



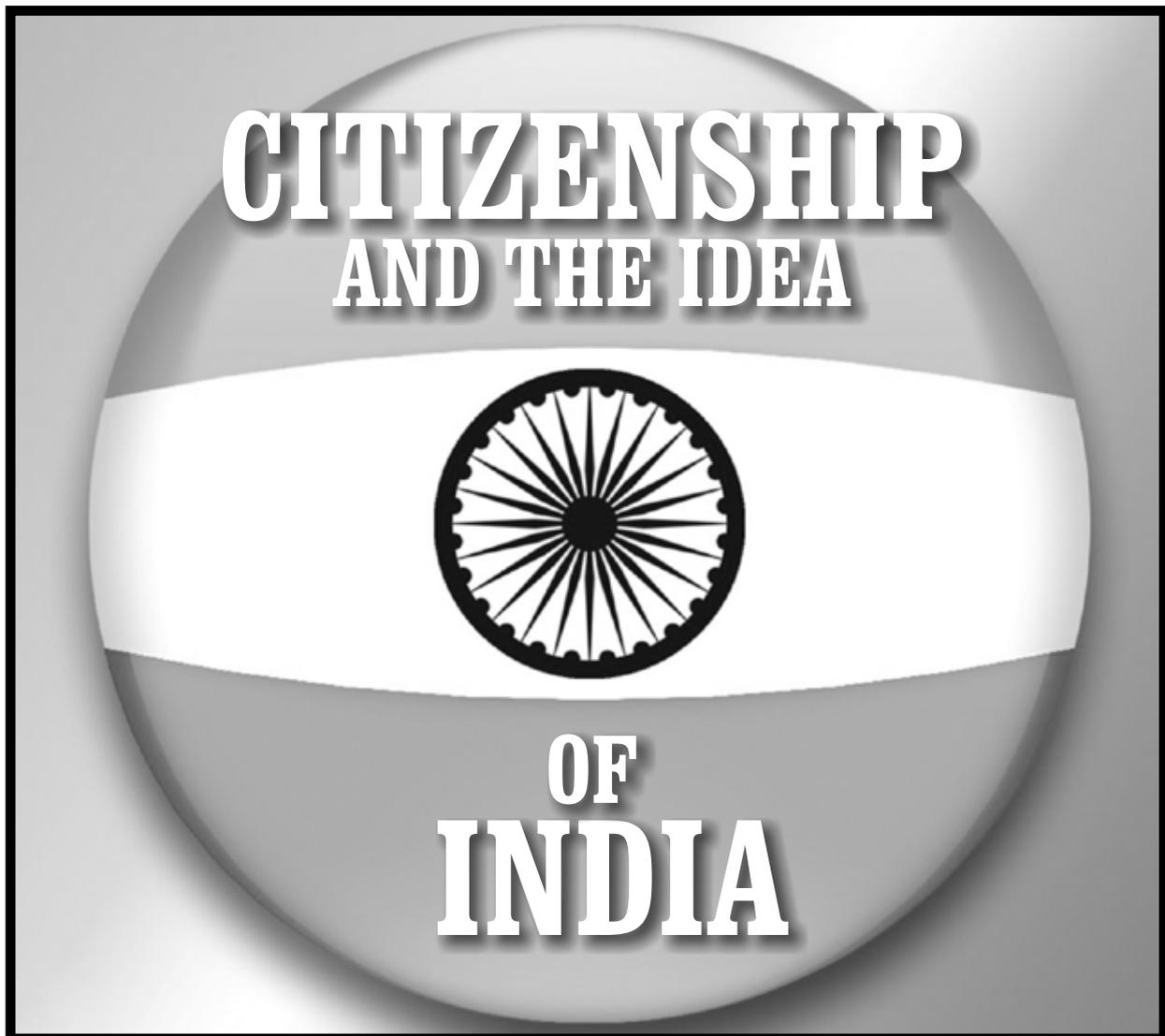
# COMMON CAUSE

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POLICY-ORIENTED JOURNAL SINCE 1982

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# STATUS OF POLICING IN INDIA REPORT 2019

POLICE ADEQUACY AND  
WORKING CONDITIONS

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Jointly prepared by Common Cause and its academic partner, CSDS, the report is a study of the trying working conditions of police personnel, their meagre resources and infrastructure, crime investigation, diversity, people-police contact and police violence. We interviewed about 12000 police personnel inside police stations or at their residences in 21 states as well as around another 11000 of their family members.

The SPIR 2019 studies the experiences of the police personnel and their attitudes towards incidents of crime, use of violence and torture, marginalised communities, juvenile delinquency and incidents of mob lynching.

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# CITIZENSHIP AMENDMENT ACT AND THE IDEA OF INDIA

## COVID-19 Exposes Our Vulnerabilities and Absurdities in the Name of Religion

As India grappled with the effects of the Citizenship Amendment Act (CAA), the theme of this issue, the ground beneath our feet was swept away by the tsunami of coronavirus. The riots which followed the anti-CAA protests claimed over 50 lives, almost all from the marginalised sections, mostly of the minority community. Homes and properties were selectively targeted, often in the presence of the police.

Thousands of innocent people of all communities have died in caste and communal riots since independence. But what stands out once again is the prejudiced attitude of the law enforcement agencies, a sad reminder of the 1984 anti-Sikh riots. As if the police were taking their cues from the same sections of politicians who were inciting violence and hysteria.

But the riots began to fade from our collective consciousness as the chaos of coronavirus burst into our lives. The sectarian hatred, however, lingered on. In no time, a section of politicians and media shifted their gaze from the riots to the pandemic, blaming it squarely on the minorities. We are back to what we do best: divide everything from the most mundane local realities to the most extraordinary global phenomenon into Hindu-Muslim issue.

And while we are at it again, the global catastrophe is slowly changing everything all of us know as normal --- from workplace to public transport, and from simple pleasures like meeting friends to taking a walk in the park. Crores of people have lost livelihoods, jobs, savings and loved ones, and the worst, we are told, is yet to come.

The crisis is a sad reminder that the world is vulnerable in ways unthinkable in the past. And that applies as much to the most advanced countries as to the poorest. We also figure that national defence or progress is not a matter of having huge armies, weaponry or shining cities any longer. It is, first and foremost, about health infrastructure, social security and our preparedness to deal with emergencies.

Some of us with homes and steady incomes gave grudging approvals to the lockdown and rightly so. But for those living for the day in the slums and tenements, it came as a curse of deprivation. They understand the value of social distancing but cannot afford it when a family of six has to live in a single room. Our policymakers made no serious plan to quickly take them home, to the more resilient villages and small towns, like we evacuated middle class Indians from across the world. We have one set of rules for people like us and quite another for the poor. We expect to be paid for the lockdown but are hesitant to pay our maids and employees with dignity and compassion. We hope our readers are among the exceptions to this horrible reality of this great country.

### **Time to Fight the Real (and Common) Enemy!**

This unusual moment in history comes as a reminder that human beings have a shared destiny. It also shows that the issues which unite us – like those of everyone's safety and well-being – are much more substantive than those which divide us. Above all, it exposes the absurdity of all prejudices, and claims of superiority, in the name of caste, nationality or religion. The real heroes, our healthcare workers, too come from all castes and communities just as the victims.

The global spread of the virus showed that people in some of the richest countries, or the rich in any country, are as vulnerable as their poor neighbours. No citizen, country, city or community can claim that they can fight the disease entirely on their own. We can only be safe when all others are safe: rich and poor, urban and rural, Hindus and Muslims. In 210 countries and territories where the virus has spread, India stands out as a country where one community is being blamed for the spread of the virus. A section of our media singled out some minority gatherings for blame while ignoring many other similar functions and congregations of other groups and sections. Some of us are still presenting it as a Hindu-Muslim problem.

## **Common Destiny, Compassion and the Idea of India**

Coming back to the theme of our cover story, the CAA, we must examine its impact just as we did for the virus – with a degree of compassion and rationality. The founding fathers of our Constitution rejected the idea of making religion the basis for citizenship. And that, set apart India from our twin Pakistan. And it was on this foundation of compassion and inclusiveness, that the idea of India was built.

The Act's stated main objective – religious persecution of minorities in the neighbouring Muslim countries – appear valid in a cursory look. But the problem is that it violates the spirit of our own Constitution. It not only excludes the Muslims but many other communities like the Baha'is, or the Jews, and even the minority sects of the Muslims like the Ahmadis or the Baloch who have a long history of persecution. It keeps out important neighbours like Sri Lanka and Myanmar where minorities are known to be persecuted. Some have also questioned the wisdom of leaving out orphans, transgenders, atheists, etc.

Parliament has to make laws but in a fair and accountable way and the citizens have an equal right to criticise them. And all laws which conflict with, and seek to alter, the basic structure of the Constitution can be struck down on the principle of 'basic doctrine' which ensures that the majority is not allowed to bulldoze all others.

The big problem of the CAA is that it violates Article 14 of the Constitution which guarantees every person's right to equality before law and prohibits discrimination. It is also being seen as a precursor to an exclusionary National Register of Citizens (NRC). The first such experiment, in Assam, has yielded tragic results with close to 20 lakh people of all communities being declared as non-citizens.

The matter is before the Supreme Court. For now the government has clarified that NRC for the entire country is not being discussed. The next phase of the census and work for updating the National Population Register (NPR) have also been deferred. This is a good time perhaps for a more dispassionate discussion on its far reaching implications.

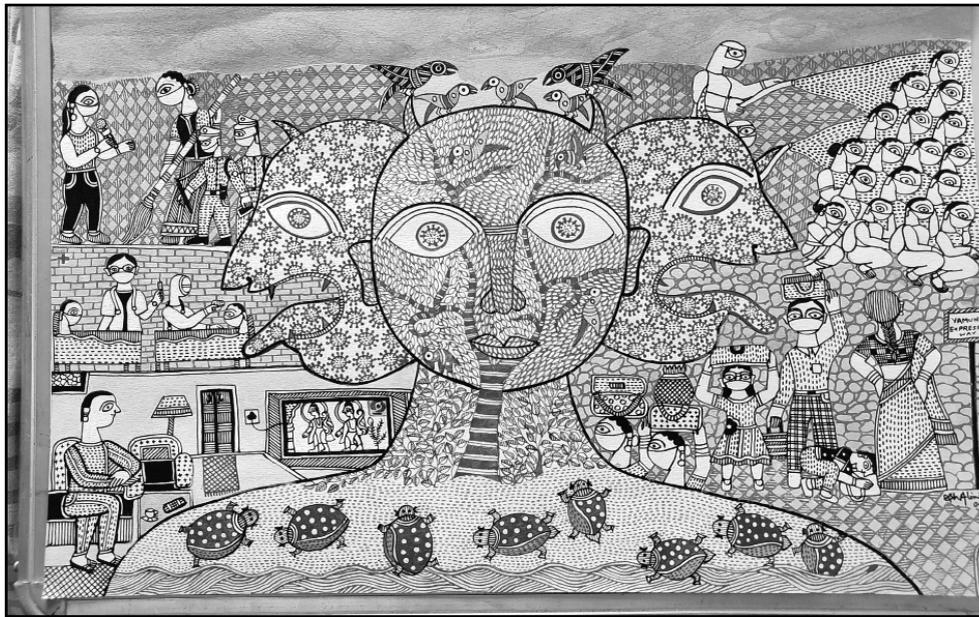
This issue of your journal has tried to demystify the implications of the CAA and COVID-19 in simple terms. We believe that we are living in an interdependent world and our actions have implications for others and in the end for ourselves. No single race, country or community can win the war against climate change, pandemics, poverty or prejudices alone. We are all in it together.

Like always, your views and comments are welcome on [commoncauseindia@gmail.com](mailto:commoncauseindia@gmail.com)

**Vipul Mudgal**  
Editor

# WHEN THE WORLD IS SICK

How the Coronavirus Outbreak is Impacting Our Lives



PAINTING CREDIT: Shalini Karn

We are living in times of a global pause. COVID-19, the disease caused by a member of the coronavirus family, is the world's biggest news story right now and will remain so, in times to come. The swelling numbers of people infected and even dying while doctors and health systems get overwhelmed across the world do not feel like scenes from a dystopian movie anymore. In such a time of information deluge and paralysing anxiety, here is a curated list of articles, already published in both national and international media, that we hope will cut the clutter around the COVID-19 crisis. Our list features excerpts of TED Talks by thought leaders as well as ideas distilled from experts on how the pandemic

will pan out in the days ahead and the arsenal of therapeutics, containment measures and testing that countries need to be equipped with in order to battle the deadly pathogen. We have listed news stories and features (often offering contrasting perspectives) on its impact on the economy, population movements and livelihoods. Some of the featured news articles also aim to facilitate our readers navigate the constitutional frameworks around various laws invoked during this unimaginable national crisis. Although the government and World Health Organization (WHO) have put out exhaustive guidelines, tips and advisories to create awareness about the outbreak, our curated list can be seen as additional reading

material that seeks to demystify the pandemic's impact on our lives.

## Medical

### 'How We Must Respond to the Coronavirus Pandemic'

In a conversation recorded on March 24, 2020, which was part of the *TED Connects* series, hosted by head of TED Chris Anderson and current affairs curator Whitney Pennington Rodgers, philanthropist and Microsoft cofounder Bill Gates tried to sum up the preparedness of governments.

- Gates stated unequivocally that it was January when everybody should have been on notice and armed with a multi-pronged strategy of

testing, therapeutics and vaccines. He believed that everyone should have been more organised at that point as the infectiousness and fatality of this novel respiratory virus put it in a 'superscary range.'

