



## In the air

The no-fly list is a welcome innovation to keep unruly passengers in check

The Centre's decision to put unruly air passengers on a no-fly list ranging from three months to a lifetime, depending upon the gravity of the offence, is stringent but welcome. The list will be maintained by the Directorate General of Civil Aviation, and be put in the public domain. The quantum of punishment is to be decided by an internal committee of the airline in question based on evidence produced by both the airline and the passenger within 30 days, during which time the passenger would not be allowed to fly. No compensation will be offered to the passenger in case the allegations of the airline are proven wrong. Aggrieved passengers can appeal within 60 days to an appellate committee. Other airlines will not, however, be bound by one airline's no-fly ban. The no-fly list provisions look stringent, empowering airlines to impose strict penalties in case of alleged misbehaviour or graver offences by passengers. But in the case of India, these appear necessary in particular because of a widespread culture of entitlement, especially among 'VIPs', and growing incidents of air rage. The new rules are, specifically, a response to the recent case of unruly and violent behaviour by Shiv Sena MP Ravindra Gaikwad on board an Air India plane six months ago. There have been other recent incidents of 'VIP' misbehaviour with airline staff – both in the air and on the ground. In Mr. Gaikwad's case, Air India had imposed a temporary no-fly ban, which was subsequently withdrawn after a grudging apology from him. Existing guidelines and rules on unruly behaviour did not have provisions for a no-fly ban, necessitating these rules.

The no-fly list system, which has been adopted by other countries too, is a relatively new development in civil aviation. Care must be taken by the airlines to ensure that the imposition of the no-fly ban is used as the last resort; ideally, it should remain in the books as a deterrent. While incidents of egregious behaviour by VIPs and unruly passengers have not been isolated events, passenger anger has also been a consequence of airline inefficiencies. The record of some airlines in ensuring service on time and avoiding over-booking of tickets that result in last-minute cancellation of tickets is not satisfactory. Airlines must be careful not to hold out the threat of the no-fly list to keep passenger frustration in check, and thereby evade giving a full explanation for their mistakes. Thanks to lower fuel prices and profitability, the civil aviation industry in India is in a phase of recovery and stability following a shakeout. This is a good time for airlines to enhance their reach and service and keep prices competitive as more Indians take to air travel. While this is a guaranteed way to keep both passenger angst and air rage in check, preventive measures such as a no-fly list should be enforced only for the most egregious of cases.

## Back to the future

Rafael Nadal closes a phenomenal year for himself and Roger Federer in the Majors

Men's tennis appears to have been transported into the past this year. No one saw Roger Federer and Rafael Nadal splitting the Majors in 2017, but that is precisely what they have done. In winning the Australian Open and the Wimbledon in his 36th year, Federer showed he is that rare great – one who marries a handsome, timeless style and a clinical, ruthless mind to transcend what is thought possible. Nadal has been stretching the limits of possibility himself. From the time he won his first ATP match as a 15-year-old in 2002, he has been told that his frenetic, physical method would not last into his 20s. He was also told that his monotone game would find little success outside the familiar comforts of clay. And yet, as he soaked in the applause of a boisterous New York crowd on Sunday, he had not merely lasted, he had also won a third U.S. Open title, his 16th Major overall. The Spaniard had debunked the theory that he was a one-surface wonder in 2010, when he first triumphed at Flushing Meadows and completed the career Grand Slam. But before this Sunday, the 31-year-old had not won a Slam outside of Roland Garros since 2013. In ending that wait and closing the gap to Federer's record 19 Majors, Nadal bullet-proofed his legacy as an all-court champion and kept the race to No. 20 alive.

