



THE ACTS THAT FAIL CONSTITUTIONAL TEST

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We are supposed to do things that make us happy within the confines of the legal system. The law should protect the country. A bad amendment can create chaos in the legal system. And so the saying "Lex malla, lex nulla which A bad law is no law" is justified. Some of the recent amendments have had a catastrophic impact on our society.

Unlike even the so-called "mature democracies" of Europe and the Americas, India ensured full equality for all when it came to matters of citizenship from the day the Constitution came into force and the republic was born. The CAA is unconstitutional for both violating the text of the Constitution but also going fundamentally against one of the basic features of the Constitution. In this piece, I will elaborate on how it does both. The CAA denies the value of community as it violates fraternal bonds between communities, a public good recognized by Dr Bheem Rao Ambedkar.

The unconstitutionality of the Citizenship Amendment Act (CAA), as violative of the fundamental rights of equality, life and liberty, has now been widely appreciated. What also deserves attention is how it sacrifices our deepest constitutional commitments to dignity, fraternity and integrity of the nation that breathe life into our fundamental rights. Citizenship amendment act gives rise to two basic issues:

- This Act gives legal colour to the Two-Nation theory.
- Religion cannot be a factor in the acquisition of citizenship which has been rejected by the Constitution of India.

Before elaborating about it we should know what are the factors or what are the provisions related to Citizenship in India.

There are three concepts which are required to be mentioned to understand the concept of Citizenship:

- Born in the territory of India.
- His parents are born in the territory of India i.e. dissent.

He is an ordinary resident in the territory of India.

These are the three grounds on which Citizenship is granted in India. One more thing is that if a person who was part of undivided India, he shall be provided Citizenship with a proviso that he was a citizen of undivided India and not only this, but he is required to become the resident of India i.e. 6 months prior to July 1996. In this case, only the person will be considered as a citizen of India. So, what we conclude is that resident, ordinary residence, a bonafide resident are essential conditions for being citizens. Those who came after the specific time period were required to file an application to an appropriate authority and before they file this application they are required to be resident for 6 months within the territory of India. There is another provision under Article 11 of the Constitution of India that a person can acquire citizenship through a law made by Parliament or can terminate citizenship i.e. the Citizenship Act, 1955.

Now the Citizenship Act says that if you are



born in the territory of India from January 26, 1950, - July 1, 1987, also you shall be the citizen of India if you are born in the territory of India from July 1, 1987 to when the 2003 bill was passed. You will be considered as the citizen of India if one of your parents is a citizen of India. But if you are born after 2004 you shall be the citizen of India if one of your parents is a citizen of India only if you are not an "illegal migrant". This the condition of the Citizenship Act, 1955. If one of the spouses is an illegal migrant you cannot be the citizen of India.

Now, what the amendment of the said act says under section 2(1)(b) is that "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".

The Foreigners Act, 1946 deals with the people who declared as foreigners and the Passport (Entry into India) Act, 1920 deals with people who have entered into India without a valid passport and now under the objects and reasons of the act the Government has mentioned that these all are the people who have been persecuted, thus a very fair question arises as to where is the provision related to persecution mentioned in the act. There is no provision related to persecution in the said act. It is interesting to have a glance at the

statement of Dr. Manmohan Singh which was "the people who have been persecuted and come from our neighboring countries, they should be given citizenship" and what Advani Ji remarked is that anyone fleeing religious persecution is a refugee, and cannot be equated with an illegal immigrant, but refugees cannot be at par with citizens. The pertinent question arises as to how the government is going to discriminate between two illegal immigrants. Both have entered into India illegally then how is the government going to decide that one has been persecuted and other is not, unfortunately, there is no provision or basis of determining it. What the government is doing is that it is targeting a particular community without naming it. It violates the basic structure of the Constitution of India. Neither the Constitution nor the Citizenship law talk about religion being a criterion for granting Citizenship.

It has been mentioned under Section 2 of the said act that it is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. But the said act has selected the countries arbitrarily as Afghanistan cannot be considered as a country sharing a border with us. By singling out certain countries the Act has omitted to include Muslim minorities like Ahmadiyyas in Pakistan, the Shias and Hazaras in Afghanistan, the Rohingyas from Myanmar. In fact, Myanmar has been left out altogether even though we share a border with it which we do not with Afghanistan since POK came in between. Also, the said Act has failed to include Srilankan Hindus. The Act is including Hindus only from the above



