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by

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1. Summoning The House : Governor vs Chief Minister

The political crisis in Rajasthan has raised several questions of constitutional interpretation and morality. A key question that arose is
whether the governor, in exercise of his powers under Article 174, could defy or delay in heeding to the advice rendered by council of ministers headed by chief minister .

Article 174 of the Constitution provides that "The governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session." Does this mean, the Governor has discretion to summon the House as per his discretion disregarding the advice of the council of ministers headed by the CM?
A five-judge bench of the Supreme Court in Nabam Rebia judgment (July 2016) had scrutinised the provision in the draft constitution and its final version as Article 174 and ruled - "we are satisfied in concluding, that the governor can summon, prorogue and dissolve the House, only on the aid and advice of the council of ministers with the chief minister as the head. And not on his own."

Further down the judgment, the 5-judge bench appeared to attach a significant explanation to its terse interpretation of the governor's powers on summoning the House. It had said, "We are of the view, that in ordinary circumstances during the period when the chief minister and his

council of ministers enjoy the confidence of the majority of the House, the power vested with the governor under Article 174, to summon, prorogue and dissolve the House(s) must be exercised in consonance with the aid and advice of the chief minister and his council of ministers. In the above situation, he is precluded from taking an individual call on the issue at his own will, or in his own discretion."

"In a situation where the governor has reasons to believe that the chief minister and his council of ministers have lost the confidence of the House, it is open to the governor, to require the chief minister and his council of ministers to prove their majority in the House, by a floor test. Only in a situation, where the government in power on the holding of such a floor test is seen to have lost the confidence of the majority, would it be open to the governor to exercise the powers vested with him under Article 174 at his own, and without any aid and advice," it had ruled.

Besides,there are numerous judgments of the SC which bars the governor from taking a decision in Raj Bhawan on whether a government enjoyed the confidence of the House or not. The SC has repeatedly ruled that test of strength has to be on the floor of the House.

2. Hindu Succession Act: Apex court verdict on women's property rights

The Supreme Court recently expanded on a Hindu woman's right to be a **joint legal heir and inherit ancestral property** on terms equal to male heirs.

A three-judge Bench headed by Justice Arun Mishra ruled that a Hindu woman's right to be a joint heir to the ancestral property is by birth and does not depend on whether her father was alive or not when the law was enacted in 2005. The Hindu Succession (Amendment) Act, 2005 gave Hindu women the right to be coparceners or joint legal heirs in the same way a male heir does. "Since the coparcenary is by birth, it is not necessary that the father coparcener should be living as on 9.9.2005," the ruling said.

The Mitakshara school of Hindu law codified as the Hindu Succession Act, 1956 governed succession and inheritance of property but only recognised males as legal heirs. The law applied to everyone who is not a Muslim, Christian, Parsi or Jew by religion. Buddhists, Sikhs, Jains and followers of Arya Samaj, Brahmo Samaj are also considered Hindus for the purposes of this law.

In a Hindu Undivided Family, several legal heirs through generations can exist jointly. Traditionally, only male descendants of a common ancestor along with their mothers, wives and unmarried daughters are considered a joint Hindu family. The legal heirs hold the family property jointly.

Women were recognised as coparceners or joint legal heirs for partition arising from 2005. Section 6 of the Act was amended that year to make a daughter of a coparcener also a coparcener by birth "in her own right in the same manner as the son". The law also gave the daughter the same rights and liabilities "in the coparcenary property as she would have had if she had been a son".

The law applies to ancestral property and to intestate succession in personal property — where succession happens as per law and not through a will.

The 174th Law Commission Report had also recommended this reform in Hindu succession law. Even before the 2005 amendment, Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu had made this change in the law, and Kerala had abolished the Hindu Joint Family System in 1975.

While the 2005 law granted equal rights to women, questions were raised in multiple cases on whether the law applied retrospectively, and if the rights of women depended on the living status of the father through whom they would inherit. Different benches of the Supreme Court had taken conflicting views on the issue. Different High Courts had also followed different views of the top court as binding precedents.

In Prakash v Phulwati (2015), a two-judge Bench headed by Justice A K Goel held that the benefit of the 2005 amendment could be granted only to "living daughters of living coparceners" as on September 9, 2005 (the date when the amendment came into force).

In February 2018, contrary to the 2015 ruling, a two-judge Bench headed by Justice A K Sikri held that the share of a father who died in 2001 will also pass to his daughters as coparceners during the partition of the property as per the 2005 law.

Then in April that year, yet another two-judge bench, headed by Justice R K Agrawal, reiterated the position taken in 2015.

These conflicting views by Benches of equal strength led to a reference to a three-judge Bench in the current case. The ruling now now overrules the verdicts from 2015 and April 2018. It settles the law and expands on the intention of the 2005 legislation "to remove the discrimination as contained in section 6 of the Hindu Succession Act, 1956 by giving equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have".

The court looked into the rights under the Mitakshara coparcenary. Since Section 6 creates an "unobstructed heritage" or a right created by birth for the daughter of the coparcener, the right cannot be limited by whether the coparcener is alive or dead when the right is operationalised. The court said the 2005 amendment gave recognition of a right that was in fact accrued by the daughter at birth. "The conferral of a right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application, they confer benefits based on the antecedent event, and the Mitakshara coparcenary shall be deemed to include a reference to a daughter as a coparcener," the ruling said.

The court also directed High Courts to dispose of cases involving this issue within six months since they would have been pending for years.

3. EWS Quota: Referral to constitution bench

The Supreme Court has **referred to a five-judge Constitution Bench** a batch of petitions challenging the 103rd Constitution Amendment of 2019 that provides 10% reservation for Economically Backward Section (EWS).

The amendment provides for 10% reservation in government jobs and educational institutions for EWS, by amending Articles 15 and 16 that deal with the fundamental right to equality. While Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, Article 16 guarantees equal opportunity in matters of public employment. An additional clause was added to both provisions, giving Parliament the power to make special laws for EWS

like it does for Scheduled Castes, Scheduled Tribes and Other Backward Castes. The states are to notify who constitute EWS to be eligible for reservation.

What does the reference mean?

A reference to a larger Bench means that the legal challenge is an important one. As per Article 145(3) of the Constitution, "the minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution" shall be five.

The Supreme Court rules of 2013 also say that writ petitions that allege a violation of fundamental rights will generally be heard by a bench of two judges unless it raises substantial questions of law. In that case, a five-judge bench would hear the case.

. The SC had refused to stay the 103rd Amendment. A reference will make no difference to the operation of the EWS quota.

The law was challenged primarily on two grounds. First, it violates the Basic Structure of the Constitution. This argument stems from the view that the special protections guaranteed to socially disadvantaged groups is part of the Basic Structure and that the 103rd Amendment departs from this by promising special protections on the sole basis of economic status. Although there is no exhaustive list of what forms the Basic Structure, any law that violates it is understood to be unconstitutional.

The petitioners have also challenged the amendment on the grounds that it violates the SC's 1992 ruling in Indra Sawhney & Ors v Union of India, which upheld the Mandal Report and capped reservations at 50%. In the ruling, the court held that economic backwardness cannot be the sole criterion for identifying backward class.

Another challenge has been made on behalf of private, unaided educational institutions. They have argued that their fundamental right to practise a trade/profession is violated when the state compels them to implement its reservation policy and admit students on any criteria other than merit.

The Ministry of Social Justice and Empowerment filed counter-affidavits to defend the amendment. When a law is challenged, the burden of proving it unconstitutional lies on the petitioners.

The government argued that under Article 46 of the Constitution, part of Directive Principles of State Policy, it has a duty to protect the interests of economically weaker sections. “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation,” the law says.

On the challenge that the amendment violates the Basic Structure, the government argued that “to sustain a challenge against a constitutional amendment, it must be shown that the very identity of the Constitution has been altered”.

Countering the claims that the amendment violates the Indra Sawhney principle, the government relied on a 2008 ruling— Ashok Kumar Thakur v Union of India, in which the SC upheld the 27% quota for OBCs. The argument is that the court accepted that the definition of OBCs was not made on the sole criterion of caste but a mix of caste and economic factors, to prove that there need not a sole criterion for according reservation.

For the unaided institutions, the government argued that the Constitution allows the Parliament to place “reasonable restrictions” on the right to carry on trade.

What are the terms of reference framed by the court?

The SC agreed that the case involved at least three substantial questions of law, whether: economic criteria alone cannot be the basis to determine backwardness; the EWS quota exceeds the ceiling cap of 50% set by the court; the rights of unaided private educational institutions.

4. Sub-classification of scheduled castes

Can a state government sub-classify or sub-categorise Scheduled Castes in the state to ensure an equitable apportionment of reservations and greater representation of the weaker sections within the Scheduled Castes? This is the question that a constitution bench of the Supreme Court of India is posed with at the moment.

The constitution bench of five judges headed by Justice Arun Mishra concluded hearings in the case of *State of Punjab v. Davinder Singh* recently and is likely to pronounce a judgment

soon on whether the question needs to be referred to a larger bench. The reason for the likely referral is that a five-judge constitution bench of the Supreme Court had already dealt with this question in 2004 and answered in the negative.

In the case of *E.V. Chinnaiah* v. *State of Andhra Pradesh*, going against well-known and what would seem to be obvious wisdom, the Supreme Court held that the Scheduled Castes form one "homogenous" group and therefore any inter-se classification within the Scheduled Castes would be a violation of Article 14.

The court was dealing with a law passed by the Andhra Pradesh government based on the report of the Justice Ramachandra Raju Commission, which recommended sub-dividing the Scheduled Castes into four groups and apportioning reservations separately for each. This was to ensure that all communities within the Scheduled Castes, particularly those that have been oppressed and marginalised the most historically and have been deprived of the opportunities of education and formal employment, receive adequate and equitable representation in educational institutions and state services.

However, the court proceeded to strike down the law on the premise that the declaration of a caste as a Scheduled Caste in the presidential list issued under Article 341 meant that it became subsumed in the broad monolith and was to be treated at par with the other Scheduled Castes for all purposes.

This was obviously wrong. Dr B.R. Ambedkar described the Indian society as a gradation of castes forming an ascending scale of reverence (which he later amended to an ascending scale of "hatred") and a descending scale of contempt. As is the nature of any hierarchical structure, no two castes are equal and while the Scheduled Castes form one group owing their commonality to their shared experience of untouchability, there is a large gradation within the Scheduled Castes. The ones at the bottom of the ladder, those who have been most severely ostracised and subjugated, have not yet received the benefits of reservations as a tool to ensure their representation in society and government.

The nine-judge bench of the Supreme Court in the case of *Indra Sawhney* v. *Union of India* was cognisant of this and it held that it would be perfectly legal for the state to categorise backward classes as backward and more backward.

The Supreme Court has held in a slew of judgments such as *Subhash Chandra* (2009) that the term "backward classes" in Article 16(4) includes Scheduled Castes and Scheduled Tribes for all intent and purport. Therefore, the Supreme Court in *Indra Sawhney* paved the way for

sub-classification not only among the other backward classes (OBCs), which it was primarily dealing with, but also within the Scheduled Castes for the purpose of apportioning reservations.

Interestingly, but wrongly, the Supreme Court in *Chinnaiah* (mis)understood that the *Indra Sawhney* judgment applied only to OBCs and not to the Scheduled Castes

5. Arunachal: Sixth schedule status?

Arunachal Pradesh Assembly on recently resolved to persuade the Centre to include the frontier state in the Sixth Schedule of Constitution and amend Article 371(H) to protect the rights of its indigenous population.

The resolution was moved by Home Minister Bamang Felix and it said, "The legislative assembly resolves that the state of Arunachal Pradesh be included in the 6th Schedule of the Constitution to protect tribal rights of the indigenous people".

The assembly further resolves that the special provision with respect to the state be further strengthened by amending Article 371(H) by inserting provisions for protection of religious or social practices of the tribes of the state, customary law and procedure of the states tribes, administration of civil and criminal justice involving decisions according to customary law of the tribes and ownership and transfer of land and its resources, it said.

The Sixth Schedule deals with provisions for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram. It seeks to safeguard the rights of the tribal populations through the formation of Autonomous District Councils.

Arunachal Pradesh bordering Bhutan, China and Myanmar come under the Fifth Schedule, which deals with provisions related to the administration and control of scheduled areas and scheduled tribes.

Article 371(H) has special provisions in respect of the governor and the total seats in its assembly.

Chief Minister Pema Khandu taking part in the discussion said that Arunachal Pradesh has many tribes but not adequate laws to protect tribal rights.

6. National Recruitment Agency

The Union Cabinet chaired by Prime Minister Narendra Modi has decided to set up **a National Recruitment Agency (NRA).** The proposed NRA will conduct a common preliminary examination for various recruitments in the central government.

Why is the NRA needed?

As of now, aspirants have to take different exams that are conducted by various agencies for central government jobs. According to Department of Personnel and Training, on an average 2.5 crore to 3 crore aspirants appear for about 1.25 lakh vacancies in the central government every year.

As and when it will be set up, the NRA will conduct a common eligibility test (CET) and based on the CET score a candidate can apply for a vacancy with the respective agency.

Initially, it will organise a CET to screen/shortlist candidates for the Group B and C (non - technical) posts, which are now being conducted by the Staff Selection Commission (SSC), Railways Recruitment Board (SSC) and Institute of Banking Personnel Selection (IBPS). Later on, more exams may be brought under it.

The agency will have representatives from SSC, IBPS and RRB. The test will be conducted for three levels: graduate, higher secondary (12th pass) and the matriculate (10th pass) candidates. However, the present recruitment agencies– IBPS, RRB and SCC — will remain in place. Based on the screening done at the CET score level, final selection for recruitment shall be made through separate specialised Tiers (II, III, etc.) of examination which shall be conducted by the respective recruitment agencies. The curriculum for CET would be common.

To make it easier for candidates, examination centres would be set up in every district of the country. A special focus will be on creating examination infrastructure in the 117 'Aspirational Districts'. The government says that the move will benefit the poor candidates, as in the present system they have to appear in multiple examinations conducted by multiple agencies. They have to incur expenditure on examination fees, travel, boarding, lodging and other things. The single examination is expected to reduce the financial burden on such candidates.

The CET score of a candidate shall be valid for a period of three years from the date of declaration of the result. The best of the valid scores shall be deemed to be the current score of the candidate. While there will be no restriction on the number of attempts to be taken by a candidate to appear in the CET, it will be subject to the upper age limit. However, the relaxation in the upper age limit shall be given to candidates of SC/ST/OBC and other categories as per the extant policy of the Government.

The CET will be conducted in multiple languages.

The government says that a single eligibility test would "significantly reduce" the recruitment cycle. Even some of the departments have indicated their intention to do away with any second-level test and go ahead with recruitment on the basis of CET scores, Physical Tests and Medical examination, say sources.

7. National Council for Transgender persons

In exercise of the powers conferred by section 16 of the Transgender Persons (Protection of Rights) Act, 2019 , the Central Government has constituted a National Council for Transgender Persons vide notification dated 21st August, 2020. The Union Minister of Social Justice & Empowerment will be Chairperson (ex-officio) and Union Minister of State for Social Justice & Empowerment will be Vice-Chairperson (ex-officio).

The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons;

(c) to review and coordinate the activities of all the departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to redress the grievances of transgender persons; and

(e) to perform such other functions as may be prescribed by the Central Government.

The other members of the Council include representatives of various Ministries/Departments, five representatives of transgender community, representatives of NHRC and NCW, representatives of State Governments and UTs and experts representing NGOs.

A Member of National Council, other than ex officio member, shall hold office for a term of three years from the date of his nomination.

8. Parliamentary committees : Shashi Tharoor episode

BJP MP Nishikant Dubey has accused the Congress party's Shashi Tharoor, chairman of the Parliamentary Standing Committee on Information Technology, of violating Committee rules when he wrote to Facebook asking it to **appear before the committee**.

Dubey, a member of the panel, has argued that Tharoor did not follow the rule that an order signed by the Secretary-General of Lok Sabha is required to summon a witness. Tharoor has rejected as "extraordinary" the idea that the panel should not take up a matter of "such great public interest" —**allegations in *The Wall Street Journal*** that Facebook's top public policy executive in India had opposed applying hate-speech rules to BJP politicians because it could damage the company's business prospects in India.

Parliamentary Committees are considered an extension of Parliament and do a good deal of legislative business as both Houses of Parliament have limited time. Standing Committees, whose tenure is continuous throughout the tenure of the House, are appointed or elected by the House or nominated by the Lok Sabha Speaker or Rajya Sabha Chairman. They work under the direction of the presiding officers. There are 24 department/ministry-related Standing Committees of which 16 are serviced by Lok Sabha and eight by Rajya Sabha.

The ruling BJP has a majority representation in most of the committees.

Does it have the powers to summon Facebook?

The committee has the powers to send a letter to Facebook — or any institution — asking it to appear and give an explanation on a subject. The committee or chairman does not have executive powers, but calling a particular person or an institution as witness is possible. An invitation to appear before a Parliamentary Committee is equivalent to a summons from a court: If one cannot come, he or she has to give reasons which the panel may or may not

accept. However, the chairman should have the support of the majority of the members. Any member can call for a meeting to discuss this, and if the majority of the members do not agree, the chairman may have to cancel the summoning, said Subhash Kashyap, constitutional expert and former Secretary General of Lok Sabha.

Kashyap said that in the past, there were instances when the chairman summoned an individual or an institution, but with the ruling party having a majority, it was presumed that the majority was in his/her favour. The situation is different here — the BJP with the majority of members is opposing it.

The BJP argues that Tharoor neither took the consent of the Committee nor got approval from the Lok Sabha Speaker for his move. Dubey has argued that Tharoor has violated the rules. Rule 269 (1) — Rule 269 in Parliamentary Rule Book deals with the functions of the standing committee – says: "A witness may be summoned by an order signed by the Secretary-General and shall produce such documents as are required for the use of a Committee."

But as experts point out, the panel chairman can take decisions, especially when the House is not in session or when a meeting is not to take place in the immediate future, and especially when the matter is of great public interest as Tharoor has argued. But again, members can object and the majority can press the chairman to cancel the summons. The rule says a Committee shall have power to send for persons, papers and records, provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final. So, in this case the Speaker can support or reject Tharoor's move.

Tharoor has argued that the matter is of great public interest. Parliamentary panels across the world have expressed concern over the role of social media giants like Facebook, WhatsApp, Twitter etc over the dissemination of disinformation and fake news on these platforms. Parliamentary panels in the UK, US , Singapore etc have summoned these giants over online disinformation and the use of social media tools for political campaigns.

The report in the WSJ alleged that Facebook, which owns WhatApp (used extensively by BJP in recent elections), had favoured the party and refused to block anti-Muslim posts by BJP leaders fearing a backlash. Referring to hate-speech — a call for violence against minorities — allegedly by Telangana BJP MLA T Raja Singh, the report has cited "current and former" Facebook

employees as saying the intervention by Facebook public policy head Ankhi Das is part of a "broader pattern of favouritism" by the company towards the ruling party.
When the Election Commission sought their views over the conduct of polls in Bihar, a number of parties expressed concern that a digital campaign could give an undue advantage for leading parties, mainly the BJP.
During the tenure of the previous Lok Sabha, the IT panel – then headed by BJP's Anurag Thakur — had summoned Twitter India and asked it to submit its views on the subject of "safeguarding citizens' rights on social/online news media platform" after a volunteer group wrote to the committee, alleging the company was biased against right-wing Twitter accounts.

After the WSJ report, the **Congress sought** a Joint Parliamentary Committee probe – a demand repeated by the CPI (M) too – into the allegations made in the report.

9. Delhi Government vs LG Again?

A fresh round of confrontation seems to have erupted between the AAP government and lieutenant governor Anil Baijal after the elected dispensation rejected Delhi Police's proposal to appoint its choice of lawyers as special public prosecutors for the northeast Delhi riot and anti-citizenship amendment Act protest cases in the high court.
Using his special powers under the Constitution of India, Baijal has called the file from the AAP government, a source said.

Delhi Police on July 10 sent a proposal to the AAP government to appoint six senior lawyers, including Tushar Mehta and Aman Lekhi, to represent the prosecution in 85 cases, said a source.
But deputy chief minister Manish Sisodia, who is looking after the home department in absence of Satyendar Jain, rejected the proposal, stating Delhi government's standing counsel Rahul Mehra and his team was "capable" of representing the state and a separate appointment by the Centre was not required, the source said.

Sources called it a "deliberate" attempt by the Centre to take control of these cases in both lower courts and the high court. "It is the first time that a team of prosecutors appointed by Delhi Police, which reports to the Centre, will represent the state in both lower and higher

courts. The power to appoint the public prosecutors lies with the elected dispensation," a source said.

The LG had "forced" the AAP government to accept Delhi Police's proposal to appoint 11 public prosecutors to represent the state in lower courts in these cases in May, the source alleged. After Delhi government pointed out "technical irregularities", the LG had asked Delhi Police to nominate a new team. When the second proposal was also rejected, the LG, using powers under Article 239AA (4) of the Constitution, invoked the provision of "difference of opinion" and referred the matter to the President while allowing Delhi Police to go ahead with its team of public prosecutors in the lower courts.

