

HINDU AMERICAN FOUNDATION
910 Seventeenth St., Suite 316A
Washington, D.C. 20006
www.hafsite.org | 202.223.8222



Hindu American Foundation (HAF)
Written Statement for the Record

Suhag A. Shukla, Esq.
Executive Director

Samir Kalra, Esq.
Managing Director

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The Hindu American Foundation (HAF) is a non-partisan, 501(c)(3) advocacy organization for the Hindu American community. The Foundation educates the public about Hinduism, speaks out about issues affecting Hindus worldwide, and builds bridges with institutions and individuals whose work and values align with that of HAF. HAF focuses on human and civil rights, education, and community building.

The Hindu American Foundation is not affiliated with any religious or political organizations or entities. HAF seeks to serve Hindu Americans across all sampradayas (Hindu religious traditions) regardless of race, color, national origin, citizenship, caste, gender, sexual orientation, age and/or disability.

Since its inception, HAF has made human rights advocacy one of its main priorities and is the only Hindu American organization to publish an annual human rights report comprehensively detailing human rights violations against Hindu and other minorities globally. The Foundation regularly hosts Congressional briefings on South Asia, actively engages with religious freedom advocates on the International Religious Freedom (IRF) Roundtable, participates in domestic and international fora on human rights, conducts on the ground fact-finding missions, and provides humanitarian assistance to refugee communities here and abroad.

HAF has worked closely with persecuted religious minorities from Afghanistan, Bangladesh, Bhutan, and Pakistan, and has conducted fact-finding missions to Bangladesh, Nepal, and Pakistani Hindu refugee camps in India. In the Indian city of Jodhpur, for instance, HAF has visited, volunteered in, and sponsored medical clinics at refugee camps for Pakistani Hindus. The conditions in these camps are deplorable and bureaucratic delays in obtaining legal status for these refugees have left these stateless people bereft of basic needs, even while they have no recourse of return to their original homes and villages. The challenges have been similar for refugees in India that fled religious persecution in Afghanistan and Bangladesh.

Accordingly, HAF respectfully submits the following written statement for the record to provide further context and details on India's recently enacted Citizenship Amendment Act, as well as background information on religious freedom and secularism in India. In addition, the statement provides a brief overview of citizenship laws in other select countries in Asia.

I. Background on Religious Freedom and Secularism in India

As a secular pluralistic democracy, all citizens of India enjoy the same rights and freedoms, regardless of their religious background. India is home to unparalleled linguistic, cultural, and religious diversity. Throughout its history, religion has been an important part of India's culture.



Hindus, a widely diverse populace, comprise a little less than 80 percent of India's 1.3 billion people, while religious minorities encompass a little over 20 percent of the population. In addition, India has the world's second largest Muslim population (approximately 176 million or 14.4 percent), and the world's largest Sikh (1.9 percent) and Jain populations (0.4 percent). There are also substantial numbers of Christians (2.3 percent) and Buddhists (0.8 percent). Smaller communities of Jews, Baha'i, and Zoroastrians have been living in India for hundreds of years.¹

Religious demographics in India are complex, especially when examined regionally. Religious minorities, either as a single community or collectively, comprise majorities in nine states/union territories. Similarly, in many other states, minorities represent significant and influential segments of the population.

Subsequent to India's independence in 1947, the demographics of religious minorities have either increased or remained stable, and there have been no major religious migrations out of the country. For instance, the Muslim population has grown from 9.8% in 1951 to its current level of 14.4%, while the proportion of Christians, Sikhs, Buddhists, and Jains have stayed relatively the same.² Moreover, India is now home to the world's largest Baha'i community, estimated at over 2 million people, and the world famous Baha'i Lotus Temple in New Delhi. India is one of the few countries in the world where Baha'is and Jews have never faced religious persecution.

Secularism in Modern India

India is a secular democracy, but its unique brand of secularism provides unprecedented religious accommodations to its religious minorities unavailable to the majority Hindu population. Until 2018, for instance, the Government of India (GoI) provided a subsidy for 108,000 Muslims to complete the Hajj pilgrimage to Mecca annually, covering airfare, domestic travel, meals, medical care, and lodging assistance. Similarly, from 2012 to 2014, the government spent approximately 300 million dollars on the Hajj subsidy for Muslims. The program was phased out by orders of the Supreme Court, and it only ended early in order to redirect the funds to minority education.³ Justice Aftab Alam stated, "The subsidy money may be more profitably used for

¹ India: Democracy in Diversity, Hindu American Foundation,
https://www.hinduamerican.org/wp-content/uploads/2019/11/HAFN_18_031-IndiaDiversityBrief_r5_web.pdf.

