



A thought for today

I like the religion that teaches liberty, equality and fraternity

B R AMBEDKAR

Time For UCC

If unifying India is Modi's mantra, uniform civil code with minority backing will transform Indian society

The Supreme Court judgment outlawing instant triple talaq was a landmark decision but it also highlights difficulties faced by judges in resolving thorny issues that overlap between civil matters and personal laws. Justices Nariman, Lalit and Joseph took the stand that triple talaq is not integral to the practice of Islam and isn't protected by Article 25(1) safeguarding religious freedoms. But Justice Joseph disagreed with the Nariman-Lalit view that a colonial-era legislation surrendering "marriage, dissolution of marriage, including talaq" to personal law regulated triple talaq, and hence must be tested against Article 14 guaranteeing equal protection of the law.

Instead Justice Joseph, like Justices Khehar and Nazeer, reaffirmed that the law applicable to Muslims "shall only be their personal law namely Shariat" and then proceeded to ascertain whether triple talaq was sanctioned by Quran. But should judges be forced into laboured interpretations of religious laws in matters like marriage that fall within the domain of civil law? All three judgments on triple talaq conducted their own inquiries into Muslim laws, on essentially theological issues, and arrived at different interpretations.

For women coping with marital, divorce, inheritance and alimony disputes, vacuum in the statute on grounds of primacy of personal laws is a gross violation of Article 14. Justices Khehar and Nazeer, with qualified support from Justice Joseph, implored Parliament to extend the codification of laws, "an issue of paramount importance", to Muslims too. But codification of personal laws will not end discrimination if the personal law is fundamentally discriminatory. Even the Hindu codes still have provisions that favour men over women. A Uniform Civil Code (UCC) would bring clarity, cut through the messiness necessitated by dealing with abstruse theological matters, and actualise Article 14's promise of equality.

But UCC seems tough to achieve in today's fractious political climate. To bring it closer, every party must drop the selective secularism it currently practises and move towards genuine secularism. This responsibility falls especially heavily on BJP and NDA as they are politically dominant in the country. Prime Minister Narendra Modi is best placed in decades to take the initiative. He has parliamentary backing and his party manifesto promised a UCC if elected. But Modi must first win minority backing by propounding an inclusive agenda in all walks of public life. After GST on the economic front, UCC is the ultimate measure to "unify" Indian society.



Let's Talk About Discrimination

Supreme Court outlawing triple talaq was no surprise, it should have gone further

Arghya Sengupta



There is something naturally perverse about a husband being given the right to annul his marriage unilaterally by merely uttering the word 'talaq' thrice. It does not require an Islamic cleric or a constitutional scholar to find this practice abhorrent, discriminatory and disrespectful of women. It was thus little surprise that the Supreme Court outlawed instant triple talaq, a judgment hailed for empowering women in their struggle for gender equality.

But that is unfortunately where praise for the judgment must begin and end. Scarcely has a judgment with such a progressive outcome been underpinned by such regressive reasoning. The dissenting opinion of Chief Justice Khehar and Justice Nazeer considers triple talaq, despite being discriminatory, to be protected by freedom of religion in the Constitution. To offset this result, they recommend legislation by Parliament on this issue and before such legislation, prevent Muslim husbands from pronouncing triple talaq.

Justices Nariman and Lalit, in their majority view, consider Sharia law to have been statutorily incorporated by the Muslim Personal Law (Shariat) Application Act, 1937. Given that all laws enacted by the legislature have to be in conformity with the Constitution, they hold Section 2 of the Act, to the extent that it enforces triple talaq, to be arbitrary. Justice Kurian, the swing vote, agrees with the conclusion of the majority that triple talaq is invalid. However he comes to this conclusion not on constitutional grounds, but pursuant to an ecclesiastical finding that triple talaq has no basis in the Quran.

