Constitutional Amendments

The Constitution (One Hundred and Twenty-Third Amendment) Bill, 2017

- The Constitution (123rd Amendment) Bill, 2017 was introduced in Lok Sabha by the Minister of Social Justice and Empowerment, Mr. Thaawarchand Gehlot on April 5, 2017. It seeks to grant the National Commission on Backward Classes (NCBC) constitutional status, at par with the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes.
- **Role of NCSC:** Currently, under the Constitution the NCSC has the power to look into complaints and welfare measures with regard to Scheduled Castes, backward classes and Anglo-Indians. The Bill seeks to remove the power of the NCSC to examine matters related to backward classes.
- **Constitutional status to National Commission for Backward Classes:** The NCBC is a body set up under the National Commission for Backward Classes Act, 1993. It has the power to examine complaints regarding inclusion or exclusion of groups within the list of backward classes, and advise the central government in this regard. The Bill seeks to establish the NCBC under the Constitution, and provide it the authority to examine complaints and welfare measures regarding socially and educationally backward classes.
- Note that this Bill was introduced alongside the National Commission for Backward Classes (Repeal) Bill, 2017 that seeks to repeal the National Commission for Backward Classes Act, 1993.
- **Backward classes:** The Constitution Amendment Bill states that the President may specify the socially and educationally backward classes in the various states and union territories. He may do this in consultation with the Governor of the concerned state. However, a law of Parliament will be required if the list of backward classes is to be amended.
- **Composition and service conditions:** Under the Constitution Amendment Bill, the NCBC will comprise of five members appointed by the President. Their tenure and conditions of service will also be decided by the President through rules.
- **Functions:** Under the Constitution Amendment Bill, the duties of the NCBC will include: (i) investigating and monitoring how safeguards provided to the backward classes under the Constitution and other laws are being implemented, (ii) inquiring

Current Status: Passed by RS with Amendments

Ministry: Social Justice and Empowerment

Stage	Date
Introduction	Apr 05, 2017
Com. Ref.	Apr 11, 2017
Com. Rep.	Jul 19, 2017
Lok Sabha	Apr 10, 2017
Rajya Sabha	Jul 31, 2017

Relevant Links

Bill Text (26 KB)
_ (301 KB)
PRS Bill Summary (411 KB)
_ (743 KB)
Select Committee Report (14 MB)
PRS Select Committee Report Summary (630 KB)
___ (612 KB)

Related news articles

Rajya Sabha passes Backward Classes Bill, Economic Times, Aug 01, 2017

Rajya Sabha is likely to pass OBC Commission Bill in Monsoon session, Business Standard, Jun 27, 2017

into specific complaints regarding violation of rights, and (iii) advising and making recommendations on socio-economic development of such classes. The central and state governments will be required to consult with the NCBC on all major policy matters affecting the socially and educationally backward classes.

- The NCBC will be required to present annual reports to the President on working of the safeguards for backward classes. These reports will be tabled in Parliament, and in the state legislative assemblies of the concerned states.
- **Powers of a civil court:** Under the Constitution Amendment Bill, the NCBC will have the powers of a civil court while investigating or inquiring into any complaints. These powers include: (i) summoning people and examining them on oath, (ii) requiring production of any document or public record, and (iii) receiving evidence.

END

Cryptocurrencies and the Regulators Dilemma

More from the author

When Satoshi Nakamoto (a pseudonymous person or group) published the pioneering paper *Bitcoin: A Peer-to-Peer Electronic Cash System* in 2008, he/they would have hardly anticipated that the valuation of the cryptocurrency – Bitcoin – founded a year later would surge to 2300 USD[1] a unit in less than a decade. At present, there are around 969 cryptocurrencies in existence across the globe, with a total market capitalisation close to 116 Billion USD.[2] Founded as a peer-to-peer electronic payment system, cryptocurrencies enable transfer of money between parties, without going through a banking system. These digital payment systems are based on cryptographic proof of the chain of transactions, deriving their name, Cryptocurrency. These employ cryptographic algorithms and functions to ensure anonymity (privacy) of the users (who are identified by an alphanumeric public key), security of the transactions and integrity of the payment systems. “Decentralised Digital Currency” or “Virtual Currency” is also interchangeably used for a cryptocurrency.

Widely seen as a disruption for the traditional banking and financial institutions, cryptocurrencies have gained significant traction over the last half a decade, at the same time creating a regulatory nightmare for banking regulators across the globe. Governments and their regulatory bodies have been brainstorming for measures to either regulate the growth of cryptocurrencies, as against just letting them proliferate without regulation and interference. While the US Senate had a hearing on Bitcoins in 2013, the Canadian Senate’s Standing Committee on Banking, Trade and Commerce carried out an extensive study on the use of digital currency in 2014. The acceptability of cryptocurrencies as a legal instrument currently varies from country to country; while some are in the process of formulating laws and measures, others are yet to respond to this disruptive change. The burgeoning use of cryptocurrencies in terror financing, ransomwares, illicit drugs or arms trade and cybercrime has also raised red flags among the security and law enforcement agencies.

The Reserve Bank of India has been keeping a tab on the increasing use of cryptocurrencies and it had issued an advisory in this regard in 2013, cautioning users, holders and traders of virtual currencies to its potential financial, legal and security related risks.[3] The Ministry of Finance also held a public consultation on regulating virtual currencies in May 2017. The overarching issues of regulation, monitoring, measures for consumer protection and security pose a dilemma before the regulatory bodies.

Cryptocurrency is fundamentally a decentralised digital currency transferred directly between peers and the transactions are confirmed in a public ledger, accessible to all the users. The process of maintaining this ledger and validating the transactions, better known as *mining,* is carried out in a decentralised manner. The underlying principle of the authenticity of the present to historical transactions is cryptographic proof, instead of trust; different from how it happens in the case of traditional banking systems.

Any exchange of currency, between party A and party B is a transaction. A cryptographic algorithm/function encrypts this transaction using the digital signatures of the parties to establish their authenticity. Once validated, the transaction reflects in the public ledger, maintained by so-called miners. Cryptocurrencies also bring in transparency in transactions, and all transactions, from the day the first unit of currency was rolled out, are stored in this public ledger. As a privacy measure, the transactions do not reveal the identities of the parties, but rather uses their cryptographic signatures or hash to identify them while mainatianing their anonymity. The transactions do not disclose any details of the parties, be it the name, gender, location signature, credentials or nationality.

The architecture of cryptocurrencies engrain the concepts of cryptography and protocols which are based upon the principles of advanced mathematics and computer engineering. This makes cryptocurrencies secure and hard to duplicate or counterfeit.

Another aspect that enshrines transparency in the cryptocurrencies is the extensive use of open source software. Mining, the process of ledger keeping and validating transactions, is also a truly decentralised and distributed process, open to everyone. The architecture of the software and system behind cryptocurrencies ensures the integrity of transactions, blocks of the transactions, and the public ledger.

The prominent feature in the design of cryptocurrencies architecture is decentralised control, which means, no single authority, institution, individual or group controls the flow of transactions, supply or valuation of the currency. Rather, the collective computing power of the miners ensures seamless operations while demand-supply dynamics drive the valuation, which is further governed by the protocols built into the software of the cryptocurrency.

The following concepts govern the functioning of most of the cryptocurrencies, however, they all vary in some way or the other in terms of development and implementation of the software or business rules:

Proof-of-work in the case of Bitcoin is finding a number, *nonce*, when added to the block, the block hash begins with a specific number of zero bits. This is more of a random search, and the probability of successful generation is really low, making it unpredictable which node in the network will be able to generate the next block. The required computation increases exponentially as the number of initial zero bits required increases.5 At present, SHA-256 is the most widely used hash algorithm for proof-of-work, while others are Scrypt, Blake-256, HEFTY1, Quark, SHA-3 and so on.

A blockchain is a sequence of interconnected blocks of finite transactions over a period of time, which could vary from a minute to a few hours or even a few days, depending upon the volume of the transactions. All the transactions within the finite time frame form a block, whose signature or hash (SHA-256 in the case of Bitcoin) is computed and interlaced with the next block, therefore forming a chain of blocks, which ensures the integrity of a cryptocurrency. In essence, a blockchain is a pubic ledger, which is distributed, synchronised and secured by cryptography. This digital ledger in maintained in every node of the network by the miners supporting the operations of cryptocurrency.

Blockchain is fundamentally a technology which not just empowers cryptocurrencies, but has found diverse applications as a digital ledger providing a secure way of making and recording transactions, agreements, contracts and land records. Being a digital ledger, a blockchain can be decentralised and distributed, enabling storage of multiple copies across the network.

Like cryptocurrencies, , the underlying blockchain technology is also considered to be a disruptive innovation. Blockchain is transparentand can maintain an indisputable record of transactions, and could potentially be used for a variety of purposes, including maintaining land tenure records and property rights.7 Exploratory research is going into creating blockchain applications in banking, pharmaceuticals, stock markets and software for supply chain integrity, maintaining contacts, banking transactions and to curb digital piracy.

Cryptocurrencies blend the best of all the above technologies or processes to offer the users an open-source, cryptographically secure platform for transactions and/or making payments which preserves their privacy and has diverse utilities. The transactions on these platforms might be a small fraction as compared to traditional banking systems, but with the growing penetration of

smart phones and internet connectivity, this innovation might seriously challenge this segment of financial sector once it moves up the value chain.

Professor Clayton Christensen had coined and defined the term *Disruptive Innovation* as a "process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors." There have been numerous instances where disruptive technologies have displaced well-established competitors, WhatsApp displacing Short Messaging Service (SMS) being one such example. Disruptive technologies offer value to the users, in terms of cost-effectiveness, usability and simplicity.8 Considering cryptocurrencies in this perspective , they may well have the potential to displace the existing financial systems which enable electronic flow of money across different political boundaries. The success of cryptocurrencies could be attributed to the advantages they have, such as:

Another facet, which brings the cost down considerably low, is inbuilt security and fraud prevention mechanism, which accounts for 40% of the costs of payment processing gateways.11

Despite these numerous advantages and user friendly processes, cryptocurrencies have their own set of associated risks in the form of volatility in valuation, lack of liquidity, security and many more. Cryptocurrencies are being denounced in many countries because of their use in grey and black markets. There are two sets of interconnected risks; one being to the growth and expansion of these platforms in the uncertain policy environment, and the other being the risks these platforms pose to the users and the security of the state.

In 2014, hackers stole about 480 million USD in Bitcoins from Tokyo's Mt. Gox exchange;14 which, at that time, was one of the biggest Bitcoin exchange in the world. There have been many more such incidents in recent times; attackers moved about 60 million USD worth of the virtual currency Ether from the account of Decentralized Autonomous Organization (DAO) in June 2016;15 a breach at Bithumb, South Korea's largest Bitcoin and Ethereum exchange, led to a loss of around 1 million USD worth of cryptocurrencies in June 201716; and hackers hijacked cryptocurrency trading platform CoinDash in the middle of its initial coin offering and stole 7 million USD from CoinDashon 17 July, 2017.17 In general, the reported instances of thefts have been from the exchanges or the users' end. Users are prone to the risk of losing their holdings if they lose the private encryption key or forget it or lose the storage device/hardware where the wallet is kept or even lose the key due to a theft or hack.18

Additionally, cryptocurrency platforms have also been found to be prone to DDoS attacks, targeted at the exchanges might slow down services or render the platform completely inaccessible. Bitfinex, a Bitcoin exchange, faced DDoS attacks in February 2017; Indian exchange Coinsecure had faced similar attacks in 2016, and BTC-E, Krazen, Poloneix have been a victim of DDoS attacks.20 Owing to these threats, cryptocurrency founders/firms have rolled out a Cryptocurrency Security Standard, a set of requirements for all information systems that make use of cryptocurrencies, including exchanges, web applications, and cryptocurrency storage solutions, complementing existing information security standards such as ISO 27001:2013.21

Perhaps, unless and until these risks are mitigated, the future of cryptocurrencies as legal instruments for exchange or goods and services or for that matter, payments, will continue to remain uncertain. Some of these are technical challenges, such as dispute settlement and security of platforms, while others are policy issues which are much more difficult to resolve such as regulation, liquidity, price volatility and consumer protection. Moroever, cryptocurrencies are an entirely new payment method, with privacy benefits for users, but at the same time, this poses significant risks to security practices , counter-terrorism, law enforcement and taxation.

The policy response to changes in financial sector is state driven, and the governments take cautious steps especially when it is a case of disruptive technology, having the potential to disrupt existing institutions, policies, strategies and practices. Regulatory agencies are still weighing the issue through the lens of consumer protection and money laundering/terror financing. The government of India and its regulatory body, the Reserve bank of India have been following the developments in this sphere for quite some time. The RBI, in 2013, had issued a warning to individuals dealing with virtual currencies in India on the financial, legal, operational and security-related risks, and warned that this could even subject the users to unintentional breaches of anti-money laundering and combating the financing of terrorism (AML/CFT) laws.37 It further reiterated this stand in 2017, again cautioning users, holders and traders of Virtual Currencies about the potential financial, operational, legal, customer protection and security related risks.38 The RBI clarified that it has not given any licence or authorisation to any entity/company to operate such schemes or deal with Bitcoin or any virtual currency.39 Owing to the rising concerns, the government of India has set up a committee to take stock of the present status of Virtual Currencies both in India and globally; examine the existing global regulatory and legal structures; and suggest measures (related to consumer protection, money laundering, etc). The committee, chaired by the Special Secretary (Economic Affairs) has representation from Department of Economic Affairs, Department of Financial Services, Department of Revenue (CBDT), Ministry of Home Affairs, Ministry of Electronics and Information Technology, Reserve Bank of India, NITI Aayog and State Bank of India.40 The committee is expected to roll out its report by the end of July.

In May 2017, based on the deliberations of this committee, the Department of Economic Affairs had invited comments from members of public for wider consultation and solicited inputs through MyGov platform41, which received 4,000 comments.42 Apart from this committee, there is also a Parliamentary Standing Committee on Finance which is looking into these developments. Questions regarding the developments in this sphere have regularly been tabled before the Ministry of Finance in both the houses of Parliament.43 As the legality and legitimacy of cryptocurrencies hangs in the balance, online cryptocurrency exchanges have mushroomed in India, facilitating their sale and purchase. These are self-regulated trading platforms, employing strict customer identification procedures such as Know Your Customer (KYC), and monitoring transactions of suspicious nature to dissuade money laundering, terror financing or other criminal activities.44 Going a step forward, these start-ups have even formed their association – the Digital Assets and Blockchain Foundation India, working towards awareness and best industry practices.

There are three probable directions in which the future discourse on cryptocurrencies will advance; that governments will: a) let cryptocurrencies proliferate as per the market dynamics, without any intervention; b) regulate this segment, designate a status such as legal instrument or capital asset with safeguards for protection against the risks like terror financing, illicit trade or tax evasion; c) proscribe them, given the security risks to the state and perils to the users from volatility, liquidity and security of the assets/systems.

Given the arising interest and enthusiasm of wider populace, technology entrepreneurs and legislators, proscribing cryptocurrencies is unlikely to happen in India. Also, the inherent risks to the security and economy of the state, as well as to the users will dissuade the government from letting cryptocurrencies proliferate without regulation. Therefore, it is quite likely that the further growth and development of cryptocurrencies in India, and their integration with the financial system, if at all, will be regulated under close observation and scrutiny, particularly in the initial phase. Nevertheless, the three factors which are going to shape the likely outcomes of policy on cryptocurrencies in India are:

For developing countries like India, disruptive technologies like cryptocurrencies bring their own set of benefits and risks. At one end, traditional banking systems have their constraints regarding

reach and innovation, where private enterprises fill this space up with novel ideas and innovative business solutions. At the other end, developing countries are at the lower end of technology adoption life cycle, as far as design, development or entrepreneurship in disruptive technologies is concerned. These countries are generally caught by surprise, as disruptive innovations suddenly rise up the value chain and rattle their existing policies, processes, strategies, instruments or technologies. Cryptocurrencies could be a great value proposition in this regard for India, but the prominent security threats, in form of terrorism and left wing extremism, might bring in some hesitation in the early phase of adoption or integration of this technology with the financial system.

If authorised as an electronic payment system or designated a legal instrument, cryptocurrencies will fall under the purview of the RBI; capital gains and business transactions will be liable to tax, and foreign payments are also going to fall under the auspices of Foreign Exchange Management Act. Regulated cryptocurrencies will enshrine robust consumer protection provisions. In terms of benefits, this could be a force multiplier in India's quest for financial inclusion, parallel to the electronic payment modalities such a digital wallets and Adhaar Enabled Payment System. It could further reduce the cost associated with remittances, which brings annual earnings of close to 62 billion USD to India,45. It would also attract future business entrepreneurs, leading to innovation, generation of job and wealth creation in the due process of payments processing, e-commerce and taxation.

Cryptocurrencies are a disruptive innovation that have already begun to alter the existing means of electronic payments, money transfers, policies and regulations. India has also moved a step forward in this regard by considering legalising of these currencies. If the further growth of cryptocurrencies is regulated in India, there will be certain requisites such as a registration process (KYC norms), scrutiny of transactions (in the form of mandatory bank transfers for sale of cryptocurrencies or quoting of Permanent Account Number/Adhaar); reporting/declaration of profits/sales/gains from trading or business activity in cryptocurrencies. The government will have to take considered steps, given the risks from possible use of cryptocurrencies in terror financing, money laundering and tax evasion. Such regulation would still not address the looming risks from price volatility, security breaches and the lack of consumer protection mechanisms, due to prevalent constraints pertaining to the jurisdiction and authority over cryptocurrencies.

Views expressed are of the author and do not necessarily reflect the views of the IDSA or of the Government of India.

available at https://www.cryptocoinsnews.com/antonopoulos-answers-inevitable-bitcoin-terrorism-question/, accessed on July 18, 2017.

b) Question (no. 1142) by Smt. Meenakashi Lekhi in Loksabha on Bitcoin Currency, April 29, 2016, available at http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=33353&lsno=16, accessed on July 20, 2017.

c) Question (no. 523) by Shri. Parvesh Sahib Singh in Loksabha on Regulation of Bitcoin, November 18, 2016, available at http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=41144&lsno=16, accessed on July 20, 2017.

d) Question (no. 335) by Shri. Jose K. Mani in Loksabha on Bitcoin Currency, February 03, 2017, available at http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=46362&lsno=16, accessed on July 20, 2017.

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IT systems of 7 north eastern states integrated with Public Financial Management System

NEW DELHI: The Finance Ministry today said information technology systems of treasuries of seven north eastern states have been integrated with the Centre's Public Financial Management System (PFMS).

Finance Secretary Ashok Lavasa recently reviewed initiatives in the area of public expenditure management in North Eastern (NE) states.

"To provide the Centre and State governments with a real time, reliable and meaningful management information system... the IT systems of all North Eastern States' treasuries (namely, Arunachal Pradesh, Manipur, Mizoram, Assam, Meghalaya, Sikkim, and Tripura) except Nagaland, have been integrated with PFMS," a ministry statement said.

The PFMS, also known as Central Plan Scheme Monitoring System (CPSMS), tracks fund disbursement and ensures that state treasuries are integrated with the Centre to ensure money is send as and when required.

The ministry has set a target to integrate PFMS with all state treasuries in current fiscal and implement Direct Benefit Transfer (DBT) for welfare and scholarship schemes.

In last six months, 15 trainings have been organised by the Central Project Management Unit (CPMU) of PFMS and government departments in NE States on PFMS.

A total of 739 officials/non-officials have gone through these trainings. The National Institute of Financial Management (NIFM), an autonomous body under Department of Expenditure has take up training of the officers from North Eastern States as a special focus area, the statement said.

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Justice Krishna to head expert group on Data Protection Framework for India

Recognising the importance of data protection and keeping personal data of citizens secure and protected, Ministry of Electronics and Information Technology (MeitY), Government of India has, on 31st July 2017, constituted a Committee of Experts under the Chairmanship of Justice B N Srikrishna, Former Judge, Supreme Court of India and comprising of members from Government, Academia and Industry to study and identify key data protection issues and recommend methods for addressing them. The committee will also suggest a draft Data Protection Bill. Protection of Data is expected to provide big boost to Digital economy of the country.

NNK/MD

END

Asia Africa Growth Corridor: Chinese daily cautions India, Japan over trade corridor

BEIJING: The Asia Africa Growth Corridor (AAGC) sponsored by India and Japan is welcome — as long as it does not try to trip China's Belt and Road initiative, a Chinese newspaper said on Wednesday.

Announced by Indian Prime Minister Narendra Modi in May, the AAGC, essentially a maritime corridor, was seen by some as a counterbalance to the Belt and Road initiative, the state-run Global Times said in a report.

"The new venture, jointly led by India and Japan - two countries that have so far opted not to join the B&R initiative - sets out a vision for the better integration of South Asia, Southeast Asia and East Asia with Africa and Oceania," it said.

The Times said the India-Japan vision indicates an overlap between the AAGC and the Belt and Road project "and invites controversy over the actual intentions behind the growth corridor.

It goes without saying that India and Japan could feel free to embark on a new connectivity initiative and no one is begging them to join the B&R initiative.

"As long as the AAGC aims to embrace inclusive growth and promote joint prosperity, the corridor should be encouraged.

"But if India and Japan design the corridor to deliberately counterbalance China's B&R, they should think twice before rushing to it because the route of the AAGC has an extensive geographic overlap with the route of the B&R initiative," the report said.

"That's particularly the case, considering that China has already made huge commitments to developing Africa while the India-Japan partnership is only just taking shape.

"If the AAGC aims to squeeze out China's B&R initiative instead of serving as a complement, it actually divides what's supposed to be a united force to forge ahead with inclusive growth in dozens of countries and regions along the route of the B&R initiative.

"India, for its part, should be particularly level-headed and guard against any over-assertive plans that may go awry."

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END

NOTA option to stay in Rajya Sabha polls - Today's Paper

The ‘None Of The Above’ (NOTA) option will remain on the ballot paper in the upcoming Rajya Sabha elections.

The Supreme Court on Thursday refused to stay an Election Commission circular issued in January 2014 that introduced NOTA in the Rajya Sabha elections.

A Bench of Justices Dipak Misra, Amitava Roy and A.M. Khanwilkar rejected the Gujarat Congress’s plea to freeze the NOTA option for elections to the three Rajya Sabha seats in the State on August 8.

Refusing to also quash a Gujarat Vidhan Sabha circular of August 1 to include NOTA in the ballot papers, the court paid scant regard to submissions made by senior advocate Kapil Sibal, appearing for Congress chief whip in Gujarat Assembly Shailesh Manubhai Parmar, that NOTA would be a “recipe for corruption”, and it would be seen as if the court was turning its back on corruption.

Mr. Sibal raised the concern that MLAs could defy the party whip and invalidate their votes by opting for NOTA. To this, Justice Roy asked Mr. Sibal whether he was apprehensive of losing the RS polls in Gujarat.

Notice to EC

The court, however, issued notice to the Election Commission of India, saying the poll body should be heard in detail as any judicial decision on NOTA may have a ripple effect on elections conducted from January 24, 2014, to the present day.

The court asked why the Congress was challenging the circular now, while noting that “God knows how many elections were held since January 24, 2014.”

The court specifically recorded Attorney-General K.K. Venugopal’s submission that the Union of India does not in anyway interfere with the decisions of the Election Commission and, hence, had no role in this case.

Consequently, the court issued notice only to the Election Commission for a response on the Gujarat Congress’ challenge of its January 24, 2014, notification. Though the Union was let off as a party in the case, Mr. Venugopal was roped in by the Bench to assist the court.

“Does the Election Commission not consult political parties before issuing such a circular,” Justice Khanwilkar asked at one point, even as the court scheduled the case for hearing the Election Commission on September 13.

“The system of NOTA makes the system of proportional representation by means of single transferable vote nugatory and otiose and cannot be made applicable in Rajya Sabha elections. The use of NOTA cannot be sanctioned by way of the impugned circular,” Mr. Parmar submitted.

END

Breastfeeding Week to promote breastfeeding

Breastfeeding Week is observed in the first week of August to focus attention on the important aspect of promotion and support of breastfeeding. The theme of this year's breastfeeding week is 'Sustaining Breastfeeding'. The Ministry of Health & Family Welfare has planned various activities at the national level during this week in association with IAP and Rammohan Lohia Hospital.

To intensify the efforts further for promotion of breastfeeding, the Health Ministry has initiated a nationwide programme called "MAA-Mother's Absolute Affection'' to bring undiluted focus on promotion of breastfeeding and provision of services towards supporting breastfeeding, along with ongoing efforts of routine health systems. In addition, "National Guidelines on Lactation Management Centres in Public Health Facilities" have been recently released to facilitate establishment of lactation management centres for ensuring that the sick and pre-term babies are fed with safe human breast milk.

The key components of the MAA programme are awareness generation, promotion of breastfeeding & inter personal counselling at community level, skilled support for breastfeeding at delivery points and monitoring and Award/ recognition of health facility. Under this programme, ASHA has been incentivized for reaching out to pregnant and lactating mothers and provide information on benefits and techniques of successful breastfeeding during interpersonal communication. ANMs at all sub-centres and health personnel at all delivery points are being trained for providing skilled support to mothers referred with issues related to breastfeeding.

Under NHM, funding support has been recommended for all States and UTs (since 2016) for successful implementation of the MAA programme. 23 States have started implementing various activities under MAA programme such as one day sensitization of health staffs, convergence meetings with line departments, Infant and Young Child Feeding (IYCF) training of staffs at health facilities, communication activities using mass media and mid-media etc. Around 2.5 lakhs ASHAs and 40,000 health staffs including programme managers at district and block level, doctors (MOs), staff nurses (SNs) and ANMs have been sensitized for breastfeeding promotion strategies under MAA programme and around 2800 health facility staffs (MOs, SNs and ANMs) are trained in 4 days IYCF training. In addition more than 75,000 mother's meetings were also carried out by ASHAs at village level to sensitize mothers regarding importance of appropriate breastfeeding practices.

Breastfeeding is an important efficient and cost-effective intervention promoting child survival and health. Breastfeeding within an hour of birth could prevent 20% of the newborn deaths. Infants who are not breastfed are 15 times more likely to die from pnuemonia and 11 times more likely to die from diarrhoea than children who are exclusively breastfed, which are two leading causes of death in children under-five years of age. In addition, children who were not breastfed are at increased risk for diabetes, obesity, allergies, asthma, childhood leukemia, sudden infant death syndrome etc. Apart from mortality and morbidity benefits, breastfeeding also has tremendous

impact on improved IQ.

The trend of breastfeeding has shown an upward trend. As per recent data, initial breastfeeding has been nearly doubled in last decade. i.e from 23.4 per cent to 41.6 per cent (NFHs-3, 2005-06 and 4, 2015-16). Significant improvement has also been reported for exclusive breastfeeding as proportion of children under age 6 months exclusively breastfed, has gone up to 54.9 (NFHS-4) per cent from 46.4 per cent (NFHS-3). However, there is further scope of improving initial breastfeeding rates considering the high proportion of institutional deliveries in the country.

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MV/SK

END

Nabard: Lok Sabha passes bill to raise Nabard's capital to Rs 30000 crore

NEW DELHI: A bill to enable exit of RBI from Nabard and increase authorised capital of the development institution six times to Rs 30,000 crore was passed by the Lok Sabha today.

The National Bank for Agriculture and Rural Development (Amendment) Bill, 2017 also seeks to amend certain clauses in the light of reference of the Micro, Small and Medium Enterprises (MSMEs) Development Act, 2006 in the proposed legislation.

Minister of State for Finance Santosh Kumar Gangwar said that the law is one of the "major step" towards doubling farmers' income by 2022.

This is a small bill but irrespective of that, 28 members put their views on this legislation, which reflects the interest of members on agriculture related issues, he said.

He said that as this is a short bill, suggestions made by members would be considered when the detail bill will come.

"This law would benefit farmers," he said adding the government is sensitive towards issues of farmers.

On concerns being raised by few members such as N K Premachandran (RSP) and K C Venugopal (Congress) on including MSMEs in place of SSIs (small scale industries), he said Nabard would always support agriculture and not corporates.

Earlier while moving the bill for consideration and passage, Gangwar said in his introductory speech on The NABARD (Amendment) Bill, 2017 said National Bank for Agriculture and Rural Development (NABARD) is a premier organisation which was established in 1982.

It provides loans for agriculture, small scale industries among others.

In the last three decades, there has been diversification in the functioning of Nabard and in the last three years, after the BJP government came to power, the bank has undergone a lot of changes, he said.

There has been changes in its priority and policies in the area of agriculture and rural development. Now Nabard is refinancing and providing direct loan in the agriculture and rural areas, he added.

The balance sheet of Nabard has increased from Rs 1.82 lakh crore in March 31, 2012 to Rs 3.10 lakh crore on March 31, 2016, he said adding that means, there has been an increase of around 70 per cent in the activities of Nabard.

Nabard plays an important role for doubling the income of farmers and increasing the infrastructure in the rural areas, the minister said adding "Keeping this target in mind I am placing this bill in the house".

At present the authorised capital of Nabard is Rs 5,000 crore and there is a proposal to increase it to Rs 30,000 crore, Gangwar said.

According to the need, he said, the government can increase the authorised capital from time to time.

If there is a need to increase this authorised capital above Rs 30,000 crore, then after discussions with RBI it can be increased, he added.

There is another suggestion that at present in Nabard, the centre has a share of 99.6 per cent and the RBI has the remaining share, he said adding there is a conflict in the role of the RBI.

As RBI is also a regulator, its 0.4 per cent equity will be transferred to Centre, he said adding as a result, 100 per cent equity will come to the Centre.

Participating in the discussion, BJD member B Mahtab suggested that the NABARD can have an authentic data bank on rural credit.

Agriculture credit is a major issue and that disbursement is dominated by private banks in certain states, he added.

Mahtab also said the functioning of Regional Rural Banks (RRBs) should be looked into.

Gajanan Kirtikar (Shiv Sena) said the government could look at appointing a RBI Deputy Governor as chairman of the NABARD.

Three members from the Lok Sabha and two from the Rajya Sabha should be appointed to the NABARD board for a period of two years, TDP member Murali Mohan said.

Varaprasad Rao (YSR Congress) said that more funds should be given to the bank for rural development activities.

Mamtaz Sanghamita (TMC), Om Birla (BJP), K Parasuraman (AIADMK), Konda Vishweshwar Reddy (TRS), Jitendra Chaudhury (CPI-M), L N Yadav (BJP), J P N Yadav (RJD), Bhagwant Mann (AAP) and M K Raghvan (INC) also spoke.

Members from the northeast India across different states rued that their region has been getting little share of the credit funds.

Kamakhya Prasad, a BJP member of the Assam, said the penetrations of banks in his insurgency-hit state was less and it should be stepped up.