- According to him, testing for the virus at this stage needs to be organised as well as prioritised. It is the need of the moment. The second important thing, he says, is the need for isolation of the population. Although it is a difficult thing to accomplish and tough on the economy, it has to be done. The sooner these goals are achieved, the faster one can return to a normal situation. He feels that testing is everything, as it helps you understand whether you need to do more shutdown or if you are reaching a point when you can relieve it.
- Gates says that if the rich countries do what is expected of them really well, then they could contain the virus by summer. However, in the developing countries, particularly in the Southern Hemisphere, the ability to isolate citizens is tough as they go out to earn their wage, get their food daily and live either in slums or in close proximity to one another. Therefore rich countries need to provide cheap testing and therapeutics to the developing countries, so that five per cent of their people do not need to be put on respirators. Not only do developing countries lack such medical equipment but also

the personnel to handle it. Other forms of health capacity such as hospital beds are also absent.

- The Gates Foundation and Wellcome Trust, with support from Mastercard and now others, have created a 'therapeutics accelerator' which looks at lab assays, animal models, in order to understand the therapeutics that need to be prioritised. The process requires complex global coordination. He estimates that out of the top 20 or so candidates, probably three or four will work out as treatment at different stages of the disease, and subsequently alleviate respiratory distress.

*View the discussion at: <https://bit.ly/2VJKdbn>*

### **'What India Needs to Fight the Virus'**

Ramanan Laxminarayan, director of the Center for Disease Dynamics, Economics & Policy in Washington and a senior research scholar at Princeton University has been developing a large-scale computer model of the Indian population over many years. After studying how the coronavirus has brought a host of countries on their knees, his team has predicted the potential impact of the disease on India.

- Dr Laxminarayan has listed several crucial factors going against India during the current pandemic. The most worrisome among those is the country's long history of respiratory diseases. Poor air quality will also contribute

towards making a respiratory disease worse.

- As per the latest available data, global mortality rate from confirmed COVID-19 cases has averaged between two and three per cent. However, most of the countries affected by the disease are developed and have better health infrastructure in place. That's not the case with India. It doesn't have China's ability to control population flows using strict measures. Apart from this, limited economic resources are another deterrent in tackling the epidemic.
- According to Dr Laxminarayan's estimate, the pandemic will reach its peak by early May this year. However, the national lockdown could reduce the number of infections by 70-80 per cent before it reaches the peak.
- Considering the global trend, the COVID-19 outbreak in India is still at an early stage, he says. Dr Laxminarayan stresses on utilising this time to create an enormous, affordable and easily available testing infrastructure. He also suggests that we intensify efforts in identifying the sick, their contact tracing and their isolation. The government has to move swiftly, and must set up treatment as well as quarantine facilities. Considering the global demand, it must procure necessary equipment,

including test kits, personal protective equipment, ventilators etc. in time. Simultaneously, it has to train health workers.

Read more at: <https://nyti.ms/34U1Vxk>

### **‘Did India Overreact? Covid-19 Outbreak isn’t Following the Trajectory of Europe and China – So Far’**

Dr N Devadasan is a public health professional with more than 30 years of experience. He has also worked with the WHO as its national programme officer for communicable diseases in India. In this article he has answered some critical questions regarding the devastating virus using available official data.

- Many experts have criticised the government for not testing enough people for COVID-19. Dr Devadasan defends the government position in limiting testing only to those who may be at risk. He is of the opinion that since textbooks of applied epidemiology advocate the futility of testing new symptomatic patients once the agent of an epidemic is established, it would be a waste of resources to do so. He reinforces his argument saying that the treatment provided to a probable COVID-19 case and a confirmed one is the same. However, he suggests strict self-quarantine measures. The patient and their contacts should be monitored closely and if their health condition

deteriorates, then and only then should they be shifted to a hospital where they may be tested for COVID-19.

- To counter the fear of ‘spread to millions,’ Dr Devadasan gives trajectories of confirmed COVID-19 cases from different countries. He says that most of the European countries have an exponential trajectory of infection. In contrast, countries in North Africa and the Middle East, as well as India, have a linear trajectory.
- Indians have gone into panic mode because of the deaths reported in Italy and Wuhan but Dr Devadasan argues that our genetics, environment and people are different from those populations. The weather in India is not conducive for the virus to spread as rapidly as it did in Wuhan and Europe.

Read more at: <https://bit.ly/34P93ed>

### **Economy**

#### **Agriculture and Food**

- In a blog for the Foundation for Agrarian Studies, R. Ramakumar, NABARD Chair Professor, Tata Institute of Social Sciences, Mumbai, writes that as India goes into a state of total lockdown, the impact of the COVID-19 pandemic on its economy is becoming more acute than ever. In *The Covid-19 Pandemic and Indian Agriculture: A Note*, he says that the country’s economy, already seeing

a sharp downturn by the end of 2019, will inevitably have an extraordinarily poor growth rate for the months of March, April, and May 2020 (though they technically fall into different quarters of the financial year). He also sounded a warning bell that if we continue the lockdown for more than a month, the severity of impact on the country’s working people as well as the economy will be even more.

- Ramakumar also explains how the COVID-19 lockdown stands apart from other crises in the global real economy by giving rise to a situation where both demand and supply have fallen.
- The author’s sense of foreboding about how the COVID-19 pandemic has crashed into an already fragile financial world rings true. In India, the banking sector was under duress owing to high levels of Non-Performing Assets and little demand for fresh credit even before the virus started sickening the world. Also, lower economic activity in times of a lockdown will naturally imply that most debt repayments stop. He also opines that a prolonged lockdown would certainly lead to a banking crisis as well. Export-led economic sectors, including spice and plantation sectors in India, will register drops in both export demand and prices. Import-driven economic sectors, dependent on intermediary goods or raw

material imports, will witness those imports frozen and therefore production stopped. More importantly, in such a scenario, remittances will plummet, adversely affecting the nation's foreign exchange reserves. The author also says that the fall in oil prices is a saving grace, but it is negated by the fall in domestic oil demand.

- He notes that even before the onset of the COVID-19 pandemic, food price rise was a feature of the Indian economy. Data reveals that food inflation was on the upswing from the middle of 2019, reaching, by January 2020, levels previously attained in 2013-14. He forecasts that if inflation rises in March 2020 and later, it will add to the burden of an already swelling price curve.
- The author concedes that the overall supply situation of essential food items does not appear to be too worrisome in India at this point. But he cautions that things could be different if the lockdown proceeds beyond a month, when the supply chains will see disruptions. The situation may exacerbate with supply bottlenecks, which could lead to price rise.

Read more at: <https://bit.ly/3apjkk>

## Market Sentiment

### 'Job Seekers, Firms see 'Pessimism' in Market Sentiment: RBI Survey'

In an article in *Business Standard*, details of the results of a few of the Reserve Bank of India (RBI) surveys have been discussed by Anup Roy. A brief overview:

- The author says that the results of the surveys, conducted before the nation went on a lockdown to flatten the coronavirus curve, reflect a sense of gloom in certain quarters. The survey results show that the general population remains pessimistic about economic and job prospects in the immediate future, even as they expect some improvement in the next year, going by the consumer confidence survey.
- In order to capture the sense of a possible virus impact, a separate 'industrial outlook survey' was repeated a fortnight after the original survey was completed. The survey, repeated with 48 companies as against 860 in the original, showed "very sharp deterioration in sentiment across all sectors for Q4FY20 (fourth quarter of the Financial Year 2019-20), and stark pessimism for Q1FY21 (first quarter of the Financial Year 2020-21), compared to the assessment in the initial round of the survey," the RBI said.
- However, it is to be noted that apart from the industrial outlook survey, the economic bearing resulting from the pandemic scare was not possible to be captured by the other surveys, considering that

the crucial surveys had ended by March 7.

- In the Inflation Expectations Survey of Households, which was conducted in 18 major cities across 5,912 urban households, the three-month and one-year median inflation expectations declined by 10 bps (basis points) and 20 bps, respectively. However, the share of households expecting general inflation to rise in the next three months and one year also declined noticeably, compared to the January 2020 round, the RBI said.
- In the Order Books, Inventories and Capacity Utilisation Survey (OBICUS) for the December quarter 2019 — covering 704 manufacturing companies — the RBI found that capacity utilisation declined to 68.6 per cent in the Q3FY20, from 69.1 per cent in the previous quarter.

Read more at: <https://bit.ly/2VlacXR>

Also read: <https://bit.ly/3bogPhF>

## Legal

### 'Is the National Lockdown in India Constitutionally Valid?'

In an opinion piece published in *The Wire* on March 28, 2020, lawyer Sanjoy Ghose analyses the legal validity of the orders passed by the central government in the wake of the coronavirus pandemic. Here are the key points:

- In the preface, the author cites Mila Versteeg, Professor of Law at the University of

Virginia, to add a caveat. He states that even if the constitutional validity of lockdowns such as these may be doubtful, people may be voluntarily willing to sacrifice their rights in the face of a pandemic. However, the author clarifies, that shouldn't hinder us from examining the legal and constitutional validity of the orders passed.

- Ghose begins with the original emergency provisions as provided in the Constitution under Article 352, and traces the history of its misuse under the Indira Gandhi government which eventually led to the 44th constitutional amendment brought in by the Janata Party government in 1978. Through this amendment, the term "internal disturbance" was substituted with "armed rebellion." It also clarified in Article 359 that the right to life (Article 21) and the right against double jeopardy and self-incrimination (Article 20) could not be suspended even during an emergency.
- For the current pandemic, two laws provide the statutory basis for the centre and states to pass relevant orders: The Epidemic Diseases Act, 1897 (EDA) and the Disaster Management Act, 2005 (DMA). While the EDA does give the government wide powers to take necessary measures against the outbreak of a disease, it is subject to the provisions of the Constitution,

being a colonial law. Till date, the validity of none of the provisions of the EDA has been examined vis-à-vis the Constitution. More importantly, the author notes, the central government's power under this law only seems to be restricted to controlling the movement and detention of vessels at ports.

- Ghose then goes on to explain the provisions of the DMA, which is a more contemporary statute. It mandates setting up a three-tier Disaster Management Authority at the national, state and district levels to formulate a disaster plan at these levels. Apart from provisions under the Act empowering the central government to constitute a national fund and issue binding directions to authorities and state governments, Section 72 gives this law an overriding effect.
- In the final section of the article, Ghose, particularly referring to the migrant exodus and the loss of economic assurance to daily wagers, questions the legality of the right to life, including the right to livelihood being snuffed out by falling back on Article 256 read with the DMA. He opines that if such drastic steps can be initiated (albeit with universal consent) without even invoking the emergency provisions, then the provisions of constitutional-legislative oversight over the suspension of fundamental rights during

emergency have been rendered meaningless.

Read more at: <https://bit.ly/2XPmPMr>

## **'Is the Central Government Coronavirus Lockdown Order Constitutionally Valid?'**

In contrast to the above article, lawyers Bharat Vasani and Samiksha Pednekar in a *Bloomberg Quint* article dated March 31, 2020 provide an alternate view, opining that the orders passed by the central government are in fact consistent with the DMA. A brief summary:

- The authors discuss the division of power between the states and the central government, as provided under Articles 245 and 246 of the Indian Constitution. While Entry 29 of the Concurrent List empowers the central and state governments to legislate on matters pertaining to the prevention of an infectious or contagious disease spreading from one state to another, Article 245, which provides the 'Doctrine of Repugnancy' acknowledges the primacy of parliamentary law over state legislation in the concurrent list.
- The authors also weigh in on the debate around the government's choices regarding legal provisions to be invoked for the current pandemic. They say that the government could not have declared a national emergency, as Article 352 of the Constitution, post the

44th Amendment, permits the government to declare an emergency only on three grounds: war, external aggression or armed rebellion. Therefore, effectively, the government could only rely on Entry 20 of the Concurrent List and invoke the DMA, which it did.

- Vasani and Pednekar note that the DMA was passed to provide a legal framework for setting up a National Disaster Management Authority (NDMA) under the Chairmanship of the Prime Minister of India. Further, the powers of the NDMA under Section 6 of the Act can be broadly interpreted to give a unified command to the central government to effectively manage a disaster throughout India.
- Citing from Section 2(d) of the DMA, which defines “disaster,” the authors hold that the COVID-19 outbreak is bound to fall under this definition, thus allowing the central government to lay down policies, plans and guidelines for disaster management. Section 38 of the Act, further, casts a duty on the states to follow the directions of the NDMA.
- Towards the end, the authors note that Section 72 of the DMA provides that the Act will have an overriding effect on all other laws, to the extent that they are inconsistent. Therefore, the orders passed by the Ministry

of Home Affairs will override any state or municipal order, to the extent that they are inconsistent.

*Read more at: <https://bit.ly/2Vof8uQ>*

### **‘COVID-19 in India: Mishandling Infected Dead Bodies Spell Anxiety’**

In an article published on March 25, 2020 in the Ankara-headquartered *Anadolu Agency*, journalist and photographer Cheena Kapoor brings out the curious, if disturbing, repercussions of the pandemic.

- The author notes that amid the national lockdown to stem the spread of COVID-19, the management of infected dead bodies and their funeral remain a source of concern. The article claims that guidelines issued by the Health Ministry regarding the handling of infected dead bodies have huge gaps, as per experts. The guidelines call for cremating bodies at a high temperature in electric crematoria or plastering graves with cement.
- China’s Infection Control Branch of the Department of Health issued a slew of guidelines on February 20, 2020, which have now been accepted globally. According to these guidelines, the body bag should not be less than 150 microns and should be accompanied with another layer of a mortuary sheet or opaque bag. In India, the Indian Council of Medical

Research (ICMR), back in 1987, stipulated that dead bodies affected with diseases such as HIV should be wrapped in double plastic bags. However, the Indian Health Ministry guidelines issued in the wake of the COVID-19 pandemic do not specify the method of cremation or the plastering of graves.

