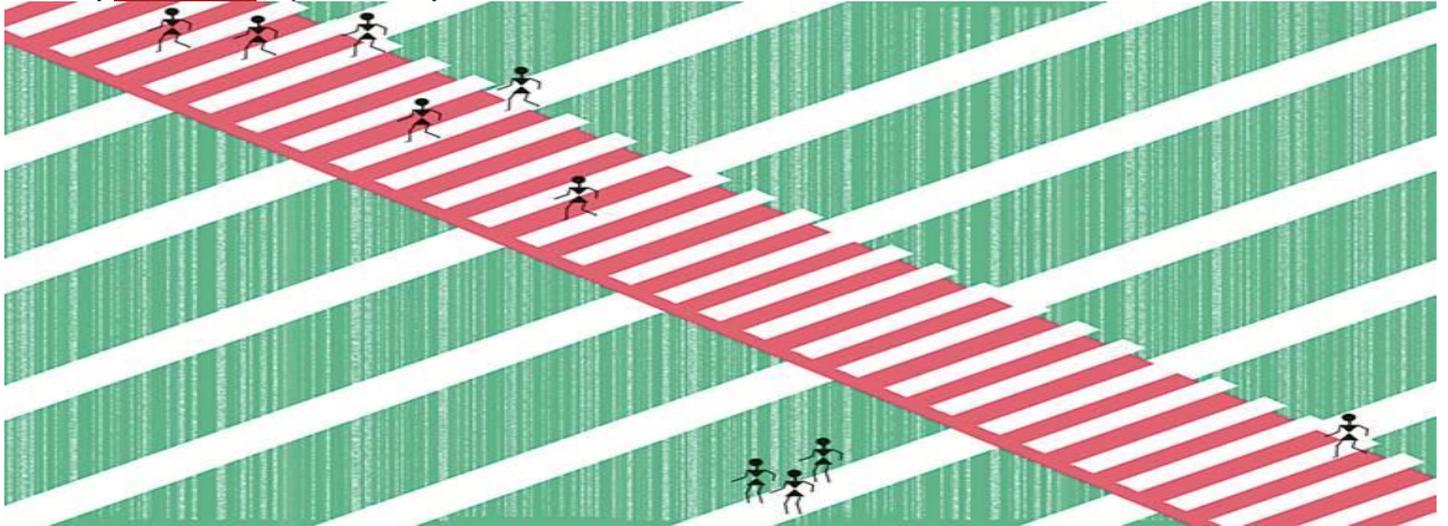


It is a huge mistake to dismiss the opposition to CAA as anti-national, anti-Hindu or anti-democratic

Non-violent protests are the most democratic form of political engagement. They demonstrate that the youth of India are deeply committed to the fundamental values of constitutionalism

Written by [C Raj Kumar](#) | Updated: January 16, 2020



The resistance across the country, particularly among the youth and the students across university campuses is motivated by a deep commitment to constitutionalism and democratic values. (Illustration by C R Sasikumar)

India is facing a significant challenge that will test its commitment to constitutionalism and democratic values. Parliament recently passed the Citizenship Amendment Act (CAA) that has raised important constitutional questions. However, what is at stake is more than just the constitutionality of the Act.

The CAA provides that migrants from certain communities will not be treated as “illegal migrants” for the purposes of the Passport Act and the Foreigners Act, if they meet four criteria: One, they came to India before December 31, 2014; two, the central government has exempted them from the Passports and Foreigners Acts; three, they are from Afghanistan, Bangladesh or Pakistan, and; four, they belong to any one of the six religious communities, Hindus, Sikhs, Christians, Parsis, Jains or Buddhists. As per the information of the government of India, only about 31,313 people fulfil the above four criteria and have stated, when they first entered India, that they had come to the country to escape religious persecution. Only these people will actually benefit from this law.