The dissenting opinion is surely astonishing. If personal law can be constitutionally protected, then it is commonsensical that such personal law can also be challenged on constitutional grounds. Further, if it is constitutionally protected, neither can a Muslim husband be disallowed from exercising his fundamental right to pronounce triple talaq nor can Parliament be expected to



it is conceptually flawed. Its finding compounds a conceptual misadventure that began with Justice Bhagwati's view in Royappa (1973). Royappa held that governmental action could be challenged as arbitrary under Article 14 because the right to equality, enshrined in Article 14 mandated the rule of law, which was the antithesis of arbitrary state action.

Two examples demonstrate why bringing arbitrariness in through the backdoor of equality in Article 14 was faulty. If all spectrum licenses are cancelled with inadequate reasons by the state it is arbitrary, but hardly an act of inequality; conversely if universities have different rules for men and women in the interest of safety, the rules are unequal, but hardly arbitrary. Simply put, equality and arbitrariness are not the same thing.

Using arbitrariness as a sword to scythe through parliamentary legislation, risks the danger of collapsing the whole of the Constitution into one article. If Article 14 means arbitrariness and arbitrariness means nothing but the rule of law, then simply replacing the mass of provisions with Article 14 should do. This result means that the Damocles' sword of a free-floating judicial determination of arbitrariness now hangs over every parliamentary and state legislation in this country.

In terms of upsetting separation of powers and arrogating powers to itself, this judgment trumps even the NJAC case. Politicians in a celebratory mood would be well-served to recognise that the Constitution is no longer supreme, the judges are.

In the final analysis, it is a telling comment that in a judgment celebrated as a landmark victory for women's rights, none of the judges find the provision of triple talaq discriminatory against women. On a matter critical to the lives of women in India, when five male judges of the Supreme Court rule on arcane questions of constitutional and ecclesiastical law instead of calling out personal laws as discriminatory, one knows that even if a victory has been achieved, the battle for gender equality will continue to remain a long and hard one.

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On the contrary Justice Kurian's swing vote holds, arguably correctly, that instant triple talaq is against the tenets of the Quran and consequently not part of Sharia law. Given it is not part of Sharia law, he considers it outlawed by the Act and hence invalid. To resolve the matter at hand, this is sufficient. However, as an approach to resolving knotty questions of personal law, this enquiry would require judges to delve deep into religious texts to ascertain their true meaning.

The hazards of such an exercise are well-known to the judiciary from what followed in the aftermath of the Shah Bano judgment (1985). Sacrificing constitutional adjudication at the altar of religious pontification from the Bench is an unwitting dilution of the supremacy of the Constitution.

In contrast, a more conscious dilution of the supremacy of the Constitution takes place in the majority opinion of Justices Nariman and Lalit. By holding that the Court has the power to strike down parliamentary legislation as arbit-

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rary under Article 14, it has converted a question of the rights of Muslim women into a contest for one-upmanship with Parliament. This is not what a landmark judgment for gender equality looks like – on the contrary its express silence on the core question of discrimination, speaks louder than its words.

Even when it has spoken – to partially outlaw Section 2 of the Act as arbitrary –

Trump's Afghanistan strategy, if followed through, opens a window of opportunity for India

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Donald Trump's gut instinct had said something else, but the demands of the Oval Office prompted him to deliver a "presidential" South Asia strategy. If it is followed through it can have wide-ranging implications for the region. Most important, it gives India a small opportunity to reshape the region and its role in the larger Asian geopolitics.

The good: US understands Pakistan is the problem, and for the first time we saw language on Pakistan that we would have liked to see a decade ago, both from Trump as well as Tillerson. For the second time since 9/11, Pakistan appears to be at a "with-us-or-against-us" moment.

Even more important, US apparently no longer believes, as generations of Pak-hugging Americans did, that Pakistan can be incentivised towards better behaviour if India could be kept out of Afghanistan or more lenient on Kashmir. Not that long ago, US was asking India how many consulates we had in Afghanistan, asking us to "do less". Thankfully Osama

bin Laden, Mullah Mansour and a host of other terror notables chillin' out in Pakistan contributed to a change of heart, at least among the generals if not in Foggy Bottom.

The new strategy, as Tillerson clarified, will focus on not allowing Taliban/al-Qaeda to win, or the US to "lose". Through that deliciously vague strategy, Washington is signalling they now "have the watches and they have the time".