- The article also states that the practice of cremating dead bodies in open spaces or along river banks poses a perpetual danger of infection transmission. Experts say that the preferred method of consuming the dead bodies was to use the electric or CNG-run crematoria. However, there is a shortage of such crematoria in the country.
- The Department of Forensic Medicine and Toxicology at AIIMS Delhi has released a protocol, which states that “for last rites, cremation should be preferred for the complete elimination of chances of infection in either electric or gas crematorium in a zipped body bag. However, keeping in mind the religious views of the family, if the burial of the body is requested, then it should be assured that the body is buried in a thick, airtight coffin.” Further, the body needs to be buried at a depth of four-six feet and should be cemented immediately as an additional precautionary measure.

*Read more at: <https://bit.ly/3boOCay>*

# THE LONG ROAD HOME

## How the Lockdown Has Affected Migrant Labourers

Akhilesh Patil\*



*A group of migrant labourers leaving Delhi, trying to reach Greater Noida through Noida Express Way, after hearing rumours that buses would operate from there.*

On March 27, 2020, a unique scene was unfolding near the Kaushambi-Delhi border. A stream of humanity, a rag tag bunch, had hit the road close to the Ghazipur mandi, walking with just the clothes on their backs. The hope of reaching home, in nearby districts or in other remote corners of the country kept them going. Men could be seen carrying worn out backpacks while women were walking with young children. They were part of the approximately 120 million migrant labourers in

India (according to the migrant advocacy NGO Aajeevika Bureau), who were caught unawares when, Prime Minister Narendra Modi announced on March 24 that, “to save India (from COVID-19),’ the entire country is going into lockdown for 21 days, with every citizen banned from leaving home.”

According to the ‘Oxford COVID-19 Government Response Tracker’ created by researchers from the Blavatnik School of Government at the University of Oxford, India has

the strictest lockdown in the world.<sup>1</sup>

Experts have weighed in on the drastic toll this lockdown will take on the migrant. In fact economist Chinmay Tumbbe, author of *India Moving – A History of Migration* and an Assistant Professor at IIM (Ahmedabad) spoke about the severe fallouts for the migrant labourer who has decided to walk back home in the wake of the national lockdown in a media interview. “Migrants’ health takes a huge beating in

\* Akhilesh Patil is a Research Executive at Common Cause



*A migrant labourer family stranded in Greater Noida in Uttar Pradesh.*

this process. That the already-malnourished will suffer immensely... And that for a few who may test COVID-19 positive, the fatality rates may be higher, only because of the long walk back home," he says.<sup>2</sup>

It is not surprising that this category of the population is paying a very steep price. The precariousness of their lot cannot be stressed enough. The UNESCO research paper *Social Inclusion of Internal Migrants in India* says that internal migrants, of which 70.7 per cent are women, are excluded from the economic, cultural, social and political life of society and are often treated as second-class citizens. It goes on to list the constraints faced by these migrants, including lack of formal residency rights; lack of

identity proof; lack of political representation; inadequate housing; low-paid, insecure or hazardous work; extreme vulnerability of women and children to trafficking and sex exploitation; exclusion from state-provided services such as health and education and discrimination based on ethnicity, religion, class or gender.<sup>3</sup>

In the backdrop of the lockdown the helplessness of this group was for all to see. Most had no clarity on how they would earn, feed themselves, and even pay room rent.<sup>4</sup> The situation became so dire for these hapless souls that food and residence in shelter homes and camps provided by the authorities became their only recourse.<sup>5</sup>

The purpose of the lockdown was to contain the spread of the virus and data shows that the lockdown has helped in restricting the number of cases. The Ministry of Health and Family Welfare had earlier said that India went from 100 cases

**“Internal migrants, of which 70.7 per cent are women, are excluded from the economic, cultural, social and political life of society and are often treated as second-class citizens.”**

to 1,000 cases in 12 days. In comparison, COVID-19 cases in other developed countries rose between 3,500 and 8,000 in the same time frame.<sup>6</sup>

However, there's another pretty grim statistic. A dataset created by researchers Thejesh GN, Kanika Sharma and Aman narrates a different story about the lockdown. As per the dataset, at least 195 people have died in the first phase of the national lockdown. Of these, at least 35 migrants were accidentally run over on the highways while walking back home. An important point that needs to be considered while looking at these numbers is that the dataset is a compilation of credible news or social media reports. Therefore, the number of deaths mentioned is just the reported deaths and the real numbers are likely to be much higher.<sup>7</sup>

The ordeal for migrant workers who chose to reach home by

foot is endless. Some have lost their lives while undertaking these long treks. Thirty nine-year-old Ranveer Singh was employed by a restaurant in Delhi as a food delivery worker. He walked for almost 200 km but collapsed in Agra and died. The autopsy revealed heart attack as the cause of his death but police assume that exhaustion caused by the long walk may have triggered his existing heart condition.<sup>8</sup>

The lot of those who manage to reach their villages is equally devastating. Many of them faced the wrath of local authorities because of the panic caused by the COVID-19 outbreak. Roshan Lal, managed to go back to his village, Fariya Pipariya in Uttar Pradesh on March 29 from Gurugram, where he used to work as a daily wage worker. On April 1 he committed suicide after he was allegedly humiliated and beaten up by the local police.<sup>9</sup>

Partha Mukhopadhyay and Mukta Naik, from the Centre for Policy Research (CPR), New Delhi, wrote: "At the heart, their (migrants') walking conveys a deep distrust of the state, especially when it promises assistance." "As a country, we have not succeeded in making people believe that the state is there for them, that it will have their back for as long as it takes — that it is their right as citizens of India. The poor see and experience the state often through a lens of violence and control, as evidenced in the recent orders, and rarely through a prism of care," they add.

Reports on incidents of police brutality abound.<sup>10</sup> In some cases growing frustration brought the workers on the streets not to quietly walk back home but to put their demands in front of the authorities which later resulted into violent clashes between them and the police.

On April 10, a few days before the conclusion of the first phase of the national lockdown, Surat witnessed protests from migrant workers. They demanded their salaries and wanted to go back to their native states. They torched vegetable carts and vandalised properties and shops along the road in Lasanaka area, a migrant hub in the city.<sup>11</sup> Similar scenes were seen near Bandra bus depot in Mumbai. On April 14, the ongoing national lockdown was extended to May 3. The announcement brought labourers from a migrant colony in Bandra



*The wife of a migrant labourer sitting on a Greater Noida pavement with two of her children, unsure how they would reach their home in Mathura.*

on the streets. Thousands of migrants gathered with one demand: “we don’t want rations, just send us back home.” The police finally lathicharged and dispersed the crowd.

Various news reports have highlighted the constricted living conditions of these migrant workers. In Bandra West, where a lot of migrants reside, 13 – 14 people have been sharing a single 300 sq ft room in some cases. The onset of summer has simply worsened their plight. With some of them having less than Rs 300 in their pockets, migrant workers in this area are dependent upon the government or NGOs for food.<sup>12</sup>

It’s the same refrain among labourers who have left home to fend for themselves and their families in unknown lands. Poor living conditions, no work and no money are disheartening for them. A research report published by Stranded Workers Action Network (SWAN), a group of volunteers mostly from the Right-to-Food and Right-to-Work civil society groups echoes the hopelessness.<sup>13</sup> SWAN volunteers interacted with 640 groups of stranded migrants and surveyed over 11,000 workers from March 27, 2020 to April 13, 2020. Most of the workers surveyed were from Jharkhand (28%), Bihar (25%) and Uttar Pradesh (13%).

According to the report, around 89% had not been paid by their employers at all during the lockdown and roughly 78%

workers had less than Rs.300 left with them. The report also highlights that the rate of hunger exceeded the rate of relief. The percentage of people who said they have less than one day of rations increased from 36% to 50% in the third week of lockdown while the percentage of people who received government rations increased from 1% to only 4% in the third week of lockdown. In total, nearly 96 % had not received rations from the government and 70% had not received cooked food. The report also reveals that the figures of 0.6 million migrants who are in relief shelters and 2.2 million migrants who have been provided food, mentioned in the status report filed by the government in the Supreme Court are just another indication of gross under provisioning for migrants during the lockdown.

After reflecting on the report’s key findings, SWAN has made categorical recommendations on food security, wages and income support, social security, shelters and housing, and transport facilities for migrants of different categories.

From the bouquet of news reports, research reports and visuals of migrant workers taking to the roads, one thing is clear. The return to a safe haven, their home, is the only hope that migrants harbour. Tumbe has spoken in a media interview about how for the circular migrant worker, “the

**“Domestic migrants, especially so-called un-domiciled domestic migrants, suffer from a lack of formal residency rights; lack of identity proof, etc.”**

city is seen as a means to an end of providing for the family back home. In times of distress, whether a recession or a pandemic, ‘home’ is the native place and migrants set off. The economic dimension comes from paying housing rents which one can save on, if one leaves the city. But more than that, it’s a natural tendency to be with parents and extended family back home, during times like these.”<sup>14</sup>

Scholars have been arguing for several years that government data tends to underestimate the flows of seasonal/circular migration. This could also be a prominent reason behind the chaos, since the government couldn’t estimate the real extent of internal migration in India.

According to the Economic Survey 2016-17 (released in January, 2017), the first-ever estimates of internal work-related migration using railways data for the period 2011-2016 indicate an annual average flow

of close to 9 million migrant people between the states.<sup>15</sup> This estimate is significantly greater than the annual average flow of about 4 million suggested by successive Censuses and higher than previously estimated by any study.

More importantly, domestic migrants have a bevy of woes to contend with and their deprivation seems to know no bounds. In fact the concept note for the national seminar *Contesting Spaces & Negotiating Development: A Dialogue on Domestic Migrants, State and Inclusive Citizenship in India*, organised by Tata Institute of Social Sciences (Mumbai) underlined that domestic migrants, especially so-called un-domiciled domestic migrants, suffer from a lack of formal residency rights; lack of identity proof; lack of adequate housing; low-paid, insecure or hazardous work; no access to state-provided welfare services including denial of rights to participate in elections even though elections in India have acquired the mythical status of ‘the greatest show in Earth.’ Thus, these exclusionary practices lead to their disenfranchisement and treatment as second-class citizens.<sup>16</sup>

Not surprisingly, the ongoing epidemic has pushed them further downhill. Social activists Nikhil Dey and Aruna Roy have described their slide in

excruciating detail in a recent article: “Millions of migrant workers, and other vulnerable groups, have lost their livelihoods, income security, and sense of dignity in three short weeks. They knew that they were vulnerable to the virus, but for them, the cure of an extended lockdown is already worse than the disease.”<sup>17</sup>

To counter these situations of extreme deprivation, experts have suggested steps that need to be taken immediately and would provide some relief to stranded workers. Mukhopadhyay and Naik of CPR suggest that arrangements must be made to take all the migrants back home, but only if they came, registered and stayed in designated shelters. To control transmission, identification of migrants and their destination need to be done so that local governments can be informed. Such data can be collected from their Aadhaar

**“To counter these situations of extreme deprivation, experts have suggested steps that need to be taken immediately and would provide some relief to stranded workers.”**

cards at registration. Once they reach home, it has to be ensured that panchayats test a sample of returning migrants — they will know who they are, even if the Aadhaar database is delayed. The writers advocate that Panchayats need to be prepared to combat the epidemic.<sup>18</sup>

Some states with a large number of migrant workers have indeed worked towards being alert and vigilant and their efforts have been applauded. What worked for states like Kerala are their robust public health system, and a culture of thriving grassroots democracy with power devolving effectively to the village councils. It helped in community outreach, rigorous contact tracing and mass quarantine.<sup>19</sup>

Experts have a slew of recommendations that can go a long way in making a difference to the lives of migrant labourers. SWAN, in its report recommends actionable measures such as doubling the PDS for three months, providing two cooked meals at conveniently located sites, minimum wages for 25 days per month to be released into Jan Dhan accounts of all urban residents, no closure of hostels, relief camps, and shelters, paying full wages of workers in the informal sector, etc. In addition, the report advocates measures such as no eviction of tenants by landlords as already mandated by the Home Ministry.

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Photographs courtesy: StoriesAsia

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# COMMON CAUSE UPDATES

## Supreme Court Cases

**Discrepancies in EVM data:** The elections in India are held using the Electronic Voting Machines (EVM) with Voter Verifiable Paper Audit Trail (VVPAT) attached to each EVM, offering a verifiable record of every vote cast. Normally, the random sampling of VVPAT slips is done for five polling stations in each constituency. The elections to the 17th Lok Sabha, starting from April 11, 2019, were conducted in seven phases covering 542 constituencies. The results were announced on May 23, 2019. However, the Statutory Rules as well as the Manual issued by the Election Commission of India (ECI) in February 2019 do not contain provisions for dealing with discrepancies arising out of the counting process. The ECI has failed to not only provide the quantum of discrepancies encountered in the process, but has also abstained from disclosing the methodology adopted for their resolution.

Hence, Common Cause, along with Association for Democratic Reforms (ADR), has approached the Supreme Court to ensure that democratic process is not subverted by electoral irregularities. It also sought to ensure the enforcement of fundamental rights guaranteed under Articles 14, 19 and 21 of

the Constitution. The petition seeks a direction to the ECI not to announce any provisional and estimated election results prior to actual and accurate reconciliation of data. It also seeks directives to evolve an efficient, transparent, rational and robust mechanism by creating a separate department/grievance redressal cell for the investigation of discrepancies, etc., including those which had taken place in the 17th Lok Sabha election results.

On December 13, 2019, the petition was tagged with W.P.(C) No.1389 of 2019. A notice was issued, returnable on February 17, 2020.

