A water umpire

The Cauvery water dispute is eluding closure, with Tamil Nadu, Karnataka, and Kerala locked in battle in the Supreme Court over their share of water.

In its statement of objects and reasons for proposing a new inter-State river water disputes law, the Centre lists out the drawbacks in the prevalent Inter-State River Water Disputes Act of 1956. The Act provides for tribunals to be constituted for every inter-State river water dispute. The statement, however, notes the reluctance shown by States to accept the decisions of these tribunals.

“Though the Cauvery and Ravi Beas Water Disputes Tribunals have been in existence for over 26 and 30 years, respectively, they have not been able to make any successful award till date,” the statement says. There is no time cap for adjudication by these tribunals nor is there any age limit for the chairperson or members of the tribunals. These, among other deficiencies, see disputes drag on for years.

The water tribunal trap

With water becoming scarce, the Centre has proposed the Inter-State River Water Disputes (Amendment) Bill, 2017 for early and amicable resolution of disputes. The Bill proposes that the Centre notify an Inter-State River Water Disputes Tribunal with multiple benches. All existing tribunals dealing with inter-State water disputes would stand dissolved on the date of establishment of this tribunal. Chairmen and other members of the existing tribunals who are aged 70, on the date of commencement of the 2017 Amendment Act, shall cease to hold office on the expiry of three months from the date of the law coming into existence. Disputes already settled by an existing tribunal, prior to the date of commencement of the 2017 Amendment Act, shall not be re-opened.

According to the Amendment Bill, when a State government approaches the Centre with a dispute, the latter shall set up a Disputes Resolution Committee consisting of expert members from relevant fields to resolve the dispute amicably. If the dispute remains unresolved, the Centre, by notification, will refer the matter to the tribunal. The tribunal shall have a chairperson, vice-chairperson, and not more than six members to be nominated by the Chief Justice of India from judges of the Supreme Court or high courts. The term of office of the chairperson is five years or till he attains the age of 70, whichever is earlier. The tenures of the vice-chairperson and other members of the tribunal shall be co-terminus with the adjudication of the water disputes.

The Centre suggests that the total time period for adjudication of a water dispute would be a maximum of four and a half years. The decision of the Bench of the tribunal shall be final and binding.

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

END

Is it time to review Section 377?

LEFT | Anand Grover

Section 377, titled “unnatural offences”, was enacted by the British after we lost our First War of Independence in 1857. They imposed their religio-cultural values upon us. Prior to that, sexual activities, including amongst homosexuals, were not penalised in India.

Section 377 penalises non-procreative sexual acts and any act of sexual perversity, as has been interpreted by different courts. Though it textually applies to all persons, homosexual and heterosexual, it has been targeted at gay men.

The Delhi High Court in *Naz Foundation v. Government of NCT of Delhi* (2009) rightly held that criminalising sexual activities with consent in private not only impairs the dignity of those persons targeted by the law, but it is also discriminatory and impacts the health of those people. Gay men are seen as criminals by the law because of Section 377, and thus by other members of society. This judgment lifted the criminal restrictions on gay men. However, it was short-lived as the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* (2013) set aside the Delhi High Court judgment. The *Koushal* judgment did not notice that the rape law itself had changed whereby instead of mere restriction on penile-vaginal non-consensual sex, it now includes a range of sexual activities, including digital and object penetration.

Discriminatory in nature

Section 377 is now restricted only to gay men and perhaps transgender people. The contradictions in the law are glaring. Consent is considered to be irrelevant. In the case of children, law presumes no consent. Therefore all sexual acts between an adult and a child are penalised.

The latest judgment on privacy by the Supreme Court has observed that *Koushal* has not appreciated the fundamental right to privacy in its application to Section 377. The *Koushal* verdict is dead; only its burial remains.

After the *Koushal* verdict, there have been a large number of cases where gay men are being blackmailed by their acquaintances and the police in connivance with each other. These cases have sharply risen in the last three years. Though there is recourse in law, no gay man can take recourse to it because Section 377 itself makes gay men’s sexual practices illegal and would put them in danger of being arrested. I have come across cases where people have undergone terrible humiliation and psychological stress, apart from being blackmailed either by their acquaintances or the police. No human being ought to be subject to such acts on account of a natural sexual affection for another human being.

Not in great company

The worst aspect of Section 377 is at the individual level. It makes gay men feel like lesser human beings because they are seen as criminals by law. That impairs not only their dignity, but forces them to go into the closet.

The British, who enacted the law, got rid of it in the 1960s in England. Many countries have got rid

of such laws, either by amendment of legislation or vide decisions of the court. India now remains with countries which India would not like to be associated with otherwise.

While most people gained independence from the British, the LGBT community, and gay men in particular, in India have remained chained to Section 377. It is high time that the chains are broken and we get rid of Section 377 so that gay men and the LGBT community can live their lives with dignity.

(Anand Grover is a senior advocate in the Supreme Court and the petitioner's lawyer in the Naz Foundation case)

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RIGHT | Navneet Rajan

Section 377 has been the subject of intense criticism in academic and other circles for being a colonial legacy, an outdated provision of law which is misused by the police and often against innocent individuals, and one that militates against the individual liberty and freedom of choice, etc. Naz Foundation challenged the constitutional validity of this section before the Delhi High Court and received a favourable verdict when the court held that the essence of Section 377 goes against the fundamental rights of citizens. The court declared that the Section, insofar as it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. It further ruled that the provisions of Section 377 would continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors.

However, the judgment was successfully challenged in the apex court, which reversed it on several grounds, mainly that Section 377 does not violate the Constitution, there was little evidence that the provision was being misused, misuse of law does not make it invalid, and most importantly, it was only for the legislature to repeal or amend the law.

Regaining fervour

The debate has regained fervour after the privacy judgment. Specifically referring to the rights of the LGBT community, the court said these are not "so-called" rights but are real rights founded on sound constitutional doctrine. They inhere in the right to life. They dwell in privacy and dignity. They constitute the essence of liberty and freedom. It further added that sexual orientation is an essential component of identity, and equal protection demands protection of the identity of every individual without discrimination. It goes on to state that privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home, and sexual orientation.

All religions consider homosexuality a sin, a conduct against the order of nature, and hold that an individual falling in this category be considered a criminal. However, by the end of the 19th century, a strong opinion emerged that it was a pathological condition and that the person should not be blamed for such conduct. Later, a dominant view emerged that homosexuality was inborn

and therefore not immoral, and it was not a disease. However, there is still no unanimity on the issue and individuals continue to hold diverse opinions.

While the progressive and timely judgement of the apex court needs to be celebrated, one should not be oblivious of the dangerous path we may tread on if the right to privacy is not tempered with reasonable restrictions. Any right, and more so a fundamental right, survives only if it is not exercised in a manner that it tramples upon the similar rights of another person.

Protecting the 'vulnerable'

The question that arises is, whether by repealing Section 377 we will achieve the objective of privacy and giving equal rights to individuals of any sexual orientation?

The rights of individuals belonging to the LGBT community need to be recognised, and these persons must be treated with dignity. Nevertheless, the law must ensure that the rights of others, especially those who may be vulnerable and may be easily tricked into unacceptable behaviour or physical intimacy by another individual with a different sexual orientation, must also be protected. To ensure that helpless children and women are not victims of such behaviour, we may have a modified provision in the law to punish such conduct against innocent children and non-consenting females who may not have the courage to resist such demands from their husbands.

(Navneet Rajan retired as Director General of Bureau of Police Research and Development, and earlier served in the CBI and the National Investigation Agency)

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CENTRE | Kamal Faruqui

As far as the private affair of an individual is concerned, within the four corners of the house, nobody has the right to interfere or peep into it. Everybody has the right to lead the life they want. But such choices should not spill over onto the streets by way of an endorsement of this style of life so as to attract other people.

Religion and rights

Why is this such an issue? Because we are a religious society. Be it a Hindu, Muslim, Christian, or Sikh, a couple, by which I mean husband and wife, does not have sex outside wedlock. Islam is very particular about the way couples should conduct their lives. Sex is allowed only in married life. Sex within the same gender, or sex out of wedlock, is prohibited in Islam. It is a crime.

But we are living in a democratic society governed by our Constitution. And the Constitution gives certain fundamental rights to citizens and one of the rights is the choice to lead the life one wants. Nobody has the right to disturb and intrude into someone's private life. We are not discussing the philosophical complexities of Section 377, but we are talking in the context of rights enshrined in the Constitution. In that context nobody should be harassed. At the same time, they should be aware that such activities are private, to be conducted within their homes.

Would you say homosexuality should be decriminalised? I speak in the context of the Constitution and in the context of religion and morality. As far as the Constitution is concerned, nobody has the

right to say how an individual should conduct his life, what to eat and what not to eat, what to wear, or comment about people's sexual activities. The Supreme Court was right in making this observation in the right to privacy judgment, delivered by a nine-judge Bench, and in another judgment in another case of instant triple talaq delivered in the same week as the privacy judgment wherein personal laws have been reaffirmed as being protected under the Constitution. The court has also observed that this right cannot be abrogated by a community in the name of majoritarian view.

So far as religious morality is concerned, homosexuality is prohibited by Islam. But the Constitution provides fundamental rights — we are not an Islamic country but a democratic country. But this does not mean a licence to do anything. I am a non-vegetarian, but I should not be oblivious to the concerns of vegetarians. Anything banned in the country, I should not do it.

The order on privacy has to be seen in the context of freedom to religion and the private lives of individual citizens. To protest the criminality of Section 377 is the right of every citizen.

Respect the Constitution

You are asking Kamal Faruqui who is a practising Muslim, who is saying that we should submit ourselves to the Constitution. But it is against my religion. The Koran very clearly states, "*Lakum dinukum waliyadeen*", which means "your religion for you and my religion for me".

We have to respect our Constitution. We are a country of many religions. Who am I to impose my view on others? That's the beauty of our Constitution. I would definitely like my children not to indulge in homosexuality. Section 377 has to be read in totality and I think the nine-judge Bench was clear that this must go.

(Kamal Faruqui is former chairman of the Delhi Minorities Commission and executive member of the All India Muslim Personal Law Board)

The views expressed are personal. As told to Anuradha Raman

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

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Decisive First Step towards Simplified Labour Laws: The Code on Wages, 2017 placed before Parliament

***Deepak Razdan**

The Government took a decisive step towards simplifying and amalgamating the vast mass of labour laws when it presented before the nation The Code on Wages, 2017, a Bill which combines features and provisions of four existing labour laws pertaining to wages. The Bill was introduced in the Lok Sabha during the Monsoon Session of Parliament on 10th August, 2017. Intended to bring relief to both employers and employees, the Code amalgamates, simplifies and rationalises the relevant provisions of the four Central labour enactments, namely the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. The four Acts will stand repealed with the passage of the Bill. Facilitating easier compliance of the law, the Code will ultimately create conditions for setting up of more enterprises and fresh employment opportunities.

The Statement of Objects of the Bill said the amalgamation of the laws would facilitate their implementation and remove the multiplicity of definitions and authorities, without compromising on the basic concepts of welfare and benefits to workers. The proposed legislation would bring the use of technology in its enforcement and thereby bring transparency and accountability for effective enforcement of the law. Widening the scope of minimum wages to all workers would be a big step for equity.

The Bill provides for all essential elements relating to wages -- equal remuneration, its payment, and bonus. The provisions relating to wages shall be applicable to all employments covering both organised as well as un-organised sectors and the power to fix minimum wages continues to be vested in the Central as well as State Governments, in their respective spheres. There are clear definitions of employer, employee, worker, minimum wage and wages.

The Code will enable the appropriate Government to determine the factors by which the minimum wages shall be fixed for different categories of employees. The factors shall be determined taking into account the skills required, the arduousness of the work assigned, geographical location of the workplace and other aspects which the appropriate Government considers necessary.

Provisions relating to timely payment of wages and authorised deductions from wages, which are at present applicable only in respect of employees drawing wages up to Rs 18,000 per month, shall be made applicable to all employees irrespective of wage ceiling. The appropriate Government may extend the coverage of

such provisions to Government establishments also.

Ensuring that there is no discrimination on the basis of gender in the payment of wages, the Bill incorporates in its first chapter itself provisions for “Equal Remuneration” in Section 3, which says “There shall be no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee.”

No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government for the area, establishment or work as may be specified in a notification. While fixing minimum wages in respect of any employment for the first time under the Code, the appropriate Government, which can be Central or State Government, will appoint a committee comprising representatives of employers, employees and independent members, to go into all issues and make recommendations. This would ensure justice to all stakeholders. “The appropriate Government shall review or revise minimum rates of wages at an interval of five years,” says the chapter on minimum wages.

Under the Bill, the Central Government will have the power to fix a national minimum wage, with a provision that there can be different national minimum wage rates for different States or geographical areas. State Governments will not fix any rate lower than the national rate. If any State Government earlier fixed a rate higher than the national rate, it will not reduce its wage rate. The Central Government before fixing a national minimum wage rate will take the advice of a Central Advisory Board. There is provision for payment of overtime work done.

Under its payment of wages provisions, the Code says “all wages shall be paid in current 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.” Wage payments can be made daily, weekly, fortnightly or monthly and the Bill has fixed time-limits for the payments.

The provisions on payment of bonus say that the bonus has to be paid even to employees who have put in only one month of service. Section 26 says this payment will be “an annual minimum bonus calculated at the rate of eight and one third per cent of the wages earned by the employee or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus during the previous accounting year.”

The bonus payment will increase proportionately, if the allocable surplus in any accounting year is higher, subject to a maximum of 20 per cent of the wages, the Section says. The available surplus for any accounting year will be gross profits for the year, after permissible deductions including direct tax on income, profits and gains for the year. The allocable surplus will be 60 per cent of the available surplus for banks and 67 per cent for other establishments.

As per Section 39, all amounts payable to an employee by way of bonus under this Code shall be paid by crediting it in the bank account of the employees by his employer within eight months from the close of the accounting year. An employer can get extension of time, but this shall not exceed, “in any case,” two years.

Doing away with inspector-raj, the Code provides for Facilitators who will help employers and employees in the proper execution of the law. The Facilitators can be appointed by the Central or State Governments and given powers throughout the States or such geographical areas assigned to them.

Section 51 of the Code says the Facilitator may within the limits of his jurisdiction, (a) supply information and advice to employers and workers concerning the most effective means of complying with the provisions of this Code; (b) inspect the establishment based on an inspection scheme. The inspection scheme, given by the Government, will provide for generation of a web-based inspection schedule.

The Facilitators can examine workers, “search, seize and take copies of such register, record of wages or notices or portions thereof as the Facilitator may consider relevant in respect of an offence under this Code and which the Facilitator has reason to believe has been committed by the employer,” Section 51 says. The Facilitators will be empowered under IPC and CrPC for their work.

Complaints for offences under the Code can be made by the Facilitator, employees, registered Trade Unions, or the Government. The Code has spelt out elaborate penalties for the offences. If an employer pays to his employee less than the amount due to him under the Code, he shall be punishable with fine which can go up to Rs 50,000. A repeat offence within five years can mean imprisonment extending up to three months, and fine up to Rs 1 lakh, or both.

Contravention of the Code or a rule made thereunder can mean a fine up to Rs 20,000, and a repeat offence within five years can mean imprisonment up to one month, or fine up to Rs 40,000, or both. A Facilitator can give time and opportunity to employer to comply with the Code, and may not initiate prosecution if there is compliance.

Clause 55 of the Bill provides for composition of offences. Only the offences for which there is no punishment with imprisonment shall be compounded. The compounding money shall be a sum of

fifty per cent of the maximum fine. There is no compounding for a similar offence compounded earlier or for commission of which conviction was made, committed for the second time or thereafter within a period of five years.

Under various other Sections, the interests of employees are protected by the Code. The burden of proof that the due payment has been made, and without any unjustified deductions, will lie with the employer.

The Code on Wages, 2017 is the first of the four Codes proposed by the Government to give further boost to ease of doing business. The three other Codes will cover Industrial Relations; Social Security & Welfare; and Safety and Working Conditions. While they will bring about a long-awaited clarity in labour legislation, and minimize its multiplicity, their ultimate benefit will help working class know its rights and responsibilities, and look forward to larger employment opportunities.

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**Deepak Razdan, is a senior journalist and is at present Editorial Consultant, The Statesman, New Delhi.*

Views expressed in the article are author's personal.

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Assam issues AFSPA order for State

For the first time since 1990, the Assam government issued orders declaring the State a “disturbed area”, imposing the Armed Forces Special Powers Act (AFSPA) for six months.

Such orders were earlier issued by the Union Home Ministry, which recently gave up its power and asked the State government to decide on continuing the enforcement of the AFSPA in the State.

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

Except in the case of Tripura and Manipur, the Centre had been issuing such notifications for Assam, Nagaland, Arunachal Pradesh and Meghalaya.

The decision comes a year after the BJP came to power in Assam in 2016.

Huge powers

The AFSPA gives powers to the Army and Central forces deployed in “disturbed areas” to kill anyone acting in contravention of the law, arrest and search any premises without a warrant, and provide cover to the Armed Forces from prosecution and legal suits without the Centre’s sanction.

An official explained that the Assam government’s notification will not affect the operation of Central forces or the Army deployed in the State.

On August 4, the Home Ministry extended the AFSPA in Assam for 27 days, which expired on August 31.

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Shayara Bano, triple talaq crusader

The fight against triple talaq, though supported by a number of women's rights activists and constant media attention, was led by the victims themselves.

Shayara Bano, a 35-year-old woman from Uttarakhand, emerged as the defining persona in the legal battle against the patriarchal custom that, though not as commonly followed, was judged unconstitutional by the Supreme Court recently.

Why this fight?

Ms. Bano was the original petitioner in the case after she approached the court in 2016 demanding that the *talaq-e-biddat* pronounced by her husband be declared as void. She also contended that such unilateral, abrupt and irrevocable form of divorce be declared unconstitutional, arguing that the practice of triple talaq violated the fundamental rights of Muslim women.

"Since my student life, I didn't like the anti-women social traditions like triple talaq and *halala* . But when it happened to me... it [the dislike] grew. Normally, these things do not happen, but when it hits you, you realise how bad this practice really is," says Ms. Bano

What happened to her?

Her battle against triple talaq was spurred by her own experience. She was a victim of the custom. Married in April 2001 to the Allahabad-based property dealer Rizwan Ahmed, she endured domestic violence and physical torture at the hands of her husband and in-laws, who allegedly demanded additional dowry and a car from her parents. Her father, a low-earning government employee, had made special efforts to arrange her marriage beyond his capacity.

As per her claim, she was often beaten and kept hungry in a closed room for days. The final cut came in October 2015, when her husband sent her a divorce note by speed post. The letter contained a pronouncement of instant triple talaq. The custody of her two children, 11 and 13, was kept by the husband. When something "so wrong" happened, she thought that there must be a law to prevent this.

Did she face challenges?

It was never going to be easy for Ms. Bano and the other women to garner support from the community as they were seen challenging the male dominance of Shariat laws, and was suspected by a section of anti-BJP groups and male Muslim intelligentsia of playing into the saffron party's strategy to communalise the discourse ahead of the 2017 Assembly elections in Uttar Pradesh. Ms. Bano says she faced several challenges during the course of her fight. The biggest came in the form of mental harassment. A member of the AIMPLB asked her to withdraw her case, saying she was going against Islam.

Did she think of quitting?

Though she felt discouraged, the thought of giving up the fight didn't occur to her even once. Ms. Bano is thankful to the women activists who supported the cause, her lawyers and the media for highlighting her experience. However, the biggest source of support came from her family, especially her father and brother.

Her legal battle received more coverage after other victims of triple talaq also approached the court, though she was the first petitioner.

