
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CITIZENSHIP (AMENDMENT) ACT, 2019 - A CRITICAL APPRAISAL
OF EXCLUDED COMMUNITIES AND STATE PROTECTION
MECHANISMS**- Harpreet Kaur¹ & Dr. Manjit Singh²**ABSTRACT**

The Citizenship (Amendment) Act, 2019 (CAA) marks a significant normative shift in India's citizenship regime by formally recognizing persecution as a legitimate ground for differential protection. Framed as a humanitarian intervention, the Act provides an expedited pathway to citizenship for select religious minorities from Pakistan, Afghanistan, and Bangladesh who have allegedly faced systemic persecution. While this legislative move reflects a positive governmental acknowledgment of vulnerability-based protection, its statutory design remains structurally under-inclusive. By adopting a selective identity-based framework rather than a principle-based persecution model, the CAA excludes several demonstrably persecuted communities, including Rohingya Muslims from Myanmar, Ahmadiyyas from Pakistan, and Tamil minorities from Sri Lanka.

Keywords: Citizenship, Persecuted Minorities, Humanitarian Protection, Constitutional Equality, Vulnerability-Based Protection.

BACKGROUND

The CAA represents one of the most contested legislative interventions in India's citizenship regime. Enacted as an amendment to the Citizenship Act, 1955, the CAA seeks to provide an expedited pathway to Indian citizenship for persons belonging to six religious communities,

¹Research Scholar, Guru Nanak Dev University, Amritsar.

²Assistant Professor, Department of Laws, Guru Nanak Dev University, Amritsar.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians, from three neighboring countries, Pakistan, Afghanistan, and Bangladesh, who entered India on or before December 31, 2014. The central justification advanced by the State is humanitarian, the Act is framed as a protective measure for *persecuted minorities* facing religious oppression in Islamic-majority states.³

At a conceptual level, the use of the category “persecuted minorities” is not inherently problematic. International refugee law, human rights law, and constitutional traditions across democratic jurisdictions recognize the moral and legal legitimacy of protecting communities facing systematic discrimination, violence, and exclusion on identity-based grounds. However, the difficulty lies not in the recognition of persecution as a basis for protection, but in the selective construction of persecution within the statutory framework of the CAA.⁴

While the Act includes certain persecuted groups, it simultaneously excludes several communities that are demonstrably persecuted in their home countries. Groups such as the Rohingya Muslims from Myanmar, Ahmadiyyas from Pakistan, Tamil minorities from Sri Lanka, and other vulnerable communities remain outside the protective scope of the CAA. At the same time, some of these excluded groups are afforded limited protection through executive instruments such as Standard Operating Procedures (SOPs) issued by the Ministry of Home Affairs (MHA), reflecting a fragmented and inconsistent protection regime.

This creates a fundamental conceptual tension, if the legislative objective is the protection of *persecuted minorities*, then the statutory framework must be coherent, inclusive, and principled. The current model under the CAA, 2019 adopts a selective humanitarianism, where persecution is recognized only when it aligns with predefined religious and geopolitical categories. This undermines both the moral legitimacy and constitutional defensibility of the Act.⁵

CONCEPTUALISING ‘PERSECUTED MINORITIES’ IN CITIZENSHIP LAW

³ Krishan Kant & Anju Rani, “Citizenship Amendment Act-2019” 9 *Scholarly Rsch. J. For Human. Sci. & Eng. Language* 11567, (2021), <https://doi.org/10.21922/srjhsl.v9i47.7698>.

⁴ Aadyaa Shukla Tiwari & Professor Arunima G, “Citizenship Amendment Act (2019): Indian Youth’s Views” 5 *Int’l J. Soc. Sci. & Econ. Rsch.* 1988, (2020), <https://doi.org/10.46609/ijsser.2020.v05i07.022>.

⁵ Nikhil E, “The Citizenship (Amendment) Act, 2019 (CAA) Conundrum” 2020 *SSRN Elec. J.*, <https://doi.org/10.2139/ssrn.3598965>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

The idea of protecting persecuted communities is deeply embedded in international legal norms. Instruments such as the Refugee Convention and its Protocol recognize persecution based on religion, race, nationality, political opinion, and membership of a particular social group as legitimate grounds for international protection. Although India is not a signatory to the Refugee Convention, its constitutional jurisprudence and statutory practices have historically reflected humanitarian principles in asylum and refugee protection.⁶Persecution, in legal and sociological terms, is not limited to physical violence. It includes -

- Systematic discrimination;
- Denial of civil and political rights;
- Religious repression;
- Economic exclusion;
- Forced displacement; and
- Structural marginalization by state institutions.

