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Supplementary issue



Why Manipuri People Oppose Citizenship Amendment Bill?

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Uti Posseditis Jurisin the Context of India – Manipur Relations Revisited

Agenda

The Citizenship Amendment Bill 2016 (CAB) passed by the Lower House of the Indian Parliament on 8 January 2019 has once again brought to the fore –the fundamental question of Manipur’s survival as a distinct people and culture under the existing scheme of India’s polity. The CAB carries with it the potential of a population bomb with the intention of completely wiping out the indigenous populations of Manipur and other North Eastern states. It seeks to legalise unabated influx of non-Muslim Bangladeshis in the region by entitling them citizenship rights. The opposition to CAB is not only for its anti-secular character but also for its possible ramifications to the indigenous populations of Manipur and their endurance as a civilizational entity. Come CAB in an altogether secular form, Manipuri people still have a fundamental right to oppose it in toto. In this backdrop, we remind ourselves of the historical and political consequences which India – Manipur relations have been brought upon the people of the region.

The illegal annexation of the erstwhile independent Asiatic State of Manipur by the Republic of India in 1949, has persistently posed tremendous challenges to the collective co-existence of Manipur as a historical, political and cultural reality. This is not a mere hypothetical allegation but a statement of fact which is founded upon a critical analysis of the systematic policies institutionalised by the Indian state. The Indian aggression of Manipur in 1949 had the effect of taking over of the then Administration of Manipur and unlawful termination of the Manipur Legislative Assembly in total contravention of (i) the Indian Independence Act, 1947 (IIA); the Manipur Constitution Act, 1947 (MCA); United Nations Charter, 1945; and norms of international customary law. It was followed by

scrapping of the Permit System by the then Chief Commissioner of Assam, Mr. Himmat Singh in November, 1950 which subsequently led to opening doors to unabated influx of foreigners to Manipur. 1953 saw the then Indian Premier Jawaharlal Nehru giving away Manipur’s Kabaw Valley to Myanmar (then Burma) without obtaining consent of the people. In the year 1958, parts of Hill Areas of Manipur came under the purview of the draconian law – the Armed Forces Special Powers Act (AFSPA) while by 1980 the whole state was declared as ‘disturbed area’ and AFSPA was enforced in toto in the entire region. Under heavy state militarisation and repression, during the period from May, 1979 till May, 2012, 1,528 Manipuris had been killed or extra-judicially executed by the security forces, military personnel and agencies of the Government of India [(EEVFAM v. Union of India, (2013) 2 SCC 493]. This data pertains to the reported or documented category only, whereas the unreported massacres, killings or extra-judicial executions, sexual crimes, torture, etc. from the period 1949 till date i.e. since the date of Indian aggression have not been documented so far. The state policy of exploitation of the natural resources of the region to the disadvantage of the indigenous Manipuri people began as early as 1983 with the commissioning of the Loktak Hydro-Power Project, besides recent ones such as Tipaimukh Multi-Purpose Project, Thoubal River Valley Multi-Purpose Project, Exploration of Oil and Natural Gas in Jiribam, Tamenglong, Chandel, Churachandpur, etc. construction of railways, trans-ASEAN highways and railways, etc.

CAB read with the above precedents underlines the agenda of the Indian state to systematically disturb and alter the indigenous integrity of Manipur. To the indigenous people of Manipur, CAB is a population bomb in disguise, *genocidal* in intent and character fully loaded with

the propensity to annihilate its population, demographic composition and symbiotic cultural identity. Census data stands to show that during the operation of the erstwhile Permit System (1948-50), the number of foreigners present in Manipur's territory accounted for less than 3000 as against 5 lakh Manipuri indigenous persons while by 2011 the number of non-indigenous persons have been pegged at 10 lakhs approximately as against 19 lakhs indigenous Manipuris. In the absence of influx protection mechanism, this number of the non-indigenous persons in Manipur is bound to shot up to unimaginable proportions. Tripura presents a clear example where influx population had driven the indigenous communities out of their own homeland. India's CAB seeks to encourage these phenomena in Manipur and the whole of North Eastern region. This bill if become a law in its present form can wipe out the identity of the whole population of Manipur and can complete the Indian aggression that began in 1949.

