CITIZENSHIP THROUGH THE LENS OF ARENDT-AMBEDKAR-AGAMBEN-ACHILLE: UNDERSTANDING PRAXIS

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Abstract

Citizenship is a contested domain in theory and practice when it is tested within the contours of nationalism and patriotism in a state. Citizenship is a right at the discretion of sovereign power, yet it negotiates between people and history. The idea of investigating citizenship from a theoretical point of view, tested through the understanding of writings from Arendt-Ambedkar-Agamben-Achille allows us to focus through: to look at the exclusion and discrimination of others, and to link this strategy within the bandwidth of law. The authors argue that citizenship in its various manifestations, as rights and obligations, within a state protected law and constitutional rights emanating from it, creates a discourse that is not fully understood. The outcome of patronising citizenship lies in resistance and emergence of new actors and classes. However, this marginalisation must be engaged through an epistemic retelling of law and governance. Therefore, through this paper, the authors make an attempt to examine citizenship through the latest episode of The Citizenship (Amendment) Act, 2019.

A primer for citizenship?

Negotiating citizenship has been tested through various actors and regimes in a state. The identity of a person is always left to being challenged, scrutinized and ascertained as a group identity that deals with the logic of separation and inclusion. In India, citizenship has always been a historical miasma that is lost in the imagination of culture, language, politics, regionalism, nationalism, patriotism and several such associative linkages and networks that define the union of citizenship. There cannot be a time where citizenship has been effectively addressed as an individual choice and as a social choice through the communities that one dwells in. If one were to examine, that there is an explanation to citizenship, and that explanative understanding should revolve around a general discourse of what the State would deal as permissible, the core of citizenship leaves its centre and escapes to the periphery of law and singularizes politics for approval and recognition. Historically, the notion of citizenship has always escaped the binaries of ruler and the ruled and has made intrusion into ideological inclination of state propaganda. If at any point of

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time citizenship has been contested, it has always been through an assertive voice that is either channelized or mobilized by a group caucus. If citizenship is so vast and unparalleled, why should there be centralization of citizenship? Can we also ask to ourselves that citizenship is the *sine qua non* of state security and state protection? All the actors within a hegemonic state make an attempt to activate control through the governance of citizenship. Being part of the community yet not being identified within the community is an excuse to legitimize discrimination. How can these oppositions be levelled and subjugated when the right to redress is silent in the law?

An examination of citizenship within a theoretical understanding paves way for a deeper introspection that freely moves between law and governance. This examination is challenging on two counts: one, lack of a pluralist understanding of what empowers the idea of citizenship; two, a patterned understanding of citizenship as a necessity and given state promise. With these limitations, any argument to put forth citizenship as an essentializing feature of unity in diversity is a false interpretation that can best be understood as an accommodation of life through the state apparatus. Therefore, the very idea of engaging in a theoretical framework of citizenship leaves one puzzled of where to begin and when to question. This accommodation of voice through any medium must first meet state resistance and then be accepted by the public. This leaves one to ask if the a citizen in a public space is asking for a public right but that is considered to be in the private realm of the state justified? The assumption that the government is for my benefit and therefore, in a Lincolnian sense meets the demands of people is assumed to be a necessary doctrine of citizenship guarantees. Can there ever be a time, of free will from the state and freedom from citizenship without legislative authority that declares one to be free? The trajectory of citizenship moves from the orbit of centralization to democratic decentralization through the constitutional rights of voting and contesting. To be a stateless person is perhaps the worst form of offence that citizenship can expose. Who has the right to be a stateless person and who decides the rights to waive that right? These are moot questions that needs to be elaborated and if not thoroughly examined, deserves a professional treatment through legal doctrine and legislative competencies.

NRC-NPR-CAA: Analysis

On December 11, 2019, the Citizenship (Amendment) Act, 2019 (CAA) was passed in the Indian Parliament. Section 2 of the Act reads, *inter alia*:

> *"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of*

the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;".

