A welcome sale

The Centre should sell its entire stake in Air India, even if in stages

With the Union Cabinet's 'in-principle' approval for the sale of Air India and five of its subsidiaries, a long-standing demand on the reform checklist has been ticked. The rationale for the government to shovel in huge sums of money to keep the loss-making airline afloat was weakening by the year. Today, such life support, as Finance Minister Arun Jaitley recently noted, was being given when competing private airlines already cater to well over 85% of the air travel demand in the country. Government money that keeps Air India from going bankrupt would be much better used to fund important social and infrastructure programmes that are starved of precious capital each year. Air India has been surviving on a ₹30,000-crore bailout package put together by the United Progressive Alliance government in 2012 to help its turnaround, and the debt relief provided by public sector banks. The airline has a debt load of over ₹50,000 crore on its books, and it is estimated that even a well-executed asset sale may not fully cover its present liabilities. So in the event of a sale, taxpayers may have to foot at least some part of the loss – either directly in case the government pays off the airline's creditors, or indirectly if the public sector banks write off their loans to the airline. However, it is more likely that the government may divest its three profit-making subsidiaries separately, with the proceeds going to Air India to help deal with its liabilities.

It is not yet clear whether the airline will be fully privatised or how its eventual sale will be executed. A ministerial panel under Mr. Jaitley is expected to begin working on the details soon. But having taken the politically courageous decision to privatise Air India, the government would do well to go for the sale of its entire stake, even if it is done in a gradual manner. Eventually, the aim of the sale should be to get the best price for the airline. One good way to achieve this would be to allow both domestic and foreign buyers to bid freely for stakes. For this, the government will have to re-tune its FDI policy to allow foreign investors to buy a stake in Air India. The Civil Aviation Ministry has made a case for the sale of non-core assets first to pay off existing creditors, so that the airline becomes more attractive to private buyers. But this assumes that private buyers would not otherwise see the value in Air India's assets. IndiGo has already expressed interest in buying a stake in Air India, with other domestic airlines reported to be serious about making a bid too. Finding a way to deal with Air India's debt load will be the main challenge for Mr. Jaitley's panel. How this process goes will be vital not just for Air India. If it goes relatively smoothly, that would make the task of moving forward on the disinvestment of other public sector units that much easier.

The plains truth

Nepal's Madhesis are seeking both grassroots democracy and state restructuring

Two months after the first phase of local elections, Nepal has completed the second, and more tricky, phase. This week's polling in provinces in the Terai plains and in the far-eastern and far-western parts completed the first elections to local bodies in two decades. In the first phase, the Communist Party of Nepal (Unified Marxist-Leninist) was in the lead, winning the highest number of councils and wards, with the Nepali Congress coming a distant second. The UML had steadfastly opposed any change to the Constitution finalised in 2015, specifically amendments that would allow a redrawing of the provinces, as demanded by the plains-dwellers, the Madhesis. This approach helped it strengthen its "nationalist" image in the hills. The second phase has been a more difficult proposition for the UML. Voter turnout in this phase was close to 70.5%, while it was 74% in the first phase. The high turnout, despite incidents of violence in areas that went to the polls on Wednesday, indicates a grassroots yearning for inclusion and the deepening of democratic institutions. Among the Madhesi parties, the newly formed Rashtriya Janata Party-Nepal boycotted the polls as its demand for amendments to be made to the Constitution before the polls was not met. But sensing the public mood for participation, it fielded independent candidates in order to consolidate support.

