

Moment of dignity for LGBT

The apex court has all but included the right of sexual orientation under Article 21



AVIRUP BOSE

Justice Anthony Kennedy of the United States Supreme Court, while commenting on the US Supreme Court's historic ruling recognising the constitutional right of same-sex couples to marry — in *Obergefell v. Hodges* — called the transcendent moment the victory of the “dignity” and “profound hopes and aspirations” of the many loving couples of the lesbian, gay, bisexual or transgender (LGBT) community. The next day *The New York Times* carried the front-

page headline “Equal Dignity”.

This same dignity of an individual's core identity has been denied under Indian law for more than 157 years, solely on the basis of an individual's sexuality. Section 377 of the Indian Penal Code (IPC) criminalises, among other things, consensual sexual acts of homosexual adults in private. This statutory deprivation was given constitutional propriety by a two-judge bench of the Supreme Court of India, when in 2015 — in *Suresh Kumar Koushal v. Naz Foundation* (Koushal) — while overruling a Delhi High Court decision, it upheld the constitutional validity of Section 377 of the IPC.

In Koushal, the Supreme Court held that given a minuscule fraction of India's LGBT population has been prosecuted under Section 377 of the IPC, it cannot be made a valid legal basis for declaring Section 377 ultra vires under Article 21 of the Indian Constitution — which guarantees the individual right to life and lib-

erty. Further, in Koushal, the court also held that blind reliance on international judgments in an attempt to protect the “so-called” rights of LGBT persons could not be the basis for deciding the constitutional validity of an Indian legislature.

Last week the majority of a nine-judge bench of the Indian Supreme Court — in *Justice K S Puttaswamy (Retd) v. Union of India* (Puttaswamy) — while upholding the fundamental right to privacy under the Indian constitution in a self-catharsis act expressly repudiated the very grounds on which the Koushal judgment upheld the constitutional validity of Section 377. Granting the Indian LGBT community their rare transcendent moment for reclaiming the dignity of their autonomous and fuller liveable life.

The *de minimis* logic of the Koushal judgment, where the invasion of the fundamental rights of a few were granted constitutional consolation, as opposed to a large number of persons, was found

to be unsustainable for deprivation of the right to privacy and to that of life under Article 21 of the Constitution. The majority of the bench expressly held that the test of popular acceptance cannot serve as a proxy for sanctity of constitutional protection — expressly stating that the right to privacy and the protection of sexual orientation is at the core of the guaranteed fundamental rights of equality, law and life.

Teaching a lesson on civility of judicial vocabulary the court criticised the Koushal judgment's use of the terminology “so-called rights of LGBT persons”. The use of such terminology was found to be suggesting that rights of the Indian LGBT community were illusory or unreal. The majority decision expressly held that, on the contrary, an individual's right of sexual orientation was inherent in her right to life and an essential component of her identity which demanded constitutional protection without discrimination.

However, given that the matter of constitutional validity of Section 377 of IPC is specifically sub judice before the court under a batch of curative petitions and that scope of the petitioner's relief sought in the Puttaswamy case was restricted to

the declaration of the constitutional validity of the right to privacy as a fundamental right, the court stops short of directly overruling Koushal and declaring Section 377 of the IPC as unconstitutional, just yet.

By repeatedly locating the right of choice of sexuality within the “privacy-dignity” paradigm of an individual's fundamental right to life with dignity, the majority of the bench has all but de-facto included the right of sexual orientation within the catena of fundamental rights under Article 21 of the Constitution.

The American philosopher Martha Nussbaum has described dignity as the transition from “disgust” to “humanity”. The usage of human dignity as the central justificatory tool to locate an individual's right of sexual orientation within the Constitution signals the court's intention to perhaps nudge the Indian society to cultivate a socio-constitutional morality towards the rights and choices of India's LGBT community — where the right of a man is not required to be sacrificed at the altar of the prejudices of men.

The author is assistant professor at Jindal Global Law School

CHINESE WHISPERS

Bride and GST prejudice



Minister of State for Finance Arjun Ram Meghwal, it appears, is privy to the problems a married woman faces in her new household. A new bride, according to Meghwal, is given a set of orders on the very first day after her wedding. So she has to wake up at 7 am and make tea for her father-in-law after he returns from his morning walk. And if guests come unannounced she isn't supposed to fret but welcome them with a smile. No, the minister wasn't speaking at an event linked to the Centre's “Beti Bachao, Beti Padhao” campaign. He was merely comparing the new goods and services tax (GST) regime — you guessed it — to a bride who too faces “compliance” issues. “Now, if the bride can't get up at 7 due to a backache she should seek her mother-in-law's permission to sleep till 9,” Meghwal added, hinting that both the government and the real estate industry had to compromise to ease into GST.

