The Annual Survey of State Laws in India

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INTRODUCTION

The Annual Survey of State Laws is an initiative of NALSAR University of Law. Starting from 2020, we will, with a multi-sectoral team, annually survey how states use their law-making powers. This evaluative exercise is both quantitative and qualitative. It will not only study how many laws states are making and in how much time, but will also examine what kind of laws they are making. In addition to statutes, we will study legislative proposals (i.e., bills), executive instruments such as ordinances, rules, regulations, and quasi-law efforts such as resolutions.

This inaugural issue includes surveys from 18 states. In this introduction, the salient findings of the surveys undertaken by a team of colleagues from the academy and the legal profession are shared. Before dwelling on the findings of the survey year, in order to provide context, the law-making powers conferred on the states by the Constitution of India are briefly described and the Sarkaria Commission's[1] deliberation on this legislative division is discussed.

The Division of Legislative Powers in the Constitution

The Constitution of India has made a three-fold division of legislative powers, and incorporated the division in three lists which have been included in its seventh schedule. All matters specified in list I are within the exclusive purview of parliament, the areas within the jurisdiction of the states are stated in list II, and list III includes subjects on which both the union and the states can legislate. The manner in which the union and the states are to exercise their legislative powers has been stated in the 11 articles of chapter I of part IX. Articles 245, 246, 248 and 254, along with the lists, encapsulate the distribution of legislative powers between the union and the states. Article 245 defines their territorial jurisdictions. Thus, parliament has powers to legislate for the whole or part of India and state legislatures can legislate for the whole or part of a state.[2] Article 246 provides for parliamentary supremacy by conferring exclusive power on parliament to make laws in relation to matters enumerated in list I. The

1. The Commission was set up by notification No IV/11017/1/83 CSR dated June 9, 1983 with Justice R S Sarkaria as chairperson and Mr B Sivaraman and Dr S R Sen as members. It submitted its 1600-page report in Jan. 1988. Commission on Centre-State Relations, "Report" (1988) *available at*: http://interstatecouncil.nic.in/report-of-the-sarkaria-commission/ (last visited on March 29, 2022). Referred to as the Sarkaria Commission through the volume.

   The division of legislative powers was examined by the Punchhi Commission too. Commission on Centre-State Relations, "Report" (March 30, 2010) *available at*: http://interstatecouncil.nic.in/report-of-the-commission-on-centre-state-relations/ (last visited on April 4, 2022). Due to the greater currency of the Sarkaria Commission, we have limited our comparison to the first report. It is for the same reason that we have not made a comparison with the Venkatachaliah Commission's report. National Commission to Review the Working of the Constitution, "Report" (March 31, 2002) *available at*: http://lawmin.nic.in/ncrwc/ncrwcreport.htm (last visited on April 4, 2022).

2. The Constitution of India, art. 245.

states' exclusive power to legislate on matters enumerated in list II has however been made subject to the powers conferred on parliament. The rule of parliamentary supremacy is also reiterated in article 246(2) where the states' power to make laws in relation to matters relating to list III is again subject to parliament's law-making powers. The issue of conflict between union and state laws is addressed in article 254(1) and here too, if a state law is repugnant to parliamentary legislation, then to the extent of repugnancy the state law is declared to be void. Article 254(2) allows the continuance of a state law made with respect to a matter listed in the concurrent list to prevail in the state provided presidential approval is obtained for the departure from union law. If such approval is obtained, then the state law, despite the repugnancy, can continue to be good law in the state. This presidential approval in no way circumscribes parliament's power to add, amend, vary or repeal the law made by the state legislature. Article 248 and entry 97 of list I of the Constitution confer on parliament the power to make law in relation to any matter which has not been enumerated in the lists. The all-encompassing law-making power of parliament also extends to list II in the following circumstances. Article 249 allows parliament to legislate on a matter specified in the state list, provided the Rajya Sabha by a two-thirds majority resolves that such parliamentary intervention is required in the national interest. Article 250 permits parliament to legislate on any matter in the state list if a proclamation of emergency is in operation. It can, with the consent of two or more states legislate on any matter in the state list. And such a legislation can be adopted by any other state.[3] Parliament has been given overriding power to make law to fulfil any kind of international agreement.[4]

The above narrative shows that the law-making power of states operates under the shadow of the union and the Constitution permits the union to occupy the space allocated to the states in myriad situations. Even when the union does not step in, the states have been required to exercise their law-making powers under the scrutiny of the union government as evidenced in the procedure provided to accord assent to bills passed by the state legislature. Article 200 confers on the governor the power to grant or refuse assent to the bill or reserve it for consideration by the president.[5] Here a distinction is made between laws which must be reserved for presidential scrutiny[6], and laws which may be so reserved.[7] When the governor decides to refuse assent, the bill is required to be returned to the house or houses of the legislature, as the case may be, for reconsideration. If the legislature on reconsideration passes the bill again, the governor cannot withhold consent. The president, like the governor, can assent or

3. *Id.*, art. 252.
4. Such international agreement could be "any treaty, agreement, or convention with any other country or countries or any decision made at any international conference, association or other body." *Id.*, art. 253.
5. The Sarkaria Commission elaborately discusses whether the governor has to exercise this power at their discretion or on the aid and advice of the state council of ministers. The Commission took the view that generally the power has to be exercised on the advice of the council of ministers but in exceptional situations the governor could rely on their own discretion. How to distinguish between the two situations, the Commission opined, was to be decided by the governor at their discretion. See, Commission on Centre-State Relations, "Report, Chapter V: Reservation of Bills by Governors for President's Consideration and Promulgation of Ordinances" (1988) *available at*: http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTER V.pdf (last visited on April 2, 2022).
6. According to the Sarkaria Commission, bills which derogate from the powers of the high court, which relate to taxes on water and electricity, and the passage of particular kinds of financial bills during a financial emergency, must be reserved for consideration of the president. *Ibid*.
7. The Commission refers to bills seeking exemption from the operation of articles 14 and 19 of the Constitution; ensuring operation of state legislations despite the rule of repugnancy; and imposing restrictions on trade and commerce. This classification makes little sense as the Commission then allows bills which do not fall under any of the above categories to still be reserved by the governor for presidential consideration. *Ibid*.

