

11 EXPLAINED

ONE VERDICT, MANY DIMENSIONS

BASKET OF LIBERTIES UNPACKED

A TO Z OF PRIVACY

The Supreme Court's landmark verdict making individual privacy a fundamental right will impact daily lives in ways that range from eating habits to online behaviour, and from sexual preferences to welfare scheme benefits.

KRISHN KAUSHIK and RAVISH TIWARI
draw up a list, one letter at a time

Illustration: Subrata Dhar



ADHAAR: The world's largest biometric project. The government has collected biometric and demographic data of 1.17 billion Indians, which it claims will help in plugging leaks in social welfare schemes. Several petitioners had challenged Aadhaar claiming that since it is mandatory in all but name, it goes against their right to privacy. The government argued that Indians don't have a fundamental right to privacy, which a nine-judge Bench disagreed with on Thursday, stating unanimously that all Indians do, indeed, have a constitutionally protected fundamental right to privacy.

BIOMETRICS: Biometric data include photographs, fingerprints, iris scans etc., which can be used to identify a person. Apart from the welfare schemes in which it is used to validate a beneficiary's identity, India is pushing it for a host of other services, and companies are building technology to use this biometric data. Activists say such a large repository of biometric information can be used as a tool of mass surveillance.

CONSENT/CHOICE: In the backdrop of growing acts of violence against those perceived to be involved in beef trade or those who allegedly eat beef, the nine-judge Bench in the privacy case said nobody "would like to be told by the State as to what they should eat or how they should dress or whom they should be associated with either in their personal, social or political life". At a time of increasingly intrusive majoritarianism, the court has made it clear that "liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind".

DATA-MINING: Earlier this year, India's richest man, Mukesh Ambani, said: "The foundation of the fourth industrial revolution is connectivity and data. Data is the new natural resource. We are at the beginning of an era where data is the new oil." The Supreme Court noted: "Recently, it was pointed out that Uber, the world's largest taxi company, owns no vehicles. Facebook, the world's most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory. And Airbnb, the world's largest accommodation provider, owns no real estate. Something interesting is happening. Uber knows our whereabouts and the places we frequent. Facebook at the least knows who we are friends with. Alibaba knows our shopping habits. Airbnb knows where we are travelling to."

EUTHANASIA: Indian law disallows medically assisted suicide. But the Bench said the right to privacy includes the right to refuse food or even medicine. Justice Chelameswar wrote, "An individual's right to refuse life prolonging medical treatment or terminate his life is another freedom which falls within the zone of the right of privacy..."

FINANCIAL TECHNOLOGY: As Internet penetration increases, so does the opportunity for financial institutions to use technology to capture and service clients better. The Narendra Modi government has been an enthusiastic backer of FinTech, using Jan Dhan Accounts, Aadhaar and Mobile, to reach a large section of the population that lay outside the banking system. On the other hand, extensive use of FinTech in a country with poor Internet literacy and little awareness of cyber hygiene is in itself a threat to the integrity of the financial system.

GOOGLE, ETC.: Companies such as Google, Facebook, Uber, Airbnb, Amazon, etc. probably have more data on users than the governments of their countries. The privacy of citizens needs protection from these non-state players, too. As Justice S K Kaul said, "Children around the world create perpetual digital footprints on social network web sites on a 24/7 basis as they learn their 'ABCs': Apple, Bluetooth, and Chat, followed by Download, E-Mail, Facebook, Google, Hotmail and Instagram."

HEALTH RECORDS: Health Records are important, private documents, whose publication can lead to social embarrassment and worse. "An unau-

thorised parting of the medical records of an individual which have been furnished to a hospital will amount to an invasion of privacy," the Supreme Court said, qualifying its position, however, by saying that if such records are collected by the state preserving the anonymity of individuals, "it could legitimately assert a valid state interest in the preservation of public health to design appropriate policy interventions on the basis of the data available to it".

INFORMATION CONTROL: Justice D Y Chandrachud mentioned three internationally accepted aspects of privacy: spatial control, decisional autonomy, informational control. The third facet is particularly relevant in today's "era of ubiquitous dataveillance", he said. "Informational privacy", the judge said, "is a facet of the right to privacy", adding that "the dangers to privacy in an age of information can originate not only from the state but from non-state actors as well". Informational control, Justice Chandrachud said, "empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person".

JUVENILE JUSTICE: The Juvenile Justice Act was mentioned by the government to argue that India does not need a fundamental right to privacy. The Act guarantees that "every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process". While the JJ Act makes the child's privacy a statutory law right, last week's privacy judgment reinforces the right of each child to have his details kept private even if he or she is charged for a crime.

KYC: 'Know Your Customer' is a mandatory requirement for the government — and extremely valuable for businesses such as insurance firms, banks, credit card companies, e-commerce firms, etc., who must know their customers as intimately as they can to tailor products for them. This is being done using unstructured data trails — cookies, metadata etc — on the Internet. Companies are sharing and trading individual profiles as commodities. The privacy judgment is likely to put a degree of check against unauthorised 'com-

modity-fication' of private profiles taken off the Web.

LAWS: The Supreme Court ruled that "the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution". Attorney General K

K Venugopal had argued that "the right of privacy may at best be a common law right, but [it was] not a fundamental right guaranteed by the Constitution". The court said that "infusing a right with a constitutional element" gives it "a sense of immunity from popular opinion and, as its reflection, from legislative annulment", which a common law right would not have.



MOBILE: With India emerging as one of the largest mobile handset markets and Chinese companies being one of its biggest suppliers, the issue of data protection has long been of concern for Indian authorities. The SC's privacy ruling may force mobile phone companies to tweak data privacy and protection settings.

NATGRID: Conceptualised when P Chidambaram was Home Minister after the 26/11 Mumbai terror attacks, NATGRID seeks to integrate over 25 categories of database from agencies like railways, banks, airlines, credit card companies, immigration, etc., and make it available to law enforcement officers. Following last week's order, the implementation of the programme could require amendments in several laws to allow sharing and transferring of data on items such as property and bank transaction details.