Cartoon for a cause

Fertiliser major IFFCO has started a unique exercise to sensitise audiences about issues concerning rural India. It has been sharing comic strips and cartoons through Facebook, WhatsApp and email, sometimes with a funny take on developments in the farm sector. IFFCO says this is more effective than giving people a lecture on dos and don'ts. In a recent message titled Kisan Gym, IFFCO shared a caricature of a farmer with washboard abs and rippling muscles to convey that working in the fields improved the farmers' health, while improving that of their farms as well.

Hugging others

At Rashtriya Janata Dal (RJD) chief Lalu Prasad's “BJP bhagao, desh bachao” rally in Patna on Sunday, a number of political leaders graced the stage in a show of Opposition strength. One of them was Member of Parliament Sharad Yadav, who has fallen out with Janata Dal (United) Chief and Bihar CM Nitish Kumar. And one of the pictures that emerged from the rally was of Lalu hugging Yadav. This reminded some keen observers of another picture — of the RJD chief hugging Nitish, two years ago when the Grand Alliance was formed. Much water has flown under the Gandhi Setu in Patna since then: The two now seem to be irreconcilably estranged, and Lalu and his ilk miss no opportunity to attack the Bihar CM, expressing in clear terms their regret of allying with him. What will be the future of Sunday's hug, one wonders.

US fight for Kabul is also India's fight

On America's strategic partnership with India, the Trump administration has worked to a script



K P NAYAR

Fourteen years after Donald Rumsfeld, then the American Defense Secretary, turned on his charm and nearly got India's political leadership to commit troops in US-occupied Iraq, this country is back to square one in helping Washington to fight another messy overseas war.

The nation-wide jubilation over the scolding that US President Donald Trump reserved for Pakistan in his first prime time speech in seven months on national security has successfully obscured a carefully devised American plan to get India involved in Afghanistan's fratricidal conflict where it failed in 2003 in the case of Iraq.

On June 8, 2003, Rumsfeld took an unusual drive to Washington's Willard Intercontinental Hotel, a stone's throw from the White House. It was Sunday. A few hours before Rumsfeld walked into the iconic Willard lobby, India's Deputy Prime Minister L K Advani had checked into the hotel. Indian diplomats in Washington, ecstatic about the defense secretary's arrival, impressed upon the number two in Atal Bihari Vajpayee's government that it was exceptional for an American of Rumsfeld's stature to make a hotel call, that too, on a Sunday.

The Pentagon's hope was that Rumsfeld's gesture would tilt Advani in the

direction of sending Indian troops to Iraq over which a debate was the raging within the Vajpayee government. Five weeks later, on July 14, the Union cabinet decided against getting militarily involved in occupied Iraq.

American President Donald Trump's phone conversation with Prime Minister Narendra Modi on the occasion of Independence Day was of the same genre as the Rumsfeld gesture. The US marks the national days of most countries with a message from the secretary of state. In the case of allies, such messages additionally convey the greetings of the president. Until very recently, India had to be content with a message from Foggy Bottom, the seat of the US state department.

Trump's August 15 phone call to Modi went down well with the Indian public and with this country's strategic community, which held forth on television talk shows about the heights that have been scaled in Indo-US friendship. But the White House was very clear: the primary purpose of the phone call was that the two leaders “resolved to enhance peace and stability across the Indo-Pacific region by establishing a new 2-by-2 ministerial dialogue that will elevate their strategic consultations”.

President Trump's administration may appear to be in disarray with nearly-daily departures of key people from the White House and other agencies, hundreds of vacancies still unfilled in key departments and deep internal contradictions. But on America's strategic partnership with India, this administration has worked to a script. The script has been written by Lieutenant General H R McMaster, Trump's national security advisor, who was in New Delhi in April.

As the first senior Trump administration official to visit India, the Modi gov-



TO THE POINT General H R McMaster (left), Trump's national security advisor, was business-like when he was in New Delhi in April. His two-hour meeting with his counterpart Ajit Doval was almost entirely devoted to Afghanistan

ernment wanted to organise an elaborate programme for McMaster. But the high-level visitor was strictly business-like and confined his itinerary to meetings with National Security Advisor Ajit Doval and Foreign Secretary S Jaishankar, apart from a 20-minute courtesy call on Modi. His two-hour meeting with Doval was almost entirely devoted to Afghanistan.

So the ministry of external affairs' announcement about McMaster's visit referred only to his meeting with Modi, but the American Embassy in New Delhi gave the game away when they issued a press release detailing his activities.

As a result McMaster's diplomacy, tucked away in a maze of words that made up a joint statement issued at the

end of Modi's meeting with Trump on June 26, was an invitation to India to contribute to Afghanistan's security. This was a significant departure from the past, when the US wanted India to be minimally involved in Afghanistan.

Colin Powell, who was George W Bush's Secretary of State, had gone so far as to urge India not to open consulates in four Afghan cities after the Americans overthrew the Taliban regime in the aftermath of September 11.

