*Date:17-03-20*

# Violating Basic Structure Doctrine

## *Religion based citizenship scheme like CAA is anathema to our constitutional scheme*

**Kapil Sibal**

Citizenship (Amendment) Act or CAA is an attempt to legitimise the exercise of preparing a National Population Register (NPR) seeking additional data from individuals, which will feed into the National Register of Indian Citizens (NRIC). Some might believe this to be a legitimate exercise with intent to have an NRIC, to include all those who can provide proof of citizenship. The obverse of this is that all those who, in the process of this exercise, are weeded out, will not find their names in the NRIC. What their status will be is not known.

Presumably, they will not be entitled to participate in any tier of future electoral processes. They may even be lodged in detention camps and thus face ruination. There may be attempts also to deport them, subject to the target country accepting them.

First of all, this entire exercise is politically motivated and its timing suspect. CAA is the outcome of the Supreme Court guided NRC process in Assam in which of the 19 lakh excluded, about 10-12 lakh are Hindus. This hot potato could not be handled by BJP, who ideologically cannot validate exclusion of Hindus from the NRC in Assam. The only way out was to grant them citizenship by passing the CAA. Though Assam is unwilling to accept even these Hindus because of demographic repercussions, the government is floundering in addressing the viral response from Assam.

Second, our Constitution and the Citizenship Act, 1955, delineates the basis of grant of citizenship in India. India, not being a theocratic state, did not opt for a citizenship law based on religion. For the first time under CAA, religion has been made the basis for grant of citizenship. This violates our secular Constitution's basic structure. A religion based citizenship regime is anathema to our constitutional scheme.

Third, historically, upon Partition, those who migrated to India before July 19, 1948, were granted citizenship provided they resided in the territory of India six months prior to that date. Muslims who moved from India to Pakistan upon Partition but chose to migrate after July 19, 1948, had to apply for registration and certification by an appointed officer. Such a procedure was not adopted with the huge

influx of Hindus who moved, at that time, from East Pakistan (now Bangladesh) into Assam and other areas of the Northeast. They have been residing there since.

The Assamese objected to such an influx. The agitation that followed resulted in the Assam Accord of August 15, 1985, fixing July 25, 1971, as the cut-off date for granting citizenship to persons who came from East Pakistan. Persons who came after July 25, 1971, were regarded as illegal immigrants. They, however, sought citizenship on the ground that they had always been residing in India even prior to July 25, 1971.

Declarations made by them in processes under NRC in Assam clearly reflect that they made no claims that they were persecuted. It is in this context that in 2003 then deputy prime minister and home minister LK Advani said in Parliament, in response to a plea by Manmohan Singh seeking accommodation of Hindus, that an illegal immigrant is an illegal immigrant.

Fourth, the present exercise also nullifies the Assam Accord.

The fifth objection is that by virtue of a legal fiction, the CAA regards such illegal immigrants to have been persecuted. Such a law is per se arbitrary. Further, persecution is not made the basis of grant of citizenship under the CAA. It only finds mention in the CAA's Objects and Reasons.

The sixth and the most worrying is the manner in which this exercise is to be conducted. The Registrar General of India, who is also the Census Commissioner, will be updating the Population Register (PR) with additional data as prescribed (date and place of birth information about parents, mother tongue, Aadhaar number, mobile number, voter ID, driving licence). Proof of citizenship will require the opinion of functionaries appointed by the state government when conducting the exercise and scrutinising the documents.

For conducting a census, the only information sought is whether the individual has changed his residence in the last six months. Millions of poor people will have no documents to prove that they were born in this country or that their parents were born here. Many of them will not have access to school certificates as well, especially women who get married and move to a new home. The absence of such documents would put them in the category of doubtful citizens marked "D" in the PR.

Then the process of inquiry and appeals will start, requiring the aid of lawyers and others. Many, not just members of one community, will lose out. Their future will be in jeopardy.

In the highly charged political environment many others will be targeted for multifarious reasons. The local environment as well as the local pressure of motivated influential people will also play a significant role in this process. That is why there is a sense of unease and trepidation, especially amongst the poor.