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opening up the space for a whole range of options to be exercised on Af-Pak in the coming months from drones to economic sanctions, CT operations, etc. Nobody knows the winning combination, but the generals who have skin in the game, McMaster, Mattis and Kelly, may do what



they have always wanted to. By not releasing troop numbers, they have allowed themselves a degree of flexibility while keeping political pressure at bay.

On the ground, the situation is dire. The alphabet soup of terror groups from al-Qaeda to Haqqanis, Taliban and LeT are not distinct entities, as Bill Roggio points out, they are closer today than they have ever been. It's not for nothing that Sirajuddin Haqqani is the deputy chief of Taliban, and Haqqanis have been close to al-Qaeda just as LeT, which was born in Kunar, is close to Taliban. In some areas Taliban have even worked together with Islamic State.

Afghanistan has got one more shot at getting things right. Ashraf Ghani's dysfunctional

government has to get its act together as well. Apart from building infrastructure India can play a role here, to beat some sense into the feuding boys – Ghani and Abdullah – with Hamid Karzai on spoiler alert.

Yes, India can invest a lot more in Afghanistan. More infrastructure, more development projects will undoubtedly follow after the Indian government completes its own Af-Pak review, which was waiting for the US one. But India cannot deliver governance. It's an issue India has always skirted around, but it needs to be addressed.

India has an opportunity to work with both Russia and Iran to revive the spirit of the 90s, when all three faced a common enemy. In fact, the speech gives

India an opening – the stabilisation of Afghanistan should be seen within the larger regional matrix involving China, Iran and Russia, all of whom can play negative roles as Russia and Iran show. This is not in India's interest, and India needs to work harder to offset US-Russia, US-Iran hostility.

Neither Trump's speech nor Tillerson's reading of the riot act to Pakistan's foreign minister in the coming days will change Pakistan's behaviour or strategy substantially, or for that matter Taliban/al-Qaeda's – yesterday's suicide attack in Lashkargah showed the enormity of the problem. Pakistan will bank on China to offset the pressure the Americans will undoubtedly exert, and hope their nukes will do the rest. Pakistan will continue to bet on the US giving up before they do. Which is possible, and Indians will be watching out for US/Trump giving up before Pakistan/Taliban.

As for re-hyphenation with Pakistan, India remains the world's biggest "hyphenator", so don't lose too much sleep over it. Instead, we should reflect on this unexpected window of opportunity and make the most of it before things start going south, as they inevitably will.

Spare The Taxpayer

Recapitalisation of public sector banks needs to come with governance reforms

Financial results of public sector banks for April-June quarter show that they remain fragile. Collectively, they made a loss when their private sector peers turned in profits. This performance was not a one-off. Three years ago, a Reserve Bank of India committee concluded that government as shareholder has suffered negative returns over decades. If this situation prevails in public sector banking, a commercial endeavour, it is because successive governments are able to pass on losses to taxpayers. This cannot continue any longer.

NDA has promised to recapitalise its loss making banks and merge some of the weaker ones with sound banks. This is inadequate to deal with a systemic problem where banks flounder once every decade. Recapitalisation, therefore, must be accompanied by deeper banking reforms or else hapless taxpayers will soon be presented with another bailout bill. The primary cause for the current state of affairs is government's majority stake in banks. This forces public sector banks to deal with an additional regulatory layer in the form of the finance ministry. This also leads to attendant problems such as banking heads with too short a tenure, low pay scales and fear of multiple investigators scrutinising commercial decisions in hope of unearthing 'corruption'. A commercial enterprise cannot be run this way.

Around 17 years ago in an earlier NDA government, finance minister Yashwant Sinha proposed lowering government's stake to 33% which would have removed some constraints public sector bankers work under. This would have provided bankers space to be more nimble and take timely decisions. It is time for current finance minister Arun Jaitley to actualise his predecessor's plan. The government should also allow banks to rework their recruitment practices and pay scales as they need to attract the best talent in the job market.



Fear to tread

Should the travel advisory for every place on earth be 'Don't'?