This amendment has allowed Indian citizenship for Hindu, Sikhs, Buddhist, Jain, Parsi and Christian religious minorities who have fled from Pakistan, Afghanistan and Bangladesh due to religious persecution in their countries and who entered into India on or before 31st December 2014. The Act has relaxed the provision of residency in India from 11+1 years to 5+1 years.[3]

National Register of Citizens (NRC) is a register that contains an official listing of all the citizens in the country which is mandated by the 2003 amendment of the Citizenship Act, 1955. This is prepared by the government in order to document all the legal citizens and identify the illegal immigrants and have them deported.[4] Currently, it is implemented in Assam alone.

National Population Register (NPR) is a register that contains an official listing of all the citizens that ordinarily reside in India, whether citizens or not. It contains information collected at local, sub-district, district, state, and national level under the provision of Citizenship Act, 1955 and the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.[5]

Citizenship (Amendment) Act, 2019

Article 11 of the Indian Constitution gives right to the Parliament to regulate the right of citizenship by law. It empowers the Parliament to make laws regarding acquisition and termination of citizenship. In exercise of this power, Citizenship Act, 1955 was passed.

According to this Act, there are 5 ways to acquire Citizenship:

1. Birth (section 3)
2. Descent (section 4)
3. Registration (section 5)
4. Naturalization (section 6)
5. Incorporation of Territory (section 7)

Citizenship Act, 1955 has been amended 6 times. 1986 saw the first amendment where both the houses of Parliament amended the Act. It was stated that it is no longer adequate

[3] Rahul Tripathi, *CAA cutoff date will prevent misuse,* ECONOMIC TIMES (Jan. 06, 2020, 06:47AM), https://economictimes.indiatimes.com/news/politics-and-nation/caa-cutoff-date-will-prevent-misuse-official/articleshow/73114719.cms.

[4] *Assam Final NRC list released: 19,06,657 people excluded, 3.11 crore make it to citizenship,* INDIA TODAY (August 31, 2019 13:16), https://www.indiatoday.in/india/story/assam-final-nrc-list-out-over-19-lakh-people-excluded-1593769-2019-08-31.

[5] Arshi Aggarwal, *What is NPR: All you need to know about National Population Register,* INDIA TODAY (December 25, 2019 09:41), https://www.indiatoday.in/india/story/explainer-what-is-npr-national-population-register-nrc-census-1631251-2019-12-24.

to be born in India to be granted citizenship. At the time of the birth of the child, one of the parents must be an Indian citizen to be granted Indian citizenship.[6] In 1992, the second amendment was made where the bill was passed to eliminate discrimination against women in the matter of citizenship and their children. According to the amendment, a person born outside India would be deemed to be an Indian citizen if either of the parents were Indian.[7]

The third amendment in 2003 brought in new categories: introducing and defining a notion of illegal immigrant who could be jailed or deported; making illegal immigrants ineligible for citizenship by registration or by naturalisation; and disallowing citizenship by birth for children born in India if either parent is an illegal immigrant. The amendment introduced a notion of Overseas Citizen of India (OCI) for citizens of other countries who are of Indian origin[8]. The 2003 amendment also mandated the Government of India to construct a National Register of Citizens. The fourth amendment in 2005 sought to expand the scope of grant of Overseas Citizenship of India to Persons of Indian Origin of all countries except Pakistan and Bangladesh and reduce the period of residence in India from two years to one year for the persons registered as OCI to acquire Indian citizenship. The 2015 amendment amended the Act to make illegal migrants who are Hindu, Sikh, Buddhist, Jain, Parsi and Christian from Afghanistan, Bangladesh and Pakistan eligible for citizenship. Under the Act, one of the requirements for citizenship by naturalisation is that the applicant must have resided in India during the last 12 months, and for 11 of the previous 14 years. The Act relaxes this 11-year requirement to six years for persons belonging to the same six religions and three countries and provides for registration of OCI cardholders, which may be cancelled if they violate any law.