The issue of classification is also flawed. Classification is permissible, but it must have a rational nexus to the object sought to be achieved. If those in power are shedding tears for persecuted Hindus, why are they insensitive to the concerns of persecuted Tamils? Are they not Hindus? Why is BJP not concerned with persecuted Buddhists and others persecuted by our neighbours other than Bangladesh, Afghanistan and Pakistan?

The entire exercise is to divide and rule. It is to perpetuate power, the exercise of which reflects the arrogance of a government which has chosen not to care.

THE ECONOMIC TIMES

*Date:17-03-20*

# A welcome SAARC initiative by India

**ET Editorial**

In bringing together the South Asian Association for Regional Cooperation (SAARC) for a coordinated response to the Covid-19 crisis, India has shown both leadership and prudence.

PM Narendra Modi's initiative is important, especially considering the absence of any coordinated global effort such as had been mounted during earlier outbreaks of Ebola and Sars.

The move could have positive spillovers, too. The world has expectations from India. US Secretary of State Michael Pompeo spoke with external affairs minister S Jaishankar, and President Hassan Rouhani of Iran reached out to PM Modi for help, given the constraints placed on Iran by US sanctions.

The PM's underscoring the need to come together, rather than grown apart, at this time of global challenge would help combat panic and confusion, especially considering the economic and social impact of the pandemic.

India's pledge of $10 million toward a Covid-19 emergency fund and putting together of a rapid response team of doctors and specialists are concrete measures. As is the proposal to set up a disease surveillance portal to better trace possible virus carriers.

India's efforts in the region may seem small but offer a contrast to the developed world's lack of collaboration and cooperation. New Delhi deserves credit for not just marshalling its resources to tackle the current pandemic but for the groundwork for the future in suggesting common Saarc pandemic protocols and setting up common research platform on epidemics.

Viruses recognise no national boundaries and the porous borders of south Asia demand coordinated action to halt the spread of disease in each nation to protect the population of the other. India has to do more to mobilise its technological capability in testing and development of vaccines and cures.

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*Date:17-03-20*

# Needed, framework to resolve failed banks

**ET Editorials**

The Yes Bank salvage still underway is a reminder that the economy needs a legal framework for resolving banks that fail. As of now, no bank is allowed to fail and taxpayer money is pumped in, directly or indirectly, to that end. The Financial Resolution and Deposit Insurance (FRDI) Bill that lapsed with the

previous Lok Sabha attempted to create such a framework but could not make progress because of widespread public resistance.

Opponents of the Bill seemed not to realise that there is no free lunch, that the cost of a bank failure cannot be wished away and that the choice, in reality, is between narrowing the scope of the impact to those directly associated with it and spreading it across society. Banking is one of the few businesses that live up to the nostrum, profits go to private individuals while losses go to the public at large.

The economy cannot allow large banks to sink, because of the interconnectedness of banks and the damage one bank's failure can do to the entire financial system. This creates a perverse incentive for bankers to take imprudent risks.

The only way to discipline such a proclivity is to ring-fence banks and make them absorb their losses without passing on the costs to those who have nothing to do with them. This calls for, besides better regulation and governance at banks, higher levels of equity and other loss-absorbing capital buffers.

The Additional Tier 1 (AT1) bonds of Yes Bank that were written off represents precisely the kind of capital buffer needed to limit damage to the banks' own stakeholders. Policy is currently creating four mega banks out of 10 public sector banks (PSBs). There is, as yet, not much sign of the kind of systemic reform that would ensure that bad loans would not pile up again to cripple their finances.

If they were to fail, should society at large pick up the tab or should the failed banks' stakeholders bear the brunt? Strengthen regulation, build in clawback provisions into banker remuneration. But if such measures still fall short of precluding failure, we need a framework for orderly resolution of failed banks.