Ms. Bano, who completed her M.A. before marriage, is now pursuing an MBA, for which she regularly attends classes. She hopes to get employed some day.

What does it mean to women?

Described as historic, women activists believe it is a step forward in the empowerment of Muslim women in India.

Ms. Bano says that though the ruling will be beneficial to Muslim women and help them avail themselves of maintenance, the real change will come only when a law is enacted making arbitrary talaq illegal.

Ms. Bano says her fight is against the social customs that give men power to abandon women on a whim, sometimes through a flimsy text message or a phone call. Women who received triple talaq lived worse than dogs and without maintenance, she points out.

She has appealed to the BJP government not to take undue credit for the decision or politicise it. “It was a social fight, not a political one. It should not be made into a political agenda,” Ms. Bano insists.

Omar Rashid

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Grievance Redressal System revolutionized through CPGRAMS

*Amitabh Shukla

For the last several decades several changes have been brought about to improve transparency in the functioning of the government and bring accountability. Cumulatively, these have helped the common man find his groove in a maze of laws and indifference of the lower bureaucracy and the response time for the solution of his or her grievance has improved significantly.

However, nothing has revolutionized accountability, transparency and the response time of the government departments than the Centralized Public Grievance Redress and Monitoring System (CPGRAMS), brought in by the Narendra Modi government.

Web based CPGRAMS has been designed and implemented in all the Ministries and Departments of Government of India. Moreover, a customized software with local language interface has also been designed for the state governments too called CPGRAMS - States. This provides online access to all citizens, including those in Armed Forces personnel, to report their grievances. The new system allows the Ministry to monitor the grievances and ensure their time-bound redressal.

A Public Grievances Call Centre has also been set up for reminding the Ministries and Departments concerned receiving bulk of the grievances in the Central Government, for expediting action on grievances pending on CPGRAMS for more than two months. Guidelines have been issued to all the Ministries and Departments of Central Government to ensure that their Citizens' Charter, incorporating list of services, service standards and timelines, are duly uploaded and updated on the respective websites.

As the Modi government has completed three years, I would limit myself to CPGRAMS which shows how penetration of Information Technology has overhauled grievance redressal mechanism in the country. While some say this is “revolutionary”, my personal experience with the system reinforced my belief that indeed the government departments have started working very fast in the last over three years.

I have two experiences to share and both relate to the postal department. In the first instance, my father, who left for his heavenly abode, left a very old Post Office savings bank account in his files. Several visits to the post office did not help as the staff found some excuse or the other to deny payment to the nominee, my mother. Several months passed and correspondence with the postal department did not yield anything. The Post Master of the small post office in Bettiah, Bihar, would not clear the papers. Enquiries were tiresome and time consuming and the staff would demand one paper or the other consistently.

It was then that I came across the PG Portal—pgportal.gov.in—and how it is meant exactly for

cases like this. I opened it one fine morning and gave the account details in the complaint section and wrote a brief description about the problem and the harassment I went through. It took me all of five-seven minutes to lodge a complaint with my e-mail ID and Mobile number given.

I logged into the portal again using the number sent to my mobile phone and e-mail after two hours. It had the details and said that the complaint is lying with the Public Grievance Officer of the postal department, with an office at Parliament Street, New Delhi. Next day, in the morning, when I again opened the portal to see the status of the complaint, it had been sent to the Public Grievance Officer at Patna GPO. In the next three hours, the complaint had reached the Superintendent of the West Champaran postal Circle in whose jurisdiction the account existed. It was actually so fast.

In the evening, I got a call from the Superintendent of Posts that the matter has been processed and my mother is welcome to visit the post office next day for collecting the cheque which now totaled Rs 39, 480 after adding interest. I was elated as the system had worked so efficiently. The cheque was collected by my mother the next day. For the first time, I saw how this system cut through all sorts of hierarchies, paper work and obstacles and delivered to the common man.

The second matter also pertained to the postal department. This time, it was the NSC of my father which had matured at the end of March 2016 and I was the nominee. The agent, through whom my father used to invest in small savings scheme of the post office, got the paperwork done and deposited in the Lal Bazar post office from where the NSC was purchased.

But the post master would have none of it. He simply sat on the papers and did nothing. Lodging a complaint with the PG Portal was a click away. This time, in three days flat, cheque was given to my representative.

CPGRAMS is the new hope for redressal of any grievance - related either to the central or the state government. While the grievances related to departments of central government are handled quite efficiently, those pertaining to the states are passed on to the respective state governments. An officer of the Indian Revenue Service said, “The monitoring of the system is done at the highest level and no laxity on the part of the officials tolerated”. As monitoring is done at various levels, there is an unusual hurry on the part of the officials to dispose the complaints as everyone would now know at which end the problem exists.

That to me is indeed a revelation and my personal experience with the CPGRAMS has been extremely pleasant.

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**The author is Resident Editor, The Pioneer, Chandigarh.*

Views expressed in the article are author’s personal.

(This article has been contributed by PIB Chandigarh)

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The Code on Wages Bill 2017

As part of labour law reforms, the Government has undertaken the exercise of rationalisation of the 38 Labour Acts by framing 4 labour codes viz Code on Wages, Code on Industrial Relations, Code on Social Security and Code on occupational safety, health and working conditions.

1. The Code on Wages Bill 2017 has been introduced in Lok Sabha on 10.08.2017 and it subsumes 4 existing Laws, viz. the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. After the enactment of the Code on Wages, all these four Acts will get repealed. The Codification of the Labour Laws will remove the multiplicity of definitions and authorities leading to ease of compliance without compromising wage security and social security to the workers.

2. At present, the provisions of the Minimum Wages Act and the Payment of Wages Act do not cover substantial number of workers, as the applicability of both these Acts is restricted to the Scheduled Employments / Establishments. However, the new Code on Wages will ensure minimum wages to one and all and timely payment of wages to all employees irrespective of the sector of employment without any wage ceiling.

3. A concept of statutory National Minimum Wage for different geographical areas has been introduced. It will ensure that no State Government fixes the minimum wage below the National Minimum Wages for that particular area as notified by the Central Government.

4. The proposed payment of wages through cheque or digital/ electronic mode would not only promote digitization but also extend wage and social security to the worker. Provision of an Appellate Authority has been made between the Claim Authority and the Judicial Forum which will lead to speedy, cheaper and efficient redressal of grievances and settlement of claims

5. Penalties for different types of violations under this Code have been rationalized with the amount of fines varying as per the gravity of violations and repeat of the offences. Provision of compounding of offences has been made for those which are not punishable by a penalty of imprisonment.

6. Recently, some news reports have been published regarding the fixation of minimum wage as Rs. 18000/- per month by the Central Government. It is clarified that the Central Government has not fixed or mentioned any amount as “national minimum wage” in the Code on Wages Bill 2017. The apprehension that minimum wage of Rs. 18000/- per month has been fixed for all employees is, thus incorrect, false and baseless. The minimum wages will vary from place to place depending upon skill required, arduousness of the work assigned and geographical location.

7. Further, the Code on Wages Bill 2017, in the clause 9 (3), clearly states that the Central Government, before fixing the national minimum wage, may obtain the advice of the Central Advisory Board, having representatives from employers and employees. Therefore the Code provide for a consultative mechanism before determining the national minimum wage.

8. Some reports have also been appearing in the media regarding the revised methodology for calculation of minimum wages by enhancing the units from three to six. It was purely a demand raised by Trade Unions in the recent meeting of the Central Advisory Board on Minimum Wages. However it is clarified that such proposal is not part of the Code on Wages Bill.

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Joint secretaries vested with financial powers

Rajiv Gauba

In a first, the Home Ministry has given financial powers to joint secretaries. They can now spend up to Rs. 50 crore for executing works and purchasing land.

Joint secretaries have also been allowed to make procurement through open or limited tender of up to Rs. 20 crore and procurement through negotiated or single tender or proprietary contract of up to Rs. 5 crore, an official said.

Such financial powers have been given to bring greater flexibility in operations, reduce delays and facilitate quick decision on matters involving financial expenditure, a Home Ministry official said. The decision has been taken by Union Home Secretary Rajiv Gauba, who assumed charge on August 31.

The joint secretaries can give expenditure sanction to infrastructure, civil, and electrical works under approved schemes and projects up to Rs. 50 crore.

They can also approve purchase of land through State governments, municipal bodies and urban authorities up to Rs. 50 crore.

The joint secretaries can also give authorisation, expenditure sanction up to Rs. 20 crore for purchase of operational vehicles of central armed police forces, Delhi Police and other security-related organisations.

These powers were earlier exercised at the level of Union home secretary, special secretary and additional secretary. There are around 20 joint secretaries in the Ministry.

They have also been empowered to sign agreements for technical collaboration and consultancy services up to Rs. 2 crore, and sanction expenditure of up to Rs. 50 lakh for running of office and contingency expenditure of up to Rs. 20 lakh.

END

Probe assets of politicians: SC

The Supreme Court on Wednesday criticised the government for not investigating the huge increase in assets, by up to 500%, of politicians from what they show at the time of nomination.

A Bench of Justices J. Chelameswar and S. Abdul Nazeer said the government had been saying it was in favour of electoral reforms, but it was not forthcoming when it came to revealing details about such massive rise in assets.

CBDT affidavit

Even the affidavit filed by the Central Board of Direct Taxes leaves a lot to be desired.

“The information in the CBDT affidavit is not complete. Is this the attitude of the Government of India,” the Bench asked.

“The government is saying they are not averse to some reform. Necessary information should be there on record [in the court],” the court said.

It directed the government to file a detailed affidavit by September 12.

The top court was hearing a plea disclosure of sources of income by the candidates contesting elections when they file nomination for elections.

The court was hearing a petition filed by a non-governmental organisation, Lok Prahari, for the inclusion of a column in the nomination form seeking details of the sources of income.

The plea has claimed that the candidates while filing their nomination papers were disclosing their assets, assets of their spouse, children and other dependents, but they do not reveal the sources of their income.

The government says it is not averse to some reform; necessary information must be on record

END

What data do you share, court asks WhatsApp, FB

A five-judge Constitution Bench of the Supreme Court on Wednesday directed instant messaging platform WhatsApp and social media giant Facebook to file affidavits stating what user data they shared with “third parties.”

The Bench led by Chief Justice Dipak Misra is hearing a petition filed by two law students alleging that a contract entered into between Facebook and WhatsApp in 2016 on data sharing was a violation of a citizen’s right to privacy. The data, according to them, included photographs, messages, pictures and other personal documents shared by users on WhatsApp.

Initially, senior advocate Kapil Sibal representing WhatsApp, submitted that the instant messaging platform does not share any personal data of its users with third parties. He said only four details, ‘telephone number, type of device, last access of the user and registration date,’ are shared.

The petitioners, represented by advocate Madhavi Divan, countered that the court should injunct WhatsApp from sharing user data with third parties. Ms. Divan submitted that European privacy watchdogs have warned WhatsApp against sharing user information with parent company, Facebook. WhatsApp was acquired by Facebook in 2014. The petitioners argued that the same restriction should be imposed in India.

The Centre, represented by Additional Solicitor General Tushar Mehta, submitted that a committee had been set up under former Supreme Court judge B.N. Srikrishna, on July 31, 2017 to identify “key data protection issues” and suggest a draft Data Protection Bill.

‘No instance of breach’

Mr. Sibal said the material shared by users on WhatsApp was encrypted and Facebook was no “third party.” He said billions used WhatsApp and there had never been a single instance of breach.

“Petitioners are concerned with certain information you will come to know, which will reveal the pattern or behaviour of the user, like his communication of health details and reports with his doctors,” Justice A.K. Sikri, on the Bench, observed. But Mr. Sibal dismissed such fears as merely speculative.

The next hearing has been fixed for November 28.

END

State laws repugnant to IBC are void: SC

Provisions of State enactments which hinder the country's new bankruptcy law, the Insolvency and Bankruptcy Code (IBC), meant to protect the interests of shareholders, creditors and workmen against entrenched managements unable to dig their way out of their debts, will be declared void, the Supreme Court held.

In a judgment heralding the IBC as an effective legal framework aimed at improving 'Ease of Doing Business', a Bench of Justices Rohinton Nariman and Sanjay Kishan Kaul held that the erstwhile management of a company cannot represent it in court once insolvency resolution process has been admitted in the National Company Law Tribunal and the management transferred to an insolvency professional.

"Entrenched managements are no longer allowed to continue in management if they cannot pay their debts," the court held in its 88-page judgment.

The judgment dismissed an appeal by Innoventive Industries, represented by senior advocate A.M. Singhvi and advocate Shikhil Suri, against insolvency proceedings under the IBC by lender ICICI Bank.

The company invoked the Maharashtra Relief Undertakings (Special Provisions Act) of 1958 against the insolvency resolution process under Section 7 of the IBC.

'Parliament statute'

Mr. Singhvi said the 1958 Act allowed temporary suspension of any debt recovery against the company and allowed the State to run the company as a measure to mitigate the hardship caused to workers who may be thrown out of employment by its closure.

In January, the National Company Law Tribunal had already dismissed the plea, saying the Code, a parliamentary statute, would prevail against the Maharashtra Act. The appellate tribunal, National Company Law Appellate Tribunal, had held that Innoventive Industries' management cannot derive any advantage from the Maharashtra Act to stall proceedings under the Code.

Appearing for the bank, senior advocate Harish Salve argued that the "old notion of a sick management which cannot pay its financial debts continuing nevertheless in the management seat has been debunked by the Code".

He added that the erstwhile management of the company cannot represent its interests once the management was handed over to the insolvency professional.

END

Social revolution in a JAM

Safe metal box money secure concept symbol vector

In a post on Facebook made on the third anniversary of the Pradhan Mantri Jan Dhan Yojana (PMJDY) last week, the Finance Minister reportedly said: “Just as GST (goods and services tax) created one tax, one market, one India, the PMJDY and the JAM revolution can link all Indians into one common financial, economic, and digital space. No Indian will be outside the mainstream.” The suggestion of equality as a criterion of governance that is conveyed by this is to be welcomed. JAM, deriving from Jan Dhan, Aadhaar and Mobile, combines bank accounts for the poor, who barely had the money to deposit in them, direct transfer of benefits into these accounts and the facility of making financial payments through mobile phones. Aadhaar is the pivot here, allowing the government to ensure that benefits reach the poor and enabling them to make payments through ordinary mobile phones. For furthering the latter the government has devised the Bharat Interface for Money (BHIM) app. The Minister spoke of these developments as a “social revolution”, perhaps alluding to the feature that the poor are the most direct beneficiaries.

There is no doubt that eliminating leakage in the transfer of welfare payments and enabling the poor to have bank accounts are worthy objectives, and when achieved should be considered significant. Indeed, it is damning that a largely nationalised banking sector had done very little to extend banking services to the poor till recently, and credit goes to this government that it made this a priority. But claims of having achieved inclusion by operationalising the JAM trinity appear somewhat exaggerated. A financial inclusion, in the sense of everyone having a bank account and access to reliable and free electronic payments system, is not the same as economic inclusion. At its most basic level, inclusion from the economic point of view would entail equal access to opportunities for earning a livelihood. This in turn implies employment opportunities. As the demand for labour is a derived demand, in the sense that it exists only when there is demand for goods and services, a significant element in ensuring inclusion is to maintain, directly or indirectly, the level of demand in the economy. Next, even when the demand for labour exists, potential workers must be endowed with the capabilities to take advantage of the opportunity offered. The potential of the JAM trinity for bringing about either of these conditions for economic inclusion is limited. This is so because JAM functions in the digital space while much of our life is lived in the brick and mortar world. In the latter space we have seen very little improvement, not just recently but since economic reforms were launched over 25 years ago.

The economic reforms of 1991 were largely in the nature of liberalisation of the policy regime, meant to make it easier for firms to produce while at the same time exposing them to international competition with a view to increasing efficiency in the economy. What a strategy based exclusively on liberalisation overlooks is that an ecosystem of production is constituted not only by the laws and regulations determining the ease of doing business, but also the access that firms have to producer services ranging from water supply to waste management. These producer services require large capital outlay, often deterring private firms. When private entities do provide these producers services they tend to be expensive, deterring their off-take. It is for this reason that globally they are generally provided by governments. In India the case for public provision of producer services, and there is no reason to provide them free of charge, is particularly high as the overwhelming part of employment is in the form of self-employment. These units are scraping the barrel as it is. Even when producer units employ workers they are poorly capitalised, making it almost impossible for them to generate producer services themselves. Thus the public provision of producer services should be an essential part of public policy. Empowerment in the brick and mortar space would require public infrastructure on a gigantic scale compared to what we have now.

Moving from production to being, JAM cannot even claim equalisation, leave alone empowerment. Amartya Sen effectively settled a longstanding debate on the question of the metric to be used to gauge equality when he proposed that it should be human capabilities. These are the endowments that allow individuals to undertake functionings they value. We would have achieved a social revolution when we have equipped all individuals with the essential capabilities. This happens when a society has, at a minimum, universal health and education infrastructure accessible to all.

We have in recent weeks witnessed governance failure on a major scale in many parts of the country. In U.P.'s Gorakhpur district children have died due to systemic failure that meant that a district's only hospital is not able to maintain a steady supply of oxygen. Later a heavy downpour in Mumbai led to a complete shutdown, widespread loss of livelihood and some of life. And most recently, in Delhi's suburb of Ghazipur a garbage mountain came crashing down, again causing death and disruption. But we would need to turn to Bengaluru to recognise the limits to information technology in solving problems of living. Lakes that are toxic when they haven't been gobbled up by the real estate mafia, traffic snarls and inadequate sewerage make life less than easy in this IT hub aspiring to play first cousin to Silicon Valley.

Given the extraordinary challenges faced by India in the provision of public infrastructure ranging from health and education to drainage and sewerage, the claim made for JAM is breathtaking in its simplicity. JAM ensures seamless transfer of welfare payments and facilitates the making payments in real time. Once again, these are worthy objectives, but fall well short of the social revolution the honourable minister claims for them. Our social revolution will arrive when all Indians are empowered through an equality of capabilities. This would require committing resources to building the requisite social and physical infrastructure and investing time to govern its functioning. JAM may have achieved equality in the digital space but is far from having empowered Indians in spheres in which they are severely deprived at present, an empowerment that they clearly value. The government has leveraged IT smartly in operationalising JAM but the possibility of replicating this to transform the ecosystem of production for firms and the ecosystem of living for individuals is limited. The widespread disempowerment faced by the people of this country predates the arrival of Narendra Modi, but his government appears to give false comfort through its claims.

In a market economy one of the markers of what the public think of the government's policies is the response of private investors. Private investment in India has declined steadily over the past few years. Overall growth had however been maintained, partly through the demand generating impact of public investment. But now even growth appears to be stalling. The latest GDP figures from the Central Statistics Office show growth in the first quarter of the current financial year to be lower than the average for 2016-17. Data actually point to a steadily slowing economy with growth having been successively lower in the past five quarters. There appears to be a mismatch between the government's own assessment of its policies and the private sector's valuation of their worth. The jubilation over JAM is an instance of this.

Pulapre Balakrishnan is Professor of Economics at Ashoka University, Sonipat and Senior Fellow, IIM Kozhikode. Views are personal

END

West Bengal settles for Bangla as new name

A year after the West Bengal Assembly passed a resolution to change the name of the State, the Mamata Banerjee government was on Friday compelled to have one name for the State after the Centre rejected the earlier proposal of having three names in three different languages.

On August 29, 2016, the Assembly had passed a resolution changing the name of West Bengal to Bengal in English, Bangla in Bengali and Bangal in Hindi.

State's Education Minister and senior Trinamool Congress (TMC) leader Partha Chaterjee told journalists that the issue of change of name was lying with the Centre, which had raised objections about having different names in different languages.