10. Supreme Court on Official Languages Act, 1963

The Supreme Court recently advised the Narendra Modi government to amend the Official Languages Act, 1963 to allow publication of official notifications in languages other than Hindi and English.

The Act stipulates the government must publish notifications only in Hindi and English.

The bench was hearing the central government's appeal against the Delhi High Court's 12 August order asking the former to reply to a plea seeking contempt action against it for not publishing the draft Environmental Impact Assessment (EIA) notification, 2020, in 22 Indian languages.

The plea, filed by environmentalist Vikram Tongad, said the central government has wilfully disobeyed a judicial order to publish the draft EIA in all languages mentioned in the eight schedule of the Constitution within 10 days, starting 30 June.

The petition also said that various other environmental activists have criticised the government for releasing the draft EIA notification only in Hindi and English, and that too a couple of days before the lockdown was imposed on 24 March.

This had taken away the rights of citizens to file their objections, the petition added.

While the CJI's bench stayed the contempt notice against the government, it said that the spirit of the high court order was correct.

11. Contempt of court

Contempt of court, as a concept that seeks to protect judicial institutions from motivated attacks and unwarranted criticism, and as a legal mechanism to punish those who lower its authority, is back in the news in India. This follows the initiation of contempt proceedings by the Supreme Court of India, on its own motion, **against advocate-activist Prashant Bhushan**.

The concept of contempt of court is several centuries old. In England, it is a common law principle that seeks to protect the judicial power of the king, initially exercised by himself, and later by a panel of judges who acted in his name. Violation of the judges' orders was considered an affront to the king himself. Over time, any kind of disobedience to judges, or obstruction of the implementation of their directives, or comments and actions that showed disrespect towards them came to be punishable.

There were pre-Independence laws of contempt in India. Besides the early High Courts, the courts of some princely states also had such laws. When the Constitution was adopted, contempt of court was made one of the restrictions on freedom of speech and expression. Separately, Article 129 of the Constitution conferred on the Supreme Court the power to punish contempt of itself. Article 215 conferred a corresponding power on the High Courts. The Contempt of Courts Act, 1971, gives statutory backing to the idea.

The law codifying contempt classifies it as civil and criminal. Civil contempt is fairly simple. It is committed when someone wilfully disobeys a court order, or wilfully breaches an undertaking given to court. Criminal contempt is more complex. It consists of three forms: (a) words, written or spoken, signs and actions that "scandalise" or "tend to scandalise" or "lower" or "tends to lower" the authority of

any court (b) prejudices or interferes with any judicial proceeding and (c) interferes with or obstructs the administration of justice.

Making allegations against the judiciary or individual judges, attributing motives to judgments and judicial functioning and any scurrilous attack on the conduct of judges are normally considered matters that scandalise the judiciary. The rationale for this provision is that courts must be protected from tendentious attacks that lower its authority, defame its public image and make the public lose faith in its impartiality.

The punishment for contempt of court is simple imprisonment for a term up to six months and/or a fine of up to ₹. 2,000.

What is not contempt of court?

Fair and accurate reporting of judicial proceedings will not amount to contempt of court. Nor is any fair criticism on the merits of a judicial order after a case is heard and disposed of.

For many years, truth was seldom considered a defence against a charge of contempt. There was an impression that the judiciary tended to hide any misconduct among its individual members in the name of protecting the image of the institution. The Act was amended in 2006 to introduce truth as a valid defence, if it was in public interest and was invoked in a *bona fide* manner.

Is Prashant Bhushan guilty of contempt?

The Supreme Court bench of Justices Arun Mishra, B.R. Gavai, and Krishna Murari, in its judgment , found lawyer Prashant Bhushan guilty of contempt of court for two tweets which it said had shaken the "very foundation of constitutional democracy".

In the first tweet, the bench found Bhushan's statement that the CJI kept the Supreme Court in lockdown mode, denying citizens their fundamental right to access justice "patently false, scandalous and malicious". "It has the tendency to shake the confidence of the public at

large in the institution of judiciary and the institution of the CJI and undermines the dignity and authority of the administration of justice", the bench concluded.

The first tweet which the court found contemptuous, said:

"CJI rides a 50 Lakh motorcycle belonging to a BJP leader at Raj Bhavan Nagpur, without a mask or helmet, at a time when he keeps the SC in Lockdown mode denying citizens their fundamental right to access Justice!"

Dividing the tweet into two parts, the bench found that the first part dealing with the CJI riding a motorcycle without a mask or helmet was not contemptuous because it is a criticism of the CJI in his individual capacity. It is only the second part which, according to the bench, is false and has the tendency to shake the confidence of the public at large in the institution of the CJI and that of the judiciary.

A tweet, by the very fact that it cannot exceed 240 characters, has to be precise and brief, and therefore, devoid of qualifications, if its writer finds it unnecessary. In his reply affidavit, Bhushan has claimed that the CJI kept the court "virtually" in lockdown mode due to COVID fears (with hardly any cases being heard and those heard also by an unsatisfactory process through video conferencing).

More important, he didn't suggest that the CJI denied citizens their fundamental right to access justice, but that the lockdown mode – which he had to impose on the court, for want of an alternative – resulted in such deprivation. This is clearly the impression one would get if one reads Bhushan's reply affidavit. But Friday's judgment shows that the bench has not read it.

Many others, including former judges of the Supreme Court, have criticised the court's inability to secure the rights of the poor, marginalised and migrant workers to access justice during the lockdown. Therefore, the bench's move to find Bhushan alone guilty for making these remarks, while closing its eyes and ears to similar remarks made by others in other public platforms, makes one wonder whether it had been selective in invoking contempt jurisdiction against Bhushan.

Similarly, Bhushan also referred to widespread dissatisfaction among lawyers with the continued 'virtual' functioning of the court and made a fervent demand for early return, with safeguards, of its normal functioning. The bench has no explanation for why it found Bhushan's grievance contemptuous, while other stakeholders have expressed similar sentiments.

In any case, the bench didn't suggest that the linking of the non-contemptuous part of the tweet about the CJI riding the motorcycle with the court's functioning during the lockdown was the offence. Since such an inference was not drawn by the bench itself, it is not clear why it found him guilty.

The bench has clearly erred in analysing the tweet as it is, without considering his reply affidavit, which explains it. If the reply affidavit is not to be considered, why insist on it as part of the procedure and a sign of extending an opportunity of being heard?

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The bench's argument about the second tweet, likewise, has no legs to stand on. The text of this tweet reads:

"When historians in future look back at the last 6 years to see how democracy has been destroyed in India even without a formal Emergency, they will particularly mark the role of the Supreme Court in this destruction, & more particularly the role of the last 4 CJIs."

In its judgment, the bench clearly says that it is not concerned about the first part of the second tweet, wherein Bhushan refers to a possibility of future historians looking back at the last six years to see how democracy has been destroyed in India without a formal emergency. It is not concerned because the first part has nothing to do with the Supreme Court. But it is here that the bench's unstated and unarticulated leap in logic – which is otherwise clear to anyone who reads the judgment – gets particularly interesting.

In paragraph 67, the bench admits that the emergency era has been considered as the blackest era in the history of Indian democracy. Supposing if one says today, claiming to be a historian of that period, that the Supreme Court had played a dubious role in that era, with the then CJI playing an especially pliant role in aid of the executive, the current Supreme Court is not likely to consider it an offence of contempt of court.

This is because, in the bench's view, the emergency era is not contemporary history, and therefore, historians of today can freely express an opinion about that era now.

In addition, the current bench knows that the court itself in 2017 – while declaring privacy as a fundamental right in *Puttaswamy* – had overruled its previous decision in *A.D.M.Jabalpur v Shivkant Shukla,* delivered during the Emergency, which was widely perceived by contemporary analysts as well as (future) historians as having contributed to the eclipse of democracy during that era.

But supposing Bhushan had written – *during the Emergency* – that a future historian would surely find the Supreme Court's role in the era dubious for conniving at the destruction of democracy, would the court – *at that point of time* – be justified in considering such a statement contemptuous? And if it did, would Bhushan be allowed to cite facts to back his claim?

Coming back to the present, if Bhushan wishes to crystal gaze and predict what a future historian might say 45 years from today about the role the Supreme Court played in second decade of the 21st century – an era which has, to many, witnessed the weakening of democratic institutions – this should be considered his personal view, one to which he is surely entitled, whether one agrees or disagrees with it today.

Why is the bench so concerned with Bhushan's predictions about what future historians might say on the Supreme Court's role in contemporary politics? It is almost as if a sense of paranoia seems to have gripped the bench about what future historians may say, in the light of Bhushan's tweets. In other words, the bench has found Bhushan guilty because it fears he is right about what future historians will say. What those historians will say about the current Supreme Court is clearly not in the hands of the bench; but the bench believes it has the power to indict and punish someone who claims to have foreknowledge about what the future historian might say.

Ironically, by punishing Bhushan, the bench is unlikely to deter future historians from saying what Bhushan tweeted. If anything, future historians are likely to consider the punishment Bhushan receives for saying what he did as supporting evidence for such an assessment of our times.

In paragraph 68, the bench says that there cannot be any manner of doubt that the said tweet is directed against the Supreme Court, and tends to give an impression that the court has a particular role in the destruction of democracy in the last six years and the last four CJIs had a more particular role in the same. It is clear that the criticism is against the entire Supreme Court and the last four CJIs, the bench declares, as if it has made some discovery. Of course, it is.

The criticism is not against a particular judge but the institution of the Supreme Court and the institution of the CJI, the bench adds. The impression that the said tweet tends to convey is that the judges who have presided over the Supreme Court in the period of the last six years have played a particular role in the destruction of Indian democracy and the last four CJIs had a more particular role in it. None could have been clearer than the bench itself in its interpretation of the tweet.

But the bench missed the essential part: Bhushan attributes this perception to future historians, and he is entitled to do so, because it is his view. The bench may have a different view of how a future historian will consider the current Supreme Court of India. In answer to Bhushan's tweet, it should articulate its own view, perhaps by starting a new Twitter handle for the Supreme Court.

12. National Education Policy 2020

- The National Education Policy (NEP) 2020 was released on July 30, 2020. The Ministry of Human Resource Development (MHRD) had constituted a Committee for drafting the National Education Policy (Chair: Dr. K. Kasturirangan) in June 2017. The Committee submitted a draft NEP for public consultation in May 2019. The NEP will replace the National Policy on Education, 1986. Key aspects of the NEP include:

School Education

- **Restructuring school curriculum:** The NEP recommends that the existing structure of school education must be restructured to make it more relevant to the needs of students at different stages of their development. The current 10+2 structure of school education will be redesigned into a 5-3-3-4 design comprising: (i) five years of foundational stage (for ages 3 to 8), (ii) three years of preparatory stage (for ages 8 to 11 or classes three to five), (iii) three years of middle stage (for ages 11 to 14 or classes six to eight), and (iv) four years of secondary stage (for ages 14 to 18 or classes 9 to 12).

Figure 1: Revised school curriculum

<table>
<tr><th>Existing structure</th><th>Proposed structure</th></tr>
<tr><td>Not covered
(ages 3-6)</td><td rowspan="2">Foundational stage -
3 years of pre-primary (ages 3-6) + 2 years of Class 1-2 (ages 6-8)</td></tr>
<tr><td>Class 1-10
(ages 6-16)</td></tr>
<tr><td></td><td>Preparatory stage -</td></tr>
</table>

<table>
<tr><td rowspan="3"></td><td>Class 3-5 (ages 8-11)</td></tr>
<tr><td>Middle stage -
Class 6-8 (ages 11-14)</td></tr>
<tr><td rowspan="2">Secondary stage -
Class 9-12 (ages 14-18)</td></tr>
<tr><td>Class 11-12
(ages 16-18)</td></tr>
</table>

- **Early Childhood Care and Education (ECCE):** ECCE consists of play-based and activity based learning comprising of alphabets, language, puzzles, painting, and music for children in early years of their life. The Committee observed that over 85% of a child's cumulative brain development occurs prior to the age of six. It recommends that ECCE for children in the age group of 3-6 should be incorporated in the school structure by following the 5+3+3+4 design of school curriculum. ECCE will be delivered through: (i) stand-alone aanganwadis, (ii) aanganwadis located with primary schools, (iii) pre-primary sections in existing primary schools, and (iv) stand-alone pre-schools. Further, a national curricular and pedagogical framework for ECCE will be developed by the National Council for Education Research and Training (NCERT). Aanganwadi workers with senior secondary qualifications and above, will be given a six-month certification programme in ECCE.

- **Achieving foundational literacy and numeracy:** The Committee observed that a large proportion of the students currently enrolled in elementary school (over five crore) have not attained foundational literacy and numeracy (the ability to read and understand basic text, and carry out basic addition and subtraction). It recommends that every student should attain foundational literacy and numeracy by grade three. To achieve this goal, a National Mission on Foundational Literacy and Numeracy will be setup under the MHRD. All state governments must prepare implementation plans to achieve these goals by 2025. A national repository of high-quality resources on foundational literacy

and numeracy will be made available on government's e-learning platform (DIKSHA).

- **Ensuring universal coverage and inclusivity:** The Committee observed that while the Right to Education Act, 2009 has been successful in achieving near universal enrolment in elementary education, retaining children remains a challenge for the schooling system. It noted the declining gross enrolment ratio (GER) as students move to higher grades indicating large dropouts from the schooling system. GER denotes enrolment as a percent of the population of corresponding age group.

Further, it noted that the decline in GER is higher for certain socio-economically disadvantaged groups, based on: (i) gender identities (female, transgender persons), (ii) socio-cultural identities (scheduled castes, scheduled tribes), (iii) geographical identities (students from small villages and small towns), (iv) socio-economic identities (migrant communities and low income households), and (v) disabilities. It recommends that schemes/policies targeted for such groups should be strengthened. Further, special education zones should be setup in areas with significant proportion of such disadvantaged groups. A gender inclusion fund should also be setup to assist female and transgender students in getting access to education.

- **Reforms in curriculum content:** Curriculum load in each subject should be reduced to its essential core content to allow for critical thinking, discussion and analysis based learning. Students should be given more flexibility and choice in subjects of study, particularly in secondary school. A new and comprehensive national curricular framework for school education will be undertaken by NCERT in accordance with these principles. This framework can be revisited every five to ten years.

- **Medium of instruction:** The medium of instruction should be in the local language/mother tongue of the child at least till grade five, and preferably till grade eight (in both public and private schools). The current three language formula will continue to be implemented. However, there should be more flexibility in the formula, and no language should be imposed on any state. The three-language formula states that state governments should adopt and implement study of: (i) Hindi, English and a modern Indian language (preferably a southern language) in the Hindi-speaking states, and (ii) Hindi, English and the regional language in the non-Hindi speaking states. The NEP recommends that the three languages should be based on choice of states and students. However, at-least two of the three languages should be native to India. Further, Sanskrit should be offered as an option at all levels of education.

- **Assessment of students:** The Committee observed that the current nature of secondary school exams and entrance exams have resulted in coaching culture, which is causing harm to student learning. It recommends that the existing system of such exams be reformed. Board examinations should test only core concepts, and cover a range of

subjects. Students can choose their subjects, and will have the option to take the exams on up to two occasions during a given year. To track students' progress throughout their school experience, examinations will be conducted in grades three, five, and eight. The examination in grade three will test basic foundational literacy and numeracy, and its results will only be used for improvement of the school education system. Further, a National Assessment Centre will be setup under the MHRD as a standard setting body for student assessment and evaluation.

- **Teacher training and management:** The existing B.Ed. programme for teacher training will be replaced by a four-year integrated B.Ed. programme that combines high-quality content, pedagogy, and practical training. Further, teachers will be required to complete a minimum of 50 hours of continuous professional development training every year. A national curriculum framework for teacher education will be formulated by the National Council for Teacher Education, in consultation with NCERT. Teachers should not be engaged in non-teaching administrative activities and excessive teacher transfers should be stopped (unless in special circumstances as decided by state governments).

- **Effective governance of schools:** The Committee observed that establishing primary schools in every habitation across the country has helped increase access to education. However, it has led to the development of schools having low number of students (the average number of students per grade in elementary education was about 14 in 2016-17). The small size of schools makes it operationally and economically challenging to deploy teachers and critical physical resources (such as library books, sports equipment). The NEP recommends grouping schools together to form a school complex. The school complex will consist of one secondary school and other schools, aanganwadis in a 5-10 km radius. This will ensure: (i) adequate number of teachers for all subjects in a school complex, (ii) adequate infrastructural resources, and (iii) effective governance of schools.

- **School regulation:** Currently, the Department of School Education is responsible for all functions of governance and regulation of school education. The Committee observed that this leads to a conflict of interest and centralisation of power. It recommends that the Department should only be involved in policy making and overall monitoring, but not in regulation of schools. An independent State School Standards Authority should be set up in each state. It will prescribe basic uniform standards for public and private schools. A self-regulation or accreditation system will be instituted for schools.

Higher Education

- **Increasing GER:** The NEP aims to increase the GER in higher education to 50% by 2035 (GER was 26.3% in 2018). Institutions will have the option to run open distance learning and online programmes to improve access to higher education, which will improve GER in the country.

- **Restructuring of institutions:** All higher education institutions (HEIs) will be restructured into three categories: (i) research universities focusing equally on research and teaching, (ii) teaching universities focusing primarily on teaching, and (iii) degree granting colleges primarily focused on undergraduate teaching. All such institutions will gradually move towards full autonomy - academic, administrative, and financial. All HEIs should eventually be transformed into large multidisciplinary universities and colleges with 3,000 or more students. By 2030, there should be one multidisciplinary HEI in, or near every district.

- **Multidisciplinary education:** The curricula of all HEIs should be made multidisciplinary to integrate humanities and arts with science, technology, engineering and mathematics. The undergraduate degree will be made more flexible with multiple exit options with appropriate certification. For example: students will receive a certificate after one year, diploma after two years, bachelor's degree after three years, and bachelor's with research degree after four years. Further, an academic bank of credit will be established to digitally store academic credits earned from various HEIs for awarding degrees based on credits. HEIs will have the flexibility to offer different designs of masters' programmes. The M.Phil. programme will be discontinued.

- **Regulatory structure:** The regulatory structure of higher education in India will be overhauled to ensure that the distinct functions of regulation, accreditation, funding and setting academic standards are performed by separate, independent bodies. This will minimise conflict of interest and eliminate concentration of power. To ensure this, the Higher Education Commission of India (HECI) will be setup with four independent verticals: (i) the National Higher Education Regulatory Council as a single regulator (including teacher education, excluding legal and medical education), (ii) the National Accreditation Council for accreditation of institutions, (iii) the Higher Education Grants Council for financing of higher education institutions, and (iv) General Education Council for specifying the curriculum framework and learning levels for higher education. Disputes between the four vertical will be resolved by a body of experts under the HECI.

- **Improving research:** The Committee observed that investment on research and innovation in India is only 0.69% of GDP, compared to 2.8% in the USA, 4.2% in South Korea and 4.3% of GDP in Israel. The NEP recommends setting up an independent National Research Foundation for funding and facilitating quality research in India. Specialised institutions which currently fund research, such as the Department of

Science and Technology, Indian Council of Medical Research will continue to fund independent projects. The Foundation will collaborate with such agencies to avoid duplication.

- **Foreign universities:** High performing Indian universities will be encouraged to set up campuses in other countries. Similarly, selected top global universities will be permitted to operate in India. A legislative framework facilitating such entry will be put in place. Such universities will be given exemptions from regulatory and governance norms on par with autonomous institutions in the country.

- **Vocational education:** The Committee observed that less than 5% of the workforce in the age-group of 19-24 received vocational education in India during 2012-2017. This is in contrast to 52% in the USA, 75% in Germany, and 96% in South Korea. The NEP recommends that vocational education should be integrated in all school and higher education institutions in a phased manner over the next 10 years. A national committee for integration of vocational education will be setup under the MHRD for this purpose. The national skills qualifications framework will be detailed further for each discipline vocation and profession. The NEP aims to ensure that at-least 50% of learners in school and higher education should be exposed to vocational education by 2025.

Other recommendations

- **Financing education:** The NEP reaffirmed the commitment of spending 6% of GDP as public investment in education. Note that the first National Education Policy, 1968 had recommended public expenditure in education must be 6% of GDP, which was reiterated by the National Policy on Education, 1986. In 2017-18, public expenditure on education in India was 4.4% of GDP.

- **Adult education:** A national curriculum framework for adult education will be developed to cover five broad areas: (i) foundational literacy and numeracy, (ii) critical life skills (such as financial and digital literacy, health care and family awareness), (iii) vocational skills development, (iv) basic education (equivalent of middle and secondary education), and (v) continuing education (through engaging courses in arts, technology, sports and culture).

- **Technology in education:** The National Education Technology Forum (NETF) will be setup to facilitate decision making on the induction, deployment and use of technology. This Forum will provide evidence-based advice to central and state-governments on technology-based interventions.

- **Digital education:** Alternative modes of quality education should be developed when in-person education is not possible, as observed during the recent pandemic. Several interventions must be taken to ensure inclusive digital education such as: (i) developing two-way audio and video interfaces for holding online classes, (ii) creating a digital repository of coursework, learning games and simulations through virtual reality, (iii) use of other channels such as television, radio, mass media in multiple languages to ensure reach of digital content where digital infrastructure is lacking, (iv) creating virtual labs on existing e-learning platforms to provide students with hands-on experiment-based learning, and (v) training teachers on how to become high-quality online content creators.

