



Visa crackdown

Students should be made aware of the risks of falling afoul of U.S. immigration laws

The arrest of 129 Indians on the charge of wilfully violating immigration laws to stay and work in the United States sends a stark message to youth looking for better prospects abroad: their efforts should begin with due diligence and strictly follow the letter of the law. In the sting operation carried out by the U.S. Department of Homeland Security, which threatens to encompass many more Indians in the 'University of Farmington' case, the contentious issue is whether they fell victim to unscrupulous recruiters who offered to secure an I-20 student document that allowed them to undertake paid work using the provision for Curricular Practical Training, or knowingly engaged in fraud. Going by the indictment of eight recruiters of Indian origin, they knew they were violating U.S. immigration law when they enrolled students using fraudulent and unlawful means, and their profits included negotiated referral fees paid into their accounts by undercover agents. The prosecution has alleged that each student who enrolled in the 'university' was aware that there would be no classes, credit scores or academic requirements, and the intention was merely to "pay to stay" and gain access to employment. These statements are, of course, subject to scrutiny during the trial of the alleged recruiters. The Ministry of External Affairs has made the correct distinction between students who may have been duped and the recruiters. Students who are eligible to pursue studies at an authorised university in the U.S. should, therefore, get a further opportunity and not be subjected to summary deportation or humiliation. It must also not prejudice the prospects of such students who may apply in future for legal entry.

The University of Farmington case in Michigan is not the first instance of Indian students falling foul of U.S. immigration laws, although it stands apart as a racket exposed by a sting operation. Others such as Tri-Valley University and Herguan University were degree mills run by individuals that used false claims and documents to enable youth to unlawfully stay in the U.S. and, in many cases, pursue employment. These trends reinforce the need for good communication that would help students identify credentialed institutions that meet the requirements of the Student and Exchange Visitor Program, and highlight the serious nature of visa fraud. If the averments in the Michigan case are correct, the prospect of working in America attracted many of the 600 students who were recruited. This should serve as a reminder to India's policymakers that access to higher education, job-creation and raising of living standards to meet the aspirations of youth must receive priority. Talk of an impending demographic dividend is meaningless without creating opportunities at home.

The peace holds

A harsher penalty in the 2008 Assam serial blasts case could have led to wider trouble

Blocked by protests against the Centre's proposed Citizenship (Amendment) Bill, Assam's Bodo-populated areas were on edge for another reason last week. Over a decade after nine serial bombs ripped through four towns, the clamour for the death penalty to be awarded to the perpetrators had put the State on alert, after a district and sessions court set up for the CBI case had convicted 14 of them. The October 30, 2008 bombings exacted a severe toll. Eighty-eight deaths, 53 of them in Guwahati, with 540 injured, it was argued, passed the Supreme Court's 'rarest of the rare' test. And yet, mindful of the "entire facts and circumstances of the case", the judge on January 30 sentenced 10 of the convicted, including Ranjan Daimary, to life and handed out limited terms to the others. Most of the convicts belong to a faction of the National Democratic Front of Boroland, of which Daimary is the chairman. The NDFB(R) has had a ceasefire agreement with the Assam and Union governments since May 2005. The NDFB (Progressive), led by Gobinda Basumatary, is also in peace talks. Recent incidents in Bodo areas – including the May and December 2014 attacks against Muslim migrants and Adivasis, in which over 100 civilians were killed – have been attributed to the rebel NDFB faction, led earlier by I.K. Songbiji and now by B. Saoraigwra.

These groups and their predecessors, many of which have given up arms and joined the formal political process, espouse causes ranging from secession to a Bodo-land State carved out of Assam. The violent phase peaked in the late 1980s and early 1990s, but ebbed with the creation of the Bodoland Territorial Council in 2003. It absorbed the likes of Hagrama Mohilya, formerly a Bodo Liberation Tigers militant, whose Bodo-land People's Front has been an alliance partner of both the erstwhile Congress-led State government and the current BJP regime of Sarbananda Sonowal. While NDFB(R) supporters chanted slogans demanding Bodoland to protest against the judicial order, a death sentence for Daimary could have sparked wider convulsions, and pushed some of the fringe groups back into militancy, creating a 1990s redux. The BJP has backed the creation of smaller States, but Bodoland is unlikely to be realised any time soon. The Bodo case for statehood is also hamstrung by the fact that non-Bodos account for nearly 70% of the population in the Bodoland Territorial Area Districts that will comprise the core of such a State. New Delhi is focussing instead on devolving more powers with its constitution amendment Bill – likely to be introduced in Parliament this week – to bring 10 autonomous district councils under the purview of the Central Finance Commission. Along with ideologically agnostic partnerships with the State government in Dispur, this is the way forward for now.

