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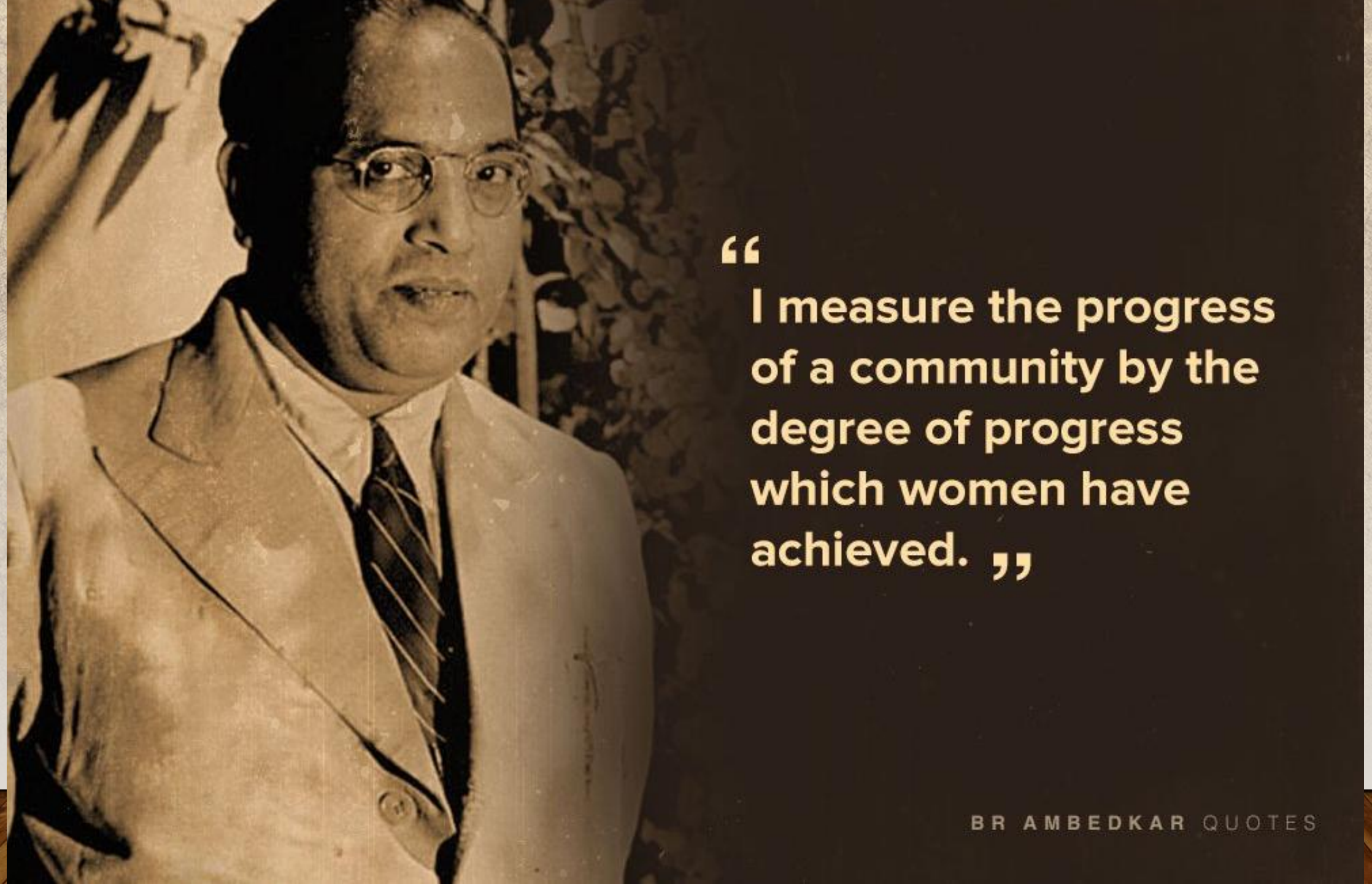
“
I measure the progress of a community by the degree of progress which women have achieved. ”
BR AMBEDKAR QUOTES

Same-sex marriage: SC rejects review of judgment

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The Hindu Bureau
NEW DELHI

A five-judge Bench of the Supreme Court, headed by Justice B.R. Gavai, on Thursday rejected petitions seeking a review of an October 2023 judgment which refused to legalise same-sex marriage.

