



THE IMPORTANT THING IN LIFE IS NOT VICTORY BUT COMBAT; IT IS NOT TO HAVE VANQUISHED BUT TO HAVE FOUGHT WELL. — PIERRE DE COUBERTIN

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FOUNDED BY

RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

# Instant injustice

Encounters, like the one in Telangana, call attention to a criminal justice system in need of urgent reform



MADAN B LOKUR

## A DIMMING CONFIDENCE

Plummeting inflows into equity mutual funds signal investor uncertainty over growth prospects

THE SHARP FALL in inflows into equity mutual funds signals a shift of mood within the investor community in India. These inflows plummeted to Rs 1,312 crore in November — the lowest levels since June 2016 — according to latest data from the Association of Mutual Funds in India (AMFI). That this fall has taken place despite the Sensex hitting a record high, and foreign investors pumping around Rs 20,000 crore into the stock market during this period, seems to reinforce the view that sentiment in India has been badly hit. It suggests that investors are voting with their feet, and is in line with the findings of the Reserve Bank of India's (RBI) consumer confidence survey which reveals that sentiment on the general economic situation and the employment scenario in the country weakened further in November.

For some time now, there has seemingly been a growing disconnect between the stock indices and the broader economy. While economic growth has fallen precipitously, the Sensex has scaled new heights. But a closer look at the market suggests that the rally was largely driven by a few stocks, reflecting the fact that investors were shifting to high quality stocks at any price. In fact, while returns in the large cap category have been around 12 per cent over the past year, they were much lower for the small and mid-caps, reflecting the pain in the larger economy. The fall in inflows in November could be indicative of a reassessment by market participants of the growth trajectory. India's economic growth has fallen from 8 per cent in the first quarter of 2018-19 to 4.5 per cent in the second quarter of 2019-20. The fall in nominal growth to 6.1 per cent is particularly disconcerting, as it would mean lower sales and profit growth for companies. With growth prospects likely to remain uncertain for the foreseeable future, cuts in earnings per share are likely to continue, further depressing sentiment.

The only silver lining in the data seems to be that inflows, channeled through systematic investment plans (SIPs), remained stable, rising marginally to Rs 8,272 crore, up by Rs 27 crore last month, with the total number of SIP accounts increasing to 2.94 crore. Yet, if concerns over the country's growth prospects deepen further, these inflows are unlikely to hold up. Markets are forward looking. And with the Monetary Policy committee (MPC) deciding against cutting rates further, they will now be eying the upcoming Union Budget in February for measures to shore up the economy. The finance minister cannot afford to ignore the great expectations. A comprehensive reform package is needed to revive both business and consumer confidence.

## HELSINKI'S DIFFERENT

Finland's new government will not be led by a wilful man in a hurry to wield absolute power absolutely

THE DREARINESS OF the global political landscape, dominated by ageing, distinguished gentlemen who are not distinguishably gentle in their ways, is alleviated by the election of Social Democrat Sanna Marin as prime minister of Finland. She will head a five-party coalition government in which 12 out of 18 cabinet berths are expected to go to women, leaving little elbow room for men with long heads and deep purposes. A coalition with a distributed power structure is also a refreshing reminder to electorates which have become recklessly appreciative of strong men who command the allegiance of overwhelming majorities that all the people are not comfortable with absolute power all the time.

Marin is the world's youngest prime minister at 34, which is five years younger than New Zealand's Jacinda Ardern, who earned global admiration for her handling of hate crime. In a depressing contrast, about 1,000 miles from Helsinki, in London, another prime minister will be elected this week. He will be a man of either 70 or 55 winters, depending on whether Labour or the Conservatives prevail. Also, Marin is the first person in her family with a university education. She represents the demographic dividend which is endlessly talked up, but generally does not get sufficient opportunity, or the education to do justice to it. She is also the child of same-sex parents in what she has described as a rainbow family. In the world's biggest democracies, such a candidate would have sunk without a trace, leaving not a political ripple behind. She would have ticked all the wrong boxes and raised a tsunami of prejudice.

Coalitions in which a single party does not wield near-absolute power are often derided for being unable to just get the job done, since they have to accommodate the priorities of their constituent partners. It is not fully appreciated that a coalition, by diluting power, also offers built-in checks and balances — one of the fundamental mechanisms of democracy, which prevents a single party from amplifying majoritarian prejudices. Also, while it cannot be assumed that power wielded by women is intrinsically less dangerous than power in the hands of men, a government in which women are numerically superior does harbour the possibilities of new priorities and will perhaps innovate processes. In a political landscape dominated by wilful men in a hurry, it offers a glimmer of a promising alternative.

## NOW YOU SEE RUSSIA

...and now you don't. But is the WADA ban the denouement, or a token rap on mittened knuckles?

SPORTS' EQUIVALENTS OF 007s, the righteous athletes from the UK and US, must've celebrated, oh so briefly, the banning of their favourite whipping boys, the Russians. Such has been the frenzied outrage at the dope taint on the sporting superpower of the erstwhile eastern bloc, that World Anti Doping Agency's ruling to purge the 2020 FIFA World Cup and Olympics of Russian presence started a small hurrah across Twitter. Only for the fine print to collapse the Mexican wave of cheer before it crossed the Atlantic and it became apparent that the Russians could fetch up anyway if they could prove they were clean to their federations. Which ought to have been exactly what happened at all previous Olympic editions, but WADA can't quite be sure. That, in a nutshell, means that the Olympics, World Cup and other events might not have Russia but they certainly will have Russians.

WADA, with the ever generous and hospitable Americans, managed to whisk away a whistleblower and get the lid off the Russian doping programme five years ago. But the Russians brazenly tampered readings in computer files, muddying waters. For the sake of fairness, WADA has allowed the "clean" Russian athletes to compete. So, expect the glorious Olgas, Marias, Alexeys, Antons, Tatanas, Yulias and Aleksanders to match the 56 medals that athletes from the Country That Must Not Be Named (CTMNBN) won last time. And don't be surprised if Vova Putin keeps count of those CTMNBN medals and chuckles away, cackling about the unfairness of the west with a wink.

Like Babushka dolls, Russia is stuck with the reputation of compulsive doping ever since the days of Cold War intrigue, and the 2020 ban is considered the denouement, though it feels like a token rap on mittened knuckles. For the Russians who'll be there in Tokyo, but not quite, it's slipping into yet another script, this time Roald Dahl channelling Ian Fleming in "You Only Live Twice."