ONLINE SHOPPING: Buying online leaves electronic footprints that can be aggregated to reach conclusions on the nature of an individual's food habits, language, health, hobbies, sexual preferences, friendships, ways of dressing, etc. Companies can dive into this reservoir to target advertising at individuals. But following the privacy verdict, e-commerce companies will have to remain cautious about sharing data aimed at targeted advertising.

PROFILING: Every person willingly shares some bit of information about herself to particular authorities, companies, or institutions. But when this information is no longer confined to silos, and an authority or company can create interlinks between the separate islands of information, they can assess the personality of the individual in question. European Union regulations in 2016 called it profiling, defining it as "automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences".

QUESTIONS: The Supreme Court judgment has clearly established the vertical application of the right to privacy against the state. However, its horizontal application, against non-state actors, has been left open to case-by-case adjudication in the future.

REPRODUCTIVE RIGHTS: The Supreme Court counts reproductive rights as inherent to the right to life and liberty. Like privacy, this right is not mentioned in the text of the Constitution, but is a penumbral right — one derived from rights mentioned in the text. In 2009, the then Chief Justice of India KG Balakrishnan wrote, "There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21..."

But more importantly, Balakrishnan noted that a woman's reproductive choices also included the right to "abstain from procreating". The Supreme Court used the jurisprudence on reproductive rights in India and the United States to draw parallels with privacy as a penumbral right.

SEXUAL IDENTITY: "The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual," said the SC. It said its 2013 judgment, which re-instated Section 377 IPC, effectively criminalising homosexuality, struck a "discordant note" on the jurisprudence of privacy. LGBT rights, the court said, "inhere in the right to life. They dwell in privacy and dignity. They constitute the essence of liberty and freedom. Sexual orientation is an essential component of identity. Equal protection demands protection of the identity of every individual without discrimination".

TERROR: The seamless structure and anonymity provided by the Internet has emerged as a new space for terrorists to exploit — in the form of indoctrination, cyber attacks on financial systems, etc. Justice Chandrachud underscored the "legitimate interest" of the state to monitor the Internet against terrorists, subject to just, fair and reasonable restrictions against encroachment into privacy.

UNAUTHORISED TAPS: Though guidelines on phone taps are already in place, the privacy ruling has further reinforced protections against unauthorised surveillance.

VIOLENCE: Justice Chandrachud observed that "privacy must not be utilised as a cover to conceal and assert patriarchal mindsets".

WESTERN IMPORT: The judgment demolished the argument that privacy is an elitist construct imported from western countries. It "categorically rejected" the premise that the poor in the third world were more concerned with "economic well-being", and "privacy is a privilege for the few". Justice Chandrachud asserted that "every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy which privacy protects."

X-FACTOR: While adjudicating on the limited question of privacy being a fundamental right, the Bench clearly also had in mind the likely evolution of ideas of privacy as technologies matured. Justice Chandrachud referred to "wearable devices" and the vast amount of data involuntarily generated by its users that could compromise privacy. Along with the evolution of new age technologies — artificial intelligence, virtual reality, augmented reality etc. — will come new challenges to the protection of privacy. The judgment indicates that it is alive to future developments as well.

YOUTH: The judgment underlined that the privacy of the socio-economically underprivileged was as important as that of anyone else — but given the extent of the adoption and reliance on new technologies by the younger generation, and in many cases their refusal to be straitjacketed within majoritarian frameworks, the issue holds crucial importance for this demographic as well. The ruling is also likely to be their bulwark against non-state actors as and when the privacy discourse gains critical mass among youth hooked to social media and e-commerce.

ZERO TOLERANCE: By making privacy a fundamental right by a 9-0 verdict, SC has immunised it against attacks by simple legislative majorities.



The Indian EXPRESS

FOUNDED BY

RAMNATH GOENKA

BECAUSE THE TRUTH INVOLVES US ALL

Abdication foretold

The authority of the Indian state was trounced by the Dera. Is anyone surprised?



M. RAJIVLOCHAN

THE FAILURE OF the Manohar Lal Khattar government to contain the violence that rocked Haryana on August 25, in the aftermath of a court pronouncing Baba Gurmeet Ram Rahim Singh guilty of rape, once again tells us of what happens when the modern state withers away. There are three layers that are noteworthy.

The most visible layer is represented by the stone-pelting rioters, unwitting pawns moved around by social forces larger than them. Arriving at Panchkula in the thousands, with family and friends, their logistics taken care of by middle-rung leaders of the Baba's dera, they were part of a design of whose objective they were unaware. A few loose-talking devotees, of course, indulged in some bombastic talk about tearing India asunder were their revered spiritual leader to be sent to jail on charges of rape.

In the second layer, complicit with the rioters, are the so-called leaders of society — like Haryana Education Minister Ram Bilas Sharma, who explained on the record, that "Section 144 cannot be imposed on faith". Please do not misunderstand. The minister was not privileging the stone-pelting's emotional connect with the Baba. For, about that he cares little. Rather, Sharma was implicitly signalling to that man in the corner, holding a bottle of petrol, that no harm will come from burning a few cars or worse. Could the minister have been colluding with the bottle-holder? That is for you to decide.

A much deeper layer is made up of the spiritual content offered by the dera. It is a matter of fact that dera followers find attractive the whacky spiritualism peddled by Baba Gurmeet Ram Rahim. Millions went to watch the film, *MSG* (Messenger of God), featuring his antics as a super human. They unquestioningly accept his claims of extraordinary capabilities. But, this spirituality is just a front for something very real and very positive that the dera offers to its followers. Dignity, social support, medical help, and food security. These are precisely the things that the modern Indian state — at least in its Haryana/Punjab version — refuses to offer to the people.

