

comment

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At 70, India gets a gift long due

The privacy ruling fills a void left by our Constitution makers

The Supreme Court's declaration that citizens have a 'right to be left alone' is a huge milestone in the history of the Republic and civil rights. The court has ruled that citizens have a right to privacy, which is fundamental to dignified human existence. While the court has not spelt out the full contours of privacy — it has given an illustrative example as to what privacy means. It said privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. By doing so, the court has affirmed an unwritten right, though recognised internationally as a fundamental right. By stepping in — the courts have filled a gap left by our Constitution framers.

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Privacy as a right has not been given a separate legal status in any country. Across the world it has arisen out of judicial pronouncements. The nine-judge Supreme Court bench had to cast away the historical burden of previous judgments that refused to recognise privacy as a fundamental right. Interestingly, while doing so, a son, who was part of the bench, overruled his father's previous verdict in the infamous ADM Jabalpur case. While this judgment has crystallised an amorphous idea — it has also reopened a debate on many contentious issues that have been decided in the past. For instance, in the case of rights of the LGBT community, this bench is of the opinion that the matter was wrongly decided on the touchstone of privacy. Sexual orientation of an individual is a matter of privacy. Similarly, the cases of abortion and wilful termination of one's life — are set to witness renewed deliberations.

So far, the Supreme Court has only decided if there is a right to privacy. Now that this is settled, it will turn its attention to Aadhaar. While the concept of privacy is still in its infancy, following developments in the field of media, technology and scientific thinking, the increasing role of corporations in the lives of citizens there is an urgent need to address this. The country could not have got a better gift from the judiciary for its 70th year of independence.

To move ahead, get the basics right

Railways needs to focus more on safety; Suresh Prabhu's resignation will not help

India's state-owned transporter is witnessing an unprecedented change. Railways minister Suresh Prabhu has put in his papers; the railway board is in the process of being restructured following the decision to replace the chairman of the board. So, is one to assume that the government is now determined to address the challenges of providing for safe rail travel? Former Prime Minister Lal Bahadur Shastri was independent India's first railways minister to quit following a train accident. Others including Madhavrao Scindia, Nitish Kumar and Mamata Banerjee offered to resign after similar tragedies. But their resignations were not accepted.

Upon his/her elevation, each railways minister has declared passenger safety as top priority. But the record of the Indian Railways — particularly on passenger deaths — has worsened over the years. Technology upgrade plans such as the installation of Train Collision Avoidance Systems have not moved forward. Rolling stock (locomotives, coaches or wagons) are antiquated; signalling systems are obsolete; track renewal targets are lagging behind, and the transporter is hobbled by underinvestment. Railway expenditure as a percentage of transport sector expenditure was placed at 56% in the 7th Plan (1985-1990), but reduced to 30% in the 11th Plan. In the last two decades, the share of the railways in overall GDP had been static at 1%, further reducing to 0.9% in 2012-2013. In case Mr Prabhu's resignation is accepted, how will the new minister tackle these issues that have a direct bearing on passenger safety?

The question has no easy answers, but one fact remains: The NDA government's quest to provide for a modern and efficient transportation system matching global standards is commendable; but age-old practices and methods that have served the aim of passenger safety in the past cannot be entirely rejected. The railways need to go back to basics and get it right.

The next target should be polygamy

If triple talaq can be challenged in the top court, other regressive laws must also be reviewed



ARIF MOHAMMAD KHAN

I had the good fortune of defending the Supreme Court judgment in the Shah Bano case in Parliament in 1985 and to argue on behalf of Muslim women in the Supreme Court challenging the constitutional validity of instant triple divorce in 2017.

The Shah Bano judgement came after changes in the CrPC which included the ex-wife in the definition of wife. Shah Bano was a textbook case where she was first deserted by her prosperous lawyer husband 40 years after marriage and three years later when she approached the court, the husband used the instrument of instant divorce and asserted that he was not liable for any payment beyond the Iddat period, that is three months.

