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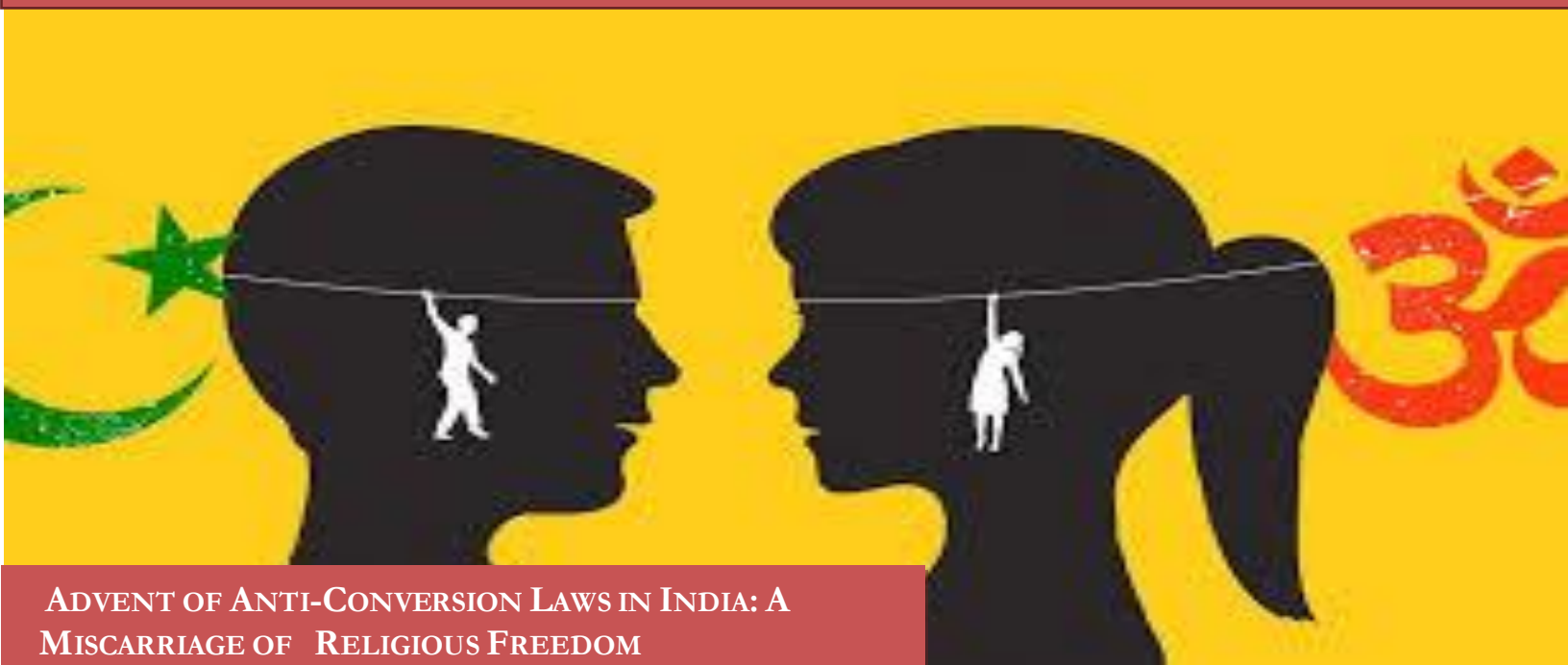
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ADVENT OF ANTI-CONVERSION LAWS IN INDIA: A MISCARRIAGE OF RELIGIOUS FREEDOM

INTRODUCTION

India, being a multi-cultural and multi-religious country, the law makers felt the need for enacting laws that would provide for marriage of two individuals of different faiths and religions. For this purpose the Special Marriage Act was enacted in the year 1954. It allows marriage between such consenting individuals without requiring religious conversion, which is a requirement if such a marriage were to be conducted as per the personal laws. While the Special Marriage Act, 1954 poses to be a progressive legislation, it sets in a series of procedural requirements for a marriage to be solemnized between such individuals.

More recently, however, States such as Uttar Pradesh and Madhya Pradesh have introduced dedicated laws that seek to prevent 'love jihad' (a term that remains undefined by law) and criminalize conversion for the purpose of marriage. The present article seeks to highlight the issues plaguing the Special Marriage Act, 1954 and how it has become exceedingly difficult for a marriage to be conducted between two individuals belonging to different faiths, even by way of conversion, due to the introduction of anti-conversion laws. These barriers in the way of interfaith marriage that have now acquired the force of law go against the Supreme Court's judgment in the case of *Lata Singh v. State of Uttar Pradesh*¹ where

it was held that, '*inter-caste marriages are in fact in the national interest as they will result in destroying the caste system.*'

PROCEDURAL ISSUES IN THE SPECIAL MARRIAGES ACT, 1954

The Section 5 of Special Marriage Act, 1954 posits that the concerned couples must give a notice at least 30 days before the date the marriage is to be conducted. A copy of this notice is to be displayed in a 'conspicuous place' in the office of the marriage officer. This provision was introduced in the interest of transparency. Moreover, Section 7 of Special Marriage Act, 1954 enables those who may have a legitimate objection, on grounds that such a marriage does not meet the conditions for marriage laid down under Section 4, to come forward during the pendency of this period.

While the purpose of the provision with respect to issuing a public notice was to provide an opportunity for the families or communities of the bride or groom to get to know about the impending wedding, the provision has been subject to constant misuse thus far that has allowed for arbitrary inference of unrelated third parties such as police and vigilante groups opposed to the idea of inter-faith marriage. Moreover, instances of blatant breach of the right to privacy of such couples, guaranteed to them under Article 21 of the Indian Constitution, have been reported whereby the notice with their personal information such as age, occupation, parents' names and details, addresses, pin codes, phone numbers,

¹ *Lata Singh v. State of Uttar Pradesh*, (2006) 5 S.C.C. 475.

etc. were released to the public and they were thus subjected to harassment. This is against the judgment of the Delhi High Court where it was held that, *'the unwarranted disclosure of matrimonial plans, was completely whimsical and without authority of law.'*²

A significant development in this regard has been in the recent ruling of Allahabad High Court wherein the requirement of mandatory publication of notice and inviting objection under Section 5, 6 and 7 of the Special Marriage Act, 1954 was done away with by declaring those provisions as declaratory and not mandatory being in violation of right to privacy of citizens.³ The notice requirement and related issues however, have remained a serious problem for interfaith couples as they often leave them with no choice but for one of them to convert to the religion of the other to get married. This issue was recognized even in the Law Commission Report, 2018. However, the act of conversion also does not appear to be without barriers in the present times with states like Uttarakhand, Uttar Pradesh, Madhya Pradesh, etc; implementing laws that seek to prohibit conversion for the purposes of marriage.