refuse to grant assent to the bill reserved for presidential consideration. The bill can also be returned to the state legislature with a message from the president advising reconsideration.[8] The house or houses of the state legislature are then required to reconsider the bill in the light of the presidential message within six months of receiving it. If the state legislature passes the bill again, the bill would be yet again sent to the president for consideration. Unlike the governor, there is no obligation placed on the president to give their assent to the bill. Since the president acts on the aid and advice of the council of ministers, this power to withhold consent signifies constant federal oversight on the law-making activities of state governments.

The constitutional choice of federal primacy has been deliberated upon by several review commissions.[9] The most detailed consideration of the legislative division of power was however undertaken by the Sarkaria Commission.[10] During its deliberations the Commission considered various radical suggestions made to revamp the division of legislative power, but at the end confirmed the rule of federal supremacy, and made only operational recommendations to fine-tune the relations between the union and the states. Even as the recommendations of the Sarkaria Commission continue to be recalled in political, judicial and academic discourse, it would be pertinent to remember that the Commission undertook its review exercise in the eighties[11] when the original constitutional choice of India being 'a federation with a strong centre' continued to be the dominant political choice.[12] The Commission's leanings were also influenced by its terms of reference, which asked the Commission to "examine and review the working of the existing arrangements between the Union and the States in regard to powers, functions, and responsibilities in all spheres and recommend such changes or other measures as may be necessary."[13] This wide mandate was then circumscribed by the guiding principle provided to the Commission, whereby it was required to undertake its task "having due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people."[14]

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8. *Supra* note 2, art. 201.
9. *Supra* note 1.
10. *Supra* note 1.
11. *Ibid.*
12. The Commission has, in its report, summarised in four categories the submissions it received from the states. The majority of state governments, political parties and eminent persons found nothing wrong with the notion of a strong centre or the union intervening during an emergency, but had strong reservations against over-centralization in peaceful times and the union attempting to dictate state policy by misusing its powers under art 201. In category II, four state governments and their supporting political parties asked for exclusion of those clauses and words from arts. 246 and 254 which accorded predominance to the legislative power of the union. This group also sought abolition or substantial reduction of the concurrent list and asked that the excluded entries, along with residuary powers, be transferred to the state list. Category III consisted of one regional party that wanted constitutional infrastructure to be so reshaped as to make India a genuine federation. Critics in category IV wanted residuary powers to be shifted to the states and a reduction of entries in the concurrent list. See, Commission on Centre-State Relations, "Report, Chapter II: Legislative Relations", paras. 2.4.02-2.4.04 (1988) *available at*: http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTERII.pdf (last visited on March 29, 2022).
13. "Note on Sarkaria Commission", *available at*: http://interstatecouncil.nic.in/sarkaria-commission/ (last visited on March 29, 2022).
14. *Ibid.*

Constitutions should be evolving testaments which are guided, but not imprisoned, by the vision of the founders. This dynamic vision of constitutional interpretation is often set against an originalist perspective which seeks primacy for the outlook of the founders. Whilst each viewpoint has its committed votaries, judicial interpretation, depending on the matter at issue, partakes of both schools of thought. The tension between the originalist and dynamic schools of interpretation assumes relevance for any work which aims to engage with Constitutions. Here it is being employed to understand Indian federalism at work. To ask how the matter of union-state relations should be addressed, there is the text informed by the vision of the founders on union-state relations, and there is the reality of the last seventy years which has worked with that text and lived that vision. How should the original mandate and the evolving reality relate to each other?

Even as the Sarkaria Commission tipped its hat to the dynamic school of constitutional interpretation,[15] it was largely in dialogue with the motivations informing the choices made by the founders. The Commission invited depositions from experts and stakeholders, conducted field surveys, and undertook analytical studies, to determine whether the normative choices made by the founders needed to change or continue.[16] This thorough interrogation of the originalist intention makes the Commission's report a useful reference point to this survey's effort to understand the present operation of Indian federalism. The efficacy of the comparison is sharpened by the fact that while the Commission took a normative approach, this survey has adopted a realist outlook. It is looking at the actual exercise of law-making powers by the states. It is possible that these realist surveys, conducted over a period of time, may yield insights on how Indian federalism should be reconstituted; however, at this time, this Annual Survey of State Laws is just analytically describing Indian federalism at work.

Other than this meta-level interest in understanding Indian federalism, an additional purpose of starting this survey is to promote a more rounded engagement with state laws. Even as national law universities have been supported by state governments and are spread all over the country, our course curricula are dominated by the legislative output from the union. It has been repeatedly found that it is not possible to alter what is taught if there are no materials to implement the modified approach. At this juncture of the Indian polity, there is a strong case to study Indian federalism at work. This proposal would not move from committee rooms to classrooms, if suitable materials to teach the course are not available: an inaccessibility which could be connected to the relative indifference of the legal academy to the legal initiatives of states. State laws, like union laws, impact on the lives of people. It is therefore important that they should be studied directly and as a whole. A piecemeal encounter with particular legislations in some judicial decisions is insufficient. This survey is an attempt at initiating the process of direct engagement.