"At the Cabinet meeting held today, it was decided that that the name will be Bangla in all the languages," Mr. Chatterjee said.

While the resolution was being debated in the State Assembly in August 2016, certain members of the Opposition, including Leader of the Left Front Legislature Party Sujan Chakraborty, had said that a State cannot have different names for different languages.

END

All that data that Aadhaar captures

Predictably enough, the recent Supreme Court order affirming that **privacy is a fundamental right** sent Aadhaar's public-relations machine into damage control mode. **After denying the right to privacy for years**, the government promptly changed gear and welcomed the judgment. Ajay Bhushan Pandey, CEO of the Unique Identification Authority of India (UIDAI), **suddenly asserted**, "The Aadhaar Act is based on the premise that privacy is a fundamental right." He also clarified that the judgment would not affect Aadhaar as the required safeguards were already in place.

The fact of the matter is that Aadhaar, in its current form, is a major threat to the fundamental right to privacy. The nature of this threat, however, is poorly understood.

There is a common perception that the main privacy concern with Aadhaar is the confidentiality of the Central Identities Data Repository (CIDR). This is misleading for two reasons. One is that the CIDR is not supposed to be inaccessible. On the contrary, the Aadhaar Act 2016 puts in place a framework for sharing most of the CIDR information. The second reason is that the biggest danger, in any case, lies elsewhere.

To understand this, it helps to distinguish between three different types of private information: biometric information, identity information and personal information. The first two are formally defined in the Aadhaar Act, and protected to some extent. Aadhaar's biggest threat to privacy, however, relates to the third type of information.

In the Aadhaar Act, biometric information essentially refers to photograph, fingerprints and iris scan, though it may also extend to "other biological attributes of an individual" specified by the UIDAI. The term "core biometric information" basically means biometric information minus photograph, but it can be modified once again at the discretion of the UIDAI.

Identity information has a wider scope. It includes biometric information but also a person's Aadhaar number as well as the demographic characteristics that are collected at the time of Aadhaar enrolment, such as name, address, date of birth, phone number, and so on.

The term "personal information" (not used in the Act) can be understood in a broader sense, which includes not only identity information but also other information about a person, for instance where she travels, whom she talks to on the phone, how much she earns, what she buys, her Internet browsing history, and so on.

Coming back to privacy, one obvious concern is the confidentiality of whatever personal information an individual may not wish to be public or accessible to others. The Aadhaar Act puts in place some safeguards in this respect, but they are restricted to biometric and identity information.

The strongest safeguards in the Act relate to core biometric information. That part of the CIDR, where identity information is stored, is supposed to be inaccessible except for the purpose of biometric authentication. There is a view that, in practice, the biometric database is likely to be hacked sooner or later. Be that as it may, the UIDAI can at least be credited with trying to keep it safe, as it is bound to do under the Act.

That does not apply, however, to identity information as a whole. Far from protecting your identity information, the Aadhaar Act puts in place a framework to share it with "requesting entities". The core of this framework lies in Section 8 of the Act, which deals with authentication. Section 8 underwent a radical change when the draft of the Act was revised. In the initial scheme of things,

authentication involved nothing more than a Yes/No response to a query as to whether a person's Aadhaar number matches her fingerprints (or possibly, other biometric or demographic attributes). In the final version of the Act, however, authentication also involves a possible sharing of identity information with the requesting entity. For instance, when you go through Aadhaar-based biometric authentication to buy a SIM card from a telecom company, the company typically gains access to your demographic characteristics from the CIDR. Even biometric information other than core biometric information (which means, as of now, photographs) can be shared with a requesting entity.

Quite likely, this little-noticed change in Section 8 has something to do with a growing realisation of the business opportunities associated with Aadhaar-enabled data harvesting. "Data is the new oil", the latest motto among the champions of Aadhaar, was not part of the early discourse on unique identity — at least not the public discourse.

Section 8, of course, includes some safeguards against possible misuse of identity information. A requesting entity is supposed to use identity information only with your consent, and only for the purpose mentioned in the consent statement. But who reads the fine print of the terms and conditions before ticking or clicking a consent box?

There is another important loophole: the Aadhaar Act includes a blanket exemption from the safeguards applicable to biometric and identity information on "national security" grounds. Considering the elastic nature of the term, this effectively makes identity information accessible to the government without major restrictions.

Having said this, the proliferation and possible misuse of identity information is only one of the privacy concerns associated with Aadhaar, and possibly not the main concern. A bigger danger is that Aadhaar is a tool of unprecedented power for mining and collating personal information. Further, there are few safeguards in the Aadhaar Act against this potential invasion of privacy.

An example may help. Suppose that producing your Aadhaar number (with or without biometric authentication) becomes mandatory for buying a railway ticket — not a far-fetched assumption. With computerised railway counters, this means that the government will have all the details of your railway journeys, from birth onwards. The government can do exactly what it likes with this personal information — the Aadhaar Act gives you no protection, since this is not "identity information".

Further, this is just the tail of the beast. By the same reasoning, if Aadhaar is made mandatory for SIM cards, the government will have access to your lifetime call records, and it will also be able to link your call records with your travel records. The chain, of course, can be extended to other "Aadhaar-enabled" databases accessible to the government — school records, income-tax records, pension records, and so on. Aadhaar enables the government to collect and collate all this personal information with virtually no restrictions.

Thus, Aadhaar is a tool of unprecedented power for the purpose of mining personal information. Nothing in the Aadhaar Act prevents the government from using Aadhaar to link different databases, or from extracting personal information from these databases. Indeed, many State governments (aside from the Central government) are already on the job, under the State Resident Data Hub (SRDH) project, which "integrates all the departmental databases and links them with Aadhaar number", according to the SRDH websites. The Madhya Pradesh website goes further, and projects SRDH as "the single source of truth for the entire state" — nothing less. The door to state surveillance is wide open.

What about private agencies? Their access to multiple databases is more restricted, but some of

them do have access to a fair amount of personal information from their own databases. To illustrate, Reliance Jio is in possession of identity information for more than 100 million Indians, harvested from the CIDR when they authenticate themselves to buy a Jio SIM card. This database, combined with the records of Jio applications (phone calls, messaging, entertainment, online purchases, and more) is a potential gold mine — a dream for “big data” analysts. It is not entirely clear what restrictions the Aadhaar Act imposes, in practice, on the use of this database.

In short, far from being “based on the premise that privacy is a fundamental right”, Aadhaar is the anti-thesis of the right to privacy. Perhaps further safeguards can be put in place, but Aadhaar’s fundamental power as a tool for mining personal information is bound to be hard to restrain. The very foundation of Aadhaar needs to be reconsidered in the light of the Supreme Court judgment.

Jean Drèze is Visiting Professor at the Department of Economics, Ranchi University

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Can’t we work on Saturdays, says CJI

Chief Justice Dipak Misra

Chief Justice of India Dipak Misra has written to the Chief Justices of the High Courts to explore the possibility of constituting special Benches on Saturdays to hear criminal and jail appeals in which legal aid has been provided.

“This will go a long way in ensuring speedy disposal of criminal appeals/jail appeals,” the Chief Justice of India said in the letter.

He pointed out that some of the Chief Justices of the High Courts had already agreed to go ahead with the project from September 9. The High Courts of Orissa, Madhya Pradesh, Patna, Jharkhand and Karnataka had constituted special Benches to hear these appeals on Saturdays, the Supreme Court’s public relations officer, Rakesh Sharma, said. “I am sure you will also join them,” Chief Justice Misra told the Chief Justices of the remaining High Courts.

Huge pendency

In the letter, Chief Justice Misra reminded them that a “large number of criminal and jail appeals are pending”.

“Delay in disposal of these appeals raises questions about the efficacy of the administration of justice as a whole and the criminal justice system in particular,” he wrote.

He said the top judiciary had taken several steps to fast-track the justice justice delivery system, including judges working during vacations.

“May I therefore impress upon you to explore the possibility of hearing such criminal appeals/jail appeals, in which legal aid counsel has been provided on Saturdays by specially constituted Bench after obtaining the consent of the legal aid counsel and State counsel concerned,” Chief Justice Misra said.

This will go a long way in ensuring speedy disposal of criminal appeals and jail appeals

END

Parties call for hybrid electoral system

Two Congress representatives, Rajya Sabha member Vivek Tankha and former Union Minister Mukul Wasnik, argued that “majority aspirations” and the “actual will of the people” is not getting reflected in election results, sources said.

Mr. Tankha told the committee that the first-past-the-post system had worked well in the beginning because there was one-party domination (the Congress winning a plurality of the seats by securing close to a majority of the votes).

The voting percentage was also very high. But now because of a division of votes, a party with even a 20% share does not get a single seat, while a party with a 28% share an get a disproportionately large number of seats.

“Whoever gets elected does not truly represent the majority aspirations. And a true democracy cannot exit without reflection of the majority aspirations,” he reportedly told the Committee.

Mr. Tankha also suggested a dual system where separate votes for a candidate and a party could be considered. This system is followed by various European countries.

He argued that the proportional representation can be devised in different ways.

Echoing the argument, sources said Mr. Wasnik also said there was a need to devise a system which will ensure that the will of the people is reflected in a proper manner.

Parties excluded

From the CPI(M), Polit Bureau member S. Ramachandran Pillai pointed out that in the 2009 elections, the BJP had 18.1% votes but 116 seats in the Lok Sabha. While, in the previous elections, the Congress got 19.35% votes but only 44 seats. Parties together polling almost 50% of the votes were totally excluded. This fact has been repeatedly flagged by CPI(M) general secretary Sitaram Yechury.

Mr. Pillai suggested that recommendations of the Law Commission’s 170th and 255th report should be implemented. A mix of both first-past-the-post and proportional representation should be tried. Both the reports had suggested that 25% or 136 more seats should be added to the Lok Sabha and be filled by proportional representation.

K. Narayana from the CPI said no ruling party had ever got 51% of the votes polled.

END

State on the other side

Supreme Court

Human rights activists often advance the claim that government is an anti-liberal establishment. During a discussion on individual liberty and state intrusion, a friend raised a counter-question: Why is the government always perceived as an institution resisting individual rights? His point was that government, after all, is a community of individuals who constitute it.

In India, however, the current trends would indicate that state seems to take an increasingly apathetic stand on fundamental rights issues in legal adjudication. Three recent examples are instructive.

On the question of criminalisation of marital rape, the **Centre made several regressive arguments** before the Delhi High Court. It was argued that what might appear to be marital rape to an individual wife might not appear so to others. With this argument, the government sought to make a distinction between marital rape and other kinds of rape. However, the fact that the offence is committed in a marital union does not change the character or the nature of the offence. Only non-consensual sexual acts will qualify as rape and not all sexual acts. It is consent that reverses the equation.

The second claim was that penalising marital rape would **destabilise the institution of marriage**. Now, whatever the benefits of collective institutions are, the value of individual liberty ought to triumph them. Individuals are the ultimate bearers of rights and duties in a constitutional system. They are the morally significant units in a liberal democracy and the political authority of the state is always constrained by them.

The Supreme Court is currently examining the legality of an unusual judgment passed by the Kerala High Court of nullifying the marriage of a 24-year-old girl called Akhila/Hadiya. In the high court, Akhila's parents, who were the petitioners, argued that their daughter had been subject to indoctrination and forced conversion to Islam and that she was unable to take an independent decision in the matter. The marriage of their daughter, they submitted, was bogus and void.

On Kerala conversion case: Choice & conversion

Quite controversially, without any proper medical examination or other authentic evidence, the government argued that Akhila was unable to make an informed decision about her own life. The basic assumption that certain adults are incapable of making decisions about their own life offends individual freedom. It is important to respect the fact that individuals can also make wrong decisions. It is quite crucial that adults are able to think freely and the state is bound to protect and preserve their capacity to do so. Only when the state system ensures individual self-governance can collective democratic self-governance be meaningfully exercised. Even further, it is correctly argued by scholars that the legitimacy of the state is heavily dependent on its respect for individual autonomy.

The **Supreme Court verdict on privacy** was certainly momentous in Indian constitutional law. However, the stand of the Central government regarding the right to privacy was not impressive. The then Attorney General argued that privacy does not enjoy the status of a fundamental right under the Constitution. By relying on two earlier decisions of the Supreme Court, it was asserted that "Indians could claim no constitutional right of privacy".

Though the arguments are less bizarre than the first two cases, this claim is vulnerable. To put it

simply, constitutions are not to be read like commercial contracts. Constitutions talk about rights in an abstract language and the Indian Constitution is no exception. Article 21 merely states about non-deprivation of life or personal liberty. What constitutes personal liberty, for instance, is a matter of constitutional interpretation and context. Merely because a right is not expressly conferred by the Constitution, it does not cease to exist. Many unwritten rights are, after all, manifestations of written provisions.

It might be argued that these are three dissimilar incidents. But the fact remains that in such prime issues of debate, the stand taken by the executive has far-reaching repercussions on politics and law. The current pattern of governmental approach to rights shows opposition to individual rights. Perhaps, one cannot expect an executive that is politically averse to personal liberty to be a strong defender of constitutional rights in law courts.

Thulasi K. Raj is a lawyer at the Kerala High Court

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

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The resilience of our liberalism: on the right to privacy

Anchored in constitutional scholarship, history and international law, the celebrated privacy judgment (*K.S. Puttaswamy*, 2017) attests to the resilience of our dignitarian liberalism. The **unanimous judgment of nine distinguished judges**, who held that privacy is integral to human dignity and not a constitutional largesse to be withdrawn at will by the state, elevates privacy to the pinnacle in the hierarchy of human rights.

“Privacy”, said the court, “ensures the fulfillment of dignity and is a core value which the protection of life and liberty is intended to achieve”. The court explained that “privacy with its attendant values assures dignity to the individual, and it is only when life can be enjoyed with dignity can liberty be of true substance” (per Justice Chandrachud). In reaffirming the coalescence of fundamental rights to life and liberty guaranteed under Articles 14, 19 and 21 following the Constitution Bench judgments in *Cooper* (1970) and *Maneka Gandhi* (1978), the court echoed the philosophical wisdom of Justice Krishna Iyer articulated years ago that “cardinal rights in an organic Constitution which makes man ‘human’, have a synthesis”.

The lowdown on the right to privacy

While finding its earlier decision in *ADM Jabalpur* a constitutional aberration, the judges emphasised that “the interpretation of the Constitution cannot be frozen by its original understanding”, reminiscent of Judge Cardozo’s celebrated statement long ago that the Constitution does not embody “rules for the passing hour but principles for an expanding future”. Expounding the philosophy of constitutionalism as a bulwark against the impulses of transient majorities, the court ruled that constitutional rights owed no apology to majoritarian opinion and thus fettered the legislative and executive infraction of these rights.

Will the compelling logic of the judgment spur meaningful executive and legislative action to redeem its promise, is the question. In particular, the state’s response to queer rights, the right of choice in matters relating to food, health, reproduction and data disclosure, etc. will define the contours of privacy rights. Hopefully, citizens will not be driven to fight endless judicial battles to take what is inherently theirs. As part of meaningful follow-up measures, the government should move forward on the report of the Group of Experts under the chairmanship of Justice A.P. Shah (2012) suggesting a model privacy law referred to by Justice S.K. Kaul in his concurring judgment. The report, which recommended nine fundamental principles as the basis of the proposed privacy law, could be reviewed in the framework of the Puttaswamy decision and can provide credible basis for a comprehensive legal architecture to secure privacy rights. The unsung hero in the battle for privacy is Rama Jois, a former judge of Karnataka High Court and member of Rajya Sabha who persistently raised the issue of privacy in relation to Aadhaar. As the then Minister of State for Planning, this writer had to deal with the issue. A resultant offshoot was the constitution by the Planning Commission of an expert group headed by Justice Shah to propose a model privacy law.

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

In the context of privacy debate, it is necessary to ask whether it was at all necessary to convert the legal challenge to Aadhaar into a privacy or an Aadhaar debate when post *Cooper* (1970), *Maneka Gandhi* (1978) and a series of subsequent Supreme Court judgments, the right to privacy stood entrenched in our constitutional jurisprudence as part of the fundamental right to dignity. What is disappointing is that even after the judgment, the Union Law Minister, himself a distinguished lawyer, has chosen to argue in public rather inelegantly that the judgment does not reject the government’s argument on privacy, even as the then Attorney General, who originally

argued on behalf of the government that privacy was not a fundamental right, has rightly conceded that the government lost its case in court.

A less noticed but significant feature of the privacy ruling is a disclaimer of judicial power to introduce new constitutional rights in the exercise of the court's judicial review jurisdiction. Some constitutional scholars have hastened to view the verdict as making the Supreme Court a "co-governor" of the nation (Upendra Baxi, *Indian Express,* August 30). Unambiguously dispelling such a notion, the court held that "the exercise has been one of interpreting existing rights guaranteed by the Constitution" and "while understanding the core of those rights to determine the ambit of what the right comprehends". It has thus adopted a vocabulary of constitutional discourse that navigates the extremes through self-restraint and has earned a general acceptance of its role as an independent custodian of the constitutional principle. In choosing to remain "within the banks", judges, wiser by experience and disciplined by law, have guarded against encroaching beyond judicial bounds, thereby ensuring a diffusion of constitutional power "in a system of inter-branch equality". The historic verdict which affirms that the idea of human dignity includes the right to be let alone, the equality of human beings and the freedom to will is a sublime oration on human dignity and a vindication of the nation's liberal conscience. It is up to us to live the judgment, to keep faith with the spirit of our age in which the idea of human rights and their preservation as the raison d'etre of the state has received universal acceptance.

Ashwani Kumar, a Senior Advocate in the Supreme Court, is a former Union Minister for Law and Justice. The views expressed are personal

An earlier version of this article referred Justice Rama Jois as the late Rama Jois. The error is regretted.

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

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Combating Corruption

V.Srinivas

India's fight against corruption is led by a robust and time tested institutional and legislative framework including the Prevention of Corruption Act, an independent Central Vigilance Commission, the Comptroller and Auditor General, the Judges (Inquiry) Act, the Lok Pal and Lok Ayukta Act 2013, Whistle Blowers Protection Act 2011, Prevention of Money /Laundering Act, Benami Transactions (Prohibition) Act which cover a number of areas of criminalization and bribery. All civil servants are mandatorily required to declare their assets on an annual basis. The Elected Representatives are required to declare their assets every election cycle.

India's "*zero tolerance to corruption*" approach, as well as "*minimum government and maximum governance*" approach resulted in simplification of the governance model in recent years. Some of the steps included abolition of the system of attestation/ authentication by Government servants for submission of certificates, abolition of personal interviews for recruitments to lower level posts and weeding out inefficient public servants and those of doubtful integrity above the age of 50 years, prematurely. Further the Government demonetized high value currency to eliminate black money and corruption. A special investigation team was constituted to fight black money. Government also conducted online auctions of coal blocks. Government sought international cooperation in G-20 meetings on ending tax havens in Europe and other countries. In bilateral meetings with Swiss authorities India has said combating the menace of black money and tax evasion was a "shared priority" for both the countries.

In a recent visit to Jharkhand, the Prime Minister gave away a few smart phones to *sakhi mandals* (self help groups) in Jharkhand and said he was surprised by the answers he got from the villagers about the usages of smart phones. India's focus on "*making government smarter*" has been at the forefront of the Nation's Fight against Corruption. The same quantum of subsidy could benefit could be far more efficiently spent by a "*Smarter Governance Model*" than in a manual system.

