



A thought for today

Tradition is a guide and not a jailer

W SOMERSET MAUGHAM

Equal In Sabarimala

SC rules against patriarchy in religion

Supreme Court has allowed women of all ages entry into Sabarimala temple, overruling a tradition that believed menstruating women distracted the shrine's presiding deity Ayyappa and his celibate worshippers. The 4-1 verdict noted that the right to worship under Article 25(1) was equally available to men and women. The court rejected the Travancore Devaswom Board and others' claims that the tradition constituted an essential religious practice. It also dismissed arguments that judicial intervention was an infringement of constitutional protections guaranteed under Article 26 to religious denominations to manage their own affairs.

This conflict between constitutional rights and age-old social customs is not new in our constitutional history. If the political class struck the first blow through constitutional rights granting equality and freedoms and statutory laws prohibiting untouchability and other social evils, the judiciary, unencumbered by political or populist compulsions, has helped take forward social reform. In a case like Sabarimala where the right to equality conflicts with the right of religious institutions, equality and individual freedom must take precedence.

There is also a strong differing view as espoused by Justice Indu Malhotra, who concludes that the equality doctrine enshrined under Article 14 does not override religious freedoms that are in accordance with the tenets of a religion. On the other hand Justice Chandrachud opines that "carving out 'custom or usage' from constitutional scrutiny denies the constitutional vision of ensuring the primacy of individual dignity." He also castigates the imposition of the burden of a man's celibacy on a woman which is then used to deny her access to spaces to which she is equally entitled. The judgment also opens a Pandora's box: will courts rule on religious bars to women priests and many other social and religious customs where patriarchy is prevalent?

Long Silence Later

The trial of Christine Ford

Over the past year a key result of the #MeToo movement has been that it has uncloseted sexual abuse accusations going back decades. These accusations are having consequences. In the US they have caused nine members of Congress to resign or decline to run for re-election. But there are consequences for the accuser too.

Academic psychologist Christine Blasey Ford has been pilloried for alleging assault by US Supreme Court nominee Brett Kavanaugh back when they were in high school. Of course some are heralding her as a hero for doing her "civic duty" against tough odds. But a political knife-fight has also shovelled vitriol and death threats at her. As she testified before the judiciary committee, Senator Kamala Harris assured her, "You are not on trial." But it definitely felt like that.

In India, as former Miss India and actor Tanushree Dutta revoiced sexual harassment accusations from a decade ago, she too is being bombarded with the question, why now? TV host Padma Lakshmi has penned a thoughtful essay on this, which includes going public about how she herself kept the trauma of being raped when she was 16 shrouded in a long silence. Social conditions that create long silences about abuse will change when women's testimonies are no longer dismissed as conspiracies or sham. To the argument that a man shouldn't pay for an act he committed in youth Lakshmi says, but the woman pays the price for the rest of her life.

I Disagree, But ...

Respectfully and non-violently. Right to free speech is a corollary of right to disagree

Gautam Adhikari



Washington: I disagree. Often, but respectfully and non-violently. I also agree, often. My ratio of disagreement to agreement in conversation swings a lot because it depends on circumstances and personal factors at points in time. But the right to disagree forms a founding stone of my overall attitude.

Agreeable disagreement, however, is not natural to us humans. It's an acquired habit. Through much of history disagreement has led to violent outcomes. Although non-violent resolution of differences had notable advocates in premodern times – Gautama Buddha, Ashoka, Greek philosophers, Islamic promoters of jihad, among others, come to mind – it is in our modern era that the concept has been incorporated in a frame of rules, laws, norms and social habits that define liberal democracy. The right to free speech is a corollary of a right to disagree.

Liberal democracy, which constitutionally enshrines the right to free speech and therefore the right to disagree, is also an acquired attitude. Amartya Sen, among other liberal thinkers, has eloquently argued that an aspiration to democracy is a "universal value". Perhaps, but is it yet a universally internalised aspiration? Democracy has had a good run in the post-World War II era and a wide range of culturally diverse countries have officially embraced it. But in far too many of the most populous nations democracy is in retreat or losing popular appeal.

