



Q/A The CAA and the National Population Register have a revised questionnaire that includes parentage
REUTERS/ADNAN ABIDI

STATES OF MATTER

The right to belong

The amendment to the Citizenship Act is neither about refugee rights nor an expression of a long-suppressed humanitarian instinct



SUKUMAR MURALIDHARAN

India enters its eighth decade as a republic amid bitter acrimony over belonging. Abuses of rights and exceptions to the promises of a republican Constitution have stirred anxieties over the years. Now at tipping point, they have triggered turmoil over an issue as basic as citizenship.

As protests continue across the country, it is important to understand what the 2019 amendment to the Citizenship Act is not.

For one thing, it is not about refugee rights. Neither is it expression of a long-suppressed humanitarian instinct. The text of the Citizenship Amendment Act (CAA) does not once use the word “refugee”. India is not a signatory to the Refugee Convention, extended without geographical limitations in 1967 after its formulation in 1951 to address dislocations from World War II in Europe. India, indeed, does not have any manner of law for refugees, only exceptions that are decreed by executive fiat to the definition of an “illegal migrant”.

Refugees are identified as exceptions to the provisions of immigration law. It may appear an ungenerous approach, but meets a requirement of the global convention, since the very identity of refugees puts them in breach of immigration laws in countries of arrival. There is a minor potential for violation of the non-discrimination clause in India’s treatment of refugees from Tibet and Sri Lanka, numerically the most significant by far, on a different footing. For these two categories, India retains control over all processes from registration to voluntary repatriation, where applicable. Refugees from every other country are registered with the UN High Commissioner for Refugees.

In this mildly conflicted scenario, the CAA comes as a rude intrusion, with its substantive change in the definition of “illegal migrant”. Persons from three neighbouring Muslim-majority countries, subject to being from six other identified religious groups, would be exempted from being classed as illegal mi-

grants. They would also be given the option of an accelerated pathway towards Indian citizenship.

While introducing the Bill in Parliament, Union home minister Amit Shah spoke of a “minority” from neighbouring countries of Muslim predominance, as a “reasonable classification”, permitting a special provision without violating the equality stipulation in Article 14 of the Indian Constitution. This seeming concern for minorities in countries where Islam is the dominant faith contrasts sharply with the consistent denial by the Bharatiya Janata Party (BJP) and its larger political family of any distinct status for India’s own minorities.

The BJP’s is an extreme view that has moved mainstream. But even among unprejudiced minds in India’s Constituent Assembly, the term “minority” was regarded with suspicion. A first draft of the Constitution conceived of strong minority rights guarantees as necessary to ensure equality before the law. In the light of Partition and other events that ensued, minority rights were set aside as a superfluity, since equality before the law was sufficient in itself as a guarantee of fair treatment. Equality in the Indian Constitution trumped identity.

An individual at birth gains an identity through various rituals specific to the community. This does not yet give her the full range of entitlements promised by the State, since citizenship is conferred through a dry bureaucratic process. A survey in 2000, three decades after India made birth and death registrations mandatory, found that a mere 54 per cent of all births that year had been registered.

Let’s step back and look a bit more closely at that statistic: Almost half the population cohort born at the turn of the century, all of

whom would have attained voting age by the 2019 general election, were devoid of the evidence testifying to their arrival on earth. Their identity as citizens eligible to vote would have been negotiated along the way, each person concluding a separate bargain with local authorities. It is conceivable that some may have failed to clear the threshold for eligibility imposed by an indifferent and sometimes hostile bureaucracy.

Matters have improved only marginally since the millennium dawned. A “Rapid Survey of Children” carried out by the ministry of women and child development found that only 72 per cent of births had been registered over the year 2013-14. Critically, only 37 per cent of the sample could produce a birth certificate

when asked. In both respects, populations of both the Hindu and Muslim faiths were fractionally below the national average, marking one dubious respect in which the Indian State has delivered on its promise of equality before the law. The average was pulled up by smaller minority faiths such as Christianity, Jainism, Sikhism and neo-Buddhism.

The CAA and the National Population Register, to be compiled in 2020 with a revised questionnaire that includes parentage, constitute a filter through which undocumented persons of particular faiths could be saved from a limbo of statelessness. For people of the faith that is the CAA’s singular omission, disenfranchisement and disentanglement are a very concrete prospect. The second-class status evident most recently in the murderous rampage unleashed by Uttar Pradesh chief minister Yogi Adityanath has thus far been normalised by the majoritarian will. It could soon be sanctified by law.

Disenfranchisement and disentanglement are a very concrete prospect