P D Rai, the lone member of Sikkim Democratic Fund (SDF), said the northeast gets one per cent of the credit, leading to farmers trapping in the net of loan sharks.

C K Sangma, another member of National People's Party (NPP) from Meghalaya, emphasised that the government policy should focus on food processing in the northeast region.

Kalushendra Kumar, the lone member of the JDU, which has broken ranks with the opposition to align with the BJP in Bihar, emphasised on giving credit-free loans to farmers.

Ramesh Bidhuri of the BJP said unlike the previous regimes, the focus of the Modi government is truly empowering the farmers rather than resort to populist measures.

He also cited the Bill which will allow the government to enhance the capital of NABARD bank from Rs 5000 crore to Rs 30,000.

NEW DELHI: A bill to enable exit of RBI from Nabard and increase authorised capital of the development institution six times to Rs 30,000 crore was passed by the Lok Sabha today.

The National Bank for Agriculture and Rural Development (Amendment) Bill, 2017 also seeks to amend certain clauses in the light of reference of the Micro, Small and Medium Enterprises (MSMEs) Development Act, 2006 in the proposed legislation.

Minister of State for Finance Santosh Kumar Gangwar said that the law is one of the "major step" towards doubling farmers' income by 2022.

This is a small bill but irrespective of that, 28 members put their views on this legislation, which reflects the interest of members on agriculture related issues, he said.

He said that as this is a short bill, suggestions made by members would be considered when the detail bill will come.

"This law would benefit farmers," he said adding the government is sensitive towards issues of farmers.

On concerns being raised by few members such as N K Premachandran (RSP) and K C Venugopal (Congress) on including MSMEs in place of SSIs (small scale industries), he said Nabard would always support agriculture and not corporates.

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END

High Level Committee on Making India Hub of Arbitration Submits Report

The Government of India under the dynamic leadership of Hon'ble Prime Minister is committed for speedy resolution of commercial disputes and to make India an international hub of Arbitration and a Centre of robust ADR mechanism catering to international and domestic arbitration, at par with international standards available.

To give an impetus to this endeavor, the Department of Legal Affairs, Ministry of Law and Justice, on 13 January, 2017 constituted a ten Member, High Level Committee under the Chairmanship of Justice B.N.Srikrishna, Retired Judge, Supreme Court of India. Justice R.V.Raveendran, Retired Judge, Supreme Court of India, Justice S. Ravindra Bhat, Judge, High Court of Delhi, Shri K.K.Venugopal, Sr. Advocate and presently Attorney General for India, Shri P.S.Narasimha, Additional Solicitor General of India, Ms. Indu Malhotra, Senior Advocate, Supreme Court of India, Shri Arghya Sengupta, Research Director, Vidhi Centre for Legal Policy, Shri Arun Chawla, Deputy Secretary General, FICCI, Shri Vikkas Mohan, Senior Director CII, were the Members and Law Secretary, Shri Suresh Chandra, was the Member Secretary of the High Level Committee.

The High Level Committee was given the mandate to review the institutionalization of arbitration mechanism and suggest reforms thereto. The Committee held 7 sittings. It submitted its report on 3 August, 2017 to Shri Ravi Shankar Prasad, Hon'ble Minister of Law & Justice and Electronics and Information Technology.

The Committee has divided its Report in three parts. The first part is devoted to suggest measures to improve the overall quality and performance of arbitral institutions in India and to promote the standing of the country as preferred seat of arbitration. The Committee in this context have *inter alia* recommended –

(i) Setting up an Autonomous Body, styled the Arbitration Promotion Council of India (APCI), having representatives from all stakeholders for grading arbitral institutions in India.

(ii) The APCI may *inter alia* recognize professional institutes providing for accreditation of arbitrators

(iii) The APCI may hold training workshops and interact with law firms and law schools to train advocates with interest in arbitration and with a goal to create a specialist arbitration bar comprising of advocates dedicated to the field.

(iv) Creation of a specialist Arbitration Bench to deal with such Commercial disputes, in the domain of the Courts.

(v) Changes have been suggested in various provisions of the 2015 Amendments in the Arbitration and Conciliation Act with a view to make arbitration speedier and more efficacious and incorporate international best practices.

The Committee are also of the opinion that the National Litigation Policy (NLP) must promote arbitration in Government Contracts.

The Committee in Part II of the Report reviewed the working of ICADR working under the aegis of the Ministry of Law and Justice, Department of Legal Affairs. The Institution was set up with the objective of promoting ADR methods and providing requisite facilities for the same. The Committee has preferred for declaring the ICADR as an Institution of national importance and takeover of the Institution by a statute. The Committee are of the view that a revamped ICADR has the potential be a globally competitive institution.

As regards the role of arbitrations in matters involving the Union of India, including bilateral investment treaties (BIT) arbitrations, the Committee in Part III of the Report has *inter alia* recommended for creation of the post of an 'International Law Adviser' (ILA) who shall advise the Government and coordinate dispute resolution strategy for the Government in disputes arising out of its international law obligations, particularly disputes arising out of BITs. The Committee has emphasized that ILA may be consulted by the Department of Economic Affairs (DEA), at the time of negotiating and entering into BITs.

The roadmap of suggested reforms after an in depth examination of the issues, by the High Level Committee can result in a paradigm shift from the current perception of delay in resolution of commercial disputes in India to it being viewed as an investor friendly destination. The suggested reforms will not only lessen the burden of the judiciary, but give a fillip to the development agenda of the Government and aid the financial strength of the country and serve the goal of welfare of the citizens.

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NNK/MD

END

New Bill to allow States to drop no-detention policy

Remedial training will be provided to students whofail in the examinations. | Photo Credit: K. Murali Kumar

With some Bills pertaining to education already passing muster in either House of Parliament this session, the Ministry of Human Resource Development is looking to introduce a Bill to amend the Right of Children to Free and Compulsory Education Act, 2009, to enable States to do away with the no-detention policy if they wish.

The Cabinet has cleared the introduction of the Bill and the Ministry wants it introduced in this session itself and passed in the next session.

Twenty-five States had recently agreed with the idea of doing away with or tweaking the no-detention policy — wherein a child is not detained till Class 8 — to give a boost to levels of learning.

Tamil Nadu, Andhra Pradesh, Telangana and Maharashtra did not ask for a rollback of the policy, however.

The Centre has thus decided to allow States to take the call and to tweak the RTE Act to enable them to do so. The Bill is expected to permit States to introduce exams in Classes 5 and 8.

Students who fail in the exams — to be held in March — will be given remedial training and offered another chance to pass in May. Those who still fail will be detained in the same class.

Officials say there were complaints that the no-detention policy — aimed at retaining students in school and giving a fillip to education — led to learning levels taking a dip. The planned modification in the RTE Act is expected to arrest this trend.

“Dropout rates till Class 8 are just 4%, but they rise to above 20% after that. This is because of the no-detention policy,” said a top HRD Ministry source.

States may be permitted to introduce exams in Classes 5, 8

END

Transport / Tourism / Urban development

The Motor Vehicles (Amendment) Bill, 2016

Highlights of the Bill

- The Bill amends the Motor Vehicles Act, 1988 to address issues such as third party insurance, regulation of taxi aggregators, and road safety.
- Under the Act, the liability of the third party insurer for motor vehicle accidents is unlimited. The Bill caps the maximum liability for third party insurance in case of a motor accident at Rs 10 lakh in case of death and at five lakh rupees in case of grievous injury.
- The Bill provides for a Motor Vehicle Accident Fund which would provide compulsory insurance cover to all road users in India for certain types of accidents.
- The Bill defines taxi aggregators, guidelines for which will be determined by the central government.
- The Bill also provides for: (i) amending the existing categories of driver licensing, (ii) recall of vehicles in case of defects, (iii) protection of good samaritans from any civil or criminal action, and (iv) increase of penalties for several offences under the 1988 Act.

Key Issues and Analysis

- The Bill caps the maximum liability for third party insurance, but does not cap the compensation amount that courts can award. In cases where courts award compensation higher than the maximum liability amount, it is unclear who will pay the remaining amount.
- Under the Act, compensation for hit and run victims comes from a Solatium Fund. The Bill creates a new Motor Vehicle Accident Fund in addition. With a Fund already existing to provide compensation for hit and run accidents, the purpose of the new Accident Fund is unclear.
- State governments will issue licenses to taxi aggregators as per central government guidelines. Currently, state governments determine guidelines for plying of taxis. There could be cases where state taxi guidelines are at variance with the central guidelines on aggregators.
- While the penalties for contravening provisions of the proposed scheme on interim relief to accident victims are specified in the Bill, the offences that would warrant such penalties have not been specified. It may be argued that imposing penalties without knowing the nature of the offences is unreasonable.
- The Bill does not address several issues around road safety that

Current Status: Passed by LS

Ministry: Road Transport and Highways

Stage	Date
Introduction	Aug 9, 2016
Com. Ref.	Aug 16, 2016 Ref. to Select Committee on Aug 8, 2017
Com. Rep.	Feb 8, 2017, Select Committee Report on first day of the Winter Session 2017
Lok Sabha	Apr 10, 2017
Rajya Sabha	

Relevant Links

Bill Text (1456 KB)
_ (2 MB)
PRS Bill Summary (415 KB)
PRS Legislative Brief (663 KB)
__ (405 KB)
_ (500 KB)
Standing Committee Report (1 MB)
PRS Standing Comm Report Summary (422 KB)
___ (653 KB)
Overview of Road Accidents in India (1021 KB)
Motor Vehicles notice of amendments, Apr 5, 2017 (1

have been highlighted by other committees such as: (i) creating road safety agencies, and (ii) improving road design and engineering.

Infographics on Road Accidents

MB)

Amendments to the Motor Vehicles (Amendment) Bill, 2016 (606 KB)

Infographics on Road Accidents

Related news articles

Experts call for changes in Motor Vehicle Bill, say States need to be given more powers, Business Line, Sep 27, 2017

Transport ministry hopes Rajya Sabha will clear Motor Vehicles Bill in next session, Financial Express, Sep 13, 2017

AIADMK to oppose Road Safety Bill in Rajya Sabha, Hindu, Jul 08, 2017

Motor Vehicles (Amendment) Bill: In a safer lane, Hindu, Apr 13, 2017

All you need to know about Motor Vehicles Bill, Economic Times, Apr 12, 2017

The road to safety: the journey for better road safety legislation in India, NDTV, Feb 21, 2017

Bill to hike fine for speeding on back-burner, Times of India, Jan 25, 2017

As speed demons on roads leave a bloody trail, bill to hike penalties awaits Parliament nod, Times of India, Jan 24, 2017

House panel sits on bill as road-crash toll climbs, Times of India, Jan 21, 2017

Govt expects Motor Vehicles Bill passage in

Winter Session, Business Standard, Oct 25, 2016

Motor Vehicles Bill signals road safety, Hindu, Aug 29, 2016

END

Cattle trade ban rules were not placed before Parliament

Cattle traders assemble at a monthly market near Mundakayam in Kerala's Kottayam district. File | Photo Credit: The Hindu

A Lok Sabha Secretariat reply to a Right To Information request made by one of the petitioners who has challenged the cattle slaughter ban rules in the Supreme Court reveals that the rules were never laid before the Parliament, which the government should have done before implementing them.

Having triggered an avalanche of litigation across the country, the Prevention of Cruelty to Animal (Regulation of Livestock Market) Rules of 2017, which bans the sale of cattle in livestock markets for the purpose of slaughter or animal sacrifices, is back to the drawing board. Notified on May 23, 2017, the rules mandate that cattle should only be sold in animal markets for farming purposes.

On August 4, 2017, petitioner Sabu Stephen, represented by advocate V.K. Biju, exposed before a Bench led by Chief Justice of India J.S. Khehar another chink in the government's slaughter ban rules.

Section 38A of the Prevention of Cruelty Act of 1960 — the parent Act under which the rules are made — mandates that any rule made by the Centre under it ought to be laid before each House of the Parliament "as soon as it is made". The rules would be placed before the Parliament for a total 30 days. Any modification agreed upon by both Houses of the Parliament should be incorporated in the rules or else they would have no effect.

The July 27, 2017 reply of the Lok Sabha Secretariat says the Parliament had no information about the rules. The RTI reply, in clear terms, said the livestock rules were "not forwarded by the Ministry concerned, i.e., the Ministry of Environment, Forests and Climate Change, for laying on the table of the House so far. Hence, not laid till date".

Mr. Biju submitted: "The government bypassed the Parliament, suppressed the rules from the elected representatives of the people of the country and killed the parent Act... all this when over 70% of the country is affected by certain provisions of the livestock rules.".

Additional Solicitor-General P.S. Narasimha admitted that he was not aware of the facts and sought an adjournment till August 9, 2017.

"A simple reading of Section 38A tells us that you (the government) cannot say 'I will not place the rules before the Parliament'," Chief Justice Khehar agreed with the petitioner's submission.

Justice D.Y. Chandrachud added that Section 38A invokes the spirit that "laying a law before the Parliament is important". "It is an exercise of parliamentary control over the laws of the land," Justice Chandrachud addressed the government.

The information about the alleged lapse on the government side came to light during a hearing on an application filed activist Gauri Maulekhi seeking a clarification of a Supreme Court order on the issue on July 11, 2017.

On that day, the court recorded the Centre's submission that the Madras High Court had already issued a blanket stay on both Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules and The Prevention of Cruelty to Animals (Maintenance of Case Property Animals) Act, 2017.

However, later, through Ms. Maulekhi's intervention, the court realised that the High Court had only stayed a provision of the livestock markets rules, namely Rule 22(b)(iii), which required a person bringing cattle for sale to market to furnish a written declaration that it would not be sold for slaughter.

The Centre has assured the court that it is re-considering the entire body of the livestock market rules. It has promised that the rules, in its existing form, meanwhile, would not be implemented.

"But these rules in the current form is nevertheless in operation. Rules, once notified, are the law. Government cannot say we will not implement them. The rules will continue to operate until either you (government) repeal them or we issue an order of injunction," Chief Justice Khehar indicated.

Says BJP will campaign against corruption, law and order problems and lack of development work in Himachal Pradesh

The process of holding the requisite Board Meetings and Shareholder Meetings has been completed in phases in September 2017.

Ruben George is staying at Ram Nath Kovind's house at Kalyanpur, near Kanpur

END

After SC order, focus on chemicals in firecrackers

Aluminium powder, sulphur and potassium nitrate go into noise-making crackers, while barium nitrate (green) and strontium nitrate (red) emit light. | Photo Credit: AP

The Supreme Court ban on the use of antimony, lithium, mercury, arsenic and lead in the manufacture of firecrackers to prevent air pollution has turned the focus on what chemicals are used to produce spectacular visual effects and noise.

The Tamil Nadu Fireworks and Amorces Manufacturers' Association, which produces most of the fireworks in the country, says none of the specific products banned by the court are used.

A Supreme Court Bench of Justices Madan B. Lokur and Deepak Gupta had on July 31, in an order, directed that no firecrackers manufactured by the respondents shall contain the chemicals in any form, whatsoever. The court entrusted the Petroleum and Explosive Safety Organisation (PESO) with the responsibility of ensuring compliance particularly in Sivakasi. Over 90% of cracker production is done in Sivakasi.

Incidentally, the court also noted it appeared that no standards have been laid down by the Central Pollution Control Board (CPCB) with regard to air pollution caused by the bursting of firecrackers.

Supreme Court bans four toxic chemicals from crackers

However, cracker manufacturers in Sivakasi, who denied using the banned chemicals, said the sound and light show is produced by chemicals such as sulphur, aluminium powder and charcoal (used as fuel), besides potassium nitrate and barium nitrate (as oxidising agents), the industry says.

Aluminium powder, sulphur and potassium nitrate go into noise-making crackers, while barium nitrate (green) and strontium nitrate (red) emit light. Aluminium powder is used in sparklers. "A combination of barium nitrate and strontium nitrate in varying proportions produces different colours," Tamil Nadu Fireworks and Amorces Manufacturers' Association secretary K. Mariappan said.

Significantly, the Supreme Court, observed that there seems to be some doubt about strontium and its compound used in crackers, and has posted the case to August 23 to hear submissions about the use of strontium.

Mr. Mariappan said that phosphorous and chlorate are not allowed to be used in fireworks. Potassium chlorate and potassium perchlorate are friction-sensitive and accident-prone, if used in combination with sulphur. Hence, it is not a part of fireworks chemistry. "Chinese crackers, which use chlorate are, therefore, banned in India," the association's representative said. However, chlorate and phosphorus are used by Amorces manufacturers for making exploding 'caps' and rolls. Similarly, red phosphorous and pitch are used in making of 'snake eggs'.

"We were using red lead for crackers emitting red colour light. However, as per PESO's advise, we switched to bismuth oxide some 15 years ago, as we were told that red lead hangs in the atmosphere causing pollution," he said.

Where do the chemicals for the firecracker industry come from? Sources in the industry and the PESO claim that the chemicals are domestically procured. "Fireworks manufacturers are also involved in aluminium powder production and they supply the entire industry's requirement," he

added.

Plea to ban firecrackers: SC seeks manufacturers' response

But a PESO source said the procurement of raw materials for fireworks does not come under the purview of the Explosives Act. The PESO has been testing samples of crackers only for adherence to the sound limit of 125 decibels at a distance of four metres.

(With inputs from Delhi Bureau)

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CBEC: TFA implementation: Government formulates action plan with timelines

NEW DELHI: The government has formulated a detailed action plan with timelines for smooth implementation of WTO's trade facilitation agreement (TFA), an official said.

Members of the World Trade Organisation (WTO) including India has ratified TFA, which aims at easing customs procedures, expediting movement, release and clearance of consignments.

For the implementation of the pact, the government has last year set up Cabinet Secretary-headed National Committee on Trade Facilitation (NCTF).

The official said recommendations made by four working groups on legislative changes, time release study, outreach programme and infrastructure augmentation are included in the National Trade Facilitation Action Plan (2017-20).

Implementation of the plan, which also includes suggestions of the private sector, have been divided into short term (0-6 months), medium term (6-18 months) and long term (18-36 months).

The short term action plan includes augmentation of storage infrastructure for perishable goods and clearance of such goods within 12 hours of landing for import and 8 hours for export.

The plan for mid term includes updation of all regulatory information available on the internet on a single window portal; to put in place adequate bio-security measures for livestock imports and publication of all fees on a singe window website.

Cargo release time, both for export and import purposes, would also be reduced within a time period.

For imports, sea and air cargo release time would be reduced to three and two days respectively. Similarly, for exports, sea cargo release time would be brought down to two days and air cargo the same day.

The CBEC and the commerce ministry would also work on streamlining policy for e-commerce which includes cutting documentation requirements and providing single submissions.

Further, as part of the action plan, legislative changes have been proposed in the Customs Act 1962 for processing of documents among other things.

The agencies and ministries involved in the implementation process includes Central Board of Excise and Customs (CBEC), Directorate General of Foreign Trade and Animal & Plant Quarantine, textiles and environment ministries.

The 164-member Geneva-based WTO is engaged in making rules for free and fair trade across the globe.

Federation of Indian Export Organisations (FIEO), which is involved in the action making exercise, said that India is ahead in implementing provisions, which it has committed in the TFA.

"We have two years for implementing category A commitments. We are ahead in most of the things. TFA will help boost global trade," FIEO Director General Ajay Sahai said.

Category A contains those provisions which a developing member country designates for implementation upon entry into force of this agreement.

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END

Centre extends Assam's 'disturbed area' tag for another month under AFSPA

AFSPA has been in place in Assam since November 1990. | Photo Credit: Ritu Raj Konwar

The Centre has extended the Armed Forces (Special Powers) Act (AFSPA) in Assam for one more month, declaring the entire state of Assam as a "disturbed" area due to various violent activities by insurgent groups ULFA, NDFB, and others.

The Union home ministry also declared Meghalaya's border areas adjoining Assam, and three districts in Arunachal Pradesh as "disturbed" under the AFSPA for two more months with effect from August 3.

In separate gazette notifications, the home ministry said the entire state of Assam has been declared "disturbed" under the AFSPA with effect from August 3 till August 31.

The ministry said the 20 km belt in Meghalaya bordering Assam will also continue to be a "disturbed area" under the AFSPA with effect from August 3 to September 30.

It has also declared as "disturbed" under the AFSPA three districts of Arunachal Pradesh — Tirap, Changlang and Longding — and areas falling within the jurisdiction of 14 police stations in nine other districts of the state with effect from August 4 to September 30.

The 14 police stations fall under the districts of Papumpare, West Siang, East Siang, Lower Dibang Valley, East Kameng, West Kameng, Namsai, Lohit district, Lower Subansiri in Arunachal Pradesh.

A home ministry official said there were 75 incidents of violence in Assam in 2016 in which 33 people, including four security personnel, were killed and 14 others were abducted.

The violence were perpetrated in Assam by insurgent groups like ULFA, NDFB and others, the official said. The official also added that continuing violence perpetrated by NSCN(IM), NSCN(K), ULFA, NDFB, and others were key reasons for continuing with AFSPA in Arunachal Pradesh.

AFSPA has been continuing in Assam since November 1990. In the three Arunachal Pradesh districts, the AFSPA has been in force since January 2016.

Meghalaya too has been witnessing violence by ULFA, NDFB militants in the recent past.

Ticket booking and cancellation forms will be modified from the current option of 'Transgender (Male/Female)' to just 'T'

Of the three young men who have galvanised Gujarat, ahead of the Assembly elections there, Dalit lawyer and activist Jignesh Mewani is perhaps the

END

Article 35A: Centre’s move for debate stirs hornet’s nest

NEW DELHI/SRINAGAR: The Centre's move seeking "larger debate" over Article 35A of the Constitution, which empowers the Jammu and Kashmir legislature to define "permanent residents" of the state and provide special rights and privileges to them, has triggered a political storm with several parties warning against any tinkering of the provision.

National Conference President and Lok Sabha member Farooq Abdullah on Monday warned of an "uprising" if Article 35A was abrogated. After a meeting of opposition parties at his residence in Srinagar, Abdullah said: "When it will come to that decision, you will see this mass uprising. Don't forget when the Amarnath land row happened in 2008, people rose overnight." His son and former chief minister Omar Abdullah tweeted: "In order to educate the people of J&K about the implications of striking down 35A, JKNC will organise awareness camps starting August 14."

"Its removal will have grave consequences for people living in Jammu and Ladakh. It's amazing that people who talk about protecting Dogra heritage & culture forget that J&K's state subject laws were Maharaja's decision," he said.

Even at the head of the PDP-BJP alliance government, chief minister Mehbooba Mufti had recently warned against any tinkering of Article 35A. Congress warned against any attempt to create new contentious issues in J&K. AICC spokesman Abhishek Singhvi said, "In the current highly fragile deteriorating climate in Jammu & Kashmir where both the state and Central governments appear to be repeatedly failing, it would be most inapposite to initiate a new divisive front. First, let the government do concrete things to restore normalcy and then we can talk of more divisive issues." CPM politburo member Brinda Karat accused BJP of furthering sectarian politics.

"Rather than settling the prevailing tension in Jammu and Kashmir through political dialogue, BJP is trying to divide the state further by bringing up these issues."A section of BJP has been supportive of the idea as it considers existence of Article 35A a major hurdle in growth of the state. Under the Article, state laws have barred non-residents from purchasing land in the state. The Article came into force through a Presidential order in 1954. It has been challenged in the Supreme Court by an NGO and Supreme Court lawyer Charu WaliKhanna. Attorney General K K Venugopal told the bench of Chief Justice J S Khehar and Justice D Y Chandrachud last month that the petition involved constitutional issues and required larger debate after which the court referred the matter to a three-judge bench setting six weeks' deadline for final disposal.

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Nine High Courts oppose all-India judicial service

Nine High Courts have opposed a proposal to have an all-India service for the lower judiciary, eight have sought changes in the proposed framework and only two have supported the idea, a Law and Justice Ministry document says.

The document, sent to all members of the parliamentary consultative committee on law and justice, also says that most of the 24 High Courts wanted control over the subordinate judiciary.

The Narendra Modi government had given a fresh push to the long-pending proposal to set up the new service to have a separate cadre for the lower judiciary in the country. The idea was first mooted in the 1960s.

The document says the High Courts of Andhra Pradesh, Bombay, Delhi, Gujarat, Karnataka, Madhya Pradesh, Patna and Punjab and Haryana “have not favoured the idea of an All-India Judicial Service”.

It said only the High Courts of Sikkim and Tripura have concurred with the proposal.

The Allahabad, Chhattisgarh, Himachal Pradesh, Kerala, Manipur, Meghalaya, Orissa and Uttarakhand High Courts have suggested changes in the age at the induction level, qualifications, training and quota of vacancies to filled through the proposed service.

Administrative control

“Most of the High Courts want the administrative control over the subordinate judiciary to remain with the respective High Courts,” the document said.

Seeking to overcome the divergence of views, the government had recently suggested to the Supreme Court various options, including a NEET-like examination, to recruit judges to the lower judiciary. There were vacancies of 4,452 judges in subordinate courts in the country.

END

e-Shakti initiative of NABARD

e-Shakti is a pilot project of National Bank for Agriculture and Rural Development (NABARD) for digitisation of Self Help Groups (SHGs). It was initiated to address certain concerns like improving the quality of book keeping of SHGs and to enable banks to take informed credit decisions about the group through a Management Information System (MIS). The project covers 25 districts and 1,30,176 SHGs have been digitised as on 31st March, 2017.

As per information compiled by NABARD, about 69,696 SHGs of the SHGs which have been digitised are credit linked as on 31st July, 2017.

No SHG has been de-recognised on account of, or, after digitisation. The digitisation project does not impact the profit/ loss position of the SHGs.

This was stated by Shri Santosh Kumar Gangwar, Minister of State for Finance in written reply to a question in Rajya Sabha today.

DSM/SBS

END

A gathering crisis: the need for groundwater regulation

The water crisis India faces is of such a magnitude that urgent measures are necessary to address it. Yet, while the crisis is often discussed, law and policy measures to address it remain insufficient. This is partly due to the fact that the primary source of domestic water and irrigation is groundwater but the media and policymakers still and often focus on surface water. This needs to change as water tables have been falling rapidly in many parts of the country, indicating that use generally exceeds replenishment.

One of the underlying reasons for excessive use of groundwater is the legal framework governing access to the resource. This was first introduced in the mid-19th century when judges decided that the easiest way to regulate this 'invisible' substance was to give landowners what amounts to a right to access groundwater found under their land, even if in the process they also used water found under their neighbours' land. Over the following decades, this led to a framework whereby landowners see groundwater as their own and as a resource they can exploit without considering the need to protect and replenish it since there are no immediate consequences for over-exploiting it. Access to a source of groundwater has progressively become a source of power and economic gain. The latter has become increasingly visible in recent decades with the propagation of mechanical pumps, which allows big landowners to sell water to others.

The Union government recognised the need to modernise the regulatory framework for accessing groundwater soon after massive expansion in mechanical pumping led to the realisation that recharge could not keep pace with use. The measures proposed were in keeping with the policy paradigm of the early 1970s when a model Bill was first introduced. It focussed on adding some State-level control over new, additional uses of groundwater but did not address the iniquitous regime giving landowners unlimited control over groundwater. This was only taken up by around a dozen States from the late 1990s onwards. The States that now have groundwater legislation based on the model Bill conceptualised in 1970 have on the whole failed to manage to address the problem of falling water tables due to increasing use. In addition, there is no provision in the existing legal regime to protect and conserve groundwater at the aquifer level. Further, since the legal regime fails to give gram sabhas and panchayats a prevailing say in the regulation of what is essentially a local resource, the present framework remains mostly top-down and is incapable of addressing local situations adequately.

Over the past decade, the situation has become increasingly dire not only in States where water tables are falling but also in those that are less affected by quantity concerns. Indeed, the quality of the water pumped is increasingly becoming cause for concern; thus the worry is about accessing a sufficient amount of groundwater that is not harmful to health. The present legal regime has clearly failed to address the growing multiple crises of groundwater. This has been officially recognised since at least the beginning of this decade, first in the Planning Commission and more recently by the Ministry of Water Resources, River Development & Ganga Rejuvenation. The result is the Groundwater (Sustainable Management) Bill, 2017, which is based on current understandings of groundwater and its links with surface water and on the legal framework as it has evolved since the 19th century.

The Groundwater Bill, 2017 consequently proposes a different regulatory framework from the century-old, outdated, inequitable and environmentally unfriendly legal regime in place. It is based on the recognition of the unitary nature of water, the need for decentralised control over groundwater and the necessity to protect it at aquifer level. The Bill is also based on legal developments that have taken place in the past few decades. This includes the recognition that water is a public trust (in line with the oft-quoted statement that groundwater is a common pool resource), the recognition of the fundamental right to water and the introduction of protection

principles, including the precautionary principle, that are currently absent from water legislation. The Bill also builds on the decentralisation mandate that is already enshrined in general legislation but has not been implemented effectively as far as groundwater is concerned and seeks to give regulatory control over groundwater to local users.

A new regulatory regime for the source of water that provides domestic water to around four-fifths of the population and the overwhelming majority of irrigation is urgently needed. For decades, policymakers behaved like the proverbial ostrich because the ‘invisibility’ of falling groundwater tables made it possible not to address the problem immediately. In many places, the situation is now so grave that regulatory action is unavoidable. The proposed new regime will benefit the resource, for instance through the introduction of groundwater security plans, and will benefit the overwhelming majority of people through local decision-making. Overall, the increasing crisis of groundwater and the failure of the existing legal regime make it imperative to entrust people directly dependent on the source of water the mandate to use it wisely and to protect it for their own benefit, as well as for future generations.

Prof. Philippe Cullet is Senior Visiting Fellow, Centre for Policy Research, New Delhi and Professor of Environmental Law, SOAS University of London

The new U.S. Fed Chairman is unlikely to opt for policies that might upset the President’s plan

END

Supreme Court seeks Centre's reply on plea against special status to J&K

The Supreme Court on Tuesday asked the Centre to respond to a petition challenging the continuing validity of Article 370 of the Indian Constitution giving special autonomous status to the State of Jammu and Kashmir.

A Bench of Chief Justice of India J.S. Khehar, Justices A.K. Goel and D.Y. Chandrachud issued notice to the Centre on the petition filed by Vijayalakshmi Jha pointing out that Article 370 was a "temporary provision."

The petition, represented by advocate Anil Kumar Jha, asked the Supreme Court to clarify if Article 370 was supposed to have lapsed automatically with the dissolution of the Constituent Assembly of Jammu and Kashmir on January 26, 1957.

Understanding Article 370

It asked whether the J&K Constitution, which neither got the mandatory assent or approval of the President of India was valid at all.

