

# The Annual Survey of State Laws in India

Edited by Amita Dhanda and Faizan Mustafa



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# MADHYA PRADESH

Aymen Mohammad<sup>1</sup>

## Introduction

This survey of statutory and executive instruments in Madhya Pradesh reflects the broader context of India's union-state relations in the year 2020. The shadow of the COVID-19 pandemic loomed large over law-making in the state. Exactly around the time when the pandemic reached Indian borders, the state was also facing political uncertainty.

Between March 11 and March 20, 2020, the Congress-led state government was reduced to a minority due to defections of 22 Congress MLAs, including six ministers.<sup>2</sup> The political crisis was unfolding at the same time as the novel coronavirus was spreading across the world.<sup>3</sup> The budget session was scheduled to begin on March 16, and the governor had asked the chief minister to seek a trust vote on the same day. Instead, the house was adjourned till March 26, citing the threat of coronavirus.<sup>4</sup> Efforts by the chief minister to delay having to prove his majority failed when the supreme court, on March 19, ordered that a floor test must held on the next day.<sup>5</sup>

Chief Minister Kamal Nath resigned and Bharatiya Janata Party's (BJP) Shivraj Singh Chouhan took oath as the chief minister on March 23, just a day after Prime Minister Narendra Modi had called for a 'janata curfew' ('voluntary' curfew) in light of the pandemic. A day later, on March 24, the prime minister announced a nationwide 21-day lockdown.

India's nationwide lockdown would later be dubbed as the 'strictest' one in the world.<sup>6</sup> It was characterised by "unilateral centralized decision-making",<sup>7</sup> purportedly under the National Disaster Management Act, 2005.<sup>8</sup> The healthcare crisis in Madhya Pradesh was compounded by the lockdown's unprecedented disruption of every aspect of peoples' lives: livelihoods, education, nutrition, routine

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1. Doctoral Fellow, NALSAR University of Law.

2. HT Correspondent, "Madhya Pradesh Crisis: Timeline of Events Leading up to trust vote", *Hindustan Times*, March 20, 2020, available at: <https://www.hindustantimes.com/india-news/madhya-pradesh-crisis-timeline-of-events-leading-up-to-trust-vote/story-skWr6iDcMjEgDl8qrETaO.html> (last visited on Jan. 27, 2022).

3. Interview with Dr. Anand Rai, *Caravan*, April 25, 2020, available at: <https://caravanmagazine.in/health/mp-political-turmoil-responsible-for-covid-19-crisis-bhopal-indore-anand-rai-interview> (last visited on Jan. 27, 2022).

4. *Supra* note 2.

5. *Shivraj Singh Chouhan v. Speaker Madhya Pradesh Assembly*, 2020 (5) SCJ 444.

6. Thomas Hale, Noam Angrist, et. al., "A global panel database of pandemic policies (Oxford COVID-19 Government Response Tracker)" 5 *Nature Human Behaviour* 529-538 (2021) available at: <https://doi.org/10.1038/s41562-021-01079-8> (last visited on Jan. 27, 2022).

7. Louise Tillin, "Centre and States need to Coordinate, not Compete", *CASI*, June 2, 2021, available at: <https://casi.sas.upenn.edu/it/louisetillin> (last visited on Jan. 27, 2022).

8. Act 53 of 2005.

healthcare and freedom of movement. This human crisis would eventually result in extreme economic hardship to citizens<sup>9</sup> as well as the state.<sup>10</sup>

The dual aspects of political instability and the pandemic are essential to set the context for our survey of law-making in the state. Firstly, the political instability continued well beyond March 23. The state had no cabinet ministers for 29 days. It was on April 21 that the cabinet was expanded. The state got its full-time health minister only on the April 22.<sup>11</sup> This was the situation that prevailed at a time when there was an unprecedented crisis in the state, which could presumably have benefited from a full-fledged government. Inter-state migrants from the state were trying to return home;<sup>12</sup> people had little awareness as to what a lockdown entailed; healthcare facilities were overwhelmed;<sup>13</sup> and 89 personnel of the state's health department had tested positive for the virus.<sup>14</sup>

The impact of the pandemic and the political crisis is also reflected in the performance of the state's legislative assembly. The fourth session of the assembly was scheduled from December 17, 2019 to January 17, 2020. The House functioned for a cumulative total of only 18 hours and 30 minutes.<sup>15</sup> The fifth session was scheduled from March 16 to April 13, 2020. Due to the resignation of the existing chief minister, the assembly session only met for 17 minutes and carried out no legislative work.<sup>16</sup> The sixth session, scheduled from March 24 to 27 met for grand total of nine minutes with a single agenda—Chief Minister Shivraj Singh Chouhan's vote of confidence.<sup>17</sup>

The last session of the year was scheduled to meet for only three days (September 21 to 23), of which the assembly held only one sitting.<sup>18</sup> The decision to reduce the session to just one day was taken at an all-party meeting in light of the worsening pandemic situation in the state.<sup>19</sup> The sitting lasted for one hour and 27 minutes.<sup>20</sup> This sitting included important items: presentation of the budget, department-related demands for grants, and the enactment of appropriation bills. Notices of 19 government bills

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9. Krishna Ram and Shivani Yadav, "The pandemic has worsened India's poverty crisis", *The Indian Express*, July 8, 2021.

10. HT Correspondent, "States' revenues dip by up to 80%, seek funds from Centre", *Hindustan Times*, April 27, 2020.

11. Neelam Pandey, "Madhya Pradesh finally gets a health minister after nearly a month of covid-19 crisis", *The Print*, April 22, 2020, available at: <https://theprint.in/india/madhya-pradesh-finally-gets-a-health-minister-after-nearly-a-month-of-covid-19-crisis/406596> (last visited on Jan. 27, 2022).

12. Sidharth Yadav, "Every second migrant worker who returned to Madhya Pradesh from Maharashtra unemployed, reveals survey", *The Hindu*, Nov. 4, 2020.

13. *Supra*, note 3.

