



Enabling a law

Supreme Court’s timeline to ensure full access for the disabled to public facilities is welcome

The Supreme Court has struck a blow for the rights of the disabled, with a direction to the Central and State governments to provide full access to public facilities, such as buildings and transport, within stipulated deadlines. People with a disability form 2.21% of India’s population according to the 2011 Census. They have had a law for two decades to enable their full participation in society, but successive governments have done little to realise those guarantees. Now, in response to a public interest petition filed by a visually handicapped activist, the court has issued a series of orders: that all government buildings should be made accessible by June 2019; half of all government buildings in the capital cities should meet accessibility norms by December this year; the Railways should present a report in three months from December 15 on implementing station facilities; 10% of government public transport must be fully accessible by March 2018; and advisory boards should be formed by the States and Union Territories in three months. The court’s directions should be welcomed by the government and service providers as an opportunity to steer policy and practice towards a universal and humane system. For too long, planners and designers have built infrastructure for use only by able-bodied individuals, ignoring the aspirations of those with disabilities, and the letter of the law.

A transformation requires governments to also harness the power of newer technologies. Geolocation is one, and it enables targeted provision of services. It is eminently feasible, for instance, to aggregate the travel requirements of disabled people with the help of information technology and smartphones, and provide affordable shared transport using accessible vehicles. Given the emphasis on smart cities and upgraded urban facilities, such schemes should be given the highest priority and start-up ideas roped in. Railway stations and access to train carriages continue to pose hurdles for not just the disabled, but even elderly travellers. The Railways should embark on an urgent programme to retrofit all stations, and try simple solutions such as portable step ladders to help board and exit trains, since level boarding is not possible in most places. Cost is not the barrier to improving facilities; what is in short supply is the political will to change the design of public facilities and stick to professional codes. The Supreme Court said in a 1998 order on a petition seeking air travel concession, that while cost was a consideration, the true spirit and purpose of the law could not be ignored. Today India, which is richer than it was then, and has passed a new law in 2016 to strengthen the rights of the disabled, should demonstrate the will to implement it.

Game for talks

Resumption of dialogue between the two Koreas reignites hopes of a détente

The prospect of a thaw in relations between North and South Korea, which resume talks after two years, holds out the hope of denuclearisation on the Peninsula. Lending the move diplomatic heft is the U.S.’s consent to South Korean President Moon Jae-in’s proposal to delay the controversial joint military exercises between the two allies. These annual operations have traditionally caused consternation in Pyongyang. The significance of the U.S. decision can also be seen in the context of Beijing’s suggestion for a freeze on joint military exercises between Washington and Seoul in exchange for a halt to Pyongyang’s nuclear programme. The demand acquired added impetus ever since Seoul launched the U.S.-backed Terminal High Altitude Area Defence (THAAD) system, raising fears that its radars could snoop on Chinese security infrastructure. But the idea never received serious consideration from the U.S., as forcing Kim Jong-un, the North Korean autocrat, to completely give up the programme was the singular focus of President Donald Trump’s approach. As for Mr. Kim, he sees recognition of his country as a nuclear power as a vantage point from where he could negotiate a roll-back of crippling international sanctions and a possible reconciliation with Washington.

The immediate trigger to the revival of dialogue is the Winter Olympics in PyeongChang in South Korea next month. North Korea’s latest ballistic missile launches and nuclear explosions have raised global alarm over the region’s safety for travel and tourism, not to mention security during the Games. Memories of the downing by North Korea of a civilian aircraft ahead of the 1988 Seoul Olympics have prompted understandable caution by the host nation. Seoul has apparently determined that the most effective means of allaying those apprehensions is to confirm the participation of North Korean athletes. The deferment of the joint military exercises with the U.S. lends further credibility to Mr. Moon’s overtures to the North, as much as it assuages Chinese concerns. Beijing had imposed an unofficial blockade on South Korean trade, tourism and entertainment following the THAAD missile installation last year. But it was quick to appreciate the needless economic and diplomatic cost of that approach, even if it did not alter its stance on the missile programme. Cumulatively, these developments should boost public patronage in the entire region for the Winter Olympics. Mr. Moon, a former human rights lawyer, has been a staunch advocate of a negotiated resolution of the North Korean nuclear stand-off. A votary of reunification on the Peninsula, he may be expected to seize the momentum generated by these events to foster cooperation with the North. There will no doubt be many obstacles on that ambitious path. But a détente between neighbours is a possibility few leaders can ignore.

Memory, myth and memorial

The battle over Bhima-Koregaon is not just one of history, it is a battle for identity and equality



SHIV VISVANATHAN

The late Kannada writer U.R. Ananthamurthy once told me a story. His PhD guide and he were discussing an Ingmar Bergman film. Ananthamurthy said when the West needs to access the past, it seems to enter a historical archive. In India we just walk across town because an Indian always lives in simultaneous time periods whereby Copernicus and Einstein share a neighbourhood. One wishes URA had written a story around this idea because he seemed to suggest that India does not need science fiction given what we do to history.