A national register of exclusion

There are few parallels anywhere else of the state itself producing statelessness in the manner that it is doing in Assam



HARSH MANDER

By requiring long-term residents of Assam to prove their citizenship by negotiating a thicket made up of bewildering and opaque rules and an uncaring bureaucracy, the Indian state has for the past two decades unleashed an unrelenting nightmare of wanton injustice on a massive swathe of its most vulnerable people.

Distressing cycle

The official presumption that they are foreigners has reduced several million of these highly impoverished, mostly rural, powerless and poorly lettered residents to a situation of helplessness and penury. It has also caused them abiding anxiety and uncertainty about their futures. They are required to persuade a variety of usually hostile officials that they are citizens, based on vintage documents which even urban, educated, middle-class citizens would find hard to muster. And even when one set of officials is finally satisfied, another set can question them. And sometimes the same official is free again to send them a notice, starting the frightening cycle afresh.

On February 2 and 3, I was in Guwahati listening to heart-breaking accounts from 53 people from 13 districts of Assam. This was as part of a people's tribunal on the National Register of Citizens (NRC), along with Justice Venkate Gopala Gowda, Colin Gonsalves,

Monirul Hussain and Sanjoy Hazarika. What emerged were numbing stories of unyielding official bias and arbitrariness, of the denial of elementary "due process" and, above all, the complete absence of public compassion. Even old men frequently broke down as they spoke of all that they had endured.

It emerged that the names of many persons were dropped from the draft NRC only because of minor differences in the spelling of Bengali names in English in different documents. We encountered several instances where the variation of a single letter, for example between Omar and Onar, was enough to rule that a person is a foreigner. Likewise, the rural unlettered are typically vague about their dates of birth. A person could be excluded from citizenship if she told the tribunal that she was 40 when her documents recorded her to be 42.

Tougher on women

Women are especially in danger of exclusion from the citizenship register. Typically, they have no birth certificates, are not sent to school, and are married before they become adults. Therefore, by the time their names first appear in voters' lists, these are in the villages where they live after marriage, which are different from those of their parents. They are told that they have no documents to prove that they are indeed the children of the people they claim are their parents. There were cases of being excluded from citizenship on this ground alone.

Impoverished migrant workers often travel to other districts of Assam in search of work, as construction workers, road-builders and coal-miners. In the districts to



which they migrate, the local police frequently record their names as illegal immigrants from Bangladesh. The police then mark them out as illegal immigrants. They receive notices from foreigners' tribunals located in districts where they might have worked years earlier, far away from their home districts they have to travel to for every hearing, adding further to their costs.

The NRC is not the only institution through which the state challenges them to prove their citizenship. A second process began in the mid-1990s when the then Chief Election Commissioner T.N. Seshan, as a one-time measure, directed officials to identify "doubtful voters" by marking a "D" against their names on the voters' list. This would temporarily bar them from voting or standing for elections, until an inquiry was completed.

But this temporary measure became permanent. The power was vested permanently with junior officials who could doubt the citizenship of any person at any time without assigning any reason. Those with the dreaded "D" beside their names had no recourse for appeal under the rules, with years passing without any inquiry.

The "D" also debarred them from being included in the draft NRC.

A third process empowers the Assam Police to identify anyone it suspects to be a 'foreigner'. Again, all that the police claim in most cases is that the person was unable to show them documents establishing his or her citizenship. People consistently deny that the police even asked them from documents. Why would they not show them these, when they all know the dangers of not allowing the suspicions of the police?

Opaque processes

All cases referred by the police are heard by Foreigners' Tribunals (FTs). Earlier, retired judges were appointed to these tribunals. The Bharatiya Janata Party government has appointed many lawyers (often members of the ruling party or the Rashtriya Swayamsevak Sangh) who have never been judges. There are now FTs in which not a single person has been declared an Indian citizen over several months. Many allege that both the police and presiding officers in FTs work to fulfil informal targets to declare people foreigners.

