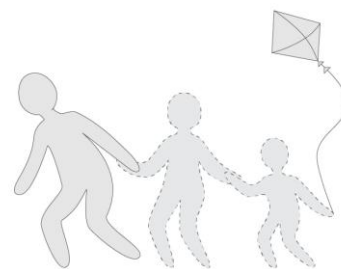


Parichay Legal Aid Clinic

# CAA 2019 Revisited? Understanding the May 2021 Order

August 2021



**Parichay**



Parichay (**পরিচয়**, meaning 'identity') is a collaborative legal aid clinic, established to provide assistance to those at risk of statelessness in the Indian state of Assam. Parichay was established as a collaboration between law schools to fulfil constitutional guarantees of access to justice through effective research, training and strategic litigation. Parichay's work is led by law students who are training in litigation and research on citizenship determination in India.

Published in August 2021

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## *Introduction*

On 28 May 2021, the Ministry of Home Affairs, Union of India issued a notification under the Citizenship Act, 1955 creating a specific procedure for naturalisation and registration for citizenship in respect of applicants from ‘minority communities’ in Afghanistan, Pakistan and Bangladesh, namely Hindus, Sikhs, Christians, Jains, Parsis and Buddhists, resident in specified districts in five states. The notification was immediately challenged by the Indian Union Muslim League (IUML) in an Interlocutory Application (IA) that they filed in their earlier writ petition challenging the Citizenship (Amendment) Act, 2019 (CAA, 2019). The IA argues that the Union Government is seeking to implement the CAA, 2019 in a roundabout manner through this May notification, despite the fact that relevant rules under the amendment are awaited. The Union, in its reply to the IA, has stated that this notification is not an implementation of the CAA, 2019, since it only applies to persons in possession of valid documents such as a passport and visa. The Union further stated that this notification seeks to only delegate powers for registration and naturalisation for a specific class of applicants, and does not deprive any potential applicant of the right to apply for citizenship.

The CAA 2019 brought to national attention the fact that citizenship laws in India are being amended to provide preferential access to citizenship for certain classes of applicants, while excluding similarly situated Muslim applicants. This note examines whether the May 28 notification can be understood as an extension of this discriminatory regime, or whether, as claimed by the Union Government, these are unrelated measures. The note will also examine the constitutionality of the order, and attempts to situate it in the larger background of refugee protection measures in India.



### ***What does the May 2021 order do?***

The order dated 28 May, 2021 directs that powers of registration of citizens under Section 5, and naturalisation of citizens under Section 6 for persons belonging to minority communities in Afghanistan, Pakistan and Bangladesh, namely Hindus, Sikhs, Christians, Jains, Buddhists, and Parsis, can also be exercised by the Collector or the Secretary of the Department of Home by way of a modified process, in the case of specified districts in the states of Gujarat, Chhattisgarh, Punjab, Haryana and Rajasthan. Section 16 of the Citizenship Act permits the Central Government to delegate powers exercisable under the Act to any power or authority as is specified.

While this may seem like a simple delegation of powers, this order actually creates a relaxed procedure for registration and naturalisation of citizens. Under the Citizenship Rules, 2009, the prescribed procedure for registration and naturalisation is as follows:

- Applications are made under the relevant sub-section and corresponding rules by filling up the relevant forms. The application is then submitted to the Collector within whose jurisdiction the applicant is ordinarily resident. (Rule 11, para 2)
- On receiving the application, the Collector issues an acknowledgment. The Collector then prepares a report on whether the applicant:
  - satisfies all the conditions in the relevant clauses of S. 5 or 6
  - has an intention to make India his permanent home
  - has taken the oath of allegiance
  - is of good character and is a fit and proper person to be registered/naturalised (Rule 12, clause 1)



- The Collector then forwards the application along with the report containing the above details to the State Government/Union Territory administration within a period of 60 days from date of receipt. (Rule 12, clause 1)
- The State Government/UT administration must then frame its own recommendation, and shall forward the application, the Collector's report, and its own recommendation to the Central Government within a period of 30 days from date of receipt of the report from the Collector. (Rule 12, clause 2)
- The Central Government shall, on receipt of applications from the State Government/UT Administration, scrutinise the applications and arrive at an independent satisfaction as to suitability for grant of citizenship. This includes conducting such inquiry as it considers necessary for ascertaining the suitability of the applicant. (Rule 13)
- On being satisfied as to the applicant's suitability, the Central Government may grant him citizenship of India. The certificate of naturalisation or registration must be signed by an officer not below the rank of Under Secretary to the Government of India. (Rules 14, 15)

This procedure involves independent scrutiny of the application for registration or naturalisation at three levels- at the level of the Collector, the State Government, and the Central Government- and it is ultimately the Central Government that makes the decision to grant citizenship.