THE CHIEF JUSTICE of India (CJI) said in his speech on Law Day, November 26, 1985 that, "I am pained to observe that the judicial system in the country is almost on the verge of collapse. These are strong words I am using but it is with considerable anguish that I say so. Our judicial system is creaking under the weight of arrears" (Chief Justice PNBhagwati). Can we be brutally frank today and admit that the criminal justice system (not the entire judicial system) has collapsed, or is it still on the precipice?

"Fair is foul and foul is fair: Hover through the fog and filthy air," said one of the witches in Macbeth. In the celebrations and furore following the recent encounter in Telangana, the Uttar Pradesh police announced that in the last two years they have killed 103 criminals (extra-judicially perhaps) and injured 1,859 in 5,178 engagements. Over this period, instead of remaining on bail, as many as 17,745 criminals have voluntarily had their bail cancelled or have surrendered, apparently fearing death in an engagement, echoing the words of a former CJI suggesting to an accused that he would be safer in jail.

What do encounters achieve other than the death of fellow humans masquerading as instant justice? The report of Justice V K Agarwal on the Sarkeguda massacre of June 2012 in Chhattisgarh is a shocking example of innocents being slaughtered on an extra-judicial assessment of guilt for a crime not even committed. The trigger-happy personnel of the security forces may be prosecuted but will they ever be punished? It's unlikely because of the time lag. How about the death of 103 criminals in Uttar Pradesh? Will we ever know the truth about these extra-judicial killings? Again, it's unlikely, though for different reasons.

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These examples seem to raise questions of instant justice, they actually raise questions of injustice. We need to recognise this dividing line and must also not forget that our society is governed by the rule of law and a progressive Constitution where everyone is presumed innocent (not isinnocent) until proven guilty through a fair trial. This was the basis of Ajmal Kasab's trial, who could also have been despatched in an encounter without any furore and amidst celebrations, but our Constitution did not allow that to happen.



JANAKI NAIR

THERE IS AN awe-inspiring incandescence to the JNU students' struggle which has lit up many institutions in India and elsewhere, and shows no sign of abating immediately. At a time of rapidly waning visionary futures, what does this fierce glow promise us? How is the steadfastness of this student body — consisting of many in their first semester — to be understood, especially their commitment to something larger and greater than themselves, of which they themselves may have only a tenuous grasp?

The Indian public university has been a politicised space from its very founding. It both produced and challenged the obvious inequities of colonial rule. In the early 20th century, it began to be recognised as a space for the redressal of caste inequalities — as in measures that were pioneered, for example, by the Mysore State in 1918. From the 1920s at least, it became an important site of nationalist and revolutionary agitation. Bengal in the late 1960s and the Sampoorna Kranti movements of Bihar in the 1970s took anti-government, anti-state student mobilisation to a new height. Despite the raging anti-reservation stirs of 1990 and 2006, the university, today, is the site of hard won state-mandated equality.

The student movements of the pre-Independence period were largely subordinated to the agendas of larger nationalist or communist parties, and were not necessarily engaged in intergenerational conflicts. Since Independence, there has been far greater engagement with university-related issues — hostels, fellowships, deprivation points, reservations, grading systems, fee hikes, and sometimes, though perhaps too rarely, course content.

## GLOW IN THE GATHERING GLOOM

JNU protests uphold public morality at a time when it's being undermined

Of late, there have been anti fee-hike agitations in institutions ranging from IIT Mumbai in 2017 to the Uttarakhand Ayurvedic University in October 2019. That they have not attained the high visibility of the JNU agitation is not so much because they were any less heroic, but because JNU enjoys hyper-visibility for simultaneously being the site of excellence — at least for the last 45 years — and exemplary inclusion.

The historic strike at the FTII in 2015 inaugurated a new phase of student movements — the students rose in defence of an idea of the institution and its unique place in Indian film history. FTII's reputation was brazenly undermined by the appointment of Gajendra Singh Chauhan as chairman and four others to the institution's council. Many of its illustrious alumni also then believed that such appointments only undid the professional heights that this institution had reached. By January 2016, Hyderabad Central University exploded in anger over the tragic suicide of Rohith Vemula, and protests broke out throughout the country in support of another view of the public university, its achievements and also its injustices. The JNU events of 2016 saw yet another shift of gear: While students were upholding their right to question the state, and its actions, much like the Sampoorna Kranti agitations of the 1970s, the institution was quickly daubed a different colour and dissent was declared unpatriotic. Since then, we have witnessed something like a war, between the idea of the university as a precious "gift of an interval", to cite Michael Oakeshott's memorable words, and the university as a cathedral, where unquestioning, militarised worship of the ethnised nation has taken root.

At the same time, the JNU events beginning in February 2016 provided a fortuitous escape for a ruling party on the edge of a precipice: It temporarily masked the workings of an unruly market economy logic that had seized hold of higher education. That logic had already intervened and reconstructed institutions of higher learning to produce academic credentialing on an unmatched scale — the capitation fee phenomenon, for example. That was the more benign form; the per-

in Madhya Pradesh, it is 0 per cent. Thereby hangs a tale for women's safety.

If the law is an ass, the legislature must change it to make it more effective — widening definitions and making punishments more stringent are not the answer — procedural changes are required. Infrastructure for the courts? In 2012, the then CJI was deeply concerned about the non-availability of infrastructure for the courts and had expressed his unhappiness at the slow progress. He eventually gave up and his concerns have been tragically forgotten. Filling up of vacancies of judges in the courts? Who will address it — the judges or the executive — and when?

The problems are many, but so are the solutions. All stakeholders must keep their eyes wide open, identify all the problems and demonstrate a will to resolve the issues, both for women and children and the courts. Reliance on anecdotal or experiential evidence for ad hoc solutions is passé. What is essential (for cases of rape, for example) is a study of each pending case as also a study of the requirements of each court before any realistic solution is proffered. While this task will require an enormous effort, it needs to be carried out as a mission mode project in public interest.

Is the judiciary up to such a scrutiny? The National Judicial Academy demonstrated in a regional conference in Delhi that delays are endemic and go to such an extent that in a criminal case, the trial court granted a staggering 94 adjournments! We need to set the alarm clock to wake us up now and cancel the snooze button, otherwise we will continue to witness the sufferings of women followed by examples of instant injustice.

The writer retired as a justice of the Supreme Court of India

nicious form reached its epitome in the industrial-scale cheating that was pioneered in Madhya Pradesh, where the BJP held office, and goes by the name of the Vyapam scam.