Even if a person finds her name in the NRC, the police can still refer her case to an FT; an election official can even deem her to be a "D"-voter. Article 20 of the Constitution includes as a fundamental right that "no person shall be prosecuted and punished for the same offence more than once". But this principle has been waived for FTs. We found that even after an FT had confirmed a person to be an Indian citizen, another FT and often the same FT can again issue notice to the same person to prove her legitimate citizenship once more. A person is never allowed to feel secure that the

state has finally accepted that she is an Indian citizen.

In this way, the sword permanently hangs low over their heads. Who will be challenged before which institution to prove that they are Indian citizens? Will they or their loved ones be stripped of their citizenship rights, and by processes that are opaque, unreasonable and discriminatory?

No person in any one of the testimonies that we heard was given legal aid by the state, which is bound to deploy lawyers paid by the state to fight their cases in the FTs and higher courts. People instead spoke of panic spending, of enormous amounts of money to pay lawyers, as well as for costs of travel of witnesses who they bring with them to testify in their favour. For this, they have had to sell all their assets or borrow from private moneylenders. The large majority of them are poorly educated and very impoverished, doing low-paid work such as drawing rickshaws, or working as domestic work or farm labour.

With the entire burden of proving citizenship on their shoulders and the arbitrary and opaque multiple forums to which they are summoned, people deprived of both education and resources are caught in a Kafkaesque bureaucratic maze from which they find it hard to emerge.

Trapped at the crossroads of history, their destinies depend on institutions that treat them with undisguised hostility and bias. There are indeed few parallels anywhere in the world of the state itself producing statelessness on the scale and in the manner that it is doing in Assam.

Harsh Mander is a human rights worker, writer and teacher

An appeasement Budget

The Interim Budget makes clear the class hierarchy in the Modi government's scheme of populism



PUJA MEHRA

Interim Budget 2019 has sought to make amends for all the wrongs of almost five years of the Narendra Modi government. For example, the debilitating impact of demonetisation on the informal sector that employs nearly 90% of the workforce had long been suspected on the basis of anecdotal evidence. The findings of the National Sample Survey Office's surveys – leaked last week after they were approved by the National Statistical Commission – show that unemployment rose to a 45-year high in the demonetisation year. The note ban, these findings suggest, has caused severe distress.

Some social security

To reach out to the segment worst hit, the Interim Budget announced the Pradhan Mantri Shram Yogi Mandhan for unorganised sector workers with monthly incomes of less than ₹15,000. With a token allocation of ₹500 crore, a direct benefit transfer of ₹3,000 a month as old-age pension has been proposed. Pensioners will receive the payments once they attain the age of 60. To be eligible, workers will

have to start contributing ₹55 every month from the age of 18. Those over 29 will have to contribute ₹100 every month. The government will match these contributions. The scheme targets workers in sectors such as leather, handloom and construction which took a body blow from demonetisation.

A possible inference can be that the Modi government does not expect – nor is it promising – upward mobility for this class to better quality jobs over the span of their working lives.

For the farmer

The Modi government's tenure has been marked by acute rural distress. Among the reasons to which it can be ascribed are legacy farm sector policy issues which no government has addressed in a meaningful way. In this, Mr. Modi's government has been no different. The minimum support prices and procurement policies it followed were more ineffective than is normal. In fact these policies reversed some of the corrections made by the previous United Progressive Alliance (UPA) government in the terms of trade for agriculture. The Modi government has also failed to respond adequately to the back-to-back droughts of 2014 and 2015. The import-export policy errors it made added to the gluts caused by bumper harvests in 2017 and 2018, which further depressed market prices and increased farmer



GETTY IMAGES/STOCKPHOTO

losses. The non-farming classes did profit to an extent from these policy failures. Falling food prices spelt losses for farmers but benefited kitchen budgets in middle-class households that had suffered from severe inflation under the UPA.

The Interim Budget offers farmers a peace offering in the form of income support of ₹6,000 a year, or ₹500 a month, financed fully by the Central government. The Pradhan Mantri Kisan Samman Nidhi (PM-KISAN) – inspired by Telangana's Rythu Bandhu – targets only landed farmers who own up to 2 hectares, while bypassing landless cultivators, the most vulnerable class in the agriculture sector.

In handing out these fiscal giveaways, Mr. Modi has bitten the bullet by reaching out to a class of voters who are traditionally not a constituency of the BJP. But these giveaways suffer from the same populist, rather than reformist, approach seen earlier with demonetisation which was planned as a

big bang intervention to downsize the black economy, and the design and implementation of the Goods and Services Tax (GST). These measures, which were not thought through properly, led to perverse consequences.