The May 2021 order specifies a shortened and diminished process for registration and naturalisation applications by Hindus, Sikhs, Christians, Jains, Buddhists, and Parsis, from Pakistan, Afghanistan, and Bangladesh. The procedure for registration and naturalisation is:



- Verification of the applicant is done simultaneously by the Collector or the Secretary, as the case may be, and reports are uploaded directly to the online portal
- There is no scope for the State Government to give recommendations (when processed by the Collector), or for the Central Government to conduct an inquiry about the suitability of the applicant
- Citizenship is granted by the Collector, on the basis of his satisfaction as to the suitability of the applicant. Certificate of naturalisation/registration is issued by the Collector.
- There is no scrutiny by either the State or the Central Government, and the grant of citizenship is entirely left to the Collector's satisfaction.

The 2021 order considerably eases the procedure for registration and naturalisation for Hindus, Sikhs, Christians, Jains, Buddhists, and Parsis, from Pakistan, Afghanistan, and Bangladesh, and eliminates levels of inquiry/scrutiny. Similar notifications have been issued in 2016 and 2018. However, after the CAA 2019 has come into force, a much larger group of people stand to benefit from the May notification, as we will explain.



## ***How does the impugned order relate to the CAA 2019?***

In order to understand how the May 2021 order relates to the CAA, 2019, it is necessary first to understand the sweeping amendments that the CAA 2019 has introduced, and who is the intended beneficiary of these changes. We will then examine whether the benefits of the May 2021 order extend to the same class of citizenship applicants, and in what way, if at all, the order expands on the discriminatory citizenship regime put in place by the CAA 2019.

### ***What does the CAA 2019 do?***

The CAA, 2019 has introduced several crucial amendments to the Citizenship Act, 1955, in addition to introducing Section 6B. These include (I) amendment of the definition of illegal migrant in Section 2(1)(b), and (II) amending the Third Schedule to the Act to reduce residency requirements for naturalisation under Section 6.

#### *Amended definition of “illegal migrant”*

Section 2(1)(b) of the Citizenship Act, 1955 defines who is an “illegal migrant.” The proviso to section 2(1)(b) was amended vide the CAA 2019, to exempt certain classes of persons from falling within this category. The proviso now states:

“Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been *exempted by the Central Government by or under clause (c) of subsection (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any*



*rule or order made thereunder shall not be treated as illegal migrant for the purposes of this Act. [emphasis added]”*

This amendment to Section 2(1)(b) came into force w.e.f. 10.01.2020. In 2015, the Passport (Entry Into India) Amendments Rules, 2015 were passed by way of notification G.S.R. 685(E) dated 7th September, 2015 in exercise of the powers conferred by section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920). These Rules amended the Passport (Entry into India) Rules, 1950 and exempted the following categories of person from Rule 4 which requires documentation for legal entry into India:

“(ha) persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014- (i) without valid documents including passport or other travel documents; or (ii) with valid documents including passport or other travel document and the validity of any of such documents has expired”

Vide G.S.R. 686(E) dated 7th September, 2015, the Foreigners (Amendment) Order, 2015 was introduced in exercise of the powers conferred by section 3 of the Foreigners Act, 1946 (31 of 1946). These Rules amended the Foreigners Order, 1948 to insert the following rule:

“3A. Exemption of certain class of foreigners.- (1) Persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and





Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014- (a) without valid documents including passport or other travel documents and who have been exempted under rule 4 from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950, made under section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920); or (b) with valid documents including passport or other travel document and the validity of any of such documents has expired, are hereby granted exemption from the application of provisions of the Foreigners Act, 1946 and the orders made thereunder in respect of their stay in India without such documents or after the expiry of those documents, as the case may be, from the date of publication of this order in the Official Gazette.”