THE UTTAR PRADESH ORDINANCE, 2020

On November 27, 2020, the government of Uttar Pradesh passed the Uttar Pradesh Prohibition of Unlawful Conversion of Religion, 2020 ('the Ordinance'), widely understood to be in furtherance of the Uttar Pradesh government's objective to eliminate the so called menace of *'love jihad.'* The Ordinance criminalizes religious conversion through misrepresentation, fraud, undue influence and allurement under Section 3 as a cognizable and non-bailable offence, providing punishments for the same. It also specifically voids marriages for the sole purpose of unlawful conversion under Section 6. Though on the surface, the Ordinance seems to be well intentioned, combating religious conversion that vitiates free consent, a careful reading of the ordinance is revealing of its true intentions.

Looking at the understanding of the word 'allurement', it is given a broad interpretation insofar as even a simple gift or promise of a better lifestyle can be considered allurement. As explained by Abhinav Chandrachud, this implies that if a person offers a copy of a religious text, say the *Bhagwad Gita*, to a non-Hindu, and the latter, upon reading it

chooses to convert to Hinduism, this conversion can be considered as vitiated by allurement. Further, a promise of a better lifestyle, simply stating that one's religion is a better alternative can be considered unlawful. At best, such a definition of allurement is vague and imprecise, and at worst, it is in contravention of Article 25 of the Constitution. It must be noted that propagation of one's religion as a fundamental right already prohibits forcible conversion. Sardar Patel, during the Constituent Assembly Debate on August 30, 1947 stated that such conversions *'should not be and cannot be recognized by law.'*

Further, reconversion is not criminalized under the Ordinance. This means that if a person is converted from Hinduism to Islam lawfully, but is coerced into converting back into Hinduism, the coercion is legally valid while the initial conversion can still be challenged under Section 3. And the imprisonment for unlawful conversion is of one year and up to five years, but this number is significantly higher when the person being converted is a woman, a minor or an individual from a Scheduled Castes/Scheduled Tribes (2-10 years) and even higher for mass conversions (3-10 years) under Section 5 (1). To state thus, and prescribe different punishments for different groups of people is to unfairly assume that women and individuals from the SCs/STs communities are of weaker will and more gullible and ultimately more susceptible to unlawful conversion. It is also important to point out that mass conversions can be as small as just two members under Section 2(f), perhaps a family deciding to convert to another religion. It is an unfair intrusion into a 'collective choice.'

Perhaps the most contentious part of this Ordinance is, however, the burden of proof clause. The Section 12 of the Ordinance states that the onus lies on the one who has done the conversion to prove that it has not been done through unlawful means. The law presumes, therefore, an illegal nature to all religious conversions in the state of Uttar Pradesh unless proved otherwise. This gives far reaching powers to the district magistrate and the police to detain and try those who have been suspected to convert others to their religion. Further, any conversion must first be referred to the District Magistrate, and both parties, the religious converter and the one converting have to confirm their actions with the District Magistrate at least 60 days prior. This has, in effect, created a system where all religious conversions take place under the watchful eye of the state.

² Pranav Kumar Mishra v. Govt. of NCT of Delhi, Writ Petition (Civil) No. 748 of 2009.

³ Safiya Sultana v. State of Uttar Pradesh, 2021 S.C.C. Online 19.

It is important to note that a case of unlawful conversion can not only be reported by the converted themselves, but by their family and relatives too under Section 4. In fact, the largest number of 'love jihad' cases that have been reported within the first month of the Ordinance's enactment, have actually been reported by the father or uncle of the Hindu woman who has eloped with a Muslim man. Out of the 14 'love jihad' cases reported in the first month, only two cases have had the woman as the complainant. In many of these cases, the woman herself has refused to give a statement citing social pressure. The new Ordinance has created new barriers to interfaith marriages in that it hands over the power to decide marriages completely to the family of the girl, while also penalizing the man, who is usually a Muslim.

ANTI-CONVERSION LAWS AND JUDICIAL DEVELOPMENTS

Anti-conversion laws are state-level statutes enacted to regulate religious conversions that are not purely voluntary in nature in India. Such law was first enacted by the state of Orissa entitled, Orissa Freedom of Religions Act, 1967 which was followed by the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968. While the Orissa High Court held that such laws were unconstitutional as the State Legislature did not have any power to legislate on matters of religion, on the other hand the Madhya Pradesh High Court upheld the validity of these acts. Finally, even the Supreme Court in *Reverend Stainislaus v. State of Madhya Pradesh*,⁴ held that both the acts are constitutionally valid as the right to propagate one's religion cannot impinge on the freedom of conscience of other citizens and it does not grant right to convert another person to one's own religion.

This judgment gave way to enactment of many anti-conversion laws like the Arunachal Pradesh Freedom of Religion Act, 1978; Chhattisgarh Freedom of Religion Act, 1968; Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002; Dharam Swatantrata Vidheya-Freedom of Religion Act, 2003 of Gujarat; Himachal Pradesh Freedom of Religion Act, 2006; Uttarakhand Freedom of Religion Act, 2018 and the Jharkhand Freedom of Religion Act, 2017. Some of these acts were later repealed or faced poor implementation but the underlying idea of all these laws was to prevent religious conversions

carried out by coercion, fraud, allurement or inducement and imposed penalties from fines to imprisonment.

Although the validity of these laws is upheld, they are indirectly in contradiction with the judgment of the Supreme Court in *Shafin Jahan v. Asokan K.M.*⁵ where it was held that the right to choose a life partner is an absolute right irrespective of one's religion or faith. Further, it has been held in *Lata Singh v. State of Uttar Pradesh*,⁶ that the right to marry is a part of the right to life under Article 21 of Indian Constitution and includes the right to choose a life partner of one's choice.⁷ In addition in such cases, individual autonomy needs to be given supreme importance⁸ as held in *Justice K.S. Puttaswamy v. Union of India*.⁹ On the other hand in *Lily Thomas v. Union of India*¹⁰ and *Sarla Mudgal v. Union of India*,¹¹ it has been held that religious conversions carried out without a *bona fide* belief and for the sole purpose of deriving some legal benefit are illegal and invalid in the eyes of law. Hence, a fine balance needs to be reached to protect religious freedom of weaker sections and the individual autonomy of women.

CONCLUSION

The Constitution of India guarantees the right to freedom of religion under Articles 25 to 28 as fundamental rights to its citizens as a result of being a secular state.¹² Inter-faith marriages are also recognized as a part of human rights under Article 16 of the Universal Declaration of Human Rights, 1948 to which India is a signatory. On the other hand, Article 18(2) of the International Covenant on Civil and Political Rights, 1976 states that no person could be made susceptible to extreme persuasion that may infringe upon the freedom to maintain his chosen religious identity. Thus, though the objective of these anti-conversion laws on the surface seems to cater to social welfare and religious protection, the indirect consequences and barriers it has created for inter-religious marriages is causing grave problems for such couples, especially women.