The Jan Dhan Yojana provided universal and clear access to banking accounts with overdraft facility. In 2016, the Aadhar Act was promulgated to ensure targeted delivery of financial and other subsidies, benefits and services. The Act provided for an efficient, transparent and targeted delivery of subsidies to individuals, through assigning aadhar identification numbers. The third major step

initiated by the Government was the introduction of BHIM (Bharat Interface for Money) which is a mobile application developed by National Payments Corporation of India. The BHIM application facilitates e-payments directly through banks and can be used on all mobile devices. Collectively the Jan Dhan Yojana–the Aadhar Act and the BHIM Application have provided for a *smart government* where subsidy flows reach the beneficiary in a timely and effective manner.

The Government has sought to promote preventive vigilance through the Central Vigilance Commission. Several preventive vigilance measures have been introduced by the CVC. Measures like Government E-Market (GEM) have helped improve the accountability and integrity in public procurement. The Commission has sought to promote ethics through education of students and youth, observance of vigilance awareness weeks, process simplification to reduce discretion and interface with public servants, focus on training and skill development and awarding exemplary punishment in all cases of proven misconduct to create deterrence. The CVC has sought to create a people's movement against corruption through an e-pledge to be voluntarily taken by the citizens and organizations.

Further the Government has sought to strengthen the auditing and accounting processes. Some of the big changes introduced in financial governance are amalgamation of the Railways and General budgets, the merger of plan and non-plan expenditures, opening up of a number of sectors for foreign direct investment and the introduction of Goods and Services Tax. Looking at the enormity of the flow of funds to urban and rural local bodies, the C& AG has identified their audit as a critical area. The C& AG has also focused on the large volumes of digital information emerging from increasing automation of tax filing, assessment and recovery procedures.

There have been significant efforts made to promote transparency in Government. The Right to Information (RTI) Act is a rights based law that has created a durable stake for citizens in the administration of the Nation. The RTI Act has led to improvements in governance. By sharing information, the citizens have become part of the decision making process, which leads to creation of trust between citizens and Government. The Prevention of Corruption Act is an Act to consolidate the law relating to the prevention of corruption. The law provides for punishments for taking gratification other than legal remuneration in respect of official acts. The investigative powers have been given to the CBI and State Police Authorities. Government has said that accountability standards for public servants have to be kept at realistic levels so that officers do not hesitate in taking honest decisions.

In order to give statutory protection to whistle blowers in the country, Government made amendments to the Whistle Blowers Act in 2015. The amendments addressed concerns relating to national security and strengthened the safeguards against disclosures, which may prejudicially affect the sovereignty and integrity of the country. Further the Benami Transactions (Prohibition) Act, 1988 was amended to empower the Income Tax authorities to attach and confiscate benami properties. Besides, if a person is found guilty of offence of benami transaction by the competent court, he shall be punishable with rigorous imprisonment and shall also be liable to fine. Several benami transactions have been identified since the coming into effect of the amended law.

To conclude, it may be said that India continues the Fight against Corruption and Black Money. These efforts led by the focus on smart governance are yielding positive results.

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**V.Srinivas is an IAS officer of 1989 batch, and is currently posted as Chairman Rajasthan Tax Board with additional charge of Chairman Board of Revenue for Rajasthan.*

Views expressed in the article are authors'personal.

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Cabinet approves introduction of the Payment of Gratuity (Amendment) Bill, 2017 in the Parliament

Cabinet approves introduction of the Payment of Gratuity (Amendment) Bill, 2017 in the Parliament

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi has given its approval for introduction of the Payment of Gratuity (Amendment) Bill, 2017 in the Parliament.

The Amendment will increase the maximum limit of gratuity of employees, in the private sector and in Public Sector Undertakings/ Autonomous Organizations under Government who are not covered under CCS (Pension) Rules, at par with Central Government employees.

Background:

The Payment of Gratuity Act, 1972 applies to establishments employing 10 or more persons. The main purpose for enacting this Act is to provide social security to workmen after retirement, whether retirement is a result of the rules of superannuation, or physical disablement or impairment of vital part of the body. Therefore, the Payment of Gratuity Act, 1972 is an important social security legislation to wage earning population in industries, factories and establishments.

The present upper ceiling on gratuity amount under the Act is Rs. 10 Lakh. The provisions for Central Government employees under Central Civil Services (Pension) Rules, 1972 with regard to gratuity are also similar. Before implementation of 7th Central Pay Commission, the ceiling under CCS (Pension) Rules, 1972 was Rs. 10 Lakh. However, with implementation of 7th Central Pay Commission, in case of Government servants, the ceiling now is Rs. 20 Lakhs effective from 1.1.2016.

Therefore, considering the inflation and wage increase even in case of employees engaged in private sector, the Government is of the view that the entitlement of gratuity should be revised for employees who are covered under the Payment of Gratuity Act, 1972. Accordingly, the Government initiated the process for amendment to Payment of Gratuity Act, 1972.

AKT/VBA/SH

END

Chakmas to be made citizens

Pema Khandu

As the Union government remains undecided on the procedure to deport the Rohingya, it is all set to give citizenship to over one lakh Chakma-Hajongs, Buddhists and Hindus who fled to India in the 1960s to escape religious persecution in the Chittagong Hill area of Bangladesh (undivided Pakistan then).

Home Minister Rajnath Singh will chair a meeting on Wednesday where a final decision to grant citizenship to the Chakma-Hajongs will be taken.

Arunachal Pradesh Chief Minister Pema Khandu will be present at the meeting.

A senior Home Ministry official said they would be granted citizenship but will not have any land ownership rights in Arunachal Pradesh, a predominantly tribal State. The Arunachalis have opposed giving any rights to Chakma-Hajongs.

“They would be free to buy land anywhere else in India but not in Arunachal Pradesh. They could continue to live in the transit camps where they have been housed since 1964-65,” the official said.

Rajnath’s view

On Tuesday, while responding to a question regarding deportation of Rohingya, Mr. Singh told a press conference in Jammu, “We have plans for illegal immigrants and some action will be taken soon.” “They are illegal immigrants and we are not ruling out the possibility of a security threat. Wait and watch,” he added.

The Home Ministry official said they were yet to formalise a procedure for deportation.

“Any procedure on deportation of Rohingya will be an extrapolation of the existing policy on Bangladesh. First step is to identify them as most of them claim they are Indians. The number of Rohingya living in India is an estimate by the intelligence agencies,” said the official.

The official said identifying an undocumented citizen was a long process.

“The police will have to enquire if the person is not an Indian citizen. Then he or she will be declared a foreigner. A foreigner not having a document is an illegal immigrant. A communication will be sent to Myanmar to verify their address. Deporting them will be the last step and the process has not been finalised yet,” he said.

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Corrupt MPs, MLAs return to power: SC

MLAs and MPs who face investigation for possessing wealth disproportionate to their known sources of income, always tend to bounce back to power. This is a phenomenon seen in the past 25 to 30 years, the Supreme Court observed on Tuesday.

The hearing, on a petition filed by Lok Prahari seeking a mechanism to investigate the source of income of politicians, saw the Centre give details of a probe into the assets of 26 Lok Sabha members, two Rajya Sabha members and 215 MLAs in a sealed cover.

A Bench of Justices J. Chelameswar and S. Abdul Nazeer asked if this phenomenon of returning to power, coupled with the mercurial rise in the assets of politicians just within a span of five years between two successive elections, was a product of ineffective investigation or of some “immunity” provided to them.

“If an MLA’s or MP’s assets have seen a 10X [10 times] rise in 2019 from what he revealed in 2014 should you not conduct an inquiry into the very propriety of a person holding public office enjoying such phenomenal rise in his assets ... The moment a candidate has shown 1,000% increase in his income in the past five years, please have a mechanism to conduct an enquiry,” Justice Chelameswar addressed the government.

“Income under each head should be probed. All these should be inquired. The public needs an answer. The people should get to know the state of affairs. It is not enough that a legislator discloses a legitimate source of income. It is important to inquire that how did the person get in that position to earn that income.”

‘Notify Fast-track courts’

The Bench observed the government should notify special fast-track criminal courts to try MPs and MLAs in corruption cases. Attorney-General K.K. Venugopal responded that prompt criminal action for disproportionate assets is taken whenever the source of income of an MLA or MP is found bogus.

“Law enforcement agencies take action. Perhaps they would straight away, even without a preliminary enquiry, register an FIR...,” the Attorney-General submitted. Scoffing at this assurance, Justice Chelameswar said “in the past 25 to 30 years, we have seen investigative agencies take no action against such MLAs and MPs.”

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Special Feature – Hindi Day, September 14th

Hindi beyond Official Language status

***PRIYADARSHI DUTTA**

September 14 is observed as the Hindi Day. It was on this date in 1949 that the Constituent Assembly adopted Hindi in Devanagari script as the official language of the Indian union after a long and animated debate. Part XVII of the Constitution comprising Articles 343 to 351 deals with the subject. The Article 343 (1) declares the official language of the Union shall be Hindi in Devanagri script. But a reading of the Articles 343 (2) onwards reveal what a difficult and complicated terrain the official language issue had to navigate in a multi-lingual nation like India with its government institutions dominated by laws, rules and regulations set down in English.

It can at best be described as a compromise. All proceedings of the Supreme Court, High Courts, authoritative texts of all Bills and Acts introduced or passed in Parliament of state assemblies, all orders/rules/laws and regulations passed under the Constitution have to be in English (as in colonial India). Until the passage of the Constitution (Fifty Eighth) Amendment Act on February 17, 1987 no updated version of the Constitution (containing the amendments) could be issued in Hindi containing the amendments. For various reasons the performance of Hindi as an official language is far from satisfactory. That is why Hindi is no way in sight of replacing English in government even after 70 years. Our Constitution makers had allotted merely 15 years for this task.

The concept of official language (Raj Bhasha) pertains to various organs of the state viz. legislature, executive, judiciary and armed forces etc. However, the nation is larger than its government institutions. The mass mobilization that Mahatma Gandhi initiated in India happened outside institutions. His Non-Cooperation movement or opposition to Congress participating in elections under the Government of India Act, 1919 reveal his disapproval to the nation being dependent on its institutions. Gandhi was aware of the gulf between the state apparatus in colonial India and her teeming millions. He wanted to address the Indian nation rather than India, the state. One of the ways Gandhi did it was to use the language of the masses rather than English.

The language question was an integral part of Gandhi's *Swadeshi* campaign. He understood that people could be involved in the mission for *Swaraj* only through their languages. Therefore after his return from South Africa in 1915, Gandhi insisted on greater usage of Hindi (and other regional languages). His article in *Pratap* (Hindi) on May 28, 1917 advocated recognizing Hindi as the national language.

Therein he stated that most Indians, who knew neither Hindi nor English, would find the

former easier to learn. He said that it was only on account of cowardice that Indians had not started conducting their national business in Hindi. If Indians shed that cowardice, and cultivate faith in Hindi, then even the work of national and provincial councils could be conducted in that language.

It was in this article that Gandhi first mooted the idea of sending Hindi missionaries in south India. His idea crystallized in the form of Dakshina Bharat Hindi Prachar Sabha established in 1923. Gandhi's long speech at 2nd Gujarat Educational Conference at Bharuch on October 20, 1917 is considered a classic. Therein he paid tributes to the pioneering efforts of Swami Dayanand Saraswati in popularizing Hindi.

Swami Dayanand (1824-1883), like Gandhi, hailed from Gujarat. He used Sanskrit as the medium of religious disputation and preaching. He never bothered to learn Hindi even while spending decades in the Himalayas and northern India. But in 1873, while visiting Calcutta, he came across Keshub Chunder Sen of Brahmo Samaj. Sen advised him to use Hindi instead of Sanskrit to increase his reach amongst the masses. Interestingly neither Swami Dayanand nor Keshub Chunder Sen were native Hindi speakers. He heeded to the friendly advice and mastered Hindi thoroughly in a short time. He wrote his magnum opus *Satyarth Prakash* (1875) in Hindi. The Arya Samaj founded by him acted as a powerful agency to popularize Hindi.

Thus Gandhi took up the baton for Hindi where Swami Dayanand had left it. Whereas Dayanand's mission was religious, Gandhi's was national. Gandhi viewed Hindi as tool to 'de-colonize' the Indian mind. His mission to popularize Hindi found many takers in southern India.

G. Durgabai (1909-1981), who later became a member of Constituent Assembly, ran a popular Balika Hindi Pathshala at Kakinanda (Andhra Pradesh) as a teenage girl. The Balika Hindi Pathshala was visited by C.R. Das, Kasturba Gandhi, Maulana Shaukat Ali, Jamnalal Baja and C.F. Andrews. They could hardly believe that the Pathshala which imparted knowledge of Hindi to few hundred women was run by a teenager.

But the situation regarding Hindi had changed in south India by the time same Durgabai reached the Constituent Assembly. She felt that zealous propaganda in favour of Hindi by native Hindi speakers alienated others. What the volunteers had achieved, misguided zealots threatened to undo. Thus she says in her speech on September 14, 1949, "I am shocked to see this agitation against that enthusiasm of ours with which we took to Hindi in the early years of this century…….Sir, this overdone and misused propaganda on their part is responsible and would be responsible for losing the support of people who know and who are supporters on Hindi like me".

The dilemma captured by G. Durgabati in her speech has not lost relevance after 70 years. Non-Hindi speakers would be more amenable to Hindi through voluntary efforts rather than enforcing the legal status of the language. An increased literary and cultural interaction between Hindi and other Indian languages would help the cause of Hindi. Prime Minister's Narendra Modi's charisma has helped Hindi in an unobtrusive fashion. The aim would be to reach maximum people in a language they can understand.

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**The writer is an independent researcher and columnist based in New Delhi.*

Views expressed in the article are his personal.

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Plea against NOTA not valid, says EC

The Election Commission has told the Supreme Court that a plea by a Gujarat Congress leader challenging the use of None of the Above (NOTA) option in the Rajya Sabha polls in the State is not maintainable.

Seeking dismissal of the plea filed by Congress chief whip in the Gujarat Assembly Shailesh Manubhai Parmar, the EC said that from January 2014, biennial elections to the Rajya Sabha have been held in many States and the NOTA option has been given since then.

“It is submitted at the outset that the present writ petition is not maintainable before this court as the contents of the said writ petition do not disclose the violation of any fundamental right of the petitioner or any other person for that matter,” the EC said in its affidavit.

The poll panel also said the petition was an “abuse of the process of law and a waste of precious judicial time of this court.”

The top court had on August 3 agreed to examine the constitutional validity of the NOTA provision in the Rajya Sabha polls saying the issue needed to be debated.

Mr. Parmar had filed the plea in the apex court against the use of NOTA option in the Rajya Sabha polls in the State in which the Congress had fielded senior leader Ahmed Patel as a candidate.

“From January 2014, biennial elections to Rajya Sabha have been held in 2014, 2015, 2016 and 2017 covering all states and 25 by-elections to Rajya Sabha have also been held. It is pertinent to point out herein that the NOTA option was a part of every Rajya Sabha elections held since 2014,” the EC affidavit said.

Constitutional provisions

It referred to the constitutional provisions and said that any election to the Rajya Sabha can only be called into question by way of an election petition only.

“The provisions of NOTA in the ballot papers for the elections to the council of states has been made by the EC to effectuate this right of electors guaranteed to them under the said section 79(A) of the Representation of the People Act, 1951,” the commission said.

END

Chakma-Hajong issue still open

Kiren Rijiju

Union Minister of State for Home Kiren Rijiju said here on Wednesday that as per the Supreme Court's order, the government would grant citizenship to over one lakh Chakma-Hajongs, Buddhists and Hindu refugees who came to India from the Chittagong Hill Area in undivided Pakistan in the 1960s.

However, Home Ministry spokesperson Ashok Prasad said the "matter is still under consideration".

Mr. Rijiju told *The Hindu* that as per the constitutional provisions and various regulations, the Chakma-Hajongs "cannot be equated with the indigenous people of Arunachal Pradesh". He blamed the Congress for committing a historical mistake.

The Chakma-Hajong refugee issue was discussed threadbare at a high-level meeting convened by Union Home Minister Rajnath Singh and attended by Arunachal Pradesh Chief Minister Pema Khandu, National Security Adviser Ajit Doval and Mr. Rijiju.

Addressing presspersons after the hour-long meeting, Mr. Rijiju said a "middle ground" would be chosen so the 2015 Supreme Court order to grant citizenship could be honoured and the rights of the local population would not be diluted.

"The Supreme Court order has to be honoured. Chakmas are settled in Arunachal Pradesh since 1964. But ST status and indigenous people's rights won't be diluted," he said.

Several organisations and the civil society in Arunachal Pradesh have been opposing citizenship to the Chakma and Hajong refugees saying it would change the demography of the State.

Workable solution

The Central government is trying to find a workable solution by proposing that the refugees will not be given rights, including land ownership, enjoyed by the Scheduled Tribes in Arunachal Pradesh, an official said.

However, they may be given Inner Line permits required for non-local people in Arunachal Pradesh to travel and work. "We are trying to find a middle ground so that the Supreme Court order is honoured, the local people's rights are not infringed and the human rights of the Chakmas and Hajongs are protected," he said.

The Minister said they have to file a reply on the issue in Supreme Court soon.

Chakmas and Hajongs were originally residents of the Chittagong Hill Tracts in erstwhile East Pakistan who left their homeland when it was submerged by the Kaptai dam project in the 1960s. The Chakmas, who are Buddhists, and Hajongs, who are Hindus, also allegedly faced religious persecution and entered India through the then Lushai Hills district of Assam (now Mizoram).

END

Can skirmishes in Manipur halt peace talks?

This is about how a small skirmish could impact bigger events. An indication of it came earlier this week in Manipur, where the very act of resolving one conflict can escalate others. The skirmish involves National Socialist Council of Nagalim (Isak-Muivah), which is conducting rocky negotiations with the government of India to convert a long ceasefire to permanent peace.

NSCN (I-M), which claims to speak for all Nagas—in Nagaland, and Naga homelands in Manipur, Arunachal Pradesh and Assam—has for long been seen by most Nagas as a group with the keenest interest in Manipur. Most of its key leaders and large proportions of its cadres are from there, in particular the northern district of Ukhrul, home of the Tangkhul tribe.

On the morning of 12 September, NSCN (I-M) killed five members of a coalition of Manipuri rebels allied to its arch rivals, NSCN's Khaplang faction. The coalition is loosely called CorCom, or Coordination Committee, and includes a half dozen groups of Meitei rebels—Meitei have their homeland in Manipur's Imphal Valley. They have for long accused NSCN (I-M) of driving a violent wedge between the plains and hills, engineering a de facto break-up of Manipur through areas of ethnic influence.

Three of those killed in the skirmish are reportedly of the People's Liberation Army, an influential Meitei rebel arm. But significantly, two others are believed to be Tangkhul tribesmen of a group widely regarded as being birthed by Meitei groups, the Manipur Naga People's Front.

As significantly, the incident took place in Kamjong district, which was in December last year carved out of Ukhrul district in a blatant bid by the state government to rein in NSCN (I-M). Seven such new districts were added to the existing nine. Of these, four were earlier part of the Naga-majority districts of Ukhrul, Senapati, Tamenglong and Chandel. Taken together, this hived off non-Naga areas, and leveraged disquiet that some Naga tribes and even some Tangkhul clans, such as in the 'southern' Tangkhul region of Kamjong—have towards domineering NSCN (I-M), and by extension the 'northern' Tangkhul.

If this seems confounding, that's because it is, but buried in this event is a series of implications that will impact peace talks with NSCN (I-M).

One is of course the mission creep that has led NSCN (I-M)'s enemies among Manipur's rebel groups to mount an attack on an area the former considers its turf. In any case, Kamjong is too close to Ukhrul for it to take such an incursion without immediate and violent reprisal. Besides loss of face, not doing so would encourage more such incursions—blessed by the Khaplang faction and also by the members of CorCom which have for decades smarted against NSCN (I-M)'s stranglehold on much of Manipur.

