


# CAA will not help persecuted Hindus, Sikhs from neighbouring countries

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March 19, 2024



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The **Citizenship Amendment Rules**, released by the central government on March 11, have proven its critics right. Rather than a humanitarian refugee policy for persecuted people, they create opaque procedures that do not provide legal safeguards for asylum seekers in India.

These Rules are meant to implement the Citizenship Amendment Act, 2019. The 2019 Act offers routes to Indian citizenship for non-Muslim “illegal migrants” who came to India before the cut-off date of December 31, 2014, from Afghanistan, Bangladesh or Pakistan. The Act is under challenge in the Supreme Court for being arbitrary and discriminatory on the grounds of religion, which, if established, would render it unconstitutional.

Even beyond religious discrimination, the newly released Rules show that the CAA is bound to also fail its ostensible beneficiaries. The Rules operate with the same logic that policies like the NRC in Assam have adopted, with terrible consequences for ordinary people who

were compelled to participate. They do not create a judicious, fair and accountable refugee system that protects fundamental human rights. Rather, they are poised to push people into a bureaucratic nightmare of uncertainty and vulnerability.

Under the Rules, those seeking benefits under the CAA will need to provide a document to prove that they are citizens of Afghanistan, Bangladesh or Pakistan, and entered India before the cut-off date. It is not difficult to imagine that those applicants, who fled persecution before 2014, would find it difficult to procure or present such documents. Inevitably, there will be situations where they have lost such documents.

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Potential applicants may have been compelled to damage these documents for fear of being further victimised based on their nationality after their migration. Applicants who arrived and resided unlawfully are also unlikely to possess the listed documents that prove the date of entry into India.



The advertisement features a red and white background. On the left, there is a stack of 'UPSC ESSENTIALS' books and a smartphone displaying the app interface. The central text reads 'Get 25% Discount ON UPSC Express SUBSCRIPTION'. On the right, there is a dashed box containing the text 'USE CODE: STUDENT25' and a red 'BUY NOW' button.

Recent global trends show that governments often demand asylum seekers fulfil onerous documentary burdens to establish fear of persecution. This leaves them tangled in delays and rejections. It has been widely observed that asylum seekers do not possess enough documents to satisfy state authorities.

Refugee law experts, for example, have shown that refugees in Australia face a higher burden of proof than even criminals. There are several cases of Australian authorities demanding that Afghan asylum seekers produce state documents, despite the well-known fact that Afghanistan's documentation system has collapsed. South Asians seeking asylum in the United Kingdom face constant suspicions regarding the authenticity of their documents. Consequently, these countries have considerable backlogs of asylum applications, and cases take between one to three years to conclude with no right to work for asylum seekers. Australia and the UK have been criticised for arbitrary and regressive policies that leave vulnerable asylum seekers in undignified conditions and even indefinite detention.

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Over-reliance on documents is a major reason for these conditions. The new citizenship rules, rather than heeding these warnings from international experience, make documents central to the process.

This documentary logic is only the tip of the problem. The opaque bureaucratic system is the worst offender. The Rules provide that state-level Empowered Committees and District Level Committees will receive and process applications.

The Empowered Committee has to be convinced, after “making such inquiries as it considers necessary”, that the applicant is “suitable”, “fit and proper”. But the Rules provide no meaningful guidance and procedures for these committees. The mandate of the Empowered Committee has not been laid down beyond the responsibility of generally ascertaining the suitability of the applicant. It remains debatable if the Committee will merely presume “persecution” for non-Muslim applicants, which is a qualification for citizenship under the CAA, or conduct an inquiry.

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It is unlikely that these committees are fit for purpose, not least because they are composed of administrators like census, postal and intelligence officials, and not those familiar with asylum claims. This composition shows that this system is not conceived as an asylum system for vulnerable people fleeing persecution.

It is also unclear what the role of the committees will be in adjudicating documents provided by the applicants. For example, District Level Committees are expected to assess the “veracity” of documents but the Rules do not indicate how this will be done. Among the documents to prove nationality, applicants can submit “any document” issued by the country of origin. But this would imply that the committee will adjudicate the relevance and authenticity of these documents. This appears to be logistically demanding if not impossible task for Indian authorities, especially if the issuing authorities in the country of origin are obscure or have ceased to exist. It may lead to delays or exclusion from Indian citizenship with no safeguards protecting them from detention and further marginalisation.

Applicants are also expected to submit “eligibility certificates” from “locally reputed community institutions” as proof of religious and national identity. It is uncertain how the committees will assess these certificates, or if they will follow a fair and transparent procedure. The complete lack of guidelines suggests that the Rules are likely to be implemented arbitrarily.

The Committees' lack of transparency and fairness in functioning brings to mind the patently arbitrary Foreigners Tribunals that have deprived over 1.5 lakh people of citizenship in Assam. These tribunals — like the Empowered Committee — have operated without any legislated procedure and separately from ordinary courts. Rather than creating another freewheeling body, the Rules should have clearly instituted independent and accessible judicial remedies for applicants, including the rights of appeal to higher courts.

Most concerning, the CAA Rules expect — and their implementation on the ground will inevitably involve force — people to declare themselves as “illegal migrants” in order to be eligible for Indian citizenship. Once they do so, they are bound to become exposed to the arbitrary powers that the state exercises in relation to foreigners, despite government assurances. They may be forced to do this only to face a bureaucratic maze.

The government could have learnt from good international practices that are not narrowly built around state-issued documents, but accept wide-ranging evidence including testimonies to show fear of persecution. The Indian system could have followed respected asylum adjudication that involves trained professionals who exercise their powers judiciously, and has mechanisms for appeals and revision.

It is clear that the Rules — despite all the political fanfare — fail to establish a fair and transparent asylum system for its proclaimed beneficiaries. The framing of the CAA and its Rules makes it clear that the government sees them not as a mechanism for addressing refugee rights but just another administrative formality.

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