

If that door should shut now

Additional Solicitor General Tushar Mehta has made an important statement before the Supreme Court (“India can’t be refugee capital: govt.”, *The Hindu*, February 1, 2018). Whether he intended it to or not, it contains a vision, a vision of India. Mr. Mehta presented that vision in terms of what India should not be.

Responding to a plea by Rohingya refugees in India, Mr. Mehta said in the Supreme Court last week: “We do not want India to become the refugee capital of the world.” He went on to say to the Bench headed by the Chief Justice of India that if the Rohingya were given refuge, “People from every other country will flood our country.” And, he added: “This is not a matter in which we can show any leniency.”

Four positions can be distilled from those observations: “We” speak for India; that India does not want refugees; people from ‘every other’ country are likely to flood India; we will not let India become the world’s refugee capital.

This article is not on the Rohingya’s case upon which we must trust the Supreme Court to pronounce as the great Sanskrit dictum suggests, ‘*dirgham pasyatu ma hrasvam*’ (look far ahead, be not short-sighted). It is on the Additional Solicitor General’s observation on India which is so important as to merit — demand — analysis.

To start with the important opening word in his remark, “We”. Does he intend to use “we” in the Constitution’s sense of “We the people...”? I doubt it, for only Parliament would feel mandated to use that expression. And even if the Lok Sabha or the Rajya Sabha were to pass a resolution, they would in all likelihood use “this House”, rather than “we”.

A law officer, when he uses “we”, has to mean those who have the power, the prerogative and the privilege to instruct him in the matter before the court. But in the statement in question being about India’s very personality, the “we” has to go beyond the knot of individuals who have conferred on a particular brief. It has to convey the thinking of the government as a whole.

That brings us to the second position taken by him, namely, that refugees will hereafter be unwelcome in India. If that is indeed the government’s thinking, then we have been given a major modification in the vision of ‘*bahujana hitaya bahujana sukhaya*’, where vouchsafing the good of the many and the happiness of the many is a ruler’s dharma, with *lokanukampaya* — compassion for the human being — governing state action. It reverses the ancient tradition of the *janapada* being not just the home for its *jana* but a sanctuary for all in need of *ashraya*, refuge — *sarva lokashrayaya*. It is perhaps this ethos that helped persecuted Zoroastrian migrants from Central Asia settle in and around Surat around the 16th-17th centuries to maintain their religious tradition.

Old texts, tenets and traditions apart, the Additional Solicitor General’s statement marks a departure from modern India’s experience in the matter. By the new yardstick, independent India’s giving *ashraya* in 1947 to over seven million refugees, mostly Hindu and Sikh, from the newly created state of Pakistan was wrong. And, by the same token, Pakistan should have sent back another seven million and more refugees, mostly Muslim, who left India for Pakistan. By that logic, the Dalai Lama should never have been given refuge in India nor the nearly 150,000 Tibetans who have come to India during the last 50 years. And, by the same logic, India should have used force, in 1971, to drive back the estimated 10 million men, women and children seeking shelter in India from genocide in East Pakistan. Tamils fleeing Sinhala intolerance, now said to number 100,000, should have been driven back over the Palk Strait to Sri Lanka, not offered even temporary *tanjem*. Afghan refugees, now numbering 10,000, should, by that principle, never have been given

space in India, nor should Baloch political dissidents be given *panah* today. Individuals like U Nu when he exited from Ne Win's regime, Sheikh Hasina when she came to India in self-exile, and several political figures from Sri Lanka and Afghanistan should, by that principle, have been bolted out, Taslima Nasreen never allowed to step foot in India.

Were Nehru, Shastri, Morarji Desai, Indira Gandhi, Rajiv Gandhi, V.P. Singh, Chandra Shekhar, Narasimha Rao, Deve Gowda, Inder Kumar Gujral, Atal Bihari Vajpayee all naive or worse in not closing India's doors to shelter-seekers? Were they un-patriotic? And were the people of India, in understanding the ethos of *ashraya*, equally mistaken?

The Additional Solicitor General's remarks have amounted to saying "we" now have a new vision, a new perspective, a new philosophy of India that does not, will not, open its doors to the refugee. In fact, it has closed its doors to refugees and to refugee-hood itself.

Now, this is not just a passing opinion on a transient matter but a rock-hard position concerning India and the human condition of nobody-ness, of homelessness, of statelessness that seeks refuge. In terms of the statement of the Additional Solicitor General, sanctuary or *ashraya* (Sanskrit), *panah* (Urdu), *sharan* (Hindi), *tanjam* (Tamil) are no longer to be India's attributes. 'Back you go!', 'Out!', are to be our answers to any refugee at our door.

The third proposition, namely, that India is in danger of being flooded with refugees "from every other country" must cause astonished disbelief. Is the world pining for refuge in India? There is as much risk of India becoming the world's refugee capital as there is hope of India becoming the world's tourist capital. Common sense — a strong Indian trait — would tell us that only those in India's neighbourhood facing the dire prospect of victimisation or death want India's sanctuary. The same common sense has, for a cousin, another sense, an uncommon Indian sense, of seeing the urgency, the sheer panic, that is caused by victimisation and ethnic hate. And that enables us to see the heartlessness and the hollowness of the fourth proposition, namely, that we will not let refugees into India.

If a neighbouring country, out of political spite, "or on account of race, religion, political opinion", were to force Hindus out of its borders and into India, we would be right in giving them *ashraya*. And we would be right to demand world condemnation of the outrage.

Keeping our land and sea frontiers open for massive numbers of people to cross over is hugely problematic. And terrorists sneaking in as refugees with sinister designs constitute a grim reality. But when has India been spared of troubles that come 'not as single spies but in battalions'? We, as a nation, cannot be so amnesiac, so altogether aphasiac, so opaque to history as to say no refugees, none at all, will hereafter be allowed to enter our territory.

Non-refoulement and international law are neither my expertise nor my theme here. The human condition is. And its most tragic experience — fear of persecution, of the furious chase, the flying bullet. William Blake wrote about two centuries ago: "Each outcry of the hunted Hare/A fiber from the Brain does tear."

India has not let the hunted hare die at its door. And if that door should shut now, a fibre from our collective brain must and will tear.

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