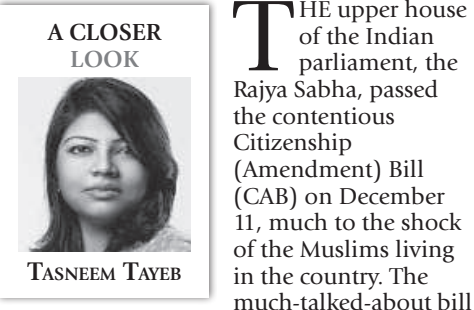


INDIA’S CITIZENSHIP AMENDMENT BILL

A divisive move riddled with pitfalls



THE upper house of the Indian parliament, the Rajya Sabha, passed the contentious Citizenship (Amendment) Bill (CAB) on December 11, much to the shock of the Muslims living in the country. The much-talked-about bill is now awaiting the assent of the President. So what is all the hue and cry about?

While the bill is popular among many in India, even if one tries to find some virtue in it, the only one that emerges—protection of monitory communities—is tarnished by the religion factor associated with it.

The BJP through the CAB want to amend the Citizenship Amendment Act 1955 to provide citizenship to the people of certain non-Muslim religious communities from three neighbouring countries, provided that they lived in India for six years. The proposed cut-off time is December 31, 2014.

Yet the bill has quite a few major drawbacks: it proposes to grant naturalised citizenship to the refugees from only six religion-based minorities—Hindu, Sikh, Buddhist, Jain, Parsi and Christian—that too only from three specific neighbouring countries: Bangladesh, Pakistan and Afghanistan. While India’s claim about the persecution of religious minority groups in Bangladesh is incorrect, let us leave this issue aside for another day. For now, let us note here the religious underpinning of the about-to-be-enacted bill and its exclusionary nature.

And this creates two further problems: first, the religion-based preferential treatment of migrants is in violation of Article 14 of the Indian Constitution which says, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Segregation of refugees on the basis of religion is essentially against the pluralistic spirit of the Indian constitution—“fundamentally unconstitutional”, as Dr Shashi Tharoor, a veteran Indian politician, has termed it.

While discussing the bill with the *BBC*, renowned historian Mukul Kesavan suggested that the bill is “couched in the language of refuge and seemingly directed at foreigners, but its main purpose is the delegitimisation of

Muslims’ citizenship”—a fear shared by many. The second problem that the proposed amendment presents is one of human cost. In a region that is mired in religion-based violence—the genocide of the Rohingya by the Myanmar military-backed government; the persecution of Tamils in Sri Lanka; the discrimination against Shia Muslims in Pakistan; the repression of Uighur Muslims in China’s Xinxiang province, to name a few—the decision to open the doors of refuge and offer protection to only a few communities negates the “humanitarian” outcomes (protection of persecuted minorities) that the BJP aims to achieve through the proposed amendment.

And while some in India see the CAB in a positive light, there are others who are concerned by the potential consequences of this move. Mainly: diluting the ethnic social identity of the north-eastern states, especially those bordering Bangladesh. CAB can be seen as a tool to enable the integration of the Hindu population left out of the National Register of Citizens (NRC) in Assam, and potentially in other states in the future; solidifying the Hindu base of India and through it the BJP’s Hindu vote bank; and marginalising the Muslim population living in India.

The CAB was first proposed by the BJP in 2016. But it had to be withdrawn after an ally withdrew support and protests flared up in the north-eastern states against the proposed bill. The bill, protesters feared, would allow for greater absorption of illegal migrants from neighbouring Bangladesh.

Tension between those who have migrated to Assam from Bangladesh and the locals have remained high historically, especially in the Muslim Bengali-dominated Barak Valley—where many Bengali-speaking Muslims had been transported as workers during the British Raj—leading to a bloody massacre of Muslims in Nellie in 1983 in which nearly 3,000 individuals had been killed in a six-hour operation.

In response to the six-year agitation by the All Assam Students’ Union (AASU) that was initiated in 1979, to weed out the illegal Bangladeshi immigrants from Assam, the Assam Accord was signed between the Indian government and the leaders of the Assam Movement on August 15, 1985, setting March 24, 1971 as the cut-off time for deportation of all illegal immigrants irrespective of their religion.