The Annual Survey of State Laws was launched because we were convinced that Indian federalism could not be understood without closely examining how states were using their law-making power. Our enthusiasm did take a beating, however, when the various researchers started to look for primary materials. The websites of many states were not up to date. The Andhra Pradesh survey refers to the AP

15. In the introductory chapter the Commission opines that "(i)t is necessary (t)o review from time to time in the light of past experience the evolution of Union-State arrangements not only for the purposes of identifying persistent problems and seeking their solutions *but also to attune the system to the changing times*…" (emphasis supplied). Commission on Centre-State Relations, "Report, Introduction" (1988) *available at*: http://interstatecouncil.nic.in/wp-content/uploads/2015/06/Sarkaria_INTRODUCTION.pdf (last visited on March 29, 2022).

16. *Ibid.*

government taking a public position against making government decisions easily accessible online "in order to avoid 'frivolous' public interest litigation that hampers the ability of the government to make decisions."[17] The AP survey also documents the various ways in which inaccessibility is practiced.[18] Some researchers directly approached the publications division of their respective state governments to obtain access to the materials. In this enterprise, the PRS exercise of assessing the performance of state legislations and legislatures was extremely helpful and we wish to express our warm gratitude for their effort.[20] However, as they themselves admit, the PRS survey was far from comprehensive as they too encountered the difficulties we faced. Consequently, contributors to this Survey have written their state surveys by accessing materials from multiple sources. Multiplicity of sourcing, it was hoped, would assist the cause of authenticity and make the examination of materials as comprehensive as possible. Since the surveys are analytical, no claims of comprehensiveness of coverage are being made. Instead, all material which deepened understanding of federalism at work has been relied upon.

Findings from the Surveys

In what follows we share the significant findings from the surveys of 18 states of the country. The first section describes the different kinds of federal relationships subsisting in the country. In section two, the nature of the legislative process followed in the states is outlined. The common patterns of law-making across states are described in section three. And in the fourth section, we draw attention to some of the unique law-making initiatives of specific states.

Various Kinds of Federalism

Even as the constitutional provisions on the division of legislative power are largely the same for all parts of the country, these provisions are not perceived or experienced similarly by all states, be it the gubernatorial power of assent, the freedom to legislate on entries in the concurrent list, or the right to receive financial support from the union. It can be contended that the principle of federal primacy does not operate in the same way for all states. The operation of the principle depends upon whether the party in power in the state is the same or different from the one ruling at the centre. The Gujarat survey points out[21] how the Gujarat Land Grabbing Act, 2020 stands in direct conflict with the federal Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 and could also fall foul of the Forests Rights Act, 2006 but it had no assent tangles.[22] In contrast, the West Bengal survey narrates how the West Bengal government has not been able to obtain gubernatorial assent for an amendment to the Motor Vehicles (Tax Amendment) Bill which allows the state to raise resources from two-wheeler pliers who use their vehicles for commercial purposes. The bill was presented to the governor in March 2020 but did not receive gubernatorial assent even though the bill was tabled after obtaining the governor's consent.[23] The jurisdictional tussles between the lieutenant governor and

17. *See* Andhra Pradesh survey *infra* at p. 11.
18. *Ibid.*
19. The surveys on Assam and Tamil Nadu.
20. Anoop Ramakrishnan and N R Nikhil, "Annual Review of State Laws" *available at*: https://prsindia.org/policy/analytical-reports/annual-review-of-state-laws-2020 (last visited on April 4, 2022).
21. The Gujarat survey *infra* at p. 48.
22. Interestingly, this was one of the situations, which the Sarkaria Commission found suitable for the governor to exercise their discretion to deny assent. *See supra* note 5, at para. 5.19.01.
23. *See* West Bengal survey *infra* at p. 211.

the Delhi government resulted in the lieutenant governor granting assent to the Delhi Urban Shelter Improvement Board (Amendment) Board Act in 2020, five years after the amending bill was passed by the Assembly.[24]

State amendments to criminal law need presidential approval and as the Maharashtra survey points out, it helps that such oversight is available when state amendments are disproportionate and vengeful: a description which could be applied to the Shakti Bills in Maharashtra[25] or the Disha law in Andhra Pradesh.[26] The federal response of delayed consent did not alter even when Telangana proposed changes to the law relating to sureties on the recommendation of the Telangana High Court.[27] In comparison, the UP Public Health and Epidemic Diseases Ordinance was issued despite the fact that the requirement of immediacy no longer survived, since the union had already issued an ordinance amending the Epidemic Diseases Act, 1897 and the scheme of punishments provided in the ordinance were inconsistent with the scheme of punishment provided in the Indian Penal Code of 1860.[28]

Taxation and Fiscal Federalism

While elaborating on financial relations between the union and the states, the Sarkaria Commission opines that the long history of the evolution of public finance in India shows that, while it is possible to divide taxation powers and allocate resources, it is difficult to strike a balance between needs and resources. For the purposes of this survey, it is significant that one basic maxim admitted to by the Commission is "that no decentralised government can be established without allocating to it sufficient financial powers…"[29] The data on financial relations emerging from the reports of various states speaks to the truth of this contention.

The year under survey was the year of the pandemic which signified high expenses and low earnings; the situation was further aggravated by the union's failure to defray compensation to states for the implementation of the Goods and Services Tax (GST). The union government permitted states to increase their borrowing limits from three percent to five percent of GSDP by duly amending their Fiscal Responsibility and Budget Management Acts. One percent of that two percent could only be borrowed if the state executed a package of reforms which included ration card portability, ease of doing business, strengthening urban local body finances, and power sector reforms.

The Bihar survey shows how the union's fiscal controls over state institutions operates. The state enacted the Bihar State Higher Education Council Act 2020 in order to implement the Rashtriya Uchhatar Shiksha Abhiyan (RUSA). Since RUSA was a central scheme, the functioning of the institutions of higher education in the state were controlled by the central scheme and not the state law.[30] If the union were to encroach on a state field by law, the state could challenge the intrusion but a schematic intervention often gets the state to almost willingly surrender its autonomy.