Citizenship Amendment Bill: The Historical Burden of India's Partition

Ill-conceived notions of the idea of nation-State by the then nationalist leadership of undivided India resulted into bloody partition in 1946-47. During the Constituent Assembly of India Debates (CADs), Indian nationalist leadership expressed their concern for their Hindu-blood fraternity left out in Pakistan and while laying down outlines for citizenship law for Indian citizens at the commencement of the [Indian] constitution, explicit powers have been granted to Parliament to frame laws to bring back those Hindu-blood fraternities into India. Pundit Jawaharlal Nehru recorded to have stated "We think also of our brothers and sisters who have been cut off from us by political boundaries and who unhappily cannot share at present in the freedom that has come. They are with us and will remain of us whatever may happen, and we shall be sharers of their good and ill-fortune alike" (Speech on "Tryst with Destiny", 14 August 1947 at Parliament House). B.R. Ambedkar explaining the rationale of article 5 of the Indian Constitution stated "...It is not the object of this particular Article to lay down a permanent law of citizenship... The business of laying down permanent law of citizenship has been left to the Parliament, ... the entire matter regarding citizenship has been left to Parliament to determine by any law it may deem fit". He continued "...If there is any category of people who are left out by the provisions in this amendment, we have given power to Parliament subsequently to make provision for them" (CADs, 10 August, 1949). These concerns find clear expression in article 11 thus: "**Parliament to regulate the right of citizenship by law—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship**". Thus, the CAB reflects the historical responsibility of the Indian State to redress the injustices of partition politics.

Manipur and the Citizenship Amendment Bill

The political question that drives home the point is on what basis Manipur shares this historical and political responsibility of India's partition? Partition took place 2 years before India illegally annexed the State of Manipur. Where does Manipur stand in the Indian policy of restitution for partition? What is the rationale of the nexus between India's CAB and Manipur sharing the former's historical responsibility? Here, we recollect the status of the historical and political entity called Manipur, distinct and separate from the Republic of India.

Manipur's territorial boundary had been established much before the colonial British laid the foundations for the polity that later emerged as the Republic of India. The existence of Manipur as a sovereign and independent entity with all the attributes of the 1933 Montevideo Convention had been testified by the *Anglo – Manipur Treaty of 4 September 1762* and the *Treaty of Yandaboo of 24 February 1826*. The Anglo – Manipur War, 1891 brought Manipur within the fold of British India. However, after the Indian

Independence Act (IIA) was enacted by the British Parliament, Manipur and other entities placed within the category of Princely States became independent by virtue of Section 7 (1) (b). This facticity has been repeatedly reaffirmed by the Supreme Court of India in a number of cases such as (i) *Virendra Singh v. State of U.P.* (AIR 1954 SC 447); (ii) *The States of Saurashtra v. Memom Haji Ismai* (AIR 1959 SC 1383); (iii) *Sarwarlal v. States of Hyderabad* (AIR 1960 SC 862); (iv) *State of Gujarat v. Vora Fiddali* (AIR 1964 SC 1043); (v) *Shri Ragunathrao Ganpatrao v. Union of India* (AIR 1993 SC 1267) among others.

Section 7 (1) (b) of the IIA was the British adaptation of Article 2 (1) of the UN Charter which put Manipur and India on an equal juridical plane. Democratic elections held in Manipur under the Manipur Constitution Act, 1947 on the basis of universal adult franchise in 1948 is considered second to Philippines in the whole South East Asian region. Manipur's tryst with democracy was nipped in the bud when the Dominion Government of India unlawfully annexed it in 1949. The Treaty of Shillong (Merger Agreement) signed on 21 September 1949 does not stand the test of legal effectuality. The people of Manipur had collectively denounced the Treaty of Shillong, 1949 as illegal and unconstitutional thrice: first, by the Manipur Legislative Assembly on 28 September 1949 (Fourth Sitting of the Third Session), second, by the Manipur People's National Convention held on 28-29 October 1993, third, by the National Seminar on Human Rights held on 8 and 9 December 1994 copies of which have been reported to have sent to the Government of India. The Republic of India in its Constitution gives due recognition to this historical and political distinctiveness of Manipur in Sl. No. 19 of the First Schedule thus: "*The territory which immediately before the commencement of this Constitution was being administered as if it were a Chief Commissioner's Province under the name of Manipur*".