Evaluation

The NEP proposes sweeping changes including opening up of Indian higher education to foreign universities, dismantling of the UGC and the All India Council for Technical Education (AICTE), introduction of a four-year multidisciplinary undergraduate programme with multiple exit options, and discontinuation of the M Phil programme.

In school education, the policy focuses on overhauling the curriculum, "easier" Board exams, a reduction in the syllabus to retain "core essentials" and thrust on "experiential learning and critical thinking".

In a significant shift from the 1986 policy, which pushed for a 10+2 structure of school education, the new NEP pitches for a "5+3+3+4" design corresponding to the age groups 3-8 years (foundational stage), 8-11 (preparatory), 11-14 (middle), and 14-18 (secondary). This brings early childhood education (also known as pre-school education for children of ages 3 to 5) under the ambit of formal schooling. The mid-day meal programme will be extended to pre-school children. The NEP says students until Class 5 should be taught in their mother tongue or regional language.

The policy also proposes phasing out of all institutions offering single streams and that all universities and colleges must aim to become multidisciplinary by 2040.

How will these reforms be implemented?

The NEP only provides a broad direction and is not mandatory to follow. Since education is a concurrent subject (both the Centre and the state governments can make laws on it), the reforms proposed can only be implemented collaboratively by the Centre and the states. This

will not happen immediately. The incumbent government has set a target of 2040 to implement the entire policy. Sufficient funding is also crucial; the 1968 NEP was hamstrung by a shortage of funds.

The government plans to set up subject-wise committees with members from relevant ministries at both the central and state levels to develop implementation plans for each aspect of the NEP. The plans will list out actions to be taken by multiple bodies, including the HRD Ministry, state Education Departments, school Boards, NCERT, Central Advisory Board of Education and National Testing Agency, among others. Planning will be followed by a yearly joint review of progress against targets set.

What does the emphasis on mother tongue/regional language mean for English-medium schools?

Such emphasis is not new: Most government schools in the country are doing this already. As for private schools, it's unlikely that they will be asked to change their medium of instruction. A senior ministry official clarified that the provision on mother tongue as medium of instruction was not compulsory for states. "Education is a concurrent subject. Which is why the policy clearly states that kids will be taught in their mother tongue or regional language 'wherever possible'," the officer said.

What about people in transferable jobs, or children of multilingual parents?

The NEP doesn't say anything specifically on children of parents with transferable jobs, but acknowledges children living in multilingual families: "Teachers will be encouraged to use a bilingual approach, including bilingual teaching-learning materials, with those students whose home language may be different from the medium of instruction."

How does the government plan to open up higher education to foreign players?

The document states universities from among the top 100 in the world will be able to set up campuses in India. While it doesn't elaborate the parameters to define the top 100, the incumbent government may use the 'QS World University Rankings' as it has relied on these in the past while selecting universities for the 'Institute of Eminence' status. However, none of this can start unless the HRD Ministry brings in a new law that includes details of how foreign universities will operate in India.

It is not clear if a new law would enthuse the best universities abroad to set up campuses in India. In 2013, at the time the UPA-II was trying to push a similar Bill, the top 20 global universities, including Yale, Cambridge, MIT and Stanford, University of Edinburgh and Bristol, had shown no interest in entering the Indian market.

Participation of foreign universities in India is currently limited to them entering into collaborative twinning programmes, sharing faculty with partnering institutions and offering distance education. Over 650 foreign education providers have such arrangements in India.

How will the four-year multidisciplinary bachelor's programme work?

This pitch, interestingly, comes six years after Delhi University was forced to scrap such a four-year undergraduate programme at the incumbent government's behest. Under the four-year programme proposed in the new NEP, students can exit after one year with a certificate, after two years with a diploma, and after three years with a bachelor's degree.

"Four-year bachelor's programmes generally include a certain amount of research work and the student will get deeper knowledge in the subject he or she decides to major in. After four years, a BA student should be able to enter a research degree programme directly depending on how well he or she has performed… However, master's degree programmes will continue to function as they do, following which student may choose to carry on for a PhD programme," said scientist and former UGC chairman V S Chauhan.

What impact will doing away with the M Phil programme have?

Chauhan said this should not affect the higher education trajectory at all. "In normal course, after a master's degree a student can register for a PhD programme. This is the current practice almost all over the world. In most universities, including those in the UK (Oxford, Cambridge and others), M Phil was a middle research degree between a master's and a PhD. Those who have entered MPhil, more often than not ended their studies with a PhD degree. MPhil degrees have slowly been phased out in favour of a direct PhD programme."

Will the focus on multiple disciplines not dilute the character of single-stream institutions, such as IITs?

The IITs are already moving in that direction. IIT-Delhi has a humanities department and set up a public policy department recently. IIT-Kharagpur has a School of Medical Science and Technology. Asked about multiple disciplines, IIT-Delhi director V Ramgopal Rao said, "Some of the best universities in the US such as MIT have very strong humanities departments. Take the case of a civil engineer. Knowing how to build a dam is not going to solve a problem. He needs to know the environmental and social impact of building the dam. Many engineers are also becoming entrepreneurs. Should they not know something about economics? A lot more factors go into anything related to engineering today.

13. Raising Age of marriage for girls

Prime Minister Narendra Modi announced in his Independence Day address that the government is reconsidering the legal marriage age for women, which currently stands at 18, but the proposal is said to have created divisions within the administration.

According to sources in the government, the proposal to review the age of marriage stems from a task-force set up in June by the Union Ministry for Women and Child Development to examine issues such as age of motherhood among girls, and the correlation between age of marriage and Maternal Mortality Ratio (MMR), Total Fertility Rate (TFR), Sex Ratio at Birth (SRB) and Child Sex Ratio (CSR), etc.

While MMR is a key indicator of maternal health in a country, TFR, SRB and CSR serve as yardsticks to make assessments about population and gender balance.

Supporters of the review say it may help keep the population in check and prevent women from being forced into early motherhood and its multiple complications, while opponents fear it will spell chaos.

Critics of the idea cite the example of women who become sexually active at 18, and say any increase in the age of marriage may push more of them out of the formal reproductive healthcare framework, given the stigma sex still courts in India.

It may also lead to an increase in the number of child marriage cases, they say, since the proposal also seeks to bring women aged 18-21 years into the bracket

Until last year, the government was veering towards reducing the age of marriage for men to 18 from the current threshold of 21, in order to bring parity between men and women.

However, sources said, it was subsequently decided that it would be better instead to increase the legal marriage age for women from 18 to 21, since that would also serve the purpose of bringing down population levels in the country — an issue that Modi touched upon in his 2019 Independence Day address.

It is further held that increasing the age would create "deeper discrepancy" in the law, which declares child marriage illegal but doesn't consider such a union void unless the partners involved challenge it.

"Right now, child marriages are voidable and not void by default…" . "But the Supreme Court, in 2017, had said that sex with a minor wife is rape — so, we are in a situation, where marriage with a girl of less than 18 years is not illegal, but sex with her is.

If you now increase the marriage age to 21, then it would lead to more confusion about the status of girls and women under 21 who are married.

To iron out these confusions, the government is said to be exploring a proposal to make child marriages void by default.

14. UTs of J&K and Ladakh: New Norms

The strength of the assembly in the union territory of Jammu and Kashmir will go up by seven seats, while the council of ministers will be trimmed to 10% of the total strength of the legislature.

These are among the major legal and constitutional changes that have been effected in the UT after the Centre read down Article 370 and divided the state into two UTs – J&K and Ladakh.

Assembly strength up by seven seats

Unlike Ladakh, the Act provides for an elected legislative assembly and council of ministers headed by the chief minister for the UT of J&K. As per the provisions, the total number of assembly segments will be increased by seven seats to 114, from the existing 107 seats. These 114 seats include 24 seats reserved for representatives from Pakistan-occupied Kashmir.

At present, the total strength of the assembly of the J&K UT is 83, after the deletion of the four assembly constituencies of Ladakh.

The delimitation of these 83 segments will now be decided by the Election Commission through the constitution of a delimitation commission to carve out seven more seats, and take total number of segments to 90.

An official said Jammu was likely to walk away with the lion's share of the new assembly seats. The delimitation of the assemblies was one of the long-pending demands of the Bharatiya Janata Party to end "discrimination" against Jammu.

While Kashmir, with a population of close to 80 lakh, at present has 43 assembly constituencies. Jammu has 37 segments, with a population of around 52 lakh.

The J&K state assembly had frozen the delimitation of assembly segments till 2026. As per the law, the first delimitation was to be carried after the first census post 2026, which is scheduled in 2031.

The official said the entire process of delimitation will be completed in the coming few months, ahead of the first elections in the UT of J&K.

Further STs were likely to get a new assembly seat. SCs already have a reservation in the assembly.

The assembly term will be six years instead of five.

“The Legislative Assembly may by law adopt any one or more of the languages in use in the Union territory of Jammu and Kashmir or Hindi as the official language or languages to be used for all or any of the official purposes of the Union territory of Jammu and Kashmir,” reads the J&K Reorganisation Act.

The reorganisation has, however, left the representation of the two UTs in Lok Sabha and Rajya Sabha unaffected.

While the UT of J&K will continue to have five MPs in the Lok Sabha, the UT of Ladakh will have one MP. Similarly, the UT of J&K will have four MPs in the Rajya Sabha.

Council of ministers trimmed

In the state of J&K, the cabinet had a strength of 24 members including the chief minister, cabinet ministers and junior ministers. The constitution of J&K had restricted the strength of the cabinet to 24 after the Ghulam Nabi Azad-led government amended the J&K constitution in 2006.

But in a major decision, the council of ministers in the UT of J&K shall not consist of more than 10% of the total number of members in the legislative assembly, with the chief minister at the head to aid and advise the lieutenant-governor.

The new arrangement implies that the total number of ministers in the cabinet including the chief minister shall not exceed 10.

The incumbent governor of J&K, Satya Pal Malik, will be the LG for both union territories for the period determined by the president.

House of elders abolished

With the reorganisation of the state, the J&K Legislative Council, also known as Upper House or House of Elders, has been abolished. The House comprised 34 members.

Common high court

The J&K high court shall be common for both UTs. The judges of the existing court shall become judges of the common high court, the Act says.

There will be a separate advocate general for the J&K UT. Besides, the Public Service Commission (PSC) for the existing state of J&K will continue to be the recruiting agency for the gazetted services of the J&K UT, while the UT of Ladakh shall come under the ambit of the Union Public Service Commission.

Central laws made applicable to UTs

As a state, J&K enjoyed a special position in the Union of India. It had its own constitution and except for defence, foreign affairs, communication and currency, the state assembly had the power to make laws on all subjects under Article 370.

Over the decades, however, many Central laws had been made applicable to the state – most recently the Goods and Service Tax Act.

Now, the UT of J&K will be under the Centre's direct rule. At least 106 new Central laws have become applicable to the UT. Some of them include the National Human Rights Commission Act, Central Information Act, the Enemy Property Act and The Prevention of Damage to Public Property Act

State law applicable to UTs with amendments

Under Article 35A of the constitution, which empowered the state legislature to define state subjects and grant exclusive rights to them, only permanent citizens of the state had exclusive rights to own property and apply for government jobs in the state of J&K.

Under the reorganisation Act, various laws related to owning land and property in the UT of J&K have been amended to omit different provisions.

Some of these laws include The Transfer of Property Act, The Jammu and Kashmir Alienation of Land Act, The Jammu and Kashmir Land Grants Act and The Jammu and Kashmir Agrarian Reforms Act. A total of seven such laws have been amended.

State laws repealed in UTs

As per provisions of the Act, at least 153 state laws have been repealed under the reorganisation Act, along with 11 under the Governor's Act. However, 166 state laws shall remain in force in the two UTs.

Centre notifies powers of LG and council of ministers

In the erstwhile state of Jammu and Kashmir, when it had special status, the chief minister was the most powerful person in the decision-making process. Now, the rules brought by the Centre for the government in the Union Territory of J&K make it unambiguously clear that the chief minister and her council of ministers would not have any say in matters related to the Indian Administrative Service, Indian Forest Service, Police and Anti- Corruption Bureau.

Reduced to an ornamental figure, the chief minister would not even have the power to transfer a constable of the Jammu & Kashmir Police.

Jammu and Kashmir does not have an elected chief minister since 2018 when the BJP-PDP government collapsed.

The Transaction of Business of the Government of Union Territory of Jammu and Kashmir Rules, 2019, notified by the Ministry of Home Affairs state that all proposals connected to public order, police and IPS officers will be submitted to the Lieutenant Governor.

Police, thus, will be a domain exclusive to the LG.

Now, the President of India will have the final say on any matter over which differences may arise between the LG and J&K's Council of Ministers.

"In case of difference of opinion between the Lieutenant Governor and the Council with regard to any matter, the Lieutenant Governor shall refer it to the Central Government for the decision of the President and shall act according to the decision of the President," reads provision 47 of the rules.

The LG of J&K has been empowered to pass directions in such situations that action taken by the Council of Ministers will be suspended for as long as it takes the President of India to decide on the cases referred to her.

"Where a case is referred to the Central Government in pursuance of rule 47, it shall be competent for the Lieutenant Governor to direct that action shall be suspended pending the decision of the President on such case or in any case where the matter, in his opinion, is such that it is necessary that immediate action should be taken to give such direction or take such action in the matter as he deems necessary," reads the Rules.

Under the Rules, the LG can refer any matter to the Council of Ministers in case of a difference of opinion between her and a minister of the Jammu and Kashmir Union Territory.

"Should the difference of opinion persist, the Lieutenant Governor may direct that the matter be referred to the Council, which shall consider the matter in its next scheduled meeting and shall convey its decision but not later than 15 days from the date of such reference," the Rules state.

"In case no such decision is received within 15 days from the date of such reference, the decision of the Lieutenant Governor shall be deemed to have been accepted by the Council of Ministers."

The new framework of governance in J&K states that the Lieutenant Governor shall make a prior reference to the Central government with respect to proposals of the following kinds:

- those affecting the relations of the Centre with any state government, the Supreme Court of India or any other high court;
- proposals for the appointment of Chief Secretary and Director General of Police;
- important cases which affect or are likely to affect the peace and tranquility of the Union Territory; and
- cases which affect or are likely to affect the interests of any minority community, Scheduled Castes or the Backward Classe
- The Business Rules have been notified nearly 10 months after Jammu and Kashmir started functioning as a Union Territory on October 31, 2019, following the J&K Reorganisation Act, 2019.

15. Padmanabhaswamy temple judgement 2020

In the Supreme Court's judgment in *Sri Marthanda Varma (D) Through Legal Representatives (LR) v. State of Kerala and others,* delivered on Monday, the word 'shebait" occurs 187 times and the word "shebaitship" occurs 72 times.

In the Kerala high court's judgment in the same case (*Uthradam Thirunal Marthanda Varma and Sree Padmanabhaswamy Temple v. Union of India and others*), delivered on January 31, 2011, the appeal against which was decided by the Supreme Court on Monday, the word 'shebait' occurs only once as an alternative to trustees, *archakas* or employees and the word 'shebaitship' doesn't occur at all.

Again, the Supreme Court's judgment refers to the Rulers of Indian States (Abolition of Privileges) Act, 1972 nine times, whereas the Kerala high court's 2011 judgment is completely silent on its relevance to the discussion.

These twin features succinctly explain why the Kerala high court found that the Travancore royal family was not entitled to manage the affairs of the Sree Padmanabhaswamy temple after 1991, whereas the Supreme Court bench comprising Justices Uday Umesh Lalit and Indu Malhotra, found the family perfectly qualified to do so.

The expression "shebait" is derived from "*sewa*" which means "service". Shebait, in literal sense, means one who renders sewa to the idol or a deity. For centuries, the temple had been under the exclusive management of successive rulers from the ruling family of Travancore. The rulers of Travancore, till the signing of the Covenant in May 1949, were managers or shebaits of the Temple.

Sree Chithira Thirunal Balarama Varma, as Ruler of Covenanting State of Travancore, had entered into a Covenant in May 1949 with the government of India leading to the formation of the United State of Travancore and Cochin. Varma died on July 19, 1991, leaving his younger brother Uthradam Thirunal Marthanda Varma to lay claim to the shebaitship.

All the temples which were under the control and management of the erstwhile princely states of Travancore and Cochin, after the merger of the two princely states, went under the control of the Travancore and Cochin Devaswom Boards.

However, under the Agreement of Accession signed between the two princely states, represented by the kings with the government of India as a party, which came into force from August 1, 1949, the administration of the Sree Padmanabhaswamy Temple was "vested in trust" in the Ruler of Travancore.

It is by virtue of the Covenant in the Accession Agreement and later by operation of Section 18(2) of the Travancore Cochin Hindu Religious Endowments Act, 1950 (TC Act), the management of the Sree Padmanabhaswamy Temple continued to be vested in Trust in the last Ruler of Travancore.

In its judgment , the Supreme Court has laid down that the shebaitship is vested in the founder and unless the founder himself has disposed of the shebaitship in a particular manner or there is some usage or custom or circumstances showing a different mode of devolution, the shebaitship, like any other species of heritable property follows the line of inheritance from the founder; and it is not open to the court to lay down a new rule of succession or alter the rule of succession.

Abolition of Privy Purses

By the Constitution 26th Amendment Act, 1971, the privy purses, privileges and other special rights of the erstwhile rulers of Indian states were abolished by deleting Articles 291 and 362 and by incorporating Article 366(22) in the Constitution. The challenge against it was repelled by the Supreme Court vide judgment rendered by the constitution bench on February 4, 1993 in Raghunathrao Ganapatrao v Union of India.

The Kerala government maintained before the Supreme Court that with the abolition of the concept of Ruler by the Constitution (26th Amendment) Act, 1971, the shebaitship of the royal family ceased to have any effect.

The Supreme Court pointed out that it is the settled law that shebaitship has the elements of office and property, of duties and personal interest blended together and they invest the office of the shebait with the character of proprietary right. The shebaitship of the temple had also passed from Ruler to Ruler consistent with the principles of succession otherwise applicable to the royal family, the court held. The Covenant let the management of the affairs of the temple with the royal family and in the hands of the Ruler of Travancore, principally because his official capacity or status as the erstwhile Head of the State apparently had nothing to do with the capacity as shebait of the temple, it explained.

The 26th Amendment Act deleted Articles 291 and 362 and inserted Article 363A which expressly stipulates *inter alia* that any person who was recognised to be the ruler of an Indian state or his successor, shall, cease to be recognised as such ruler or successor, and all rights, liabilities and obligations in respect of privy purses stand extinguished.

Article 366(22) was also accordingly amended and in terms of the amended definition, "Ruler" now means *inter alia,* the person who was recognised as the ruler of an Indian state or as a successor to such Ruler, before the commencement of said Constitutional Amendment.

With the deletion of Article 291, the rights, liabilities and obligations with respect to Privy Purses stood extinguished. The guiding principles emanating from Article 362 that in exercise of legislative or executive power, due regard shall be given to the guarantee or assurance given in any Covenant or agreement referred to in Article 291 also ceased to exist.

The relevance of the 1972 Act

In 1972, the parliament enacted the Rulers of Indian States (Abolition of Privileges) Act, 1972, to amend certain enactments consequent on de-recognition of rulers of Indian states and abolition of privy purses, so as to abolish the privileges of rulers and to make certain transitional provisions to enable the said rulers to adjust progressively to the changed circumstances.

That is precisely why, on the strength of various statutory provisions, certain benefits in the form of personal rights or privileges are still available.

It is for the concerned legislatures to take appropriate steps in accordance with law, either to terminate the effect and operation of extension of such benefits or allow them to operate or lessen the extent and cause gradual changes as was sought to be undertaken by 1972 Act, the Supreme Court held in its judgment on Monday.

Thus, if the provisions of the TC Act are taken to be an exercise by the concerned legislature with "due regard" to the assurances and guarantees in covenant or agreements in terms of Article 362 as it existed then even with the deletion of Article 362 the concerned provisions would still be operative so long as appropriate steps are not taken by the concerned legislature, the court reasoned.

Despite the 26th Amendment Act, 1971, the private properties of the ruler would continue to be available for normal succession and devolution in accordance with the law and custom, the Supreme Court held. But the court also accepted the royal family's claim that it no longer considered the temple as its private property, and that it only sought shebaitship.

The bench explained that on the day the covenant became effective, the Ruler of the Covenanting State of Travancore was holding the office of the shebait of the Temple, which was not in his official capacity as the ruler; and that the expression "Ruler of Travancore" in the covenant and in the TC Act was only to identify the person, and that official status of the ruler of Travancore had no relation with such administration.

The shebaitship of the temple being unconnected with the official status of the person who signed the covenant must devolve by the applicable laws of succession and custom, the court ruled. After the death of the person who was in control and supervision of the administration, the heritable interest must devolve in accordance with the customary rights, the bench ruled.

Unless and until the line of succession of the shebaitship and in-charge of the administration is completely extinct, there can be no question of escheat as observed by the Kerala high court, the bench added. The doctrine of escheat postulates that where an individual dies intestate and does not leave behind an heir who is qualified to succeed to the property, the property devolves on the government.