The petition pointed to clause (3) of Article 370, which said it was up to the President to declare whether the Article should cease to exist or continue to be operative. For this, the President would have required the recommendation of the Constituent Assembly of J&K. However the institution had been dissolved.

Besides, the petition contended that the special autonomous status is violative of Article 1 of the Constitution which envisages that "India, that is Bharat, shall be a Union of States."

It argued that the separate "Constitution of Jammu &Kashmir was never ratified by the President or the Parliament or satisfies Article 1 or the Preamble of the Constitution."

It said "the instrument of accession signed between the erstwhile ruler of J&K and the Indian government on October 26, 1947 does not talk, even remotely about forming a Constituent Assembly or about a separate Constitution of J&K." The petition sought the J&K Constitution to be declared "void, inoperative, illegal and ultra vires of the Constitution of India."

The importance of Article 370

The petition asked the court to quash the 'Delhi Agreement' entered into between Sheikh Mohammad Abdullah and Jawaharlal Nehru, representing J&K and the Indian government, respectively.

The 1952 agreement saw the Indian government acquiesce that residuary legislative powers would vest with J&K instead of the Centre, unlike the case with other States. The agreement had also empowered the J&K lawmakers to confer people domiciled there with special rights and privileges.

The Centre has to file its reply in four weeks.

Says BJP will campaign against corruption, law and order problems and lack of development work in Himachal Pradesh

The process of holding the requisite Board Meetings and Shareholder Meetings has been

completed in phases in September 2017.

Ruben George is staying at Ram Nath Kovind’s house at Kalyanpur, near Kanpur

END

Paper trail EVMs will be used in Gujarat polls, Election Commission informs Supreme Court

The Election Commission of India (EC) on Wednesday expressed confidence that it will be able to hold the forthcoming elections to Gujarat Assembly using Electronic Voting Machines with Voter Verified Paper Audit Trail (VVPAT) if it receives the machines it has ordered on time. In an affidavit filed in Supreme Court, the EC said it is short of 16,500 VVPATs - of a total 70,000 required for the Gujarat elections - and has ordered for more.

The EC said in its affidavit: "…The ECI currently has 53,500 VVPAT units in its possession and the number of VVPAT units required for conducting election to the Gujarat legislative assembly is 70,000 units. The ECI is expected to receive delivery of 48,000 VVPAT units from Bharat Electronics Ltd and Electronics Corporation of India Ltd by August 31, 2017 and another 25,500 VVPAT units in September 2017." If this consignment of VVPATs is delivered on time, the Commission stated, it "expects to be able" to conduct the Gujarat elections "completely with the use of VVPATs".

The affidavit was filed following a direction from the apex court. While hearing a petition seeking use of VVPAT machines in Gujarat election, the court had asked EC about its current stock of these machines. Reshma Vithabhai Patel, convener of Patidar Anamat Andolan Samiti, which was in the forefront of the Patel quota agitation in Gujarat, had filed the petition.

END

Govt proposes setting up financial data management centre

New Delhi: A government appointed panel has suggested setting up a financial data management centre (FDMC) for managing the repository of financial regulatory data to ensure stability in the economy.

The Committee, headed by Ajay Tyagi (additional secretary in finance ministry), has submitted its report and a draft bill titled ‘The financial data management centre bill 2016’.

Finance minister Arun Jaitley in budget speech 2016-17 had announced setting up of financial data management centre under the aegis of the financial stability and development council (FSDC) to facilitate integrated data aggregation and analysis in the financial sector.

The Committee has “worked out for an Act to provide for the establishment of a data centre for managing the repository of financial regulatory data, to enable standardisation of data across the financial sector and providing analytical support” to the FSDC on issues related to financial stability of the economy and matters connected therewith.

The panel, in its report said that efforts should be concentrated on framing the law, setting up of centre and standardizing processes around collection of data from central level regulators and entities. “As the system matures and if it is decided to integrate data of state level financial sector regulators, the same has to be done with wide consultation with the states, which is a long drawn process.

“Hence, it was viewed that the coverage of the FDMC may be limited to all financial sector regulators notified by the central government...,” the report said. The panel suggested that one of the main functions of the centre will be to establish an electronic database for financial regulatory information. It should be in-charge of the day to day operations, maintenance and updating the electronic database, analyse the data submitted in the database and provide analytical support to FSDC.

To ensure secrecy and avoid conflict of interest, the committee has recommended that member, employee or officer of the centre having access to confidential data will be not be allowed to render advice or accept any employment with a financial service provider for a period specified in the act until the person has taken approval of the centre.

To provide independence and ensure accountability while performing functions assigned to members of employees in furtherance of objectives of the centre, the committee’s view was to grant the status of “public servants” to the members, officers and employees of the centre. The finance ministry has invited comments on the draft bill till 13 January 2017.

END

New system for rating bureaucrats open to bias: Anand Sharma

The government's new system of rating officers on the basis of a 360-degree approach is opaque and susceptible to bias, manipulation and lacks fairness, a parliamentary standing committee has said. The 360-degree approach is a new multi-source feedback system for performance appraisal of bureaucrats started by the current government for future postings. The system seeks to look beyond the ratings received in appraisal reports written by their bosses. It relies on feedback of juniors and other colleagues for an all-round view. The government has been showcasing the 360-degree approach as one of its major administrative reforms. "… The present 360-degree appraisal system opaque, non-transparent, and subjective. Feedback in this process is obtained informally, making the process susceptible to being manipulated," the Standing Committee on Personnel, Public Grievances, Law and Justice said in its report tabled in Rajya Sabha Tuesday.

The report mentions that most central posts of joint-secretary level and upwards go to IAS officers and adds that the majority of top posts should not go to any one service leaving others services out in the Central Staffing Scheme. Since the new 360-degree system hinges on feedback about officers received from people who have worked with them - juniors and peers included- the committee noted that such feedback could lack objectivity.

"Feedback received from subordinates and stakeholders could be biased or lack objectivity, particularly if the officer had to discipline his subordinates or he was unable to meet the unjustified demands of stakeholders," says the report of the multi-party committee headed by Anand Sharma, Congress leader in Rajya Sabha. "Acting on such feedback behind the back of the officer may not be legally tenable particularly if it adversely affects the empanelment prospects of the officer."

The report notes that the 360-degree approach does not have any statutory backing, or supported by any Act. "There is no statutory backing to the scheme to the scheme and it is based on executive instructions only," the report says. The report also mentions the report of the Second Administrative Reforms Commission set up by the UPA-II government to say that the multi-source feedback system was not suitable for India.

"In the context of India, where strong hierarchical structures exist and for historical and social reasons it may not be possible to introduce this system unless concerns of integrity and transparency are addressed," the report says, quoting the administrative reforms commission.

The committee recommended that the empanelment process be more objective, transparent and fair.

END

Amended Banking Regulation Bill gets elders' nod

The Rajya Sabha on Thursday passed the Banking Regulation (Amendment) Bill, which empowers the Reserve Bank of India to issue instructions to the banks to act against major defaulters.

The Bill, earlier passed by the Lok Sabha, will replace the Banking Regulation (Amendment) Ordinance, 2017.

Replying to a debate on the Bill, Finance Minister Arun Jaitley said there was nothing wrong in banks giving out loans and trying to recover them. It was only on the strength of the banking finance that businesses expanded, jobs were created and the economy moved on.

Responding to demands for making the names of big defaulters public, Mr. Jaitley said it was being done in the case of wilful defaulters. Only in cases of normal commercial transactions were the names not made public. Asked about the Panama cases, he said action had been taken pertaining to all foreign account details that had come.

Bad debts

On the concerns raised by Congress member Jairam Ramesh about rising non-performing assets (NPA), Mr. Jaitley said they stood at Rs. 6.41 lakh crore by March this year. They were growing because of accumulated interests. Along with the stressed assets, they amounted to over Rs. 8 lakh crore.

Some members wondered why the government was extending such powers to the RBI, to which the Finance Minister said the RBI was not merely a regulator.

It also performed other functions like public debt management.

Mr. Jaitley said after the insolvency law, which provides for a window of 180 days for debtors to settle the matter or face eviction and subsequent takeover of management by debt reconstruction companies, things had started improving. Debtors were now coming forward to settle unresolved issues with lenders.

Earlier, in his opening remarks, the Finance Minister identified Steel, Infrastructure, Power and Textiles as the sectors with the most NPAs. Public sector banks were hit the most as big industrial and infrastructure programmes were supported by them in the hope that there would be further expansion.

Due to the import of steel from China, domestic businesses had suffered. However, things were now looking up with the government introducing customs duty and minimum import price. The road sector had also started showing good results. Mr. Jaitley said the earlier rules for debt recovery were time-consuming. The new parallel mechanism was more effective.

'Hasty legislation'

What was the urgency to pass the Bill, he was asked. "It is already too late," Mr. Jaitley said. "The capacity of banks to lend money to small creditors is being impacted, the growth is impacted."

Among those who participated in the debate were Samajwadi Party's Naresh Agrawal, AIADMK's N. Gokulakrishnan, TMC's S.S. Roy, JD (U)'s Harivansh, CPI(M)'s Tapan Kumar Sen, BSP's Veer

Singh and BJD’s Sarojini Hembram.

END

minimum wage: Bill to fix minimum wage for unorganised sector introduced in Lok Sabha

NEW DELHI: The Code on Wages Bill that seeks to fix a national minimum wage for all categories of over 40 crore unorganised sector workers and provide a fixed timeline for their payment -- in some cases only through electronic means or cheque -- was introduced in the Lok Sabha today.

The Code provides for the government to determine the minimum wages every five years using factors like skills required for the job, arduousness of work, geographical location of work place and other aspects.

Such wages are to be fixed on recommendation of panels comprising an equal number of representatives of employers and employees, and independent persons, according to the Code on Wages, 2017, Bill.

Under this, the government will fix the number of hours of work that would include a day of rest every seven days. The payment for work on a day of rest will not be less than overtime rate.

Introducing the Bill, Labour Minister Bandaru Dattatreya said 'The Code on Wages' Bill will consolidate and amend the laws relating to wages and bonus.

The Bill seeks to amalgamate four laws -- the Payment of Wages Act 1936, the Minimum Wages Act 1948, the Payment of Bonus Act 1965 and the Equal Remuneration Act 1976.

"It is for simplification, rationalisation and making it less cumbersome. No way workers' right is being infringed... It is going to bring in a historical change in the wages for workers and universal minimum wages will be implemented for the first time in India," Dattatreya said.

The Bill will help generate employment and attract entrepreneurs, he said, adding that there are 44 labour laws which are being clubbed in four codes and the Bill introduced today deals with the code on wages.

"40 crore unorganised sector workers can avail of the universal minimum wage. The Bill has a very large perspective. As far as workers' right is concerned, it is in no way exploitation of workers," Dattatreya said.

As N K Premachandran (RSP) opposed the introduction of the Bill in such a short notice, the government sought to assuage the concerns, saying the Bill is being only introduced and discussion will take place later.

The Code stipulates that the wages are to be paid in coin or currency notes or by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee and the government may specify industrial or other establishment where the salary will be paid only through cheque or digital mode.

Daily wages have to be paid at the end of the shift while the weekly ones on the last working day of the week. Workers engaged in fortnightly employment will get wages before the end of the second day after the end of the working period.

For the monthly earner, the payment will have to be made before the expiry of the seventh day of the succeeding month.

Where an employee is removed or dismissed from service as also when he or she resigns, the wages payable shall be paid within two working days.

The Code provides employers with authority to make deductions from the wages only in case of fines imposed, absence from duty, damage or loss of goods expressly entrusted with the employee custody, housing accommodation and amenities and services.

A bonus at the rate of 8.3 per cent of wage earned or Rs 100, whichever is higher, will be paid.

Any employer paying to any employee less than the amount due in wages or bonus or any other dues will be punishable with a fine of up to Rs 50,000, the Code said.

Repeat offence within five years will be punishable with imprisonment of 3 months or fine of up to Rs 1 lakh, or with both.

The central government under the Code will fix the national minimum wage as also for different states or areas.

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Push for law to ensure transparency rules

The government could consider introducing a new law to ensure transparency of rules, the Economic Survey has recommended, stressing that the ‘opaque mesh’ of regulations prevalent in India not only make life difficult for citizens who cannot feign ignorance of the rules as a valid defence, but also act as a magnet for corruption and endless litigation.

“The problem is that it is not easy for ordinary citizens [and businesses] in India to navigate the multitude of rules, regulations, forms, taxes and procedures imposed by various tiers of government. Moreover, these rules frequently change and sometimes contradict each other,” the Survey’s second volume tabled in Parliament on Friday said.

Arguing that India would benefit enormously if the average citizen could easily access the latest rules and regulations in a comprehensible format, the survey suggests a Transparency of Rules Act (TORA) as a possible solution.

Explaining that it is not referring to the content of the rules but solely about the ease of finding out what the citizen is expected to so, the Survey said even government officials struggle to keep up with ‘the latest version’ of complicated rules.

‘Attempt to change’

“The TORA is an attempt to change in some ways the relationship between the average normal citizen and the State. All forms of governance are based on citizens being expected to follow the rules. Unfortunately, in India, very often, the rules are not so transparent. I don’t mean the grand laws passed in Parliament, but the administrative rules, forms, procedures that citizens have to follow,” said Principal Economic Advisor Sanjeev Sanyal.

Says BJP will campaign against corruption, law and order problems and lack of development work in Himachal Pradesh

The process of holding the requisite Board Meetings and Shareholder Meetings has been completed in phases in September 2017.

Ruben George is staying at Ram Nath Kovind’s house at Kalyanpur, near Kanpur

END

The boycott ban: on Maharashtra's law against social boycott

Maharashtra’s new law prohibiting the social boycott of individuals, families or any community by informal village councils is a step in the right direction, given the pervasive nature of the problem. **The progressive legislation, which received Presidential assent** recently and was gazetted earlier this month, targets the pernicious practice of informal caste panchayats or dominant sections using ostracism as a means of enforcing social conformity. **The Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016**, may serve as a template for similar legislation in other States. The Act lists over a dozen types of actions that may amount to ‘social boycott’, which has been made a criminal offence punishable with imprisonment up to three years or a fine of 1 lakh or both. The practices it prohibits range from preventing the performance of a social or religious custom, denial of the right to perform funerals or marriages, cutting off someone’s social or commercial ties to preventing access to educational or medical institutions or community halls and public facilities, or any form of social ostracism on any ground. The law recognises the human rights dimension to issues of social boycott, as well as the varied forms in which it occurs in a caste-based society. Its progressive sweep takes into account discrimination on the basis of morality, social acceptance, political inclination, sexuality, which it prohibits. It even makes it an offence to create cultural obstacles by forcing people to wear a particular type of clothing or use a particular language.

This is not the first law of its type. Bombay enacted a law against excommunication in 1949, but it was struck down by the Supreme Court in 1962 after the Dawoodi Bohra community successfully argued that it violated the community’s constitutional right to manage its own religious affairs. One hopes the latest Act will not be vulnerable to legal challenge. Article 17 of the Constitution and the Protection of Civil Rights Act outlaw untouchability in all its forms, but these are legal protections intended for the Scheduled Castes. In reality, members of various castes and communities also require such protection from informal village councils and gatherings of elders who draw on their own notions of conformity, community discipline, morality and social mores to issue diktats to the village or the community to cut off ties with supposedly offending persons and families. The case of a mountaineer from Raigad is somewhat notorious. He had conquered Mt. Everest but could not escape a social boycott in his village because his wife wore jeans and did not wear a mangalsutra. It is not a proud moment for a country when special legislation is required to prohibit social discrimination, ostracism and practices repugnant to human dignity. Yet, given the prevailing circumstances, any legislative assault on abhorrent social practices ought to be welcomed.

Rajasthan’s ordinance shields the corrupt, threatens the media and whistle-blowers

END

Article 35A comes under scrutiny

The question whether Article 35A, relating to special rights and privileges of the citizens of Jammu and Kashmir, is ultra vires of the Constitution or not is likely to head for a decision before a five-judge Constitution Bench.

The indication that the constitutionality of Article 35A will be under scrutiny came from a Bench of Justices Dipak Misra and A.M. Khanwilkar while hearing a petition filed by Charu Wali Khanna, who has challenged the Article as well as Section 6 of the Jammu and Kashmir Constitution, which deal with the permanent residents' status in J&K.

Property rights

The petition said Article 35A protects certain provisions of the J&K Constitution which denies property rights to native women who marry from outside the State. The denial of these rights extend to her children also. "This should ideally go before a Constitution Bench," Justice Misra said.

Article 35A also empowers the State's legislature to frame any law without attracting a challenge on grounds of violating the Right to Equality of people from other States or any other right under the Constitution.

"Section 6 of the Jammu and Kashmir Constitution restricts the basic right of women to marry a man of their choice by not giving the heirs any right to property if the woman marries a man not holding the Permanent Resident Certificate. Her children are denied a permanent resident certificate thereby considering them illegitimate — not given any right to such a woman's property even if she is a permanent resident of Jammu and Kashmir," the petition, filed through advocate Bimal Roy, said.

The court tagged the petition along with another filed by NGO We the Citizens challenging Article 35A.

The NGO's petition contended that the State's special autonomous status under Articles 35A and 370, was discriminatory against non-residents as far as government jobs and real estate purchases are concerned.

END

On SEBI's trade restrictions: A hasty order

The order of the Securities and Exchange Board of India imposing trading restrictions on 331 companies suspected of being shell entities is an example of rash regulatory action. The Securities Appellate Tribunal has since rightly ordered the lifting of the trading restrictions imposed on two of the companies that approached it, namely J Kumar Infraprojects and Prakash Industries. In fact, the tribunal stated in its order that “it is apparent that SEBI passed the impugned order without any investigation.” Interestingly, the regulatory body had acted on a list of suspect companies that the Ministry of Corporate Affairs had forwarded after consultation with the Serious Fraud Investigation Office and the Income Tax department. Instead of conducting an independent investigation into these suspect companies, SEBI passed the buck to the exchanges and asked them to impose immediate trading restrictions on the companies. Before a proper investigation by SEBI or the exchanges, the companies were put under stage four of the Graded Surveillance Measure, whereby trading is limited to one day a month, the trading price is capped, and buyers are required to deposit money. It is suspected that trading on the shares of these “shell” companies was used as a way to launder black money. In fact, 169 out of the total list of 331 companies had already been suspended from trading before the order. But on the list were also companies with huge market capitalisations, and it is reasonable to assume that the predominant share of trading on any given day is legitimate.

An interesting unknown, meanwhile, is the basis on which the MCA prepared the list of suspect companies that was forwarded to SEBI. The government’s resolve to act against dodgy companies, for the sake of bringing business practices under the purview of the law, is indeed warranted. According to Finance Minister Arun Jaitley, since demonetisation the Centre deregistered well over 1,60,000 dormant companies until early July. It has also identified over 37,000 shell firms and 3,00,000 firms engaged in suspicious dealings, according to Prime Minister Narendra Modi. At the same time, a sound business environment also requires that the government adhere to the basic rules of justice at all times. Handing out extremely harsh punishment on suspect companies without giving them an adequate chance to explain their positions smacks of heavy-handedness. The economic costs of freezing the trading of shares of popular companies are not commensurate with the purported benefits of such action. While the SAT order has brought some fairness to the entire proceedings, SEBI’s action will deal a blow to its credibility among investors as being an effective and unbiased regulatory body. Not surprisingly, investor unease was at least partially evident on the street where stocks witnessed a sharp fall after the order. In order to restore confidence, SEBI and the government must explain the rationale behind their actions.

Rajasthan’s ordinance shields the corrupt, threatens the media and whistle-blowers

END

Centre’s eBiz initiative stutters

Tough puzzle: ‘Limited availability of technical resources’ has hampered technology integration.

The ambitious eBiz portal project unveiled by the Centre in 2013 to serve as an online, single-window entry point for investors looking to set up a business anywhere in the country, is still struggling to become fully operational.

Even services that were available on the portal, such as registrations with the Corporate Affairs Ministry and the Employees’ Provident Fund, have been ‘impacted’ due to technical issues.

While State governments have not come on board for critical components of the eBiz project, technical glitches have arisen in the plan to integrate all clearances onto a single system owing to government departments opting for different technology platforms.

“It may be noted that the partner ministries and departments offering their services through eBiz portal have migrated their existing applications to new technology platforms (Employees’ Provident Fund Organisation migrated to Oracle and Ministry of Corporate Affairs migrated to SAP V2). This has impacted the availability of their services on the eBiz portal,” the department of industrial policy and promotion (DIPP) in the Ministry of Commerce and Industry informed Parliament in an action taken report tabled earlier this month.

Such changes, the DIPP has pointed out, require additional efforts to resolve technology migration issues and the ‘limited availability of technical resources’ at individual departments causes delays in integration with the National eGovernance Service Delivery Gateway (NSDG, the middleware to integrate services between departments and the portal).

Testing the integration of individual services with the eBiz portal also added to delays, the DIPP told the parliamentary standing committee on commerce, citing ‘dependency on multiple stakeholders’ such as NSDG, banks and state treasuries. The DIPP said it had ‘taken up the matter at appropriate levels in partner departments to take necessary measures in speeding up integration with the portal.’

More than two years after discussions began with the States to devise a state-level composite application form (CAF) for investors that would integrate about 14 state government services and permits, this key component of the eBiz portal is also stuck with no takers, except Delhi, so far.

After official-level discussions since 2015, Minister of State for Commerce and Industry Nirmala Sitharaman had requested state chief ministers last February to roll out eBiz’ state-level services. Concurrence was received from Rajasthan, Uttar Pradesh, Maharashtra and Delhi governments to integrate State services with the eBiz portal only but not on the State CAF, the DIPP told the Parliamentary panel.

The State CAF was demonstrated to all State governments last October, but only the Delhi government has accorded concurrence on it. Seven services that are part of the State CAF have been integrated with the eBiz portal.

The Parliamentary panel had questioned how ‘pilot’ States such as Haryana, Maharashtra, T.N., Punjab, Rajasthan and U.P. had not given approvals to the CAF initiative.

“But for the medium term, we see a very solid track ahead for the Indian economy,” Lagarde said to a question on India.

END

Assam, Manipur can now decide on AFSPA

In this 2010 photo, students stage a protest to demand the withdrawal of the AFSPA in New Delhi.

The Union Home Ministry is set to give up its power to impose the ‘disturbed areas’ tag on Assam and Manipur, both ruled by the BJP. The move effectively means it will be the States’ decision to either continue the Armed Forces (Special Powers) Act (AFSPA) or revoke it.

As per Section 3 of the AFSPA, it can be invoked in places where “the use of armed forces in aid of the civil power is necessary.”

A senior official told *The Hindu* that it would be the first time since 1990 — when the AFSPA was first invoked in Assam — that the Centre would give up its power to continue or discontinue it.

The AFSPA empowers the Army and Central forces deployed in “disturbed areas” to kill anyone breaking the law and arrest and search any premises without warrant. “...we have decided to rescind the power of invoking the AFSPA in two States for now: Assam and Manipur. The States are competent to decide whether they want to continue with it in entirety or impose it in a few pockets where disturbance is expected,” the official said.

Another official clarified that there was no such proposal for Jammu and Kashmir.

Earlier, the Home Ministry used to issue a notification declaring States “disturbed areas” every six months. The duration was later changed to three months, pending a periodic review. On August 4, the Ministry extended the AFSPA in Assam for 27 days.

It is effective in the whole of Nagaland, Assam and Manipur (excluding seven Assembly constituencies of Imphal). In Arunachal Pradesh, it is in force in 16 police station areas and in Tirap, Longding and Changlang districts bordering Assam. Tripura withdrew the AFSPA in 2015. It is not in force in Meghalaya (except in a 20-km area along the border with Assam) and Mizoram.

To justify the continuation of the AFSPA in Assam, the Home Ministry had said in the notification that the security situation in Assam “remained vitiated owing to the belligerent attitude of the underground groups, including the ULFA(I), the NDFB(S), the KLO and the KPLT.”

While 246 insurgency-related incidents were reported in Assam in 2014, the number came down to 11 in 2017 (till March 31). Cases of abduction also declined, with 94 reported in 2014 and nil from January to March this year.

In Manipur, 56 incidents were reported till March this year, while 278, 229 and 233 incidents were reported in 2014, 2015 and 2016 respectively.

Says BJP will campaign against corruption, law and order problems and lack of development work in Himachal Pradesh

The process of holding the requisite Board Meetings and Shareholder Meetings has been completed in phases in September 2017.

Ruben George is staying at Ram Nath Kovind’s house at Kalyanpur, near Kanpur

END

Cabinet approves MoU between India and Sweden on IPRs

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi today has given its approval to the Memorandum of Understanding (MoU) between India and Sweden on cooperation in the field of Intellectual Property (IPRs).

The MoU establishes a wide ranging and flexible mechanism through which both countries can exchange best practices and work together on training programs and technical exchanges to raise awareness on IPRs and better protect intellectual property rights.

Impact:

The MoU will enable India to exchange experiences in the innovation and IP ecosystems that will substantially benefit entrepreneurs, investors and businesses on both sides. The exchange of best practices between the two countries will lead to improved protection and awareness about India's range of Intellectual creations which are as diverse as its-people. It will be a landmark step forward in India's journey towards becoming a major player in global Innovation and will further the objectives of National IPR Policy, 2016.

Features:

A Joint Coordination Committee (JCC) with members from both sides will be formed to decide cooperation activities to be taken under the MoU in following areas:

a) Exchange of best practices, experiences and knowledge on IP awareness among the public, businesses and educational institutions of both countries;
b) Collaboration in training programmes, exchange of experts, technical exchanges and outreach activities;
c) Exchange and dissemination of best practices, experiences and knowledge on IP with the industry, universities, R & D organisations and Small and Medium Enterprises (SMEs) through participation in programs and events in the matter, organized singly or jointly by the Parties;
d) Exchange of information and best practices for disposal of applications for patents, trademarks, industrial designs, copyrights and Geographical Indications, as also the protection, enforcement and use of IP rights;

e) Cooperation in the development of automation and implementation of modernization projects, new documentation and information systems in IP and procedures for management of IP;

f) Cooperation to understand how Traditional Knowledge is protected; and the exchange of best practices, including traditional knowledge related databases and awareness raising of existing IP systems;

g) Exchange of information and best practices regarding Intellectual Property law infringements in the digital environment, especially regarding Copyright issues; and

h) Other cooperation activities as may he decided by the Parties with mutual understanding.

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AKT/VBA/SH

END

Can’t Mekedatu be used to address T.N.’s needs, asks SC

The Supreme Court on Thursday asked why the Mekedatu dam project cannot be envisioned as a facility to store excess water from Karnataka, which can be released to Tamil Nadu.

The suggestion was mooted by a three-judge Special Bench, led by Justice Dipak Misra, during the hearing of appeals in the Cauvery case.

The discussion touched upon the Mekedatu project when Karnataka provided statistics of Cauvery water released to Tamil Nadu from 2007, post the tribunal award. Karnataka submitted that except for two drought-ridden years, the water released had never decreased below the 192 tmc ordered by the tribunal.

Tamil Nadu retorted, saying only excess water was released by Karnataka.

‘Can be storage facility’

At this point, Karnataka submitted that the Mekedatu dam project could be used as storage facility for excess water, to be released whenever Tamil Nadu required so.

Tamil Nadu indicated that it was agreeable to the proposition, provided that such an arrangement was under the control and supervision of an independent third party. The court also said that it may not be feasible to construct a new dam for storage in Tamil Nadu, and asked both States to put the proposition before the Centre when it begins its arguments in the Cauvery case next week.

In 2015, Karnataka had termed the challenge posed by Tamil Nadu to the construction of Shivasamudram and Mekedatu hydro power projects as “misconceived, obstructive and factually baseless”.

The Karnataka government told the Supreme Court that the two reservoirs would neither diminish nor reduce the river’s downstream flow.

First instalment, an adaptation of first two chapters, released

END

Ministry of Defence approves delegation of Powers to Border Roads Organisation

The Ministry of Defence has decided to delegate administrative and financial powers to the Border Roads Organisation (BRO) right upto the level of Chief Engineer and Task Force Commander, so as to avoid delays on account of references between the Chief Engineer and HQ DGBR and also between HQ DGBR and the Ministry.

Functioning under the control of the Ministry of Defence since 2015, the BRO is engaged in road construction to provide connectivity to difficult and inaccessible regions in the border areas of the country. The Ministry of Defence intends to bring transformational changes in the organization in order to improve the pace of execution of works and to achieve the desired outcomes according to the requirement of the Armed Forces.

In line with the aim to bring in transformational changes in the BRO, various powers of delegation have been revised. According to the earlier delegation of powers, a Chief Engineer in the BRO could give administrative approval of works only upto Rs. 10 crore, that too only for departmental works, whereas the ADGBR had powers to accord administrative approval only upto Rs. 20 crore for departmental works. For contractual works, all administrative approvals were given by DGBR, who had powers only upto Rs. 50 crore. Enhancing the powers at all levels in the BRO, the Ministry of Defence has now approved that for both departmental and contractual mode of execution, a Chief Engineer of BRO can accord administrative approval upto Rs. 50 crore, ADGBR upto Rs. 75 crore and DGBR upto Rs. 100 crore.

Further, according to the earlier delegation of powers, a Chief Engineer in the BRO had the power to accept execution of contracts only upto Rs. 10 crore, ADGBR had powers upto Rs. 20 crore, beyond which all tenders had to be sent to DGBR. With the intent to speed up the tendering process, the Ministry of Defence has now enhanced the powers of Chief Engineer for acceptance of bids with cost of contract upto Rs. 100 crore and that of ADGBR for cost of contract upto Rs. 300 crore. With this delegation, the entire tendering process including acceptance of bids would be completed at the level of Chief Engineer/ADGBR for a majority of the contracts.

For adopting the DPR mode of execution, there is a need to outsource consultancy services. According to the earlier delegation of powers, a Chief Engineer had powers only upto Rs. 10 lakh, ADGBR upto Rs. 50 lakh and DGBR upto Rs. 2 crore. The Ministry of Defence has now enhanced the powers of Chief Engineer to accord administrative approval for outsourcing of consultancy services upto Rs. 2 crore and ADGBR upto Rs. 5 crore and full powers beyond Rs. 5 crore to DGBR.

There also is a need to replace obsolete construction equipment in the BRO with modern equipment. According to the earlier delegation of powers, DGBR had powers only upto Rs. 7.5 crore for procurement of indigenous equipment and Rs. 3 crore for procurement of imported equipment. All other cases of procurement had to be referred to the Ministry of Defence. In order to fast track the procurement of latest construction machinery and

equipment in the BRO, the Ministry of Defence has enhanced the delegation of powers upto Rs. 100 crore to DGBR for procurement of both indigenous/imported equipment.

