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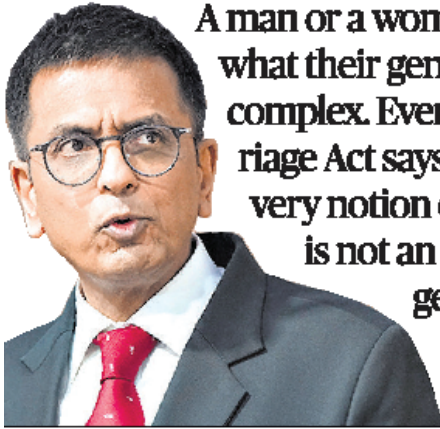
SAME-SEX UNION: SC TO SEE IF SPECIAL MARRIAGE ACT CAN BE DEEMED GENDER-NEUTRAL



There is no absolute concept of a man or an absolute concept of a woman at all..

A man or a woman is not a definition of what their genitals are, it is far more complex. Even when the Special Marriage Act says 'man' and 'woman', the very notion of a man and a woman is not an absolute on what genitals you have.

D.Y. CHANDRACHUD
Chief Justice of India



The Supreme Court on Tuesday cut short the Union government's "value judgment" that genitals decided whether a person was a man or a woman, saying there was no "absolute concept of a man or an absolute concept of a woman" and that gender was "far more complex" than one's genitals. A Constitution Bench headed by Chief Justice of India D.Y. Chandrachud was responding to the Centre's argument that laws, including the Special Marriage Act, recognised only heterosexual marriages between a "biological man and a biological woman".

Senior advocate Mukul Rohatgi, leading the arguments for the petitioners who are seeking legal recognition of same-sex marriages through a broader reading of the Special Marriage Act by interpreting it as gender-neutral, said the petitions were not delving into the personal laws of religions, but only seeking a wider interpretation of the Act to include same-sex marriages.

The court said it was proceeding on an "incremental canvas" in the case. "Incremental changes in issues of societal ramifications is a better course to take. We will not step into personal laws. We will only examine if the Special Marriage Act can be interpreted in a manner to make it gender-neutral. Period," Justice S.K. Kaul on the Bench said.

At one point, the Chief Justice asked whether the court could develop a situation of a "civil union" and leave the legislature and society to evolve into a state of greater acceptance over the future.

At this, senior advocate Menaka Guruswamy and advocate Arundhati Katju intervened to point out that most legal rights flow from blood relationships and "full marriages". "Anything short of a full marriage, we will have to approach the court again and again for redressal of individual discriminations," Ms. Guruswamy submitted.

Mr. Rohatgi said that Ms. Guruswamy's submissions touched upon "absolute day-to-day issues".

"Do you know, My Lords, under the Income Tax Act, two partners cannot give gifts to each other without paying tax," he pointed out. Earlier, Chief Justice Chandrachud told Mr. Mehta: "You are making an important value judgment that the notion of a biological man and the notion of a biological woman is an absolute."

"But a 'biological man' means a biological man, it is not a notion," Mr. Mehta protested.

"Of course it is. There is no absolute concept of a man or an absolute concept of a woman at all... A man or a woman is not a definition of what their genitals are, it is far more complex. Even when the Special Marriage Act says 'man' and 'woman', the very notion of a man and a woman is not an absolute on what genitals you have," the CJI shot back.

Mr. Mehta continued to submit that a "biological man means the genitals one has", though adding that he did not want to use that "expression". He argued that the law differentiated between a man and a woman. "Your Lordships will have to otherwise decide that marriage is a fundamental right de hors (not including) the law," the Solicitor-General said. The government argued that society may not accept that same-sex marriages ought to be on a par with heterosexual marriages.

Justice Kaul said that it was "not mandatory that the whole society should accept something" for the court to recognise rights.

"But several Acts would become unworkable... I may have the biological attributes of a man, but I consider myself a woman... Should the Code of Criminal Procedure treat me as a woman then," Mr. Mehta questioned.

