## The gun and the pen

Stringent laws are only part of the solution to violent extremism

rime Minister Narendra Modi's recent observations at a conclave of State Home Ministers contained a possibly unintended explanation for why academicians, students and lawyers are languishing in prison on terrorism charges. He called for the elimination of all forms of Naxalism, be it of the gun-wielding variety or the kind that uses the pen "to raise international support" and "to mislead the youth". The remarks came alongside his emphasis on how the Unlawful Activities (Prevention) Act had given an impetus to combating terrorism. In effect, he has conveyed a disconcerting message that the police would treat armed militants and intellectuals alike, if the Government suspects a concordance in their outlook. Considering that the UA-PA has been frequently and even unfairly invoked in cases that appear to have no nexus with terrorism, Mr. Modi's views raise a question whether his comments are a justification of sorts for the continued incarceration of many who do not seem to have indulged in any particular extremist act. Incitement to violence, especially mobilising support for armed insurgency, is indeed a grave offence, but unless there is a proven connection between the nature of the support given and an actual act of terror or a plot to commit one, it is difficult to treat the two things as one.

Recent judicial orders declining bail to activist Umar Khalid in the Delhi riots case, and Jvoti Jagtap of the Kabir Kala Manch in the Elgar Parishad case are good examples of how the police straddle the huge gulf between the nature of their participation in a protest or an event and an actual act of violence by invoking UAPA, and thus eliminating the need to have concrete evidence to show their involvement in a communal or Maoist plot. While this may highlight the potential for misuse of UAPA and the impediments to liberty found both in the law and in its judicial interpretation, it also has a distinct side-effect: the manipulation of political discourse in such a way that those who question the actions, methods and processes of the state that cause mass resentment are criminalised. It is in such a backdrop that the use of political catchwords such as 'Urban Naxals', a term that even Mr. Modi has used recently, should be seen. Far from being linked to any terrorist or Maoist conspiracy, the term is merely used to tarnish those with an alternative point of view. The Government arming itself with more stringent laws is only part of the solution to the threat posed by violent extremism. Looking for remedies to the underlying causes is more important than conjuring up conspiracies in the name of dismantling its support structures.

## **Burden of tragedy**

People were allowed to walk

t least 140 people were killed after a suspension bridge, a tourist attraction in Gujarat's Morbi town, collapsed, sending hundreds of revellers into the Machchhu river below. At least 47 of the dead were children, making it one of India's most horrendous tragedies. Inaugurated in 1879, the bridge was renovated and opened on October 26, four days before the tragedy. This raises several concerns. A company that seems to have had no apparent expertise or track record in the field was awarded the contract. There are questions about the fitness of the bridge; in any case, it was not intended to carry more than 150 people at a time, according to reports. Hundreds were on the bridge when it snapped as there was no crowd control. People were allowed to walk into a death trap. All these point to a major failure of governance at various levels. Gujarat is among the richer States of India, but it has often faced governance challenges – its poor management of the pandemic is a case in point. Human acts of omission and commission often cause tragedies, and significantly change the impact of natural disasters. The police have arrested nine people, including two officials of the company that is now under a cloud, and the government has announced compensation to the kin of the victims. A thorough inquiry and the fixing of accountability must follow quickly. The findings should be made public as soon as possible, and the guilty must face exemplary punishment.

Coming out of the long restrictions on travel necessitated by the COVID-19 pandemic, people all over the world appear to be binging on travel and outings. A stampede in Seoul in South Korea killed 154 people last week. In India also, record numbers of people are thronging tourism and pilgrimage spots. While tourism and travel are powerful engines of the economy, there must be more attention paid to ensure that they are safe and sustainable. Tourist and pilgrimage centres around the country should carry out safety and environmental audits to ensure that crowd management and safety protocols are in place to avoid tragedies such as this. Development of new centres where large numbers of people are expected should account for such contingencies. The rapid pace of road and infrastructure development in ecologically sensitive areas such as the Himalayas should be in accordance with topographic limitations. More must be done to regulate the flow of travellers according to the infrastructure capacity of particular destinations. Tourism promotion campaigns must include creating safety awareness among visitors and local officials.

