

## **The Concept of “People” in “We the People of India...” Reality and Transformation**

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### **Abstract**

*This article shows that the concept of “people” in the Preamble of the Constitution of India is vague and confused and victim of severe politicking. Such “people” cannot be the “sovereign” that gave themselves the Constitution. The concept of “people” in the Constitution has an overlap with the “citizenship” that often used interchangeably and nationalism. In the post-independence era the concept of “people” has become more elusive and there is a need to take stock of the situation resulting from right wing majoritarian politics.*

*Key Words: People, Constitution of India, Citizenship, Politics.*

### **I. The Canvas**

The popularly understood meaning of the word people is human beings making up a group or assembly or linked by a common interest. In the Constitution of India the opening sentence of the Preamble states that “we the people of India...” It can be safely assumed that this expression was intended to mean the citizens and the nationals of India. The constitution was written and passed by the constituent assembly in 1949 and the constituent assembly itself was elected in 1946, “we the people” in the constitution refers to the **people** in India. Whether the Constituent Assembly was a true representative of the people of India is not the subject matter of discussion of this paper.

This paper raises question relating to the concept of “people” as existed in the mind of the framers of the constitution during 1946 and 1949-50.

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This is because “People” at the time of the Drafting of the Constitution for the geopolitical territory of a nation called “India” had to be, of necessity, “Indians” by which expression one understands that the “people” were either persons who had acquired citizenship of India and/or Indian nationals who were born in India or born of parents and grandparents born in India and hence natural “citizen” of India.

## **II. Colonial Hangover**

The legal status of peoples in the Indian subcontinent was an important driver of the anti-colonial, nationalist movement. Since the emergence of India as an independent nation in 1947, the terrain of citizenship has continued to be characterized by multiple contestations, linked to different historical periods and to varying socio-political causes.

History is witness to the fact that during the period in question, there were communal riots and inter country migrants and refugees from the newly created countries namely the West Pakistan and the East Pakistan as the undivided India now stood divided on religious lines. There was an exodus of people from East Pakistan [now Bangladesh] and West Pakistan, [now Pakistan]. People who fled each of these countries were loosely referred to as “refugees” which broadly included the illegal emigrant also. Whether the “refugees” were included within the purview of “people” is not expressly deliberated anywhere. However, the fact that the victims of communal riots and/or refugees and/or migrants from Pakistan and the erstwhile East Pakistan remained confined to the Refugee camps and were not “Indian” at that point of time. Had they been “Indian” they would not have been in refugee camps at that point in time.

Moreover, there were less number of people who had come to India from other foreign countries and eventually settled down in India. Whether the expression “People” included them for being “People of India” who gave the Constitution to themselves is not made clear anywhere. One cannot but recall in this context that the partition of India was on the basis of religion. Although India chose to remain secular and encouraged people of all religion and ethos to settle in India.

The question that arises is whether such “settlers” were also part the concept of the “People” who gave themselves the Constitution.

Therefore, from the above factual discussion the question arises whether:

- a. The texture of “people” were homogenous or heterogeneous” at the time of making of the Constitution? By the term homogenous it is assumed that the “People” as mentioned in the Preamble spoke of “People” who were “Indian” or “Bharatvasi” [that is citizens/nationals of India] at that point of time and not the victim migrants and refugees of the communal riots.
- b. Today there is the Indian diaspora as there are people with Indian roots settled down all over the world. They are citizens of the respective countries where they have chosen to settle down and yet continue to identify themselves as Indians. It is again presumed that in the absence of clarity that they are a later addendum to the concept of “People” in “We the people...” They are the “people” of “future” as against the “people” in the 1946-1950-time slot.