And the NRC was updated recently to identify the people who had migrated to the said states after Mach 24, 1971 and declare them illegal immigrants. This resulted in the exclusion of nearly 1.9 million people in Assam from the final NRC—a majority of them reportedly from the Hindu community. And while some people in Assam welcomed the NRC result, the reintroduction of the CAB in parliament has sparked protests in the north-eastern states amidst fears that it will be used as a tool to absorb the Hindu population left out of the NRC into the country.

The statement of BJP President and Home Minister Amit Shah during a visit to Assam—“I have come here to assure all my refugee brothers that there is no need to worry as the

Constitution—which includes regions in Assam, Meghalaya, Tripura and Mizoram, as well as states that have the inner-line permit regime, namely Arunachal Pradesh, Nagaland and Mizoram—scepticism among the natives of these regions remains high about the outcome of the proposed amendment.

While we cannot comment on whether the xenophobic fears of the north-eastern states are rational, what is apparent is that the CAB might potentially increase religio-ethnic tensions in the northeast of the country.

It will also trigger fears that if the NRC is applied to other states, the Hindu population left out of those registers will be absorbed in India thought the amended CAB, while the Muslims will be declared illegal, thus denying them equality on the

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PHOTO: REUTERS/ANUWAR HAZARIKA

Police use water cannon to disperse demonstrators during a protest against Citizenship Amendment Bill (CAB), which seeks to give citizenship to religious minorities persecuted in neighbouring Muslim countries, in Guwahati, India, on December 11, 2019.

central government will not force them out of the country. Before NRC, we will bring the Citizenship Amendment Bill, which will ensure these people get Indian citizenship”—only fuelled the fears of the people of the north-eastern states.

And although the BJP later announced that the CAB will not be applicable for areas under the Sixth Schedule of the Indian

account of their religion.

And because of the way the CAB has been presented, one might be pardoned for finding it similar to Israel’s “law of return” which allows the Jews the right to live in Israel and to gain Israeli citizenship.

While trying to justify why Muslims have not been incorporated in the list of the religions, BJP spokesperson Nalin Kohli told

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If wealth is justified, so is a wealth tax



right, where wealth has long been viewed as worthy of celebration, not as demanding justification.

But today’s concentrations of wealth do demand justification. In 2018, Forbes listed three billionaires among its top ten most powerful people in the world. Next to the heads of states of Chinese President Xi Jinping, Russian President Vladimir Putin, US President Donald Trump, and German Chancellor Angela Merkel, one finds not only the Pope, but also Amazon founder Jeff Bezos, Microsoft co-founder Bill Gates, and Google co-founder Larry Page. All three owe their power not to public position or spiritual influence but to private wealth.

As contenders in the Democratic primary for the 2020 US presidential election, Senator Bernie Sanders of Vermont and Senator Elizabeth Warren of Massachusetts have promised to impose new taxes on the super-wealthy. Warren’s wealth-tax proposal—a levy of 2 percent on every dollar of net worth above USD 50 million, rising to 6 percent for fortunes greater than USD 1 billion—has ruffled billionaires’ feathers. According to Gates, he has paid more in taxes than almost

anybody (some USD 10 billion). And while he would consider it “fine” if that figure had been doubled to USD 20 billion, he believes a much higher tax would threaten the incentive system that led him (and others) to invest in the first place.

For his part, Michael Bloomberg, the founder of the Bloomberg news empire, a former mayor of New York City, and now a Democratic presidential contender himself, argues that a wealth tax might be unconstitutional, and that it would turn the US into the likes of Venezuela. And not to be outdone, Facebook founder and CEO Mark Zuckerberg has suggested that taxing

billionaires’ wealth would lead to worse outcomes than leaving it where it is, implying that the ultra-wealthy know better than the peoples’ elected representatives how tax revenues should be spent.

Note the sense of entitlement underlying each of these reactions. Each man’s billions, we are told, belong to *him*; he earned the money and should therefore get to decide how to spend it, be it on philanthropic projects, taxes, or neither. The billionaires tell us that they are willing to pay a fair share of taxes, but that there is some undefined threshold where the incentives to innovate and invest will be thrown into reverse. At that

point, apparently, the ultra-wealthy will go on strike, leaving the rest of us worse off.

