

Modernity mandates can't be exclusionary

Universal registration of births is a laudable goal. But the new births and deaths bill can result in deep exclusions and burden poor citizens

The two authors of this piece do not have birth certificates, a characteristic that, in all probability, they share with top government functionaries. They have got through life so far using the certificates from their school-leaving examination. Many others in this country will not even have this document, since the 2011 Census showed that less than 22% of the population passed their school-leaving examinations.

This week, Parliament passed with minimal debate the Registration of Births and Deaths (Amendments) Bill, 2023. The legislation aims to solve the problem of people having no birth certificates by overhauling the births and deaths registration process to keep pace with "societal change and technological advancement" and make it more "citizen friendly". Though largely ignored, it has serious implications on our everyday lives and might, ironically, negate its own stated objectives.

The amendment seeks to build a national database of births and deaths, linked to the Aadhaar details of the parents, or persons required to report births and deaths to the registrar, such

as the medical officer in charge of a hospital where a baby is born; the jailor, in case of births in a prison; the manager of a hotel or lodge in case of births in such a place; or, for adopted children, the person in charge of specialised adoption agencies.

Once notified, the government can have the power to deny a person, who is born after the law comes into effect but doesn't have a birth certificate, admission to schools, registration as a voter, driver's licence and "any other purpose as may be determined by the central government". To implement this, the national database may be made available to the authorities preparing or maintaining other databases.

The relationship between documents, such as birth certificates, and citizenship has a complex history in India. In her classic work on citizenship, Niraja Gopal Jayal powerfully argues that, after Partition, India inverted the standard relationship between documents and citizenship. The norm is that citizenship enables access to identity documents; in India, however, documents needed to be acquired, and then scrutinised and authenticated by the State to validate citizenship. Recently, the effort has been to make a more inclusionary citizenship possible, by situating basic public services within the

framework of fundamental rights and the goal of universalising access to identity, via Aadhaar.

Continuing this tradition, the amendment purports to "provide for use of the birth certificate as a single document to prove the date and place of birth of a person... in order to enhance the public convenience and

to avoid multiplicity of documents". However, rather than being inclusionary and enhancing convenience, its outcome could be quite the opposite.

By apparently making the birth certificate the only document that can provide such proof and linking its possession to access to critical necessities for day-to-day living and constitutional rights (such as that of voting), the amendment effectively makes it a mandatory document, with its absence resulting in multiple exclusions. So, despite its stated intentions, this bill could increase bureaucratisation and the coercive use of documents, such that the onus of proof of being a citizen and accessing consequential rights rests firmly on the ability of a person to produce a birth certificate.

Thus, a person without a birth certificate may be physically present, but officially non-existent.

This is not idle speculation. Despite increasing institutional births, the fifth round of the National Family



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Despite increasing institutional births, NFHS 5 found that nationally, around 11% of births still happen outside formal facilities

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Health Survey found that nationally, around 11% of births still happen outside formal facilities. Indeed, in 50 districts, many in the Northeast, and the tribal-dominated and poorer districts of Bihar, Jharkhand, Chhattisgarh, and Uttar Pradesh, the share of such births is more than 30%; in another 76 districts, this share is around 20%. It is difficult to imagine that the universal registration of births in these areas would be feasible in the immediate future. Children born there might end up paying the penalty for administrative gaps.

But, even when it becomes feasible, is it constitutionally tenable? In its 2018 Aadhaar judgement, the Supreme Court (SC) decided that universal rights such as voting, education and access to food cannot be abridged merely due to the absence of specified documentation.

Further, it is unclear how the linking of databases permitted in this bill, coupled with the Digital Personal Data Protection Bill, 2023, affects the fundamental right to privacy articulated in the SC's Puttaswamy judgement of 2017. This relates not just to the indi-

vidual but also to parties, such as hotel managers, who are mandated to report births. Could the amendment empower the State to track an individual from birth to death, without any check or balance?

It is indisputable that universal birth registration is a laudable goal. It is in conformity with the United Nations Legal Identity Agenda and sustainable development goals; and the bill is a step in that direction. But, one must also not put the burden of meeting this goal only on citizens. It may be prudent to reflect soberly on the implications of this amendment, without standing on prestige.

The courts should not be the only guardians of our constitutional freedoms. Our Parliament and executive have equal responsibility to protect people's rights. Rather than wielding the axe of coercion, especially when the rights of the least privileged are at risk, less haste and more deliberation is needed.

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