"We have carefully gone through the judgments delivered by Justices S. Ravindra Bhat (former judge) speaking for himself and for Hima Kohli (former judge) as well as the concurring opinion expressed by one of us (Justice P.S. Narasimha), constituting the majority view. We do not find any error apparent on the face of the record," the Review Bench held in a short order.

The other judges on the Bench are Justices Surya Kant, B.V. Nagarathna, and Dipankar Datta. The petitions were decided via circulation in the chambers of the judges.

Content.

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- Same sex marriage refers to the legal and social recognition of marriage between individuals of the same gender or sexual orientation. In such marriages, two people of the same sex come together in a formal union, just like opposite-sex couples, with the same legal rights and responsibilities.

Against Constitutional Validity:

- **A five-judge Constitution Bench of the apex court headed by Chief Justice of India ruled in a 3:2 verdict against giving constitutional validity to same-sex marriages.**

Domain Of Parliament:

- **The CJI, in his opinion, concludes that the court can neither strike down or read words into the Special Marriage Act (SMA) 1954 to include same sex members within the ambit of the SMA 1954.The top court said it is for Parliament and state Legislature to formulate laws on it.**

- **The right to marry is not expressly recognized either as a fundamental or constitutional right under the Indian Constitution but a statutory right.**

- **Though marriage is regulated through various statutory enactments, its recognition as a fundamental right has only developed through judicial decisions of India's Supreme Court. Such declaration of law is binding on all courts throughout India under Article 141 of the Constitution.**

Fact

- **Marriage as a Fundamental Right (Shafin Jahan v. Asokan K.M. and others 2018):**
- **While referring to Article 16 of the Universal Declaration of Human Right and the Puttaswamy case, the SC held that the right to marry a person of one's choice is integral to Article 21 of the Constitution.**

- **LGBTQ Community Entitled to all Constitutional Rights (Navjet Singh Johar and others v. Union of India 2018):**
- **The SC held that members of the LGBTQ community "are entitled, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution" and are entitled to equal citizenship and "equal protection of law"**

- **LGBTQ is an acronym that stands for "lesbian, gay, bisexual, transgender and queer (or "questioning").**

Special Marriage Act (SMA) 1954

- **Marriages in India can be registered under the respective personal laws Hindu Marriage Act, 1955, Muslim Personal Law Application Act, 1937, or under the Special Marriage Act, 1954.**
- **It is the duty of the Judiciary to ensure that the rights of both the husband and wife are protected.**
- **The Special Marriage Act, 1954 has provisions for civil marriage for people of India and all Indian nationals in foreign countries, irrespective of religion or faith followed by either party.**
- **When a person solemnized marriage under this law, then the marriage is not governed by personal laws but by the Special Marriage Act.**

Features:

- **Allows people from two different religious backgrounds to come together in the bond of marriage.**
- **Lays down the procedure for both solemnization and registration of marriage, where either of the husband or wife or both are not Hindus, Buddhists, Jains, or Sikhs.**
- **Being a secular Act, it plays a key role in liberating individuals from traditional requirements of marriage.**