14. PTI, "Four officers among 89 health department staff in Madhya Pradesh test coronavirus positive", *News18*, April 16, 2020, available at: <https://www.news18.com/news/india/four-officers-among-89-health-department-staff-in-madhya-pradesh-test-coronavirus-positive-2580225.html> (last visited on Jan. 27, 2022).

15. Statistical statement related to the Vidhan Sabha Session, Madhya Pradesh Vidhan Sabha, 15<sup>th</sup> Vidhan Sabha, Fourth Session (Dec. 17, 2019 to Jan. 17, 2020), available at: <https://mpvidhansabha.nic.in/stats/stat15thvs-4.pdf> (last visited on Jan. 27, 2022).

16. Statistical statement related to the Vidhan Sabha Session, Madhya Pradesh Vidhan Sabha, 15<sup>th</sup> Vidhan Sabha, Fifth Session (March 16 to April 13, 2020) available at: <https://mpvidhansabha.nic.in/stats/stat15thvs-5.pdf> (last visited on Jan. 27, 2022).

17. Statistical statement related to the Vidhan Sabha Session, Madhya Pradesh Vidhan Sabha, 15<sup>th</sup> Vidhan Sabha, Sixth Session (March 24 to 27, 2020) available at: <https://mpvidhansabha.nic.in/stats/stat15thvs-6.pdf> (last visited on Jan. 27, 2022).

18. PTI, "As COVID-19 cases spike, Madhya Pradesh Assembly session to be curtailed", *Business Standard*, Sept. 15, 2020, available at: [https://www.business-standard.com/article/current-affairs/as-covid-19-cases-spike-madhya-pradesh-assembly-session-to-be-curtailed-120091501143\\_1.html](https://www.business-standard.com/article/current-affairs/as-covid-19-cases-spike-madhya-pradesh-assembly-session-to-be-curtailed-120091501143_1.html) (last visited on Jan. 27, 2022).

19. *Ibid*.

20. Statistical statement related to the Vidhan Sabha Session, Madhya Pradesh Vidhan Sabha, 15<sup>th</sup> Vidhan Sabha, Seventh Session (September 21 to 23, 2020) available at: <https://mpvidhansabha.nic.in/stats/stat15thvs-7.pdf> (last visited on Jan. 27, 2022).

were presented, eight of which were enacted. Eight ordinances were tabled, of which four lapsed and four were replaced with government bills that were subsequently enacted.<sup>21</sup>

At a time when the government could have benefited from legislative accountability, the Assembly was reduced to a mere rubber stamp. A huge chunk of legislative business was carried out within just a few minutes. Furthermore, it was decided by consensus that only the minimum quorum of legislators would be present,<sup>22</sup> thus further diluting the representative character of the House. Thus, the pandemic resulted in bypassing the constitutional purpose of making an executive accountable to an elected state legislature. A centralised and unilateral union government, political crises, a one-man cabinet and an unprecedented public health crisis worked in conjunction to curtail the constitutional machinery.

Scholars in various contexts have begun to analyse and document how the pandemic impacted countries with federal structures.<sup>23</sup> In India, the pandemic became a catch-all phrase for all kinds of policy-making and statutory interventions. Not only were minute details of lockdowns decided through union-government notifications,<sup>24</sup> but a whole host of “reforms” were initiated and justified on the grounds of economic revival in a pandemic-hit nation. For example, the union government sought to downplay its default of the states’ compensation for implementation of the Goods and Service Tax (GST),<sup>25</sup> and gave states two ‘options’ for additional borrowing.<sup>26</sup> All of the states chose ‘Option 1’, according to which the union government would borrow on behalf of the states to meet the shortfall arising out of GST implementation. This ‘special window’ of borrowing would be over and above any borrowing limits on states. The amount would be fully repaid from the GST compensation cess fund under the GST (Compensation to States) Act, 2017. Under the Financial Responsibility and Budget Management (FRBM) laws of states, states are not permitted to exceed a borrowing limit of three percent of the Gross State Domestic Product. Since state revenues were severely hit, the union government allowed states to increase this borrowing limit to five percent. However, one percent of the additional borrowing would be “reform-linked borrowing.”<sup>27</sup> States would be allowed to borrow only if they carry out specific ‘reforms’ in their states—an arrangement reminiscent of Structural Adjustment Programmes of the International Monetary Fund and the World Bank.

The ‘invisible hand’ of the union in the state’s law-making is a recurring theme in this survey. There are few departures in state law-making from the union’s many ‘nudges’ when it comes to ‘reforms’ that the state carried out. The first year of the pandemic is a study in the coercive features of India’s federalism, rhetoric about ‘cooperative federalism’ notwithstanding. In the areas of agriculture and labour laws, the state’s law-making closely mirrored the agenda set by the union government. The state introduced

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21. Madhya Pradesh Vidhan Sabha website, *available at*: [https://mpvidhansabha.nic.in/bill\\_2020.htm](https://mpvidhansabha.nic.in/bill_2020.htm), [https://mpvidhansabha.nic.in/ordinance\\_2020.htm](https://mpvidhansabha.nic.in/ordinance_2020.htm) (last visited on Jan. 27, 2022).

22. *Supra* note 17.

23. For example, see Nico Steytler (ed.), *Comparative Federalism and Covid-19* (Routledge, Oxon, 2022).

24. See, Lockdown Advisories of the National Disaster Management Authority, March 24, 2020, April 14, 2020 and May 1, 2020, *available at*: [https://ndma.gov.in/covid/NDMA-Orders\\_Advisories](https://ndma.gov.in/covid/NDMA-Orders_Advisories) (last visited on Jan. 27, 2022).

25. Press Information Bureau, “Borrowing of money to meet GST revenue shortfall”, Ministry of Finance, Sept. 20, 2020, *available at*: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1656927> (last visited on Jan. 27, 2022).

26. Press Information Bureau, “Borrowing options to meet the GST Compensation requirement for 2020-21”, Ministry of Finance, Aug. 29, 2020, *available at*: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1649485> (last visited on Jan. 27, 2022).