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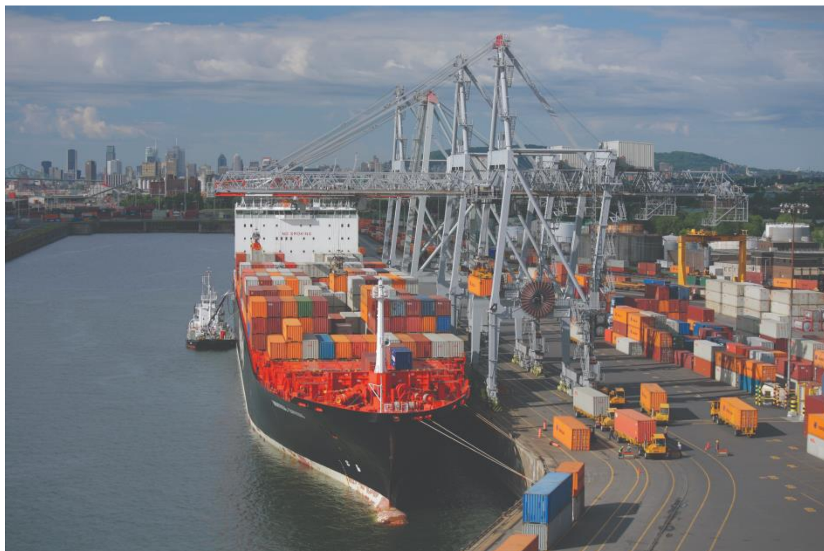
बिज़नेस स्टैंडर्ड

*Date:17-03-20*

# बंदरगाह सुधार में सरकार का अगला बड़ा कदम

**विनायक चटर्जी , (लेखक फीडबैक इन्फ्रा के चेयरमैन हैं।)**



देश की अर्थव्यवस्था में बंदरगाहों की बड़ी अहमियत है। इसके बावजूद देश में जितनी भी सरकारें बनी हैं, सभी ने सरकारी स्वामित्व वाले बंदरगाहों के लिए नीतिगत सुधारों की दिशा में बहुत कम ध्यान दिया है। यह तथ्य हमेशा अचंभित करता रहा है। सड़क, दूरसंचार, विद्युत, नागरिक उड्डयन जैसे सभी अन्य क्षेत्रों में सुधार देखने को मिले हैं या कम से कम उनमें सुधार की दिशा में गंभीर प्रयास किए गए हैं, लेकिन तुलनात्मक रूप से बंदरगाह क्षेत्र पर कम ध्यान दिया गया है।

यहां तक कि आज भी तथाकथित 'प्रमुख बंदरगाहों' को 1960 के दशक में बनी शुल्क एवं नीतिगत प्रणाली का पालन करना पड़ रहा है। देश के समुद्री मालवहन में करीब 55 फीसदी हिस्सेदारी इनमें से 12 की है। इन बंदरगाहों का शुल्क एक केंद्रीय प्राधिकरण- द सेंट्रल अथॉरिटी ऑफ मेजर पोर्ट्स (टेंप) तय कर रहा है। अन्य बहुत से परिचालन और वाणिज्यिक मामलों का नियंत्रण भी टेंप के हाथों में है। यह तो वैसे ही है मानो दूरसंचार मंत्रालय दिल्ली से आदेश जारी कर देश भर में फोन शुल्क दरें तय करे या विद्युत मंत्रालय देश भर में सभी विद्युत वितरण कंपनियों (डिस्कॉम) के लिए बिजली की दरें तय करे।

इसके नतीजतन कारोबार का एक बड़ा हिस्सा उन 'गैर-प्रमुख' या 'निजी' बंदरगाहों के पास चला गया है, जिनका एक ज्यादा उदार व्यवस्था के तहत परिचालन होता है और वे राज्य सरकारों के नियंत्रण में आते हैं। केयर की एक रिपोर्ट के मुताबिक माल की कुल आवाजाही में गैर-प्रमुख बंदरगाहों का हिस्सा वर्ष 2016 में बढ़कर 43 फीसदी हो गया, जो 1981 में 10 फीसदी था। मुंद्रा, काकीनाडा और पीपावाव जैसे ऐसे बंदरगाह न केवल परिचालन के लिहाज से ज्यादा कुशल हैं बल्कि इन्होंने माल की सुगम आवाजाही के लिए देश के भीतरी हिस्से से बेहतर संपर्क विकसित किया है।