² *Id.*

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<https://timesofindia.indiatimes.com/india/haj-subsidy-ends-funds-to-go-into-minority-education/articleshow/62531624.cms>



uplift of the community in education and other indices of social development."⁴ Under a separate provision, however, \$12.15 million a year is still allocated to assist Hajj pilgrims.⁵

The Gol also has a separate Minorities Affairs Ministry to focus on supporting religious minorities, including Christians, Muslims, Sikhs, Buddhists, and Zoroastrians through education and social empowerment programs. In the 2019-2020 Gol budget, \$641.55 million was earmarked for the Minorities Affairs Ministry to benefit the country's religious minorities.⁶

Additionally, at the state level, several states have reserved quotas for Christians and Muslims for government seats and in the public sector. Moreover, India's Jewish community was recently accorded minority status in the State of Maharashtra, making them eligible for specific benefits, including travel to Jerusalem, completely subsidized by the government. Similarly, Jains have been provided with minority status in the states of Gujarat and Telangana, making them eligible for government grants, scholarships, and other resources, in spite of being one of India's more affluent communities. And Jat Sikhs (the dominant Sikh caste group in Punjab) were granted backward class status by the Punjab government in 2014, making them eligible to receive reserved seats in government jobs.⁷

The Indian constitution and legal system protects religious freedom and ensures equality for all citizens, regardless of religious identity. All religious minorities enjoy autonomy over their institutions and places of worship, free from government intrusion, while many Hindu institutions do not, thus falling victim to politicking, governmental corruption, mismanagement, and illegal sale of property.

Christian and Muslim minorities are also provided separate, religion-based personal laws, which many civil rights advocates have criticized as being contrary to the principles of a secular democracy and for adversely impacting women. "Triple Talaq" or the process for instant divorce under Islamic law, for example, was part of the personal law code for Muslims in India, despite it being outlawed in most Muslim majority countries, including Pakistan. "Triple Talaq" left millions of women and children at risk of impoverishment as it lacks any requirements for ex-spouses to pay alimony or child support.⁸

⁴<https://timesofindia.indiatimes.com/india/Abolish-haj-subsidy-in-10-years-Supreme-Court-to-government/articleshow/13059420.cms?from=mdr>

⁵ *Id.*

⁶ "Minority Affairs Ministry Budget Allocation Same As 2018-19," July 5, 2019, The Economic Times, <https://economictimes.indiatimes.com/news/economy/policy/minority-affairs-ministry-budget-allocation-same-as-2018-19/articleshow/70096125.cms>.

⁷ India: Democracy in Diversity, Hindu American Foundation, https://www.hinduamerican.org/wp-content/uploads/2019/11/HAFN_18_031-IndiaDiversityBrief_r5_web.pdf.

⁸ *Id.*



In response to the negative social impact on Muslim women and children, the Triple Talaq bill was signed into law as the Muslim Women (Protection of Rights on Marriage) Act, 2019 on August 1, 2019. The bill was welcomed and lauded by Muslim women’s rights groups across the country.⁹

Given the challenges that discriminatory provisions of separate personal laws such as Triple Talaq can pose, a Uniform Civil Code, or a common set of laws that apply equally and neutrally to all citizens, regardless of religious identity would better provide equality and justice for all of India’s citizens. This would also be consistent with the form of secularism prevalent in the U.S., where the government does not provide separate religious laws or favoritism to any religious groups.

Accordingly, the abolition of Triple Talaq and other recent legislative initiatives, such as the abrogation of Articles 370 and 35A (Article 370 exempted the former state of Jammu & Kashmir from numerous civil rights laws passed by the Indian Parliament absent the state’s formal adoption of such laws) is a demonstration of India’s commitment to ensuring equal protection to all of its citizens regardless of religion, gender, sexual orientation, or class.

II. The Status of Refugees in India

Throughout its history, India has served as a refuge for persecuted religious groups or those fleeing violence from around the world. Some Jewish communities in India trace their roots back over 2500 years, while others over the subsequent millennia, fleeing persecution from various parts of the Near and Middle East. Zoroastrians arrived around 700 AD (they’re now known as Parsis and/or Iranis in India), fleeing persecution in their native land of Persia, and integrated seamlessly into Indian society, while practicing their faith fully.

The Dalai Lama and Tibetan Buddhists sought refuge in India after escaping Chinese oppression and established the Tibetan government in exile in the northern city of Dharamsala. Many Rohingya Muslims from Myanmar and Afghan Muslims have found safe haven in India as well. As recently as 2018, India extended citizenship to exiled Baloch leader Brahumdagh Bugti and several others from Pakistan.