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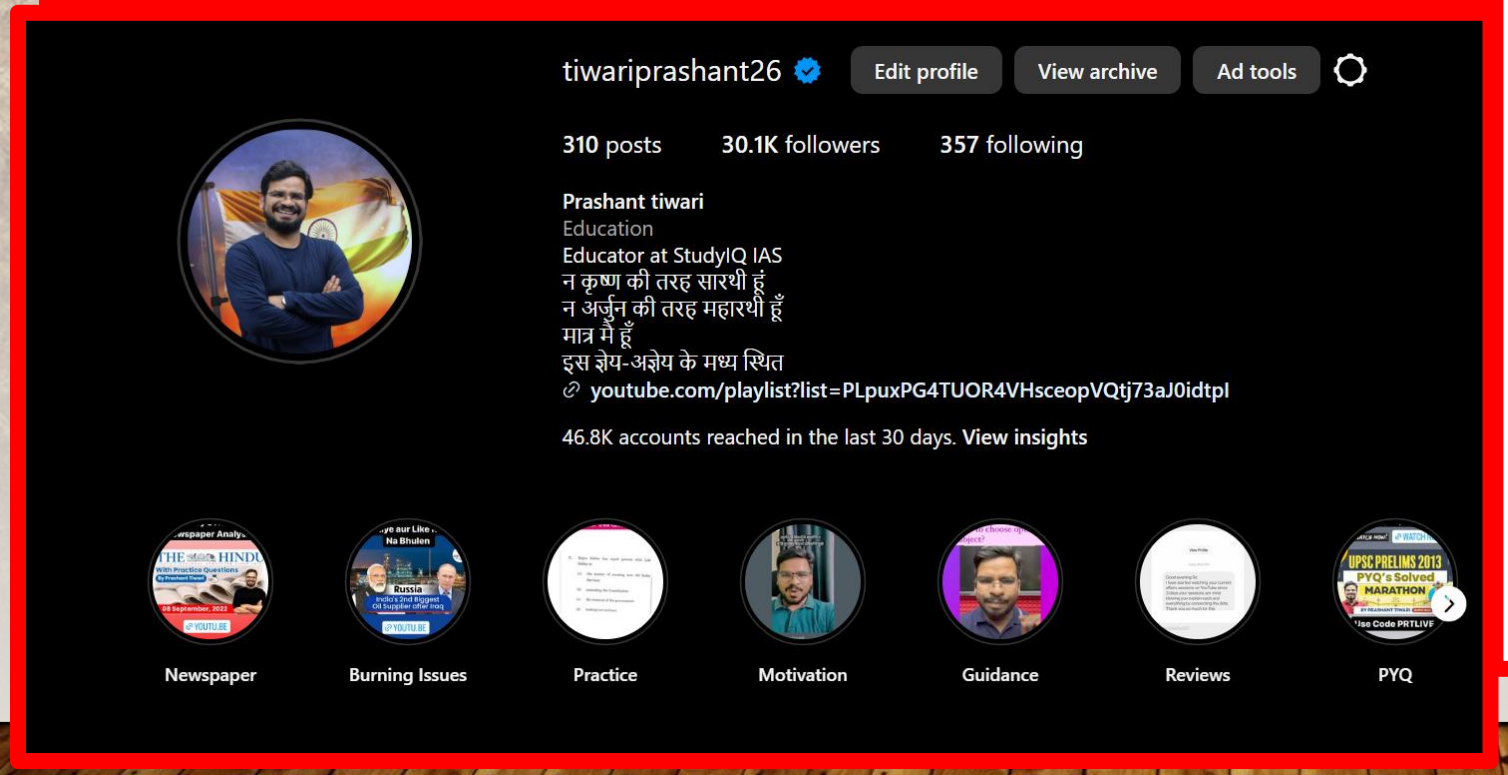

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Description

Is India open to the idea of dual citizenship?

Vivek Katju

Former diplomat

Amitabh Mattoo

Dean of the School of International Studies at the Jawaharlal Nehru University

PARLEY

At an event in December, External Affairs Minister S. Jaishankar said there are a lot of challenges in providing dual citizenship to Indians settled abroad. He pointed out that the Overseas Citizenship of India drive is a step towards meeting the demand and added that the debate on dual citizenship is "still alive". Is India open to the idea of dual citizenship? Amitabh Mattoo and Vivek Katju discuss the question in a conversation moderated by **Kallol Bhattacherjee**. **Edited excerpts:**

Do you think dual citizenship for diasporic Indians could become a reality?

Vivek Katju: First, let me distinguish between NRIs living abroad and People of Indian Origin (PIO). NRIs, or Non-Resident Indians, are Indian nationals who hold Indian passports. They have all the rights that accrue to Indian nationals. The only thing they cannot exercise abroad is the right to vote, though I believe arrangements were made at some stage for NRIs to register themselves in the missions so they could vote in their place of entitlement. PIOs are not Indian nationals, quite clearly, and therefore they do not have political rights. At one stage, the government had given expanded economic facilities to PIOs, and later, what was called a PIO card was converted into an Overseas Citizen of India (OCI) card. Now, I never understood the reason for this change in designation, as the OCI card does not confer on any person of Indian origin, any additional facilities, or any rights which the PIO card did not already possess. Citizenship essentially has political attributes. If you are a citizen, you have the full right to participate in the political process of the country. A non-citizen does not have that right. So, the word "citizen" is extremely confusing and, in my opinion, it should be avoided as it creates a misleading impression.

Minister Jaishankar's remarks have opened up an issue that has unresolved contours. Professor Mattoo, what are your thoughts about granting dual citizenship rights to people of Indian origin living abroad?