One also wishes URA was here to watch the recent battle between Mahars, a Dalit caste, and Marathas. The linearity of history does not quite capture the subtlety of storytelling.

The memorial

It all began with a pillar, a little war memorial commemorating what history books antiseptically called the third Anglo-Maratha war. The British had established it in Bhima-Koregaon village to commemorate the British East India Company soldiers who fell in the battle of January 1, 1818. Along with a few British soldiers, many Mahar soldiers also died.

The event can be read Rashomon-like in many ways. But Indians do what Akira Kurosawa did in a more surrealistic way. For the Marathas and for our history textbooks, the narrative was a battle between imperialism and nationalism. But the Mahars read this narrative differently. The history inscribed in textbooks did not take their memories seriously. The Ma-

hars recollect how during the reign of Baji Rao II, they had offered their services as soldiers. The Peshwa spurned them, and this pushed the Mahars to seek out the British in the next war.

The Battle of Bhima-Koregaon is thus read differently. It is not seen as a battle in which the British with 834 infantry men, of which over 500 were Mahar, defeated a numerically stronger Peshwa army. It marked not the continuity of the British but the end of Peshwa rule. For Mahar memory, the presence of the British shrinks and it becomes a story of Mahar courage and valour, a testimony to Mahar martial values in their struggle for equality against the Peshwas. The Koregaon Ranstambh (victory pillar) represents a different kind of memory and a different kind of solidarity. It is now part of a new genealogy, not part of a battle between Indians and the British, but a struggle for equality.

A new memory

In January 1927, Babasaheb Ambedkar visited the site and gave it this new legitimacy. This new memory triggered the formation of new communities. The Bhima-Koregaon Ranstambh Seva Sangh was formed to commemorate the battle of the Dalits for self-respect and equality. Over time this parallel memory acquired power as members of the Mahar regiment visited it to pay homage to Mahar militarism and valour. What was a local source of pilgrimage soon expanded to cover other States such as Uttar Pradesh and Karnataka. Maratha history competed with Mahar memory over the interpretation of the Stambh.

One has to remember what Ananthamurthy said of past, present and future being enacted simultaneously. An Indian storyteller has to capture the magic of simultaneous time. A friend of mine suggested helpfully that one should imagine that one is watch-



SPECIAL ARRANGEMENT

ing three TV sets tuned to the past, the present and the future. While the Mahars are enacting their memorial to history reasserting their sense of identity and equality in a now immortalised village, the dominant castes are feeling unease with what they sense as re-appropriation of history. Tune to TV-2.

For the Brahmins and Marathas watching these rituals, life seemed surreal. Suddenly, violence spreads across Maharashtra as pitched battles take place between Mahars and Marathas, each guarding their identity as if it were a piece of intellectual property. The battle now is not just one of memory, it is a battle for identity and equality. As violence spreads and Maharashtra comes to a standstill, as the metro, the sign of modern civic regularity, threatens to stop, normal life comes to a standstill in Pune, Nagpur, Thane and Kolhapur. The call for the urban shutdown has been given jointly by Dalit and Maratha groups. Both

This too is a right

The right to sexual privacy makes the law on adultery open to constitutional scrutiny



THULASI K. RAJ

Joseph Shine v. Union of India, the petition challenging the constitutional validity of the criminal prohibition on adultery under Section 497 of the Indian Penal Code, has now been referred to the Constitution Bench by the Supreme Court. The petition was admitted by the court with the preliminary observation that the provision attacks the independent identity of the woman and is archaic in its nature. As widely argued, on the intuitive grounds of both directly discriminating against men and indirectly discriminating against women, there are overwhelming reasons why the apex court should strike down this provision. However, there is much less discussion on another significant aspect of adultery law: the right to sexual privacy.

Generally speaking, in a marital bond based on love and trust, it is true that the spouse will have a ne-

cessary grievance against the adulterous partner. It is in view of this breach of fidelity that the civil laws in the country provide for adultery as a ground for divorce. It is important to clarify that the adultery laws having consequences such as divorce might well be in the legitimate state interest. It does seem quite unfair to compel an individual to remain with an unfaithful partner.

The problem, however, is with the fact that adultery is made a penal offence. Adultery covers sexual intercourse between consenting adults. What is under challenge is a punitive provision that existed since 1860, which crystallised Victorian notions of sexuality. To prescribe a criminal penalty for a voluntary sexual activity is strikingly disproportionate.

