

FROM THE READERS' EDITOR

## Shades of grey in the right to be forgotten



A S PANNEER SELVAN

One of the consequences of living in a digital era is that a court ruling in one part of the world may trigger a reaction elsewhere. Following the ruling of the Court of Justice of the European Union against the search engine Google in the "Right to be Forgotten" case, there has been a spike in takedown requests. I have been receiving mails from readers, PR agencies, corporates and litigants seeking the removal of a story from *The Hindu* archives.

The requests are not restricted to old news items but include some recent high-profile reports of companies who lost out following the de-allocation of coal blocks by the Supreme Court. A builder wanted to remove the name of the building in which a fatal accident happened. Another writer wanted to take down a report of a court proceeding, as the case was later resolved through an out-of-court settlement. A writer from Delhi wanted to remove the web link for a story because a political party was using the report during the election to fix its opponents.

First, let's look at the background to the European Union's Court ruling. A Spanish citizen, Costeja González, was in financial trouble way back in 1998, and his home loan foreclosure notices appeared in a Spanish newspaper *La Vanguardia*. But because the original purpose of the notice to attract a potential buyer had lapsed, he wanted the newspaper to remove them. He lodged a complaint with the Agencia Española de Protección de Datos (Spanish Data Protection Agency, the AEPD) against the newspaper and against Google. The AEPD rejected the complaint against *La Vanguardia*, taking the view that the information in question had been lawfully published by it. On the other hand, the complaint was upheld as regards Google Spain and Google Inc, and the two companies were requested "to withdraw the data from their index and to render access to the data impossible in the future." The case was escalated to the Spanish National Court, and later referred to the Court of Justice of the European Union.

### Important aspects of EU Court ruling

The EU Court's ruling covered three important aspects: the territoriality of EU rules, the applicability of EU data protection rules to a search engine and the right to be forgotten. The court ruled that even if the physical server of a company processing data is located outside Europe, EU rules apply to search engine operators if they have a branch or a subsidiary in a Member State which promotes the selling of advertising space offered by the search engine. On the applicability of EU data protection rules to a search engine, it maintained that search engines are controllers of personal data and Google therefore cannot escape its responsibilities before European law when handling personal data by saying it is a search engine. EU data protection law applies and so does the right to be forgotten. On the question of the right to be forgotten, the European Court held that individuals do have the right — under certain conditions — to ask search engines to remove links with personal information about them. However, it maintained that the right to be forgotten is not absolute and it always needs to be balanced with other fundamental rights, such as the freedom of expression and of the media.

The way Google responded to this ruling has raised many ethical and philosophical questions. A recent article in *The Guardian* by Julia Powles, a researcher in law and technology at the University of Cambridge, and Enrique Chaparro, an information security specialist of an Argentine digital rights organisation, talked about how Google determined our right to be forgotten, in the wake of the judgment, and what society loses when a private corporation rules public information. They argue that forgetting and remembering are complex, messy, human processes and that our minds reconstruct, layer, contextualise and sediment in a way that is vastly different from the world wide web. They cite the original research paper presented by Google founders Sergey Brin and Larry Page to draw our attention to the real problem: the black box algorithms of the search engines. Ms. Powles and Mr. Chaparro explain how the search engines take the entire corpus of unrelated, uncontrollable documents on the web and give it perpetual, decontextualised freshness.

The important takeaway from their article is: "The point of having rights against search engines is not to manipulate memory or eliminate information, but to make it less prominent, where justified, and combat the side effects of this uniquely modern phenomenon that information is instantly, globally, and perpetually accessible." And this provides the rationale for *The Hindu's* policy on takedown requests.

Reports that have been published are factual accounts of events and have met the editorial standards of the newspaper. The archives section of the newspaper's website is a repository of reportage and articles published at different points of time. The governing policy is to neither withdraw nor alter the content when the reporting itself was not in error or vitiated by any other factors. As the issue here is one of Internet search engines bringing up the material from a link, it essentially needs to be addressed to the search engines, and not the publisher of the material. The newspaper, based on its editorial judgment, may consider follow-up reporting if any subsequent developments warrant one. *The Hindu's* exemplary tradition of a general daily newspaper of record also comes from the fact that it studiously refrains from altering its published content.

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## Pakistan moves to widen its tax net

Pakistan has begun chasing wealthy tax-dodgers who enjoy lives of extravagance and luxury, but revenue officials face huge challenges in trying to force the very richest — and most influential — to pay up.