The state restructuring demand had been articulated during the *jan andolans* (popular struggles) of 2006. The demand for federalisation was repeated in the agitations in the Terai in 2015, which had led to an economic blockade of the valley by the plains-dwellers. But despite these agitations, the issue remains unresolved as strident opposition by the UML has prevented any consensus over amendments that would realign the provinces so that the Madhesis are in a majority in more provinces than those delineated in 2015. For the Madhesis, federalisation is a desperate demand for recognition and inclusion, as the hill elite dominates the various layers of the government, the bureaucracy and the security forces. The threat of an electoral boycott was meant to be a pressure tactic to get the Central government led by the Nepali Congress and the Communist Party of Nepal (Maoist Centre) to live up to the promises of pushing for the requisite amendments in Parliament. But as the local elections were widely welcomed by the electorate, including the plains-dwellers, this was a self-defeating step. This is why two other Madhesi forces – the Federal Socialist Forum and the Madhesi Janadhikar Forum Loktantrik – decided to participate in the elections. However, the three big parties – the UML, the Congress and the Maoists – should not misread the high participation level as marking a change in outlook in the plains on state restructuring. Madhesi faith in democracy must be secured with the promised amendments.

The task before the sentinel

It is time the Chief Justice of India set up the larger Bench to examine privacy challenges to Aadhaar

SANJAY HEGDE

The expansion of Aadhaar continues. The effort is now emboldened by a Supreme Court judgment that has stuck a band-aid on a gaping wound, which required stitches if not surgery. Individual holdouts against Aadhaar have been recognised and grudgingly protected by the judgment. There is, however, no broad declaration against an overpowering state's propensity to stretch out to every sphere to compel individual surrender of little remnants of liberty. The architecture of enforced surveillance has been left intact.

As good as its use

Aadhaar is a classic case of technology being amoral. The splitting of the atom gave us nuclear energy. It also gave us weapons with the capacity to destroy civilisation. Similarly, the Unique Identification Authority of India (UIDAI) began only with the mandate to confirm a citizen's unique identity. A standalone authority, with biometric information and fingerprints, which could, in cases of doubt, identify with certainty any claimant of government subsidies or special services. Aadhaar's claim was to weed out duplicates and forgeries, thus ensuring targeted distribution by administrations.

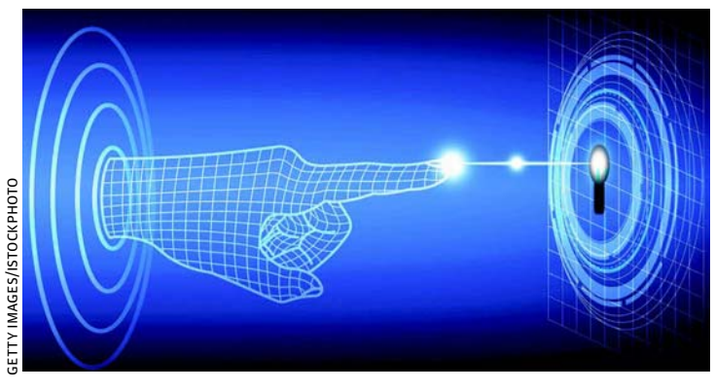
Aadhaar's sole purpose was as a benign guarantor of identity in cases of doubt. Any attempt by government departments to overreach this mandate was resisted by the authority. In fact, when a court ordered access to the database for a police investigation in a criminal matter, the Aadhaar authority challenged the order in the Supreme Court.

However, the UIDAI database has today ceased to be only a neutral identifier of a person's identity. In the Information Age, where data is the new oil, the temptation to maximise the use of an all-encompassing database is simply too strong. More and more service providers sought linkages to the data and the government ramped up the number of government and other organisations that could insist on an Aadhaar-based identity alone as a sine qua non for dealing with the user. Shortly after the Supreme Court's recent judgment of June 9, 2017, the government publicised a prior notification of June 1, 2017, under the Prevention of Money Laundering Act (PMLA). The notification makes it mandatory for bank account holders to produce an Aadhaar number.

The government has also deliberately misconstrued an earlier Supreme Court order in order to pressurise telecom operators to make Aadhaar a requirement for all mobile phone users. Even education and health services have been used to broaden the Aadhaar net and draw in more people into the dragnet. Schools insist on newly admitted children having Aadhaar numbers, which are not given until the parents too submit to Aadhaar registration.