Look at large nations like Turkey, Hungary, Bangladesh, Philippines, Venezuela, Russia among others that call themselves democratic but no longer sustain the liberal spine that holds it up. And in the two largest democracies, India and the US, liberal values may be in jeopardy.

In India, the right to disagree is being eclipsed by the rights of a supposed religious majority. It is that reconstructed majority's definition of India which must prevail, not the idea outlined in the Constitution. Its supporters are often violent.

They call secularists 'sickular' and liberals 'libtards', little understanding that it's secular liberalism that created space for them to flourish. They have even killed dissenting intellectuals, viciously attacked protesters and lynched members of minorities. Democracy for them is simply majority rule, not the right to disagree.

In the US, liberal democracy is on the defensive in a game of social, racial and ideological partisanship. Its institutions, hitherto assumed to form an unparalleled set of checks and balances to authoritarian power, now seem less than adequate to roll back the onslaught of an authoritarian-minded president. When all three branches of government – executive, legislature and judiciary – are controlled by a single party subservient to the president, the space for civilised disagreement shrinks. The coming midterm elections for the US legislature might restore balance, but at this point liberal democracy is in turmoil.

A broad, America as the putative champion of global democracy wants to retreat from any such role. President Donald Trump said as much at the recent UN General Assembly. Whether such leadership is necessary is a persistent theme of global debate but if there is an 'international liberal order', it has been helped into being and sustained by the US support thus far: 'America First', apart from sounding menacing, leaves a vacuum in world teamwork that would be hard to fill, though French President Emmanuel Macron has gamely offered to step up to the plate.

In a new book 'The Jungle Grows Back: America and Our Imperiled World', a neoconservative intellectual Robert Kagan argues for America's essential role as an enforcer of peace and order in the world. Well, some might say that it's American recklessness, such as its 2003 Iraq invasion, that has caused much disorder in the world. But the US remains the richest and most powerful nation by far. Its advocacy for a democratic world, in a more benign form than it was in the case of Iraq, remains necessary for all global citizens who fight for democracy.

First, however, it must put its own house in order. It has to resolve amicably the trifidic disagreement that threatens to make its own liberal democracy dysfunctional.

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Chetan Bhagat

The Rafale deal grabbed headlines last week, giving the opposition something they wanted for a long time – a potential scam that was relatively easy to understand (India bought planes from France, Anil Ambani is supposed to have benefited from it).

Did Ambani benefit legitimately? Well, who cares and who knows (and frankly we will never know). But Ambani in a defence deal, really? It is just terrible optics, no matter what the merits of the situation. And since optics matter, BJP will pay the political price for this deal.

Was there wrongdoing? Well, there's all kind of versions. Proving legal wrongdoing is an uphill task (like any previous alleged scam). However, there are some things that happened here that don't seem right.

Four main stakeholders were involved – the French and Indian governments, a French private company (Dassault) and an Indian private company (Reliance). Let's call them the 'four friends.'

But let's step back a little. A few years ago, the Indian government created a policy to involve Indian private companies in defence. That made it necessary for any foreign defence supplier to spend at least 30% of the contract amount in India, using an Indian manufacturer to manufacture parts (called an offset partner). On paper, this policy looks great. We buy weapons from outside, but some of the money comes back to India.

However, the same policy also allows for gross misuse. A few decades ago we had middlemen in defence deals, who enabled bribes and kickbacks. After Bofors, they were banned. However, now with an Indian company involved in offsets, it is an excellent way to make the foreign company pay a kickback, through the Indian company, which then has its own ways to pay the government (or do them a favour).

I am not saying that's what happened



was a big disappointment. Did the four friends do something wrong given the policies in place? Frankly, we will never know. If they decide to help each other out, it is unlikely they ever exchange bags of money. There probably would be nothing illegal in the way the deal is done. There may or may not have been a bribe – there often isn't one between powerful friends, just favours traded. However, what is wrong here is the crony capitalism, whether direct or indirect.