In case of emergent need for construction equipment, DGBR has been given full powers for hiring upto three years and for Chief Engineers (Project), powers have been enhanced from Rs. 50 lakh to Rs. 5 crore and the period of hiring has been enhanced from 6 months to one year.

The BRO is engaged in road construction activities in the most difficult areas and the usage norms and fixation of life of construction equipment varies from terrain to terrain. Earlier, all cases of revision of norms of equipment and fixation of life had to be referred to the Ministry of Defence. In a departure from the earlier policy, full powers in this regard have been delegated to DGBR.

The Ministry of Defence in consultation with the Armed Forces would identify the roads to be entrusted to the BRO and fix priorities by approving the Long Term Roll-On Works Plan and Annual Works Programme for the BRO. Thereafter, powers related to execution of works have been delegated to be exercised by different levels within the BRO. However, to ensure accountability, a MIS is being developed for online monitoring of progress of works.

From the current year, the BRO has initiated the practice of preparation of DPRs for all new road projects to be taken up and has adopted the project mode of execution. In an important policy change from the conventional departmental mode of execution followed by the BRO in the past, the organisation has now also started adopting the EPC mode of execution. The Ministry of Defence has approved policy guidelines in this regard, based on which the BRO may engage big construction companies for taking up road projects on a turnkey basis.

It is expected that with delegation of powers by the Ministry of Defence to the BRO, the pace of road construction in border areas would improve and the BRO would be able to complete ongoing/new projects in compressed timelines.

NW/DK/Rajib

END

Safeguarding the interests of farmers

“The PDS in Tamil Nadu is intact and continues to retain the feature of universal coverage even after implementation of the National Food Security Act, 2013.” A PDS outlet in Coimbatore. | Photo Credit: M. Periasamy

Transformational changes are taking place in India currently, improving the way we live. These changes are impacting all our lives in small or significant ways. It is gratifying to know that the citizens at large are happy with these changes. However, for some who have fed themselves on the fodder that such changes are not for the near future, there is consternation. Even worse, these people find it difficult to comprehend that technology and policy are working together to remove discretion and opaqueness.

The ongoing discourse, particularly in Tamil Nadu, on the Public Distribution System (PDS), the procurement of grains/pulses from farmers, public storage in Food Corporation of India godowns, commitments made in the World Trade Organisation (WTO), Direct Benefit Transfer, etc. is interesting. However, there are strands in this discourse which are impressionistic and not based on data. They create a populist narrative and distract from the core issues. It is necessary, therefore, to infuse facts into the discourse.

The PDS in Tamil Nadu is intact and continues to retain the feature of universal coverage even after implementation of the National Food Security Act, 2013 (NFSA). Although the guidelines under the NFSA prescribe identification of priority households, there is no denial of any benefit under the PDS. There is no reduction even in the total coverage from the earlier Targeted Public Distribution System, which was effective till Tamil Nadu joined the NFSA in November 2016. The average annual offtake or the annual allocation has remained 36.78 lakh tonnes. The major part of the subsidy for the distribution of foodgrains (90.81% for rice and 91.70% for wheat) is borne by the Government of India.

The implication of this subsidy allocation to Tamil Nadu alone on the Government of India is approximately 843 crore per month and approximately 10,120 crore per year. Since the central issue price under the NFSA is much lower compared to the erstwhile Targeted Public Distribution System, the burden on the State government has come down. On implementing the NFSA, the savings for the State exchequer on account of this subsidy, thanks to the lower central issue price, is approximately 436.44 crore per year.

Union Consumer Affairs Minister Ram Vilas Paswan on August 1 stated in a series of tweets the data for Tamil Nadu and also highlighted the fact that Tamil Nadu gets the highest allocation in the country as ‘tide over’ allocation of 12.52 lakh metric tonnes of foodgrains. The narrative in Tamil Nadu cannot be devoid of these facts.

Another disturbing strand in this narrative in Tamil Nadu is that the Indian government has callously sold away the interests of our farmers at the WTO by agreeing to the Trade Facilitation Agreement. Nothing can be further from the truth than this!

The Trade Facilitation Agreement was agreed on in 2013 in Bali and came into force from February 2017 after two-thirds of the WTO’s 164 members ratified it. Several trade-related issues such as transparency, predictability and efficiency at the ports, faster clearance procedures, and improved appeal rights for traders are to be addressed by countries. They shall notify various provisions to bring in the facilitation, over three years or more. Only the basic set of provisions will be implemented within one year. The Trade Facilitation Agreement allows for consultations before any new trade rules are notified. A WTO study indicated that when the Trade Facilitation

Agreement is fully implemented, trade costs for member countries will decrease by an average of 14.3%. It is also estimated that the time taken to export and import will come down drastically. Finance Minister Arun Jaitley has made budgetary allocations for bringing in single-window clearance and improving customs clearance at the ports. A high-level committee chaired by the Cabinet Secretary will monitor logistics and efficiency at ports and related issues.

Thus, it can be seen that the Trade Facilitation Agreement is not about market access but inter alia about facilitating and bringing trade transparency. By ratifying the Trade Facilitation Agreement, India has not forgotten the developmental agenda lying unfulfilled at the WTO.

The Public Stock Holding issue remains unresolved at the WTO. Although agreed on in Bali in 2013 and reiterated in Nairobi in 2015, that a permanent solution for Public Stock Holding be found by 2017, it is still a 'work-in-progress'. The existing WTO rules would have allowed a legal challenge to our Public Stock Holding and minimum support price-based procurement programme in case we breached 'the limit' on procurement. 'The limit' is defined as 10% of the value of production of the particular grain being procured.

WTO rules classify procurement and holding of public stocks for food security purposes as 'Green Box' or non trade-distorting. However, if foodgrains for the public stocks are procured through an administered price/minimum support price and if this minimum support price is higher than the archaic fixed reference price (calculated on base period 1986-88), then it is considered as trade-distorting agriculture support. Such trade-distorting support should be within 'the limit', which is 10% of the value of production of the particular grain being procured.

One of the first things that this government did in 2014 was to intensely engage with the WTO to obtain a 'peace clause' so that even if we did breach 'the limit', no one shall challenge our programme till such a time a permanent solution is found, agreed on, and adopted by the WTO membership. Prime Minister Narendra Modi, on this matter, personally engaged with global leaders, and by November 2014 we obtained an open-ended peace clause from the General Council of the WTO, which was later reaffirmed at the Nairobi Ministerial. So Prime Minister Modi has safeguarded the interests of the farmer and ensured that India's sovereign right to protect them is not diluted.

Providing food to the poor or targeted groups at subsidised prices is fully WTO-compatible. This does not figure at all in the WTO calculations. We have not undertaken any commitment in the WTO for any kind of limit on the food supplied under the NFSA .

An informed discourse based on facts is welcome and I believe such a discourse shall strengthen public policy.

Nirmala Sitharaman is Minister of State (Independent Charge) for Commerce and Industry, Government of India

The new U.S. Fed Chairman is unlikely to opt for policies that might upset the President's plan

END

Union Home Minister launches the Digital Police Portal under CCTNS project

Various organs of Criminal Justice System including Police, Courts & Prisons, to be linked with CCTNS database: Shri Rajnath Singh

The Union Home Minister Shri Rajnath Singh has said the Ministry of Home Affairs will undertake steps to integrate the various organs of the Criminal Justice System such as the Police, Courts, Prisons, Prosecution, Forensic Laboratories, Finger Prints and Juvenile Homes with the Crime and Criminal Tracking Network & Systems (CCTNS) database. Launching the Digital Police Portal under the CCTNS project here today, he said this Interoperable Criminal Justice System (ICJS) will be a useful resource for all stakeholders including the policy makers.

Shri Rajnath Singh said the Digital Police Portal will enable citizens to register FIRs online and the portal will initially offer seven Public Delivery Services in 34 States & UTs, like Person and Address Verification e.g. of employees, tenants, nurses etc, permission for hosting Public Events, Lost & Found Articles and Vehicle theft etc. Besides, the portal will enable restricted access to law enforcement agencies on topics such as Antecedent Verification and make assessment of FIRs.

Shri Rajnath Singh said at present out of the 15,398 Police Stations under the CCTNS project, 14,284 Police Stations are using CCTNS software. Out of these 14,284 Police Stations, 100% FIRs are being generated under this software in 13,775 Police Stations. The Union Home Minister said the pace of implementation of the CCTNS project is satisfactory in all States. He said that out of 15,398 Police Stations across the country, connectivity is enabled at 13,439 Police Stations. Out of 36 States/UTs, 35 States/UTs are sharing CCTNS database containing seven crore records that includes 2.5 crore FIRs, he added. Shri Rajnath Singh said the MHA has released Rs.1,450 crores, out of which Rs. 1,086 crores has been spent by States/UTs.

The Union Home Minister said the CCTNS portal will provide investigator the complete record history of any criminal from anywhere across the country. He said the software offers Google-type Advance Search engine and analytical reports. Shri Rajnath Singh said the portal offers 11 kinds of search and 44 types of reports. Recently, the software was used to trace few mentally challenged women from Tamil Nadu in Uttarakhand and reunited with their families, he added.

Ministers of State for Home Affairs, Shri Hansraj Gangaram Ahir and Shri Kiren Rijiju, besides Director, Intelligence Bureau, Shri Rajiv Jain, DGs of CAPFs and Senior Officers of MHA and NIC were present during the function.

Speaking on the occasion, the Union Home Secretary Shri Rajiv Mehrishi said the CCTNS portal will form the backbone of the Criminal Justice System and this database will be subsequently linked with the Ministry of Road Transport and Highways (MORTH) database on vehicle registrations.

Addressing the gathering, the OSD, MHA, Shri Rajiv Gauba said the CCTNS portal will be a huge game changer, force multiplier and revolutionize the way Police works in the country. He laid stress on the data accuracy and completeness of the database to make it a success.

KSD/NK/PK

END

Digital Em‘Power’ment: Delivering on ‘RTI’- Right to a Transformed India

***Piyush Goyal**

Every government comes to power with the promise of serving the people and making their country a better place to live in. When this promise is broken, by inefficiencies and corruption, people’s trust in their leadership is shaken, and they demand answers. In elections then, the people give their own answer to the government, and expectations are transferred to the next government. It is in such an atmosphere of anger and expectation that the Narendra Modi government came to power. Before the 2014 election, India saw the fight against corruption become a people’s movement. This momentum towards honest governance found its conclusion in India electing Shri Narendra Modi as their Prime Minister. People placed their trust in him, seeing that his words were backed by action and conviction, and the task was set for our Government: clean up the past, deliver on promises, and reignite people’s trust in institutions.

In May 2014, people rejected a scenario where decisions took place behind a smokescreen and were allowed in the public eye only through a ‘Right to Information’ procedure. The RTI didn’t allow citizens to monitor government’s work and instead of being a right, it became a privilege, outside the reach of many citizens who are not well-versed with the nitty-gritties of the process. What was needed wasn’t a post-facto privilege, but a round-the-clock right to transparency. Under the guidance of Hon’ble PM Shri Narendra Modi, the Ministries of Power, Coal, New and Renewable Energy, and Mines have been digitising our decisions, progress, and goals in the form of apps, and delivering upon the PM’s promise of the ‘Right to a Transformed India’.

Amongst other means, we’ve brought transparency through user-friendly apps that broadcast all our major operations to people’s mobiles. Want to know the villages yet to be electrified in your district? Just log onto GARV. Want to know the price being paid by your power utility for electricity? Try MERIT. Worried about the next power cut? Don’t worry, URJA Mitra will send a notification intimating you in advance.

TAMRA and TARANG track the status of projects and clearances, enabling people to hold government accountable for bottlenecks. It’s a fact that while there was a near shutdown of mining

auctions before 2014, 29 mining blocks generating revenue of more than Rs.1.22 lakh crore over the lease period of the mines for mineral bearing States, have been auctioned in the past three years, and TAMRA will help further enhance this. By ensuring timely execution, TARANG app played a role in rapid expansion of our transmission network. Value of projects commissioned between 2014-17 is 83% more than those commissioned between 2011-14, and there has been 40% increase in India's transmission capacity between 2014-17 alone.

PM Modi's 2015 Independence Day speech aroused in people's minds a deep care for India's energy deprived citizens. As he set the task of electrifying India's remotest villages in 1,000 days, public interest was high in the progress of this herculean task. GARV fulfilled the need for a platform with village-wise progress reports, and GARV-II surpassed this with habitation-wise data down to the households. Transparency has helped us immensely as people's scrutiny further energises the 'Speed, Skill, and Scale' mantra. We greatly value all inputs we receive from the people and the media. With GARV, public funds were saved as journalists highlighted uninhabited villages. Making data more meaningful, GARV goes beyond listing and gives 'Impact Study' on villages. People get to know on-the-ground impact through number of shops, *aata chakkis*, appliances, etc. installed post-electrification.

While power purchase by DISCOMs was earlier mired in corruption, MERIT app and Vidyut Pravah have eliminated discretions and reduced costs. Over the next five years, MERIT is expected to save Rs. 20,000 crores in power procurement costs, reducing consumers' bills. UDAY and URJA go a step further by ranking performance of States/cities/DISCOMs on several parameters.

The UJALA app has been instrumental in ensuring the fastest rollout of LED bulbs. This app, which is often quoted internationally, has a story behind its conception. At the end of a review meeting discussing coal block auctions, after the Supreme Court cancelled 204 coal blocks, PM Modi asked me how many LED bulbs have been distributed so far. I did not have the current figure readily, and said I will get back to you after checking. PM then reminded me of the importance of regularly monitoring to ensure results and fix responsibility for performance. I got my team cracking to devise a portal where anytime, anywhere, anyone could check the number of LED bulbs rolled out. The result is not a mere status check on bulbs, but also the amount of CO2 emissions avoided, power saved, and money saved in people's bills. It in fact, became a popular app which, helped market the scheme across the country and enabled rapid roll out and unprecedented success.

Shedding light on what happens underground, Mining Surveillance System (MSS) app, allows reporting illegal mining, while Coal Mitra identifies the most efficient thermal power plants. ARUN, provides a DIY (Do It Yourself) guide for solar rooftop installations, and critical knowhow about government incentives, costs and methods of installation, thereby removing barriers which inhibited a solar rooftop revolution in India.

So many apps, so many different downloads! How does one discover the apps? How do we

tell the public that these apps exist? Just give a missed call to 1-800-200-300-4. This is a common uniform number where all one has to do is give a missed call; and will receive a link by which one can download the app of your interest.

By inviting public scrutiny through transparency and real time data in public domain, the Ministries of Power, Coal, New & Renewable Energy and Mines, are rebuilding people's trust in government institutions. The beautiful and instructive phrase '*Tamso Ma Jyotirgamaya"* (lead us from darkness to light) guides the teams in all our Ministries. Through these apps, we aspire to remove the darkness of secrecy and corruption, and move towards the light of honesty and dedicated service for the benefit of 125 crore Indians.

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The Author is Minister of State – (Independent charge) for Power, Coal, New & Renewable Energy and Mines, Government of India.

END

70 years of Independence

Special Feature – I-Day 2017

Housing for All by 2022

From Restrictive to Transformative Era

***Vinod Behl**

In its seven decades of journey since independence, the real estate and housing sector, has come a long way from early years of restrictive policies, deficient planning and highly inadequate resources, to reach a progressive, planned, organised and reformative stage, facilitating urban transformation and speedy economic growth.

The present government's vision is to ensure long term inclusive development through good governance and transformative reforms to boost real estate, housing and infrastructure - the vital sectors that hold key to economic development. It is a far cry from early years after independence (1947 – 64), when not much attention was paid towards housing/urban infrastructure due to lack of resources and staff capacity to design and deliver. But, it was during this period that the government introduced state housing boards, mandated to construct houses for public and laid the ground for planned cities and subsequently Chandigarh & Gandhinagar came into existence in 1952 and 1960 respectively.

In later years after independence but in pre-liberalisation era (1965- 1990) was marked with regulatory restrictions. But it was in this period that the policy boost was given to the growth in housing finance sector, with the formation of Housing Urban Development Corporation (HUDCO), National Housing Bank (NHB) and Housing Development Finance Corporation (HDFC). The Urban Land Ceiling Act was passed in 1976 with a purpose to curb speculative land pricing, but was later repealed by all states except West Bengal & Kerala as it failed to serve its purpose. Significantly, during this period (1988), National Housing Policy came into being and a rural housing scheme for downtrodden was launched.

In the post- liberalisation period (1991-2000), the role of government as enabler, away from direct

provider of housing, as proposed in National Housing Policy, was further reinforced with the creation of efficient legislative, legal and financial frameworks for private sector for the development of real estate and housing. Further, to give a boost to urban development and housing, urban local bodies were empowered and housing finance market was deepened. In the post -2000 period of economic globalization, JNNURM, an urban- focused programme to encourage cities to go for phased improvements in the civic service levels, involving investment of $20 billion was launched in 2005.

Big Boost to Housing since 2014

Real estate, housing and infrastructure are at the forefront of Modi government's policy to boost economy and push up growth. When NDA government, led by Prime Minister, Narendra Modi took over in May,2014, economy was in shambles, inflation & current account deficit were high and projects were stuck due to corruption and policy paralysis and foreign investment was hit. But, with its focus on good governance and through a spate of reforms, the NDA government could manage to restore the growth. It has brought down fiscal deficit from 4.5 percent in 2013-14 to 3.5 percent in 2016-17, targeting 3.2 percent in 2017-18. The GDP growth that had fallen to 6.6 percent in 2013-14, clocked 7.1 percent in 2016-17 and Moody has projected 7.5 percent growth rate in 2017-18.

Immediately after taking over, the government liberalized FDI in construction development, significantly reducing minimum area and capital investment requirements for foreign real estate developers. This eased foreign investment for the sector, troubled by regulatory bottlenecks and paucity of funds. The second wave of FDI reforms in 2016, allowing 100 percent FDI in civil aviation, food processing sectors and easing norms in defence and pharmaceutical sectors, was much to the advantage of real estate. In fact, the positive impact of FDI reforms is already visible. Foreign investment has shot to record $156 billion during 3 years of Modi government, with FDI in real estate touching $5.7 billion, according to 2016 World Investment Report of United Nations. During UPA time, it was $1.2 billion in 2013-14.

Fully realizing that cities are the engines of growth, Modi government, following the global trend of promoting urbanisation, directed its policies towards improving cities productivity. It launched key reform programmes of 'Atal Mission of Rejuvenation & Urban Transformation' (AMRUT) & '100 Smart Cities Mission', with investment of about one lakh crore, over 5 years, adopting incentive based approach, directly linking financial incentives to reforms undertaken by urban local bodies for developing urban infrastructure in cities. AMRUT is targeted to rejuvenate 500 cities on PPP model, benefiting 2 crore urban households. While under UPA's urban renewal mission (JNNURM), Rs. 36000 crore was released against commitment of Rs. 42800 crore, NDA government has committed 98000 crore under AMRUT & Smart Cities Mission.

The government's policy emphasis to promote urban transformation, has already started paying dividend. Forty seven percent of 11705 urban projects approved during 2015-16, are already under implementation, to be completed by stipulated time period of 2019-20, compared to 39 percent of 3138 projects approved during 2005-2014 period. So much so that today foreign investors are eyeing smart cities for investment. The US & French development agencies have signed pacts to adopt 3 cities each for development as smart cities. Japan has shown interest in

creating smart cities while Chinese companies are keen to develop mega industrial townships. The government through these reform initiatives, is focusing on improving the quality of human life. And for that purpose, a City Livability Index has been launched for major cities on the basis of quality of life they offer.

As urban infrastructure holds the key to urban transformation, the government is putting emphasis on boosting urban infra investment. A record allocation of Rs. 3.96 lakh crore was made for infra sector in the union budget for 2017-18. For highways, the budget allocation was hiked from 57676 crore to 64000 crore and budget for rural roads was stepped up to 27000 crore. The policy initiatives on the infrastructure front are clearly showing results. The cost overruns in central sector infrastructure projects came down sharply to 11 percent at the end of FY 17, from 20 percent, 3 years back when Modi government took over, reflecting increased efficiency in project implementation and faster clearances.

As part of its urban reforms agenda, the government's mission of 'Housing for All by 2022' assumes great significance. The mission focuses on building 3 crore new low cost, affordable homes (including 1 crore rural homes). And to ensure the success of its ambitious programme, the government has taken enabling policy decisions like according infrastructure status to affordable housing, tax incentives for affordable housing to builders and home buyers and credit linked interest subsidy under Pradhan Mantri Awas Yojana (PMAY) to home seekers.

The key reform to set up Real Estate Investment Trusts (REITs), will come handy to fund capital-starved developers. Benami Property Act, aimed at stamping out black money and other measures to weed out cash transactions, are also going to check artificial & speculative spurt in prices and making homes more affordable. The enactment of landmark RERA (Real Estate Regulation Act) is going to boost real estate and housing by bringing in transparency and credibility, protecting the interests of property buyers and making the business regulated and more organised .The biggest tax reform of independent India - GST, will further make real estate transactions more transparent & tax efficient.

Notwithstanding these path breaking reform initiatives, the immediate challenge before the government is to ensure smooth and effective implementation of these measures while executing its unfinished agenda of reforms like single window clearance, ease of doing business, rental housing, rationalization of land prices and stamp duty among others. Seized of these challenges, the government is making all out efforts to see that the cumulative effect of all its reform initiatives ensures transformational changes on ground, bringing in significant improvement in the quality of life of ordinary people.

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70 years of Independence

Special Feature – I-Day 2017

RERA: On Road to Reformed & Regulated Realty

***Vinod Behl**

As the three- month window given to states for notifying RERA (Real Estate Regulation & Development Act), especially in view of ongoing under-construction projects, expires in July, the stage is set for the transformation of the real estate and housing as a matured, professional, organised and transparent sector, much to the advantage of all the stakeholders.

In a landmark move, the central government, in the form of RERA, gave the real estate sector its first regulator w.e.f from May 1, 2016. The Union Ministry of Housing & Urban Poverty Alleviation, however, gave time to states till May 1, 2017, to formulate & notify rules for the functioning of the regulator.

RERA is aimed at establishing real estate regulatory authority for regulating and promotion of the real estate sector, ensuring efficient and transparent transactions and establishing an adjudicating mechanism for speedy dispute redressal, thereby protecting the interests of consumers. It seeks to address vital issues of fair transactions, timely delivery and quality construction.

The regulation has come as a big relief in the backdrop of lakhs of aggrieved home buyers across India protesting against long delays in delivering their homes in which they have invested their hard earned money. Earlier, home buyers would fall prey to unscrupulous builders, luring them to invest in unapproved projects, promising high returns. But now under RERA, buyers interests are protected as only registered developers can launch projects. Moreover, developers cannot launch and advertise their projects and seek customers' bookings, without getting all the required permissions from the authorities. They are also barred from arbitrarily charging the booking amount as under the new regulation, booking amount has been fixed at 10 percent of the property cost.

RERA has also made it mandatory for developers/project promoters to make all necessary disclosures about projects including permissions secured from authorities, date of launch, promised date of delivery, project specifications, amenities/facilities etc. And all this information is to be loaded on the project website by the builder. This information will also be available on the website of development authority. In the light of these mandatory disclosures, consumers will be able to do proper due diligence of properties and take informed decision about investing in a particular property, thereby ensuring the safety of their investment.

Here, it is also significant to mention that regarding safety of investment, RERA has made a stringent provision for developers to put 70 percent of the money collected from buyers (including land cost) in escrow account, to ensure that this money is not diverted elsewhere and is actually used for the project for which it is collected. Today, if large number of under- construction residential projects are stuck , it is for the reason that developers had over leveraged, diverted money to other projects and even invested it in creating land banks. And now they are left with no money to complete these projects.

With the new real estate regulation, property buyers will also be saved from being shortchanged in terms of the area of property. RERA has put ban on selling property on the basis of super built area, which has lot of ambiguity, with buyers being totally clueless about how much space they're getting. Now, it has been made mandatory for developers to sell property only on carpet area (actual usable area) basis, bringing much needed clarity and transparency to buyers.

RERA will serve as a major deterrent against malpractices by developers as it has put heavy cost (in terms of penalty and imprisonment) to cheating by developers. Under the new regulation, if the project promoter fails to deliver home as per agreed deadline, they are bound to return the entire money invested by the buyers along with pre- agreed interest rate mentioned in the contract. But if the buyer does not want to give up home, the builder will have to pay interest on each delay month to the buyer till the final delivery of the dwelling unit. Earlier, developers were paying meagre interest on delay in home delivery while they were charging hefty interest from buyers in case they defaulted on payments. But RERA will put an end to this malpractice. Besides, delayed delivery, developers will be punished for other violations, including poor quality of construction. Aggrieved buyers can get redressal within 6 months through fast track court under RERA.

Real estate stakeholders look at RERA as a far- reaching reform for the sector as a whole. As a prominent Property Consultants describes RERA as a potential tool for revamping the real estate sector across the board, from developers to end- users and investors, to lending institutions and a decisive step to usher the opaque sector into transparency and accountability, in turn bringing in much needed consumer protection. The real estate sector, according to him, will usher in standardized processes and procedures that the industry needs to progress. Farook Mahmood, President FIABCI (International Real Estate Federation), paints RERA, along with other policy initiatives like granting industry status to affordable housing, extending concessional tax rate on interest for qualifying foreign debt and permanent residency status to foreign investors, subject to minimum investment and employment criteria, as a positive step that will make India more investment- friendly, opening doors for foreign investment. Parveen Jain, President, NAREDCO (National Real Estate Development Council) says that by aiming to bring transparency and accountability in the sector, RERA will change the general perception about the real estate sector.

Notwithstanding the impending positive impact of RERA, concerns have been raised about its efficacy with regard to timely and proper implementation. A few states are yet to notify RERA and consumer groups are expressing doubts about dilution of RERA provisions by some states. But the government is committed to ensure that the act is implemented in its letter and spirit. It is in this context that the former urban development minister, M. Venkaiah Naidu (responsible for pushing through RERA) stressed to the states to notify the law in time and advised them against diluting it. There is also a challenging task ahead- how to revive stalled housing projects and ensure that buyers waiting for years, finally get their home. Industry experts believe that introduction of single window clearance mechanism will give more teeth to RERA, to achieve its desired results. Jaxay Shah, President, CREDAI (Confederation of Real Estate Developers Associations of India), sums up on a positive note - notwithstanding these teething troubles, both consumers and developers need to look at RERA optimistically. because as the regulatory mechanism sets in, there will be a smoother transition towards new administration, creating accountability and transparency and promoting delivery- driven project execution.

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Will SC end personal laws' immunity?

The Supreme Court's judgment on the constitutionality of triple *talaq* may also decide the age-old debate whether personal laws can be brought under the ambit of Article 13 (laws inconsistent with or in derogation of the fundamental rights) of the Constitution.

While the All India Muslim Personal Law Board (AIMPLB) has argued that the Supreme Court does not have jurisdiction to strike down provisions of personal law, organisations calling for reform and Muslim women from various walks of life across the country have urged the court to declare triple *talaq* and polygamy as "un-Islamic".

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A judicial declaration from a Constitution Bench under Article 13 that personal laws are liable to comply with the fundamental rights guaranteed by Constitution would bring religious law, even uncodified practices, under judicial review.

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Privacy is a natural right

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Rajagopal’s stance appears confused about what the issue before the court exactly is. He also assumes a fundamental right necessitates a dialogue in the Indian context. True, all rights and freedoms have cultural contexts. That argument cannot be used, however, to presuppose whether there is a fundamental right. And, contrary to what Rajagopal writes, the recently concluded hearing has little to do with Aadhaar. The question before the nine-judge bench is simply whether there is a fundamental right to privacy implicit in the Indian constitution. It is to answer this question, that the bench was formed after which the Aadhaar hearings will continue before a three-judge bench.

The question is not one of “elevating” privacy to a fundamental right. Instead it is only one of recognition. Privacy is not just the right to be left alone but is liberty and freedom in action, already guaranteed under Article 21 of our Constitution. Liberty is privacy and privacy is liberty. If it were not so the right to freedom of expression, guaranteed by Article 19, itself would be in danger.

Further, the idea of privacy is embedded in the notion of dignity and is also protected by the right to equality guaranteed by Article 14. This aspect is particularly important in the “Indian context” because dignity extends to all human beings in equal measure. It is not a concept limited to the elite. Even those who seek to be “acknowledged by the state” have the right to dignity and to privacy.

The concern that “privacy” as an amorphous concept should be not be recognized as a fundamental right because it might create a situation of administrative paralysis is also faulty. Amorphous concepts like liberty depend upon individual selfhood, spatial autonomy and other multiple choices including control over the mind. Liberty, dignity and freedom inform the three Articles 14, 19, and 21, and privacy is inbuilt in all of them.

Mr. Rajagopal’s core concern seems to revolve around the fact that there has been no public debate on what should be privacy in the Indian context. He goes on to say that the ground reality today is that there is very little understanding of personal privacy at “all levels of society.” He gives some examples where our privacy is unduly compromised in daily modern undertakings such as filing a bank form etc. This notion confuses privacy with secrecy.

While secrecy may be a kind of privacy, privacy itself is a much wider concept. When a person makes a private judgement in society and discloses some information to another member for any purpose, he does so within the realm of his constitutionally protected right of liberty. It does not mean that once certain information has been given out in the public domain he loses his right to privacy over it. The information must be used only for the purpose which it is handed for. This is all the more true with a scheme like Aadhaar where citizens hand out their personal data to the state in order to receive certain benefits. It is the responsibility of the state to ensure that each citizen’s privacy is protected.

It is true that India does not have a data protection law and lags behind several countries in this aspect. Of course, we need a data protection law, but one might want to recognize that we lag behind most nations which recognize privacy as a constitutional right. The Supreme Court has in several landmark judgements emphasized that there are some rights which are natural and which

inhere in individuals. The court has always striven to ensure that such rights be recognized as fundamental.

The expression “democracy” in the preamble of the constitution contemplates that the judiciary can interpret the constitution in a meaningful, purposive and relevant manner to meet the needs of the time. The real failure for India would be if courts fail to act as a citadel of justice and to protect the freedom and liberty of each individual.

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Privacy is a natural right

“We need a meaningful national dialogue on what personal privacy ought to mean in the Indian context before we move on to the right to privacy” reads the headline of Raju Rajagopal’s op-ed in Mint published on 16 August 2017. As a young advocate working on the privacy case, I have some fundamental concerns with the arguments.

Rajagopal’s stance appears confused about what the issue before the court exactly is. He also assumes a fundamental right necessitates a dialogue in the Indian context. True, all rights and freedoms have cultural contexts. That argument cannot be used, however, to presuppose whether there is a fundamental right. And, contrary to what Rajagopal writes, the recently concluded hearing has little to do with Aadhaar. The question before the nine-judge bench is simply whether there is a fundamental right to privacy implicit in the Indian constitution. It is to answer this question, that the bench was formed after which the Aadhaar hearings will continue before a three-judge bench.