Mr. Rohatgi submitted, "Laws will change, society will evolve and the courts need to rule when called upon by citizens who seek recognition of their fundamental rights to equality and equal treatment to lead a dignified life... We seek a declaration that we have a right to get married. This should be recognised by the state by virtue of an imprimatur of the court. Our right should be made part of the Special Marriage Act. Once that happens society will recognise that we have equal rights. Then two people can hold hands and walk in the streets without social stigma following them everywhere."

Senior advocate Kapil Sibal, for Jamiat Ulema-i-Hind, said that the court should either go into everything or nothing or not examine the issue "piecemeal", leaving confusion in its wake.

"The immediate question here before you is not the right to equality, dignity, privacy of LGBT persons. The question is the right of conferment of socio-legal status and whether that can be done by judicial adjudication," Mr. Mehta said.

He said the court should not leave "a few windows open" as this would pave the way for all the doors and even the entire house to open in the future.

"The windows are willingly going to open, no matter what we decide... The windows have already started opening up," Chief Justice Chandrachud responded.

Mr. Mehta said that the "acceptance of any relationship by the society is never dependent on legislation or judgments".

"It can come from only within the society," he said.

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INDIA, RUSSIA AGREE TO DEEPEN TRADE AND ECONOMIC RELATIONS

India and Russia discussed "trade deficit" during the India-Russia Inter-governmental Commission on Trade, Economic, Scientific, Technological and Cultural Cooperation (IRIGC-TEC). The meeting on Tuesday was co-chaired by Denis Manturov, Deputy Prime Minister and Minister of Trade and Industry from Russia, and External Affairs Minister S. Jaishankar.

"The sides reviewed the entire gamut of bilateral trade and economic relationship, and agreed to work together to unlock its full potential including addressing the trade deficit and market access issues," the MEA's press note read.

Speaking at a business event organised by the FICCI on Monday, Mr.

Manturov flagged the issue of payments in bilateral trade that had deepened in the backdrop of the Western sanctions on Russia.

Apart from interacting with Mr. Jaishankar, the Russian Minister also met Union Commerce and Industry Minister Piyush Goyal, Finance Minister Nirmala Sitharaman and National Security Adviser Ajit Doval. "The visit is in continuation of the regular high-level dialogue between the two Sides," the note said.

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WHAT ARE THE LATEST DEVELOPMENTS IN YEMEN?

How did a prisoner swap come about between the two warring sides in Yemen? How many prisoners were released? Was this originally agreed upon in the 2018 Stockholm Agreement?

Hundreds of prisoners captured during the war in Yemen were reunited with their families between April 14 to 16 amid diplomatic efforts to halt the conflict, the Associated Press reported. The main warring sides in Yemen are the Iran-backed Houthis and the pro-Yemen government, Saudi-led coalition.

How did the prisoner swap happen?

The two opposing sides had in March agreed to release 887 detainees after a ten-day meeting in Switzerland. The parties also agreed to meet again in May to discuss more such releases, the International Committee of the Red Cross (ICRC) said in a press statement.

Flights of the ICRC carried 869 of the released detainees to six cities in Saudi Arabia and Yemen. An additional 104 detainees were released from Saudi Arabia to Yemen on Monday. The large-scale prisoner swap has given the people hope for a permanent ceasefire in Yemen.

What is the Stockholm Agreement?

The warring parties in control of parts of Yemen had signed the Stockholm Agreement in December 2018 whereby they had committed to freeing conflict-related detainees. The agreement brokered by the United Nations had three main components — the Hudayah agreement, the prisoner exchange agreement, and the Taiz agreement.

The Hudayah agreement included a ceasefire in the city of Hodeidah and other clauses like no military reinforcements in the city and strengthened UN presence. In November 2018, hundreds of people were killed in clashes in Hodeidah, an important port in Yemen, when government loyalists supported by a Saudi-led coalition launched an attack to oust the Iran-backed Houthi rebels from the Red Sea city.

The Taiz agreement includes the formation of a joint committee with

participation from civil society and the UN.

