



Questions of age

The SC has done right in refusing to extend POCSO to adults with mental retardation

The Supreme Court has shown due restraint in declining to apply the provisions of the Protection of Children from Sexual Offences Act to mentally retarded adults whose mental age may be that of a child. It would have been tempting to give a purposive interpretation to the term ‘child’ under POCSO, which refers to those below 18 years of age, and rule that it encompasses those with a ‘mental age’ of a person below 18. It would have been compelling to acknowledge how similarly a child and an adult with inadequate intellectual growth are placed when it comes to sexual assault: both may show the same lack of understanding about the situation they are in and incapacity to protest. No doubt, any expanded definition to encompass both biological and mental age within the POCSO framework would have helped extend its beneficial features to another section of vulnerable persons. The court has chosen the challenging path of analysing the import of such judicial interpretation, along with the question whether expanding the notion of age is within its remit. It has ruled that it is outside its domain. POCSO is meant to protect children from sexual offences. To extend it to adult victims based on mental age would require determination of their mental competence. This would need statutory provisions and rules; the legislature alone is competent to enact them. Judicial conferment of power to trial courts to treat some adults as children based on mental capacity would, in the Bench’s opinion, do violence to the existing law protecting children from sexual offences. It noted that there may be different levels of mental competence, and that those with mild, moderate or borderline retardation are capable of living in normal social conditions.

The case before the court related to the rape of a 38-year-old woman with cerebral palsy. Her mother was concerned about the absence of a friendly and congenial atmosphere before the trial court. She approached the courts for a direction to transfer the case to a special court under POCSO, a law that mandates child-friendly procedures and features during the trial, taking into account her daughter’s mental age, which she said was that of a six-year-old. In a fateful turn of events, the lone accused died during these proceedings, bringing the criminal case to an end. The implication of the Supreme Court ruling is that the onus is always on trial judges to keep in mind the degree of retardation of victims and their level of understanding while appreciating their evidence. It would be unfortunate if cases get derailed because of either the victims’ inability to communicate effectively or because of the court’s difficulty in understanding their words or gestures. It is now up to the legislature to consider the introduction of legal provisions to determine mental competence so victims with inadequate mental development may effectively testify against sexual offenders.

Poles apart

Executive overreach in Poland is drawing people to the streets, and inviting the EU’s ire

Poland’s right-wing government has been waging a relentless war on democratic institutions ever since it assumed office in 2015. But it may have gone too far now with its moves to curb judicial independence, which have been categorically opposed by President Andrzej Duda. Mr. Duda, an ally of the ruling Law and Justice Party (PiS), vetoed two measures that militate against the rule of law. One of them requires all judges of the Supreme Court to step down, except those the President thinks should stay on. The second gives Parliament control over the mechanism that deals with their appointment. However, he did assent to another controversial measure which empowers the justice minister to sack the heads of lower courts. The government of Prime Minister Beata Szydlo was able to initiate these unpopular pieces of legislation because it has already stripped the tribunal that adjudicates on the constitutionality of laws relating to its powers. The government has claimed that the overhaul was intended to rid the judicial system of Soviet-era remnants. But most Poles seem to think otherwise. They have tasted economic prosperity and political freedoms in the post-Cold-War years and after the country’s 2004 accession to the European Union. They have also grown accustomed to standing up for their rights against arbitrary encroachment, and with success. The government was forced to reverse a socially regressive policy on abortion that even criminalised termination of pregnancies regardless of circumstances, including rape.

Outrage against the latest judicial reforms has drawn thousands to the streets in protest against the PiS regime. Poland has been the poster child of the EU’s integration, and the institutional clampdown in this otherwise thriving economy is understandably causing concern in other European capitals. The European Commission has said it would start legal proceedings. Under the Rule of Law Framework, it can strip a member-country of its voting rights. But given the sensitivities about national sovereignty, there are bound to be limits on the application of procedures, even where they may be sound under the law. Moreover, Hungary’s continued clash with the EU over similar issues seems to have made little difference to its dismal record on democratic governance and accountability. Experience suggests that leading by example and exerting diplomatic pressure, rather than preaching from the pulpit, is a more realistic and effective course to adopt. The art and craft of stitching up pragmatic, if sometimes painful, political compromises has been the story of the EU, where the imperatives of staying together trump almost all else. Poland’s robust civil society may, in the end, be more effective in keeping its government accountable.