Vide notifications G.S.R. 702(E) and G.S.R. 703(E) dated 18th July, 2016, ‘Afghanistan’ was added to the list of countries mentioned in G.S.R. 685(E) and G.S.R. 686(E).

The Passport (Entry Into India) Amendments Rules, 2015 and the Foreigners (Amendment) Order, 2015 are in effect and have regularised the residence in India of the abovementioned migrants from the specified communities in the specified countries. Courts have refrained from taking punitive measures against persons who *prima facie* fall within this exemption, without requiring any separate trial to record a finding of religious persecution. For example, in the case of Ranjit Kumar Mazumdar & Anr v State of West Bengal, the Appellant was granted bail against offences under the Foreigner’s Act, 1946, on the grounds that the amendment to



the Passport (Entry into India) Rules 2015 and the Foreigners (Amendment) Order, 1946 protect the appellant from prosecution under the 1946 Act. Since the exemption created by the CAA, 2019 vide proviso to Section 2(1)(b) relies on a classification created vide the abovementioned notifications under the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946, it is evident that persons who are exempted under these notifications are also currently exempted from the definition of “illegal migrant” for any purpose under the Citizenship Act, 1955.

Various High Courts have applied the amended definition of “illegal migrant,” after the coming into force of the CAA, 2019. In *Archona Purnima Pramanik vs State Of Karnataka*, the Karnataka High Court granted regular bail to a person facing charges under sections 465, 471, 468 of IPC, sections 5, 12 and 14 of Foreigners Act, 1946 on the ground that the petitioner was a Christian from Bangladesh demonstrably living in India since 2002. In *Anil Kumar @ Anantnag v State of UP* the Allahabad High Court granted regular bail to a person facing charges under under Sections 420, 467, 468, 471 IPC and 14 Foreigner's Act while observing that the CAA, 2019 has exempted minorities from Bangladesh who entered India prior to 2014. Separate proof of persecution was not insisted upon in either of these orders.

Consequent to this amended definition of “illegal migrant”, the CAA 2019 has expanded the eligibility of persons who can apply for citizenship under s. 5 and 6. Section 5 and 6 both state that “illegal migrants” are barred from applying for citizenship by registration or naturalisation. By altering the definition of “illegal migrant”, the CAA 2019 expands the categories of persons who are eligible to apply under the s. 5 and 6 processes, by effectively removing the bar for the exempted class of persons.



### *Reduced residency requirements for naturalisation*

The eligibility for application for naturalisation under s. 6 has been directly amended by the CAA, 2019. Through the amendment, the Third Schedule to the Citizenship Act, 1955 was amended to reduce the residency period for ‘minorities’ (from the specified religious groups excluding Muslims) from Afghanistan, Pakistan and Bangladesh, from eleven years to five years. *This benefit is available to all such applicants, and is not restricted to only those who have entered before the 31st of December, 2014 or those who have experienced persecution.*

Note: Para 1.13 of the report of the Joint Parliamentary Committee on the Citizenship (Amendment) Bill 2016 states that the many foreign nationals of Indian origin were unable to apply for citizenship under Section 5(1) because they were unable to provide documents to prove that they are of Indian origin. As a result, they had to apply under Section 6, which had a longer residency requirement. It is to address their concerns that the Third Schedule was amended.

### ***Who benefits from the May 2021 order?***

It is evident that the May 21 order, read with the CAA 2019 benefits three categories of persons: (a) persons who have entered India without valid documents, i.e., illegal migrants, and (b) any applicant who is Hindu, Sikh, Buddhist, Christian, Parsi or Jain, from Afghanistan, Pakistan and Bangladesh, irrespective of when they have entered the country, or whether they are escaping persecution. (c) persons of Indian origin, who are Hindu, Sikh, Buddhist, Christian, Parsi or Jain, from Afghanistan, Pakistan and Bangladesh. We will examine each category:



*Persons who have entered India without valid documents, i.e., illegal migrants.*

This is evident from the [website](#) on which citizenship applications are made. Under the section for naturalisation under Section 6, there is a specific sub-section titled “Passport Details Exemption for Certain Persons”. In that section, it is clarified that for applicants belonging to minority communities (Hindus, Sikhs) from Afghanistan/Pakistan, it is not mandatory to provide details of a valid passport and visa, and in fact a passport number and details is entirely optional, while details of expired visas may be provided. (screenshot below).