### III. People’s Tryst with Destiny

By the [Indian Independence Act 1947](#), the British gave up their suzerainty over India there were still some princely States that were ruled by the prince and kings. Each of them were free to choose whether to join any one of the newly independent countries of India or Pakistan or to remain outside them. For a short time, some of the rulers explored the possibility of a federation of the States separate from either, but this came to nothing. Most of the states then decided to accede to India or to Pakistan, such as [Junagadh](#) (1947–1948), [Hyderabad](#) on 18 September 1948, [Bilaspur](#) on 12 October 1948, and [Bhopal](#) on 1 May 1949 joined the Union of India. It can thus be assumed that they were part of Indian polity at the time of drafting of the constitution and adopting it. [Travancore](#) chose to remain an independent country. After Indian independence, Travancore and Cochin (now Kochi) merged to form the state of Travancore-Cochin; boundaries were redrawn, and it was renamed Kerala in 1956. Hence at the time slot of 1947 to 1950 it was not a part of “we the people of India”. Till

the abolition of Privy Purse during Mrs. Indira Gandhi's regime in 1971<sup>2</sup> most of the princely states in India were clinging to a separate identity with the rajas and maharajas at the helm of affairs even though they had become a part of the Union of India. Many States accrued to India at a later stage for example Goa<sup>3</sup>, Sikkim<sup>4</sup> and Jammu & Kashmir<sup>5</sup>. People belonging to these Princely States could not have been within the ambit of "people" in the Preamble.

There were also the Indian enclaves in the territory of Bangladesh and Bangladesh enclaves within the geopolitical territory of India till the enclave exchange in the year 2015<sup>6</sup>. The population of these enclaves would not have formed a component of "people" in 1950 and whether the population of Indian enclaves in Bangladesh were part of "people of India" is not known. Obviously, there is a notional extension of the horizon of the concept of "people in the Preamble.

Today the concept of "people" in the preamble of the Constitution is wider and heterogeneous and still expanding. Such being the case there is likely to be a transformation in universal common consciousness that had prompted the drafting of the Constitution of India. India is no longer confined strictly and narrowly within the geopolitical territory of India. India also has a diasporic face. Accordingly, the philosophy behind the Constitution of India has also undergone and is still undergoing a silent evolution, without which the legal system would not gain peoples acceptance and validity.

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<sup>2</sup>Privy Purse was abolished by the Constitution of India (twenty six Amendment) Act, 1971 and came into effect on 26 December, 1971.

<sup>3</sup>Goa was liberated by the Indian Army from Portuguese colonisation on December 19, 1961 and became an Union Territory along with the enclaves of Daman and Diu. On May 30, 1987 Goa was conferred statehood and became the 25th state of the Indian Republic.

<sup>4</sup>On 16 May 1975, Sikkim became the 22nd state of the Indian Union, and the monarchy was abolished. To enable the incorporation of the new state, the Indian Parliament amended the Indian Constitution.

<sup>5</sup>Jammu & Kashmir Reorganisation Act, 2019

<sup>6</sup>The exchange of enclaves was to be implemented in phases between 31 July 2015 and 30 June 2016. The enclaves were exchanged at midnight on 31 July 2015 and the transfer of enclave residents was completed on 30 November 2015. This by The Constitution (100 Amendment) Act, 2015

During the drafting process of the Constitution, which lasted from 1946-49, a considerable amount of discussion and energy were devoted to the concept of citizenship that would be enshrined within the constitutional text. The final text of the provisions relating to citizenship was decided after several rounds of revisions to drafts prepared by successive preparatory committees over a period extending to two years<sup>7</sup>. However, the Preamble does not use the words citizen or national, it uses the word people.