गुजरात के गैर-प्रमुख बंदरगाह पीपावाव ने सुगम परिवहन के लिए देश के भीतरी हिस्सों से बेहतर संपर्क विकसित किया है। हालांकि प्रमुख बंदरगाहों में निजी क्षेत्र माल की आवाजाही को संभालने जैसे क्षेत्रों से जुड़ा हुआ है। लेकिन ड्रेजिंग (बड़े जहाजों की आवाजाही को संभव बनाने के लिए बंदरगाह की गहराई बढ़ाने) और नए टर्मिनल बनाने में निवेश के जरिये निजी क्षेत्र की भागीदारी और बढ़ाने की जरूरत है।

सागरमाला परियोजना 2015 में शुरू हुई। इसका मकसद बंदरगाहों की क्षमता बढ़ाना, बंदरगाहों की परिचालन कुशलता और देश के भीतरी क्षेत्रों से संपर्क सुधारना है ताकि माल का सुगमता से परिवहन हो सके। अब तक 125 परियोजनाएं पूरी हो चुकी हैं, जिन पर 31,000 करोड़ रुपये की लागत आई है। इन परियोजनाओं में से ज्यादातर (22,000 करोड़ रुपये की परियोजनाएं) बंदरगाहों के बुनियादी ढांचे के आधुनिकीकरण के लिए थीं।

बंदरगाहों के बुनियादी ढांचे में निवेश के बाद केंद्रीय मंत्रिमंडल ने अगला तार्किक और अहम कदम उठाया है ताकि बंदरगाह नए बुनियादी ढांचे- परिचालन नीति सुधारों का फायदा उठा सकें। मंत्रिमंडल ने 12 फरवरी को एक विधेयक- द

मेजर पोर्ट्स अथॉरिटी बिल 2020 को मंजूरी दे दी। इसका मकसद प्रमुख बंदरगाहों के प्रशासनिक ढांचे में व्यापक बदलाव करना है। यह विधेयक 1963 के अधिनियम की जगह लेगा। इसलिए टैंप का दौर खत्म होने का जा रहा है, जिसकी अब तक सरकारी बंदरगाह प्रणाली पर मजबूत पकड़ थी।

दरअसल ऐसा पहला कदम 2016 में उठाया गया था, लेकिन यह विधेयक पारित नहीं हो पाया क्योंकि पिछले साल लोकसभा चुनाव से पहले संसद को स्थगित कर दिया गया। इस वजह से विधेयक रद्द हो गया। हालांकि हाल में मंत्रिमंडल द्वारा मंजूर विधेयक के सभी ब्योरों का पता नहीं चला है, लेकिन यह 2016 के विधेयक की तर्ज पर होने के आसार हैं।

वर्ष 2016 के विधेयक में प्रमुख बंदरगाहों को ज्यादा स्वायत्तता दी गई थी। इसमें खुद ही शुल्क तय करने का अधिकार भी शामिल है। शुल्क में स्वायत्तता के अलावा 2016 के विधेयक में बंदरगाहों के बोर्डों को केंद्र सरकार की मंजूरी के बिना बैंकों एवं वित्तीय संस्थानों से धन (आरक्षित पूंजी के 50 फीसदी तक) जुटाने की मंजूरी दी गई थी।

इसमें बंदरगाह और निजी क्षेत्र के ठेकेदारों के बीच पीपीपी परियोजनाओं को लेकर विवाद के समाधान के लिए केंद्रीकृत मध्यस्थता बोर्ड स्थापित करने का प्रावधान किया गया था। अगर इन उपायों को ताजा विधेयक में शामिल किया गया है तो इनसे प्रमुख बंदरगाह निजी क्षेत्र के लिए निवेश और सेवा प्रदाताओं के रूप में ज्यादा आकर्षक बन जाएंगे। इस समय प्रमुख बंदरगाहों पर कार्गो हैंडलिंग की सेवाएं देने वाले निजी ऑपरेटरों को टैंप को अपने शुल्क का भुगतान करना होगा। यह साफ तौर पर एक अच्छा नतीजा नहीं है।