The second factor is that NSCN (I-M) cannot be seen to be weak, not when it could affect its negotiating position with the Indian government.

India's security establishment could sit back and let a bunch of rival rebel groups kill each other off, but the downside—and there are several—could be a surge in bloodletting that in a worst case could jump from rebel warfare to killing of non-combatants purely on the basis of ethnicity. This could set off a firestorm in ethnically fragile Manipur (which now has a Bharatiya Janata Party-led government).

Indeed, more such skirmishing could even lead, in another worst-case, to hardliners of NSCN (I-M) pulling out of peace talks to maintain status quo that permits them weapons, recruitment and,

for all practical purpose, a parallel administration across much of the Naga homelands. Assume the peace deal goes through. What security will former NSCN (I-M) leaders and cadres enjoy in Manipur—or Tangkhul homelands, for that matter—without the clout of weapons they now have, with which they purvey both fear and favour to fund the group? Their enemies will descend on them, attempt to exact revenge.

There is a push to hammer out the peace deal by December this year, well in time to make a big impact on elections to Nagaland's assembly due by March 2018. The biggest gainer in that case will likely be the Bharatiya Janata Party, which expects to substantially increase its seat count from the current four in the 60-member assembly. It will place the party in a better position to influence government formation in what is generally accepted will be a hung assembly.

I shall share more on that political flux in future columns, but meanwhile, there's this matter of war before peace.

Sudeep Chakravarti's books include Clear.Hold.Build: Hard Lessons of Business and Human Rights in India, Red Sun: Travels in Naxalite Country *and* Highway 39: Journeys through a Fractured Land. *This column, which focuses on conflict situations and the convergence of businesses and human rights, runs on Thursdays.*

Respond to this column at rootcause@livemint.com

END

How to make Indian courts more efficient

The Indian judicial system has a pendency problem. This is known—a staple of every governance reform and economic growth debate. That makes the news that lower courts in Kerala, Punjab, Himachal Pradesh, Haryana, and Chandigarh have disposed of almost all cases that had been pending for a decade or more as welcome as it is surprising. Today, there are only a total of 11,000 cases pending for over 10 years in these four states and the Union territory of Chandigarh. This is impressive given that the national pendency count is pegged at around 2.3 million cases. Delhi, Assam, Andhra Pradesh, Madhya Pradesh, and Karnataka are also close to clearing out long-pending cases.

These figures are only for the lower courts but there are still valuable lessons to be learnt—especially since the lower courts are where most cases get stuck. Take, for example, the high court of Punjab and Haryana which has jurisdiction over the lower courts of Punjab, Haryana and Chandigarh. Almost a decade ago, it set up a case management system—i.e. a mechanism to monitor every case from filing to disposal. It also began to categorize writ petitions based on their urgency. In addition, it set annual targets and action plans for judicial officers to dispose of old cases, and began a quarterly performance review to ensure that cases were not disposed of with undue haste. All these measures ushered in a degree of transparency and accountability in the system, the results of which are now apparent.

There is also a less obvious lesson to be learnt when it comes to reducing pendency—one that seems counter-intuitive. The accepted wisdom is that courts struggle to keep up because there aren’t enough judges. But this might not be entirely true given that some courts are clearly managing to perform better in the same conditions. A study by data journalism website *IndiaSpend* has found no strong direct correlation between judicial vacancies and the performance of a court. The study looked at the lower courts in Tamil Nadu and found that while all courts had missing judges, there was still significant variation in their performances. For example, while a civil case anywhere in the state takes on an average about 2.95 years to be resolved, in the district of Ariyalur, it takes an average of 4.65 years. Similarly, while Chennai’s lower courts dispose criminal cases the quickest, Coimbatore’s lower courts are the slowest.

This is not to suggest that the large number of judicial vacancies isn’t a problem. But there are other effective ways to address the problem as well.

Judicial case management is one important measure. Here, the court sets a timetable for the case and the judge actively monitors progress. This marks a fundamental shift in the management of cases—the responsibility for which moves from the litigants and their lawyers to the court. While some legal experts, such as the former chief justice of Australia, Sir Gerard Brennan, have argued that judges should stick to judicial matters and leave administrative issues to other court officials and staff, others such as Lord Woolf of the UK—who worked extensively on reforming the civil justice system in England and Wales—believe that the two functions cannot be viewed separately.

The Law Commission of India in its 230th report has also offered a long list of measures to deal with the pendency of cases. These include providing strict guidelines for the grant of adjournments, curtailing vacation time in the higher judiciary, reducing the time for oral arguments unless the case involves a complicated question of law, and framing clear and decisive judgements to avoid further litigation. In addition, the courts should also seriously consider incorporating technology into the system; digitizing courts records has been a good start in this context but a lot more can be done. For example, just like automation powered by Artificial Intelligence is already helping doctors, it can also be leveraged to assist judges and lawyers.

Earlier this month, a special court sentenced gangster Abu Salem and others for the 1993 Mumbai bomb blasts. It took nearly 25 years for the Indian state to convict and sentence at least some of those who had perpetrated one of the bloodiest acts of terrorism on Indian soil. Justice delayed this much is justice compromised. That is the truth underscored by the Indian judicial system's sclerotic nature. Citizens are poorly served by the state twice over: once when their access to the law exists more in name than in fact, and the second time when they are deprived of the benefits of economic growth that has been hamstrung by clogged courts. The lower courts in states like Kerala and Punjab have shown that this need not be the case.

How do you think the Indian judicial system can be made more efficient? Tell us at views@livemint.com

END

Pay relief in cases of unnatural jail death: SC

The Supreme Court on Friday directed the Chief Justices of all High Courts to register petitions *suo motu* to identify the kin of prisoners who died unnatural deaths from 2012 and order the States to award them compensation.

“It is important for the Centre and the State governments to realise that persons who suffer an unnatural death in a prison are also victims — sometimes of a crime and sometimes of negligence and apathy or both. There is no reason at all to exclude their kin from receiving compensation only because the victim is a criminal,” a Bench of Justices Madan B. Lokur and Dipak Gupta observed.

Normally, the National and State Human Rights Commissions award compensations in cases of custodial torture and deaths. However, compliance by State governments is low as these commissions do not exercise any power of contempt.

Besides, the States go for a long-drawn appeal in the High Courts and later on in the Supreme Court, if necessary.

HCs in charge

Friday’s judgment is significant as the High Court will now directly award compensation and ensure compliance by the States.

The Supreme Court referred to its judgment as a voice of the victims and an end to the silence of the dead.

The court said though laws had been made for payment of compensation to victims of crime, those in power had turned their back on the families of prisoners who had died unnatural deaths in custody. Human rights in a welfare state is not dependent on the status of the person – whether he is a criminal or a victim.

“It will be appreciated that merely because a person is accused of a crime or is the perpetrator of a crime and in prison custody, that person could nevertheless be a victim of an unnatural death. Hence the need to compensate the next of kin,” Justice Lokur, who authored the 43-page verdict, wrote.

The payment from the year 2012 was chosen because National Crime Records Bureau has records of unnatural deaths only from that year. The judgment came on a letter addressed to the apex court in 2013 by its former Chief Justice R.C. Lahoti on the deplorable conditions of 1,382 prisons in the country.

In an emotive few paragraphs, Justice Lokur wrote about the “voiceless” and forgotten children who have died unnatural deaths while in custody or in child care homes.

The court pointed out how both the Centre and States had never bothered to compile data on how many children had died thus. The court said the pain of the families of these children was no less. “It seems that apart from being ‘voiceless’, such children are also dispensable... It is time that unnatural deaths of children in child care institutions are seriously looked into by all concerned if we are to provide the children of our country with a better future,” Justice Lokur observed. The court put the Union Women and Child Development Ministry on a December 31 deadline to formulate procedures for tabulating children who died unnatural deaths in custody or in child care institutions.

END

National effort needed for further strengthening democratic foundations: Vice President

Releases the Book 'Loktantra ke utsav ki ankahi kahani'

The Vice President of India, Shri M. Venkaiah Naidu has said that a national effort is needed to further strengthening country's democratic foundations. He was addressing the gathering after releasing the Book 'Loktantra ke utsav ki ankahi kahani' authored by Dr. S.Y.Quraishi, here today. The Chief Election Commissioner, Shri A.K. Joti and other dignitaries were present on the occasion.

The Vice President underscrored the need for people to vote for candidates based on the four positive Cs – 'Character, Calibre, Capacity and Conduct' and not on the basis of three negative Cs – 'Caste, Community and Cash'. He further said that there should be a debate on electoral reforms that can transform India into a more vibrant democracy. We must make our political democracy a social democracy, he added.

Following is the text of Vice President's address:

"On this International Day of Democracy, let me extend my warmest greetings and good wishes to all of you and all the people of India who are shaping the largest democracy of the world.

I am also very happy to release, on this occasion, **Loktantra ke utsav ki ankahi kahani,**the Hindi version of Shri S.Y. Khuraishiji's book "An undocumented wonder: The making of the great Indian Election".

It is a very lucid account of the extraordinary manner in which elections are conducted in our country. The Election Commission of India has rightfully gained worldwide appreciation for its extremely professional conduct of elections in a complex and vast country like India.

The author has shared his insights and experiences in a gripping narrative that captures the challenges and achievements of election management. It is a book that can provide valuable guidance to those conducting elections as well as enhance general awareness about the systematic and systemic way in which the Election Commission of India addresses all the key challenges. It also reflects the agility and responsiveness of the Commission that keeps innovating to respond to new challenges.Transparency and accountability are the hallmarks of a functioning democracy. The proposal to introduce Voter Verifiable Paper Audit Trial (VVPAT) in all polling booths from 2019 elections is another step in the direction of strengthening our democracy, which has to be nurtured and preserved by constantly reforming the electoral system.

I compliment Dr S Y Quraishi ji on this excellent publication and the National Book Trust for bringing out the Hindi translation. I wish and hope that the National Book Trust will make this book available in all other Indian languages so that the information and ideas contained in this book reach a wider public.

Conducting elections well is an important and integral part of democracy. Each citizen must be

able to vote for the candidate and the party she or he likes without any fear of intimidation. Nor should there be any inducement. Each individual is important in a democracy and each vote is important. In a robust democracy, the voice of the people is heard and the choice of the people is respected. The transfer of power takes place peacefully based on the popular mandate.

Brothers and Sisters, we should be proud of the fact that we are not only the largest democracy in the world but also that we are constantly striving to make it more meaningful. We gave universal franchise right from the time we became independent and decided to adopt a democratic form of government. As compared to many fledgling democracies, we have been able to hold elections to the national Parliament and State Assemblies as well as to the local bodies fairly regularly.

However, a little critical introspection and honest review of the past and current electoral processes makes us realize how much we all collectively need to do to improve the system. Clearly, there are a number of areas in which we have to bring about changes.

On this International Day of Democracy, my thoughts turn to the **quality of our polity**. How well are we nurturing and nourishing this plant of democracy sown with great expectations by the founding fathers of our constitution?Are we living up to those ideals? Are our thoughts and actions breathing life into the constitution we gave ourselves in 1950?

India has committed to the United Nations Charter that aims to build a world on the values of 'peace', 'justice', 'respect', human rights', and 'tolerance 'and 'solidarity'.

India's glorious cultural heritage is also dotted with a number of thought leaders who have eloquently espoused these values for over a million years. The village republics and the Bhikshu Sanghas of ancient India, as Dr.B.R.Ambedkar points out, functioned on democratic principles.

The essence of all religions is the quest for peace and harmony. A few days ago, we commemorated the 125th anniversary of Swami Vivekananda'shistoric speech at the World Parliament of Religions in Chicago. In that speech, Swami Vivekananda touched upon the essence of Hinduism as "a religion which will have no place for persecution or intolerance in its polity, which will recognize divinity in every man and woman."

Gurudev Rabindranath Tagore had forewarned against the temptation to break up our world into fragments by erecting narrow domestic walls. But we are still grappling with the divisions based on caste, creed, religion, sex and language. It is, however, heartening that the youth of our country is aspiring to see a new India where these distinctions become irrelevant. We are trying to create a new India wherekey democratic principles are actively practiced in daily life.

The India we want is a democratic, developed, inclusive, peaceful, harmonious India that **celebrates** diversity and plurality not merely **tolerates** them.

I want each citizen of our country to strive continuously through thought and action to transform our country into a vibrant democracy. A democracy in which leaders should be elected on the basis of character, calibre, capacity and conduct and voters should choose the candidates who have discipline, dynamism, dedication and devotion. Politics of caste, community and cash should be totally rejected.

Elections are the touchstone for a democracy. The regularity and the fairness of elections is an indication of the health of any democracy. Elections are an expression of individual freedom and potentially give each Indian a sense of participation in the governance of the country.

We must deepen this bond between people and leaders through a respectful responsiveness to public opinion. We must enhance the trust and confidence in the citizens that the political executive will deliver on the promises made during election campaigns.

All this requires a rethinking about our electoral processes. I would suggest that we, as a nation,should engage in this collective reflection and ponder over five aspects I wish to outline.

First,I feel the time has come to take a serious look at the possibility of conducting**simultaneous elections** for the parliament and various Assemblies. The current practice of conducting elections in one State or the other at different times tends to focus the attention of the country away from development and slows down progress.

As the former President of India, Shri Pranab Mukherjee had stated:

"Throughout the year, some election or the other is happening and regular work comes to a standstill with the code of conduct being implemented. The time is also ripe for a constructive debate on electoral reforms and a return to the practice of the early decades after Independence when elections to the Lok Sabha and state assemblies were held simultaneously.It is for the Election Commission to take this exercise forward in consultation with political parties."

Second, if the 73rd and 74th Constitutional Amendments have to be implemented in letter and spirit, we should ensure that **elections to local bodies** should be held every five years. Ours is a three tiered democratic polity and we must strengthen democracy at the Union, State and local body levels.

Third, I would suggest that we should have a time limit to dispose of election petitions. If necessary, special election tribunals must be set up for disposing of election petitions.

The fourth aspect and perhaps the most important of all is the need to **curb the influence of money power** in elections to set a truly level playing field. Various solutions have to be thought of including State-funding. In addition, the new trend of paid news has to be completely eliminated.

The fifth aspect is an imperative need for revisiting the Anti-Defection law. We must examine as to what extent it has served its purpose. If needed, it has be amended further and made more stringent.

We are at the cross roads of our country's history. The citizens, especially the youth, are looking for a future that guarantees them the freedom to grow, to contribute to and be a part of the new India's growth story. The country is looking for a new paradigm in governance that focuses on achieving tangible development outcomes. The direction set by the government seeks to make a collective effort to transform the development trajectory encapsulated in the overarching principle of 'Sabka Saath, Sabka Vikas'. As Dr. B.R.Ambedkar in his closing speech of the first Constituent Assembly said:

"If we wish to maintain democracy not only in form but also in fact, what must we do? We must make our political democracy a social democracy. It means a way of life which recognizes liberty, equality and fraternity as the principles of life".

Free and fair election process is the foundation for a political democracy. The ultimate purpose of democratic governance is social democracy, to ensure inclusive development and improvement in the quality of life of all citizens; especially those who are the poorest of the poor and those who have been left out of the democratic processes.

I do hope the book will stimulate further thoughts and action. Inspired by the Prime Minister's mantra of "reform, perform, transform" as the guiding principles, the people and their elected representatives have the ability to transform our largest democracy into a more lively democracy that welcomes people's participation in all spheres of nation building.Let us accelerate this process by moving from precept to practice and collectively shape the India we all want."

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KSD/BK

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'Maximum Governance, Minimum Government' is the government's motto: Dr. Jitendra Singh

Swachh Bharat Mission Manual launched

Two Day Regional Conference on Good Governance and Replication of Best Practices concludes in Goa

'Maximum Governance, Minimum Government' is the motto of the Central Government. To achieve this motto Government is concentrated on "Citizen-First" mantra, said Dr. Jitendra Singh, Union Minister of State for Development of North Eastern Region (Independent Charge), MoS for PMO, Personnel, Public Grievances and Pensions, Atomic Energy and Space. He was speaking at the valedictory session of the two-day regional conference on *'Good Governance and Replication of Best Practices'* which concluded in Goa today.

"Our dream is to bring Government closer to citizens so that they become active participants in the governance process. An important step for Good Governance is the simplification of procedures and processes in the Government so as to make the entire system transparent and faster. To this end Government has taken the decision to scrap 1,500 obsolete rules, started the self-certification process etc. To achieve this, the Department of Administrative Reforms & Public Grievances has a key role to play," said Dr. Jitendra Singh.

Dr. Jitendra Singh said the Prime Minister's Awards for Excellence in Public Administration were instituted 10 years back and first awards were presented on the 2nd Civil Services Day on April 21, 2007 to the Civil Servants for their innovative ideas and efforts in addressing the problems locally. This motivation is required for improving governance and delivery of services. He said the Priority Programmes for PM's Award to be presented next year are (i) Pradhan Pradhan Mantri Fasal Bima Yojana (PMFBY); (ii) Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY); (iii) Promoting Digital Payments; and (iv) Pradhan Mantri Awas Yojana (Rural &Urban).

Talking about Grievance cell, he informed that Department of Administrative Reforms and Public Grievances (DARPG) enabled a quantum shift in Online Government Service delivery across the country. This aims to further Government's efforts at revamping of Public Administration system, Public Grievance Redress Mechanism, ushering in e-Governance, Digital India, more so in the context of the goal of 'Minimum Government with Maximum Governance' through e-Governance based Citizen Centric End-to-End Online Services. Compared to 2.70 lakh grievances in 2014, 11.94 lakh grievances were received on CPGRAMS (Central Public Grievance Redress and Monitoring System) in 2016. In 2017, 9.32 lakhs grievances have already been received till 25.8.17. Due to higher expectations, the grievances have increased more than 4 times in 2016, compared to 2014. However, due to intensive monitoring, the disposal rate has also increased significantly and is presently more than the rate of receipt of grievances. Action on grievances can be tracked with the help of unique grievance registration number. A timeline of two months has been prescribed for disposal of grievances. In case it is not possible, an interim reply with reasons for delay has to be provided.

Right to Information Act (RTI) is now online and from last six months it is available on mobile also, he informed.

Development Manual for District level functionaries by DARPG Swachh Bharat Mission [Gramin] was also launched during the Valedictory function. The purpose of the Development Role manual is to create an enabling mechanism for improved implementation of the Centrally sponsored schemes at the cutting edge, leading to enhanced outcomes in nature and extent. The manual is prepared with inputs from a combination of sources, including interaction with the Ministry of Drinking Water and Sanitation (MDWS), review of extant scheme guidelines and circulars issued by MDWS and discussions with the key personnel involved in the implementation of the scheme.

Chief Minister of Goa, Shri Manohar Parrikar also shared his thoughts on Good Governance, Swachh Bharat, and Grievance redressal mechanisms during the valedictory session.

Shri C. Viswanath, Secretary DARPG in his address said that conferences like these are useful for promoting meaningful confluence of interactions and insights, cross-fertilization of ideas and exchange of constructive views among the policy makers, public figures, peers, practitioners and professionals who may have championed and facilitated the successful implementation of innovations in government processes, administrative reforms, and public service delivery.

With this, the two-day Regional Conference on '*Good Governance and Replication of Best Practices*' concluded. The DARPG has so far organized 26 such regional conferences to share experiences in the formulation and successful implementation of good governance practices and to facilitate speedy and efficient delivery of public services

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PDS digitisation moving at snail’s pace

Going nowhere:The project’s aim is to help the government ensure that foodgrains reach the right beneficiaries.File Photo

The Narendra Modi government’s claim to ensure end-to-end digitisation of the Public Distribution System (PDS) is coming to naught even after three years of being in mission mode. At least 11 States have not taken the elementary step of digitising fair price shops and nine other States, including Uttar Pradesh, have hardly made any progress.

