



Undoing injustice

The Supreme Court invokes constitutional norms and Islamic canon to bar instant talaq

By declaring the discriminatory practice of instant triple talaq as unconstitutional, the Supreme Court has sent out a clear message that personal law can no longer be privileged over fundamental rights. Three of the five judges on the Constitution Bench have not accepted the argument that instant talaq, or *talaq-e-biddat*, is essential to Islam and, therefore, deserves constitutional protection under Article 25. The biggest virtue of the two opinions constituting the majority judgment is that they do not have to undermine any religious tenet to make their point. On the contrary, as Justice Kurian Joseph says, the forbidden nature of triple talaq can be gleaned from the Koran itself. Justice Rohinton Nariman, writing the main judgment, locates the practice in the fourth degree of obedience required by Islamic tenets, namely, *makruh*, or that which is reprobated as unworthy. The main ground on which the practice has been struck down is a simple formulation: that "this form of talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it." In fact, the final summation is so simple that the court did not even have to elaborate on how triple talaq violates gender equality. On the contrary, Justice Nariman says that having held the practice to be arbitrary, there is really no need to go into the element of discrimination. The court deserves commendation for undoing the gender injustice implicit in the practice so effortlessly, within constitutional parameters as well as the Islamic canon.

The present case was initiated *suo motu* by the court, but opinion against triple talaq could not have gathered critical mass and the case against it significantly bolstered if it weren't for a few women standing up to the community's conservative elements and challenging it. Any other outcome would have been a great injustice to them. Even the judges in the minority have had to concede that their reasoning is based mainly on the fact that this form of talaq is a matter of personal law, and therefore entitled to constitutional protection. "It is not open to a court to accept an egalitarian approach over a practice which constitutes an integral part of religion," writes Chief Justice J.S. Khehar in his minority opinion. Interestingly, even his view segues into a somewhat egalitarian position, restraining Muslim men from pronouncing triple talaq until Parliament enacts a law to regulate it. The All India Muslim Personal Law Board, and all those who supported its regressive opinion that even an unworthy practice should not be dislodged by judicial verdict, should now accept the verdict in the interests of a modern social order. And there is no reason to contend that their faith has been unduly secularised. For, as Justice Joseph concludes, "what is bad in theology is bad in law as well."

Fusion and fission

The merger of the two AIADMK factions has led to the emergence of another

New fault lines have formed in the All India Anna Dravida Munnetra Kazhagam in Tamil Nadu. When the factions led by Chief Minister Edappadi K. Palaniswami and former Chief Minister O. Panneerselvam agreed on the merger, they must have hoped it would lead to a period of political stability and an unrivalled claim to power. Instead, they are now faced with a new pressure group led by T.T.V. Dhinakaran, nephew of the polarising figure that is V.K. Sasikala, who is serving a four-year sentence in the disproportionate assets case. By making the isolation of the Sasikala family a pre-condition for the merger, the Panneerselvam faction appears to have left Mr. Palaniswami on shaky ground. While Mr. Dhinakaran was not against the merger *per se*, he and his kin have not taken kindly to the depiction of the political reunion as a logical outcome of popular aversion to the Sasikala family. The merger and the retrieval of the election symbol of Two Leaves were seen as political necessities, but not the insistence of the Panneerselvam faction on carrying on a political campaign almost entirely on an anti-Sasikala platform. Though Mr. Palaniswami managed to defer a decision on expelling Sasikala until after the convening of a general council meeting, in the popular imagination the merger was made possible only by the sidelining of the Sasikala family. To retain their relevance, Mr. Dhinakaran and other members of the family were forced to coalesce into an opposing group.

With the support of 19 legislators, Mr. Dhinakaran is in a position to bring down the government. However, rather than project his opposition as another split in the party, he is keen to fight the battle from within. The proposal to pitch the Speaker, P. Dhanapal, as the group's choice of Chief Minister to replace Mr. Palaniswami is part of an attempt to reassert control over the party and the government. Even now, many ministers in the Palaniswami cabinet are Sasikala loyalists; they are held together only by their desire to avoid a snap election just one year into the term of the Assembly. Given the mood of the government at the Centre and the interests of the Bharatiya Janata Party, Governor C. Vidyasagar Rao might not act in a hurry on the plea by the MLAs supporting Mr. Dhinakaran and order Mr. Palaniswami to go through a floor test. Indeed, the best course in the current muddled circumstances would be to let matters take their own course and allow any oppositional group to move a motion of no confidence against the government. The Dhinakaran group would like a change at the helm, but would not like to be seen as joining hands with the Opposition Dravida Munnetra Kazhagam and forcing a snap election. In such a situation, the proper forum for a change of leadership is a meeting of the AIADMK's legislature party, not the Raj Bhavan, and not the floor of the Assembly. At least, not yet.