FOREIGNERS DIVISION  
MINISTRY OF HOME AFFAIRS  
GOVERNMENT OF INDIA

FORM IC-6(1)

NATURALIZATION AS A CITIZEN OF INDIA UNDER SECTION 6(1) OF THE CITIZENSHIP ACT, 1955

- Eligibility Criteria
- Required Documents
- Passport Details Exemption for specific persons

If Nationality of a person is Afghanistan/Pakistan, and the person belongs to minority community(Hindus, Sikhs) in the respective country, and the person entry date in India was before 31/12/2009 then the following are applicable:

1. In the Passport Particulars Passport Country, Passport Number and Passport valid upto fields are optional.
2. You have to enter date of Visa Valid upto/ RP Valid upto. (It is not an issue, even if the Visa/RP has been expired. Please enter last expiry date)
3. If you have a passport, then please enter the details. (System accepts expired passport details)
4. While uploading documents, if you don't have a passport, then in place of a passport, you may upload Visa/RP document.

Therefore, if the online application portal itself allows for applications to be made without valid documents, it is evident that the May 21 order extends to persons without valid documents, i.e., previously “illegal migrants” within the meaning of unamended S. 2(1)(b) of the Citizenship Act, 1955. It is incorrect therefore to say that the benefits of this order only extend to applicants with valid documents, since those now exempted from the definition of “illegal migrant” do not need documents like passports. Muslims without valid documents however, cannot take advantage of this order, making it blatantly discriminatory.



*Any applicant who is Hindu, Sikh, Buddhist, Christian, Parsi or Jain, from Afghanistan, Pakistan and Bangladesh, irrespective of when they have entered the country, or whether they are escaping persecution*

The May 2021 order benefits both people who may have arrived due to persecution before the applicable cut-off date, as well as persons who have arrived after December, 2014, with valid documents, and with no experience of persecution. For example, an IT engineer from Bangladesh belonging to the Hindu faith may arrive in India in 2015, and benefit from the relaxed naturalisation process under the May 2021 order, without being required to demonstrate or even make a claim of persecution on the basis of their religious identity. However, a Muslim applicant will have to maintain residence for eleven years to qualify for citizenship, and even then will not benefit from this relaxed process.

*Expedited process for some persons of Indian origin, but not all*

Section 5 of the Citizenship Act creates a specific category of persons who are eligible to register as citizens of India. Section 5(1)(a) allows persons of Indian origin to register as citizens, provided that they satisfy the residency requirements. It should be noted that in comparison to Section 6 residency requirements, which is an aggregate period of twelve years, Section 5(1) only requires a residency period of seven years. This is because section 5(1) restricts itself to persons of Indian origin, whereas naturalisation under Section 6 is available to anyone who satisfies the criteria laid down in the Third Schedule. The impugned order however, is creating a further distinction between persons of Indian origin from Afghanistan, Pakistan, Bangladesh who belong to a religious minority in these countries, and other persons of Indian origin. Notably, Muslims who are persons of Indian origin, do not get to avail the benefits of this expedited process of registration.



Also, the exemption for illegal migrants applies to applicants under Section 5 as well. This is evidenced from the website for citizenship registration [here](#) (screenshot below)

FOREIGNERS DIVISION  
MINISTRY OF HOME AFFAIRS  
GOVERNMENT OF INDIA

FORM IC-5(1)(A)

REGISTRATION AS A CITIZEN OF INDIA UNDER SECTION 5(1)(A) OF THE CITIZENSHIP ACT, 1955 MADE BY A PERSON OF INDIAN ORIGIN

- Eligibility Criteria
- Required Documents
- Passport Details Exemption for specific persons

If Nationality of a person is Afghanistan/Pakistan, and the person belongs to minority community(Hindus, Sikhs) in the respective country, and the person entry date in India was before 31/12/2009 then the following are applicable:

1. In the Passport Particulars Passport Country, Passport Number and Passport valid upto fields are optional.
2. You have to enter date of Visa Valid upto/ RP Valid upto. (It is not an issue, even if the Visa/RP has been expired. Please enter last expiry date)
3. If you have a passport, then please enter the details. (System accepts expired passport details)

Similar exemptions have been carved out for applications under S. 5(1)(c), S. 5(1)(d), S. 5(1)(e), S. 5(1)(f) and S. 5(1)(g).