Privacy in the public domain

The greatest challenge to privacy is from the private sector. It also stems from an indifference to our own privacy



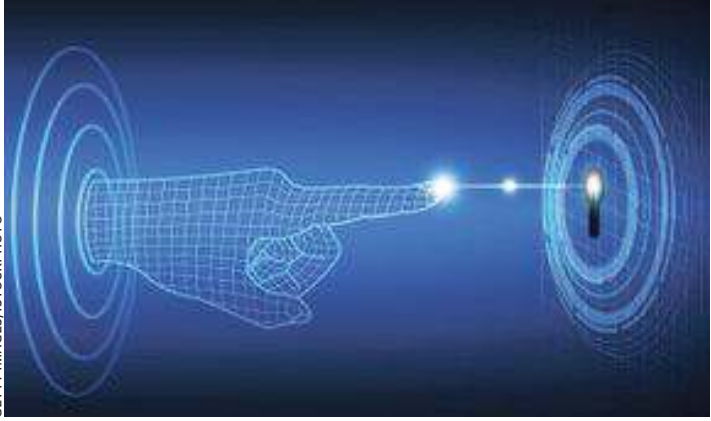
SUNDAR SARUKKAI

It is heartening to read the preliminary observations of the Supreme Court, made on July 19, regarding privacy as a fundamental right. Unfortunately, much of the debate on privacy seems to suffer from the leftovers of a certain traditional understanding of privacy and the private. In fact, it is no longer possible to decouple the idea of privacy from the mechanisms through which privacy is guaranteed. Since Aadhaar and many of the contemporary discussions on privacy are related to deep technological developments, the question of privacy should be rethought in the context of these technologies.

Secrecy and security

Privacy is not a concept like the other fundamental rights. Moreover, our notions of privacy have changed and will continue to change. If there is one major catalyst for this change, it has been technology. Built homes are a simple example of how we develop a sense of privacy which is influenced by a technological development. Once we have a conception of home, we also have conceptions of bedroom, living room, toilet and kitchen. These spaces and conceptions created by very simple processes of technology create specific ideas of privacy.

Two common ways of understanding privacy are through secrecy and anonymity. We believe that our bank balance must be private. Companies do not normally make public the salaries of



GETTY IMAGES/ISTOCKPHOTO

all their employees. Universities do not make public the marks or grades of their students in a way that violates the privacy of the student.

These notions of privacy are based on the need for security and protection. We do not want to divulge certain things about our wealth or life practices since they may be used by others to potentially harm us. So privacy becomes a way of protecting individuals or groups. But we also often overthrow privacy arguments for security purposes. We do not object to giving our biometrics when we apply for visas or when we join some private jobs.

Contemporary technology has made possible many new innovations that have changed the very meaning and significance of privacy. From smartphones to the darknet, the fundamental trajectory is one to do with privacy. However, there are two worrisome aspects. In any discussion on privacy, there is a deep suspicion of the government and state, most times rightly so. But this suspicion does not extend to technology and its private agents, those that are responsible for the breakdown of the value of privacy today.

Today, in times of growing

privatisation, the greatest challenge to privacy comes from the private sector. It also stems from an indifference to our own privacy. We do not seem to value privacy today as in earlier times. Social experiments have shown that people are willing to have private information about themselves made public if they receive some monetary advantage.

We do this all the time. When we search for a book or a ticket, we start getting advertisements related to these searches in our supposedly private emails. What we read, search, buy, talk and perhaps even think get stored, used and circulated. Everything is tracked and rerouted. We have no clue to the amount of information about our private lives that is out in the Web. All because we get free emails and free Internet access! Today, privacy has been deeply compromised through the offering of ‘free’ goods.

The state and private players

Very often when we worry about questions of privacy, it is about the role of the government or the state. The state too can do much with the information on individuals that it collects through various voluntary as well as coercive means. The con-

cern about privacy thus was a concern about potential misuse of such information. However, information about individuals is arguably much more in the private domain today than it is within various governments. Moreover, the mining of this information is taken up far more assiduously by the private compared to government institutions.

The idea of privacy has always had a troubled relationship with privatisation. Private companies often have rules that protect them from being transparent in hiring policies, in affirmative action or even making public the salaries of all their employees. Private groups know best the power of the idea of privacy. They use this notion to protect themselves from governments and the public. They also realise that the greatest market that is perennially available to them is the market of trading information on privacy.

A related problem is that the government has begun to look more and more like the private sector. Today, almost all politicians are rich entrepreneurs and hold powerful business interests. The public-private binary does not function in any useful sense as far as the governing class is concerned. Thus, privacy is not only open to manipulation by the government but even more so by the private sector. This is so especially because it is the private sector that is at the forefront of developing technologies that facilitate this mining, storing and sharing of information.

No free lunches

The Trojan horse through which the state and private players enter our domains of privacy is through contemporary technologies. These technologies have now come to be seen as necessary. The

fact that we so unthinkingly buy into this story shows the success of how these technologies have colonised us so effectively.