Sunday night also marked the end of the most successful player-coach relationship in tennis. Toni Nadal, who has coached his nephew since he was four, had said that the U.S. Open would be his last Grand Slam on the road. Through 27 years and 16 Major titles, Toni has challenged and cultivated Nadal's innate relentlessness. The addition of former World No. 1 Carlos Moya to the coaching team has played a part in the resurgence, but none of this would have been possible without Toni. In both the semi-final against Juan Martin del Potro, Federer's conqueror, and the final against Kevin Anderson, the 6'8" South African on an impressive, heart-warming run, Nadal showcased the tactical mastery and technical advancement that he and Toni have so painstakingly worked towards. "I know we're the same age," Anderson told Nadal during the trophy ceremony, "but I feel like I've been watching you my whole life." It was a measure of the impact Nadal has had on the sport – and also a tribute to his longevity, his incredible ability to overcome injury setbacks and return to a high level, as he has this year after a gloomy 2016. Another remarkable recovery story played out in the women's draw: Sloane Stephens, who walked for the first time in April after foot surgery earlier in the year, put mind over matter to break through at her home Slam. The 24-year-old American has been picked out for great things; on Saturday, she delivered a popular, courageous triumph, the first, it would appear, of many.

# New strategy, old game

The Trump administration has presented its plan for Afghanistan as a regional approach – it's anything but that



VARGHESE K. GEORGE

"The core goal of the U.S. must be to disrupt, dismantle, and defeat al-Qaeda and its safe havens in Pakistan, and to prevent their return to Pakistan or Afghanistan... And after years of mixed results, we will not, and cannot, provide a blank check (to Pakistan)... As President, my greatest responsibility is to protect the American people. We are not in Afghanistan to control that country or to dictate its future," said the President of the United States, announcing a "regional strategy" for Afghanistan after the worst year of the conflict. The President was Barack Obama and the year was 2009.

On August 21, when President Donald Trump unveiled his new "regional strategy" for Afghanistan, it was in large part a reiteration of the above speech in terms of strategic objectives. By now 2016 has become the worst year of the conflict. Mr. Trump's speech was high on rhetoric and low on detail. Three weeks later, do we know better? Interactions with people close to the subject, including Ahmad Daud Noorzai, head of the office of President Ashraf Ghani of Afghanistan, and Joshua White, who was Director for South Asian Affairs at Barack Obama's National Security Council, provide some clues.

### Junking timelines

Mr. Trump's announcement of military commitment without a deadline in Afghanistan could be a game changer, both agree. "The word on the street is that Afghans are happy. This allows us to create a culture of peace, to build institutions and improve delivery of public services," Ahmad Daud Noorzai, said during an interaction with a group of journalists and experts at



the Afghanistan embassy in Washington last week. He said the most important reason for Afghanistan's failure to stabilise has been the uncertainty around security.

Not announcing a timeline is wise strategy, feels Mr. White, who played a crucial role in President Obama's Afghanistan strategy. "We examined the risk of drawdown and the outcomes looked ugly. Withdrawal would have been unwise. Significant scaling up of American troops would also have been unwise – that is the lesson that we learnt from the surge (in U.S. troop deployment in Afghanistan). We could not have fundamentally changed the balance of power without a large number of forces there for ever," he said in an interview at the Johns Hopkins University, where he teaches now (<http://bit.ly/JoshuaWhite>).

Mr. Noorzai said Mr. Trump's declaration that the U.S. would go after terrorists has already made a difference on the ground in Afghanistan: "From the military point of view, this is a huge change. This has already impacted the armed insurgents. When your commander-in-chief says to go after the terrorists, the nature of the military presence changes." So more than the number of American boots on the ground, the nature and quality of America's military presence has changed, and this could make a difference.

### Pressure on Pakistan

The most tangible measure against Pakistan came a week after Mr. Trump's speech as the administration decided to keep \$255 million

in military assistance to Pakistan in suspension until Islamabad demonstrates action against terrorist groups. This was earmarked in the U.S. budget for 2017. In July, Defence Secretary James Mattis did not provide certification that Pakistan was taking action against the Haqqani network, and held back \$50 million from reimbursements to Pakistan for logistical support for the war in Afghanistan.

This is a continuation of the Obama administration's policy. In 2015 and 2016, it had held back part of reimbursements to Pakistan from the Coalition Support Funds. Though Mr. Trump spoke tough on Pakistan, it is still unclear what could be the tough measures. Mr. White thinks overdoing this could be counterproductive: "Increased pressure is likely to push Pakistan into a corner, unlikely to deliver results in terms of cooperation on critical security issues. The insurgency in Afghanistan is largely organically funded. The safe havens help the Taliban, but I don't think they are vital to the Taliban. So even if the pressure on Pakistan produces results, I don't think its impact on the situation in Afghanistan will be significant."

