out NRC afresh in Assam, together with implementing the NRC test across India, this time.<sup>317</sup> Confirming the shift, Assam Finance Minister, Hemanta Biswa declared that NRC in its current form – to mean, with Hindu excluded from the list – was not acceptable to Assam government.<sup>318</sup>

Amidst this clearly deliberate attempt by the Centre and state governments to obfuscate Assam NRC, the revised CAB 2019 was passed by union cabinet on 4th December 2019. To blunt opposition to the amendment by tribal groups in Northeastern India who have voiced opposition to settling immigrants in tribal pockets, the bill provided concessions, limiting the scope of the legislation to areas with existing protective regimes for indigenous communities.<sup>319</sup> In Assam itself, the bill has been strongly opposed, with ethnic Assamese activists claiming the amendment – by allowing (mostly Bengal-origin) Hindus excluded from NRC to be provided a backdoor entry to Indian citizenship – violates the Assam Accord meant to 'detect and deport' all illegal migrants.<sup>320</sup> The BJP-led national government tried to buy off Assamese opposition by offering concessions, promising constitutional safeguards for indigenous Assamese.<sup>321</sup> But these seem not to have worked. However, BJP carried on, and on the strength of its majority in Parliament, managed to get the bill passed. Assam and other parts of North East have since exploded in protest.<sup>322</sup>

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317 <https://scroll.in/article/944460/why-amit-shahs-promise-to-extend-a-pan-india-nrc-to-assam-will-not-be-easy>

318 'NRC final List: BJP worried over exclusion of Hindus, Inclusion of Illegal Bangladeshi Muslims'. 31 August 2019. India Today. <https://www.indiatoday.in/india/story/nrc-final-list-bjp-worried-over-exclusion-of-hindus-inclusion-of-illegal-bangladeshi-muslims-1593966-2019-08-31>

319 These include Inner Line Permit (ILP) state (Nagaland, Mizoram, parts of Arunachal Pradesh), and 6th Schedule Areas in Assam and Tripura. Manipur has also been promised ILP status.

320 'Curfew in Guwahati, Army on Standby amid Citizenship Bill protest in Assam'. 11 Dec. 2019. NDTV. <https://www.ndtv.com/india-news/assam-chief-minister-sarbananda-sonowal-stuck-at-guwahati-airport-amid-protests-over-citizenship-bil-2147148>

321 Assam BJP puts Clause 6 Balm on agitation frenzy'. 10 Dec. 2019. The Telegraph. <https://www.telegraphindia.com/states/north-east/assam-bjp-puts-clause-6-balm-on-citizenship-bill-agitation-frenzy/cid/1725606>

322 Citizenship Amendment bill protests LIVE updates: Assam CM urges people to main calm, People defy curfew in Guwahati. 12th Dec. 2019. Indian Express. <https://indianexpress.com/article/india/citizenship-amendment-bill-protests-live-updates-assam-tripura-protest-cab-6162942/>

## 5. Citizenship (Amendment) Act 2019 and Pan-India NRC: The perfect storm!

Having tested Assam, BJP is now seeking to take its NRC dragnet to the rest of the country. Its first policy statement after returning to power in May 2019 declared “NRC would be implemented on priority in areas affected by infiltrators”.<sup>323</sup> In July 2019, an official notification laid the ground for a 2-step process to prepare a National Register of Indian Citizens (NRIC) across India.<sup>324</sup> Central to this exercise, to be rolled out along with the decennial Census in 2020, is “identifying persons whose citizenship is doubtful”. Information sourced through Right to Information Act (RTI) questions has revealed that no definition is provided, nor a transparent process laid out. Alongside, central government has delegated the establishment of Foreigners Tribunals in districts across the country<sup>325</sup>, and started setting up detention centres in each state.<sup>326</sup> In northern Uttar Pradesh state, ruled by BJP, police have been tasked to identify, “especially from slums and railway stations and outskirts of towns” foreign nationals, to check their documents, destroy fake ones, record biometrics and take action to deport them.<sup>327</sup> The directive does not invoke any law for police to conduct this check, without due process, or how the deportation would take place. In Bengaluru, capital of southern Karnataka state, also ruled by BJP, police recently picked up 59 alleged illegal migrants - men, women and children - detained them illegally for over a month, and then transported them to eastern Kolkata, to be deported across the border in Bangladesh.<sup>328</sup> A pan-India infrastructure to detect, detain and deport is steadily revving into action. This is causing shock waves in Muslim settlements across the country. Suicides have been reported.<sup>329</sup>