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Is the determined student struggle at JNU looking back with nostalgia at a public university that was, or heralding the public university's new future? When the prospects of steady, well paid, or dignified work are so bleak, and when even those with academic credentials no longer harvest the same "returns" that might have been true even a decade ago, what can motivate the students to take such an unwearied stand? To make any hackneyed point about the dreams and revolutionary ardour of youth would be to dishonour the movement. What the JNU students have upheld is a reminder of the importance of public morality, at a time when it has been degraded beyond recognition in our republic's life. That is the precious glow we perceive in this gathering gloom.

The writer teaches history at JNU

## DECEMBER 11, 1979, FORTY YEARS AGO

ASSAM POLLS DELAYED THE ELECTION TO the Lok Sabha from 10 of the 14 constituencies in Assam stands postponed indefinitely, according to official sources. Reports received by the chief election commissioner from Assam's chief electoral officer indicate that no nomination papers could be filed for any of the 10 constituencies in the Brahmaputra valley. The state has been in the grip of tension following agitation by students and other organisations demanding postponement of the Lok Sabha poll till the names of illegal immigrants from across the border are eliminated from the electoral rolls. The agitators have successfully prevented filing of nomination papers in 10 constituencies.

IAEA CONFERENCE THE WEEK-LONG 23rd general conference of the International Atomic Energy Agency (IAEA) concluded in Delhi without resolving some of the important issues raised by the third-world countries. The issues which have been shelved till the next general conference include the resolution of the "Group of 77" third-world countries submitted to the IAEA's board of governors regarding the imbalances in the agency's technical assistance programme vis-a-vis the safeguard implementation and their demand for proportionate representation on the board of governors. The Group of 77 countries had also suggested in their resolution that, instead of being largely dependent on doles from rich coun-

tries, the technical assistance financing should be all from the IAEA's regular budget like the provision made for safeguards implementation and which the agency will be spending about \$19 million in 1980.

NOBEL FOR MOTHER MOTHER TERESA OF Calcutta's Catholic Missionaries of Charity order received her \$1,92,000 Nobel Peace Prize for 1979. She said she considered herself an unworthy winner, but accepted the prize cheque, the Nobel gold medal and diploma on behalf of the world's poorest of the poor. The 69-year-old nun is the first Indian citizen and first Yugoslavia-born peace prize laureate, accepted the prize from the committee Chairman.



# THE IDEAS PAGE

## This land is mine

But can India refuse to own me? If Parliament passes the Citizenship Amendment Bill, India's constitutional structure, as we know it, will lose its soul



HARSH MANDER

DESPITE BEING UNDER constant siege, the edifice of India's Constitution has endured so far. The onslaught has intensified since the expanded mandate to the Narendra Modi government in May.

However, if Parliament passes the Citizenship Amendment Bill, India's constitutional structure will cave in. Make no mistake. The Constitution will not need to be rewritten. But, its soul will be annihilated. A new nation will emerge from its rubble — wrathful, muscular, majoritarian, and inhospitable to its minorities.

This Bill weighs upon tangled contestations of belonging and rights. Who belongs to India, and on what terms? And indeed, who does India belong to? A young Bengali-origin Assamese poet Kazi Neel lamented, "This land is mine. But I am not of this land". He loves India, but India refuses to own him.

Citizenship ultimately is the right to have rights. Who in this country should have rights, and from whom should these be withheld?

The answer to these fraught questions were settled within the humanist and inclusive framework of the Indian Constitution. Its iridescent central premise was that religious faith has no bearing on eligibility for Indian citizenship. India belongs equally to its Muslim, Christian and Parsi residents, as much as to its Hindus, Sikhs, Buddhists and Jains.

Questions of belonging — and religion as politics — have torn India apart. The Muslim League regarded religion as the key to citizenship; therefore, India was not one but two nations — Hindu India and Muslim Pakistan. V D Savarkar concurred. India's Constituent Assembly steadfastly rejected this idea that India belonged only to its Hindu majority. Jawaharlal Nehru declared, "We accept as Indian anyone who calls himself a citizen of India".

By introducing the Citizenship Amendment Bill (CAB), the BJP-led government has deliberately reopened old wounds, reviving old fears, anxieties and hatred of Partition. This Bill, in effect, endorses the two-nation theory by creating a hierarchy of citizenship based on religious faith, excluding Muslims from this hierarchy.

The moral fig leaf offered is that this intends to provide refuge to people suffering religious persecution in neighbouring countries, Pakistan, Bangladesh and Afghanistan. If religious persecution was truly to become the yardstick for eligibility for Indian citizenship, then few neighbours are more tormented than the Ahmadiyas in Pakistan who face even death for worshipping in a mosque, the Rohingyas battling genocide in Myanmar, and the Uighurs held in internment camps in China.

Until 1987, to be eligible for Indian citizenship, it was sufficient for a person to be born in India. Then, spurred by the populist movements alleging massive illegal migrations from Bangladesh, citizenship laws were first amended to additionally require that at least one parent should be Indian. In 2004, the law was further amended to prescribe that not just one parent be Indian; but the



CR Sasikumar

other should not be an illegal immigrant.

The unease of the BJP-led governments of India and Assam with the NRC is that a much larger number of Bengali-origin Hindus have been excluded from it than Muslims. If they are judged as illegal immigrants, not just they, but their offsprings would become illegal because of the 2004 amendment. The CAB alone can rescue the BJP from this political conundrum. It will treat Bengali Hindus as refugees, and only the Bengali-origin Muslims and all their later generations would become illegal, even if they were born in India and know no other country as their home.

Treating Bengali-origin Hindus, excluded from the Assam NRC, as persecuted refugees from Bangladesh, however, will require multiple extraordinary leaps of official faith. Not one of these persons would have claimed in any official forum — the NRC offices, Foreigners' Tribunals or police stations — that they are illegal Bangladeshi immigrants. They would have strenuously tried to establish exactly the opposite. But after the CAB, to secure Indian citizenship, they would have to claim to be foreigners to become eligible for Indian citizenship. There will also be questions of evidence. How will they prove that they were citizens of neighbouring countries and that they were persecuted? The truth is that most had not crossed any border, but were unable to produce documents which satisfied officials that they were Indian citizens.

The CAB is the harbinger of a national NRC. By passing the CAB, effectively, the government is clearly messaging that if people of any identity except Muslims are unable to produce the required documents, they will be accepted as refugees and given citizenship. This means that the real burden to prove that they are Indian citizens of the national NRC after CAB is only thrust on Muslims, because only they will risk statelessness. Most Indians would find it impossible to muster the required documents to



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prove their citizenship, but only documentless Muslims will face the prospect of detention centres, or being stripped of all citizenship rights.