Amitabh Mattoo: I think Mr. Jaishankar must have made an off-the-cuff remark. It cannot be a serious question to be debated at this point in India that certain people or a class of people who are no longer Indian citizens, or who either gave up Indian citizenship or never were Indian citizens, will be given additional citizenship of India. If you look back at the Constitution of India, Part II deals with this section on citizenship. Article 5 of the Constitution defines who is a citizen of India, either by birth, by parentage, or by acquiring it after having remained a resident in India. There is also a distinction between being a domicile and being a citizen. You may be domiciled in India and yet not be a citizen. This was determined by the Supreme Court in *D.P. Joshi v State of Madhya Bharat* in 1955. The only major amendment to the Citizenship Act came in 2019, with the Citizenship Amendment Act. Then there was a fast-track process for minorities from certain neighbourhood countries to be allowed to take Indian citizenship. I don't think it can really be a serious, substantive question to allow people to have citizenship of both India and another country because that would confer political rights. In other words, citizens of the U.S., U.K., or Australia, for example, would not only have political loyalty to those countries but also the right to vote in India. That, frankly, for me is an extremely dangerous idea. As an Indian citizen, I would not be willing to give political rights to anyone with divided loyalties. Because after all, dual citizenship means that you have divided loyalties.

We are not ready to have dual citizenship in this country after just 75 years. I am not xenophobic, I am a person who has grown up with an idea of global citizenship in a larger sense. But in terms of which political dispensation will govern India, I am not willing to share that right with anyone who has but 100% political loyalty to India. Personally, I had the option of acquiring Australian citizenship, and the only reason I did not take it was that it would mean relinquishing Indian citizenship.

In the U.S., you cannot become a President unless you are born in the territory of the country. REUTERS

> I believe it is the democratic right of every Indian to choose the citizenship of another country and relinquish Indian citizenship. But they cannot say I will acquire the citizenship of another country, participate in its political process, and still hold on to political rights in India
>
> VIVEK KATJU

The incoming Trump presidency has several Indian-origin people, as well as first-generation Indian immigrants, who will hold public office. Do you think that for certain communities and certain kinds of workers who are employable globally, the idea of citizenship requires some degree of flexibility?

VK: No. You cannot have divided loyalties. You are either a citizen of India, which is in full rights, political rights, economic rights, etc, or you are not.

You mentioned that in the U.S., there are people of Indian origin who are holding, who have, and who will be holding the office. I think six persons of Indian origin have been elected to the House of Representatives this time. Let us not forget that they are American citizens. The Indian systems and law demand that the moment you acquire the nationality of another country, you relinquish India's nationality, which means that you do not have political rights anymore.

I believe it is the democratic right of every Indian to choose the citizenship of another country and relinquish Indian citizenship. But they cannot say I will acquire the citizenship of another country, participate in its political process, and still hold on to political rights in India. Now I know that some other countries allow that, but I must confess I have very orthodox views on this. The international system is a system of states.

AM: I completely endorse Mr. Katju's remarks. We cannot, for the sake of populism or to attract foreign investment, create what the Marxists used to call a "comprador" class – a class of people who will act as foreign agents in India. You give them the right to vote and to elect members of Parliament and Legislative Assemblies, that is a sure way of recolonising India.

But if you open this Pandora's box by allowing even a single citizen of another country to have dual citizenship in India, it would be deeply dangerous and subversive. There are situations where people who have decided to make India their home have relinquished earlier citizenship and become citizens of India. Mirra Alfassa, known as The Mother, whose work inspired many and who founded the Aurobindo Ashram in Puducherry, became an Indian citizen despite earlier campaigning for dual citizenship. Similarly, Mother Teresa became an Indian citizen, and economist Jean Drèze, I believe, relinquished his Belgian citizenship and became an Indian citizen. In the U.S., which might seem more flexible, the fact is that you cannot become a President unless you are born in the territory of the U.S. Even Elon Musk, despite all his championing of Donald Trump, can never aspire to be President because he was born in South Africa. So, some laws are much more rigid.

Is the issue being propped by populism?

AM: I hope not, because I have great regard for the External Affairs Minister, so I am sure he is not doing it for populist reasons. The diaspora has a great role to play but not as dual citizens. You have the diaspora playing a role in cementing bilateral relations with the U.S. The hugely successful Indian diaspora in the U.S. often acts as a rallying point for leaders' visits there, and similarly in other countries. The first Indian diaspora of indentured labourer that went into the Caribbean may not have been as successful in material terms as this new wave of diaspora. But, as I said, they can cement bilateral ties and help attract investment from abroad.