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24. *See* NCT Delhi survey *infra* at p. 184.
25. *See* analysis of the Shakti Bills in the Maharashtra survey *infra* at p. 112.
26. *See* Andhra Pradesh survey *infra* at pp. 10-11.
27. *See* Telangana survey *infra* at p. 174.
28. The ordinance was promulgated without instructions from the president even though it was repugnant to the laws of the union. The Constitution of India, art. 213. Also *see* Uttar Pradesh survey *infra* at p. 199.
29. *See* Commission on Centre-State Relations, "Report, Chapter X: on Financial Relations", para 10.2.05 (1988) *available at*: http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTERX.pdf (last visited on April 2, 2022).
30. *See* Bihar survey *infra* at pp. 25-26.

The survey on West Bengal documents how the state has been an outlier and has refused implementation of central schemes in order to promote implementation of its own schemes. It has renamed many central schemes and issued a notification which directs government officials to use the state assigned name of a scheme in all communications and publicity campaigns.[31]

Federal intervention in the resource earning activities of the states has been discussed at some length in the Chhattisgarh and Jharkhand surveys. The Chhattisgarh survey documents how the central government acquired the authority to provide permits to auction coal mines in India by enacting the Mineral Laws (Amendment) Act, 2020. The amendment has divested the states of their ownership rights and thereby weakened the environmental regulations in force in the area.[32] The Jharkhand survey details the losses incurred by the mineral rich states and how the state has been attempting to raise resources by enacting the Jharkhand Mineral Bearing Lands (Covid-19 Pandemic) Cess Act, 2020. Whether the states can levy a cess on the output has been a 'yes and no 'judicial saga.[33] This conflict significantly affects the state's power to raise resources as the rates of royalty paid to the coal producing states have remained unchanged since 1973.

The Rajasthan survey recounts how the state government raised funds for the pandemic by extending the surcharge imposed by the previous government for "the conservation and propagation of cows and its progeny" to be also available for "mitigating natural or man-made calamities".[34] The state's other efforts to raise money for farmers welfare by amending the Rajasthan Agricultural Produce Markets Act, 1961 did not obtain similar success as the state amendments were overridden by the central government's Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020.[35] The need to continuously search for resources has also been documented in the Punjab survey where the state has legislated to strengthen the commercial potential of jails.[36]

The Politics of Law-Making

Both the principle of federal primacy and the fact that it controls the purse strings pushes state governments to maintain cordial relations with the union government. The survey shows that relationships between the federal and the state governments range from complete deference to total animosity. It is not the constitutional design of division of legislative power but the political compulsions of each state which determines whether they choose to challenge the dictum of the union or not.[37] Thus, Rajasthan, Punjab and Chhattisgarh all three states enacted laws which attempted to curb the impact of the farm laws enacted by the union. Since the amending laws were changing federal statutes, they could become law only if assented to by the president. An approval they did not obtain. Yet in passing the amending laws, the state governments expressed their disagreement to the union and

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31. *See* West Bengal survey *infra* at p. 214.
32. *See* Chhattisgarh survey *infra* at pp. 36-37.
33. For a detailed recount of the judicial see-saw on the State's power to levy cess on minerals, *see* the Jharkhand survey *infra* at pp. 59-60.
34. *See* Rajasthan survey *infra* at p. 150.
35. *Id.* at pp. 150-151.
36. *See* Punjab survey *infra* at p. 131.
37. *See* NCT Delhi survey *infra* at pp. 191-192, exemplifying how the government of Delhi defers to the LG with regard to rules made under art. 309 of the Indian Constitution.

communicated their political inclinations to their constituents. It is these political inclinations which caused even the (then) largely compliant Tamil Nadu government to enact the TN Undergraduate Medical Reservation Act, 2020, modifying the application of the National Eligibility cum Entrance Test (NEET) in Tamil Nadu.[38] The centre's decision to exempt hydro-carbon exploratory projects from environment impact assessment and public consultation prompted the enactment of the TN Protected Agricultural Zone Development Act, 2020 which declared the Cauvery delta as a 'protected agricultural zone' and thus not available for a range of future industrial projects.[39] The State of Odisha attempted to keep its political constituents and the union happy by facilitating the return of its migrant workers and providing additional wages to workers in the state under its MUKTA scheme while simultaneously reducing protections available to workers under various labour laws.[40]

When states propose amendments to central legislations made on subjects covered by the concurrent list, they are still acting in a legislative field which the Constitution subject to conditions, permits them to occupy. They have no such constitutional leeway with subjects covered by the union list. Since legislations made by the union are to be implemented by the states, legislative prudence would suggest that even central laws should not be made without consulting with the states. The council of states is meant to perform just this role. However, in recent years, certain legislative tactics have been adopted whereby the council of states is deliberately ousted from the law-making process. The categorisation of the Aadhar law as a money bill can be cited as one such example.[41]

Since the making of law is a political exercise, states have, in the survey year, felt compelled to express their opinion by expressing their dissent from the legislative choices of the union. Resolutions passed by Andhra Pradesh, Bihar, Kerala, NCR Delhi, Punjab, Jharkhand, Rajasthan, Telangana and West Bengal, against the Citizenship Amendment Act and the National Population Register are a case in point. These resolutions may have no legal status but they are a powerful symbolic protest against the manner in which the union is employing its law-making powers and a public expression of opinion asking the centre to reconsider its legislative choices.[42] The political significance of these resolutions is also evident from the fact that the Gujarat state legislature passed a pro-CAA resolution.[43]

Devolution of Powers

Even as states are critical of the union trenching into their powers and arm-twisting them into conformity, our research also shows that when it comes to devolving legislative and administrative powers to local governments, there is a similar unwillingness by states to devolve power.[44] The Kerala

38. *See* Tamil Nadu survey *infra* at pp. 159-160.

39. *Id.* at pp. 164-165.

40. *See* Odisha survey *infra* at p. 118. A similar choice was also made by Telangana. *See* the Telangana survey *infra* at p. 178.