The deep divide within white Americans

How the U.S. went from electing a black President to choosing a successor with little compassion for minorities



SONALDE DESAI

In Charlottesville, Virginia, a crowd of angry protesters marched on August 12 in a manner reminiscent of Nazi paramilitary gatherings. Most of them were white men protesting the removal of iconic statues of generals from the American Civil War who fought to preserve slavery. Their appearance mimicked the famed Ku Klux Klan mobs united in their desire to keep black Americans in their place through violence and intimidation. Their anger escalated to encompass Jews and immigrants through chants like, "Jews shall not replace us," and "Blood and Soil" (a popular Nazi slogan). A member of this angry community drove his car into a group of peaceful counter-demonstrators and killed a young woman. Events in Charlottesville saddened America, but what shocked it was President Donald Trump's refusal to criticise this collection of Ku Klux Klan and neo-Nazi groups. He continues to equate these groups inciting angry white men with peaceful counter-demonstrators, and blames them both equally.

Echo from Charlottesville

Contrasting this chilling march dominated by white men in Charlottesville with the euphoric multi-colour crowd celebrating the election of America's first African-American President eight years ago, one wonders what changed in the intervening eight years to allow hate and intolerance to replace hope and optimism for a multiracial society. Could it be that in an era of rising economic instability, the election of Barack Obama to America's highest office created an impression that African-Americans were catching up with and perhaps



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surpassing white Americans in income and achievement, fuelling white resentment?

Statistical data from a 2016 survey conducted by the PEW Research Center sheds light on some of these trends. First, it documents a sharp fissure in American society between black and white Americans. The income gap between the two groups remains large. Median adjusted household income in 2014 terms was \$24,700 and \$44,700 for black and white households, respectively, in 1967. In 2015, incomes for both groups had grown, reaching \$43,300 and \$77,900, respectively for black and white households.

In absolute terms, this represents a growing gap between the two groups. Gap in wealth is even greater; today a median white household has 13 times the wealth of a median black household. These material differences spill over into perceptions with 88% of blacks saying more needs to be done to bridge the racial divide while only 53% of whites say so. Moreover, a far greater proportion of the black population feels that blacks are treated unfairly by police (74%) than white (35%).

However, if these data show a sharp racial divide in material and psychological well-being, they also show that a substantial proportion of white America recognises the vulnerabilities faced by their black brothers and sisters. Then what encourages these brazen displays of

racism? Don't these angry mobs know that they are in the minority in a public culture that embraces multiculturalism? The answer to this lies in the deep economic and cultural divide within white Americans.

A growing inequality

Wealth inequality in the U.S. has grown sharply over the past three decades, as estimated by the U.S. Federal Reserve Bank. In real terms, the bottom 20th percentile of white Americans had net average wealth of \$15,248 over the period 1992-98, and \$19,650 in 2001-07. But post-recession, it fell sharply to \$10,468 in 2010-13. In contrast, the wealth of the top 10% of white Americans was \$730,350, \$1,210,554 and \$1,260,430 in 1992-98, 2001-07 and 2010-13, respectively. Thus, while the bottom fifth bore the brunt of the recession of 2008, the top tenth have not suffered much, increasing the 90th/20th wealth ratio to 123 in recent years, compared to 48 two decades ago. Education and wealth accumulation go hand in hand with the college-educated owning most of the nation's wealth. However, only 38% of white adults and 23% of black adults have a college degree. The PEW study also found that college-educated whites are far more likely to recognise their racial advantages than those with only high school education — 47% vs 17%.

Thus, it is not surprising that white households in lower income

groups, most of whom lack college education, are resentful of their economic misfortune. In African-Americans and immigrants, they have found a handy target, with a healthy dose of anti-Semitism thrown in. While racial inequality in incomes has grown at the top and the middle of the distribution, that at the bottom has declined. Poverty rate among whites has grown from 8% to 10% between 1974 and 2014, while that for blacks has dropped from 30% to 26% over the same period. African-Americans are still more likely to be poor than the white population, but in this war of perceptions, poor whites feel that their conditions are deteriorating while those of African-Americans are improving.

What is surprising is that this frustrated and vulnerable group has found an unlikely ally in President Trump. One would normally not expect a billionaire business owner to tap into this well of discontent among the nation's dispossessed. Yet, as unlikely as it seems, Republican voters seem far more discontent with what they perceive as minority appeasement than Democrats. The PEW study found that 59% of Republican voters believe that there is too much attention to racial issues in America compared to 21% of Democrats. Thus, Mr. Trump was clearly responding to his core voters when he refused to condemn the racist fringe elements that caused the Charlottesville tragedy.