27. Press Information Bureau, “Finance Minister announces Government Reforms and Enablers across Seven Sectors under Aatma Nirbhar Bharat Abhiyaan”, Ministry of Finance, May 17, 2020, *available at*: <https://pib.gov.in/PressReleasePage.aspx?PRID=1624661> (last visited on Jan. 27, 2022).

a liberalised agricultural marketing law based on the union government's 'Model Mandi Act',<sup>28</sup> even before the union had promulgated ordinances on the same. It also entered a 'race to the bottom' with other states over reducing legal protections for labour—purportedly to attract capital.<sup>29</sup> In all of this, the pandemic was cited as the policy reason for such decisions.

This survey starts with a quantitative and qualitative summary of statutory legislation either enacted by the legislative assembly or promulgated by the state governor. The analysis also attempts to trace the legislative subjects under Schedule VII to the Constitution under which the legislations were enacted. The second section analyses select use of executive instruments and the possible implications *vis-à-vis* encroachment into the executive domain. It is presumed that statutory legislations place limits on state action. However, as the survey demonstrates, statutes often provide for wide-ranging powers to the state, and the state government frequently used them to curtail rights. For example, it used its powers under the Epidemic Diseases Act, 1897 to create new penalties pertaining to dissemination of 'rumours'. Similarly, the state government used its enabling powers under labour protection statutes to exempt industries from complying with labour-protection standards. Thus, effectively defeating the purpose of these statutes.

The criteria for selecting specific notifications, circulars or government orders were primarily based on the possible impact such delegated legislation had on the constitutional scheme. Furthermore, some delegated legislation that stood out for being unique or exceptional have also been included. The selected delegated legislations are organised by the broad thematic areas under which they fall, rather than chronologically.

The concluding section of this survey provides some insights into how the state dealt with issues pertaining to key areas of social security/welfare, public order/police, and taxation/tariffs for public services. It also refers to the disconcerting and frequent use of preventive detention under the National Security Act, 1980 for routine policing and public health purposes.

## Legislative Survey

### Statutory Legislation Enacted by the State Assembly

As explained previously, the state assembly carried out very limited legislative work in 2020 due to political uncertainty, using the pandemic as a pretext to pass laws in a hurry, if at all. In total, the government introduced 19 bills for the House's consideration. The House passed nine bills, of which eight received gubernatorial assent. All the bills passed by the House in 2020 were passed in the one-day session held on September 21. Two of these Acts were Appropriation Acts, which have not been discussed in this survey.

#### ***Madhya Pradesh Moneylenders (Amendment) Act, 2020***<sup>30</sup>

The 2020 Act amended certain provisions of the principal Act of 1934 to provide an enabling power to the state government to notify a ceiling for interest rates that moneylenders can charge. Charging a

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28. Press Information Bureau, "Linking Farmers with Markets", Ministry of Agriculture & Farmers Welfare, Feb. 4, 2020, available at: <https://pib.gov.in/PressReleasePage.aspx?PRID=1601897> (last visited on Jan. 27, 2022).

29. Milind Ghatwai, "MP proposes labour reforms to attract investment", *The Indian Express*, May 6, 2020.

30. Madhya Pradesh Act 16 of 2020.

higher interest rate than the ceiling limit was also criminalised. Furthermore, the principal Act was also amended to bar the recovery of loans made by unregistered moneylenders. Lastly, the amended Act excluded loans advanced by non-banking financial companies (NBFCs) registered under the Reserve Bank of India Act, 1934. From the perspective of union–state relations, there are two important observations: (i) The state list of Schedule VII empowers states to legislate on “money-lending and money-lenders; relief of agricultural indebtedness”. The amendment to exclude NBFCs was necessary to ensure that there was no regulatory conflict between the states and the Reserve Bank of India. This conflict has been seen in other states too.<sup>31</sup> (ii) The conflict is not only limited to NBFCs but is also seen in issues pertaining to peer-to-peer (P2P) lending<sup>32</sup> and micro-finance institutions.<sup>33</sup>

### ***Madhya Pradesh VAT (Amendment) Adhiniyam, 2020***<sup>34</sup>

The principal Act deals with Value Added Tax (VAT) in the state. The principal legislation defined “taxable turnover” as a dealer’s turnover after certain deductions. The amendments allow for an additional deduction of “amount collected by way of cess” under the Madhya Pradesh Motor Spiti Upkar Adhiniyam, 2018 and Madhya Pradesh High Speed Diesel Upkar Adhiniyam, 2018. Section 14 of the principal Act provides for the circumstances under which a registered dealer may claim rebate of input tax. The amending provisions allows rebate for dealers who are registered under the principal Act or under the Madhya Pradesh Goods and Services Tax Act, 2017 and purchase petrol/diesel for sale. They primarily apply to those who “could not get themselves registered under” the VAT Act, or those “who obtained registration after the prescribed date”.<sup>35</sup> Entry 54 of the state list allows states to legislate on taxes on the sale of petrol, diesel, natural gas and air turbine fuel. Even after the introduction of the GST regime (which subsumed various state indirect taxes), fuels and liquor (for human consumption) were excluded from the scope of GST and continued to be taxed by states under their respective laws. Furthermore, the legislation is also covered by entries 26 and 27 of the state list that deal with “trade and commerce within the State...” and “production, supply and distribution of goods...” respectively.<sup>36</sup>

### ***Madhya Pradesh Goods and Services Tax (Amendment) Act, 2020***<sup>37</sup>

The Amendment Act made certain relaxations on filing deadlines taking note of the pandemic. In the principal Act, the government could, on the recommendations of the GST Council, make an order for the removal of any difficulty in giving effect to any provisions of the Act. This power was extended by another two years by the Amendment Act. Furthermore, amendments were also carried out for:

- (a) making service-providers eligible for a composition levy that could only be availed by goods suppliers earlier;

31. *Radhe v. Mehta*, 2 (2012) BC 699.

32. Reserve Bank of India, “Report of the Working Group on Digital Lending including Lending through Online Platforms and Mobile Apps” (Nov., 2021).

33. Arun Iyer, “AP, Kerala Govts seek to regulate NBFCs, MFIs”, *The Economic Times*, June 1, 2010, available at: <https://economictimes.indiatimes.com/news/economy/finance/ap-kerala-govts-seek-to-regulate-nbfc-mfis/articleshow/5996474.cms> (last visited on Jan. 27, 2022).

