



## A welcome quietus

The Supreme Court finally ends unjustified curbs on Hadiya's personal freedom

Hadiya has at last won her freedom. The curious aspect of her case is that it took such a long time for the courts to acknowledge that the 25-year-old woman from Kerala enjoys as much freedom of choice in her marriage as in her religious belief. The Kerala High Court had caused quite a muddle when it annulled her marriage solely on the suspicion that it was a ruse to scuttle *habeas corpus* proceedings before it. On her father's complaint that she had been indoctrinated and brainwashed into embracing Islam, and his fear that she was a victim of a movement to convert Hindu women and send them to overseas battle zones, the high court ordered her confinement in her parents' home. The Supreme Court's categorical ruling that the high court was wrong in invalidating a marriage under its writ jurisdiction constitutes a welcome end to the unjustified curtailment of her freedom of movement and her life choices. The verdict, for which detailed reasons are yet to be pronounced, restores the liberty of Ms. Hadiya, who chose to convert to Islam more than a year ago and later married a Muslim man. Last November, the apex court had freed her from her parents' custody and allowed her to complete her internship as part of a homoeopathy course she had taken up in Tamil Nadu. However, even this was somewhat unsatisfactory, as it appeared to be a compromise between being in parental custody and being allowed to live with her husband.

It is possible that her father, K.M. Asokan, was gripped by fear as her conversion came amid reports of radical groups recruiting young people on behalf of the Islamic State. The high court did not question her conversion, but suspected the veracity of her claim that she was married, as it happened in a day's break between hearings. However, these facts were not enough for the court to annul the marriage and label it a "sham". The court made odd observations on how a woman's marriage requires the involvement of her parents and that Ms. Hadiya was "at a vulnerable age". Even in the Supreme Court, Ms. Hadiya could explain to the judges that she stood by her marriage to Shafin Jahan only after other parties had advanced arguments on "indoctrination" and "conspiracy" and the National Investigation Agency had its say. Finally, the court has now given primacy to her view. The implications of her ordeal are disquieting: it is not difficult in this country to question the life choices of an adult woman by casting doubts on her volition and personal autonomy, and her freedom to choose her way of life can sometimes be judicially curtailed. While a lawful investigation into organised recruitment by radical groups must not be impeded, courts should strive even harder to protect personal freedoms without being swayed by mere suspicion.

## Saving Ghouta

Given the deal to evacuate one militant group, Syria should reach out to the rest

The agreement reached between armed groups in Eastern Ghouta and a UN delegation to evacuate some militants from the besieged enclave is the first major concession the rebels have made since Syrian government attacks began a month ago. Under the deal, the Jaish al-Islam, the main rebel group, will evacuate militants linked to the Hayat Tahrir al-Sham (HTS), formerly an al-Qaeda front, from Ghouta on the outskirts of Damascus. HTS militants will go to Idlib, a province in northwestern Syria run by the rebels, mainly the HTS. Over the past month, the rebels had refused to strike any deal with the regime even after repeated bombardment. At least 1,000 people have been killed in one month, with the UN warning of an "apocalypse" in Syria. The regime's argument was that it was seeking to liberate Eastern Ghouta from terrorist occupation. But about 400,000 people are stuck in the enclave; some reports say the rebels are using them as human shields. But the regime and its Russian backers are paying little attention to human suffering. Last month, the UN Security Council unanimously passed a resolution calling for a ceasefire in Eastern Ghouta. Thereafter, the Syrian government eased the siege of the city, allowing aid groups to supply assistance. But the ceasefire is yet to take effect. The Russians, who voted for the resolution at the Security Council, continued to justify attacks by citing the presence of the HTS, which is linked to an internationally designated terrorist organisation.

With HTS fighters now being evacuated, it is an opportunity for Russia and the Syrian regime to cease hostilities and engage with the other armed groups, including Jaish and Faylaq al-Rahman, an affiliate of the Free Syrian Army. Both the rebels and the government can learn from the battle for eastern Aleppo, which regime forces captured in late 2016. After the rebels ran out of all options in the face of continued Syrian/Russian assaults, both from land and air, they finally decided to leave the city under Turkish mediation, handing it over to government forces. The battle for Eastern Ghouta bears an eerie similarity to that of eastern Aleppo. In Ghouta, the rebels do not have any meaningful support coming from outside that could allow them to resist regime forces. What they do now to deter regime advances is to shell the government-controlled parts of Damascus and its suburbs, killing more civilians and giving further reason for the regime to justify its military operations. This will only prolong the conflict, endangering civilians on both sides. Given the Aleppo example and the reality on the ground in Eastern Ghouta, the sooner the government forces and the armed gangs reach an agreement for evacuation, the better it will be for the hundreds of thousands of people in the enclave.