There are reports that the Civil Aviation Ministry wants to make Aadhaar identification mandatory for access to commercial flights. The government has decided to make the cost of holding out unbearable to the non-compliant and present courts with a fait accompli.

Fundamental freedoms of the individual are being routinely sacrificed at the altar of administrative expediency and the forced sacrifice is justified as being necessary for the greater common good. Not since the forced sterilisations during the Emergency has a government been so invested in an administrative goal that it has abandoned the requirement to seek "the consent of the governed". A key to access government services has turned into a prison lock of individual liberties. An all-powerful state seems today to seek "One Ring to rule them all, One Ring to find them, One Ring to bring them all, and in the darkness bind them".



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Everyone is affected

How then is this darkness to be dispelled? How are the Lords of the Rings to be brought back to democratic governance? The processes have to be both political and legal. The Mahatma as a leader was born in 1907 when an Indian barrister in Transvaal refused to register himself as a lesser inhabitant of South Africa. It is time for all political parties, including the Bharatiya Janata Party, to take a relook at the extent of control that Aadhaar gives to governments against the citizen. Today's government is tomorrow's opposition, and vice versa. Every party must seriously ponder the possibility that its worst opponents may one day use this technology against it.

The Congress, which fathered the scheme, is now coming to the slow realisation of the surveillance possibilities that it has handed over to its successor. Sitaram Yechury of the Communist Party of India (Marxist) has also raised concerns during the parliamentary debates held after the Aadhaar legislation was rushed through as a money bill. A sustained parliamentary inquiry committee, spanning various ministries, should be used to rein in the system's worst excesses. Every new administrative measure designed to be Aadhaar-reliant should seek prior approval from this parliamentary committee.

It has been almost 700 days since the Supreme Court on August 11, 2015, referred the privacy challenges to Aadhaar to a larger Bench of possibly nine judges. The court needs to rule on whether the right to privacy is an established part of the fundamental right to life and liberty in this country. This is because, at a hearing before three judges, Attorney General Mukul Rohatgi had contended that because of judgments of the "Court in *M.P. Sharma & Others v. Satish Chandra & Others*, AIR 1954 SC 300 and *Kharak Singh v. State of U.P. & Others*, AIR 1963 SC 1295 (decided by Eight and Six Judges, respectively), the legal position regarding the existence of the fundamental right to privacy is doubtful." He therefore contended that the "right to privacy" deemed to be accepted by subsequent smaller Benches "resulted in a jurisprudentially impermissible divergence of judicial opinions".

The court further records its "opinion that the cases on hand raise far reaching questions of importance involving interpretation of the Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in *M.P. Sharma* (supra) and *Kharak Singh* (supra) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches".

The nine judges

Getting together nine judges to hear at length a constitutional matter of these proportions is an administrative nightmare for any Chief Justice. But failure to do so in time permits the state to set up an architecture of surveillance that cannot be undone later.

Chief Justice Patanjali Sastri in the early years of the Supreme Court had written: "If, then, the courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the 'Fundamental rights', as to which this Court has been assigned the role of a sentinel on the '*qui vive*'. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute."

If the sentinel deserts duty and the citizens rights die uncherished, the Republic too cannot long endure.

Sanjay Hegde is a senior advocate of the Supreme Court

Making the House rules

Parliament must codify the legislature's privileges to prevent misuse of power

M.R. MADHAVAN

The Karnataka Legislative Assembly has found two journalists guilty of breach of its privilege and sentenced them to jail. This followed certain articles written by the journalists which were alleged to defame some legislators. This case once again raises the question of what should constitute privilege of the legislative bodies.

The idea of privilege emerged in England as Parliament started to protect itself from excesses by the monarch. It established several rights and privileges including the freedom of members of Parliament to freely speak and vote in Parliament (including its committees).