## Sequence of implementation, EWS quota outcomes

he original intent of the reservation policy in newly independent India was to level the playing field for the most marginalised sections, those stigmatised and discriminated against on account of their birth into specific caste and tribal groups. While these groups were also economically deprived, that was not the main rationale for instituting compensatory discrimination in favour of these groups.

Over the decades, the instrument of reservation has expanded to include more groups under its ambit, leading to furious debates both about the general principle of affirmative action and about which groups deserve to be beneficiaries. These disputes have resulted in complex legal cases, with the rulings providing the nuts-and-bolts mechanics that guide the implementation of the reservation policy on the

This article draws attention to a crucial impending implementation decision about the economically weaker sections (EWS) quota, and shows how the sequence of implementation would result to diverging outcomes.

The reservation system in India takes two forms: vertical reservation (VR), which until 2019 was defined for stigmatised and marginalised social groups (SCs, STs and OBCs); and horizontal reservation (HR), applicable to cross-cutting categories such as women, people with disability (PWD), domicile, etc. As long as the VR system was social group-based, no individual was eligible for multiple VR categories, since no individual can belong to multiple caste or tribal groups.

The 103rd Constitution Amendment Act in 2019, popularly known as the 10% quota for the so-called EWS, fundamentally altered the original raison d'être of reservations by opening VR to groups that are not defined in terms of hereditary social group identity (caste or tribe). EWS status is transient (that individuals can fall into or escape out of), but social groups are permanent markers of identity.

While this meant that in principle, an individual could belong to two VR categories (say, SC and EWS), the amendment explicitly removed individuals who are already eligible for one VR (SC, ST, or OBC) from the scope of EWS reservations. As a result of this exclusion, an individual could still be only eligible for at most one vertical category.

Exclusion of SCs, STs, OBCs from the scope of EWS reservation was immediately challenged in court on the grounds that it violated individual right to equality (that roughly corresponds to



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The judiciary needs to note a subtle aspect of economically sections' (EWS)

reservation, i.e., first or last, in ensuring that there is an implementation

Articles 14-18 of the Indian Constitution).

On the last day of hearings at the Constitutional Bench of the Supreme Court, the following "compromise" proposal was made by G. Mohan Gopal: do not revoke the amendment but interpret the language of the amendment in a way that does not exclude SCs, STs, OBCs from the scope of EWS reservation.

Overlapping VR categories and ambiguity

Allowing for overlapping VR categories (such as SC and EWS, etc.) generates an important ambiguity under the current legal framework, most notably stemming from the ruling of the Indra Sawhney case (1992). Under this, any member of a reserved category who is entitled to an open-category position based on "merit" (examination) score should be awarded an open-category position, and not be slotted under a VR position. Technically, this implies that open-category positions must be allocated based on merit in the first step, and VR positions should be allocated to eligible individuals in the second step. This procedure is called "over-and-above" choice rule in the literature. This is to be distinguished from the "guaranteed minimum" rule which would guarantee a minimum number of positions to members of beneficiary groups, regardless of whether they enter through reserved or open ("merit") positions.

When VR categories are mutually exclusive, i.e., no individual can be a member of multiple vertical categories, it is completely immaterial in what sequence vertical categories are processed in relation to each other. However, if individuals can belong to two vertical categories, the relative processing sequence of vertical categories becomes very important, as Sönmez and his fellow economist Utku Ünver show in their 2022

How will sequencing matter? EWS-first: Consider the scenario where EWS positions before other VR categories, immediately after the open category seats. In her 2019 paper with economist Rajesh Ramachandran, Deshpande shows that under the current income limit for EWS reservation, more than 98% of the population qualifies, i.e., almost everyone is eligible for EWS reservation. If EWS reservations are filled first, the outcome would be the same as treating EWS positions as open positions.

This would effectively end up making the EWS reservation redundant. Since the richest applicants are not eligible for EWS, the actual outcome would be slightly different, but not a whole lot as the richest 2% may not even apply to

public institutions where quotas are applicable. EWS-last: If EWS positions are allocated after all other VR positions are filled, this issue will not arise. Now, while all individuals with incomes lower than the EWS limit are equally eligible for EWS positions (which is still effectively all individuals), the system awards the EWS positions to eligible individuals who have highest merit scores. But since some of the higher score individuals from SCs, STs and OBCs would be admitted under their respective quotas, this sequencing will make EWS positions more

#### On which sequence is better

accessible to members of forward castes.