16. Anti defection law: Pilot's challenge

Pilot and the MLAs had recently moved the Rajasthan HC, claiming that the disqualification notices issued to them by Speaker Joshi were an attempt to stifle their voices, which sought a leadership change within the party in the "most democratic manner". They had challenged the correctness and validity of the notices.

They had also challenged the Constitutional validity of para 2(1)(a) of the Tenth Schedule, which is the anti-defection law.

But what does the Tenth Schedule say? And how has the Supreme Court interpreted the anti-defection law over the years?

What does the Constitution say?

The phrase '*Aaya Ram, Gaya Ram*' became popular in Indian politics after Haryana MLA Gaya Lal changed his party twice within a few hours and thrice within a fortnight in 1967.

The anti-defection law, enshrined in the Tenth Schedule of the Constitution of India, was inserted in 1985 to prevent such political defections.

It lists two situations for disqualification on the ground of defection. Firstly, if an MP or an MLA "has voluntarily given up his membership of such political party" (clause 2(1)(a)). Secondly, if he

votes or abstains from voting in the House contrary to any direction issued by his party, that is if he violates the party whip in the House (clause 2(1)(b).

What has Pilot alleged in the court?

It is the first ground under clause 2(1)(a) that Pilot and the MLAs have challenged in the high court, asserting that the provision cannot be so widely construed that the very same fundamental freedom of speech and expression of a member of the House is jeopardised.

“Mere expression of dissatisfaction or even disillusionment against the party leadership cannot be treated to be conduct falling within the clause 2(1)(a) of the 10th Schedule of the Constitution of India,” their petition had said.

They have, therefore, demanded that clause 2(1)(a) be declared *ultra vires* (outside the scope of) the basic structure of the Constitution, and the freedom of speech and expression under Article 19(1)(a).

While on 21 July, the high court requested Joshi to defer action on disqualification notices until 24 July (A questionable action as the courts cannot place a stay on notice issued by speaker under sch.10) , Joshi quickly moved the Supreme Court, challenging this order.

The apex court heard the case and wondered if the notices issued to the rebel Congress MLAs by the Speaker would amount to shutting out dissenting voices.

It, however, refused to restrain the Rajasthan High Court from ruling on the petition filed by Pilot and other MLAs.

What does voluntarily giving up party membership mean?

In a 1994 judgment, the Supreme Court had held that voluntarily giving up membership does not necessarily mean that the legislator needs to formally resign, and that this can be inferred from the member's "conduct" as well.

The court had explained: "Even in the absence of a formal resignation from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs".

For instance, in 2007, the Supreme Court had upheld the disqualification of 13 Bahujan Samaj Party MLAs who had supported Mulayam Singh's claim to form the government in 2003. The MLAs had met the Governor along with the general secretary of the rival party and made a written request to him to invite the Leader of the Opposition to form the government as against their chief minister's advice to the Governor to dissolve the Assembly.

On this, the Supreme Court had said: "An irresistible inference arises that the 13 members have clearly given up their membership of the BSP. No further evidence or enquiry is needed to find that their action comes within paragraph 2(1)(a) of the Tenth Schedule."

However, in 2011, the Supreme Court had set aside the Karnataka Speaker's order disqualifying 11 BJP MLAs. These MLAs had approached the Governor, saying that they had withdrawn their support to the government led by Yeddyurappa because he was corrupt and had lost the confidence of the people.

Among other things, the Supreme Court had noted that the MLAs had continued to be members of the BJP, but were merely against Yeddyurappa.

What are the Speaker's powers?

The Speaker of the House enjoys vast powers on disqualification proceedings, with the Supreme Court consistently holding that it would not interfere in such proceedings until the Speaker actually makes a decision.

One of the first cases in this regard was a 1992 judgment, when the court asserted that "having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairman".

It is on this judgment that Joshi had moved the Supreme Court to challenge the 21 July high court order, directing him to extend time given to the rebel MLAs to reply to the disqualification notices issued.

As for the time that the Speaker can take to decide the disqualification proceedings, the Supreme Court held in January this year that the decision should ordinarily be taken within 3 months, "absent any exceptional circumstances".

17. Custodial violence in India

In the same week that the world marked International Day in Support of Victims of Torture (June 26), a father-son duo in Tamil Nadu who kept a shop open after COVID-19 curfew hours died in custody, allegedly after being tortured at the hands of the Thoothukudi district police.

According to reports, a baton was inserted into the anus of one man. The Chinese army's use of iron rods and nail-studded clubs in 2020 will be remembered by a generation. But we will soon forget what happened in Thoothukudi, as if it was a momentary aberration rather than part of systemic police violence in India.

The police in the same district had, on May 22, 2018, shot dead 13 people, who were among a crowd that had demonstrated for 100 days without violence, seeking closure of Vedanta's highly polluting Sterlite Copper Unit. In two years, no one has been charged, and police impunity seems to continue.

The persistence of inhuman treatment makes it apparent that the India is determined to protect violence by the police. India is one of only five countries that have yet to ratify the 1987 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The others include Sudan, Brunei and Haiti.

Just before the 2010 visit to India of US President Barack Obama, the Lok Sabha passed the Prevention of Torture Bill, 2010, as a hesitant and wholly inadequate first step towards India's UNCAT ratification. Despite the change of government, the lip service has continued. In 2017, when India presented its third Universal Periodic Review (UPR) to the UN Human Rights Council, no exclusive anti-torture Bill was mentioned, but rather the Law Commission's ongoing examination of changes to existing criminal laws.

In 2010 itself, a Rajya Sabha multi-party select committee had substantially improved the Lok Sabha's Bill, but as of 2017, when senior advocate Ashwani Kumar (who chaired the select committee) prayed that the Supreme Court nudge the government to pass the Bill, the court ignored his cause – and the cause of the people of India.

Under the worse-than-colonial Indian State, one-sixth of the world's population is vulnerable to arbitrary police violence. Not all the one-sixth, however, but more likely the 39% of them that are Dalit, Muslim or Adivasi. A disproportionate 53% of Indian prisoners are from this demography. As a mirror to that, US Blacks were 12% of the adult population but 33% of sentenced prisoners, according to the Pew Research Centre.

'Dalit Lives Matter' and other memes to parallel the US 'Black Lives Matter' miss the culprit in both democracies: police torture. The distinction is important. In America, the dominant theme has quickly switched to 'racism' (whose corrections are, quite rightly, inclusive measures such as seeking greater Black presence in more diverse areas of employment and education). Unfortunately, merely calling out a social issue such as 'racism' or 'casteism' does not deal with the criminal in the room – the police officer whose violence the state permits. Both social and criminal issues must be dealt with – in distinctively different ways, in India, the US and everywhere.

The Tamil Nadu police has Social Justice and Human Rights Units in every district. They have mobile police squads (to respond to atrocities against SC and ST communities), but the units also hire economists and sociologists. This strange fusion of social justice (for equal access to resources) and human rights (for prevention of violence) is not effective for either. The confusion is not confined to TN. All over India, reservations for vulnerable communities has not prevented the violent 'reservation' for them in the institutionalised prison and torture system.

Law commission suggestions

The Law Commission of India (Chairperson: Dr. Justice B. S. Chauhan) submitted its report on "Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through legislation" to the Ministry of Law and Justice on October 30, 2017. India signed the convention on October 14, 1997 but has not ratified it so far.

The matter was referred to the Law Commission in July 2017, following a recommendation by the Supreme Court. .

Objective of the convention: The convention seeks to ensure that countries put in place various institutional mechanisms to prevent the use of torture. Each country that is party to the convention is required to carry out certain steps such as (i) legislative, administrative, judicial or other measures to prevent torture, and (ii) ensure that torture is a criminal offence, among others. In order to meet these obligations, the Commission recommended amendments to the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. In addition, the Commission submitted a draft Prevention of Torture Bill, 2017 which defines acts that should constitute torture and prescribed punishments for such acts.

Ratification of convention: The Commission observed India has faced problems in extradition of criminals from foreign countries. This is because the convention prevents extradition to a country where there is danger of torture. It recommended that this issue should be resolved by ratifying the convention.

Definition of torture: The Commission observed that there is no definition of torture in the current Indian laws. According to the draft Prevention of Torture Bill, 2017, any public servant or an individual authorised by him indulges in an act of torture if they inflict on another person: (i) grievous hurt, (ii) danger to life, limb, or health, (iii) severe physical or mental pain, or (iv) death for the purpose of acquiring information or punishment.

Punishment for acts of torture: In order to deter the use of torture, the Commission recommended stringent punishments for individuals who commit such acts. According to the draft Prevention of Torture Bill, 2017, punishment for torture includes imprisonment up to 10 years and fine. In case torture leads to death, the punishment includes death or life imprisonment in addition to fine.

Protection for individuals: The Commission recommended that an effective mechanism be put in place to protect victims of torture, complainants, and witnesses against possible violence and ill-treatment. The draft Prevention of Torture Bill, 2017 makes state governments responsible for protecting these individuals. The state government will provide such protection from the time of submission of complaint till conclusion of trial for the offence.

Compensation for torture: The Commission recommended amendments to the Code of Criminal Procedure, 1973 to allow for payment of compensation in case of torture. It made this

recommendation citing that courts have previously awarded compensation for various forms of torture including illegal detention, and custodial torture.

The Commission recommended that courts should determine compensation on the basis of nature, purpose, and extent of injury caused to a person, among other factors. Further, courts should keep in mind the socio-economic background of the victim to ensure that the compensation covers medical treatment and rehabilitation.

Custodial injury: The Commission recommended amendments to the Indian Evidence Act, 1872 to ensure that in case a person sustains injuries in police custody, it will be presumed that these have been inflicted by the police. The burden of proof shall lie on the police authorities to explain such injuries.

Sovereign immunity: Sovereign immunity is the principle that the government is not responsible for the actions of its agents (such as police forces). The Commission states that courts have rejected this principle in various cases and therefore agents of the government cannot engage in torture. The Commission reiterated that citizens are entitled to constitutional rights such as the right to life and personal liberty.

<u>18.GST SHARING WOES: CENTRE STATE FINANCIAL RELATIONS</u>

The distribution of GST proceeds has triggered a new flashpoint in Centre-state relations amid fresh indications of delayed compensation payments and dues to the states.

While the Centre released Rs 13,806 crore to the states for March 2020, wrapping up the full payout for FY20 at Rs 1.65 lakh crore, compensation payments for this financial year since April remain pending. Key Finance Ministry officials are reported to have briefed the Standing Committee on Finance Tuesday about the Centre's inability to pay states in the near future. Punjab has responded by flagging the need for "timely GST payments", stating that four months of pending dues are equivalent to two months of salaries bills of the state. Kerala has described the reported statement by Ministry officials as a "brazen betrayal of federal trust". West Bengal Chief Minister Mamata Banerjee wrote to Prime Minister Narendra Modi , urging the Centre to release GST compensation worth Rs 4,135 crore for April and May.

Why has GST compensation been an issue?

The concerns started surfacing in October last year, when the payments to states got delayed as GST revenues came in lower than expected. The Covid-19 pandemic has deepened the

economic slowdown and impacted revenues, with GST collections recording a 41% decline in the April-June quarter.

As the amount to be paid to states started rising with a compounded 14% rate even as compensation collections remained around the same level for two consecutive years, the high 14% rate has been viewed as delinked from economic realities. For instance, in the ongoing financial year, the SGST (state GST) revenue for June has been Rs 23,970 crore, while monthly protected revenue is Rs 63,706 crore, leaving a gap of Rs 39,736 crore (not taking into account settlement of IGST, the tax levied on all inter-state supplies of goods and services). Only Rs 14,675 crore has been collected as compensation cess in April-June, including Rs 7,665 crore in June.

The Centre has cleared compensation dues for FY20 of Rs 1.65 lakh crore, while the collection under the compensation cess fund was only Rs 95,444 crore, implying the payments were over 70% higher than the collection.

The gap was partly bridged by money from the compensation fund that had remained unutilised in the first two years of GST, along with Rs 33,412 crore that was ploughed back from Consolidated Fund of India to the compensation fund. (This was after the settlement of IGST dues had showed an excess apportionment by the Centre in FY18, due to the ad-hoc method of IGST settlement being followed in the first few months after the GST rollout in July 2017.)

Now, compensation payments to states are pending since April.

How much is transferred to the compensation fund?

In the Budget for 2020-21, while announcing the transfer of balances due from the collections for 2016-17 and 2017-18 in two instalments to the GST Compensation Fund, Finance Minister Nirmala Sitharaman had said that henceforth, transfers to the fund would be “limited only to collection by way of GST compensation cess”.

Vijay Kelkar, former Finance Secretary and 13th Finance Commission Chairman, and Pune International Centre’s Senior Fellow V Bhaskar co-authored a recent paper that questioned this proposition. “While the Centre’s position appears legally tenable, it does not appear ethically defensible… its decision to restrict transfer to the Fund only to compensation cess collections seems more a fiscal aspiration than a legal compulsion. Section 10(1) of the Act allows for

'other amounts' also to be credited to the Compensation fund with the approval of the GST Council," they wrote.

At present, the cess levied on sin and luxury goods such as tobacco and automobiles flows into the compensation fund. In the GST Council meetings in early 2017, states had suggested alternative sources of revenue for the compensation fund in case of a shortfall, with borrowing among the options. Minutes of the 8th GST Council meeting state: "The Hon'ble Chairperson (then Finance Minister Arun Jaitley) that compensation to States shall be paid for 5 years in full within the stipulated period of 5 years and, in case the amount in the GST Compensation Fund fell short of the compensation payable in any bimonthly period, the GST Council shall decide the mode of raising additional resources including borrowing from the market which could be repaid by collection of cess in the sixth year or further subsequent years."

What are the options for meeting the compensation gap?

Market borrowing has been discussed in the GST Council as one of the possible solutions, although the legality of the Council in borrowing will need to be explored. There is also an emerging view among states in favour of hiking the GST rates or restructuring the GST slabs. The states, however, agree that tinkering with the rate structure needs to be done only after the effects of the pandemic-induced slowdown wear off.

There are differing views among states on the Council itself resorting to market borrowing. While Kerala backs such a move and Bihar opposes it, all states are unanimous on sticking to the 14% assured rate for compensation. Some states are also of the view that the compensation period should be extended beyond the stated period of five years.

Hiking the cess rate or lowering of the guaranteed compensation rate have featured in the discussions of GST Council meetings, but states are not in favour of either option. As per estimates shared by Bihar Deputy Chief Minister Sushil Kumar Modi, even if revenue collections in 2020-21 are projected at 65% of the revenues collected in 2019-20, there would be a revenue gap of Rs 2,67,000 crore for states. Even if a 5% cess is levied on high-end luxury goods, which form about 10% of the overall GST base, it would only yield about Rs 22,000-25,000 crore per annum, he had earlier said.

In their paper, Kelkar and Rao have said the Centre should promptly respond to the demand from states to pay them overdue compensation cess by borrowing from the market. “Though it does not appear to be legally liable, it has a moral imperative to do so, even if the guaranteed rate of revenue of 14% is inordinately high in the present COVID led economic downturn,” the paper said, adding that a restructuring of the GST model should be considered if the losses for states continue.

19. Committee on criminal law reform

A five-member Committee for Reforms in Criminal Law has been set up by the Union Ministry of Home Affairs at the National Law University (Delhi). The vice-chancellor of NLU (Delhi),Ranbir Singh, is the chairperson and the members include G S Bajpai, registrar, NLU, Delhi, Balraj Chauhan, vice-chancellor of DNLU Jabalpur, Mahesh Jethmalani, senior advocate and G P Thareja, former district and sessions judge, Delhi. The mandate of the committee is to recommend reforms in the criminal laws of the country in a principled, effective and efficient manner, which ensures the safety and security of the individual, the community and the nation and which prioritises the constitutional values of justice, dignity and inherent worth of the individual. In its wisdom, the committee has decided to commence “online” consultations at the peak of the COVID-19 epidemic to ensure that it has its report ready in the six-month time-frame fixed by the home ministry.

Law reform is ordinarily within the mandate of the Union Ministry of Law and historically, various law commissions have been set up to recommend law reforms. Apart from government servants, the commission consists of area experts, lawyers and is given a specific mandate, such as removal of obsolete laws or identification of law that obstructs economic progress. After holding nationwide consultations over a period of three years, the commission gives a report that is studied by the law ministry and then placed before Parliament. There is no reasonable explanation why a university is being charged with making recommendations on the reform of

criminal law and that too, with an ambiguous objective, in a truncated time-frame of six months.

The purpose of criminal law is not only to deter criminal deviance and protect society from crime, but also to provide procedural safeguards to individuals and protect innocents from State persecution. The presumption of innocence, the principle of equality before the law, non-admissibility of statements made to the police and restrictions on admissibility of incriminating evidence obtained from search and seizure are all integral to the purpose of criminal law. The fact that the Union home ministry, under whom three investigative agencies function, has notified this reform agenda is in itself a cause of concern and raises questions as to the propriety of this exercise.

The composition of this committee, its methodology and time-frame, have also been received by the legal fraternity across the country with disapproval, suspicion and discomfort. The Bar Council of Delhi was one of the first to raise an objection to the almost complete exclusion of practising lawyers and the Bar from the committee. Several retired judges and senior advocates have also raised concern over the lack of diversity in the composition of the committee and the inadequacy of the time-frame and lack of clarity on the objectives that the reforms or amendments seek to achieve. The women's bar across the country has refused to accept the composition of this committee and has demanded its reconstitution — 112 women lawyers from the Delhi, Bombay, Calcutta, Banglore and Madras High Courts have written to the chairman of the committee expressing their grave concern that a committee which proposes to reform criminal law from a post-colonial and non-patriarchal perspective excludes women, minorities and representatives of the marginalised sections of society.

Causing even further ambiguity on the exact focus of reform and at odds with the notified objective of the home ministry, which is "ensuring the safety and security of the individual and the nation", the mission statement of the chairman of the committee on its website states that: "The colonial foundations of our criminal law have long been a matter of concern in legal discourse. The fundamental principles of Indian Penal Code, Criminal Procedure Code and Indian Evidence Act continue to reflect state paternalism and Victorian morality of the colonial state." One would have imagined that with this mission statement and a post-colonial agenda,

the committee would seek to reform the laws that provide qualified immunity for police excesses or invite consultation on rationalising the punishment and definition of offences against the state and against public tranquillity. Instead, the focus of this committee seems to be on increasing strict liability offences and making sexual offences gender neutral.

The methodology adopted by the committee based on questionnaires, also reflects a predetermination on what is to be amended and the process of consultation is more like a referendum on the amendments predetermined by the committee members, rather than an open-ended discussion to determine the reform priorities of Independent India.

The inhuman killing of George Floyd in the US has sparked off a global introspection into criminal law and an acknowledgment that law enforcers are themselves becoming a threat to the lives and liberties of citizens, especially those from minorities and marginalised communities. World over there is no longer tolerance for rationalising police excesses in the name of community or national security. It is unfortunate that in India, the criminal law reform agenda has clubbed the security of an individual with the security of the nation. This runs contrary to the experienced reality of most marginalised people across the world, who are mostly at the receiving end of police atrocities and harassment. Their safety lies in strong procedural laws that ensure the presumption of innocence and deter arrest and long incarceration on flimsy grounds.

20. Shashi Tharoor bats for Presidential system in India

The disgraceful political shenanigans the nation has witnessed, most recently in Karnataka, Madhya Pradesh and Rajasthan, and the horse-trading of MLAs to switch allegiances for power and pelf, are not merely an occasion for breast-beating about morality in politics or the opportunism of the cash-rich ruling party. We never seem to look beyond the headlines to the basic problem: The system that makes this shameful conduct possible. The parliamentary system we borrowed from the British has not worked in Indian conditions, says Tharoor. It is time to demand a change.

The facts are clear: Our parliamentary system has created a unique breed of legislator, largely unqualified to legislate, who has sought election only in order to wield executive power. It has

produced governments dependent on a fickle legislative majority, who are therefore obliged to focus more on politics than on policy or performance. It has distorted the voting preferences of an electorate that knows which individuals it wants to vote for but not necessarily which parties. It has spawned parties that are shifting alliances of selfish individual interests, not vehicles of coherent sets of ideas. It has forced governments to concentrate less on governing than on staying in office, and obliged them to cater to the lowest common denominator of their coalitions. The parliamentary system has failed us.

Pluralist democracy is India's greatest strength, but its current manner of operation is the source of our major weaknesses. To suggest this is political sacrilege in India.. The main reason for this is that they know how to work the present system and do not wish to alter the ways they are used to.

Yet the parliamentary system devised in Britain — a small island nation with electorates of less than a lakh voters per constituency — is based on traditions which simply do not exist in India. These involve clearly defined political parties, each with a coherent set of policies and preferences that distinguish it from the next, whereas in India a party is all-too-often a label of convenience which a politician adopts and discards as frequently as a Bollywood film star changes costume. Hopping from one to the next — which would send shock waves through the political system in other parliamentary democracies — is commonplace, even banal, in our country.

