



Targeting refugees

The Centre has revealed a disturbing intent to push the Rohingya back to a conflict zone

The Union government's position that it considers Rohingya refugees from Myanmar's Rakhine state as a potential security threat is a disturbing attempt to paint the persecuted community in a poor light so that it could justify their deportation in future. While some degree of caution is necessary in dealing with any unusual flow of refugees from a conflict-hit region, the imputation of collective motivation to the Rohingya refugees in the country, estimated to number about 40,000, is heartless. The Centre's affidavit in the Supreme Court contains self-serving arguments: that providing for refugees from out of the country's limited resources would have an adverse impact on its citizens, as they would be deprived of their legitimate share in employment, housing, educational and medical facilities; that there is growing stridency in Rohingya militancy; and that Buddhist citizens face threat of violence from the refugees. Whether or not these assertions are based on facts, they disregard the wider context. Myanmar refuses to accept most Rohingya as its citizens, rendering them stateless, and hundreds of thousands have fled to Bangladesh in just the past few weeks. The intention to deport them by itself constitutes an unusual abandonment of humanitarian principles, as India has an exemplary record in taking care of refugees from many countries since Independence. India is not a signatory to the UN Convention on Refugees, 1951, but it has so far adhered to its normative standards. It has played host to refugees of all hues, and stood by the principle of non-refoulement, under which refugees cannot be forced to return to conditions of danger.

Non-refoulement has now evolved into a peremptory norm that every country is expected to follow. The existing law on the subject as well as some judicial decisions do support the norm that deportation of illegal immigrants is a matter of executive policy. It is also true that the fundamental rights relating to movement and settlement within the country are available only to citizens, but it cannot be forgotten that the right to life and liberty under Article 21 is not confined to citizens, but anyone who has to face the rigours of law on Indian soil. As the Centre asserts, it does have a procedure to pass deportation orders, one that it believes is fair and reasonable. But when an entire class of people is identified for deportation and accused of plotting against the host country, it is unlikely that fairness can be assured in every case. India may have strategic and diplomatic reasons for backing the Myanmar position with regard to terrorism in the Rakhine region. However, that does not necessarily mean that it should cite vague fears about militants infiltrating the country under the guise of refugees, who happen to be Muslim, to deny safe haven to a largely stateless community.

The Kurdish vote

With Iraqi Kurds still firm on a referendum, Baghdad must keep tensions from escalating

Iraqi Kurdistan's decision to go ahead with a proposed independence referendum, despite strong opposition both from within and outside Iraq, has created a regional political storm in West Asia. The Iraqi Supreme Court has already asked the Kurdistan Regional Government to suspend the vote, scheduled for September 25, till its legality is settled. Iraqi Prime Minister Haider al-Abadi has threatened to use force if the referendum turns violent. The Turkish government has ordered a military drill on the Iraqi border, while Iran has also issued a warning. Such opposition is largely driven by fears that a 'yes' vote in the referendum, which is almost certain, would enhance the nationalist aspirations of Kurds living in other countries and further destabilise the region. Besides Iraq, Kurds, the fourth largest ethnic group in West Asia but without a state, are scattered in various countries, including Turkey, Iran and Syria. In Turkey, Kurdish rebels are involved in a protracted civil war, while in Syria they have established a regional government. They are all keenly awaiting the outcome of the Iraqi vote. A 'yes' vote doesn't necessarily mean that Iraqi Kurdistan would immediately break away from Iraq. Both the regional government in Erbil and the federal government in Baghdad are not ready for that. But the Kurdish Regional Government, led by Masoud Barzani, wants to send a message to Baghdad as well as the outside world that its aspirations for independence are genuine and have popular resonance.