Even the development work by India in Afghanistan was only grudgingly accepted by the US in deference to Pakistan's opposition to any Indian role in Afghanistan. The June joint statement broke from the past when it averred that “recognizing the importance of their respec-

tive strategic partnerships with Afghanistan, the leaders committed to continue close consultations and cooperation in support of Afghanistan's future”.

Since the change in administration in Washington, Indian leaders such as Sushma Swaraj have publicly and privately identified with American objectives in Afghanistan. Trump has understood this to mean that America's fight for Kabul is, therefore, also India's fight. To his entrepreneurial mind, it is only natural that the cost of the Afghanistan project should be shared by all those who have a stake in it: not financially alone, but in men, material and resources. Clearly that explains his remarks about India that “we want them to help us more with Afghanistan”.

How that help should be of use to Washington will be left to senior presidential aides, the three generals who today run America's foreign and security policies: McMaster, Defense Secretary General James Mattis and White House Chief of Staff General John Kelly. India, of course, has a choice, just as it did in 2003.

The “new 2-by-2 ministerial dialogue” involving defence and foreign ministers of the two sides that Modi and Trump discussed on August 15 has been articulated as an Indo-Pacific initiative, but it is naïve to think that when Afghanistan is again discussed bilaterally in the context of Trump's new initiative, it will be confined to India building dams, roads or bridges. General Mattis will have a say in the discussions with Indians having a sense of déjà vu going back to the US invasion of Iraq in 2003 and Rumsfeld's request for Indian boots on the ground.

K P Nayar reported from Washington as a foreign correspondent for 15 years

CONSUMER LIFE

Low expectations cast shadow on ensuing festive season

MAHESH VYAS

Consumer sentiments have been deteriorating steadily in August. The BSE-CMIE-UMich Index of Consumer Sentiments has slipped during each of the four weeks of the month by about one per cent compared to the preceding week. This steady deterioration has taken the index to its lowest level so far, during the current fiscal year.

With just four days before the month closes, it is now reasonably clear that the month will post a decline in the index of consumer sentiments compared to July. This would be a fall for the second consecutive month in the index.

It is likely that the month's index would be the lowest in its short history of 20 months.

Consumer sentiments have been worsening since a brief rise during April and May this year. Large-scale farm loan waivers (or effective promises to do so) and government interventions to shore up prices of select agricultural commodities had helped improve sentiments. But, the effect was evidently short-lived.

The litany of woes have been piling up. Agitations have continued in Maharashtra. Other problems include the erratic temporal progress and spatial spread of monsoon showers, shutting of abattoirs in Bihar, floods in the east and dry spells in UP, Punjab, Haryana, MP, parts of Maharashtra and southern states, uncertainties and inconveniences caused by the goods and services (GST), continued political uncertainty in Tamil Nadu and the breakdown of law and order in Haryana. The cumulative effect has played a role in keeping consumer sentiments depressed.

Prime Minister Narendra Modi's Independence Day speech, which is usually very inspiring, failed to offset the effects of the rising tide of bad news. The flow of good news has been exceptionally low. Even equity mar-



A sharp fall in consumer expectation would not be good news for consumer goods companies

kets failed to enthuse. For the sake of records, August witnessed popular indices touch new peaks early in the month, and later the Reserve Bank of India (RBI) cut interest rates. But, the markets as a whole were spooked by yet another round of low earnings and boardroom problems in traditionally-admired companies yet again. Returns during August are likely to be barely positive, if at all.

For the larger set of households the news of RBI's rate cut is in fact bad news because deposit rates have been cut by many large banks.

Households in general feel that their economic conditions worsened in August compared to their conditions in July. The average index of current economic conditions for the first four weeks of August was about three per cent lower than its level in the corresponding weeks of July. Weekly indices do not average to the monthly index because the monthly indices are adjusted for non-response which is not possible in the weekly indices. Nevertheless, the weekly growth rates do tell us the direction of the trend fairly accurately. Weekly

indices are very useful in foretelling the possibly monthly values. Currently, they seem to tell us that August was not a very good month for consumer sentiments.

Urban indices have fallen a lot more than the rural ones. The current economic conditions index for urban India is likely to show a fall of about four per cent in August. This would be a sharp fall. The corresponding rural index is seen falling by a lesser 2.5 per cent.

Perhaps, the most important takeaway from the preliminary understanding of August is that urban India has dropped its expectations from the future. We see a possible 4.5 to five per cent fall in the index of consumer expectations in urban India during the month. This is not good. Hopes on the future, expectations that things will improve in the near future, are critically important in enabling the turnaround.

Households spend more when they believe that the future is bright or at least it would be better than today. Expectations of increased household spending because of the Pay Commission awards could be misplaced. Increased household income is not an adequate condition for increased household spending. Expectation of sustained high income is also important. It is worrisome that these expectations are falling.