In the absence of a real party system, the voter chooses not between parties but between individuals, usually on the basis of their caste, their public image or other personal qualities. But since the individual is elected in order to be part of a majority that will form the government, party affiliations matter. So voters are told that if they want a Narendra Modi as prime minister, or a Mamata Banerjee or Jagan Reddy as their chief minister, they must vote for someone else as MP or MLA in order to indirectly accomplish that result. It is a perversity only the British could have devised — to vote for a legislature not to legislate but in order to form the executive.

The fact that the principal reason for entering Parliament is to attain governmental office creates four specific problems. First, it limits executive posts to those who are electable rather

than to those who are able. The prime minister cannot appoint a cabinet of his choice; he has to cater to the wishes of the political leaders of several parties. (Yes, he can bring some members in through the Rajya Sabha, but our upper house too has been largely the preserve of full-time politicians, so the talent pool has not been significantly widened.)

Second, it puts a premium on defections and horse-trading. The anti-defection Act of 1985 has failed to cure the problem, since the bargaining has shifted to getting enough MLAs to resign to topple a government, while promising them offices when they win the subsequent by-elections.

Third, legislation suffers. Most laws are drafted by the executive — in practice by the bureaucracy — and parliamentary input into their formulation and passage is minimal, with very many bills being passed after barely a few minutes of debate. The ruling party inevitably issues a whip to its members in order to ensure unimpeded passage of a bill, and since defiance of a whip itself attracts disqualification, MPs blindly vote as their party directs. The parliamentary system does not permit the existence of a legislature distinct from the executive, applying its collective mind freely to the nation's laws. Accountability of the government to the people, through their elected representatives, is weakened.

Fourth, for those parties who do not get into government and who realise that the outcome of most votes is a foregone conclusion, Parliament or Assembly serves not as a solemn deliberative body, but as a theatre for the demonstration of their power to disrupt. The well of the house — supposed to be sacrosanct — becomes a stage for the members of the opposition to crowd and jostle, waving placards and chanting slogans until the Speaker, after several futile attempts to restore order, adjourns in despair. In India's Parliament, many opposition members feel that the best way to show the strength of their feelings is to disrupt law-making rather than debate the law.

Apologists for the present system say in its defence that it has served to keep the country together and given every Indian a stake in the nation's political destiny. But that is what democracy has done, not the parliamentary system. What our present system has not done as well as other democratic systems might, is to ensure effective performance. India's many challenges require political arrangements that permit decisive action, whereas ours system

promotes drift and indecision. We must have a system of democracy whose leaders can focus on governance rather than on staying in power.

The disrepute into which the political process has fallen in India, and the widespread cynicism about the motives of our politicians, can be traced directly to the workings of the parliamentary system. Holding the executive hostage to the agendas of a motley bunch of legislators is nothing but a recipe for governmental instability. And instability is precisely what India, with its critical economic and social challenges, cannot afford.. A directly elected chief executive in New Delhi and in each state, instead of being vulnerable to the shifting sands of coalition support politics, would have stability of tenure free from legislative whim, be able to appoint a cabinet of talents, and above all, be able to devote his or her energies to governance, and not just to government. The Indian voter will be able to vote directly for the individual he or she wants to be ruled by, and the president will truly be able to claim to speak for a majority of Indians rather than a majority of MPs. At the end of a fixed period of time, the public would be able to judge the individual on performance in improving the lives of Indians, rather than on political skill at keeping a government in office.

The same logic would apply to the directly elected heads of our towns and cities and village panchayats, who today are little more than glorified committee chairmen, with little power and minimal resources. To give effect to meaningful local self-government, we need directly elected local officials, each with real authority and financial resources to deliver results in their own areas.

The only serious objection advanced by liberal democrats is that the presidential system carries with it the risk of dictatorship. They conjure up the image of an imperious president, immune to parliamentary defeat and impervious to public opinion, ruling the country by fiat. In particular they argue that it will pave the way for a Modi dictatorship in India. But a President Modi could scarcely be more autocratic than the prime minister we have seen in office — one who has, thanks to the parliamentary system, a rubber-stamp majority in the Lok Sabha rather than the independent legislature a presidential system would ensure. In addition, the powers of a President Modi would be amply balanced by those of the directly elected chief executives in the

states, who would be immune to dismissal by their party leader, or to toppling by defecting MLAs.

21. J&K domicile rules

The Jammu and Kashmir domicile rule issued by the central government has come under severe criticism within the region and beyond. Recent news reports suggest that an IAS officer from Bihar including 25,000 other individuals have so far received the domicile certificates which allows entry of nonresidents (defined by the now revoked Article 35A) into the state along with giving them access to the property and government jobs that were previously reserved for locals.

The new domicile which replaced Article 35A was issued amidst the raging Covid-19 pandemic. Outright condemnations from all political parties barring the BJP as well as heavy discontentment and cries of foul play by a cross-section of the local populace led to an immediate amendment of the initial order which reserved only class fourth jobs for the residents of Jammu and Kashmir. The amendment showed how callously the initial order was brought in without consultation or serious thinking from the political leadership in New Delhi. Moreover, it triggered conversations around a possible demographic change being engineered by the central government. Irrespective of the government's intentions, there is a unanimous belief among the people of the Valley and parts of Jammu that the change in the demography of Jammu and Kashmir has begun.

Apart from criticism on the dubious intentions of the government, the domicile rule in itself seems to be an affront on constitutional practices applied in other (such as the Northeastern states). Drawing a comparison to the previous domicile laws, the new rules have no constitutional backing and can easily be revoked through an executive order. Moreover, the new domicile law may not hold water once the elections are held, and a new legislative assembly is elected given the political opposition it has faced from the regional parties.

The need for implementation of the new domicile law arose after the constitutional changes which abrogated Article 35A came into effect. A vehement demand from the people of Jammu, the party leadership of BJP and other regional leaders, who were

ready to play ball with the central government while former chief ministers, and state legislators remained under detention perhaps resulted in the new arrangement.

In the backdrop of redefining hereditary state subject laws in Kashmir, the new grounds for getting domicile for non-diasporic Kashmiris are bound to raise tensions among locals due to the perceived ease of access. According to the order, individuals residing in the state for a minimum period of 15 years; worked for the government in Jammu and Kashmir for at least 10 years; studied in the state for at least seven years and appeared for a board examination are eligible for domicile certificate. According to the new guidelines, children of those who worked or studied in the Valley for the stipulated period are also eligible for domicile even if they have never been to or lived in the state. Moreover, the punitive measures in place to ensure the fast-tracking of domicile certificates for non-residents at a time when the country is grappling with a pandemic also raises fears about the uncharacteristic sense of urgency displayed by the Centre to implement these new guidelines. To ensure fast-tracking, the tehsildar in charge shall face up to a 50,000-rupee fine if he/she fails to issue domicile within 15 days of receiving the duly completed application.

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In addition to the ease of access to domiciles and the possibility of numerous non-diasporic Kashmiris getting permanent residency, the privileges that people can avail with these certificates are bound to further anxieties in the already disenfranchised local population. Those with these certificates can own property in Kashmir and get access to government jobs that were earlier reserved for locals. For a state with an unemployment rate of 15.89 percent in comparison to the national average of 6.87 percent — of which 25.2 percent are graduates and 59.5 percent jobless women — the new domicile laws will only aggravate the problem to an unimaginable level.

The fears amongst locals regarding losing reservation for government jobs are further emboldened by the compromised schooling system in Kashmir on account of longstanding conflict which in turn has impacted the holistic development of Kashmiri youth. With government jobs now opening to other demographics, any competitive advantage the local youth may have had is gone. There is a fear among the youth in J&K that they will have an unfair disadvantage while competing with applicants from the rest of India as for the last three decades the education has been the worst hit with continuous strikes, agitation, violence, and militancy. The conflict has adversely affected

Kashmiri lives and practically destroyed any semblance of a thriving private sector. Thus, reservations in government jobs were even more important and with these reservations now removed, fear of losing out to more qualified Indians who have been unaffected by the collaterals of conflict is looming.
The rationale employed for the revocation of Article 370 was that it would forge greater integration of the state with the rest of India and such integration would have a positive impact on overall economic development. However, the heavy-handed use of security measures to impose an unprecedented, vicious and polarised political rhetoric and measures such as large-scale internet shutdowns which can be deemed as collective punishment to implement revocation exacerbated existing fault lines and has made the goal of integration of hearts and minds of locals harder to realise even as the legal and political integration was bulldosed through.

In the context of this growing disaffection furthered by the revocation; the new domicile laws may only reiterate existing fears in the Kashmiri populace of a looming demographic change. Moreover, implementing this policy during a global pandemic raises doubts about the motives of the dispensation and makes one wonder if more sensitivity for the plight of the conflict-ridden state could have been displayed. Examining the legal implications of the new domicile laws and what that may mean for the people of Jammu and Kashmir seems to indicate that negative perceptions of India in the Valley may only be furthered and not mitigated.

Even if public perceptions may be to the contrary, there is no doubt that the change in domicile law is being positioned as a humanitarian gesture to appease a section of West Pakistan refugees, members of Valmiki community and women who married nonresidents as the hereditary domicile law made it impossible for them to get the domicile status. However, due to political mismanagement by previous governments and the severity of Article 35A, they were disenfranchised and had to suffer for decades. Unfortunately, a policy meant to make amends for previous wrong doings seems to be coming at the cost of undermining the wishes of the current majority population in Kashmir who fear the imminent threat of demographic change. Thus, even if the rationale of providing domicile may pertain to undoing past wrongs, the means employed and the socio-political climate in which the policy is being implemented may

heighten feelings of alienation amongst locals and pose impediments to the goal of forging integration and long lasting peace in the Valley.

22. MPLADS Suspended

MPLAD is a central government scheme, under which MPs can recommend development programmes involving spending of Rs 5 crore every year in their respective constituencies. MPs from both Lok Sabha and Rajya Sabha, including nominated ones, can do so.

States have their version of this scheme with varying amounts per MLA. Delhi has the highest allocation under MLALAD; each MLA can recommend works for up to Rs 10 crore each year. In Punjab and Kerala, the amount is Rs 5 crore per MLA per year; in Assam, Chhattisgarh, Maharashtra and Karnataka, it is Rs 2 crore; in Uttar Pradesh, it was recently increased from Rs 2 crore to Rs 3 crore.

How much will the suspension contribute to the Centre's efforts to manage the pandemic?

Suspension of the MPLAD Scheme will make Rs 7,800 crore available to the government. For comparison, this is only 4.5% of the Rs 1.70 lakh crore relief package for the poor announced under the Pradhan Mantri Garib Kalyan Yojana.

Opposition MPs have reacted sharply. Adhir Ranjan Choudhary, leader of the Congress Legislature Party in Lok Sabha, termed the move a gross injustice towards people's representatives. RJD MP Manoj Jha said the diversion of MPLAD funds would centralise their administration and decrease the efficiency of their disbursal.

23. INDIA Name change petition

More than seven decades later, the nomenclature of the country, has once again become a topic of debate as a petition filed by a Delhi-based businessman, seeks to amend Article 1 of the Constitution, arguing that "The removal of the English name though appears symbolic, will instill a sense of pride in our own nationality, especially for the future generations to come".

"In fact, the word India being replaced with Bharat would justify the hard fought freedom by our ancestors," claims the petition.

"The politics of naming is part of the social production of the nation. Its processes are shaped by broad socio-political conditions and can be studied from several angles.," writes social scientist Catherine Clémentin-Ojha, in her article, ''India, that is Bharat…': One Country, Two Names'. For that matter, apart from the three most common names — India, Bharat, and Hindustan — used to designate the South Asian subcontinent, there are several other nomenclatures applied across different points in time, and from multiple socio-political points of view, to describe the geographical entity or parts of it that we now know as India. Consequently, when the Constitution of the country was being prepared, a heated argument had ensued with regard to the naming of the country in a way that would be most suitable to the sentiments of its multicultural, vivacious population.

The many names of India

It is important to note that in geographical terms, the space that is today referred to as India, was never a constant entity in the preceding centuries. However, scholars have often pointed out that one of the oldest names used in association with the Indian subcontinent was **Meluha** that was mentioned in the texts of ancient Mesopotamia in the third millennium BCE, to refer to the Indus Valley Civilisation.

"Meluha, it is now generally agreed, was the name by which the Indus civilisation was known to the Mesopotamians., But Meluha, of course, had lost currency way before modern political systems developed in the region. The earliest recorded name that continues to be debated is believed to be '**Bharat**', 'Bharata', or 'Bharatvarsha', that is also one of the two names prescribed by the Indian constitution. While its roots are traced to Puranic literature, and to the Hindu epic, Mahabharata, the name's popularity in modern times is also due to its sustained usage during the freedom struggle in slogans such as 'Bharat mata ki jai'.

Apart from Bharat though, there are few other names associated with the country as well that trace their roots to Vedic literature. For instance, **'Aryavarta'**, as mentioned in the Manusmriti, referred to the land occupied by the Indo-Aryans in the space between the Himalayas in the

north and the Vindhya mountain ranges in the south. The name **'Jambudvipa'** or the 'land of the Jamun trees' has also appeared in several Vedic texts, and is still used in a few Southeast Asian countries to describe the Indian subcontinent.

Jain literature on the other hand, also lays claim to the name Bharat, but believes that the country was called **'Nabhivarsa'** before. "King Nabhi was the father of Rishabhanatha (the first tirthankara) and grandfather of Bharata," writes geographer Anu Kapur in her book, 'Mapping place names of India'.

The name **'Hindustan'** was the first instance of a nomenclature having political undertones. It was first used when the Persians occupied the Indus valley in the seventh century BCE. Hindu was the Persianised version of the Sanskrit Sindhu, or the Indus river, and was used to identify the lower Indus basin. From the first century of the Christian era, the Persian suffix, 'stan' was applied to form the name 'Hindustan'.

At the same time, the Greeks who had acquired knowledge of 'Hind' from the Persians, transliterated it as **'Indus'**, and by the time the Macedonian ruler Alexander invaded India in the third century BCE, **'India'** had come to be identified with the region beyond the Indus.

By the 16th century, the name 'Hindustan' was used by most South Asians to describe their homeland.

The debate to name an Independent India

After the Independence of the country, the Constituent Assembly set up a drafting committee under the chairmanship of B R Ambedkar on August 29, 1947. However, the section, 'name and territory of the Union' was taken up for discussion only on September 17, 1949. Right from the moment the first article was read out as 'India, that is Bharat shall be a union of states', a division arose among the delegates.

Hari Vishnu Kamath, a member of the Forward Bloc suggested that the first article be replaced as 'Bharat, or in the English language, India, shall be and such.' Seth Govind Das, representing the Central Provinces and Berar, on the other hand, proposed: "Bharat known as India also in foreign countries". Hargovind Pant, who represented the hill districts of the United Provinces, made it clear that the people of Northern India, 'wanted Bharatvarsha and nothing else'.

Pant made his argument in the following words: “So far as the word ‘India’ is concerned, the Members seem to have, and really I fail to understand why, some attachment for it. We must know that this name was given to our country by foreigners who, having heard of the riches of this land, were tempted towards it and had robbed us of our freedom in order to acquire the wealth of our country. If we, even then, cling to the word ‘India’, it would only show that we are not ashamed of having this insulting word which has been imposed on us by alien rulers.”
None of the suggestions were accepted by the committee. It is worth noting though, that ‘Hindustan’ was hardly a contender in the debates.
The dispute over the naming of the country has come up several times after the adoption of the constitution as well. In 2005, for instance, a retired member of the IAS and a freelance journalist named V. Sundaram published an article asking to do away with the name ‘India’ and use ‘Bharat’ instead. “According to V. Sundaram, it is because ‘Bharat’ was thought to be too Hindu by the drafters of the Constitution that they introduced ‘India’ as a guarantee to the minorities that they would not be Hinduized. But, he argued, this was a misconception: the word Bharat carries no communalist overtones and therefore it should be the sole official name of the country,” writes Ojha.
In 2012, Shantaram Naik of the Indian National Congress proposed a bill in the Rajya Sabha with a similar suggestion. “”India” denotes a territorial concept, whereas “Bharat” signifies much more than the mere territories of India. When we praise our country we say, “Bharat Mata Ki Jai” and not “India ki Jai”,” he argued.
The most recent petition for the name change, has once again been rejected by the Supreme Court, stating that they cannot do it since “India is already called Bharat in the Constitution itself’. The court though, has suggested the petitioner to file his plea to the Centre instead.
Whether the government goes on to make a choice between ‘India’ and ‘Bharat’, we are yet to see

24. PM CARES FUND

On March 28, the **Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund, or the PM CARES Fund**, was set up to tackle distress situations such as that posed by the **COVID-19 pandemic**.

The fund has raked in thousands of crores worth of donations including unlimited tax-free contributions from major corporates.

The fund receives voluntary contributions from individuals and organisations and does not get any budgetary support. Donations have been made tax-exempt, and can be counted against a company's corporate social responsibility (CSR) obligations. It is also exempt from the Foreign Contribution (Regulation) Act, 2010, and accepts foreign contributions, although the Centre has previously refused foreign aid to deal with disasters such as the Kerala floods. The Prime Minister chairs the fund in his official capacity, and can nominate three eminent persons in relevant fields to the Board of Trustees. The Ministers of Defence, Home Affairs and Finance are ex-officio Trustees of the Fund.

Does not India already have a fund with similar objectives?

Yes. The Prime Minister's National Relief Fund (PMNRF) was set up in January 1948, originally to accept public contributions for the assistance of Partition refugees. It is now used to provide immediate relief to the families of those killed in natural calamities and the victims of major accidents and riots and support medical expenses for acid attack victims and others.

The PMNRF was originally managed by a committee which included the Prime Minister and his deputy, the Finance Minister, the Congress President, a representative of the Tata Trustees and an industry representative. However, in 1985, the committee entrusted the entire management of the fund to the Prime Minister, who currently has sole discretion for fund disbursal. A joint secretary in the PMO administers the fund on an honorary basis.

As of December 2019, the PMNRF had an unspent balance of ₹3,800 crore in its corpus. Opposition leaders have questioned the need for a new PM CARES Fund, given that the PMNRF has similar objectives. States also have similar Chief Minister's Relief Funds, and State governments have appealed for donations noting that they bear the major burden of implementing COVID-19 relief operations.

Are donations pouring in?

PM CARES has attracted a large amount of donations. Within the first half hour after the PM's tweet on March 28, donors as varied as the IAS Association and Bollywood actor Akshay Kumar had pledged to contribute ₹21 lakh and ₹25 crore, respectively, to the fund. In the first week, news reports suggested that publicly declared donations added up to at least ₹6,500 crore.

In the month since then, lakhs of public and private sector employees have donated a day's salary to the fund, with some claiming it was done without their permission or knowledge. Among major donations include ₹500 crore from employees of the Defence Ministry, Army, Navy, Air Force and defence public sector units, as well as ₹500 crore each from the Tata Group and Reliance Industries. Protests have been raised against companies such as Reliance which have made major donations to PM CARES even while cutting salaries of their own employees, as well as the Railways, which donated ₹151 crore to PM CARES, but could not provide free transport for destitute migrant workers

The Centre has not responded to queries on how much money is in the PM CARES Fund, or how and when it will be used to provide relief.

What are some of the other concerns around it?

It is not clear whether the fund comes under the ambit of the RTI Act or oversight by the Comptroller and Auditor General of India, although independent auditors will audit the fund. One RTI query to the PMO by activist Vikrant Tongad was refused, citing a Supreme Court observation that "indiscriminate and impractical demands under RTI Act for disclosure of all and sundry information would be

counterproductive", while other RTI queries have not received a response even after the statutory 30-day period.

The PM CARES web page is opaque regarding the amount of money collected, names of donors, the expenditure of the fund so far, or names of beneficiaries. The PMNRF provides annual donation and expenditure information without any detailed break-up. The PM CARES Fund's trust deed is not available for public scrutiny.

The decision to allow uncapped corporate donations to the fund **to count as CSR expenditure** — a facility not provided to PMNRF or **the CM's Relief Funds** — goes against previous guidelines stating that CSR should not be used to fund government schemes. A government panel had previously advised against allowing CSR contributions to the PMNRF on the grounds that the double benefit of tax exemption would be a "regressive incentive".

Constitutionality and legality

Many questions and issues have been raised regarding the legality and constitutionality of the PMNRF and the creation of PM CARES on the same lines with slight changes. The new fund appear to raise the same issues again with an additional question of the need of duplication.

The replication of PMNRF seems to indicate that there is no purpose for the creation of this other than presenting the people with some 'showpiece' measure and telling the public that the government is taking huge measures to fight the pandemic while it is actually not.

Inherent Legal Problems

Private vs. Public Nature of the Funds

In Aseem Takyar v. Prime Minister National Relief Fund (2016), an **appeal** was filed before the Delhi High Court contending that PMNRF being a 'public authority' must come under the jurisdiction of the Right to Information **Act**, 2005. The plea was accepted and an appeal was made. In the appeal, the fund contended that

"It finds its genesis in a personal appeal made through a press note dated 24.01.1948 by the then Prime Minister, Pt. Jawaharlal Nehru. This, according to the Fund, was a personal appeal/request/decision and not an order/decision made by the Government of India. The Fund further contended that this appeal/request/decision was not a decision of the Central Government and was thus not made in the name of the Hon'ble Governor General of India, the head of Central Executive, as was then required for decisions of Central Government."