⁵ *Shafin Jahan v. Asokan K.M.*, 2018 S.C. 343.

⁶ *Lata Singh v. State of Uttar Pradesh*, (2006) 5 S.C.C. 475.

⁷ *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192.

⁸ *Trishla Rai v. State of Uttar Pradesh*, Writ Petition (Civil) No. 26364 of 2019.

⁹ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

¹⁰ *Lily Thomas v. Union of India*, 2000 (6) S.C.C. 224.

¹¹ *Sarla Mudgal v. Union of India*, 1995 (3) S.C.C. 635.

¹² *S.R. Bommai v. Union of India*, (1994) 3 S.C. 1.

⁴ *Reverend Stainislaus v. State of Madhya Pradesh*, 1977 (1) S.C.C. 677.



FAILED ASSASSINATION: POISONING OF ALEXEI NAVALNY

INTRODUCTION

Russian political regime under Vladimir Putin has come under harsh international scrutiny after an assassination attempt aimed at Alexei Navalny, a political opposition figure and anti-corruption activist. On 20th August, 2020 the opposition leader while on a flight from Tomsk to Moscow became extremely ill and collapsed during the flight after which he was taken to the hospital via emergency landing at Omsk. He was evacuated to the Charite hospital in Berlin, Germany after two days of being in coma where it was identified that he had been poisoned with a nerve agent known as Novichok which is a lethal chemical developed during the Soviet era. This poison was confirmed by five organisations for prohibition of chemical weapons (OPCW) which also clarified that it was new type of Novichok that was not included in the list of controlled chemicals of the Chemical Weapon Convention.¹³

Fortunately, on 7th September, Navalny woke up from induced coma and his condition started to improve. Despite reports of poisoning and severe criticism from international community, the Russian

prosecutors refused to file an official investigation and the Kremlin denied any involvement in the poisoning of Navalny. However, when Navalny recovered and decided to come back to Russia from Germany, he was detained at the International Airport for allegedly violating the terms of probation and by February his suspended sentence was replaced with a prison sentence which could extend over a period of two years. The detention has since created outrage among supporters of Navalny and democracy, and has led to mass protests in Russia. There have been multiple arrests and violent suppression of protesters by the Russian government has been witnessed.

HISTORY OF RUSSIAN POISONING

The Soviet Union around 1921 began researching on chemical and biological weapons. This operation started under Stalin and was called “Kamera” which means “Chamber” and later on it was rebranded multiple times and presently it is continuing under the name of Federal Security Service (FSB) and Foreign Intelligence Service (SVR) which function as agencies that develop refined products developed from past research.¹⁴

¹³ Masha Gessen, *Alexei Navalny Has the Proof of His Poisoning*, *The New Yorker*, 18 October, 2020, available at <https://www.newyorker.com/culture/the-new-yorker-interview/alexei-navalny-has-the-proof-of-his-poisoning>

¹⁴ Benjamin Pullen, *From the Kamera To Navalny: A Brief History of Russian Poisonings*, *The American Security Project*, 24 September, 2020, available at <https://www.americansecurityproject.org/from-the-kamera-to-navalny-a-brief-history-of-russian-poisonings/>

Throughout the century since, these chemical agents have been employed by the Soviet and Russian security forces to suppress the voice of dissent. In 1978, a defected Bulgarian journalist died mysteriously after his leg was punctured with the tip of an umbrella while waiting for a bus in London. The tip of the umbrella carried a metallic pellet contained ricin, a deadly poison which was released into his bloodstream and this assassination was suspected to be done by KGB.

In the 2004 Ukrainian Presidential elections, the pro-European candidate Viktor Yushchenko running against Russian favoured Viktor Yanukovich was assassinated using a lethal chemical called dioxin as established by Austrian doctors later on. It was suspected that the Kremlin worked with the Ukraine's security service to poison him. Moreover, Anna Politkovskaya, a journalist who was critical of Vladimir Putin was also poisoned in the same year but had survived, only to be later assassinated in 2006.

Alexander Litvinenko, former KGB and FSB agent, revealed confidential information about the Kremlin still operating soviet era labs to research about poisons. He had started investigations into the death of journalist Anna Politkovskaya and therefore, was also assassinated in 2006 through a chemical poison called radioactive polonium -210 which was added to his tea. In recent years between 2008 and 2018, there have been many incidents of suspected Russian poisonings which include assassination of Karina Moskalenko, a human rights lawyer, Alexander Perepilichny who is a Russian businessman critical of Putin's regime, Vladimir Kara-Murza, a famous opposition leader who was poisoned twice, and the most recent one before Alexei Navalny being Sergei Skripal who was a double agent of FSB and had been assassinated in the United Kingdom in 2018.¹⁵

NAVALNY: A THORN IN PUTIN'S REGIME

Nearly a decade ago, Alexei Navalny, a young lawyer in Moscow started his journey as a dissenter of corruption. He started with collecting and compiling publicly available information to document corruption and abuse of power in Russian government. At first, he used his blog to document inflated prices in government contracts and documented real estate holdings and private property of government officials which had been registered under names of relatives.

He soon established an Anti-Corruption Foundation which became a multimedia production conducting investigations into corrupt officials using wide range of tools like drones and spy cameras. He became a major opposition figure and he was one of the leaders of the mass protest against rigged elections in 2011 and 2012.¹⁶ Many of his followers coordinating the protest were forced to either live in exile like chess champion Garry Kasparov and prisoner rights activist Olga Romanova or twice were killed, like politician Boris Nemtsov. The Kremlin also tried to shut down his organisation through a series of court cases and arrests. He was sent to jail in 2013 for a sentence of five years on charges of embezzlement but thousands of Muscovites protested and secured his release.

He was also attacked in 2017 by unknown assailants outside his office who sprayed green dye mixed with corrosive chemicals into his eyes and face. This left his left eye damaged and he lost sight for a period of time, which was later regained. Despite, all of the strategies employed by the Kremlin, Navalny's influence and reach kept expanding and he even attempted to run for the presidential elections in 2018.¹⁷ So, to eliminate any threat to his regime Vladimir Putin finally attempted his assassination as observed by the world on 20th August last year.

¹⁵Patrick Revell, *Before Navalny, A Long History of Russian Poisonings*, ABC News, 26 August, 2020, available at <https://abcnews.go.com/International/navalny-long-history-russian-poisonings>

¹⁶Russia Navalny: Poisoned opposition leader held after flying home, BBC World, 17 January 2021, available at <https://www.bbc.com/news/world-europe-55694598>.