In urban India, there are sufficient reasons to justify the reduced expectations. Reduced interest rates on deposits is just one. Sustained low labour participation rates is another. Now, the urban unemployment rate is also rising steadily.

The festive seasons is upon us already. A sharp fall in consumer expectations around now would not be good news for consumer goods companies.

The author is managing director and CEO, Centre for Monitoring Indian Economy P Ltd

LETTERS

Blinded by god-man

With reference to “‘Messenger of god’ gets the message of law” (Aug 28), the Dera Sacha Sauda agitation in Punjab and Haryana that resulted in the deaths of many, besides the plunder of public property, is a colossal failure of the political leadership. When dignitaries such as ministers are seen prostrating before controversial religious leaders, who are being probed for rape and murder charges, they send all the wrong signals to the public and law enforcement agencies. It, therefore, came as no surprise that despite being warned, the Haryana government failed miserably in preventing the followers of Ram Rahim Singh from going on a rampage, following the CBI court holding him guilty of rape.

Now that the court has sentenced the religious leader to 20 years in jail, the government should ensure law and order is quickly restored, and take steps to make good the losses to the exchequer and to the public, by auctioning off the sizeable properties held by the god-man. That will convey the right message that there is a cost to be borne for violence, whether intended or not, on the ground of vicarious liability.

V Jayaraman Chennai

Task cut out for Infy

With reference to “Reimagining Infosys” (August 28), Nandan Nilekani (pictured) is one of the co-founders of Infosys and one who has been its CEO for five years. He knows Infosys better than most in terms of its workforce, business and culture. That said, his holding the fort is at best a stop-gap solution. As Infosys stocks tanked 15 per cent in two straight trading sessions last week, the Nilekani factor raised investors' spirits as stocks rose two per cent. He is favoured by 12 fund managers representing institutional investors in Infosys.

Any other business behemoth can well do with its founders' occasional pointers but not undue interference, particularly when past experience, in this era of a globally uncertain climate and changing paradigms in IT, is apt to lose relevance. Hopefully the founders, major investors and senior staff of Infosys will put their



heads together to not only select an able CEO but also to set a progressive framework for the company.

R Narayanan Ghaziabadi

Guidelines of wise men

With reference to “Monumental failures of RBI” (August 23), Gajendra Haldea has said that it was the Reserve Bank of India's (RBI) job to lay down effective (lending) norms and guidelines to banks. The RBI had laid down comprehensive norms and guidelines to banks in 1975. These were evolved not internally by the RBI bureaucracy and dictated by it to banks. They were based on recommendations of a study group (later known as Tandon Committee) appointed by RBI under Prakash Tandon, the much celebrated then chairman of Punjab National Bank and comprising 14 other eminent men.

These wise men, after year-long deliberations, prescribed industry-wise norms for inventories and receivables and laid down guide lines for bank lending. The basic principle on which the guidelines were based was that the function of a bank was only to supplement its own resources (including long-term funds raised elsewhere) of a borrower in running an enter-

prise. The bank's lendings were not to exceed the Maximum Permissible Bank Finance for each borrower, based on a formula laid down by the study group.

The RBI accepted major recommendations of the study group and required banks to restrict their lendings accordingly. It required its supervisory machinery to oversee their implementation. As a result, the quality of loan portfolios of banks showed perceptible improvements and what we call non-performing assets today (a term not in vogue then) did not contaminate them to any visible extent. Then came the era of liberalisation in the wake of the economic reforms of 1991, which dispensed with the undue restrictions and controls associated with the license-permit raj. The RBI's norms for bank lending, which were evolved with the consent of and in co-ordination with those affected (viz. banks and their borrowers) did not fall in the ambit of the said reforms, although their revision from time to time, in the light of changing scenario, was always called for. But at some stage, the norms and guidelines were dropped lock, stock and barrel and a free-for-all was created; banks could lend as they liked. And the result is there for all to see. The wholesale abandonment of aforesaid discipline in the name of liberalisation tantamounts to throwing the baby out with the bathwater.

R C Mody New Delhi

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BY MIKE FLANAGAN

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Success at Doklam

India achieves status quo ante without firing a single bullet

The Ministry of External Affairs stated on Monday afternoon that Indian and Chinese troops were “disengaging” in the Doklam area near Sikkim. The Doklam face-off between the two countries began over the construction of a road. It has ended with the construction halted. India, therefore, has crossed the border back into its territory. This is the restoration of status quo ante, which is what India had wanted. That India has managed to achieve its objective without firing a shot, while showing maturity and restraint in the face of the Chinese media onslaught, and with the military assessing its position carefully before making its move to achieve local positional superiority, and surprise the Chinese, are all to the credit to the government and the army. On its part, China has said it will continue to patrol the area, but that was never the issue. The point was to not change the situation on the ground, as agreed on in 2012. It is a diplomatic bonus that this episode also saw the US and Japan siding with India in their public statements.