As in the case of Microsoft, Satya Nadella has promised investment in artificial intelligence. That is all for the good of the nation. However, the question really is whether this diaspora could become a Frankenstein monster. While its role may appear benign and a source of great good, you may suddenly empower it to the point where it decides who is going to be your next leader. That is where I think there has to be a *lakshman rekha*. You need to maintain a clear line between the useful role played by the diaspora and its crossing the boundaries. I am not willing to let any Satya Nadella or Vivek Ramaswamy or any person of Indian origin who may just acquire Indian citizenship for instrumental reasons while retaining their American or other citizenship decide my political future. I am an Indian citizen, and I vote for my future along with other Indian citizens who do not have any other loyalties to any other country.

To listen to the full interview
Scan the code or go to the link
www.thehindu.com

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Content.

- **Part II deals with this section on citizenship. Article 5 of the Constitution defines who is a citizen of India, either by birth, by parentage, or by acquiring it after having remained a resident in India.**

- **There is also a distinction between being a domicile and being a citizen. You may be domiciled in India and yet not be a citizen.**

- **This was determined by the Supreme Court in D.P. Joshi v State of Madhya Bharat in 1955.**

- **The only major amendment to the Citizenship Act came in 2019, with the Citizenship Amendment Act. Then there was a fast-track process for minorities from certain neighbourhood countries to be allowed to take Indian citizenship.**

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Content.

- **Dual or Multiple Citizenship: It grants an individual legal status as a citizen of two or more countries simultaneously.**

- **Countries offering dual citizenship: United States, Finland, Albania, Israel, and Pakistan, etc.**

- **The Indian Constitution prohibits dual citizenship for nationals.**

We need accessibility rules that are based on principles

Shashank Pandey

Lawyer and founder of the Politics and Disability Forum

Nayan Chandra Mishra

Law student at Dr. Ram Manohar Lohiya National Law University, Lucknow

The Supreme Court, in *Rajive Raturi v. Union of India* (2024), held Rule 15 of the Rights of Persons with Disabilities (RPwD) Rules, 2017, violative of the Rights of Persons with Disabilities Act, 2016.

The Court reasoned that the Rule was drafted in a discretionary tone whereas the corresponding provisions (Sections 40, 44, 45, 46, 89) in the Act imposed a mandatory obligation for the government. This was significant as Rule 15 was a statutory provision under which the accessibility guidelines of respective departments and ministries were notified. Key examples include the Ministry of Housing and Urban Affairs' guidelines for creating barrier-free environments, the Ministry of Road Transport and Highways' bus body code, and other accessibility standards established by the Ministries of Sports, Culture, and Information and Broadcasting.

The Court observed that these guidelines allowed discretion to the ministries and departments, which is antithetical to the mandatory language of the Act. Moreover, striking down Rule 15 also meant that the accessibility guidelines notified under the Rule lost their statutory authority. As a result, the Court gave the government three months to develop minimum mandatory accessibility requirements to govern all the sectors.

The judgment is a stark reminder of how accessibility guidelines have been created in silos without the identification of normative principles that will ensure universality and intersectionality to those guidelines. Thus, while formulating new guidelines, there needs to be a shift towards a principle-based framework on accessibility rules.

The idea of accessibility

The Court deliberated in detail on the difference between accessibility and reasonable accommodation. Accessibility and reasonable accommodation both originate within the principles of substantive equality of the Constitution. Accessibility is now accepted as a right woven throughout the United Nations Convention on the Rights of Persons with Disabilities. Conversely, reasonable accommodation is a facilitator of substantive equality where specific challenges are dealt with in a specific context. Therefore, both concepts should be understood as interdependent and complementary to each other, where accessibility builds the edifice through standardised accessibility standards from the outset, while reasonable accommodation ensures tailored solutions for those individuals who might still face inaccessibility in a specific context.

The idea of accessibility is not static, and the conceptual contours and corresponding tools have evolved regularly. For instance, with the advent of Artificial Intelligence and the Internet of Things and their incorporation into social interactions, the understanding of digital accessibility has evolved simultaneously. This makes it necessary to modify the nature, extent, and type of digitally accessible tools that can ensure broader inclusivity.

The shifting threshold also needs to be understood in the context of phased realisation of accessibility. The Court in *Rajive Raturi* observed that the existing guidelines are framed in a way that establishes long-term goals of accessibility without setting the minimum standards requiring immediate implementation. Hence, the minimum accessibility threshold shall be envisaged on a sliding scale wherein the baseline moves forward at periodical intervals. Canada has developed a comprehensive road map to achieve full accessibility by 2040, focusing on harmonising standards across the country through two work streams, with periodic reviews every five years to adapt to changing needs.