#### **IV. People-Citizen-National: In Search of a Nomenclature**

Nationality and citizenship are often used interchangeably in general discourse in India. There is a certain ambiguity about these terms, especially in more recent times, when 'nationality' and 'nationalism' have once again become sites of strife. Several groups of citizens have been charged with 'anti-national' sentiments, even as their citizenship is seemingly accepted. Moreover, these expressions are not used in the Constitution of India. It uses the word "people", not citizen, not national but people. In a case decided in the 1960s, the Indian Supreme Court held that citizenship is applied only to natural persons and connotes a legal status that determines civil and political rights within the context of domestic law<sup>8</sup>

Citizenship at the commencement of the Constitution was that:

1. Every person who has his domicile in the territory of India and
2. Who was born in the territory of India; or
3. Either of whose parents was born in the territory of India; or
4. Who has been ordinarily resident in the territory of India for not less than five years preceding such commencement,

Shall be a citizen of India<sup>9</sup>

Rights of citizenship of certain persons who have migrated to India from Pakistan was laid down as:

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<sup>7</sup>AshnaAshesh& Arun Thiruvengadam, Report on Citizenship Law: India, (Aug. 25, 2020 3:30 P.M.)

[https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT\\_CR\\_2017\\_12.pdf](https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT_CR_2017_12.pdf).

<sup>8</sup> The State Trading Corporation of India Ltd. And Ors. v. The Commercial Tax Officer, Vishakhapatnam and Ors. 1964 SCR (4) 89.

<sup>9</sup>Article 5, IX, CAD, 30<sup>th</sup> July, 1949 to 18<sup>th</sup> September, 1949 (1999)

Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if:

(a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b)(i) In the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government, Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application<sup>10</sup>. In other words such a person was not “people of India” but was deemed to be a people of India by conferment of such right.

Rights of citizenship of certain migrants to Pakistan was also determined stating that notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India, provided that a person who, after having so migrated to the territory now included in Pakistan, had returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 would be deemed to have migrated to the territory of India after the nineteenth day of July, 1948<sup>11</sup>

Rights of citizenship of certain persons of Indian origin residing outside India was determined as:

Any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a

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<sup>10</sup> Article 6, IX, CAD, 30<sup>th</sup> July, 1949 to 18<sup>th</sup> September, 1949 (1999)

<sup>11</sup> Article 7, IX, CAD, 30<sup>th</sup> July, 1949 to 18<sup>th</sup> September, 1949 (1999)

citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India<sup>12</sup>

However, a person voluntarily acquiring citizenship of a foreign State could not be citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State<sup>13</sup> thus denying the diasporic face of India. The diasporic face of India in the period of globalisation is very important.

Much changes have taken place since the adoption of Constitution of India in 1950. Much combination and permutation has taken place. Though Articles 2-3<sup>14</sup> speak about re-organisation of State, there were some princely States which were not even part of India in 1949-1950 and were added later and hence in that period in time they could not have been part of the “people” of India.

There was a realisation in the then government of India and the framers of the Constitution of India that all were not people of India. Had that not been so, the Immigration (Repulsion from Assam) Act 1950 would not have been enacted. The Constitution was adopted in 26 January, 1950 and came into force on 1 March, 1950 within a gap of 33 days. That should reflect how unsure the framers of Constitution were regarding who the “people” of India were.

Citizenship in India, then, has been deeply marked by colonial continuities and ruptures. It is, at the same time, being transformed by demographic and political shifts. In recent years, the rise of Hindu majoritarian parties at regional and

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<sup>12</sup> Article 8, The IX, CAD, 30<sup>th</sup> July, 1949 to 18<sup>th</sup> September, 1949 (1999)

<sup>13</sup> Article 9, IX, CAD, 30<sup>th</sup> July, 1949 to 18<sup>th</sup> September, 1949 (1999)

<sup>14</sup> Article 2, The Constitution of India: Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Article 3, The Constitution of India: Parliament may by law

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by Uniting any territory to part of any State;

(b). increase the area of any State;

(c). Diminish the area of any State;

(d). alter the boundaries of any State;

(e). alter the name of any State...

national levels has added a further level of complexity to these trends. Niraja Jayal has persuasively argued that the substantive character of Indian citizenship has changed over time, from *ius soli* to *ius sanguinis*<sup>15</sup>. At the time of the commencement of the Constitution, Jayal argues, the organizing principle was *ius soli* i.e. on the basis that birth on the soil of India<sup>16</sup> would confer citizenship rights although this was mixed with other bases. But this was the basis of deciding who were the “people” of India.

