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Address the Social Malaise Behind Him

Why give a rape convict such a devout following?

The ability of the Indian state to uphold the rule of law was put to the test on Friday, when masses of Dera Sacha Sauda chief Gurmeet Ram Rahim Singh's followers went on a rampage after his conviction for rape of two women in his monastery 15 years ago. The law enforcement agencies of the state could not be said to have come out with flying colours, but they did manage to arrest the godman and whisk him away to jail and are using force, at the time of writing, to control violent mobs who have set fire to trains and other vehicles. It could be argued that Haryana police should have taken proactive measures to prevent Dera followers from congregating in Panchkula, where the court that tried the godman is located. But, in practice, it is not easy to uphold people's right to move freely within the country and selectively prevent the movement of select groups of would-be arsonists.

The larger question is what, in modern India, allows hundreds of thousands of ordinary people to surrender rational thought and considerations of natural justice before blind loyalty to a figure who lives a flamboyant, luxurious lifestyle at the expense of mostly poor followers. Another godman's followers had created a similar ruckus in Haryana when the law caught up with his misdeeds, more than two years ago. This social malaise must be identified and addressed. It does not help that political parties find it convenient to woo such godmen at the time of elections to win crucial additional votes. This makes entire governments beholden to such exploiters of popular vulnerabilities and embolden them to think they are above the law. When politicians take such shortcuts to power, ordinary people pay the price by way of having their vehicles burned and their lives disrupted by violent protests.

The saving grace is that the law does work, even if at a snail's pace. A man who arrogated to himself divine powers to bed or castrate followers as he chose has been convicted by the temporal institution of the courts. The court is right in ordering attachment of his properties to make good the damage wrought by his supporters. More importantly, society must be rid of the ills that produce such godmen.

Nilekani's Challenge: Change & Continuity

Infosys has been bruised by a tussle between its board and founder N R Narayana Murthy. Its CEO, Vishal Sikka, chairman R Seshasayee and two other board members have quit. Nandan Nilekani, one of the founders, is back as non-executive chairman. During his decades in the company, Infosys grew into a multibillion-dollar revenue giant and its transparent management and work culture was a magnet for foreign investors, otherwise bemused by the opacity in many Indian corporations. Yet, for nearly a decade, Infosys has fallen far behind cutting-edge IT; companies like Alphabet, Apple, Facebook, Microsoft and others have raced ahead.

Infosys has failed to progress beyond its core activity as wage arbitrageur for digital grunt work. It has few technologies of its own and lacks a high-value consultancy team. Sikka was imported to whip Infosys into shape, and make good use of its cash pile. Under him, Infosys managed to boost its revenues per employee from the $50,000 mark, where it was stuck with TCS and Wipro, closer to the $65,000 level of HCL. Shareholders were happier, but Infosys' conservative sages could not adjust to extravagant pay and severance packages, acquisition costs and chartered flights that came with the new CEO. Sikka's departure with much of the board owes less to their performance, measured by investor confidence, and more to a clash of cultures between founders and globalised managers.

Nilekani understands the culture at Infosys. Which makes it simpler for him to continue the systemic changes Sikka introduced to raise revenue per employee, without raising hackles or even eyebrows. However, going back to the Infosys of old is not an option. Continue Sikka's good work, even if not in his name or style.

A Babylonian tablet could reset some angles of mathematical history

All the Sines of a New Father of Triangles

There is much apprehension these days about calculated moves to alter history, but the re-examination of a cuneiform tablet from Mesopotamia now indicates that a reassessment of the history of mathematics may also be on the cards. The inscriptions on a 3,800-year-old Babylonian clay tablet from the time of the famed ruler Hammurabi, now named Plimpton 322 — discovered by a diplomat-excavator who was said to be the inspiration for Indiana Jones — apparently allows accurate trigonometric calculations using exact ratios of the lengths of the sides of right-angled triangles (instead of the sines, cosines and tangents commonly taught in schools now) with their unique base 60 form of mathematics.

Many have speculated that the claims of the 5th-century BC Greek mathematician Pythagoras being the first to deduce facts about right-angled triangles just did not add up. Some believe later commentaries indicate it was the collaborative work of his followers, the Pythagoreans. Ancient Indian and Chinese mathematicians who also independently arrived at the same conclusions make up the other points of this triangular contest. Now that the timeline has jumped back by a millennium to some unknown Babylonian mathematician(s) and threatens to snatch the glory from all the other three, trigonometry's history may have to be recalibrated.