This hopefully brings to a close the weeks-long crisis. It is also a great relief that backroom diplomacy has worked and the immediate confrontation has been defused. Of course, much is still to be learned about how this was achieved. Moreover, a careful eye must continue to be kept on Chinese activity in this strategically important region. Going forward, however, there are several lessons that the Indian government must draw from this episode. The first is that it should not be allowed to recur; an institutional mechanism must be evolved for resolving such issues and indicating what core interests might be being breached by either side. The Chinese government has claimed that it had let India know well in advance of its road-building plans. The government must see if this was in fact the case and, if so, why pre-emptive action was not taken, or discussions opened. It is precisely to fill such lacunae that a more structured mechanism must be developed. Two mature countries, nuclear-armed nations with pretensions to great power status, should not be reduced to allowing their soldiers to scuffle along the border.

Alongside this mechanism, greater attention must be paid to the India-Bhutan relationship. After all, the dispute over the land in question is technically between China and Bhutan. That the Indian army and not the Royal Bhutanese Army stepped up in this case should not be a surprise, given the historical relationship between the two countries. But such actions should in future be given a solid and transparent legal footing in order to defang propaganda emanating from Beijing. India should also go out of its way to smoothen any feathers in Bhutan that have been ruffled by this incident. But the immediate reaction should be relief that calmer heads have prevailed, and that the confrontation has not been allowed to escalate.

The real champion at Glasgow

Coach Pullela Gopichand has shown the way forward

Indian sports fans would have been justifiably proud at the stunning entertainment on display in the ladies’ single finals at the World Badminton Championships that saw world number four P V Sindhu lose narrowly to her Japanese opponent. Moreover, despite the loss, they may have also been thrilled to see, for the first time, two Indians on the podium, with Sindhu taking the silver and Saina Nehwal the bronze. They would have been heartened by the fighting spirit of the three Indian men — Kidambi Srikanth, who lost narrowly to a Korean opponent, B Sai Praneeth and Ajay Jayaram. But the real champion of the Indian squad that turned out at Glasgow was undoubtedly Pullela Gopichand, the low-profile chief national coach of the Indian team. It would be no exaggeration to say that Mr Gopichand, 43, a former All England Badminton Championship winner, has been responsible for developing, almost single-handedly, the current generation of talent — the best that India has seen in badminton so far.

His protégés are: Nehwal, once world number one and an Olympic bronze medalist; Sindhu an Olympic silver medalist; Srikanth, winner of two consecutive Super Series titles in Indonesia and Australia this year; and Praneeth, winner of one Super Series this year. The fact that all these players are products of his academy is one aspect of Mr Gopichand’s achievements. Along the way, he has created an enabling environment for the development of badminton in India. As a result, badminton has become one of the most popular sports in India after cricket. Today, badminton “academies” flourish, mostly in Mr Gopichand’s hometown of Hyderabad, in the hope of replicating his solid track record. The striking point about Mr Gopichand’s role is that he has achieved all this with the minimum of unseemly controversies that seem to accompany almost every other popular sport in India. Cricket is perpetually mired in controversy, Indian hockey enjoys a precarious existence owing to inherent instability of the national federation, Indian football attracts more attention for institutional disputes rather than the national team’s performance, the petty squabbles among Indian tennis players have become an annual fixture of that sport and in boxing and wrestling, suspicions of doping lurk.

Mr Gopichand’s dignity and manifest disinterest in wealth — at the height of his talents, he famously declined the inducements of a cola company to endorse a product he deemed unhealthy — have ensured that the institutional foundations of the game have steadily strengthened and enabled players to focus on their skills. To be sure, this may not last for long with the Badminton Association of India considering a proposal to introduce a panel of national coaches rather than relying on one — Mr Gopichand has been in the position since 2006 — including separate coaches for singles and doubles. Mr Gopichand’s response to this is unrecorded but he has repeatedly spoken of the need to strengthen the roots of the game and introducing international best practices. And he can be relied on to view these proposals from the point of view of the good of the game rather than any planned diminution of his personal powers.

ILLUSTRATION BY AJAY MOHANTY



Buy the Akash. It is ours

This would help the defence industry, and also send out the message that the government is serious about indigenisation

Amongst the holiest cows in our cow-loving land is the notion of defence indigenisation — which means designing, developing, and manufacturing our own weapons and defence systems, as major powers all do for strategic and economic reasons. Successive Indian governments, especially the present one, have paid lip service to indigenisation in public and in Parliament. But, to illustrate how much more needs to be done, there is the example of the Akash missile system, which already defends Indian airspace.