The price we pay for modern technologies is not only money. The economic model that runs consumerism of modern technologies is quite different from the model of selling groceries. We are seduced by the amount of free things we get in a technological gadget. The websites are free; we can download millions of books and songs for which we had to pay earlier. Why are we being given so much that is free? Like almost everything else in this world, there are always hidden costs. The major cost that we pay is the cost of our privacy – the information on each one of our private lives and, through this information, more effective control on how we act and behave.

This raises deeply troubling questions about making privacy a fundamental right. How will the Supreme Court judges be able to give a judgment on privacy as a fundamental right without also making possession, and the making, of technology as ‘rights’? How can they do this without imposing controls on predator technologies that enter the social world in the guise of making our lives comfortable? Some might argue that technology is only an intermediary tool that enables certain things, both good and bad.

But to hold this view is to be blind to the changing modes of technological domination through digital and Internet technologies. Technology is no longer outside human and social processes; it co-creates and co-constitutes the human and the social.

Sundar Sarukkai is professor of philosophy at the National Institute of Advanced Studies, Bengaluru

Time to change course

Chennai city will have no future if plans to fill the Ennore creek go ahead



NITYANAND JAYARAMAN & T.M. KRISHNA

Since December 2015, Chennai has limped from one extreme weather-related shock to another – the floods, the failed monsoon of 2016, Cyclone Vardah, and now the water crisis. Chennai’s defining element is water. But the city shows scant regard for this precious but dangerous resource. Located squarely in the intervening floodplains of three rivers on a high-energy coastline, Chennai is a disaster-prone location. Any badly located city can be vulnerable merely by virtue of its location. But only a special kind of city – a city with a death wish – actively makes a bad situation worse.

Nothing speaks more elegantly to Chennai’s death wish than what governments are doing to the wetlands in North Chennai. In June, the State government conceded the Government of India-owned Kamarajar Port Ltd’s (KPL) request to divert 1,000 acres of the hydrologically sensitive Ennore wetlands for industrial installations that are best built on dry land. The proposal is pending Central government clearance. If permitted,

KPL’s dream will turn out to be Chennai’s worst nightmare, far worse than the 2015 floods.

The importance of Ennore

Ennore Creek, a sprawling 8,000-acre tidal waterbody, is a place where climate change and disastrous land-use change converge. Two rivers with a total catchment of 5,000 sq km empty into the Ennore Creek.

This wetland’s importance may not be apparent. Much of the creek looks dry year-round, when visible waterspread is only 1,000 acres. But when cyclonic weather pushes the sea surging landwards, or when rainwaters from the two rivers come rushing to meet the sea, the waterspread in the creek swells to its majestic fullness. Come rain or storm surge, the availability of room for the rain or sea water to stay is what keeps the city from going under.

The creek offers another protection too. It buffers the rich aquifers of the Araniyar-Kosasthalaiyar Basin from the sea, and keeps salt water from invading groundwater resources that supply several hundred million litres daily to Chennai even during the worst droughts.

In 1996, the Tamil Nadu government protected a 6,500-acre stretch of the tidal waterbody under the Coastal Regulation Zone (CRZ) Notification. But greed prevailed over good sense. More than 1,000 acres of the creek were lost



R. RAGU

to illegal encroachments that rise like dams across a river.

The offending installations block the path of rainwaters rushing down the Arani river and the mighty Kosasthalaiyar. Areas that never got flooded saw waters enter homes and remain for more than a fortnight in 2015. Tamil Nadu’s lifeline, the Manali petroleum refinery, went under water for days.

Seeds of disaster

The identities of the architects of the last disaster may not be clear. Also, they may arguably not have known the consequences of interfering with mega-drains. But such assumptions no longer hold good. Political leaders and bureaucrats have been told that the creek is a protected waterbody, and that encroaching on it is both illegal and

dangerous.

But neither impending danger nor illegality has stopped the State government from clearing KPL’s proposal to construct coal yards, warehouse zones, car parking and export terminals for Ford, Hyundai and Nissan on 1,000 acres of Ennore wetlands. Justifying the decision taken in June, the State Coastal Zone Management Authority published a new map – subsequently exposed to be a fraudulent map – that denied the existence of the 6,500-acre creek.

The architects of future disasters in this case are neither anonymous, nor ignorant. They cleared KPL’s proposal fully aware that the encroachments will endanger more than a million people in Thiruvallur and Chennai districts.

Such decisions arise not out of a love for encroachments, but out of perverted values, lack of accountability and an entrenched culture of discrimination. We refer to this in our collaboratively produced music video, the “Chennai Poromboke Paadal”, or the “Song for Chennai Commons”.

Picking on the poor

After every flood, courts and governments turn their ire against the poor who huddle in horrible hovels along the edges of our stinking rivers. The larger, more dangerous encroachments are never touched. The 2015 floods are being used to

justify the removal of 55,000 families from the edges of Cooum and Adyar rivers to socially fraught and flood-prone ghettos in wetlands on the city’s fringes.

