

Eyes on the ballot

By Sukumar Muralidharan, January 25, 2019

Selective morality speaks out loud in recent legislative changes on citizenship and affirmative action. Three legislative proposals introduced in the penultimate session of the current Lok Sabha signpost the motifs of the ruling party's upcoming election campaign. Nationalist resurgence will be the dominant theme, and its embodiment a leader who bristles with political machismo.

Not everybody is expected to share the spirit. Citizenship in India, the basic title to belong, was seemingly a settled debate. Yet, trajectories of development since Independence led to a mass of citizens becoming economically marginal and politically powerless, aside from a vote exercised every few years.

That negation of the constitutional assurance of equality may now be solemnised under amended laws of citizenship. First in the Narendra Modi government's redefinition was the National Register of Citizens (NRC), unveiled last July, confronting four million out of Assam's known population of 33 million with a grim stateless future.

It was a calculated move to shore up emerging constituencies for the BJP in the Northeast, even at the cost of losing others. Like a compulsive gambler willing to risk all in another throw of the dice, the Modi government then chose, in the last session of Parliament, to introduce a contentious amendment to India's citizenship law that further muddies the waters for citizens of the frontier regions. As waves of anger swept across the Northeast, the BJP's partner in Assam, the Asom Gana Parishad, quit its alliance in anger.

Cultural accommodation has never been the BJP's strong suit. Citizens living on the margin, without documents that establish their credentials, and practising a faith deemed alien, have always been "illegal" in the BJP discourse. The party now proposes to open up a pathway to citizenship for immigrants from three Muslim-majority countries — Afghanistan, Pakistan and Bangladesh — subject to their birth in the Hindu, Buddhist, Sikh, Jain, Zoroastrian or Christian faiths.

Selective morality speaks out loud in this measure. The government's proposed abridgement of humanitarian principles is so drastic as to be positively corrosive of modern republican principles. Early last year, contesting a petition to halt the forced repatriation of Rohingya Muslim refugees fleeing Myanmar's military atrocities, the government averred in the Supreme Court that India could not become the "refugee capital of the world".

Worries have been expressed that the citizenship law amendment potentially violates the right to equality under the Constitution. A rejoinder, though of rather dubious ethical provenance, is available: Equality is a guarantee only proffered to citizens. Before qualifying for the right, an individual has to clear the citizenship threshold.

The greater danger in the proposed law lies in its institution of a religious test for citizenship. Never formally defined, Indian secularism does not go so far as the US Constitution, to prohibit the *establishment* of any religion. Though prone to infirmities in interpretation, the so-called "disestablishment" clause was the ground on which several courts struck down US President Donald Trump's mischief early in his tenure, to ban the entry of citizens from a number of Muslim majority countries.

Lacking a constitutional foundation, Indian secularism was always a contentious mix of confessional politics in numerous variants. The BJP today seeks to transform that mix into monotonic uniformity. A skewed perception is evident in Prime Minister Modi's assertion that two recent rulings of the SC, both connected to religious practice, are fundamentally different. The outlawing of summary divorce process under Islamic law is a laudable assertion of gender equality. But opening the Sabarimala shrine in Kerala to pre-menopausal women is a deplorable transgression of hallowed tradition.

A law holding Muslim men criminally culpable for issuing decrees of summary divorce, is another of the legislative changes the government has aggressively sought. Desertion is a civil offence under Hindu matrimonial law, constituting substantive grounds for divorce. The offending male would be liable to pay maintenance to his divorced wife, though not to imprisonment. Under the government's proposed new law, the Muslim male would suffer the extra jeopardy of imprisonment for the same offence.

A similar deficit of logic is evident in a third legislative initiative unveiled during the last session of Parliament. Affirmative action, or a policy of assured opportunities for

certain classes of citizens in education and the administration, is a time-honoured remedy for deficits of social and educational capital. Except when it is a consequence of social and educational backwardness, reservations are not a remedy for economic deprivation.

This common sense now stands upended by a constitutional amendment rushed through Parliament in perhaps the quickest ever time, assuring the economically deprived among classes not already beneficiaries, of 10 per cent reservations in Central government positions and educational institutions. Decades of jurisprudence have been overturned and multiple uncertainties caused in how a complex system of affirmative action will cope with the new wild card.

For the BJP, the touchstone of success for these laws is defined purely in electoral terms. Unfortunately, that is not a truth that the BJP alone is privy to.

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