The Akash consists of a Rohini radar that detects incoming aircraft at ranges out to 120 km and relays the information to a command post. This categorises and prioritises the threats and orders a well-positioned missile launcher to shoot down specified targets. Meanwhile, a “command guidance” radar locks onto the target and guides one or more missiles onto the aircraft. The Akash has already demonstrated it can shoot down enemy aircraft, flying at treetop height, at ranges out to 25 km.

The simple and robust Akash was designed and developed by the Defence Research and Development Organisation (DRDO) under the Integrated Guided Missile Development Programme (IGMDP). The IGMDP was initiated in 1983 under Dr A P J Abdul Kalam when it became apparent that international technology denial regimes left India with no choice but to build its own missile systems by developing sophisticated technologies such as rocket propulsion and inertial navigation. The highly successful project birthed the Prithvi and Agni ballistic missiles that underpin India’s land-based

nuclear deterrent; the Nag anti-tank guided missile and the Akash missile. While ballistic missiles are privileged children whose acquisition is guided by strategic considerations, and the Nag is only now coming to fruition, the defence ministry is sorely mistreating the Akash.

Consider the missile production eco-system that the Akash has created. After the DRDO developed the Akash’s foundational technologies, two defence public sector undertakings — Bharat Electronics Ltd (BEL) and Bharat Dynamics Ltd (BDL) — have functioned as “systems integrators” that put the entire system together. Numerous private sector companies, notably Tata Power (Strategic Engineering Division) and Larsen & Toubro, have developed crucial sub-systems like the missile launchers; while 330 smaller private firms feed into the Akash’s production as Tier-2 and Tier-3 vendors. Besides building the Akash systems that are already operationally deployed on the borders, these companies constitute a technology eco-system that continuously upgrade the existing system and will develop the next generation of missiles. This is the first time such a production eco-system has been built for an indigenous missile and nurturing such an eco-system is an obvious national interest.

But production eco-systems are nurtured with production orders. Today, the Akash production chain stands empty as the defence ministry haggles with BEL over the cost of its next order. Consequently, the induction of another eight Akash squadrons is held up by the ministry’s insistence that the Akash must match



BROADSWORD

AJAI SHUKLA

The fabric of a plural culture

In *No Place to Hide*, the book that chronicles Edward Snowden’s unmasking of the American mass surveillance regime, the journalist Glenn Greenwald writes that “only when we believe that nobody else is watching us do we feel free — safe — to truly experiment, to test boundaries, to explore new ways of thinking and being, to explore what it means to be ourselves... for that reason, it is in the realm of privacy where creativity, dissent, and challenges to orthodoxy germinate. A society in which everyone knows they can be watched by the state — where the private realm is effectively eliminated — is one in which those attributes are lost, at both the societal and the individual level.”

Fifty-five years ago, Koka Subba Rao, one of the great civil rights judges of the Indian Supreme Court, understood this. Striking down police regulations that authorised the surveillance of a “history-sheeter” — including the tracking of his movements — he held that “if a man is shadowed, his movements are obviously constricted... [the] movement of an automation. How could a movement under the scrutinising gaze of the policemen be described as a free movement? The whole country is his jail. The shroud of surveillance cast upon him perforce engender(s) inhibitions in him and he cannot act freely as he would like to do.”

Unfortunately, Justice Subba Rao could persuade only one other judge, out of a bench of six, to join him. His words were words of dissent. The justices in the majority held that surveillance did not physically impede a person’s movement, or his liberty, and therefore (apart from one regulation that authorised the police to enter a suspect’s house at night) did not violate the constitutional guarantees of personal liberty and the freedom of movement.

Justice Subba Rao’s insight — that the impact of surveillance did not leave perceptible traces in the physical world, but worked insidiously upon the minds of its

targets, channeling their actions, their movements, their associations, and their very thoughts into preset grooves and patterns, killing dissent and heterodoxy, and imposing a stifling, psychological conformism upon society — remained a cry in the wilderness until finally, last week, a nine-judge Bench of the Supreme Court resurrected his view and made it the law of the land. Tucked away within the 597 pages of a mammoth verdict (spanning six separate opinions), we find the following observation by Justice Dhananjaya Chandrachud: “Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture.”

This is not mere rhetoric. A few lines before this, Justice Chandrachud referred to the individual’s right to “stand against the tide of conformity in creating a zone of solitude.” In his separate opinion, Justice Jasti Chelameswar warned of “attempts by governments to shape the minds of subjects... conditioning the thought process by prescribing what to read or not to read... what forms of art alone are required to be appreciated leading to the conditioning of beliefs.” Justice S A Bobde defended the idea of a “zone of internal freedom in which to think.” And perhaps most bluntly of all, Justice Sanjay Kishan Kaul observed that “knowledge about a person gives a power over that person... privacy is key to the freedom of thought.”