Religious minorities from Pakistan, Bangladesh, and Afghanistan have also trickled into India for decades to escape state sanctioned religious persecution, violence and discrimination at the

⁹ *Id.*



hands of non-state actors. There are now an estimated 200,000 refugees from Afghanistan, Bangladesh, and Pakistan living in India without legal status.¹⁰

In spite of meeting the criteria for refugee status under international law due to their well-founded fear of persecution and their respective government’s failure to protect them, they were not officially recognized as refugees by either the Indian government or the United Nations High Commissioner for Refugees. Without a formal refugee policy in place in India, these minority groups fleeing religious persecution were caught in legal limbo. As a result of their inability to obtain legal status in India, they have struggled to obtain employment and educational opportunities, access to government benefits, and permanent living accommodations.

Refugees from Afghanistan

Notwithstanding a recent decline, Afghanistan is considered one of the oldest centers of Hindu civilization and was once home to a thriving Hindu population.

In the late 1970s, there were approximately 200,000 Hindus and Sikhs residing in Afghanistan, who played an important role as traders and entrepreneurs in several parts of the country. According to the Afghanistan Independent Human Rights Commission (AIHRC), however, the civil war forced the majority of Hindus and Sikhs to emigrate from Afghanistan, and they were forcibly deprived of their lands.¹¹

Under the Taliban’s reign, Hindus faced pervasive discrimination and were forced to publicly identify themselves by wearing a distinguishing yellow stripe on their arm (or yellow markings on their forehead, or a red cloth according to some sources), similar to the Jews in Nazi Germany. The Taliban placed other restrictions on the religious freedom of minorities, including the prohibition of cremation, an essential funeral rite for most Hindus and Sikhs. Pressure to convert to Islam was also prevalent under the Taliban. Following the fall of the Taliban and the establishment of a new government, Hindus still endured violence, harassment, political marginalization, economic and social discrimination, and legal inequalities, and were unable to freely and openly practice their religion.¹²

The vast majority of Afghan Hindus and Sikhs fled Afghanistan to escape persecution and discrimination over the past several decades and now live as refugees in other countries. In

¹⁰ “Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017,” Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.

¹¹ *Id.*

¹² *Id.*



2014, an additional 500 Hindus and Sikhs fled Afghanistan due to increased discrimination and security fears with the reduction in international troops.¹³

Due to its geographic location and spiritual connection for both Hinduism and Sikhism, India has been the most common destination for Afghan Hindu and Sikh refugees. Between 25,000 and 50,000 (estimates vary) Afghan Hindus and Sikhs migrated to India in the 1990s to escape discrimination and violence. Estimates vary widely on how many of these refugees have received citizenship and how many are still waiting to receive citizenship. At least one community based organization working with Afghan Hindu and Sikh refugees assert that 18,000 people are still waiting for citizenship.¹⁴ Regardless of the exact numbers, there are thousands of Afghan refugees waiting to receive citizenship in India.

Many of the refugees that do not have official refugee status or citizenship live on the margins of Indian society and have been unable to find consistent employment, amongst other challenges. In fact, according to Afghan community sources, the inability to find employment has forced some Afghan Hindus and Sikhs to return to Afghanistan in the past few years, though the security situation has now led them to once again migrate back to India.

In May 2016, the Afghan Minister of Justice indicated that many Hindus and Sikhs submitted applications for renunciation of Afghan citizenship.¹⁵ And in 2018, a delegation of 17 Hindus and Sikhs, including the only Sikh running for elected office, was targeted by a suicide bomber and killed en route to a meeting with the country's president. The Islamic State (IS) subsequently claimed responsibility for the assassination.¹⁶

While facing several challenges and struggles in India without citizenship, recent government policy changes have provided hope for religious minorities who fled Afghanistan. In July 2016, for instance, the Indian government announcement plans to reduce the fees for citizenship applications from 15,000 rupees to 100 rupees for the refugees and stated that it would start naturalizing Afghan Hindus and Sikhs. The government also announced plans to allow those on long-term visas to buy property, open bank accounts and obtain welfare cards, as well as move freely within the country.¹⁷

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Athayi, Abdullah, "Report on Citizenship Law: Afghanistan," March 2017, European University Institute, https://cadmus.eui.eu/bitstream/handle/1814/45933/GLOBALCIT_CR_2017_09.pdf.

¹⁶ <https://www.nytimes.com/2018/07/01/world/asia/afghanistan-school-attack-nangarhar.html>

¹⁷ "Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017," Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.



Refugees from Pakistan

Human rights and religious freedom conditions continue to deteriorate at an unprecedented rate in the Islamic Republic of Pakistan. Pakistan's widespread violation of human rights and its tolerance of human rights violations by non-state actors demonstrate a blatant disregard for international human rights norms and its obligations under human rights treaties and conventions.

In December 2018, Pakistan was labeled as a Country of Particular Concern by the U.S. State Department for its "systematic, ongoing, [and] egregious violations of religious freedom"¹⁸ against its religious minorities including Hindus, Sikhs, Christians, Ahmadiyya Muslims, and Shia Muslims.