State’s flawed approach

The right to privacy is valued and cherished for it involves the most intimate decisions and choices. The individual is absolutely autonomous in her territory. She is free to err, resolve and experiment. She is informed and independent to make her own decisions. Privacy is freedom giving as well as empowering in this sense.



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The right to engage in sexual intercourse is an intrinsic part of the right to privacy. Privacy has to invariably contain the right to bodily integrity, self-determination and sexual autonomy. By criminalising adultery, the state is in fact showing a paternalistic attitude by telling individuals how to lead their lives and what behaviour to adopt. It carries moralistic undertones of imposing what living an ideal life means for the state. Such an approach seriously undermines the underlying values of personal liberty.

In fact, in the celebrated privacy judgment in K.S. Puttaswamy (2017), exercising the police power of the state in matters of private choices was repelled by the apex court. Justice J. Chelameswar in clear terms held, “I do not think that anybody would like to be told by the state as to what they should eat or how they should dress or

groups in turn see the villainy of the third as they protest against the march of Hindutva by the Bharatiya Janata Party (BJP). Hindutva, they feel, has turned this into a casteist controversy.

Other narratives

Hindutva forces, Dalit leader Prakash Ambedkar felt, were trying to poison society along caste lines. Dalit scholars point to Vadhu Budruk, a village close to Bhima-Koregaon and the controversy around Sambhaji, the eldest son of Shivaji. Legend has it that Sambhaji’s body was mutilated and then thrown into the river. Legend adds to it that Govind Mahar, a Dalit, gathered the body and stitched it together. It was the Mahars who arranged for Sambhaji’s memorial and, when Govind Mahar died, they constructed a tomb for him in the same village. Upper caste Marathas object to this narrative and a battle is being fought over it.

It is time to switch on TV-3. The BJP has over the years forged an anti-Muslim meta-narrative around these struggles. Hindutva organisations invoke past Maratha glory to keep the caste within their fold. The recent attempt to link Hindutva battles as a neo-Peshwa enterprise is disturbing to the BJP’s electoral campaign as the party under its national president Amit Shah has been wooing Dalits into its fold. When other Hindutva organisations evoke Maratha glory, Dalit alienation and unease is obvious. Dalit organisations in response have organised a huge conference at what was once the dominant seat of the Peshwas. A caste split now threatens the huge electoral wooing of Dalits as future vote banks. The BJP attempt to consolidate the electoral future is coming apart, ironically through the same caste wars it encouraged before it sought to consolidate an electoral future. What one sees are the scenarios that might change 2019 as an idea of the electoral fu-

whom they should be associated with either in their personal, social or political life.” Likewise, it seems to follow that individuals must be free from the interference of the state in matters of their sexual choices, or even in choosing their sexual partner.

Foreign jurisprudence

It is pertinent to note that none of the European countries has criminalised adultery. In most of South America, adultery is no longer a crime. Many States in the U.S. have either repealed adultery laws or put them to disuse. Following this global trend, in 2012, a working group of the United Nations called upon countries to do away with laws penalising adultery.

The right to sexual privacy is increasingly recognised in jurisprudence around the world. In the U.S in particular, the courts have enthusiastically located a constitutional right to sexual privacy. In *Griswold v. Connecticut* (1965), the U.S. Supreme Court was cautious to highlight the importance of privacy in the peculiar sphere of marital bedrooms in the context of birth control. In *Lawrence v. Texas* (2003), when confronted with the question of the legality of certain sexual conduct between persons

ture. The BJP fear of another Jignesh Mevani appearing and disrupting its carefully quilted electoral strategy is quite obvious. What was a caste war is being secularised into a law and order problem. Cyber elks are warning against any attempt to create caste divides.

Beyond containment

As I researched the archives of newspapers trying to make sense of the Bhima-Koregaon incident, I realised that the narrative cannot be contained or encapsulated in terms of one narrative. It is not a historical controversy alone, it cannot be restricted to a caste war, it is not a battle for identity, it is also a search for equality. It is also an attempt by politicians to go beyond all these fragments and create a more united future. One suddenly senses the many octaves in which politics in India occurs. Suddenly one senses the Proustian quality of such narratives where time redefines the nature of a problem. One realises that memory is a strange, protean, alchemical force in India where linearity does not work, and past, present and future struggle to simultaneously control narratives in India. It’s a reminder of philosopher Ian Hacking’s reading of our time. He claimed politics in the 18th century was about control of the body, in the 19th about the control of populations, and in the 20th about the control of memory. The only thing he forgot to mention is how complex memory in our age has become as it combines myth, memory, history. One trembles as one thinks how easily a fragment of the past can rewrite the future of a democracy, or the dreams of identity and justice.

Shiv Visvanathan is a member of the Compost heap, a group of academics and activists working on alternative imaginations

of the same sex, the court held that no “majoritarian sexual morality” could override legitimate privacy interests.

