

CAB 2019: The Insidious Chapter in the Constitutional History of Free India



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Controversial Citizenship Amendment Bill 2019 has been passed in Lok Sabha on 9th December, 2019 and also received a 'free passage' in Rajya Sabha on 11th of December, 2019 on its way to become a Law of the Land after the assent of the President of India. The original draft of the Bill that BJP government tabled before the parliament and subsequently got it passed in Lok Sabha in 2019 has undergone certain minor changes before it got placed before Lok Sabha by newly elected BJP government.

In the state of Arunachal Pradesh, the Indigenous Tribal Forum opposed the bill. Although, the issue is not similar to that of being against the Hindu Bengalis (as in the case of Assam). The issue in Arunachal Pradesh is related to the Chakma and Hajong refugees, who were settled in the state by the Indian Government following their displacement from the East Pakistan. Bill would make them the legal citizen of the state.

“Ours is a nation that has historically offered refuge and protection to the persecuted of all nations and of all faiths. We are a proud nation that has never been broken by the insecurity of a few, for we have always stood firm with the knowledge that free India can only remain free if her people are liberated, if her voices are heard, and if our institutions, our governments and our political forces dedicate themselves to securing the inalienable rights of the citizens of this country.” ~ Sonia Gandhi, Statement after Citizenship Amendment Bill gets Rajyasabha Approval

Another significant social, political and economic implication of the Bill has been identified in the state of Manipur. The opposition of the Bill in Manipur is specifically based on the longstanding problem of the availability of the land in the valley. This land is mainly inhabited by the indigenous communities, mainly the 'Meiteis', who had been living on the land since many decades. They are also the major ethnic group inhabiting the land and they are dependent on the land as their main occupation is Agriculture. However, the increase in the migration in Manipur will result in causing a visible change in the demographics and land use. Further, the minority and the tribal groups living in Meghalaya have been self-determinant towards their ethnic and clan identity. Their self-identity according to their ethnic background is considered as the first stage of their self-identification. However, the new Bill can result in damaging their ethnic and clan identity, being the main reason of their political and social opposition of the Bill. The opposition of the Bill in Mizoram is similar to that of Arunachal Pradesh, as the Mizo people fear that inclusion of the Chakma refugees and migrants would result in distorting their ethnic, cultural and traditional image. Nagaland is the state of Naga people who have been struggling for their ethnic identity and sovereignty is also coming under the threat from illegal Bagladeshi immigrants (IBI). The Bill would result in integrating the refugees and illegal immigrants with the Naga tribal groups that poses a significant challenge for their identity and self-determination. In the context especially of the state of Nagaland, it is relevant to understand that, as per the Citizenship Act of 1955, the illegal immigrants cannot get citizenship in India. An illegal immigrant is defined as people who either entered the country without proper documents, or stayed on beyond the permitted time. In 2015, the government made changes to the passport and foreigner's acts to allow non-Muslim refugees from these countries to stay back in India even if they entered the country without valid papers. The fear of cultural and social damage due to the inclusion of

the illegal immigrants and refugees is the main reason of opposition of the Citizenship (Amendment) Bill 2016 and 2019.

Therefore, the different states of the Northeast region of India are in significant dilemma with the CAB and its implementation. For the ethnic and tribal groups, their ethnic and cultural identity is the backbone of their existence. The tribal and indigenous political groups are therefore, against the Bill in order to protect their cultural, linguistic and traditional identifies that are under significant danger because of this Bill. Moreover with the passing of the Bill has resulted in chaos within the Northeast states of India which may throw the region in perpetual Dark Age.

The indigenous people of the northeast India, taking into account their delicate cultural, demographic and political position, would be the first to come in the line of fire while facing the adverse impact of the hostile and unconstitutional provisions of the Citizenship Amendment Bill 2019. However, the changes that have been made in the CAB 2019 as to the exclusion of Tribal belts including Autonomous Tribal District Councils, 6th Scheduled areas and ILP areas from the purview of the Bill will not protect these regions from the wrath of impact of its fundamental unconstitutionality. When the Bill becomes the law of land it will open the door for millions of people from Pakistan, Bangladesh and Afghanistan to apply for the official citizenship of India. The 'Newly acquired Indian Citizenship' would make them entitled for the same rights and privileges that any other Indian normally enjoys as a lawful citizen of India. However, India has a rich tradition of offering protective shelter to those who have been battered and persecuted in their motherlands.

