



HOW THE FOUNDING VALUES OF TWO GREAT NATIONS – UNITED STATES AND INDIA – CAN GET HOLLOWED OUT THROUGH TWEAKS IN THEIR IMMIGRATION LAWS

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Until President Trump of the United States and Prime Minister Modi of India came to power, it was unimaginable that democratically elected leaders could cynically tweak immigration laws to undermine the founding values of their nations.

America has unquestionably been viewed as a nation of immigrants and a beacon of liberty for the world's persecuted until Trump came on the scene. Trump cruelly [reduced refugee admissions](#) to a trickle and toughened asylum laws. He has separated children from parents fleeing violence in Central American countries and virtually eliminated their ability to legally claim asylum under US immigration law. Most recently, our colleagues have been able to [witness firsthand](#) that the tent courts under Trump's Remain in Mexico policy, are totally and shockingly lacking in due process. Worse still, Trump fulfilled his campaign pledge by imposing a travel ban on countries with mostly Muslim populations in the name of national security. All of these actions, and many more architected by Trump's openly xenophobic Senior Advisor Steven Miller, have undermined American ideals symbolized by the Statue of Liberty. Even the new public charge rule has been designed to keep out less wealthy immigrants from countries that Trump derisively called "s-hole countries". Trump's then acting USCIS chief Cuccinelli uglily distorted the famous [Emma Lazarus poem](#) associated with Lady Liberty by saying, "Give me your tired and your poor who can stand on their own two feet and who will not become a public charge."

Modi's Hindu nationalist Bhartiya Janata Party got a second five year term after

winning a thumping parliamentary majority in May 2019. India is the world's largest democracy and 900 million people were eligible to vote in the last general election. Voter turnout in that election was the highest at 67%. While campaigning for the BJP, Amit Shah, now India's powerful Home Minister, likened unauthorized immigrants from Bangladesh as termites and vowed to throw them in the Bay of Bengal. Soon after resuming power, the BJP revoked the autonomy of Kashmir in August, the only Muslim majority state in India, and detained its political leaders. Continuing on the same Hindu nationalist trajectory, the BJP pushed through the [Citizenship Amendment Act](#) (CAA) that amends the Citizenship Act of 1955. The CAA provides for a pathway to citizenship for Hindus, Christians, Sikhs, Buddhists, Jains, and Parsis who came to India from Pakistan, Bangladesh or Afghanistan on or before December 31, 2014, even illegally, but excludes Muslims. Most of the immigrants who are in India since that time are Muslims. It is also interesting to note that CAA excludes Jews and potentially atheists, although if there are any who are affected, they may be very few in comparison to the millions of Muslim immigrants who have been living in India for decades. The BJP justifies the CAA as a means for sheltering persecuted minorities in neighboring countries, although this makes little sense as Muslims have borne the brunt of persecution in those countries especially the Ahmadiyya and Shia from Pakistan and the Rohingya from Myanmar.

The CAA is far more pernicious when viewed in conjunction with India's controversial National Register of Citizens, which is part of the Indian government's efforts to identify unauthorized immigrants in the northeastern state of Assam who allegedly came from neighboring Bangladesh, even though they have lived in Assam for decades. When the NRC was published in August, about 2 million people were not able to establish that they were in India since 1971. Most of them were Muslims and some of them were Hindus. The CAB will protect Hindus who are not on the NRC by affording them citizenship while Muslims who cannot prove that they are citizens will ultimately be kept in massive detention camps and ultimately deported. Home Minister Amit Shah, who like Steve Miller in Trump's administration, is the mastermind behind these cruel and divisive policies, plans to extend the NRC across the country that will catch many more million Muslims suspected of being in India illegally. One should note that many of the affected Muslims live in abject poverty and have hardly preserved documents to establish their entry into India by a cutoff date

many decades earlier. Many have also been valiant survivors of cyclones that ravage those eastern parts of India that might have washed away their homes, meagre belongings and documents.

Although Muslims have been subjected to discrimination and violence under the BJP administration, and the [excellent profile of Modi in the New Yorker](#) reveals why, the CAA takes this discrimination to a new level as it completely contradicts India's founding ideal as a plural and secular nation. As the [Economist has aptly commented](#), "To accept religion as a basis for speedier citizenship is to cock a snook at India's own founding fathers, who proudly contrasted their vision of an open, pluralist society against the closed, Islamic purity of next-door Pakistan."

Although Trump's Muslim ban was successfully blocked by lower federal courts, the US Supreme Court in [Trump v. Hawaii](#) upheld a watered down version of it in a 5-4 decision. Chief Justice John Roberts, in writing the majority opinion, found that [Section 212\(f\) of the Immigration and Nationality Act \(INA\)](#) "exudes deference to the President" and thus empowers him to deny entry of noncitizens if he determines that allowing entry "would be detrimental to the interests of the United States." Although Trump made various utterances regarding his animus towards Muslims during his campaign and even after he became president, the majority found the third version of the [Executive Order](#) to be neutral on its face and that it did not violate the Establishment Clause of the First Amendment of the US Constitution. Several of Trump's other immigration policies such as his blocking of asylum seekers and public charge rule are still being reviewed by the courts.

CAA's legitimacy will also soon be tested in the Indian Supreme Court. Article 14 of India's Constitution provides, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." It remains to be seen whether India's Supreme Court strikes down CAA as unconstitutional or whether it will affirm a law that is blatantly discriminatory against Muslims just as the US Supreme Court upheld Trump's Muslim ban. It is also rather strange to use religion as a litmus test for citizenship. How does one prove one's religion, especially when he or she may be not openly practicing it? The fact that Muslims can apply for Indian visas, OCI status or citizenship under other provisions of the Citizenship Act is beside the point. CAA's blatantly discriminatory intent will subject millions of Muslims to statelessness, detention and deportation while those of other religions even if unauthorized will get a

smooth ride to Indian citizenship. It is no surprise that CAA has resulted in [massive protests across India](#) and an unjustified harsh police response.

While leaders like Trump and Modi tweak immigration laws for political advantage, they not just undermine the founding values of their nations but also cause great havoc and distress to millions of people. People who vote for them may perceive certain advantages, such as economic or otherwise, but they must also realize that those perceived benefits are hollow if the soul of the nation is eviscerated through cynical manipulation of the immigration laws.