When the CAA uses the language of “persecuted minorities”, it implicitly adopts this broader understanding of persecution. However, statutory design contradicts this conceptual breadth by limiting protection to specific religious identities from specific countries, rather than focusing on the fact of persecution itself.⁷This distinction is crucial. A persecution-based model is inherently condition-based (based on vulnerability and harm), whereas the CAA adopts an identity-based model (based on religion and nationality). This transforms a humanitarian category into a selective political category, where protection is not triggered by suffering, but by group identity.

INCLUSION UNDER THE CAA - RECOGNISED PERSECUTED MINORITIES

⁶ Shivli Shrivastava & Dr. Anjali Sharma, “Citizenship (Amendment) Act, 2019 and Refugees in India” 6 *Legal Rsch. Dev.* 11, (2022), <https://doi.org/10.53724/lrd/v6n3.05>.

⁷ Seema, “Citizenship in India and the Citizenship Amendment Act 2019: A Study” 9 *RSCH. REV. Int’l J. Multidisciplinary* 286, (2024), <https://doi.org/10.31305/rrijm.2024.v09.n12.034>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

The communities included under the CAA, Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Pakistan, Afghanistan, and Bangladesh, are undeniably persecuted minorities in these states. Historical and contemporary evidence supports claims of -

- Forced conversions;
- Religious violence;
- Blasphemy prosecutions;
- Structural discrimination;
- Insecurity of life and property; and
- Institutional marginalization.

From a humanitarian perspective, their inclusion reflects a legitimate protective rationale. The State's recognition of their vulnerability is both ethically and politically defensible. The CAA, therefore, cannot be dismissed as entirely illegitimate; rather, it must be understood as a partial humanitarian project.⁸In this sense, the Act constitutes a positive governmental intervention aimed at correcting historical injustices and providing refuge to vulnerable populations. The recognition of persecution as a valid ground for differential treatment aligns with constitutional doctrines that permit reasonable classification when it is based on intelligible differentia and rational nexus with the objective of the law.

THE ISSUE OF SELECTIVE PROTECTION

The central constitutional and normative problem arises not from who is included, but from who is excluded. Several persecuted communities remain outside the statutory scope of the CAA, despite facing severe and systematic persecution. The Rohingya community has faced ethnic cleansing, mass displacement, statelessness, and violence in Myanmar. Their persecution is

⁸ Soumya Saha, "Citizenship (Amendment) Act, 2019 and the Reconfiguration of India's Citizenship Regime" 4 *J. Contemp. L. & Soc'y* 187, (2024), <https://doi.org/10.18311/jcls/2024/v1i4/48931>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

internationally documented and recognized by global human rights institutions. Yet they remain excluded from the CAA framework.⁹

Ahmadiyyas in Pakistan face institutionalized religious persecution, including constitutional exclusion, criminalization of religious practice, and targeted violence. Despite fitting squarely within any reasonable definition of “persecuted minorities”, they are excluded due to their religious classification as Muslims. Tamil minorities in Sri Lanka have historically faced ethnic persecution, displacement, and violence, particularly during and after the civil war. Many sought refuge in India, yet they remain outside the statutory framework of the CAA. These exclusions expose a structural contradiction; persecution is acknowledged as a justification but not applied as a principle. Instead, protection is filtered through selective identity categories.

STATE PROTECTION THROUGH SOPs - FRAGMENTED HUMANITARIANISM

Interestingly, the Indian State itself tacitly acknowledges the persecution of excluded communities through executive mechanisms. Certain groups, such as Rohingyas and other vulnerable migrants, are afforded limited protection through Standard Operating Procedures (SOPs) issued by Ministry of Home Affairs. These SOPs provide conditional humanitarian safeguards, documentation mechanisms, & procedural protections against arbitrary detention and deportation.¹⁰ This creates a dual structure of protection, statutory protection under the CAA for selected groups; and executive protection through SOPs for excluded groups.