Moreover, this country runs on the principles lay down by the Constitution written by Babasaheb Ambedkar that does NOT prescribe any kind of discriminatory treatment to the people on the basis of caste, creed, religion, race, gender or any other identity because of which Glanville Austin, an internationally renowned scholar of Indian Constitution must have identified it as a 'Social Document'. Art. 14 of the Constitution establish the principle of Equality and therefore the provisions of the Citizenship Amendment Bill 2019 which are violative of Art. 14 that also states that the *State shall not deny to any person equality before the law or the equal protection of the laws*, are unconstitutional in the sense that Government of India either directly or indirectly cannot resort to any discriminatory policy while granting citizenship to the people. So, the Bill in question has seriously dislocated on three fronts- 1. Opening the doors of India to so called 'persecuted' people only from Pakistan, Afghanistan and Bangladesh and 2. Opening doors of India only to the so called persecuted people from only 6 religious faiths that is Hindu, Buddhists, Sikhs, Jains, Christians and Parsis AND 3. Opening the doors to existing Refugee/illegal immigrant population in India belong to 6 religions to a golden opportunity to become official, registered, authentic citizen of India.

Surprisingly this Bill has no space for persecuted Muslims in Pakistan like Ahmadiyyas and Muhajirs. This Bill also has no space for existing Rohingya Muslims refugees in India. Bill also excludes Sri Lankan Hindus and Bhutanese Christians. It is really unfortunate if government of India holds a 'belief' that Muslims cannot be persecuted in the lands 'Ruled' by the Muslims and hence does not deserve the protection at par with the equally persecuted members of other 6 religions. At the outset, doesn't these provisions' in the Bill sounding divisive & communal in nature? Doesn't it create a suspicion in the mind as to the intentions of the government? Doesn't this Bill threaten the existence of entire tribal belt and indigenous population and at the same time posing a serious challenge to the secular character of this great nation? Doesn't this Bill laying the foundation of the creation of humungous, permanent HINDU vote bank for the 'political beneficiaries'?

On 10th of December, 2019 an important but interesting event happened. Dimapur town was brought under Inner Line Permit system. The demand of the Nagas to extend ILP upto Dimapur was very old however; nobody seems to have imagined that their demand which has been pending for years could be fulfilled immediately after the clearance of CAB 2019 in Loksabha. Question arises as to whether the Government of Nagaland executed the decision to bring Dimapur under ILP to fulfil the long lasting demand of the people or they have taken this quick decision thinking that the ILP will protect the region from the demonic influx of population that will be arriving in the region when CAB 2019 turns out to be the full-fledged law of land. ILP has always been necessary for Dimapur. On various public platforms I have settled my position firmly on the necessity of permanent ILP not only for Nagaland or Dimapur but for the entire tribal region of the northeast in the interest of the survival of people, culture and society at large. However, the present day context is very complex hence needs to be put in different perspective.

The Citizenship Amendment Bill's reference to the Inner Line Permit seems to be redundant without recognizing the fact that in any case, anyone who is not considered indigenous to states where the ILP is there cannot settle down or buy land in protected areas, however, as for "outsiders" working and living in these states with long-term permits as they have always been coming there, they have always been there.

Significantly, the revised bill of 2019 does not have any provision that prevents people who have been naturalised by it from applying for these long-term permits and working and living in these states and influencing the affairs of the residents either positively or negatively. Moreover, it may be a well-recognized fact that the Inner Line Permit may not be effective in preventing regional migration at all.