The crony capitalism is direct if Reliance was indeed recommended by the government (unproven yet). However, even if the government did not recommend Reliance, isn't it true that in such deals, in India only companies like Reliance can win? Certain corporates have an unfair advantage in India, simply by virtue of their perceived closeness to the government. Even if we buy the version that Reliance was chosen independently, the question is why were they chosen? Their defence subsidiary was formed two weeks before this deal. Their experience in this field was limited.

The reason why Reliance was chosen, most likely, is because companies like Reliance can wade through the complex maze of Indian regulations and babuism and open doors at the right places. We may promote Make In India, but making in India is so darn difficult; that you better be a crony billionaire to even have a chance in certain sectors.

That the current government did nothing to change that four years after being in power is sad. That they either helped their rich friends get defence deals, or made policies that indirectly give their rich friends an advantage is sad.

Perhaps there is something wrong in the Indian value system and culture. We value relationships, family and our own friends a bit too much. For that, we are ready to kill merit, talent, fairness and the greater good. Why don't we make policies that enable a new breed of entrepreneurs to emerge? Moreover we still don't have a good system in place to secure the equipment our forces want, and now all such deals will be viewed with scepticism.

Beyond marriage and morals: State has no business seeking to control an individual's sexual expression

Kaleeswaram Raj and Thulasi K Raj



With the judgment of the Supreme Court in Joseph Shine vs Union of India, adultery will no longer be a crime in India. In the history of the constitutional court, rarely has it struck down a definitional provision of the criminal code. By overruling its earlier judgments of Soumitri Vishnu (1985) and Revathi (1988), the court has in essence substituted popular morality with constitutional morality and state's paternalism with individual autonomy.

The adultery law is not merely colonial and archaic but also curious and convoluted. Section 497 of the Indian Penal Code makes adultery a punishable offence with a maximum of five years imprisonment. The law is peculiar in multiple ways. Firstly, it criminalises sexual intercourse with married women, but not unmarried women. Secondly, if the consent of the husband of the married woman is obtained, the offence ceases to be one. Thirdly and interestingly, men alone are culpable under the adultery law. The partiality against women is indirect whereas that against men is more direct.

As correctly noted in the judgment, Section 497 is "subsistence of a patriarchal order." In fact, in Dothard vs Rawlinson,

(1977) the United States Supreme Court was confronted with the issue of whether prohibiting women from applying for the prison guards was constitutionally permissible. The ostensible reason was that the presence of women itself might provoke sexual harassment.

Justice Marshall said in the dissent: "With all respect, this rationale regrettably perpetuates one of the most insidious of the old myths about women that women, wittingly or not, are seductive sexual objects... It is women who are made to pay the price in lost job opportunities for the threat of depraved conduct by prison



privacy is a fundamental right, the Puttaswamy (2017) judgment laid down the foundation for privacy jurisprudence in our constitutional tradition. Puttaswamy was seriously and comprehensively tested in Navtej Singh Johar (2018) which made same sex relations legally permissible. Sexual expression and the right to private association are inherent aspects of the right to privacy. The judgment holds that sexuality is an organic and inherent human characteristic and cannot be "contracted away" by marriage.

The most striking feature of the adultery law is that it criminalises a private sexual conduct between consenting adults. By doing so, it reprimands decisional autonomy, sexual expression and sexual association. A prominent argument during the proceedings in Joseph Shine was that the police power of the state could not extend to people's bedrooms. The Supreme Court cited the South Korean Constitutional Court to

inmates. Once again, the pedestal upon which women have been placed has upon closer inspection, been revealed as a cage."

The resemblance of Dothard with Joseph Shine is remarkable. Analogously, by conceiving woman as an object belonging to her 'owner', the law manifests gender stereotypes in the most concrete form. This phenomenon has been identified as 'romantic paternalism' – the idea of portraying stereotypes as protection.

When Section 377 criminalised sexual orientation, Section 497 penalised sexual association. By holding that the right to

privacy is a fundamental right, the Puttaswamy (2017) judgment laid down the foundation for privacy jurisprudence in our constitutional tradition. Puttaswamy was seriously and comprehensively tested in Navtej Singh Johar (2018) which made same sex relations legally permissible. Sexual expression and the right to private association are inherent aspects of the right to privacy. The judgment holds that sexuality is an organic and inherent human characteristic and cannot be "contracted away" by marriage.