Gurmeet Ram Rahim Singh's dera is just one of the ten more visible deras in north-west India. There are over 3,000 deras here, each providing the same services to the people — health guidance, de-addiction support, with a lot of dignity and all of it laced with a quirky spiritualism. Studies done by Paramjit S. Judge, Ronki Ram, me and our students have documented this aspect of dera culture in Punjab. People feel emotionally attached to the guru for providing them solace. But then a search for meaning and solace takes people to strange places and persons. Some sit by the river at Varanasi for solace and some join the shakha of a cultural organisation. There is no reason for anyone to sneer at any of the personalised solace-seeking strategies. The simple fact is, the strands connecting the believers with the Baba are multifarious, visible, and tenacious. They are stronger than the strands that connect the people to the uncaring, distant, and seemingly unjust, Indian state. The deras here seem to go beyond providing people with mental succour and start providing those services that should have been given by the state.

The Indian state is one of a kind. Oppressive as it is on occasion, it is unique in its persistent refusal to assert its authority in a routine manner, in a lawful and humane way against rule-breakers and those planning to challenge its authority. The most visible manifestation of this is in the reluctance of governments in India, cutting across political parties, to exercise the authority of the state except when it is politically convenient for those currently in power. State authority is seldom exercised as a matter of routine. The situation is so serious today that many senior bureaucrats even express astonishment when asked of why they are not working towards creating effective, easy to implement, people-friendly regulatory mechanisms for issues that concern the people like education, health, food quality, housing, real estate.

There is a certain simple-mindedness visible here. Chief Minister Khattar, and Minister Sharma, for example, pointed out

that, everything notwithstanding, the followers of the Baba have done good work on a variety of government campaigns and had even promised peace and quiet. A similar promise of peace and quiet had been made by another chief minister in December 1992 just before the mob assembled to demolish the Babri Masjid and push India into a grave spiral of violence. That dera followers were assembling in the thousands, with rations and equipment, to witness their revered one being humiliated did not seem to alert the authorities of the state to the possibility of large-scale mischief. Rather, they gave categorical assurances to an alarmed High Court that everything was okay.

But that, too, is at one with the general condition of the state in India. Since the state hardly works normally, it is impossible to make it function on special occasions, like when a 15-year-old rape case is finally reaching a verdict. Fifteen years? It took that long to decide upon a rape charge? This itself is an indicator of a dysfunctional state system marked by a dysfunctional system of justice.

The Law Ministry (2016) tells us that this is to be expected given that there are only 18 judges per million population, while the Law Commission (1987) had recommended a minimum of 50 judges per million. No wonder a hard-pressed people reach out to deras and babas and panchayats to provide them a semblance of justice since the state refuses to improve its systems of delivery. To make matters worse, the foot soldiers of justice, the police, over-worked, understaffed, and politically compromised, simply do not have the capabilities to ensure that the authority of the state is asserted routinely, regularly, justly and without rancour.

To expect this police force to suddenly exercise the authority of the state against those resorting to violence because their emotions are hurt does amount to asking it to do something beyond its proven abilities.

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WELCOME CJI MISRA

India's new chief justice comes to his office at a fine moment for the court

CHIEF JUSTICE J.S. Khehar's last week in office marked a series of watershed moments in the history of the republic. In the triple talaq verdict, a five-judge bench of the Supreme Court displayed a fine complexity. It struck down, through the majority opinion, a regressive practice on the grounds that it violated Article 14 — the constitutional guarantee of the fundamental right to equality — but a significant opinion on the bench also reiterated the constitutional protection to personal laws. Forty-eight hours later, the apex court stood up unequivocally for the right of the individual to privacy. It recognised her right "to be different and to stand against the tide of conformity in creating a zone of solitude".

Ever since 2014, an apprehension has taken hold and grown — that a strong political executive is asserting its dominance in spaces that, in a plural, constitutional polity, should not be governed by the tyranny of numbers. It has given rise to fears of a spreading majoritarianism among sections of minorities — religious, social, political. The BJP has used its electoral victories to justify controversial policies and political projects, from those carried out in the name of cow protection and to counter "love jihad", to the overriding of citizens' legitimate concerns on data protection. A weak Opposition has been unable to articulate a counter-narrative. In this context, the judiciary has reminded — and reassured — the people of India that democracy is not merely preserved and sustained by the holding of elections and the electing of governments. It needs checks and balances, and countervailing institutions, to protect individual and minority rights from being relegated or stifled.

As Justice Dipak Misra takes over as CJI, the court, through its verdicts, has also set up the debates for the future. The idea of the private individual that the higher judiciary has affirmed must now be actualised. Going forward, the lower courts must also uphold the principles the apex court has outlined in specific cases that come before them. The onus also lies on citizens. The apex court has, particularly through the privacy verdict, provided the tools for individuals to assert their rights, to stand up against any attempts to deny them. By testing and deploying these for the rights of homosexuals, women, the poor and vulnerable, the idea of citizenship will be made bolder and deeper. How CJI Misra shapes the contentious debate on judges' appointments and protects the judiciary's independence will also define the balance between the executive and the court.

NO SILVER BULLET

Mergers of state-owned banks are not the whole solution. Balance-sheets must be strengthened, governance improved

THE GOVERNMENT HAS announced that a ministerial panel headed by the finance minister will oversee mergers among state-owned banks. Finance Minister Arun Jaitley says that the aim is to create strong banks and that the merger proposals will have to come from the boards of these banks and decisions will be taken purely on commercial grounds. This comes at a time when bad loans as a ratio of total loans are already close to 10 per cent with indications that the ratio could worsen given the current economic conditions and the twin balance-sheet problem — of over-leveraged corporate balance-sheets and banks weighed down by bad loans. That's why the so-called Alternative Mechanism to oversee mergers of PSU banks could be seen as an attempt to skirt the challenge of infusing capital for banks which the government controls or divesting some of these weak banks.