The downside

In a similar way, the PM-KISAN scheme is likely to encourage further fragmentation of already much fragmented landholdings. Farming households holding larger land parcels will try to split holdings to try to qualify for the benefits under the scheme. Had the scheme been dovetailed with a replacement of the highly distortional fertilizer subsidy with a direct benefit cash transfer, not only would a long-pending reform have been accomplished but the income support offered to farmers could have been nearly twice as much as has been announced. Bureaucrats had made a case for adding the fertilizer subsidy as a cash component to the income support, but Mr. Modi showed no appetite for the reform.

Even so, the Interim Budget leaves no doubt about which class of voters Mr. Modi is most eager to please. The gifts showered on the middle class outstrip those to the poorer sections who have borne the brunt of demonetisation and an incompetently designed GST. The income-tax rebate for individuals drawing incomes of up to ₹5 lakh will leave nearly ₹1,000 a

month more in their wallets. This is twice the amount farmers will receive from the PM-KISAN scheme.

And, middle class Indians will not, unlike unorganised sector workers, have to wait till they are 60 to receive the rebate or the other tax benefits announced, such as on fixed deposits and two self-owned houses.

There was something for the rich too. The most positive, and the only reforms-oriented announcement, was reserved for them – a promise of a complete digitalised experience in their dealings with the income-tax department. This could end the excessive harassment and the tax terror that have been unleashed in the past couple of years.

Compromising economics

Finally, apart from making clear the class hierarchy in Mr. Modi's scheme of populism, the Interim Budget provides evidence, if any more was needed, that Indian electoral politics is dependent even more now on schemes involving handouts and fiscal goodies. That the need to spend money on the voting classes is felt by successive governments confirms that no serious gains from economic reforms are reaching the non-rich. Politicians appear to be compromising good economics with increasing ease and relish.

Puja Mehra is a Delhi-based journalist

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Protest in Kolkata

West Bengal Chief Minister Mamata Banerjee has taken her political hostility towards the Bharatiya Janata Party to a dangerous level (Page 1, "Mamata goes on stir after CBI tries to quiz Kolkata police boss", February 4). The action of stopping Central Bureau of Investigation officials from discharging their duties is a serious breach of constitutional propriety because she has interfered in the due process of the law. It appears that she has embarked on a dangerous brinkmanship because of her inability to distinguish between Central agencies and the ruling party at the Centre. Victimhood loses its legitimacy when it turns into paranoia.

■ The showdown in Kolkata is a sad chapter in Indian

politics. Leaders such as Ms. Banerjee and Arvind Kejriwal, being the street fighters, subsequently continue to behave like what they were. In a democratic system, State governments should work within the framework of the Constitution and respect the Central government irrespective of party affiliations. Otherwise, it will result in anarchy and chaos. Why is Ms. Banerjee shying away from the Central Bureau of Investigation? Has she forgotten that this is an investigation into activities that siphoned off life-long earnings from the poor?

SHALINI MURTHY, Bengaluru

■ If one knows Ms. Banerjee well, her reaction causes no surprise. When she was in the Opposition there were often calls for 'strikes' on even the flimsiest reasons, in turn disrupting normal life.

One feels sorry for the people of West Bengal. V.S. GRI, Chennai

■ While Ms. Banerjee's angry response was a needless over-reaction to what is being made out to be a routine attempt to initiate an inquiry, one is left wondering why a little more decorum and protocol was not shown by the CBI. Had the Kolkata police commissioner cooperated with the inquiry, much of the sting in the action would have been taken out too. It is also very odd that a large posse of CBI officers landed up unannounced at the commissioner's residence late on Sunday evening. The ponzi scheme scam is certainly not one that warrants such dramatic action by the CBI. This oddity makes the episode appear to have been hatched at the behest of the Central

government, especially in the face of recent snubs that the TMC has inflicted on the BJP. One waits to see what the Supreme Court will have to say. ANAND ARAVAMUDHAN, Chennai

■ As can only be expected, the Opposition has quickly rallied around Ms. Banerjee and wasted no time in lambasting the Central government for using agencies like the CBI to further its own ends. What supports the Opposition claim is that in almost all the cases so far, the targets have been States where the Opposition parties are in power and the spotlight is on leaders who could pose a threat to the BJP. C.V. ARAVIND, Bengaluru