The question of privilege

The Indian Constitution specifies the powers and privileges of Parliament in Article 105 and those of State legislatures in Article 194. In brief, they (a) provide freedom of speech in Parliament subject to other provisions of the Constitution and standing orders of the House; (b) give immunity for all speeches and votes in Parliament from judicial scrutiny; and (c) allow Parliament (and State legislatures) to codify the privileges, and until then, have the same privileges as the British Parliament had in 1950. Till now, Parliament and State legislatures have not passed any law to codify their privileges.

The power of privilege has been used against journalists in several instances. For example, in 2003, the Tamil Nadu Legislative Assembly sentenced the publisher, editor, executive editor and two senior journalists of *The Hindu* and the editor of *Murasoli* to 15 days' imprisonment for contempt. The action against *The Hindu* was taken for three articles that described the Chief Minister's speeches and used words such as "diatribe" and "high-pitched tone", and an editorial.

Interestingly, the editorial commented on the privilege motion against the articles and argued that privilege must be invoked "only rarely when there is real obstruction to its functioning, and not in a way that sets legislators above ordinary comment and criticism." The journalists obtained a stay on the arrest and the matter was referred to the Constitution Bench of the Supreme Court.

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Given this history, there are several issues that need resolution. First, what should be the privileges that protect the members of legislatures and the House? How does the privilege power sit with fundamental rights of expression and personal liberty? It is clear that members of legislatures should be able to perform their legislative duties without any obstruction, and should be free to speak and vote without fear of legal repercussions. Should the privilege extend to comments on the individual actions of members?

Perhaps, it is better to restrict the use of privilege to proceedings of the legislature. Any member who is falsely accused of any impropriety can use the defamation route through courts. A further issue is whether the House should have the power to sentence a person to a jail term. While the British Parliament continues to have such powers, it has not used it since 1880.

An even more fundamental question is: what are the privileges? In the absence of a code, how does one know whether an action is a breach of privilege or not? Therefore, it is important to codify them.

In this context, it may be pertinent to note that Australia passed the Parliamentary Privileges Act in 1987. That Act states that "words or acts shall not be taken as an offence against a House by reason only that those words or acts are defamatory or critical of Parliament, a House, a committee or a member". However, this protection does not apply "for words spoken or acts done in the presence of a House or a committee".

The Act also prescribes a maximum punishment of one-year imprisonment and a fine of A$5,000. In 1999, a joint committee of the British Parliament recommended codification but this recommendation was overturned by another committee in 2013.

It is evident that the framers of our Constitution envisaged codification of privileges. In the Constituent Assembly, Dr. Rajendra Prasad said, "Parliament will define the powers and privileges, but until Parliament has undertaken the legislation and passes it, the privileges and powers of the House of Commons will apply. So, it is only a temporary affair. Of course, Parliament may never legislate on that point and it is therefore for the members to be vigilant."

Parliament has examined the issue of codification. In 2008, the Committee of Privileges of Lok Sabha felt that there was no need for codification. It noted that the House had recommended punishment only five times since the first Lok Sabha, and that allegations of misuse of its powers were due to a lack of understanding of its procedures.

Given the number of such cases, Parliament and Legislative Assemblies should pass laws to codify privilege. It may also be time for the courts to revisit the earlier judgments and find the right balance between fundamental rights of citizens and privilege of the legislature. The recent case in Karnataka gives another opportunity to examine the issue.

M.R. Madhavan is the president and co-founder of PRS Legislative Research

LETTERS TO THE EDITOR

Letters emailed to letters@thehindu.co.in must carry the full postal address and the full name or the name with initials.

Brakes on mob violence

Prime Minister Narendra Modi has finally spoken on the killing of innocent Indians by cow vigilantes while addressing a function at the Sabarmati Ashram in Gujarat. While his long-pending statement is indeed welcome, actions speak louder than words. He needs to ensure that Chief Ministers in all States apprehend those involved in such violence. He should also understand that when a member of his Council of Ministers pays last tributes to a person accused of lynching Mohammad Akhlaq in Dadri, his government's intentions seriously come under a cloud of doubt.