On February 24, 2020, the bench consisting of the Chief Justice and Justices Bhushan Gavai and Surya Kant directed this matter to be listed after four weeks on a non-miscellaneous day. In the meantime, the counter-affidavit is to be filed. This case is likely to be listed next on March 31, 2020.

**Right to clean air, adoption of electric vehicles:** Common Cause, jointly with Centre for Public Interest Litigation (CPIL) and Sitaram Jindal Foundation, filed a PIL demanding implementation of the 'Faster Adoption and Manufacturing of (Hybrid &) Electric Vehicles in

India' (FAME-India) scheme and Niti Aayog's recommendations. It also prayed for the adoption of internationally recognised best practices for integration of usage of electric vehicles.

The petition brings to the Court's attention the government's release of the National Electric Mobility Mission Plan, 2020 in 2012, in which several recommendations were made for the adoption of electric vehicles. Among other things, the plan had recommended that government fleets and public transportation be switched to electric vehicles; subsidies be provided to consumers for purchase of electric vehicles and the provision of tax and policy incentives. It had also recommended provisions for charging points in apartment buildings, parking lots, government offices, malls etc.

On March 3, 2019 the Court said that further orders will be passed after the government informs the Court about the steps taken so far.

On February 19, 2020, the Supreme Court noted that the electric vehicle use issue was inextricably linked to other allied matters on air pollution pending before it. Among them is the serious problem of vehicular pollution, pertaining

to the fuel used in vehicles, the Court said. This impacted not only the NCR region, but the entire country. The Court considered it appropriate that all such pending issues be considered simultaneously and with the assistance of an authority empowered to take decisions. It specifically sought assistance from the parties on the following points: Procurement of electric vehicles; Providing charging ports; Feebate system (imposing fee on vehicles with high emissions and providing a subsidy on electric vehicles); Use of hydrogen vehicles; Any other alternate means of power for vehicles; Overall impact on import and environment.

With this order the Court directed the matter to be listed on March 31, 2020 as the first item.

### **Miscellaneous Application (MA) in Right to Living Will:**

The Indian Society of Critical Care Medicine (ISCCM) has filed an MA, seeking a clarification on paragraphs 191 to 194 of the judgment in the Common Cause petition on Living Will and the right to die with dignity. These paragraphs explain the Advance Medical Directive (AMD), its functioning, execution, records, the parties involved, and the role of the Medical Board, among other things.

The petition has sought specific modifications, deemed necessary to remove the uncertainty on withholding or withdrawal of

life-sustaining treatment in India. The application includes provisions for the right to refuse life-sustaining treatment. As per communication received from the petitioner advocate, the application seeks to simplify the process of executing an AMD, which requires travelling and interaction with several authorities. The matter was taken up on November 19, 2019 and was directed to be listed before the Constitution Bench headed by Justice Arun Mishra in the coming week.

On December 11, 2019, the court permitted that notice be served on the standing counsel within three days. As ordered on November 19, 2019, the Constitution Bench, consisting of Justices Arun Mishra, Indira Banerjee, Vineet Saran, M.R. Shah and S. Ravindra Bhat, heard the matter.

On January 22, 2020, the Bench asked the Union of India to file a response within 10 days. The counsel indicated that they are trying to convene a joint meeting of all the stakeholders. The Bench has allowed the joint meeting and asked for a report on the consensus arrived at, if any. Common Cause also received a notice to attend the meeting and our legal counsel for the matter, Prashant Bhushan participated in the event.

**Writ for police reforms:** The battle for police reforms has been going on for the last 23 years. The Supreme Court took 10

years to give a historic judgment in 2006, in the petition filed by Prakash Singh, Common Cause and N K Singh. Since then, it has been a struggle to get the Court's directions implemented. On February 28, 2020, our counsel sought urgent listing of a fresh plea seeking implementation of guidelines laid down in the 2006 judgment on police reforms. He referred to the riots which broke out in North East Delhi to highlight the pressing need for the court to issue directions for the implementation of the 2006 judgment. The bench, comprising CJI S A Bobde, Justice B R Gavai and Justice Surya Kant, agreed to list the matter after the hearing in Sabarimala reference case RP (C) No. 3358/2018 in WP (C) No. 373/2006 was concluded.

**Introduction of electoral bonds challenged:** Common Cause and ADR challenged the introduction of Electoral Bonds through an amendment in the Finance Act, 2017. These bonds have not only made electoral funding of political parties more opaque, but have also legitimised high-level corruption at an unprecedented scale by removing funding caps for big corporates and opening the route of electoral funding for foreign lobbyists. The PIL seeks directions from the Supreme Court to strike down the amendments brought in illegally as a "Money Bill" in order to bypass the Rajya Sabha. On October 3, 2017, a notice was issued to the respondents and on

February 2, 2018, our petition was tagged with one filed by the Communist Party of India (Marxist).

On March 14, 2019, the Centre claimed in its affidavit that electoral bonds would “promote transparency in funding and donations received by political parties.” The matter was taken up on March 26, 2019, when the ECI again red-flagged the scheme, pointing out that it had expressed concerns about it even in 2017. It said on affidavit that the scheme would have “serious repercussions/impact on the transparency aspect of political finance/ funding of political parties.”

In April 2019, the SC had declined to give its final ruling on the matter, saying there wasn’t much time left for a detailed examination of the issue before the Lok Sabha elections. It had asked political parties to submit donor details to the ECI in a sealed cover by May 30. The Apex Court has reserved its judgment while the information lying with the ECI in sealed covers cannot be made public without the Court’s direction. In December too, the Court was approached before the assembly elections, when it said it would grant a hearing in January 2020. This matter was listed on January 20, 2020, when the court granted two weeks’ time to the respondents to file their response. The three-judge bench led by the CJI listed the case for hearing in two weeks, only

at the insistence of our lawyer seeking an urgent stay on the sale of electoral bonds ahead of the assembly polls in Delhi. The matter is likely to be listed on March 16, 2020.

### **Illegal Mining in Odisha:**

There has been much progress since the final judgment on August 2, 2017, when the Court imposed 100 per cent penalty on illegal mining (i.e., without forest and environmental clearances, mining outside lease/ permitted area and mining in excess of permissions). In September 2017, Common Cause filed an application for clarification of issues arising out of the judgment. The Central Empowered Committee (CEC), formed by the SC, and comprising Justices GS Singhvi and Anil R Dave, was asked to ascertain whether there had been any violation of the applicable rules and regulations.

Subsequent to the Court’s judgment on the Interim Application/objections on November 12, 2018, holding Sarda Mines Pvt Ltd (SMPL) guilty of illegal mining in Odisha, the matter was taken up on January 16, 2019. On that day, the time to complete the task of reviewing the National Mineral Policy, 2008, and announce a new National Mineral Policy was further extended up to April 30, 2019. The Union of India filed its report on April 29, 2019, which was taken on record by the Court. On May 3, 2019, A D N Rao, learned Amicus Curiae,

submitted that the report of the CEC would be filed on or before May 8, 2019. The matter was listed several times in the period between July and September 2019.

On January 16, 2019, the Apex Court took cognisance of the deleterious effect of mining on vegetation. The bench opined that a condition must be imposed in the mining lease, the environmental clearance and the mining plan. This should be to the effect that the mining lease holders shall undertake re-grassing the mining area and any other area which may have been disturbed due to their mining activities. The lease holders should also restore the land to a condition which is fit for growth of fodder, flora, fauna etc., after ceasing mining operations. The Union of India was directed to report the action taken within a period of three weeks and to devise appropriate methods for ensuring compliance of this condition after the mining activity is over, at the cost of the mining lease holders. This condition shall be in addition to other conditions already imposed under the mine closure plan and shall not be imposed in derogation of any other condition.

In IA No. 186810 of 2019, the Bench allowed the application filed by SMPL to continue mining after granting one month’s time to deposit the dues and ordered SMPL to file an undertaking to comply with all the rules,

regulations and other mandatory provisions for carrying out mining operations. In IA No. 30915 of 2019, application filed by M/s Mideast Integrated Steels Ltd. was allowed, and Mideast was permitted to sell the iron ore already mined, under the supervision of an authority to be appointed by the state government. This would be subject to the sale proceeds being deposited with the Special Purpose Vehicle, Odisha Mineral Bearing Areas Development Corporation (OMBADC).

On January 27, 2020, the Supreme Court granted the Union of India a period of four weeks to report the compliance by the states on a previous order by the said court (08.01.2020), with respect to re-grassing by the mining lease holders.

On January 29, 2020, the Court stated that the report prepared by Justices Singhvi and Dave be placed before the Odisha state government. This was to determine whether the facts and conclusions of the committee necessitated taking appropriate action on particular mining leaseholders. In addition, the bench stated that the petitioners can bring to notice any information about the mining lease holders who may have been exonerated by the

committee but have violated the law. It also stated that accused parties will have the right to be heard before action is taken by the state government, based on the report of the committee.

With respect to IA No. 157635/2019 filed by the Odisha Mining Corporation, the bench stated that the applicant was permitted to commence mining operations in the Tiringpahar Iron Ore Mines of OMC Ltd. The matter is likely to be listed on March 16, 2020.

**Coal block allocation:** On September 27, 2019, the Court reiterated that no investigating officer (IO) associated with the probe of coal block allocation scam cases would be transferred or repatriated to parent cadres without its permission. The bench of justices Deepak Gupta and Surya Kant, however, allowed a plea by some supervisory officers in the Enforcement Directorate (ED) and Central Bureau of Investigation (CBI) for repatriation to parent cadres. It said that IOs of the coal scam cases shall not be released in order to maintain continuity but the supervising officers, who have completed their deputation tenures, can be released. The Court said that the officers, so repatriated, shall be replaced

by officers of the same rank. Senior Advocate RS Cheema, the special public prosecutor (SPP) pleaded before the Bench to relieve him from the money laundering cases arising out of the matter. He said he faced problems owing to lack of prosecutors and personnel needed to handle the cases. The Apex Court declined to pass any order on this application and said it would consider the plea in December 2019. On December 9, 2019, the Court requested Cheema and the Solicitor General to suggest names for the SPP for ED. Our advocate again raised the issue of delay in completion of investigation against the former director of CBI, Ranjit Sinha, which was ordered in 2015. The SPP committed that the report would be submitted in February. However, during the hearing on February 19, 2020 the SPP requested for more time which was granted by the Court.

On February 19, 2020, the bench, consisting of Chief Justice of India SA Bobde and Justice Deepak Gupta accepted the Status Report filed on 25.09.2019 by CBI and ordered to list the matter after four weeks along with I.A. No.35 of 2012. In the meantime, the CBI was allowed to file a further status report before the Court.

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# COMMON CAUSE EVENTS

SPIR 2020 Brainstorming: December 3, 2019 and January 16, 2020

**Akhilesh Patil and Dhruv Shekhar\***



PHOTO CREDIT: Sachin Kumar, CSDS

*A brainstorming session at CSDS to finalise the themes and concerns of SPIR 2020.*

Common Cause organised several brainstorming sessions at the Centre for the Study of Developing Societies (CSDS) to finalise the themes and concerns of the third edition of the Status of Policing in India Report (SPIR 2020). SPIR 2020 will look at the forms and context of policing in conflict states or states where some form of extremism, insurgency or militancy is taking place and a large number of paramilitary or armed forces are present. The first session was held on December 3, 2019 at the CSDS campus, in which elaborate discussions focussed on the themes and issues needed to be addressed by the upcoming report.

Apart from Kamal Kant Jaswal and Vipul Mudgal, President and Director of Common Cause respectively as well as

Sanjay Kumar, Professor, CSDS, participants included Ish Kumar, former director, National Crime Records Bureau (NCRB), Pooja Satyogi, Assistant Professor, School of Law, Governance and Citizenship, Ambedkar University Delhi and senior journalists such as Sangeeta Barooah Pisharoty and Satyendra Ranjan.

Mudgal began the session by stressing on the importance of using data to improve policing and suggested ways in which data can be used to assess the performance of the police as well as levels of citizens' trust and satisfaction. Subsequently, he explained how the objective of SPIR 2020 was to shed light on the status of policing in conflict ridden areas of the country.

During the session, participants shared their diverse perspectives

on the upcoming report and gave suggestions on its methodology and themes. Ajay Dandekar, faculty member at the Department of History, School of Humanities and Social Sciences, Shiv Nadar University, recommended segregating the report depending on the relevant regions. Satyogi suggested creating a distinction between short term and long term disturbed areas.

Other notable suggestions came from Javed Iqbal Wani, assistant professor, School of Law, Governance and Citizenship, Ambedkar University Delhi. He cited the example of Jammu & Kashmir while proposing that the report explore the relationship between local police forces and the paramilitary forces and evaluate whether citizens view the law enforcement agencies as a monolith or as entities with different personalities. Pisharoty discussed in detail the dynamics of the law and order situation in the Northeast.

Keeping these suggestions in mind, the team held another session on January 16, 2020, in which survey questionnaires and the sample scheme were finalised. As per the designed sample scheme, approximately 10,000 citizens and police personnel from 26 districts of 11 states will be surveyed.

\* Akhilesh Patil and Dhruv Shekhar are Research Executives at Common Cause

## Discussions on SPIR and India Justice Report: February 8, 2020 and February 27, 2020

Radhika Jha\*



PHOTO CREDIT: Tata Trusts

*Radhika Jha of Common Cause participating in a roundtable consultation at the release of the India Justice Report at the Gujarat National Law University.*

graduate programme in Public Policy & Governance and LLM in Law and Development at the Azim Premji University (APU), Bengaluru. The presentation was attended by nearly 50 students. It was followed by a faculty seminar in which Common Cause made a presentation on the first two editions of SPIR to the faculty of APU. The presentation was accompanied by an engaging question and answer session on policing in the country as well as the future research projects of Common Cause. Possible collaborations between the organisations were also discussed during the meeting with the faculty.