¹⁷Russia opposition leader Alexei Navalny attacked with "brilliant green" dye, BBC World, 27 April 2017, available at <https://www.bbc.com/news/world-europe-39735867>

However, the face of the opposition in Russia remained undaunted. In a move that left the Russian Federal Security Service (FSB) red faced, Navalny put out a YouTube video containing a phone conversation recording that he had allegedly had with FSB agent Konstantin Kudryavtsev while posing as an official of Russia's National Security Council. In the video titled "I called my killer. He confessed", the intelligence operative, said to be the chemical and biological weapons expert Kudryavtsev by Navalny, is heard admitting to poisoning Navalny by administering poison via his underwear.¹⁸

To make things worse for Putin, just a day after returning from Germany and being detained at the airport, Navalny released another two hour long YouTube video showing an extravagant palace lying near the Black Sea, claiming that it belongs to the Russian President.¹⁹ As per the video, the "Putin Palace", as Navalny dubbed it, costs 1.4 billion dollars and has been paid for with the "world's largest bribe." Vladimir Putin was forced to respond to the allegations about the 18,000 square meter estate and about his indulgence in uninhibited corruption made in the video, which has been watched more than a hundred million times, stating that the lavish property does not belong to him or his close relatives.²⁰

As Putin looks to silence dissent and choke the voices speaking up against his corrupt acts, Navalny and his movement might very well be the last legitimate threat that he has to deal with during the rest of his tenure. Since the recent constitutional amendments will essentially allow Putin to extend his presidency to 2036 if he so wishes, on top of granting him immunity from prosecution when he eventually steps down, the need for domestic balance has expired and the complete removal of notable opposition or their subjugation seems to be the new policy in the era of the new constitution.

CONCLUSION

Critics say that Navalny would not be set free anytime in the near future. Considering the pace at which the officials have tried to take Navalny out of public spotlight, they are most likely to put him behind the bars. United Kingdom and European Union have severely admonished the move, with some demanding new sanctions on Russia over human rights abuses. U.S. National Security Advisor, Jake Sullivan, asked for Navalny's prompt release and remarked that the "perpetrators of the outrageous attack on his life must be held accountable."²¹

However, keeping in mind political, external as well social factors, there is a lot of scepticism that this would help release Navalny.

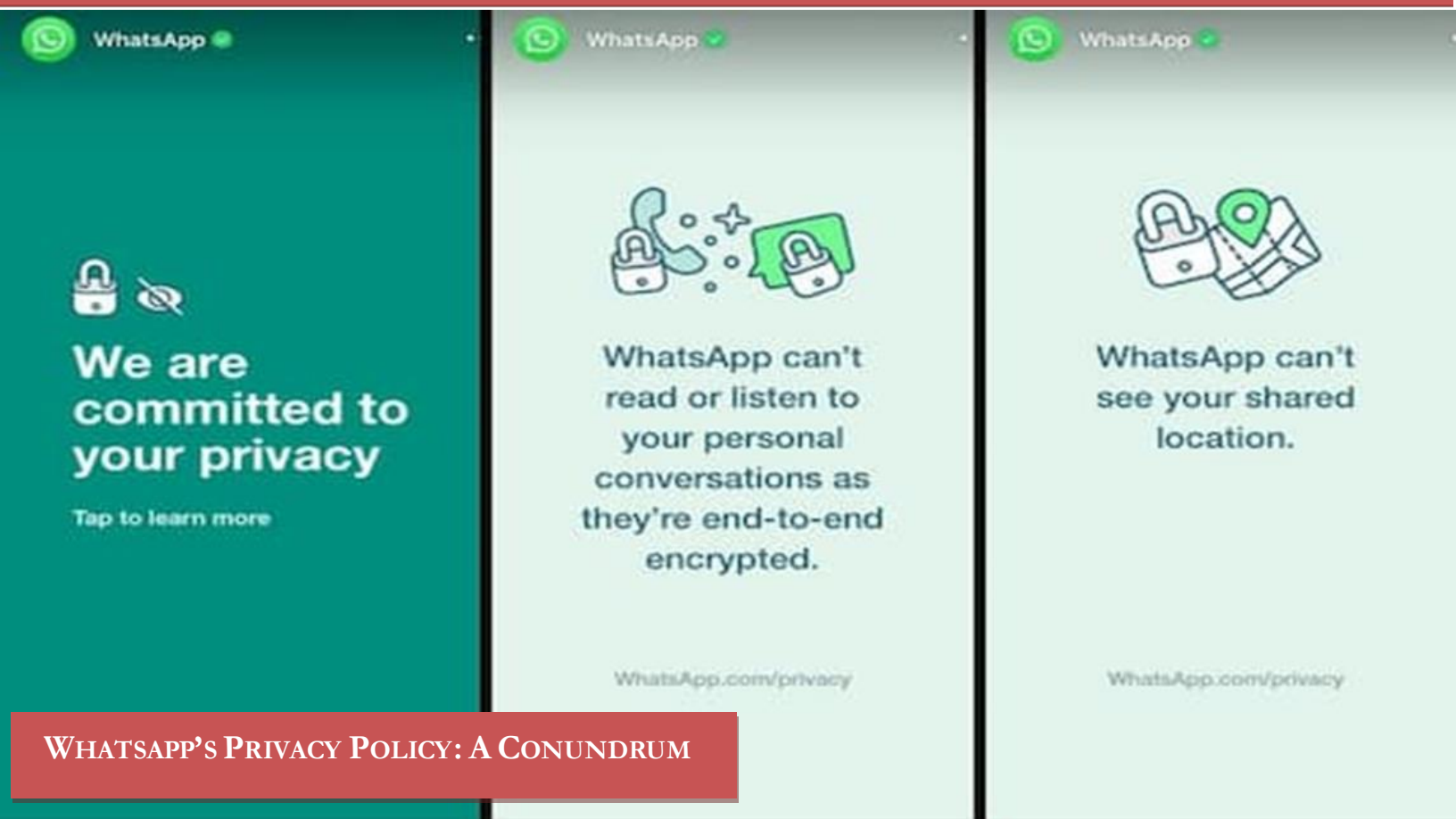
Despite his stay in the lock up, Navalny's return and detention could be a turning point for Russia and governments across the globe. If the international community turns a blind eye to this issue, Russia would get a message that it can escape liability and do whatever it wants to do. The global community should issue a clarion call against unjust actions of Russia and set a precedent for all the states that human rights violation should not take place in this socio-legal world.