In order to escape these rampant religious freedom violations, Hindus, Sikhs, Christians, and Ahmaddiya Muslims have increasingly fled the country in the last several years. As of 2013, an estimated 100,000 Pakistani Christians, Hindus, and Sikhs had fled their home country. Nearly 12,000 Pakistanis (mainly Christians) filed asylum claims in Thailand, and an estimated 10,000 Ahmadiyyas have sought asylum in Germany, U.K., and the U.S.¹⁹

According to Hindu community leaders, politicians, and NGOs in Pakistan, there are an estimated 5,000 Pakistani Hindus leaving for India annually.²⁰ A large segment of the refugees are from the Bhil and Meghwar communities, known as scheduled castes or Dalits. These two tribes have historically lived on both sides of the Indo-Pakistan border, and prior to partition of the Indian subcontinent, frequently travelled between western Rajasthan (in India) and southern Punjab and Sindh (now in Pakistan), in search of cultivated agricultural land.²¹

The majority of refugees have settled in Rajasthan in approximately 400 camps, with an estimated 1,500–2,000 Pakistani Hindus settling there annually, according to local NGOs in the city of Jodhpur. Additionally, there are significant numbers in Punjab, Haryana, Gujarat, Madhya

¹⁸ Religious Freedom Designations, December 11, 2018, U.S. Department of State, <https://www.state.gov/religious-freedom-designations/>.

¹⁹ "Pakistan Assessment 2016, SATP, <http://www.satp.org/satporgtp/countries/pakistan/index.htm>; "Thousands of Ahmadi Fleeing Persecution in Pakistan and Seeking Asylum Overseas," September 4, 2016, Rabwah Times, <https://www.rabwah.net/thousands-of-ahmadis-fleeing-persecution-in-pakistan-and-seeking-asylum-overseas/>.

²⁰ "Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017," Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.

²¹ "Victims of History: The Untold Story of Pakistani Hindu Refugees India," March 31, 2013, Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2020/03/Victims-of-history-untold-story-pakistani-hindu-refugees-india.pdf>.



Pradesh, and the capital of New Delhi. In Madhya Pradesh, for instance, there are 35,000 Pakistani Hindus according to the All India Sindhi-Hindu Society.²²

The last time a large number of refugees from Pakistan received citizenship was in 2005, when 13,000 Pakistani refugees obtained Indian citizenship.²³

Starting in 2014, the Indian government began taking several steps to address the influx of Pakistani Hindu refugees, including relaxing citizenship requirements and providing long-term visas. In the last three years, however, only an estimated 2,447 refugees were granted citizenship, 1,310 of which were in Rajasthan.²⁴

Without citizenship these vulnerable populations live in makeshift camps that lack rudimentary facilities, suffer from severe health conditions, and struggle to obtain employment, education, and access to government benefits.

Refugees from Bangladesh

Bangladesh was founded as a secular republic in 1971, but in 1988, the Bangladeshi constitution was amended and declared Islam the official state religion. The Bangladesh Supreme Court affirmed that amendment in 2016.²⁵

Once celebrated for its religious tolerance, Bangladesh has now become a battleground of ideas between an increasingly vocal and powerful collection of Islamist groups, and the vast majority of Bangladeshi citizens who still cherish the ideals of secularism and democracy. While numerically smaller, the Islamists who espouse a narrow sectarian agenda and seek to create a theocratic state with limited rights for minorities and women, are rapidly gaining ground.

²² "Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017," Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.

²³ "Victims of History: The Untold Story of Pakistani Hindu Refugees India," March 31, 2013, Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2020/03/Victims-of-history-untold-story-pakistani-hindu-refugees-india.pdf>.

²⁴ "Celebrations in Rajasthan Over CAB as Over 25000 Pak Migrants to Get Citizenship Immediately," December 13, 2019, The Economic Times, <https://economictimes.indiatimes.com/news/politics-and-nation/celebrations-in-rajasthan-over-cab-as-over-25000-pak-migrants-to-get-citizenship-immediately/articleshow/72500751.cms?from=mdr>.

²⁵ "Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017," Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.



Accordingly, the plight of religious minorities and atheists has become increasingly precarious as there has been a marked increase in religiously motivated violence coinciding with the rise of domestic and international Islamist terror groups.