More recently, however, the organizing principle of Indian citizenship has, in Jayal’s view, leaned more towards *ius sanguinis*, i.e. based on descent or through the citizenship of parents, and expressly disfavours those who are Muslims. It is argued that alongside this shift, there are other changes afoot, because although there has been a shift towards the privileging of Hinduism in matters relating to citizenship laws more recently, this movement has not been uniform as Hindu Tamils from Sri Lanka have not benefited much from this trend. So, religion is not the sole explanatory factor for the complex trajectory of citizenship laws in India and nor for deciding who are the people of India. The terrain of citizenship laws continues to be a shifting, evolving space that will no doubt see further change in the future, in response to agonistic contests between different groups of Indian citizens.

## V. Jurisprudential Rumbling

The Kelsonian concept of the basic transcendental metaphysical abstract norm in India has transformed vastly from what was perceived on 26 November, 1949 and till date. The universal values that formed the bedrock of the Indian Constitution in 1950s are no longer the same. India is no longer a Socialist State except as a word in the Preamble. The transition from socialism to capitalism, from public sector to private sector without an amendment of the Preamble or the Constitution bespeaks of such transition and transformation from what it had been in 1949-50.

According to Dr. B. R. Ambedkar, not just those who were part of Constituent Assembly or the people who lived at that time but also the people who would

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<sup>15</sup> Niraja Gopal Jayal, *The Oxford Handbook of the Indian Constitution*, (OUP, 2016)

<sup>16</sup> Kevin Walby & Michael Haan, *Caste Confusion and Census Enumeration in Colonial India, 1871-1921*, XLV (9) *Histoire sociale* 301, (2012).

live in India in future were a component of “We the people of India”. The expression “people” in the preamble, according to Ambedkar, embraces the past present and the future. He stated that<sup>17</sup>:

“I remember the days when politically minded Indians, resented the expression “the people of India”. They preferred the expression “the Indian nation.” I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realise that we are not as yet a nation in the social and psychological sense of the word, the better for us. For then only we shall realise the necessity of becoming a nation and seriously think of ways and means of realising the goal”.

In other words, according to Ambedkar the heterogeneity of Indian polity and its fragmentation into several castes, class, race, tribe and religion prevented it from being a “nation”, there was problem with determinations of citizenship in that politically fluid situation of 1947 to 1950, hence the members of the constituent assembly, including Babasahib Ambedkar, thought “people” was a safe and neutral expression.

The reason for making such a statement is becoming clearer by the day. Tagore had termed India as a human pilgrimage<sup>18</sup> where people from all over the world came to settle down. This is utopia, an ideologically ideal situation. However, resources do not increase with increasing population neither does love for the nation increase with increasing population. “People” who are citizens of India, nationals of India along with those persons that are accepted as Indian have the first claim over the resources, and yet they are not necessarily nationalist. It is, therefore, important to identify people of India.

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<sup>17</sup> [B.R. Ambedkar’s Speech in Constituent Assembly \(Aug. 25, 2020, 5:00 P.M.\)](https://scroll.in/article/802495/why-br-ambedkars-three-warnings-in-his-last-speech-to-the-constituent-assembly-resonate-even-today)  
<https://scroll.in/article/802495/why-br-ambedkars-three-warnings-in-his-last-speech-to-the-constituent-assembly-resonate-even-today>.

<sup>18</sup> Rabindranath Thakur, “Bharat Tirtha”. According to him, this land is so pious and honourable that it is to be worshipped whole heartedly. India is the land which welcomes every individual, human race, tribe with same warmth of heart. It is a unique quality of mother India that she never closed her door over any one, enduring immense pain. -”Nobody

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The realisation of this goal is going to be very difficult – far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes, sub castes, religions that do not reflect the notion of homogenous people. *In the first place because they bring about separation in social life and they generate jealousy and antipathy between caste and caste.* All these difficulties must be overcome to become a nation in reality. *For fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coats of paint.* Fraternity means a sense of common brotherhood of all Indians – of Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve.<sup>19</sup> This also makes the identification of “We the people of India illusive to say the least.