In the year 2019, the sixth amendment finally changed the scope of law. This amendment allowed Indian citizenship for Hindu, Sikh, Buddhist, Jain, Parsi and Christian religious minorities who have fled from Pakistan, Afghanistan and Bangladesh due to religious persecution in their countries who entered into India on or before 31st December 2014. The Act has relaxed the provision of residency in India from 11+1 years to 5+1 years.[9] However, the CAA excludes minorities who have fled from religious persecution from other neighbouring states, such as Tamil refugees from Sri Lanka, Rohingya refugees,

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[6] Tania Midha, *Citizenship Act: Govt changes criteria qualifying a person as a citizen of India,* INDIA TODAY (February 20, 2014, 11:16), https://www.indiatoday.in/magazine/indiascope/story/19861215-citizenship-act-govt-changes-criteria-qualifying-a-person-as-a-citizen-of-india-801552-1986-12-15.

[7] Negi Mohita, *The Citizenship Amendment Bill, 1992!,* YOUR ARTICLE LIBRARY, http://www.yourarticlelibrary.com/essay/the-citizenship-amendment-bill-1992/24871.

[8] Partha S Ghosh, *The Citizenship Discourse in India,* ECONOMIC AND POLITICAL WEEKLY (March 12, 2011), https://elibrary.azimpremjifoundation.org:2146/stable/pdf/41151966.pdf?ab_segments=0%2Fbasic_SYC-4946%2Fcontrol&refreqid=search%3A2d9482042e3d06d725dec2b4dfc721ec.

[9] Rahul Tripathi, *CAA cutoff date will prevent misuse: Official,* Economic Times (Jan 06, 2020, 06:47), https://economictimes.indiatimes.com/news/politics-and-nation/caa-cutoff-date-will-prevent-misuse-official/articleshow/73114719.cms.

Nepali refugees from Bhutan and Tibetan Buddhist refugees from China. The Act excludes Muslims who have entered India by 31st December 2014.

Legality of exclusion:

According to Article 11 of the Indian Constitution, the Parliament has the rights to make laws regarding citizenship while Article 368 gives power to Parliament to amend the Constitution and procedure thereof. The Citizenship Amendment Act, 2019 is legally valid. It seeks to protect the people in the nation and provides citizenship to people who have fled their countries due to 'religious persecution'. The question here is, whether the Act is constitutionally valid. A basic perusal of constitution would include: the organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers. A charter of government deriving its whole authority from the governed.[10]

Meanwhile, the question of whether the government will go to any extent to protect its own citizens needs deliberation. Through Article 21, every human is entitled the 'Right to Life' and 'No person shall be deprived of his life or personal liberty except according to procedure established by law'. The article talks about 'Any Person'. Whether to place citizens first in that list depends on how one interprets it. Furthermore, since India is not a signatory to the Convention relating to the Status of Refugees, 1951 and Protocol relating to Status of Refugees, 1967, the obligations contained therein are not binding. While India is a party to the International Covenant on Civil and Political Rights 1966, the scope of the said Covenant does not extend to the principles of *non-refoulement*. So far as the International Convention on Protection of All Persons against Enforced Disappearances and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 is concerned, no situation has emerged, to place reliance upon the same Convention. In the absence of any international treaty to which India is a signatory, preventing India from exercising its power of deportation, no claim can be based on any International treaties/covenants. The Court would be hesitant to undertake the exercise of examining treaties/conventions since no writ can be issued under Article 32 of the Constitution when it is evident that such an indulgence by the highest court of the country would encourage illegal influx of migrants and thereby deprive the citizens of India of their fundamental and basic human rights. The scope and purview of The Foreigners Act, 1946 fell for the consideration of the Constitution Bench in the case of *Hans Muller of Nurenburg Vs Superintended, Presidency Jail, Calcutta and Ors.*[11] While examining the

[10] Constitution, *Black's Law Dictionary,* Revised fourth edition, (1968)
[11] AIR 1955 SC 367

scope, scheme, ambit, and powers conferred upon the Central Government under the said Act, the court reasoned that:

> *We do not agree and will first examine the position where an order of expulsion is made before any steps to enforce it are taken. The right to expel is conferred by Section 3(2)(c) of the Foreigners Act, 1946 on the Central Government and the right to enforce an order of expulsion and also to prevent any breach of it, and the right to use such force as maybe reasonably necessary "for the effective exercise of such power" is conferred by Section 11(1), and also Central Government. There is, therefore, implicit in the right of expulsion a number of ancillary's rights, among them, the right to prevent any breach of the order and the right to use force and to take effective measures to carry out those purposes. Now the most effective measures method of preventing a breach of the order and ensuring that it is duly obeyed is by arresting and detaining the person ordered to be expelled until proper arrangement for the expulsion can be made. Therefore, the right to make arrangements for an expulsion includes the right to make arrangements for preventing any evasion or breach of the order, and the Preventive Detention Act confers the power to use the means of preventive detention as one of the methods of achieving this end. How far is it necessary to take this step in a given case is a matter that must be left to the discretion of the Government concerned, but, in any event, when criminal charges for offences said to have been committed in this country and abroad are levelled against a person, an apprehension that he is likely to disappear and evade an order of expulsion cannot be called either unfounded or unreasonable. Detention in such circumstances is rightly termed preventive and falls within the ambit of the Preventive Detention Act and is reasonably related to the purpose of the Act. The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains."*

Following the judgement, this Supreme Court, in the case of *Mr. Louis De Raedt & Ors Vs Union of India And Ors.*[12] held that:

> *The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also not much help to them. The fundamental right of a foreigner is not confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to citizens of this country. It was held by Constitution Bench in Hans Muller of Nurenburg Vs Superintendent, Presidency Jail, Calcutta*[13] *that power of the government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this*

[12] (1991) 3 SCC 554
[13](1955) 1 SCR 1284

discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned has served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice.

CAA and its aftermath:

Before the law fully comes into force with NPR and NRC, people have occupied streets to resist the new law that affects the religious pluralism of India. For instance, at Jantar Mantar, the National Green Tribunal had banned all protests as it caused public nuisance.

"The National Green Tribunal said that the space could no longer be used for protests or public gatherings. People living close to the venue should not have to suffer noise pollution and unhygienic conditions."[14]

Almost a year later, the ban was revoked. The highest court reasoned that there cannot be a complete ban on holding protests at places like Jantar Mantar and Boat Club (near India Gate). A bench comprising Justices A K Sikri and Ashok Bhushan stated that there was a need for striking a balance between conflicting rights such as a right to protest and right of citizens to live peacefully.[15] Justice Krishna Iyer dealt with the question of "lawlessness of law or order" by referring to the idea of civil disobedience as held in *Nawabkhan Abbaskhan vs State of Gujarat.*[16] He quoted the former US Supreme Court judge Benjamin Curtis to say that "it may be and has been a high and patriotic duty of citizens to raise a question whether a law is within the Constitution of the country."[17]

Another case in point is Shaheen Bagh – the emergence of latest protest site in Delhi. Is Shaheen Bagh getting memorialised or museumised through protest discourse and narratives? To memorialize the place is to engrave a place as a reminder of an event. Just like how impactful words are engraved on a tomb as a tribute to remember the person gone, a place is engraved with memories so that the place is forever remembered as an identity of a certain event. If Shaheen Bagh is to be memorialized, are we going to carry the place in our minds to

[14]Rineeta Naik, *Why banning protests at Delhi's Jantar Mantar harms the right to dissent and public accountability,* SCROLL.IN (Oct 09, 2017, 08:00), https://scroll.in/article/853263/why-banning-protests-at-delhis-jantar-mantar-harms-the-right-to-dissent-and-public-accountability.

[15]Sanjay Sharma, *Supreme Court lifts ban on demonstrations at Delhi's favorite protest site Jantar Mantar,* INDIA TODAY (July 23, 2018, 12:56), https://www.indiatoday.in/india/story/supreme-court-lifts-ban-on-protests-at-delhi-s-jantar-mantar-1293211-2018-07-23.