It should be noted that none of these exemptions are applicable to Muslim applicants. As it stands today, access to citizenship and naturalisation in these specified districts is not only available to a wider category of non-Muslim applicants from Afghanistan, Pakistan, and Bangladesh (by allowing applications to persons without documents, and by relaxing residency requirements under S. 6), but the process itself has been made significantly easier, by removing levels of scrutiny for non-Muslim applicants, which continue to apply to Muslim applicants. It is important to note here Muslim applicants from Afghanistan, Pakistan and Bangladesh, who have experienced persecution will not be able to avail of these relaxations.



### *How is the May 2021 order unlawful?*

The 2021 order violates Articles 14, 21, 25, and 51 of the Indian Constitution, as well as India's obligations under International law. Under binding International human rights law, India is required to ensure racial equality and to eliminate racial discrimination, ensure gender equality, ensure freedom of thought and belief, due process of law, and to enforce the principle of non-refoulement, which is a *jus cogens* norms in International law. India's constitutional framework, read with obligations under International law, mandates a framework of refugee protection that is non-discriminatory. Most of the arguments that were framed against the CAA, 2019 extend to the present order *mutatis mutandis*. [See the petition filed by Deb Mukharji against the CAA, 2019 for an illustrative elaboration of constitutional arguments.] Some important arguments are as follows:

#### **a. Citizenship laws require heightened scrutiny:**

- Citizenship is the gateway to other fundamental rights and privileges. The denial of access to citizenship leads to a denial of the most significant civil and political rights. The right to citizenship, in that sense, is a very significant right. Thus, laws that determine the right to and means of acquiring citizenship must be subject to rigorous scrutiny.
- In addition, refugees are an extremely vulnerable group with no ability to participate in civil and political processes that could represent their needs at the level of legislation or policy. The judiciary is the only institution where refugees can have any voice. Thus, heightened standards of judicial review must be exercised in cases where rights of refugees are at stake.





## **b. Discriminatory and invidious classification**

- The state cannot extend a benefit that is a gateway to accessing citizenship rights for one class of persons and not for another without compelling and non-discriminatory reasons. The creation of a simplified citizenship acquisition process cannot be done in a colourable and discriminatory fashion. Any relaxation in procedure or scrutiny of applications must be linked to non-discriminatory and objective criteria.
- The barrier of documentation that exists for refugees applying for citizenship in India has been all but removed with respect to the exempted class of persons, i.e., Hindus, Sikhs, Parsis, Buddhists, Christians and Jains, from Afghanistan, Pakistan and Bangladesh. Effectively, this creates eligibility criteria arbitrarily drawn from classifications based on religion and place of birth, and completely excludes the following classes of refugees from applying for citizenship:
  - i. Muslim refugees from Afghanistan, Bangladesh and Pakistan. This includes both Ahmadiyahs from Pakistan, as well as Muslim refugees (including women) from Afghanistan escaping persecution by the Taliban.
  - ii. Refugees from countries other than Afghanistan, Bangladesh, and Pakistan. This includes Sri Lankan Tamil refugees, Ma and Chin and Chakma refugees from Myanmar.
  - iii. Refugees who migrated due to reasons other than religious persecution, e.g.: racial, ethnic or gender-based persecution, or an intersection of multiple grounds leading to persecution.





- The order does not invoke any special circumstances that justify the use of a religion based classification for an expedited and eased citizenship application process. Such a policy can only be explained by the state by resorting to stereotypes and prejudice about the acceptability of one group and the untrustworthiness of another, which is a prohibited basis for state action.
- The creation of law on the basis of a classification drawn from religious identity must attract rigorous forms of scrutiny, to ensure that the deployment of such a classification is reasonable, necessary and proportionate. Any discriminatory and colourable use of a religion based classification deeply offends the essence of Equality which is a basic feature of the Indian Constitution and expressly safeguarded by Article 14 of the Indian Constitution.