The question is not one of “elevating” privacy to a fundamental right. Instead it is only one of recognition. Privacy is not just the right to be left alone but is liberty and freedom in action, already guaranteed under Article 21 of our Constitution. Liberty is privacy and privacy is liberty. If it were not so the right to freedom of expression, guaranteed by Article 19, itself would be in danger.

Further, the idea of privacy is embedded in the notion of dignity and is also protected by the right to equality guaranteed by Article 14. This aspect is particularly important in the “Indian context” because dignity extends to all human beings in equal measure. It is not a concept limited to the elite. Even those who seek to be “acknowledged by the state” have the right to dignity and to privacy.

The concern that “privacy” as an amorphous concept should be not be recognized as a fundamental right because it might create a situation of administrative paralysis is also faulty. Amorphous concepts like liberty depend upon individual selfhood, spatial autonomy and other multiple choices including control over the mind. Liberty, dignity and freedom inform the three Articles 14, 19, and 21, and privacy is inbuilt in all of them.

Mr. Rajagopal’s core concern seems to revolve around the fact that there has been no public debate on what should be privacy in the Indian context. He goes on to say that the ground reality today is that there is very little understanding of personal privacy at “all levels of society.” He gives some examples where our privacy is unduly compromised in daily modern undertakings such as filing a bank form etc. This notion confuses privacy with secrecy.

While secrecy may be a kind of privacy, privacy itself is a much wider concept. When a person makes a private judgement in society and discloses some information to another member for any purpose, he does so within the realm of his constitutionally protected right of liberty. It does not mean that once certain information has been given out in the public domain he loses his right to privacy over it. The information must be used only for the purpose which it is handed for. This is all the more true with a scheme like Aadhaar where citizens hand out their personal data to the state in order to receive certain benefits. It is the responsibility of the state to ensure that each citizen’s privacy is protected.

It is true that India does not have a data protection law and lags behind several countries in this aspect. Of course, we need a data protection law, but one might want to recognize that we lag behind most nations which recognize privacy as a constitutional right. The Supreme Court has in several landmark judgements emphasized that there are some rights which are natural and which

inhere in individuals. The court has always striven to ensure that such rights be recognized as fundamental.

The expression “democracy” in the preamble of the constitution contemplates that the judiciary can interpret the constitution in a meaningful, purposive and relevant manner to meet the needs of the time. The real failure for India would be if courts fail to act as a citadel of justice and to protect the freedom and liberty of each individual.

Eklavya Vasudev is a junior counsel in senior advocate Gopal Subramanium’s team representing one of the petitioners in the case .

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70 years of Independence

Special Feature – I-Day 2017

India on Way to Change the Course Correction in Planning and Governance

*Rajendra Bora

After a tryst with destiny 70 years back India is said to have now finally arrived at a take off stage to achieve the dreams and aspirations of its people.

The nation is witnessing an upsurge of youth power bubbling with enthusiasm and confidence.

It is not out of context to state here that the present government at the Centre got elected on a massive mandate from electorate consisting in abundance of young, mostly first time, voters.

India has traversed a long way since the attainment of independence. The leadership of the party which guided the destiny of the nation for a number of electoral terms was obviously inclined towards socialism and adopted a model of planned development pursuing mixed economy with huge state sector investment. But the state machinery was not equipped and even prepared to own the mammoth task.

State intervention was needed and it initially paid dividends because we could not do without it as the big investments were not possible from private sector.

We witnessed the first decade of independent India as full of hope and aspiration for change in socio economic situations that has been stagnant for historic reasons. There was superb enthusiasm and confidence among the people of the new republic that they would change their destiny. However, the following decades proved to be the period of disillusionments. Despite the country pumping in huge public money we found, by the turn of the century, it was complete shattering of hopes as the system started showing it's rotten state.

For a long time state sponsored economy kept the market based economy at bay. But for the first time in all these long years we are witnessing a course correction after the last elections sent a party to govern with huge electoral mandate.

Unlike its predecessors, the NDA government has no inhibition or compulsion to follow the beaten path and is using the bulging market economy for the benefit of rising the standard of living of the masses, particularly of the poorest of the poor.

The government at the centre, headed by Narendra Modi, is showing a determination and vigour in taking decisions and implementing them, including the latest one of GST.

The whole model of subsidies has been changed to transfer financial help directly to the beneficiaries in their bank accounts.

With the clarion call of ‘Sabka Saath, Sabka Vikas‘(Together with all, development for all) and ‘Minimum Government and Maximum Governance’ as policy initiatives the present government, headed by Narendra Modi, has established itself a doer.

Of all the policy initiatives taken by the government, the Goods and Services Tax (GST) is the most transformative and impactful reform GST aiming at making India a common market with common tax rates.

Replacing the leaky and inefficient welfare delivery system with the cash transfer model has been adopted using direct benefit transfer (DBT) pilots with the JAM (Jan Dhan, Aadhaar, Mobile) as its foundation.

This initiative is natural corollary of the ambitious ‘Make in India’ which aims at making the country a global manufacturing hub. ‘Make in India’ initiative encourages both multinational as well as domestic companies to manufacture their products in India and the transparent and efficient tax collection system would make it realise.

Similarly ‘Skill India’ wants to make India a skilled country targeting skill development training to over 500 million youth by the year 2022.

Coupled with this the flagship ‘Digital India’ programme has already started transforming the country into a digitally empowered society and knowledge economy by bringing in digital infrastructure, creating digital empowerment and delivering governance and services through digital means. That brings transparency and efficient governance.

‘Start-up India’, ‘Stand-up India’ is aiming at young entrepreneurs to become self-employed. The scheme was launched to give a boost to entrepreneurship and job creation. The policy initiative promotes bank financing for start-up ventures.

The Prime Minister has rightly commented recently that "the pace at which people are taking to digital technology defies our stereotypes of age, education, language and income."

For the first time a sustained and effective effort is made against corruption which pervaded not only the state machinery but in politics too.

The battle against corruption has already started cleansing the rotten system it inherited. The Prime Minister is not only asserting that boldness is required to drive the corruption out of the system but adopting a bold approach indeed defying the preachers of doom. A robust boldness is evident in the functioning of the present government breaking the inertia.

Election driven development schemes, wrapped in rigid bureaucratic framework, are now slowly but certainly being replaced with people's participation.

Young generation of the 21st century is now aspiring for finding its national identity too as a powerful and competing country in the world. Majority of Indians are now asserting that they be counted and are not in a mood of compromise. We may call it self-confidence.

The country is preparing to celebrate Independence Day with greater hopes and aspirations with full of confidence not witnessed for a long time.

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**The author is a senior journalist with experience of more than 40 years of journalism. Has served in the Press Trust of India for over 26 years in various capacities including the Chief of Bureau, Rajasthan.*

Views expressed in the article are author's personal.

(The feature has been contributed by PIB Jaipur)

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Two cheers for the Supreme Court

On the 4th of November, 1948, Dr. B.R. Ambedkar rose to address the Constituent Assembly, and proudly stated that “the... Constitution has adopted the individual as its unit”. On Tuesday, this constitutional vision, under siege for much of India’s journey as a democratic republic, came within a whisker of destruction at the hands of the Supreme Court. But when all the dust had cleared in Courtroom No. 1, it finally became evident that Chief Justice J.S. Khehar had been able to enlist only one other judge, out of a Bench of five, to support his novel proposition that the religious freedom under the Indian Constitution protected not just individual faith, but whole systems of “personal law”, spanning marriage, succession, and so on. This view would not only have immunised instantaneous triple talaq (*talaq-e-biddat*) from constitutional scrutiny, but would also — in the Chief Justice’s own words — have ensured that “it is not open for a court to accept an egalitarian approach, over a practice which constitutes an integral part of religion”.

Had the Chief Justice managed to persuade one other judge to sign on to his judgment, we would have found ourselves living under a Constitution that sanctions the complete submergence of the individual to the claims of her religious community. A reminder, perhaps, of how even the most basic constitutional values, often taken for granted, hang by nothing more than the most fragile of threads. But if the relegation of the Chief Justice’s argument to a legally irrelevant dissenting opinion narrowly averted disaster, the separate opinions of three judges invalidating the practice of *talaq-e-biddat* gave us something to cheer about — but not much. By a majority decision, instantaneous triple talaq is now invalid, a significant victory that is the result of many decades of struggle by the Muslim women’s movement for gender justice. That is something that must be welcomed. However, the value of a Supreme Court judgment lies not only in what it decides, but also in the possibilities and avenues that it opens for the future, for further progressive-oriented litigation. In that sense, the triple talaq verdict is a disappointment, because even the majority opinions proceeded along narrow pathways, and avoided addressing some crucial constitutional questions.

Justice Rohinton F. Nariman, writing for himself and Justice U.U. Lalit, held that the 1937 Muslim Personal Law (Shariat) Application Act had codified all Muslim personal law, including the practice of triple talaq. This brought it within the bounds of the Constitution. He then held that because *talaq-e-biddat* allowed unchecked power to Muslim husbands to divorce their wives, without any scope for reconciliation, it was “arbitrary”, and failed the test of Article 14 (equality before law) of the Constitution. The practice, therefore, was unconstitutional.

Justice Nariman’s reasoning, while technically faultless, avoided the elephant in the room that had been ever-present since the hearing began. Under our constitutional jurisprudence, codified personal law — that is, personal law that has been given a statutory form, such as the Hindu Marriage Act — is subject to the Constitution. However, uncodified personal law is exempted from constitutional scrutiny. In other words, the moment the state legislates on personal law practices, its actions can be tested under the Constitution, but if the state fails to act, then those very practices — which, for all relevant purposes, are recognised and enforced by courts as law — need not conform to the Constitution. This anomalous position, which had first been advanced by the Bombay High Court in a 1952 decision called Narasu Appa Mali, and has never seriously been challenged after that, has the effect of creating islands of “personal law” free from constitutional norms of equality, non-discrimination, and liberty.

By holding that the 1937 Act codified all Muslim personal law, Justice Nariman obviated the need for reconsidering this longstanding position, even as he doubted its correctness in a brief, illuminating paragraph. As a matter of constitutional adjudication and judicial discipline, he was undoubtedly right to do so. However, it is impossible to shake off the feeling that the court missed

an excellent opportunity to review, and correct, one of its longstanding judicial errors. It seems trite to say that in our polity, there should not exist any constitutional black holes. The basic unit of the Constitution, as Ambedkar said, is the individual, and to privilege state-sanctioned community norms over individual rights negates that vision entirely.

In a separate opinion — which turned out to be the "swing vote" in this case — Justice Kurian Joseph did not go even that far. He simply held that *talaq-e-biddat* found no mention in the Koran, and was no part of Muslim personal law. Effectively, he decided the case on the ground that *talaq-e-biddat* was un-Islamic, instead of unconstitutional — begging the question whether secular courts should be adjudicating such questions in the first place. If Justice Nariman's opinion was narrow and technical, Justice Joseph's was narrow and theological. Therefore, in a case that involved, at its heart, issues of the intersection between personal law, the Constitution, and gender discrimination, there is no majority view on any of these topics.

This brings us back to the dissent. Not only did the dissenting opinion privilege community claims over individual constitutional rights, it also conflated the freedom of religion with personal law, thereby advancing a position where religion could become the arbiter of individuals' civil status and civil rights. Here again, it had been Ambedkar, extraordinarily prescient, who had warned the Constituent Assembly on the 2nd of December, 1948: "The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death... if personal law is to be saved, I am sure... that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extent beyond beliefs and rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion."

Ultimately, what separates religious norms and personal law systems — and this includes all religions — from the laws of a democratic republic is the simple issue of consent. This is why the Chief Justice's conflation of religious freedom and personal law was so profoundly misguided: because, in essence, he took a constitutional provision that had been designed to protect an individual, in her faith, from state interference, and extended it to protect a personal law system that claims authority from scriptures — scriptures whose norms are applied to individuals who had no say in creating them, and who have no say in modifying or rejecting them. The Muslim women challenging triple talaq invoked the Constitution because there was no equivalent within their personal law system; the Chief Justice would have denied not only them that possibility, but would have denied to every other individual, who felt oppressed and unequally treated by her religious community, for all time — and told them, as he did in this case: "Go to Parliament, but the Constitution has nothing for you."

At the very least, the Majority judgments did not close that window. For that, we must say: two cheers to the Supreme Court.

Gautam Bhatia is a Delhi-based lawyer

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PM's interaction with Additional Secretaries and Joint Secretaries

The Prime Minister, Shri Narendra Modi, on Wednesday, met and interacted with a group of over 70 Additional Secretaries and Joint Secretaries serving in the Government of India. This was the first of five such interactions.

During the interaction, officers shared their experiences on subjects such as a digital and smart governance, administrative procedures and accountability, transparency, doubling of farmers' income, skill development, Swachh Bharat, consumer rights, environment protection, and building of New India by 2022.

The Prime Minister said the combination of development and good governance is essential for the welfare and satisfaction of citizens. He said good governance should be a priority for the officers. He emphasized the need for all wings of Government to work in harmony, and synchronisation, to achieve the best possible results. He said all officers must keep the poor and the ordinary citizens in their minds while taking decisions.

The Prime Minister said the world is looking to India with positive expectations. He said the entire world feels that a successful India is vital for a global balance. He said there is also a strong undercurrent for excellence from the common citizens of India. Youth from humble backgrounds, with very limited resources are achieving best positions in competitive exams and sports. He asked the officers to work to promote this spontaneous upsurge of talent, recalling the spirit and energy that they themselves would have possessed in the first three years of their service.

The Prime Minister said this was a unique opportunity for officers to deliver their utmost for the benefit of the nation. He emphasized the importance of breaking silos, and efficient internal communication between various departments of the Government. He also underlined the necessity of speed and efficiency in decision making. He said that honest decision making with good intention would always be encouraged by the Union Government. He asked the officers to focus attention on the 100 most backward districts of India, so that they can be brought up to the national average level, on various development parameters.

AKT/AK

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Statement on behalf of The Government – on The Supreme Court Judgement on Right to Privacy

The nine-judge Bench Supreme Court judgement has today pronounced in the “Privacy Case” by upholding the Right to Privacy as one protected by Article 21 of the Constitution of India. The Government welcomes the view of the Supreme Court, which is consistent with all the necessary safeguards that the Government has been ensuring in its legislative proposals which had been approved by Parliament.

The issue of personal liberty had a chequered history during the previous Congress Governments. Immediately after the Constitution was framed, the Congress Government at the Center had consistently maintained that personal liberty could be denied to an individual by any legislation irrespective of the reasonableness of that legislation. The Congress Governments had consistently argued that privacy was not a part of any constitutional guarantees. In fact, during the internal emergency when Article 21 was suspended, the Central Government had argued before the Supreme Court that a person could be killed and deprived even his life (let alone liberty) and he would still be remediless.

The UPA Government had introduced AADHAR scheme without any legislative support. It was in that context that the question of the UPA’s AADHAR scheme was challenged before the judiciary. The NDA Government ensured that necessary legislation was approved by Parliament. Adequate safeguards were also introduced. On 16.3.2016, while speaking on the AADHAR Bill in the Rajya Sabha, the Government through the Finance Minister, had clearly stated – “Is privacy a fundamental right or not? The present Bill pre-supposes and is based on the premise and that it is too late in date to contend that privacy is not a fundamental right. So, I do except that probably privacy is a fundamental right. Now, where do you fit privacy as a fundamental right? And that is where I want to clear the misconception due to which these amendments which have been proposed. It is contended and broadly it is now accepted that privacy is a part of the individual liberty. So when Article 21 says, “no person shall be deprived of his Right to Life and Liberty without procedure established by law”. Then let us assume that privacy is a part of liberty and no person shall be deprived of his privacy without procedure as established by law. The underlying point is that privacy is not an absolute right. It is a right even in our Constitution. If it is a Fundamental Right under Article 21, which is subject to restriction that it can be restricted by a procedure established by law, that procedure established by law obviously has to be fair, just and reasonable procedure. The case before the Supreme court is you have no law, you have not legislated, you have not laid down any guidelines and you have by an executive fiat created authority where all personal data and biometric information will go. What will that be used for? Is this a fair, just and reasonable procedure?”

The Finance Minister was referring to the situation where the UPA Government created an AADHAR without any legislative support. The present Government did exactly the opposite. It gave a legislative support to AADHAR and incorporated in law special

safeguards with regard to privacy. It has also assured the Supreme Court that it will soon be coming out with a data protection law for which a committee headed by Justice Sri Krishna, a retired judge of the Supreme Court, had already been appointed.

Today's judgement of the Supreme Court is a welcome judgement in as much as it strengths the Fundamental Rights and personal liberty. The judgement reads that personal liberty is not an absolute right but liable to the restrictions provided in the Constitution which will be examined on a case to case basis. The Government is of the clear opinion that its legislations are compliant with the tests laid down in the judgement. The Supreme court has stated that "…requires a careful and sensitive balance between individual interests and legitimate concerns of the State. The legitimate aims of the State would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits." The Government is committed to this object.

NNK/MD

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Right to privacy: India couldn't have got a better gift in 70th year of Independence

The Supreme Court's declaration that citizens have a 'right to be left alone' is a huge milestone in the history of the Indian Republic and civil rights. The court has ruled that citizens have a right to privacy, which is intrinsic and fundamental to dignified human existence. While the court has not spelt out the full contours of privacy – it has given an illustrative example as to what privacy means. It said privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. By doing so, the court has affirmed an unwritten and ambiguous right, though recognised internationally as a fundamental human right. By stepping in – the courts have also filled a huge void left by our constitution framers.

Privacy as a right has not been given a separate legal status in any country. Across the world it has arisen out of judicial pronouncements. The nine-judge Supreme Court bench, which decided on the case, had to cast away the historical burden of previous judgments that refused to recognise privacy as a fundamental right. Interestingly, while doing so, a son, who was part of the nine-judge bench, overruled his father's previous verdict in the infamous ADM Jabalpur case. While this judgment has crystallised an amorphous idea – it has also reopened a debate on many contentious issues that have been decided in the past. For instance, in the case of rights of the LGBT community, this nine-judge bench is of the opinion that the matter was wrongly decided on the touchstone of privacy. Sexual orientation of an individual is a matter of privacy. Similarly, the cases of abortion and willful termination of one's life – are set to witness renewed deliberations.

So far, the court has only decided if there is a right to privacy. Now that this is settled, it will turn its attention to the government project Aadhaar. Privacy is central to the legal challenge facing Aadhaar, the 12-digit biometric unique identity number; it is yet to be tested on its touchstone.

While privacy in India is still in its infancy, following immense developments in the field of media, technology and scientific thinking, the increasing role of corporations in the lives of citizens there is an urgent need to address this. The country could not have got a better gift from the judiciary for its 70th year of independence.

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SC overrules Emergency-era habeas corpus verdict

Over 40 years after the Supreme Court’s darkest hour when it said citizens had no right to life and liberty during the Emergency period, a nine-judge Bench condemned the decision in the infamous ADM Jabalpur case, better known as the habeas corpus case, as “seriously flawed.”

The habeas corpus judgment in 1976 upheld the Congress government’s move to unlawfully detain citizens, including political rivals, during the Emergency years.

Cost of dissent

Of the five judges on that Bench, only Justice H.R. Khanna dissented with the majority opinion of then Chief Justice of India A.N. Ray, Justices M.H. Beg, Y.V. Chandrachud and P.N. Bhagwati. Justice Khanna's dissent cost him the chief justiceship. He was superceded by Justice Beg, following which he resigned.

On Thursday, for the first time in Supreme Court's history, a nine-judge Bench, led by Chief Justice of India J.S. Khehar, officially condemned the Supreme Court’s majority opinion in the habeas corpus case.

The judgment, authored by Justice D.Y. Chandrachud, who, incidentally, is the son of Justice Y.V. Chandrachud, “expressly overruled” the 1976 majority judgment and removed a long-pending taint on the court's history as a people's champion.

Justice Chandrachud, writing for himself, Chief Justice Khehar, Justices R.K. Agrawal and S. Abdul Nazeer, held that “the judgments rendered by all the four judges constituting the majority in ADM Jabalpur are seriously flawed. Life and personal liberty are inalienable to human existence”.

“No civilized state can contemplate an encroachment upon life and personal liberty without the authority of law. Neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights. The right to life has existed even before the advent of the Constitution,” Justice Chandrachud wrote.

Hailing Justice Khanna for standing up to the government even at a personal cost, Justice Chandrachud said the majority judgments in the Jabalpur “should never have been”.

Justice Rohinton Fali Nariman, in his seprate judgment, described Justice Khanna's dissent as one of the “three great dissents” in the Supreme Court's history.

He calls the dissenting judgment of Justice Fazl Ali, who he describes as a "great judge", in the A.K. Gopalan case on preventive detention that fundamental rights in the Constitution are not watertight compartments as “a cry in the wilderness” and said that it took the Supreme Court 20 years to correct its view. Justice Nariman said the judgment took “his breath away”. The second great dissent was by Justice Subba Rao, who upheld the individual's right to privacy.

He pointed to the introduction of the National Human Rights Commission law, which recognises right to life as a human right and observed that “developments after this judgment (ADM Jabalpur) have also made it clear that the majority judgments are no longer good law and that Khanna, J.’s dissent is the correct version of the law”.

In his separate judgment, Justice Sanjay Kishan Kaul termed the ADM Jabalpur case as “an aberration in the constitutional jurisprudence of our country.”

Neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights

Justice Chandrachud

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Worried SC calls for robust data protection regime

Security concerns:The SC said dangers to personal data originate from government as well as private players.

The Supreme Court on Thursday urged the government to put in place a robust mechanism for data protection.

Noting that “informational privacy is a facet of the right to privacy”, a nine-judge Bench, led by Chief Justice of India J.S. Khehar, said dangers to personal data originate not only from the government but also from private players.

“The dangers to privacy in an age of information can originate not only from the state but from non-state actors as well. We commend to the Union Government the need to examine and put into place a robust regime for data protection,” Justice D.Y. Chandrachud wrote.

Legitimate aims of state

The court observed that the creation of a regime requires careful and sensitive balance between individual interest and legitimate concerns of the state. “The legitimate aims of the state would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge and preventing the dissipation of social welfare benefits,” the apex court observed.

The court said the introduction of a “carefully structured” data protection regime and its contours were matters policy matters to be considered by the Centre.

The court also took note of the Centre's move to constitute a committee of experts led by former Supreme Court judge, Justice B.N. Srikrishna, on July 31, 2017 to identify “key data protection issues” and suggest a draft Data Protection Bill.

The Office Memorandum of the Justice Srikrishna Committee notes that the “government is cognisant of the growing importance of data protection in India. The need to ensure growth of the digital economy while keeping personal data of citizens secure and protected is of utmost importance”.

Panel report

The Centre has undertaken in the court that the Ministry of Electronics and Information Technology would work with the panel and hand over all necessary information to it within the next eight weeks, after which the latter will start its deliberations. The Committee is expected to submit its report expeditiously.

The government has already indicated in the court that the committee would be framing a data protection Bill similar to the “technology-neutral” draft Privacy Bill submitted by an earlier expert committee led by former Delhi High Court Chief Justice A.P. Shah to the Planning Commission of India in 2012. No steps were taken on the recommendations of the Justice Shah Committee.

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Privacy a fundamental right: SC

Justice Sanjay Kishan Kaul said privacy, dignity and personal liberty were parts of the same “tree of justice”.

When this happens, the government has to prove that the encroachment into privacy was a reasonable restriction on the fundamental right to privacy. Plus, the court would also test whether the law in question stipulates an invasion into a person's privacy through a procedure which is fair, just and reasonable.

“Right to privacy is a part of fundamental right of a citizen guaranteed under Part III of the Constitution. However, it is not an absolute right but subject to certain reasonable restrictions,” Justice A.M. Sapre said in his separate judgment.

The nine-judge Bench was composed of Chief Justice J.S. Khehar, Justices J. Chelameswar, S.A. Bobde, R.K. Agrawal, Nariman, A. M. Sapre, D.Y. Chandrachud and Sanjay Kishan Kaul.

Judgment overruled

With this, the court has overruled its own eight-judge Bench and six-judge Bench judgments of M.P. Sharma and Kharak Singh delivered in 1954 and 1962, respectively, that privacy is not protected under the Constitution.

The nine-judge Bench was deciding a reference from a five-judge Constitution Bench, which is considering the validity of the Aadhaar scheme as a breach of privacy, informational self-determination and bodily integrity. The five-judge Bench wanted to know first whether privacy was a fundamental right or not before delving into the question of validity of Aadhaar.

Holding that “privacy is a constitutionally protected right”, Justice Chandrachud observed that this fundamental right is multifaceted — it preserves personal intimacies, sanctity of family life, the home, sexual orientation. It protects heterogenity and recognises the plurality and diversity of our culture. His views were endorsed by Chief Justice of India J.S. Khehar, Justices R.K. Agrawal and S. Abdul Nazeer in the same judgment.

Constitutional firewall

“Fundamental rights are the only constitutional firewall to prevent state’s interference with those core freedoms constituting liberty of a human being. The right to privacy is certainly one of the core freedoms, which is to be defended. It is part of liberty within the meaning of that expression in Article 21,” Justice J. Chelameswar held in his concurring judgment.

Justice S.A. Bobde said the “first and natural home for a right of privacy is in Article 21 at the very heart of personal liberty and life itself”.

Justice Sanjay Kishan Kaul said privacy, dignity and personal liberty were parts of the same “tree of justice”.

“Thus, from the one great tree, there are branches, and from these branches there are sub-branches and leaves. Every one of these leaves are rights, all tracing back to the tree of justice. They together form part of that ‘great brooding spirit’. Denial of one of them is the denial of the whole, for these rights, in manner of speaking, fertilise and nurture each other,” said Justice Kaul.

Global significance

The nine-judge Bench's judgment gains international significance as privacy enjoys a robust legal framework internationally, though India has remained circumspect. The judgment, if it declares privacy as a fundamental right, would finally reconcile Indian laws with the spirit of Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966, which legally protects persons against the "arbitrary interference" with one's privacy, family, home, correspondence, honour and reputation.

END

Protect privacy of children: Justice Kaul

Sanjay Kishan Kaul

Privacy of children requires special protection in a digital age so they are not subjected to consequences of their mistakes and naivety, the Supreme Court on Thursday said.

Justice Sanjay Kishan Kaul, in his 47-page separate but concurring judgement holding that right to privacy is a fundamental right, also observed that children are perpetually creating digital footprints on social networking websites as they learn their ABCs — “Apple, Bluetooth and Chat”.

“Children around the world create perpetual digital footprints on social network websites on a 24/7 basis as they learn their ‘ABCs’: Apple, Bluetooth, and Chat followed by Download, E-Mail, Facebook, Google, Hotmail, and Instagram. “They should not be subjected to the consequences of their childish mistakes and naivety their entire life. Privacy of children will require special protection not just in the context of the virtual world, but also the real world,” Justice Kaul said.

The judge observed that technology results almost in a sort of a permanent storage in some way or the other making it difficult to begin life again giving up past mistakes. The SC ruled that “right to privacy is an intrinsic part of Right to Life and Personal Liberty.

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Citizen vs State: On right to privacy verdict

In a rare unanimous verdict pronounced by nine judges, the Supreme Court has ruled that **privacy is a fundamental right** that requires constitutional protection. It was always known or assumed to be a common law right. Occasionally, and somewhat grudgingly, it was recognised in some verdicts as a fundamental right. In concluding that “the right to be left alone” is an inalienable part of being human, the court has restated a fundamental principle, namely that some rights are natural and inherent; constitutions only recognise them and make them explicit. This restatement of first principles became necessary mainly due to a strange and perverse argument by the Union government in the course of the hearings on the validity of its Aadhaar-based unique identity scheme that privacy is not a fundamental right. The fact that all the judges unanimously came down on this argument shows how much the government misunderstood the constitutional underpinnings of privacy as a value in itself and as an ineluctable facet of human dignity. The government argued that privacy is “so amorphous as to defy description”, that it is needless to call it a fundamental right as it is one in common law, and that it has been given statutory protection in different forms. There was even a suggestion that privacy is an imported value and that it is elitist. All these arguments fell by the wayside.

The outcome was not entirely unexpected. Not many would have seriously believed a constitutional court would rule that privacy is not a cherished right in a democracy. What implications the ruling would have on state policy and citizens’ rights will be the core issues in future. A welcome aspect of the judgment is that it makes it clear that sexual orientation is part of privacy and constitutionally protected, and that the 2014 verdict upholding Section 377 of the Indian Penal Code is flawed. This opens up the case for a much-needed reconsideration. As for Aadhaar, it is pertinent to note that the judges have referred to the restrictions and limitations that privacy would be subject to. The test to decide the validity of any such restriction is that it is reasonable, based on fair procedure and free from arbitrariness or selective targeting or profiling. It can also be based on compelling state interest. This is where a cautionary note is in order. Courts exercising writ jurisdiction should be cautious about the nature of the relief they grant based on wide and open-ended claims of breach of privacy. The verdict has advanced and revivified core constitutional principles in an era in which privacy is pitted against state interest. Somehow, privacy as a value finds itself at loggerheads with notions of national security, the needs of a knowledge society and even socio-economic policy. Hopefully, this judgment will set many such concerns at rest and bring about a more equitable relationship between citizen and state.

Rajasthan’s ordinance shields the corrupt, threatens the media and whistle-blowers

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Endgame for Section 377?

Bright rainbow colored background with a grunge texture and grafitti paint drops. Global colours are easily modified | Photo Credit: Getty Images

The guillotine has fallen on the right of men to unilateral divorce by mere pronouncement in one go. It is a reflection of the failure of politics in India, and the pusillanimity of the political class that is its custodian, that the practice had the long life that it enjoyed in a secular republic. And even though it is disappointing that none of the judges came to the conclusion of the unconstitutionality of triple talaq via the path of equal rights — in this case of India's women — it is yet the case that the highest court of the land has pronounced a negative verdict on the practice. Rulings by the Supreme Court can have significant spread effects.

Even when rulings in one case may not directly impact those in other areas, they have the potential to change behaviour across society. Thus, activists see the ruling against triple talaq as generally empowering women among India's Muslims. Similarly, the ruling that has closely followed it in time, namely the one upholding privacy as a fundamental right of the citizen under the Constitution, is believed to have major implications for the lives of Indians. We can see immediately that it stalls the incipient rise of the surveillance state. But it has been suggested that it has the potential to impact the Indian state's regulation of sexual relations. In particular, it has been suggested that the ruling has a bearing on the constitutional validity of Section 377 of the Indian Penal Code (IPC) which criminalises acts "against the order of nature". In the first instance, this immediately devalues by association the homosexual condition, a historical peeve of European Christianity. It should be recognised that even though all religions drawing upon West Asian culture have strictures against homosexuality, it was the West that justified sexual persecution on aesthetic grounds. Under Hitler homosexuals were to be exterminated so that Germany would be populated by the perfect race. It needs to be acknowledged at the same time that it is the Christian West that has taken the lead in reversing the historical prejudice against homosexuality and that members of its political class have played a leading role in this. But we live in India and must perforce address its realities.