The RPwD Act defines barriers in the broadest form possible, wherein intangible barriers such as attitudinal barriers are recognised in addition to tangible barriers such as infrastructure. This has modified how accessibility is viewed and understood within physical and digital ecosystems. Thus, it is necessary to evolve accessibility parameters in theory and practice to overcome tangible and intangible barriers. For instance, the evolving understanding of disability is an aspect that informs the attitude of society and, hence, directly relates to the attitudinal barrier. Thus, accessibility must also align with this evolution of disability understanding to be truly inclusive.

The understanding of universal design has also evolved over time. It is not just limited to persons with disabilities but also includes every vulnerable community, such as women, children, and the elderly. This reflects a tacit recognition of the universality of disability, which is not identified as an individual's incapacity to perform but rather the composition of the environment in which one operates. Disability may arise from a high cognitive workload causing an inability to focus and control emotions, temporarily broken limbs, unavailability of ramps to a pregnant mother, age-related complications, etc. Thus, the rules should be applicable across groups, providing accessibility in the general sense and not exclusive to persons with disabilities.

Compliance with social audit

Section 48 of the RPwD Act mandates the Central and State governments to regularly undertake social audits of all general schemes and programmes to ensure they do not have an adverse impact on the needs and concerns of persons with disabilities. Social audits play a vital role in developing and strengthening the accountability of the government and service providers. For instance, regular social audits of schemes providing assistance technologies to persons with disabilities can assess the bottlenecks in the delivery of services, identify the changing needs of individuals, and provide better devices.

However, due to the lack of standardised guidelines under the RPwD Rules, there is no clarity on the scope and methodology of social audits. This might lead to inconsistencies among the Centre and the States, lack of awareness, and insufficient training for auditors. Therefore, clear guidelines and operationalisation of social audits at a larger scale will help identify the changing nature of disability-related challenges and make targeted interventions to enhance service delivery through concerned schemes and programmes.

Rules have to be understandable

The earlier accessibility rules across departments and ministries suffered from bureaucratic complexity regarding their mandate. There were too many technicalities and often contradictory accessibility mandates from multiple ministries that confused the complying entities. For instance, a sporting complex has multiple guidelines for accessibility from the Ministry of Urban Affairs and Housing, Sports, Transport, and others. This led to not just a failure to provide objective parameters but also increased the compliance cost for such establishments. During the proceeding under the redressal mechanism, the complex and overlapping guidelines also delayed the relief sought by persons with disabilities.

The new accessibility rules must be direct, understandable, and practical to ensure effective implementation. The ambiguity in department/ministry jurisdiction that plagued the earlier rules should also be addressed by having a nodal authority, ideally, the sector regulators, and in the absence of it, the Ministry of Social Justice and Empowerment should adjudicate on rules.

The deadline for releasing the new accessibility guidelines is February, subject to extension. Thus, there is a necessity for diverse sectors, both private and public, beyond social services such as financial, technological, transport, to deliberate upon the minimum rules of accessibility. This isn't just warranted by the legislative mandate of the RPwD Act but also a market incentive to tap into the large population base by providing accessible products and services.

The new accessibility rules must be direct, understandable, and practical to ensure effective implementation

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Content.

- **The Supreme Court, in Rajive Raturi v. Union of India (2024), held Rule 15 of the Rights of Persons with Disabilities (RPwD) Rules, 2017, violative of the Rights of Persons with Disabilities Act, 2016.**

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Content.

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- **Moreover, striking down Rule 15 also meant that the accessibility guidelines notified under the Rule lost their statutory authority.**
- **As a result, the Court gave the government three months to develop minimum mandatory accessibility requirements to govern all the sectors.**
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Section 152 of BNS should not become a proxy for sedition

Pushkar Anand

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Shivang Tripathi

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The Rajasthan High Court, in *Tejender Pal Singh v. State of Rajasthan* (2024), cautioned against using Section 152 of the Bharatiya Nyaya Sanhita (BNS) as a tool to stifle legitimate dissent. In 2022, before the BNS was enacted, the Supreme Court had suspended pending criminal trials and court proceedings under Section 124A (sedition) of the Indian Penal Code (IPC) until the government reconsidered the law. This was followed by a verbal proclamation by the Union Home Minister that 'sedition' would be repealed as an offence. Section 152 of the BNS criminalises any act exciting secession, armed rebellion, and subversive activities. It also criminalises acts encouraging feelings of separatism or endangering the sovereignty, unity, and integrity of India. While the BNS does not formally use the term 'sedition', the Rajasthan High Court's recent decision hints that the spectre of sedition still looms large in the BNS.