41. Arvind P Datar and Rahul Unnikrishnan, "Aadhar: The Money Bill Controversy", *available at*: https://www.barandbench.com/columns/aadhaar-money-bill-controversy (last visited on April 12, 2022).

42. The impact of the resolutions can be assessed by the fact that a public interest petition was filed in the supreme court questioning the passing of such resolutions. The court has not issued notice but asked the petitioner to provide more details. Samanwaya Rautray, "SC to see if Assemblies can pass resolutions against Central Laws", *The Economic Times*, March 20, 2021, *available at*: https://economictimes.indiatimes.com/news/india/dont-states-have-right-to-express-opinion-sc-asks-ngo-on-plea-to-quash-caa-agri-laws-resolutions/articleshow/81590021.cms?from=mdr (last visited on April 3, 2022).

43. Gujarat Legislative Assembly, Government Resolution, Jan. 10, 2020.

44. *See* Mohan Guruswamy, "Small states are a must for better governance", *Deccan Chronicle*, March 22, 2022.

survey mentions that the state reduced the number of seats to be filled by direct elections and thereby retained a greater say in the composition of local bodies. Further, the principle of keeping governance close to the people was compromised by forcibly merging District Cooperative Banks with State Cooperative Banks.[45] The Telangana survey recounts a similar story of the state government amending the Greater Hyderabad Municipal Corporation Act, 1955 to prescribe what the Corporation must do or not do.

The Chhattisgarh survey provides one of the few examples of devolution of power, when the state government gave power to the collectors to take stock of the needs of their districts and make their executive decisions accordingly. The collectors, however, chose to wait for guidelines from the union.[46]

The Assam survey has a different story to recount in relation to the constitution of three new autonomous district councils for Moran, Matak, and Koch-Rajbongshi communities in the state and how these councils "are successful in breaking up pan-Assam socio-political movements by providing material incentives to focus only on distinct ethnic communities."[47]

Nature of Legislative Process: Curtailed Deliberation

The year of the survey was the pandemic year which necessarily meant shortened Assembly sessions. Except for West Bengal, NCR Delhi and Kerala, which enacted no more than the absolute necessary statutes, the pandemic had little impact on the production of laws by the states. The number of bills introduced and enacted by the states was comparable to previous years. However, the time taken to make laws was progressively shortened. The Madhya Pradesh survey reports that "a huge chunk of legislative business was carried out in just a few minutes".[48] The representative nature of the process was further curtailed by the fact that only a minimum quorum of legislators was required to be present.

The survey on Uttar Pradesh shows how the time spent on deliberation was progressively reduced. Debate and deliberation are integral to democratic law-making. Otherwise, there is little to distinguish between laws made through democratic and dictatorial processes. The surveys show that state governments across party affiliations showed impatience with discussion, debate, disagreement and dissent. For example, the Andhra Pradesh survey reveals the peremptory manner in which the state decided to abolish the legislative council when it opposed the ruling party's bills on trifurcation of the state capital. Standing out in stark contrast, the Kerala survey refers to a robust process of reviewing legislative proposals, with 14 subject committees which cumulatively submitted as many as 655 reports to the fourteenth legislative assembly.[49]

It is this non-deliberative mode of enacting statutes that explains how, progressively, states do not make a distinction between an ordinance and an Act. Innumerable states first promulgated ordinances and then enacted them as statutes duly approved by state legislatures. The surveys on Maharashtra and Uttar Pradesh have drawn special attention to the interchangeable use of legislative and executive

45. *See* Kerala survey *infra* at p. 85.
46. *See* Chhattisgarh survey *infra* at p. 44.
47. Assam survey *infra* at p. 16.
48. Madhya Pradesh survey *infra* at p. 90.
49. *See* Kerala survey *infra* at p. 76.

instruments of law-making, with the constitutional requirement of the "need for immediate action" when the state legislature was not in session being given an easy ignore.

The ordinance to statute process of making law still retains a modicum of public disclosure of the norms being adopted by the state. However, several states carried on governance by relying upon statutory and non-statutory executive instruments alone. The National Capital Territory of Delhi and West Bengal can be referred to as two states that chose to take this option.[50]

Another trend that was found in several states, with West Bengal leading the way, was the preference of providing for the welfare of people through schemes instead of statutes. West Bengal's gubernatorial wrangles can, to some extent, explain this preference, but even Telangana chose to convert a statutory scheme into a non-statutory one, and thereby made welfare more a part of state largesse than an entitlement of the people. So, while rights are addressed by schemes,[51] deprivations are enacted through law.[52]

Common Law-Making Patterns: Standard and Not So Standard Responses

The previous section showed the processual commonalities between the states and how states are largely making imperative rather than deliberative legislative choices. In this section, we examine the substantive areas on which states make laws.

While land, local government and education were the most common repeat players, in this year of the pandemic, public health and disease also had a pervasive presence. On federal prompting, labour reform and ease of business figured nearly everywhere. In addition, there were varied ways in which questions surrounding religion and law were addressed. Both Karnataka and Gujarat made laws on land grabbing, but the Karnataka Act was drafted ensuring that the entitlements granted by legislations were not infringed.[53] Andhra Pradesh amended its Gaming Act of 1974 to criminalise online gaming portals that allow betting and gambling. A similar effort by Tamil Nadu was struck down by the Madras high court which held that the statute did not distinguish between games of skill and games of chance, and games of skill were not within the legislative competence of the State. The Maharashtra survey recounts how efforts to provide wages to workers during the pandemic invited litigation and salutary advice from the Supreme Court. The more compassionate voices could not obtain traction.[54]