Within minutes of the Supreme Court's ruling on the primacy of privacy, commentators pointed out that it has implications for Section 377 as no longer can sex acts in private be overseen by law. While this may at first blush appear to be a tenable interpretation, it is not an argument that is made by activists for gay rights. Incidentally, it must be said that this group includes a large number of Indians who are not in any way circumscribed by Section 377 as the fight for sexual equality is not spearheaded by gay men. So why is the argument against Section 377 not to be based on the right to privacy but to be premised instead on the idea of the right to equality before the law? While privacy is of paramount importance, in itself it cannot be the clinching argument in the context. After all, do individuals have the right to violence in the privacy of their homes? We may well agree with a man that his home is his castle, and therefore beyond the invasive remit of the state, but we are unlikely to agree with his right to domestic violence. He has no right to subjugate his spouse through violence, not even in the privacy of his home. The case against Section 377 must be based on the argument that it is arbitrary in proscribing all but the 'missionary position' in intercourse. What the Indian law as it stands does is to violate the right to non-discriminatory treatment of the LGBT community who invariably reject this position.

So are we witnessing the endgame of Section 377? Hardly, it would be seem, though we should not give up all hope to seeing a civilised India in our lifetime. Why so? At least, the arguments of some of the judges of the Supreme Court are not a cause for optimism. The swing judge, so to speak, in the talaq ruling thought of the practice as bad in religion and therefore not "good in law". This has a direct bearing on the path of LGBT rights in India as homosexuality is proscribed in

some religions. Is this to be interpreted as suggesting that India's gay Muslims and Christians should remain criminalised for all time? Not if we are to go by the court's earlier rulings. The NALSA judgment of 2014 is a landmark one in that it upheld the right to choose one's sexual orientation. However, it did not go far enough to call for a repeal of Section 377. In some ways, however high-minded the judges in that case may have been, they did not allow their minds to soar enough to recognise sexual rights as legitimately redeemable through practice.

While the courts may get away without addressing the sexual rights of Indians constrained by Section 377, the political class cannot any longer credibly do so. The Bharatiya Janata Party (BJP) and the Congress cry themselves hoarse with their slogans 'sabka saath, sabka vikas (together with everyone, everyone's progress)' and 'inclusion', respectively. If the populace are to see these as meant to no more than stimulate a self-induced rapture, the political parties have their task cut out. The Congress must recognise that the provisions of this law are exclusionary in that it leaves out a section of Indians. The BJP on its part had better get to finally see that 'vikas' is all about flourishing lives and not just making goods in India for sale abroad. If the Kinsey report on sexuality based on the United States experience is to be taken as a benchmark, we would have to heed its finding that around 10% of men are homosexual.

This is larger than some of India's religious groups. It appears that for the main political parties of India, sabka vikas amounts to privileging religion, even when it is exclusionary. But if they would only dare to see the full logic of their pronouncements, they cannot shrink from devoting their energies to empowering the LGBT community in India. Among India's political parties, the CPI(M) alone has frontally sought repeal of Section 377, even though this may have something to do with the intelligence of its JNU-educated leadership rather than their MPs, not to mention the rank and file of the party. The Congress did include Section 377 in its manifesto in 2014, but somewhat limply under the section on governance, betraying its timidity. After all, its clan-based allies from Uttar Pradesh and Bihar, on whom it increasingly relies, seem unable to see beyond their families and their biradari, showing little concern for women, linguistic minorities or civil liberties in general.

Having tasted the sweetness of power, the BJP has begun to choose its words more carefully. As soon as the ruling on triple talaq was announced, the entire leadership was all agog with tweets and statements. The Minister for Law and Justice spoke of the judgment having upheld "gender justice, dignity and equality". He couldn't have been more precise. Could he not have noticed that that is exactly what repeal of Section 377 of the IPC will achieve on the sexual plane, we wonder. But while legislation for its repeal may be some way off, the LGBT movement of India is here to stay. Chances are that in a city near you preparations are on right now for the next annual 'Pride' march. It would be a party with a difference as all parties are welcomed. You could even walk your talk.

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Can NRIs invest in immovable property in India?

India’s real estate has always been one of the investment opportunities for investors to explore due to the high returns it has offered. More so now, thanks to the implementation of the Real Estate (Regulation and Development) Act, 2016, (RERA), which aims at protecting consumer rights and increasing transparency.

The good news is that even non-resident Indians can invest in this sector under the extant foreign exchange regulations. Non-resident Indians include Non-Resident Indian citizens (NRIs) and Persons of Indian Origin (PIOs).

An NRI is an Indian citizen who is not a resident of India as per foreign exchange regulations. The definition of resident under the foreign exchange regulations of India is different from that of Indian income tax laws.

PIO is defined to include an individual (who is not a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Hong Kong, Macau, Iran, Nepal or Bhutan) who at any time held an Indian passport or whose parents or grandparents were Indian citizens.

Typically, both NRIs and PIOs are allowed to purchase or receive by way of gift any immovable property in India without permission from the Reserve Bank of India, except an agricultural land, plantation property and a farm house. Further, both NRIs and PIOs are also allowed to inherit any immovable property (including agricultural land, etc.) in India. There is no restriction on the number of immovable properties both NRIs or PIOs may hold.

In case of purchase of an immovable property, payment can be made only out of funds received in India through normal banking channels by way of inward remittance from any place outside India or out of funds held in any Non-Resident External (NRE) account/Foreign Currency Non-Resident (FCNR) account/Non Resident Ordinary (NRO) account maintained in India.

Payment cannot be made through travellers’ cheque or foreign currency notes or any other mode.

NRIs can transfer any immovable property in India by way of sale or gift to residents of India, other NRIs or PIOs without requiring any permission. However, agricultural land, plantation property and a farm house can be transferred only to Indian residents.

PIOs can also freely transfer any immovable property other than agricultural land, plantation property and a farm house to Indian residents by way of sale. Agricultural land, plantation property and a farm house can be transferred by way of gift or sale only to a person resident in India who is a citizen of India. PIOs may transfer residential or commercial property in India by way of gift to Indian residents, NRIs and PIOs.

In case of sale of immovable property (other than an agricultural land, plantation property and a farm house), the funds can be freely remitted out of India, subject to the following conditions:

• The acquisition of immovable property was made in compliance with the foreign exchange regulations existing at the time of acquisition

• The sale proceeds being repatriated cannot be more than the amount paid for acquiring immovable property in foreign exchange

It is pertinent to note that in the case of sale of residential property, the repatriation of sale

proceeds is restricted to not more than two such properties.

Further, remittances out of balance held in NRO account can be made only up to $1 million per financial year. In case the property was acquired by way of a gift, the sale proceeds may be received in the NRO account for remittance purposes. However, all the remittances should be made only after making payment of applicable taxes (both direct and indirect) in India.

Lastly, foreign nationals of non-Indian origin, resident outside India, can only acquire immovable property in India through inheritance from a person resident in India. Further, such individuals can transfer immovable property only with prior permission of RBI.

The above information is general information and specific advice should be sought for any foreign investments in India. Also, it is recommendable to check the tax implications that may arise on any transaction before making a decision!

FAQs

1. Is there any limit on the number of properties that NRI or PIO can buy or sell?

There is no restriction on the number of properties that a person can buy or sell. However, there is a restriction on the number of residential properties whose sales proceeds can be freely repatriated. While the proceeds of two residential properties can be freely repatriated, the proceeds from third property and thereafter can be deposited in an NRO account out of which a total of $1 million per financial year can be freely remitted.

2. Is rental income freely repatriable?

Rental income can be repatriated freely from India without taking any specific permission.

3. How do I repatriate profits or capital gains on sale of a property?

There is a restriction on the remittance of proceeds beyond the principal amount of investment. However, the profits and/or gains can be deposited in the NRO account of the remitter and, consequently, the same can be remitted outside India, provided it does not exceed the threshold of $1 million per financial year.

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Data law panel report by year end: Prasad

The Centre expects the expert committee working on a framework for data protection to submit its report by the end of this year. This could lend greater clarity on data privacy requirements that could be imposed on companies like Google and Facebook.

“We expect the committee, led by former Supreme Court judge Justice B.N. Srikrishna, to submit its report by the end of this year,” IT Minister Ravi Shankar Prasad said.

Asked about protection of user data with firms such as Google and Facebook, Mr. Prasad said while he appreciated how these firms were helping in empowering citizens, “they will need to respect and follow the law of the land.” A top government official said the panel’s report would clear the air on laws that would apply to such firms.

“The committee has already met twice,” the official, who did not wish to be named, said. “Whether there is a need for a separate law or introducing regulations under the IT Act… the government is open to both options, but that will totally depend on the nature of the recommendations.”

The Centre had formed a 10-member panel to identify “key data protection issues” and propose a framework for a data protection law.

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SC verdict to affect ban on slaughter

The landmark judgment declaring right to privacy a fundamental right would have “some bearing” in matters relating to slaughter of cows, bulls and bullocks in Maharashtra, the Supreme Court said on Friday.

The Bombay High Court had on May 6 last year struck down Sections 5(D) and 9(B) of the Maharashtra Animals Preservation (Amendment) Act, 1995.

While Section 5(D) criminalises possession of flesh of cows, bulls or bullocks, slaughtered outside Maharashtra, Section 9(B) imposed burden on the accused to prove that meat or flesh possessed by him/her does not belong to these animals. The State government had filed an appeal in the top court.

The SC observed this while hearing a batch of appeals filed against the HC verdict decriminalising the possession of beef in case of animals slaughtered outside the state.

Right to eat

A Bench comprising Justices A.K. Sikri and Ashok Bhushan was told by senior advocate Indira Jaising, representing some of the petitioners, that after yesterday’s privacy verdict by a nine-judge constitution Bench, the right to eat food of one’s choice was now protected under privacy.

Senior advocate C.U. Singh also told the apex court that the privacy judgement would have to be looked into while deciding the issue. “Yes, that judgement will have some bearing in these matters,” the Bench observed. The Supreme Court had yesterday said “nobody would like to be told what to eat or how to dress” while ruling that these activities come under the realm of right to privacy.

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The good and the bad of the privacy ruling

One of the pleasures of being a lawyer in a vibrant common law jurisdiction is that every once in a while the system spits out a decision so artfully crafted and filled with nuance and meaning that it is a sheer joy to read. Few decisions in recent memory are better exemplars of this than the recent decision of the Supreme Court in Puttuswamy v. Union of India, affirming the fundamental right to privacy.

The system of common law is based on precedent. Judges are bound to consider past judgments and apply them to disputes that come before them in the future. They are only permitted to diverge the chain of historical decisions if it is possible to sufficiently distinguish—in fact or principle—from the available precedents. Our law is, therefore, not so much a monolith handed to us by our founding fathers as an edifice constructed brick-by-brick through an incremental series of decisions—each one based on the judgements that preceded it but in aggregate a composite, well-integrated whole. Common law takes shape in this manner, organically evolving to accommodate new technologies and social mores while remaining consistent with the past from which it arose.

The fundamental right to privacy has been developed by the courts in this manner for over 60 years. The reason the Supreme Court had to take the effort to gather nine judges together to rule on whether or not we have a fundamental right to privacy was because of a minor inconsistency that had crept into the chain of decisions over 50 years ago and remained, till last Friday, unresolved.

It all began when the attorney general of India, while defending the Aadhaar project, argued that the Constitution does not include within it a fundamental right to privacy. He based his conclusion on two cases decided by the Supreme Court—one, MP Sharma v. Satish Chandra, decided by an eight-judge bench in 1954 and the other, Kharak Singh v. State of Uttar Pradesh, by six judges in 1962. Both cases had held, under different circumstances, that the Constitution of India does not specifically protect the right to privacy. In the 55 years that have passed since these cases were decided, there hasn't been a larger bench of Supreme Court that has considered this issue, and therefore, by sheer weight of numbers, these judgements bound us. It would take nine judges to set this straight.

When you get into the weeds, MP Sharma dealt with a completely unrelated issue—the right against self-incrimination. While it did mention the right to privacy in passing, these comments were stray observations at best. Kharak Singh, on the other hand, was a confusing decision that held, on the one hand, that the intrusion into a person's home is a violation of liberty (relying on a US judgement on the right to privacy), but on the other hand went on to say that there was no right to privacy contained in our Constitution.

But since these were eight- and six-judge benches of the Supreme Court, every subsequent court had to deal with this confusion as best they could. In the next case, Gobind v. State of Madhya Pradesh, a three-judge bench, mindful of its inability to overturn a judgment of a larger bench, skirted around the inconsistency by "assuming" that the right to privacy was protected under the Constitution—relying on the first part of the Kharak Singh judgement without specifically calling out its inconsistency with the second. Once Gobind hacked a pathway through this thicket, many smaller benches followed suit, building on these principles to articulate a fundamental right to privacy in the context of medical privacy, matrimonial privacy, reputational privacy, privacy of sexual orientation and many more. But we always knew that this jurisprudence, built as it had been on uncertain foundations, was susceptible to challenge.

The task before the nine-judge bench in Puttuswamy v. Union of India was to settle the law once and for all. They did so emphatically—overruling both MP Singh and Kharak Singh to the extent that they had held that there was no fundamental right to privacy. They also overruled additional district magistrate (ADM) Jabalpur—a decision that allowed for fundamental rights to be suspended during an Emergency and called into question the judicial reasoning in the Naz Foundation case that implied that the “minuscule minority” LGBTQ (lesbian, gay, bisexual, transgender and queer) community was not entitled to the right to privacy. They connected our privacy jurisprudence over the years with our international commitments and established our conformity with comparative laws around the world.

In doing so, they affirmed the precedential basis of every single privacy judgement in our judicial history, making it clear that even without an express fundamental right to privacy, we are entitled to enjoy the right as it is inherent in our right to liberty and dignity.

Much as I enjoyed reading the judgement, I have some misgivings about the direction down which it is pointing us. I am concerned that the tests they have articulated and the constraints they have imposed could well have a chilling effect on our ability to get the most out of modern technology. While the opinions of both justice D.Y. Chandrachud and justice Sanjay Kishan Kaul speak of the need to balance the individual’s right to privacy with the benefits of data mining and big data, they go on to suggest a framework to protect individual autonomy based solely on consent. While they seem to understand the benefits that big data can bring us, they appear, at the same time, ignorant of the chilling effect that a strict notice and consent-based framework can have on these business models.

Just as the strength of the common law system comes from the solid foundations on which it is based, its weakness is that it is structurally designed to build only on past decisions. Since they are required to decide solely based on historical thought processes, they are incapable of finding solutions for a future untethered to the past. This is why a common law judiciary is so bad at dealing with disruption.

We are currently in the midst of a period of unprecedented disruptive change. Where it was once sufficient to secure personal privacy by limiting the collection of data, in the face of a rapidly increasing number of devices and systems that constantly collect information from us in ways that we cannot completely comprehend, consented collection is completely infeasible. We are also beneficiaries of new technologies that leverage the power of data offering us facilities and services that enhance our quality of life. Most of these new technologies rely on big data and machine learning—which in turn depend on access to large data sets in order to do their magic. Requiring data controllers to restrict themselves by proportionality and purpose could have a chilling effect on these new business models.

Regulators around the world have begun to discard the principle of notice and consent that guided their actions for over three decades. They have, instead, begun to rely on models such as accountability to address the challenges of a disruptive future. If the nine judges who have done such an exemplary job of righting the mistakes of the past could have only shifted perspective while legislating for the future, we’d have got a judgement that was truly perfect by every measure.

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The Constitution, refreshed

When delivering the 12th Justice K.T. Desai Memorial Lecture on dissenting judgments in Mumbai last year, Justice Rohinton F. Nariman described the great dissenters on the Supreme Court of the 1950s and 1960s as persons who had chiselled and added meaning to the Constitution's fundamental rights. They did this, he said, by, more than anything else, appealing to what the former Chief Justice of the U.S. Supreme Court, Charles Evans Hughes, had called the "brooding spirit of the law and the intelligence of a future day."

Now, on August 24, Justice Nariman and eight of his colleagues, who heard arguments in *Justice K.S. Puttaswamy (Retd) v. Union of India*, have brought to life the brooding spirit of three such dissents. In doing so, they have not only consigned some of the court's most regressive judgments to the dust heap of history, but have also delivered a rousing affirmation of the critical place that the right to privacy enjoys in the penumbra of liberties that the Constitution guarantees.

Perhaps it ought to be a matter of shame for us that well into our seventh decade as a constitutional democracy, we needed the Supreme Court to tell us whether we possess a fundamental right to privacy or not. But this unanimous verdict delivered through six separate opinions nonetheless marks a watershed moment in our constitutional history. Collectively, the judgments could well herald a new dawn. The verdict's consequences for civil liberties are potentially enormous. They are likely to have an effect not only on the challenge to the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 — or the Aadhaar Act — that is presently pending but also on a slew of other issues, ranging from matters concerning the collection of private data to invasions that go to the root of our bodily integrity and individual autonomy.

The reference to the nine-judge Bench emanated out of the larger challenge to the validity of the Aadhaar Act. There, during the course of hearings before a three-judge Bench, the Union of India raised a rather alarming plea: it said, in response to arguments that the legislation infringed the right to privacy, that there simply existed no such fundamental guarantee. The government predicated this argument on the basis of two previous judgments of the court, *M.P. Sharma v. Satish Chandra* (1954) and *Kharak Singh v. State of U.P.* (1962), rendered respectively by a Bench of eight and six judges, which, it said, had conclusively held that there existed no fundamental right to privacy. Accordingly, it contended that subsequent judgments rendered by Benches of lesser strength which had recognised a fundamental right to privacy were wrongly decided.

Before the nine-judge Bench, in seeking to further its plea, the government made a number of claims, three of which were particularly noteworthy. First, it argued that the Constitution's framers never intended to incorporate a right to privacy, and therefore, to read such a right as intrinsic to the right to life and personal liberty under Article 21, or to the rights to various freedoms, such as the freedom of expression, guaranteed under Article 19, would amount to a rewriting of the Constitution. Second, it claimed that since privacy, as a concept, was vague, amorphous, and incapable of precise definition, it cannot be elevated to the status of a fundamental right. Third, it contended that privacy was, at best, a purely elitist concern, and that, in a land like India, rife with poverty, it can never be considered as a value worth universally cherishing.

Although the court speaks through six separate opinions, marked by occasionally disparate reasoning, each of the state's arguments stands unanimously rejected. On the first argument, the court recognises that much of the text of the Constitution, particularly of the rights enlisted in part III, are abstract statements of privileges that, in any event, require interpretation for us to make sense of them. To hold, therefore, that privacy is intrinsic to personal liberty does not tantamount

to rewriting the Constitution. On the other hand, it would merely be a natural product of a proper interpretive exercise, where the Constitution is seen as not merely representing a matter of social fact but of being a product of morality, of representing a set of larger ambitions and ideals.

The court recognises that the constitutional guarantees of a right to personal liberty and of a right to freedom of expression, while abstract in their wording, are subsumed by deep moral values central to the very conception of citizenship. What's more, as Justice Sanjay Kishan Kaul notes in his separate opinion, "the Constitution was not drafted for a specific time period or for a certain generation, it was drafted to stand firm, for eternity." The notions of "goodness, fairness, equality and dignity can never be satisfactorily defined," he adds. They were left "abstract for the reason that these rights, by their very nature, are not static." To disregard privacy as a fundamental right would, therefore, fail to make the best sense of the Constitution as a legitimate basis for government.

The argument that privacy is a purely elitist concern is also found to be unsustainable. Here, Justice Chandrachud, for example, leans on Amartya Sen's work to show us that liberty and freedom are values that are not only inherent in our constitutional order, but that they also serve a larger instrumental purpose, in creating conditions that best further the cause of equality and social justice.

The idea that privacy is amorphous and vague is similarly made short shrift of. Privacy, as a concept, the court finds, involves not merely a simple right to be left alone, but extends to protecting a number of different values integral to a person's most intimate choices; it constitutes a bundle of liberties, including, as Justice Nariman points ought, the right to abort a foetus, the rights of same-sex couples, the rights as to procreation, to contraception, and so forth. This holding, in and of itself, should be sufficient to overrule the court's judgment in *Suresh Kumar Koushal v. Naz Foundation*, where it upheld the abominable Section 377 of the Indian Penal Code, which, among other things, criminalises homosexual activity.

Ultimately, however, the judgments in *Puttaswamy* will perhaps be remembered best for their vindication of three glorious dissenting opinions of the past. First, Justice Fazl Ali's opinion in *AK Gopalan v. State of Madras* (1950), where he ruled that fundamental rights cannot be slotted into watertight silos that are mutually exclusive, but rather that they have to be read as a collective whole, as rights that give and take meaning from each other. The rights to equality, to freedom of speech and expression, and to life and personal liberty, he therefore held, together stand as a bulwark against the tyrannical powers of the state. This foresight in Justice Fazl Ali's finding, Justice Nariman writes, "simply takes the breath away."

Second, the court affirms Justice Subba Rao's voice of dissent in *Kharak Singh*, where he held that "nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy."

Finally, though, comes the clincher: a specific, explicit avowal of Justice Khanna's daring minority opinion in *ADM Jabalpur v. Shivkant Shukla*. Here, he ruled that the right not to be deprived of our life and personal liberty without the authority of law was not a creature of the Constitution. Such a right inheres in us as human beings. Now, the court in *Puttaswamy* has held that privacy is one such liberty, which is fundamental to our very existence. The court recognises that each of us has, at the least, a kernel of personality, of identity, that we have a right to preserve. How the court applies this verdict in the future, to different cases, not least the Aadhaar challenge, would no doubt present a significant test. But, for now, it's time to celebrate, and to commend the Supreme Court for its truly momentous ruling.

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Target Section 377: On decriminalising gay sex

Same-gender sex remains a crime in the country due to a flagrant judicial mistake committed by the Supreme Court in 2013. The time has come to undo it. Ever since the constitutional validity of Section 377 of the Indian Penal Code was upheld in *Suresh Kumar Koushal* (2013), the correctness of the retrograde verdict has come under doubt twice. The latest criticism from the court is strident and explicit. While declaring that the right to privacy is a fundamental right and an inherent component of human liberty and dignity, the nine-judge Bench has observed that the rationale behind the *Koushal* judgment is flawed and unsustainable. It has said the rights of LGBT persons are real rights founded on sound constitutional doctrine and not “so-called rights” as the earlier Bench had described them disdainfully. The astounding claim made in *Koushal* that there was no need to challenge Section 377 because the LGBT community constitutes only a minuscule minority has been completely discredited. It was unreasonable to advance the view that constitutional protection is available to a group based on its size. Yet, in a show of uncharacteristic reticence and contrary to the history of the evolution of constitutional jurisprudence, the earlier Bench had suggested that the provision can be diluted only through the legislative route. This week’s ruling on privacy rights contains a clear enunciation of the constitutional basis for protection of rights based on sexual orientation.

Transgenders, even though insignificant in numbers, are entitled to human rights, another Bench had observed in *National Legal Services Authority* (2014), in a subtle hit at the “minuscule minority” formulation in *Koushal*. At another point, it said Section 377 had been an instrument of harassment and abuse, something the earlier judgment had refused to accept. Significantly, it advocated the adoption of the Yogyakarta Principles — norms on gender identity and sexual orientation adopted by human rights experts in 2006 in Indonesia. A key principle is that discrimination based on sexual orientation and gender identity must end. By commending this norm, the court has located sexual orientation not only as a freedom flowing from the right to privacy, but as demanding of non-discriminatory treatment. Both these verdicts correctly refrained from ruling on the validity of Section 377, as it was not the primary question before them. However, it is quite apparent that a strong body of constitutional jurisprudence is now available to target Section 377, as and when a five-judge Bench takes up the reconsideration of *Koushal*. By the latest verdict, sexual orientation is an aspect of the right to privacy and an inalienable part of human dignity, freedom, and personal liberty. Under the 2014 reasoning, it is relatable to both dignity and equality. Read together, they have laid the foundation for restoring the Delhi High Court judgment of 2010 in *Naz Foundation*, which read down Section 377 to decriminalise consensual sex among adults irrespective of gender.

Rajasthan’s ordinance shields the corrupt, threatens the media and whistle-blowers

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The lowdown on Article 35A

Article 35A is a provision incorporated in the Constitution giving the Jammu and Kashmir Legislature a carte blanche to decide who all are 'permanent residents' of the State and confer on them special rights and privileges in public sector jobs, acquisition of property in the State, scholarships and other public aid and welfare. The provision mandates that no act of the legislature coming under it can be challenged for violating the Constitution or any other law of the land.

Article 35A was incorporated into the Constitution in 1954 by an order of the then President Rajendra Prasad on the advice of the Jawaharlal Nehru Cabinet. The controversial Constitution (Application to Jammu and Kashmir) Order of 1954 followed the 1952 Delhi Agreement entered into between Nehru and the then Prime Minister of Jammu and Kashmir Sheikh Abdullah, which extended Indian citizenship to the 'State subjects' of Jammu and Kashmir.

The Presidential Order was issued under Article 370 (1) (d) of the Constitution. This provision allows the President to make certain "exceptions and modifications" to the Constitution for the benefit of 'State subjects' of Jammu and Kashmir.

So Article 35A was added to the Constitution as a testimony of the special consideration the Indian government accorded to the 'permanent residents' of Jammu and Kashmir.

The parliamentary route of lawmaking was bypassed when the President incorporated Article 35A into the Constitution. Article 368 (i) of the Constitution empowers only Parliament to amend the Constitution. So did the President act outside his jurisdiction? Is Article 35A void because the Nehru government did not place it before Parliament for discussion? A five-judge Bench of the Supreme Court in its March 1961 judgment in Puranlal Lakhanpal vs. The President of India discusses the President's powers under Article 370 to 'modify' the Constitution. Though the court observes that the President may modify an existing provision in the Constitution under Article 370, the judgment is silent as to whether the President can, without the Parliament's knowledge, introduce a new Article. This question remains open.

A writ petition filed by NGO We the Citizens challenges the validity of both Article 35A and Article 370. It argues that four representatives from Kashmir were part of the Constituent Assembly involved in the drafting of the Constitution and the State of Jammu and Kashmir was never accorded any special status in the Constitution. Article 370 was only a 'temporary provision' to help bring normality in Jammu and Kashmir and strengthen democracy in that State, it contends. The Constitution-makers did not intend Article 370 to be a tool to bring permanent amendments, like Article 35A, in the Constitution.

The petition said Article 35 A is against the "very spirit of oneness of India" as it creates a "class within a class of Indian citizens". Restricting citizens from other States from getting employment or buying property within Jammu and Kashmir is a violation of fundamental rights under Articles 14, 19 and 21 of the Constitution.

A second petition filed by Jammu and Kashmir native Charu Wali Khanna has challenged Article 35A for protecting certain provisions of the Jammu and Kashmir Constitution, which restrict the basic right to property if a native woman marries a man not holding a permanent resident certificate. "Her children are denied a permanent resident certificate, thereby considering them illegitimate," the petition said.

Attorney-General K.K. Venugopal has called for a debate in the Supreme Court on the sensitive

subject.

Recently, a Supreme Court Bench, led by Justice Dipak Misra, tagged the Khanna petition with the We the Citizens case, which has been referred to a three-judge Bench. The court has indicated that the validity of Articles 35A and 370 may ultimately be decided by a Constitution Bench.

KRISHNADAS RAJAGOPAL

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UIDAI refutes Wikileaks reports of Aadhaar data snoop, says system is secure

Unique Identification Authority of India (UIDAI) | Photo Credit: P.V Sivakumar

The UIDAI on Sunday asserted that Aadhaar system has stringent security features to prevent any unauthorised capture or transmission of data, refuting reports that hinted at sensitive biometric data being allegedly accessed by certain foreign agencies.

The statement by the Unique Identification Authority of India (UIDAI) came after WikiLeaks hinted that CIA had allegedly accessed the Aadhaar database.

Dismissing the allegations, UIDAI said Aadhaar biometric capture system has been “developed within our own country and it has adequate and robust security features to prevent any possibility of any such unauthorised capture and transmission of data regardless of any biometric device that may be used.”

The UIDAI said that such “misinformation was being spread by certain “vested interests”.

“Some vested interests are trying to spread misinformation that since ‘Cross Match’ is one of many devices which are being used in biometric devices by various registrars and agencies in Aadhaar ecosystem, the biometrics being captured for Aadhaar are allegedly unauthorisedly accessed by others,” the UIDAI statement said rejecting charges of data compromise.

Outlining the stringent checks and balances in UIDAI system, it said that any biometric device before being used in Aadhaar system is “thoroughly tested” internally and externally extensively by Standardised Testing Quality Certification (STQC) and certified.

“In addition, there are many other rigorous security features and processes within UIDAI through which it ensures that no biometric data of any individual is unauthorised accessed by anyone in any manner whatsoever,” the UIDAI said.

The Aadhaar issuing body said that the biometric identifier had been issued to over 117 crore people, with around 4 crore authentication taking place every day.

“Till date, there has not been a single case of leak of biometric data, theft of identity, or financial loss to any one on account of use of Aadhaar. The UIDAI will continue to take every possible measure to ensure that Aadhaar remains safe and secure,” it said.

In an apparent attempt to crack down on revenge porn, Twitter has introduced a new policy that states that no one can post or share “intimate photos

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A sterling judgement on right to privacy

The Supreme Court's judgement on the right to privacy last week was as fine an instance as any of Constitutional interpretation. By reading it as a fundamental right guaranteed by the Constitution, the nine-judge bench reaffirmed the principle of the individual as the raison d'etre of the state. In the process, it fulfilled its constitutional role as a check upon legislative and executive power in comprehensive fashion.

The judgement has two crucial components. The first is doctrinal. The Narendra Modi government's stance that there is no fundamental right to privacy is based on the precedent of two Supreme Court judgements—M.P. Sharma vs Satish Chandra, district magistrate, Delhi in 1954 and Kharak Singh vs State of Uttar Pradesh in 1962—which noted that the Constitution did not "specifically protect" the right to privacy. Those observations were based on the Supreme Court's then-doctrinal position on fundamental rights crafted in the A.K. Gopalan vs State of Madras judgement in 1950. This position held that the fundamental rights guaranteed by Article III of the Constitution existed not as an interlocking grid but in silos.