Such a model reflects administrative recognition of persecution without legislative recognition. The State, therefore, accepts the vulnerability of these communities in practice, while denying them formal statutory inclusion. This fragmentation weakens the coherence of India’s humanitarian protection framework and produces legal uncertainty for vulnerable populations.

The selective construction of “persecuted minorities” transforms the CAA from a humanitarian instrument into a selective protection regime. This undermines -

- The universality of humanitarian principles;

⁹ *Id.*

¹⁰ Brij Mohan Dutta, “A critical analysis of Citizenship Amendment Act, 2019 (CAA)” 28 *Int’l J. Bus. Excellence* 505, (2022), <https://doi.org/10.1504/ijbex.2022.127500>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

- Equality-based constitutional ethics;
- Coherence of citizenship jurisprudence; and
- Legitimacy of differentiation based on vulnerability.

If persecution is the moral foundation of the Act, then exclusion of persecuted groups becomes normatively indefensible. The CAA reflects a genuine humanitarian impulse, but a structurally limited execution. It recognizes persecution, but not consistently; it protects vulnerability, but selectively; it affirms humanitarianism, but conditionally. While the inclusion of persecuted minorities is a positive step, the exclusion of other persecuted communities exposes a deep normative inconsistency. Rather than rejecting the Act entirely, a more constitutionally coherent approach would involve expanding and redefining the category of ‘persecuted minorities’ to ensure that protection is grounded in vulnerability rather than identity.¹¹

CONSTITUTIONAL EQUALITY AND THE LOGIC OF CLASSIFICATION

At the heart of the constitutional debate surrounding the CAA lies Art. 14 of the Constitution of India, which guarantees equality before the law and equal protection of the laws. Indian constitutional jurisprudence does not prohibit classification per se; rather, it permits reasonable classification provided two conditions are satisfied -

- The classification must be founded on an *intelligible differentia*.
- The differentia must have a *rational nexus* with the object that is sought to be achieved by the law.

The State has justified the CAA’s classification on the basis of religious persecution in Islamic-majority neighboring states. On the surface, this appears to satisfy the test of intelligible differentia. However, constitutional validity is not determined merely by the presence of classification, but by the consistency and rationality of the classification in relation to the stated

¹¹ Prabjot Kaur et al., “Indian citizens sentiment classification on Citizenship Amendment Act 2019” 2023 *OPSEARCH*, <https://doi.org/10.1007/s12597-023-00626-3>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

objective.¹²If the stated objective is the protection of persecuted minorities, then persecution must function as the operative criterion. However, the structure of the Act reveals that religion and nationality operate as primary filters, while persecution becomes a secondary justification. This inversion weakens the rational nexus between classification & objective of legislation.

In effect, the CAA constructs persecution as a derivative category, rather than a foundational one. Protection is not triggered by evidence of vulnerability or harm, but by identity membership. This shifts the law from a vulnerability-based model to an identity-based model of protection, which is constitutionally more difficult to justify under Art. 14.¹³A vulnerability-based model of citizenship protection focuses on structural marginalization, risk of harm, statelessness, denial of basic rights, and systematic discrimination. An identity-based model, in contrast, focuses on religious identity, ethnic identity, national origin, and group membership.

The CAA formally adopts the language of vulnerability (“persecuted minorities”) but substantively implements an identity-based framework. This creates a conceptual mismatch between justification and implementation. Under vulnerability-based framework, Rohingyas, Ahmadiyyas, Sri Lankan Tamils, and other excluded groups would clearly qualify for protection. Their exclusion thus reveals that the operative logic of the Act is not persecution, but selective identity recognition. This contradiction weakens the constitutional coherence of the Act and exposes it to normative critique not merely on political grounds, but on principled constitutional reasoning.¹⁴

SELECTIVE HUMANITARIANISM AND CONSTITUTIONAL MORALITY

The Indian Constitution is a moral charter grounded in the values of dignity, equality, and justice. The doctrine of constitutional morality, developed through judicial interpretation, requires that state action aligns with the ethical foundations of the constitutional order. Selective humanitarianism, where some persecuted groups are protected and others are excluded without principled justification, conflicts with this moral framework. Humanitarian protection, by its

¹² *Id.*

¹³ Taiyba Khan, “The Citizenship Amendment Act, 2019: A Religion Based Pathway to Indian Citizenship” 2020 *SSRN Elec. J.*, <https://doi.org/10.2139/ssrn.3665743>.