Due to the split in the division bench, a decision was not reached as to the status of the PMNRF.

But even if the stance of government is that PMNRF is 'private' in nature, the access to information still cannot be denied because **Section 19** of the Indian Trusts Act, 1882 says "A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property." Hence, the citizens of India being the beneficiary of these funds, can ask for information related to the fund.

The Accountability Quotient

As envisaged by Nehru, the PMNRF was managed by a managing committee which also comprised a member from India's private business sector and the president of Congress party till 1985, but after that year when Rajiv Gandhi became the Prime Minister, he authorized the managing power entirely to the PMO. The PM, from then on, has the power to appoint a secretary of the funds on his sole discretion. The determination of who can be a beneficiary of the fund is also on the sole discretion of the PM. Although, the highly controversial position given to the president of congress was removed, the PMO was given the sole discretion, thereby, affecting the accountability.

Plus, the fund should also be covered by the provisions of article 151 (1) of the constitution and be audited by the Comptroller and Auditor General of India instead of third party auditing which will ensure more transparency and accountability.

Legal Backing of the Tax Benefits: Section 80 G

Contributions to both these funds are eligible for 100% tax exemption under Section 80 G of the Income Tax Act, 1961. But in order to be registered as a 'public charitable trust' under 80 G to obtain exemption benefits a due process has to be followed. This process involves obtaining a valid certificate by the trust. For getting this certificate, the trust has to submit its application and 10 G form along with the trust deed to the Income Tax Office. The section also lists several conditions to follow for procurement of certificate, one of them is that "The public charitable trust has to be registered under relevant laws and with the income tax department." Hence,

the fund also needs to be registered under The Registration Act, 1908. It is very important to know whether due process has been followed because otherwise the fund lacks a legal backing.

Article 266, 283 and 284 of the constitution

Creation of both these funds also has an incoherence with article 266, 283 and 284 of the constitution. Article 266 (2) states that "all other money (other than consolidated and contingency fund of India) received by or on behalf of the government shall be entitled to the Public Account of India." And article 283 (1) states that:

"The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President."

Hence, parliamentary oversight is necessary in this matter to ensure that the provisions of constitution are not getting violated or the President, for the time being, needs to come up with a proper set of rules to be followed regarding these funds.

A PIL in this regard was **filed** by advocate ML Sharma. In the case Manohar Lal Sharma V. Narendra Damodas Modi & ors. (2020), the petitioner contended that the government should rescind the PM CARES Fund on the ground that it is not constitutional as it has not been enacted under article 266 or 267 of the constitution or passed by the parliament or approved by the President. The bench headed by SA Bobde dismissed the plea calling it a "misconceived petition".

The Unused ₹3800 Crore

The unused amount of ₹3800 crore lying in the PMNRF has also attracted a lot of questions. The government hasn't provided an answer as to why it created a separate fund when such a big amount is there in a fund was created for the same purpose. In 2018-19, the PMNRF made an investment of ₹1301 crore in the State Development Loans (SDL) and invested ₹250 crore as FDs in IDFC Bank. These facts indicate that for the past few years government has been earning by way of investing the fund's money. This raises the question that the creation of the new fund can be due to the fact that PMNRF's money had become an investment-vehicle.

Conclusion

After analysing both the funds, it can be said that neither of them is perfect. But this does not reduce the redundancy of creating the PM CARES Fund because it is in no way modelled to be better than the PMNRF. It lacks constitutional explanation and the government has still not addressed the concerns raised. This situation is alarming as the fund is receiving huge donations and has already become a target of fraud. People have lost their money because of fraudulent activities like creation of similar name funds, similar websites etc. Even one of BJP Maharashtra prominent leaders tweeted the fake id – pmcaresfund.in instead of **pmindia.gov.in**. An honest mistake or a deliberate fraud. Anyway, the government has to take constructive steps to deal with the concerns rising up by first addressing the immediate problems of such fraudulent activities. According to a survey, there has been a sudden jump in Covid-19 cybercrimes. Therefore, the government has to increase the awareness for the same. And then address all the legal concerns associated because they are not any less important. Better frameworks for transparency need to be worked out and legality of the fund needs to be specified.

This fund is receiving huge amounts of donations for the cause, so it is only good to hope for the time being that this Fund is not merely a publicity meatball in the name of Prime Minister, but it actually 'cares' for the country.

Supreme court clears PMCARES

The Supreme Court HAS "refused" to order transfer of funds from the PM CARES Fund to the National Disaster Response Fund (NDRF), saying they "are two entirely different funds with different object and purpose" and "there is no occasion" for such a direction.
It also said guidelines specifically provide for audit of the NDRF by the Comptroller & Auditor General of India, but PM CARES Fund, being a public charitable trust, "there is no occasion for audit by the Comptroller & Auditor General of India".
Dismissing a writ petition filed by NGO Centre for Public Interest Litigation (CPIL), the bench of Justices Ashok Bhushan, R Subhash Reddy and M R Shah said: "The funds collected in the PM CARES Fund are entirely different funds which are funds of a public charitable trust and there is no occasion for issuing any direction to transfer the said funds to the NDRF… The prayer of the petitioner to direct all the funds collected in the PM CARES Fund till date to be transferred to the NDRF is refused."

The bench said “the contributions made by individuals and institutions in the PM CARES Fund are to be released for public purpose to fulfil the objective of the trust. The PM CARES Fund is a charitable trust registered under the Registration Act, 1908 at New Delhi on 27.03.2020. The trust does not receive any Budgetary support or any Government money. It is not open for the petitioner to question the wisdom of trustees to create PM CARES Fund which was constituted with an objective to extend assistance in the wake of public health emergency that is pandemic COVID-19”.

It also rejected the prayer for a direction to the government to put in place a new National Plan under the National Disaster Management Act, 2005, to deal with Covid-19 situation.

The bench said “all aspects of epidemics, all measures to contain an epidemic, preparedness, response, mitigation have been elaborately dealt in Plan, 2019 (the National Plan made in 2016 was revised and approved in November 2019) … The petitioners are not right in their submissions that there is no sufficient plan to deal with COVID-19 pandemic. COVID-19 being a Biological and Public Health Emergency, which has been specifically covered by National Plan, 2019, which is supplemented by various plans, guidelines and measures, there is no lack or dearth of plans and procedures to deal with COVID-19”.

Appearing for the CPIL, senior advocate Dushyant Dave contended that the earlier guidelines for administration of NDRF, which came into force from 2010-11, have been modified by new guidelines with effect from 2015-16, and it is not possible now for any person or institution to make a contribution to the NDRF. He said paragraph 5.5 of earlier guidelines has been deleted to benefit the PM CARES Fund, so that all contributions by any person or institution should go to the PM CARES Fund.

The bench, however, rejected this. It said “paragraph 5.5 of earlier guidelines which contemplated contributions by any person or institution for the purpose of disaster management to the NDRF are very much still there in the new guidelines”, that guideline 5.2 “expressly provides that any grants that may be made by any person or institution for the purpose of disaster management shall be credited into the NDRF”.

“The submission that after the new guidelines, it is not possible for any person or institution to make any contribution to the NDRF is, thus, misconceived and incorrect,” it said.

The bench said “the PM CARES Fund has been constituted in the year 2020 after outbreak of pandemic COVID-19 whereas the new guidelines came into force with effect from 2015-16, on which date the PM CARES Fund was not in existence, hence, the submission that new guidelines were amended to benefit the PM CARES Fund is wholly misconceived”.

Dave said though the government had decided to treat COVID-19 as a notified disaster for the purpose of providing assistance under SDRF, no similar notification had been issued for the purpose of providing assistance for COVID-19 under NDRF.

On this, the bench pointed to an order dated April 3, 2020, saying “the Central Government had released first instalment of Rs 11,092 crores out of Rs.22,184 crores which was the Central Share of SDRMF. All States have been allocated different amounts for the purpose of providing assistance under SDRMF”.

It said “in event any State expenditure is in excess of the balance in the State’s SDRMF (State Disaster Risk Management Fund), the State is entitled for the release of fund from NDRF as it is clear from new guidelines” and the “submission that NDRF cannot be used for any assistance for COVID-19, thus, cannot be accepted”.

“When the Central Government is providing financial assistance to the States to contain COVID-19, it is not for any PIL petitioner to say that Centre should give amount from this fund or that fund,” it said.

The bench said “Dave during submissions has fairly submitted that he is not questioning the bona fide of constitution of PM CARES Fund. His submission is that NDRF is audited by CAG, but PM CARES Fund is not audited by CAG rather by a private Chartered Accountant”.

It said “the nature of NDRF and PM CARES Fund are entirely different. The guidelines issued under Act, 2005 with regard to NDRF specifically provides for audit of the NDRF by the Comptroller & Auditor General of India whereas for public charitable trust there is no occasion for audit by the Comptroller & Auditor General of India”.

25. Constitutionality of lockdown

It's always safer to begin with a caveat. Even if you were to conclude that all that is being done to protect you may not be legitimate, the chance of a constitutional court being vexed with these questions is as remote as you deciding upon Wuhan as your first vacation destination post lockdown.

Mila Versteeg, professor of law at the University of Virginia, writes in *The Atlantic* that while the constitutional validity of the lockdown in the United States is doubtful, it has bipartisan support and people, scared out of their wits, are also willing to voluntarily sacrifice their rights. This is not a new phenomenon. Many would remember how, in the wake of the felling of the World Trade Centre, America, the land of liberty, voluntarily accepted the draconian Patriot Act for the sake of homeland security. Therefore, even presuming that none of the parties in India – the Centre, the states or the people – have any objection to the virtual house arrest of the entire nation, should that hinder us from examining whether such a course is constitutionally kosher?

Original emergency provisions and Indira's misuse

Before it was amended in 1978, Article 352 of the Indian constitution permitted the declaration of an emergency on three grounds – war, external aggression and internal disturbance. For mysterious reasons, the emergency imposed by Indira Gandhi during the Bangladesh War in 1971 had not been rescinded even as on that summer day in June 1975 when the Supreme Court vacation single judge V.R. Krishna Iyer, heard Nani Palkhivala for a whole day in a packed courtroom. It was a challenge by Indira Gandhi to the Allahabad high court verdict setting aside her election and unseating her as prime minister. Justice Iyer did not grant a blanket stay that day. He merely allowed Mrs Gandhi to participate in the house but not vote. The emergency that followed at midnight was invoked on the grounds of "internal disturbance" – one of the three permissible grounds.

Then came the infamous *ADM Jabalpur* case. As overnight most opposition leaders were arrested, many of them successfully secured habeas corpus release orders from various high courts. These cases landed up before a constitution bench of the Supreme Court. Attorney General Niren De reportedly was not keen to defend the stand of the Indira government that during an emergency even the right to life could be suspended. It is said that oblique hints at revocation of the residency rights of his British wife were also instrumental in ensuring De's appearance in court. He later claimed that he tried his best to shock the judges into reason, arguing the proposition that during an emergency even if a person were to be killed by the security forces in the presence of the justices, they would remain helpless. Sadly, the majority judges did not bite the bait but timidly concurred. Justice Khanna penned his famous dissent, arguing that the right to life was a natural law right and the remedy of

habeas corpus preceded the constitution. Therefore, the right to life and the remedy of moving a habeas corpus petition in court for release against illegal detention could not even be suspended during emergency. But he was the sole voice of reason and the majority opinion prevailed.

Janata's constitutional purge and the new legal regime

For all the brouhaha made by the court in recent times of burying *ADM Jabalpur* six feet under, the Janata Party government had done that already in 1978 through the 44th constitutional amendment. Not only did Morarji Desai's government substitute "internal disturbance" with "armed rebellion" but it also clarified in Article 359 that the right to life (Article 21) and the right against double jeopardy and self incrimination (Article 20) could not be suspended even during an emergency.

Under the constitution, it is during the period of emergency that the niceties of separation of powers between the three wings of government, as well as the division of powers between the Centre and the states are legally permitted to be blurred. The constitution, upon promulgation of emergency, permits the Centre not only to give executive directions to the states but also to the legislature in matters such as public health, law and order and police, which are otherwise state subjects with only a limited role for the Centre.

Even during normal times, Article 256 stipulates that the Centre can give directions on how to implement laws made by parliament. Article 257 states that the executive power of the states should be exercised in a manner that does not "impede or prejudice" the executive power of the Centre. The Centre is also permitted to issue directions to the states towards this end. Article 355 (which the Janata Party perhaps forgot to amend when it purged our constitution of 'internal disturbances') enforces a constitutional duty on the Union to protect the states against "external aggression' as well as "internal disturbances".

While indisputably the 'coronavirus pandemic' would qualify as a situation of 'internal disturbance', it certainly cannot be covered by any of the three existing grounds in Article 352 which would permit the Central government to declare an emergency, suspend fundamental rights, including Article 19 which protects the basic freedoms of citizens, and control the executive and legislative functions of the states.

Two centuries, two statutes

Under this constitutional framework, two laws provide the Centre and the states the statutory basis for acting against the Coronavirus. They are the Epidemic Diseases Act, 1897 (EDA) and the Disaster Management Act, 2005 (DMA). The case of the government

perhaps is that these two laws arm it with sufficient powers and there is no necessity to fall back on the "emergency provisions" of the constitution. This warrants a closer examination of these two laws.

The EDA is of 19th century vintage, enacted by a colonial power with a ruthless administrative apparatus uncontrolled by a constitution based on fundamental individual rights. A closer look would indicate that even this law is intended to address a situation when a "state or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease" and the government is of the opinion that "the ordinary provisions of the law for the time being in force are insufficient for the purpose".

The law indeed gives wide powers to "take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by, the public or by any person or class of persons as it shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed."

However, it does not provide that this power can be used in violation of any existing law, much less a constitution which was then not even in existence. Under our constitutional system, a law born before our first Republic Day may be allowed to survive it provided it passes the *agni pariksha* of the constitution. Till date, neither the EDA nor measures taken under it have been subjected to that test. More importantly, the Central government's power under this law only seems to be restricted to controlling the movement and detention of vessels at ports.

What does the Disaster Management Act say?

The second legislation, the DMA, is of 21st century vintage and mandates setting up a three-tier Disaster Management Authority at the national, state and district level to formulate a disaster plan for its level.

Section 11(3), DMA, sets out the aspects of such a plan. It is to deal with measures to be taken in mitigation and to address preparedness and capacity. Section 19 mandates the state authority to lay down guidelines for providing standards of relief. Section 22(2)(h) permits the state authority/executive committee to give directions to government departments on actions to be taken in response to any threatening disaster. Sections 24 and 34 empower the state executive committees and the district authority to control or restrict the movement of vehicular traffic or people from or within a vulnerable or affected area, and to take any measures that may be warranted by such a situation. Also directions can be given to

government departments on taking such steps and measures "for rescue, evacuation, providing immediate relief saving lives."

Section 30 replicates this model for the district level. Section 34 empowers the district authority to "control and restrict vehicular traffic", as well as "recommend such measures as are necessary." Section 35 permits the Central government to take such measures as (a) coordinate work between the various authorities and government departments (b) deployment of forces and (c) other matters to secure "effective implementation". Section 36 creates a statutory responsibility on all Central government departments to comply with the directions of the national authority.

The DMA also requires all government departments to formulate their own disaster management plans. Section 47, DMA, empowers the Central government to constitute a National Disaster Mitigation Fund. Section 50 authorises, in times of a threatened disaster, the authorities to permit the administration to procure without adherence to the usual tender procedure. Section 51 sets an imprisonment term of one year (two years in the event of loss of lives) for persons obstructing discharge of functions by any government officer or employee. WhatsApp rumour mongers would be interested to know that Section 54 prescribes a one-year penalty for spreading fake news or false alarm. Section 56 even has a similar penalty for a government servant who refuses to perform his duty. Section 61 is an important provision which prohibits discrimination on grounds of sex, caste, community, descent or religion in the matter of providing compensation or relief to victims. Section 6 empowers the Central government to issue binding directions to authorities and state governments. Lastly, Section 72 gives this law an overriding effect.

Protection of states from 'Internal Disturbance'

While considering the validity of the Armed Forces (Special Powers) Act,1958 which conferred sweeping powers to the armed forces in disturbed areas, the Supreme Court in *Naga People's Movement of Human Rights* v. *Union of India* held that:

"Reference in this context may be made to Article 355 of the constitution whereunder a duty has been imposed on the Union to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. In view of the said provision, the Union government is under an obligation to take steps to deal with a situation of internal disturbance in a State… The provisions of the Central Act have been enacted to enable the Central government to discharge the obligation imposed on it under Article 355 of the

constitution and to prevent the situation arising due to internal disturbance assuming such seriousness as to require invoking the drastic provisions of Article 356 of the constitution."

The Sarkaria Commission report has stated that under Article 355, the Union can issue a wide array of directions, without having to resort to invoking Article 352 (emergency) or Article 356 (president's rule). In fact, the report cautions against a hasty imposition of president's rule by stipulating that the Union can also act under Article 355 i.e. without imposing president's rule. Article 355 can stand on its own. The report indicated that it should first be ensured that the Union had done all that it could in discharge of its duty under Article 355, that it had issued the necessary directions under Articles 256-257 and that the state had failed to comply with or give effect to the directions.

Orders passed on the Coronavirus

Coinciding with Prime Minister Modi's May 24 address to the nation which announced a four-hour lead time for bringing the entire nation under 'lockdown' for 21 days, the National Disaster Management Authority (NDMA) issued social distancing guidelines on March 24 considering the "coronavirus pandemic" as a "disaster" within the meaning of the DMA. The Union home secretary forwarded these lockdown guidelines to the states and Union Territories by an order of the same date.

The measures include the shutting of all non-essential government establishments, all commercial and private establishments, industries, transport by air, rail and road, hospitality services, educational institutions, places of worship, political gatherings, etc. Certain exceptions for medical staff, journalists, petrol pumps, essential stores, etc have been provided for. The district collectors are to be the "incident commanders" in each district who would also decide on who should be issued exception passes. Downstream, in several states, the competent authorities have issued orders under Section 144 of the Code of Criminal Procedure, 1973, prohibiting more than five people from assembling in public places.

Legality of national "house-arrest"

While four days' lead time was given for the Janata Curfew, barely four hours' time was given to the crores of Indians to arrange their lives and livelihoods in an orderly manner. The chaotic aftermath of the national lockdown has been evidenced by heartwrenching scenes at railway stations, inter-state bus terminals, state borders, labour markets etc. where scores of people have been subjected to a period of enforced unemployment while being marooned far away from the sanctuary of their homes.

As per the 2011 Census, India has 41 million migrant workers. Add to that domestic workers, daily wagers and construction workers. Conceded, the prime minister, several chief ministers and government advisories have exhorted employers not to deduct wages for the period of the lockdown. However, without a guaranteed wage or some minimum income or compensation, can the right to life, which includes the right to livelihood of these hapless workers, be snuffed out simply by falling back on Article 256 read with the DMA?

We have seen how after the Janata government's amendment, even if emergency is formally promulgated, the right to life cannot be taken away. In the present case, the emergency provisions have not even been invoked! If the government can bypass the emergency provisions of the Constitution and initiate such drastic steps, albeit with universal consent, one might well ask whether such provisions – which not only specify the manner in which fundamental rights may be suspended but also set out the constitutional-legislative oversight over such suspension – have been rendered completely meaningless.

While orders under Section 144, CrPC restrict collective assembly, can the NDMA direct a "lockdown" which draws the "*lakhsman rekha*" at the citizen's door and compels her into virtual imprisonment for 21 days. Clause (a) and (e) of Article 39 require the government to take steps to ensure that citizens have a right to adequate means of livelihood, and citizens are not forced by economic necessity to enter avocations unsuited to them. These obligations are among the Directive Principles of State Policy which are considered to be fundamental in the governance of the country. The present lockdown would create conditions that run contrary to these obligations. The choice between COVID-19 and economic death is a hard one. The citizen, for howsoever noble a motive, has been left deprived of even her right to chose. Section 144 CrPC as well the cognate provisions in state police Acts (such as Section 30(3), Delhi Police Act, 1978) usually prohibit assemblies. But the lockdown has taken the 'Lakhsman Rekha' to all our doorsteps. Again, returning to the fundamental issue – without a declaration of emergency and, therefore, with the right to movement and the right to livelihood still in operation, is a "lock-down" constitutionally valid?

counter arguments. When the very right to life of the nation is imperilled, such constitutional arguments are heresy. After all, the Doctrine of Necessity proclaims loud and clear that "Necessity knows no law". For whatever it is worth, if we are willing to accept that these unforeseen times are compelling us to act beyond the four corners of our basic law, at the very least let us not lose focus on the equally critical mandate of both the EDA as well as DMA – namely relief and rehabilitation of the disaster affected, i.e. the poor and most marginalised.

Also, while wholehearted support to the administration in this hour of national crisis is the duty of every Indian, it is equally important to keep flagging crucial issues – such as, has the Disaster Fund mandated by the DMA been operationalised? Is the process of disbursement of compensation under the EDA under contemplation

26. Aarogya Setu and privacy concerns

In 2017, India witnessed a unique event. A democratically-elected government stood before the Supreme Court and argued that it had complete and absolute right over the lives of its citizens. It asserted that privacy was an "elitist" concern, that its surveillance powers had no constitutional limits and, no fundamental right to privacy was guaranteed by the Constitution. The Court disagreed unanimously.