¹⁸ Luke Harding, *Navalny says Russian officer admits putting poison in underwear*, The Guardian, 21 December 2020, available at <https://www.theguardian.com/world/2020/dec/21/navalny-russian-agent-novichok-death-plot>

¹⁹ *Kremlin critic Navalny releases video of Putin's extravagant palace*, THE WEEK, January 22, 2021, available at <https://www.theweek.in/news/world/2021/01/22/kremlin-critic-navalny-releases-video-of-putins-extravagant-palace.html>

²⁰ *Vladimir Putin: Russian palace in Navalny video not mine*, BBC, January 25, 2021, available at <https://www.bbc.com/news/world-europe-55799143>

²¹ Madeline Roache, *'His Fight Is in Russia.' Why Navalny Flew Home Straight Into Putin's Clutches*, TIME, 18 January 2021, available at <https://time.com/5930595/alexei-navalny-return-russia-why/>



WHATSAPP'S PRIVACY POLICY: A CONUNDRUM

INTRODUCTION

'Right to Privacy' is intrinsic to human rights jurisprudence, as is derivable from its presence in pivotal legal instruments such as the Universal Declaration of Human Rights²² and the International Covenant on Civil and Political Rights.²³ Observing beyond the traditional focus on States, the invasive breaches of human rights obligations, particularly right to privacy and data protection, that are been made by non-state actors like social media corporations in the contemporary times are alarmingly threatening. One such step has been taken by WhatsApp in the form of its newly drafted Privacy Policy (hereinafter, **"Policy"**).

WhatsApp LLC, in their older Privacy Policy assured how "respect" for user privacy is "coded into" their "DNA".²⁴ However, the Facebook-owned instant messaging platform, through release of the new Policy, has lost this credibility. While the chats are still "end-to-end encrypted",²⁵ legitimate concerns with respect to data protection and violation of privacy rights are being raised. While WhatsApp has released clarifications in this regard²⁶, issues such as unequal policies for users in India and Europe not only reflect on the platform's integrity but also on the inadequacies of the Indian legal framework. In this article, the authors have attempted to discuss the nuances of the Policy and the lacunae in the domestic laws on data protection.

A PROBLEMATIC CHANGE?

²² Article 12, Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

²³ Article 17, International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171.

²⁴ WhatsApp Privacy Policy, WhatsApp (Jul. 20, 2020), <https://www.whatsapp.com/legal/privacy-policy/?lang=en>

²⁵ Answering your Questions about WhatsApp's Privacy Policy, FAQ, WhatsApp, <https://faq.whatsapp.com/general/security-and-privacy/answering-your-questions-about-whatsapps-privacy-policy/?lang=fb>

²⁶ *Id.*

WhatsApp's announcement regarding the change in its Policy has stirred confusion and despair amongst its users in India which is one of the largest consumers of this social platform. It led to an exodus shift to its rival platforms.²⁷

While change is always accompanied by its mate inertia, this case is also no different. This change in the policy has also faced its fair share of resistance in the form of claims to a threat to data privacy. Although the threat to privacy by this platform is not a recent concern, what tickled the masses this time was that they were subjected to these updates unilaterally with an all or nothing approach.²⁸ At the core of this controversy, two issues are being highlighted- first is the alleged threat to the privacy of the consumers due to sharing of information with Facebook and second is the differential policies for European and Indian users. To get a better insight to this issue it is necessary to look into the implications of the changes so proposed. The new Policy proposes to share the user's information with Facebook family of companies so as to help them run their businesses. While as a measure of damage control it was clarified by WhatsApp that the chats and personal messages are supposedly out of danger of breach and will not be shared but the other data that is collected in the course of operation can be shared. Every individual leaves a trail of private data while operating in the digital world and this metadata or data of the data is what is at stake here. Metadata is inclusive of your network connectivity, model number, battery status, etc. While this said data seems trivial and unimportant to many, this can be carefully mined to create a profile of the user which can be further used to showcase targeted ads. Targeted ads are not the only problem but the usage of the data for any purpose other than the one for which it is collected is the heart of the problem. "Ms Sengupta, the Research Director at Vidhi Centre for Legal Policy explained that corollary the issue is the mistrust that is generated by using the information for the purpose that is not reasonably connected to

the one for which the information is shared."²⁹ This gives these corporate houses a free run to monetise the data that is stored by them in the course of their operation. Therefore, as of now the real threat is not to the personal messages or the information that is shared across the platform but the sharing of a person's online presence.

The second issue in this controversy is the differential policies for European and Indian users. This differential treatment results from the legal framework that these two regions house. While European Union (EU) has the General Data Protection Regulation (GDPR) 2016³⁰ that categorically protects the personal data of its citizens from being exploited, India fails to implement any such legislation. GDPR addresses the transfer of personal data outside the EU and Economic areas and shapes the manner of exploitation of user's information. The core principles of this regulation are the right to privacy and the right to be forgotten. It restricts the sharing of user information for the purpose other than the purpose for which it was collected and or any reasonably related³¹ and slams steep penalties up to €20 million or 4% of global annual turnover.³²

CONCLUSION

The fundamental character of the right to privacy received official affirmation after this inherent right was reaffirmed by the nine-judge in *K.S. Puttaswamy v. Union of India*³³. So it is high time that this recognition is brought to practice. Regardless of the legitimacy of the concerns surrounding the matter this updated Policy practically brought to the forefront the inadequate data protection framework of the country. The Data Protection Bill, 2019 is being analyzed by the Parliamentary Committee and hence is still a work in progress in India. If it were in place such an amendment would not have affected the Indian users. This episode reinforces the immediate need for the Personal Data Protection law

²⁷ Reuters, Signal, Telegram see Demand Spike as new WhatsApp Terms Stir Debate, *The Hindu* (21st Jan 2020, 2:24 PM) <https://www.thehindu.com/sci-tech/technology/signal-telegram-see-demand-spike-as-new-whatsapp-terms-stir-debate/article33534932.ece#>

²⁸ Soibam Rocky Singh, WhatsApp Differential Treatment of Users a cause of Concern: Centre says in Delhi HC, TH, (25th Jan 2021, 4:21 PM), <https://www.thehindu.com/news/national/whatsapp-treating-indian-users-differently-from-europeans-matter-of-concern-centre-to-hc/article33655505.ece>.

²⁹ Nandana James, WhatsApp's new privacy policy: Yet another reason why India needs data protection law, TH, (10th Jan 2021, 6:13 PM) <https://www.thehindubusinessline.com/info-tech/whatsapps-new-privacy-policy-yet-another-reason-why-india-needs-data-protection-law/article33542521.ece>.

³⁰ Council Directive 95/46, 2016, O.J. (L 119) 1 (EC).

³¹ *Supra* Note 8.

³² Council Directive 95/46, art 83, 2016, O.J. (L 119) 1 (EC).

³³ *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.

in India for if not then it's the fundamental right of citizens at stake.

Additionally when this matter reached the Delhi High Court,³⁴ it directed to opt-out of the App and switch to a better alternative owing to its private nature, well this seems appropriate and convenient however this highlights a bigger problem with inefficient data protection laws at its core. Switching to a better alternative is probably a quick solution but not a permanent one. We need to update our regulations and policies with an emphasis on competition and data protection. The bigger responsibility however also lies on the consumer to educate themselves and rise to the wakeup call that we all have received through that one notification and to sit back and read the terms and policies that we agree to without even blinking and, ponder upon whether we are opening the door to our private lives too quickly. We have to take charge of our own privacy or else we will become the slaves of these technologies.