K.B. DESSAI,
Fatorda, Goa

■ It was encouraging to see the people's non-violent response in the face of hate and violence ("Shed hate, not blood, say protesters," June 29). The fact that the protest was not driven by political parties but drew support from students, academics, artists and journalists enhanced its appeal. Coming as a follow-up to two similar, extremely well-attended protests held at the same venue against caste-based discrimination, the display of solidarity comes as good news for democracy. The unequivocal condemnation by Union Minister M. Venkaiah Naidu of Junaid Khan's killing came as a much-awaited response from a Central government representative. It is only by taking action against elements behind such mob violence and ensuring justice to its victims that the government can claim to have fulfilled its constitutional duty.

FIROZ AHMAD,
Delhi

Freeing the Maharajah

The Union Cabinet's nod for privatisation of debt-ridden Air India and its five subsidiaries is a bold move ("Govt. to shed stake in loss-making AI," June 29). The once high-flying 'Maharajah' was brought down to earth by mounting losses and huge debts, inviting the scorn of all stakeholders.
With the bankers and the investigating agencies turning the heat on Vijay Mallya's ailing Kingfisher Airlines, it was only obvious that ugly questions began to be raised on Air India leading a charmed existence.
Though the fine print for the airline's strategic sale is yet to be worked out, it will certainly be a tall order for any buyer to turn around the airline and make it fly high again.

N.J. RAVI CHANDER,
Bengaluru

Paid news malaise

Paid news misleads the electorate, harms the prospects of genuine candidates with modest financial resources, thus culminating in unfair competition, and contributes to discriminatory public policy decisions in the long run, causing criminalisation of politics ("Pay to publish," June 29). This turns the so-called public representatives into a mafia, sustained on money and muscle power. There is a way out: amend the Representative of the People Act (1951), categorise paid news as a criminal offence and seriously consider the Indrajit Gupta Committee's suggestion of state funding of elections to curb undervalued information on assets and liabilities by candidates.

AIJAZ HUSSAIN MALIK,
Baramulla

Unwelcome comments

Tennis great and former world No.1 John McEnroe's recent comment on Serena Williams, saying "if she played the men's circuit she would be like 700 in the world ranking", is totally unwarranted, and sounds very embarrassing.
("Serena asks McEnroe for 'respect'," June 28).
Williams's list of accomplishments, which includes 23 Grand Slam titles, and still counting, doesn't actually need wins over male players to justify its greatness. McEnroe may well turn the pages of tennis records to know that women tennis players in the past had indeed defeated men.
Two of such 'battle-of-sexes' matches were: Billie Jean King trouncing Bobby Riggs in a 6-4, 6-3, 6-3 three-setter in 1973 and Helen Wills Moody toppling her doubles partner Phil Neer in straight sets 6-3, 6-4 in an exhibition match in 1933.

R. SIVAKUMAR,
Chennai

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CORRECTIONS & CLARIFICATIONS:

>>A Sports page story – "This is significant for Ramkumar: Krishnan" (June 29, 2017) – erroneously said that Ramesh Krishnan beat Mats Wilander in the second round of *Wimbledon* in 1989. It was the *Australian Open*.

It is the policy of The Hindu to correct significant errors as soon as possible. Please specify the edition (place of publication), date and page. The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300 (11 a.m. to 5 p.m., Monday to Friday); Fax: +91-44-28552963; E-mail:readerseditor@thehindu.co.in; Mail: Readers' Editor, The Hindu, Kasturi Buildings, 859 & 860 Anna Salai, Chennai 600 002, India. All communication must carry the full postal address and telephone number. No personal visits. The Terms of Reference for the Readers' Editor are on www.thehindu.com