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The Tyranny of the Mob

The Constitution of India, adopted on 26 November 1949, is perhaps one of the most liberal documents which affirms the idea of India, with the Preamble to the Constitution making a powerful statement of intent. The words are indeed stirring and bring out the grandeur of a process of thought which encompassed a set of beliefs and principles that encapsulated the idea of Dharma and Righteousness and which have, since ages, been the bedrock of India's civilisational ethos.

The Preamble to the Constitution, when it was adopted, read as under:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith, and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

The words SOCIALIST and SECULAR were added by the 42nd Amendment to the Constitution in 1976, to make the preamble read as "sovereign, socialist, secular, democratic republic" and the words "unity of the nation" was also changed to read "unity and integrity of the nation".¹

At its very commencement, hence, the idea of India being a state for all communities and for all religious groups was enshrined in the Constitution. This, of course, applied to citizens of India and not to non-citizens. The partition of India, however, happened on religious grounds and Pakistan was created on the basis of religion, as a Muslim state. This left a large number of Hindus, Christians, Sikhs and other religious minorities in Pakistan, who were vulnerable and whose very existence was threatened.

In 1955, the Government of India passed the Citizenship Act which provided two means for foreigners to acquire Indian citizenship. People from the earlier undivided India, who had come across from Pakistan as refugees were given a means of registration after seven years of residency in India. Those from other countries were given a means of naturalisation

after twelve years of residency.² The Citizenship Act was further amended after the Assam Accord of 1985 when the Rajiv Gandhi led government agreed to identify foreign citizens, remove them from the electoral roles, and expel them from the country.³ The Citizenship Act was further amended in 1992, 2003, 2005 and 2015.

In December 2003, the Vajpayee led NDA government passed the Citizenship (Amendment) Act, 2003, wherein illegal immigrants were made ineligible to apply for citizenship by registration or by naturalisation.⁴ Their children too were declared as illegal immigrants.⁵ The 2003 amendment also mandated the Government of India to create and maintain a National Register of Citizens. The Bill received support from all sections of India's polity, with the then leader of the opposition, Dr Manmohan Singh stating, during the debate in Parliament that conditions for grant of citizenship to refugees belonging to the minority communities in Bangladesh and other countries who had faced persecution, should be made liberal.

After the BJP led NDA alliance came to power in 2014, a Bill was introduced in the Parliament to amend the citizenship law, to make the non-Muslim migrants from Pakistan, Afghanistan, and Bangladesh eligible for Indian citizenship. The Bill was passed by the Lok Sabha but could not be passed in the Rajya Sabha. It was reintroduced in the Lok Sabha on 19 July 2016 as the Citizenship (Amendment) Bill, 2016 and was thereafter referred to a Joint Parliamentary Committee on 12 August 2016, which submitted its report to the Parliament on 7 January 2019. While the Bill was passed by the Lower House on 8 January 2019, it

was pending for consideration and passing by the Upper House, but lapsed consequent to the dissolution of 16th Lok Sabha.

With the formation of the 17th Lok Sabha, the Union Cabinet cleared the Citizenship (Amendment) Bill, 2019, on 4 December 2019 for introduction in Parliament. The Bill was introduced in the 17th Lok Sabha on 9 December 2019 and was passed on 10 December 2019, with 311 MPs voting in favour and 80 against the Bill.⁶ On 11 December 2019, the bill was passed by the Rajya Sabha with 125 votes in favour and 105 votes against it.⁷ After receiving assent from the President of India, the Bill became an Act on 12 December 2019.

Protests have broken out by some sections of society on the Citizenship (Amendment) Act (CAA), mostly by people who are unaware of what the Act actually entails. Imaginary fears have been aroused and despite repeated assurances by the government, including by Prime Minister Modi himself, that the Act is not intended against any Citizen of India, but is only intended to grant citizenship to a small group of people who have faced religious persecution in the Islamic states of Pakistan, Bangladesh and Afghanistan, the protests continue in some parts of the country. This gives rise to the belief that indeed, the protests are motivated, with a hidden agenda behind them.

It is worth noting that the CAA does not violate any provision of the Constitution, as is being suggested by some. Here, false concerns have been flagged that the CAA is in violation of Articles 14, 15 and 21 of the Constitution of India. The CAA simply defines who can be considered an

immigrant and has reduced the time period of legitimate stay for consideration for citizenship from 11 years to 5 years. A clause has also been introduced that such people cannot be prosecuted. This in no way is violative of Article 14, which states “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. The Indian citizen faces no discrimination on this count. With respect to the illegal immigrants, the CAA again is not violative of Article 14 as the concept of equality applies to those who are similarly placed. The CAA is for persecuted minorities from Islamic countries and all such minorities are being treated equally. Article 15 is only applicable to Indian citizens, so its provisions have not been violated. Similarly, Article 21, which states “No person shall be deprived of his life or personal liberty except according to a procedure established by law” has also not been violated. There was also no infirmity with respect to the passing of the Bill as it was done after due diligence and debate and was passed by both Houses of Parliament. In any case, whether the CAA is constitutionally valid is a matter which has been placed before the Apex Court and therefore, it would behove all concerned not to pre-judge the issue.