Once comprising 31% of the population (1947), the Hindu population has steadily declined to less than 9% today, based on official government estimates. Dr. Abul Barkat of Dhaka University projects that Hindus will be nonexistent in Bangladesh in the next three decades if their population continues to decline at the current rate.²⁶

This precipitous decline is due to both bouts of mass killings and displacements, as well as low-level violence and baseline discrimination. During Bangladesh's 1971 War of Independence from Pakistan, Islamist militias, in conjunction with the West Pakistani military, were responsible for the massacre of an estimated two million East Pakistani citizens, the ethnic cleansing of 10 million ethnic Bengalis (mainly Hindus) who fled to India, and the rape of 200,000 women (some estimates put the number of rape victims at closer to 400,000) in the first documented use of rape camps as a tool of war.²⁷

Similarly, following the 2001 elections, Islamist groups, such as Jamaat-e-Islami (JeI) along with the Bangladesh Nationalist Party, unleashed a large-scale systematic campaign of violence targeting the Hindu community that lasted more than 150 days, involved 18,000 incidents of major crimes, and led an estimated 500,000 Hindus to seek refuge in India.²⁸

Moreover, in 2013, JeI orchestrated violent mass riots in response to convictions of their leaders for committing war crimes during the 1971 War and systematically attacked Hindus and Buddhists, resulting in the destruction of nearly 50 temples and 1,500 homes. Subsequently, from November 2013 - January 2014, Islamists attacked, damaged, or destroyed 495 Hindu

²⁶ Hasan, Kamrul, "No Hindus will be left after 30 years," November 20, 2016, Dhaka Tribune, <http://www.dhakatribune.com/bangladesh/2016/11/20/abul-barkat-632-hindus-left-country-day/>.

²⁷ Bass, Gary Professor, "The Blood Telegram: Nixon, Kissinger, and a Forgotten Genocide," Raveendra, Bhavani, "Bangladesh war crimes tribunal in the works," April 20, 2010, Center for Human Rights and Humanitarian Law, <http://hrbrief.org/2010/04/bangladeshwartribunal/>; Hossain, Anushay, "The Female Factor: Bangladesh Protest Breaks Boundaries," February 13, 2013, Forbes, <http://www.forbes.com/sites/worldviews/2013/02/13/the-female-factor-bangladesh-protests-break-boundaries/>.

²⁸ "Bangladesh: Discrimination and Displacement of Religious Minorities," August 8, 2003, Refugees International, <http://www.refugeesinternational.org/content/article/detail/891/>; "Bangladesh Human Rights Report 2008," Global Human Rights Defence, <http://www.ghrd.org/FilesPage/3343/GHRDReport2008ver5.pdf>; Rahman, M, "25 ministers, MPs complicit," December 2, 2011, The Daily Star, <http://www.thedailystar.net/newDesign/news-details.php?nid=212567>.



homes, 585 shops, and 169 temples.²⁹ Incidentally, the U.S. has for years allowed individuals who have either been accused or sentenced of war crimes in that same war to live in the U.S.³⁰

These incidents from 2013 and 2014, along with perpetual violence and discrimination, have forced thousands of more Hindus and Buddhists to seek refuge in India.

III. India's Citizenship Amendment Act

In an effort to address the plight of the religiously persecuted refugee populations noted above, amendments to India's Citizenship Act were initially proposed in July of 2016, when the Citizenship (Amendment) Bill, 2016 was introduced in the Lok Sabha (Lower House of Parliament). The bill, which failed to advance through the Parliament, sought to ease citizenship requirements for Hindus, Christians, Sikhs, Buddhists, Jains, and Parsis fleeing religious persecution in the Islamic Republic of Afghanistan, the People's Republic of Bangladesh, and the Islamic Republic of Pakistan.

A similar bill, commonly referred to as the Citizenship Amendment Act (CAA), was reintroduced and passed by the Indian Parliament in December 2019. **The CAA removes substantial barriers to legal resettlement and citizenship by granting amnesty for certain minority religious refugees (Hindus, Buddhists, Jains, Sikhs, Parsis or Zoroastrians, and Christians) from the Islamic Republic of Afghanistan, People's Republic of Bangladesh, and the Islamic Republic of Pakistan, who sought refuge in India on or before December 31, 2014. It also proposes that illegal entry not be a bar to naturalization for members of these communities, and that the minimum residency requirement of 11 years be reduced to five.** The provisions of the bill on citizenship, however, do not apply, in certain tribal areas in the northeastern states of Assam, Meghalaya, Mizoram, Tripura, Arunachal Pradesh, and Nagaland in order to protect the indigenous, tribal populations there.³¹

The specific mention of adherents of the four Dharmic traditions (Hindus, Sikhs, Buddhists, and Jains) in the CAA is (1) an important acknowledgement of their suffering both in their native countries and in India as they've languished for years in legal limbo in make-shift refugee camps throughout the country; (2) recognition of India as the sacred geography and homeland of these traditions and their respective adherents; and (3) indication of India's efforts to provide refuge to

²⁹ "Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017," Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.