Twice thereafter, the Narendra Modi government attempted to circumvent the Supreme Court's strictures. First, through the mandatory, expansive and unjustified use of Aadhaar, which was pruned substantially by the Court. And second, by issuing a tender to build a surveillance system in 2018, which was stopped after being brought to the notice of the Supreme Court. The Aarogya Setu app raises similar concerns..

The government claims it has launched this contact tracing app to better equip healthcare authorities to fight the COVID-19 pandemic. However, its historically poor track record on privacy, the lack of transparency about who built and runs the app, and the absence of data protection legislation compound people's anxieties. Especially because the app allows the government continuous access to an individual's location and demographic data. Thus it is imperative that the government answer some burning questions:

First, since the app breaches the fundamental right to privacy, it must have legislative sanction. Instead, the app is being imposed through executive order. Companies are being told that all their employees must use the app, and local governments, building societies and shops are making it mandatory. Why has the government not complied with the orders of the Supreme

Court vis-a-vis the need for legislation? Under what legal framework has this breach of privacy been shown to be reasonable?

Second, what are the safeguards against data theft and other breaches? The app's Terms of Service (TOS) confer blanket limited liability on the government. In cases of data theft, who will be held accountable? How can the government be allowed to operate a huge surveillance system without concomitant obligations?

Third, why is the app not open source? The closed source architecture of the app violates transparency principles and this government's own policies. Singapore's TraceTogether app was made open source, thus allowing researchers and experts to test the architecture and suggest measures to correct vulnerabilities.

Fourth, why is there no protocol for deletion of data? What legal rights do users have over their data and its deletion? Does the government have a right to hold the data and process it in perpetuity? Under the TOS, the government is obligated to delete certain personal data after a 30-day time period. However, there exists no framework to check compliance of the same. If users have no control over their data, it is a complete violation of their right to informational self-determination and the right to be forgotten.

Ever-changing rules add to the problem. On April 14, the app updated its privacy policy without notifying users, despite the privacy policy explicitly mandating the same. Such actions do not inspire trust.

Fifth, has the app been tested with any groups of users, for example, like Britain is testing a contact tracing app with a limited population in the Isle of Wight? Has the government conducted scenario analyses of how the app can be misused or abused? This is crucial in India given how much stigmatisation has already occurred (communities refusing to bury bodies of COVID patients and an instance of the lynching of a person suspected to be positive). The human touch may be vital, as Kerala has demonstrated, by successfully using old-fashioned manual contact tracing.

Sixth, has the government figured out how to deal with cases of false positives, the possibility of which is acknowledged in the TOS? How well trained are officials who will be making decisions about whom to quarantine? What if the app provokes people to infer incorrectly that

someone they encountered a few days earlier was a carrier of the virus? If they attack or stigmatise that person, a faulty algorithm or inference would have jeopardised someone's life. How will the government deal with such cases?

Seventh, in a country where the total number of smartphone users is around 500 million, is the government going to penalise the remaining (almost) two-thirds of the population for not downloading the app on a smartphone they do not possess or cannot afford?

Across India, there are efforts to build databases of people's health records to enable easier treatment, including through telemedicine. If instances of misuse of the Aarogya Setu app emerge, then people will not trust other government initiatives involving health records, even if they are undertaken with due care, inclusive consultations, and respect for privacy.

The government must address these concerns in an open manner. Contradictory statements from ministers and combative rejoinders to those, like Rahul Gandhi, who raised valid concerns, just worsen the confusion.

When the Supreme Court heard the Right to Privacy case, it marked an unprecedented occasion where the government of India actually argued against the rights of its citizens. Now, it is time to stand up and ensure that, through the Aarogya Setu app, this government does not callously snatch those rights and jeopardise citizens' safety

27. Azaan and use of loudspeakers

Holding that azaan (call to prayer) "may be an essential and integral part of Islam", the Allahabad High Court recently said its recitation "through loudspeakers or other sound amplifying devices cannot be said to be an integral part of the religion, warranting protection of the fundamental right enshrined under Article 25 of the Constitution of India, which is even otherwise subject to public order, morality or health and to other provisions" of Part III of the Constitution.

Ruling on pleas by Ghazipur MP Afzal Ansari, Congress leader Salman Khurshid and senior advocate S Wasim A Qadri, who challenged orders of the Ghazipur, Farrukhabad and Hathras

administrations directing mosques to stop recitation of azaan through loudspeakers in view of the Covid-19 guidelines, a division bench of Justices Shashi Kant Gupta and Ajit Kumar said azaan can be recited by the muezzin from the mosque minarets "by human voice without using any amplifying device and the administration is directed not to cause hindrance… unless such guidelines are being violated".

But the bench made it clear that "under no circumstances sound amplifying devices can be permitted to be used between 10.00 pm to 6.00 am by the district administrations. the petitioners have failed to bring on record or even plead that they sought any such permission for the use of sound amplifying devices, for recital of Azan from their respective mosques and, therefore, their use without such permission would be illegal and cannot be accorded approval by this Court. However, in case any such application is filed before the concerned authorities, that may be dealt with in accordance with law including Noise Pollution Rules".

In his petition, Ansari had prayed that fundamental right to religion of the people at Ghazipur may be protected and the state administration be directed to permit recitation of the azaan by only one person from respective mosques of Ghazipur since it does not violate any of the directives issued for controlling the threat of the pandemic spread. Khurshid had stated that recitation of azaan is an integral part of Islam and in no way undermines the society's collective response to the pandemic.

In response, the Uttar Pradesh government had filed a counter-affidavit contending that azaan is a call for congregation to offer prayers at the mosque and, therefore, in violation of the guidelines for containing the pandemic.

28. Press Freedom Index 2020

India has slipped two points on the 2020 World Press Freedom Index, compiled by Reporters Without borders, to a rank of 142. This rank places India below countries like Myanmar (139), South Sudan (138) and Palestine (137), and a little above Pakistan (145). The report notes that though there have been no murders of journalists in India in 2019, there have been "constant press freedom violations, including police violence against journalists, ambushes by political activists, and reprisals instigated by criminal groups or corrupt local officials".

It notes that India's score has been heavily affected by the situation in Kashmir after the central government shut down fixed line and mobile Internet connections completely for several months, making it virtually impossible for journalists to cover what was happening in what has become a vast open prison.

. The report comes at a time when a Kashmiri photojournalist, Masrat Zahra, has been booked for 'anti-national" Facebook posts. Another journalist from *The Hindu*, Peerzada Ashiq, also faces an FIR for a story on an encounter in Shopian.

Globally, the report notes that the coming decade would be decisive for the future of journalism. It notes that the Covid-19 pandemic amplifies the many crises that threaten the right to freely report, independent, diverse and reliable information:

"There is a clear correlation between suppression of media freedom in response to the coronavirus pandemic, and a country's ranking in the Index. Both China (177th) and Iran (down 3 at 173rd) censored their major coronavirus outbreaks extensively. In Iraq (down 6 at 162nd), the authorities stripped Reuters of its licence for three months after it published a story questioning official coronavirus figures. Even in Europe, Prime Minister Viktor Orbán of Hungary (down 2 at 89th), had a 'coronavirus' law passed with penalties of up to five years in prison for false information, a completely disproportionate and coercive measure."

Norway topped the Index for the fourth year in a row in 2020, while Finland is again the runner-up.

29. USCIRF Downgrades Indias status

The U.S. Commission on International Religious Freedom (USCIRF) has downgraded India to the lowest ranking, "countries of particular concern" (CPC) in its 2020 report. The report, released in Washington by the federal government commission that functions as an advisory body, placed India alongside countries, including China, North Korea, Saudi Arabia and Pakistan. India was categorised as a "Tier 2 country" in last year's listing. This is the first time since 2004 that India has been placed in this category.

"India took a sharp downward turn in 2019," the commission noted in its report, which included specific concerns about the **Citizenship Amendment Act**, the proposed National Register for Citizens, anti-conversion laws and the situation in Jammu and Kashmir. "The national government used its strengthened parliamentary majority to institute national-level policies violating religious freedom across India, especially for

Muslims." The panel said that the CPC designation was also recommended because "national and various State governments also allowed nationwide campaigns of harassment and violence against religious minorities to continue with impunity, and engaged in and tolerated hate speech and incitement to violence against them".

The Govt. of India reacted sharply to the USCIRF report , terming it "biased and tendentious" and rejected its observations.

"We reject the observations on India in the USCIRF Annual Report," official spokesperson Anurag Srivastava said. "Its biased and tendentious comments against India are not new. But on this occasion, its misrepresentation has reached new levels. It has not been able to carry its own Commissioners in its endeavour. We regard it as an organisation of particular concern and will treat it accordingly," Mr. Srivastava added.

Three of the 10 USCIRF commissioners dissented with the panel's recommendation on India as being 'too harsh' and that ended up placing the country alongside what they termed as "rogue nations" like China and North Korea.

The commission also recommended that the U.S. government take stringent action against India under the "International Religious Freedom Act" (IRFA). It called on the administration to "impose targeted sanctions on Indian government agencies and officials responsible for severe violations of religious freedom by freezing those individuals' assets and/or barring their entry into the United States under human rights-related financial and visa authorities, citing specific religious freedom violations". In 2005, Prime Minister Narendra Modi who was at the time the Chief Minister of Gujarat was censured by the USCIRF. The commission had recommended sanctions against Mr. Modi for the 2002 riots and the U.S. government had subsequently cancelled his visa.

The USCIRF 2020 report makes a specific mention of Home Minister Amit Shah, for not taking what it deemed as sufficient action to stop cases of mob lynching in the country, and for referring to migrants as "termites". In December 2019, the USCIRF

had also asked the U.S. government to consider sanctions against Mr. Shah and "other principal leadership" over the decision to pass the Citizenship Amendment Act.

30. Governors right to call for a floor test

A Governor can call for a floor test any time he objectively feels a government in power has lost the confidence of the House and is on shaky ground, the Supreme Court held recently.

In a 68-page judgment, a Bench of Justices D.Y. Chandrachud and Hemant Gupta concluded that a Governor can call for a trust vote if he has arrived at a *prima facie* opinion, based on objective material, that the incumbent State government has lost its majority in the Assembly.

"The idea underlying the trust vote is to uphold the political accountability of the elected government to the State legislature... In directing a trust vote, the Governor does not favour a particular political party. It is inevitable that the specific timing of a trust vote may tilt the balance towards the party possessing a majority at the time the trust vote is directed. All political parties are equally at risk of losing the support of their elected legislators, just as the legislators are at risk of losing the vote of the electorate. This is how the system of parliamentary governance operates," Justice Chandrachud observed.

The intention behind a trust vote was to enable the elected representatives to determine whether the Council of Ministers commanded the confidence of the House. It was the MLAs, and not the Governor, who made the ultimate call whether a government should stay in power or not, the court reasoned.

With this, the apex court has made it clear that a Governor's power to call for a floor test is not restricted only before the inception of a State government immediately after elections, but would continue throughout its five-year term.

The court clarified that the Governor's requirement to have a trust vote does not "short-circuit" any disqualification proceedings pending before the Speaker. It said a Governor need not wait for the Speaker's decision on the resignation of rebel MLAs before calling for a trust vote in the House.

But Governors cannot misuse their wide powers to call for a floor test to displace elected governments for political reasons, the court stressed.

"It is necessary that the Governors bear in mind that the purpose underlying the entrustment of the authority to require a trust vote is not to displace duly elected governments but to intervene with caution when the circumstances which are drawn to the attention of them indicate a loss of majority. This power is granted to the Governors to ensure that the principle of collective responsibility is maintained at all times and must be exercised with caution," Justice Chandrachud observed, while referring to the nine-judge Bench judgment in the S.R. Bommai case.

Justice Chandrachud further said the decision of the Governor to call for a trust vote was not immune from judicial review.

The judgment is based on the Madhya Pradesh political controversy, which led to the **fall of Kamal Nath government** and the return of the BJP regime under Shivraj Singh Chauhan after 22 Congress MLAs offered their resignations to the Speaker. On March 19, the Bench **ordered a floor test** in the House within the next 24 hours. However, Mr. Nath had resigned before the trust vote.

The core arguments raised by the Congress party was how the Governor had no authority to demand that then Mr. Nath should take a floor test on March 16 in the opening session of the Budget.

The Congress had also accused the Governor of "short-circuiting" the Speaker's power to decide on the resignation of 16 of the 22 rebel MLAs "spirited away" by the BJP to Bengaluru and their disqualification for defection, if necessary.

31. Prevention of corruption act and Deemed universities

In a significant ruling, the Supreme Court has held that bribery and corruption in a deemed university can be tried under the **Prevention of Corruption Act**.

Individuals, authorities or officials connected to a deemed university, whatever be their role or designation, come under the definition of a 'public servant'. They can be tried and punished under the anti-corruption law, the court said.

Deemed universities come within the ambit of the term 'university' in Section 2(c)(xi) of the Prevention of Corruption (PC) Act, 1988. A deemed institution under the University Grants Commission Act of 1956 has the same common public duty like a university to confer academic degrees, which are recognised in the society.

Officials of a deemed varsity, though not seen as public servants in the conventional sense, perform duties in the discharge of which the State, the public and the community at large has an interest, a three-judge Bench led by Justice N.V. Ramana reasoned in a judgment pronounced on April 27.

"The object of the PC Act was not only to prevent the social evil of bribery and corruption, but also to make the same applicable to individuals who might conventionally not be considered public servants. The purpose under the PC Act was to shift focus from those who are traditionally called public officials, to those individuals who perform public duties. Keeping the same in mind, it cannot be stated that a deemed university and the officials therein, perform any less or any different a public duty," Justice Ramana, who authored the main judgment shared with Justice Mohan M. Shantanagoudar, observed.

Justice Ajay Rastogi, in his separate but concurring judgment, reiterated that the provisions of the PC Act would cover "all persons who are directly or indirectly actively participating in managing the affairs of any university in any manner or the form."

Gujarat's appeal

The judgment came on an appeal filed by the Gujarat government against a trustee of Sumandeep Charitable Trust, which established and sponsors Sumandeep Vidyapeeth, a deemed university. The State police had filed a case in 2017 against the trustee for allegedly demanding ₹20 lakh from the parent of a medical student to write her final examination. The Gujarat High Court had discharged the trustee from the case.

The apex court set aside the High Court order and ordered that the trial be completed expeditiously.

32. Supreme Court quashes 100% quota for STs in scheduled areas

The Supreme Court's judgement against 100% reservation of teachers of the Scheduled Tribes (ST) in primary schools located in the Scheduled Areas brings to the fore a debate over the prospects of the interests of Adivasis protected under the Fifth Schedule of the Constitution coming in conflict with that of the other categories within the quota system.

A five-judge constitution bench led by Justice Arun Mishra on April 22 struck l.down a government order issued by Andhra Pradesh governor Biswabushan Harichandan which had provided absolute reservation for members of the STs for teaching jobs in the scheduled areas. The apex court has also reiterated the *Indra Sawhney vs Union of India* judgement, which capped reservations at 50%. The issue has reached the Supreme Court after an appeal was filed against the Andhra Pradesh high court ruling which had upheld the government order providing for 100% reservations for tribal teachers in the Scheduled Areas. The five-judge constitution bench has also interpreted its judgement prospectively not "retrospectively" and held that the existing appointments made in excess of 50% reservation shall survive but shall cease to be effective in the future, providing relief to the tribal teachers who have already been appointed.

One Chebrolu L. Prasad had filed an appeal against the high court order contending that the governor's order was discriminatory since it affected not only the open category candidates but also the other reserved categories' candidates and reservation under Article 16 (4) of the Constitution shall not exceed the 50% cap.

The bench, observed:

"100% reservation would amount to unreasonable and unfair and cannot be termed except as unfair and unreasonable. Thus we are of the considered opinion that providing 100 % reservation to the Scheduled Tribes and Scheduled Castes were not permissible. The Governor in the exercise of the power conferred by para 5(1) of the Fifth Schedule of the Constitution cannot provide 100% reservation."

The bench further ruled, "By providing 100 percent reservation to the Scheduled Tribes has deprived the Scheduled Castes and the Other Backward Classes (OBCs) also of their due representation. It also impinges upon the right of open category and scheduled tribes who have settled in the Scheduled Areas after January 26, 1950. The rights of the Scheduled Tribes who are not residents of the scheduled areas shall also be adversely affected if the impugned order is allowed to become operational."

Call for safeguarding tribals' interests

Tribal advocacy groups, however, contend that social justice cannot be delivered if tribals in the scheduled areas and the other marginalised sections living elsewhere are seen as being on the same page. Lawyer and tribal activist Palla Trinadha Rao said that the quashing of the government order will run counter to the principal objective of the Fifth Schedule of the Constitution. The schedule is framed to give protection to the tribals living in the scheduled areas from alienation of their lands and natural resources to non-tribals, he said.

33. U.S. Supreme court ruling on LGBT Rights

The American Supreme Court ruled recently that a landmark civil rights law protects LGBT people from discrimination in employment, a resounding victory for LGBT rights from a conservative court.

The court decided by a 6-3 vote that a key provision of the Civil Rights Act of 1964 known as Title VII that bars job discrimination because of sex, among other reasons, encompasses bias against LGBT workers.

"An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids," Justice Neil Gorsuch wrote for the court.

The outcome is expected to have a big impact for the estimated 8.1 million LGBT workers across the country because most states don't protect them from workplace discrimination. An estimated 11.3 million LGBT people live in the U.S., according to the Williams Institute at the UCLA law school.

The cases were the court's first on LGBT rights since Justice Anthony Kennedy's retirement and replacement by Kavanaugh. Kennedy was a voice for gay rights and the author of the landmark ruling in 2015 that made same-sex marriage legal throughout the United States. Kavanaugh generally is regarded as more conservative.

The Trump administration had changed course from the Obama administration, which supported LGBT workers in their discrimination claims under Title VII.

During the Obama years, the federal Equal Employment Opportunity Commission had changed its longstanding interpretation of civil rights law to include discrimination against LGBT people. The law prohibits discrimination because of sex, but has no specific protection for sexual orientation or gender identity.

In recent years, some lower courts have held that discrimination against LGBT people is a subset of sex discrimination, and thus prohibited by the federal law.

Efforts by Congress to change the law have so far failed.

The Supreme Court cases involved two gay men and a transgender woman who sued for employment discrimination after they lost their jobs.

34. U.N. Public service day

Every year on June 23rd, United Nations Public Service Day is celebrated as a tribute to the people who are associated with public service in all the counties of the world.

UN public service day meaning

UN public service day is celebrated to acknowledge the creative achievements and contributions by the public service institutions. The aim is to acknowledge as well as the reward public service so that they continue to work effectively and responsibly in all countries.

UN public service day significance and theme for 2020

This year, the United Nations Public Service Day is dedicated to all the women and men who risk their lives and health amidst the COVID-19 pandemic. June 23rd serves as a recognition for all the brave and hard workers who are still working for the essential public services amid the ongoing COVID-19 pandemic.

This includes people working in the healthcare sectors, delivery sectors, sanitation sectors, social welfare, education, transport, law enforcement, and all the public servants. These people are the ones who continue to work amidst the pandemic while others take shelter at their homes.

35. Facebook ignores rules on communal posts

A top Facebook India official turned a blind eye to hate speech by a BJP leader and three other "Hindu nationalist individuals and groups" to avoid damaging the social media platform's business prospects, *The Wall Street Journal* reported recently.

The newspaper reported that citing business imperatives, Facebook's top public policy executive in India, Ankhi Das, is "opposed applying hate-speech rules" to at least four individuals and groups linked with the BJP despite the fact that they were "flagged internally for promoting or participating in violence."

Das, the public policy director of Facebook's India, South and Central Asia division since 2011, has the task of overseeing "a team that decides what content is allowed on the platform", the WSJ reported in its article entitled *Facebook's Hate-Speech Rules Collide With Indian Politics.*

The WSJ report referred to a hate speech — calling for violence against minorities — allegedly by Telangana BJP MLA T Raja Singh, a BJP MLA in the Telangana Assembly who has made communally provocative statements. "The current and former Facebook employees said Das' intervention on behalf of Singh is part of a broader pattern of favoritism by Facebook toward Mr Modi's Bharatiya Janata Party and Hindu hard-liners," as per the *WSJ* report.

The article triggered a heated exchange between Congress leader Rahul Gandhi and the Centre. While Rahul alleged that the BJP and the RSS "control Facebook and WhatsApp" and use the platforms to influence the electorate, Union Minister for Communications, Electronics and Information Technology Ravi Shankar Prasad hit back, saying that access to information has been democratised and was no longer controlled by the Gandhi family.

36. Anti defection law : Manipur crisis

Manipur Speaker Y Khemchand's decision to disqualify three Congress MLAs and the state's lone TMC MLA ahead of the Rajya Sabha election this year raised questions once again on the Speaker's powers to disqualify under the Constitution. With the disqualifications, BJP candidate Leisemba Sanajaoba was elected to the Rajya Sabha with 28 votes. The Congress secured four votes less.