Bachi Karkaria



Only the date line changes. Exactly a week ago, London, Paris, Brussels, Dhaka, Delhi, Islamabad respectfully made way for Barcelona. 'Moving down tourists is the new normal' despaired the Evening Standard while Londoners sat transfixed to the too-familiar photograph of a bloodied avenue. Las Ramblas, the very metaphor of hedonism, had been bustling with carefree crowds when a van emerged like a bat out of hell – driven with a fervour linked to the promise of heaven. The next Monday, a bomb alert evacuated the same stretch.

East and West have met in terror: True, each had had enough of its own, but now it's of a common genre. What demons – or angels – drive 22-year-olds to get behind a wheel and ram coldly into unsuspecting strangers? And how alert can we be when jihad comes via such everyday objects as a van, kitchen knife – or the tiffin box bombs of Mumbai and Delhi.

This column swells from my time on the Ramblas, my awe over something as civilised as a 1.2 km thoroughfare dedicated to pedestrians, leaving vehicles to fend for themselves on its margins. My first encounter with this incredible boulevard came at an international AIDS conference in 2002. It was where India's HIV-afflicted finally found their voice, and through which a flamboyant Shatrughan Sinha swaggered as health minister. So the many stories to be filed kept me away from Las Ramblas's tiresome blandishments. But my hotel was right on it, and I went to bed with riffs of laughter and the weeping of violins. In the morning when I walked to catch my tube, it lay exhausted from its multiple orgasms.

Two other visits allowed a more touristy appreciation. Of the Ramblas's gilded 'statue' men, the segueing of the world's accents, the flowers, food and baubles, the eccentric Gaudi architecture just off it, and suave Hispanics seducing over La Rioja or returning from a late-late concert, the men in long formal skirts (you read that right).

Now in London, my two always-must-dos are also stained by recent attacks: the Borough market and Westminster bridge. But the crowds still mill undaunted. It's the most effective thumb-nose to terror. Or so they say.

Alec Smart said: "Triple talaq: right decision, hopefully for the right reason."

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dilbert



Your Thoughts Can Make Or Break You

Sant Rajinder Singh

Thoughts are potent. The power of thoughts can help us achieve our goals. Those who want to succeed are driven by thoughts that it is possible and that they can gain the skills to be successful, which in turn inspires them to achieve that goal.

If we take the road of positive thinking, whether for others, or by thinking positively about our goals ourselves, it will lead to success. However, if we listen to negative comments of others, or our own negative self-talk in our minds, we may become discouraged, give up and not reach our goals.

The spiritual path is one that leads us to firsthand experience of God. The practice that leads us there is meditation. To meditate properly, one needs to still one's mind so no thoughts intervene with our focus of gazing within. To be successful, we need to put

in time and have a positive attitude to keep practising day after day. A positive attitude will prevent us from giving up.

Negative thinking brings thoughts of sadness, anger, depression, disillusionment, or despair. Once we are in that cycle, it is hard to emerge. When we become negative, we may think meditating is useless and that we may never reach our goal. How can we keep our thoughts positive, especially when faced with so many difficult challenges in life?

As we go through life, we have choices to make. When we need to use our mind for work and communication, we can also use it for keeping our thoughts positive or negative. If we keep them negative, we slow down and when we keep them positive, we progress, both in spiritual and worldly domains. We cannot accomplish our

best work when we are weighed down with negativity. But if we are positive, we can move forward spiritually and in the mundane sphere. We should watch our thoughts as we go about our day. Let us awake each day and put positive thoughts in front of us, leaving negative thoughts behind. Let us forget all the negative things people have said or done to us.

When we wake up in the morning and meet our family, let us keep positive thoughts before us. When we go to work, let us focus on the positive things people do and say. Let us overlook any negativity that happens. In this way we can move forward spiritually and also in the mundane sphere of life. We will feel better physically and mentally because we are not stressed by the negativity. We will not be burdened



the speaking tree

Sacredspace

Respect Women

The basic Buddhist stand on the question of equality between the genders is age-old. At the highest tantric levels, at the highest esoteric level, you must respect women: every woman.

The XIV Dalai Lama

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