³⁰ <https://www.wnyc.org/story/sentenced-death-bangladesh-war-criminal-lives-new-york/>;
<https://www.bbc.com/news/world-asia-46924329>

³¹ "The Citizenship (Amendment) Bill, 2019," PRS Legislative Research, https://prsindia.org/sites/default/files/bill_files/Citizenship%202019%20Bill%20Text.pdf.



these especially vulnerable communities who have no options for resettlement in any nation in South Asia other than India.

The inclusion of Christians and Parsis is also important as they too have faced serious human rights violations in India's three neighboring countries.

Ultimately, the sole intent of the law is to provide long overdue relief to refugees living on the margins of Indian society, who have already suffered the trauma of religious persecution in their native countries. According to local NGOs, for instance, at least 25,000 Pakistani refugees (some estimates put the number at 50,000) in Rajasthan alone will benefit from the CAA.³² Thousands of those are Dalits from the Bhil and Meghwar communities of Pakistan.

On the other hand, if the CAA is repealed, as some have agitated for (at times violently),³³ religiously persecuted refugees, including thousands of Sikhs, Buddhists, Christians, and Hindus (including many Dalits) would be legally subject and vulnerable to deportation back to their countries of origin under Indian law.³⁴

Accordingly, HAF believes the Citizenship Amendment Act is long overdue and necessary, providing respite for religious minorities with a well-founded history of persecution who have sought refuge in India from Afghanistan, Bangladesh, and Pakistan.

At the same time, any listing out of specific groups is prone to inadvertent exclusion, such as Ahmadiyya Muslims, Shia Muslims, Baloch, and Sindhis, who have also suffered persecution in Pakistan. Though these groups can still apply for asylum and citizenship in India through normal channels, using neutral language such as “persecuted religious minorities” in the CAA would have allowed India to develop an effective refugee and asylum policy and better aligned with India’s civilization ethos, civic obligations, and international human rights norms.

³² “Celebrations in Rajasthan Over CAB as Over 25000 Pak Migrants to Get Citizenship Immediately,” December 13, 2019, The Economic Times, <https://economictimes.indiatimes.com/news/politics-and-nation/celebrations-in-rajasthan-over-cab-as-over-25000-pak-migrants-to-get-citizenship-immediately/articleshow/72500751.cms?from=mdr>.

³³ “Twist to Anti-CAA Protests in Kerala,” March 2, 2020, Swarajyamag, <https://swarajyamag.com/news-brief/twist-to-anti-cao-protests-in-kerala-terrorist-organisation-tries-to-extort-huge-sum-from-nri-industrialist-claims-many-businessmen-have-paid>.

³⁴ “CAA is Necessary, Not Meant to Send Muslims Out of India,” March 5, 2020, The New Indian Express, <https://www.newindianexpress.com/nation/2020/mar/05/cao-is-necessary-not-meant-to-send-muslims-out-of-india-says-top-lawyer-harish-salve-2112705.html>.



The CAA Has No Impact on the Citizenship Status of Indian Muslims Nor Does it Bar Muslim Immigrants

Contrary to media reports and statements by some American lawmakers, the Citizenship Amendment Act does not change citizenship laws or other immigration laws in India. Moreover, nothing in the text of the law itself, notices issued by the government, or official public statements, establishes a religious test for immigration nor does it exclude Muslims from immigrating to India as some have falsely claimed. Muslims from anywhere in the world, including Afghanistan, Bangladesh, or Pakistan, are eligible to immigrate to India through any legal channel as they always have.

There is no question, and should be no question, to the rights and privileges of Indian Muslims as equal citizens of India. In fact, as noted above, Muslims and other minorities have been afforded special privileges and rights not available to the majority community under India's version of secularism.

The CAA only seeks to provide amnesty to religious minorities from Afghanistan, Bangladesh, and Pakistan who have fled religious persecution in their native countries. It does not impact other avenues of legal migration, such as economic migration.

Bangladeshi Muslims, for instance, seeking better economic opportunities are free to legally immigrate to India through various avenues. Since 1971, large numbers of Muslim migrants from Bangladesh have illegally crossed the porous Indo-Bangladesh border into India's northeastern states for economic reasons, not for reasons of religious persecution.³⁵ Despite entering India illegally, many of these economic migrants have received government benefits and have even been added to voting lists in states such as West Bengal.³⁶

Moreover, other refugees, including Muslims, can still immigrate to India through normal channels and naturalization requirements for immigrants not fleeing religious persecution remain unchanged.

Finally, it is important to note that the CAA is not tied in any way to the National Registry of Citizens (NRC). The NRC was first established in 1951 in the northeastern state of Assam to create a list of genuine Indian citizens, and was updated in 2013 after a Supreme Court order.³⁷ It was created in the context of a steady flow of illegal migration

³⁵ "Illegal Migration into Assam," November 8, 1998, South Asia Terrorism Portal, http://www.satp.org/satporgrp/countries/india/states/assam/documents/papers/illegal_migration_in_assam.htm.