Pakistan's tax-to-GDP ratio of 9.5 per cent is among the lowest in the world and the government is under pressure from foreign donors and lenders, including the International Monetary Fund (IMF), to increase collection to boost the struggling economy. Revenue authorities say they have identified about a quarter of a million new taxpayers who they project will add around 14 billion rupees (\$140 million) to government coffers.

### Key election pledge

Broadening the tax base and improving the economy after years of drift and sluggish growth under the last government was a key pledge in Prime Minister Nawaz Sharif's 2013 election campaign, when he was swept to power for a third time.

Currently less than one per cent of Pakistanis pay income tax and the government collected just \$8 billion in total income tax in the 2013-14 fiscal year — barely enough to cover just the country's defence expenditure of \$7 billion.

The finance ministry is aiming to boost the tax-to-GDP ratio to 15 per cent in the current fiscal year ending June 30. As part of those efforts, the Federal Bureau of Revenue (FBR) is compiling lifestyle and vehicle data to trace unregistered taxpayers, including wealthy landlords and businessmen zipping between their luxury homes in imported Mercedes. We are collecting information from the vehicle registration authority, car fish.— AFP

manufacturers, utility companies, telecom companies and property registration offices and tracing people who are not paying any tax," FBR spokesman Shahid Hussain has said.

The data is used to generate profiles of potential taxpayers, after which demands are issued for them to pay income tax.

"FBR has already issued notices to 261,250 potential tax payers," said Mr. Hussain, adding that new taxpayers have paid 570 million rupees since the crackdown started. It is not just dodgy businessmen who have been caught — several lawmakers have been found paying either no tax or very little and not filing their mandatory annual tax statements.

The FBR has taken punitive measures against some "chronic defaulters", freezing nearly 300 bank accounts, seizing more than 100 vehicles, putting 78 properties up for sale and issuing arrest warrants in 40 cases.

"Employing information technology, the FBR is creating a central database which would contain information about all taxpayers and nobody will be left undetected," Mr. Hussain said. But Pakistan is a country where wealth and political influence go hand in hand. For generations, landowners and industrialists have given patronage to political parties and scant attention has been paid to their assets by the taxman. Changing this arrangement is tricky. Umar Cheema, an investigative journalist for Pakistani daily *The News* who has done several major exposes on tax-dodgers, says the FBR's commitment is encouraging, but he does not expect them to net any big fish.— AFP

# The banality of evil revisited

*India's Daughter*, by telling us how particular rapists think, forces us to confront that this is what many men, from every demographic across the country, say

Vasundhara Sirnate

Hannah Arendt wrote *Eichmann in Jerusalem: A report on the banality of evil* in 1963, a report on the trial of Adolf Eichmann, the Nazi officer charged with carrying out the Reich's "Final Solution." She wrote of Eichmann, "Despite all the efforts of the prosecution, everybody could see that this man was not a "monster," but it was difficult indeed not to suspect that he was a clown." She found him quotidian, almost unremarkable. She, controversially, did not believe him to be a fanatic or a sociopath, but described him as someone who had made stupid choices for professional advancement.

*India's Daughter*, a reconstructive documentary by Leslee Udwin on the Nirbhaya gang rape, that has now been banned by the Bharatiya Janata Party government, essentially presents the "monsters" that raped the woman as everyday men, like Arendt presented Eichmann. In doing so, the film offers a damning portrayal of Indian patriarchy and misogyny.

Some years ago, a friend confided in me that in a fit of rage her husband had shouted that he wished she would be gang raped because she deserved it. Then he paused and said, "No, I think I want something worse than that to happen to you. I want you to die."

I watched *India's Daughter* before the government banned it. As I listened to the rapist explain how he and the others thought about women, I realised there was little difference between them and this husband. But that's where the similarity ended. He was an upper caste male, an IIT aristocrat living in Silicon Valley, studying at a top business school. The only other difference was that he never acted on his thoughts.

### Problematic documentary

*India's Daughter* is problematic on many counts. First, the appeals process of the rapists, sentenced to death in 2013, is still on. There is good reason to fear that the release of the documentary could hurt the appeal. However, while the trial was ongoing, no one raised the argument that the mobs outside the Delhi court, which were baying for the blood of the rapists, were hurting the actual trial and sentencing.