*While speaking on November 25<sup>th</sup> 1949, addressing the member of the Constituent Assembly on the issue of fraternity Dr. Ambedkar narrated a story to bring home the point.*

“Fraternity means a sense of common brotherhood of all Indians – of Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is, can be realised from the story related by James Bryce in his volume on American Commonwealth about the United States of America.

The story is – I propose to recount it in the words of Bryce himself:

“Some years ago the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England divine proposed the words ‘O Lord, bless our nation’. Accepted one afternoon, on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word nation’ as importing too definite a recognition of national unity, that it was

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<sup>19</sup> [B.R. Ambedkar’s Speech in Constituent Assembly \(Aug. 25, 2020, 5:00 P.M.\)](https://scroll.in/article/802495/why-br-ambedkars-three-warnings-in-his-last-speech-to-the-constituent-assembly-resonate-even-today)  
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dropped, and instead there were adopted the words `O Lord, bless these United States.’”

There was so little solidarity in the USA at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United States could not feel that they were a nation, how difficult it is for Indians to think that they are a nation?”<sup>20</sup>

“We” were, therefore, not yet a nation because we were fragmented in castes, religion, class, gender, politics and ideology and hence we became “*the People of India*” as the first 5 words of our preamble connote. Although the constitution was drafted by handful of Indians who were elected by limited franchise in the drafting committee called constituent assembly, still it represents the decision of the whole country to “solemnly resolve” and adopt, enact and give themselves the Constitution.

The political forefathers of our nation were very much appeased by the parliamentary form of government of Britain because of its accountability to the people. They saw this system of governance as the tool for upliftment of masses and development of Indian subcontinent by ensuring equal and full participation of people in making government and directing its policies. And that is why during framing constitution they chose parliamentary form of government rather than presidential form like the USA. The preamble is an introduction to the spirit of constitution, and as whole governance was about to be built by the people and for the people of India ‘We the people of India’ gave Indians full authority to dictate their own future. It also signified that people are sovereign. However in the absence of clear indication as to who are the “people” of India, sovereign becomes the handmaid of confused politics.

State is a political community. It has a definite territory. If the state is run by a government which is appointed by people, people are sovereign [at least on paper] because it is from them it derives its legitimacy. In medieval time govt./rulers/councils used to derive their legitimacy based on divine right to rule. Kings were God’s representatives on earth. Eventually Church asserted God’s relation with the Church and Church appointed the monarch.

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<sup>20</sup> Ibid

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Thus, God was true sovereign but had an exclusive relation with the Church and the monarch derived his/her power from God through the intervention of the church. When people asserted their right and ability to commune with god without church's intercession, divine right of kings also took a blow along with that of the Church.

Without legitimacy a legal system is no system. For a long time God had been providing that legitimacy. With the fading away of divine powers question of the basis of legitimacy arose. Then came philosophers like Hobbes, who promulgated of social contract between people and the ruler. Ruler(monarch or parliament) will protect life and property, in exchange ruler acquires unprecedented powers that enable him to do anything in contravention of all moralities and values. This proposal was not very liberal, and it was a theoretical justification rather than a political event. Then came the social contract among people, they formed a political community, which was to be called a State. To formalise the relationship between the ruler and the people and also people and people a constitution had to be drafted to write down rights and responsibilities of each. People can be part of many such communities, such as West Bengal is a State and yet it is also a state and India which is also a state, Bengalis are part of political community of West Bengal and also of the Indian political community. Biharis do not decide chief minister of West Bengal.