34. Madhya Pradesh Act 18 of 2020

35. Statement of Objects and Reasons, Madhya Pradesh VAT (Amendment) Adhiniyam, 2020.

36. The Constitution of India, Schedule VII, Entries 26 and 27 of List II.

37. Madhya Pradesh Act 19 of 2020.

- (b) allowing input tax credit claims on debit notes related to previous financial years up to due date of return of September of the following year;
- (c) allowing voluntarily registered taxable persons to apply for the cancellation of registration;
- (d) allowing additional time to file an application for revocation of cancellation of registration;
- (e) an enabling provision allowing the government (on the recommendations of the GST Council) to specify the categories of services or supplies for which a tax invoice shall be issued. Furthermore, the enabling provision allows the government to specify categories of services for which any other document instead of an invoice may be used. It also allows the government to exempt certain supplies or services from the requirement of an invoice;
- (f) providing the manner and form in which a tax-deducted-at-source certificate may be issued;
- (g) prescribing penalty for individuals who retain the benefit of transactions classified as offences by the principal Act;
- (h) prescribing penalties for availing input tax credit without invoices/bills;
- (i) determining time and manner for claiming transitional input tax credit; and
- (j) redefining “transfer of business assets” as only when it is done for a consideration.

Many of these amendments were necessitated due to the dire straits that businesses found themselves in following months of lockdown and disruption of supply-chains. It is also important to note that the GST regime resulted in a situation where the government had to tailor its policies only subject to the “recommendations of the GST Council”.

### ***Madhya Pradesh Nagarpalik Vidhi (Tritiya Sanshodhan) Adhiniyam, 2020***<sup>38</sup>

The Amending Act amends two principal statutes—Madhya Pradesh Municipal Corporation Act, 1956<sup>39</sup> and Madhya Pradesh Municipalities Act, 1961.<sup>40</sup> It was enacted on September 25, 2020 and replaced an ordinance promulgated on September 12, 2020. The principal Acts contained identical provisions empowering municipal corporations and municipalities to levy duty on transfer of immoveable property. The principal provisions provide that the duty imposed under the Indian Stamp Act, 1899 shall be increased by “one centum” on the value of property or the amount secured by the instrument of usufructuary mortgage. The amendments increased the rate of annual hike by “three centum”. The state is competent to enact this law under Entry 5 of List II of Schedule VII, which pertains to “local government...constitution of local bodies, municipal corporations...” It is difficult to understand the circumstances that merited immediate action under Article 213 and required the promulgation of an ordinance. However, it is possible that the state displayed this urgency because the union made reforming urban local bodies/utilities to improve their “financial strength” one of the conditions for states to qualify for additional borrowing. Among other things, these conditions required that “floor rates of property tax in urban local bodies...are in consonance with prevailing circle rates”.<sup>41</sup>

38. Madhya Pradesh Act 20 of 2020.

39. Act 23 of 1956.

40. Act 37 of 1961.

41. Press Information Bureau, “Goa has joined five other States namely, Andhra Pradesh, Madhya Pradesh, Manipur, Rajasthan and Telangana, who have completed ULB reforms”, Ministry of Finance, Feb. 11, 2021, *available at*: <https://pib.gov.in/PressReleasePage.aspx?PRID=1697062> (last visited on Jan. 27, 2022).

## ***Madhya Pradesh Anusuchit Janjati Rin Vimukti Adhiniyam, 2020<sup>42</sup>***

The purpose of the Act is to provide relief to indebted individuals belonging to scheduled tribes of the state. Under this Act the protection that was earlier provided only to indebted people in rural areas by the Madhya Pradesh Gramin Rin Vimukti Adhiniyam, 1982, is now extended to scheduled tribes too. The 2020 Act applies to only such debt that was incurred up to August 15, 2020. Furthermore, it only applies to a person belonging to a scheduled tribe residing in a scheduled area. The Act also only protects people indebted to unregulated moneylenders and not those who are indebted to regulated banks and other financial institutions. Certain statutory consequences flow from its enactment. These include:

- (a) Every debt (including the amount of interest) advanced up to August 15 shall be deemed to be wholly discharged.
- (b) Jurisdiction of civil courts will be barred for debt recovery.
- (c) All proceedings pertaining to execution of any decree for money or proceedings for making final any preliminary decree for foreclosure or sale or proceedings in execution of any final decree for sale against a debtor are deemed to be withdrawn.
- (d) Any property of the debtor that is attached pursuant to proceedings shall be released.
- (e) Any person who is detained in a civil prison in execution of any decree for money passed against her/him by a civil court in respect of debt shall be released.
- (f) Any pending suits against the debtor will abate.
- (g) Pledged property and mortgage executed in favour of the creditor shall be released and stand redeemed, respectively.

The Act criminalises any creditor who accepts any payment against any claim or refuses to return or re-deliver possession to the debtor. Like the Act on Moneylenders, this Act is also covered by entry 30 of list II of schedule VII, which allows states to legislate on “money-lending.... relief of agricultural indebtedness”.

## ***Madhya Pradesh (Finance) Act, 2020<sup>43</sup>***

The Act amended the Madhya Pradesh Fiscal Responsibility and Budget Management (FRBM) Act, 2005. It had to be amended to allow the state government to additionally borrow Rs. 4,443.00 crore during the financial year ending March 31, 2020. Furthermore, the government was permitted to “receive an additional loan as determined by the central government” for the financial year ending March 31, 2021. Both these loans would not be “reckoned against any limit or target” contained in the FRBM Act. This law replaced an ordinance with identical provisions that was promulgated on March 28, 2020. It enabled the state government to borrow for the GST compensation cess as well as the conditional borrowing linked to reforms. Article 293 permits state governments to borrow upon the security of the Consolidated Fund of the State within such limits as “determined by the state legislature”. Consequently, these limits are determined by the FRBM Act of the state. Article 293 empowers the union to lay down conditions when providing additional lending to states if a state already has dues that need to be paid to the union government. It was this framework that was used by the union to

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42. Madhya Pradesh Act 17 of 2020.

