Editorial

Monday, December 2, 2019

The 'Trust' factor

Almost an hour long talks between the 18 members delegate of the COCOMI with the Union Home Minister Amit Shah in the presence of some other Union government authority and the State government representatives including the Chief Minister N. Biren Singh on November 24, followed by the assurances given by the Home Minister to the COCOMI, should have been enough to relieve the people of the state on the apprehension about probable interference to the interest of Manipur while bringing a final solution to the vex NSCN-IM issue. To be précis the same assurance was given to the Chief Minister N. Biren Singh and the political parties delegations who had met Union Home Minister in the regard time and again. In fact, an assurance by a Prime Minister or the Union Home Minister or the Chief Minister of Manipur should have been enough to calm the people of the state from any kind of fear psychosis lingering to the mind of the people of the state.

But then the trust deficit stands as a big hurdle to calm the people of this state. There is reason for those in the BJP and its supporters to believe on what their leaders had assured as they have seen then keeping their words but to the people the assurances fails to find a place to either believe it or not. It was not the credibility of the present BJP but it was the bitter instances of those in the highest post of the country had committed. If one remember, it was on June 13 of 2001 that the then Union Defence Minister George Fernandez, while speaking to a gathering at GM Hall here in Imphal announced that, no agreement that the people of the state opposed including extension of cease fire between the government of India and NSCN-IM beyond the state of Nagaland will be signed. It was on the next day, i.e. on June 14, 2001, after the then Defence Minister had left Imphal, the then interlocutor of that time Mr. Padmabhaya , signed the agreement with the leadership of the NSCN-IM by adding three words to the extension of the cease fire –"without territorial limit", which was against the assurance of the then Defence Minister of India a day before. The result of adding the three words that the defence minister assured to exclude it from the agreement , had burnt the entire state of Manipur. The world witnessed burning of the state legislative Assembly, along with many government quarters and offices of political parties. The tears still wet mothers, widows and son and daughters of 18 people who died during the bloodiest uprising for protection of the territorial and political boundary of the state. Left with no choice the then government had removed the 3 words "without territorial limits" from the agreement on July 27 of that year.

It is a fact that unlike other Prime Minister Narendra Modi and Amit Shah combo led government is a little different. Since they started running the country most of the words promised by them have been seen fulfilled, no matter they get votes or not during election, they always stand with what they had promised to the people. The first term of Narendra Modi led NDA government witnessed many outdated law being scrapped after he announced that outdated laws will be scrapped while delivering speech at Medison Square garden. However, for reason best known, AFSPA is still not scrapped.

So the point wanted to draw the attention of the government is that if they really want the people to have trust in the government to believe in whatever announce or declare by the Prime Minister or Home Minister or the Chief Minister, let it be converted into action, leaving aside the political gain.

Manipur have been a more peaceful state today if the so called promises have been fulfilled. Now one way to calm the people and to restore the peaceful coexistence in the state is to let everything known to the public. Settling the issue of NSCN-IM and legislation or a clause to safeguard the people of the NE from the impact of CAB is what people of the entire North east region have desired. Whatever agreed and whatever the NSCN-IM demanded should be made public and it is perfect time. Besides, the invitation for consultation in connection with CAB by the Union Ministry to stakeholders of Manipur is a good beginning. But again the Home Minister should not simply listen and let go the stakeholders of Manipur. Instead fulfilled the demand put up by the Manipur's stakeholders like the MANPAC.

The trust deficit between the common people and the Political leaders running the country should be bridged this time.

Why the Proposed Citizenship Amendment Runs Foul of Constitutional Provisions

Courtesy The Wire
By : Anupama Roy

Speaking in Kolkata, Union home minister Amit Shah promised to bring the National Register of Citizens to the state, but only after the government had passed the Citizenship Act (Amendment) Bill, 2016 in the Rajya Sabha to ensure that no Hindu, Buddhist, Sikh, Jain and Christian refugee was denied citizenship for being an illegal immigrant.