# Under a humane Constitution

The Supreme Court's judgment on passive euthanasia must compel more debate on technological self-determination



GAUTAM BHATIA

Last week, in *Common Cause v. Union of India*, the Supreme Court ruled that every individual has the right to die with dignity. It upheld the practice of passive euthanasia – the removal of life-support mechanisms from persons who, for the most part, have slipped into a persistent vegetative state in order to allow them to die in the natural course of things – and laid down a set of detailed procedural guidelines to facilitate this process. These include "advance directives" and "living wills", which are instructions issued by a person specifying what should be done to her in the event of a terminal illness, and who will decide if she herself is incapacitated from giving or withholding consent. The court also addressed situations where a patient was terminally ill, but had not issued an advance directive. In such situations it held that the consent of the patient's close family, subject to the supervision of and concurrence by trained medical personnel, would substitute for the advance directive.

### The individual's choice

A number of terms have been invoked to identify the case. It has been called the "living wills case", the "passive euthanasia case", the "right to die with dignity case", or even simply the "euthanasia case". While all these descriptors are accurate, there is, however, a more fundamental principle that unites the four separate and detailed opinions (spanning 538 pages) in *Common Cause*. Each of the four opinions – authored by Chief Justice Dipak Misra, and Justices

A.K. Sikri, D.Y. Chandrachud, and Ashok Bhushan – are organised around the constitutional values of personal autonomy, bodily integrity and human dignity. And these values, in turn, are expressed in the language of an individual's choice to receive or decline medical intervention or medical treatment.

### The primacy of consent

Last year, in its privacy judgment, the Supreme Court affirmed that the ideas of self-determination and the right of the individual to make fundamental choices about how to use her body are at the heart of the Constitution. *Common Cause* represents the first important application of these general principles to a concrete situation. In framing the issue in terms of the individual's choice to reject medical intervention, the court articulated an important insight: we live in a world where we are constantly subjected to all kinds of invasive processes, procedures, and systems. In *Common Cause*, the context was that of medical intervention. Medical intervention, however, is only one offshoot of a world that is now defined and constituted by technology. Systems of technology are embedded in the very fabric of our lives, from something as basic as the phone that helps us find our way in an unfamiliar city, to the more complex architectures that are now used worldwide for large-scale governance and administration.

Consequently, if the right to privacy, self-determination and choice means anything in the age of technology, it surely means this: individuals have the right to engage with technological systems on their own terms, the right to opt into or opt out of such systems without suffering for it, and the right not to be subjected to technological intervention without being given meaningful choice. Let



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us call this the principle of technological self-determination: or the right of every individual to determine how, on what terms, and to what extent, she will engage with technological systems. This, of course, is closely related to the question of the relationship between technology and human empowerment; as the Chief Justice correctly put the point in his lead judgment, when discussing the issue of leaving life-support systems on in the hope that a cure might be found some day, "should [the individual] be 'guinea pig' for some kind of experiment?"

The link between the constitutional values of choice and self-determination, and the concrete issue of the engagement between the individual and technological systems (in the context of medical intervention) was explained by all the judges. The Chief Justice noted that "the recognition of the freedom of competent adults to make choices about their medical care necessarily encompasses recognition of the right to make choices since individual free choice and self-determination are themselves fundamental constituents of life." Justice Sikri observed that "dignity implies, apart from a right to life enjoyment of right to be free of physical interference." Justice Chandrachud took the insight one step further, when he wrote that "the right not to accept medical treatment is essential to liberty.

Medical treatment cannot be thrust upon an individual, however, it may have been conceived in the interest of the individual." The last sentence is crucial, because the most common justification offered in support of invasive technological intervention is precisely that it is only for the benefit of the people that it targets. As Justice Chandrachud recognised, however, such arguments cannot override human freedom and human choice. And Justice Bhushan concluded by holding emphatically that the principles of autonomy, bodily integrity, and human dignity "enable an adult human being of conscious mind to take decision regarding extent and manner of taking medical treatment."

*Common Cause*, therefore, is an emphatic recognition of the basic principle that, in today's world, individuals must be empowered to engage with technological systems on their own terms. Under the Constitution, the state cannot subject individuals to technological intervention without their consent, and indeed – as Justice Chandrachud noted in the privacy judgment – must take active steps to facilitate the ability of individuals to engage with such systems as citizens, and not as subjects. Just like the Constitution marks a turn from a culture of authority to a culture of justification, where every decision taken by persons in authority must be justified to the people, so must the principle of justification be applied to the engagement between individuals and technological systems. And at the heart of that engagement must be the principles of self-determination and choice. *Common Cause* marks the first important judicial endorsement of those principles in the privacy era. And if the court continues to apply it in the cases that will inevitably come before it in the coming months and years, *Common Cause* might be remem-

bered (as indicated above) as the first formulation of a core constitutional principle for the 21st century: the principle of technological self-determination.