On February 8, 2020, a roundtable consultation and release of the India Justice Report (IJR) was organised at the Gujarat National Law University in Gandhinagar. Radhika Jha from Common Cause participated in the session and represented the IJR team in the consultation on police. The report release was attended by more than 60 civil society members, faculty as well as students, while the roundtable on the police was attended by about 15 civil society members and academics. The consultation focussed on the findings of the study, particularly in the context of Gujarat, and the ways in which these findings can be used for advocacy purposes. Participants also gave constructive feedback on the report and suggested future areas of research.

On February 27, 2020, Jha of Common Cause presented the key findings of the Status of Policing in India Report (SPIR) 2019 to the students of the post



PHOTO CREDIT: Tata Trusts

*The consultation, focussed on the findings of the India Justice Report, was attended by civil society members and academics.*

\* Radhika Jha is a Research Executive at Common Cause

# Labour Migration – Advanced Perspectives for Practice: February 10, 2020 - February 15, 2020

Shambhu Ghatak\*



PHOTO CREDIT: Shambhu Ghatak

*Ravi Srivastava, former professor of economics and chairperson, Centre for the Study of Regional Development, Jawaharlal Nehru University (Right) with Shambhu Ghatak of IM4Change.*

and Programme Implementation) and India Human Development Survey (by National Council of Applied Economic Research). In addition, course participants were introduced to various theories of migration -- classical and neoclassical theories including rational choice theory, structuralist/ Marxist approaches to labour migration and post-structural theories of migration. The certificate course also covered labour laws and explained the role of trade unions in formal and informal labour markets.

Around 28 participants from various parts of India attended the course. Course instructors included Babu Mathew, former registrar and faculty at National Law School of India University and Ravi Srivastava, former professor of economics and chairperson, Centre for the Study of Regional Development, Jawaharlal Nehru University.

Inclusive Media for Change and Common Cause participated in a certificate course offered by Aajeevika Bureau, a non-profit that works with migrant workers of south Rajasthan, in partnership with Azim Premji University. Titled 'Certificate course on labour migration – advanced perspectives for practice,' the six-day programme aimed to provide a learning platform for civil society practitioners, workers' rights advocates and students interested in issues related to internal labour migration, urban governance and informality.

Using a collaborative, experiential learning model, the course, held from February 10 to February 15, 2020 in Bangalore, strived towards enriching the practitioner's field insights

with conceptual and critical discourses on migration.

Shambhu Ghatak and Mandeep Punia, who attended the programme on behalf of the Inclusive Media for Change project of Common Cause, learnt in detail about the main sources of migration related data i.e. Census (by Ministry of Home Affairs), National Sample Survey (by Ministry of Statistics



PHOTO CREDIT: Shambhu Ghatak

*The certificate course provided a learning platform for civil society practitioners, workers' rights advocates, and students.*

\* Shambhu Ghatak is Senior Associate Fellow at the Inclusive Media for Change Project

# FREQUENTLY ASKED QUESTIONS ABOUT THE CAA, NPR AND NRC

## Apprehensions and Possibilities



PHOTO CREDIT: Karan Kumar Deshmukh

*A public gathering against the CAA at Azad Maidan in Mumbai.*

### What is the Citizenship Amendment Act 2019?

After long and acrimonious debates in both the Houses, Parliament of India passed the Citizenship Amendment Bill (CAB) 2019. On December 12, 2019, the bill was signed into law by the President of India and came to be known as the Citizenship (Amendment) Act, 2019, (CAA).<sup>1</sup> The act provides Indian citizenship to refugees from Afghanistan, Bangladesh and Pakistan belonging to the six minority religious communities --- Hindu, Sikh, Buddhist, Jain, Parsi and Christian --- provided they have lived in India for six years and entered the country on or before December 31, 2014. The Report Of The Joint Committee On The Citizenship (Amendment) Bill, 2016, mentions that it has been informed by the Intelligence

Bureau that there are 31,313 people (Hindus - 25,447, Sikhs - 5,807, Christians - 55, Buddhists – 2 and Parsis - 2) who have been given Long Term Visa on the basis of their claim of religious persecution in their respective countries and will be the immediate beneficiaries of the then proposed amendment.

### Why are there nationwide protests against this law?

After India's citizenship laws were amended by Parliament, protests have been sweeping through the country, bringing droves of people on the streets who fear that the amended law is a threat to a secular, inclusive nation. CAA critics feel that the act adds a religious criterion for Indian citizenship, violating the constitutional principle of secularism. Critics have raised

their voices on how CAA violates Article 14 of the Constitution which provides that "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 also prohibits discrimination on grounds of religion, caste, sex or place of birth.

As part of the debate on the Citizenship (Amendment) Bill in the Lok Sabha, Union Home Minister Amit Shah said that the bill will give relief to those minorities who have been living a painful life after facing persecution in neighbouring countries.<sup>2</sup>

However, critics have argued that the text of the Citizenship Amendment Act, 2019, does not mention "religious persecution" in the law. The Statement of Objects and Reasons of the

Bill, which was presented in Parliament, has the phrase: “persecution on grounds of religion.”<sup>3</sup>

But opinions vary on this. It has also been pointed out that while the term ‘religious persecution’ itself is not mentioned in the Act, the government had clarified that “the Bill has been drafted in such a way that it gives reference to the Notifications dated September 7, 2015 and July 18, 2016 which mention the term ‘Religious Persecution.’”<sup>4</sup>

Protesters have also raised doubts about the inclusiveness of the Act and fear that it, used along with the planned National Register of Citizens, could lead to widespread disenfranchisement of Muslims.<sup>5</sup> In addition, anti-CAA protesters have also claimed the Act to be anti-Constitution.<sup>6</sup>

There has been uproar in other quarters as well, with Opposition parties questioning the Centre on why only three countries - Pakistan, Afghanistan and Bangladesh – have been included, whereas other persecuted groups from nations like Nepal, Myanmar, Sri Lanka have been left out in the Act. They have also asked why Tamils have been excluded in CAA, despite over one lakh Tamil refugees living in India.<sup>7</sup>

In addition to the protests, over 144 petitions against CAA have been filed in the Apex Court so far, challenging the validity of the Act.<sup>8</sup>

Trinamool Congress MP Mahua Moitra has also moved the top court with a petition challenging the CAA, which states: “By introducing a religion test in India’s citizenship law, the Amendment strikes a body blow to the basic structure of India’s constitution, specifically its non-denominational character; and is manifestly arbitrary, constitutionally immoral, both in letter and in spirit.”<sup>9</sup>

Turning up the volume is the widespread anti-CAA protests in all North Eastern states.<sup>10</sup> However, tribal states of the Northeast have got protection from the CAA with the ILP (Inner Line Permit) system, unlike Assam. The CAA, 2019, while inserting a new sub-section 6B, listing out the provisions to grant citizenship rights to Hindu and other non-Muslim minorities of three countries, says “nothing in this section shall apply to tribal area[s] of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under ‘The Inner Line’ notified under the Bengal Eastern Frontier Regulation, 1873.”

The Sixth Schedule allows the constitution of autonomous district councils in tribal areas: of Assam (three), Meghalaya (three), Mizoram (three) and Tripura (one) — 10 in all in the Northeast. Thus in Assam, there are the Karbi Anglong Autonomous Council (for the Karbi Anglong District), the Dima Hasao Autonomous Council (for



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*A crowd in support of CAA 2019 at the Gandhi Ashram in Ahmedabad.*

the Dima Hasao or the erstwhile North Cachar Hills District) and the Bodoland Territorial Council (The Bodoland Territorial Areas District). These regions are exempt from the purview of the Act.<sup>11</sup>

## Who is an illegal migrant?

The term “illegal immigrants” is not defined in the CAA Act 2019.

The Citizenship Act, 1955 defines “illegal immigrants” as 2 (b) “illegal migrant” means a foreigner who has entered into India—

- (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or
- (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law

in that behalf but remains therein beyond the permitted period of time.

The Act of 2019 has added the following proviso to this section:

“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 sub-section (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;”.

## Why has the NRC exercise in Assam faced criticism?

The National Register of Citizens (NRC) in Assam is a list of Indian citizens living in the state. It sought out to find foreign nationals in the state bordering Bangladesh. The register updating process started in the wake of a Supreme Court order in 2013, whereby the state’s nearly 33 million people had to prove that they were Indian nationals prior to March 24, 1971. The updated final citizenship list was published on August 31, 2019, with over 1.9 million applicants being left out of the list.<sup>12</sup>

In fact the first NRC came into being in Assam in 1951 after the Census 1951 was conducted. The main intent of the exercise is to identify and possibly deport the so-called illegal migrants.<sup>13</sup>

It was also a state-specific effort towards safeguarding the identity of the Assamese people. In 2013, Assam Public Works and Assam Sanmilita Mahasangha filed a writ petition before the Supreme Court demanding the deletion of the names of illegal migrants from voter lists in Assam. As a result, the updation of the of NRC was ordered by the SC in 2014, in accordance with Citizenship Act, 1955 and Citizenship Rules, 2003 in all parts of Assam. The process officially started in 2015.<sup>14</sup>

This colossal exercise, however, has faced criticism from every quarter. The All Assam Students’ Union (AASU) is unhappy with the total number of people excluded from the final citizenship list. The AASU is a signatory to the Assam Accord, a 1985 agreement between the Centre and protesters with clauses dealing with the “detection, deletion and deportation” of illegal foreigners from Assam.<sup>15</sup> In fact it has gone ahead and filed a petition at the Supreme Court seeking a thorough rectification of the NRC to omit the errors.<sup>16</sup>

Even the Assam Finance Minister Dr Himanta Biswa Sarma has spoken in favour of the present NRC process in Assam being

“***The National Register of Citizens in Assam has faced criticism from every quarter.***”

scrapped. “Assam state BJP [Bharatiya Janata Party] and Assam government opined that the NRC, which was prepared under the supervision of the Supreme Court and by the state coordinator Prateek Hajela in Assam, has failed to fulfill the aspiration of the people of Assam,” he said.<sup>17</sup>

Earlier, the Supreme Court while extending the deadline for publication of the final NRC for Assam by a month to August 31, also rejected the central and Assam government’s pleas to conduct 20 per cent sample re-verification of the draft NRC in areas bordering Bangladesh.<sup>18</sup>

The costs of the exercise have been steep as well. According to the report, “The Economic Cost of Draft NRC: Poor Made Extremely Poor,” by the New Delhi-based Rights and Risks Analysis Group (RRAG), the people in Assam excluded from the draft NRC spent Rs 7,836 crore for the hearings. The group also pointed out that respondents during a survey carried out by RRAG said they have spent an average of Rs 19,065 per person for attending the hearing.<sup>19</sup>

In addition, the Government

**“There is a lack of clarity with regard to the documents that will be accepted as proof of citizenship.”**

of India spent a whopping Rs 1,220 crore in preparing the Assam NRC, and employed 52,000 government employees, according to media reports.

### **Why are marginalised people fearing the new law?**

Several groups have come out in opposition to the Citizenship Amendment Act and the proposed National Register of Citizens. Among them are women, oppressed castes and LGBTQ people who fear that these laws are a threat to their citizenship rights. In fact, the National Coalition for Inclusive and Sustainable Urbanisation (NCU), a network of activists, researchers, urban practitioners, lawyers, informal sector workers, has condemned the trio of CAA-NPR-NRC, saying that the combination will directly target unorganised sector workers, homeless people, migrant workers, basti dwellers and transgender persons. It based its concerns on its survey conducted in Andhra Pradesh, Bihar, Jharkhand, Maharashtra and Tamil Nadu, which revealed that on average 99 per cent of

the homeless people do not have birth certificates, which the network feels will be a dangerous proposition in the context of NRC-NPR-CAA.<sup>20</sup>

Also, even now there is a lack of clarity with regard to the documents that will be accepted as proof of citizenship.<sup>21</sup>

Therefore, critics say that several migrant workers who do not possess documents feel threatened by the challenge of proving their citizenship.<sup>22</sup> Sub-rule (4) of Rule 4 of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 under which the NPR is being prepared mentions “Doubtful” Citizen. The said proviso is reproduced below for reference:

“During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified pro forma immediately after the verification process is over.”

The provision of ‘doubtful citizen,’ has been identified by critics as a cause of grave concern in the present day scenario. The 2003 Rules, which sets the ground rule and provides for procedures and processes to be followed for preparing the NPR and National Register of Indian Citizens (NRIC) does

not say how an individual or a family would be identified as “doubtful”. Once an individual or a family is marked as “doubtful” citizen, they would be (a) asked to provide information “in a specified pro-forma” and (b) given opportunity to be heard by “the Sub-district or Taluk Registrar of Citizen Registration” before a final decision is taken on whether to include them in the NRIC or not.

While a Sub-district or Taluk Registrar gets all the power to decide who is an Indian citizen and who is not, the pro forma on the basis of which it would be decided does not exist. Since this is the job of the 2003 Rules, it is clear that the entire exercise would depend on the whims and fancies of these local officials and hence, there is an immense possibility of arbitrariness and misuse.<sup>23</sup>

Several voices have also emerged expressing the vulnerability of the tribal population. Tribal rights activists are apprehensive that tribals are bound to fail to produce documents in relation to their existence as they fight an everyday battle to survive and are on the last rungs of the caste hierarchy.<sup>24</sup>

National marches have also been taken out by women, transgender and queer communities against the CAA and the proposed NRC. Organisers are anxious that the combination of CAA and NRC is going to adversely affect

the transgender community as transfolk choose their names, genders and religions post the transformation process. Since these are not reflected on birth certificates, they run the risk of being excluded from citizenship due to discrepancies in documentation.<sup>25</sup>

## **What is the National Population Register (NPR)?**

The NPR has been envisioned as a register for all the usual residents of the country. It is being prepared under provisions of the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003.