The CAB was introduced in the Lok Sabha on July 19, 2016, a couple of months after the conclusion of the state assembly elections in Assam. In these elections, held two years after the BJP-led NDA came to power at the Centre, BJP leaders, including party president Amit Shah, spoke in rallies promising a 'Bangladeshi-free Assam'.

Echoing the campaign speeches of Prime Minister Narendra Modi in the 2014 Lok Sabha election, Shah sought to convince people in Assam that the BJP would get rid of Bangladeshi 'infiltrators'.

Simultaneously, the party also promised to protect Hindus who had fled to India to escape religious persecution in Bangladesh, enact a law for the rehabilitation of Hindu refugees from Pakistan and Bangladesh, set up a task force to expedite pending citizenship requests from refugees, and issue long term visas of 10-15 years, wherever citizenship requests were taking long to process. Immediately after its introduction in the Lok Sabha, CAB 2016 was entrusted to a Joint Parliamentary Committee (JPC), which submitted its report on January 7, 2019, recommending the Bill for discussion in parliament.

Nine members of the 30-member committee submitted notes of dissent, indicating that there was no consensus on the final recommendation. The Bill was placed for discussion in the Lok Sabha on January 8, during the last session of the 16th Lok Sabha. It faced opposition there, but was passed with the force of the NDA's numerical majority.

The matter was placed for discussion in the Rajya Sabha on January 9 – a day when house proceedings were dominated by the EWS quota bill, which ended in the adjournment of the house. With the dissolution of the Lok Sabha by the president in preparation for the next general election, the CAB lapsed.

The BJP then made CAB part of the party's campaign for the 2019 Lok Sabha election. In rallies in Assam and West Bengal in particular, but also in other states, the BJP leaders made it clear that when the party returned to power, it would ensure the passage of the CAB into an Act. The manifesto of the Congress party released on April 2 announced its opposition to the CAB.

Headed by Rajendra Agrawal, a BJP MP, the joint parliamentary committee was expected to submit its report by the last week of the winter session of 2016. In its 425-page report, finally submitted on January 7, 2019, the committee has noted its mandate, modus operandi, minutes of meeting, and dissent notes of nine members, apart from its recommendations on the final Bill.

The JPC spoke to 'experts' from different ministries including law and home, apart from 'stakeholders' from different states. It is clear that the JPC was conscious that the CAB, when enacted into a law, could face the charge of discrimination and judicial scrutiny may render the Act unconstitutional on the ground that it violated Articles 14 and 25 of the constitution. The JPC considered the charge of potential violation of Article 25 surmountable, since the CAB in its opinion was not violating the right to freedom of religion.

It devoted its efforts, therefore, towards preparing a defence against the charge of violation of Article 14, i.e., equality before the law and equal protection of the law guaranteed by the constitution to all 'persons' – citizens and aliens.

In this context, the JPC considered the suggestion that the category 'persecuted minorities' could be used in the Bill instead of identifying communities based on religion. It must be pointed out here that the CAB does not use the category religious minorities anywhere in the Bill. The Bill only gives reference to the notifications dated September 7, 2015 and July 18, 2016 to the Passports Act and the Foreigners Act, which mention the term 'religious persecution'.

Yet, the JPC rejected this proposal in deference to the wishes of the 'legislative department', which advised it against the incorporation of a wider category of persecuted minorities, which would 'negate the *objectives* of the Bill', and 'lose sight of' *religious* persecution as the *primary objective* of the amendment.

The Department of Legal Affairs convinced the JPC that the CAB was sufficiently fortified against judicial scrutiny for violation of constitutional norms because it did not discriminate against persons on the ground of religion. It was making a distinction among persons on the ground of religion, for the purpose of meeting the primary objective of the Bill, which was extending the protection of citizenship to minority communities facing religious persecution in specified countries.

The consideration of religious persecution for making distinction among persons for extending the protection of citizenship could not, in its opinion, be construed as discriminatory, and in violation of Article 14 of the constitution because the distinction was being made on the grounds of both *'intelligible' differentiation and 'reasonable' classification*.