Law-Making on the Pandemic

The year 2020 was the first of the two pandemic years. Even as the union made the first level of government orders under the National Disaster Management Act 2005, all states registered their respective legal responses to the health crisis. States used different kinds of legal vehicles to address the pandemic. While some states issued ordinances to articulate their responses,[55] most states issued regulations under the Epidemic Diseases Act,1897. Rajasthan, however, after promulgating two ordinances, enacted the Rajasthan Epidemic Diseases Act, 2020 because, as a former princely state, it

50. For a detailed analysis on how the NCT Delhi's subordinate legislation fared when normatively evaluated, *see* NCT Delhi survey *infra* at pp. 187-191.
51. *See* Telangana survey *infra* at pp. 177-178.
52. *See* Uttar Pradesh survey *infra* at p. 200.
53. *See* Karnataka survey *infra* at p. 69 and Gujarat survey *infra* at pp. 47-50.
54. *See* Maharashtra survey *infra* at pp. 105-106.
55. Karnataka, Kerala, Odisha and Uttar Pradesh were among the states that promulgated ordinances.

was not covered by the 1897 Act and had got its own statute in 1957. Though COVID-19 was a health crisis, several survey reports noted that states addressed it more as a law-and-order matter than a health crisis. Prohibitions on free speech and penal sanctions for infringing the norms declared by the state were to be routinely found in the subordinate legislation or executive instructions issued by the states.[56]

Even when the state governments of Bihar, Chhattisgarh Odisha and Jharkhand issued notifications asking private schools to reduce fees, their appeals were largely ignored. The Maharashtra survey recounts how the state government's directives on wages invited litigation, with the supreme court not adjudicating on the question, but counselling understanding and conciliation to the parties.[57]

Another pandemic response adopted by several states was to order salary cuts of elected representatives[58] and to defer payments of salaries and pensions of government employees. The Telangana high court found the deferment of payment to employees illegal, as the government order was not backed by any statute. This caused the state to first promulgate an ordinance and then replace it with the Telangana Disaster and Public Health Emergency (Special Provisions) Act 2020.[59]

Land Laws

The legislative interventions on land have attempted to control use of land, to streamline land records, and to effect redistribution. Andhra Pradesh enacted the AP Assigned Lands (Prohibition of Transfers) (Amendment) Act, 2020 to allow the use of assigned lands for the Andhra Pradesh Green Corporation. It simultaneously amended the AP Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006. The parent statute on land conversion allowed agricultural land to be used for non-agricultural purposes. The amendment permits a reconversion. Thus, non-agricultural lands can be once again used for agricultural purposes.[60] As part of its policy to encourage industrialisation, Bihar had waived payment of levy for converting the use of agricultural land to non-agricultural purposes. In the survey year, the relevant Act was amended and industries seeking conversion of agricultural lands were now required to pay conversion fees.[61] The Gujarat survey describes the evolution of the land leasing system, which at first prohibited the transfer of agricultural land for non-agricultural purposes, and how progressively the state has monetised permissions for land use to the advantage of the deep pockets.[62]

The efforts of the Andhra Pradesh government to legislatively streamline its land records in order to enable growth of the land market were unsuccessful as the enacted statute could not obtain presidential approval, despite trying more than once.[63] Punjab's efforts in the realm of land addressed the need to expedite resolution of land disputes, protect small farmers from being divested of their land, and address the land rights of communities left out of earlier land reforms.[64] Uttar Pradesh changed its Land Revenue Code to include persons of the "third gender" as part of a landowner's family.[65]

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56. *See* for example Chhattisgarh, NCR Delhi, Madhya Pradesh, Telangana and Uttar Pradesh.
57. *See* Maharashtra survey *infra* at p. 106.
58. Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Karnataka, Kerala, Telangana and Uttar Pradesh.
59. *See* Telangana survey *infra* at p. 176.
60. *See* Andhra Pradesh survey *infra* at p. 6.
61. *See* Bihar survey *infra* at p. 27.
62. *See* Gujarat survey *infra* at p. 46.
63. *See* Andhra Pradesh survey *infra* at pp. 6-7.
64. *See* Punjab survey *infra* at pp. 133-134.
65. *See* Uttar Pradesh survey *infra* at pp. 199-200.

Labour Reform and Ease of Doing Business

State revenues were under severe stress: since the pressure to spend had increased due to the pandemic, there was need to increase borrowing limits under the respective Fiscal Responsibility and Budget Management (FRBM) Acts. All states amended their respective FRBM's after the union permitted states to exceed their borrowing limits. The control of the purse strings by the union influenced the adoption of large-scale changes to give effect to the ease of doing business[66] and the dilution of protection under various labour laws.[67] This is yet another instance that reveals how important rights and protections are reduced to issues of compliance. Kerala is the only state which, while enacting laws to ease doing of business, did not amend its labour laws to reduce the protection of workers. In fact, it promulgated a Kerala Headload Workers (Amendment) Ordinance, 2020 to limit the maximum weights workers can carry, to bring it in conformity with the standards set by the International Labour Organisation. It also brought in a slew of ordinances to raise the revenues of welfare funds by altering the periodic contributions of employees, employers and the government.[68] In some states judicial or legislative pushback caused the controversial labour laws to be stalled. Notifications of the government of Gujarat raising the hours of work were struck down by the supreme court when challenged by the Gujarat Mazdoor Sabha.[69] In Karnataka, the bill to replace the Industrial Disputes and Certain other Laws (Amendment) Ordinance 2020 was defeated by a strong opposition in the legislative council because it reduced labour protections. Consequently, the government shelved the controversial ordinance and did not repromulgate it.[70]

Education

The educational interventions largely revolved around setting up regulatory authorities and specialised universities. Such bodies were set up in Andhra Pradesh and Bihar. The decisions of the regulatory body in Andhra Pradesh proved controversial as it upset existing stakeholders,[71] and the Bihar body attempted to streamline higher education in Bihar, but its effectiveness was compromised by the regulatory demands of the University Grants Commission and central government schemes to promote higher education. Establishment of specialised universities to promote specific knowledge areas was another educational intervention initiated in many states. Thus, whilst Andhra Pradesh established the AP Fisheries University and Assam set up a Skill University, Kerala tried to encourage digital research and entrepreneurship by upgrading the Indian Institute of Information Technology and Management to the status of a digital university.