43. Madhya Pradesh Act 21 of 2020.

link additional borrowing to “reforms” pertaining to urban local body reform, power-sector reforms, ease of doing business and implementation of the ‘one nation, one ration card scheme’. This Act also amended the schedule to the Indian Stamp Act, 1899 (insofar as it applies to Madhya Pradesh). It changed rates of work contracts relating to construction agreements and mining leases of major and minor minerals.

Furthermore, under entry 43, list II of schedule VII, the state is exclusively competent to legislate on “public debt of the State”. The state is also competent to legislate on “taxes on mineral rights...”, “rates of stamp duty in respect of documents...” (entry 63, list II) and “regulation of mines and mineral development...” (entry 23, list II).

## **Ordinances**

### ***Background and Summary of Promulgated Ordinances Subsequently Replaced by Acts of Legislature***

A total of 14 ordinances were promulgated in 2020. Of these, six lapsed. One was repealed by a subsequent ordinance, and one was withdrawn. Six ordinances were eventually replaced by statutes enacted by the state legislative assembly. Two ordinances pertained to budgetary appropriation.<sup>44</sup> The Madhya Pradesh Finance Ordinance, 2020 was subsequently replaced with the Madhya Pradesh Finance Act, 2020 (discussed above). The Madhya Pradesh Municipal Law (Amendment) Ordinance, 2020 was replaced with the Madhya Pradesh Nagarpalik Vidhi (Tritya Sanshodhan) Adhiniyam, 2020. Another ordinance pertaining to municipal law was promulgated on September 26, 2020<sup>45</sup> to provide for direct elections for mayors and chairpersons of municipal corporations and municipalities. However, this ordinance also lapsed. The Madhya Pradesh Karadhan Adhiniyamon ki Purani Bakaya Rashi ka Samadhan Adhyadesh, 2020<sup>46</sup> was promulgated to provide for a procedure for settlement of amount arrears under older tax laws of the state, including Sales Tax, Commercial Tax, VAT, etc. An ordinance was also promulgated to amend the Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2020<sup>47</sup> for the establishment of Eklavya University. It is once again unclear what the emergent circumstances were that merited an ordinance. All in all, the single largest category for which ordinances were used was finance (including taxation and budgeting). This was followed by municipal laws.

### ***Lapsed Ordinances***

This section summarises the ordinances that were promulgated but allowed to lapse. Of the six lapsed ordinances, one pertained to direct elections for mayoral posts (discussed above).

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44. Madhya Pradesh Finance Ordinance, 2020 (promulgated on Mar. 28, 2020), Madhya Pradesh Appropriation (Vote on Account) Ordinance, 2020 (promulgated on Mar. 28, 2020) and Madhya Pradesh Appropriation Ordinance, 2020 (promulgated on July 24, 2020).

45. Madhya Pradesh Nagarpalik Vidhi (Dwitya Sanshodhan) Adhyadesh, 2020 (Madhya Pradesh Municipal Laws (Second Amendment) Ordinance, 2020). The ordinance was replaced with an Act of the legislature in 2021.

46. Madhya Pradesh Tax Laws Arrears Settlement Ordinance, 2020. The ordinance was subsequently replaced by an Act of the legislature in February 2021.

47. Madhya Pradesh Private Universities (Establishment and Operation) Amendment Ordinance, 2020. The ordinance was eventually replaced with an Act of the legislature in 2021.

An ordinance was promulgated to amend the Madhya Pradesh Cooperative Societies Act, 1960. It amended section 48A of the principal Act that disqualified a person from being elected as president or chairman if the individual was a member of parliament or the legislative assembly. This ordinance removed the disqualification. Furthermore, the ordinance introduced additional provisions empowering the registrar to constitute a committee to assist the administrators to discharge their duties under the Act. It also empowered the state government to notify a maximum limit for its share capital in a cooperative credit structure. Entry 32 of the state list empowers the state to legislate on “incorporation, regulation and winding up of corporations....co-operative societies.”

The Madhya Pradesh Lok Sewaon ke Pradan ki Guarantee (Sansodhan) Adhyadesh, 2020<sup>48</sup> introduced the concept of ‘deemed approval’. The government was empowered to notify certain services that could be covered under the scope of ‘deemed approvals’. If an officer fails to take a decision within the stipulated time on an application received for such a notified service, the approval is deemed to be granted ‘by the designated portal’. Such an approval would have the same force of law as an approval granted by a designated officer. Such an approval would not apply to fraudulent applications. This concept of a ‘deemed approval’ was also promoted by the union government that nudged states to introduce such provisions to ensure ‘ease of doing business’. Although not expressly a part of the reform-linked borrowing scheme of the union, it does fall within the ‘ease of doing business reforms’. These reforms required states to ‘eliminate the requirements of renewal of registration certificates/approvals/licences obtained by businesses for various activities in at least seven statutes. It is important to note that constitutional scholarship in recent years has delved into questions of automated decision-making by machines and how such provisions of law impact principles of administrative and constitutional law.<sup>49</sup>

The Madhya Pradesh Labour Laws (Amendment) Ordinance, 2020 was part of a ‘race to the bottom’ in which states competed with each other to eliminate or reduce labour protections across the board. This was supposed to “attract investments” in a “post-lockdown” economic downturn. The ordinance specifically amended the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961 and increased the threshold of the Act’s application. Previously, the Act applied to every undertaking with more than fifty workers. The amendment increased the threshold to “more than hundred”. The ordinance also amended the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam<sup>50</sup> to empower the state government to exempt any establishment or category of establishments from the application of the Act. This ordinance worked in conjunction with various notifications that significantly reduced protections for workers in the state. The notifications and delegated legislation are discussed in the subsequent section of this survey.

Another identical ordinance, the Labour Laws (Madhya Pradesh Amendment) Ordinance, 2020 was also promulgated by the state government. However, this ordinance was intended to amend union laws, including the Factories Act, 1948 and Contract Labour (Regulation and Abolition) Act, 1970. Under

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48. Madhya Pradesh Public Services (Guarantee of Delivery) (Amendment) Ordinance, 2020.