Mr. Noorzai said Mr. Ghani is trying to impress upon Pakistan to make the best use of Afghanistan's economic potential: "We have excellent relations with the countries on the north, west and south. New trade routes and opportunities are opening up and Pakistan has a lot to gain from it."

Mr. Trump called upon India to play a larger role, but Washington's

expectations from India are very modest. No specific demand for monetary assistance has been made.

### Expectations from India

The Trump administration, it appears, would like India to help in working with Afghanistan's domestic factions in widening and buttressing the political legitimacy of the current government, and helping it improve its governance. For his part, Mr. Noorzai finds India's increasing role in Afghanistan very welcome. "The Indian private sector must come to Afghanistan," he said. "Start your business, make your profit. We could start with IT, we have so many needs. There is an impression in India that Indians are targeted in Afghanistan; Indians will need as much security as any other, but they can do their business. India needs to create a positive view in the country about Afghanistan so that the private sector understands the economic opportunity in Afghanistan." Mr. White believes India has been self-restrained – "for good reasons" – in its role in Afghanistan, though from 2012 onwards the Obama administration was open to New Delhi playing any role that it could agree with the Afghan government. "There is value in signalling that the U.S. sees India as a critical partner for Afghanistan. But there is also a risk, because feeding Pakistan's anxiety about Indian influence in Afghanistan is not necessarily helpful to either Washington or New Delhi," he said.

Following Mr. Trump speech, Secretary of State Rex Tillerson said India has a role to play in changing Pakistan's behaviour: "India and Pakistan, they have their own issues that they have to continue to work through, but I think there are areas where perhaps even India can take some steps of rapprochement to improve the stability within Pakistan and remove some of the reasons why they deal with these unstable elements inside their own country."

Mr. White feels this is continuation of U.S. policy under Presid-

ent Obama: "The Trump administration has spoken more clearly and more directly about safe havens, not only for Afghan-focussed groups but also for Indian-focussed groups. But again, near the end of the Obama administration there were some strong statements and acknowledgment on that issue, particularly after the Uri attack." He adds that America always wanted India to remain constantly engaged with Pakistan, "despite the disappointments India and the U.S." had with Islamabad. There is an unmistakable level of continuity between the Obama and Trump administrations in viewing the India-Pakistan rivalry as a potential nuclear catastrophe. In fact, Mr. Trump mentioned that in his South Asia speech, and he has inherited the idea from the Obama era.

### Not exactly regional

The Trump administration has presented the new strategy as a "regional" approach, but in the last three weeks it is clear that there is hardly any regional cooperation evolving or to be expected. Russia has termed the strategy a "dead end", China has said Pakistan should be on board. The administration has acknowledged that Russia will work to undermine America in Afghanistan, but believes that China is interested in stability in Afghanistan. In June, the Pentagon's half-yearly report on the situation in Afghanistan described India as "Afghanistan's most reliable regional partner" and noted the interests – conflicting in many cases – of countries such as Iran, Saudi Arabia, China, Russia and the Central Asian states in Afghanistan, not to mention Pakistan. The new strategy does not appear to be addressing this factor and other measures of the Trump administration could aggravate the rivalries. Herein lies the most serious challenge in making any meaningful progress in Afghanistan.

varghese.g@thehindu.co.in

# The resilience of our liberalism

The historic verdict on privacy is a sublime oration on human dignity



ASHWANI KUMAR

Anchored in constitutional scholarship, history and international law, the celebrated privacy judgment (*K.S. Puttaswamy*, 2017) attests to the resilience of our dignitarian liberalism. The unanimous judgment of nine distinguished judges, who held that privacy is integral to human dignity and not a constitutional largesse to be withdrawn at will by the state, elevates privacy to the pinnacle in the hierarchy of human rights.