We the people mean, people of Indian political community past present and future, give this constitution to ourselves. And by the structure of constitution, it is applicable to the constituent States and panchayat raj institutions. This structure is protected by basic structure doctrine<sup>21</sup> of Constitution. So "We the people" represent State as political community. Otherwise we the people would only mean people of India as existed during 1947-1949-50.

This is also a Hobbesian State, the "people" of India did not sign any contract tribal on Sentinelese island don't even know anything called India, even if the islands are a part of India and Sentinelese part of Indian political community. So we the people is also a legal fiction that we tell to ourselves, as long as it suits us. It is a living vibrant and growing concept above any time

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<sup>21</sup>Keshavananda Bharati v. State of Kerala, (1973) 4 SCC 225

frame or space. When One is not able to identify with this legal fiction there results Naga insurgents or Maoists or Kashmiri separatists.

We the people is also a line between absolute despotism and total anarchy.

There are two condition precedent to being “people”:

1. They must be bound by or linked by a common interest
2. There must be solidarity

The second is brought about by social cohesion and according to Durkheim, division of labour is a method of bringing about social cohesion and solidarity. All societies necessarily imply some solidarity, or, in other words, cohesion between individuals as well as between individuals and society (group)<sup>22</sup>. In India such solidarity is conspicuous by its absence. Hence “people” in India is weak concept.

Be it the hands-off approach of the judiciary, or the constitutional provisions that grant the Parliament unfettered powers to enact citizenship legislation or identify the people of India – either of these could potentially allow for authoritarian excesses.

## **VI. Politics of “People” and “People” of Politics**

This article has so far concentrated on the context of identifying the people of India from the time of formal independence in the middle of the twentieth century till date. During this entire period, the politics of India was dominated by the Congress party. The Congress was the leading vehicle for the anti-colonial, nationalist movement, and had also been the sheet anchor of the drafting process of the Constitution. In the post-independence phase, Congress governments under Prime Ministers Nehru, Shastri and Indira Gandhi had broadly adopted modernist and secular forms of governance. This changed from the 1970s onwards under Prime Minister Indira Gandhi who began to adopt

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<sup>22</sup> Alexander Gofman V. Jeffries, (ed.), *The Palgrave Handbook of Altruism, Morality, and Social Solidarity* 45-69 (Springer, 2014).

strategic policies to court constituencies among religious minorities such as Muslims, Sikhs and other groups in particular regions and states of India. Several commentators expressed alarm at the overt or covert communalization of politics which, they argued, would invite a backlash from Hindu majoritarian groups which had remained marginal in the legislative sphere since Independence. In the 1990s, this came to pass and the Bharatiya Janata Party (BJP) became a significant party representing the interests of the Hindu majority at the national level. From having a mere 2 seats in the 540-member lower House of Parliament in 1984, the BJP became the single largest party in general elections held in 1996, 1998 and 1999, securing more seats than the Congress nationwide. It formed the government at the Centre in 1996, but governed only for 13 days. In 1999, the BJP-led coalition government was more successful and lasted for its full five-year term, the first non-Congress government in India to do so. From 2004 to 2014, India was governed by a Congress-led coalition. In general elections held in 2014, the BJP was returned to power at the head of a coalition government. And returned with more than two third majority in 2019. What is striking, however, is that Prime Minister Narendra Modi's government, can govern on its own as the BJP has a majority in the lower house of Parliament. Since 2014, the BJP and Hindu majoritarian policies have clearly been on the ascendance in Indian politics, a context which frames the policy changes in the sphere of citizenship and that leads to further transformation of the concept of "people" in India<sup>23</sup>.