Over the last two decades, successive governments have indicated the policy option of consolidating Indian banks to ensure a better functioning financial sector. But that goal cannot be achieved by forcing a lender with a strong balance-sheet and a country-wide franchise or branch network to merge with a weak bank when the balance-sheets of most of the 21 state-run banks look stretched. The RBI's latest Financial Stability Report shows that the gross bad loan ratio of PSU banks could be as high as 14.2 per cent by March 2018 if there is no economic rebound. The credit rating agency, Moody's, reckons that the government which has budgeted Rs 10,000 crore this fiscal for capitalising banks will have to set aside close to Rs 95,000 crore for 11 state-run banks over the next two years.

The global experience of such mergers in the financial sector has shown that they are bound to fail if they don't meet the test of efficiency, synergy and cultural fit. It may be early to judge but the latest results show a deterioration in earnings of India's largest bank, State Bank of India, after the merger of its associate banks with the parent. Given the context, it is debatable whether this planned consolidation will lead to rationalisation, both at the branch level and in terms of staff, and a more efficient banking system. If the motive is only to shrink the universe of banks which the government controls, it will still not address the core issue of governance that underlies some of the problems faced by these banks. For, that is tied in to the ownership of banks by the government. Pursuing the mergers of these banks without strengthening their balance-sheets and raising governance standards poses the risk of compounding the problems being faced by these lenders.

SUPREME COURT'S LOST CHANCE

By resting heavily on religious texts, triple talaq verdict sets a troubling precedent



CHINTAN CHANDRACHUD

ON AUGUST 22, the Supreme Court delivered its judgment in a case challenging the constitutional validity of the practice of "instant triple talaq" by Muslim husbands. The case held significant opportunities for the Court. It was asked to decide if the practice violated the constitutional right to equality and protections against gender discrimination. Ahead of the judgment, it was widely anticipated that the Court would strike down the practice on the basis that it breached constitutional morality. It was also hoped that the Supreme Court would overturn a long-standing decision of the Bombay High Court effectively insulating personal laws from constitutional scrutiny. In spite of the majority of judges striking down the practice of instant triple talaq, the judgment did none of those things.

To be sure, the more accurate way of characterising the judgment is that some of the judges did do some of those things. But the danger of three separate opinions amongst a panel of five judges deciding a case is that the lowest common denominator prevails. In this case, the lowest common denominator was that the practice of instant triple talaq was not integral to Islam, and was therefore unprotected by the constitutional right to freedom of religion. The Court decided the case on an interpretation of religious texts rather than constitutional provisions.

The most striking implication of the Court's judgment is that it effectively signalled that triple talaq and other religious

practices would be scrutinised through the lens of religion rather than the right to equality. The battle for equality will, as a result, continue to be waged in the language of religion rather than the language of rights. There is another particularly disquieting feature of judges adjudicating upon the significance of religious practices. The Court opens itself up to uncomfortable questions of institutional and individual competence.

The most striking implication of the Court's judgment is that it effectively signalled that triple talaq and other religious practices would be scrutinised through the lens of religion rather than the right to equality. The battle for equality will, as a result, continue to be waged in the language of religion rather than the language of rights. There is another particularly disquieting feature of judges adjudicating upon the significance of religious practices. The Court opens itself up to uncomfortable questions of institutional and individual competence.

The dissenting opinion alluded to this in no uncertain terms. Citing four high court cases that held that triple talaq was integral to Islam, the opinion stated that all of those cases were decided by "Sunni Muslims, belonging to the Hanafi school" which "cannot be considered an outsider's view" of Islam. This criticism of the majority's opinion, decided by judges of different faiths, is hardly subtle. Investigating the legitimacy of this criticism is for another day. But transforming the language of argument from religious texts to constitutional rights would alleviate it considerably, for all judges are equally "outsiders" (or insiders) on questions of fundamental rights. Yet, with the Court's decision, the bench composition in cases involving personal law will become more significant than ever before.

Perhaps the greatest success of the majority opinions is that they avoided the situation that would have arisen had the dissenting opinion prevailed. In spite of holding the practice of triple talaq constitutionally valid, the dissenting opinion — recognising the in-

justices associated with the practice — was willing to decouple the constitutional right from the remedy. More specifically, the opinion would have imposed a six-month injunction to enable Parliament to enact legislation on the subject. The injunction would continue if appropriate legislation was introduced in Parliament within that time frame.

This outcome would have been not only constitutionally suspect, but also pragmatically unsound. The Supreme Court lacks the authority to direct Parliament to enact legislation. The dissenting opinion's justification — that the Union government adopted an "aggressive" position in the case — mistakenly conflates Parliament and government. More significantly, the Court would have been aware that its exhortations to Parliament in several previous cases have fallen upon deaf ears, eroding its authority. It is not difficult to see why in the game of modern politics, governments in India (and elsewhere) see it in their interests to defer difficult decisions to Courts. The dissenting opinion should have acknowledged that the incentive structures simply do not line up for governments to push controversial legislation through Parliament.

The legacy of the case will likely be one of missed opportunities. It is legitimate for us to expect more from a constitution bench decision of the Supreme Court.

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FREEZE FRAME

E P UNNY



AUGUST 28, 1977, FORTY YEARS AGO

IDI AMIN'S OVERTURE
UGANDAN PRESIDENT IDI Amin's reported offer to pay Rs 30 lakh pounds compensation to some 1,000 stateless Asians expelled by him from his country has surprised British government officials. However, President Amin had earlier paid some Rs 3 crore to the Indian government towards compensation for those Indians he had expelled from Uganda. Britain and Uganda have no diplomatic relations. The Ugandan leader has this time offered to pay to 1,000 stateless Asians, now scattered in Europe and elsewhere, a sum of 30 lakh pounds to be paid immediately and the balance over 10 years at half-early intervals without interest. The offer

does not apply to 5,000 Asians who hold British passports.

BAIL FOR SANJAY
FORMER I&B MINISTER V.C. Shukla and Sanjay Gandhi were granted bail on a personal bond of Rs 6,000 in the *Kissa Kursi Ka* case. The CBI has launched proceedings against them for criminal conspiracy and destruction by fire of the film, *Kissa Kursi Ka*. The film, produced by Amrit Nahata, MP, was forfeited when it was referred to the I&B ministry by the censor board.