On the other hand, the approach of the Supreme Court of India towards the right to sexual privacy has been, at best, ambivalent. The judgment in *Suresh Kumar Koushal* (2013) upholding the criminalisation of voluntary sexual intercourse between those of the same sex remains a serious blow to the right to sexual freedom. However, subsequently, in *NALSA v. Union of India* (2014), the Court said that the value of privacy is fundamental to those of the transgender community.

The present challenge to the law on adultery is significant for various reasons. One of them certainly is that it is perhaps the first occasion where the privacy judgment in *Puttaswamy* is going to be doctrinally and forensically tested. It is also equally crucial that the right to sexual privacy forms a distinct and independent ground which makes the law on adultery further vulnerable to constitutional scrutiny.

Thulasi K. Raj is a lawyer at the Kerala High Court

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.

Pakistan’s videotapes

Kulbhushan Jadhav has become a tool in the hands of Pakistan to score points over India (“Pak releases Jadhav video, India terms it propaganda”, January 5). Every opportunity is being used to show India in a bad light by using Mr. Jadhav as a pawn. Whatever pressure we seem to be exerting on Pakistan to try to free him is proving to be of little use. When loud diplomacy has failed, it is time to explore whether other means such as back channels or third party diplomacy would be of use. Perhaps we can work out a mutually acceptable solution to the problem. This is a humanitarian issue that concerns a person’s life and we should keep politics out of it.

D.B.N. MURTHY,
Bengaluru

Of eminent sense

The constructive approach

of and measured tone in veteran Sri Lankan politician and Tamil leader R. Sampanthan’s words (“The Wednesday Interview” – “We can’t despair, we can’t abandon things”, January 3) raise the stature of the political leader in him to the level of a statesman. It needs to be appreciated that even when the question veered towards the provocative – “Do you feel that the coalition government is letting down the Tamil people?” – his view was holistic, without indulging in rhetoric. The interview brings forth his sense of reason and practical wisdom.

AYYASERI RAVEENDRANATH,
Aranmula, Kerala

A safety net

The Indian Patents Act protects against the evergreening of the drugs, which is a common practice by pharma giants to try to

stop generic companies from producing lower priced drugs (“How India rejects bad patents”, December 27, 2017). The Act is most useful for the poor who cannot afford to buy expensive drugs especially when facing chronic illness. But this too comes at a price. Take the case of a reduction in the price of stents. Even though this will promote domestic manufacturing – as big companies will withdraw from the market – it could result in the entry of substandard products. The need of the hour is for a balanced approach with an agency to monitor these products and improve funding for R&D in India. This will also make India a successful manufacturing hub.

RAHUL NAIR PARAPPATH,
Thiruvananthapuram

■ Who says drug developments must be

viewed as inventions? When life-saving vaccines such as for polio are not patented, it is ridiculous for enterprises and the developed world to support a move for patenting drugs that not only exist but are also recombinated to appear as a new product. This displays their avarice, self-seeking, inhumane, profit-only motives. Resources that have the potential to save lives must never be patented in the first place. Section 3(d) of the Indian Patents Act is on solid ground and India must uphold this legal experiment at the WTO forum, without buckling under international pressure.

DEVI RAJMOHAN,
Kochi

■ India being a signatory to the Doha declaration, it should ensure better access to essential medicines. The compulsory licensing system along with filtering out bad

patents will ensure the availability of medicines at an affordable rate. What the Indian Patent Office is doing is commendable, which will ensure that India does not bend before pharmaceutical majors.

VISHNU NARAYANAN,
Kannimari, Palakkad, Kerala

Untenable view

There have been suggestions in the media that the pronouncement of instant talaq should be treated as emotional abuse and brought under the Protection of Women from Domestic Violence Act, 2005. This view is as legally untenable as the obsession to criminalise talaq-e-biddat. Section 3 of the Act defines emotional abuse as: “(a) insults, ridicule, humiliation, name calling and insults or ridicule specially (sic) with regard to not having a child or a male child; b) and repeated threats to cause physical pain to any person

in whom the aggrieved person is interested.” The pronouncement of the meaningless formula ‘talaq-talaq-talaq’ in any form after its invalidation by the apex court comes nowhere near this definition. Hence, it cannot be brought under the Act.

A. FAIZUR RAHMAN,
Chennai

Dhoni is back

I was on cloud nine after reading the ‘Sport’ page report, “Chennai will whistle again for Dhoni” (January 5). To know that M.S. Dhoni will lead Chennai Super Kings (CSK) once again puts all our fears to rest. It is also good to know that Suresh Raina and Ravindra Jadeja will also be playing along with Captain Cool. We look forward to a new and successful innings by CSK.

MD RUSTAM PARWEZ,
Giridih, Jharkhand

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