Contributions are invited for the next issue of CasihR Newsletter. The last date is 20th April 2021.

The articles can be mailed on casihr@rgnul.ac.in

³⁴ Shreya Agarwal, It's A Private App, If You Don't Want To, Don't Use It": Delhi High Court on Plea Against WhatsApp's Updated Privacy Policy, (18th Jan 1:27 PM) <https://www.livelaw.in/top-stories/whatsapp-new-privacy-policy-delhi-high-court-right-to-privacy-168527>.

NATIONAL NEWS

Climate Activist arrested and charged with sedition

Delhi Police Cyber Cell on Saturday arrested 21-year-old climate activist Disha Ravi from Bengaluru for her alleged role in spreading 'toolkit' related to farmers protest. Toolkit account, run by Khalistanis, allegedly decided to conduct a digital strike post on the Republic Day incident. While the said matter has gained traction due to the activist being charged with sedition such an approach is widely criticized by many.

Pakistan outlawed virginity test

A court in the northern city of Lahore in Pakistan has abolished so-called virginity tests, which women are subjected to in sexual assault cases, setting a precedent for the practice to be potentially outlawed nationwide. The test is seen as a measure of virtue and of whether a woman is trustworthy implying that if two fingers can be easily inserted into the vagina, it shows that a woman is not a virgin, and thus lacks moral authority to make an assault or rape accusation. The ruling was immediately hailed across Pakistan, with no high-profile public critiques, suggesting it has widespread support.

Bombay High court on media trial

The tragic death of the actor, Sushant Singh Rajput took a serious toll on journalism in India. The Bombay HC while disposing off a bunch PILs, filed as the aftermath of the actor's suicide, stated that "Any reportage has to be in accordance with the norms of journalistic standards and ethics, else media houses stand to face contempt action." The court also agreed with the accusation of the petitioners that the Union Ministry of Information and Broadcasting had "abdicated statutory functions" in regulating media from vitiated coverage on the actor's death.

Love Jihad a tool to curb right to choice

On 24th November 2020, the Indian State of Uttar Pradesh promulgated a new ordinance which shocked the nation. The Prohibition of Unlawful Conversion of Religion Ordinance, 2020 requires religious conversion to be scrutinized and certified by the State. Conversion to a different faith without the state's approval would lead to imprisonment and fines. While on the face of it, it seems that this ordinance is enacted to ensure that conversions aren't carried out by undue influence, force, misrepresentation, coercion, or fraud – however, the State has been conferred unfettered power to surveil and question conversions stemming from inter-faith marriage.



THE STORMING OF THE US CAPITOL BUILDING AND ITS LINK TO ETHICAL USE OF MEDIA

INTRODUCTION

The controversial presidency of the 45th President of the United States, Donald Trump, came to a dramatic end, when in the final week of his reign a violent mob attacked the US Capitol³⁵. The 117th US Congress had assembled at the Capitol for the Electoral College vote count when an armed and violent mob of Trump supporters stormed Capitol Hill after a highly inflamed and factually incorrect address by Donald Trump, rejecting his defeat in the 2020 Presidential Elections. Donald Trump's repeated claims of election fraud and relentless efforts to overturn the election outcome resulted in the events that media outlets termed as 'insurrection', 'coup', and 'an act of terror'³⁶.

The mob wreaked havoc, looting and ransacking the House Chamber and offices of various lawmakers, including House Speaker Nancy Pelosi³⁷. The Congress reconvened in the evening to certify the election of Joe Biden as the next US President, in the background of an unfortunate historical event.

On 6th January, former President Trump spoke at the "March to Save America" rally,³⁸ urging his supporters to march to the Capitol Building to disrupt the certification of the 2020 Electoral Results. This culminated into the infamous siege of the Capitol Building, leading to the question: was this callous behaviour by the erstwhile President an act of incitement of violence?

DID THE ADDRESS CONSTITUTE INCITEMENT OF THE ATTACK?

³⁵ Associated Press, *U.S. Capitol locked down as Trump supporters clash with police*, THE HINDU, Jan 7, 2021, <https://www.thehindu.com/news/international/electoral-college-protests-us-capitol-locked-down-as-trump-supporters-dash-with-police/article33515359.ece#>

³⁶ David Rutz, *Conservative media members erupt with anger over protestors storming Capitol: 'This is domestic terrorism'*, FOXNEWS, Jan 6, 2021, <https://www.foxnews.com/media/conservative-media-members-erupt-anger-violent-protesters-storming-capitol>; Rebeca Solnit, *The violence at the Capitol was an attempted coup. Call it that*, THE GUARDIAN, Jan 6, 2021, <https://www.theguardian.com/commentisfree/2021/jan/06/trump-mob-storm-capitol-washington-coup-attempt>

³⁷ *Today's Rampage at the Capitol Hill, as it happened*, THE NEW YORK TIMES, Jan 6, 2021, <https://www.nytimes.com/live/2021/01/06/us/washington-dc-protests>

³⁸ *Trump's speech that 'incited' Capitol violence: Full transcript*, Aljazeera, Jan 11, 2021, <https://www.aljazeera.com/news/2021/1/11/full-transcript-donald-trump-january-6-incendiary-speech>

INTERNATIONAL NEWS

Malaysia's Highest Court strikes down State Muslim Gay Sex ban

Same-sex acts are illegal in Malaysia. The country, which has 13 states, has a dual-track legal system, with Islamic criminal and family laws applicable to Muslims running alongside civil laws. LGBT advocates said that Islamic laws have been increasingly used to target the Southeast Asian country's gay community, with a rise in arrests and punishments ranging from caning to jailing. However in a unanimous decision, Malaysia's top court ruled on Thursday that the Islamic provision used in Selangor was unconstitutional and authorities had no power to enact the law.

Deterioration human rights situation in Belarus

A "systematic crackdown" against dissent in Belarus is continuing, months since the country's disputed presidential election last year. Further, there has been a "mass arbitrary arrests and detentions" of largely peaceful demonstrators, along with "hundreds of allegations of torture and ill-treatment", Ms. Bachelet the UN human rights Chief said, that "not one of the hundreds of complaints for acts of torture and ill-treatment" had been investigated.

Impartial probe demanded in the Bangladesh Writer's custodial death case

Human rights groups and heads of missions of several countries in Dhaka have urged a transparent and independent probe into the death in custody of writer Mushtaq Ahmed in a Bangladesh prison on February 25. Ahmed was arrested by the authorities for a Facebook post that criticised the country's response to the COVID-19 pandemic and had been in pre-trial detention for the last nine months.