The court, in the light of new law that is section 125 of CrPC, decreed in favour of Shah Bano and ordered the husband to pay a paltry sum of less than ₹250 per month. The matter went to higher courts and finally the Supreme Court upheld the judgment of the lower court in favour of Shah Bano. At this stage the Muslim Personal Law Board jumped into the fray and began organising protest meetings saying

that if this judgment was not reversed it would obliterate the community identity (Milli Tashakkhus) of Muslims. It was the same divisive argument that was advocated by the Muslim League before 1947. At that time, it was asserted that Muslims were a separate nation, now it was asserted that the Muslims have a separate identity.

The Muslim Personal Law Board built up such pressure that the government was forced to take cognisance of it. To its luck, even Congress leaders such as Narasimha Rao and Arjun Singh held the view that the Congress Party cannot perform the role of a social reformer for Muslims and advised the prime minister not to endanger the political constituency of the party by ignoring the demands of the Personal Law Board. Rajiv Gandhi, the young Prime Minister, could not ignore this advise and agreed to bring a legislation to reverse the judgment. The announcement to this effect created such a massive backlash that within a few days the government was forced to do something to manage the adverse reaction and at this stage Ayodhya came in handy to divert public attention from the Shah Bano verdict.

I resigned the day the Bill was introduced on February 23, 1986. During the discussion, not a single minister of the government defended the Bill on merit. They were simply said that there was an apprehension of a breach of peace. It sent out a message that the parliamentarians were not doing it because it was the right thing to do. They were doing it because they were fearful of Personal Law



Women celebrate the Supreme Court's triple divorce verdict, Allahabad, August 23

Board and its threats. I resigned because in August 1985, I had taken almost 60 minutes to defend the judgement in Parliament. Rajiv Gandhi wrote a small note congratulating me for the reaction that my speech had elicited. Six months later, the government decided to bring a legislation where the specific intent of the Bill was to reverse the judgement. I had defended that very judgment in Parliament.

The Supreme Court judgment of 2017 is a victory for Muslim women and their organisations. The women who have fought this case lacked resources or any organised support system and yet they persevered.

This is a historic judgment that will pave the way for a new era in this country. The 2017 Supreme Court judgment will not only have a liberating effect on Muslim women — the

threat of triple talaq that hung over their heads has been removed — but it also sends out a strong message of gender equality. It is a great source of inspiration even for non-Muslim women too. If these poor Muslim women without any resources can fight their battle successfully, why can't others?

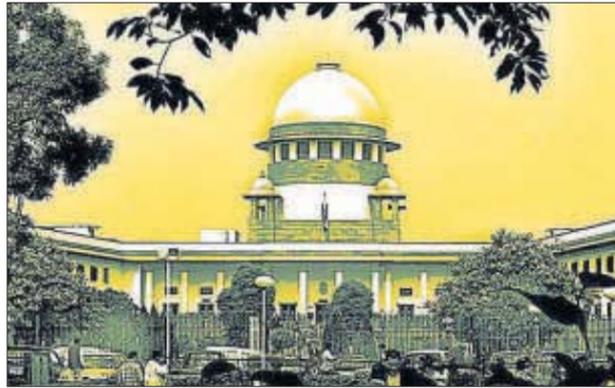
The Supreme Court has used the word 'unconstitutional' to describe triple talaq in a majority judgment. The door is now open and other provisions like polygamy can be challenged on the basis of its being arbitrary and unilateral. In fact my understanding is that like triple talaq, the unrestrained right to polygamy also finds no sanction in the Quran.

In matters of social reform, the path is never smooth. You will hear about many cases where the man will still make three pronouncements and the woman will refuse to move out saying there is no legal sanction for triple divorce. And if she chooses to go to the police, it will be a fit case for prosecution under harassment and mental torture. If in two or three cases effective action is taken, people will simply forget about triple divorce.