The term ‘usual resident’ in this context, has been defined as a person who has resided in a local area for the past six months or more or a person who intends to reside in that area for the next six months or more. According to official information, NPR is to be prepared at the local (Village/sub-Town), sub-District, District, State and National level.<sup>26</sup>

The NPR was first put together in 2010, and was subsequently updated in 2015. According to the official website, the objective of the NPR is to create a comprehensive identity database for every usual resident in the country. The government has said that the NPR was being updated to allow the rightful beneficiaries get the benefit of government welfare schemes.<sup>27</sup>

The official website also states that it has been decided to update the NPR along with the House-listing phase of Census 2021 during April to September 2020 in all the States/UTs except Assam.

However, news reports have stated that the exercise to update the NPR and the first phase of the Census 2021 will not be held as scheduled due to the lockdown announced by Prime Minister Narendra Modi, to combat the coronavirus outbreak.

Owing to the prevailing situation, the NPR and Census exercises have been deferred till further orders.

## **Why are critics linking the NPR to the all-India National Register of Citizens (NRC)?**

In West Bengal, activists and protesters have already attacked the NPR exercise, alleging that it is actually the first step to creating an all-India National Register of Citizens.<sup>28</sup>

However, the government has assured people that updating the NPR is not linked to the NRC in any way. Union Home Minister Amit Shah stressed on the fact that NPR is a database for policy while NRC is the process where people are asked to prove citizenship.<sup>29</sup>

Nevertheless, the legal framework for the NPR is grounded in the Citizenship

Act, 1955. In 2003, the Act was amended by the Atal Bihari Vajpayee-led BJP government to introduce the category of an “illegal migrant.” To implement this amendment, a set of rules (Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.) were issued.

The rules read: “The Central Government shall, for the purpose of National Register of Indian Citizens, cause to carry throughout the country a house-to-house enumeration for collection of specified particulars relating to each family and individual, residing in a local area including the Citizenship status.”

For administrative purposes, there are a collection of registers: the “National Register of Indian Citizens shall be divided into sub-parts consisting of the State Register of Indian Citizens, the District Register of Indian Citizens, the Sub-district Register of Indian Citizens and the Local Register of Indian Citizens.”

The rules also specify how these registers of citizens would be created: “The Local Register of Indian citizens shall contain details of persons after due verification made from the Population Register.”

When the Local Register is generated from the Population Register, a “verification process” would be carried out which would create the category of “doubtful citizenship.” The final

National Register of Citizens would be prepared by asking doubtful citizens to prove they are Indians as part of a “claims and objections” process.

This Population Register mentioned in the rules is the National Population Register, which is slated to be updated.<sup>30</sup>

Meanwhile, the Home Minister said in Parliament that no document would have to be submitted for the NPR and no one would be declared “D” (doubtful) if they failed to produce such papers.<sup>31</sup>

## What are the differences between the NPR and the Census?

The NPR is a register of usual residents of the country. It is being prepared at the local (village/sub-town), subdistrict, district, state and national level under provisions of the Citizenship Act, 1955 and the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

A usual resident is defined, for the purposes of the NPR, as a person who has resided in a local area for the past six months or more, or a person who intends to reside in that area for the next six months. The law compulsorily seeks to register every citizen of India and issue a national identity card.

The objective of the NPR, being carried out under the aegis of the Registrar General and ex-Officio Census Commissioner, India,

is to create a comprehensive identity database of every usual resident in the country.

The demographic details of every individual are required for every usual resident. The data for NPR was last collected in 2010 along with the house listing phase of the Census 2011. Updating of this data was done during 2015 by conducting door to door survey.<sup>32</sup>

The decennial census, on the other hand, is the largest single source of a variety of statistical information on different characteristics of the people of India conducted on the basis of the Census Act enacted in 1948.

The census is the basis for reviewing the country’s progress in the past decade, monitoring the ongoing schemes of the government and plan for the future. It provides detailed and authentic information on demography, economic activity, literacy and education, housing and household amenities, urbanisation, fertility and mortality, scheduled castes and scheduled tribes, language, religion, migration, disability, besides others.

The enumerators also collect data related to cultivators and agricultural labourers, their sex, occupational classification of workers in non-households industry, trade, business, profession or service by class of worker and sex. There will also be detailed survey on gender and literacy rate, number of

towns, slum households and their population.

Information is also collected on sources of potable water, energy, irrigation, method of farming, whether a house is concrete, thatched or others.

With a history of more than 130 years, this reliable, time tested exercise has been bringing out a veritable wealth of statistics every 10 years, beginning from 1872 when the first census was conducted in India non-synchronously in different parts.

The government of India decided in May 1949 to initiate steps for developing systematic collection of statistics on the size of population, its growth, etc., and established an organisation in the Ministry of Home Affairs under Registrar General and ex-Officio Census Commissioner, India.

This organisation was made responsible for generating data on population statistics including vital statistics and census. Later, this office was also entrusted with the responsibility of the implementation of Registration of Births and Deaths Act, 1969 in the country.<sup>33</sup>

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# THE CITIZENSHIP AMENDMENT ACT AND THE CONSTITUTION

## Relationship between the Citizen, State and Nation

Anupama Roy\*

Seventy years back, in expressing their resolve to constitute India into a democratic society based on dignity and fraternity, the people of India committed themselves to creating a society in which equal citizenship would be possible. Competing ideas and claims to what it means to be a citizen and the relationship between the citizen, state and nation, have made citizenship deeply contested. The contemporary moment of citizenship in India is especially fraught, with the Citizenship Amendment Act (CAA), the National Register of Citizens (NRC), and the National Population Register (NPR) constituting an assemblage where disparate and adversarial political tendencies have coincided in their particularistic articulation of citizenship.

It is often claimed that the CAA is the same old citizenship law since it does not deprive any section of Indians of their citizenship; the only change it makes is offering citizenship to Hindus, Buddhists, Jains, Sikhs, Parsis and Christians who fled Afghanistan, Pakistan and Bangladesh before December 31, 2014 because of religious persecution. The government has also assured that the NRC has been held in abeyance and that the NPR is a routine exercise



PHOTO CREDIT: Ayush Ranjan

*A footbridge covered with anti CAA - NRC posters at Delhi's Shaheen Bagh.*

of enumeration of resident population to facilitate the framing of appropriate welfare policies.

A 'law' according to Article 13 of the Constitution of India would have the force of law only if it is made by a competent authority like the legislature and is not inconsistent with or in derogation of Fundamental Rights in part III of the Constitution. Arguments in support of the CAA claim that it is incontrovertible since it was enacted by Parliament of India - the competent authority under the Constitution to legislate on citizenship - following the legislative procedure laid down in the Constitution. The question of pedigree or source of law is important for ascertaining competence and also for addressing the question why a law should be complied with.

While law making and eliciting obedience to law are central to the exercise of state sovereignty, the principle of 'rule of law' - which is deeply associated with constitutionalism - both defines and limits state authority. The limits imposed by the rule of law, brings into play questions of content of law, in particular the normative question of just law. Justice as a standard for evaluating a law raises concerns around the fairness of both procedure and content, and is distinct from questions of efficiency, which pertain to the appropriateness of the provisions of law for serving the purposes for which it was framed.

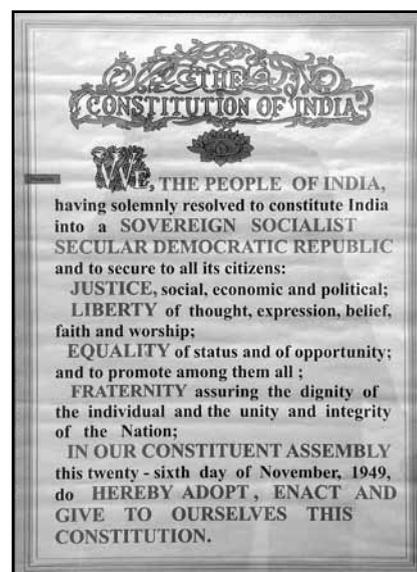
The Joint Parliamentary Committee (JPC) constituted in August 2016 to consider the implications of Citizenship (Amendment) Bill (CAB)

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2016 by taking into account the interests of various stakeholders, submitted its recommendations to the Lok Sabha in January 2019. While recommending that the CAB be considered for enactment, the JPC invoked Article 11 of the Constitution which gives Parliament authority to 'regulate the right of citizenship by law.' It buttressed the ground of legislative competence with normative claims drawn from the Constituent Assembly which had preferred not to make permanent provisions for citizenship, leaving it to Parliament to frame a law for the acquisition and termination of Indian citizenship for all future contexts. The JPC considered this power unfettered since Article 11 states that nothing in Part II of the Constitution, that is, Articles 5 to 10, which pertain to determination of citizenship in the context of Partition, 'shall derogate from the power of the Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.' In making this emphatic claim, the JPC overlooked the fact that even if Parliament's powers of regulating citizenship by law were not constrained by anything laid down in Part II, they were restrained by other parts of the Constitution, primarily Part III. These constraints apply on all law-making powers of Parliament, including those concerning citizenship. The JPC,

however, prepared the ground for exceeding the scope of Article 11, to bring an amendment in the citizenship law that has changed the character of citizenship and belonging in India. By introducing religion as a criterion of distinguishability among persons, the CAA has introduced an entirely new principle in the citizenship law of India. Along with the NPR and the NRC it also produces the possibility that religion could become the ground for depriving people of citizenship.

Aware that the CAB, when enacted into a law, could face the charge of violating the Right to Equality under Article 14 and Right to Freedom of Religion under Article 25 of the Constitution, the JPC consulted legal and constitutional experts. In the opinion of the JPC, the CAB was sufficiently protected against the charge of violation of Article 25 since it did not prevent citizens from exercising their fundamental right to freedom of religion. It devoted its efforts, therefore, towards preparing a defense against the possible charge of violation of Article 14, which guarantees to all persons – citizens and aliens - equality before law and equal protection of law. In this context, the JPC considered the suggestion by constitutional experts that the broad category 'persecuted minorities' be used in the Bill instead of 'minority communities' identified on the ground of religion. Yet, the JPC rejected this proposal



in deference to the wishes of the legislative department, which advised against the incorporation of the category persecuted minorities, since it would lose sight of religious persecution as the primary objective of the amendment. The consideration of religious persecution for extending the protection of citizenship could not, in its opinion, be construed discriminatory, because the distinction among persons was being made on the grounds of both 'intelligible' differentiation and 'reasonable' classification. The two standards of evaluation – intelligibility and reasonableness – were laid down by the Supreme Court judgment in 1952 in the case *State of West Bengal v. Anwar Ali Sarkar*. Indeed, citing the judgment in *Sarbananda Sonowal v. Union of India & Anr. (2005)*, the JPC drew attention to the 'dangerous consequences of large-scale illegal migration' from Bangladesh to argue against

**“Competing ideas and claims to what it means to be a citizen have made citizenship deeply contested.”**

‘misconceived and mistaken notions of secularism’ coming in the way of stopping this influx (JPC Report 2019, p.12).

The judgment in *Anwar Ali Sarkar* had, however, laid down substantive conditions which required that the criteria of intelligibility of differentia and reasonableness of classification must satisfy both grounds of protection guaranteed by Article 14, i.e., protection against discrimination (equality before the law) and protection against the arbitrary exercise of state power (equal protection of the law). In 2009, the Delhi High Court judgment in *Naz Foundation v. Government of NCT of Delhi* added a further test of reasonableness - requiring that the objective of classification in law must also be subjected to judicial scrutiny. The restraint on state arbitrariness, according to the judgment, was to come from constitutional morality, which as B R Ambedkar declared in the Constituent Assembly, was the responsibility of the state to protect. The code of constitutional morality constitutes critical morality by putting in place evaluative frameworks for substituting

those standards which may be acceptable to the ‘majoritarian’ public, but are against the norms of constitutional democracy. Arguing that there exists close connection between the form of the Constitution and that of the administration, Ambedkar warned that the Constitution may be perverted without changing its form, by simply making administration inconsistent with the former. Ambedkar’s call for a firm adherence to constitutional morality reflects his apprehensions about the uncertainty of executive decisions and mistrust of legislative power.

It is worth noting that the field-visits by the JPC in Rajasthan, Gujarat, Assam and Meghalaya yielded uneven findings. The ‘refugees’ in Rajasthan and Gujarat who had migrated to India from different parts of Pakistan, narrated their hardships and preferred changes in law to facilitate the acquisition of citizenship. They also asked that the social and economic conditions of those who had already become citizens be given attention. Apprehensive that the CAB would unsettle the peace in the region, especially in Assam following the 1985 Accord, depositions from Assam and Meghalaya were against the amendment. It is not clear why one set of concerns prevailed over the other, in the final recommendation of the JPC.

In the ultimate analysis, while judicial decisions have

over the years enhanced judicial power, carving out a space for elaboration of constitutional politics in the domain of the state, it is important that Parliament’s law-making functions be also understood with reference to its constitutional role and functions in a constitutional democracy. While Parliament enjoys enormous law-making powers, this power is coeval with other equally important roles that it performs – of representation, deliberation and accountability. Indeed, its law-making function can be performed effectively only in tandem with and simultaneous with its roles as a deliberative body. It is only as a deliberative body that Parliament can represent and encompass the diversity of interests, especially of the most vulnerable, and not only those of the majority. It is only through an effective performance of both these functions that it can hold the executive accountable. Not only should a law made by Parliament be reflective of the synchronous performance of all these functions, no law can be truly democratic unless it embodies the aggregate of all these roles of Parliament. The force of law is not the manifestation of Parliament’s power to make laws. It is the outcome of a series of performances which inspire trust in executive decisions and legislative power for being consonant with the spirit of the Constitution.