Blackwater Pardons

US President Donald Trump has pardoned four former security guards from the private military firm Blackwater who were serving long jail terms for killing 14 Iraqi civilians, including two children, during the infamous 2007 Nisour Square massacre in Baghdad. The pardons were strongly criticised by many in the United States. General David Petraeus and Ryan Crocker, respectively commander of U.S. forces and U.S. ambassador in Iraq at the time of the incident, called Trump's pardons "hugely damaging, an action that tells the world that Americans abroad can commit the most heinous crimes with impunity".

Since the attack, constitutional law experts have engaged in debate about whether the speech by Trump was protected by the First Amendment, in order to understand the nature of the siege. In *Brandenburg v. Ohio*³⁹, the US Supreme Court ("SCOTUS") established the "incitement test". According to this test, there are two steps to determine whether a speech is unprotected by virtue of being inflammatory and resulting in incitement of a lawless action. First, the speech needs to be "directed to inciting or producing imminent lawless action" and second, the speech must be "likely to incite or produce such action." While his supporters clung on to the part of his speech in which he said "everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard", a careful analysis evidently shows that the address was dotted with violent imagery, with the erstwhile President urging his supporters to "fight".

Again, in *Hess v. Indiana*⁴⁰, the SCOTUS held that for speech to constitute incitement, it must advocate for immediate illegal action; in his speech, Trump continuously demanded a march to the Capitol, to "stop the steal", meaning to disrupt the certification of the election. Such inflammatory words culminated into the lawlessness that was the attack on the Capitol.

While some might argue that his speech was calling for his supporters to peacefully march to the Capitol, a literal reading of his speech would not suffice. For the apparent connection that has come up between the address and the attack, the former President can be held guilty for the insurrection⁴¹ as he incited his supporters against a formal authority, which in this case was the Congress. Further, he can also be held guilty for inciting the riot⁴² and advocating overthrow of Government⁴³, when he repeatedly insinuated that he and his followers would "stop the steal".

This whole incident reminded us of the responsibility that leaders, and especially heads of states, hold while using public platforms to address the masses. Ethical use of media, whether online or offline, is nothing short of a duty for leaders voted to power democratically.

³⁹ *Brandenburg v. Ohio*, 395 US 444 (1969).

⁴⁰ *Hess v. Indiana*, 414 US 105 (1973).

⁴¹ 18 U.S. Code § 2383.

⁴² 18 U.S. Code § 2101.

⁴³ 18 U.S. Code § 2385.

THE ETHICAL USE OF MEDIA

On January 8, 2021, Donald Trump was banned from various social media platforms due to his active support of the Capitol mob.⁴⁴ Twitter had been already hiding or adding fact-check labels to Trump's tweets to control misinformation against COVID-19. Twitter, later on, began labelling his tweets regarding election fraud as misleading or disputed. Facebook, too, banned Trump from all its social media platforms, including Instagram. This blocking/suspension of social media accounts included Trump's election campaign handles and those of his allies who posted on his behalf. The other social media giants that took such measures included Snapchat, YouTube, and Twitch.

While Trump's critics have applauded this step by social media platforms, others have warned that these measures might become a precedent for curbing freedom of speech and expression.⁴⁵ The banning of Donald Trump from various media outlets has raised fundamental questions about the limits of free speech and who sets them. The authority to ban individuals/organizations from social media practically amounts to sending them to exile.⁴⁶ However, these big tech companies are justified in their action to ban Trump as they are protected under the controversial Section 230 of US Communications Decency Act. Under this section, "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." More importantly, under this section titled "protection for private blocking and screening of offensive material"⁴⁷, these platforms have the right to block or ban any offensive material or any person derogating the community guidelines. Trump's use of social media handles to spread of misinformation, however, cannot be considered

protected speech; while the situation of banning him might raise concerns for free speech, the action of banning him in itself was not illegal, but instead rather necessary after the storming of the Capitol.

CONCLUSION

Social media provides a platform for all ideologies and opinions, in the spirit of the right to free speech. They act as fora for communication between world leaders and the general public, which is especially important in democratic countries like the USA and India. However, it is when such platforms begin to create a sense of impunity for the leaders to steer their followers towards extremities, that the regulation of the use of social media becomes crucial. After the US Capitol attack, Twitter's chief executive Jack Dorsey acknowledged that the "offline harm as a result of online speech is demonstrably real".⁴⁸ The platform updated its policies to provide for permanent suspension of the accounts of repeat offenders of its rules on political content. Facebook's COO lay similar emphasis on their existing policy, and the company proceeded to take some action outside the US too to suspend accounts of state-run media feeding the fire of violence.⁴⁹ These moves come not a minute sooner. The incitement of violence seen in the US Capitol attack is not an isolated incident. In India, too, human rights groups have repeatedly called for action against state leaders spreading misinformation and stoking communal violence on social media platforms. In an incident last year, for instance, a politician expressed extreme views on Facebook labelling Muslims as traitors and calling for the shooting of Rohingya immigrants.⁵⁰ However, no action was taken against him, with the media giant instead choosing to protect its business prospects in the country and maintain good relations with the powerful.⁵¹

⁴⁴ Allan Akhtar and Avery Hartmans, Twitter suspended Trump's account permanently, BUSINESS INSIDER, Jan 9, 2021, <https://www.businessinsider.in/tech/news/twitter-suspended-president-donald-trumps-account-permanently/artideshow/80180969.cms>

⁴⁵ James Clayton, *Twitter Boss: Trump ban is 'right' but 'dangerous'*, BBC, Jan 14, 2021, <https://www.bbc.com/news/technology-55657417>

⁴⁶ Jaspreet Bindar, *Donald Trump's exile and power of social media platforms*, LIVE MINT, Jan 21, 2021, <https://www.livemint.com/opinion/columns/donald-trump-s-exile-and-the-power-of-social-media-platforms-11611249259617.html>.

⁴⁷ 47 U.S. Code § 230.

⁴⁸ Adam Satariano, *After Barring Trump, Facebook and Twitter face scrutiny about inaction abroad*, THE NEW YORK TIMES, Jan 14, 2021, <https://www.nytimes.com/2021/01/14/technology/twitter-facebook-twitter.html>

⁴⁹ *Id.*

⁵⁰ Miriam Berger and Elizabeth Dwoskin, *Trump ban by social media companies came after years of accommodation for world leaders who pushed the line*, THE WASHINGTON POST, Aug 14, 2020, <https://www.washingtonpost.com/technology/2020/08/14/facebook-hate-speech-india-politics-muslim-hindu-modi-zuckerberg-11597423346/>

⁵¹ *Id.*

Social media companies have continually been criticised for their reluctance to address the unethical use of their platform in the country even after receiving warnings.⁵²

The freedom of speech and expression in our country is subject to the requirement for public order and prevention of incitement,⁵³ and these ideals must be upheld to keep in check the use of social media's global influence by leaders to promote undemocratic ideas. The same alertness and vigour shown by the media platforms to ban Trump's accounts needs to be seen more uniformly around the world when needed.