This judgment brings to my mind an observation of Pandit Jawaharlal Nehru. Sometime in the mid-1950s, Taya Zinkin, a correspondent from The Guardian, London had interviewed Panditji. She asked him what he considered his greatest achievement in life? Panditji had said: "I succeeded to secure rights for my Hindu sisters which were denied to them for centuries." Then she asked and what his life's greatest disappointment was? Panditji shot back: "I could not achieve the same for my Muslim sisters."

Arif Mohammad Khan is a former Union minister and was counsel for the All Indian Muslim Women Personal Law Board in the instant triple talaq case. The views expressed are personal

RIGHTSMATTER



In a landmark verdict, the Supreme Court on Thursday ruled individual privacy is a fundamental right

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Why privacy is no more a zero-sum game in India

Now that it has been declared a fundamental right, Parliament must define the contours of the SC ruling



SUNIL ABRAHAM

The privacy debate has been framed by some as a zero-sum game between State interest and individual interest. Sections of the private sector worry that privacy as a fundamental right will have a dampening effect on scientific research and technological innovation. But this is not the whole truth. The armed forces and intelligence agencies depend on military secrecy. Democracy is a consequence of the secret ballot. The bureaucracy cannot function without official secrets. Science cannot progress without double blind peer reviews and anonymised data sets. Innovators and creators need to protect their trade secrets, patents (before registration) and copyright (before publication). E-commerce and banking require passwords and authentication factors to be kept confidential. The free press depends on anonymous sources. All of this is predicated on the individual right to privacy. It is, therefore, not a refuge for scoundrels who have "something to hide" but the foundation of an open society and the free market.

How do we then address the tension between privacy and other fundamental rights like the right to free speech and derivative rights like the right to information? The RTI Act has privacy as one of the 10 exceptions — with public interest as the exception to the

exception. But a comprehensive fix would be for Parliament to enact an omnibus privacy law that does four main things: One, establishes the contours of this right including exceptions; two, articulates national privacy principles; three, establishes the officer of the privacy commissioner; and, four, enables a co-regulatory regime that allows bottom-up data protection standards from each industry sector to be blessed by the regulator.

How do we resolve the competing imperatives of privacy and national security? First by converting some of these tensions from zero-sum games to optimisation problems through innovative law and technology. Second, by updating 50 odd sectoral laws and regulations that impact the individual right to privacy in various domains.

How do we prevent Internet giants from using their legal teams to make a mockery of our privacy and data protection laws while at the same time protect emerging firms from over-regulation? Unlike the European GDPR, which has 37 years of historical baggage starting with the OECD Guidelines from 1980, India has the advantage of starting with a tabula rasa. If law makers are bold — we can leapfrog into the age of big data, machine learning and AI by reinventing principles such as consent, accountability etc. Rahul Matthan from Trilegal is leading some of the most innovative thinking here. Only through such regulatory innovation can we prevent both the "administrative paralysis" that might emerge from excessive litigation or the dampening effect on innovation from inappropriate regulation.

Sunil Abraham is executive director, Centre for Internet and Society. The views expressed are personal

Why Amma and Indira canteens are lifesavers

Fixed price meals can protect the urban poor from the brunt of inflation, and provide employment to women



REETIKA KHERA

The first coverage of the recently inaugurated "Indira canteens" in Karnataka that I noticed were two reports on television channels. Both were poking fun (justifiably) at Rahul Gandhi's goofy speech at the launch. Sadly though, neither commented on the rationale or importance of the Karnataka government's initiative. This was disappointing because 'canteens' (a variant of 'community kitchens') play an important role not just for "poor" people, but for others too.

Community kitchens (or canteens) need to be viewed more broadly than as a 'food subsidy' or even a 'safety net'. There are several reasons for this: One, canteens are of immense value not only to the indigent but to working people too. Two, canteens are a useful response to a "market failure" (such as high inflation) in the market for street food. Fixed price meals can protect the urban poor from the brunt of inflation. Three, there is an important gender dimension to canteens. It provides respite to women from packing lunches (invariably this task falls on women) for working members of their families.

Further, in several states (such as Jharkhand and Tamil Nadu), the canteens are run by women, providing them an opportunity for paid work. Four, community kitchens help in the creation of democratic public spaces, so sorely required in Indian society. Sharing a meal with people from diverse backgrounds fosters a spirit of togetherness.