The project was launched in 2012 at a cost of Rs. 884 crore to ensure that, at every step from field to fork, the government would be able to track the movement of foodgrains so that they reached the right beneficiaries. As part of the effort, all fair price or ration shops were to be digitised. But out of 5.26 lakh ration shops, only 51% have been digitised in three years, it was found at a review meeting chaired by the Minister of Consumer Affairs, Food and Public Distribution Ram Vilas Paswan, on Friday.

“When we took over in 2014, fewer than 10,000 fair price shops had been digitised even after two years of launch. In the last three years, we have made significant progress,” a senior Ministry official said.

Connectivity issues

The numbers are most stark in the northeast. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram and Nagaland have cited connectivity issues for their inability to commence the process of digitisation.

Jammu & Kashmir, Kerala, Punjab and West Bengal fall in this category of non-starters, too.

Another nine States have made meagre progress. In Bihar, less than 1% of ration shops are digitised; the figure is 1% for Tripura, Delhi and Uttarakhand. Uttar Pradesh fares better with 16% shops digitised. The project also calls for automation of the supply chain — online monitoring of stock positions in godowns, tracking the movement of the food grains from the godowns to the fair price shops, SMS alerts to beneficiaries, etc. Thirteen States are yet to take the first step in this direction.

The Centre, meanwhile, has sought to present the digitisation of 23.11 crore ration cards as a great success, in the process uncovering 2.48 crore bogus cards, which have been deleted to save the nation a subsidy of Rs. 15,000 crore per annum.

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A partisan ruling — on disqualification of dissident AIADMK MLAs

The **disqualification of 18 dissident AIADMK legislators** by the Tamil Nadu Assembly Speaker is a partisan decision aimed at securing a majority for the seven-month-old Edappadi K. Palaniswami government after a rebellion reduced it to a minority. The Speaker's ruling comes at a time when there is an increasingly indefensible reluctance on the part of the Governor, **Ch. Vidyasagar Rao, to order a floor test**. It serves the political purpose of reducing the total membership of the House from 233 to 215 and, thereby, the majority threshold from 117 to 108. The disqualified legislators are loyalists of T.T.V. Dhinakaran, who heads a faction of the AIADMK opposed to the ruling dispensation controlled by Mr. Palaniswami and his Deputy Chief Minister O. Panneerselvam. The Speaker has interpreted their memorandum to the Governor **expressing lack of confiidence in the Chief Minister** as amounting to "voluntarily giving up" their party membership. The opposition Dravida Munnetra Kazhagam had feared precisely such a turn of events. It had voiced apprehensions that the Speaker may disqualify the dissidents ahead of a possible trust vote, leading to the Madras High Court directing that there should be no floor test until September 20. The Dhinakaran faction may not command much popular support, but that is no reason for the Speaker to act in a politically partisan manner and keep them out of the House to prevent them from voting against the government. There is a growing feeling that the present regime will stop at nothing to remain in office. The Governor's silence adds to the impression that the Centre is not averse to letting the regime go on, despite its apparent lack of numbers.

The Speaker's decision under the Tenth Schedule of the Constitution is subject to judicial review. If it is challenged, the courts will have to decide whether legislators withdrawing support to their own party's government amounts to voluntarily giving up their membership, a condition under which a member may be disqualified. The second condition is attracted only when a whip is disobeyed, but even then there is a provision for the party to condone such a breach. In *Balchandra L. Jarkiholi & Others v. B.S. Yeddyurappa* (2011), the Supreme Court, in similar circumstances, quashed the disqualification of 11 MLAs in Karnataka. Last year, the Supreme Court declined to intervene when some dissenters hobnobbing with the opposition were disqualified just ahead of Harish Rawat's confidence vote in Uttarakhand. In that case, the rebels had joined hands with the opposition in meeting the Governor, whereas there is no proven link between the AIADMK dissidents and the opposition in Tamil Nadu. While such legal and constitutional questions may be decided judicially, political morality has suffered another blow in the State. This government may survive a floor test in a truncated House, but at a cost to its legitimacy.

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

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Business Of Cleanliness

In May, Indore was declared India's cleanest city. It beat 433 other cities in a survey conducted by the Centre, which ranked them on various sanitation and cleanliness parameters, including waste collection, open defecation free (ODF) status and feedback from citizens. The survey is part of the government's initiative towards a cleaner India. Its focus on sanitation, open defecation and waste collection is significant, considering their impact on the environment, and on the health of city dwellers.

The Swachh Bharat Mission plans to achieve safe sanitation for all by 2019. The government has a clearly-defined progress path for achieving open defecation free cities and districts/villages. More critically, there is also a well-defined process, for the different phases of the mission, across the sanitation value chain - build, use, maintain and treat (BUMT). This effort needs to be sustained after 2019.

Nationally, we generate a staggering 1.7 million tonnes of fecal waste every day. However, there are no systems in place to safely dispose the bulk of this waste. Nearly 80 per cent of this sludge - a human excreta and water mixture that bears disease-carrying bacteria and pathogens - remains untreated and is dumped into drains, lakes or rivers, posing a serious threat to safe and healthy living.

The fecal sludge management system (FSM) is a solution to this problem. Successfully adopted by several countries in south-east Asia, FSM involves collecting, transporting and treating fecal sludge and septage from pit latrines, septic tanks or other onsite sanitation systems. This waste is then treated at septage treatment plants.

FSM is an effective alternative to traditional sewerage networks - both in terms of construction costs and time-taken. Using non-sewered sanitation systems helps to treat the bulk of waste from onsite sanitation facilities such as pit latrines and septic tanks. In fact, more than 70 per cent households with safe sanitation facilities are based on such onsite systems, and in a majority of cities there are no sewered networks or sewage treatment plants. Currently, the waste is collected by private operators, who empty the sludge using vacu-trucks.

The collected waste is dumped indiscriminately in the nearest open space. This poses grievous dangers of infection since the untreated sludge comes back into human contact through either the soil, or through untreated water contaminated with the bacteria and pathogen load of the dumped sludge. The good news is that these truck operators can be monitored through a simple GPS tracking process in order to ensure that they dump the waste at treatment plants/pre-determined sites.

Analysis has shown that treatment plants need to be conveniently located, bearing in mind the need for vacu-trucks operators to make money. The FSM ecosystem requires its stakeholders to collaborate closely. While the government will provide technical assistance to states and cities to design and implement effective fecal sludge management and treatment systems, citizens need to play their part as well. For instance, they need to be aware about the importance of a regular schedule for desludging septic tanks. They must also be ready to pay part of the cost of running FS treatment plants in their cities through regular service charges, or through regular taxes.

Perhaps the most important role in the FSM chain is that of sanitation workers. From extraction and collection to transportation and disposal, they are key to an effective FSM system. With no proper disposal system or safety regulations in place, they face serious health hazards. Their status in the workforce hierarchy is low. However, there is huge potential in the FSM system

businesses for sanitation workers. The sludge is nutrient-rich. The waste, after treatment, can be given to farmers for use as organic compost. It can even be treated and used for biogas, or to manufacture fuel pellets or ethanol. Once pathogens and bacteria are removed, the water can be used for irrigation, construction, by industry in cooling plants, by RWAs and housing societies for gardens and flushing and by government agencies for parks.

With appropriate training, sanitation workers can be empowered to own and run FSM businesses - much like the producer cooperatives of the agriculture sector. While FSM is advantageous at many levels, perhaps the most significant benefit that improved sanitation offers is public health. Cleaner water bodies mean reduced incidence of water-borne diseases and reduced mortality linked to diarrhoeal diseases - especially among children less than five years old. We lose nearly 1,000 children a day to poor sanitation.

Effective sanitation measures like FSM are critical in saving these lives. A national policy is in place; it is now incumbent on cities and state governments to operationalise it. FSM is not only an engineering or infrastructure solution, but a city system that requires the resolve of each stakeholder to make the city fecal sludge free, and meet the objective of clean cities, as envisioned in the Swachh Bharat Mission.

Kidwai is chair, FICCI Water Mission and Krishna is country lead, Water Sanitation & Hygiene, India Country Office, Bill & Melinda Gates Foundation

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Vice President Inaugurates National SC ST Hub (NSSH) Confluence

MOUs with 3 Sector Skill Councils to provide skill development trainings to SC-ST Entrepreneurs

The Vice President, Shri Venkaiah Naidu was the Chief Guest of National SC ST Hub (NSSH) Confluence organized by Ministry of Micro, Small and Medium Enterprises (MSME) and also released first ever radio jingle for National SC ST Hub. Minister of Social Justice & Empowerment Shri Thaawarchand Gehlot, Minister of Tribal Affairs Shri Jual Oram, Minister of State (Independent Charge), Ministry of Micro, Small and Medium Enterprises Shri Giriraj Singh, Minister of State, Ministry of Finance Shri Shiv Pratap Shukla, were also present to grace the occasion.

The Vice President of India, Shri M. Venkaiah Naidu has said that a collective, coordinated action is needed to strengthen the eco-system for promoting SC & ST Entrepreneurs in the country. He was addressing the National SC-ST Hub Confluence organized by the Union Ministry of Micro, Small & Medium Enterprises, here today. The Union Minister for Social Justice and Empowerment, Shri Thaawar Chand Gehlot, the Union Minister for Tribal Affairs, Shri Jual Oram, the Minister of State for Micro, Small & Medium Enterprises (I/C), Shri Giriraj Singh, the Minister of State for Finance, Shri Shiv Pratap Shukla and other dignitaries were present on the occasion.

The Vice President said that the country will be developed when the downtrodden and under-privileged sections are uplifted. He further said that we need to have an integrated, multi-dimensional developmental agenda for the development of the country.

The Vice President said that setting up of Industries is important for the development of our country and it will solve the unemployment problem and increase the income. He further said that industry and agriculture are two important factors for the overall development of the country.

The Vice President while referring to the national discourse today, Stand-up, Start-up, Incubation, Innovation said that this should get further momentum and tempo. He further said that Make in India, Skill India, Digital India, Clean India – all these programmes should reach every section and everybody must get their due. Capacity building is important; credit availability is important, technology up-gradation is also important, he added.

The Vice President said that the Micro, Small and Medium Enterprise Sector (MSME) is the bulwark of the Indian economy and one of the largest employers after agriculture. He further said that it is also one of the major contributors to the country's GDP. With Make in India envisaging to push contribution of the manufacturing sector to 25 per cent of the GDP by 2022, the MSME sector will be required to play a critical role in achieving the goal, he added.

The Vice President said that skill up gradation is one area that requires top attention for the overall development of SC/ST entrepreneurs. He congratulated the National SC/ST Hub for signing MoUs with Sector Skill Councils to skill over 2,000 entrepreneurs and said that the associations and incubators have a huge role to play in supporting the objectives of National SC/ST Hub. Each association must extend support in building capacities and mentoring entrepreneurs in its respective sector, he added.

Shri Shiv Pratap Shukla, Minister of State for Ministry of Finance, mentioned that Sabka Saath, Sabka Vikas is the genesis of the idea of inclusivity. He also promised his Ministry's full support to the Ministry of MSME to enable entrepreneurism amongst the SC ST community.

Shri Jual Oram, Minister of Tribal Affairs stated that he was glad that the Government has taken an initiative as unique as NSSH to uplift the ST community of the country.

Shri Thaawarchand Gehlot, Minister of Social Justice & Empowerment mentioned that all MSMEs face challenges in marketing their products due to competition from large enterprises which is why the Public Procurement Policy is a welcome step.

Shri. Giriraj Singh, Minister of State (Independent Charge), Ministry of MSME thanked everyone for their presence and mentioned that if SC ST entrepreneurs can get orders worth Rs. 5,000 crores, it will go a long way in helping such entrepreneurs. He mentioned that the day the job seeker becomes a job giver, dreams of everyone shall be accomplished.

Dr. Arun Kumar Panda, Secretary, Ministry of MSME highlighted that the programme was a medium to build bridges therefore connecting everyone and bringing everyone on a common platform. A brief presentation was given by Joint Secretary, SME, on the initiatives undertaken by the hub, highlighting the progress till date.

The confluence brought various insights from Industry Association and Incubators to understand the gaps in realizing the mandate of Public Procurement Policy and put forth innovative strategies for holistic development of MSEs owned by SC/ST Entrepreneurs. The discussion held was extremely fruitful and intend to go a long way in meeting the objectives of the National SC ST Hub.

Interactive session was held with over 150 industry associations and incubators with representation of over 400 participants, focussing on collaboration with NSSH, to augment the capabilities of existing SC/ST entrepreneurs. Several excellent suggestions were made with respect to market access; capacity building, tender challenges, technology upgradation, etc. were made. The session also focused on future action plan along with role to be played by each stakeholder to achieve the objectives of the hub.

In addition, MOUs were signed with 3 Sector Skill Councils to provide skill development trainings of SC-ST Entrepreneurs under capacity building initiatives of NSSH.

Background:

The Government of India formulated the Public Procurement Policy, 2012 which states that 20% of total procurement of goods and services by Central Ministries, Departments and CPSEs shall be made from MSEs and 20% of such procurement (4% of total) shall be from SC & ST owned MSEs.

NSSH is a unique initiative launched by Prime Minister Shri Narendra Modi on 18th October 2016. This initiative is aimed empowering SC ST owned MSEs in order to achieve the 4% mandate of the Public Procurement Policy.

In view of the above, the NSSH initiative has the potential to work on ground and have an impact till the last mile. Due to the social and economic bearing the programme can have, it requires a strategy that delivers sustained and measureable impact, on the entire MSME ecosystem. Therefore, there have been continual efforts to include all relevant stakeholders including state, industry associations, incubators, CPSEs to identify synergies and work collaboratively and cohesively towards a shared goal.

Some of the milestones achieved by the hub are as follows -

1. Data analysis completed for **5 lakh SC/ST** units to identify suppliers to CPSEs

2. **Physical verification** of over **4,900 SC/ST entrepreneurs** completed that had potential to supply to CPSEs

3. **Telephonic interaction** with over **2,590 SC/ST MSMEs** completed to understand challenges in securing PSUs' tenders

4. Information of **1,003 SC/ST enterprises** mapped with **42 CPSEs for** vendor empanelment and procurement

5. **Appointment of nodal officers in 67 CPSEs.** Discussion with over **60 CPSEs** conducted

6. **Special Marketing Assistance Scheme** - **950 units** participated in **domestic and international fairs/exhibition**

7. **2,107 units** facilitated with CPSE linkages under **Special Vendor Development Programme**

8. **512 SC/ST** units benefitted under **Special Performance & Credit Rating Scheme**

9. Training programme conducted in **IIM Noida** (Satellite institute of IIM Lucknow), **IIM Lucknow, IIM Raipur, IIM Kolkata and XLRI Jamshedpur** (on pilot basis) for SC/ST entrepreneurs for over **100 SC/ST entrepreneurs.**

Key highlights of the discussion were:

1. Getting support from Industry Associations on data consolidation and Udyog Aadhaar Memorandum (UAM) registration.

2. Providing on ground support to adopted SC-ST owned MSEs by Industry Associations and Incubators.

3. Assisting NSSH in future endeavours in spreading awareness by participating, organizing various events, seminars, workshops, knowledge sessions etc.

4. Mentoring and handholding support to potential SC-ST entrepreneurs during and post incubation programme.

5. Providing capacity building trainings to SC-ST Entrepreneurs.

6. Technology collaboration with overseas partners is required to upgrade existing technology

Also, the following suggestions were made -

1. While releasing tenders, CPSEs should focus on quality based products manufactured by MSMEs, especially SC-ST entrepreneurs rather than established brands.

2. It was proposed that there is a need to create awareness around the various schemes of the Government in addition to the NSSH

3. It was suggested that the prequalification criteria for CPSE tenders should be eliminated for SC ST MSEs.

4. For VDP programmes, it was suggested that instead of conducting the VDPs in neutral locations, these should be done at the premises of the respective CPSEs.

5. It was proposed, that sanctioned loan tenure should be extended to provide sustainable support to SC ST MSEs.

6. It was suggested that traditional businesses like Handicraft sector, Leather sector etc. needs to be promoted and requires government's intervention for growth and development

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Why dynastic politics is harming India

Congress vice-president Rahul Gandhi's fumbling justification of his party's brand of dynastic politics at the University of California, Berkeley, US, last week continues to haunt him. It is now Union finance minister Arun Jaitley's turn to put the boot in after colleagues like Amit Shah had a go. Gandhi's blithe dismissal of the phenomenon indeed rankles. But he was correct in pointing out that most mainstream parties in India are culpable. The Bharatiya Janata Party (BJP) is far from immune to it, no matter that its tallest leaders have come up the hard way. Across the northern and Dravidian parties, it has become the norm more than the exception. This transformation of dynastic politics into a generalized phenomenon comes with serious negative consequences.

The logic of dynastic politics is the logic of patronage. The dynast trades economic largesse and access to the machinery of the state for long-term fealty. Economist Mancur Olson has described it as stationary bandits versus roving bandits. Dynasts are the former. They have incentive to develop their constituencies because they are in for the long haul. The benefits of the development they deliver will be reaped by their descendants in the form of continued loyalty to the dynasty. In contrast, roving bandits—non-dynastic politicians—face a temporal mismatch between effort and payoff. They are thus less likely to work towards long-term development goals.

That is how it is intended to work in theory, at least—the silver lining to the violation of the egalitarian spirit of a liberal democracy. In practice, however, that is not quite how it works out. A growing body of empirical research shows that dynastic politicians consistently underperform non-dynastic politicians.

The Philippines is a good testing ground. Since the restoration of democracy in 1987, more than 60% of the country's House of Representatives has been made up of dynastic clans. Multiple studies have found that this has had deleterious consequences. In 2012, a study by Roland Mendoza, an economics professor at the Asian Institute of Management in the Philippines, found that constituencies ruled by dynasts tended to have more poverty and higher income inequality. A year later, in their paper *The Effect Of Political Dynasties On Effective Democratic Governance: Evidence From The Philippines*, Rollin Tusalem and Jeffrey J. Pe-Aguirre had similar findings, noting that provinces dominated by family clans were less likely to perform well in terms of infrastructure development, health spending, criminality and employment.

The Philippines is not a one-off. In a 2015 paper studying city-level governments in Brazil, *Political Dynasties And The Quality Of Government*, Arthur Bragança, Claudio Ferraz and Juan Rios found that municipalities with dynastic politicians in power tended to have greater capital expenditure but didn't perform any better than those without dynastic politicians when it came to growth and development outcomes. And rectifying the lack of such empirical work in the Indian context, a recent Harvard paper, *Understanding The Economic Impacts Of Political Dynasties: Evidence From India,* by Siddharth George and Dominic Ponattu, analysed night-time luminosity as a measure of economic growth to find that constituencies where dynasts won grew 6.5 percentage points slower annually than constituencies where dynasts lost.

There are multiple possible reasons for this failure of dynastic politics across the world. By definition, the politics of patronage entails inefficient use of state resources to reward clients. Besides, deterioration of political ability is inevitable. Dynastic capture of the political process locks out capable non-dynasts from participating effectively. This in turn leaves voters with limited choice—which reduces their ability to topple dynasties that fail to deliver and, consequently, the latter's incentive to perform. The corruption that is a given in any stagnant political system is a third cause of poor performance. An entrenched political elite requires an entrenched economic

elite to survive; there is often a fair amount of overlap. That way lies the crony capitalism birthed during the licence raj that continues to plague India, a drag on economic growth.