Some broad trends can be noted in successive attempts at amending citizenship laws by BJP governments (which have been in power in 1999-2004 and 2014-present) which impacts upon the identification of who the people of India are and in the case-law emanating from the Indian judiciary in recent years:

- i) a hostile attitude towards 'illegal migrants' who, it is argued, have swamped states neighbouring Bangladesh including Assam and Arunachal Pradesh since the 1960s and must be reined in through

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<sup>23</sup>Ashna Ashesh & Arun Thiruvengadam, Report on Citizenship Law: India, (Aug. 25, 2020 3:30 P.M.)  
[https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT\\_CR\\_2017\\_12.pdf](https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT_CR_2017_12.pdf).

changes to citizenship laws. Paradoxically, the same attitude is not exhibited towards a similar trend in Western India where people from Pakistan have similarly run afoul of citizenship laws while crossing the border from Pakistan. As Jayal<sup>24</sup> carefully documents, the difference may be that of religion. The 'illegal migrants' in East India are mostly Muslim while those in West India are largely Hindu.

- ii) An increasingly open and sympathetic attitude towards claims of citizenship advanced by Hindus, Buddhists, Jains, Sikhs and Christians, especially when made from the South Asian region, on the ground that being religious minorities, they face persecution in Muslim-majority societies. The same sympathy is not extended to persecuted groups like Ahmaddiyas and Shias or, for that matter, to Tamils from Sri Lanka. There is an actively hostile approach to claims advanced by Muslims generally<sup>25</sup>.
- iii) An active pursuit of policies aimed at the eventual goal of dual citizenship for people of Indian origin (or the Indian diaspora). Though aimed at the overall diaspora, these policies seem aimed at benefiting groups located in particular regions of the world, including North America and the United Kingdom, which are more affluent and better placed to aid political parties and policies of foreign investment. These trends are reflected in the body of two recent attempts at amending the Citizenship Act of 1955, introduced in 2015 and 2016. The Citizenship Bill of 2016 was introduced in the Lok Sabha (the lower House of Parliament) and is pending before a Parliamentary committee.

The 2016 Bill has been criticised as being discriminatory against Muslims. One would be remiss however, in characterising this issue purely as one of religious bias. As mentioned, this Bill is also silent on the Tamil refugees from Sri Lanka, who are predominantly Hindu and constitute one of the largest refugee groups in

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<sup>24</sup>Niraja Gopal Jayal, *The Oxford Handbook of the Indian Constitution*, (OUP, 2016).

<sup>25</sup>Kanika Gauba, Anshuman Singh, 'Voter, Citizen, Enemy', LVII (23) *Economic and Political Weekly* 12-14 (2017)

India. Tamil refugees have not only been at the receiving end of the government's indifference but have also been subjected to differential treatment even in terms of the fees that is to be paid for applying for citizenship<sup>26</sup>.

These are but illustrations of the government's attitude towards Tamil refugees. The purpose of these illustrations of legislative and policy measures that exclude or allegedly discriminate against the predominantly Tamil refugee population legally residing in India was to complicate the claim that the shift in citizenship laws in India is shaped by religious and communal considerations alone. The story of the sustained neglect of Tamil refugees indicates religion, while undoubtedly an important factor, is not the only factor at play. Beyond this, in the broader political landscape, the issue of nationalism has come to the fore in recent years. Right wing groups have charged that various groups of people harbour 'anti-national' sentiment. Typically clouding the concept of "people" even further even in the context of the present times<sup>27</sup>.

Anti-nationalist/anti citizenship charges are levelled not only at Muslims and other minority groups, but also at members of the Hindu majority who are academics, writers, artists, public intellectuals and anti-superstition activists who do not subscribe to the views of these right wing ideologues. What is worrying is that very often, these charges of fringe groups have resulted in state-sponsored charges of sedition and other criminal proceedings. Traditional symbols of nationalism, such as the national flag and the national anthem are being elevated in their symbolism by both state and non-state actors, and people who object to this trend are subjected to forms of abuse, from psychological to physical to murder in extreme cases. To understand these trends, one has to adopt a broader perspective. Laws that seek to prohibit cow slaughter and secure the banning of beef may seem, at first blush, to be about issues other than citizenship. However, if we view citizenship as being about deeper issues of

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<sup>26</sup>Ashna Ashesh& Arun Thiruvengadam, Report on Citizenship Law: India, (Aug. 25, 2020 3:30 P.M.)

