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RULE OF LAW

Law made injustice possible in Ayodhya, Hyderabad encounter cases. Will this happen with CAA too?

We look up to law as a tool for enabling justice and identifying illegalities. Today, that has become more difficult.

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Members of the Karnataka Reserve Police Force beat men whose scooter rode too close to a barricade in Mangalore on December 20. | AFP

In these tumultuous times, India is running into the limits of the law and experiencing how the letter of the law is, ironically, enabling injustice. Three recent instances illustrate this: the Ayodhya verdict, the Hyderabad encounter killings of rape accused and the citizenship law and protests against it.

The Supreme Court's judgement in the Ayodhya dispute on November 9, began by stating that it would not pronounce on matters of faith – but went on to finally decide the case on the basis of faith. The court was ruling on a decades-long conflict about the ownership of the plot on which the 500-year-old Babri masjid had stood until was demolished in 1992 by a Hindutva mob.

Claiming to uphold the constitutional commitment to equality of citizens of all faiths, the court handed over the plot to the Hindu side to construct a Ram temple, based primarily on travellers' accounts that described the site as the birthplace of Ram. It held the two sides to the case to different standards of evidence, relaxing rules of evidence in favour of Hindus while holding Muslims to stricter standards of proof.

The decision revealed the malleability of law and how it could be used to pass off a decision founded on faith as one based on law. Even as the court stated in its verdict that "all forms of belief, worship and prayer are equal", it endorsed the belief of Hindus that the site was the birth place of Ram. The thin line between legal and illegal here was made apparent in this case as the court legalised the illegal occupation by Hindus with one stroke of the pen.



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Supporters of the Vishwa Hindu Parishad in Ahmedabad celebrate the Supreme Court's verdict on the Ayodhya site on November 9. Credit: Sam Panthaky/AFP

Before debates over this verdict were exhausted came the shocking gang rape and murder of a 26-year-old veterinary doctor in Hyderabad on November 27. A little over a week after her body was found, the four men accused of the crime were killed in an encounter. Even as the police explained the encounter as a necessary act of self-defence, an outpouring of praise came not only from the general public but from politicians, who hailed the extra-judicial killings as an act of justice.

While many activists spoke out against the encounter killings, others were quick to point out the inability of law to mete out speedy justice: the convicts in the Delhi gangrape case of 2012, they noted, were still alive despite the Supreme Court upholding the death sentence for them in 2017. While questions can be raised on both sides, what is crucial to note here is once again how the law can be creatively used to justify illegalities and injustice.

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of due process. Both these go against the spirit of the law. But then what is the alternative? Does this mean we take the law into our own hands to mete out justice? What is the difference between us taking law into our hands and the state using its monopoly over violence to use it arbitrarily? Both the encounter killings and the delayed justice to the Delhi victim highlight again the use of law to make legal what in essence is inherently unjust.

Colonial-era tactics

The encounters also put the spotlight on the excesses of law, something we now witness in the state's response to protests against the Citizenship Amendment Act and the National Register of Citizens. Section 144 of the Indian Penal Code, a colonial law to stifle India's Independence struggle, is being used today to prohibit public gatherings and to justify police atrocities against Muslim communities (primarily but not limited to Uttar Pradesh), curtailing constitutional right to free expression and abusing the state's right to use force. If the police can take law into their own hands to mete out justice that the court denies, they can also do so to enable injustice. Law is here but a mute spectator, open to abuse.

The Citizenship Amendment Act, which replaces the earlier prohibition of all illegal migrants from acquiring Indian citizenship, now provides a fast track to citizenship for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan who entered India before 2015. The law seeks to alter India's secular character enshrined in the Constitution by being applicable only to members of certain religions only.

In its defence, the state has argued that the law is based on intelligible differentiation and reasonable classification. The government has said that the law is meant to

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Police beat a protester during a demonstration against the Citizenship Amendment Act in Lucknow on December 19. Credit: AFP

With the Citizenship Amendment Act now a law, the National Register of Citizens signals another exercise of legalising illegalities. In the guise of weeding out illegal immigrants, it will enable state-orchestrated harassment and targeting of Indian Muslims. After all, members of any other group that is left out of the register will be considered a refugee and offered a path to citizenship. Only Muslims have been denied this safeguard.

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The Supreme Court is to hear the petitions against the Citizenship Amendment Act on January 22, but the mood of the court is already palpable as it refused to stay the act and reprimanded protestors from New Delhi's Jamia Millia Islamia university for "rioting", pronouncing them guilty without any legal inquiry. By charging students with violence, the court has absolved the Delhi Police and the state of responsibility for violence at Jamia on December 15, despite evidence of the police using tear gas in a library and beating students who had nothing to do with the protests that had been held outside the campus.

Will the Supreme Court once again rule that the Citizenship Amendment Act is just even when the letter of this law is unconstitutional?

The role of the law

We look up to law as a tool for enabling justice and identifying illegalities. The law is considered a saviour of the masses, an instrument that one resorts to, when all else has failed – the only glimmer of hope in what is otherwise a dismal state of injustice in India. We have looked to the Supreme Court as the protector of the weakest in this country and it has in many instances come forth to provide justice. But today this seems a distant dream, as India is forced to adopt the cynicism that French theorist Michel Foucault expressed of the law as a tool of oppression.

“It would be hypocritical or naïve to believe that the law was made for all in the name of all; that it would be more prudent to recognise that it was made for the few and that it was brought to bear upon the others; that in principle it applies to all citizens,

It is perhaps this cynicism that has led to people taking to the streets. After all, protests signal the failure of law and justice – and worse, the failure of the state.

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