[16] AIR 1974 SC 1471

[17]Kaleeswaram Raj, *Anit-CAA Movement: Litigation not a democratic substitute for the praxis of peaceful agitation,* DECCAN HERALD (February 20, 2020, 23:47), https://www.deccanherald.com/opinion/main-article/anti-caa-movement-litigation-not-a-democratic-substitute-for-the-praxis-of-peaceful-agitation-806633.html.

remember it as a place where people came together to protest a cause? If yes, are their voices heard? Or is it lost in between as they are being pushed into a space that is created for the purpose of protests? When people have come together and have created space to be heard, why is the entire space being pushed aside and ignored? To museumize the place is to set a permanent site for an event that once occurred. So, every time a person visits, there is a history that follows. If Shaheen Bagh is to be museumized, are we identifying the place as a place where people came together for citizenship? Are we to memorialize or to museumize Shaheen Bagh? Will protests continue if court were to order the same as in the case of Jantar Mantar? Should Shaheen Bagh be labelled as '*Delhi's favorite protest site*?'[18]

B R Ambedkar

The idea of untouchables, according to Ambedkar, was employed and encouraged for the rest to be dominant and to feel alive. Marginalizing them to one corner and barely allowing them to live takes away the gift that is naturally granted on birth, i.e., life. They were forced into a system where the rules were given by the other. Swaraj was not only about decolonisation to Ambedkar; it was about emancipation of the untouchables from the bondage of Hindus. Manu, the first man according to Hindu mythology, created the concept that would result in a lethal machine. The caste system, which identifies a group of people as the elite and another set of people as servants, impure and unnecessary, employs a toxic system of considering a certain section of people as chattels. This is where the question of division comes[19]. Who decides where to draw the line? Who decides for these people? He practised demos-prudence where he converted a few basic needs into rights. However, as a constitution-maker he was careful not to convert all such needs into rights.[20]

Hannah Arendt

Hannah Arendt is shedding light on the concept of reducing human value. Humans interact and share space together if they have something to contribute. The moment they have nothing to contribute, the bond that is created perishes. The value of a human reduces to nothing. This assignment of human value based on their contribution, ranging from monetary contribution to enslaving someone to extract their benefit, does not stop there. The world has come to a

[18] Sanjay Sharma, *Supreme Court lifts ban on demonstrations at Delhi's favorite protest site Jantar Mantar,* INDIA TODAY (July 23, 2018, 12:56), https://www.indiatoday.in/india/story/supreme-court-lifts-ban-on-protests-at-delhi-s-jantar-mantar-1293211-2018-07-23

[19] Omvedt, Gail, Dalits and the Democratic Revolution – Dr. Ambedkar and the Dalit Movement in Colonial India. Sage Publications 1994.

[20]Upendra Baxi, *Restoring'Title Deeds to Humanity': Lawless Law, Living death, and the Insurgent Reason of Babasaheb Ambedkar,* Ambedkar Memorial Lecture 2013, Ambedkar University; Upendra Baxi, '*Justice as Emancipation: 'The Legacy of Babasaheb Ambedkar'* in Upendra Baxi and Bhikhu Parekh (ed.), Crisis and Change in Contemporary India 122–49 (New Delhi, Sage).

juncture where human value is reduced to no worth at all and this is termed as '*radical evil'*.[21]

She goes on to explain that the concept of *'Banality of Evil'* where the one who does evil is not evil from their perspective. When the evil works so well in their favour, they don't see any other perspective anymore. They continue to believe that they are doing the right thing as they don't have evil intentions while carrying out the order or doing the act.

Giorgio Agamben

Agamben explores about the State of Exception[22], where a certain policy that is implemented to deal with a political exigency becomes permanent and turns out to be the new law. He says that state of exception is a state of necessity. And necessity knows no law or boundaries and during an exception, laws are suspended. And this suspended state becomes permanent, violating the very object of the law that was in existence.[23]Humans being reduced to a bare life where they are living not a life, rather a living death. He is questioning the law that is supposed to support and uplift the people when it is reducing human beings to a life that is barely a life.