³⁶ *Id.*

³⁷ <https://www.business-standard.com/about/what-is-nrc>.



December 31, 2014. That said, with regard to the principle of secularism, even the Lautenberg-Specter Amendment could use more neutral language.

IV. Citizenship Laws in Other Asian Countries

The following provides a brief overview of discriminatory citizenship provisions in the (1) Kingdom of Bhutan; (2) Malaysia; and (3) Islamic Republic of Afghanistan.

Kingdom of Bhutan

Bhutan is a multi-ethnic, multilingual country home to a number of ethnic and religious groups, including Drukpa Buddhists and Lhotshampas, the overwhelming majority of whom are Hindu. Although Drukpa Buddhists are politically and religiously dominant, Lhotshampas comprise a substantial minority. The Lhotshampas are descendants of Nepalese who have lived in Bhutan for centuries, with increased immigration to the southern lowlands of Bhutan in the nineteenth century.

During the 1980s, the Bhutanese authorities adopted a series of nationalist policies, known as “One Nation, One People” policies aimed at forced ethnic and religious cohesion. These policies included discriminatory citizenship laws that disenfranchised many ethnic Nepali Hindus by declaring them “illegal immigrants.”⁴⁰

In order to enforce these policies, the government pursued a violent pogrom of intimidation of the Lhotshampas in southern Bhutan. Their property was destroyed, and activists were arbitrarily detained and tortured. Individuals were forced to sign “voluntary migration certificates” before being expelled from the country. In December 1990, the authorities announced that Lhotshampas, who could not prove that they were residents of the country before 1958, must leave the country. The lack of official identity documents for many Lhotshampas, despite having roots in the country for generations, made proving residency virtually impossible. This made tens of thousands of Lhotshampas stateless, forcing them to flee to Nepal and the Indian state of West Bengal. It is estimated that more than 100,000 Bhutanese citizens, approximately one-sixth of the kingdom’s total population of 700,000, were forced to leave.⁴¹

Following the crackdown, the government severely curtailed the basic religious rights of the remaining Hindu community, including closing Hindu temples and schools.

⁴⁰ “Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017,” Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.

⁴¹ *Id.*



Bhutan's refusal to repatriate any of the refugees led to the "resettlement movement" beginning in 2007, whereby the refugees were resettled from Nepal to third-party countries. To date, over 100,000 refugees have been resettled in third countries, including approximately 90,000 in the United States. There are now only around 10,000 registered refugees remaining in two camps in Nepal.⁴²

The country's discriminatory citizenship policies have also disenfranchised thousands of ethnic Nepali Hindus still living in South Bhutan rendering them virtually stateless. There are currently approximately 40,000 ethnic Nepalis born in Bhutan awaiting the government's approval for citizenship status in Bhutan.⁴³

Moreover, Bhutan has still not rectified the flaws in the system of birth registration for children born after 1990, which requires that both parents must be of Bhutanese nationality. As noted above, nationality is difficult to prove for many Lhotshampas that do not have official documents. These laws have resulted in problems accessing education and health services for minority children. As a result of these discriminatory policies, "some Nepali-speaking Bhutanese citizens could not obtain security clearances for government jobs, enroll in higher education, or obtain licenses to run private businesses."⁴⁴

Malaysia

Malaysia is a federal constitutional elective monarchy, with Islam as the official state religion. Malaysia is a Muslim majority nation with substantial religious and ethnic minorities. Despite its portrayal as a moderate Muslim democracy, Hindus, Christians, and Buddhists in Malaysia suffer widespread persecution, including restrictions on religious freedom, institutional discrimination, and political repression. As the power and influence of Islamic law continues to grow and permeate all aspects of Malaysian society, the status of Hindus and other non-Muslims has become increasingly precarious in recent years.

The *Bumiputra* (son of the soil) policies, encompassed in Articles 153 and 160 of the Constitution, collectively relegate ethnic and religious minorities to second-class citizenship not deserving of equal protection under the law. The provisions afford a special status to ethnic Malays by defining "Malay" as a "person who professes the religion of Islam, habitually speaks the Malay language, [and] conforms to Malay custom..."⁴⁵

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ "Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017," Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.