And then, since this imagination of citizenship is all vested in documents, which documents will prove my religion? At present, it is only one's own declaration during the decadal census which is the official evidence of one's religious persuasion. I can be born into a religion, and can reject it when I am an adult. I can be born to parents who claim no religion. But if religion becomes the principal fulcrum of whether or not one is a citizen, then which document will the state rely upon to decide if I am a refugee or should be thrown into a detention centre?

For a republic built on guarantees of equality and non-discrimination on the basis of religion, creating a class of potentially stateless persons exclusively because of their religious identity would mark decisively the demise of India as a secular republic. The responsibility for this catastrophic collapse of the edifice of our constitution would be shared by a political opposition emptied out of its moral and political convictions.

The CAB-NRC poses the gravest threat to India's secular democratic constitution since India became a republic, and must be fought with a nation-wide civil disobedience movement. The contours of this struggle need to be worked out by We the People.

But, I have decided on my form of civil disobedience. If the CAB is passed, I will, in solidarity with those whose citizenship alone will be contested, first declare myself to be Muslim. When the national NRC is organised, I will boycott it, and refuse to produce any documents. I will then demand that I be given the same punishment to which my undocumented Muslim sisters and brothers will be subjected, be it detention or the extinguishing of my citizenship rights.

Mander is a human rights worker and writer

### WHAT THE OTHERS SAY

"America might be in a hurry to get out of Afghanistan, but a final settlement needs to be hammered out between the Taliban, the Kabul government as well as other Afghan political players, and should not be imposed by external powers." — DAWN

## Betrayal of the republic

Religious basis of citizenship would be a negation of secularism, liberalism, equality and justice



FAIZAN MUSTAFA

THE YEAR WAS 2013. I was travelling in China, when a taxi driver there posed a question to me: Why are there so few Buddhists in India? The fact is we did persecute Buddhists in India. Religious persecution has always been there and all religions are guilty of it. The Narendra Modi government is, therefore, right in recognising religious persecution. But the solution it presents to the problem is not only unconstitutional but dangerous. It will surely damage India's standing in the comity of nations.

The Citizenship Amendment Bill (CAB) is more in tune with the Israeli law of return that treats Israel as the natural home of all Jews. Ideally, we should say anyone persecuted anywhere in the world, on the ground of religion or political opinion, would be welcome in India.

Shared identity is at the core of citizenship. The framers of our Constitution and those who enacted the Citizenship Act in 1955 believed in citizenship as a unifying idea. Today, citizenship is being used to divide people and treat people of certain religious persuasion as inferior. The majoritarian politics is divisive as it distinguishes Indic faiths from those that originated outside India and says the latter cannot have any sacred places of worship in India. Now, through the CAB, we are creating divisions between Abrahamic religions by including Christians in the Bill but excluding Jews and Muslims. The Bill also ignores atheists.

Articles 5 to 11 of the Constitution give details of various categories of persons who are entitled to citizenship. Article 11 empowers Parliament to regulate citizenship and the Citizenship Act was passed in 1955. This does not mean that Parliament, through an ordinary law, can destroy the fundamental values or the basic structure of the Constitution. The religious basis of citizenship would be a negation not only of secularism but also of liberalism, equality and justice. Interestingly, neither the Constitution nor the Citizenship Act define the term "citizen".

The citizenship law was amended in 1986 due to the Assam Accord and in 2003, because of the BJP's opposition to illegal migrants. Unlike the original Citizenship Act that gave citizenship on the principle of *jus soli* (everyone born in India), the 1986 amendment was less inclusive as it added the condition that in addition to one's own birth in India, one can get citizenship only if either of the applicant's parents happened to be an Indian citizen at the time of birth. The 2003 amendment by the Vajpayee government made the law even more stringent. Now, the law requires that in addition to the fact of birth, either both the parents should be Indian citizens or one parent has to be an Indian citizen and the other not an illegal migrant.

The Assam NRC has busted the narrative of several million Bangladeshis illegally staying in India. Rs 1,600 crore was spent on the

NRC, which brought Assam to a standstill for five years. BJP leader Himanta Biswa Sarma has rejected the final NRC and wants it to be undertaken again with the national NRC. It seems most of the 1.9 million excluded from the NRC are non-Muslims. Clearly, the CAB is nothing but a face-saver for the BJP. But like the flawed NRC, it too is not going to give the desired results, either in terms of deportation or denial of citizenship to one particular community. Moreover, the CAB will put even non-Muslim citizens under severe hardship as those who were till now asserting that they are Indian citizens will now have to prove that they, in fact, came from these three countries.

The CAB is against five of the BJP's primary positions. First, the BJP manifesto for the 2016 Assam assembly election had promised honouring the Assam Accord in letter and spirit. Second, it had been advocating that the cut-off date should be July 19, 1948 not March 25, 1971. The new Bill has brought forward the cut-off date to December 31, 2014. Third, though the BJP has been using all kinds of adjectives against illegal migrants, the CAB deems such illegal migrants as citizens and abates all proceedings against them under the Foreigners' Act, 1946. Fourth, the argument that refugees or illegal migrants are a burden on national resources does not stand any longer. Fifth, the Statement of Objects & Reasons to the Bill takes strong exception of a "particular religion" being declared as state religion in Afghanistan, Pakistan and Bangladesh. Does that mean the Hindu right no longer wants to make India a Hindu rashtra?

The CAB is in the teeth of Article 14, which not only demands reasonable classification and a rational and just object to be achieved for any classification to be valid, but additionally requires every such classification to be non-arbitrary. The Bill is an instance of class legislation, as classification on the ground of religion is not permissible. Neither is religious persecution the monopoly of three countries nor is such persecution confined to non-Muslims. Religious persecution is rampant in China and Myanmar. Several Muslim groups such as Hazaras in Afghanistan and Shias in Pakistan too face persecution. The Supreme Court in *EP Royappa* (1973) observed that "equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within the traditional and doctrinaire limits. From the positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies... Where an act is arbitrary, it is implicit that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14".

Finally, if those who support the CAB think the Bill would be able to take away the citizenship of billions of Muslims, they are wrong: The CAB would apply to only Muslims who have migrated from Pakistan, Bangladesh and Afghanistan. Moreover, citizenship once conferred cannot be retrospectively revoked.

The Bill is unnecessary. If we care for refugees, India should sign the Refugee Convention and make illegal migrants eligible for citizenship.

The writer is vice chancellor, NALSAR University of Law, Hyderabad. Views are personal



RAM MADHAV

## A law that includes

Citizenship Bill continues long tradition of welcoming persecuted minorities

FIRST THINGS FIRST. The Citizenship Amendment Bill (CAB) is not about excluding anybody; it is about including some. It is an effort to grant citizenship to those minorities from erstwhile Pakistan — that now includes Pakistan and Bangladesh — and Afghanistan, who have come to India seeking refuge from religious persecution or the fear of it. The first time such refugees were included was immediately after Partition in the first census, which was also regarded as the National Register of Citizens.

