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Citizenship without bias

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ADRIFT: "According to sources, there are nearly 30,000 Malaiha Tamils in the refugee camps scattered throughout Tamil Nadu. They have absolutely no moorings in Sri Lanka." Picture shows a group of Tamil refugees at Tiruchi airport returning to Sri Lanka, in 2015. — PHOTO: M. SRINATH | THE HINDU

The new citizenship legislation should include refugees from persecuted minorities of all denominations who have made India their home

On July 19, 2016, the government introduced a Bill to amend certain provisions of the Citizenship Act, 1955. The Bill has now been referred to the joint select committee of Parliament. The object of the proposed Bill is to enable Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who have fled to India from Pakistan, Afghanistan and Bangladesh without valid travel documents, or those whose valid documents have expired in recent years, to acquire Indian citizenship by the process of naturalisation. Under the Bill, such persons shall not be treated as illegal immigrants for the purpose of the Citizenship Act. In another amendment, the aggregate period of residential qualification for the process of citizenship by naturalisation of such persons is proposed to be reduced from 11 years to six years. A large number of people who would otherwise be illegal immigrants can now heave a sigh of relief if the Bill goes through as they would be eligible to become citizens of the country.



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Not inclusive enough

The Citizenship (Amendment) Bill, 2016, owes its genesis to the assurance given by the Prime Minister that Hindus from these three countries who have sought asylum in India would be conferred Indian citizenship. But since singling out Hindus alone could be discriminatory, the Bill has extended the right to acquire citizenship to other religious minorities living in the three countries.



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The Bill, when passed, would be of immense benefit to the Chakmas and Hajongs of Bangladesh displaced because of the construction of the Kaptai Dam who have been refugees for nearly 65 years.

The Supreme Court in *Committee for C.R. of C.A.P. v. State of Arunachal Pradesh* directed the Government of India and Arunachal Pradesh to grant citizenship to eligible persons from these communities and to protect their life and liberty and further prohibited discrimination against them.

Ramaseshan

Though India has not enacted a national refugee law, the three principles underlying India's treatment of refugees was spelt out in Parliament by Jawaharlal Nehru in 1959 with reference to Tibetan refugees.

They include: refugees will be accorded a humane welcome; the refugee issue is a bilateral issue; and the refugees should return to their homeland once normalcy returns there.

The proposed Bill recognises and protects the rights of refugees and represents a welcome change in India's refugee policy. But it would have been appropriate if the Bill had used the term "persecuted minorities" instead of listing out non-Muslim minorities in three countries. To give an example, the Ahmadiyyas are not considered Muslims in Pakistan and are subject to many acts of discrimination. Other groups include members of the Rohingyas, who being Muslims are subjected to discrimination in Myanmar and have fled to India. Such a gesture would also have been in conformity with the spirit of religious and linguistic rights of minorities guaranteed under our Constitution. Unfortunately the Bill does not take note of the refugees in India from among the Muslim community who have fled due to persecution and singles them out on the basis of religion, thereby being discriminatory.

The case of the Malaiha Tamils

Yet another disappointing feature of the Bill is that it does not provide citizenship to the people of Indian origin from Sri Lanka who fled to Tamil Nadu as refugees following the communal holocaust in July 1983. The Indian Tamils, or Malaiha (hill country) Tamils as they like to be called, are descendants of indentured workers who were taken by the British colonialists in the 19th and 20th centuries to provide the much-needed labour for the development of tea plantations. The British gave an assurance that the Indian workers would enjoy the same rights and privileges accorded to the Sinhalese and the Sri Lankan Tamils. But soon after independence, by a legislative enactment the Indian Tamils were discriminated and rendered stateless. In the protracted negotiations that took place between New Delhi and Colombo on the thorny issue of stateless people, Nehru maintained that except for those who voluntarily opted for Indian citizenship, the rest were the responsibility of Sri Lanka (then Ceylon). Sri Lanka, on the other hand, argued that only those who fulfilled the strict qualifications prescribed for citizenship would be conferred citizenship, and the rest were India's responsibility.

Nehru's principled stance was abandoned by Lal Bahadur Shastri and Indira Gandhi when they entered into two agreements with Colombo in 1964 and 1974, respectively. New Delhi agreed to take back 6,00,000 people of Indian origin with their natural increase as Indian citizens, while Sri Lanka agreed to give citizenship to 3,75,000 with their natural increase. The wishes of the Indian Tamils in Sri Lanka were not ascertained. To the ruling elite in Colombo and New Delhi the people of Indian origin became an embarrassing set of statistics. Important national leaders — C. Rajagopalachari, K. Kamaraj, V.K. Krishna Menon, P. Ramamurthy and C.N. Annadurai — opposed the agreement as inhuman, but their views were brushed aside by the Central government in order to befriend the Government of Sri Lanka.

The ethnic fratricide in 1977, 1981 and 1983, which affected the plantation areas, convinced many people of Indian origin that they could not live amicably with the Sinhalese. They never subscribed to the demand for a separate state of Tamil

Eelam; in fact, the hill country was relatively tranquil during the protracted ethnic conflict. Even then, they were subjected to vicious attacks by some lumpen sections of the Sinhalese population. They sold all their belongings, came to India as refugees, with the hope of acquiring Indian citizenship and permanently settling down here.

A point of no return

According to informed sources, there are nearly 30,000 Malaiha Tamils in the refugee camps scattered throughout Tamil Nadu. They have absolutely no moorings in Sri Lanka. Their children have intermarried with the local people and are well integrated into Tamil society. The young have availed of educational facilities, but are unable to get jobs commensurate to their qualifications because they are not Indian citizens. The refugees in Kottapattu camp, near Tiruchi, with whom we interacted, told us: "Come what may, we will not go back to Sri Lanka."

All these refugees qualify for Indian citizenship by registration under Article 5 of the Citizenship Act of 1955. However their plea for citizenship has been negated citing a Central government circular that Sri Lankan refugees are not entitled for Indian citizenship. In a communication dated November 21, 2007 to the Special Commissioner for Rehabilitation, the Secretary to the Government of Tamil Nadu mentioned that there are strict instructions from the Government of India "not to entertain applications of Sri Lankan refugees for the grant of Indian citizenship". We submit, in the light of recent developments, the above-mentioned circular of the Central government must be immediately withdrawn.

The tragedy of the Malaiha Tamils, a majority of whom are Dalits, must be underlined.

Immigrants, even those who are termed illegal, are entitled to equal protection before the law and the various rights that flow from Article 21. This was stressed by the Supreme Court in *National Human Rights Commission v. State of Arunachal Pradesh* while addressing the rights of Chakma refugees. If such immigrants are granted citizenship, the natural progression would mean that they enjoy the benefits of rights guaranteed under Article 19 besides others such as access to the public distribution system, right to participate in the political process, right to secure employment and other rights all of which currently are inaccessible to them. The Bill recognises this in its objects and reasons by referring to the denial of opportunities and advantages to such persons. The Bill therefore should not restrict itself to minorities from Afghanistan, Pakistan and Bangladesh but should include refugees from persecuted minorities of all denominations who have made India their home.

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