### Judicial legislation

As a final point, it must be noted that the court – speaking through the Chief Justice – laid down detailed procedures for the implementation of the advance directives. These safeguards are quasi-legislative in nature, and the court justified them by citing the famous *Vishaka* judgment, which had held that when there is a legislative vacuum, the court can step in and fill the gap until a law comes into force. That principle, however, may merit some reconsideration, because even with the best of motives, it involves the court stepping into the legislative sphere.

One possibility might be to consider a constitutional device used in South Africa: the suspended declaration of invalidity. The Constitutional Court of South Africa is empowered to declare a legal provision unconstitutional, but also give the legislature some breathing space to remedy the defect before the judgment actually comes into force. Similarly, in cases where the Indian Supreme Court finds a legislative vacuum, it could (like it has done in *Common Cause*) issue guidelines, but suspend their operation for a period of a few months, giving Parliament an opportunity to consider the guidelines, and take action. If, then, Parliament fails to take action, it could be presumed to have tacitly endorsed the court's guidelines, and they could then acquire legal force. Such a model would promote dialogue between the different branches of government, and strengthen the court's legitimacy and competence to act in difficult cases of this kind.

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## A breakthrough and a gamble

Now that talks between the U.S. and North Korea are on, it is worth testing Pyongyang's sincerity



SHASHANK JOSHI

The remarkable announcement of a personal meeting between U.S. President Donald Trump and the North Korean leader Kim Jong-un appears welcome news. It points the way out of a crisis that seemed last year to be spiralling out of control, after the exchange of personal and nuclear threats. But the history of talks with North Korea is a story of recurring disappointment and duplicity. A summit meeting without adequate diplomatic groundwork risks emboldening North Korea while setting the stage for a bad deal which sells out American allies, or dashed expectations and a slide to catastrophe.

### The fine print

On the face of it, North Korea's offer – unusually conveyed from the White House, by three South Korean officials – is attractive. We are told that Mr. Kim has promised to discuss giving up his nuclear arsenal if his country's security is assured; to hold off from missile or nuclear tests while talks are under

way; and to accept that the annual U.S.-South Korea military exercises will continue. He has not demanded a dowry of food or fuel ahead of talks, as in the past. For their part, South Korea and the U.S., mindful of what they called the "mistakes of the past", have rightly promised that sanctions will remain firmly in place, until a deal is in place. However, the devil is in the detail.

First, North Korea's demand for security guarantees is an old one, going back more than a decade. But what does it mean in practice? This could involve simply a U.S. statement of non-aggression, or even a peace agreement that would formally end the Korean War. The Obama administration considered such a discussion, but balked because North Korea had not put de-nuclearisation on the table. Now, it might have done. But what if North Korea seeks, as it has in the past, a deeper guarantee of security, the dissolution of the U.S.-South Korea alliance and the removal of American troops from the peninsula? Such a move would be hugely destabilising, potentially nudging South Korea towards acquiring nuclear weapons of its own. Yet it might appeal to a president who has spoken disparagingly of alliances and distrusts faraway troop commitments.

Second, how reliable are Mr.



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Kim's commitments? In the past, the regime has signed up to deals and then walked through loopholes. In 2012, North Korea agreed to halt missile tests in exchange for U.S. food aid. But a few weeks later, it announced a satellite launch which uses the same technology as ballistic missiles. The deal promptly collapsed. Today, North Korea is yet to confirm that it shares the South's interpretation of its commitments. Will it really freeze all tests for the duration of talks? The first challenge will come during the massive U.S.-South Korea military exercises due to be held from March to May. South Korea will probably push for these to be scaled down, to avoid provoking Pyongyang, but they will certainly go ahead. It remains to be seen whether Mr. Kim will hold his nose, or lose his temper.

Third, while Mr. Trump's personal involvement is significant, it is

important that diplomacy take into account the range of regional interests.

### Involving China

China's role in enforcing sanctions is crucial, contributing to a huge fall in North Korean exports last year. Beijing must be brought along rather than kept in the dark because the sanctions regime will have to be preserved and tightened if talks go nowhere. Japan, which hosts U.S. bases and would be deeply affected in any regional war, is also a key partner. It is encouraging that the South Korean delegation that made this announcement from the White House will be in Japan soon. One option is to revive the ecumenical format of the six-party talks, which involved all these parties plus Russia between 2003 and 2009, although this, of course, clashes with the President's compulsive need to take credit for any success.