Let's remember that every time such refugees come to India and claim citizenship, the government has been issuing citizenship to them after the due process. There are a number of instances of religious minorities from these three countries coming over to India on religious visas and deciding to stay back because of the dangerous situations that existed back home. They include Sikhs from Afghanistan, Sindhis and SCs from Pakistan and Bengalis and tribals from Bangladesh. What the government intends to do through the proposed CAB is simplify the process of granting of citizenship to these minorities. Earlier, there was a 12-year wait under the regular citizenship laws. The new Bill reduces that period to five years. A minority citizen from these three countries, who turns to India seeking citizenship, will become eligible for the same provided he or she has entered India before December 31, 2014 and has lived here for at least five years.

Unfortunately, the debate on the Bill has been distorted by the Opposition, citing erroneous arguments like the violation of Article 14 and the principle of secularism. Granting citizenship to sections of the population is a regular process. During the liberation war of Bangladesh, lakhs of Hindus and other minorities had poured into India. This migration was no smaller than at the time of Partition. A majority of them had come to states like Bengal, Assam and Tripura. Camps were created for such migrants and special efforts were made to provide citizenship to them by the government at the time. There are a good number of such Bangladeshi immigrants in these three states who had secured citizenship documents at that time. Nobody called it a violation of Article 14. Similar facilities were extended to persecuted Indians from Uganda during Idi Amin's rule and then, too, nobody had demanded that in order to be secular we should extend citizenship to Ugandans.

Home Minister Amit Shah's invoking of Partition has an important historical bearing on the issue. We can't shut our eyes to the fact that India was partitioned on religious lines and large-scale communal violence erupted as a result. Between 1947 and 1950, millions crossed over to either side. They all became citizens of the respective countries.

But then, it came to the knowledge of the authorities that even after 1950, the migration was continuing into the Northeast for reasons that were not necessarily Partition-re-

lated. It was then that the Jawaharlal Nehru government promulgated The Immigrants (Expulsion from Assam) Act, 1950. The Act stated that the government would deport those immigrants who had entered Assam illegally and whose presence was considered detrimental to the interests of Assam and India. When the question of minorities was brought to Nehru's attention, he exempted all of them from the 1950 Act. The relevant portion of the 1950 Act states: "Provided that nothing in this section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or has left his place of residence in such area and who has been subsequently residing in Assam." Nehru was categorical that the Act wouldn't apply to minority immigrants like Hindus, Buddhists, Christians and Sikhs.

The proposed Bill is a continuation of that unfinished agenda. It has become necessary that the issue of the illegal immigrants be addressed in one go, as their numbers have swelled to millions in the last several decades. This Bill will come as a big boon to all those hapless people who have been the victims of Partition and the subsequent conversion of the three countries into theocratic Islamic republics.

Arguing that the Bill is anti-secular is specious. After Independence, not once but twice, we conceded that the minorities in our neighbourhood were our responsibility. First, im-

mediately after Partition and again during the Indira-Mujib Pact in 1972 when India had agreed to absorb over 1.2 million refugees. It is a historical fact that on both the occasions, it was only the Hindus, Sikhs, Buddhists and Christians who had come over to our side. Far from being anti-secular, Indian citizenship was a commitment given by our leaders to the minorities. That is precisely what the Narendra Modi government is fulfilling now.

India has several other refugees that include Tamils from Sri Lanka and Hindu Rohingyas from Myanmar. They are not covered under this Act. Similarly, the Nepalese and others from neighbouring countries are guided either by bilateral agreements or the citizenship laws of our country.

Concerns of some sections in the Northeast have also been adequately addressed by excluding Schedule VI areas and the Inner Line Permit-restricted areas from the purview of the Bill. The CAB is a law applicable to the entire country. The government will make sure that no state shall face any adverse impact on its demography, culture, language and customs.

In its two millennia-long history, India has always welcomed persecuted minorities, like the Parsis, Jews and others, from wherever they came. The CAB is a continuation of that national tradition.

The writer is national general secretary, BJP and director, India Foundation

### LETTERS TO THE EDITOR

#### APATHETIC BODIES

THIS REFERS TO the editorial, 'Put out the fire' (IE, December 10). It was sad to see the ill-fated building turning into a gas chamber and hapless workers choked to death. The key cause of such unregulated and unregistered units flourishing under the nose of the authorities are their economic viability. Setting up a unit in commercial areas means high rents and the onerous task of securing NoCs from venal agencies. In a country where 22 per cent of people are below the poverty line and many face hunger daily, people perishing in such devastating fires does not move the apathetic authorities and the indigent worker's fate is fixed.

Deepak Singhal, Chennai

#### THANKS AMBEDKAR

THIS REFERS TO the article, 'Ambedkar and I' (IE, December 10). Like the writer's, my parents changed my surname to hide my Dalit identity. They were trying to shield me from the discrimination they suffered. For many years, I struggled with my identity but Babasaheb helped me understand my roots. His life and books educated me about his legacy and filled me with positive attitude about my caste.

Anshul Choudhary, Agra

#### SUU KYI'S SURPRISE

THIS REFERS TO the editorial 'Moment of reckoning' (IE, December 10). When

#### LETTER OF THE WEEK AWARD

To encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to [editpage@expressindia.com](mailto:editpage@expressindia.com) or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301.

Aung San Suu Kyi announced that she would personally defend Myanmar against accusations of genocide at the International Court of Justice (ICJ) in The Hague this week, it came as an enormous shock. Myanmar has steadfastly ignored UN reports alleging that since 2017, its army has raped, murdered and tortured the Rohingyas, driving more than 7,40,000 to flee to neighbouring Bangladesh. Technically, Suu Kyi, the de facto leader of Myanmar, is going in her capacity as foreign minister. But the world will recall her as the heroine who won the Nobel peace prize in 1991 in recognition of her dogged resistance to a military junta.