If we take a look around in Nagaland it may easily be concluded that the maximum labour force operating in Nagaland is from outside of the state. Moreover, Tribal Autonomous District Councils and Inner Line Permit system do not seem to have complete control over the foreign nationals, the infiltration outside TADC and ILP notified areas would also affect the demographic pattern of the northeast. Moreover, according to leader of opposition in Meghalaya Assembly Mukul Sangma, “...in respect of Nagaland, Mizoram and Arunachal Pradesh, the fact is, even when ILP is operational, the actual population of the indigenous communities and non-indigenous have increased in favour of non-tribal”. The census reports of the government will substantiate the claim of Mr. Sangma, also the residents of Nagaland can observe this truth in their daily routine affairs. Further, it may also be noted that, exemption of the CAB will not help in addressing the concerns because illegal immigrants can apply for citizenship from any state and move to other parts of the country. No matter how fortified the house is, when the flood occurs, it is bound to be submerged in the rushing water. Influx of the population will definitely have a capacity to impact the life of people living in the protected areas either directly or indirectly, visibly or invisibly. When the inevitable intermingling of the beneficiaries of CAB 2019 and the ILP protected indigenous population will happen; the ‘demography’ of the region will definitely undergo an inevitable change-if not today-not tomorrow-but someday it will definitely change the world that we live and experience today. These contentions have been put forth on the basis of the observations recorded while experiencing the ground realities of the northeast region.

If ILP is the solution, then let that solution be a stronger one. How does the ILP normally operate in our state? What is the mechanism? What checks and balances does it provide? Whether records of 'Issue of Permit' have been kept properly? Whether entry and exit points of permit holders have been recorded? How many incidents of illegal entries have occurred so far, and what actions have been taken by the government agencies? We need to ask many more questions. The current system of ILP in its current form is not sufficient to battle out the 'grave impact' that would be generated by this 2019 Amendment in Citizenship Act, 1955. To protect the interests of the affected indigenous population new laws, rules are required to be legislated by the concerned states as a support mechanism to the Inner Line Permit System. For example, the provision for long term work permit which is normally granted for one year must be abolished for the beneficiaries of CAB. Moreover, when the beneficiaries of CAB start arriving in the 'protected' regions of the northeast for different purposes including that of work must be separately categorized and monitored by special agencies. If a 'Legal Migrant' living in Nagaland or any other ILP/6th schedule/ADTC region running a business then in such cases if the teams of workers and labour force involved consist of the beneficiaries of CAB 2019 then such a contractor / businessman must register CAB Beneficiary labour force separately with the concerned authorities as may be notified by the law. Also, the 'Non-Muslim Refugees' (legal/illegal) who have already been living in the states will achieve permanent citizenship by virtue of this Amendment, however, such people also needs to be identified and categorized separately for better administration and monitoring purpose.

The point of argument is that, existing provisions of ILP that derive its legal validity from Bengal Eastern Frontier Regulations, 1873 are absolutely deficient to protect the interests of indigenous population. The object and purpose of BEFR does not cover the unique situation that CAB has invited and therefore, to support the existing provisions government needs to think seriously to enact certain legal measures at the earliest. The 'Change' is necessary to 'Counter/facilitate' the Change.

On the other hand, the Bill which now all set to become a law will undoubtedly create enormous incentive for Hindu population in particular to migrate to India from Bangladesh as has been the historical trend – Hindu population in what is now Bangladesh has steadily declined over the years not just because of alleged religious persecution or violence but also many of them willingly marched towards Indian Republic in search of better opportunities, prosperity and better future. This population from time to time has become a strong vote bank, and it will likely to remain a permanent vote bank for their political saviours. With the passing of CAB entire world of northeast India has been changed, however, as I have observed, people still have unshakable faith in the Constitution of India and their Fundamental Rights protected therein. Art. 13, Article 32, Article 226/227 and Art. 136 of the Constitution of India are the ways and means to initiate constitutional battle for the justice, and as we have seen the stand of All Assam Students Union, they are all fully geared up to challenge the so called “historic Amendment” made in the Citizenship Act, 1955 before the Hon’ble Supreme Court of India.

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