49. Ryan Calo and Danielle K. Citron, “The Automated Administrative State: A Crisis of Legitimacy”, 70 *Emory Law Journal* 797 (2021). Also see, the International Association of Constitutional Law’s Research Group on “Algorithmic State, Society and Market—Constitutional Dimensions”, available at: <https://iacl-aidc.org/index.php/en/research/research-groups/algorithmic-state-society-and-market-constitutional-dimensions> (last visited on Jan. 27, 2022).

50. Madhya Pradesh Labour Welfare Fund Act, 1983 (Act 36 of 1983).

article 213 of the Constitution, prior ‘instructions of the president’ are required when an ordinance is amending a union law. Following approval from the president, the ordinance was promulgated. The ordinance increased thresholds of applicability of the Factories Act, 1948 from “ten or more” workers to “fifty or more”. The ordinance also exempted factories operating without using electricity from the application of the Factories Act, 1948. The Contract Labour (Regulation & Abolition) Act, 1970 was also similarly amended to increase the threshold of applicability from “twenty or more workmen” to “fifty or more workmen”. Trade unions, industrial and labour disputes (entry 22), labour welfare and working conditions, labour compensation (entry 24) are part of the concurrent list on which both the union and the states are competent to legislate.

In April 2017, the union government released the Agricultural Produce and Livestock Marketing (Promotion & Facilitation) Act, 2017. In 2018, another model law aimed at facilitating contract farming was also released. Both these model legislations were released for adoption by the states. The former was aimed at enabling “alternative marketing channels other than APMCs to farmers”, while the latter was supposed to enable farmers and businesses to enter into contracts for produce. These model laws became the basis on which the controversial ‘farm laws’<sup>51</sup> were designed. Both the laws were first promulgated as ordinances by the union government and subsequently enacted as legislation in June 2020. The ordinances and statutes faced stiff resistance from farmers. Questions were also raised as to the legislative competence of the union government, since the laws pertained to ‘agriculture’ (entry 14), intra-state trade (entry 26) and ‘markets and fairs’ (entry 28), all of which fall squarely under the state list of Schedule VII. The union government argued<sup>52</sup> that it was competent to legislate on these matters by virtue of entry 33(a) of list II.<sup>53</sup> However, the Madhya Pradesh government promulgated the Madhya Pradesh Krishi Upaj Mandi (Sansodhan) Adhyadesh, 2020 on May 1, 2020. This was significantly before the union government would promulgate its agriculture ordinances. The ordinance amended the principal Act to enable electronic trading of notified agricultural produce. It also allowed private entities to establish private market yards. The amendment ordinance met with protests<sup>54</sup> and resulted in a significant decline in trading in market yards.<sup>55</sup> Eventually, with the introduction of the unions’ farm laws, the ordinance was allowed to lapse. The pandemic was cited by both the union<sup>56</sup> and the state as an additional reason for introducing the ordinance.<sup>57</sup>

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51. Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (Act. 20 of 2020); Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 (Act 21 of 2020); Essential Commodities (Amendment) Act, 2020 (Act 22 of 2020).

52. Press Information Bureau, “Impact of New Farm Laws”, Ministry of Agriculture & Farmers Welfare, July 20, 2021, *available at*: <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1737290> (last visited on Jan. 28 2022).

53. “Trade and commerce in, and the production, supply and distribution of.... The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products.”

54. Kashif Kakvi, “Madhya Pradesh: Govt Bill That Intends to Open Private Mandis, Faces Backlash”, *NewsClick*, Sept. 7, 2020, *available at*: <https://www.newsclick.in/Madhya-Pradesh-Govt-Model-Mandi-Bill-Open-Private-Mandis-Faces-Backlash> (last visited on Jan. 27, 2022).

55. Kashif Kakvi, “New Laws Paralyse 70% of MP’s Mandis in Six Months”, *NewsClick*, Dec. 7, 2020, *available at*: [newsclick.in/Fallout-Farm-Laws-New-Laws-Paralyse-70%25-MP-Mandis-Six-Months](https://www.newsclick.in/Fallout-Farm-Laws-New-Laws-Paralyse-70%25-MP-Mandis-Six-Months) (last visited on Jan. 27, 2022).

56. Press Information Bureau, “President promulgates two Ordinances with the aim of giving a boost to rural India and agriculture”, Ministry of Agriculture & Farmers Welfare, June 5, 2020, *available at*: <https://pib.gov.in/PressReleasePage.aspx?PRID=1629750> (last visited on Jan. 27, 2022).

57. Milind Ghatwai, “MP Amends Mandi Act to allow agriculture marketing yards”, *The Indian Express*, May 2, 2020.

# Use of Executive Instruments to Encroach on Legislative Authority

## Delegated Legislation on Public Health

On March 7, 2020, the government, by notification,<sup>58</sup> invoked section 71(2) of the Madhya Pradesh Public Health Act, 1949<sup>59</sup> empowering medical officers and hospital superintendents to order evacuation, compulsorily vaccinate and issue various directions to contain the spread of disease. Leaves were cancelled for all employees/officers of the health department.<sup>60</sup> On March 20, it issued an order (effective till June 15) requiring suppliers of masks and sanitisers to maintain fixed prices, maintain a record of purchase and sale and not refuse sales.<sup>61</sup>

On March 23 2020, the government notified Madhya Pradesh Epidemic Diseases, COVID-19 Regulations 2020<sup>62</sup> under the Epidemic Diseases Act, 1897. The regulations placed all officers of a local area at the disposal of the district magistrate, sub-divisional magistrate and officers authorised by the Department of Public Health and Family Welfare. The regulations further barred dissemination of information regarding COVID-19 without prior clearance of the principal secretary (Public Health and Family Welfare), among other officers. This bar on free speech was justified on the grounds that it was necessary to prevent rumour-mongering.

The enabling Act provides a *carte blanche* to state governments under sections 2, 3 and 4 to make such regulations. However, such use of delegated legislation to regulate free speech is of questionable constitutionality. The regulations also set out protocols for disease surveillance and contact-tracing. They also provide for punishments in case a person violates quarantine conditions and provide protection to persons acting in good faith.