Finally, we should be realistic. North Korea may have promised to discuss getting rid of his weapons, but this is unlikely to happen. As James Clapper, then the U.S. Director of National Intelligence, acknowledged in 2016, the policy is a "lost cause". "They are not going to do that," he warned. "That is their ticket to survival." One must therefore think creatively about desirable outcomes short

of de-nuclearisation. This could involve cutting the number of North Korean warheads and missiles, a permanent freeze on tests, intrusive inspections, and measures to block the export of nuclear technology. This will require diligent, expert and experienced diplomacy – big asks for a demoralised, shrunken and marginalised State Department. If the bar is set too high, the resulting disappointment risks pushing everyone back, more forcefully, onto a path of war.

All this might have been handled better. A presidential summit, which confers unusual prestige upon Mr. Kim, ought to have been held back as a concession for a later stage. There is a reason why North Korea has wanted a summit for decades. Now that one is agreed, it is worth testing North Korea's sincerity as long as sanctions are not lifted prematurely. But American forces on the Korean peninsula and the alliance they uphold should not be treated as a bargaining chip. Mr. Trump should proceed with extreme caution.

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## 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.

### Court on euthanasia

The Supreme Court's verdict on legalising passive euthanasia is a step that will help people in an incurable vegetative state or in deep coma a chance to breathe their last in peace and dignity ("SC upholds passive euthanasia", March 10). Even though it is the duty of the kith and kin to do their best to save the life of the person, it would be uncharitable to expect them to be providing life support to one who as per medical parlance is already dead. But stringent guidelines need to be in place to prevent misuse. Moreover, a special clause should be incorporated in all life insurance policies that passive euthanasia would also be tantamount to natural death and a declaration from the policy holder regarding his decision on passive

euthanasia obtained at the time of issuance of the policy.

THARCIUS S. FERNANDO,  
Chennai

■ When critical care gets far too critical and patients can't endure it any longer, families are caught on the horns of a dilemma. They can neither exercise the moral right to suspend treatment nor afford the mounting cost of health care. Aside from such expenses, the patient is subject to unending torment from a plethora of medical instruments to keep him alive. In such dire circumstances where patients are reduced to a vegetative state, it becomes incumbent on others to let them die peacefully through a living will or passive euthanasia. This is especially so in the world's largest democracy where health

care is getting increasingly unaffordable.

KANGAYAM R. NARASIMHAN,  
Chennai

■ The judgment highlights a vexing problem of a modern society. It has allowed individuals with a terminal illness to refuse medication. This judgment serves the purpose of a modern, production-oriented society by giving the non-productive individuals the 'autonomy' to die. It is a sociological reality that many people in their old age start feeling worthless due to a lack of direct contribution towards the "process of production" in society. After this judgment, such a feeling of worthlessness, if compounded by the person suffering from a terminal illness, is bound to become much worse. The court has said "the individual interest has to be given priority over

the state interest". Parliament must translate this part of the judgment into law with caution.

ANGAD S. BRAR,  
Chandigarh

■ It is inhuman to sustain an individual's suffering through artificial means. However, the ruling has wider connotations in its applicability. It will be morally challenging for the stakeholders executing the process, especially for the physicians who are expected to sustain the patient's life. The moral, religious and personal beliefs of an individual on life and death can play a significant role in the decision-making process. Also, instances of physicians forced to execute passive euthanasia for financial stakes cannot be glossed over. It will also be interesting to see how this progressive step will affect

the pharmaceutical industry and the research and development of life-saving drugs.

PAUL JOM,  
New Delhi

■ The report about an elderly couple writing to the President seeking permission for active euthanasia brings out another dimension to the issue as well as the sad state of affairs when it comes to the lives of senior citizens in India ("Elderly couple seeks active euthanasia", March 11). The complete collapse of government hospitals and the emergence of commercial corporate health care only makes many a senior citizen pray to god for a peaceful end. The fear of falling sick in one's old age while keeping in mind the high cost of medicare in our society disturbs many an elderly citizen. The high and prohibitive premiums of

medical insurance for the aged further complicate the subject. The Central and State governments should work toward free or subsidised efficient and effective medical assistance to senior citizens.

M.V. NAGAVENDER RAO,  
Hyderabad

### Pay hike

The creation of a small, elite "super club" within the cricket dressing room may not be conducive to cordial relations among senior players ("Sport" page - "Kohli & Co. receive pay hikes", March 8). Even if it was desirable, elevating players such as Rohit Sharma is mindless. That Ravichandran Ashwin with a rich harvest of wickets is way down the money ladder is startling.

C.K. SUBRAMANIAM,  
Navi Mumbai

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