¹⁴ Md Tasnimul Hassan, “The Origin, History and Legality of the Citizenship (Amendment) Act, 2019” 2020 *SSRN Elec. J.*, <https://doi.org/10.2139/ssrn.3571012>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

nature, must be universal in principle, even if limited in practice by capacity and resources. The CAA's structure reflects conditional humanitarianism, where compassion is mediated through political identity filters. This undermines the universality of humanitarian ethics and weakens the legitimacy of the protection regime.¹⁵

The existence of SOPs issued by the Ministry of Home Affairs to protect certain vulnerable migrant communities demonstrates an implicit recognition of persecution beyond the CAA framework. These SOPs provide procedural safeguards, temporary protection measures, identification and documentation mechanisms, and administrative recognition of vulnerability.

However, executive instruments lack the stability, enforceability, and normative authority of statutory law. Protection through SOPs remains contingent, discretionary, and revocable, unlike statutory citizenship rights. This creates a hierarchical protection structure -

- Statutory protection and citizenship pathways (CAA beneficiaries); and
- Administrative protection without citizenship security (SOP beneficiaries).

Such stratification undermines the principle of equal dignity and entrenches differential humanitarian status among persecuted communities.¹⁶

COMPARATIVE CONSTITUTIONAL PERSPECTIVE

Comparative constitutional systems dealing with refugee and asylum protection increasingly adopt condition-based frameworks rather than identity-based frameworks. Modern humanitarian regimes focus on risk assessment, vulnerability profiling, individualized determination, and evidence-based persecution analysis.

This approach avoids categorical exclusions and ensures that protection is linked to harm, not identity. In contrast, the CAA represents a categorical model, where inclusion and exclusion are predetermined by statutory identity filters. This model is administratively efficient but

¹⁵ D. Ananda, "The intersection of Indian citizenship amendment act 2019 and religious persecution" 2 *Discover Glob. Soc'y*, (2024), <https://doi.org/10.1007/s44282-024-00108-x>.

¹⁶ Prabjot Kaur et al., "Correction to: Indian citizens sentiment classification on citizenship amendment Act 2019" 2023 *OPSEARCH*, <https://doi.org/10.1007/s12597-023-00653-0>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

normatively rigid, producing structural injustices through over-inclusion and under-inclusion simultaneously.

A constitutionally robust classification under Art. 14 would require -

- Persecution as the primary classification criterion;
- Religion and nationality as contextual indicators, not determinative filters;
- Inclusion mechanisms based on vulnerability assessment; and
- Flexible statutory categories allowing expansion.

Such a framework would allow the State to retain the humanitarian core of the CAA while eliminating selective exclusions. It would also align statutory protection with executive recognition mechanisms, creating a coherent protection regime.¹⁷The solution is not abolition but expansion. The CAA represents a foundational humanitarian framework that can be constitutionally strengthened through -

- Inclusion of other persecuted communities;
- Recognition of non-religious forms of persecution;
- Incorporation of vulnerability assessments;
- Harmonization with SOP-based protections; and
- Creation of statutory refugee-protection pathways.

This would transform the Act from a selective humanitarian instrument into a comprehensive protection framework.¹⁸

TOWARDS AN INCLUSIVE STATUTORY FRAMEWORK - REDEFINING PROTECTION

¹⁷*Supra* note 13.

¹⁸*Supra* note 13.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

The CAA represents an important shift in India's citizenship jurisprudence by formally acknowledging persecution as legitimate basis for differentiated protection. This acknowledgment itself is normatively significant, as it reflects a humanitarian orientation within the legislative imagination of the State. However, the current statutory structure remains under-inclusive because it adopts a fixed-category model rather than a principle-based model of protection. A principle-based framework would not define protection through rigid identity categories, but through substantive vulnerability criteria. Such criteria would include -

- Systematic discrimination;
- Religious or ethnic repression;
- Statelessness or denial of nationality;
- Forced displacement;
- Risk of violence or persecution; and
- Structural exclusion by state institutions.

Redefining "persecuted minorities" around these conditions would ensure that protection flows from harm and vulnerability, not from religious or geopolitical identity. A restructured framework must include communities that are currently excluded but demonstrably persecuted. Their persecution satisfies all internationally recognized criteria of ethnic cleansing, statelessness, and forced displacement. Exclusion of such a group contradicts the humanitarian logic of the CAA.