How did the war in Yemen begin?

The conflict in Yemen began in 2011 as part of the Arab Spring protests. President Ali Abdullah Saleh was forced to hand over power to his deputy, Abdrabbuh Mansour Hadi. Mr. Hadi found himself faced with an insurmountable task of tackling Yemen's economic and security problems. The Houthis, backed by Iran, took advantage of Mr. Hadi's weak control and captured the Saada province in the north, and then Sana'a, the capital of Yemen, in 2014.

The thought of Iran-backed Houthis in control of Yemen bothered neighbouring Saudi Arabia due to its differences with Iran. Saudi Arabia then led a coalition that included other Arab countries and sent troops to Yemen in 2015. However, they were unable to oust Houthis from Sana'a as well as from the north of the country.

The war has continued since then and has only ceased once in April 2022, when the Houthis and the Saudi-led coalition announced a two-month ceasefire ahead of Ramzan, the holy month of Islam. This was Yemen's first nationwide truce in six years, Deutsche Welle reported.

How has this affected Yemen?

According to the UN, Yemen is now the largest humanitarian crisis in the world with 80% of its population dependent on aid and protection. Over three million people have been displaced from their homes since 2015, and public service sectors like healthcare, water, sanitation, and education have either collapsed or are in a dire situation. Economically too, Yemen is in the trenches. It has lost \$90 billion in economic output and more than 6,00,000 people have lost their jobs. More than half of the country's population is living in extreme poverty.

LEAVE DECISION ON SAME-SEX UNION TO PARLIAMENT, SAYS GOVT.

'We are in charge,' says SC, responding to argument by Solicitor-General that 'five brilliant individuals' cannot make a decision for entire nation

The court battle for legal recognition of same-sex marriage began on Tuesday with a brief but intense sparring session between the Supreme Court and the Union government, which saw Chief Justice of India D.Y. Chandrachud sharply reminding the government that "we are in charge".

The remark from the CJI came in response to preliminary objections from the government, represented by Solicitor-General Tushar Mehta that "five brilliant individuals" cannot decide for the entire nation and create a "new socio-legal relationship" within the institution of marriage.

Mr. Mehta said the petitioners seeking legal recognition of same-sex marriage should first address the government's preliminary objection that Parliament, and not the court, should consider and decide the issue. "I am sorry, Mr. Solicitor-General, we are in charge... Don't tell us how to conduct our proceedings," the CJI said.

The Solicitor-General, however, pressed on, arguing that the petitions were not maintainable in the absence of including the States as parties to the case.

"Marriage is a subject in the Concurrent List of the Constitution. We cannot have one State opposing same-sex marriage and another legislating in

favour of it. Every State has separate rules under the Special Marriage Act or the Hindu Marriage Act. I or any other person in this court may have a clear view of the issue, but those are not the views of the nation... So let Parliament consider and decide this issue," he submitted.

Mr. Mehta said he would have to take instructions on the government's "further participation" in the case. Justice Sanjay Kishan Kaul intervened to ask, "Are you saying you will not participate in the proceedings? It does not look nice when you say the government will not participate." "I am saying this is not an issue to be decided by five brilliant individuals [the Bench] and five learned individuals [petitioners' lawyers] on this side..." Mr. Mehta said.

Senior advocates Mukul Rohatgi and K.V. Vishwanathan, for the petitioners, said their fundamental rights could not, and need not, wait for Parliament to legislate.

They made it clear that they do not want to touch upon the realm of personal laws, thus obviating the need to involve the States. Mr. Rohatgi said that he was only seeking an interpretation of the Special Marriage Act to include same-sex marriages.