The Cooum and the Adyar are elite, high-status rivers, running through elite neighbourhoods within the city. Purging the edges of the poor is seen as integral to the wholesome restoration of these rivers. Contrastingly, the Kosasthalaiyar and Ennore Creek are seen as working-class waterbodies. Here, the value of the “worthless” wetland is sought to be enhanced by industrial encroachers with state protection.

Our song about Chennai spotlights the undervalued Ennore Creek, because with every cut to the creek, Chennai will hurt a hundred times. The song has resonated with fishers to whom the creek is life, and with lakhs more across the world. When, not if, Ennore floods this year or next, people will know it was not an accident.

If plans to fill the creek persist, Chennai will have no future. The precious freshwater aquifer that Chennai draws from will be lost to salt. The precious freshwater that falls from the sky will turn the city into a watery grave.

Nityanand Jayaraman is a Chennai-based writer and social activist. T.M. Krishna is a Carnatic vocalist, author and public speaker

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.

A different presidency

President Ram Nath Kovind has left many disappointed with his inaugural speech. It is odd that he chose to ignore mentioning India’s first Prime Minister among those who shaped the destiny of the nation and also hyphenated Mahatma Gandhi with Pandit Deendayal Upadhyaya, the late Jan Sangh icon, in building an egalitarian society. One is saddened to discern an ideological tinge in the speech of the highest constitutional functionary. Given Nehru’s contribution to the freedom movement, spread over several decades, sacrifices made and his achievements in building the nation in the post-Independence era, not acknowledging him as one of the leading architects in nation-building endeavours is regrettably and grossly unfair (“Diversity key to India’s success, says Kovind”, July 26).

S.K. CHOUDHURY,
Bengaluru

■ President Kovind’s first speech does convey the message that “it’s going to be a different presidency” as aptly titled in a report (July 26). It is an egregious omission not to mention the name of the first Prime Minister, the builder of modern India, and strange to equate Mahatma Gandhi with Deendayal Upadhyaya. The BJP seems to have developed an antipathy towards Nehru, who was perhaps the most secular of our top leaders. One waits to see who the real Ram Nath Kovind will be when there is a constitutional crisis or even a hung Parliament. He has dropped enough hints about his political thinking in his very first speech, thanks to his speech-writers either in his secretariat or the PMO.

V.N. GOPAL,
Chennai

■ Mr. Kovind deserves all appreciation for fondly remembering the Iron Man

of India while boldly omitting reference to the first Prime Minister. It is unfortunate that the Opposition has even criticised the naming of a selfless social worker in Mr. Kovind’s speech. It is the prerogative of any personality to remember his role models. Why does one need to toe the Congress’s line which has only looked at members of the Nehru-Gandhi family?

MADHU AGRAWAL,
New Delhi

The Doklam stand-off
Unswerving adherence to the path of neutrality and shunning exhibition of editorial prejudices – hallmark traits of *The Hindu* which got us old-timers addicted to it – are now showing signs of extinction as far as this daily is concerned.

The headline on the first page was startling – “India admitted to transgression” (July 26). For a moment I wondered whether the news agent had supplied me

a Chinese newspaper.

P.R.R. NAYAR,
Thiruvananthapuram

■ Amidst the aggressive posturing and sabre-rattling by the Chinese state media and government officials, the article, “The crossroads at the Doklam Plateau” (July 26), injects much-needed nuance into the discourse surrounding the current dispute. Bhutan’s historical position as an effective buffer zone between India and China and its long-standing friendship with India are invaluable in a hostile neighbourhood. The strategic advantage of this nation’s goodwill towards India must not be frittered away by any overreach into its sovereignty for the purpose of countering China’s overtures. India must avoid adopting a Big Brother attitude and view Bhutan as an equal partner. By respecting Bhutan’s sovereignty and evincing concern regarding Chinese attempts to compromise the same, India can cultivate a

mutually advantageous partnership to tackle this tough situation.

MANASWINI VIJAYAKUMAR,
Bengaluru

State of the Railways

The findings of the CAG on various aspects of functioning in the Indian Railways are alarming. It is evident that food served on trains will be the most vulnerable point of contamination. I travel frequently on so-called superfast trains. These are some observations. Passengers get foul-smelling coffee/tea most of the time and are apprehensive that it could be contaminated with water from the washrooms. The

CORRECTIONS & CLARIFICATIONS:

The report, “In Rajya Sabha, contesting claims over farm crisis” (July 26, 2017), there was an erroneous reference to Samajwadi Party leader *Ram Gopal Verma*. It should have been *Ram Gopal Yadav*.

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