[https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT\\_CR\\_2017\\_12.pdf](https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT_CR_2017_12.pdf).

<sup>27</sup>Ashna Ashesh& Arun Thiruvengadam, Report on Citizenship Law: India, (Aug. 25, 2020 3:30 P.M.)

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identity, including about what individual citizens can eat, read, think or do, then these laws do implicate aspects of the concept of “people” in India. This is equally true about laws which seek to make the ‘Unique Identification Document’ or ‘Aadhaar card’ mandatory for all banking and tax transactions and for being able to use a cellphone. The latter promises to embed in the Indian legal regime, the largest system of State surveillance ever conceived and will undoubtedly have implications for the enjoyment of broader rights and privileges as “people” of India<sup>28</sup>.

### **VII. Encapsulated View**

This article has sought to provide an overview of the historical circumstances and events that have shaped the constitutional provisions and legislative landscape relating to the concept of “people” as enshrined in the Preamble of the Constitution of India and blow the myth surrounding its sovereignty. As with many other nations, particularly in South and South East Asia, citizenship discourse in India has been affected by multiple factors such as:

1. the history of practices of colonialism and the type of citizenship regime that was in place during the colonial period;
2. the choice of the independence generation about the type of citizenship regime that would be enshrined for the post-colonial phase;
3. the continuing legacy of colonial trends into the independence era as a result of forced migration and/or seclusion of groups of populations;
4. the changing contours of identity politics which affects the evolution of the concept of “people”;
5. the concept of “people” as adopted by leaders and major national parties; and
6. the demands of practical politics which requires the building of political constituencies by pampering them and the ‘othering’ of particular groups.

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<sup>28</sup>AshnaAshesh& Arun Thiruvengadam, Report on Citizenship Law: India, (Aug. 25, 2020 3:30 P.M.)

[https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT\\_CR\\_2017\\_12.pdf](https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT_CR_2017_12.pdf).

The framers of India's constitution adopted a modernist, secular notion of "people" by seeking to incorporate a broadly jus soli conception of people in the Constitution. Over time, this has been modified to incorporate various elements of a jus sanguinis model of citizenship, with the insertion of notions of descent, common religious identity and common 'national' values into the discourse of "we the people of India"<sup>29</sup>.

This makes it imperative that other institutional actors step in to prevent a situation where this important constitutional terrain is captured by particular groups. Constitutional stability requires a balance among competing groups and their interests and current Indian citizenship laws exhibit a tendency to move towards an extreme end diffusing the face of the "people" of India. When ordinary politics and the courts do not seem able to play a moderating influence, some other actors are required to step in to fill the gap. On this issue that is of vital interest, civil society groups and academics may have to play that role, at least in the short term. Raising the profile of these issues, which usually stay below the national radar, is therefore an imperative<sup>30</sup>.

The concept of "people" as mentioned in the Preamble of the Constitution of India has evolved over a period of seventy years but has not been able to show an identifiable face. One is not sure whether a vote bank can be a sovereign, that too a vote banks that are so pliant and malleable as in India. If "People" of India is to be a sovereign, then the "people" must have one face and one identity unregimented by narrow religio-political considerations. People cannot be nation. Nation has people in it. Unless we are able to form a nation, unfragmented by petty considerations of caste, regionalism, we will not find our identity as people.

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<sup>29</sup>AshnaAshesh& Arun Thiruvengadam, Report on Citizenship Law: India, (Aug. 25, 2020 3:30 P.M.)

[https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT\\_CR\\_2017\\_12.pdf](https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT_CR_2017_12.pdf).

<sup>30</sup>AshnaAshesh& Arun Thiruvengadam, Report on Citizenship Law: India, (Aug. 25, 2020 3:30 P.M.)

[https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT\\_CR\\_2017\\_12.pdf](https://cadmus.eui.eu/bitstream/handle/1814/47124/GLOBALCIT_CR_2017_12.pdf).