Five and a half decades after his solitary dissent, Justice Subba Rao’s insight has become constitutional wisdom. One of the crucial features of the right to privacy judgment is the understanding that democracy is founded on pluralism and diversity, and pluralism and diversity begin in the mind. Privacy is important not because people have something to hide, but because privacy gives people a sanctuary where they can think, be, and live, in opposition to the dominant cultural, social, and political norms of the time. Privacy allows people



GAUTAM BHATIA

international prices. There is neither understanding nor acknowledgement of the difficulties that indigenous manufacturers face, nor of the benefits of an indigenous system.

From the start, the air force poooh-pooohed the Akash, pressing instead for foreign-built missile systems whose complex electronics could easily be sabotaged with a kill switch that renders it ineffective against certain aircraft. In repeated trials up to 2004, the air force rejected the Akash for specious reasons, even as the missile repeatedly struck its targets. Eventually, in an incident in 2004 that has gone into DRDO folklore, the Akash project director, Dr Prahlada, readied the missile for a final do-or-die attempt to demonstrate its accuracy. A Nishant drone was flown, trailing a target sleeve that the Akash was to engage. But then, just as the missile was readying to fire, the sleeve detached itself from the Nishant and floated to the ground. With the air force evaluation team ready to declare the trial a failure and doom the Akash to oblivion, Dr Prahlada boldly designated the Nishant drone as the target. The Akash missile slammed into the tiny Nishant 20 kilometres away, utterly destroying the ₹5.5 crore drone. Dr Prahlada had to field audit objections for years, but the Akash had proved its effectiveness against a target far smaller than a combat aircraft.

Why should the military buy more Akash, even if it costs more than equivalent foreign systems? There are at least five reasons. First, technology is generational and the current Akash will inevitably birth a more capable version. Already, the DRDO is developing a seeker head on a budget of just ₹50 crore that will make the Akash more accurate and capable of longer ranges. Second, producing the Akash in India provides employment, a key aim of the Make in India programme. Third, buying Indian creates a multiplier effect at multiple levels of our economy, whereas buying a system from abroad puts the money into another economy altogether. Every company involved in defence production, every employee, is paying direct and indirect taxes into the economy. Fourth, facilitating the development of defence systems in India creates strategic intellectual property; the government needs to subsidise IP creation with orders, as is done by the countries from which India routinely buys. Fifth, Indian defence firms cannot be directly compared with foreign industry because the cost of doing business in India, especially working capital costs, are significantly higher — 14-15 per cent here, compared to 2 per cent abroad. Add to that the 33 per cent corporate tax levied on Indian defence firms and the cost of equivalent Indian products works out at least 30 per cent higher than an identical product built abroad.

That is why the General Financial Regulations mandate that, in government procurement, if a product with 50 per cent value addition in India is up to 20 per cent more costly than an equivalent foreign product, the Indian vendor must be given the contract at the lowest bid price. If the foreign vendor bids ₹100 and the Indian vendor quotes between ₹100 and ₹120, the Indian vendor must get the option to supply at ₹100. For defence products, with their strategic dimension, the Indian vendor must be given the option to supply at a rate that is up to 20 per cent higher.

Ordering more Akash systems is essential for the Indian defence industry. This is the first time an entirely Indian designed, developed, and manufactured product is being deployed in numbers. The Akash experience would teach us a great deal about the dynamics of mass production, maintenance and spares support and upgrading it to the next level. And it would constitute a clarion call that the government is serious about indigenisation.

a space where they can refuse to conform. And it is in that space where liberty flourishes, the liberty to fashion alternative ways of life, which — ultimately — form and take shape in the public sphere, allowing society always to renew itself. As Meenakshi Arora, one of the senior counsels for the petitioners observed during oral arguments, to live without privacy is akin to living under the shadow of a perpetual, general warrant in your name, issued by the state. And such a perpetual warrant can only produce the kind of conformity that Justice Robert Jackson, the great American judge, likened to the “unanimity of the graveyard.”

Of course, a private space, a space of sanctuary, makes sense only if people are free enough in their lives to access it. And it is here that the judgment offers us a second important insight. Feminist scholars have long argued that by walling off spaces (such as the home) and institutions (such as marriage) from public scrutiny, the concept of privacy shields their exploitative character, and stymies any possibility of egalitarian reform. In his judgment, Justice Chandrachud makes a serious effort to engage with these concerns, observing that any formulation of the right to privacy must account for women’s rights within the home and the “private sphere”. Constitutional law, therefore, cannot treat the home or the marriage as a sacred space, immune from norms of equality and autonomy: Indeed, personal autonomy, vesting in each individual, must be at the heart of the right to privacy.

Will these observations have any impact? We shall soon know, as the Delhi High Court hears a petition challenging the constitutionality of the marital rape exception, a classic case that pits the sanctity of private spaces (the home, the family, and marriage) against the decisional autonomy of women. It is only through such concrete cases that, over time, the Supreme Court’s right to privacy judgment will begin to make a genuine difference to the lives of the citizens whose inheritance it has now become.