RAIDS AT PUNJAB PCC
THE PUNJAB VIGILANCE Department raided

the Punjab Congress Bhavan in Chandigarh in search of documents pertaining to the December 1975 AICC session. The raid comes after an FIR was lodged against former CM, Giani Zail Singh, and others for allegedly collecting funds for the Congress session and amassing wealth by abuse of authority.

JAIL INMATES ON FAST
ABOUT 50 OF 850 fasting prisoners at Bareilly jail were removed to hospital. The prisoners went on a fast unto death to demand that they be released immediately after remission in their sentences without individual cases being referred to the Probation Board or the government.

13 THE IDEAS PAGE

Tall tales for farmers

Government's stated aim to double agricultural incomes by 2022 appears unrealistic. But it can change the policy focus from the consumer to the farmer



FROM PLATE TO PLOUGH
BY ASHOK GULATI AND
SIRAJ HUSSAIN

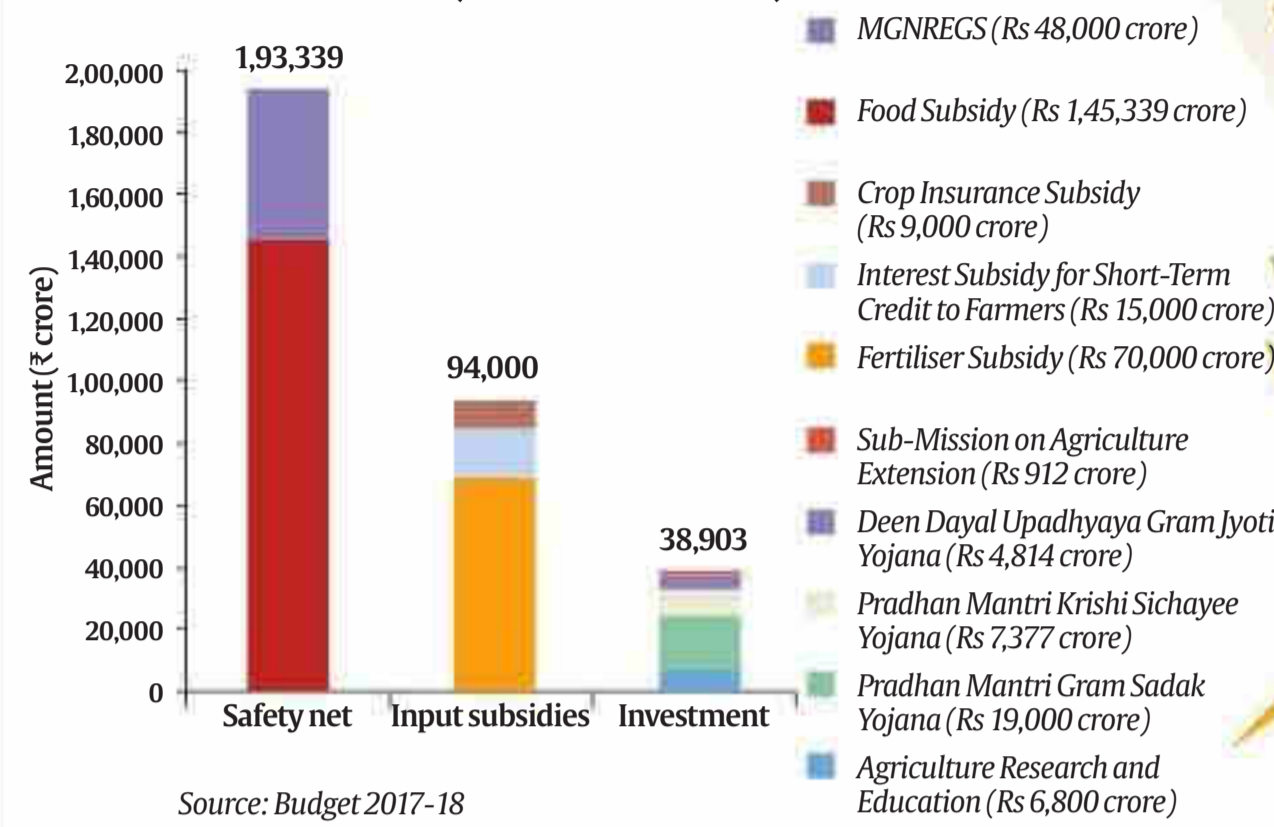
IN HIS INDEPENDENCE Day speech, the prime minister referred to farmers 12 times. He talked about several achievements in agriculture — providing soil health cards to nine crore farmers and the enhanced crop insurance scheme. He also mentioned that 99 projects under the Pradhan Mantri Krishi Sinchayi Yojana will be completed by 2019, FDI in food processing will be encouraged, supply of inputs to farmers will be ensured and they will be assisted in marketing their produce. The PM concluded by saying, "Together we will build such an India where the farmers can sleep without worry. In 2022, they will earn double of what they earn today".

The first time the PM had shared his dream of doubling farmers' income (DFI) was at a kisan rally in Bareilly on February 28, 2016. A day later, the finance minister talked about this goal in his budget speech. Thereafter, this goal attracted the attention of policymakers, economists and most importantly, farmers. Initially, it was not clear if the government intended to double the real income of farmers or their nominal income. It is now evident that the government's aim is to double the real income — recent reports of the Committee on Doubling Farmers' Income spell out this goal.