Making triple talaq illegal is laudatory. But some aspects leading to the verdict are disturbing

However, However, However

Jhuma Sen

Shaista Ambar, the president of the All India Muslim Women Personal Law Board, had stated in 2016 that "Indian Muslim women will walk with the Quran in one hand and the Constitution in the other". A five-judge bench of the Supreme Court on Tuesday, while disposing a batch of petitions that challenged the constitutional validity of instantaneous triple talaq (talaq-ul-biddat), held the practice to be un-Islamic as well as unconstitutional. This mirrored Ambar's statement.

While the Bharatiya Muslim Mahila Andolan (BMMA) and the Bebaak Collective, two Muslim women's groups that were parties to this petition, had relied on ecclesiastical and constitutional interpretations respectively to establish the practice to be patently discriminatory against women, it was disappointing to find a 'diverse' constitutional bench in its split 3-2 verdict unable to articulate a jurisprudence of gender justice, or evolve a framework of constitutional governance by making religion, non-discrimination and the Constitution speak to each other.

While the progressive outcome of the judgement is indeed laudatory, one can't help but note the limited — and, in some cases, regressive — reasonings extended by the bench to arrive at its findings.

The minority opinion of Justices J S Khehar and Abdul Nazeer on the question of the validity of triple talaq found the practice discriminatory. Yet, it advocates instant triple talaq's protection by holding that "the stature of 'personal law' is that of a fundamental right". This is truly inexplicable. Personal law is neither a fundamental right nor is it protected by Article 25 of the Constitution, which protects individuals, not 'laws'.

Then they went on to add that personal law is only bound by "public order, health and morality" inscribed in Article 25(1), implying that instant triple talaq does not offend gender equality and non-discrimination, which go at the heart of constitutional morality. Indeed, in Paragraph 193 of the judgment, Chief Justice Khehar *reasons* that "it is not open to a court to accept an egalitarian approach, over a practice which constitutes an integral part of religion". And yet, he carefully avoided establishing that instantaneous triple talaq is an essential practice of Islam, as mandated by the *essential practices test* itself.

Arbit, Bit by Bit

For a constitutional court to reason thus, although in a minority opinion, that religion is 'a matter of faith, and not of logic', and is protected from constitutional scrutiny, is distressing. Tomorrow, if a community decides that bride-burning is a matter of faith, and it follows no logic, will a constitutional court not rise to the occasion, scrutinise it and declare it unconstitutional?

The majority opinion of Justices R F Nariman, U U Lalit and Kurian Joseph adopted different reasons to invalidate instant triple talaq. Nariman, writing for himself and Lalit, concludes that the practice is unconstitutional because it is arbitrary.

He finds the Muslim Personal Law (Shariat) Application Act, 1937, had codified all Muslim personal law, including the practice of triple talaq, which rendered itself to constitutional scrutiny.

He reasoned that because instant triple talaq allowed Muslim husbands an unbridled power to divorce their wives, without any possibility for reconciliation, it must be arbitrary, failing the test of Article 14 of the Constitution that mandates equality before law. Thus, arbitrariness becomes the reason for invalidating triple talaq, whereas non-discrimination based on sex inscribed in Article 15, which ought to have been the primary reason, remained secondary. One can only consider this as a lost opportunity for the court to articulate a gendered reading of the Constitution.

It is astounding that the judges did not entertain the question of non-discrimination. Indeed, the express silence on the question of non-discrimination is telling in the face of the fact that the campaign to abolish instant triple talaq is inextricably linked to the emergence of Muslim women's activism over the last decade or so. The petitioners in this case bare testimony to that.

The second strand of the majority opinion from Justice Joseph offered a crisp reasoning to invalidate instant triple talaq as un-Islamic. He effectively reiterated multiple high court judgements leading to the 2002 Supreme Court judgement in the 'Shamim Ara v State of UP' case, which had invalidated triple talaq, to rule that instant triple talaq is invalid as it leaves no scope for reconciliation as required by the Quran.

What is bad in theology must be bad in law, he held. It would have been interesting to see what opinion Joseph's 'swing vote' would have provided about the elephant in the room — uncodified personal laws — and whether they are subject to the test of the Constitution. But Joseph avoids the subject.

Nariman's Point

Perhaps the avoidance stemmed from the court's reluctance to deal with this question headlong in the decades following the infamous Bombay High Court decision in the 1952 'State of Bombay v Narasu Appa Mali'. In this case, the court stated that uncodified personal laws are not laws within the ambit of Article 13 of the Constitution. So, they need not be tested against its provisions.

The saving grace of this missed opportunity is Justice Nariman observing that the wrong of 'Narasu' could be corrected in an appropriate case in the future. One can only hope that such an appropriate case is heard in Nariman's court in the near future.