Another issue which assumed some significance was the effort by the Assam government to replace the governor with the chief minister as the chancellor of the Skills University.[72] Chhattisgarh had its own saga of conflict between the government and the governor in the realm of higher education.[73]

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66. Such statutes have also been enacted by Himachal Pradesh, Karnataka, Kerala, Punjab and Uttar Pradesh. Telangana fulfilled its ease of business obligations by issuing a series of government orders.
67. Gujarat, Himachal Pradesh, Karnataka, Madhya Pradesh, Odisha, Punjab, and Uttar Pradesh
68. *See* Kerala Survey *infra* at p. 82.
69. *See* Gujarat survey *infra* at p. 51.
70. *See* Karnataka survey *infra* at p. 74.
71. *See* Andhra Pradesh survey *infra* at p. 7.
72. *See* Assam survey *infra* at pp. 19-20, where the authors also refer to jurisdictional tangles in West Bengal and the sparring between the governor and the education minister in Kerala.
73. *See* Chhattisgarh survey *infra* at p. 39.

Religion and Law

Uttarakhand, in 2018, and Himachal Pradesh, in 2019, had enacted legislations that ushered in state oversight on religious conversion.[74] In the survey year, Uttar Pradesh followed suit and enacted such a law. The question of state support to madrasas was differently addressed in Assam and Rajasthan. While Assam withdrew state support to madrasas by just repealing the statute providing such support,[75] Rajasthan chose to enhance state support by enacting the Rajasthan Madrasa Board Act 2020.

Kerala promulgated an ordinance, which transferred the appointment of officers and employees in the Waqf Board to the State Public Service Commission, Andhra Pradesh amended the AP Charitable and Hindu Religious Institutions and Endowments Act, 1987 to exempt eight prominent temples from the application procedure provided for appointment of trustees.[76] The Kerala survey also indicates how an earlier move to transfer the appointments of the Devaswom Board to the Public Service Commission had failed, and a Special Recruitment Board was established for Devaswom appointments.[77]

Preserving Memory

The surveys of Chhattisgarh, Karnataka, Tamil Nadu and Uttar Pradesh show how the act of preserving memory can become politicised. In Chhattisgarh and Uttar Pradesh, depending on which party was in power, the memory of which leader should be immortalised was decided and their name bestowed on major educational institutions. In these two states, the politics of commemoration was influenced by election results and the names of some universities were altered multiple times. Some universities in Tamil Nadu were named after former Chief Minister J Jayalalitha, though the then government's plan to convert her house into a memorial accessible to the public was resisted by her relatives and shot down by the high court.[78] The Telangana government expressed its immortalising aspirations by adopting a resolution seeking that the former prime-minister P V Narasimha Rao be conferred the Bharat Ratna posthumously.

Appropriation Acts

All the surveys make mention of the Appropriation Acts enacted by the concerned state. However, these Acts have been viewed by most contributors as routine laws that states have to enact in order to appropriate funds from the Consolidated Fund of the State. The surveys on Assam and Tamil Nadu have drawn special attention to the Appropriation Acts of their respective states. The Assam survey draws attention to the increased expenditure on social welfare primarily prompted by the state's decision to establish three more autonomous councils and sanction a 500-crore package for four tribal communities in an election year. The Tamil Nadu survey makes a comparison between governmental spending in previous years and the increased level of appropriations in the survey year, which would

74. The Uttarakhand Freedom of Religion Act, 2018 (Act 28 of 2018); Himachal Pradesh Freedom of Religion Act, 2019 (Act 13 of 2019).

75. *See* Assam survey *infra* at pp. 17-18, on how the state support was to be withdrawn from both Sanskrit Tols and madrasas but, when the repealing law was enacted, only madrasas were included.

76. *See* Andhra Pradesh survey *infra* at p. 8.

77. *See* Kerala survey *infra* at p. 86.

78. *See* Tamil Nadu survey *infra* at p. 159.

have an effect on the fiscal deficit of the state. According to the government, the pandemic caused a sharp drop in revenue but expenditures had to be enhanced to protect people's welfare.

Since a state is bound by the expenditures shown in the Appropriation Acts, these Acts provide public evidence of the actual expenses incurred by a state.

Standalone Approaches

In this section we discuss approaches adopted by any one state whether to promote good governance or to advance development, to promote rights or to discipline people and communities. In order to promote good governance, Telangana set up the "Dharani Portal", which was to be a one stop digital portal for recording land rights. This digitalisation of land records and conducting of various land transactions online was seen as a way of obviating administrative discretion and the attendant corruption. The online route was also opted by the state for various other application processes, including application for speedy approval of building permissions.[79] The state government, like several others, saw human discretion as a source of corruption. That discretion also offers possibilities of individuation and honing rules for justice was not acknowledged, and the exclusion inherent in the standard form not even admitted.

In order to decentralise development and to avoid the creation of a honeypot city, Andhra Pradesh opted for a trifurcated capital with the legislature, executive and the judiciary sitting in different cities. Since this proposal came after repealing the AP Capital Region Development Authority Act, 2014 which the previous government had enacted, the proposal was overrun by litigation and did not survive the onslaught.[80] Whether the trifurcation of the capital would result in inclusive development or dissonance in governance could not be tested.