# THE CITIZENSHIP QUESTION

## The Evolution of a Democratic Republic

Nilanjan Mukhopadhyay\*



PHOTO CREDIT: Karan Kumar Deshmukh

*The nature of citizenship like that of the state, is a question which is often disputed; there is no general agreement on a single definition; the man who is a citizen in democracy is often not one in an oligarchy. - Aristotle*

The decision of the National Democratic Alliance government headed by Prime Minister Narendra Modi to ensure passage of the Citizenship Amendment Act (CAA), is politically the most impactful one since assuming office in 2014. While other decisions, especially the step to render Article 370 ineffective, too will shape the future characteristics of the Indian Republic, the CAA strikes at its fundamentals because the legislation spells out anew who is an Indian, and who is not. Paradoxically however, the momentousness of this decision was not recognised when the process

was initiated in September 2015 by the government with its move to amend the Passport (Entry into India) Rules, 1950, followed up with a further tweak in July 2016. When the legislation was first introduced, days before Afghanistan was added to the list of countries from where ‘refugees’ could become Indian citizens, it did not evoke the scrutiny it deserved. This underscores that while the Bharatiya Janata Party and its affiliated organisations assiduously went about its ideological pursuits, the Opposition -- in electoral politics as well as among the intelligentsia -- was entrapped in the government’s strategy of opening several fronts simultaneously. Consequently, the Hindu Right’s adversaries focussed on immediate specificities, be it repeated instances of mob lynching, the law criminalising instantaneous divorce among Muslims and the Ram temple issue, etc. As a result, the Sangh Parivar is now close to converting India into the nation of its dreams -- a mirror image of Pakistan.

Who was entitled to be an Indian citizen became a vexed matter the moment partition of British India became reality. Dr B R Ambedkar on August 10, 1949, in fact, remarked in

the House that he did not think “that any other article has given the drafting committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed...” Eventually, the Constituent Assembly agreed that it would limit itself to “citizenship on the date of the commencement of (the) Constitution” and that Parliament, which would subsequently come into existence, will have the right to decide on the “business of laying down a permanent law of citizenship.”<sup>1</sup>

Yet, divergences on political lines prevailed even on the limited question of who could be called an Indian citizen when the country would become a Republic. As Ambedkar acknowledged, these differences remained within the Drafting Committee as well. Eventually

**“Who was entitled to be an Indian citizen became a vexed matter the moment partition of British India became reality.”**

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five categories of people were drawn up on whom Indian citizenship could be conferred. These were: 1) Persons domiciled and born in India -- principally those who formed the bulk of India's population; 2) Persons domiciled in India but not born in India yet residing in India (chiefly people in Portuguese or French settlements or even the limited number of Iranians who had resided for long. The three other categories were: 1) Original residents of India but who had migrated to Pakistan (and had returned); 2) Original residents of Pakistan but who had migrated to India and finally; 3) Those themselves or their parents were born in India but at that time were residents elsewhere. Of these categories, it was politically logical for Indian citizenship to be conferred on all groups except in the case of those who crossed over twice -- once from the Indian side into Pakistan and thereafter, back to India.

The Islamophobic nature of a significant section of the Indian political leadership is one of the hidden realities in the immediate aftermath of partition. Although Indians chose not to follow in Pakistan's footsteps and define their nationhood on the basis of religious identity, the government applied different yardsticks for Hindu and Muslim immigrants to India. Inter-community violence had reared its head well before the Mountbatten Plan was announced but outbreak of clashes was not synchronised



PHOTO CREDIT: Karan Kumar Deshmukh

*A man holds a placard against India's citizenship laws in a protest rally in Mumbai.*

across the country. It was thereby evident that the transfer of population would be a long-drawn process. The length of the immigrations process varied from province to province, district to district. Although the focus of administrators was chiefly on Punjab, Sindh and Jammu regions, trauma in Bengal was no less, except that while the operation was 'surgical' in the west, in the east this was a protracted affair.

This may appear odd, but a number of Muslims who went away to Pakistan (both west and east) in the first wave in 1946-47, chose to begin returning to India. These people included, as Jawaharlal Nehru detailed in the Constituent Assembly, on August 12, 1949, those whose "family split up, when a part of the family has always remained here,

a bit of it has gone away, the husband has remained here but has sent his wife and children away because of trouble etc.; he thought it safer or whatever the reason, he continued to stay here while his wife and children want to come back." More importantly however, Nehru also listed among the 'returnees' those people "whom you might call the Nationalist Muslims, those people who had absolutely no desire to go away but who were simply pushed out by circumstances...who having gone to the other side saw that they had no place there at all, because the other side did not like them at all; they considered them as opponents and enemies and made their lives miserable for them..."

But it took time for these Muslims to realise they were

unwelcome in Pakistan and they could still make India their homes. Yet, when they returned, they found themselves being discriminated against due to their religious identity. From July 1948, only those who secured permits from the Indian High Commission in Pakistan could return. For such people, it was a double whammy -- they were targeted in Pakistan for their views and in India for their identity, ironically in a country that promised to be home to people of every faith. Peculiarly however, the pressure on the Nehru government to have different yardsticks for Muslims as juxtaposed to Hindus or Sikhs, did not come from a formal Hindu Right platform -- it came from within. In the same Constituent Assembly debate, Nehru said that "one word has been thrown about a lot" and that he would like to strongly protest against its use. The word was actually an accusation. His statement explains that much of the contemporary Sangh Parivar vocabulary is drawn from the past: Nehru said accusations were hurled at his government that it "goes in for a policy of appeasement, appeasement of Pakistan, appeasement of Muslims, appeasement of this and that. I want to know clearly what that word means. Do the honourable Members who talk of appeasement think that some kind of rule should be applied when dealing with these people which has nothing to do with justice or equity? I want a clear

answer to that. If so, I would only plead for appeasement. This Government will not go by a hair's breadth to the right or to left from what they consider to be the right way of dealing with the situation, justice to the individual or the group." <sup>2</sup>

Nehru also referred to the much-denigrated principle of secularism or concept of secular State, another word which he said was also "thrown up a good deal." Furthermore, the premier added, "May I beg with all humility those gentlemen who use this word often to consult some dictionary before they use it?... It has a great deal of importance, no doubt. But it is brought in, in all contexts, as if by saying that we are a secular State we have done something amazingly generous, given something out of our pocket to the rest of the world, something which we ought not to have done... We have only done something which every country does except a very few misguided and backward countries in the world."<sup>3</sup>

Significantly, when Nehru used these sharp words, Syama Prasad Mookerjee, former president of Hindu Mahasabha was Industry Minister in the Interim Government and he often found allies within the Congress. In hindsight, Nehru did not realise that the sentiment which had taken Mahatma Gandhi's life did not require a separate political front but had sustained on its own, at times within the

Congress too. Not just the issue of citizenship but the principles Nehru cherished, also include his drive for a common Hindu Civil Code, another issue to which there was strong resistance and was again unresolved in the Constituent Assembly and left for Parliament to legislate later. Despite these concessions to the Hindu Right, Mookerjee was increasingly uneasy in the government and utilised the Liaquat-Nehru Pact (also known as the Delhi Pact) as occasion to part company. Days later, on April 19, 1950, Mookerjee explained his resignation: "Circumstances that have led to my resignation are primarily concerned with the treatment of minorities in Pakistan, especially in East Bengal," he wrote to Nehru, the letter later read out in Parliament.<sup>4</sup>

There certainly is history to the Hindu Right Wing's concern about religious minorities in specific countries --- just three countries in the Indian sub-continent while remaining blind to their targeting within India and other nations in the region. Mookerjee's letter was actually a culmination of his run-ins with Nehru on the extent to which New Delhi could exert pressure on Pakistan in dealing with its internal matter. While the former wanted direct intervention on behalf of religious minorities, Nehru's view was that "protection in Pakistan (to Hindus) can be given only by Pakistan." Significantly, Mookerjee also held Muslims

in disdain and even before becoming Mahasabha president was of the view that “Bengali Muslims were, by and large, ‘a set of converts’ from the dregs of Hindu society.”

In his resignation letter Mookerjee also asserted, “let us not forget that the Hindus of East Bengal are entitled to the protection of India.” Once again this is the first articulation in independent India that the country is a ‘natural home’ to all Hindus. In 1949-50, although a member of the union cabinet, Bengal was Mookerjee’s primary region of interest. This is the primary reason for him to limit his interventions to Bengal and not extend his thesis to the Hindus of West Pakistan. In any case, the percentage of Hindus in West Pakistan by 1949-50 was miniscule compared to the eastern part. The purpose of recounting the debates in the Constituent Assembly and the reasons Mookerjee advanced for resigning from the government is to point out that the genesis of CAA lies in the past and the shaky foundations of ‘secular’ India. Despite the strength of the opinion which made a case, whenever occasion permitted, for India to follow Pakistan, it was due to Nehru’s towering persona that India did not become a ‘Hindu’ Pakistan.

It was this pressure on the Sangh Parivar which forced it to mute its viewpoint on the issue of citizenship. Consensus on what was considered politically correct

**“Eventually, the Constituent Assembly agreed that it would limit itself to ‘citizenship on the date of the commencement of (the) Constitution.”**”

forced the BJP to embrace the Nehruvian definition of the nation and nationhood when it was formed after the Janata Party. While the party’s initial advocacy of Gandhian Socialism after its formation in 1980 is well known, little is known about how the party defined the state. In its first-ever election manifesto, for the Lok Sabha polls in 1984, the BJP stated: “In Indian tradition, since times immemorial, the state has always been a civil institution, which makes no distinction between one citizen and another on grounds of his religion. The very idea of a theocratic state is alien to Indian political history. So, when India became independent in 1947, we very naturally declared ourselves a secular state, unconcerned that Pakistan had opted for theocracy.”<sup>5</sup> Five years later, in 1989, when the BJP had forged tactical alliances with Janata Dal and through it, with the communist parties, to minimise the split in anti-Congress vote, its manifesto reiterated this position:

“The idea of a theocratic state is an anathema to Indian mind and the BJP believes that State in India has always been a civil institution which respects all religions equally and makes no discrimination between one citizen and the other on the grounds of language, gender, caste or religion. It is the duty of the State to guarantee justice and security to all minorities—linguistic, religious or ethnic.”<sup>6</sup>

To comprehend reasons for BJP’s deceitful endorsement of India’s inclusive character, although its ideology was based on the exclusion of Muslims, Christians, Jews and Zoroastrians, one must recall L K Advani’s assertion after the Babri Masjid’s demolition that the agitation was not just for building a Ram temple at Ayodhya but to popularise the idea of cultural nationalism and the Hindutva project. The wording of CAA demonstrates that BJP always believed in Savarkar’s idea that “Muslims in India should be given the same kind of treatment as Pakistan gave to the Hindus in Pakistan. Frankly, the Indian Union was a Hindu State as every nation was called after the name of its national majority.”<sup>7</sup> But in the late 1980s and early 1990s, the party was not in a position to push its divisive agenda at a conceptual level. This was best underscored in the decision to put Atal Bihari Vajpayee in harness in 1995 and relegate Advani to the secondary position. But the emergence of Modi marked greater acceptance

of the Hindutva idea and this explains why the BJP pushed its agenda of linking Indian citizenship to religious identity.

Significantly, the issue of “illegal infiltration” from Bangladesh crept into the BJP vocabulary from the late 1980s. Also, significantly, the promise of preparing a national level National Register of Citizens was included in every BJP Lok Sabha poll manifesto from 1989 onward. Even in 2019, the BJP pledged to “implement the NRC in a phased manner in other parts of the country.”<sup>8</sup> The government clarifications merely say it has not yet initiated the process for nationwide NRC, but remains silent on whether the matter remains on the party’s agenda and intention list. The present BJP definition of citizenship has also evolved through the process of introducing the idea of blood-based nationhood from 1999. This campaign reached its peak in 2004 when women BJP leaders, principally Sushma Swaraj and Uma Bharati raged against the possibility of Sonia Gandhi becoming prime minister. They threatened to tansure themselves, an act portrayed in Hindu nationalistic narrative as sacrificing the pristine symbol of womanhood, at par with one’s sexuality. Blood-nationalism was also the core of the BJP’s promotion of the Overseas Citizen of India (OCI), a concept the party championed but which

was implemented by the United Progressive Alliance government. The rules governing OCI cards mirror the CAA -- it is not issued to any person whose parents or grandparents are Pakistanis.

The CAA is undoubtedly the culmination of more than a century of efforts to define Indian nationhood on the basis of religious identity. In 2025, the Rashtriya Swayamsevak Sangh shall mark its centenary almost a year after V D Savarkar in his text, *Hindutva! Who is a Hindu?* codified Hindu nationalism. In his booklet, he defined a Hindu as “a person who regards this land of Bharatvarsh from the Indus to the Seas as his Fatherland as well as his Holy Land, that is the cradle of his religion.”<sup>9</sup> Savarkar distinguished between *punyabhoomi* (holy land) and *pitribhoomi* or *matribhoomi* (fatherland or motherland), which when extrapolated meant that ‘non-Hindus’ couldn’t call India their nation. In contemporary India, Muslims remain willing to call the country their own, but the BJP is relentlessly pursuing its objective of the nation declaring these people to be not their own. In conversations among the BJP’s faithful, it is often said *unka khoon hi kharab hai* or their blood is bad. The legitimacy that this viewpoint has acquired will be difficult to rollback even if the current spate of protests electorally derails the BJP bandwagon. The

majoritarian viewpoint requires a holistic opposition which does not look for pragmatic embrace of Hindutva, soft or hard. The CAA’s passage has possibly made the emergence of such a political alliance all the more difficult.