Sanjay Chopra, Mohali

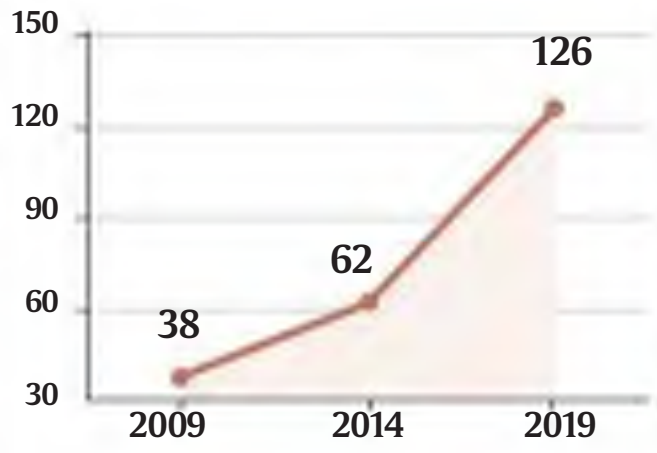


## TELLING NUMBERS

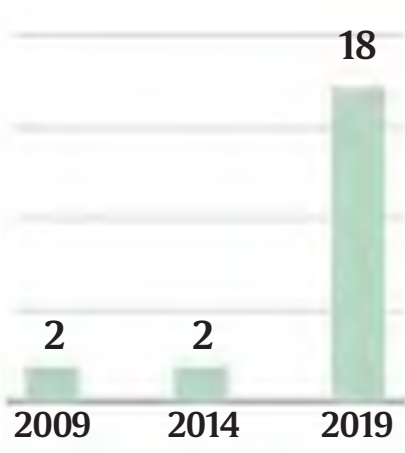
### Rising trend in number of MPs, MLAs and candidates who face cases of crime against women

#### DECLARED CASES OF CRIME AGAINST WOMEN

##### LOK SABHA CANDIDATES



##### LOK SABHA MPs



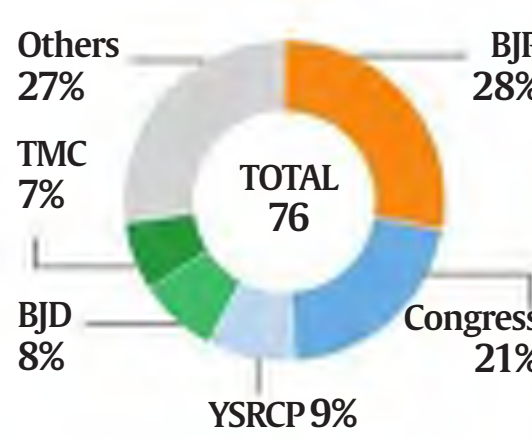
BETWEEN 2009 and 2019, there has been an increase of 231% in the number of candidates with declared cases of crime against women contesting Lok Sabha elections. The number elected as MPs has increased 9 times, according to an analysis by the Association for Democratic Reforms (ADR) and the National Election Watch.

For current MPs and MLAs, the ADR analysed 4,822 election affidavits (759 MPs and 4,063 MLAs) out of a total of 4,896 (776 MPs and 4,120 MLAs). It found that 76 MPs/MLAs had declared cases of crime against women. Of these, 18 are MPs and 58 are MLAs. Among candidates in MLA, Lok Sabha and Rajya Sabha elections in the last five years, 572 were found to have declared such cases; none of them has been convicted. Among them, 410 were given tickets by recognised political parties while the remaining 162 were independent candidates.

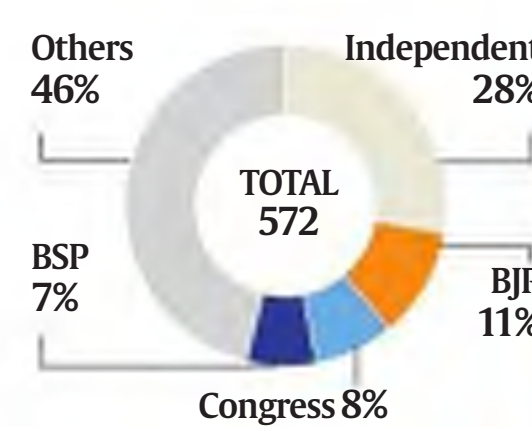
The BJP has 21 MPs/MLAs with cases relating to crimes against women, at 21, the ADR said. The BJP is followed by the Congress at 16, YSRCP at 7, BJD at 6 and Trinamool Congress at 5. In terms of candidates who declared such cases, the BJP fielded 66, followed by the Congress at 46, BSP at 40, CPI(M) at 15, and Shiv Sena and Samajwadi Party at 13 each.

The highest number of MPs/MLAs with declared cases of crime against women are in West Bengal (16), followed by Odisha and Maharashtra (12 each), Andhra Pradesh (8), Telangana (5) and Madhya Pradesh (3). Among candidates in the last five years, 84 facing such cases were fielded from Maharashtra, followed by Bihar (75), West Bengal (69), Uttar Pradesh (61), Odisha (52), Andhra Pradesh (33) and Karnataka (26).

#### MPs, MLAs FACING CASES OF CRIME AGAINST WOMEN



#### MP, MLA CANDIDATES FACING CASES OF SUCH OFFENCES



In accounting for crime against women, the ADR counted cases of acid attack (IPC Sections 326A & 326B; rape (Sections 375, 376, 376A, 376B, 376C, 376D & 376E); outraging the modesty of a woman (Section 354A); sexual harassment (Section 354A); assault on women with intent to disrobe a woman (Section 354B); voyeurism (Section 354C); and stalking (Section 354D).

In the last five years, recognised political parties have given tickets to 41 candidates with declared cases of rape against them. Out of these, nine were elected, three of them as MPs and the other six as MLAs. In addition, 14 independent candidates had declared cases of rape against them.