By enshrining this ethno-religious litmus test in the Constitution, there have been far reaching implications for religious minorities, including Hindus, Christians, and Buddhists, resulting in severe economic, social, and educational discrimination. For instance, Muslim Malays are afforded preferential treatment in several areas including “property ownership, higher education, civil service jobs, business affairs, and government contracts.”⁴⁶

Furthermore, nearly 200,000 Malaysians of Indian ethnicity (primarily Hindus) have been denied citizenship, despite having roots in Malaysia for several generations. These Indian Hindus are the descendents of indentured laborers who were brought to Malaysia from India during the colonial era to work on plantations. Although they were entitled to citizenship after Malaysia gained independence, many of them lack birth certificates and identity documents, resulting in a denial of basic rights to education, healthcare, jobs, driving licences, and formal marriages.⁴⁷

Finally, Malaysian laws provide unequal citizenship rights for women. In particular, under Article 14 of the Constitution, Malaysian men married to foreign spouses automatically pass on their citizenship to their children born outside of Malaysia as soon as they notify the Malaysian government. Malaysian women, however, who are married to foreign spouses and give birth to children outside the country are required to apply for their children’s citizenship under Article 15, which can take anywhere from two to eight years to be approved.⁴⁸

Islamic Republic of Afghanistan

Religious minorities and women in Afghanistan remain marginalized and subjected to violence, discriminatory laws, and social prejudice and harassment. These conditions have led Hindus and Sikhs to leave the country en masse, as noted above, with only an estimated 200 families remaining (mostly Sikhs, with only a few Hindus).⁴⁹

The Afghan Constitution gives explicit preference to Islam over other religions and subordinates the rights of non-Muslims. Article 2, for instance, declares Islam as the “sacred religion” of the State, while Article 3 states, “In Afghanistan, no law can be contrary to the beliefs and

⁴⁶ “Freedom in the World 2019: Malaysia,” Freedom House, <https://freedomhouse.org/country/malaysia/freedom-world/2019>.

⁴⁷ “Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017,” Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.

⁴⁸ “Malaysia’s Unequal Citizenship Laws,” September 27, 2019, The Star, <https://www.thestar.com.my/lifestyle/family/2019/09/27/malaysia-unequal-citizenship-laws/>.

⁴⁹ “Hindus in South Asia & the Diaspora: A Survey of Human Rights, 2017,” Hindu American Foundation, <https://www.hinduamerican.org/wp-content/uploads/2019/12/HAF-HinduHumanRightsReport2017.pdf>.



provisions of the sacred religion of Islam.”⁵⁰ Moreover, the legal system has incorporated aspects of Islamic law (Sharia) in conjunction with civil law and local customary law.⁵¹

The application of Islamic law also explicitly extends to nationality rules, impinging on the basic rights of religious minorities. For instance, citizenship and national identity cards are not available to a child “born outside of a marriage relationship and if the marriage does not occur according to Sharia jurisprudence.”⁵²

V. Conclusion and Recommendations

India has a centuries long history of providing shelter to diverse groups fleeing religious persecution in their native countries. The Citizenship Amendment Act is a continuation of that policy intended to deal with an acute refugee and humanitarian crisis within India’s borders. And in contrast to some of the countries listed above, the CAA does not disenfranchise or strip the citizenship of any of its citizens.

That being said, the language of the current law could have better reflected the spirit behind this critical, necessary amendment if the language was expanded. At HAF, we suggest that this is the very intent the bill should articulate. We would strongly recommend that the Government of India reconsider the definition of religious and ethnic refugees as follows:

“Members of a religious or ethnic minority community who are unable to return to their home countries of Afghanistan, Bangladesh, or Pakistan, and unable to obtain protection in those countries due to past or well-founded fear of future persecution on account of religion or ethnicity.”

Of course, India will ultimately assess, as every nation does, which specific countries’ refugees it will prioritize, weighing carefully numerous considerations, including its relations with the country, the likelihood of conditions improving or worsening there, and domestic considerations such as India’s capacity to take in more people as the second most populous country in the world and continue to appropriately meet the needs of all its diverse people.

Just as previous legislative initiatives in India, such as the abrogation of Articles 370 and 35A were subject to independent judicial scrutiny, so too is the Citizenship Amendment Act.

⁵⁰ “The Constitution of the Islamic Republic of Afghanistan, (Ratified) January 26, 2004, Embassy of the Islamic Republic of Afghanistan, [http:// www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf](http://www.afghanembassy.com.pl/afg/images/pliki/TheConstitution.pdf).

⁵¹ Yassari, Nadjma and Saboory, Mohammad Hamid, “Sharia and National Law in Afghanistan,” 2010, Jura Gentium, <https://www.juragentium.org/topics/islam/en/yassari.htm>.

⁵² Athayi, Abdullah, “Report on Citizenship Law: Afghanistan,” March 2017, European University Institute, https://cadmus.eui.eu/bitstream/handle/1814/45933/GLOBALCIT_CR_2017_09.pdf.

HINDU AMERICAN FOUNDATION

910 Seventeenth St., Suite 316A

Washington, D.C. 20006

www.hafsite.org | 202.223.8222



Accordingly, the U.S. should support India's right to decide this matter internally, just as India or any other foreign country should refrain from interfering with U.S. refugee policies and immigration laws, such as the Lautenberg-Specter Amendment.