INDIA, CHINA SNAP UP RUSSIAN OIL IN APRIL ABOVE 'PRICE CAP'

In full flow

The West fears that Kremlin is enjoying stronger revenues despite attempts to curb funds for Russia's military operations in Ukraine



- India and China have not agreed to abide by the G7's price cap
- West had hoped threat of sanctions might deter oil purchases
- Lower freight rates, smaller discounts for Urals against global benchmarks nudged the daily price of the grade back above the cap earlier in April

India has accounted for more than 70% of seaborne supplies of Urals grade so far this month, China for about 20%; average discounts were at \$13 per barrel to dated Brent in Indian ports

India and China have snapped up the vast majority of Russian oil so far in April at prices above the Western price cap of \$60 per barrel, according to traders and Reuters calculations.

That means the Kremlin is enjoying stronger revenues despite the West's attempts to curb funds for Russia's military operations in Ukraine.

India accounts for more than 70% of seaborne supplies of the Urals grade so far this month and China for about 20%, Reuters calculations show. Lower freight rates and smaller discounts for Urals against global benchmarks nudged the daily price of the grade back above the cap earlier in April from a period of trading below. India and China have not agreed to the price cap, but the West had hoped the threat of sanctions might deter purchases above the cap. Average discounts for Urals were at \$13 per barrel to dated Brent on a DES (delivered ex-ship) basis in Indian ports, according to traders.

The Urals price on a free-on-board basis in Baltic ports, allowing about \$2 per barrel of transport costs, has been slightly above \$60 per barrel so far in April, Reuters calculations show.

A MESSAGE FOR THE PLANNERS IN DEALING WITH THE DRAGON

Manmohan Bahadura retired Air Vice Marshal, was Additional Director General, Centre for Air Power Studies

China's recent move to 'allocate' names to places in Arunachal Pradesh is proof that Beijing wants to keep the India-China relations pot simmering, just short of a boil. While we have the Chinese Foreign Minister say that "... As neighbouring countries and major emerging economies, China and India have far more common interests than differences", we also have, besides the 'naming' farce, the denial of visas to some Indian media personnel who the Chinese consider to be 'unhelpful' in their reporting; this behaviour is nothing but 'creeping warfare,' perhaps a la the Sun Tzu kind.

Sun Tzu wrote that the acme of skill is winning without fighting. Should we then deduce that China is doing just that — a malicious engagement in a surreptitious manner? Or, are we giving more credence than is due to Beijing's supposed inclination to follow Sun Tzu's thoughts?

Articulations at the People's Congress

A commentary in the U.S. Army's West Point Modern War Institute, titled, "Sun Tzu's trap: the illusion of perpetual competition", considers China's President Xi Jinping as less of a Sun Tzu follower and cast more in a Maoist mould — a form that believes in power flowing through the barrel of a gun. And it is here that another recent article in the prestigious Foreign Affairs magazine (by two noted columnists, John Pomfret, a former Beijing bureau chief of The Washington Post, and Matt Pottinger, former U.S. Deputy National Security Adviser) gains credence.

The authors argue that Xi Jinping should be taken seriously when he says that he is preparing China for war. The article mentions war in relation to Taiwan, but a careful reading would show that Mr. Xi's articulations at the National People's Congress in March this year point more towards the larger implications of the thinking at the highest level in the Chinese government, i.e. the exhortation to work together, "dare to fight and be good at fighting", to break out of dependence on foreign technologies, and to get society to rally behind the People's Liberation Army and use the thrust towards 'unification of the motherland' as a stepping stone to making China great again. These statements are unexceptionable for any head of government to make, except that we need to be prepared for the tenor of the proclamations getting converted to kinetic activity vis-à-vis our own border problems with Beijing; remember, intentions can change overnight.

There have been border talks with China (the 17th instalment on December 20, 2022) and the by-now-usual post-talks statement of 'working

together to maintain peace'. Such long-drawn out negotiations for what appear to be purely tactical positions, have a different hue when viewed through a strategic prism. In a lecture in 1986, titled 'Moral principles and Strategic Interests', the then U.S. Secretary of State George Shultz, speaking on interlocation for advancing national interests, said that "negotiations are an euphemism for capitulation if the shadow of power is not cast across the bargaining table". He added that for authoritarians, the gun is always on the table and for the side without cards or a hand to play, negotiations are an illusion. Is there a message in this for New Delhi vis-à-vis its hard power preparations, in the midst of the meandering talks, to meet Beijing's challenge?