In 2017, the BJP formed the government in Manipur after seven legislators who won on a Congress ticket switched sides. The Congress party asked the Speaker to disqualify these seven, but the petitions were kept pending.

Since no action was taken by the Speaker on the disqualification petitions, a writ petition was filed before the High Court of Manipur in Imphal seeking directions to decide on the petition within a reasonable time. However, the court did not pass an order saying that the larger issue of whether a High Court can direct a Speaker to decide a disqualification petition within a certain timeframe is pending before a Constitution Bench of the Supreme Court. The parties were left with the option to move the apex court or wait for the outcome of the cases pending before it.

In 2018, however, the High Court, refusing the preliminary objections of the Speaker, decided to hear the case on merits. It reasoned that since the remedy under Tenth Schedule is an alternative to moving courts. It said that if the remedy is found to be ineffective due to deliberate inaction or indecision on the part of the Speaker, the court will have jurisdiction. However, the High Court again did not pass orders since the larger issue is pending before the Supreme Court.

Meanwhile, the Manipur case reached the Supreme Court.

In the 2016 SA Sampath Kumar vs Kale Yadaiah and Others case relating to the disqualification of a Telangana MLA, a two-judge bench of the Supreme Court had asked a larger bench to clarify the legal position on the Speaker's powers to disqualify and the extent to which such decisions of the Speaker can be reviewed by the courts. This larger bench, however, is yet to be formed.

This January, expressing its displeasure with the Speaker's lack of urgency in deciding the disqualification petitions, a three-judge bench comprising Justices Rohinton F Nariman, Aniruddha Bose and V Ramasubramanian ruled that Speakers of assemblies and the Parliament must decide disqualification pleas within a period of three months except in extraordinary circumstances. This settled the law for situations where the timing of the disqualification is meddled to manipulate floor tests.

The court also recommended that the Parliament consider taking a relook at the powers of the Speakers citing instances of partisanship. The court suggested independent tribunals to decide on disqualification. In the context of Manipur, this ruling meant that Speaker Khemchand had to rule on the disqualification within three months since.

While making a ruling in the Manipur case, the three-judge bench led by justice Nariman also ruled that the 2016 reference to a larger bench by a two-judge bench was not needed. It said, that the two judge bench had not been apprised of a five-judge bench ruling in 2007 that answers the questions raised by the 2016 reference. Decisions of a larger bench are precedents and are binding on smaller benches.

Incidentally, the 2016 reference was made by a bench of Justices R K Agarwal and Nariman.

But even after three months after the Supreme Court order, the Speaker did not take a call on the disqualifications. On March 18, in an extraordinary move, the Supreme Court removed Manipur Minister Thounaojam Shyamkumar Singh, against whom disqualification petition was also pending before the Speaker since 2017, from the state cabinet and restrained him "from entering the Legislative Assembly till further orders".

On June 8, the Manipur High Court also passed similar orders in the case of the seven Congress MLAs, relying on the SC verdict. The Speaker, on the eve of the Rajya Sabha elections, finally ruled on the petitions.

On June 17, **three-BJP MLAs resigned** and four ministers in N Biren Singh's government, all MLAs of NPP, switched camps to lend support to the Congress. Of the seven MLAs, who had in 2017 jumped to BJP, four MLAs once again pledged their votes to the Congress. One of those four MLAs, Brojen Singh, moved the High Court a day before the election and secured

permission to vote. With the speaker disqualifying the other three and a TMC MLA, the Congress secured 24 votes, four short of the BJP.

37. Durbar move: Jammu and Kashmir

The Jammu and Kashmir high court has rung its bell in its recently delivered judgement on the legacy of the Darbar Move, a 148-year-old tradition in which the capital of the region is relocated twice a year — from Srinagar to Jammu during winter months and vice versa in the summer.

The honourable high court had recently taken *suo moto* cognisance of the order issued by the Union territory's administration which had delayed the darbar switch from Jammu to Srinagar in view of the coronavirus pandemic. The high court after considering the material placed before it pronounced:

The bench headed by Chief Justice Gita Mittal observed that there were no grounds or reasons forthcoming in terms of administrative efficiency, legal justification or constitutional norms for effecting the darbar move. The division bench, citing limitations on the extent of its jurisdiction, deferred the task of reviewing this practice to the best wisdom of those upon whom the constitution of India bestows this solemn duty, i.e. the executive.

The high court, however, went on to prod the decision-makers, including the Centre, and directed them to look into the necessity of continuing with the 148-year-old biannual darbar move, keeping in mind the financial implications of over Rs 200 crore per annum that is incurred by the "hopelessly fiscally deprived Union Territory".

Implications of undertaking this exercise

The enormity of this exercise can be gauged by the fact that when the capital shifts, so does the civil secretariat, important subsidiary offices, files and government documents, and the assembly. Official documents and other equipment are packed in hundreds of bundles, cartons and metallic trunks, and loaded onto more than 250 trucks which ferry them the 300 km distance between Jammu and Srinagar, and vice versa.

The general administration department in its affidavit to the high court stated that about 9,695 government officials were involved in this biannual exercise in November 2019, while it stood at a figure of 10,112 in April 2019. On each move, an allowance equivalent to Rs 25,000 (an amount of Rs. 50,000 per annum) is paid to employees involved in the shift.

Additionally, a temporary move allowance of Rs 2,000 per month is also paid to each moving employee, bringing the annual expenditure to Rs 75,000 per employee. It was also submitted that 1081 personnel from the Jammu and Kashmir armed police, J&K security, police in Kashmir and Jammu zones were engaged in providing security for the move in October 2019. Additionally, 15 companies of the Central Armed Police Force provided security to this exercise in October 2019.

Similarly, J&K's estate's department, which is responsible for providing accommodation to civil secretariat employees after a darbar move, in its affidavit disclosed that Rs 127 crore was spent for providing accommodation to such employees during 2018-19 and 2019-20. All this provides an insight into the enormity of this exercise and its bearing on the public exchequer.

Previous attempt to reform

In 1987, when the then prime minister, Rajiv Gandhi, got stuck in Kashmir due to bad weather on a visit to J&K, the headquarters and administrative seat of governance was in Jammu. As this seemed ironic and strange, the PM asked the then chief minister Farooq Abdullah to review this age-old practice keeping in mind the changing times.

Abdullah then constituted a committee with then finance commissioner Sheikh Ghulam Rasool as its chairman and Shafi Pandit and Sushma Chaudhary as its members to suggest measures to reform this practice. The committee submitted its report titled *Darbar Move: The Reality* which recommended certain measures to revamp this age-old practice. When its recommendations were taken up for implementation, some vested interests inflamed passions under the banner of regional discrimination, because of which the report had to be shelved.

An informal effort in this direction was also made when Omar Abdullah was chief minister but again such attempts were looked at with suspicion across the state. The stranglehold this issue has on the false prestige and psyche of the people of the two provinces has been the biggest impediment for the requisite political will to bid this practice its long-overdue farewell.

Call for reforms

Way back in 1872, the practice of the darbar move might have seemed pragmatic and rational, keeping in view the aspirations and the governance needs of the provinces of the

erstwhile state of Jammu and Kashmir. The rugged and mountainous topography further complicated by the geographical disconnect owing to lack of road and air travel facilities prevalent in those times seem to have been eased to a great extent in the present era.

It also needs to be appreciated that since the state was dismembered, its size has shrunk and it has fallen to 18th rank in terms of its area in the Indian Union and bigger states like Rajasthan and Madhya Pradesh have managed governance efficiently with a single, permanently stationed capital. With the advancement of technology, distances have dwindled and the outdated method of ferrying truckloads of records involving large scale money and manpower appears retrograde.

The digitisation of all records has already been undertaken to a great extent and it is expected that by 2021 this exercise would be complete, thereby making the practice of ferrying records redundant. The high court has been gracious in suggesting a number of viable alternatives that could be adopted.

38.New rules for private satellite channels

The Narendra Modi government has come up with a set of draft amendments to uplinking and downlinking guidelines for private satellite television channels. One of the clauses in the new draft guidelines states that Ministry of Home Affairs (MHA) has the authority to withdraw security clearance to a channel before the permitted time period of 10 years, leading to the termination of its licence.

The draft does say that the channel would be given an opportunity to be heard before that.

The draft of the amended guidelines, released recently by the Ministry of Information and Broadcasting, comes amid the Covid-19 crisis, at a time when the nationwide lockdown has led to an increased consumption of media, particularly television.

The need for new guidelines

According to the I&B ministry, there was a need to review and amend the existing guidelines, which were last issued in 2011. This need was felt because of challenges emerging from "fast evolving broadcasting technology", "changes in the market scenarios", and other operational developments in the broadcasting sector. There was also a need for creating a conducive environment for ease of business on a "sound regulatory framework".

Sources in the television broadcasting industry told ThePrint that while the draft amended guidelines would make it easier to conduct business in certain ways, there are a lot of issues that remain unclear, such as the timeline required by the government to issue a licence to a new private satellite television channel, leaving the decision to the political dispensation of the day.

The new guidelines also list a series of penal actions for violations from broadcasters, ranging from prohibiting a channel's broadcast for 30 days if it uses dual logos, to stopping a channel from live broadcasts for up to six months in case it fails to register for the telecast of a live event.

Security clearance

One of the clauses in the draft guidelines states that once a channel is granted security clearance, it will be valid for 10 years. But it adds that this can be terminated by the Union Ministry of Home Affairs any time within the period.

The guidelines reiterate that security clearances from the MHA will be mandatory for the company and its directors, in case of a change in directors or appointment of a new executive, change in shareholding pattern, or the transfer of a channel from one entity to the other.

“But, they do not explicitly state if a channel with security clearance already in the broadcasting business will have to go for another round of security clearance from the MHA if it has to open a new channel.” Further, there is a disconnect between the guidelines and the Companies Act, because most of the time, “new directors in the company are from within the employees, and unless the MHA gives security clearance to the person, he or she cannot take up the job”.

No set timeline for getting a licence

The draft guidelines are also quiet on the time to be taken by the government to issue a licence to a private satellite television channel, leaving the decision to the political dispensation of the day.

An industry source gave the example of how Quintillion Business Media, which had plans to operate a business news channel in a joint venture with *Bloomberg*, had to drop its plans because it failed to procure a licence from the I&B ministry for three years, while fairly newer channels like Republic TV got a licence within months.

Further, too much reference to the MHA is also cause of worry, and the absence of a single-window clearance (to get a licence) is also an issue, given that other ministries and departments involved in the process such as the Department of Space and the Department of Telecommunication, are still not aligned.

Also included in the amended guidelines are provisions for penal action, such as a warning and/or prohibition of broadcast up to 30 days, for use of dual logos for a channel or using a name or logo not approved by the ministry.

Tiranga TV, a now-defunct news channel promoted by Congress leader Kapil Sibal, had run into trouble with the I&B ministry last year on this account.

The guidelines also specify that channels which do not remain operational for 60 days should inform the I&B ministry, along with reasons about why it has remained non-operational, failing

which, it would receive a warning. In case the channel continues to be non-operational for over 90 days, it would invite suspension or cancellation of permission.

Sources in the government said this provision has been put in because several small broadcasters secure licences and then either continue to remain dormant or sublet it to another entity, which may not have the security clearance..

The guidelines also state that channels will have to file renewal applications six months before the expiry of their licences.

Non-news channels can go for temporary live uplinking of events, provided they are not related to news or current affairs, by registering five days before an event.

Broadcast of live events without prior registration will invite penal action, which could include suspension or cancellation of the channel's permission. The guidelines, however, don't clarify which event to be uplinked live would be construed as a news or current affairs event, leaving it up to the decision of the central government.

Any channel or teleport found uplinking content not adhering to the Programme and Advertising Code under the Cable TV Act, will be liable for penal action, ranging from warning to be communicated to the channel, to suspension or revocation of permission, or disqualification from holding any permission under the guidelines for a period of up to five years.

'Ease of doing business will improve'

Industry sources said the new guidelines do address some challenges in terms of the ease of doing business in the broadcast sector.

"The good points are that there are no changes in licence fees and processing fees for temporary live uplinking, and other amendments to the licence (change of name and logo) have been removed."

Another move broadcasters have welcomed is the registration process for live uplinking needed by non-news channels, as opposed to the earlier requirement of permission.

Other positive things the sources point out are clear guidelines for mergers and acquisitions and inter-group mergers, and the clause of letting a channel remain non-operational up to 60 days with prior intimation, which they say will help save costs.

The guidelines also do not mention preconditions for use of foreign satellites.

39. Holding elections during pandemic

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From putting a cap on the number of people involved in door-to-door campaigning to allowing the submission of nomination forms online to providing voters with gloves before they use electronic voting machines (EVMs) — the Election Commission of India (ECI) recently released a set of broad guidelines for holding elections in the time of the coronavirus disease pandemic.

While standard safety measures such as social distancing and wearing of masks, among others, will be followed, ECI also said those with high temperature will have to vote in the last one hour of the polling process and that there will be fewer voters at a booth.

The poll watchdog was finalising the guidelines to hold the first set of elections, especially that in Bihar, in the wake of Covid-19.

In the guidelines, ECI also decided to “decentralise” the training of officials in charge of the polling process. This effectively means that their training will either happen online or will be conducted face-to-face in a staggered manner.

“Hand gloves shall be provided to all the electors for signing on the voter register and pressing button of EVM for voting,” the poll watchdog said, adding that face masks, sanitizers, thermal scanners, gloves, face shields and personal protective equipment kits “shall be used during the electoral process ensuring social distancing norms”.

Also, the number of tables in a counting hall has been slashed by half — from 14 to seven. The commission also said a maximum of 1,000 people will be allowed to cast their votes at a polling station, a significant reduction from the earlier figure of 1,500.

At polling booths, electors will stand six feet-apart, in line with health ministry guidelines. Soap, water and hand sanitizers will be made available at the entry point. Thermal scanners will also be there.

Covid-19 patients, those in quarantine for symptoms and those with temperature higher than normal will be made to wait and vote in the last one hour, in keeping with safety norms prescribed by the health ministry.

Extra face masks will be kept for those not carrying one. During the identification process, voters will require to lower the face mask, the document said.

“Earmarking circle for 15-20 persons of 2 yards (6 feet) distance for voters standing in the queue depending on the availability of space. There shall be three queues each, for male, female, and PwD (people with disabilities)/ senior citizen voters,” the guidelines said.

A group of just five people, including candidates but excluding security personnel, is allowed to take part in door-to-door campaigning.

For road shows, a convoy of vehicles should have an interval after every five vehicles instead of 10 vehicles (excluding security vehicles, if any). The interval between two sets of convoys of vehicles should be half-an-hour instead of a gap of 100 metres.

The commission's guidelines added: "In all, such identified grounds (where public rallies are to be conducted), the District Election Officer should, in advance, put markers to ensure social distancing norms by the attendees."

Nomination forms will be available online on the website of the chief electoral officer and district election officer. The number of persons to accompany a candidate for submission of nomination has been restricted to two. The number of vehicles for the purposes of nomination is also restricted to two.

While elections have taken place in other countries since the pandemic, including in Sri Lanka recently, elections in India have only been confined to polls to the Rajya Sabha and legislative council seats, which involve a limited set of voters. Experts believe that the election guidelines adopted for Bihar, where elections are due in October-November, will have significant implications for political contests.

ECI, which reviewed suggestions received from state officials and political parties before releasing the final guidelines, is also likely to hold polls to the Samastipur parliamentary constituency and 56 assembly constituencies (across eight states) from September.

The Congress and the Rashtriya Janata Dal (RJD) were critical of the guidelines.

The Congress issued a statement saying that the guidelines were not enough for the conduct of "free, fair and independent elections" in the time of Covid-19, and in ensuring the smooth elections in "free, non-partisan & fair fashion".

"Despite having sought comments from political parties such as the Indian National Congress and in response to which detailed recommendations were given, the ECI has overlooked almost all the suggestions given and prepared guidelines that are inadequate in dealing with the challenge of Covid-19," said party general secretary (organisation) KC Venugopal.

RJD spokesperson Manoj Jha said the guidelines appeared to have been formulated keeping a country "other than India in mind".

"These guidelines will not ensure maximum voter participation," said Jha. "As an incentive, perhaps, a health insurance for voters can be offered, in case it is being offered to poll officials. An election with a 25% turnout is hardly an election."

"It seems the ECI is more invested in the idea of an election, than in its democratic potential," he added.

But former chief election commissioner SY Quraishi said the guidelines were "very sensible" and have "drawn from the experience of other elections". "They are in conformity with the health ministry guidelines...," he said

40. Hindi as official court language in Haryana

The Haryana government in May notified an amendment to its Official Language Act, brought in to compulsorily mandate the use of Hindi in subordinate courts and tribunals across the state. The move, as per the chief minister's statement to the Assembly, was to ensure that people get justice in their own language, thereby making the judicial system more litigant friendly. Although there was never a bar on the use of Hindi in Haryana's courts, English had been the preferred choice in many courts and districts.

Our legal system is an institutional inheritance from the time of the British Raj — the English language, thus, is part of an inextricable foundation. Such was the familiarity with English for official work that post-Independence, the Constituent Assembly chose to retain it, in addition to Hindi, as the Official Language of the Union. Further, Article 348 of the Constitution was categorically drafted to stipulate that proceedings in the high courts and the Supreme Court would be conducted in English, and that the authoritative text of all acts, orders, rules and regulations would be in English subject to Parliament enacting a law otherwise. It was asserted that English had become critical to the interpretation and application of laws, which too were originally drafted in English. Hindi, or other Indian languages, could only be used for such a purpose once it developed the same kind of capacity, knowledge and analytical accuracy as required for legal interpretation. Consequently, and in the absence of any sustained effort to develop and enrich Hindi for such a purpose, English continued to be the language of choice for the legal system.

There is no gainsaying the fact that more people in Haryana understand Hindi better than they do English, but conflating colloquial convenience with the technical exactitude required for the application of law — most of which is in English — may lead to counterproductive results. It is important to note that Haryana's own State Judicial Examination continues to be conducted in English, with Hindi only being a separate paper. Moreover, the Bar Council of India's Rules of Legal Education prescribe English as the default medium of instruction for all law courses, and even those institutions which seek to allow instruction in another language are required to conduct a compulsory examination for English proficiency. Such a systemic and institutionalised predominance of the language, including within Haryana itself, is also coupled with the fact that

major laws, judicial precedents, commentaries and other legal resources are all primarily available in English only.

While the Amendment does envisage six months for building infrastructure and for training staff, it is unlikely to be adequate time for lawyers and judges to effectively re-equip themselves without compromising on the quality of justice itself. Notably, a similar amendment was brought in by Punjab in 2008, but if actual progress made on the ground there is any indication of its success, the Haryana government might want to reconsider.

Interestingly, in 2007, when the law commission had solicited the views of various legal luminaries on the introduction of Hindi in the SC and the high courts, Justice B N Srikrishna had fairly remarked that unless two generations of lawyers were trained in Hindi, such a move would not be feasible. It would indeed be ideal for our justice delivery system to function in the common tongue. But an issue as important as this needs to be approached from a practical standpoint despite its moral and emotive charm.

What is required is not an abrupt imposition of governmental choice, but the gradual creation of an atmosphere for all stakeholders to move towards adopting the language in their own interest, and in the interest of a fairer system of justice — the SC's move to make its judgments available in regional languages is a case in point. Of course, changes in attitudes, systems and institutions take time, but these will also offer a far more sustainable, just and efficient manner of giving shape to the Haryana government's stated intention.

41. A.P. State election commissioner controversy

The Andhra Pradesh High Court recently directed the state government to reinstate Nimmagadda Ramesh Kumar as the State election Commissioner (SEC). He had been dismissed by the government on April 10 after he postponed the local body elections that were scheduled to be held on March 25.

The court also struck down the government's appointment of retired judge V Kangaraj as the SEC in the same order.

On March 15, Kumar had cited the coronavirus situation and the need to take safety measures and postponed the elections indefinitely, resulting in a showdown with the government. The state government then brought an ordinance under Article 213 and removed Kumar ,who challenged the move in the High Court.

After Kumar had postponed the elections, Chief Minister Y S Jagan Mohan Reddy had said that the Election Commission did not consult anyone in the government before taking the decision and accused Kumar of pushing back the elections at the bidding of former chief minister and Telugu Desam Party (TDP) chief N Chandrababu Naidu. Kumar had been appointed as SEC during Naidu's tenure in April 2016.

In the run up to the local body elections in March, Kumar had also ordered the transfers of the District Collectors of Guntur and Chittoor, and suspended the Circle Inspector of Macharla Town Police Station in Guntur. He had issued the policeman's suspension orders after two TDP leaders who were on their way to file nominations for the local boy polls were attacked on March 11 in Macharla. The attack was allegedly carried out by workers of the ruling YRSCP — the party has denied the charges..

Another flashpoint between the government and Kumar was his order to collectors to stop all activity related to a survey of land to be distributed to eligible beneficiaries.

On April 10, the state government issued an ordinance modifying the Andhra Pradesh Panchayat Raj Act, 1994 to change the tenure, eligibility and appointment of the SEC. The ordinance reduced the term of the SEC to three years, using which, the government dismissed Kumar and appointed Kangaraj in his place.