The second problem comes from those who say that the film is orientalist and colonial. Yes, a non-Indian person made the film, and her gaze on Indian society is not as nuanced as an Indian's would be, especially an Indian steeped in critical and social theory. But none of these is a ground for dismissing the film or banning it.

Third, the film is said to glorify the



**COMMON FACTOR:** "This sameness of Indian male behaviour across professions, classes, caste and religion is the context in which the film should be seen." Picture shows participants of a rally to protest incidents of molestation and abuse in Allahabad. — FILE PHOTO: AP

### One of the strongest feminist voices comes from the girl's father, while a patriarchal voice comes from the wife of one of the accused

rapists and promote voyeurism. However, believing that is to misread the film. The film is not focussed on rape victims. Udwin is trying to understand why rapists rape. This is not unlike the work of Mahmood Mamdani (*When Victims Become Killers*) and Scott Strauss, who have tried to understand the Rwandan genocide also from the point of view of those who killed. It is not unlike what the Behavioural Sciences Unit of the Federal Bureau of Investigation does in the United States. Also, if there is a charge of voyeurism, should depictions of Auschwitz cease completely, because they may prompt people to become neo-Nazis?

The film gives the rapists a voice and in doing so shows them as ordinary boys capable of unspeakable horror. Bollywood

has done far more to propagate rape culture through its Chikni Chamelis and Munnis than Udwin's film does (which has a very limited reach since the average Indian does not watch BBC documentaries). Even "Ranjhanaa," a film released after the anti-rape agitation, glorifies stalking, thus bearing testimony to how little the movement changed mindsets, even while it achieved far-reaching legal reforms. Heroines in Bollywood films are constantly scripted to reward the attentions of a stalker, a sexual harasser and a male who steals their dupattas. Fathers are scripted like Rapunzel's abductor; they lock their daughters in the house, who then has to wait for rescue.

Udwin's voice is conspicuous by its absence in the film. She does not judge what the men say. The men range from the rapists to the defence lawyers for the rapists. They say things like, "Ours is a great culture. There is no place for women in it." A lawyer says that he would burn his daughter in front of his whole family if she engaged in premarital intercourse. Another likens a woman to a flower and later to a piece of jewellery. One of the strongest feminist voices comes from the girl's

father, while a decidedly patriarchal voice comes from the wife of one of the accused, who asks why no one is bothered about her protection. A husband, she says, has to protect his wife. If her husband is sentenced to death, who will protect her?

The film tells us how these particular rapists think. In doing so, however, we are forced to confront that this is what we have heard men from every demographic say, across the country. This is why it has become a political problem. It is frankly embarrassing for a political class that talks about "India Shining" and "Make in India" and empty parrots the words "women's empowerment" to have this seen internationally. Meenakshi Lekhi said that the film would deter tourism, while Venkaiah Naidu stated that the film was part of an anti-India conspiracy.

### Age-old thinking

This thinking has existed in India for centuries — much before Udwin made this film. Khaps in India have been saying such things about women for a long time. One of the defence lawyers asks why his clients have been singled out for punishment when many sitting Members of Parliament have rape charges against them. The rapist, Mukesh Singh, also uses the cliché, "it takes two to clap." He questions the woman's character, asking if a 'decent' girl would be out on the streets that late. In doing so, he echoes Hindu godmen who have said similar things. For instance, Asaram Bapu said, "The victim daughter is as guilty as the rapists. She should have called them brother and begged them to stop." Ram Sewak Palka, a member of the Chhattisgarh BJP unit said, "No one commits rape intentionally. It happens by mistake."

We are still a country where many believe that women have lesser intrinsic worth. Between the rapists in the film who tried to "teach her a lesson," some of our political leaders, NRI aristocrats and male relatives, rioters who use rape as a weapon against women, unconstitutional village councils that sanction gang rape, policemen who violate women in custody, and the Army that has been accused of rape in Kashmir and the Northeast, there is a stunning and shocking sameness.

This sameness of Indian male behaviour across professions, classes, caste and religion is the context in which the film should be seen. The film only tries to understand one case, but in doing so it helps to reflect on how ordinary men are capable of stomach churning violence, no moral capacity, and remain unaware — like the rapist in the film — that they have done something monstrous.

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## 'I am not a fly-by-night operator'

If you ban something, the first thing you do is to make every person in the world see a pirated version, says film-maker Leslee Udwin

Leslee Udwin, Director of the controversially banned documentary *India's Daughter*, was back in London for a few days before leaving for New York, where her film will be formally released on March 9. Her voice hoarse with fatigue, Ms. Udwin responded to the issues the film has raised. Excerpts from an interview with Parvathi Menon.