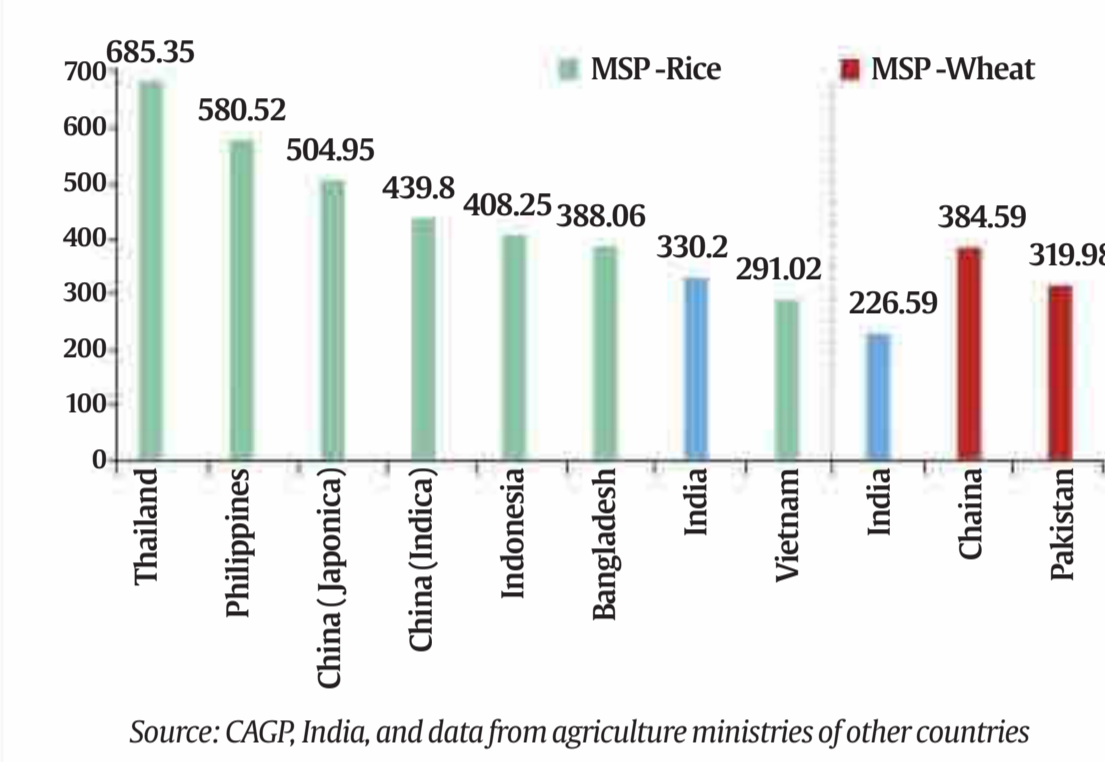
On April 13, 2016, the government set up a committee under Ashok Dalwai, then additional secretary in the Union ministry of agriculture, to prepare a report on DFI. The committee seems to have prepared a 14 volume report of which four volumes — 718 pages in all — have been uploaded on the ministry's website as of August 14. The 14 volumes could have more than 2,000 pages in all, and more than 300 recommendations. It would be quite a test for the PM to read the entire report and make sense of it in order to initiate policy action. The report has information, which can be very useful for a PhD student, but it also has several inconsistencies that leave the reader confused, reminding one of Albert Einstein's famous quote "If you can't explain it simply, you don't understand it well enough".

The report pertains to three areas — productivity gains, reduction in cost of cultivation, and remunerative prices. Strategic framework has four concerns — sustainable agri-production, monetisation of farmers' produce, re-strengthening extension services, and recognising agriculture as an enterprise. The report also uses an econometric model to work out the investment needed in agriculture, irrigation, rural roads, rural energy and rural development to attain 10.41 per cent annual growth in real incomes for DFI by 2022-23 over the base of 2015-16. The point to be noted is that farmers' real incomes have increased by only 3.5 per cent per annum during 2002-03 to 2012-13. So, DFI means three times higher effort and resources. That means a humongous additional investment of about Rs 6,40,000 crore at 2011-12 prices. And this does not include investments in agri-logistics, cold chains, etc. Eighty per cent of this investment has to

Graph -1: SUBSIDIES, WELFARE PROGRAMMES AND INVESTMENTS IN AND FOR AGRICULTURE (BUDGET FY 2018)



Graph -2: INCENTIVES: ARE OUR FARMERS GETTING REMUNERATIVE PRICES (2014-15)? (USD/MT)



come from the government. The investments in and for agriculture need to rise by 22 per cent per annum in real terms if the dream of DFI is to be realised.

But the report is totally silent on how, and from where, these resources will be generated. In a climate of loan waivers, subsidies, and welfare programmes (see Graph 1) that dominate the budget, the likely reality is that investments are going to shrink further. But even if one makes the assumption that this humongous investment will somehow be made, there are two questions that beg for answers. How much will agri-production increase as a result of this investment? Where will that increased production be absorbed? We have seen that when production increases somewhat significantly, prices crash — this year in several states, prices of onions, potatoes, pulses and oilseeds crashed when production increased. If domestic consumption can't absorb increased outputs, can we export competitively in global markets? The report does not answer any of these fundamental questions. Instead, we have a laundry list of hundreds of recommendations, ranging from implementation of the Agriculture Produce and Livestock Marketing, (Promotion and Facilitation) Act to e-NAM to negotiable warehouse system to price deficiency payments to re-organising KVVKs and setting up a secretariat for DFI.

Does it then mean that DFI will remain

One may look at the Chinese experience during 1978-84, when the country doubled farmers' real incomes in six years and reduced poverty by half (India took 18 years, from 1993 to 2011, to cut poverty by half). China focused primarily on incentives for farmers by moving from the commune system to the household responsibility system in land, and ensured higher prices for farmers. Chinese prices for farmers are way above what India gives to its farmers. To cite one example, China's MSP for wheat in 2014-15 was \$ 385 per tonne against India's \$ 226 per tonne.

a pipe dream by 2022? Most likely, though not necessarily. In order to take this dream closer to reality, one may look at the Chinese experience during 1978-84, when the country doubled farmers' real incomes in six years and reduced poverty by half (India took 18 years, from 1993 to 2011, to cut poverty by half). China focused primarily on incentives for farmers by moving from the commune system to the household responsibility system in land, and ensured higher prices for farmers. Chinese prices for farmers are way above what India gives to its farmers. To cite one example, China's MSP for wheat in 2014-15 was \$ 385 per tonne against India's \$ 226 per tonne. Similar differences exist for other crops (see Graph 2). This was on top of \$ 22 billion of input subsidies.