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FILE PHOTO

Dance away discrimination: Alankrita Shrivastava's Lipstick Under My Burkha

Tomorrow, if a community decides that bride-burning is a matter of faith, will a constitutional court not rise to the occasion and declare it unconstitutional?

AADHAAR

Do We Really Need the Census?

Atanu Biswas

The decennial Indian census is the world's largest administrative exercise. It cost around ₹2,200 crore in 2011. The next census is due in 2021. But with the tremendous drive towards digitisation, how long will this gigantic exercise go on as the primary tool for planning national progress?

The British census, first undertaken in 1801, will also be conducted in 2021. But the British government wanted to replace it with analysis from existing data from other sources after 2021. Moreover, the UK Statistics Authority has proposed that the 2021 census should be conducted predominantly online, supplemented by tax and National Health Service (NHS) records.

The paper exercise in 2021 would have cost around £1 billion (more than ₹82 billion). But the largely online census would save 40% of costs. In 2014, the British government confirmed that it would aspire not to undertake the census after 2021. Instead, a more regular administrative data would be used to produce statistics.

Britain does not have a unique identity (UID) database yet, although the £5 billion (about ₹411 billion) national identity card scheme was initiated with much enthusiasm. But, in 2010, the then-home secretary Theresa May scrapped the scheme. So, in Britain, the plan is that by combining existing statistics, such as council tax records, school admission statistics, tax records and NHS data, statisticians could provide a similar level of data to the census, but at a lower cost and on a more frequent basis.

But we have Aadhaar. With the Aadhaar database, census might become unnecessary in India. Still mandatory for filing income-tax returns, and growing traction — at least prior to this week's Supreme Court verdict on privacy as a fundamental right, leaving the verdict's effect on Aadhaar to be clarified by a five-judge bench later — for schemes like scholarships and compensation, Aadhaar can provide a database cheaper and more informative than the census.

When the Permanent Account Number (PAN) and Aadhaar cards are connected, all the information associated with the former is automatically transferred to the latter. So, all the economic activities can subsequently be monitored by Aadhaar — making the PAN redundant. The same future holds for the voter card, below-poverty-line (BPL) card, government health insurance cards and other IDs.

Eventually, the Aadhaar database could become a dynamic census database, ready to serve any purpose at any point of time. Then, one just needs some efficient data-mining tool, some carefully written programmes, which will be able to extract all the information from the Aadhaar database that we collect in a census, with utmost accuracy.

If Aadhaar is not derailed, 2021 may well see the end of a tradition that started in 1872 in this country. And to save money, the 2021 census could also be conducted overwhelmingly online. Then, if the data of Census 2021 is properly digitised, tallied and linked with the Aadhaar database, we may not need to carry out any future census exercise.

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FILE PHOTO

It's the final countdown

RIGHT TO PRIVACY

Getting Personal in a Public Space

Lavanya R Fischer

That privacy is basic to the dignity of the human being was made explicit in the Supreme Court judgement this week. The court held that it is a fundamental, but not an absolute, right. This distinction is important because of the extremely delicate balance between individual rights and public good.

Countries around the world have approached this concept in very interesting ways. Just like in India's case, this right, though not a part of many older Constitutions, has been read into them, on the premise that some rights are natural, inalienable or fundamental to an individual. The almost 600-page judgement of the nine-judge bench refers to the debate on privacy in countries like Britain, the US, South Africa and Canada. But there are interesting perspectives on this right to be gained from other jurisdictions too: ranging from giving up a certain measure of privacy on the basis of trust in governmental institutions, to its opposite.

Iceland and Spain figure prominently in the list of countries with the most stringent privacy regulations. While not clear whether it would figure in the top five countries with regard to privacy regulations, one of the most important cases in the international discourse, and especially data privacy, came before the German constitutional court in 1983. This was the first time dignity as associated with the right to 'informational self determination' was articulated.

This Census Act Temporary Injunction Case questioned the collection and use of census information ostensibly for planning purposes. The order, while allowing collection, reiterated the principle of proportionality, namely, the amount of data collected had to be balanced with why it was being collected. The court compared the collection of comprehensive data as akin to controlling freedom, since it would influence the way people acted to keep out of governmental radar. This then would affect democracy at its core.

This was why the court held that informational self-determination was intrinsic to the German Constitution's first and second Articles, protecting the dignity of the individual, and the right to free development of her personality. This identification of the effect of collecting and accessing information as exerting psychological pressure on the individual affecting both the individual's development, as well as the development of the democracy, is perhaps important for India.

The German court, like the Indian one, recognised that intrusions on this right were possible. It stated that there must be a statutory basis for the collection of this information, which must not be in conflict with constitutional protections and basic law. This basic law, as underlying the Constitution, was the inspiration for the Indian Supreme Court's 'basic structure' doctrine.