For generations, Iraqi Kurds have been at the receiving end in the dysfunctional relationship between Baghdad and Erbil. Kurds had been brutally repressed until the regional government was formed following the first Gulf War of 1991. Since then, they have exercised autonomy and built institutions for self-governance, but Kurdistan has remained part of Iraq. Now, Mr. Barzani, who will step down as the President of the regional government after the November 1 elections, is looking to begin the process for restructuring Erbil-Baghdad ties. Baghdad should see this as an opportunity to address the Kurdish question. In recent years, both Baghdad and Erbil cooperated in the fight against the Islamic State. Now that the IS threat has been largely contained, both sides can refocus their energies on settling the dispute between themselves. Though independence remains the proclaimed goal of Iraqi Kurdistan, Mr. Barzani himself has often signalled compromise. He once proposed a confederation, a united state in which Iraq and Kurdistan could co-exist, sharing resources and a vision on foreign and security policies. Baghdad chose to ignore such proposals. With the push for the referendum, Kurds are trying to change the status quo. Federal dialogue is essential, for it is neither in Baghdad's nor the Kurds' interest to jeopardise the relative calm in Iraq's northeast, or to deepen sectarian fault lines.

India needs to push for a new deal

It must reopen the discussion on balancing the global intellectual property system with development



PADMASHREE GEHL SAMPATH

Global trade and intellectual property are at a crossroads. In a time when multilateral consensus is languishing on a large number of issues, the Trump administration is considering pulling the U.S. out of most free trade agreements on the ground that it needs a more favourable environment for its companies and its people. Much will be written about the carnage as far as jobs, wages and national sovereignty that the current American onslaught on trade deals brings to the fore. Here, I focus on a critical issue — how trade deals are becoming the new Trojan horse to ensure stronger patent protection and continued profits to global companies.

Problem with trade deals

A bit about the historical trajectory of events. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) embodied an international regulatory regime for the first time, in 1995. Although it represented a major compromise for most developing countries, it was only the starting point for many other nations, which have since then promoted excessive protection of private investor interests through bilateral trade agreements, often at the expense of wider public interests. Corporate libertarians, riding high on increased market power, continue to lobby their governments for absolute protection of intellectual property (IP) rights of corporations.

For the U.S. in particular, which has never made any qualms about the importance of its domestic corporate interests, trade agreements are a prime vehicle to supplant its strong domestic standards of IP



protection in partner countries, in a bid to ensure the same level of privileges for its companies abroad. Over the past 20 years, the American strategy has been a neat one: to pursue bilateral agreements with individual countries one by one to ensure stronger IP protection across markets, by sidestepping the multilateral regime.

Gaming the system

In an inter-connected and highly globalised world, what goes around comes around quite fast and often with drastic consequences for all. In this case, the crux of the matter lies in how these stronger rules are changing the global corporate landscape. For years now, while patent protection is getting stronger in all sectors in a large number of countries, the conditions for its grant are becoming greatly relaxed. Not only do such lax patenting requirements allow companies to claim patents more broadly — or consecutively, with little show of original effort as in the case of evergreening — but also patents can be claimed on all possible inventions (and discoveries) that are of relevance to the present, and even to the future. A large number of countries have already foregone many degrees of policy freedom by signing up to 'TRIPS-Plus' standards of protection. This, in conjunction with other trade measures, is disintegrating exist-

ing markets and rigging established rules of the game. A superstar firm today is not necessarily one with the greatest technological breakthroughs or the largest research and development labs, but surely is one that has a large IP portfolio, engages in extensive litigation on patent issues, and thrives on licensing revenues. Noting the gravity of the situation, *The Economist* in 2016 produced two short opinion pieces on how corporate profits and returns on capital are at near record levels in the U.S. and what might be wrong with it. It argued that established companies are "becoming more entrenched" in existing markets worldwide, and made the case that high profits may be a sign of a sickness rather than growth and called for reining in IP rights.