However, a robust civil society rebuke from highly unlikely sources that has condemned both the Charlottesville violence and Mr. Trump's morally bankrupt response to it gives cause for optimism about the strengths of American civil society. In the wake of Mr. Trump's equivocation, eight leaders of major companies and business groups resigned from the President's Manufacturing Council, beginning with Ken Frazier, the African-American CEO of Merck Pharmaceuticals, followed by CEOs of Under Armour and Intel among

others. This led to the President disbanding the Manufacturing Council. Similar condemnation has poured in from artists and intellectuals, resulting in Donald and Melania Trump's decision not to attend Kennedy Center awards ceremony, only the fourth time a sitting President has skipped these honours in four decades. Most importantly, even Republican legislators find themselves at odds with the President on this issue and some have publicly distanced themselves.

There is something about events like Charlottesville that throw the national character in sharp relief, highlighting both the forces that underpin these eruptions and the strength as well as weakness of the civil society. This past week has been full of the saddest and the proudest moments in recent American history. A President from the party of Lincoln who has lost the moral authority to lead the nation is confronted with an unlikely opposition. Who would have thought that corporate America would one day provide moral leadership where politicians fail?

Corporates take the lead

It would be a mistake for us to not recognise that this revolt began with the courageous leadership of a single individual, Ken Frazier of Merck. It seems likely that Mr. Frazier's black conscience did not allow him to share a podium with Mr. Trump, but it also seems likely that on the whole, corporate America is responding to its stockholders and, to some extent, consumers, who do not want the nation's political and economic agenda overshadowed by racial bigotry. As modern America faces up to its underlying full of racism and hate, it is heartening to see that a vast majority of Americans refuse to be complicit in actions that shame its ideals.

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Shaping wilderness

The use of technology is challenging long-held ideas about conservation



PANKAJ SEKHSARIA & NAVEEN THAYYIL

One of the most significant trends visible in wildlife conservation and management today is the increased use of "technology". Camera traps, for instance, have provided new evidence of tiger presence in the Mhadei Wildlife Sanctuary in Goa and of the Asiatic wildcat in Bandhavgarh, Madhya Pradesh; radio collars have helped solve the mystery of tiger deaths in Bandipur in Karnataka and Chandrapur district of Maharashtra; and satellite telemetry promises to provide new insights into the behaviour and movement patterns of the Great Indian Bustard in Gujarat, which includes its journeys across the border to Pakistan. New software and sophisticated surveillance technologies are being operationalised to keep an eye on developments across large landscapes and the use of contraceptives has been suggested to contain runaway populations of animals ranging from the

monkey in large parts of India to the elephant in Africa.

Within easy reach

We may not be able to escape such a technology-based framing, but it is possible that the current set of technologies, like those mentioned earlier, are profoundly different from those of the earlier era? And is the change that we are seeing, therefore, a more fundamental one?

What these innovations appear to do is increase our proximity to the subject of our interest and of our investigation. Surveillance technologies are bringing distant and topographically complex landscapes right into our homes and offices so that they can be observed and monitored without moving an inch. More individual wild animals are perhaps being caught and handled today than has ever happened earlier. And then there are various levels of physical intrusion that these sentient beings are subjected to — be it a microchip in the tail, a radio collar around its neck or a contraceptive injected into its body, not to mention the sedation that most of these individuals are forced into to enable such intrusions.

Technology has always allowed us deeper access into and control



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over our environment; in many ways it has been key in the human conquest over nature. And yet there are some things — a ferocious large cat or a free flying bird or a deep-sea mammal — that had still seemed out of reach. They were wild, defined as an animal 'living or growing in the natural environment; not domesticated or cultivated'. They were wild and therefore inaccessible or inaccessible, therefore wild. Technology is closing that gap and it is the very idea of the "wild" and "wilderness" that comes into focus in important public initiatives such as conservation and protection of biodiversity. How wild or natural, for instance, is an animal that cannot perform its fundamental biological function of procreation because it has been sterilised by human intervention? Is a tiger that has been sed-

ated multiple times and now carries a radio collar as 'wild' a tiger as one that has never been photographed, sedated or collared? How wild is a wilderness where everything has been mapped, where everything is known and where all movement is tracked in real time?

Aesthetic and ethical issues

The matter here is both aesthetic and ethical. The basic pleasures of enjoying the wild are essentially technology mediated intrusions (think binoculars and cameras) into the private lives of animals that the human species does not allow in its own case. Aldo Leopold pointed out, for instance, to the role of the automobile, and the dense construction of roads to accommodate them, as central to the emergence of wilderness areas in 19th century United States. Does the radio collar go only a step further, or is there a fundamental shift here? One could argue that this collar is a signifier of further human dominance and authority over the wild animal if not complete control. A photograph of a collared tiger is unlikely to win an award in a wildlife photography contest just as an encounter with a collared animal is unlikely to evoke the same experience of thrill because the

element of surprise will have been removed. The issue is one that goes to the very heart of the notion of the "wild" and of "wilderness", marking as it does a paradigm shift in our relationship to and understanding of wildlife.