■ A tradable commodity Beginning with "the caricaturing of scientific

inquiry" that took place at the Indian Science Congress recently, the article on the crisis in public education (OpEd page, "Imagining alternative futures", February 4) tells us how fictionalised data are attempting to lure us into a dream of development from which we may never wake up. That education, far from being a right reinforced and guaranteed by a constitutional amendment, continues to be "a tradable commodity" is a nauseating truth being fed to young people, as public education buckles under the pressure to privatise being imposed by transnational capital. The implications for the quality and credibility of knowledge created in India are as unpalatable a truth as the subversion of facts being churned out to suit a regressive social agenda. VASANTHA SURYA, Bengaluru

Derailment

It is disconcerting that the derailment of the Delhi-bound Jogbani-Anand Vihar Seemanchal Express happened just a few days after Union Minister Piyush Goyal said in his Budget speech that Indian Railways "experienced the safest year in its history" (Page 1, "Seemanchal Express derails in Bihar; 6 dead, 30 injured", February 4). Funds must be devolved to restore and upgrade tracks, which is a basic necessity, instead of expending on luxuries such as bullet train projects. The accident, which took place in Vaishali district, Bihar, highlights the amount of work that still needs to be done to make train journeys accident-free and safe across the vast rail network in India. Y. MEENA, Hyderabad

MORE LETTERS ONLINE: www.hindu.com/opinion/letters/

America has lost the Afghan war

Once U.S. troops leave, the Taliban is sure to challenge Kabul one way or the other



STANLY JOHNY

The Remnants of an Army, a famous oil on canvas by Elizabeth Butler, is a lasting image of the First Anglo-Afghan War (1839-1842). It depicts William Brydon, a medical officer in the British Indian Army, arriving in Jalalabad from Kabul on horseback in 1842. Both Brydon, who was wounded, and his horse look exhausted. Brydon was the only survivor of the 16,000 soldiers and camp followers who were retreating from Kabul after the British invasion went awry.

One hundred and thirty-seven years later, the Soviet Union sent troops to Afghanistan to bolster its client communist regime. A decade passed before the Soviet troops too withdrew in ignominy. And again in 2001, the U.S., the sole superpower of the post-Soviet world, sent troops to Afghanistan launching its 'War on Terror'. Now, after 17 years of the war, with the U.S. and the Taliban agreeing 'in-principle' to a framework for peace that would provide the Americans a face-saving exit from Afghanistan, it's hard to miss the echoes from history.

Repeating mistakes of the past Afghanistan has historically been a difficult place for external invaders, thanks to its complex tribal equations and its rugged mountainous terrain. It's a classic example of a country whose geopolitical destiny is defined by geography. The British Empire sent troops to Afghanistan in 1839 as part of the 'Great Game'. They feared that the Russians would take over Afghanistan and be at the border of India, "the jewel in the British Crown". To pre-empt that, they conquered Kabul, toppled the Emir of Afghanistan, Dost Mohammad Khan, and installed their protégé Shah Shujah Durrani in power. When the invasion became unsustainable in the wake of the violent resistance by tribal fighters, mainly the faction led by Dost Mohammad's son, Akbar Khan, the British decided to withdraw. But while withdrawing, all their troops but Brydon were mas-



"After 17 years of fighting, the war has reached nowhere." An injured American soldier in Arghandab Valley, Afghanistan, in 2010. •REUTERS

sacred, and Dost Mohammad went on to recapture Kabul.

The Soviets made the same mistake. They sent troops to Afghanistan after an intra-party coup in the country. The Soviets were wary of Hafizullah Amin, who captured power and assassinated Nur Mohammad Taraki, the leader of the 1978 communist coup. In December 1979, Leonid Brezhnev deployed troops to Afghanistan. The Soviets staged another coup, murdered Amin, and installed Babrak Karmal, a Moscow loyalist, as President.

Given their defeat in the Vietnam War and their loss of Iran following the 1979 Revolution, the Americans saw the Soviet intervention in Afghanistan as an opportunity. They began supporting the mujahideen, the tribal warriors who were fighting both the communist regime and its Soviet backers, with help from Pakistan and Saudi Arabia, which were worried about the expansion of communism to the Muslim world. A decade later, the Soviets realised that the occupation had become unsustainable and pulled back.

When the U.S. decided to attack

the Taliban regime in Afghanistan in 2001, President George W. Bush said the 'War on Terror' would not end "until every terrorist group of global reach has been found, stopped and defeated". This was a tall order. The U.S. toppled the Taliban quickly and Afghanistan eventually got an elected government under President Hamid Karzai. But after 17 years of fighting, the war has reached nowhere. Since 2009, when the United Nations started documenting the casualties of the war, nearly 20,000 Afghan civilians have been killed in conflict and another 50,000 wounded. The U.S., which has spent some \$877 billion on the war, has lost at least 2,000 military personnel in Afghanistan since the war began.