Achille Mbembe

He talks about how there is a desire for hatred, a desire for apartheid. Historically, the nations have believed that a wall is said to solve the problems of suffering. The colonizers destroyed everything that surrounded them merely because they were inferior and was filled with fear of annihilation. In order to separate themselves from the native people, they wanted to create a clear distinction. The native people were forced into images that the colonizers created.

Mbembe is asking whether it gives us the right to distinguish people because we can't share the inner feeling together? Is it enough to shoot them? The process of death sentence or disfigurement is no longer the answer. Explaining and understanding and gaining knowledge is no longer present[24]. If an eyebrow raises when a woman or a person of colour or someone from a different faith is in a better place, how, then, can one say that there is no discrimination?[25]

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[21]Hannah Arendt, *Eichmann in Jerusalem: A Report of the Banality of Evil* (London, Faber, 1963); *Origins of Totalitarianism* (San Diego: Harcourt, 1966)

[22]Agamben, *Homo Sacer: Sovereign Power and Bare Life,* Palo Alto, CA: Stanford University Press, (1995); Agamben, *State of Exception,* Chicago: University of Chicago Press, (2005); Amrita Sharma & Peerzada Raouf, *Dependent Development: Law and Sovereignty in Sopore, Kashmir,* Projections, The MIT Journal of Planning, 12, Spring (2016).

[23]Damai, Pupsa, The Killing Machine of Exception: Sovereignty, Law, and Play in Agamben's State of Exception, Marshall University (2005), https://mds.marshall.edu/cgi/viewcontent.cgi?article=1030&context=english_faculty.

[24] Michel Foucault, *Face aux gouvernements, les droits de l'homme*, *in Dits et écrits*, vol. 4, Gallimard, Paris, (1994), p. 708.

[25]Achille Mbembe, *The Society of Enmity,* Radical Philosophy 200 (Nov/Dec 2016); Achille Mbembe, *Politiques de l'inimitié, La Découverte*, Paris, (2016); Sigmund Freud, *Mass Psychology and Other Writings*, trans. J.A.

Conclusion: Too soon?

Hannah Arendt's simple question provokes the importance of refugee suffering as a way to emancipate and provide solidarity to the fleeing communities avoiding persecution and prosecution, often times with complete denial of civil liberties and right to recourse. Right to have rights is a question that deserves answers to the most marginalized of the population – refugees – who are treated as the Other category by the state nomenclature and are termed as aliens, imposters, unnecessary and waiting to be integrated. This Other category also comprises of people who are willfully leaving from their homes for better employment, access to resources, higher standard of living and a renewed existence from the suffering endured in the native state. This self-emancipation means the willingness to voluntarily face hardships, and the ability to expose one to numerous vulnerabilities that come from state forces, border control movements, the –un-fear of being imprisoned without bail and making concrete efforts to face the most inhuman conditions that otherwise are considered to be unacceptable. Can refugees ask for themselves and to the state if they have right to have rights?[26]

Drawing upon Agamben's argument about what constitutes 'living death' should be revisited through the lens of the above question that Arendt asks. Giorgio Agamben describes the state of exception as "a zone of indistinction, between the outside and the inside," such that "there is no difference between law and force, wherein individuals are subjects to the law but not subjects in the law". One of the foundational powers of a sovereign is the ability to decide if the law applies to a situation or if the law is held in abeyance due to an emergency or crisis. Agamben's description of the 'state of exception' provides a philosophical ground for critical scholarship on meanings of sovereignty, law and the accrual of emergency powers to the executive. He argues that the "state of exception which was essentially a temporary suspension of the rule of law on the basis of a factual state of danger, is now given a permanent spatial arrangement, which as such never remains outside the normal order". To bear witness or have a written or oral testimony to the plight of this suffering is a consequence of the legal epistemologies entrenched in the unnatural significance of understanding suffering in itself.