On 8 April 2020 the government, by notification,<sup>63</sup> also invoked the Essential Services (Maintenance) Act, 1979,<sup>64</sup> making it punishable for individuals providing certain notified services to refuse service. This included sanitation workers in healthcare institutions, medical professional services, healthcare services, sale of medical devices, drugs and medicine sales, ambulance services, water and electricity providers, security services, biomedical waste services and food and drinking water providers.

## Miscellaneous Pandemic-Related Executive Instructions

The government also issued various orders that one could consider as incidental to its pandemic response. These were broadly in the area of public order, and included regulating lockdowns<sup>65</sup> and

58. पत्र क्रमांक एफ 10-02/2020/सत्रह/मेडि-02, Mar. 7, 2020, Department of Health and Family Welfare, Government of Madhya Pradesh, available at: <https://health.mp.gov.in/sites/default/files/2020-03/197-7-3-2020.pdf> (last visited on Jan. 27, 2022).

59. Act 36 of 1949

60. Madhunika Iyer, "Madhya Pradesh Government's Response to COVID-19", *PRS Legislative Research*, India, April 18, 2020, available at: <https://prsindia.org/theprsblog/madhya-pradesh-government%E2%80%99s-response-to-covid-19-january-2020-april-17-2020> (last visited on Jan. 27 2022).

61. *Ibid.*

62. Madhya Pradesh Epidemic Diseases, COVID-19 Regulations, 2020, No. PS/Health/17/Medi-3/595, Mar. 23, 2020, Madhya Pradesh Gazette, Government of Madhya Pradesh, available at: [https://drive.google.com/file/d/1iPxCQtDL\\_PAbtyJZ9Ydh43dmRF8MwWFv/view](https://drive.google.com/file/d/1iPxCQtDL_PAbtyJZ9Ydh43dmRF8MwWFv/view) (last visited on Jan. 27 2022).

63. क्रमांक 57/2020/दो/सी-1, Apr. 8, 2020, Department of Home Affairs, Government of Madhya Pradesh.

64. Act 10 of 1979.

65. PTI, "COVID-19: Night curfew in Madhya Pradesh's five cities from November 21", *The Economic Times*, Nov. 21, 2020, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/covid-19-night-curfew-in-madhya-pradeshs-five-cities-from-november-21/articleshow/79328175.cms> (last visited on Jan. 27, 2022).

prohibiting intra-state movement.<sup>66</sup> Orders also pertained to the time, location and permissibility of activity such as schools,<sup>67</sup> liquor shops,<sup>68</sup> tourism,<sup>69</sup> religious programmes,<sup>70</sup> etc. The government also granted parole to 12,000 prisoners, and extended the period from 60 days to 120 days.<sup>71</sup>

## Labour ‘Reforms’ for Economic ‘Revival’ Post Lockdown

Besides ordinances pertaining to labour law reform, the state government also used delegated legislation extensively to increase working hours,<sup>72</sup> exempt industries from application of the Madhya Pradesh Industrial Relations Act, 1960<sup>73</sup> and the Industrial Disputes Act, 1947,<sup>74</sup> increase the time for which shops and establishments may be kept open,<sup>75</sup> and ‘simplify’ the process of licencing for contract labour agencies.<sup>76</sup>

Except for some rules pertaining to labour safety, the state exempted factories in the state from all provisions of the Factories Act, 1948 for three months.<sup>77</sup> This was justified under the state’s “action plan...in view of the economic situation” arising out of the pandemic. The government also amended compliance norms under the Factories Act, 1948 by recognising third-party certification for “non-hazardous category factories” employing up to 50 workers.<sup>78</sup> Furthermore, the government notified the stipulated time limit for service-provision by the labour department under Madhya Pradesh Lok Sewaon ke pradan ki guarantee Adhiniyam, 2020 as one day. In effect, most approvals would be automated through the ‘deemed approval’ procedure discussed above. One of the conditions under the reform-linked borrowing scheme of the union was ‘ease of doing business reforms’, which required the implementation of a “computerised central random inspection system”. This was also carried out by the government by a notification dated September 9, 2020.<sup>79</sup>

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66. *Supra* note 60.

67. PTI, “Coronavirus: Schools, cinema halls closed in Madhya Pradesh”, *India Today*, Mar. 14, 2020, available at: <https://www.indiatoday.in/india/story/coronavirus-schools-cinema-halls-closed-in-madhya-pradesh-1655338-2020-03-14> (last visited on Jan. 27, 2022).

68. News Desk, “Liquor shops in MP can be opened between 7 am and 7 pm, district collectors to take final call”, *IndiaTV*, May 3, 2020, available at: <https://www.indiatvnews.com/news/india/liquor-shops-to-open-in-madhya-pradesh-bhopal-indore-7-am-to-7-pm-coronavirus-lockdown-613611> (last visited on Jan. 27, 2022).

69. Divya A, “Madhya Pradesh reopens tourism sector for domestic travellers”, *The Indian Express*, June 12, 2020, available at: <https://indianexpress.com/article/cities/madhya-pradesh-reopens-tourism-sector-for-domestic-travellers-6456032> (last visited on Jan. 27, 2022).

70. “MP Home Department Issues Order to Prohibit Religious Programmes”, *ANI*, July 14, 2020, available at: <https://www.aninews.in/news/national/general-news/covid-19-mp-home-dept-issues-order-to-prohibit-religious-programmes20200714233309> (last visited on Jan.27, 2022).

71. Express News Service, “Covid-19: MP govt extends parole to convicts from 60 to 120 days”, *The Indian Express*, May 14, 2020, available at: <https://indianexpress.com/article/india/to-decongest-jails-due-to-covid-19-mp-govt-extends-parole-to-convicts-from-60-to-120-days-6409503/> (last visited on Jan. 27, 2022).

72. No. 247-2020-A-XVI, Madhya Pradesh Gazette, Apr. 24, 2020.

73. No. 957-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.

74. No. 956-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.

75. No. 959-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.

76. No. 953-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.

77. No. 958-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.

78. No. 954-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020 and No. 955-02-2020-A-16, Madhya Pradesh Gazette, May 5, 2020.