The growing trend of unethical use of social media rings alarm bells for those who wish to safeguard multitudes of natural and human rights of millions across the globe. The need of the hour is for leaders to uphold their duty of using their reach responsibly, for social media platforms to acknowledge their role in regulating such use, and for states to enable and supervise reasonable measures taken by these private companies to prevent historic tragedies like the siege of the US Capitol in the days to come.



Lawmakers Back Biden's Victory in Arizona

By NICHOLAS FANDOS
and EMILY COCHRANE

WASHINGTON — Congress moved late Wednesday toward confirming President-elect Joseph R. Biden Jr.'s victory after a mob of loyalists urged on by President Trump stormed and occupied the Capitol, disrupting the final electoral count in a shocking display of violence that shook the core of American democracy.

There was no parallel in modern American history, with insurgents acting in the president's name vandalizing Speaker Nancy Pelosi's office, smashing windows, looting art and briefly taking control of the Senate chamber, where they took turns posing for photographs with flits up on the dais where Vice President Mike Pence had just been presiding. Outside the building, they erected a gallows, punctured the tires of a police SUV, and left a note on its windshield saying, "PELOSI IS SATAN."

By the time the Senate reconvened, hours after lawmakers had been evacuated from a Capitol overrun by rebels carrying pro-Trump paraphernalia, one of the nation's most polarizing moments had yielded an unexpected window of solidarity that briefly eclipsed partisan division. Republicans and Democrats locked arms to denounce the violence and express their determination to carry out what they called a constitutionally sacrosanct function.

"To those who wreaked havoc in our Capitol today, you did not win," Mr. Pence said in a sharp break



⁵² *Supra* note 47

⁵³ INDIA CONST. art 19(2)



VACCINE HESITANCY AND HUMAN RIGHTS: AN ANALYSIS

INTRODUCTION

Vaccines are one of the greatest achievements of medical science. The invention of the vaccine to deal with a pandemic gives a sigh of relief to everyone. It ensures the welfare goal of 'Public Health'. People enthusiastically want to be vaccinated in order to be safe and secure. However, this enthusiasm or the benefits of vaccine takes a back seat when the vaccine shows even a slight side effect. A sense of fear is culminated into the mind of the people. This fear turns into the reluctance in the people to be vaccinated. This concept is popularly known as Vaccine Hesitancy.

VACCINE HESITANCY

Vaccine hesitancy is defined by the WHO Strategic Advisory Group of Experts (SAGE) on Immunization as the “delay in acceptance or refusal of vaccines despite availability of vaccination services”⁵⁴. Vaccine-hesitant individuals are “fence sitters”, who are “characterized by uncertainty and a

lack of confidence in vaccines, but who may still support vaccination in some respects”.⁵⁵

It is an irony that despite the perception of the vaccination as the most successful health measures, it is perceived as unsafe and unnecessary. There are numerous reasons for the same. Firstly, the attitude of the society is changing towards science and scientific expertise. Secondly, the spread of misinformation plays a major role. Even if a slight side effect may have taken place, it will be presented as a storm in a teacup.

Antivaxxers has a huge potential to change the vaccine from boon to bane. They have the power to influence the large population from taking vaccine. This will in turn create more vaccine-hesitant individuals. The WHO named vaccine hesitancy as one of the top ten global health threats for 2019, stating that it “threatens to reverse progress made in tackling vaccine-preventable diseases”⁵⁶.

In such a situation, question arises as to how do a reluctance of a group of people affects the human

⁵⁴ World Health Organization, Strategic Advisory Group of Experts on Immunization. Report of the SAGE working group on vaccine hesitancy (2014). https://www.who.int/immunization/sage/meetings/2014/october/SAGE_working_group_revised_report_vaccine_hesitancy.pdf?ua=1.

⁵⁵ Rossen I, Hurlstone MJ, Dunlop PD, Lawrence C. Accepters, fence sitters, or rejecters: moral profiles of vaccination attitudes. *SocSci Med*. 2019;224:23–7.

⁵⁶ WHO. Ten threats to global health in 2019 (undated). <https://www.who.int/emergencies/ten-threats-to-global-health-in-2019>.

rights of the people amidst the battle against corona

ANALYSIS

Vaccine hesitancy is significantly perilous to the existing fight against the virus. As has been elaborated above, there are a plethora of reasons that have sprouted this notion of hesitancy. And this very apprehension of getting vaccinated can be evaluated on the touchstone of constitutional paradigms. *Firstly*, Article 19(1)(a) of the Indian constitution fosters 'right to know' and lays ground for advocating 'informed consent' of the people at large. Treading on this facet of the fundamental right to speech and expression, it becomes rational for the people to be hesitate before getting a vaccine because of the paucity of settled and confirmed information. Since the plague is caused by a mutant virus, the predictability quotient of the impact of this virus and the efficacy of the remedy invented remains limited even at the behest of the developed scientific techniques.

Secondly, it is quite obvious now that every right has a correlative duty. In *State of Rajasthan v. Union of India*⁵⁷, the court iterated that "In strict sense, legal rights are correlatives of legal duties and are defined as interests whom the law protects by imposing corresponding duties on others." Therefore, exercising their right to know will be accompanied with their correlative duty to not to put others in danger of catching this deadly virus.

Also, India being a welfare state, it becomes its responsibility to provide for the public health of the people. According to Article 21 read with the Directive principles of State of policies⁵⁸, public health forms a crucial part of the action plan that any welfare state makes. And to fulfil the objective 'public health' is a reasonable restrictions envisaged in Article 19(2) on the freedom of speech and expression. This implies that this fundamental right can be halted if such a right is weighed against public health.

Lastly, the notion of 'basic rights' holds utmost significance in the instant case. According to Henry Shue, 'basic rights are those minimum demands that each person can claim against the rest of the humanity, or the line beneath which no one is

virus.

allowed to sink."⁵⁹ He expounds right to personal security and subsistence as equivalent to the basic rights. Logically following, right to health and protection against the deadly virus will easily fall under the subsistence and personal security paradigms of basic rights. Therefore, even according to the theory of basic rights, vaccine hesitancy lingers like a sword over the head of individual's basic right of protection and sustenance.

Rampancy of vaccine hesitancy not only slows down the vaccination drive so as to immunise the substantial amount of population across the nation to prevent community spread but it also endangers the plausibility of eradicating this disease from the country. It is quite clear that such a goal can only be envisioned if the nation stands united against it and even a speck of dilemma can hinder the success of this mission.



⁵⁷ *State of Rajasthan v. Union of India*, AIR (1977) SC 1361.

⁵⁸ INDIA CONST. art. 38, 39.

⁵⁹ Henry Shue, "Basic Rights: Subsistence, Affluence and U.S. Foreign Policy", 2nd ed., Princeton University Press (1996).

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