**Your film has been banned in India for an interview with an accused rapist, and for "showing India in a bad light". How do you respond to that?**

The ban is utterly beyond my comprehension because what this film says is like a mirror held up to what Prime Minister Modi has said in all his statements about gender equality since he came to power. He has spoken about resetting the moral compass in India, about supporting women attain equality, and finding ways to educate women, has total synergy with the film. We are saying the same thing.

**You had appealed directly to Mr. Modi to repeal the ban. Did you hear from him?**

We haven't heard from Mr. Modi yet. The government is inviting the world to point fingers at India, and call it undemocratic and unconstitutional. Why are they doing this? Why are they intent on committing international suicide? All I want to say to the world through my film and campaign is this: India led by example, now follow India's lead.

This film can still be shown if they change their mind by tomorrow night [International Women's Day]. India will then be holding its head high to move forward with an agenda to put women in the spotlight of getting equality — which is unfinished business the world over.

**Why focus on India when gender discrimination and rape is a global issue?**

It was not the horrific rape that made me come to India. The extraordinary, courageous and unprecedented protests that followed made me think: "My God, they are fighting for my rights in India." I was so grateful. I have myself been raped. It is not surprising — one in five women globally have been raped. So I



**TRANSPARENT:** "We never did any secret filming. As a world-renowned producer who has won a British Oscar, I would never do a thing like that." — PHOTO: AP

### I can tell you hand-on-heart that we have not paid one rupee to anyone we interviewed

am one of the 20 per cent. The supreme irony is that my film has got statistics at the end of it of offences against women in every country in the world. By their ban, the government forced the BBC version, and not the India version, to be leaked onto YouTube. If you ban something, the first thing you do is to make every person in the world see a pirated version. And that is what has happened. The tragedy for me is that the pirated copy that went up on YouTube does not have the global statistics, as BBC Storyville has a house style that doesn't allow them to put statistics on a film.

So now the YouTube version has got so many heads that I am trying every day to cut them down with a sword. My team

has pulled down the online version thousands of times because I want to obey that ban, as it is India's law. But unfortunately it has now got into Torrent.

**How do you respond to the allegation that you did not follow due legal processes?**

I am a producer of 20 years standing who does her due diligence. I am not a fly-by-night operator. I followed the legal due process in every respect. I complied with the permissions: they are cast iron. A five-person committee from Bihar was constituted to look at the raw, unedited footage. On December 9 and 10, they saw every frame of the 16-hour footage.

So I got permission to film the doctors, I got permission from the police, I got permission from the Ministry of Home Affairs and Bihar jail; and consent from Mukesh Singh to shoot that interview.

On the issue of the interview being

sub-judice, I sought the opinion of at least five senior High Court and Supreme Court lawyers, who each told me verbally that the film would not prejudice the hearings. I then commissioned a legal opinion (which I paid for) from two senior and well-known ex-Supreme Court judges. They too said there is nothing in the documentary that could prejudice the Supreme Court case.

I also took the risk of showing the film to the state prosecution team, because if even one piece of evidence in the film could prejudice the case, I could never live with myself for the rest of my life. The team said the documentary is one hundred per cent accurate to the case. "We are amazed by how balanced it is," they said.

**What about the allegation that you made the film for commercial gain, that you paid Mukesh Singh for the interview, and that he did not know he was being filmed?**

I will not allow them to besmirch my name and say that I made it for commercial gain. I came using my own money and I am now in personal debt for £120,000 and rising. I gave it free to NDTV, because I told myself that I would not make a penny out of the Indian version. And I can tell you hand-on-heart that we have not paid one rupee to anyone we interviewed.

We never did any secret filming. As a world-renowned producer who has won a British Oscar, I would never do a thing like that.

**Are the parents of Nirbhaya still with you?**

Absolutely. Just two days ago I got a message from the father that made me cry. "When you walk the right path, there will be obstacles, there will be thorns" he said.

The parents agreed to her name being mentioned in the international version, but not in the Indian one. At least a year ago the father told me: "I am not ashamed. It is wrong that rape should adhere to the rape victim. She suffered enough without shame being put on her. It is the rapist who carries the shame, and the society that the rapist has been encouraged by. All of them deserve that shame." parvathi.menon@thehindu.co.in