Manipur under *Uti Possidetis Juris*

Even within the present constitutional scheme of India's polity, Manipur represents the case of *Uti Possidetis Juris*. No provision of the constitution of India that seeks to dismember or alter her territorial, social, cultural and linguistic indigenous integrity can apply to the state of Manipur. The basis of the principle of *uti possidetis juris* is the 'intangibility of frontiers inherited from colonisation'. Its application has the effect of freezing the territorial title existing at the moment of independence to produce the 'photograph of the territory' at the critical date. The Chamber of the International Court in *Burkina Faso v. Republic of Mali* (International Court of Justice Reports, 1986) characterised *uti possidetis juris* thus – "The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved. Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case, the application of the principle of *uti possidetis* resulted in administrative boundaries being transformed into international frontiers in the full sense of the term". *Uti possidetis juris* rise to protect Manipur's boundary as stood on the date of enactment of the IIA. The Parliament of the Republic of India does not have the legal and political proprietary authority to disturb or alter the integrity of Manipur in its holistic sense. Rather the Indian Parliament has an unaddressed agenda of according Manipur a constitutional provision similar to article 370 to provide the legal mechanism for effectuating the recognition given under Sl. No. 19, First Schedule of the Constitution of India.

Uti Possidetis Juris: Beyond Territoriality

Article 2 (4) norm of the UN Charter informs India's serious obligations to respect Manipur's identity and to refrain from resorting to threats or use of force against its territorial integrity. At the heart of the theories of political independence and territoriality lie the concepts of "*population or people*". A population is identified with the culture and languages of its social groups. Cultural and linguistic identity of the people is thus central to the ideas



of polity, territory, and sovereignty. Protection of a territory without safeguarding the social values, culture and identity of the inhabitants living therein goes on to defeat the intent, objectives and purposes of the article 2 (4) norm that prohibits the use of force against the territorial integrity or political independence of sovereign states. This is where we apply the *uti possidetis juris* becomes relevant to Manipur's case beyond its classical territorial dimension. Under this rule of contemporary customary international law (*Burkina Faso v. Republic of Mali, 1986*), the Government of India cannot apply policies such as CAB that tends to or will bring substantial changes to the demography, identity and culture so as to result in the total disruption of the social, cultural, linguistic identity of the people of Manipur. Substantial disruption here would mean altering or diluting those values without which the "idea of Manipuri" will no longer survive. The demographic composition, cultural and linguistic identity of a people at the moment of independence from colonial power is protected by *uti possidetis juris*. India cannot disturb Manipur's linguistic and cultural integrity under any circumstances. Manipur's indigeneity – aboriginal population, culture, identity and political aspirations falls within the protected values of the international community. So far as the CAB seeks to decimate the indigenous socio-cultural and linguistic integrity and subsequently to repress political aspirations, the Indian state is in the process of blatant and forceful deprivation of the right of Manipuri people to self-determination which constitutes a norm of *jus cogens*. Application of the CAB to Manipur with or without any exception contravenes India's obligations under article 2 (4) of the UN Charter.

International Humanitarian Law and the CAB

Due to the prevailing state of conflict between Government of India's armed forces and national liberation movements, rules of international humanitarian law also becomes applicable to Manipur. India being an occupying and administering state and also being a High Contracting State party to the Four Geneva Conventions of 12 August 1949 is under obligations not to transfer its own population to the occupied territory of Manipur. According citizenship rights to Bangladeshis irrespective of religious categorisation and allowing them to reside and settle in any part of the [Indian] territory including Manipur under the proposed CAB amounts to population transfer from India to Manipur.

Article 3 of the UN Draft Declaration on Population Transfer and the Implantation of Settlers defines unlawful population transfer thus: "A practice or policy having the purpose or effect of moving persons into or out of an area, either within or across an international border, or within, into or out of an occupied territory without the free and informed consent of the transferred population and any receiving population". So far as CAB seeks to grant

citizenship rights to Bangladeshis, thereby conferring them the fundamental right to reside and settle in any part of the territory of India including Manipur it amounts to encouraging population transfer from India to Manipur. Under this provision, even if the incoming or transferred population (Bangladeshi Indian citizens) consents to move into the Indian territory (Manipur), the receiving population (Manipuri people) have not expressed their consent to receive them.