This is not an esoteric matter because it has a direct bearing on the agenda of conservation; it is the conservation of this 'wild' life that we are talking about after all. If we agree that technologies and technological interventions are bringing about fundamental changes in the identities and essence of wild subjects, it follows that current ideologies and methods of conservation will also have to change.

Are we willing to characterise wilderness areas as glorified theme parks? Are attempts at conservation then just routes to manage these slippery slopes? If this is not an appropriate aesthetic or ethical stance, then how do we think of the ubiquitous use of high technology to shape wilderness, and to intrude into 'wild' bodies, even as they are used in the name of protecting them?

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LETTERS TO THE EDITOR

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Full circle?

V.K. Sasikala appears to have lost the plot with former Tamil Nadu Chief Minister O. Panneerselvam making a return to the AIADMK fold as the Deputy Chief Minister. The merger, said to have been initiated by the BJP, was on predictable lines and shows that politics is the art of the possible. While the return of OPS, a welcome development, is certain to give the party more teeth, it remains to be seen what influence the legislators who have now expressed support to ousted deputy general secretary T.T.V. Dhinakaran will exert in trying to rock the boat. The unified party would do well to get its house in order and devote all its energy to running the government effectively.

N.J. RAVI CHANDER, Bengaluru

High-profile cases

The slow pace of justice in India has always created a problem for both the accused and the victims. Stacks of pending cases, lack

of evidence and cumbersome processes of investigation are serious impediments to the course of free and fair justice. Politicians are using the circumstances to give thrust to their own political gains but the fact is that it is the people on either side of the line of justice who suffer the most. Any failure in delivering justice is pernicious. The country's judiciary needs the required infrastructure, staff, tools and technology to enable the speedy delivery of justice. There should be no room for creating doubt and suspicion ("Malegaon case: SC gives Purohit bail", August 22).

APARAJITA SINGH, Lucknow

■ The court saying that bail cannot be denied merely because some communities are against it is in itself a telling commentary on the tendency by political parties to checkmate one another through the powerful ammunition of "high-profile

cases".

It has to be remembered that courts go by material evidence, among others, to adjudicate on the merits of a case. Whether or not all such evidence was produced will be examined by the court. All political parties must ponder over their priorities on cases pending before court. The intense debates over the "propriety" of the highest court of the land in granting bail can be avoided if highly sensitive cases are fast-tracked. If procedures are simplified and cases are put up in all seriousness, there will be no ground for parties to play their favourite game of fixing blame. But will it happen in India?

GANAPATHI BHAT, Akola, Maharashtra

What prison

The Editorial, "Prison and privilege" (August 22), is an eye-opener on the illegal and outrageous means employed by serving prisoners to take advantage of the weaknesses in the

system. Everyone in Bengaluru who was browbeaten into submission by these two prisoners should be brought to book. Globally, a prison break or prison escape is treated as a grave offence, especially if there is found to be connivance of prison staff.

SUDDAPALLI BHASKARA RAO, Muscat, Sultanate of Oman

For a fresh start

India-Nepal ties have witnessed a lot of ups and downs in the last two years starting with confrontation over Nepal's Constitution and then going all the way to the imposition of a blockade by India ("Rebooting India-Nepal ties", August 22). All this could have been prevented had our political establishment shown some resilience and maturity. It is here that we remember the I.K. Gujral doctrine, which put emphasis on mutual respect and mutual non-interference with our neighbours. We have to remember that being geographically and

economically the strongest nation in the subcontinent, the onus of some maturity when it comes to dealing with our neighbours rests with us.

KARAN CHOUDHARY, Pathankot, Punjab

ODF targets

It is extremely disconcerting that villagers are being threatened with the snapping of electricity connections for not being able to construct toilets in their houses. ("No power if you go in the open, SDO tells villagers", August 22). Some weeks ago, there was a detailed report of villagers being threatened by the administration that their PDS cards could be cancelled for a similar reason. Here, one read of how villagers, mostly Adivasis, already trapped in a debt cycle, were facing greater impoverishment and vulnerability because of the administration's diktat. One must not forget the death of Zafar Khan of the same State, Rajasthan, who was

killed while trying to protest the shameful practice of authorities photographing women who were going to relieve themselves. What adds irony to this is the fact that the authorities who pass such orders are totally insensitive not only to the rights of the very citizens they are meant to serve but are also oblivious of their failure to meet the goals of other schemes such as providing electric connections to each house. Obviously, the administration too is under great stress and undue pressure because of the demands and targets of the government's various pet, but myopic, schemes. The government must ensure that the administration remains faithful to constitutional values and does not violate rights. For this, it has to remove all coercive, threatening stratagems.

FIROZ AHMAD, New Delhi

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