"Privacy", said the court, "ensures the fulfillment of dignity and is a core value which the protection of life and liberty is intended to achieve". The court explained that "privacy with its attendant values assures dignity to the individual, and it is only when life can be enjoyed with dignity can liberty be of true substance" (per Justice Chandrachud). In reaffirming the coalescence of fundamental rights to life and liberty guaranteed under Articles 14, 19 and 21 following the Constitution Bench judgments in *Cooper* (1970) and *Maneka Gandhi* (1978), the court echoed

the philosophical wisdom of Justice Krishna Iyer articulated years ago that "cardinal rights in an organic Constitution which makes man 'human', have a synthesis".

While finding its earlier decision in *ADM Jabalpur* a constitutional aberration, the judges emphasised that "the interpretation of the Constitution cannot be frozen by its original understanding", reminiscent of Judge Cardozo's celebrated statement long ago that the Constitution does not embody "rules for the passing hour but principles for an expanding future". Expounding the philosophy of constitutionalism as a bulwark against the impulses of transient majorities, the court ruled that constitutional rights owed no apology to majoritarian opinion and thus fettered the legislative and executive infraction of these rights.

### Shaping privacy rights

Will the compelling logic of the judgment spur meaningful executive and legislative action to redeem its promise, is the question. In particular, the state's response to queer rights, the right of choice in matters relating to food, health, reproduction and data disclosure, etc. will define the contours of privacy rights. Hopefully, citizens will not be driven to fight endless judicial battles to take what is inherent theirs. As part of meaningful follow-up measures, the govern-



ment should move forward on the report of the Group of Experts under the chairmanship of Justice A.P. Shah (2012) suggesting a model privacy law referred to by Justice S.K. Kaul in his concurring judgment. The report, which recommended nine fundamental principles as the basis of the proposed privacy law, could be reviewed in the framework of the Puttaswamy decision and can provide credible basis for a comprehensive legal architecture to secure privacy rights. The unsung hero in the battle for privacy is the late Rama Jois, a former judge of Karnataka High Court and member of Rajya Sabha who persistently raised the issue of privacy in relation to Aadhaar. As the then Minister of State for Planning, this writer had to deal with the issue. A resultant offshoot was the constitution by the Planning Commission of an

expert group headed by Justice Shah to propose a model privacy law.

In the context of privacy debate, it is necessary to ask whether it was at all necessary to convert the legal challenge to Aadhaar into a privacy or an Aadhaar debate when post *Cooper* (1970), *Maneka Gandhi* (1978) and a series of subsequent Supreme Court judgments, the right to privacy stood entrenched in our constitutional jurisprudence as part of the fundamental right to dignity. What is disappointing is that even after the judgment, the Union Law Minister, himself a distinguished lawyer, has chosen to argue in public rather inelegantly that the judgment does not reject the government's argument on privacy, even as the then Attorney General, who originally argued on behalf of the government that privacy was not a fundamental right, has rightly conceded that the government lost its case in court.

### On the court's role

A less noticed but significant feature of the privacy ruling is a disclaimer of judicial power to introduce new constitutional rights in the exercise of the court's judicial review jurisdiction. Some constitutional scholars have hastened to view the verdict as making the Supreme Court a "co-governor" of the nation (Upendra Baxi, *Indian Express*, August 30). Unambigu-

ously dispelling such a notion, the court held that "the exercise has been one of interpreting existing rights guaranteed by the Constitution" and "while understanding the core of those rights to determine the ambit of what the right comprehends". It has thus adopted a vocabulary of constitutional discourse that navigates the extremes through self-restraint and has earned a general acceptance of its role as an independent custodian of the constitutional principle. In choosing to remain "within the banks", judges, wiser by experience and disciplined by law, have guarded against encroaching beyond judicial bounds, thereby ensuring a diffusion of constitutional power "in a system of inter-branch equality". The historic verdict which affirms that the idea of human dignity includes the right to be let alone, the equality of human beings and the freedom to will is a sublime oration on human dignity and a vindication of the nation's liberal conscience. It is up to us to live the judgment, to keep faith with the spirit of our age in which the idea of human rights and their preservation as the *raison d'être* of the state has received universal acceptance.