The upshot of this example is that India needs to focus on incentives for farmers. Unfortunately, our policy is biased in favour of the consumers and that inadvertently makes it anti-farmer. The Narendra Modi government can address that issue by using an income policy to protect the poor, and free up prices for farmers, allow private trade to stock and operate freely and have unhindered exports. India can, then, raise farmers' incomes significantly, if not double them by 2022.

Gulati is Infosys Chair professor for Agriculture at ICRIER and Hussain is former Secretary Agriculture (GoI) and currently Visiting Senior Fellow at ICRIER

WHAT THE OTHERS SAY

"While the US Navy is becoming a dangerous obstacle in Asian waters, China has been making joint efforts with the members of ASEAN to draw up a Code of Conduct for the South China Sea."

—CHINA DAILY

Why memory

Gandhi Smriti celebrates the Mahatma's life, but ignores his assassin and the ideas that drove him. That's a problem



SEEMA CHISHTI

THE SACHSENHAUSEN Memorial and Museum, near Berlin, is the same concentration camp where the Nazis perfected the method of killing Soviet prisoners of war by firing a neat shot at the back of their neck while pretending to measure their heights. It is also the place where the famous pastor, Martin Niemoller, the one who spoke of the folly of not speaking out when they came for Communists, trade union leaders and then the Jews, was kept. When they came for him, there was no one left to speak for him.

What does not escape your attention is that the police training academy for the region is located cheek-by-jowl to the camp. As part of a political consensus in Germany to ensure that Nazi philosophy is never forgotten, and so never repeated, police training academies are situated near concentration camps. The idea is to keep the horror alive for those who are most visibly identified with the state.

The use of memory as a political tool to preserve sanity and not forget has been the subject of much debate — and some concern too — in Germany. But the broad idea of how one must remember to remember is perhaps modern Germany's biggest contribution to good sense in the post-war world.

At the Gandhi Smriti, where Mahatma Gandhi was assassinated by Nathuram Godse, you experience the opposite of remembering. The museum has, no doubt, been refurbished with care and imagination. Its aesthetic speaks to each visitor, but something very important is missing.

The name of the assassin and the ideas that drove him to murder Gandhi find no mention at the memorial. The fact that he was killed is perfunctorily mentioned, but the setting at the memorial is such that you would think you are in Porbandar or Wardha, where he was born and lived for long periods. At Gandhi Smriti, the site where Gandhi was killed, his life indeed is celebrated, but there is no solemn evaluation of his death.

Why is memorialising Gandhi's death relevant now? The spate of hate crimes and lynchings on the basis of what you look like or eat, have reopened many debates that were once deemed as settled. Being an Indian citizen was once like being part of a large quilt, where a different patch was accepted and, in fact, a matter of pride. Now,

when the government speaks of amending the Citizenship Act on the basis of religion or its senior ministers visit those accused of mob attacks on dinner tables, as in Dadri, the signs are clear. They become very graphic when governments, for instance in UP and MP, ask madrasas to prove their patriotism.

When the idea of nation-state arose in Europe, it was embedded in language and a oneness that valued sameness. It was only countries like the Soviet Union and Yugoslavia that proposed solid multi-ethnic and religious identities. India was an even bigger exception.

During the Independence struggle, broadly three competing visions emerged: The mainstream Gandhian/Congress concept of a secular and democratic India; the Left idea, shared by Bhagat Singh and other revolutionaries and the Communists; and a third exclusivist vision, shared by both the Muslim League and the Hindu Mahasabha/RSS, which saw religious faith/identity as the marker of citizenship and Hindus and Muslims as adversaries. The first two, predictably, clashed with the third vision. The Muslim League got its Pakistan, but the Hindu Rashtra could not be realised since the idea of a modern, secular and democratic republic with a vote to every citizen, prevailed in India.

Hindutvavadis saw Gandhi's eclecticism and abhorrence of the two-nation theory as a threat to their ideas. The communal hate fuelled by Partition and the quick turn of events between August 1947 and January 1948 created an enabling climate for them to kill Gandhi. This is what Sardar Patel, a devoted Gandhian and then deputy home minister, meant when he wrote the letter banning the RSS, referring to the "cult of violence" that had whipped up enough hate to murder the Mahatma.

Gandhi Smriti alludes to the killer, a "madman". It speaks of the *hatya*, but not the politics that killed the Mahatma. The phrase "madman" was used by a distraught Pandit Nehru when he addressed the crowd to douse communal fires. But, certainly, seven decades on, it is time to strip the madness of its camouflage and confront the beast in the tent. In countries that have been able to prevent a repeat of hate, spelling out and recalling those episodes, like the Third Reich, are very important.

The Partition museum that has come up in Amritsar might be a good beginning to start thinking clearly about the hate that broke up the Subcontinent. Even merely recalling the ideas that allowed patriotism to masquerade as patriotism would be a revolutionary act. History will not repeat itself as parody or farce, if only we remember.

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LETTER TO THE EDITOR

COURTS TALK TOUGH

THIS HAS BEEN a great week, not only because of the shots-in-the-arm to the country's citizenry by two sets of earth shaking judgments by our Supreme Court, but also because of the harsh words spoken by the judges of the Punjab and Haryana High Court (furious after seeing the carnage around them): That India's prime minister is of the entire country, not just of the political party in power, that the chief minister is not of the BJP but of the entire state of Haryana. Lord Keynes once famously said that words sometimes have to be harsh, "for they are the assault of thoughts on the unthinking."