Given these advantages to having canteens, the hostile coverage to Karnataka's canteen initiative, is especially disappointing. Some commentators have evaluated them solely from the prism of government expenditure. Clearly, that is an inadequate lens through which to view canteens.

Canteens work well in urban contexts

CANTEENS WORK WELL IN URBAN CONTEXTS FOR MIGRANT LABOURERS, VISITORS IN EMERGENCIES, ETC. THEY ARE AN IMPORTANT COMPLEMENT TO OUR EXISTING FOOD SECURITY PROGRAMMES

for migrant labourers, visitors in emergencies (due to illnesses, etc) and so on. In that sense, canteens are an important complement — thus far missing — to our existing framework of food security programmes. The National Food Security Act (NFSA) included four important programmes: The Public Distribution System (PDS), the Mid-Day Meal (MDM) scheme, Integrated Child Development Services (ICDS or anganwadis) and finally, maternity benefits. Community kitchens, along with social security pensions, were part of an earlier proposal, but were eventually dropped due to fiscal concerns.

Apart from Karnataka; Chhattisgarh, Jharkhand, Odisha, Tamil Nadu, Telangana are among the states which run canteens. Placing them near hospitals, bus stands and railway stations ensures that those in most need are able to access them easily. Think of all the district hospitals that attract poor patients from rural areas, barely able to afford medical care, who otherwise end up paying a lot for food.

Further, recent evidence from research in economics on similar schemes is quite encouraging. Several papers document the positive effects of the MDM scheme on enrolment, attendance, learning outcomes and nutrition. Even the PDS, which indeed suffered from high levels of corruption until the early 2000s, began to witness a turnaround in the past decade. Apart from a well-documented turnaround in Chhattisgarh and Odisha, we find a huge improvement in Madhya Pradesh too: In a small survey in 2013, respondents reported getting less than 40% of their entitlements, this rose to around 90% in follow-up surveys conducted in 2015 and 2016.

Of course, the financial aspect is important. Yet, the fiscal disciplinarians need to be reminded that there are two ways of reducing fiscal deficits. One, raising revenues by expanding the tax base and/or levying higher taxes. India's income base has stagnated at around 3% of the population, while in other BRICS countries it is around 7-8%. Two, cutting costs is another way of reducing deficit. But where? Social spending in India remains too low in the international perspective. What the Supreme Court had said early on in the right to food case — 'cut the flab elsewhere' — still holds true.

The message from the states, across party lines, is clear: Community kitchens which provide subsidised ready-made meals fulfil a useful social and economic role. They are good use of taxpayers money.

Reetika Kherra is associate professor (economics) at the Indian Institute of Technology Delhi. The views expressed are personal

innervoice

FAILURES ARE PILLARS OF SUCCESS; NEVER LET YOUR DREAMS TAKE A BACKSEAT

Shivani Sonia Thakur

Yesterday I was reading a story that deeply inspired me. This story is about a 4-year-old boy called Tommy. One day, after he returned from school, he handed a letter to his mother, where his teacher had written that Tommy was an autistic child, not fit for a regular school. This letter shattered Tommy's mother, who took it upon herself to teach her son.

This young boy was none other than Thomas Alva Edison — the famous

inventor. Later, in 1914, unfortunately Edison's factory burned down completely. He was 67 years old and all the work of his lifetime had turned to ashes. But this incident couldn't burn down his will power. After the incident, he said, "I am grateful to the almighty who gave me a chance to do something new. Three weeks after this incident, Thomas Edison invented the phonograph."

He had a positive attitude towards life which made him stronger and helped him survive through tough times. Think for a

while, if something like this happens to you, what would be your reaction? Most of us would be terribly depressed. But, remember, behind every success story, there are many stories of failure.

Learn the formula of success from water. Just like water takes the shape of any container it is put into, we must learn to adjust to every situation and find a way out. And never stop chasing our dreams.

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