CAA 2019 is the last piece of the puzzle in this new citizenship regime of

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323 ‘NRC to be implemented on priority in areas affected by infiltration: President’ 20 June 2019. Business Line. <https://www.thehindubusinessline.com/news/national/nrc-to-be-implemented-on-priority-in-areas-affected-by-infiltration-president/article28085910.ece>

324 Registrar General Citizenship Registration. Notification. SO 2753 ( E ), 31 July 2019.

325 Ministry of Home Affairs. Order. GSR 409 (E). Dated 30 May 2019.

326 ‘states told to set up centres to detain illegal migrants’. 29 June 2019. The Economic Times. <https://economictimes.indiatimes.com/news/politics-and-nation/states-told-to-set-up-centres-to-detain-illegal-migrants/articleshow/70426017.cms>

327 ‘UP Police asks top officials to start identifying Bangladeshis, foreigners, living illegally’. 1 Oct. 2019. IndiaToday. <https://www.indiatoday.in/india/story/up-police-nrc-to-identify-bangladeshis-living-in-uttar-pradesh-1605158-2019-10-01>

328 ‘Ground Report: Taken from Bengaluru to Kolkata: 59 ‘Bangladeshi’s wait to be pushed back. The Wire. 27 Nov. 2019. <https://thewire.in/rights/ground-report-taken-from-bengaluru-to-kolkata-59-bangladeshis-wait-to-be-pushed-back>

329 ‘As NRC fear grips West Bengal, Mamata says 11 commit suicide’ 26 Sept. 2019. The week. <https://www.theweek.in/news/india/2019/09/26/as-nrc-fear-engulfs-kolkata-mamata-says-11-committed-suicide.html>

enfranchising some, and disenfranchising others. As Assam NRC experience shows, while Hindu immigrants will be offered protection of citizenship, Indian Muslims, not just 'infiltrators' among them, will increasingly be targeted for disenfranchisement, stripped of their nationality, sent to detention centres and rendered stateless. That this could potentially affect the entire Muslim population of India – estimated 200 million today, 14.2 per cent of the country – is a sobering thought. In the final analysis, this use of law and procedures – claiming NRC as critical to identify and deport illegal migrants (to mean Muslims), whilst fashioning CAA 2019 as a refugee protection mechanism for Hindus and other minorities, who will not be deported – is remarkable for a country which guarantees equality as its core principle.

## 6. Imperilling South Asia

A citizenship regime that is an open invite to all Hindus from the region to move to India, is bad news for South Asia too. It seeks to empty the rest of the countries of the region of their Hindu populations, making those countries further homogenous majorities. And by creating a cut off of 31<sup>st</sup> Dec. 2014, CAA 2019 puts at risk minorities still in those countries to their own majoritarian targeting. This it does, even as the law homogenises India itself, at the cost of India's minorities, especially Muslims. Minority rights in South Asia – especially the countries mentioned in the legislation – has existed in a precarious balance, with a majority in one country often being minority in another. Since the end of colonial rule and Partition, minority targeting in one country has had its immediate and grim repercussions in another, on their own minorities.<sup>330</sup> Of late, small gains have been made in minority protection and promotion in the region. The recent Kartarpur corridor agreement between India and Pakistan – allowing visa-free travel for Sikh pilgrims from India to their holy sites in Pakistan<sup>331</sup> – being a fine recent example. Given the centrality and size of India in the region, CAB 2019 threatens to irreparably rip apart that balance. Already, Bangladesh has expressed worries that CAB-NRC will hit "golden chapter in Delhi-Dhaka ties"<sup>332</sup>, Afghanistan has taken exception to Indian accusations of state persecution<sup>333</sup>;