Fali S. Nariman, via email

HELMSMAN NILEKANI

THIS REFERS TO the report, 'Nilekani back at Infosys for a second stint' (IE, August 25). That Nandan Nilekani earned the confidence of both the UPA and the NDA governments in carrying forward his brainchild, the Aadhaar project, reveals a unique quality — being comfortable with parties and people of all hues. Now that he is back, after a gap of nine years, to where he belongs, his stint in the Unique Identification Authority of India (UIDAI) should help him. He has had a first hand experience of "bureaucracy". No one doubts his managerial and strategic qualities. But, importantly, he has Infosys founder N.R. Narayana Murthy's ear.

Ganapathi Bhat, Akola

KEEP PRABHU

THIS REFERS TO the report, 'Prabhu orders to quit, AI chief to head Rly board' (IE, August 24). Railway Minister Suresh Prabhu has taken a number of measures and introduced reforms to improve the condition of the railways and passenger services. The passenger complaint redressal system on Twitter is im-

LETTER OF THE WEEK AWARD

TO encourage quality reader intervention, The Indian Express offers the Letter of the Week award. The letter adjudged the best for the week is published every Saturday. Letters may be e-mailed to editpage@expressindia.com or sent to The Indian Express, B-1/B, Sector 10, Noida-UP 201301. Letter writers should mention their postal address and phone number.

THE WINNER RECEIVES SELECT EXPRESS PUBLICATIONS

mensely helpful to rail passengers. The resignation of the railway minister or top officials of the railway board is no solution. Responsibility should be fixed and drastic action taken against the erring ground staff in case of accidents like the Utkal express tragedy and remedial measures should be taken in accidents caused by systemic failures.

M.C. Joshi, Lucknow

DON'T LITIGATE

THIS REFERS TO the article, 'Out on several LIMBS' (IE, August 24). Our justice is crippled by the dead weight of pendency of government cases in courts due to the collision of several wings of the executive. A pre-audit system, with accountability, to verify the legal tenacity of all decisions is needed.

M.N. Bhartiya, Goa



NEXT DOOR NEPAL
BY YUBARAJ GHIMIRE

Slipping in Delhi

Deuba's India visit is unlikely to help his cause back home

PRIME MINISTER Sher Bahadur Deuba's statement on the eve of his five-day state visit to India revealed the anxieties Nepal's political order harbours about the country's constitution. "The republic will be formalised once elections to the provincial and federal parliament are held," Deuba had said. A day earlier, the cabinet had decided to hold the two elections simultaneously on November 26.

Why does the republican order appear so "vulnerable" though the monarchy was "abolished" at the first meeting of the Constituent Assembly nearly nine years ago? Incidentally, Deuba's assessment is shared by many key political groups. Pushpa Kamal Dahal, chief of the Communist Party of Nepal-Maoist Centre, and also a partner in Deuba's government, has repeatedly said the Nepali Congress and the Communist Party of Nepal-Unified Marxist Leninist together may restore Nepal's Hindu status and the monarchy that the new constitution took away.

A similar fear is palpable also among certain sections in India that had played a key role in formulating the contentious agenda of the constitution, mainly secularism and republicanism, without following due process and letting the people have their say on these

issues. "Hope Deuba's unscheduled one-to-one meeting with (Prime Minister) Modi was not to brief the Nepali leader on the virtues of a monarchical Hindu state order," tweeted S.D. Muni, who in his capacity as member of the National Security Advisory Board of India, influenced the Indian establishment to endorse the radical political agenda in Nepal that had Maoists at the centre stage.

Prime Minister Modi had invited Deuba to his residence soon after he landed in Delhi Wednesday. The unplanned and unprecedented act was clearly an Indian wish. It was perhaps a message to China, now not only competing with India but visibly outpacing it in Nepal, that Kathmandu and New Delhi do not always work under prescribed state norms and that "common culture and traditions", at times, make them a "family".

However, Nepal's political society has drawn their own conclusions about Deuba's visit, which seems very different from what Modi may want to signal to the world. There has been strident criticism in Nepal of the 46-point statement, that followed the signing of the eight-point MoU during the visit, and Deuba's commitment to amend the constitution to address the grievances of the Rastriya Prajatantra Party, a Madhes-based political group. An amendment bill to the

constitution to meet the demands of Madhes groups had been defeated in parliament on the eve of Deuba's India visit. Critics are questioning Deuba's decision to commit in Delhi that he will re-introduce the defeated bill. Deuba, he course, has the chance to clarify his position in parliament.

India's foreign secretary, S. Jaishanker, said Doklam did not figure when the two prime ministers met. The statement issued by New Delhi, however, said that "defence ties and assistance in security is an important aspect of our partnership".

Deuba also apparently failed to convince New Delhi that more than a dozen embankments India "unilaterally" built on its side of the border cause floods in the Madhes area every year and need immediate "review" and "correction". All that Delhi said was there will be more "consultation and cooperation".

But Modi got an invitation from Deuba for a third visit to Nepal to lay the foundation of a hydro project — Arun Three — that will be built with Indian aid. Modi badly needs to tell Nepali people that the post-earthquake blockade, which put them into hardship, was an aberration and unfortunate.

However, certain developments that took place during Deuba's India visit indicate that he may have fresh challenges to deal with on

his return. The ruling coalition partner, the CPN-Maoist Centre, has revived the Young Communist League (YCL) that has threatened to "keep a watch on corrupt leaders besides manpower agencies dealing with drafting youths to employment abroad". The YCL had been lying low since the Nepali Congress and other coalition partners objected to them running a "parallel state" seven years ago. The YCL's new statement indicates that its agenda and style of functioning has not changed. It also has the potential to cause a rift in the ruling coalition and threaten the government. A law and order problem can be detrimental to the timely conduct of the polls scheduled in November.

A prime minister visiting New Delhi soon after assuming office used to be seen as a routine matter. However, the increasing hostility or indifference of more and more political actors in Nepal towards India means a Delhi trip may not always yield a positive outcome for the government of the day.

Back home, Deuba will need to dispel the suspicion about any "secret deal" having been made during his visit, and make the atmosphere conducive for a fair poll in November.

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