There is no quick fix. Weak institutions and state capacity of the kind India suffers from enables dynastic politics. When the state is incapable of adequately utilizing resources and delivering public goods to all its citizens, jumping the queue becomes imperative. This is done by acquiring political backing. The politics of caste is a good example of this. Blind caste loyalty is anything but; it is a rational choice based on the utility of mobilizing as a caste group to attract a political patron who will channel state resources to the group. Voting along caste lines and voting on economic grounds are often set up as a binary choice, with the latter preferable. This is a fundamental misreading. In the absence of adequate state capacity, the two are not opposed; they are the same.

Economic growth post-liberalization has lifted millions out of poverty—but until state capacity strengthens enough to remove the need for middlemen, the politics of patronage and dynasty is unlikely to go anywhere.

Can India get rid of dynastic politics? Tell us at views@livemint.com

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Stay the course

In its September 2015 order, the Supreme Court had told the Centre and the Arunachal Pradesh government that citizenship be conferred on the Chakmas and Hajongs at the "earliest, preferably within three months". The authorities did little to enforce the court's directive in two years. A week ago, the Centre gave a commitment that the court order will be enforced. However, on Tuesday, Minister of State for Home Kiren Rijjiju said the apex court order was "unimplementable". He called for the order to be modified so that the rights of the indigenous population of Arunachal Pradesh are not diluted. This flip-flop may appeal to nativist outfits like the All Arunachal Pradesh Student's Union (AAPSU), which forced a bandh in the state on Tuesday to protest the Centre's decision, but it exposes the government as weak and incapable of a firm and ethical stand. The government must take necessary action for the enforcement of the court order and tell outfits such as the AAPSU in clear terms that it will not allow law and order to be disrupted.

Migration and citizenship issues are sensitive matters across the Northeast. State authorities should not let anyone communalise these or exaggerate their implications for the local society. Unlike the Rohingya, the Chakmas and Hajongs came as refugees to India from Bangladesh in the 1960s and were settled in the then North East Frontier Agency (NEFA). As per a treaty India signed with Bangladesh in 1972, it was agreed these refugees would be granted citizenship rights. Though only 5,000 of the original 14,888 persons settled in NEFA, which later became Arunachal Pradesh, are alive, the refugee population has swelled to nearly a lakh, many of them born in India. For all practical reasons, these stateless people are Indians having lived all their lives in refugee settlements in Arunachal Pradesh. The government must assuage the local populace of their fears that the Chakmas and Hajongs are a threat to their cultural identity and social fabric. Much of the social tensions between the indigenous people and the refugees are triggered by competition for meagre economic resources, especially land, and lack of employment opportunities. Leaders like Rijjiju, who command influence at the Centre, ought to devise ways to expand the economic pie instead of flowing with the populist current.

The BJP has big plans for the Northeast and sees itself as a party of governance in the region. The refugee issue is a test for the party to negotiate faultlines in the region without taking recourse to identity politics.

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Union Home Minister inaugurates two-day NHRC National Seminar on Good Governance, Development and Human Rights

Union Home Minister inaugurates two-day NHRC National Seminar on Good Governance, Development and Human Rights

The Union Home Minister Shri Rajnath Singh said that in Indian culture, the focus has always been on duties and not on rights; if everybody attends to his duties, the rights of all automatically get protected. He was addressing at a National seminar on Good Governance, Development and Human Rights, organized by the National Human Rights Commission (NHRC) here today. He said that the concept of Human Rights in the centuries old Indian ethos is rooted in peace, unlike the West where it shaped up with conflict post- World War-II. The concept of protection of Human Rights in India is linked with the wellbeing of the whole universe, wherein all elements live in mutual coexistence peacefully. This, he said, reflects even in our spiritual and divine invocations.

Referring to the issue of governance, Shri Rajnath Singh said that any sovereign nation is free to take action against illegal migrants. He said that the issue of deportation of Rohingyas for India is not a matter of ego and confrontation but of principles. Those who, in the name of human rights, are expressing concern on the rights of others should bother first for the rights of the citizens of India. The citizens of the country have the first right on its resources and not the illegal migrants. Rohingyas are illegal migrants; they are not refugees for which a process is required to be completed, which they never followed.

He said that India is not a signatory to International Laws on Refugees or to the UN Refugee Convention 1951, hence, the question of its violation does not arise. The principle of non-refoulement would apply to Rohingyas only if, they were given asylum in India. He said that the Government is very clear on the issue and to this effect has filed an affidavit in the Supreme Court. The Union Home Minister said the Government of India has extended aid to Bangladesh for the welfare of Rohingyas there. He described both Bangladesh and Myanmar as friendly countries and said that the State Counsellor of Myanmar, Ms. Aung San Suu Kyi has raised a ray of hope by saying that her country is prepared to take back Rohingyas. He expressed the hope that Myanmar would take some solid steps in this direction at the earliest.

The Union Home Minister said that Good Governance, Development and Human Rights are an inseparable trio and the Government is committed to uphold them. Describing the seminar organized by the NHRC as very relevant, Shri Rajnath Singh said that development without bringing dignity to human life would be meaningless. He said that the PM Ujjwala Yojna was meant to ensure dignified life to crores of women and we believe development without dignity is of no use. He listed several measures and schemes introduced by the Government during the last three years, which are aimed at overall welfare of the people by bringing transparency and accountability in its initiatives so that benefits of welfare schemes reached out the real beneficiaries. He said that the Government aims to provide ‘Housing to All’ by 2022 and electricity to all villages.

Earlier, inaugurating the seminar, Shri Justice H L Dattu, Chairperson, NHRC said that the universality of Human Rights, their focus on human dignity and their concern for accountability make them uniquely appropriate for reshaping notions of development, cooperation, good governance and combating discrimination and exclusion to reach the goal of achieving a society where 'Human Rights for All' becomes a reality. He said that for any country to find its due place among civilized nations, the most important factors are eradication of poverty and provision of healthcare, education and equitable life opportunities to all without distinction. Unfortunately, even after more than half a century of independence, our country stands only at the fringe on all these counts. Justice Dattu said that there is a need to bring together politics, economics and culture in a more symbiotic relationship to constructively contribute to humanity so that the human being can become the pivot around which all governance and development activities, policies and programmes can revolve.

Shri Ambuj Sharma, Secretary General, NHRC, welcoming the participants, underlined the significance of the national seminar and how the Commission has been making efforts to strive for good governance both in-house and outside through its interventions and functioning. Dr. Ranjit Singh, Joint Secretary, NHRC in his introductory remarks emphasized the importance of good governance and development and how significant are these to the protection of human rights.

The Seminar is divided into five technical sessions spread over two days. These are being chaired by NHRC Members and participants include domain experts and top government functionaries from the Centre, State Governments and Union Territories. The discussion will focus on the role of media in civil society in promoting good governance and human rights, discerning indicators of good governance, global best practices and impact of information technology on good governance, service delivery mechanism and measures to enhance transparency and accountability, health and Swachh Bharat initiatives, new paradigm and challenges in good governance with an Indian perspective.

Union Minister for Law & Justice and Electronics and Information Technology, Shri Ravi Shankar Prasad will deliver the valedictory address in the concluding session tomorrow.

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Privacy and the Indian culture

Privacy is not a state of maintaining secrecy. Rather it is defined as “the state of being alone and not watched or disturbed by other people” or “the state of being free from the attention of the public”.

What does privacy mean in the Indian cultural and behavioural context?

Well, it means little.

To understand why privacy means little in India, we need to go back to the demographics of this country. Historically, India is a diverse country where diversity lies not just in its geographical landscape, topography and state boundaries but also in its culture, traditions, food habits, attire, languages, dialects, scripts, behaviour, religion and caste. As a proverb goes, “Every two miles the water changes, every four miles the speech.”

Of the 1.3 billion people who live in India, as many as 68.84% live in rural parts, according to the Census of India 2011. According to the same census, 67.77% of this rural population is considered literate; the rest are illiterate and uneducated and thus form India’s oral society. Overall, as much as 27.01% of India’s population, as per official figures (which may have a skewed mechanism of measuring literacy rates and often include those who lack functional literacy), is considered illiterate.

However, there is no denying that most of those who are considered illiterate or uneducated are financially poor, residing in rural or tribal parts of the country or hailing from backward districts.

One of the reasons why mobile penetration is high in India—mobile subscriptions in India crossed the 1.1 billion-mark in October 2016—is because a mobile phone allows people to communicate instantly and orally, without the need to write messages or take someone’s help to write messages.

For a similar reason, TV and radio transistors, too, are popular in India. According to a Broadcast India Survey, rural India has 17% more homes with television sets despite low income brackets. Further, among FM listeners, almost 76% listen to FM radio using their mobile phones, according to a study conducted by AZ Research.

In such a scenario, where most conversations and flow of knowledge is taking place through oral communication, the idea of information protection or privacy of data has little scope.

It must also be noted that while a lot of knowledge in India has been documented by scholars, researchers and writers, both online and offline, there is a lot more that is yet to be documented or explored because those who hold this knowledge are illiterate and unskilled to be able to document this information in the traditional sense.

Culturally, India has been a country where much of its knowledge has been transferred from one generation to another orally. This holds true for traditional knowledge about health, medicine, architecture, culture, craft, art, folk tales, folk music, language and more.

India has neither looked at communication nor information as “private”. There is also little understanding of private life in India where almost every part of one’s life is open to family, community, village or society.

Community practices and diktats take over personal choices and ownership. For example, a girl may have a personal mobile phone, however it is her family or even the community that decides how she can use it.

Besides, Indians have a habit of interfering in other people's lives. Ironically, we don't even consider seeking personal and private information as "interference" or "breach of privacy".

Arranged marriage, a concept alien to the West, is still a common practice in India. And if this interference in personal space is not enough, community members also want to know how much is being spent on a wedding, when the couple plan to have children and, if they're not, then why not. As children, Indians are not taught to shut their bedroom doors, even when they go to bed. In many houses, both in rural and urban India, locking your door—unless you're changing clothes—is considered an act of secrecy and not privacy.

"What do I have to hide?" is a question people often pose as a retort when asked if they would want to maintain their privacy, even the privacy of data on their mobile phones. Even in urban spaces, it is fairly common for consumers to call out their debit card pins to waiters in India.

Many Indians will justify this act, saying that they don't have too much balance in their account anyway, again confusing privacy with luxury and associating security with wealth.

Our society is at a crossroads of the digital revolution and the right to privacy. As the country moves towards the digital medium, the Indian cultural context poses challenges to understanding and implementing privacy as a right that is intrinsic to life and liberty. Indians need to understand that privacy is not about what you want to hide but what others need not see.

Osama Manzar is founder-director of Digital Empowerment Foundation and chair of Manthan and mBillionth awards. He is member, advisory board, at Alliance for Affordable Internet and has co-authored NetCh@kra–15 Years of Internet in India and Internet Economy of India. He tweets @osamamanzar.

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Leg-up for PM’s pet housing project

People purchasing a low-end house from a private developer will be eligible for financial help under the ‘Housing For All’ policy of the Narendra Modi government, Urban Affairs Minister Hardeep Singh Puri announced on Thursday.

Unveiling the new public-private partnership (PPP) for affordable housing, Mr. Puri said that it will help in meeting the housing requirements for all targets.

Risk assignment

“This policy seeks to assign risks among the government, developers, and financial institutions, to those who can manage them the best, besides leveraging under-utilised and unutilised private and public lands towards meeting the Housing for All target by 2022,” he said.

Pradhan Mantri Awas Yojana (PMAY) or Housing For All has been moving at a rather sluggish pace. The government was to construct 12 lakh houses under PMAY by 2017-18, but only 1.49 lakh houses have been constructed till last year. The Centre now seeks to construct 26 lakh houses in 2018-19, 26 lakh in 2019-20, 30 lakh in 2020-21 and 29.80 lakh in the 2021-22 period.

Eligible buyers can get Central assistance of about Rs. 2.50 lakh per house as interest subsidy on bank loans. And if they do not avail any loan, they can get upto Rs. 1.50 lakh.

The policy gives eight PPP options for developers to invest in. “Out of these eight, we are talking, six models will utilise government lands,” Mr. Puri said. It is now time for private developers to seize the investment opportunities, he added.

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is it difficult to grant citizenship to Chakmas?

Why has the issue been raked up?

On September 13, Home Ministry officials held a meeting with Arunachal Pradesh Chief Minister Pema Khandu and Union Minister of State for Home Kiren Rijiju, who represents the State in Parliament, on various administrative issues. The subject of granting citizenship to the Chakma-Hajongs was also discussed. After the meeting, Mr. Rijiju said a “middle ground” would be chosen so that the Supreme Court’s 2015 order to grant citizenship to Chakma-Hajong refugees could be honoured and the rights of the local population not diluted. “The Supreme Court order has to be honoured. Chakmas are settled in Arunachal Pradesh since 1964. But the Scheduled Tribe status and indigenous people’s rights won’t be diluted,” he said in a tweet later. This led to widespread outrage in the State and several incidents of violence were reported.

What was the Supreme Court order?

In September 2015, the court, after hearing a petition filed by the Committee for Citizenship Rights of the Chakmas, directed the State government to grant citizenship to Chakmas and Hajongs within three months. The State government had opposed the move in court. After giving a statement that the order had to be honoured, Mr. Rijiju changed his stand and said it was not implementable. He clarified that since the Home Ministry was the implementing authority for granting citizenship, it would approach the Supreme Court to modify its order.

What is the controversy now?

After violent protests in the State following Mr. Rijiju’s comments, Mr. Khandu wrote to Home Minister Rajnath Singh on September 18 that the State was not ready to accept any infringement on the constitutional protection bestowed on the tribals of the State. Mr. Khandu said the State’s unique history was governed by a special Act and the Constitution gives special protection rights to the predominantly tribal State. “These provisions were legislated with the singular objective to protect the tribes of the State from the onslaught of alien culture and overwhelming influx of non-Arunachalese in the State,” his letter said.

Mr. Rijiju blamed the Congress for settling outsiders in a tribal State in the first place. “Originally 2,700 families were settled in Arunachal Pradesh by the then Congress government from 1964 to 1969. The settlement itself was not as per regulations. The settlement violates the Bengal Eastern Frontier Regulation, 1873, or the Inner Line Permit system,” he said. Since Arunachal Pradesh is a protected State, any outsider visiting the State needs a permit to do so. Mr. Rijiju had earlier said that Chakma-Hajongs would not get any rights to buy property or land in Arunachal Pradesh.

When did Chakmas flee to India?

In the 1960s, over one lakh Chakmas and Hajong refugees, Buddhists and Hindus, fled to India from the Chittagong Hill Tract area in the then East Pakistan (now Bangladesh), facing religious persecution. The areas where the Chakma-Hajongs lived was submerged following the construction of the Kaptai Dam. They were made to settle in the Tirap division of Arunachal Pradesh, then known as the North East Frontier Agency, administered by the Ministry of External Affairs through the Governor of Assam. Arunachal Pradesh became a Union Territory in 1972, which coincided with the formation of Bangladesh, and soon local political parties began protesting against the settlement of outsiders in the State. The agitation gained momentum in 1987 when Arunachal Pradesh became a State.

What’s the road ahead?

The logjam persists even as the government looks for damage control. Mr. Rijiju said Chakma-Hajongs were entitled to live anywhere in India but their stay in Arunachal Pradesh would violate the constitutional rights of indigenous tribes protected by Article 37 IH.

VIJAITA SINGH

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Out of my mind: A dangerous decision

You expect governments to say one thing and do another. That is politics. But you don't expect a government to change its mind within a week on a fundamental principle.

Take the case of the Chakma and Hajong. One lakh of them have lived in Arunachal Pradesh since 1964. They have limited rights but are not citizens. The Supreme Court ordered the government in 2015 to regularise their status. The Home Ministry decided to comply with the order. But then there were local protests by tribal communities. They complained that the communities in question would upset the 'demography' of the state if they were granted citizenship. It would seem that the citizens of Arunachal Pradesh think they have a right to veto who else becomes citizen of India despite the decision of the Supreme Court. The Minister of State in the Home Ministry has defended the decision therefore to renege on the promise to the Chakma and Hajong. The reason given is that the rights of the indigenous citizens of Arunachal Pradesh would be 'diluted' if citizenship was granted to the Chakma and Hajong. There is 'constitutional protection bestowed' on the citizens of Arunachal Pradesh which will be infringed if more people are admitted as citizens.

This, if true, is an astonishing doctrine. After all, there is only citizenship of India, not of a state within India. If Arunachal Pradesh enjoys special status, is it akin to Article 35A under which Jammu and Kashmir citizens have special privileges? There are restrictions on out-of-state Indian citizens owning land in J&K. Is that also the case in Arunachal Pradesh? The Chakma and Hajong are, however, not from out of the state. They have lived there for 53 years. Are they not to be allowed to enjoy rights that other residents have?

If so, did the Supreme Court not know about this vital protection to the rights of local tribal people of Arunachal? Did the Home Ministry also not know of this valuable constitutional protection last week? There is a BJP-led government in Arunachal. The Chief Minister is reported to have been present when the Home Ministry first made the positive decision to give citizenship rights to the Chakma and Hajong. Subsequently, he seems to have changed his mind.

Now the granting of citizenship to the 'newcomers' will 'disturb the demography of this tribal state and violate the constitutional rights of the tribals'.

What, we may ask, is going on here? Does every state have an inviolable 'demography' which has to be left undisturbed? Is this not really the cynical politics of reservations which the 'local' tribals fear will be diluted by admitting these other tribals to citizenship? Is it not really a question of guarding a vote bank which may be alienated if more were given the same rights?

The consequences of this reversal of a promise to the Supreme Court are more serious than the Home Ministry seems to realise. If the majority community in each state - Marathi speakers in Maharashtra or Tamil speakers in Tamil Nadu - insisted that 'others' disturb the demography of their state, soon we will not have one India but 29.
If each state had individual citizenship denied to 'outsiders', there will be many more partitions of India. Think
again please.

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Dialling The Wrong Number

Shortly after the Supreme Court declared privacy to be a fundamental right, most cellphone users received a message from their telecom operators which seemed to negate it. The message threatened disconnection of cellphone connections if a user failed to link their Aadhaar. These messages and calls have only increased in frequency. This re-verification requires a user to visit a telecom service centre, undergo biometric authentication by putting their fingerprints on an authentication device, and hope that the details in the Aadhaar database match with their cellular connection.

This exercise has led to anxiety, irritation and even anger for a large number of people. These include those who still may not have enrolled for Aadhaar, some willing to link it due to privacy concerns, another set whose biometrics are rejected or details do not match and much more who are tired of standing in lines to link their Aadhaar to another essential service. To their chagrin, the government has stated that the raison d'etre is a direction by the Supreme Court. Such justification is at best suspect and at worst damages the institutional credibility of the Court.

The Centre is the custodian of the airwaves and having the power to issue licences has permitted private companies to provide mobile voice and data services. Telecom operators are governed by regulations including those for subscriber verification by the Department of Telecommunications (DOT). Pre-existing norms required cellular users ti not only required to furnish a valid government identification for availing mobile services but also required some form of additional verification. However, by a series of circulars issued by the DOT from March 2017, telecom operators were directed to re-verify existing users by Aadhaar authentication by February 28, 2018. The circulars cited stray sentences from a dismissal order in February of a public interest petition in the Supreme Court titled as Lokniti Foundation v. the Union of India.

For a variety of reasons, this does not amount to a "direction" to the government as claimed in the DOT circular. First, the basis of the order and the references to Aadhaar emerges from a counter-affidavit filed by the government in the Lokniti case. Rather than volunteering information on the pre-existing court orders that limit the Aadhaar programme to a voluntary service restricted to specific services, the government instead advocates its use for re-verification. Second, the SC nowhere uses the phrase, "direction" which is a term of art contained in court orders to impart a binding force. While the lexicology of Aadhaar may now define "voluntarily" to mean as "mandatory", the lex still recognises a distinction between an "observation" and a "direction".