Problems with Section 152

First, Section 152 BNS criminalises 'acts endangering the sovereignty, unity, and integrity of India.' However, what constitutes such endangerment under Section 152 has not been defined in the statute. This renders the provision vague, and amenable to expansive interpretation by enforcement authorities. Accordingly, a speech criticising a prominent historical or political figure, or sympathising with a controversial public figure, may be construed as 'endangering' the 'unity and integrity of India' for initiating legal action against a person. In the current sociopolitical environment that appears increasingly fragmented, a stringent penal provision without inbuilt checks for abuse may be used to stifle dissent and criticism.

The lack of a statutory requirement to establish a causal linkage between the speech and its actual consequence before depriving the accused of personal liberty renders Section 152 amenable to abuse

Second, the term 'knowingly' in Section 152 substantially lowers the threshold for commission of the offence, especially in the context of social media. Even if a person does not have the malicious intent to incite activities or feelings prohibited under Section 152, they can still be considered liable for the offence if they share a post knowing it will reach a larger audience and may provoke such activities or feelings. This would be sufficient to arrest a person and prosecute them for commission of the offence under Section 152, which is cognisable and non-bailable. The lack of a statutory requirement to prima facie establish a causal linkage between the speech and its actual consequence before depriving the accused of personal liberty renders Section 152 amenable to abuse much like its predecessor, and has the potential to instill a chilling effect on free speech. The potential for abuse of the sedition-like provision is clearly borne out by data of the National Crime Records Bureau (NCRB) regarding Section 124A of the IPC. Out of 548 persons arrested between 2015 and 2020 for sedition, only 12 people were convicted in seven cases. More importantly, this was the situation when Section 124A IPC was relatively narrower and more specific in comparison to Section 152 of the BNS. Unfortunately, the NCRB data, and the benefit of hindsight regarding abuse of Section 124A, seem to have had no bearing in designing the contours of Section 152 of the BNS.

The way forward

In the past, the judiciary has consistently adopted a consequentialist interpretation to strike a careful balance between national interest and the freedom of expression. The Supreme Court has given weight to the actual consequence or impact of free speech in determining the offence rather than considering the 'speech' on its own. For instance, in *Balwant Singh and Anr v. State of Punjab* (1995), the Court drew a line of demarcation between casual sloganeering and its repercussions or consequences, requiring a direct causal nexus between the act and its impact for it to amount to an offence of sedition. Further, in *Javed Ahmad Hazam v. State of Maharashtra and Ors* (2024), the Court said the "effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds..." Moreover, in *Kedar Nath Singh v. State of Bihar* (1962), the Court had differentiated 'disloyalty towards the government' from 'strongly worded criticism of the government and its policies'.

Given the lack of inbuilt safeguards in Section 152 to prevent its abuse, these interpretations should guide the enforcement authorities in applying this provision. Moreover, the Supreme Court should, when it gets the earliest opportunity, craft a set of guidelines for the enforcement authorities, demarcating the boundaries for the terms used under Section 152 BNS, as it did with respect to 'arrest' in *D.K. Basu v. State of West Bengal*. This will ensure that the provision does not become a proxy for the offence of sedition.

It is important to provide liberal space to thoughts, beliefs and expressions, and to subject them all to unimpeded criticisms, especially in the age of social media. We need to fall back on the concept of 'marketplace of ideas', as envisioned by Justice Holmes in *Abrams v. United States*, because the best test of truth will always be the potential of an idea to get itself accepted in a democratic and diverse society.

- **The Rajasthan High Court, in Tejender Pal Singh v. State of Rajasthan (2024), cautioned against using Section 152 of the Bharatiya Nyaya Sanhita (BNS) as a tool to stifle legitimate dissent.**

- **In 2022, before the BNS was enacted, the Supreme Court had suspended pending criminal trials and court proceedings under Section 124A (sedition) of the Indian Penal Code (IPC) until the government reconsidered the law.**

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- In the past, the judiciary has consistently adopted a consequentialist interpretation to strike a careful balance between national interest and the freedom of expression.