It is here that we would like to frame the argument from a culmination of Ambedkar, Arendt, Agamben and Achille. Writing almost contemporaneously with Hannah Arendt, Ambedkar reflects her dilemma: Arendt moves ambivalently from her description of radical evil (states of affairs that we may neither understand fully nor fully punish) to the thesis of the 'banality of evil'. We suggest a need for installing a critical type of understanding that enables acts of reading both Ambedkar and Arendt and also Agamben. They, in a deep affinity, speak to us about production and reproduction of conditions of 'living death'. If for Agamben 'living death remains the production of the quotidian performance of the state as 'lethal machine', Ambedkar

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Underwood, Penguin, London, 2004, p. 26, https://www.radicalphilosophyarchive.com/issue-files/rp200_article_mbembe_society_of_enmity.pdf.

[26] Masha Gessen, *The Right to Have Rights* and the *Plight of the Stateless*, THE NEW YORKER (May 3, 2018) https://www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-thestateless.

speaks to the idea of Hindu civilization itself as such a lethal machine. Both accomplish the narratives of production/reproduction of pre-social bodies as 'walking corpses,' 'living dead' and 'mummy-men,' 'faceless persons,' and the 'shadows'. If for Giorgio Agamben, it is the Concentration Camp which furnishes some horrific insignia for the Nomos of the modern European law, for Ambedkar the Samskars of Hindu culture and civilization codified by Manu (or its DNA, as it were) continue to define law as an iteration of foundational violence. Either ways, the criticality of this for refugees can be treated to Jean Baudrillard's imagery of sovereign power as comprising the powers of administering biological and social death[27] . This reliving as a hope for a new life, new way and everything 'new' can be captured by how Arendt stresses on mitigates 'minute by minute' as a 'lesson' of the 'terrifying, unswayable and unimaginable banality of evil.'

No rights even when imprisoned and deported?

If refugees are imprisoned without any documents, are not treated with categories that citizens are provided with, and do have dignity, a term without any definition, can be seen in a report and now a case in the Supreme Court by Harsh Mander on Assam's detention camps.[28] Illegal immigrants are not considered citizens and are distinctly termed forever foreigners without being recognized under the Foreigner's Act. They are separated within the jail or centers, are not allowed for 'family reunifications' – a principle that is seen as good and bad by the state as it creates more migration concerns that goes against basic humanitarian standards and do not have access to courts to be free because even the courts cannot recognize or give legal personality to these persons.[29] So, who are they? An invisible category? Jail is the ultimate bastion for civil liberties to be suspended, repatriation to this special category of persons seems like a lost case.[30]

Therefore, is it really a case to make that refugees have a right to have rights? If by way of living they are dead in all respects for the state, mere existence for survival is not living at all. By way of argument, one can interrogate these spaces to expose the banality of evil perpetrated by state, as Arendt would call as the unimaginable evil, to resuscitate 'these' people that have been enshrined with some rights or responsibilities but no duties.

In conclusion, the theoretical framework of organizing and mobilizing as a collective force either on streets or in the courts through a public interest litigation is how collective power manifestation can be revisited by invoking the facets of law. To expose the culpability of the state is to also valorize the entitlement that gets automatically accorded when treating humans as refugees and refugees as Others. This discourse is distinct to address how Arendt's argument can

[27] Jean Baudrillard, *Symbolic Exchange and Death* (London, SAGE, 1993: Hamilton Grant, trans).
[28] Ziya US Salam, *Harsh Mander: Foreigners Tribunals are a Hoax,* FRONTLINE (October 11, 2019), https://frontline.thehindu.com/cover-story/article29498787.ece.
[29]*Assam Detention Centres: Myth Vs Reality,* EASTMOJO (December 27, 2019, 10:49), https://www.eastmojo.com/in-depth/2019/12/27/assam-detention-centres-myth-vs-reality.
[30]*Petition Against Assam's Detention Camps in SC,* CJP (November 22, 2018), https://cjp.org.in/petition-against-assams-detention-camps-in-sc/.

pass muster to the rising challenges posed by mass migration due to factors that are beyond one's control. Therefore, through this article, the authors believe that a larger theoretical study is critical and must address the growing trends of resistance and the affront to citizenship.