The JPC took recourse to these two standards of evaluation – of intelligibility and reasonableness – drawing from the Supreme Court judgment in 1952 in the case *State of West Bengal vs. Anwar Ali Sarkar* This basically meant that the JPC was convinced that the CAB would withstand challenge on the ground of discrimination and violation of Article 14 since it 'distinguished' a group from another group of persons on intelligible grounds and this distinction had a rational relation to the objectives of the CAB.

In addition, the JPC believed that the objective of equality in Article 14 did not postulate equal treatment of all persons without distinction but equality of treatment in equal circumstances. In other words, the JPC was convinced that mentioning the names of the six religious minority communities would stand the scrutiny of the judiciary and its commensurability with the constitution.

Interestingly, the Supreme Court judgment referred to by the JPC, i.e., *West Bengal vs. Anwar Ali Sarkar* (1952) had resulted in the dismissal of the appeal by the West Bengal government against a Calcutta high court judgment in a case involving the trial of Anwar Ali Sarkar under the West Bengal Special Courts Act (X of 1950).The objective of the Act, as declared in its preamble, was 'to provide for speedier trial' for certain 'cases' or 'offences' or 'classes of cases' or 'classes of offences', and to empower the state government to constitute special courts, with procedures for trial, which were different from those laid down in the Criminal Procedure Code.

The JPC drew support from the Supreme Court judgment to argue that the classification of persons on the ground of religion would not constitute discrimination under Article 14 since they constituted a distinct group or class of cases requiring the protection of citizenship to escape religious persecution. Their inability to get speedy admission into citizenship made their condition precarious, especially since they were likely to be slotted as illegal migrants. The CAB attempted to correct that anomaly, by inserting exemptions in the citizenship law.

In the JPCs view, this constituted both an intelligible differentia and reasonable classification. Essentially, for the JPC, the test of reasonableness was primarily *procedural*, merely requiring correspondence between classification and the objectives of the law which made different rather than equal treatment imperative. In its judgement in Anwar Ali Sarkar case, however, the Supreme Court had gone beyond procedural requirements to lay down *substantive* conditions for fulfilling the criterion of reasonableness. It did this by locating reasonableness in the stringent requirement of conformity to the equality provisions in Article 14 of the constitution. This is evident in the explanation given by the Supreme Court for dismissing the appeal by the West Bengal government, stating emphatically that the West Bengal Special Courts Act violated Article 14 on two grounds: (i) for failing the test of 'equality before law' by discriminating among persons while conducting a trial, and; (b) for removing the guarantee of 'equal protection of law' against the arbitrary power of the state.

The dissenting judge, Patanjali Shastri, as well as CJI Arthur Trevor Harries who wrote the lead judgement, agreed that the state had the power to distinguish and classify persons 'to be subjected to particular laws'. They also agreed that while the state government had discretionary powers which were plenary in nature, these powers *could not be arbitrary*.

Thus, the criteria of intelligibility of the differentia and the reasonableness of classification, foregrounded by the JPC as protection against judicial scrutiny, can be still be prised open for constitutional validation, to ask whether they 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's judgment in *Naz Foundation vs. Government of NCT of Delhi* referred to the 'scope, content and meaning of Article 14' as elaborated in what it called 'a catena of decisions'. These decisions, the judgment stated, lay down that while Article 14 'forbids class legislation', it allows 'reasonable' classification for the purpose of legislation.

Apart from the test of reasonableness and therefore 'permissible' classification, the Naz Foundation judgment recommended *a further test of reasonableness*, requiring that the *objective* for such classification in the law must also be subjected to judicial scrutiny: "If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable".

Citing the judgment in Maneka Gandhi case, the Naz Foundation judgment augmented protection against state arbitrariness by stressing that the law should 'eschew arbitrariness in any form' since arbitrariness was antithetical to equality, both according to political logic and constitutional law.Thus, while providing a test for reasonableness, the Naz Foundation judgment went beyond the procedural test of correspondence between an intelligible differentia and the objectives of law, by subjecting the objectives themselves to scrutiny.