Article 49 of the Fourth Geneva Convention relative to the Protection of Civilians in Times of War of 12 August 1949 provides: "*The occupying Power (India) shall not deport or transfer parts of its own civilian population into the territory (Manipur) it occupies*". Protection of the civilians in times of conflict accorded under article 3 common to the Four Geneva Conventions seeks to protect the aboriginal indigenous cultural and linguistic integrity of the civilian population caught in the middle of a conflict. Without this fundamental basis, protection of mere human dignity stands to frustrate its intent and objectives. When such population transfer is pursued or committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, the forced transfer partakes the form of genocide (article 6, 1948 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal, Nuremberg). Indian State is trying to extinguish resistant politics in the region through cultural implantation after having failed political engagements. The Indian state cannot transfer or implant population in Manipur. Besides the operation of *uti possidetis juris* in favour of Manipur, population transfer or implantation is absolutely prohibited as a war crime under article 8 (2) (b) (viii) of the Rome Statute of the International Criminal Court, thus: "*The transfer, directly or indirectly, by the Occupying Power (India) of parts of its own civilian population into the territory (Manipur) it occupies*". Article 25 (1) & (2), Rome Statute reinforces the severity of this war crime with individual criminal responsibility – whoever incites whether directly or indirectly in the commission of the war crime of population movement or transfer in the occupied territory of Manipur can be prosecuted for individual criminal responsibility.

Manipuri Peoples' Collective Stand

The people of Manipur continue to maintain its stiff opposition against the policies of the Indian state which aims at decimating and annihilating Manipur's collective co-existence and her holistic integrity protected under *uti possidetis juris*.

Civil society organisations of Manipur like the United Naga Council, All Manipur United Clubs' Organisation, United Committee Manipur, Committee of Civil Societies, Kangleipak, Ethno Heritage Council, League of Indigenous People Upliftment and students' bodies such as All Manipur



CRPF and State Police preparing to fight the unarmed women protestors at Khwaramband Keithel, at least 7 injured on FEB 10



Muslim Students' Organisation, All Naga Students' Association, Manipur, All Meitei Pangal Students' Union, All Manipur Students' Union, Manipuri Students' Federation, Kangleipak Students' Association, Students' Union of Kangleipak, ApunbaIrreipakkiMaheirosingSingpanglup, Reformist Students' Front, Socialists Students' Union, and Manipur Students' Association, Delhi, and All Manipur High Court Bars' Association, etc. have registered strong notes of dissent and protest against the CAB and continue to threaten to launch intense stir in case it becomes a law. AMUCO, UCM, CCSK, HERICON, LIPUN, AMSU, MSF, DESAM, KSA, SUK, AIMS have boycotted the Republic Day of India in Manipur.

We also remind ourselves that a representative conglomeration comprising of the leaders of Kabui Mothers' Association, Zeliangrong Union, Janet Ulama, Manipur, Kuki Mothers Association, AMUCO, senior citizens, professionals and lawyers under the aegis of the UCM had in 2001 resolved to stand firm against the Government of India's policies to disintegrate Manipur in any manner.

At this juncture, certain relevant excerpts from historic resolutions adopted by Manipuri people's movements are reproduced. The rally carried out on 4th August, 1997 resolved that "*The people of Manipur shall resist as one man, the sinister and diabolic designs which pose a tremendous threat to the territorial integrity of the state and ethnic harmony of the people*". Further People's Declaration to Defend the Territorial Integrity of Manipur adopted on 26 June, 2001 resolved that "...any attempt and subsequent alteration to the existing [read socio-cultural and linguistic] boundary of Manipur by the Government of India would necessarily initiate the process of the disintegration of the Republic of India constituted in 1950" (Resolution no. 4); "*The people of Manipur*

reminds the Government of India that nothing can disintegrate [read integrity of] Manipur and the North-Eastern region or set people against people and it is now time for a new dawn for a peaceful, progressive and meaningful coexistence" (Resolution No. 7) and "*The people of Manipur reaffirms that the Manipur People's uprising on 18 June 2001 stands as a living testimony to this common aspiration to the people to preserve the unity and territorial integrity of Manipur*" (Resolution No. 8). The Manipur Legislative Assembly had in the past adopted similar resolutions on March 24, 1995; March 14, 1997; December 17, 1998; and March 22, 2001. Given these precedents, the present BJP led – Government of Manipur is under historical and political obligations to adopt a resolution on similar lines. It should wake up maturely to the clarion call of the people of Manipur.

The All Manipur People's Convention of 17 September 1965 in its Memorandum submitted to Union Minister for Home Affairs, Government of India stated "...Any such arrangement will be fraught with grave consequences. None would brook [read stand] the territorial disintegration of this ancient State of Manipur. It is but natural that there should be stiff resistance to such a fantastic proposal" (Resolution No. II). It continue to state in Paragraph 16 that "*Fears not at all unreasonable, baseless and ingenuine are expressed in this region that these people are on way to extinction and their fates will be sealed for good as their sister communities like the Kacharis and the Tripuris, in the absence of proper and adequate safeguards in the struggle for existence*".

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