At the global level, these sectors are stratified, with profits neatly split up between large corporations and new kinds of non-innovator firms that simply amass patents speculatively in upcoming, promising technologies for spurious returns. The non-innovator companies are the patricians of the system: when they hit the technology jackpot, they control the market and have the power to shift wealth and control competition. An example that beautifully captures the situation is Qualcomm Inc., an American company that is the legal patent holder of thousands of patents that are con-

sidered critical to build mobile phones with wireless technologies, accounting for a total profit of \$5.7 billion through intellectual property licences in 2016 alone.

Stemming the tide

For India, the fate of its pharmaceutical and software sectors swings in the balance, and guaranteeing fair and unfettered competition will be critical to ensure that we do not lose more ground to global companies abroad and at home. The United Nations Conference on Trade and Development (UNCTAD)'s recent Trade and Development Report calls for stronger measures to protect domestic sectors against the undue domination of large companies, particularly in high-profit sectors such as pharmaceuticals, media and information and communications technology (ICT), where foreign companies still account for most of the transfer of profits across borders. Warning against trade deals that seek to protect the status quo, the report identifies patents as an instrument of unfair market power across markets. The report uses data for U.S. multinational companies (MNCs) and their foreign affiliates in India to show that patent reforms have led to significant increases in the rates of return to affiliates of American companies by enabling monopoly profits when compared to publicly listed and locally headquartered companies, which are increasingly being left behind. In the pharmaceutical sector, for example, the analysis that ranges 20 years (from 1996) shows that profits of domestic companies are in sharp decline since the late 2000s while those for the American MNC affiliates operating in the Indian market are rising steeply. A similar trend is visible in the ICTs sector as well.

It is important to take these findings in the broader perspective of what India's growth drivers will be in the years to come. Our high-technology sectors are already taking a beating because they operate

in a volatile global environment. Supporting IP standards that simply follow a 'winner takes all' ideology without emphasis on technological advancement and competitive markets will be a regrettable mistake. What India needs right now is a clear and tough stance on intellectual property both in domestic policy and at the multilateral level. At home, support for innovation has to be accompanied with instruments that guard against the misuse of market power, coercive bargaining and aggressive merger and acquisition strategies if local firms should survive and flourish.

Heated negotiations in the run-up to the upcoming WTO Ministerial Conference in Argentina already show that these issues will be central: there are ongoing attempts by big business to push for new rules in areas such as e-commerce to slice up profit-making opportunities of the future. Other proposals being made will largely limit the ability of governments to constrain corporate behaviour in the public interest even if they succeed partially. In such an international context, we need to stop soft-peddling on these issues in the pretence that we aspire to be a major IP player in the same vein as the U.S. What we need is a return to old-fashioned pragmatism that clearly shows the West that India recognises the fallacy of the current IP system and leads the way to broker a global new deal. This new deal should not only call for a return to business in the WTO by tackling the forgotten issues of the Doha Round but also firmly reopen the discussion on balancing the global IP system with development. That way, even if we don't win in Argentina, we will have made an ambitious start in redefining the global trade and IP agenda.

Padmashree Gehl Sampath, a policy expert at the United Nations Conference on Trade and Development, is one of the authors of the Trade and Development Report 2017

In Vivekananda's country?

His wise words on sheltering refugees are not reflected in the government's affidavit on the Rohingya



KARAN THAPAR

Just about ten days ago, on September 11, Prime Minister Narendra Modi admonished a students convention for forgetting the significance of 1893. Many were perplexed until they realised this was the year Swami Vivekananda delivered his famous speech to the World Parliament of Religions in Chicago. As Mr. Modi put it, that date was the original 9/11. "Had we not forgotten the significance of our own 9/11, there would have been no 9/11 in 2001," he added.

Perhaps the Prime Minister has himself either forgotten or is unaware of an important and, today, very relevant boast at the start of Swami Vivekananda's speech. In a critical sentence he said: "I am proud to belong to a nation which has sheltered the persecuted and the refugees of all religions and all nations of the earth."