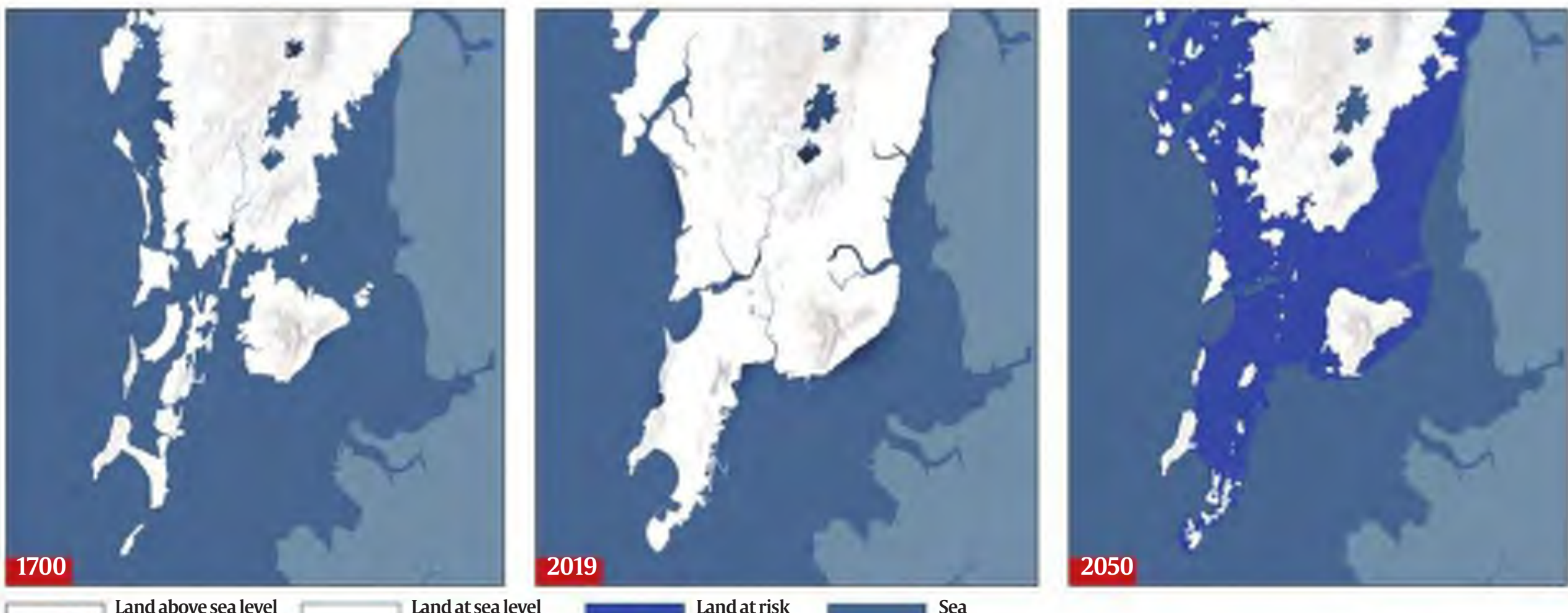
Source for all data: ADR

## EXPERTS EXPLAIN

# The rising threat to Mumbai

A new study projects that in the absence of quick and significant action, Mumbai in 2050 will look much like what it did in 1700 — with the sea having reclaimed much of the landfill that the city has been built on

### MUMBAI'S PAST, PRESENT, FUTURE? MAPS OF THE CITY AND THE SEA IN 1700, 2019 AND 2050 (PROJECTED)



NIKHIL ANAND & CAROLINE TERENS

ON OCTOBER 29, 2019, the journal *Nature* published an important paper identifying the dangers climate change poses specifically to Mumbai and other coastal cities.

The research, carried by many newspapers including *The Indian Express*, indicates that anthropogenic climate change will inundate significant sections of Mumbai by 2050. Unless the city takes significant action in the next three decades, the sea will reclaim much of the landfill that the city has been built on. As per this study, Mumbai in 2050 will look a lot like Mumbai in 1700, unless the city makes serious efforts to adapt to climate change.

Together with Guangzhou, Jakarta, Miami, and Manila, Mumbai now regularly appears on a list of cities endangered by climate change. As the cyclones battering coastlines near Mumbai and unseasonal, heavy rains indicate, climate change is not some event in the distant future. It is present. It is here.

Recent studies, published by the Intergovernmental Panel on Climate Change (IPCC) and in *Nature* by Lu and Flavelle in October 2019 indicate that its effects are more intensive than earlier models predicted.

For example, sea levels are rising significantly faster than were previously estimated. The *Special Report on the Ocean and*

*Cryosphere in a Changing Climate*, published last month by the IPCC, indicates that sea levels are significantly higher than were originally anticipated, and as such will have significant impacts on cities like Mumbai.

As city residents are very aware every monsoon, much of Mumbai is tenuous land made dry, just a few metres above sea level. The IPCC report warns Mumbai's planners and administrators and states that "in the absence of adaptation, more intense and frequent extreme sea level events, together with trends in coastal development will increase expected annual flood damages by 2-3 orders of magnitude by 2100."

The report points out, however, that "well-designed coastal protection" could both "reduce expected damages" and "be cost efficient for urban and densely populated... areas".

Despite the urgent need for adaptation and action in a vulnerable city like Mumbai, the city is ignoring climate adaptation programs and infrastructures in its development planning processes. Worse, Mumbai's ongoing infrastructure projects don't address climate change, and as such, may significantly worsen climate risks that its 19 million residents face.

Take, for example, the ways in which climate change is treated in Mumbai's new Coastal Road project, now stalled by the Bombay High Court. The project proposes the construction of a 29.2 km road on the western coast of Mumbai, that aims to mitigate "extreme traffic congestion" and "transport related pollution" in hopes of increasing productivity and quality of life for citizens. (Environmental Impact Assessment Report)

Much of the project is to be built on reclaimed land, even as project documents acknowledge that reclamation makes the city vulnerable to flooding. Further, our reading of the Coastal Road Detailed Project Report and

the Environmental Impact Assessment show that these studies significantly underestimate sea level rise, a key consideration for designing a road being built on reclaimed land.

For example, in its assessment of risks from sea level rise, the project uses data from the 20th century (the period between 1878 and 1993), which indicates an average sea level rise of 1.27 mm/year. (See Coastal Road Detailed Project Report p 47, EIA p 98.)

But the rate of sea level rise has more than doubled in India in just over a decade in line with global rates. Research conducted by Dr A S Unnikrishnan and his team at the National Institute of Oceanography in Goa has shown that sea level rise has increased to 3.2 mm/year in the period 1993-2012 (Unnikrishnan *et al.* 2015).

The IPCC projects sea level rise to accelerate still further and faster in the coming years. If infrastructure is being designed for the future (and not for the past), then it remains unclear why planners do not use current and future projections that will more correctly estimate future climate risk in the design of urban infrastructure.

As we note flooding in Mumbai, elsewhere in Maharashtra, Kerala, and beyond, we ask, who would be held responsible for the catastrophes that may unfold in Mumbai when important climate data are ignored in the design of new infrastructure projects? And who will be held responsible for urban catastrophes that might ensue, when climate infrastructure and adaptation plans are never implemented in the city despite all evidence pointing to the need for urgent interventions?

Mumbai is in the midst of a climate emergency. While it is slow and difficult to perceive in the everyday, this emergency requires city administrators to rethink how Mumbai may be remade in and with rising

waters. These unprecedented times demand new imaginaries, designs, plans, and infrastructures, not the materialisation of failed ideas of the 20th century.