An unsustainable war And what did it get in return? The Taliban, which retreated in 2001, is on the comeback trail. Some estimates suggest that nearly half of Afghanistan, mostly the mountainous hinterlands, is now controlled by the Taliban. In the east, a small cell of the Islamic State is well-entrenched and has carried out a series of sectarian

attacks in recent months, killing hundreds of Hazara Shias. The government is grappling with chronic corruption, and regional satraps call the shots outside Kabul.

U.S. President Donald Trump has made it clear many times that he wants to bring American troops back home. Yet he decided to send more troops to Afghanistan in 2017 to step up the fight against the Taliban. Since then, the U.S. has carried out large-scale air operations in Afghanistan, but it has failed to arrest the Taliban's momentum. The group continues to hold sway in rural Afghanistan and retains the capability to strike anywhere in the country. Just since 2014, Afghanistan has lost some 45,000 soldiers in battle. Amid mounting losses and an inability to break the stalemate in the conflict, the Americans, like the British Empire in the 19th century and the Soviets in the 20th century, seem to have realised that the first major war of the 21st century is no longer sustainable.

The role of the Taliban

The question is, what next? The U.S. says it has got assurance from the Taliban that the group won't provide a safe haven to terror groups in Afghanistan. It will also push for a ceasefire and intra-Afghan talks. But the fact remains that the U.S. has already conceded a lot to the Taliban. The Taliban said it would not talk to the Afghan administration; it does not acknowledge the government's legitimacy. The Americans accepted this and held direct talks with the insurgents, who negotiated from a position of strength. The U.S. has also agreed, in principle, to pull out troops, the biggest Taliban demand, without any clear agreement on the future role of the Taliban. This shows how desperate the U.S. is to get out of Afghanistan, a war it has lost badly. It will be exiting on terms largely dictated by the Taliban. It would be naive to say that the Taliban fought the war for 17 years only to reach an agreement with the Americans. It fought for power, which it lost with the arrival of American troops in 2001. And it's certain that once the Americans leave, the Taliban will challenge Kabul one way or the other.

stanly.johny@thehindu.co.in

Wrong on the Rohingya

Deportation of refugees is legally and morally problematic



THULASI K. RAJ

In January, the UN High Commissioner for Refugees (UNHCR) called for a report from India on the deportation of a group of Rohingya refugees to Myanmar in October 2018. India's repatriation of the refugees contravenes international principles on refugee law as well as domestic constitutional rights.

Global framework

Refugee law is a part of international human rights law. In order to address the problem of mass inter-state influx of refugees, a Conference of Plenipotentiaries of the UN adopted the Convention Relating to the Status of Refugees in 1951. This was followed by the Protocol Relating to the Status of Refugees in 1967. One of the most significant features of the Convention is the principle of non-refoulement. The norm requires that "no contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." This idea of prohibition of expulsion lies at the heart of refugee protection in international law.

It is often argued that the principle does not bind India since it is a party to neither the 1951 Convention nor the Protocol. However, the prohibition of non-refoulement of refugees constitutes a norm of customary international law, which binds even non-parties to the Convention. According to the Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations, UNHCR, 2007, the principle "is binding on all States, including those which have not yet become party to the 1951 Convention and/or its 1967 Protocol."

Article 14 of the Universal Declaration of Human Rights provides that everyone has the right to seek and enjoy in other countries asylum from persecution. Moreover, Article 51 of the Constitution imposes an obligation on the state to endeavour to promote international peace and security. Article 51(c) talks about promotion of respect for international law and treaty obligations. Therefore, the Constitution conceives of incorporation of international law into the domestic realm. Thus the argument that the nation has not

violated international obligations during the deportation is a mistaken one.

Domestic obligations

The chapter on fundamental rights in the Constitution differentiates citizens from persons. While all rights are available to citizens, persons including foreign citizens are entitled to the right to equality and the right to life, among others. The Rohingya refugees, while under the jurisdiction of the national government, cannot be deprived of the right to life and personal liberty.

The Rohingya are "among the world's least wanted and most persecuted people," according to a BBC report. In Myanmar, they are denied citizenship, the right to own land and travel, or to even marry without permission, says the report. According to the UN, the Rohingya issue is one of systematic and widespread ethnic cleansing by Myanmar.