79. Labour Department Letter No. 742/892/2020/A-16, Sept. 9, 2020.

Two important steps that the state government took must also be mentioned here. Firstly, it attempted to set up the 'Rozgar Setu' portal through which the government hoped to help migrants returning home to Madhya Pradesh due to the lockdown find employment.<sup>80</sup> Secondly, the state government also constituted an advisory commission for the welfare of inter-state migrants from Madhya Pradesh.<sup>81</sup>

## Conclusion: Public Order, Social Welfare and Taxation

The survey indicates that the state government placed a premium on taxation and finance in legislation as well as delegated legislation. At a time when the state suffered immensely due to lockdowns and the pandemic, the government was focused on complying with the union's reforms. Madhya Pradesh was not different from other states in approaching the pandemic as a law-and-order issue rather than a public health one. In fact, a coercive element was present even in its COVID-19 regulations under the Epidemic Diseases Act. Similarly, when the state government made rules pertaining to user charges for water supply, sewerage and waste management, it chose to create a framework in which the state could recover the expenditure on services. Thus, increasing the burden on citizens at a time when they were facing immense financial difficulty.<sup>82</sup> In contrast, the state government was eager to reduce enforcement against industries and businesses, and ease their compliance burden. Similarly, the government continued a worrying trend<sup>83</sup> of using preventive detention under the National Security Act, 1980 for routine public order and regulatory breaches, including detentions for alleged sale of fake remdesivir,<sup>84</sup> cow slaughter,<sup>85</sup> carrying swords in a religious procession<sup>86</sup> and food adulteration.<sup>87</sup> Using administrative detention powers to enforce regulatory norms and public order is not only outside the scope of the Act but also an abuse of power.

Before concluding, one must take note of some decisions of the state government that, for want of a better word, can only be classified as the absurdities of a bureaucratic government. In a tragedy of errors, the Kamal Nath government first issued a circular demanding that each health worker convince at least one male person to be sterilised or risk losing her/his job.<sup>88</sup> When the opposition took issue

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80. Labour Department Letter No. क्र.46 अमुस/श्रम/2020, June 11, 2020.

81. क्र.-600-358-2020-ए-सौलह - Madhya Pradesh Gazette, Aug. 4, 2020.

82. Madhya Pradesh Municipality (User charges for Water Supply, Sewerage and Solid Waste Management Services) Rules, 2020. See rule 2(1)(o) "User Charges" means charges imposed under provisions of section 132-A of the Madhya Pradesh Municipal Corporation Act, 1956 and section 127-B of the Madhya Pradesh Municipalities Act, 1961 for 100% percent recovery of expenditure incurred on Water Supply, Sewerage and Solid Waste Management Services.

83. Sana Shakil, "94% NSA detainees in 2017, 2018 were from MP and UP: Centre", *New Indian Express*, Sept. 21, 2020, available at: <https://www.newindianexpress.com/nation/2020/sep/21/94-nsa-detaineesin-20172018-were-from-mpand-up-centre-2200032.html> (last visited on Jan. 27, 2022).

84. Amit Anand Choudhary, "SC raps MP govt. over detention of doc under NSA, nixes order", *The Times of India*, Oct. 31, 2021, available at: <https://timesofindia.indiatimes.com/india/sc-raps-mp-govt-over-detention-of-doc-under-nsa-nixes-order/articleshow/87408287.cms> (last visited on Jan. 27, 2022).

85. Milind Ghatwai, "Indore administration invokes NSA against two for cow slaughter", *The Indian Express*, June 23, 2020, available at: <https://indianexpress.com/article/india/indore-madhya-pradesh-cow-slaughter-nsa-6471717> (last visited on Jan. 27, 2022).

86. Rishav Raj Singh, "Madhya Pradesh HC Quashes NSA Charges Against Four Muslims, Directs State Govt to Pay 10k per Case", *The Wire*, Oct. 11 2020, available at: <https://thewire.in/law/madhya-pradesh-high-court-nsa-charges-muslim-youths> (last visited on Jan. 27, 2022).

87. PTI, "41 booked under NSA in 6 months for food adulteration in Madhya Pradesh", *New Indian Express*, Jan. 9, 2020, available at: <https://www.newindianexpress.com/nation/2020/jan/09/41-booked-under-nsa-in-6-months-for-food-adulte-ration-in-madhya-pradesh-2087420.html> (last visited on Jan. 27, 2022).

88. क्रमांक / एन.एच.एम. / परिवार कल्याण / 2020/87, Feb. 1, 2020.

with it, the government withdrew the circular.<sup>89</sup> In another instance, the government demanded that 1,211 personnel of the state's anti-naxal Hawk Force 'return' some part of their salary as they were 'erroneously' receiving a higher 'hardship allowance' than what they were entitled to.<sup>90</sup>

On December 25, 2020, the state government ordered that all government ceremonies should begin with the worship of the girl child or 'kanya puja'.<sup>91</sup>

Law and policy-making was overshadowed by the pandemic and, in Madhya Pradesh's case, also political uncertainty. However, the pandemic soon became the basis on which most of the state's statutory, gubernatorial and delegated law-making was carried out. It was not as if the pandemic was *solely* a pretext for law-making for the state government. Much of the state's statutory and gubernatorial law-making power was exercised due to 'nudges' from the union, which controlled the purse-strings. Even when the state was making laws that it was clearly constitutionally competent to enact, the initiative was coming from elsewhere.

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89. क्रमांक / एन.एच.एम. / 2020 / 3755 भोपाल, Feb.21, 2020.

90. Rahul Naronha, "MP govt. orders recovery of special allowance from elite Hawk Force deployed for Naxal operations", *India Today*, Sept. 8, 2020, available at: <https://www.indiatoday.in/india/story/mp-govt-orders-recovery-of-special-allowance-from-elite-hawk-force-deployed-for-naxal-operations-1719887-2020-09-08> (last visited on Jan. 27, 2022).

91. General Administration Department, क्रमांक एफ 19-87/2020/1/4, Dec. 24, 2020, available at: <https://www.patrika.com/bhopal-news/kanya-puja-will-be-done-before-all-government-programs-in-mp-6592852/> (last visited on Jan. 27, 2022).