Defence committee's remarks

In the recent past, there has been exhaustive media coverage on arms procurement by our services from domestic players. However, closer scrutiny would show that assets that would carry the war to the adversary are missing from the publicity blitz underway. This has been critically commented-on too by the Parliamentary Standing Committee on Defence, in its March 2023 report. The Indian Air Force (IAF) is a case in point, whose deterrent and striking power would be vital in any India-China conflict. The committee has commented adversely on the slow production rate of the Tejas fighter by Hindustan Aeronautics Limited and noted the IAF's urgent need to make up its dwindling squadron numbers through the 114 Multi Role Fighter Aircraft project. Similar observations have been made for hardware procurement for the Indian Army (modernisation of 45% equipment which is in the vintage category) and Indian Navy (requirement of a third aircraft carrier). The committee has acknowledged that funds are scarce, but has recommended that allocation for defence should be 3% of GDP to maintain India's deterrent posture.

What is odd, however, is the statement of the Defence Secretary (responsible for acquisitions and for the defence of India, as per allocation of business rules) who was of the opinion that the current allocation is sufficient. This is indeed surprising, for if it is true, then why the utter scramble for emergency armament purchases from abroad after every skirmish on the border?

As we enter another election year, the decision makers are sure to be aware that power talks — and talks decisively. The ongoing one-year-plus Russia-Ukraine conflict has shown that power is not just about possessing capability but also about the capacity-to-last-the-distance too. India's acquisition plans must be oriented accordingly.

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NAGALAND'S MUNICIPAL TIGHTROPE

On March 28, the Neiphiu Rio-led Nagaland government preferred to be in contempt of the Supreme Court than face the wrath of the community-based organisations by repealing the Nagaland Municipal Act of 2001. This led to the cancellation of the State Election Commission's March 9 notification for holding elections to Nagaland's 39 urban local bodies (ULBs) with 33% of the seats reserved for women. The apex court has however, stayed the notification cancelling the civic body polls. It was in this year, for the first time, that Nagaland elected two women to power in the recent Assembly elections.

Why is there opposition to ULB polls?

Nagaland is arguably the only State where ULB seats are not reserved for women as mandated by clause IV of the 74th Amendment to the Constitution of India. Most of the traditional tribal and urban organisations oppose the 33% reservation of seats for women as they argue that such reservation would violate the special provisions granted by Article 371A of the Constitution to Nagaland. The Article states that no Act of Parliament would apply to the religious or social practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga customary law, and ownership and transfer of land and its resources. The hohos (apex tribal bodies) point out that women have traditionally not been part of decision-making bodies.

Have such polls ever been held in Nagaland?

The first and only civic body election in Nagaland was held in 2004 without any reservation of seats for women. The State government amended the 2001 Municipal Act in 2006 to include 33% reservation for women in line with the 74th Amendment. This triggered widespread opposition forcing the government to indefinitely postpone the ULB polls in 2009. Efforts to hold the elections in March 2012 met with strong protests and in September 2012, the State Assembly passed a resolution to exempt Nagaland from Article 243T of the Constitution which is related to the reservation for women. This resolution was revoked in November 2016 and elections to the civic bodies with 33% reservation were notified a month later. The notification led to widespread mayhem in which two people were killed in large-scale violence and arson.

This made the government declare the process to conduct election null and void in February 2017.

Why did the govt. decide on ULB polls this time?

Under pressure from the Supreme Court, the Rio government laid the ground for holding ULB polls after consultations with various stakeholders, including churches, NGOs, and tribal bodies in March 2022. The State Election Commission on March 9 notified that the polls would take place on May 16. The tribal bodies and civil society organisations threatened to boycott the polls until the "borrowed" Municipal Act of 2001 factoring in women's reservation is "reviewed and rewritten in complete consonance of the voice of the Naga



The Kohima Municipal Council in Nagaland. kmc.nagaland.gov.in

How is Nagaland caught between the Supreme Court and community-based organisations on reservation of seats to women in local body elections? What are the special provisions granted by Article 371A of the Constitution to Nagaland? Has a local body election ever taken place in the State?

people" so that it does not infringe upon Article 371A. The government succumbed to public pressure and repealed the Municipal Act with immediate effect as the people "cannot be compelled" to participate in the elections.