Ashwani Kumar, a Senior Advocate in the Supreme Court, is a former Union Minister for Law and Justice. The views expressed are personal

## LETTERS TO THE EDITOR

Letters emailed to [letters@thehindu.co.in](mailto:letters@thehindu.co.in) must carry the full postal address and the full name or the name with initials.

### Kashmir outreach

Whether it is by way of 'coincidence' or 'deliberate rivalry', the outreach visits by Union Home Minister Rajnath Singh and former Prime Minister Manmohan Singh to strife-torn Jammu and Kashmir are inspiring. There has been some progress in the State as far as development is concerned and one hopes that the ₹80,000-crore Prime Minister's development package for Jammu and Kashmir announced in 2015 results in progress on the ground. There has to be efficient and accountable functioning of the administrative machinery, eradication of corruption, protection of the academic interests of youth, and the early conduct of pending elections to self-governing bodies. The two main national parties should

refrain from politicising the visits of their key leaders as the State deserves a second chance at peace and development ("Will turn J&K into heaven: Rajnath", September 11)

RAGHAVAN SAMPATH,  
Chennai

### A growing crisis

Recent upheavals across the world show that refugees will go to any extent to cross international boundaries (Editorial page - "The disaster next door" and "World" page - "Hungry and traumatised, Rohingya are living in fear", both September 11). It is unfortunate that hardly anyone attends to them barring the UNHCR and the ICRC. No problem involving refugees can be solved without international support. Nearly 150 nations are signatories to the Refugee Convention.

Though India is not a signatory, it has risen to the occasion in crises. But what steps has the international community taken to solve this problem?

ABHISHEK K.,  
Thiruvananthapuram

### Children's safety

The murder of a seven-year-old student in his school is horrendous ("Student's death triggers violence" and "Haryana books owner of school", both September 11). Schools are considered to be the second home of children. Merely suspending the principal is not enough; safety measures must be introduced to prevent untoward incidents. The management of schools cannot make flimsy excuses, especially as many of them are quick to levy hefty fees. There must be a sufficient number of staff to

ensure the safety of children. Installing CCTVs is not enough. In this case, the culprits must be severely punished. With crimes against children being reported every day, one feels the deep pain of the parents.

PRABHA MUTHUKRISHNA,  
Bengaluru

### Accepting NEET

Amidst all the politicking to exploit the emotions of the student community on the NEET issue, it is comforting to find a sane voice (Some editions, "NEET ended rote learning: ushered in social justice" - interview with Dr. A. Krishnaswamy, September 11). Contrary to the apprehensions raised, instead of a few districts cornering the bulk of medical seats, the year saw more equitable distribution, with districts considered backward

gaining substantial seats compared to the previous years. This position may still improve in the years to come if the measures announced by the Education Minister such as opening coaching centres and online counselling are implemented with all seriousness. Even less developed States in terms of economic and educational status to Tamil Nadu have

consented to the NEET mode of admission. In such a situation, opposition by a progressive State such as Tamil Nadu sounds bizarre. Politicians in the State are indulging in rhetoric over the issue knowing full well that the clock cannot be put back.

V. SUBRAMANIAN,  
Chennai

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### CORRECTIONS & CLARIFICATIONS:

It is *ballasting* operation: The opening sentence of a report headlined "Vietnamese ship sent to anchorage" (Sept. 11, 2017) erroneously read: "After successful *ballistic* operation, Vietnamese ship MV Hai Duong 09 ... has been sent to the anchorage." (The ballasting process gives stability to a ship by putting a heavy substance in its bilge. The term ballistic relates to projectiles or their flight.)

A report headlined "U.S. policy shadows Afghanistan talks" (Sept. 10, 2017) erroneously referred to Dr. Abdullah Abdullah as *Afghanistan President*. It should have been *Chief Executive*.

The full form of NAI is Naval Armament *Inspectorate* and not Naval Armament *Instructor*, as given in the report headlined "Will Nirmla break glass ceiling in military?" (Sept. 10, 2017).

The Readers' Editor's office can be contacted by Telephone: +91-44-28418297/28576300; E-mail: [readerseditor@thehindu.co.in](mailto:readerseditor@thehindu.co.in)