The judgment provided substantive test of protection against exercise of arbitrary power of the state, to say that any violation of Article 14 is in fact a violation of equality provisions in the constitution. 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. Upendra Baxi has read the Naz foundation judgment as a 'dignity plus' for enhancing the idea of constitutional morality through its 'scrupulous extension' by taking Parts IV and IV-A of the Constitution as constituting 'a nearly complete code of constitutional morality'.

Both these parts constitute for Baxi the 'thresholds of *critical morality* by which some actually existing standards of *positive morality* ought to be judged and where necessary further *constitutionally displaced*'. In this understanding 'constitutional morality must outweigh the argument of public morality, even if it be the majoritarian view'.

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'India can be a natural ally to Kurdish nation'

By a correspondent
Guwahati Dec.2

A vivid followers of various religions, linguistic communities, tribes etc, India can be a natural ally to the Kurdish nation as it also supports various religious faiths including Islam (both Shia and Sunni sects), Christianity, Judaism, Yazdanism, Yazidi, Bahabism, Zoroastrianism etc with different racial groups.

Moreover, as Hindustan is a concept of nationalism (not necessary an entity of Sanatan religion), Kurdish people also prefer to categorize everyone on the basis of a nation and not necessary the religion.

Kurds never have prioritized religion issues and they are still fighting for their ethnicity.

Interacting with a group of scribes at Guwahati Press ClubI in northeast India through videoconferencing from Vancouver last evening (30 November 2019), Kurdish activist Diary Khalid Marif categorically stated that New Delhi should come forward supporting the cause of freedom-loving Kurdish people scattered in different countries. "Kurds are the world's largest ethnic group with over 40 people but without a State and we are divided mostly in four countries (Turkey, Iran, Iraq, and Syria). Unlike the common believe that every Muslim supports ISIS, we donot do that, rather Kurdish people have successfully resisted the Islamist terrorists I many occasions," said Marif adding that every nation, which expresses concern over the religious terrorism, should come forward supporting Kurds.

A regular contributor of media columns in ThePasewan, Awene Weekly, Daily Hawlati, Lvin, KNN TV etc, Marif also pointed out that unlike ISIS, Muslim Kurds also maintain respects to the minorities and women.

The young political analyst revealed that Kurdish movement is enriched with the active participation of their women even in armed struggles.

There are over 20 million Kurds in Turkey and even it is around 20 percent population of the country, they are denied their identity.

Torturing, imprisonment and killings of Kurds are regular happenings where they cannot speak Kurdish language.

Similarly Iranian Kurdistan supports nearly 12 million Kurds (around 17 percent population of Iran) who always suffer discrimination from the Islamic Republic in Tehran. Arbitrary evictions of Kurdish

families, restricted access to housing, education and health are primary issues for Kurds in Iran. In fact, an independent State for Kurdish people (Republic of Mahabad) existed inside Iran for some time in 1946, but soon Tehran crushed it.

Iraqi Kurdistan gives shelter to around 6 million Kurds (around 17 percent of its population) where they initially enjoyed no rights. By Sixties only, rights for Kurds were included in the Iraqi

constitution. Millions of Kurdish people were killed by various regimes in Baghdad, where Iraqi dictator Saddam Hussain took the lead in massacring the Kurds.

In Syrian Kurdistan, there are over 3 million Kurds (around 10 percent of Syrian population) who also face difficulties in various political aspects. However, Kurdish national there enjoy the right to

citizenship, study in mother tongue and speak their language.

Humiliated by the concerned governments of Turkey, Iran, Iraq, Syria etc for decades, Kurdish people have to fight for their ethnic identity. Kurdush names & costumes are banned in most of these countries, where their language has also been restricted. But facing all challenges, Kurds are running their struggle for a greater independent Kurdistan and thousands have sacrificed their lives for the cause.

Himself a Pune University pass-out, Marif termed India as a favourite destination of Kurdish students for higher studies. He also admitted that he learned many things in India like democratic values,

tolerance, dignity to minority communities and finally the unity in diversities. Marif still misses typical Indians foods, people with warm hearts amidst the greenery of landscape

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