What is the way forward?

The groups against reservation for women want a "guarantee" that the 33% quota would not violate the provisions of Article 371A. Before "rushing to conduct" the ULB elections, they suggested that the duration of the reservation should be capped at two tenures and demanded that the post of chairperson should not be reserved for women. The Naga Mothers' Association (NMA) said that the State government erred in not listening to or consulting with women's organisations before taking the decision to repeal the Municipal Act.

On April 17, the Supreme Court pulled up the Nagaland government for adopting an "ingenious method" of repealing the Municipal Act to evade the undertaking given to the court for holding the polls.

The apex court also noted "nothing has so far emerged (with respect to Article 371A) to advance a plea that religious or social practices of Nagas or Naga customary law and procedure denies the right of equality to women insofar as the participatory process is concerned in such elections".

IT'S BILKIS TODAY, IT CAN BE ANYBODY TOMORROW: SC

Supreme Court vs Gujarat govt.

March 27: SC directs Centre and Gujarat to be 'ready with the relevant files regarding the grant of remission' to Bilkis Bano case convicts

April 18: After seeking time to complete pleadings and citing incomplete translation of records, Centre and Gujarat inform court that they are 'seeking review of the March 27 order' and claiming privilege



Are you saying the State government has immunity from producing the documents in court? Documents have been shown to us in even graver matters of national concern... If you cannot show reasons [for remission], we will draw our own conclusions

- JUSTICE K.M. JOSEPH



'What were the standards you applied for the remission,' Justice K.M. Joseph asks the Centre and Gujarat who refused to submit files on the remission of 11 convicts in gang-rape and murder case

The Supreme Court's view that they are in contempt did not faze the Centre and Gujarat, which brought the official files concerning the remission granted to 11 life convicts in the Bilkis Bano gang rape case to the courtroom on Tuesday, only to jointly claim privilege over the contents. Appearing before a Bench of Justices K.M. Joseph and B.V. Nagarathna, Additional Solicitor General S.V. Raju said he had "instructions" that the Centre and the State were "considering" a review petition against a March 27 order of the top court to be "ready with the relevant files regarding the grant of remission" on April 18. The court explained it was important for it to examine the records to see whether the State government had independently applied its mind to all the relevant factors before granting remission to 11 men sentenced to life imprisonment for the gang rape of Bilkis Bano and the "horrendous mass murder" of her family members during the 2002 riots.

"Today it is this lady, tomorrow it can be me or you... What were the standards you applied for the remission? Same standards should apply to all. What happens to my brother and sister should be of great concern to me," Justice Joseph told Mr. Raju, appearing for both the Centre and Gujarat.

Mr. Raju said the State had indeed applied its mind but was claiming privilege (exemption from disclosing information).

"Are you saying the State government has immunity from producing the documents in court? Documents have been shown to us in even graver matters of national concern...", Justice Joseph noted.

"If you cannot show reasons [for the remission], we will draw our own conclusions about your reasons... We will say your reasons do not hold water ... You are in contempt... What is the reason for not showing them to the court? Why are you shying away?" Justice Joseph asked.

Justice Nagarathna reasoned that the Centre and Gujarat would anyway have to show

the documents to make a case for review. Review petitions are usually filed before the same Bench whose order is under challenge.

"So why not show the files today? You will be on a better footing," Justice Nagarathna asked.

Mr. Raju, pressing his hand on a stack of paper, said he had the files "ready" with him as directed by the court, but the Centre and Gujarat "wished" to file a review first.

"The State and Centre wish to file a review against the order directing them to be 'ready' with the files?" Justice Joseph asked.