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330 Citizenship Bill: The communal aftershock that shook India's neighbours post-Babri. 5 Dec. 2019. The Wire, <https://thewire.in/government/citizenship-amendment-bill-india-bangladesh-pakistan-babri-masjid>

331 'Kartarpur corridor: A modern miracle' 17 Nov., 2019. The Telegraph. <https://www.telegraphindia.com/opinion/kartarpur-corridor-a-modern-miracle/cid/1719750>

332 <https://m.dailyhunt.in/news/india/english/hindustan+times-epaper-httimes/bangladesh+worried+cab+nrc+will+hit+golden+chapter+in+delhi+dhaka+ties-newsid-152819300?ss=wsp&s=a>

333 'CAB: India's relations with neighbours run into story headwind'. 12 Dec. 2019. The Wire.

and Pakistan is saying that the legislation is “violating all relevant international conventions and norms”<sup>334</sup>. The example of the other homeland for a faith community – Israel – and how that has created divides and fractures in the wider middle eastern region, once home to various Jewish communities, besides in Israel itself, with illegal Jewish settlements expanding and rights of long-standing Israeli Arab citizens denied with impunity, should be a grim reminder against this misadventure.

## 7. Conclusion

India has no domestic refugee law. It has neither signed the UN Convention on Refugees (1951) nor ratified the UN Convention Relating to the Status of Stateless Persons (1954). In the absence of these, successive governments as well as courts in India, have acted arbitrarily – opening doors to some, closing them to others. Whilst India has welcomed Tibetans, Bangladeshis and Pakistanis, even Afghans, it has closed its doors to Rohingyas. On the whole, Muslim immigrants have mostly been kept at bay, as is evident from the treatment of Rohingyas, with both the government and Supreme Court going against the internationally recognised principle of non-refoulement, to direct Rohingya deportation from India.<sup>335</sup> CAA 2019 was in the circumstance, a good opportunity to cast an inclusive and universal refugee law, had the interest of persecuted minorities been the objective. Clearly, it was far from that.

The BJP government in its pursuit of a Hindu majoritarian vision of India, is seeking to create a legal regime that disenfranchises and excludes Muslims. And by selling CAA in conjunction with Assam NRC, it has sought formally to exclude Muslims from any scheme of naturalisation, while including Hindus in, arbitrarily. With little hope for due process and justice awaiting them in Foreigners Tribunals<sup>336</sup> - offered as a last chance for appeals against disenfranchisement - this will be the end of the road for the hundreds of thousands of Muslims left off the NRC in Assam, consigned to statelessness.

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334 'India's attempt to interfere. Pakistan condemns Citizenship Amendment bill'. 11 Dec. 2019. The Wire. <https://thewire.in/government/pakistan-citizenship-amendment-bill>

335 "Obtain Particulars of Rohingya for Deportation, Rajnath Singh Tells States." The Indian Express, Sept. 27, 2018. <https://indianexpress.com/article/india/obtain-particulars-of-rohingya-for-deportation-rajnath-singh-tells-states-5377088/>

336 See Amnesty International recent report on the working of Foreigners Tribunals for that analysis. 'Designed to Exclude: How India's courts are allowing Foreigners Tribunals to render people stateless in Assam'. November 2019.

Having created this regime sanctioned by law, of excluding some (using NRC), while including others (with CAA 2019), and having reaped electoral dividends on the back of vote bank politics, Prime Minister Modi and Home Minister Shah are now seeking to take their apartheid experiment to the rest of India.

## **8. Recommendations**

- Repeal CAB 2019 provisions that create a two-track discriminatory process of naturalisation for illegal migrants, based on religion.
- Conduct a fair appeals process for those excluded from Assam NRC that is monitored by international observers. For those genuinely foreigner, work with the origin country to deport and rehabilitate them in their home country, within the framework of international law and norms. Rest must be restored their Indian nationality and dignity. Release all locked up in detention centres.
- Immediately suspend pan-India NRC (NRI) implementation, until due process and transparent procedures are devised and communicated. Contain panic among people through public awareness and confidence-building campaign.
- Devise a non-discriminatory refugee law. Ratify UN Refugee convention (1951) and UN stateless convention (1954).