### **c. Irrational classification**

- The 2021 order fails the test of reasonable classification for a legitimate purpose under Article 14 of the Indian Constitution. Religious identity of the applicant has no rational nexus with the need for a simplified, expedited and segregated citizenship acquisition regime.
- Apart from the disqualification under Section 2(1)(b) of the Citizenship Act 1955, other barriers for refugees in filing applications for citizenship stem from the economic deprivation and social marginalisation that they have experienced. Even for those who enter India with valid documents, access to finances, transport, agents, regular employment and housing all impact the ability of refugees to maintain legal documentation throughout their stay in India. Periodic renewal of LTVs/VISAs and other *ad hoc*



documentation is often impeded by impoverishment. The requirement of payment of high application fees, late fee penalties, travel to offices at the state and Central levels, travel to embassies located in New Delhi, arranging paperwork, filing of online forms and so on are severe impediments to illiterate and economically marginalised persons. The intersections of caste, ethnicity, language, community could aggravate the experience of marginalisation, especially for those who are minorities *in India*, where they have been residing for years at the time of finally applying for citizenship. These factors may impact one's ability to obtain initial documentation and thereafter to maintain an uninterrupted chain of document renewals.

- A comprehensive refugee policy may need to reflect these concerns while balancing demands of national security. However, this cannot be done by introducing a policy that is selective, arbitrary, based on stereotype, discriminatory and exclusionary.
- The order does not link the right to access the expedited and simplified process to any objective experiences of deprivation, vulnerability and hardship. Rather it assigns a benefit based solely on religious identity and country of origin, which has no nexus with the objective of alleviating barriers to accessing citizenship application processes and is completely irrational, unreasonable and arbitrary.

#### **d. Offends secularism**

- In selecting religion as the basis for grant of a right to an expedited and simplified citizenship acquisition regime, the order violates the basic feature of secularism which comprises the Basic Structure of the Indian Constitution. Religious identity cannot be linked to access to civil and political rights under the Indian Constitution.



## **Need for a non-discriminatory and universal refugee policy**

The May 2021 order seeks to create an expedited process of citizenship for a specific class of refugees framed on the basis of religion and country of origin. However, Indian refugee policy has not always been narrowly framed. In 2011, the Union Government introduced a Special Operating procedure (SOP) to provide Long Term Visas (LTV) for “foreign nationals who claim to be refugees”. This allowed grant of LTVs to foreign nationals. The policy states that after inquiry into the reasons for their leaving the originating country and the manner in which they entered India, an assessment is to be on the basis of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion. If the person clears this assessment, grant of a year-long valid LTV, which would regularize their stay in India and enable them to take up employment will be considered. Ideally, this would also qualify them for citizenship, as they would no longer be “illegal migrants” and thus unable to apply for citizenship under the Citizenship Act, 1955. A separate LTV policy pertaining to nationals from Pakistan, Afghanistan extends to categories beyond “minorities.” However, this procedure requires submission of extensive documentation including an “indemnity bond from an Indian guarantor”. This covers:

- (i) Members of minority communities in Pakistan/Bangladesh/Afghanistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians.
- (ii) Pakistan / Bangladesh women married to Indian nationals and staying in India and Afghanistan nationals married to Indian nationals in India & staying in India.
- (iii) Indian origin women holding Pakistan/ Bangladesh/ Afghanistan nationality married to Pakistan/ Bangladesh/ Afghanistan nationals and returning to India



due to widowhood/divorce and having no male members to support them in Pakistan/ Bangladesh/ Afghanistan.

(iv) Cases involving extreme compassion.

It is evidence that India's refugee policy has historically been inclusive, accommodating and in consonance with India's constitutional values. However, the May 2021 order, as well as similar orders passed in 2016 and 2018, mark a sharp departure from this approach, as they do not extend to the abovementioned categories of persons, and seek to arbitrarily create an expedited pathway to citizenship for some refugees, while excluding others. In the interests of refugee protection, the State should adopt a comprehensive and non-discriminatory refugee policy that allows persons to, if they qualify existing conditions, become legal residents by obtaining Long-term visas, and then, if having satisfied conditions for naturalisation or registration, become citizens. Such a policy would be in consonance with India's constitutional values and commitment to refugee protection.

The core issue at the heart of this is the absence of a non-discriminatory and universal refugee policy that takes into account the needs of all those who seek refuge in India, and does not create hierarchies between different categories of refugees based on protected characteristics, and then providing refugees a pathway to citizenship. Instituting such a policy will address the concerns of refugees in a manner consistent with our constitutional values.

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