The purpose of this article is to demonstrate that two routes imply very different policy outcomes. We are highlighting the fact that overlapping VR categories lead to a major ambiguity (or loophole) in the system. If the objective is to make EWS equally applicable to the current VR categories, then EWS-first should be adopted with the recognition that this sequencing will effectively convert EWS into what are currently open category positions. If the objective is to minimally interfere with the amendment, then EWS-last should be adopted with the recognition that this sequencing will still tilt the EWS category in favour of forward castes. Since the impact of these two routes will be vastly different, it would be best if this subtle aspect of EWS reservation is carefully evaluated and integrated into the implementation of the policy.

What if the current income limit of the EWS category is changed (lowered)? That would change the calculus somewhat since poorer individuals from all social groups (including non-SC-ST-OBC) would be eligible. In this scenario, the richer (above the presumed new income cut-off) SC-ST-OBC individuals will be eligible only for the social group-based VR positions. However, changing income limits is likely to open a whole new Pandora's box, especially in the absence of reliable income data. Realistically, shifting the income cut-off for EWS seems unlikely.

Therefore, the court would be well-advised to consider the implications of the implementation routes and to make sure there are no ambiguities, i.e., no loopholes. Ambiguities in reservation rules have led to court cases, leading to long delays in filling up positions. Given the enormity of the unemployment situation, as well as the importance of addressing social cleavages, the urgency of working out an optimal implementation strategy cannot be overstated.

# A pathway to citizenship for Indian-origin Tamils

he Supreme Court of India has now posted the 232 petitions challenging the Citizenship (Amendment) Act (CAA) to be heard on December 6, 2022. However, there is another issue linked to the subject, i.e., the unresolved status of Indian-origin Tamils who repatriated from Sri Lanka. For over four decades, nearly 30,000 Indian-origin Tamils have been classified as stateless persons, based on technicalities. Given their genealogical link to India, the Government of India needs to consider extending citizenship benefits to them in accordance with Indian bilateral obligations and international humanitarian principles and international conventions.

**Plight of Indian-origin Tamils** 

Under the British colonial government, Indian-origin Tamils were brought in as indentured labourers to work in plantations. They remained mostly legally undocumented and socially isolated from the native Sri Lankan Tamil and Sinhalese communities due to the policies of the British. After 1947, Sri Lanka witnessed rising Sinhalese nationalism, leaving no room for their political and civil participation. They were denied citizenship rights and existed as a 'stateless' population, numbering close to 10 lakh by 1960. As an ethno-linguistic minority without voting rights, this resulted in a double disadvantage till the two national governments addressed this

Subsequently, under the bilateral Sirimavo-Shastri Pact (1964) and the Sirimavo-Gandhi Pact (1974), six lakh people along with their natural increase would be granted Indian citizenship upon their repatriation. Thus, the process of granting Indian-origin Tamils (who returned to India till around 1982) began. However, the Sri Lankan civil war resulted in a spike in Sri Lankan Tamils and Indian-origin Tamils together seeking asylum in India. This resulted in a Union Ministry of Home Affairs directive to stop the grant of citizenship to those who arrived in India after July 1983.



### <u>Manuraj</u> **Shunmuga sundaram**

weaker

optimal

strategy

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Besides its bilateral obligations and international humanitarian principles and conventions, there are recent judgments to guide India in having an expanded and liberal interpretation of the Citizenship (Amendment) Act

Furthermore, the focus of the Indian and Tamil Nadu governments shifted to refugee welfare and rehabilitation. Over the next 40 years, the legal destiny of Indian-origin Tamils has been largely intertwined with that of Sri Lankan Tamil refugees, and both cohorts have been relegated to 'refugee' status. This is because Indian-origin Tamils who arrived after 1983 came through unauthorised channels or without proper documentation, and came to be classified as 'illegal migrants' as per the CAA 2003. This classification has resulted in their statelessness and blocking of potential legal pathways to citizenship.

## **Overcoming statelessness**

While constitutional courts have not had an occasion to deal with the question of statelessness, there have been two recent judgments (Madurai Bench of the Madras High Court, Justice G.R. Swaminathan), taking these issues head on. In P. Ulaganathan vs Government of India (2019), the status of citizenship of Indian-origin Tamils at the Kottapattu and Mandapam camps came up for consideration.