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# THE TRAGEDY OF THE NORTH EAST

## Why is the Region So Opposed to the CAA?

Sangeeta Barooah Pisharoty\*



An anti- CAA protest organised by the Artistes of Assam at the AEI playground in Chandmari, Guwahati.

bit.ly/2jaWoZl by Ankur Jyoti Dewri (CC BY-SA 4.0)

guns silencing at least four young lives, while smoke billowed out of burnt tyres. People in thousands hit the streets defying curfew and sloganeered against the central and state governments, demanding that CAA be withdrawn for Assam.

Much before mainland India registered protests against the CAA, the Northeast had erupted – when it was just the Citizenship (Amendment) Bill, introduced in Parliament in mid-2019. Though the Bill was against the secular tenets of the Constitution even then, would it for the first time define – legally – an illegal immigrant in terms of her religion? Although India was officially taking a position that three Muslim majority countries, particularly its friendliest neighbour Bangladesh, was unable to protect its minorities, engagement with it was near non-existent among the mainstream liberals -- media and intellectuals alike. Till then, the proposed amendment was looked at in mainland India as only a ‘North-eastern concern.’ It therefore provokes me to deduce now that had the Union Home Minister Amit Shah not spoken in party rallies of introducing the National Register of Citizens (NRC) for the rest of India, like in Assam, there might not have been any anti-CAA

On January 26, 2020, the proscribed armed group fighting for a ‘sovereign’ Assam – the United Liberation Front of Asom -Independent (ULFA-I) – declared a state-wide shutdown, after a prolonged hiatus. It was to oppose the Narendra Modi government’s decision to include Assam – barring seven of the 33 districts – within the ambit of the controversial Citizenship Amendment Act (CAA).

From the 1980s to the early 1990s, January 26 was one of those dates in the annual calendar when we – as youngsters growing up in Assam/Northeast -- barely stepped out of our neighbourhood. Bandhs and blasts would typically dent the Republic Day. Year after year. The same was true for Independence Day.

Highly armed central forces would take control of the public places including roads much before such a day of national significance would actually dawn, intensifying the inspection – of vehicles, people, their papers. Everyone on the street would be a suspect, seen as supporters of armed separatist groups. Preventive arrests would take place, cloaking common citizens in a veil of panic.

On January 26 this year, those memories came back. I stepped out, onto Guwahati roads to catch the pulse of the city. How was Guwahati responding to recent developments? After all, barely a month ago, the city, a vibrant business hub of the Northeast, had turned into a near ‘war zone.’ Live bullets were shot from security forces’

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protest outside of the Northeast. The horrid experiences of the NRC update process in Assam, mainly of the poor for lack of documents, may have been enough to ring warning bells. The Muslims largely saw the CAA as a possible escape route for the Hindus and Christians if a nation-wide NRC was to take place, with only them being left to prove their citizenship during the process. In the BJP ruled Assam, the trust deficit in the system was paramount when the NRC update process unrolled in that state.

Though the Modi government passed the CAB in the Lok Sabha in mid-2019, it eventually didn't bring it to the Rajya Sabha, leading to the lapse of the Bill. The government's action was only due to the vociferous protests across the Northeast. Fearing backlash, the regional allies of the BJP put massive pressure on its central leadership to back off. That the Centre backed off finally, facilitated the ruling BJP to reap benefits in the 2019 general elections. For the first time, 17 of the 25 Lok Sabha seats of the region went to the BJP and its allies in the NDA.

While the Northeastern states have long been hoping that New Delhi treats each of the states differently, with their own unique battles to deal with, the Centre's gaze has always been of the eight states as a single bloc – as Northeast, essentially as one size fits all. However, the anti-CAB protests brought together

– after a long while -- the conglomeration of various tribes and communities of the region, some of whom have been at long-drawn-out conflict with each other. They came together as one, as 'indigenous,' as the 'insider,' organising themselves against whom they see as the 'outsider.' In other words, the periphery united to strike back at the centre. How New Delhi dealt with the region while bringing in the CAA in December 2019, showed the measure of caution on part of the government.

A provision in the CAA, inserted into the Citizenship Act, 1955, says, "Nothing in this section shall apply to tribal areas of Assam, Meghalaya, Mizoram and Tripura, as included in the Sixth Schedule to the Constitution, and the area covered under the inner line notified under the Bengal Eastern Frontier regulation, 1873."

Effectively, what the Centre did was to carve out a couple of boxes to distribute the population of the region. In Assam itself, two such boxes were put to use. While the CAA won't be effective in the three autonomous district council areas operative under the Sixth Schedule, comprising seven districts, it would be, in the rest of the state, leading the anti-CAA protesters to question the government. How is a law not good for one section of people of the state fine for the rest? If you go by what the anti-CAA protesters have to say about

the Centre's move in various rallies across the state, the intention behind it was to divide the people, and rule; weaken the united voice against the amendment.

Though the mainstream intellectual and media focus is presently on the anti-CAA protests in the rest of India, the spate of protests in Assam, Tripura and some other pockets of the Northeast has not ebbed. So have not the central and state governments' arbitrary arrests of those at the forefront of it, some by the National Investigating Agency (NIA) under the Ministry of Home Affairs (MHA) on the accusation of being 'Maoists.'

At this point, it is important to seek answers to two key questions:

- Why is the region so opposed to the CAA?
- Why was there an overwhelming support to the NRC?

In Assam, a violent response was recorded no sooner did Parliament pass the amendment in early December for the primary reason that it violated the core clause of Assam Accord. Signed on August 15, 1985, with the Rajiv Gandhi government by those spearheading the six-year-long anti-foreigner agitation, the Accord is considered by a large swathe of Assamese as a promise of New Delhi towards addressing the concerns of a set of people residing in a state with open international borders. Assam

shares its border with Bangladesh and Bhutan. Though the Centre had begun fencing the India-Bangladesh border, some parts of it are still open, including the riverine areas. Since the 1970s, due to the ethnic drive against the Nepalese in Bhutan, large numbers of the former had also entered Assam.

As per the 1985 Accord, Assam got an exclusive citizenship cut-off date of March 24, 1971. It was in keeping with the birth of Bangladesh, to the spirit of the Indira-Mujeeb pact, as India's commitment to the newly born nation. It was decided that those who crossed over to settle down in Assam from what was East Pakistan till March 24, 1971, would be considered Indian citizens. Those found to have entered the border state after that date – after Bangladesh was born – would only be considered foreigners. The MHA, the nodal agency to implement the Accord, would detect such foreigners and deport them to Bangladesh – both Hindus and Muslims.

While India has failed to detect and deport such foreigners by bringing Bangladesh on board (Bangladesh has been maintaining that its citizens have not illegally entered Assam or India since its birth), the CAA has been added to the equation. It not only distinguishes between Hindu/ Sikh/ Buddhist/ Jain/ Parsi/ Christian and Muslim undocumented migrants from that country, which the Accord doesn't do, but also

gives preferential treatment to everyone else apart from Muslims by extending their citizenship cut-off date (in the context of Assam) from March 24, 1971 to December 31, 2014.

Since the first bout of large-scale migration took place from East Bengal during the British rule, the Assamese have been fearful of losing their political, cultural and linguistic hegemony in the state due to the growing number of Bengali speakers, alongside losing their land. During the colonial period, while the British preferred the Muslim Bengali peasants over the locals for their sheer ability to conform to the system of procuring more revenue from the agricultural land, the English educated Bengali Hindus were brought in large numbers to man the offices. Bengali was introduced as official language, setting aside Assamese, much to the consternation of the native population. Later, even after being educated in English, and Assamese being introduced as a medium of education too, the native population had to struggle hard to break the Bengali hegemony over government jobs. Without much say in the economy of the state even after Independence, the Assamese masses tend to look at land as their only resource. So lack of land rights over the migrants has been a core concern too.

The CAA, facilitating citizenship to another set of Bengali speakers, naturally then evoked

the long-standing concerns. Those opposed to the CAA cite the 2001 and 2010 Census reports. As per the 2001 Census, 48.80 per cent of Assam's speakers were Assamese. In the 2010 census, it has slid to 48.38 per cent. Concurrently, the number of Bengali speakers has shot up from 27.54 per cent in 2001 to 29.91 per cent in 2010. The example of Tripura is often cited across the region to substantiate the fear of losing political and linguistic identity due to the migration from East Pakistan/Bangladesh. Tripura's 19 scheduled tribes, who were a majority prior to Partition, have been reduced to 30 per cent of the state's population today due to massive migration from East Pakistan/Bangladesh. As per the 2011 Census, Tripura has 24.14 lakh Bengali speakers as against 8.87 lakh speakers of the native Kokborok language.

For a set of people who are less in number, this is no ordinary fear to be boxed only within the modern contours of xenophobia, and derided and dismissed. Though the Assamese are in majority in Assam, various communities and plains tribes which come together to claim that identity, are individually few in numbers. Among those who call themselves Assamese are plains tribes like the Mishing, Deuri, Tiwa and Rabha, who have their own dialects, weaves, literature, customs and belief systems. The caste Hindus who form part of the Assamese identity too are few in numbers

individually. So the fear and concern are raw and real.

The concern of the smaller communities, the fight of the smaller sub-nationalities over larger nationalities, therefore, forms the crux of the opposition to the CAA, and also to their support of the NRC. This narrative is true of not just Assam but in other parts of the Northeast too. For instance, in Manipur, though the Meiteis are in majority, only 1,522,132 speak the Meitei language. Additionally, as per the state's laws, while land traditionally held by the Meiteis, mainly in the valley areas, can be bought by the hill tribes, vice versa is not allowed. This is despite the fact that Manipur's topography comprises more of hills than the valley. With little say in the state's nascent economy, and long battered by armed movements and their counter by armed forces with draconian laws that spare no one, the identity of most of the communities is firmly territorial.

In the Indian physical map, the largest number of diversity in terms of population, cultures, traditional practices, languages, is to be found in the Northeast. Most of these communities are small in numbers, hence their fear of migration from outside. The Indian state and its intelligentsia will have to take this aspect into consideration while noting down why the region is up in arms against the CAA and is often found

supporting processes like the NRC. Generations of youth have picked up arms against New Delhi primarily because they see it treating the region only as a borderland without taking into consideration what its people want for themselves. According to recent news reports, the Centre's move to implement CAA in Assam has led several youths to join ULFA-I.

Indian mainstream intelligentsia must also take into cognisance that, like in several parts of the country, with the rise of the Hindu and Muslim Right in Assam, a large swathe of people are caught between their allegiance to linguistic ethnicity and religious identity. The rise of the Hindu Right is also threatening to swallow the strong sense of *Axomiya bhaxik jatiotabad* or Assamese linguistic sub-nationalism into a primarily Hindu assertion, like it did in Maharashtra (*Marathi Manush*), Gujarat (*Gujarati Asmita*), et al.

While taking a round of Guwahati city on January 26, a conversation with a young man, not far from the iconic Cotton College where students were protesting against the CAA, highlighted that schism. All of 25, the youth, from the post Assam anti-foreigner agitation generation, dismissed the ULFA-I's call for 'Assam Bandh' opposing CAA, asking me in return, "Why is that we are protesting only when Hindus are coming?"

The Assamese community today is at the crossroads, pondering where to head – to being Hindu first or an Assamese first, which comprises a syncretic culture promoted by the 15th century Vaishnava saint Sankardeva and the 17<sup>th</sup> century Sufi mystic Ajan Fakir. The bulk of Bhupen Hazarika's songs are perched on that syncretic, humane culture.

Even as the protest against the CAA continues in Assam and the fate of those nearly 20 lakh people left out of the final NRC is yet to be decided, the Modi government is set to unroll another set of legalities through the Clause 6 committee set up by the MHA last year. The committee, set up to provide recommendations to the Ministry to grant "constitutional safeguards" to "Assamese people" as per the Assam Accord (not for accepting those who came till December 2014 as per the CAA but for those who settled till March 1971), has recently submitted its report.

While the suggestions are not officially in the public domain yet, it is to be seen whether they will succeed in amicably minimising the fear and concern of the majority population. Or will they start a new chapter of 'us' and 'they', 'insider' and 'outsider', 'indigenous' and 'migrant', thus producing only a new set of leaders to further rumble the conflict-ridden politics of the state?

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Its very first Public Interest Litigation benefitted millions of pensioners. Subsequent PILs transformed the way natural resources are allocated in India. Its landmark cases include those regarding criminalisation of politics; cancellation (and re-auction) of the arbitrary 2G telecom licences and captive coal block allocations; quashing of Section 66A of the IT Act; prohibiting misuse of public money through self-congratulatory advertisements by politicians in power, to name only a few. Our other prominent petitions pertain to imposing penalties on rampant illegal mining in Odisha, the appointment of Lokpal and seeking human beings' right to die with dignity through a 'Living Will.'

The impact: Re-auctions leading to earning of several thousand crores, and counting. Even though that is a lot of money for a poor country, the earnings are a smaller gain when compared to the institutional integrity built in the process. From spectrum to coal to mines, today no government can 'gift' precious resources to cronies thanks to these two PILs.

(For more details about cases, please visit [www.commoncause.in](http://www.commoncause.in))

Common Cause runs mainly on donations and contributions from members and well-wishers. Your donations enable us to research and pursue more ideas for a better India. Common Cause believes that no donation is too small. Donations are exempt under Section 80-G of the Income Tax Act. Please send your cheques with your personal info at the address given below. You may also deposit directly into our bank account (details are given below) and send us an email at [commoncauseindia@gmail.com](mailto:commoncauseindia@gmail.com), providing information such as donor's name, address and PAN number for issuance of donation receipt.

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## COMMON CAUSE VISION

An India where every citizen is respected and fairly treated

## MISSION

To champion vital public causes

## OBJECTIVES

To defend and fight for the rights and entitlements of all groups of citizens

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