The European Court of Justice, too, has upheld the right to privacy in cases from various member States, ranging from the need to restrict use of fingerprints taken for biometric passports, to controlling who can view or use personal information. This has been one side of the public trust debate.

During this period, various countries have tried, with differing levels of success, to create a single identification number or card. At one end of the spectrum is Estonia, a country that allows a lot of information to be collected, but has extremely effective checks on the way it is used with stringent and actively enforced legislation. Further, individuals can see who has accessed their information (whether the police or other government officials).

The citizens of Estonia have high 'social trust'. Even Japan has used Estonian expertise to build itself an identity system. The active efforts of this small Baltic country in trying to promote its model represents the other less common side of the public trust debate.

In contrast to Estonia, in Britain, a national identity card scheme was struck down. The cancellation of Britain's National Scheme in 2011, after eight years of debate and partial implementation, was because it was generally felt that the information collected by this means was too large, and not in proportion to the stated goals.

George Orwell's Big Brother was the ultimate dystopian nightmare. We are trying hard in India to enforce ideas of sovereignty over the body, given minority and feminist struggles for basic rights. So, the idea of enforcing informational sovereignty may seem less important.

Vigilant courts are the last bastions against becoming just numbers. But the fear is the slow erosion of individual identity to that of an indefinable greater good, of imagination to non-confrontation. Though the Estonian story may offer hope.

FILE PHOTO

Choosing when to show oneself

the speaking tree

Ganapati Guides

M N KUNDU

Any sadhana, puja or auspicious activity by Hindus invariably starts with invocation of Ganeshji for his blessings for success. Ganapati, the offspring of primordial consciousness, Shiva, and elemental energy, Devi Parvati, is the god of wisdom. His physical appearance is a great lesson on management principles. His big head represents big thinking with confidence, memory and experience.

Large ears and small mouth advise us to listen more, talk less. His small and penetrating eyes look for minutest details and read between the lines for best interpretation. His long trunk represents constant activity, flexibility and ability to sniff out threats and opportunities. Big belly represents unquenchable thirst for knowledge and ability to accept and digest information. His body symbolises management principles of big thinking, deep listening, less talking and more vision.

Once a competition was held between Ganesh and his brother Kartik. Devi Parvati said that whoever would circle the entire universe seven times would be the winner. Kartik immediately set off on his peacock but Ganesh circled his mother Parvati seven times and sat down quietly, since he knew his mother, as primordial energy, represented the universe. No prizes for guessing who won.

This is one more example of out-of-the-box thinking that discovers solutions that are not only unconventional but also practical and lucrative. So, Ganesha is invoked for his intelligence and wise guidance, which is why He is propitiated at the start of any new venture.

Citings

On Global Funds Flow

SUSAN LUND ET AL

Banks are now proceeding more thoughtfully than they had been pre-crisis as they consider their foreign business and global footprints. They are exiting or reducing operations in countries and markets in which they have low market share and lack unique capabilities.

Some banks from developing and other advanced economies, however — notably Canada, China and Japan — are expanding abroad. Canadian and Japanese banks have doubled foreign claims since 2007 by $2.3 trillion, bringing the total to $5.3 trillion in 2016 ($1.4 trillion for Canada and $3.9 trillion for Japan). China's four largest banks have increased foreign lending by more than 10 times, from $86 billion in 2007 to $1 trillion in 2016….

Despite the retrenchment of global banking, financial globalisation continues. The global stock of foreign investment relative to GDP has changed little since 2007, standing at roughly 180% of world GDP. In absolute terms, total foreign investments have grown to $132 trillion in 2016, from $103 trillion in 2007. More than a quarter of equities worldwide are owned by foreign investors, up from 17% in 2000.

In global bond markets, 31% of bonds were owned by a foreign investor in 2016, up from 18% in 2000. Foreign lending and other investment is the only component of foreign investment assets and liabilities that has declined since the crisis.

From "The New Dynamics of Financial Globalisation"

Chat Room

Support Right to Privacy

Apropos 'Outgrowing the Mai-Baap State' by Samraat Basu and Sanjana Srikumar (Aug 25), the Supreme Court's verdict is a testament to the fact that the right to privacy is implicit in the Constitution and sine qua non for human existence. The brewing dissidence over the issue has now subsided. The right to privacy not being an absolute right is legitimate and justifiable as national interest and sovereignty are above all rights. The ramifications of this landmark ruling will be pervasive and not evasive, provided the citizens cooperate with the government policies and share details, whose benefits ultimately revert to them.

RAAJASH KULMI

Ujjain