The consequences were far-reaching. Article 14, which guarantees equality before the law, ensures that state laws cannot be arbitrary in nature or application. They must be reasonable. Article 21 protects life and personal liberty—and the petitioners in the current case have argued that it implicitly contains the right to privacy as well. Those protections and rights can be constrained by "procedure established by law". Without the reasonableness guaranteed by Article 14 to test that procedure, Article 21 is weakened.

But as justice D.Y. Chandrachud notes in his opinion, this doctrine was set aside by an 11-judge bench in 1970's Rustom Cavasjee Cooper vs Union of India judgement. And 1978's judgement in Maneka Gandhi vs Union of India by a seven-judge bench established the new doctrine that the distinct fundamental rights are not carved out from each other but overlap.

The privacy judgement thus reaffirms the strength of the Constitutional protections given to fundamental rights. Its second component—the philosophical—goes much further.

Justice Chandrachud has cited a long history of political thought to point out the essential nature of the right to privacy. Aristotle distinguished the public sphere of political life—the polis—from the personal sphere, the oikos. John Stuart Mill made the same distinction in more absolute terms and limited state power to the public sphere. This distinction cannot exist without the right to privacy. When the state has the right to intrude where it will in a citizen's life, there can be no effective personal sphere. That is a dystopian vision. It is also incompatible with democratic structures on a practical level. Consider the bedrock of the democratic process, the universal adult franchise. The secret ballot is an extension of privacy principles into the public space and political system. Without it, elections would be a farce.

The judgement also sketches out the evolution of the concepts of human dignity and the right to life, both guaranteed by the Constitution. When a citizen cannot draw a boundary between the state and his personal life, dignity is manifestly impossible. Likewise, over the past century and a half, the understanding of the right to life and liberty has evolved beyond the physical into the idea of "an inviolate personality." As justice Chandrachud pithily puts it, "The right to be let alone is a part of the right to enjoy life. The right to enjoy life is, in its turn, a part of the fundamental right to life of the individual."

A judgement this comprehensive and far-reaching is bound to raise questions as well. The litigation against the Aadhaar programme is still pending in a separate case, but this judgement is

bound to bolster it, hampering the benefits the programme can genuinely deliver. Likewise, the state's actions and processes when it comes law and order and national security will come under increased scrutiny. This is mostly to the good; there is a long history of the state being slipshod and cavalier here. There are far-ranging implications for digital business models, as well—and more broadly, for the knowledge economy. As Rahul Matthan has pointed out in this paper, the bench's observations on this front, such as a proposed outline for informational privacy, don't quite take the rapidly evolving nature of the digital economy into account.

Other outcomes are unambiguously positive. The judgement cites women's abortion rights and the execrable Section 377 to note that sexual orientation, gender identity and women's bodily autonomy are bound with human dignity and the right to privacy. This has profound implications for women and the LGBT (lesbian, gay, bisexual and transgender) community. And then there are the truly intriguing questions. The judgement argues for a living Constitution and against originalism. It also cites the American Constitution's architect, James Madison, who "contemplated the protection of the faculties of the citizen as an incident of the inalienable property rights of human beings." Taken together, could this be used to litigate for reading a right to property back into the Constitution some day? And what of the judgement's implications about the superiority of negative rights to positive rights?

These issues will play out in the months and years ahead. Whatever the outcomes, the judgement must be celebrated for establishing an enlightened baseline for the debates to come.

How could Aadhaar be affected by the judgement? Tell us at views@livemint.com

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Quota policies and career advancement in politics

Quotas are an increasingly common tool to improve the economic and social participation of historically underrepresented groups in education, business and politics. India has one of the most expansive and long-standing systems of political quotas in the world, which has provided fertile ground for learning about the short and long-term effects of political empowerment of women and ethnic minorities. These policies have been the focus of a number of studies to date, improving our understanding of the benefits of more diverse political representation on the provision of public goods, and trust in the government, and attitudes towards female leaders, or girls in general.

Often implicit in the advocacy of quotas is an argument that they will increase the representation of targeted groups in a way that can eventually render the policy obsolete through institutional change. Whether such institutional change is possible has long been debated in the many contexts in which quotas or affirmative action policies have been proposed and advocated and it is an open question as to whether quotas can have broader effects in areas in which they are not directly applied. In recent research, I ask: How do quotas for women in local elected bodies in India affect candidacy for, and representation in, higher offices? I empirically test whether such a quota system can increase participation and representation in higher levels of government, and if so, through which channels (*Can Quotas Increase The Supply Of Candidates For Higher-level Positions? Evidence From Local Government In India*).

India first introduced nationwide seat quotas for women in government in 1993 with the 73rd and 74th amendments to the Constitution. Importantly, the amendments provided for one-third of all seats at the level of *panchayats* and municipalities to be filled by women. For single-seat leadership positions, reservations were assigned randomly across areas in each election cycle such that in aggregate, the one-third quota would be met. After several election cycles there is considerable variation across areas in the cumulative number of years exposed to a woman in the leadership position. I use the rotating assignment mechanism of district chairperson seats to identify effects of cumulative exposure to local female leadership on candidacy for state assembly elections from 2004-2007 and the parliamentary election in 2009. By the late 2000s, some districts had seen the chairperson's seat reserved for three election cycles, while others had only just seen their first cycle of reservation or had not yet been reserved at all. This variation is used to identify the effects of local female political leadership on candidacy for, and representation in, higher offices.

The quota policy in local government increases female candidacy in both state and national legislature elections. An additional election cycle (five years) of quotas increases the number of female candidates for state assembly elections by .075 candidates. In Parliament, this candidacy effect is larger, with an average of 0.25 additional female candidates per reserved cycle. This implies an additional female candidate would appear among four constituencies that had seen one additional reserved local term. It is important to note that there are nine to 10 assembly constituencies per district, on average; per district, the effect on aggregate state assembly candidacy is then between one and two additional female candidates for an additional two election cycles of exposure. That the effect is stronger at the state legislature level when comparing similar areas also suggests that the state legislature may be seen as a logical intermediate career step for politicians from previously reserved areas. This effect magnitude also very closely mirrors the number of district chairpersons that would have been available for higher office: two cycles yield between one and two new politicians created by the chairperson quota. There are mixed results as to whether quotas in local government can increase the representation of women in higher offices. The new female candidates who appear after quota exposure do not win the elections they contest, and the majority run as independents—lacking access to the resources and support of established political parties. New female candidates win a roughly proportional share of votes, and

there is limited evidence of changes in voter turnout.

A remaining question is whether the increase in candidacy is a result of the creation of politicians in local government who contest for higher office, or is a response of potential candidates to run in areas where female leaders are more likely to be seen as capable. I find that approximately half of the candidacy effect is due to the supply channel (that is, “contesting up”), while the other half was due to repeat candidates contesting in longer-exposed constituencies. This suggests that both the supply and demand channels may be at work in increasing female candidacy for higher office.

Conclusion

The quota policy for women in local government increases candidacy for, but not representation in, state and national political offices. This suggests there are longer-term effects of quotas on political dynamics and effects outside the particular level of government in which the quotas were active. Estimate magnitudes imply these quotas were responsible for a majority of the increase in female candidates in state legislature and parliamentary elections since the policy went into effect, although female representation in higher offices remains low and does not appear to be changed by the policy. In sum, it remains to be seen whether quotas in local government can generate an increase in representation by women in higher levels of government.

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How privacy stacks up

A nine-judge bench of the Supreme Court, only the tenth such instance in India's history, delivered a historic judgment on Thursday. The judges unanimously affirmed the existence of a constitutional right to privacy. The *ADM Jabalpur* decision from the Emergency era was formally overruled, and the majority openly criticised the reasoning in *Koushal*, the verdict on Section 377. These are significant developments, and the decision can be expected to have sweeping implications for constitutional law in India. However, relatively little attention has been paid to what this decision entails for the future of the right to privacy in India. This piece focusses on three significant privacy themes that permeate the judgment.

The first among them is this: is the **right to privacy a monolithic conception**, or does it consist of different variants? There were already hints in the Indian jurisprudence that privacy is best conceptualised as consisting of clusters of rights. Privacy in India has raised issues ranging from surveillance, search and seizure, and telephone tapping to abortion, transgender rights and narco-analysis. It is difficult to escape the conclusion that these cases raise distinct issues and demand different analyses. The Supreme Court has now confirmed this view. In acknowledging that different conceptions of privacy exist, it has significantly advanced the privacy jurisprudence in the country.

Right to privacy: what the Supreme Court verdict means for the common man

Although there was near unanimity among the judges that privacy operates through different variants, there was no clear consensus on what these variants are. While Justice D.Y. Chandrachud offered a learned discussion of the different methods of classifying privacy, ultimately he chose to not embark upon 'an exhaustive enumeration' of the privacy categories. Justice R.F. Nariman expressed a clearer view, referring specifically to 'physical privacy', 'informational privacy', and the 'privacy of choice'. In reaching that conclusion, his reasoning was reminiscent of the privacy jurisprudence in the U.S., where distinct variants of privacy derive support from different constitutional safeguards. Finally, Justice J. Chelameswar discussed the privacy of 'repose, sanctuary, and intimate decision'. It is unfortunate, though unsurprising, that the judges did not agree on what the constitutive variants of privacy are. Expressing a final view on classification was strictly not necessary to answer the reference. Nevertheless, this may have been an opportunity for the Court to delineate the broad contours within which privacy could structurally grow.

The second issue concerns the standard(s) against which privacy infractions must be judged. When is it permissible for the state to restrict individuals' privacy? As privacy is an aspect of the right to life and liberty under Article 21 of the Constitution, the question should be: is the impugned restriction of privacy 'just, fair and reasonable'? Sometimes, however, an entirely distinct, higher standard of review has also been used. That standard enquires whether the impugned violation of privacy is aimed at achieving a 'compelling state interest'.

On this issue, Justice Chandrachud adopted the classic three-step analysis: Is the restriction supported by 'law'? Does the law pursue a legitimate objective? Is there a rational nexus between the objects sought to be achieved and the means used to achieve them? Admittedly, he used the language of 'proportionality'. However, it would be a step too far to read that as a wholesale adoption of the entirely distinct European standard of proportionality into Indian privacy jurisprudence. Justice S.K. Kaul, in contrast, seemed to take the further step of expressly adopting the proportionality standard. Both Justice Chelameswar and Justice S.A. Bobde noted the distinct standards of 'reasonableness' and 'compelling state interest'. Neither however, conclusively identified the instances when each of these standards may apply. Unfortunately thus, the

judgment offered no majority view on this point, although it seemed clear that restrictions on the right to privacy must at the very minimum be ‘just, fair and reasonable’.

The lowdown on the right to privacy

The final theme is about whom privacy is a guarantee against. Do infractions by private entities as well as the state fall within the ambit of constitutional privacy? As a general rule, Indian courts have refrained from applying fundamental rights against private persons unless required by the express words of the Constitution. In the context of privacy however, the Court had, on at least three previous occasions, blurred the conceptual distinction between the private law infringement of privacy and the constitutional infraction.

On this question again, the Supreme Court’s view was divided. Justice Chandrachud, on behalf of the four judges, chose to leave this question to the legislature. In contrast, Justice Bobde and Justice Kaul took opposing views. Justice Bobde affirmed the separation between the constitutional right to privacy and the common law right. The former is available only as against the state; the latter, against private persons. Justice Kaul disagreed. To him, the fundamental right to privacy applies against ‘interference from both state, and non-state actors’.

In sum, the Supreme Court on Thursday made a remarkable contribution to the privacy jurisprudence in India. However, the specificities of the right to privacy await final resolution. The impending privacy challenges to Aadhaar and the WhatsApp privacy policy will, it is hoped, offer the Court another opportunity to provide definitive guidance on these issues.

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The new U.S. Fed Chairman is unlikely to opt for policies that might upset the President’s plan

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Uttar Pradesh gets 41,173 more houses under Pradhan Mantri Awas Yojana(Urban)

Andhra Pradesh far ahead of others with 21% of total houses sanctioned so far; Tamil Nadu and MP next

Over 26 lakh houses sanctioned so far with an investment of Rs.1.40 lakh cr

Top 10 States account for 82% of total sanctions

Affordable housing in urban areas is gaining momentum in Uttar Pradesh with the State getting 41,173 more houses sanctioned under the Pradhan Mantri Awas Yojana (Urban). The Ministry of Housing and Urban Affairs has sanctioned 2,17,900 more houses for six States including Uttar Pradesh taking the total houses sanctioned so far to 26,13,568 with a total investment of 1,39,621 cr. Central assistance of 40,597 cr has been approved for construction of these houses.

In the latest sanctions, Andhra Pradesh has got 1,20,894 more affordable houses followed by Uttar Pradesh-41,173, Assam-16,700, Gujarat-15,222, Jharkhand-14,017 and Maharashtra-9,894.

Andhra Pradesh is far ahead of others in sanctions under PMAY(Urban) accounting for 20.71% of all the houses sanctioned so far.

Details of top ten States in respect of number of sanctioned houses under PMAY (Urban) are:

S.No	State	No of affordable Houses sanctioned	Total investment Approved (Rs. Cr)	Central Assistance Approved (Rs. Cr)
1	Andhra Pradesh	5,41,300	31,056	8,138
2	Tamil Nadu	3,35,039	11,987	5,090
3	Madhya Pradesh	2,87,101	19,502	4,415
4	Karnataka	2,03,260	9,282	3,345
5	Gujarat	1,72,816	11,497	2,493
6	West Bengal	1,44,904	5,920	2,186
7	Maharashtra	1,44,165	15,868	2,244
8	Uttar Pradesh	1,20,028	4,767	1,959
9	Jharkhand	95,742	3,561	1,474
10	Bihar	88,375	3,915	1,454

These 10 States account for 82% of the total 26,13,568 houses so far sanctioned under PMAY(Urban).

With the latest sanctions, of the 36 States and Union Territories, all except Delhi, Chandigarh, Goa and Lakshadweep have got houses sanctioned under PMAY(Urban).

AAR/KM/ August 28, 2017

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Sport empowers individuals, transform communities and inspire populations for positive change: Vice President

Sport empowers individuals, transform communities and inspire populations for positive change: Vice President

Launches National Sports Talent Search Portal

The Vice President of India, Shri M. Venkaiah Naidu has said that Sport empowers individuals, transform communities and inspire populations for positive change. He was addressing the gathering at the launch of the National Sports Talent Search Portal, an initiative of the Ministry of Youth Affairs and Sports, here today. The Minister of State for Youth Affairs and Sports (I/C), Water Resources, River Development and Ganga Rejuvenation, Shri Vijay Goel and other dignitaries were present on the occasion.

The Vice President said that sports play an important role in improving physical and mental health, and fostering active citizenship and social inclusion. He further said that it also inculcates leadership skills, team spirit and enables a person to develop a sense of equanimity during a win or a loss. There is evidence that sport and play enhance child development, learning and encourage better academic performance, he added.

The Vice President said that we need to create good infrastructure for sports in all states and nurture sporting talent from an early age. He further said that across the length and breadth of the country we need more training academies and coaching centres to turn our young men and women into sports stars and role models for succeeding generations. The platform of National Sports Talent Search Portal will be a game changer and enable the Ministry of Youth Affairs and Sports and Sports Authority of India select the best, he added.

Following is the text of Vice President's address:

"I am happy to inaugurate National Sports Talent Search Portal, an initiative of the Ministry of Youth Affairs and Sports. This kind of initiative will not only help in identifying the best talent, but will also provide a level playing field to all the applicants and create a competitive environment.

Sport is an integral part of nation-building process, as it plays an important role in terms of individual development, community development, social inclusiveness and economic development. One of the most important factors that enable a nation to become a sporting power is the identification and development of right talent. As one-seventh of humanity, there is no dearth of talent in our country, especially with more than 450 million youth. In fact, we are overflowing with talent, but in order to harness it we have to put in place a robust system to spot and nurture talent, and develop world champions.

The platform of National Sports Talent Search Portal will be a game changer and enable the Ministry of Youth Affairs and Sports and Sports Authority of India select the best. I would like to congratulate Shri Vijay Goel for this major initiative, which will go a long way in attracting the best

available sporting talent in the country. This platform will be fast, transparent and provide a mechanism for fair selection. Only meritorious and talented young sportspersons will be selected.

The portal is also available as a Mobile App, which can be downloaded on the smartphones. It gives me lot of satisfaction to know that the talent search portal and App have been developed by IRIS, a highly reputed software and data analytics company, under corporate social responsibility (CSR) support. I congratulate IRIS and the team which developed this valuable platform in close consultation with Sports Authority of India.

Sport empowers individuals, transform communities and inspire populations for positive change. It has become a tool of transformation, weaning villagers away from addiction, breaking caste barriers within the community, bringing women out of the home and empowering them, and reviving spirit and pride in individuals and the village as a whole.

The games foster friendships, unity and a healthy vibrant community. This simple but powerfully uplifting intervention renews the joy and spirit of community kinship. For women, the blossoming of their self-confidence and spirit of initiative in this space is the bedrock for societal change tomorrow.

Sport plays an important role in improving physical and mental health, and fostering active citizenship and social inclusion. It also inculcates leadership skills, team spirit and enables a person to develop a sense of equanimity during a win or a loss.

Sport is a good entry-point for the promotion of life skills-based education and healthy lifestyles, including the values of physical fitness, proper nutrition and how to make choices that positively impact health. There is evidence that sport and play enhance child development, learning and encourage better academic performance. Sport is a powerful social tool, bringing together people from different ethnic, cultural, religious, linguistic and socio-economic backgrounds.

Sports should be an integral part of our everyday life. Some people think that sports is important only for physical well-being, I feel sports is important for overall development of an individual. We are a large and diverse nation. Sports can be a great means of national integration. From sports, we learn sportsman spirit and that acts as a lubricant in our social life. More than winning, sports helps you learn to deal with defeats. Sports helps you become a fighter.

Sport increases self-esteem among adolescent girls and provides opportunities for the advancement of girls in the face of gender-related barriers. Sport can be used to promote a safe and protective environment for children and to teach young people how to solve conflict in a non-violent manner. Sport activities can be low-cost and utilize locally-available resources. Sports help children develop physical skills, get exercise, learn to play as a member of a team, learn to play fair, and improve self-esteem.

Healthy people make a healthy nation. If everybody is active and healthy, they can lead a happy life besides being more productive economically. The importance of health in our country is acknowledged over the ages through the saying ‘Aarogyame Maha Bhagyam’ which translates to ‘Health is Wealth’. That being the case, things are different today. Our country is fast emerging as the ‘diabetic capital’ of the world. It is because of modern life styles, food habits and declining physical activity. This is a serious socio-economic challenge for our country.

Our country has always been rich in culture and tradition, and games have been an important part of Indian culture from times in memorial. Gradually the time changed and so did our sports.

Traditional Games were not just games; they were designed in such a way that one can develop lot of skills like logical thinking, building strategy, concentration, basic mathematics, aiming, and lot more. During the era of the Rig - Veda, Ramayana and Mahabharata, men of a certain stature

were expected to be well - versed in chariot - racing, archery, military stratagems, swimming, wrestling, horse riding and hunting. While the present-day archers are struggling to hit fixed targets, ages ago, Arjuna hit the ‘rotating Fish that is MatsyaYantra’ to defeat his fellow contenders and win over Draupadi.

We have come a long way from ancient times and have a huge population of young people whose talent needs to be harnessed. Barring cricket and hockey earlier as team sports, our success in sports events is sporadic and more on account of individual effort and excellence, rather than any State patronage and encouragement. That must change. Be it Sania Mirza, P.V.Sindhu, Saina Nehwal, P. T. Usha, Milkha Singh or Abhinav Bhindra, all of them did themselves and the nation proud through perseverance and tenacity.

As I said, we need to create good infrastructure for sports in all states and nurture sporting talent from an early age. Across the length and breadth of the country we need more training academies and coaching centres to turn our young men and women into sports stars and role models for succeeding generations.

It is my dream, a dream I share with millions of my countrymen, to see India emerge as a major sporting nation in the world. India stands poised on the curve of a major leap in all fields and I am certain that this is true of sports as well, of a time when India will figure prominently in the list of medal-winning nations in Olympics and other sports competitions.

Jai hind.”

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KSD/BK

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A right for the future

Hourglass time icon in flat vector style. Isolated on white background.

The best works of fiction often contain a sentence that captures the essence of what the work is about regardless of how thick the full book is. So too with legal judgments, even when over 500 pages. They often have a sentence that captures its philosophical and political kernel. In *Justice K.S. Puttaswamy (Retd) v. Union of India* this can be found in para 121 of the judgment where Justice D.Y. Chandrachud writes, “When histories of nations are written and critiqued, there are judicial decisions at the forefront of liberty. Yet others have to be consigned to the archives, reflective of what was, but should never have been.” The sentence precedes a critique of judicial embarrassments from the U.S. and India, respectively (*Buck v. Bell* where the courts supported state-sponsored eugenic sterilisation and the infamous *ADM Jabalpur v. Shivkant Shukla* which held that there was no remedy against illegal detentions).

While there is much that will be written about the Supreme Court’s decision holding that right to privacy is a fundamental right under the Indian Constitution, I want to focus on the temporal dimension of Justice Chandrachud’s statement. What notions of time do judges call upon when deciding cases they believe will impact liberties in the future? In particular, how do we understand the nature and dilemmas of judicial innovation which — Janus-faced — is bound to the past (by the binding nature of precedent) even as it responds to unfolding and uncertain futures brought about by technological transformations of life?

Let’s begin with understanding a structural problem that served as the backdrop against which a reference was made to the nine-judge Bench about whether the right to privacy is a fundamental right in India. Like in other instances such as free speech, the Supreme Court has often found itself bound by decisions of larger Benches (constituted at a much earlier time when the court’s rosters had not been as stretched as they are today). The central dilemma is, what are courts to do when they find themselves curtailed by judgments given by larger Benches which are binding by virtue of the Bench strength but otherwise wholly inadequate in terms of their jurisprudential grounding as well as their political consequences? In the present case this was manifested in the form of two judgments (*M.P. Sharma*, a 1954 decision of an eight-judge Bench, and *Kharak Singh*, a 1962 six-judge Bench decision) — both of which had held that there is no fundamental right to privacy.

Privacy is a fundamental right

Kharak Singh was an ambiguous judgment, with the first half of the judgment seemingly making a case for privacy and the second half undoing itself on formal grounds. In his opinion (written on behalf of Justices J.S. Khehar, R.K. Agrawal, and S. Abdul Nazeer), Justice Chandrachud provides us with a fascinating history of the doctrinal evolution of the right to privacy to India. While *M.P. Sharma* and *Kharak Singh* had held that the right to privacy was not a fundamental right in India, the subsequent history of the doctrine as it emerged in future cases decided by smaller Benches is a story of adaptation, mutation and often fortuitous misinterpretation.

The turning point was in *Gobind v. State of Madhya Pradesh* (1975) where a three-judge Bench, while staying shy of declaring a right to privacy, nonetheless proceeded with the assumption that fundamental rights have a penumbral zone and the right to privacy could be seen to emerge from precisely such a zone, and they argued that if it were considered a right, it would then be restricted only by compelling public interest. In an erudite paragraph that leaps out of the judgment, Justice K. Matthew observed, “Time works changes and brings into existence new conditions. Subtler and far reaching means of invading privacy will make it possible to be heard in the street what is

whispered in the closet." This prescient observation and its reference to the temporal dimension of problems reiterate the difficulties that courts face when yoked to dated principles and yet compelled to respond to contemporary problems. It is also equally applicable to *Gobind* itself, which benefitted philosophically from *Griswold v. Connecticut* that was decided after *M.P. Sharma* and *Kharak Singh.*

How then do courts adapt and innovate within a set of formal constraints? It would be helpful to use an analogy from urban studies. Solomon Benjamin and R. Bhuvaneswari in their work on urban poverty argue that in contrast to visible strategies of democratic politics such as protests, the urban poor also engage in 'politics by stealth' — a form of participation which relies on a porous and fluid approach that responds to stubborn structures such as the bureaucracy by sneaking up inside them, adapting and slowly transforming the structure itself. Might we think of the history of privacy jurisprudence as a form of 'doctrine by stealth' in the best sense of the term? The judgments of the court post the trilogy of *Sharma-Kharak Singh-Gobind* are simultaneously a story of such adaptations even as they serve as an inventory of new technologies of power and control. Thus in *PUCL v. Union of India* (1996) the court said privacy is not a fundamental right, but telephone conversations are such an integral part of modern life that unauthorised telephone tapping would surely violate the right to privacy. In the *Canara Bank* case (2004), responding to the expectation of privacy for voluntarily given information, the court transformed the legal fiction that the *Gobind* decision was based on ("assuming privacy is right") into putative reality by attributing to *Gobind* the holding that privacy is indeed an implied right.

Government, Congress spar over right to privacy verdict

Critics of the Supreme Court may argue that this haphazard development of doctrine can have disastrous consequences in terms of a theory of precedents and some aspects of the court's track record (where it often ignores its own precedents) would certainly support such a critique. Yet at the same time, looking at the diverse contexts in which the question of privacy has been adjudicated (validity of narco analysis, intrusions by media, sexuality as identity, safeguards of personal data, etc.), one cannot but appreciate the necessary distinction between a hierarchical command structure-bound approach to judicial innovation versus an evolutionary perspective that is able to accommodate contingencies by adapting.

Senior advocate Arvind P. Datar describes the judgment as articulating a right for the future — an apt characterisation to which I would add a further question: what kind of (present) futures will such a right speak to? The numerous historical references to media, urbanisation and technology in the judgment intimate a judicial intuition of the transformed landscape of personhood that the language of rights has to negotiate and a recognition of the challenge of living in what French philosopher Gilles Deleuze terms control society, where surveillance is not about the eavesdropping constable but self-submission to mandatory ID cards and corporate-owned computer servers.

The judgment might then be the first instance of the articulation of a human right in a post-human world (where the human as a natural subject finds herself inseparably enmeshed within techno-social networks). In that sense the location of the right to privacy within a natural rights tradition by the court seems a little archaic and romantic. For a judgment that is refreshingly unapologetic about its philosophical and jurisprudential ambitions, one hopes that in addition to the regulars of the liberal canon (John Locke, John Stuart Mill, Ronald Dworkin) one will start seeing the slow appearance of philosophers from science and technology studies if we are to truly articulate a jurisprudence for the future. But for now, let's celebrate the first steps which this judgment takes.

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‘Reform labour laws to ease compliance’

The government should reform labour laws and make them more flexible to make it easier to do business in the country, the NITI Aayog said in an Ease of Doing Business report.

The report, based on an enterprise survey of 3,276 manufacturing firms, was prepared jointly by NITI Aayog and IDFC Institute and released on Monday by Union Minister for Law Ravi Shankar Prasad and Minister of Commerce and Industry Nirmala Sitharaman.

“According to our survey’s finding, firms in labour-intensive sectors find compliance with labour-related regulations particularly onerous. This fact translates into enterprises avoiding the labour-intensive sectors,” according to the report.

The survey found that more enterprises in labour-intensive sectors reported that finding skilled workers, hiring contract labour and terminating employees was a major or a severe obstacle.

Such sectors also reported a significantly higher average time taken for environmental approval and more days lost due to strikes and lockouts, it said.

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How blockchaining Aadhaar can help

The Supreme Court's landmark judgment, where the Right to Privacy has been termed as a fundamental right under the Indian Constitution, is a very big deal. The fact that the court has accorded privacy such an esteemed place in our Constitution is very significant and has multiple ramifications.

Heated conversations are already taking placing on issues such as the lesbian, gay, bisexual, transgender and queer (LGBTQ) status, the "beef ban", the data that mobile companies and social networks collect and keep, and Section 66A of the IT Act. However, no other impact area, perhaps, is being discussed as much as what it does to the poster child of the government: Aadhaar, and the Unique Identification Authority of India (UIDAI).

I believe every country needs an identity system, and this is even more true in the case of a large, heterogenous entity of more than a billion people which is India. Having a unique, immutable identity associated with every citizen is vital for governance and security. This is important to pass on benefits and subsidies in sectors such as insurance, education and healthcare. Identity is also vital to ensure that people do not misuse the system with duplication, example of PAN (permanent account number) cards, licences and other such documents. That is why banks, telecom services providers, and everyone else has the concept of KYC (know your customer). For the government to have "one-KYC-to-rule-them-all", or a National Identity System is critical, and far more efficient than having multiple ones.

In this respect, Aadhaar has been a phenomenal initiative, both in conception and executing. More than a billion Indians have a unique identity now, with both their basic demographics and biometrics recorded in a secure, central database. This has already started yielding major benefits. Aadhaar has made getting passports, mobile services, bank accounts and many other such services much faster. Kotak Bank Ltd and DBS Bank, among others, have started offering near-instant bank accounts, while Jio offers instant data connections.

PAN cards and driving licences are being de-duplicated (eliminating duplication), resulting in massive fraud prevention. The fact that Aadhaar—along with bank accounts (Jan Dhan) and mobile phones—is being opened up as a platform, creating the JAM (Jan Dhan, Aadhaar and Mobile) stack or the India Stack (set of open application programming interfaces, or APIs), is a huge leap forward in its utility. Large and small companies can sit on this stack, and use the identity, connectivity, banking and payment (UPI) infrastructure to create massive products and services, and simplify existing ones considerably.

Nevertheless, there has been a huge amount of scepticism and debate on the safety and security of the Aadhar database. There are fears that Chinese (or any other) hackers will hack into the database. There are even greater fears that any government or authority with malevolent intent will have access to the personal information and location of every Indian citizen and, therefore, the ability to inflict extreme surveillance and targeted damage.

The government claims that the UIDAI database is in a central server with super-tight security, protected by best-in-class cryptography. There are strong laws around what can be accessed and by whom, for example biometric information is always anonymised. Having said that, these concerns, howsoever paranoid, are real. Unfortunately, hackers are always ahead of the game, and have broken into the super-secure systems like the NSA (National Security Agency) in the US, and Britain's NHS (National Health Service). And what is to prevent a government or a dictator from amending the laws and going after its own citizens, using this targeted information?

That is where blockchain comes in. We have discussed this technology often, and to revise: it is a distributed database shared among a network of computers, all of which must approve a transaction before it can be recorded. So, it is essentially a universal ledger of digital records (or identity)—one that's shared between various parties. It can only be updated by consensus of a majority of the participants. And, once entered, information can never be erased.

Now, if Aadhaar was built on a blockchain platform (and, to the best of my knowledge, it is not yet), most of the concerns could be assuaged. The database would be immensely difficult to hack: besides getting around the state-of-the-art cryptographic protection, the hackers would need to hack into multiple nodes or servers, rather than just one. The distributed consensus nature of the blockchain would prevent malicious attacks, until 51% of the nodes would be compromised.