On the developmental front, different states have tried to build on their strengths. With the objective of making Karnataka a technology hub, the State legislature enacted the Karnataka Innovation Authority Act, 2020 which allows innovators to obtain regulatory exemptions. Since state largesse comes along with state oversight, the start-ups have been reportedly hesitant to accept the offer.[81] Andhra Pradesh moved to press its aquaculture advantage by enacting several statutes which would enable it tap the economic potential of the industry, and enacted a statute to establish the AP State Aquaculture Development Authority to aid the process.[82] In a bid to develop the state as an export hub of seed potatoes in the country, Punjab enacted the Punjab Tissue Culture Based Seed Potato Act, 2020.[83]

In acknowledgement of the job opportunities that English medium education opens up, the Chhattisgarh government launched the Swami Atmanand English Medium School Scheme to enable all children of merit, belonging to the economically weaker sections, to study in English medium schools. The benevolent intention was not accompanied with the requisite transition planning, and the students are reportedly struggling.[84]

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79. For an elaborate description *see* Telangana survey *infra* at pp. 170-171.
80. The High Court of Andhra Pradesh struck down the proposal on March 3, 2022. "Govt Has No Right to Enact Law for Three Capitals" March 3, 2022, *available at* https://news.abplive.com/andhra-pradesh/govt-has-no-right-to-enact-law-for-three-capitals-andhra-pradesh-hc-asserts-amaravati-is-state-capital-1516825 (last visited on April 4, 2022).
81. *See* the Karnataka survey *infra* at p. 74.
82. For other developmental initiatives of the state, *see* Andhra Pradesh survey *infra* at p. 5.
83. *See* Punjab Survey *infra* at p. 134.
84. *See* Chhattisgarh survey *infra* at p. 41.

Karnataka extended state patronage to heritage protection by enacting statutes which would protect Lakkundi, the birthplace of Attimabbe, a patron of Kannada Literature and promoter of Jainism. The other statutory authority was established to cover places associated with Sarvajna, the famous Kannada social reformer, philosopher and poet, who belongs to the Kumbara community: a move that could be seen as an effort by the ruling dispensation to woo the significant OBC population in Karnataka. The establishment of these authorities has resulted in other groups making similar demands to the state.[85] There is a resonance between these initiatives and the council-forming activities in Assam.

As already mentioned, there is a general governmental impatience with dissent and disagreement, be it from parties in the opposition or the people. The move of the Uttar Pradesh government to obtain recovery for damage caused to public or private property during hartals, bandhs, riots, public commotion and protest is in a class of its own.[86] Even as the Allahabad High Court has struck down some of the most egregious provisions of the Act, it is pertinent to recall that in the face of the presumption of constitutionality, the ordinance and the substituting Act remain good law. Judicial review is an after-the-fact process. It can never sufficiently protect people against the waywardness of governments, since, till corrected and disciplined by judicial intervention, the norms created by the institutional machinery of the state subsist as good law.

Learnings from the 2020 Survey

The task of putting together this inaugural issue has been far from easy, despite it being just a one-year survey that did not even cover all the states in the country. We cannot therefore draw definitive conclusions but only put down tentative learnings emerging from this exercise. We feel compelled to put them down to have a reference for the future, as that which is not documented is often forgotten.

This introduction has been replete with references to the Sarkaria Commission, which, as we had mentioned earlier, largely made operational recommendations. These operational recommendations were more in the nature of fixing time limits within which tasks were to be done; or distinguishing between mandatory and optional requirements; or making a case for constitutional rectitude and development of healthy conventions. The findings arising from the various contributions in this survey may show the Commission to be naïve in its expectations from the union, the states and the various constitutional authorities. In defence of the Commission, it must be said that a Constitution is not merely the text, but also the spirit and the values informing the text. Constitutional functionaries, be they the president, the prime-minister, the governor or the chief-minister, have to act as constitutional and not party functionaries. Constitutional authority is power held in trust which has to be even-handedly exercised for the good of all.

The value of cooperation can only be promoted if both sides win, or rather, if each side looks out for the other. The 2020 survey shows the polity running short on this value, be it in how powers are exercised or resources distributed. If each constituency believes that it has to look out for itself, and to learn to elbow out others, then the text of the law would always remain insufficient. Ethics, unlike law, is an enterprise of nurturing moral excellence. Such moral excellence cannot be developed if it is

85. *See* Karnataka survey *infra* at p. 68.

86. For a detailed analysis *see* Uttar Pradesh survey *infra* at pp. 200-201.

only guided by the rules of law. Legal rules embody the minimum modicum of good conduct. Law is the floor of ethics but should not be its ceiling because, once law drives ethics, the question becomes what is legally justifiable and not what is legally desirable or even legally permissible. The moment the legal bandwagon hitches itself to the justifiable, then the deliberation is not about acting in accordance with the law, but working around the law. Our research has provided us with innumerable examples of such roundabouts. In launching this survey, we want to start a public conversation on how the various constituents of the Indian Constitution should interact with each other.

Lastly, laws are made, implemented, adjudicated and studied, to contribute to a culture of rule of law. For building such a culture, a country needs responsiveness, not coercion, from lawmakers. Only if people feel an affinity with the rules they are meant to follow, will the law become a part of their inner morality. An imposed law, accompanied with criminal sanctions, only triggers "catch me if you can" impulses.

In conclusion, we must state that this first volume of the journal is something akin to a pilot project. Since we did not know enough about the situation on the ground, we decided not to create a common template. Instead, contributors were given the freedom to devise their own research methodology and forge their own analytical tools to understand how federalism played out in the state they were studying. The research methodology needed to be flexible as information was not equally accessible in all states. A standard research methodology could have prevented the discovery which an anxious search might yield. This year's survey has familiarised us with the lay of the land, and we hope to build on this learning in the years to come, in close communication with all our readers.[87]

Amita Dhanda and Faizan Mustafa

April 4 2022, Hyderabad

87. We invite all those who want to be associated with the *Annual Survey of State Laws in India* as reporters, reviewers or contributors in English or the languages of their state to write to us at ASSL@nalsar.ac.in.