But the CAA might not pass constitutional scrutiny because of the following reasons. One, there is no intelligible differentia. The CAA identifies persons belonging to six religious communities and privileges them over other religions — especially Islam. This doesn’t qualify the test of reasonable classification and the law will not pass constitutional scrutiny, having specifically left out Muslims. It is an example of discrimination — the grant of citizenship on the basis of religion was rejected by the framers of the Constitution.

Two, the classification doesn't have a rational relation to the object. The classification in the Act has been ostensibly done to provide the privilege of citizenship to those who have been affected by religious persecution. But both the selection of the countries and the inclusion of religions do not have a rational relationship with this objective. There is enough evidence to prove that there are people practising other religions, who suffer from religious persecution in these three countries as well as in other countries in South Asia. In fact, addressing the problem of religious persecution would have been a legitimate criterion for legislation — instead of using a particular religion or country of origin as the basis of granting citizenship.

Three, arbitrariness is antithetical to equality. Article 14 of the Constitution provides for “equality before law or equal protection of the laws within the territory of India”. The Supreme Court has emphasised the importance of non-arbitrariness to pass the test of equality. In this case, the selection of the countries, the identification of the religions and more importantly the selective exclusion of Muslims, is a clear violation of Article 14 . Numerous judgments of the Supreme Court have underscored this and the Court has been unequivocal in its commitment to the jurisprudential foundations of this principle.

Four, the CAA violates the basic structure of the Constitution. An important doctrine of Indian constitutional law is that the basic structure of the Constitution is unamendable. The power of Parliament to amend any provision of the Constitution and to pass any legislation is plenary, provided the basic structure and framework of the Constitution is not altered. In short, no amendment to the Constitution can change India from being a Republic. Over the years, the Supreme Court has listed what it regards as part of the Constitution's basic structure and framework, including its power of judicial review, federalism and secularism. The doctrine of unamendability of the Constitution's basic structure has now entrenched fundamental values of constitutionalism by imposing limits on the sovereign power of Parliament. The CAA, by omitting Islam, violates the principle of secularism, which the Court has held is part of the basic structure of the Constitution.

While these are four good reasons for the CAA to be declared unconstitutional, there are other reasons as to why this was unnecessary and unwarranted. First, the CAA has undermined the concept of federalism. Given that the Act needs to be implemented by the state governments, and several chief ministers have expressed their disapproval, effectively implementing this law will be difficult. The Kerala legislative assembly has, in fact, passed a resolution to this effect.

Second, the CAA has affected the collective consciousness of the Indian identity. While, globally, identity politics is nothing new, India has steadfastly adhered to the values of pluralism. But the CAA, in its existing form, places religious identity over other identities for granting citizenship — that needs to be rejected.

Finally, the non-violent opposition to the Act is part of our democratic culture. Most of the protests and the opposition to the CAA have been non-violent, democratic, inclusive and pluralistic. The violence that has happened on account of the protests is unacceptable in any democratic society, committed to the rule of law. It is a huge mistake to dismiss the opposition to the Act as anti-national or anti-Hindu or anti-democratic.

The resistance across the country, particularly among the youth and the students across university campuses is motivated by a deep commitment to constitutionalism and democratic values. It has even been largely devoid of participation by political parties. In fact, non-violent protests are the most democratic form of political

engagement and this demonstrates the fact that the youth of India are deeply committed to the fundamental values of constitutionalism and democratic governance.

So, what is the way forward? There is a strong case for the CAA to be declared unconstitutional by the Supreme Court. This outcome can be avoided, if Parliament revisits the Act and includes all religions and the beliefs of India's tribal population who are animists and do not adhere to any of the major faiths in the country. Doing this will send the right message to all citizens across India, including some 200 million Muslims and some 104 million tribals, that it was never the intention of the government to discriminate against anyone on the basis of religion, faith or belief.

This article first appeared in the print edition on January 16, 2020 under the title 'Don't call them anti-national'. The writer is founding vice chancellor of O P Jindal Global University and founding dean of Jindal Global Law School.