Therefore, the discrimination that the Rohingya face is unparalleled in contemporary world politics. In *National Human Rights Commission v. State of Arunachal Pradesh* (1996), the Supreme Court held: "Our Constitution confers... rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise..."

India lacks a specific legislation to address the problem of refugees, in spite of their increasing inflow. The Foreigners Act, 1946, fails to address the peculiar problems faced by refugees as a class. It also gives unbridled power to the Central government to deport any foreign citizen. Further, the Citizenship (Amendment) Bill of 2019 strikingly excludes Muslims from its purview and seeks to provide citizenship only to Hindu, Christian, Jain, Parsi, Sikh and Buddhist immigrants persecuted in Bangladesh, Pakistan and Afghanistan. The majority of the Rohingya are Muslims. This limitation on the basis of religion fails to stand the test of equality under Article 14 of the Constitution and offends secularism, a basic feature of the Constitution.

The American philosopher Ronald Dworkin argues that if we claim international law to be law, we must understand it as part of the greater morality. In such a conception, the deportation of refugees by India is not only unlawful but breaches a significant moral obligation.

Thulasi K. Raj is a lawyer at the Kerala High Court

SINGLE FILE

The danger of cash transfers

It might incentivise the state to shirk its constitutional responsibility of providing basic entitlements to all

AKRITI BHATIA & CHANDAN KUMAR



With the general election around the corner and NSSO data revealing that the unemployment rate has hit a 45-year high, there is a spike in concern for the economic security of the people. Several recent proposals – whether the Congress's pre-emptive announcement of a minimum income guarantee scheme, or

the Interim Budget's promise of a range of income transfers to farmers (albeit as low as ₹3 per day for a family of five) and a pension scheme for workers aged over 60 years in the unorganised sector, or the government's announcement of a 10% quota for the "economically weaker sections" in the general category – might appear promising but raise questions about their impact on the working poor.

If uplift of the poor is a priority, why not provide decent employment opportunities, minimum wages and social security to all workers? Why not spend on universalising access to, and provision of, basic public services to all? Why, contrarily, are there periodic cuts in social sector spending, including on public education and primary health; amendments in labour laws in favour of corporates; and privatisation and contractualisation even within the public sector?

In this context, cash transfers to the "poor" – also subject to gross exclusionary errors of identification – do not ensure accessibility, affordability or even sustained economic security given falling real wages. The scheme also doesn't indicate where that money would be spent by the beneficiaries. More importantly, the concern is that these cash transfers could replace, rather than supplement, existing schemes that provide subsidised goods and services. This would imply that citizens could be left at the mercy of private, for-profit players to avail even basic services. This might incentivise the state to shirk its constitutional responsibility of providing basic entitlements to all.

Case studies around Direct Benefit Transfers have shown that they play an instrumental role in dismantling existing welfare schemes and deprive ASHA and Anganwadi workers of their wages. These workers have been pillars in creating an ecosystem for ensuring nutritional security to women and children. Even in Europe, wherever guaranteed basic income has been implemented, provision of services has increasingly moved towards greater privatisation.

Finally, it is surprising that the same government that earlier opposed cash transfer schemes as "doles" is now advocating them. Politically the scheme seems to be the most viable option now, given the unemployment catastrophe. Hurried income transfers before the election could be considered as "cash for votes", but the larger danger entails the state's diminishing accountability towards its citizens, of upholding their rights to basic entitlements and to work.

Akriti Bhatia is a Ph.D. Scholar at the Delhi School of Economics. Chandan Kumar works with the Working Peoples' Charter, a collective that works with informal labour across India



NOTEBOOK

'Why must we tell you?'

Often people revisit traumatic memories only to tell journalists their stories

MEERA SRINIVASAN

As journalists, we are often guilty of behaving like an entitled bunch. We ask questions, demand answers, call people at odd hours with or without an apology, or trouble a friend for a phone number we have lost.

It is one thing to pose difficult questions to those in power, those who are accountable to the people, or those who think privilege ought not to be challenged. But it is quite another to nudge people who are in the lap of danger or adversity to share their stories with us, so we can tell them.

It was late 2003, and I was in journalism school. A group of us were taken to Pappapatti, Keeripatti and Nattamangalam in Madurai district to try to understand, and report on the entrenched caste hegemony that was reflected in the periodic violence that mili-

tant sections of the dominant Thevar caste group unleashed on the oppressed Dalits. Despite the panchayats being reserved for Dalit candidates, most were forced to stay out of the contest. The few who took a risk paid with physical injury or, at times, life.