Similarly, a properly designed Aadhaar-on-blockchain would potentially allay the 'surveillance' fear: think of the blockchain having multiple nodes —the UIDAI, a court, a few ministries, Parliament, or any other such entity. For any data to be compromised or any malevolent attempt to happen, again multiple entities would have to agree to it and authenticate it, rather than one central authority! Again, but its very nature, all records will be immutable and for a record to be changed, the entire blockchain would need to be compromised, which is difficult to do. The system could harness other benefits of blockchains like smart contracts, for example, to execute certain events automatically.

I am sure that there are perhaps large technology challenges to be addressed for this to happen, but these would be surmountable. One could make a large private or permissioned blockchain (when a group of participants are given the express authority to provide the validation of blocks of transactions in the blockchain network), for example, which would be custom built to requirements. While blockchain is an emerging technology, it is almost tailor-made for massive applications like this one, and many countries have embraced this by putting assets and identity on blockchains. Estonia, while a tiny country, in fact, has all assets and identities on a blockchain network, and markets itself as 'country as a service'!

Aadhaar is a very important and critical initiative. It must not be weakened by the privacy doubts surrounding it, or by the fear of vulnerability to its hacking. We must wrest the initiative that the Supreme Court judgement gives us. Let's seriously explore blockchain and see what we can retrofit, or perhaps even think of Aadhaar 2.0 on blockchain.

The author is senior vice-president, digital transformation, Mahindra Group.

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Why the Centre must stop targeting the NGT

The National Green Tribunal (NGT)'s journey since its inception in 2010-11 has been far from easy: Despite being a body constituted by an Act of Parliament, the Supreme Court in the initial years had to intervene to ensure necessary administrative arrangements were made by the government for the tribunal to become fully functional. The NGT, however, has emerged as a critical player in environmental regulation, passing strict orders on issues ranging from pollution to deforestation to waste management. These issues more often than not come in conflict with what is known as the development agenda of successive governments, which tend to be extremely short-sighted. Unsurprisingly, they are not really supportive of the tribunal and always look for opportunities to clip its wings.

That the NGT's problems are for real became evident when the Delhi High Court aimed a barb at the Centre last week. "Would you like to wind up the National Green Tribunal?" the Delhi High Court asked the Centre, while hearing a plea seeking directions to authorities to fill the vacant posts of judicial and expert members in the tribunal. "It is perhaps because of red-tapism in the bureaucracy that the NGT is headed towards a premature death," said the plea, adding the court could issue directions to fill vacant posts. The matter has now been listed for September 14.

That the government has been targeting the NGT was clear in July when the Centre modified the process of appointments to the Tribunal, bringing in clauses that experts said will considerably weaken the country's environmental watchdog. The new rules do away with a condition that the NGT can only be headed by a former Supreme Court judge or the chief justice of a high court, and takes away the judiciary's control on the process to appoint the Tribunal's members. Opposition parties and constitutional experts said such a move chips away at the independence of these institutions.

This desire to control autonomous bodies such as the NGT will be a great disservice to the nation; we need an independent body that can control the executive, which does not seem to think that long-term sustainability of a country is as important as short term economic gains.

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Privacy and household finance

On the very same day that the Supreme Court pronounced its landmark judgement on the fundamental right to privacy, the Reserve Bank of India (RBI), with much less fanfare, released the report of its committee on household finance. While not exactly light reading, the report is remarkable for the depth of its comparative analysis and the modern technological solutions it recommends and even if the subject matter lacks some of the visceral appeal as the Supreme Court judgement, its contents are, nonetheless, enlightening.

Much of what has been pointed out in the report will come as no surprise to us. For instance, it highlights the fact that Indians invest a disproportionate amount of wealth in physical assets like gold and real estate, and not nearly enough in pension-oriented financial assets. And that we have higher-than-normal levels of unsecured debt—loans from friends and family for the most part but also from non-institutional sources like moneylenders.

What is less obvious is the strong negative correlation between low levels of participation in insurance and high levels of non-institutional debt—indicating that our failure to invest in insurance products forces us to take on high cost borrowings when calamity strikes. The report has also pointed out that, while the number of elderly people in the population will grow by 75% over the next decade and a half, only a very small fraction of that cohort will actually have saved in private pension plans indicating that they are all highly susceptible to adverse shocks later in life.

For these reasons and more, the report has recommended that Indian households should re-allocate their investments away from gold and towards the financial markets and shift borrowing from non-institutional debt into institutional finance. It suggests the introduction of measures that will provide households access to quality public health services and actuarially fair insurance products to help shield them from the impact of unpredictable medical emergencies.

All this is easier said than done. There is a general lack of trust in the formal financial markets, a factor that the report correlates highly with income levels—poorer households believe that investment in financial products is the prerogative of the wealthy. Additionally, due to the perception of high transaction cost and bureaucratic complexity, Indian households generally prefer to avoid interacting with the institutional financial system.

To address these concerns, the report has recommended the creation of customized products with low marginal servicing costs that are designed to scale across the entire range of complexities that describe Indian households. It suggests that these products should be priced fairly and dispensed along with financial advice that is provided with incentives that keep the best interests of the household at the fore.

This is where the report departs from those of previous committees. It goes into details on how we can achieve these results calling for the widespread use of modern technologies. It has actively recommended the use of fintech to build customizable, infinitely scalable solutions and has articulated a number of specific structural measures to achieve that. Central among these is the creation of a regulatory sandbox that will straddle the regulators of all four financial sectors—insurance, pensions, stock markets and banks—and will allow tech companies to test their products and regulators to assess their impact on the ecosystem in a controlled environment in which applicable regulations are temporarily relaxed.

But perhaps most relevant, particularly in the context of the Supreme Court judgement, is the emphasis the report lays on the need to enact a modern privacy law. Given its strong recommendation to use of fintech to rejuvenate the household finance sector, the report

recognizes that a strong privacy law will be a necessary prerequisite. This is particularly true in the context of robo-advisory services or flow-based lending products that will, by necessity, access personal financial information in order to generate their results.

In the absence of a full-fledged privacy law, there is a clear and present danger that any fintech products that are deployed even in the controlled environs of a regulatory sandbox, could have serious repercussions on privacy. Without clearly thought through and technologically responsive guard rails that developers must apply to the products they develop, there is a risk that the unintended consequences of their products will do more harm than good. With this in mind, the report recommends the enactment of a rights-based privacy regime that imposes accountability obligations on developers and applies appropriate constraints on big data applications without imposing other burdensome compliance that will make their deployment unsustainable.

Now that the Supreme Court has instructed the Justice Srikrishna committee to come up with an appropriate law to safeguard privacy, it would be good if the committee gives due attention to this strong recommendation from RBI as to what that law should contain.

Rahul Matthan is a partner at Trilegal. Ex Machina is a column on technology, law and everything in between.

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Comments are welcome at feedback@livemint.com

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Financial inclusion and the right to privacy

As India uses Aadhaar to advance financial inclusion efforts, it is essential that both privacy and financial interests of the poor are protected. The Supreme Court in a landmark ruling on 24 August decided unanimously that there is a fundamental right to privacy in India. It called on the government “to examine and put into place a robust regime for data protection”. Legislation to protect the privacy interests of the poor should now be top of the agenda.

What should that legislation look like? Unhindered by the outdated and entrenched approaches to privacy in jurisdictions such as the US and Australia, India has the unique opportunity to put in place a model system for the governance of privacy, one that is far better suited for the digital age and for expanding financial inclusion.

A data protection law is especially important at this early stage in the development of databases, policies and systems in India that rely upon Aadhaar. While Aadhaar promises to bring improvements in the delivery of services to poor people and under-served communities, it could also facilitate the collection of massive amounts of information, which would expose vulnerable consumers to privacy risks—competing factors that well-crafted legislation can address.

Integration of Aadhaar into the economy helps the financially excluded to access life-changing loans, insurance, savings and payments services more easily, and the costs of the financial services delivery likely will fall as a result. Aadhaar can also help citizens receive timely and complete payment of their government benefits.

Yet, if government and the private sector collect Aadhaar numbers for everything from utilities to health services, from car insurance to residential leases and link the information collected from countless databases, Aadhaar could become the organizing tool for the compilation of sensitive, detailed and constantly evolving individual profiles. Corporations and government with access to these profiles could use them in abusive ways to describe, predict, and ultimately influence the behaviour of individuals, sometimes without their knowledge.

Data from a person’s purchasing history, location, habits, income and social media activity can be used to classify consumers and customize the price of financial products or the interest rates charged to them. Such customization could exploit the consumer unfairly, based on their habits, or enable financial service providers to discriminate directly or indirectly based upon the customer’s ethnicity, gender, caste or religion. Government access to profiles can also raise privacy concerns. The vast amounts of data generated by new technologies and linked to Aadhaar increase the potential for abusive data practices and privacy invasion. The Supreme Court’s ruling is a vital first step in responding to this danger.

Many countries base their data protection regimes on the exercise of consumer choice or “informed consent”. But putting the burden on consumers to read lengthy and legalistic privacy notices and then to exercise choice about how their data will be used is unrealistic anywhere in the world. How many people read privacy notices before installing an app on their phone? Apple’s privacy policy for India runs over 3,000 words. Microsoft’s privacy statement is well over 7,000 words. India can recognize the reality that consent is no longer practical as the primary justification for data practices and establish substantive privacy protections regarding the collection, use and disclosure of personal information.

India also has the opportunity to establish safeguards for consumer privacy that are integrally part of the design, including the technical design, of government and private sector systems. This approach, often called “privacy by design”, has received widespread support from regulators and

policymakers around the world. The European Union's General Data Protection Regulation (GDPR), which takes effect next year, mandates data protection by design and by default, significantly expanding the reach of this process.

A critical feature of any data protection regulation will be the limitations placed on the collection and storage of personal data. Some, in the US in particular, have advocated "use-based" systems of data protection regulation, which focus on permissible uses of data without restricting its collection and storage. However, the collection and storage of data should also be regulated, especially considering the vastly increased opportunities for harmful and unauthorized access the more data is collected and the longer it is kept, and the social harms created by pervasive surveillance.

The Supreme Court was not called upon to address all the ways Aadhaar might be used consistent with a citizen's right to privacy. These issues, including whether providing one's Aadhaar number can be made mandatory, will need to be decided in subsequent cases.

Judicial rulings are one path for developing the right to privacy. The legislative path allows India to develop world-leading data protection that moves away from the flawed notice-and-choice model to one that establishes for the government and private sector alike clear, predictable parameters on the collection, use, processing, sharing, and the security of personally identifiable information. The Supreme Court's recognition of a right to privacy provides the foundation to ensure that innovations such as Aadhaar are used to enhance the poor's dignity and well-being.

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Comments are welcome at theirview@livemint.com

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70 years of Independence

Special Feature – I-Day2017

Assessing India's Progress in Various Fields

***Anshuman Bhargava**

We are celebrating 70 years of our Independence. But looking back at the history of these seven decades, what are the things which we should be proud of? Have we really progressed much and reached the level we should have in all these years?

The verdict will be divided. India is a land of a diverse population, with great variations in economic standards, having different religious and cultural customs and different stages of development. Hence, every section has its own view of development and reasons to whine or cheer.

But there are certain major and decisive strides we have made in these years particularly during last three years which no one can ignore or deny, irrespective of his or her political affiliation or personal grudges against certain leaders or governments or the 'system'.

Perhaps our greatest achievement is to have evolved a healthy democratic government system.

We have a very strong constitutional framework that makes democracy such a success here. But that is just the tip of the iceberg. Our achievements in these years are endless, should we sit to prepare an exhaustive list. We have some of the best institutes in the world in the form of IIMs and IITs.

Our healthcare sector is looking up and health tourism is a reality where people from advanced nations are coming here for affordable treatment. We have a railway network that is among the largest in the world in terms of track length and passenger volume. We have one of the largest armies in the world.

We have among the world's busiest airports in Delhi and Mumbai. Our life expectancy at birth has increased from a mere 32 years in 1947 to 66 years today. We were one of the foremost nations to establish nuclear reactors and produce clean energy. Despite our financial and technological limitations, we have made the best use of our resources and from an importer of even a needle, today we are exporters of software.

Our technocrats and managers are celebrated worldwide for their professionalism and calibre. Today we are a nation reckoned as a leader in space technology. Millions of Indians have fought their way in and made Europe and the US their home, by sheer virtue of their hard work and professional competence, contributing seminally in global projects.

We have produced noble laureates, artists, singers, musicians, writers, sportsmen, scientists, diplomats, scholars and statesmen of world repute year after year, in hundreds. This is no mean thing in just seven decades of our independent existence. We had difficult times in recent years with policy paralysis in government and slackness in ideation that slowed down India's growth trajectory to some extent but in the last three years or so of the NDA government, things have started looking up.

In less than three years, at least 30 new projects have been launched for giving a new shape and direction to the country like Jan Dhan, Swachh Bharat, Startup India, Nat'l Health Policy, Give up LPG, Skill India, Make in India, Smart City, Udaan scheme, GST, Digital India, Crop Insurance scheme to name a few, even if we leave for the moment aggressive advancements in railway and road networks and facilities.

No wonder World Investment Report finds India among the top three prospective host economies of the world. In Financial Year 2015-16 we had a whopping 55 billion dollars' worth of investments in the country. In World economic forum Global Competitive Index, India has jumped 32 places

and today the country is the 6th largest manufacturing nation in the world. Projects worth Rs. 8 lakh crore pending for years have now been cleared and put on the fast track under the Prime Minister's personal initiative.

India's effort and commitment towards production and use of clean energy has found praise globally. The government has plans to produce 175 GW of renewable energy and we have already realised 50 GW production level in last three years. India stands 4th in the world in global wind power installed capacity. At least 22 crores LED bulbs have been distributed, which is to lead to saving of Rs 11,000 crore in electricity bills of the country. The government is not only targeting mega projects but is equally attentive towards micro-level social engineering and taking grassroots level steps to strengthen the common man and the rural foundations.

The Prime Minister deeply believes in public participation and hence all projects are prepared with a view to benefit more and more people. In just three years of his governance, the government has ensured the establishment of 50,000 km of power transmission lines, even as over last five decades we had only 16,000 km covered. Not only that, in less than three years we have over 12,000 villages electrified, even as when the government came in power, it found over 18,000 villages in Independent India still living in the dark.

Between 2010 and 2014, just 59 village panchayats had been connected with optical fibre network which in last three years stands at 77,000 panchayats. Such is the pace at which the government is working. It is very likely that in next two years we will have all the 2.5 lakh villages enjoying optical fibre network to enjoy seamless internet and communication facility.

The buzzword of the government is transparency and to bring in transparency in government working, digitisation has a big role to play, which is why the government is taking along the two together. The more digital technology penetration we have, the lesser corruption we have because everything is in the public domain for everyone to see and track. As Prime Minister Modi says, it is all about change in the viewpoint and way of handling things that would make all the difference.

The NDA government is a departure from the past because it has changed the work culture and viewpoint of the people, instilling hope in them, pushing them to dream big. The seeds of every success lie in dreams that we cherish!

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**The author is State Editor of the Madhya Pradesh Editions of The Hitavada.*

Views expressed in the article are author's personal.

(This feature has been contributed by PIB Bhopal)

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Cabinet approves Memorandum of Understanding by the Election Commission of India with the Election Management Bodies of other countries/International Agencies

Cabinet approves Memorandum of Understanding by the Election Commission of India with the Election Management Bodies of other countries/International Agencies

The Union Cabinet chaired by Prime Minister Shri Narendra Modi has approved the proposal of the Election Commission of India to enter into Memorandum of Understanding (MoU) on cooperation in the field of electoral management and administration with the Election Management Bodies of other countries/International Agencies. These are as follows:

i. The National Electoral Council of Ecuador;

ii. The Central Election Commission of Albania;

iii. The Election Commission of Bhutan;

iv. The Independent Election Commission of Afghanistan;

v. The National Independent Electoral Commission of Guinea;

vi. The Union Election Commission of Myanmar; and

vii. The India International Institute of Democracy and Election Management (IIIDEM) and the International Institute for Democracy and Electoral Assistance (International IDEA).

These MoUs contain standard articles/clauses which broadly express promotion of cooperation in exchange of knowledge and experience in the field of organizational and technical development of electoral process; support in exchanging information, institutional strengthening and capacity building, training of personnel, holding regular consultations etc.

These MoUs would promote bilateral cooperation, aimed at building technical assistance / capacity support for the said Election Management Bodies.

Background:

The Election Commission has been participating in promoting cooperation in the field of election matters and electoral processes across the world with certain foreign countries

and agencies by adopting the mode of MoU signed by the concerned parties. The Election Commission, a constitutional body, conducts the largest electoral exercise in the world. It is the responsibility of the Election Commission to organize free and fair election in the country of about 85 crore voters with diverse socio-political and economic backgrounds. In recently years, the role being played by the Election Commission ensures greater participation of people in political affairs. India, today, is considered as the world's largest democratic country. The success of democracy in India has attracted the attention of almost every political system around the world.

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PM's interaction through PRAGATI

The Prime Minister, Shri Narendra Modi, today chaired his twenty-first interaction through PRAGATI - the ICT-based, multi-modal platform for Pro-Active Governance and Timely Implementation.

The first twenty meetings of PRAGATI have seen a cumulative review of 183 projects with a total investment of Rs. 8.79 lakh crore. Resolution of Public Grievances has also been reviewed in 17 sectors.

Today, in the twenty-first meeting, the Prime Minister reviewed the progress towards handling and resolution of grievances related to patents and trademarks. He noted the improvement in performance, asked the concerned officers to work towards further expediting the processing of patent and trademark applications. Officials explained the steps taken towards speeding up the grant of patents and trademarks, including enhanced manpower. The Prime Minister emphasized the importance of using latest available technology, to streamline the process, and reach global standards in this regard.

The Prime Minister reviewed the progress of nine vital infrastructure projects worth over Rs. 56,000 crore in the railway, road, power and oil pipeline and health sectors, spread over several states including Uttar Pradesh, Madhya Pradesh, Gujarat, Haryana, Rajasthan, Maharashtra, Uttarakhand, Punjab, West Bengal, Karnataka, Tamil Nadu, Andhra Pradesh, Bihar, Odisha, Telangana, and Kerala. The projects reviewed today, include the Delhi Mumbai Industrial Corridor, and construction of four new AIIMS at Manglagiri in Andhra Pradesh, Kalyani in West Bengal, Nagpur in Maharashtra, and Gorakhpur in Uttar Pradesh.

The Prime Minister also reviewed the progress of the Smart Cities Mission. He appreciated the participation of cities in the challenge route. He said the challenge before everyone is now to ensure implementation and expeditious completion of the work in the 90 identified cities, with high quality.

Reviewing the progress of the Forest Rights Act, the Prime Minister emphasized the importance of using space technology to determine the rights of tribal communities, and settle claims expeditiously.

The Prime Minister said that the apprehensions with regard to GST have been proven to be unfounded, and a smooth transition has happened. He asked all Chief Secretaries to further boost efforts to increase registration under GST, and to achieve a quantum jump in this regard within a month.

On Government e-Marketplace (GeM), he said the portal has improved transparency, and has reduced wasteful expenditure. He asked the Chief Secretaries of all States to

give priority to GeM in government procurements.

AKT/SH

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Odisha rated as low-growth State

Despite the government claiming to have provided business-friendly environment to investors and attracting huge investments in past decade-and-a-half, Odisha has been categorised as a low-growth State in the country in the latest NITI Aayog survey.

High growth States

The NITI Aayog's 'Ease of Doing Business Report: An Enterprise Survey of Indian States', released on Monday, points at more hurdles in setting up new businesses in Odisha compared to other States. The 15-high growth States include Bihar, Uttarakhand, Tripura, Sikkim and Meghalaya.

The NITI Aayog and IDFC Institute, its knowledge partner, have classified States on the basis of their average annual real growth rate using State Gross Domestic Product from 2004-05 to 2013-14.

Median average

"We calculated the median average annual growth rate, which turns out to be 8.14%. The States that experienced annual average growth rate equal to or above the median were classified as high-growth States and those with annual growth rate below the median were categorised as low-growth States," the study stated. At a growth rate of 6.59%, Odisha falls in low-growth category.

According to the study, enterprises in high-growth States reported fewer regulatory hurdles. This establishes an empirical link between superior regulatory environment and better economic performances.

Power connection

"On average, enterprises reported taking 52 days, 61 days, and 76 days for getting electricity, water, and sewerage connections respectively. The World Bank 2017 Doing Business report ranks India at number 25 for getting electricity connection and it is estimated that getting the connection takes about 46 days. It takes an average of 31 days to get electricity connection in Karnataka, 32 days in Gujarat and around 95 days in Odisha," says the report.

Odisha is listed among States with lowest proportion of enterprises having knowledge of their environment category. Only 22% of enterprises in Odisha are aware of their category.

Similarly, the age distribution of high-growth and low-growth enterprises shows that in general, the share of young enterprises is higher in the high-growth States than in the low-growth States.

Around 20% of enterprises in Odisha are young whereas percentage of young enterprises in Bihar is above 70%.

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Rainbow of possibilities

In the week following the Supreme Court's *Justice K.S. Puttaswamy (Retd) v. Union of India* decision, popularly **referred to as the Right to Privacy judgment**, a number of odes have been written to this momentous affirmation of core constitutional principles. Much has been made about the way in which the judgment demolishes the underlying assumptions of *Suresh Kumar Koushal v. Naz Foundation* (2013), which upheld the constitutional validity of Section 377 of the Indian Penal Code. These elements of the ruling will certainly strengthen the case for the Constitution Bench that is scheduled to sit and decide on the Koushal case. But regardless of when it is heard by the court, the Right to Privacy judgment is a victory for queer persons as well: in terms of how it challenges the language of that prior decision, and further, in how it opens out the realm of possibilities for queer rights under the law.

Looking first at the question of language: Section 377 is a vaguely worded law. The vagueness is purposeful — as Thomas Babington Macaulay once noted, the drafters of the Indian Penal Code were unwilling to insert anything into the text of the statute to promote discussion on "this revolting subject". The subject in question was, of course, same-sex intimacy. The stated offence, as it has stood for more than 150 years, is "carnal intercourse against the order of nature". Even as these words crystallise and sanction acts of homophobia and transphobia, they are, ultimately, vague.

SC verdict recognises that key elements to be worked out in data protection law, says Nandan Nilekani

The *Koushal* decision, however, was a lot less vague in its contempt for members of the LGBT community. To unambiguously say that the rights of LGBT persons are not real constitutional rights, to brush aside the numerous evidence of violations placed before the court in favour of the merely "200 reported prosecutions over 150 years": these were violent words. They hit with a greater force because of the space where they came from. The Supreme Court is the highest constitutional court of the country, an institution which is held in relative regard to the other branches of government despite its missteps. To hear these words from this court was the clearest rejection of equal citizenship that the queer community had faced.

Koushal was indeed met with overwhelming critique, from civil society as well as from representatives of a range of political parties. However, at the level of constitutional discourse, the slights it had made stood largely unanswered. A different bench of the court made a partial corrective in 2014. The *National Legal Services Authority v. Union of India* judgment, while articulating a charter of rights for transgender individuals, also noted that Section 377, though associated with certain sexual acts, effectively targeted specific identities: a finding the *Koushal* court refused to make. This implicit critique was a gentle reprimand at best.

With the Right to Privacy judgment, the court's response to *Koushal* is anything but gentle. Justice D.Y. Chandrachud's opinion, signed on by three other judges, has a section titled "Discordant notes", which places Koushal next to what the judges officially recognise as its constitutional predecessor: the *ADM Jabalpur v. S.S. Shukla* decision of 1976. The habeas corpus case, as it is also referred to, infamously upheld the denial of basic fundamental rights during the imposition of Emergency and is widely understood to be one of the most shameful passages in the court's history. To put *Koushal* in the same frame as this decision is to acknowledge the gravity of what it meant to uphold the criminalisation of millions of LGBT persons in India.

Right to privacy is "intrinsic to life and liberty," rules SC

Justice Chandrachud then takes on one of the more casually dismissive statements made in

Koushal, where Justice G.S. Singhvi referred to the “so-called rights” of LGBT persons, emphatically noting that they cannot be construed as “so-called rights” but are real rights founded on sound constitutional doctrine. The *Koushal* judgment is also called out for relegating its constitutional responsibility with the claim that LGBT persons constitute a minuscule fraction of the population. The court reminds us of its own counter-majoritarian role, noting that the guarantee of constitutional rights does not depend upon their exercise being favourably regarded by majoritarian opinion.

If the *Koushal* court’s violent words constituted a wound, the *Puttaswamy* court’s words are an attempt to heal those very wounds, to try and reverse some of the damage that came from this kind of judicial contempt.

At another level, the judges here don’t just challenge *Koushal*: they also allow us to imagine possibilities for queer justice beyond the limiting frame of Section 377. Even as the court does not make a holding on the constitutional validity of the section, it does find that sexual orientation is an essential attribute of privacy. The conclusion of Justice Chandrachud’s opinion goes on to hold that privacy includes at its core the preservation of personal intimacies and sexual orientation. Further, the court notes that the right to privacy recognises personal choices governing a way of life, that it is not lost or surrendered merely because an individual is in a public space. Reading these statements together can give us a sense of some of the ways in which the judgment can be used to push for queer rights in spaces beyond decriminalisation and the **immediate threat of Section 377**.

First, to understand privacy as a recognition of personal choice allows us to think of justice for queer lovers who run away from home and are forced to return, often through the filing of habeas corpus petitions by their families. In many instances, persons who express the intent to leave their family will be challenged by a sitting judge in an open court and remanded to a government shelter home to “rethink” their choice. Proceedings in these kinds of habeas corpus petitions are illustrative of the wide discretion that courts have to interfere with personal decisions that queer persons take regarding with whom and where they want to live: the *Puttaswamy* court offers us a forceful constitutional articulation that could be used to challenge this denial of autonomy.

This articulation of privacy as personal autonomy is also what might be used in dealing with the vast number of medical professionals across the country who insist on treating homosexuality as a disease, in many instances detaining queer persons in clinics and administering treatment against their will.

Finally, a recognition that privacy is linked to autonomy and the navigation of space should allow us to think about the ways in which public spaces can be made safer for people who bear physical markers of gender nonconformity: whether it is public transport or an establishment space, how could this articulation of privacy protect, or provide a remedy when queer individuals are harassed for expressing their identity in a public space?

With the Right to Privacy judgment, it is not just Suresh Kumar Koushal but also these varied structures supporting queer persecution that have received a significant challenge.

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The new U.S. Fed Chairman is unlikely to opt for policies that might upset the President’s plan

70 years of Independence

Special Feature – I-Day 2017

Digital Revolution in India

***Dr.Gurmeet Singh**

Evolution of technology has been the foundation stone of progress and has over the centuries changed the way societies function. Technological inventions have revolutionized each sector of the society by reducing human labour, brining efficiency and increasing productivity. Be it introduction of information communication technologies in education, digitization in the media and services sector, automated devices for health care ; each sphere of society gets a boost with the touch of technology. For a country like India that has a perfect blend of rich traditional heritage and one of the fastest growing economies with the largest 'young 'population; there is an immense opportunity to change the face of the society with technological revolution. While the country has seen implementation of technological inventions in various fields in several decades after independence, the present Government has acted as a catalyst in not only speeding up the process of digital revolution in the country but also taking an initiative in bridging the digital divide in the country. The past three years have not only witnessed a swift rise in exploration, implementation and utilization of digital technologies but also focused on taking digitization and its benefits to the grass root level and especially to the less privileged sections of the society.

Digital revolution in India is significant as it promises to bring a multi-dimensional metamorphosis in almost all sectors of the society. From digitization in governance to better health care and educational services, cashless economy and digital transactions, transparency in bureaucracy, fair and quick distribution of welfare schemes all seem achievable with the digital India initiative of the present Government. A look at Government initiatives in various sectors in past three years show how digital revolution in India is not only changing the way society functions but also bridging the gap between the haves and the have-nots of the country.

The quality of education in any society forms the foundation stone for the very fabric of the society. Keeping in mind the importance of education, the digital India initiatives puts together a number of digital services for improving the dissemination of education in society. Be it primary level, secondary level or higher education and research facilities, the various digital schemes in this sector are revolutionizing the education system in the country. While there are a number of schemes in the education sector, to mention a few –'SWAYAM' scheme provides an opportunity to students to access courses taught in classrooms from ninth standard to post graduation, that can be accessed by anyone, anywhere at any time. This digital scheme not only brings education at the door step of numerous students but also aims to bridge the digital divide as students who cannot join mainstream or formal education can access this application. Another digital scheme is 'ePATHSHALA' which disseminates all educational content through website and mobile app. Next in row are schemes like ' Mid-Day Meal Monitoring App', 'Shaala Sidhi' and 'Shaala Darpan' that focus on quality of school administration and evaluate the schools and kendriya vidyalas to improve the quality of education. Promoting research skills is the 'OLABS' digital scheme. OLabs i.e. online labs for school lab experiments provide students with ease of conducting experiments over internet. In the area of higher education Government has the 'National Scholarship Portal', 'eGranthalya', 'National Knowledge Network' to name a few. These digital initiatives not only look at improving the sector of education but are reaching out in bringing education to the underprivileged, thus utilizing the digital revolution to bridge the gap between haves and have-nots of education.

While education sector constructs the fabric of the society, Health care is an equally important sector for a society that has a secure and stable future. The various digital initiatives of the Government in the health services include- ' Digital AIIMS' a project that aims to create an effective linkage between UIDAI and AIIMS; the 'e-hospitals' scheme that is an open source health management system; 'mRaktkosh' – a web based mechanism that interconnects all blood banks of the state into a single network. Besides health and Education the present Government has also taken various initiatives to digitize governance. For instance the 'UMANG' aims to bring one stop solution to all government services; 'e-panchayat', 'eDistricts', eOffice; are also some of the services to digitize governance and administration in the country. Besides these the 'National Voters Service Portal' and 'ECI-EVM Tracking Services are also bringing about transparency in governance. The AADHAR scheme and BHIM app are also significant in speeding up the process of digitizing the economy.

Unique to India's character is the agriculture sector. The Governments' Digital India initiative is also proving a number of schemes for the benefit of the farmer. Some of the schemes in the agriculture sector include, 'mkisan', 'farmer portal', 'Kisan Suvidha app', 'Pusa Krishi', 'Soil Health Card app' , 'eNAM', 'Crop Insurance Mobile APP' , 'Agri Market app' and 'Fertilizer Monitoring App. Keeping in mind women's safety, applications like 'Nirbhaya app' and 'Himmat app' have been launched that facilitate sending of distress calls. There are also apps for law enforcement agencies, courts and judiciary.

Thus, several initiatives by Government in various sectors are not only an attempt to revolutionise

the society but also focus on utilizing the digital technologies to elevate the down trodden and bridge the gap between the different social strata.

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Views expressed in the article are author's personal.

(This Feature has been contributed by PIB Chandigarh)

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