But this perspective ignores the fact that accumulated wealth is largely a product of law, and by implication of the state and the people who constitute it. As economist Thomas Piketty demonstrates in his 2014 book “Capital in the Twenty-First Century”, the rich today hold most of their wealth in financial assets, which are simply legally protected promises to receive future cash flows. Take away legal enforceability, and all that remains is hope, not a secure asset.

Moreover, the private empires over which today’s billionaires preside are organised as legally chartered corporations, which makes them creatures of the law, not of nature. The corporate form shields the personal wealth of the founders and other shareholders from the corporation’s creditors. It also facilitates the diversification of risk within a company, by allowing discrete pools of assets to be created, each with its own set of creditors who are barred from making claims on another asset pool, even though the parent company’s management controls all of them.

Further, the company’s own shares can be used as currency when acquiring other companies. When Facebook bought WhatsApp, it covered USD 12 billion of the USD 16 billion purchase price with its own shares, paying only USD 4 billion in cash. And, as with Facebook, corporate law can be used to cement control by founders and their affiliates through dual-class share structures that grant them more votes than everyone else. As such, they need not fear elections or takeovers of any kind.

Finally, companies whose assets take the form of intellectual property (IP) and other intangibles tend to rely even more on the helping hand of the law. As of 2018, 84 percent of the market capitalisation of the S&P 500 was held in such intangible assets. It takes a legal intervention to turn ideas, skills, and knowhow—which are free to be shared by anybody—into exclusive property rights that are enforced by the full power of the state. And in recent years, Microsoft and other US tech companies have boosted their earning power significantly by promoting US-style IP rules around the world through the World Trade Organization’s body for Trade-Related Aspects of Intellectual Property Rights (TRIPS).

To be sure, there are good reasons for states to adopt laws that empower private agents to reap the rewards of organising businesses and developing new products and services. But let’s call a spade a spade and a (legal) subsidy a subsidy. While Bezos, Bloomberg, Gates, and Zuckerberg may well be savvy entrepreneurs, they also have benefited on a massive scale from the helping hand of legislatures and courts around the world. This hand is more contingent than the invisible one immortalised by Adam Smith, because its vitality depends on a widely shared belief in the rule of law. The erosion of that belief, not a tax, poses the greatest threat to billionaires’ wealth.


Katharina Pistor, Professor of Comparative Law at Columbia Law School, is the author of “The Code of Capital: How the Law Creates Wealth and Inequality.”

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PHOTO: REUTERS

QUOTABLE Quote



MAHATMA GANDHI (1869-1948)

Indian lawyer, politician, social activist, and writer who became the leader of the nationalist movement against the British rule of India.

The best way to find yourself is to lose yourself in the service of others.

CROSSWORD BY THOMAS JOSEPH

ACROSS

1 Damon and LeBlanc

6 Ultimate

10 Parting word

11 Like

12 Clarifying words

13 Victorious

14 Archaeology sites

15 Salt additive

16 Memorable time

17 Museum focus

18 Yacht spot

19 Unidentified

22 Onion's kin

23 Forum garb

26 Ineffectual quality

29 Deli choice

32 Track trip

33 Service reward

34 Outfielder's cry

36 Traffic marker

37 Giant of myth

38 Studio work

39 Exact copy

40 Improve, in a way

41 Towel word

42 Music's Mariah

DOWN

1 Horse with no wins

2 Navy bigwig

3 Reason for overtime

4 Afternoon events

5 Day light

6 Touch down

7 Nay voters

8 Crumpet's cousin

9 Highly competitive

11 Walking sound

15 Rage

17 Base

20 Sushi choice

21 Abel, to Adam

24 Recover from

25 Ridiculous

27 Yoga need

28 Swift

29 Link up

30 Nimble

31 Car part

35 Works leather

36 Robin Cook book

38 Buddy

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YESTERDAY'S ANSWERS

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BETLE BAILEY by Mort Walker



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