It is also being alleged that the CAA violates India’s secular character, as enshrined in the preamble to the Indian Constitution. It does not take away any rights of Indian citizens and has only been enacted to give citizenship rights to the hapless minorities of three Islamic republics who faced religious persecution, being non-muslim. No less a person than Mahatma Gandhi had given such

an assurance to the Hindus and Sikhs who had been left behind in Pakistan due to the division of the country on a communal basis. This assurance was also repeated by Mr Nehru, so it is not something new. The CAA thus seeks to address a historical wrong and provide some element of relief to a small group of people who have been eking out an existence in India. It was not their fault that they were forced to stay behind in an Islamic republic due to the force of circumstances. They deserve empathy and support and that is what the CAA intends to give. In any case, the CAA does not prevent Muslims from other countries getting Indian citizenship for which separate provisions of the Citizenship Act exist.

Within India, the coordinated nature of the protests once again indicates a great deal of prior planning to enable simultaneous execution at multiple points across the country. Interestingly, most people who form the large crowds collected at various places are, for the most part, unaware of what the issue is about against which they are protesting. Obviously, the crowds have not come spontaneously for a cause in which they believe in, but have been collected together through financial or other inducements to partake in the protest.

What is being witnessed in the protests against the CAA is a classic case of information warfare, to shape the information environment. The opinion of a large segment of India’s youth, especially its students have been influenced to believe that the CAA will deprive millions of Muslims of their Indian citizenship. Many students also believe that the CAA is aimed at appeasing Hindu nationalists.

Nothing could be further from the truth⁸ but the way false information has not only been spread but found a great deal of credibility among vast segments of society, points to forces which are inimical to Indian interests and which are working to destabilise the country. Innocent youth have been caught up in this vicious propaganda, as have other segments of the society, especially segments of the Muslim community

The manner of protests also points to forces at work which are working against India's unity and integrity. While Article 19 of the Indian Constitution guarantees the right to freedom of speech and expression and to assemble peaceably without arms, such rights are not absolute and cannot impinge on the rights of other citizens. Blocking off of public roads as a symbol of protest thus violates Article 19, as the rights of others to use that road have been compromised. Burning of buses and public and private property also does not come within the ambit of freedom of expression. But most importantly, when such protesters demand turning back a validly passed Act in Parliament, and state that they will not allow the government to function unless such an Act is abrogated, they are striking at the very heart of Indian democracy, with a view to derailing India's democratic structure. Under no circumstances can a few thousand people getting together to spread anarchy, be allowed to derail the will of the people of India. This is clearly unacceptable.

This is not to state that dissent is an illegitimate activity. Dissent against the government is clearly permissible by the Constitution and is a legitimate

part of democratic functioning. This facet was reiterated by Justice DY Chandrachud, a sitting Judge of the Supreme Court of India. Speaking on the 15th Justice PD Desai Memorial Lecture, on 'The Hues That Make India: From Plurality to Pluralism,' Justice Chandrachud said: "The blanket labelling of dissent as anti-national or anti-democratic strikes at the heart of our commitment to protect constitutional values and the promotion of deliberative democracy". He further added, "The destruction of spaces for questioning and dissent destroys the basis of all growth—political, economic, cultural and social. In this sense, dissent is a safety valve of democracy."⁹

What Justice Chandrachud said is all to the good, but it implies also that the means of protest and the means used to dissent must be in conformity with the law. When protesters assemble in public spaces and deny to the rest of the populace the right to use those public spaces, then it is not dissent but anarchy. When protesters misuse their freedom of expression to spread hate and vitriol and sow divisions among communities, it is not dissent but anarchy. And when protesters use public platforms to publicly seek the break up of India, it is not dissent but anarchy.

The Government is duty-bound to uphold the Constitution of India. It is duty-bound to ensure the unity and integrity of India. It is duty-bound to ensure to all its citizens, Justice, Liberty and Equality. It must, therefore, do its duty with diligence and secure the maximum good for the maximum people. It must never ever submit to the tyranny of the mob.

References:

- 1 <http://legislative.gov.in/constitution-forty-second-amendment-act-1976>
- 2 *The Citizenship Act, 1955, ACT No. 57 of 1955, available at <http://legislative.gov.in/constitution-forty-second-amendment-act-1976>*
- 3 <https://indiankanoon.org/doc/12559/>
- 4 <https://indiankanoon.org/doc/949775/>
- 5 *An illegal immigrant was defined as citizens of other countries who entered India without valid travel documents, or who remained in the country beyond the period permitted by their travel documents. Such people could be deported or jailed.*
- 6 <https://scroll.in/latest/946252/parliament-centre-to-introduce-citizenship-amendment-bill-in-lok-sabha-soon>
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- 8 *Extracted from an article by the author, "Citizenship (Amendment) Act is a wise legislation: Why none of the objections raised on it are valid" in the TOI blog, 15 February 2020 and available at <https://timesofindia.indiatimes.com/blogs/toi-edit-page/citizenship-amendment-act-is-a-wise-legislation-why-none-of-the-objections-raised-to-it-are-valid/>*
- 9 *Blanket labelling of dissent as anti-national hurts ethos of democracy: Justice Chandrachud, The Hindu, 15 Feb 2020, available at <https://www.thehindu.com/news/national/blanket-labelling-of-dissent-as-anti-national-hurts-ethos-of-democracy-justice-chandrachud/article30829420.ece>*