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say that the "state had no business in seeking to control an individual's actions which were within the sphere of his or her constitutionally protected rights of privacy and self-determination." Hence, if the right to privacy does not take in the right to sexual privacy, the right is rendered superfluous at best.

A major contribution of Joseph Shine to the legal and constitutional discourse is the doctrine of unprincipled criminalisation. While determining the policy of criminalisation, the burden on the state is invariably high. This is because detention and imprisonment inhibit the most valued possession of humanity – individual liberty. No subjective opinion or so-called 'cultural values' can govern criminal policy. This is why the argument of the state that striking down the adultery law is "detrimental to the intrinsic Indian ethos" ultimately had to be rejected.

Moreover, it is important to distinguish illegality from immorality. Morality is not always the subject of the law. Every 'unacceptable' conduct of a spouse need not be necessarily 'criminal'. So is the case with private alcoholism or even plain lying, which can all have adverse impact on the institution of marriage. Joel Feinberg's comment is quite worthy: "Indeed, everything about a person that the criminal law should be concerned with is included in his morals. But not everything in a person's morals should be the concern of the law."

The writers are Supreme Court lawyers who appeared for the petitioner in Joseph Shine vs Union of India

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Neither This Nor That

Wealth has no permanence: it comes in the morning, and at night it is scattered to the winds. Physical beauty too has no importance, for a rosy face is made pale by the scratch of a single thorn.

Jalaluddin Rumi



Vivekananda's Landmark Address In Chicago

Arijit Ray

When Swami Vivekananda began his speech at the Parliament of the World's Religions held in Chicago in 1893, addressing his audience as, "Sisters and brothers of America," he got a thunderous standing ovation that lasted more than two minutes. The spontaneous response from the audience was symbolic of the imprint his message would create in the hearts and minds of people across the world. His message of harmony, tolerance and universal acceptance stirred the depths of the human soul and re-established the relevance of practical spirituality in the lives of people, in a world torn by jealousy, greed, hatred and bloodshed.

He introduced the western audience to Hindu faith and spoke about India as a nation that has sheltered the persecuted and refugees of all religions from across

the world. He set the context of a philosophy and outlook that is universal in spirit. A framework that was much needed for the world at large, at that point in time. This doctrine has become even more relevant today.

While he spoke of sectarianism, bigotry and its horrible descendant fanaticism and how they have drenched the earth with blood, destroyed civilisation and sent whole nations to despair, he also spoke of tremendous hope. He said, "Fervently hope that the bell that tolled this morning in honour of this convention, may be the death-knell of all fanaticism, of all persecutions with the sword or with the pen, and of all uncharitable feelings between persons wending their way to the same goal."

This significant message for harmony and brotherhood reverberated through

minds, that were hitherto bereft of hope and positivity, inspiring them to rekindle hope. While it aroused tremendous interest in spirituality in the enterprising and active minds of the western citizen, it re-awakened spirituality and set the process of resurgence in the Indian mind.

A nation that had gradually started losing touch with the rich spiritual heritage of its past began to sit up and take notice. And most importantly, it infused Indians with tremendous vitality, strength and energy.

Through his talks at the Parliament of the World's Religions and subsequent lecturing and teaching work for four and a half years in the USA and England, Vivekananda promoted the image of India as the land of spirituality, harmony and rich cultural heritage. Swami Vivekananda's ideas influenced the leaders of pre-independent India including Tilak, Gandhiji, Nehru and Netaji, and he is regarded as one of the creators of modern India. Western thinkers have spoken of him as the "moulder of the modern world". He was a great humanist who loved humanity in the East as well as in the West.

Today, when we are at a crossroads and values cherished over the centuries are getting eroded in the name of fanatic religious beliefs and dogmas, Swami's message of universality, harmony, character building and value-based education, strength and courage is even more relevant. The time has come, for all of us to collectively and individually imbibe, assimilate and put to practise Swami's messages, in our day-to-day lives. The impact of this will surely be transformational. As transformational as the famous five words, "Sisters and brothers of America," that he uttered from the podium of the Art Institute of Chicago, 125 years ago.