Unfortunately, that sentiment is

not reflected in the government's affidavit on the Rohingya presented to the Supreme Court on Monday. Instead, it views them as "a very serious threat and potential threat to national security". It claims "many of the Rohingyas figure in the suspected sinister designs of ISI/ISIS and other extremist groups". It accuses them of "mobilization of funds through hundi/hawala channels". Finally, it adds there's a "serious potential and possibility" of Rohingya violence against Buddhists in India.

Assertions without evidence

Yet these are simply broad and generalised assertions. So far the government has not submitted a shred of evidence to support them. In fact, there's a good reason to disregard or even dismiss these exaggerated fears.

First, whilst it's true that the Arakan Rohingya Salvation Army has connections with Hafiz Saeed and al-Qaeda, it would be grossly unjust to view all Rohingyas as potential terrorists. That leap of logic is akin to a flight of imagination. Or else, because the Lashkar-e-Taiba and Jaish-e-Mohammed and now, perhaps, al-Qaeda and the Islamic



State conduct operations in Kashmir, this argument should lead to the government viewing all Kashmiris as terrorists!

However, it's not just the government's logic that falls apart; facts also disprove its position. S.D. Singh, the Inspector General of Police in Jammu, where the largest Rohingya concentration is located, has told NDTV that there are only a few cases of petty crime against them, the sort that poor refugees are often accused of, and they are not a threat to national security. Several other police officers have said that the same seems to be true of Rohingyas settled in Jaipur, Delhi, Chandigarh and parts of Haryana such as Faridabad and Mewat.

Second, the claim that the Rohingyas are carrying out hawala

transactions is nothing but an insult to their poor and wretched status. If they had the money for hawala transactions they would surely spend it on improving their miserable existence. You only have to look at the conditions in which they live to realise how unlikely is this charge. If it were not hurtful, it would be laughable.

Third, the claim that the Rohingya will indulge in violence against Buddhists in India is simply bizarre. You could just as well say that Hindu refugees fleeing Pakistan and Bangladesh could be a threat to Indian Muslims. This argument suggests the government is dredging up whatever fear it can to demonise the Rohingya in the eyes of the Supreme Court.

Attempt at avoidance

The government's affidavit is clearly an attempt to get around India's international law commitments and its own constitutional provisions, both of which require the grant of sanctuary to the Rohingya. That now depends on whether the Supreme Court is intimidated by the government's lengthy affidavit or has the strength to stand up for the prin-

ciples of our Constitution and international law. These are quite explicit.

No doubt India is not a signatory to the 1951 UN Convention on Refugees or its 1967 Protocol, but we are still bound by the many conventions on human rights we have signed. These include the UN principle of non-refoulement, which explicitly forbids the forcible return of refugees. More importantly, the Supreme Court has ruled that the right to life and personal liberty under Article 21 applies to all people in India, irrespective of citizenship. That includes the Rohingya refugees. The government cannot overlook all of this without shaming India.

Paradoxically, Union Minister of State for Home Affairs Kiren Rijiju has tweeted, "This chorus of branding India as villain on Rohingya issue is a calibrated design to tarnish India's image." The actual truth is that it's the government that's doing the tarnishing. The Supreme Court now has an opportunity to uphold India's self-respect and honour.

Karan Thapar is a television anchor

LETTERS TO THE EDITOR

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Interactions in Kashmir

After failing to take stock of the situation and enabling a permanent solution to end the impasse in Jammu and Kashmir during his 10-year tenure as Prime Minister, Dr. Manmohan Singh's move now to lead a Congress team on a fact-finding mission and 'healing mission' to Kashmir is nothing but an exercise in futility. It is also aimed at deriving political mileage and a ruse to show the PDP-BJP government in a poor light before the people of the Valley. The team's visit has also come at a time when separatist elements are on the back foot after the elimination of commanders of Pakistani-sponsored terror outfits.