अगर पिछले कुछ वर्षों में हुए निवेश का फायदा उठाना है तो इन सुधारों को अमलीजामा पहनाना होगा। केयर की रिपोर्ट में कहा गया कि बंदरगाहों के लिए ज्यादा उदार प्रणाली के सकारात्मक असर गुजरात में सबसे बेहतर दिखते हैं, जो व्यापार और विकास के बंदरगाह आधारित मॉडल में अगुआ था। गुजरात मैरिटाइम बोर्ड राज्य में 41 गैर-प्रमुख बंदरगाहों का प्रशासनिक कामकाज संभालता है। इन बंदरगाहों का देश में गैर-प्रमुख बंदरगाहों के जरिये होने वाली माल की कुल आवाजाही में 70 फीसदी हिस्सेदारी (वर्ष 2017 में ) है। गुजरात की वृद्धि दर बढ़ने में बंदरगाह बुनियादी ढांचा और लॉजिस्टिक्स की अहम भूमिका रही है। गुजरात की वृद्धि 1980 के दशक में पांच फीसदी से थोड़ी अधिक थी, जो 1990 के दशक में 8 फीसदी से ऊपर पहुंच गई।

जहाजरानी क्षेत्र को बढ़ावा देने के लिए हाल के वर्षों में कई कदम उठाए गए हैं। इनमें सागरमाला परियोजना से लेकर जलमार्ग के जरिये माल ढुलाई को प्रोत्साहन देने के लिए करों में बदलाव, बंदरगाह आधारित सेज का विकास और मेगा पोर्ट आदि शामिल हैं। पोर्ट अथॉरिटी बिल को संसद की मंजूरी मिलने से एक खाई पट जाएगी।

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The Indian EXPRESS
JOURNALISM OF COURAGE

*Date:16-03-20*

# Sorry picture

## *Allahabad HC was right to condemn naming and shaming of protesters. By not upholding it, apex court disappoints.*

**Editorial**

The Allahabad High Court had, suo motu, taken cognisance of the UP government's vindictive move to put up roadside posters naming and shaming and giving photos and details of individuals accused of damaging public property during the anti-CAA protests in Lucknow in December 2019. The court deservedly reprimanded the Adityanath government for "undemocratic functioning", for violating the individual's fundamental right to privacy and the assurance of Article 21, that no person shall be deprived of life and personal liberty except by procedure established by law. It directed the government to take down the posters "forthwith" and set a date for it to submit a compliance report to the court. When the UP government appealed the decision of the Allahabad HC, however, the Supreme Court merely remarked that the state's action was not "covered in law" and referred the case to a bigger bench. This is disappointing. Surely, it should not require a larger bench to see the obvious: That the UP government's move is an attempt to intimidate and hound the protester, that it is guilty of trying to undermine the presumption of innocence until proven guilty by due process of law — a cardinal principle of criminal jurisprudence.

Taking its cue from the apex court, the UP cabinet has cleared the draft Uttar Pradesh Recovery of Damage to Public and Private Property Ordinance 2020 — it proposes to legalise its invasion of the privacy of citizens and its invitation to mob justice in a state that has seen frequent episodes of vigilante violence. In a sense, the UP government's moves, first to name and shame protesters and then to provide legal cover for it, are only in keeping with its conduct so far, ever since the eruption of protests against the new citizenship law. The brutality of the police crackdown in December 2019, the indiscriminate slapping of grievous charges against protesters, and the death toll, are all an indictment of a rampaging state trying to look strong by using force to crush basic liberties. But the apex court's ostensible reprieve to the UP government is a let-down.

The Supreme Court has shown a disturbing lack of urgency in habeas corpus cases relating to Kashmir recently, and in matters of hate speech and sedition, yet it remains the citizen's best hope for protection of individual liberties against state trespass and transgression. It must be hoped that the larger bench which will hear the UP government's challenge of the Allahabad HC ruling in this week, will make amends for the impression of delay and miscarriage of justice in the case so far.