The meaning of the order becomes clear in the penultimate paragraph when the Court states that, "we dispose of the same with the hope and expectation, that the undertaking given by this Court, will be taken seriously, and will be given effect to, as soon as possible.". Hence, the purported court order requiring re-verification by Aadhaar, on closer examination, contains no such direction but expressions of good faith in the measures suggested by the government. Again, this is done without reference to any of the Aadhaar cases as the government fails to inform the Court on the pre-existing orders which limit the scope and use of Aadhaar.

Viewed independently of this non-existent court direction, the DOT circulars contain no legal force or grounding in law. They do not cite or reason any statutory or regulatory support. They are crouched behind a non-existent SC directive. This becomes apparent as the circular, states, "all licensees shall intimate their existing subscribers through advertisement in print/electronic media as well as SMS about the orders of Hon'ble Supreme Court for re-verification." It is peculiar that the linking deadline of Feburary 28, 2018 is not mentioned in any of these communications. Irrespective of legality or constitutional propriety, an aggressive push continues to instil fear in people that their mobile phone connections will be disconnected due to the Supreme Court. This

becomes especially problematic given that the Supreme Court has indicated that the pending litigation on Aadhaar will be finally heard in November.

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Generalist vs specialist

In an earlier article ('The case for lateral entry', IE, August 9), we made a case for an institutionalised system of lateral entry of mid-career professionals into the IAS. We argued that lateral entrants will not only bring in much-needed external expertise into the government but will also challenge the regular recruit IAS into continuous self-improvement. But such self-improvement will not happen automatically; the government will have to institute an incentive structure, devote greater attention to career management and provide opportunities for specialisation. How the government should approach this task is the thrust of this article.

Arguably the biggest question confronting the IAS is its lack of specialisation. The IAS was modelled on the colonial era Indian Civil Service as a generalist service to deliver the core functions of the state - collect taxes and maintain law and order. The challenge of development in a large, populous and impoverished country was probably not on the radar screen when the IAS was designed. But it soon became apparent that this development task would become central to public administration, especially at the state level. The IAS adapted to these changing dynamics by retooling itself as a "development agent", and on the whole acquitted itself quite creditably.

As economic reforms deepened and the state started yielding to the market, the nature of administration changed, demanding domain knowledge, especially at the policy level. This raised questions about the role and relevance of the IAS. Two views emerged.

The first is the argument that the best leadership is provided by generalists who have a breadth of understanding and experience. Specialists, no matter how competent, tend to have a tunnel vision and are not equipped to take a broader view. Sure, domain knowledge has to feed into policy-making, but that can be accomplished by domain experts advising the generalist leader in decision-making. In this worldview, a good IAS officer can head the Department of Agriculture as competently as she would the Department of Shipping.

The opposing view is that the IAS, as generalists, tend to over-weigh their experience of the process and form over understanding of policy content. Only someone who has learnt the subject from the trenches, as it were, can provide competent leadership in a functional area. Having the IAS head specialised areas is an inefficient arrangement.
This debate has frowned upon moderation. But there is no need to look for binary solutions. The complex and interconnected nature of policy-making demands that specialist expertise has to go with generalist experience. Notably, the Constitution Review Commission 2002 suggested the "need to specialise some of the generalists and generalise some of the specialists". That seems to be a wise dictum for the way forward.

That raises the challenge of managing specialisation. When does an IAS officer start to specialise? How will the system be operationalised?

The private sector's example is instructive. There, young professionals are typically recruited in specialised areas and they rise to generalist leadership positions negotiating their way up the hierarchy. What we have, or should have, in the public sector is in fact its reverse. Young recruits join the IAS as generalists, acquire breadth and then go on to acquiring depth.

The first decade of an IAS' career is typically spent in field postings with responsibility for policy execution which hones her administrative and people management skills, apart from imparting invaluable understanding of ground realities. From there an IAS graduates to policy formulating positions, at the centre and state levels. This transition provides the ideal marker for beginning to specialise - combining the soft skills they have learnt with the hard skills of a specialised domain.

Managing specialisation can be a complex challenge. How much specialisation should there be? How should officers be allocated among the specialisations? What should be the weightages for expressed preferences and revealed competencies? Once allocated a specialisation, how should an officer's career be managed?

A starting point can be to categorise ministries broadly into three groups - welfare ministries, regulatory ministries and economic ministries since experience suggests that each of these categories demands broadly similar behavioural attributes and aptitudes. A couple of principles should inform the process.

First, allocating officers across specialisations cannot, and should not, be reduced to a formula. It is best to work the system flexibly, allowing specialisation to emerge gradually through a process of deliberate iteration at the mid-career level. This will facilitate officers in specialising as they move up the hierarchy based on their revealed aptitude and performance record. Because the system needs to be flexible, it places the onus on the government to make it predictable and transparent.

Second, specialisation need not be mandatory. Some IAS officers may prefer to remain generalists. Indeed, the system too is always in need of some generalists. One of the tasks of cadre management will indeed be to match the supply and demand across specialisations and generalists.

Once they are allocated specialist positions, officers should be afforded opportunities to deepen their domain knowledge through study and training. Also, since IAS officers are recruited at a young age, they hardly ever experience the government from the outside. They should, therefore, be allowed, even encouraged, to work outside the government, preferably in a non-governmental organisation for a few years, irrespective of their area of specialisation. This is bound to make them more useful and relevant civil servants.

This effort to optimise generalist experience with specialist domain expertise should apply to lateral entrants as well. Just as regular recruits are required to specialise, lateral entrants should be required to "generalise" through field postings so that they have an opportunity to dirty their hands.

Giving the IAS an optimal blend of breadth and depth is a complex challenge. The way forward lies in eschewing binary solutions and embracing a nuanced, iterative process of active but careful cadre management.

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Consent key factor in defining sexual assault, says Delhi HC

Is a ‘yes’ or ‘no’ from a woman to a sexual act really a ‘yes’ or ‘no’? The Delhi High Court asks.

The High Court discusses the various “models” of sexual consent in the modern world. The debate is part of an 82-page judgment which acquits film-maker Mahmood Farooqui in a rape case giving him the benefit of the doubt that he might have misread the ‘no’ of the woman as a ‘yes’.

In normal parlance, consent would mean voluntary agreement of a woman to engage in sexual activity without being abused or exploited by coercion or threats, Justice Ashutosh Kumar, who authored the verdict, observes.

‘Affirmative model’

The consent can be revoked any moment. “Thus, sexual consent would be the key factor in defining sexual assault as any sexual activity without consent would be rape,” the judgment says.

On the “various models of sexual consent”, the judge starts with the “traditional and the most accepted” one, which is the “affirmative model” where a “yes is yes and no is no.”

But the judgment goes on to tackle a situation where a woman’s affirmative consent or positive denial is not asserted, but conveyed in an “underlying/dormant” fashion, leading to a “ confusion in the mind of the other.” The court says there are “differences between how men and women initiate and reciprocate sexual consent.”

Gender equality

“The normal construct is that man is the initiator of sexual interaction. He performs the active part whereas a woman is, by and large, non-verbal. Thus, gender relations influence sexual consent,” Justice Kumar notes. But this may not be true in the case of modern society where gender equality is the “buzzword”, Justice Kumar adds.

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PM's interaction through PRAGATI

The Prime Minister, Shri Narendra Modi, today chaired his twenty-second interaction through PRAGATI - the ICT-based, multi-modal platform for Pro-Active Governance and Timely Implementation.

The first twenty one meetings of PRAGATI have seen a cumulative review of 190 projects with a total investment of Rs. 8.94 lakh crore. Resolution of Public Grievances has also been reviewed in 17 sectors.

Today, in the twenty-second meeting, the Prime Minister reviewed the progress towards handling and resolution of grievances related to the banking sector. The Prime Minister asked the Secretary, Financial Services, to look at ways to increase the use of RuPay debit cards that have been issued to Jan Dhan account holders. The Prime Minister was briefed on the relief that has been received by the Jan Dhan account holders, as part of the insurance provisions that are linked to these accounts.

The Prime Minister reviewed the progress of nine infrastructure projects in the railway, road, power, coal and gas pipeline sectors, spread over several states including Telangana, Karnataka, West Bengal, Manipur, Mizoram, Kerala, Tamil Nadu, Chhattisgarh, Jharkhand and Delhi. The India Myanmar Friendship Bridge was also reviewed. These projects are cumulatively worth over 37000 crore rupees.

The Prime Minister reviewed the progress of the National Heritage City Development and Augmentation Yojana (HRIDAY), and the Sugamya Bharat Abhiyan (Accessible India Campaign) for the Divyang.

The Prime Minister said that while many Union Government departments are now using the Government e-Marketplace (GeM), only ten States have so far shown keenness in using it. The Prime Minister said that GeM increases the pace of procurement, and boosts transparency, besides supporting enterprise at the local level. He urged all Chief Secretaries to explore its use to the extent possible, to minimize leakages and delays.

On GST, the Prime Minister said that while traders across the country are positive and are accepting this new taxation arrangement, they need handholding so that their problems can be resolved. He urged the Chief Secretaries to use the district administration in this regard, so that small traders are facilitated to access and adopt the new system. He reiterated that small businesses must register with the GST network, to take advantage of business opportunities. He said that the common man and the trader must benefit from this path breaking decision.

The Prime Minister also called for sustained efforts to boost digital payments and work towards a less cash society.

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Union Home Minister launches Platform for Effective Enforcement for No Child Labour (PENCIL) Portal

SOPs for enforcement agencies on child labour also released

Shri Rajnath Singh addresses National Conference on Child Labour

The Union Home Minister Shri Rajnath Singh launched the Platform for Effective Enforcement for No Child Labour (PENCIL) Portal at the National Conference on Child Labour organised by the Ministry of Labour and Employment, Government of India here today. The PENCIL is an electronic platform that aims at involving Centre, State, District, Governments, civil society and the general public in achieving the target of child labour free society. Shri Rajnath Singh also launched the Standing Operating Procedures (SOPs) for the enforcement of legal framework against child labour. The SOP is aimed at creating a ready reckoner for trainers, practitioners and monitoring agencies to ensure complete prohibition of child labour and protection of adolescents from hazardous labour ultimately leading to Child Labour Free India.

After launching the portal, Shri Rajnath Singh said that any decent society cannot allow the child labour. Child labour is a curse, he said. He said that India needs to take a resolve to eradicate the child labour from the country. He expressed faith that with conviction and resolve, we can eradicate this menace. Shri Rajnath Singh said if India could attain freedom in five years after taking resolve of ‘Do or Die’ of Mahatma Gandhi during the Quit India Movement, then there is no reason why India cannot attain a child labour free society in coming five years if the whole country gets united and takes resolve to do so. He said that childhood is the best period of an individual’s life gifted by God. But he expressed sadness at the fact that one in every 10 children is involved in child labour and is not able to lead a normal life during his childhood.

Shri Rajnath Singh said that ratification of treaties by India in this regard shows our resolve to eradicate child labour in a time-bound manner. He said that only portal will not be able to suffice our efforts, but social awareness is needed in this regard. He quoted the example of special drives undertaken under ‘Operation Smile’, where 70,000-75,000 children could be saved. He emphasised that for the success of PENCIL Portal also, one month’s special drive in the country, even at block levels, is required, so that everybody becomes aware of it and acts in the direction of elimination of child labour. He said that

child labour not only has social implications but economic implications also. Appreciating the Ministry of Labour and Employment's efforts in releasing SOPs for enforcement agencies, he said that this will help in the better implementation of the schemes, as many schemes are good at the formation stage, but are not being implemented in an effective manner on the ground due to lack of guidance.

The Minister of State for Labour and Employment (I/C), Shri Santosh Kumar Gangwar said that children are the country's assets and its future. He said that due to short-term economic and social constraints, the income from child labour may appeal to be good, but in the long run, it is not so. He said that keeping in mind the overall development of children, the employment of children under the age of 14 years is not allowed under the law for any occupation and for the children between 14-18 years, the employment is not allowed in occupations that are harmful to their physical and mental health. He said that main hurdle in the implementation of laws is lack of awareness and guidance and the SOPs released today will be useful to the enforcement agencies. He further said that child labour is a social problem and positive attitude is very important in this regard. He expressed hope that all sections of India will rise above law to realise the dream of child-labour free society. The Labour Minister stated that India ratified the two Core Conventions of International Labour Organization (ILO), Convention 138 regarding admission of age to employment and Convention 182 regarding worst forms of Child Labour in June 2017 which shows our commitment to a child labour free nation.

Shri Kailash Satyarthi, Nobel Peace Laureate and Child Right Activist was the Guest of Honour on the occasion. Expressing happiness over the release of PENCIL portal, he said that today is a historic day for India. India is telling the world that it will give PENCIL in the hands of children and not tools to work, he added. He emphasised that the top leadership should be involved in these campaigns. He said that PENCIL and SOPs are important not only for India but also for the world in showing a new direction to them. He said this proves that fact that technology can be converted into instruments of social upliftment and power. Shri Satyarthi said that currently, he is on 'Bharat Yatra' to spread awareness and sensitise on issues related to child sexual abuse and child trafficking. He also emphasised on the institutional mechanism and exclusive courts for handling cases related to child sexual abuse.

Earlier while delivering the welcome address, Secretary, Ministry of Labour & Employment, Smt. M. Sathiyavathy said that Government has taken various initiatives and developed a legal framework to achieve the Sustainable Development Goal (SDG) of

eliminating child labour by the year 2025. She said that child labour has come down in India as per 2011 census as compared to 2001 census. She further stated that broad consultation was done with all the stakeholders before finalizing the amendments in central rules which was notified on 2nd June 2017. For the first time we have provided for prevention, rescue and rehabilitation of children in the central rules and institutional set up at the district level in the form up district task force. She said that SOPs will provide step by step guidelines and will be a ready reckoner for trainers, practitioners and monitoring agencies.

In a video message during the conference, Mr Guy Ryder, DG, ILO, congratulated India for its foresight and expressed the hope that India will play a critical role in supporting ILO's efforts around the globe.

On the occasion, a short film on child labour and an animated detailed presentation on PENCIL portal were also shown.

The PENCIL Portal (pencil.gov.in) has various components, namely Child Tracking System, Complaint Corner, State Government, National Child Labour Project and Convergence. The Districts will nominate District Nodal Officers (DNOs) who will receive the complaints and within 48 hours of receiving, they will check the genuineness of the complaint and take the rescue measures in coordination with police, if the complaint is found to be genuine. Till date, 7 states/UTs have appointed the DNOs.

The State Labour Ministers from Uttar Pradesh, Assam, Delhi, Telangana, Tamil Nadu, Haryana, Andhra Pradesh, Chhattisgarh, Bihar and Rajasthan participated in the conference. The conference was also attended by Labour Secretaries of the State, Secretaries of Central Ministries, District Nodal Officers as well as the Project Directors for National Child Labour Project (NCLP).

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Right to privacy not an excuse to deny information

The Central Information Commission (CIC) has upheld the right to information over the right to privacy in a case concerning the National Commission for Protection of Child Rights (NCPCR) denying information on cases lying pending with it. It observed that the appellant's request for action taken information on four-year-old complaints before the NCPCR was in the public interest and related to its core function.

In its latest order, the CIC said it was not convincing that the NCPCR refused information, observing that no effort was made to provide the information which could have been voluntarily disclosed under Section 4(1)(b) of the RTI Act. "Except the name of the child, nothing could be denied," the CIC said.

The appellant sought information about the number of complaints received by the NCPCR, a copy of inquiry proceedings in such complaints, date-wise decisions of cases in which the accused were found guilty and what relief was granted. However, the Public Information Officer (PIO) replied on May 17, 2017 that the information sought was not disclosable as per exemption under Section 8 (1)(j) of RTI Act.

The CIC said the NCPCR hired the services of a consultant and an adviser, who instead of guiding the PIO properly to disclose the information, misguided him to deny the entire information. "These two experienced seniors did not even provide reasons to justify the denial," it notes. "When appellant was not seeking names and personal information and wanted information about the number of cases left out without any action, or action taken and pending before the Commission for years, the public authority cannot invoke Section 8(1)(j) at all."

The CIC has ordered the NCPCR to provide information regarding cases pending for over two years pertaining to the Bihar circle and the details of disposal of cases where the accused were found guilty, after removing names and personal details of children, within 15 days. It has also directed the PIO to show-cause why maximum penalty should not be imposed upon each of them, for illegal obstruction of information, before October 20, 2017.

Impact of judgment

In a commentary on the impact of the right to privacy judgment passed by the Supreme Court on the RTI Act, Information Commissioner Madabhushi Sridhar noted that the public information officers continue to deny access to information held by them. Published in the September, 2017 issue of the *Economic and Political Weekly* , he notes: "The misuse of Section 8(1)(j) of the RTI Act, 2005, which codified privacy exception, by PIOs is rampant and most times reduced this act into a mockery."

"The misuse of Section 8(1)(j) of

the RTI Act, which codifies privacy exception, is rampant

Madabhushi Sridhar

Information Commissioner

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VVPAT to be used in Gujarat polls

The Election Commission of India will use Voter Verifiable Paper Audit Trail (VVPAT) gadgets with Electronic Voting Machines (EVM) in all 50,128 voting booths in Gujarat, which goes to the Assembly polls at the end of this year.

“This is the first time an entire assembly poll will be conducted using EVMs equipped with VVPAT,” Chief Electoral Officer B.B. Swain told mediapersons in Gandhinagar on Thursday.

VVPAT machines, which will be attached to the EVMs, will allow voters to verify if their vote has gone to the intended candidate. This would ensure transparency in the voting process, the Chief Electoral Officer said.

The machine is being put to use in Gujarat following a petition filed by Reshma Patel, one of the conveners of the Patidar Anamat Andolan Samiti.

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For truce to hold

The Gorkha Janmukti Morcha (GJM) has done well to call off the agitation it spearheaded in the Darjeeling hills for over a hundred days. The Union home ministry will organise a meeting to discuss the issues raised by the protestors. The protest had begun to lose its sting as the extended bandh crippled normal life in the region. Tourism, the backbone of the local economy, suffered because of the extended shutdown and the violence and educational institutions and businesses were closed. The West Bengal government has described Singh's offer for talks as a face-saver for the GJM. Even if that is true, the state government must now reflect seriously on the reasons that had forced people in the hills to take to the streets again.

There is persuasive evidence to suggest that the Nepali-speaking majority of the Darjeeling hills continues to feel alienated from the state government, which is perceived to exclusively represent the Bengalis of the plains. Communities in the hills believe that Kolkata is unwilling to recognise their unique cultural character and that it wants to subsume their distinct linguistic and ethnic features in a Bengali identity. The idea of a separate Gorkhaland state is born out of a struggle in the hills to maintain a unique sub-regional identity. Of course, issues of governance have also been flagged. The West Bengal government, at various times, has sought to contain the statehood demand with the promise of administrative autonomy. The Darjeeling Gorkha Hill Council of the 1980s to the present Gorkhaland Territorial Administration were created in response to popular movements for a separate state. Though projected as autonomous entities, however, the state governments were reluctant to sufficiently empower them with funds or administrative powers. These bodies, predictably, failed to meet the expectations of the people. The state government has also invited accusations of insensitivity to the cultural claims and sentiments in the hills. The present phase of the protests, for instance, was provoked by an announcement by Chief Minister Mamata Banerjee that Bengali would be made compulsory in all schools.

Successive state governments have preferred to enforce peace in the hills by exploiting divisions within the Gorkhaland movement. This time, the state government weaned away a section of the GJM earlier this month. A week ago, the government constituted a nine-member board of administrators and bestowed on them the powers vested with GTA. It helped to end the bandh, but in the absence of institutional remedies to genuine concerns about the cultural identity of the hills and administrative autonomy, the protests could return.

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