We approached a middle-aged woman in the Dalit village, hoping to get her perspective. "Why must we tell you?" she screamed. "Who are you? So many media folk come here and ask us questions, but has anything changed for us? Can you assure me that you can publish the truth and make a difference?" Obviously, we couldn't promise change, but we reported what we saw.

About a decade later, in 2012, I went to Idinthakarai in Tirunelveli district to report on how locals felt about the imminent commissioning of the controversial Kudankulam nuclear power plant. I walked

towards a woman seated in front of her house and even before I could say a word, she said: "What? Interview? We don't need the nuclear plant." Clearly she was in no mood to tell us. But after some time, when more women joined her, she began speaking with less anger, and explained in painstaking detail why they were opposed to the plant that, they believed, would endanger their health, community and village.

From time to time, I sense scepticism among some people I meet in the war-affected areas of Sri Lanka, especially those under continuing military surveillance. After speaking to them, we reporters might come back with a compelling human story, but the residents have to continue living there, at risk and experiencing anxiety every day. Invariably though, a few minutes into the conversation, they begin sharing very personal stories of

love, pain, loss and distress. Retelling them means revisiting traumatic memories but they still do. They let a complete stranger into their homes, serve tea, and are willing to trust sooner than we'd think.

For a decade now, Sri Lankan activist Sandya Eknaligoda has been campaigning for the truth about her disappeared husband, the dissident journalist-cartoonist Prageeth Eknaligoda.

Sandya challenges powerful politicians boldly, turns up for every other protest on enforced disappearances – be it in Colombo or in the north. She has given many interviews to local and foreign media, meticulously sharing details of Prageeth's disappearance each time. Some time ago I asked her, "How do you agree to tell this story again and again, it must be hard." She said: "Yes, it is. But since giving up is not an option, I do it."

FROM THE HINDU ARCHIVES

FIFTY YEARS AGO FEBRUARY 5, 1969

Ajitha's bail application rejected

Mr. P.K. Lakshmanan, District and Sessions Judge, to-day [February 4, Calicut] rejected the bail application filed on behalf of Miss Ajitha, said to be one of the top Naxalite leaders, now under remand in connection with the attack on Pulpalay wireless station. The Judge, however, granted bail to another accused, Mohanan, on health grounds. The Judge observed that though the investigations in the case had not yet been completed, a prima facie case had been made out against Miss Ajitha in all the cases in which she was alleged to have been involved. Miss Ajitha was credited with being the "motive force or live wire" of the group which was alleged to have committed the offences. The Judge said that since several others alleged to be involved in the crimes were yet to be apprehended, the danger of the crimes being committed again if the accused was enlarged on bail, could not be over-ruled.

A HUNDRED YEARS AGO FEBRUARY 5, 1919

Tragedy in a Hotel.

About 1 O'clock this afternoon [February 4] a report of a revolver was heard in Taj Mahal Hotel [in Bombay]. The waiters, thinking that it must have been the sound of the bursting of a motor tyre at the taxi stand below, took no notice of it. A little later someone was heard calling out for help from room No. 442, and on a waiter peeping through the half-closed doors he found a gentleman lying flat on his chest on the floor. The waiter immediately rushed downstairs to the Manager's Office to obtain help. On his way down he was stopped by an officer who enquired of him as to what was the matter. On the waiter informing him that something serious had happened in room No. 442 the officer at once rushed upstairs to the room, picked up the gentleman and put him on his cot. Assistance came in promptly and the gentleman, whose name is Lt. H.R. Playfair, was placed in a motor ambulance and removed to Colaba War Hospital. He had a bullet wound on his right shoulder. Lt. Playfair has been staying at Taj Mahal Hotel for some time and he was alone in his room when the revolver was heard to go off. The police found a revolver in his room with an empty cartridge in one of its chamber. The matter is under investigation.

CONCEPTUAL Matching hypothesis

PSYCHOLOGY

This refers to the idea that people are more likely to be romantically attracted towards people who are as attractive as themselves than those less or more attractive. While physical attractiveness can determine the mating preferences of people to a significant extent, social and other non-physical forms of attraction can also determine mating patterns prevalent across various human societies.

MORE ON THE WEB

The Hindu explains: What is the polar vortex?

<http://bit.ly/Polarvortex>