The court recognised the distinction between Indian-origin Tamils and Sri Lankan Tamils and held that a continuous period of statelessness of Indian-origin Tamils offends their fundamental right under Article 21 of the Constitution of India. The court further held that the Union Government has implied powers to grant relaxation in conferring citizenship and prescribed that a humanitarian approach, shorn of the rigours of law, should be adopted.

On October 11, the court held in Abirami S. vs The Union of India 2022, that statelessness is something to be avoided. The court further held that the principles of the CAA, 2019, which relaxes the conditions for citizenship for Hindus from Afghanistan, Pakistan and Bangladesh, would also apply to Sri Lankan Tamil refugees. As such, these judgments have provided categorial judicial guidance to the Union of India on how to utilise an expanded and liberal interpretation of

the CAA, 2019 to overcome statelessness.

The situation of statelessness of Indian-origin Tamils is 'de jure', created from the failure in implementing the 1964 and 1974 pacts. De jure statelessness is recognised in international customary law. Therefore, India has an obligation to remedy the situation. In the case of the Chakma refugees, the Supreme Court (Committee for C.R. of C.A.P. and Ors. vs State of Arunachal *Pradesh* 2015) held that an undertaking made by the Government of India with respect to grant of citizenship inheres a right in the stateless or refugee population. As such, India has made repeated undertakings, through the 1964 and 1974 pacts, which have created a legitimate expectation among the Indian-origin Tamils and would entitle them to be granted citizenship.

Remedying statelessness is not a novel process in law. While dealing with a similar situation, in 1994, the United States enacted the Immigration and the Nationality Technical Corrections Act to retroactively grant citizenship to all children born to an alien father and citizen mother. Similarly, Brazil, through the Constitutional Amendment No. 54 of 2007 retroactively granted citizenship to children under jus sanguinis, which was earlier stripped by an earlier amendment, i.e., Constitutional Amendment No. 3 of 1994. Therefore, any corrective legislative action by the Government of India to eliminate statelessness should necessarily include retroactive citizenship for Indian-origin Tamils.

According to a recent report by the United Nations High Commission for Refugees, "Comprehensive Solutions Strategy for Sri Lankan Refugees", there are around 29,500 Indian-origin Tamils currently living in India. As such, when the Union Government makes its case before the Supreme Court to extend citizenship to Indian-origin persons from Pakistan, Afghanistan and Bangladesh seeking asylum in India, it cannot deny Indian-origin Tamils their rightful pathway to citizenship.

Inputs from Sheeba Devi L., advocate

## LETTERS TO THE EDITOR

## **Man-made tragedy**

Going by evidence in the collapse of a colonial-era suspension bridge in Gujarat's Morbi district (Page 1, October 31), there is enough to indicate that this was a man-made

tragedy. Visuals have shown hundreds of people on the bridge. The Gujarat government needs to constitute an inquiry committee. Stern action

needs to be taken against the guilty. S.K. Khosla, Chandigarh

There does seem to have been negligence: bypassing safety rules in ensuring carrying capacity and also being lax about enforcing safety rules. There are images of youngsters on the bridge being over-enthusiastic and boisterous. Money and

words are poor comfort when precious lives have been needlessly lost. Rajamani Chelladurai. Palayamkottai, Tamil Nadu

The bridge should not have been thrown open to the public without ascertaining its safety in full. The Morbi accident, like similar tragedies in the past, will pass into oblivion once the authorities finish doling out monetary compensation to

the families and the appointment of an inquiry P.G. Menon.

From what can be seen in

will be a number of

the media, it appears to be

a man-made tragedy. There

questions considering the

sheer magnitude of this

Chennai

tragedy.

Rabada and Anrich Nortje rattled the Indian batters. That the first slip was standing almost near the 30-yard circle behind the wickets stood testimony to the speed at which the SA bowlers were bowling, which reminded us of the deadly pace attack of the

West Indies of the 1970s.

The sheer pace of the South

Ngidi, Wayne Parnell, Kagiso

African quartet — Lungi

**At Perth** 

To read more letters online, scan the QR code.Letters emailed to letters@thehindu. co.in must carry the full postal address and the full name or the name with initials. Barring Suryakumar Yadav,

the rest fell to pace. K. Pradeep, Chennai