mentioned three countries. Is the Government interested only in providing Citizenship to the Hindi speaking Hindus by excluding non-Hindi speaking Hindus in Sri Lanka? By arbitrarily selecting just three countries without any valid ground, the act is doing a huge injustice to the human race. Therefore, the statements “Equality and Arbitrariness are sworn enemies” and “Arbitrariness is antithesis to equality” are absolutely justified. The argument made by the Union government is that this is a ‘reasonable classification’ permissible under the Constitution. Although the Constitution does not use these words, the test goes back to the **State of West Bengal vs Anwar Ali Sarkar** (1952) in which the Supreme Court was interpreting the scope of Article 14, which guarantees equality before the law. The said Act is in violation of Article 14 of the Constitution of India which demands reasonable classification which includes intelligible differentia and it should have a reasonable nexus with the objective sought to be achieved. Selection of only three countries on the name of religious persecution and excluding a particular community without naming it is in violation of the principle enumerated under Article 14, 15 and 25 of the Constitution of India. Trans genders, Atheists, Adivasis and Dalits are also not under the purview of the said amendment.

Also, the said act is indirectly providing citizenship to illegal immigrants. The act says if the travel documents like passport and visa are not in order or are not available, an individual can apply for Indian citizenship if he can prove that he was persecuted back home. Now what the Act is trying to convey is that if 4 people have entered inside the territorial boundaries of India illegally, naturally they won't be

having any document to show that they are from India. Also, at the same time, they won't be saying that they are illegal immigrants. The act now wants them to say is that they have been persecuted from among the three countries. The CAA creates this legal right for such migrants or illegal immigrants. Secondly, they get a faster route for Indian citizenship through the Naturalisation Mode. The minimum residency requirement in India would be only 1+5 years instead of 1+11 years as applicable for all other categories of Foreigners.

Finally, the CAA denies the value of community as it violates fraternal bonds between communities: a public good recognized by Ambedkar and the Supreme Court in decisions on secularism. In passing such a humiliating and inhuman law, and then by curbing protests with brutality, the government of India has told its people that they are mere instruments in a larger political plan. The republic is, therefore, again under siege. This time by an explicit denial of our deepest constitutional commitments

Power corrupts and absolute power corrupts absolutely and thus the recent amendment to the Unlawful Activities Prevention Act, 1967 gave a wide magnitude of powers to the government and thus ended in having a catastrophic effect in the legal system. With this, the government has become unbelievably parsimonious.

The appurtenant question is that can we trust political parties and Government official who have the power to decide whether someone is a terrorist without that person being given a fair opportunity of trial?



Well, it was absolutely surprising to know that the government has given this power and what is worse is that it is hard-pressed to find any discussion on any news channel about it. The talk is about the recent amendment done to the Unlawful Activities Prevention Act or The UAPA and why this is the most dangerous law in this country. The bill to amend UAPA was introduced by Union Home Minister in the Lok Sabha this week and was passed by a brief discussion. A few opposition MP's like Mahua Moitra and Asauddin Qwaisi tried their best and came up with excellent arguments to oppose the bill and to highlight exactly how bad this amendment to the law is and how will it be affecting the nation. But the supermajority of the NDA government in the Lok sabha and their concerns were easily drowned and subsequently, it became an Act. Lacunas in the said act were overlooked. The UAPA was first passed in 1967 and gives widespread power to the Government to do several things.

The key ingredients of the act are:

- It has the power to designate any organization as unlawful.
- It defines what is called unlawful activity.

In 2004 the act was amended to declare terrorism as a crime and to grant the government the power and authority to declare any organization as a terrorist organization. The law also gives enhanced power to police with respect to interrogation and makes it extremely difficult for an arrested person to get bail. The new Act allows the National Investigation Authority to wreak havoc with India's federal structure of our country. But the point of attraction is the single most dangerous element enshrined in the Act

which is that the government to declare individuals as a terrorist and not just organizations. The pertinent question is what kind of individual does the government intend to designate as terrorist under the amended law. The Home Minister gave certain reasons for making an amendment in the bill. The important questions that are needed to be addressed are:

What is the purpose of designating an individual a terrorist?

It is important to remember that if the individual engages in what UAPA defines as terrorism, then the Government already has the power to prosecute and punish them. In other words, if we have a bad guy in our sights, by all means, arrest him and prosecute him and if we have the evidence, then the courts will also convict him. This is how law abiding society fights terrorism. Who can have a problem with that? But then the question is why we would want to weigh the system down with another layer of action of designating someone as terrorist if we can just convict him and send him to jail anyway. This is what we should worry about that designation of an individual as terrorist gives Government and the officials the power to label and stigmatize an individual as terrorist even though they do not have the evidence to actually prosecute and convict that person. If fake encounters allow the police officer to pass death sentence without going into the process, then Government's plan to designate individuals as terrorist will essentially allow the Government to make someone's life a living hell. This form of solitary confinement without a trial and without sending someone to jail, we could lose our job, we will always be covered by



the bad image, our kids will have a tough time at school. Everyone will look at us with suspicious eyes and the police will keep harassing us. We can appeal the Government's decision of designating you as a terrorist but the way the system chooses these people who conduct these reviews, good luck with that.