For instance, award winning landscape architects and planners Dilip da Cunha and Anuradha Mathur have shown that sea walls, river embankments, and reclamation do not always prevent inundation from intensified rains and rising seas. They instead magnify the risks of inundation. Water seeks its own level. While a wall might prevent inundation in one part of the city, it would exacerbate inundation in other parts. Managed wetlands provide water with a place to go, but are difficult to create. What might the Municipal Corporation do to make the city livable amidst a climate crisis?

Climate change is not just an environmental issue. It is a human issue and an urban issue that will dramatically affect every resident of Mumbai, particularly its urban poor. Mumbai's current priorities are misplaced. It is currently spending a large part of the city's 'rainy day' corpus to construct a coastal road that few will use. Wouldn't it be wiser for the city to instead spend this money on mitigating the effects of actual rainier days, floods, and rising seas that already are a new normal in the city's climate changed future?

(Anand is Associate Professor of Anthropology, University of Pennsylvania. His research focuses on infrastructure, urbanism and environment. He is the author of *Hydraulic City: Water and the Infrastructures of Citizenship in Mumbai* (2017) and *The Promise of Infrastructure* (2018). He is currently researching climate change, the sea, and the city. Terens is a Research Assistant in the Department of Anthropology, specializing in Urban Studies)

## FACT CHECK, GROUND REALITY

# USCIRF, the Commission concerned over CAB: what are its functions?

#### SHUBHAJIT ROY

NEW DELHI, DECEMBER 10

ON MONDAY, the United States Commission on International Religious Freedom (USCIRF) said it was "deeply troubled" by the passage of the Citizenship (Amendment) Bill in Lok Sabha, "given the religion criterion in the Bill", and recommended that "if the CAB passes in both Houses of Parliament, the US government should consider sanctions against the Home Minister and other principal leadership".

#### Who are the USCIRF?

The USCIRF is an advisory or a consultative body, which advises the US Congress and the administration on issues pertaining to international religious freedom. On its website, the USCIRF describes itself as an independent, bipartisan US federal government commission that was created by The International Religious Freedom Act (IRFA). "The broad-based coalition that advocated strongly for IRFA's enactment sought to elevate the fundamental human right of religious freedom as a central component of US foreign policy," the website says.

In practice, the USCIRF has little teeth in implementation, but acts as a conscience-keeper for the two branches in the US government — the legislature and the executive. It often takes maximalist or extreme positions, and has been used by civil society groups to put pressure on US Congress members and administration officials.

#### And what is the IRFA?

The International Religious Freedom Act of 1998 was passed by the 105th US Congress (1997-99) and signed into law by then President Bill Clinton on October 27, 1998. It is a statement of the US's concern over violations of religious freedoms overseas.

The full title of the Act reads: "An act to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted in foreign countries on account of religion; to authorize United States actions in response to violations of religious freedom in foreign countries; to establish an Ambassador at Large for International Religious Freedom within the Department of State, a Commission on International Religious Freedom, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes."

#### What does the USCIRF do?

The USCIRF is mandated by US statute to "monitor the universal right to freedom of religion or belief abroad — not in the United States — using international standards to do so and makes policy recommendations to the President, Secretary of State, and Congress". "USCIRF Commissioners are appointed by the President and Congressional leaders of both political parties. While USCIRF is separate from the State Department, the Department's Ambassador-at-Large for International Religious Freedom is a non-voting *ex officio* Commissioner. A professional, non-partisan staff supports USCIRF's work," according to



Protest against CAB by Assamese film personalities in Guwahati. Dasarath Dekra

the commission's website.

The USCIRF's main responsibilities are:

- To issue an annual report by May 1 of each year, assessing the US government's implementation of IRFA. It recommends countries that the Secretary of State should designate as "Countries of Particular Concern" for engaging in or tolerating "systematic, ongoing, egregious violations of religious freedom"; documents conditions in about 30 countries; reports on significant trends; and makes recommendations for US policy.
- To engage Congress by working with

Congressional offices, advising on legislation, testifying at hearings, and holding briefings on religious freedom issues.

■ To meet regularly with Executive Branch officials, including the Departments of State and Homeland Security, to share information, highlight situations of concern, and discuss USCIRF's recommendations for US policy.

**How does USCIRF define "freedom of religion or belief abroad"?**

On its website, the Commission says:

"Religious freedom is an important human right recognized in international law and treaties... The freedom of religion or belief is an expansive right that includes the freedoms of thought and conscience, and is intertwined with the freedoms of expression, association, and assembly. The promotion of this freedom is a necessary component of US foreign policy."

In its statement issued to "raise serious concerns and eye sanctions recommendations" in the aftermath of the passage of the CAB in Lok Sabha, the USCIRF said the Bill "enshrines a pathway to citizenship for immigrants that specifically excludes Muslims, setting a legal criterion for citizenship based on religion". The CAB, it said, "is a dangerous turn in the wrong direction; it runs counter to India's rich history of secular pluralism and the Indian Constitution, which guarantees equality before the law regardless of faith. In conjunction with the ongoing National Register of Citizens (NRC) process in Assam and nationwide NRC that the Home Minister seeks to propose, USCIRF fears that the Indian government is creating a religious test for Indian citizenship that would strip citizenship from millions of Muslims".

**Has USCIRF raised issues relating to India in the past?**

In August this year, USCIRF had issued a statement against the NRC in Assam and said that it creates a "negative and potentially dangerous climate for the Muslim community" in northeastern India. It had said that the updated NRC could be used to

disenfranchise Muslims in the region and is part of the government's ongoing efforts to introduce a "religious test" specifically aimed at clearing out Muslims.

In June this year, in response to mob lynching of Tabrez Ansari in Jharkhand in India, USCIRF Chair Tony Perkins had condemned the incident. "We condemn in the strongest terms this brutal murder, in which the perpetrators reportedly forced Ansari to say Hindu chants as they beat him for hours. Ansari later died from the injuries he suffered due to this horrific attack. We call on the Indian government to take concrete actions that will prevent this kind of violence and intimidation by a thorough investigation of Ansari's murder as well as the local police's handling of the case. Lack of accountability will only encourage those who believe they can target religious minorities with impunity," the USCIRF chair had said.

In July 2008, it had urged the US State Department to deny a tourist visa to then Gujarat Chief Minister Narendra Modi, who had been invited to attend a conference in New Jersey. It had said that "Modi was previously denied entrance to the United States due to his role in riots that overtook the Indian state of Gujarat from February to May 2002 in which reportedly as many as 2,000 Muslims were killed, thousands raped, and over 200,000 displaced. Numerous reports, including reports of official bodies of the Government of India, have documented the role of Modi's state government in the planning and execution of the violence, and the failure to hold perpetrators accountable".