- **Balwant Singh and Anr v. State of Punjab (1995), the Court drew a line of demarcation between casual sloganeering and its repercussions or consequences, requiring a direct causal nexus between the act and its impact for it to amount to an offence of sedition.**

- **Further, in Javed Ahmad Hazam v. State of Maharashtra and Ors (2024), the Court said the "effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds..."**

- **Moreover, in Kedar Nath Singh v. State of Bihar (1962), the Court had differentiated 'disloyalty towards the government' from 'strongly worded criticism of the government and its policies'.**

- **It is important to provide liberal space to thoughts, beliefs and expressions, and to subject them all to unimpeded criticisms, especially in the age of social media.**

- **Section 124A of the Indian Penal Code penalises a crime against the state.**

- **Sedition refers to any act or attempt to bring hatred or contempt towards the government established by law in India, or to incite disaffection or resistance against it.**

Punishment Under 124A

- **Sedition is a non-bailable offence. A person charged under this law can not apply for government job. They have to live without their passport.**

- **Upon conviction, the person can be punished with either life imprisonment and a fine, or imprisonment for up to three years and a fine, or just a fine.**

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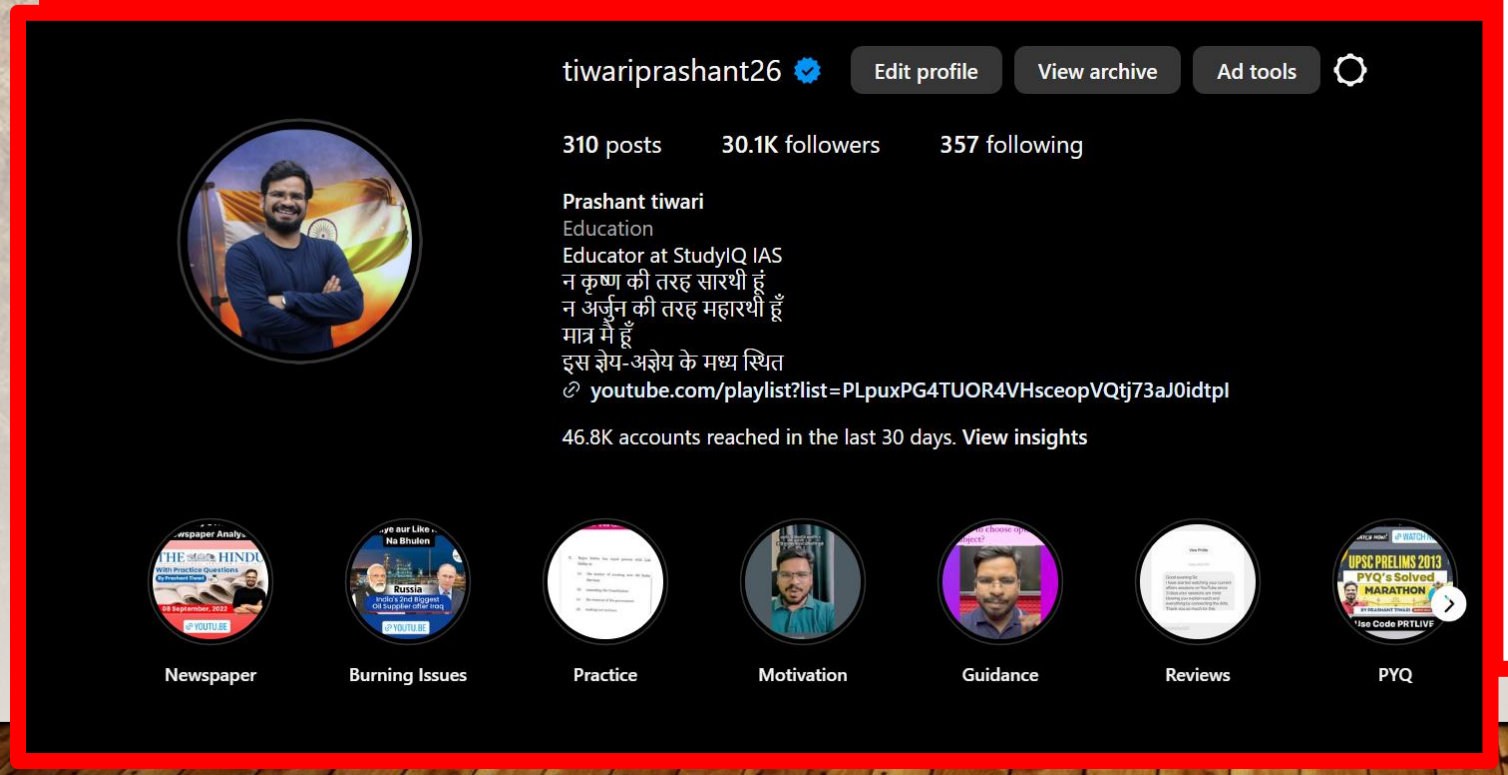

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Description

Thank You!