Institutionalized constitutional exclusion, criminalization of religious practice, and targeted violence make Ahmadiyyas a paradigmatic persecuted minority. Their exclusion reflects identity-based filtering rather than vulnerability-based assessment. Historical ethnic persecution, mass displacement, and refugee flows into India establish clear grounds for inclusion within a

persecution-based framework. Their inclusion would not dilute the humanitarian purpose of the CAA; rather, it would complete it.¹⁹

HARMONISING STATUTORY AND EXECUTIVE PROTECTION MECHANISMS

The coexistence of statutory protection (CAA) and executive protection (SOPs) creates a fragmented humanitarian regime. A coherent legal framework would require -

- Codification of SOP protections into statutory law;
- Uniform protection standards;
- Legal enforceability of humanitarian safeguards; and
- Stability and permanence of protection status.

Executive discretion should function as a supplementary mechanism, not a substitute for statutory rights. Incorporating SOP-based protection into formal legislation would eliminate uncertainty and enhance the dignity of protected communities.²⁰

A reformed statutory framework could adopt a tiered protection model -

Tier 1 - Automatic Protection Categories

Communities facing well-documented, systemic persecution could receive presumptive protection.

Tier 2 - Vulnerability Assessment Mechanism

Other applicants could be assessed through individualized vulnerability and persecution criteria, ensuring flexible inclusion.

Tier 3 - Humanitarian Residency Status

¹⁹ Abhinav Chandrachud, “Secularism and the Citizenship Amendment Act” 2020 *SSRN Elec. J.*, <https://doi.org/10.2139/ssrn.3513828>.

²⁰ Narender Nagarwal, “The Citizenship Amendment Act 2019: An Insight through Constitutional and Secularism Perspective” 2021 *J. Asian & Afr. Stud.* 002190962110588, <https://doi.org/10.1177/00219096211058883>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Temporary protected status leading to permanent residency and eventual citizenship pathways. This model balances humanitarian inclusion, administrative feasibility, and constitutional coherence.

NORMATIVE REFRAMING OF THE CAA

The dominant public discourse frames the CAA as either wholly illegitimate or wholly justified. Both positions oversimplify the legal reality. A more nuanced assessment reveals that -

- The Act is normatively defensible in recognizing persecution as a basis for protection.
- The Act is structurally deficient in selectively applying that principle.
- The solution lies in expansion and reform, not rejection.

The CAA should therefore be understood as a partial humanitarian instrument that requires normative completion. Citizenship is not merely a legal status; it is a vehicle of dignity, belonging, and political recognition. Excluding persecuted communities from statutory protection reinforces hierarchies of worthiness and produces stratified humanitarianism. An inclusive constitutional order must reject the idea that some persecuted lives are more deserving of protection than others. Humanitarianism, to retain moral legitimacy, must be principled, not selective.²¹

CONCLUSION & A WAY FORWARD

The CAA reflects a significant shift in India's citizenship philosophy by recognizing persecution as a ground for protection. This represents a positive governmental initiative grounded in humanitarian concern. However, the Act's selective construction of "persecuted minorities" undermines its normative coherence and constitutional legitimacy. By excluding communities such as Rohingyas, Ahmadiyyas, and Sri Lankan Tamils, while simultaneously offering them limited protection through executive SOPs, the State creates a fragmented and hierarchical protection regime that contradicts the very logic of humanitarianism it claims to uphold.

²¹"Citizenship (Amendment) Act, 2019: The Politicization of Religious Identity in Contemporary India" 9 *Jurnal Politik*, (2023), <https://doi.org/10.7454/jp.v2i2.1147>.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com
<https://www.ijalr.in/>

The future of India's citizenship framework lies not in abandoning the humanitarian project initiated by the CAA, but in deepening and universalizing it. A redefinition of "persecuted minorities" based on vulnerability rather than identity, integration of executive protections into statutory law, and expansion of inclusion criteria would transform the CAA into a coherent, principled, and constitutionally sound protection regime. Such reform would preserve the positive humanitarian impulse of the Act while eliminating its selective exclusions, thereby aligning India's citizenship law with the foundational values of dignity, equality, and justice that underpin the constitutional order.