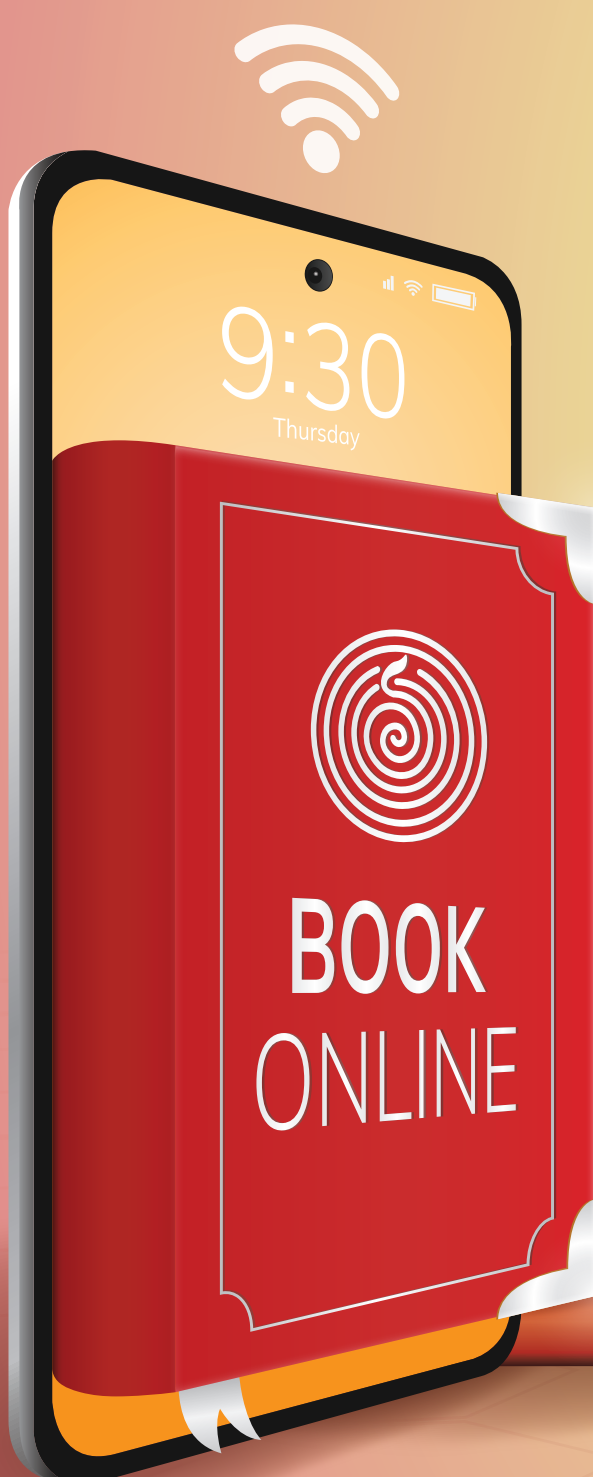
The law officer later went on to change tune, saying that he had not

seen the files himself. "I will consider [filing the review petition]... I have not decided to file".

Initially in the hearing, Mr. Raju sought an adjournment citing a delay in getting the records translated from Gujarati. He also said pleadings were still incomplete in the case.

At the end of the hearing, when asked by the court when he would file the review petition, Mr. Raju said rather cryptically, "If I am there, we will file it on Monday. Otherwise, I am not there".

The court scheduled the next hearing on May 2 for final disposal.



The advertisement features a smartphone with a red book cover displayed on its screen. The book cover has the Vedhik logo and the text "BOOK ONLINE". Above the phone is a white Wi-Fi symbol. To the right of the phone, the text "VEDHIK IAS ACADEMY" is written in bold, with "The New Learning Mantra" in a smaller font below it. Further right, the text "MASTER THE NEW LEARNING MANTRA" is written in large, bold, red letters. At the bottom right, the website "www.vedhikiasacademy.org" is displayed. The background is a gradient of yellow and orange with a subtle geometric pattern.



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