

Right to privacy as right to life

In the Supreme Court's [right to privacy judgment](#) (*Justice K.S. Puttaswamy v. Union of India*), [Justice D.Y. Chandrachud held](#): "Life and personal liberty are inalienable to human existence... The human element in the life of the individual is integrally founded on the sanctity of life... A constitutional democracy can survive when citizens have an undiluted assurance that the rule of law will protect their rights and liberties against any invasion by the state and that judicial remedies would be available to ask searching questions and expect answers when a citizen has been deprived of these most precious rights."

In 2014, Delhi University professor G.N. Saibaba was arrested under the Unlawful Activities (Prevention) Act and held in Nagpur Central Jail till the [Supreme Court granted him bail in 2016](#). In March 2017, he was convicted by the Gadchiroli sessions court to [life imprisonment for alleged offences](#) under the same Act, and returned to custody in the Anda cell of Nagpur Central Jail. His appeal against the conviction is pending before the High Court in Nagpur. While the grounds of his conviction are debatable, the immediate concern is regarding the question of miscarriage of justice on other grounds. Mr. Saibaba has severe disabilities and multiple related health conditions and has high support needs. Placing him in solitary confinement with no support violates his right to life, bodily integrity and autonomy under Article 21, although his conviction only imposes restraints on personal liberty. This inhuman treatment is punishment far in excess of the sentence awarded by the court.

It is now time to ask searching questions about the sentence, and appeal to the court for the application of constitutional due process so as to not endanger his right to life.

The deplorable conditions in Indian prisons are well known. It is settled law now that prisoners may be deprived of personal liberty according to procedure established by law, but that does not include a derogation of their right to dignity. The privacy Bench reiterated the words of Justice Krishna Iyer in the *Prem Shankar Shukla* case: "The guarantee of human dignity, which forms part of our constitutional culture, and the positive provisions of Articles 14, 19 and 21 spring into action when we realise that to manacle man is more than to mortify him; it is to dehumanise him and, therefore, to violate his very personhood, too often using the mask of 'dangerousness' and security..." and that the right to life cannot be restricted to mere "animal existence". How do we begin to understand the sanctity of life, dignity and bodily integrity for a person with disabilities? If handcuffing is an extraordinary and excessive restraint on an ordinary prisoner, what constitutes excessive restraint beyond the writ of law for a person with disabilities?

The Supreme Court holds unequivocally that in adopting the Constitution, the people of India do not surrender the most precious aspects of the human persona — namely life, liberty and freedom — to the state on whose mercy these rights would depend. Each of these aspects — life, liberty and freedom — must be considered together and/or severally as the case may be. Where there is a sentence on personal liberty, the citizen does not surrender his life to the mercy of the state.

If, as the right to privacy judgment asserts, privacy "as an integral part of the right to human dignity is comprehended within the protection of life as well", it is necessary for every court to develop a sensibility towards and understanding of what constitutes human dignity and protection of life for persons located differently in the social order. For, an important aspect of this judgment, which is now law in India, is respect for human diversity and pluralism.

Albeit with reference to a different case, the court observed that neither the fact that very few persons bear certain attributes nor the test of "popular acceptance... furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protection". Mr. Saibaba

may well be the only person in his situation. That in itself is reason for the courts to intervene actively in his favour and remove him immediately from this precarious situation of precarity and irreversible harm.

Entitled to bail

In the light of the decision of the Supreme Court on the right to privacy, particularly its comments on the *Suresh Kumar Koushal* judgment on Section 377 of the Indian Penal Code and the habeas corpus case, one cannot help but hope that the Nagpur High Court, in considering Mr. Saibaba's appeal against his conviction, similarly examines the judgment and deliberates on the relationship between fact, law, popular rhetoric and proportionality therein.

Most importantly, however, it is hoped that the court examines disability as a ground for the grant of bail, as distinct from (but related to) "medical grounds". This entails, according to the Rights of Persons with Disabilities Act, 2013, "respect for inherent dignity, individual autonomy... and independence of persons" and "accessibility". Section 2(s) of the Act defines a person with disability as "a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others." In conditions of custody, such persons must be protected from any hindrance to the exercise of bodily integrity and autonomy with dignity — this lies at the core of his right to privacy. Unavailability of such a guarantee within custodial facilities entitles the prisoner with disabilities to bail.

Mr. Saibaba's predicament is best described in his own words: "I am frightened to think of the coming winter... As temperature goes down excruciating pain continuously in my legs and left hand increases. It is impossible for me to survive here during the winter that starts from November... I am living here like an animal taking its last breaths. Somehow eight months I managed to survive. But I am not going to survive in the coming winter. I am sure. It is of no use to write about my health any longer..."

"No one understands 90% disabled person is behind bars struggling with one hand in condition and suffering with multiple ailments. And no one cares for my life. This is simply criminal negligence, a callous attitude." (Extract from his letter to his wife dated October 17, 2017.)

At the time of his conviction and the proceedings so far, we did not have the constitutional wisdom of the privacy Bench before us. In weighing the question of restraint on personal liberty against the risk to life, bodily integrity and dignity, the court scene in *The Merchant of Venice* spins into view: "Therefore prepare thee to cut off the flesh/Shed thou no blood, nor cut thou less nor more/But just a pound of flesh." A Daniel, come to judgment.

Kalpana Kannabiran is Professor and Director, Council for Social Development, Hyderabad

The definition of harassment needs to be constantly updated, and the process for justice made more robust

END

Downloaded from crackIAS.com

© **Zuccess App** by crackIAS.com