Turning to the second question that the Home Minister's remarks in the Parliament regarding the terrorist literature and terrorist theory that the act doesn't deal. **What is terrorist literature and terrorist theory and given the attitude of police and the manner in which the security laws in India are routinely misused to target political opponents and dissidents?** Do we really want to give officials in the Home Ministry with the power to brand or label someone a terrorist, because they already have a copy of communist manifesto at their home, If the police in Jharkhand has tried to charge literally thousands of tribal people (Adivasis) with sedition because of their support to the Pattalgadi movement which only talks about the rights that constitution has given to the Tribals. We can be sure that the power to designate an individual as terrorist will be rampantly abused. Already the existing UAPA had been used to file an utterly glimpsy case against selfless and dedicated human right activist like Sudha Bharti. This proves that the parent law is a terrible piece of legislation. The UAPA was passed by Congress party in a very rushed manner in 2004 without any proper parliamentary scrutiny and the Narendra Modi government is attempting to do the same with this atrocious amendments. The new law will give the State Government unprecedented power.

Let's take a look at the history of fake encounters done by the police especially in the case of Shorabuddin Fake encounter and also the snooping case of Ishrat Jahan. We can imagine the faces of the people who are wielding this power. If we can trust them, then all the very best and if we cannot, we should be scared, very very scared.

The two Mentioned act are disastrous and are destroying the federal structure of our constitution. On the one hand the Citizenship amendment act is providing citizenship in an arbitrary manner where as on the other hand the Unlawful Activities Prevention Act is itself making it a nightmare for the people to be the citizens of this country. There is a need to decide which side of history we want to be on. Do we want to be upholders of this Constitution or do we want to be its pallbearers?

The voice of contradiction has been tormented in light of which it has become essential that the voice of difference be heard. Let me start first by citing Maulana Azaad he once said about this nation that you are battling to construct " it is india's notable fate that numerous races and culture should stream to her, discovering her home in the reseptible soil and that numerous a convoy should discover rest here, where our societies, our dialects, our verse, our writing, our craft, the multitudinous happenings of our every day life will bear the stamp of our joint undertaking."

This is the possibility that had been cut in the constitution . This is the very constitution that every last one of us has vowed to ensure. In any case, this constitution is under risk today. A significant number of us may differ with me



by saying "acche racket" are here and nothing can ever turn out badly under this great showrious domain. Be that as it may, at that point you are feeling the loss of the signs , you are feeling the loss of the sign and if just you open your visually impaired collapsed eye you could see that these signs are all over. That this nation isn't the nation that once Mahatma Gandhi longed for making it , this nation has been destroyed.

In 2017, the United States Holocaust Memorial Museum set up a blurb in its fundamental anteroom. It contained a rundown of the considerable number of indications of early one party rule. What's more, you won't be amazed to realize that each one of those signs are now occurring right now.

There is a ground-breaking and proceeding with patriotism being jeered into our national texture. It is shallow; it is xenophobic, and it is limited. It is the desire to partition; it's anything but a longing to join together.

Individuals who have lived right now 50 years are solicited to show a piece from paper that they are residents of this nation , where priests can't deliver degrees to show that they have moved on from school, you anticipate that seized needy individuals should demonstrate papers, to show that they have a place with this nation.

Trademarks , images and coagulating designs are utilized to test the devotion. There is nobody trademark nobody religion that can show any indian that he is a loyalist.

There is resonating scorn of humanism right now, has been a 10 overlap increment in the

quantity of loathe violations. The lynching of residents based on religion is been expanding each day and there are powers right now are simply giving a help to this expansion.

There is an incomprehensible oppression and controlling of broad communications today. The top media houses right now straightforwardly or in a roundabout way obliged by one gathering or one man right now.

Religion and government are currently interlaced right now. Do I at any point need to talk about it? Neither should I advise you that we have reclassified being a resident. With the NRC and the Citizenship (Amendment) Bill, we are ensuring that it is just a single network that is the objective of against movement laws.

I don't debate the resonating command that this legislature has. Be that as it may, I preserve the option to differ with your thought that there is nobody before you and there will be nobody after you.