K.R. SRINIVASAN,
Secunderabad

■ It would be advisable if the two major national parties take a bipartisan attitude on a Kashmir policy and work out a framework for lasting peace. Essentially, this should involve all groups in Kashmir. An all-India effort must be in place to make Kashmiris feel safe and secure here. The long

journey after Independence and a couple of wars with Pakistan have taught us enough lessons that in unity lies strength. Fewer sound bites and more ground work is what is needed.

B. SUNDAR RAMAN,
Coimbatore

India on the Rohingya

Ever since the crisis involving the Rohingya erupted in its extended neighbourhood, the government in India has failed to make any diplomatic effort to defuse the crisis. The Prime Minister's visit to Myanmar did not touch the nerve of the problem. It was only after much persuasion by Dhaka that New Delhi woke up in response and came out with a soft-worded statement and drew up a soft policy of dispatching relief items to refugee camps in Bangladesh. This has been an inadequate move and doesn't reflect the leadership role that behoves a nation aspiring to be a leading power. It needs to do more by balancing its diplomatic relations with nations in the region while

helping to find a lasting solution of the crisis ("Rohingya have terror links: Centre", September 19).

BIBHUTI DAS,
New Delhi

■ Why should India be so adamant about deporting the Rohingya despite world and domestic opinion? Just look at the pictures of the Rohingya who live in refugee camps, with fear written on their faces about the threat of deportation by India.

Most of them are a bag of bones, they ran to this nation empty-handed and with trust, and want asylum here till things become normal in their nation. Do they look like they are capable of causing security threats to India when their worry is about the security of their families primarily? No one likes a 'refugee status' permanently. Is it because of the present government's belief that being from a particular minority community is a source of threat to our national security? Doesn't India have the capability to

find those who are really indulging in such anti-security acts, isolate them and treat them fittingly?

RAMEEZA A. RASHEED,
Chennai

Down South

What is most tragic in the political spectacle in Tamil Nadu is the fact that statutes such as the anti-defection law and those governing the conduct of MLAs are being unconsciously exploited. It is conveniently forgotten that the very spirit of such statutes is to ensure that the concept of governance should not be reduced to the spoils system, where the greed for power, pelf and aggrandisement keeps the juggernaut going ("T.N. Speaker disqualifies 18 rebel AIADMK MLAs", September 19). On the contrary, all the dramatics are vying with one another to flaunt legal and constitutional niceties only to bide their time and outwit their mutually exclusive factions. Can there be a better illustration of well-meant laws being put paid to?

S. BALU,
Madurai

Politics here too

Thanks to the crazy intervention of politics, even the election of the Bharat Scout and Guides Movement (Tamil Nadu) — which would otherwise have never attracted any media attention — is now in the limelight (Some editions, "BJP's Raja loses bid to head Scouts and Guides", September 17). Why does the BJP want to influence even an international movement? Why move away from the clear intention of Lord Baden-Powell, the founder of the scouting movement, who said, "A scout and guide credential is measured not on the number of badges attached to the uniform one wears but by the character that one holds dear to the heart in serving the humanity with no discrimination of any sort?"

VICTOR FRANK A.,
Chennai

Rail travel

It is always a bone of contention among train passengers when it comes to claiming berth space,

storing luggage, sharing mobile charging points and so on.

One cannot deny the fact that train travel is the most comfortable mode of transportation which, at an affordable price, comes with a comfortable full-length berth and a washroom facility which cannot be found even in air travel. It is unfortunate that because of some bad apples who have caused quarrels to breakout over oversleeping passengers using the middle and lower berths, the Indian Railways have had to reduce the sleeping time of passengers ("Railways cut sleeping time by an hour", September 18). We should learn to hold on to the existing benefits and request better amenities going by the plate placed in all coaches which says: "Help the railways to serve you better." A pleasant journey is always possible with the proper understanding and cooperation of fellow passengers.

KSHIRASAGARA BALAJI RAO,
Hyderabad

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