The writer is a Delhi-based lawyer and legal writer, who was one of the lawyers for the petitioners in this case. Views are his own

The human side of AI



BOOK REVIEW

PRAVEEN CHAKRAVARTY

February 10, 1996 is a milestone in the history of humans versus machines. That was the day Deep Blue, a machine, beat Garry Kasparov, the reigning world champion of chess. The day machines conquered the cognitive skills of humankind, skills that were believed to be uniquely human. The day machines proved to be better than humans in evaluating more than trillions of possible decision paths to choose the most optimum one. The day machines passed the “Turing test” of fooling humans into thinking it is human too. The day it became clear to the world that there is nothing artificial about artificial

intelligence. This in essence is the story of *Deep Thinking* by Garry Kasparov.

Chess is often hailed as the ultimate test of human intelligence and cognitive skills. The battle between a machine and one of the greatest chess champions in human history ought to be the story of the final frontiers in this battle. A machine won this battle more than two decades ago. Yet, why has it taken this long for the world to realise that livelihoods are about to be usurped by computers? Mr Kasparov provides a historical context in his book. In the early 20th century in New York, the elevator operator’s union was 17,000 strong. The technology for automatic elevators existed since 1900. The union prevented the adoption of automatic elevators for fear of their jobs. In 1945, the elevator operators went on a strike and thousands of people were forced to climb endless stairs, including in the then tallest building in the world — Empire State. The elevator industry

launched a massive public relations (PR) initiative that capitalised on people’s sufferings from the strike and ushered in automatic elevators. Mr Kasparov argues that something similar is happening today in the world of artificial intelligence; technology that has been around for several decades but is now being put to use, thanks to a huge PR push by Tesla, driverless cars, voice assistants and other such technological advances.

At a time when the world is confronted with fears of robots taking over human jobs and plunging societies into unrest, this book is a grim reminder of the infinite limits of technological prowess and the futility in fighting it. While the book is anchored in Mr Kasparov’s infamous loss to IBM’s Deep Blue computer in a chess match series two decades ago, it also weaves a larger narrative of humans versus machines and its attendant issues. Mr Kasparov’s erudition shines through the book as he wades through history, sociology, technology, and human psychology to paint a complete picture of this important issue the world at large is facing. He is also unambiguously clear which side

he is on when he says colourfully, “Romanticising loss of jobs to technology is little better than complaining that antibiotics put too many grave diggers out of work.”

The book does not disappoint ardent chess enthusiasts. Nearly 100 of the 260 pages of the book are about pawn sacrifices, Retti openings, king queen versus king rook end games, tricks to outmanoeuvre the machine and so on, in chapters with such enticing titles as “The board is in flames” Mr Kasparov analyses that fateful loss to Deep Blue for the first time in this book and reveals how he accepted defeat in game two even though he was in a position of draw, which he realised only later. It is both a tragic and delightful irony that even the world’s greatest chess champion is susceptible to committing costly mistakes at critical junctures only because he is a human and not a machine. Mr Kasparov also admits and lives up to his reputation of being a sore loser when he cites everything from espionage, human mistakes and outright cheating as plausible reasons for his defeat to Deep Blue.

Mr Kasparov also delves into issues of privacy and Orwellian states aided by technology. He posits that our lives are being converted into data that can be mined to intrude but that is of our own volition. He argues that eventually the innate human desire for efficiency and convenience will trump a “vague desire for privacy”. His maxim for the privacy debate is that “privacy is dying, so transparency must increase” Though it is unclear how and who will ensure transparency in an Orwellian state.

Mr Kasparov then turns philosopher to explore concepts of wisdom and knowledge to understand if there can ever be a natural ceiling to what extent machines can emulate humans. Machines cannot dream, not even in sleep mode, he jokes.

There are 300 billion possible ways to play just the first four moves of a chess game. A typical chess game lasts 40 moves. If a machine could be trained to analyse such a gargantuan number of decision trees and beat the world’s greatest human chess expert two decades ago, why is it a surprise that machines can

drive cars today?

The book talks about how one of the lead scientists in IBM’s Deep Blue team is now building intelligent algorithms for a hedge fund to make investments in the stock markets that can replace hundreds of investment experts, paid millions of dollars each, to do the same job. There is no reason this review of *Deep Thinking* could not be written by a machine. Or perhaps a machine cannot adequately express both the sheer joy and bursts of frustrations in reading a book that beautifully articulates the enormity of the battle of human versus machine and its imminent impact on humankind but with some pointless sojourns. Hopefully!

The reviewer is a policy economist and founding trustee of IndiaSpend

DEEP THINKING Where Machine Intelligence Ends and Human Creativity Begins

Garry Kasparov
John Murray
288 pages; ₹599