

# The Annual Survey of State Laws in India

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**The National Academy of Legal Studies and Research (NALSAR)**

Justice City, Shamirpet,  
Hyderabad, Telangana 500101

2022

**Mode of Citation:** ASSSL (2020)

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# RAJASTHAN

Subhashini Shriya<sup>1</sup>

## Introduction

The Indian Constitution provides for an exceptional coexistence of a federal dual polity. Despite the clear predominance of the parliament in the legislative field, the legislative powers of state governments are protected as constituting the basis structure of the Constitution.<sup>2</sup> This distinctive model of federalism has undergone further evolution through the legislative activity of the states and the centre, and judicial pronouncements on the subject. The legislative landscape of the year 2020 provides an important terrain for studying the operation of federalism in India for many reasons. The first among them being the return of a 'strong' government at the centre for a second term, enjoying an overwhelming majority. The mandate given to the central government in 2019 reinforced the push towards centralisation by the existing union government, testing the strength of the federal system. The second reason is the exercise of state legislative powers in states ruled by opposition parties, which also reflected the scope available within constitutional provisions to safeguard the states' powers in certain matters.

The year was also distinguished by widespread mass agitations against central legislations. This was accompanied by amendments to the central farm laws by various state legislatures using the overlap of the subject areas, with items falling under the state and concurrent lists in the seventh schedule. On many occasions, this was done with the stated objective of safeguarding public interest. These dynamics underlined the important connection between a federal legislative system and the weight given to public opinion in legislative activity. It also exemplified how a federal system can enable and safeguard the recognition of public opinion in the legislative process.

Finally, the exceptional circumstances brought on by the COVID-19 pandemic left an indelible imprint on all aspects of the country's social and political life, including the legislative processes of the central and state governments. They put to test the effectiveness of the administrative and legislative systems in addressing the needs of governing a country of India's scale and heterogeneity. They also created an impetus for state and union legislatures to innovate and push the boundaries of their powers to meet the demands of the situation. A review of the legislative processes of the states in such turbulent times provides important insights into the scope and significance of the legislative powers given to the state by the Indian Constitution; it also points to the new directions that are opening up with regard to legislative action, enabling the evolution of Indian federalism.

This study analyses the legislative activity undertaken by the state of Rajasthan in 2020 to shed light on how states have been exercising the powers provided to them to exclusively or concurrently legislate on certain subjects, and what this tells us about the operation of federalism in India presently. The analysis

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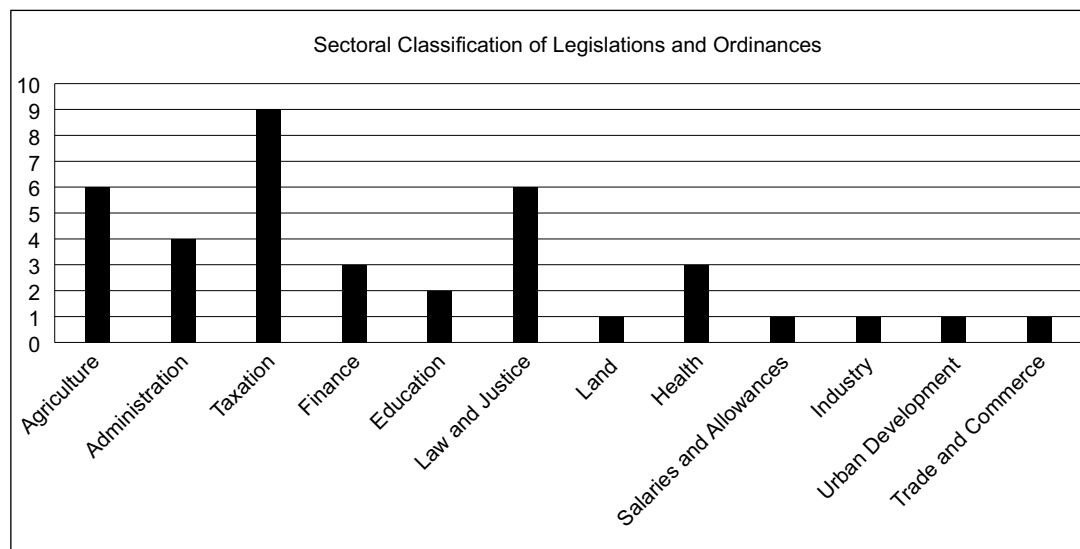
1. Independent researcher based in Delhi.

2. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

begins with a quantitative analysis of the full output of bills and ordinances passed by the Rajasthan legislative assembly and offers an overview of the areas of emphasis adopted by the state. Then, it takes a closer look at select legislations which speak most directly to the operation of federalism in terms of its subject and its operation on the ground.

## Quantitative Profile

In 2020, a total of 35 bills<sup>3</sup> were introduced in the Rajasthan legislature. Out of these, one was withdrawn and 30 were passed after being discussed in the house. Twenty-four of these bills were enacted as laws after gaining the governor/president’s assent. Of these, 17 were amendments to existing laws. With regard to the subject matter, six addressed production and trade in agricultural goods, five pertained to issues of law and justice, three were on taxation, two on the subject of education, two on administration, and one each on excise, industry, urban development, health, land and salary & allowances. In terms of orientation, 11 of these Acts and ordinances focused on social welfare, while two dealt with public order. The government also promulgated eight ordinances, out of which seven were eventually enacted as laws. See Figure 1 for the laws passed by the Rajasthan legislative assembly.



**Figure 1: Sectoral Classification of Legislations and Ordinances**

On other parameters of legislative functioning, the Rajasthan legislature met for 29 days,<sup>4</sup> which is the second highest among all states, and almost the same as its average in the previous three years, reflecting little change despite the lockdown and COVID-19 restrictions. It also spent more time on average in passing a bill compared to most other state legislatures. Thirty-seven percent of the bills passed by the Assembly had a gap of at least five days between introduction and passing compared

3. Rajasthan Legislative Assembly, Bills and Acts, available at: <https://rajassembly.nic.in/LegislationGovernmentBills.aspx> (last visited on Jan. 31, 2022).

4. Anoop Ramakrishnan and N R Akhil, “Annual Survey of State Laws 2020”, available at: <https://prsindia.org/policy/analytical-reports/annual-review-of-state-laws-2020> (last visited on April 15, 2022).

to the national average of only nine percent.<sup>5</sup> Fourteen of the bills were passed in the absence of the opposition as it walked out of the session.<sup>67</sup>

## Qualitative Analysis

Before discussing the effectiveness and impact of the overall activity undertaken by the Rajasthan legislative assembly, this survey looks at select enactments, distinguished by either innovation or egregiousness, their implications on the ground, in society and politics, and the light they throw upon the centre-state relationships and the state of federalism in India today. The survey begins with an examination of legislations passed to facilitate the state government's tackling of the COVID-19 pandemic. It then examines the laws that were passed to amend the central legislations on agriculture, which, however, did not receive presidential assent, illustrating the state government's contestation over policy with the centre. It next looks at legislative interventions towards social welfare, with a particular focus on the Rajasthan Madrasa Board Act, 2020 and the Rajasthan Jan-Aadhaar Authority Act, 2020. Lastly, the Rajasthan Stamp (Amendment) Act, 2020 and the Rajasthan Agricultural Produce Markets (Amendment) Act, 2020 are examined to see how the state legislature has sought to strengthen its fiscal resources and autonomy.

## Tackling the Pandemic: The Legislative Dimension

The states' responses to the COVID-19 pandemic reflected and exacerbated many already existing tensions in the operation of federalism. It has been argued that the ensuing crisis witnessed the rapid centralisation of powers in the hands of the centre. While such a tendency is certainly observable, the limitations of such centralisation and the need for coordination between various levels of government has also been widely acknowledged. States have also legislated towards strengthening their capacity for intervention in the situation, exercising their federal powers.

### *Intersection between the EDA, NDMA and State laws*

The Epidemic Diseases Act (EDA), 1897 confers the primary prerogative for issuing temporary regulations for containing an epidemic on state governments and allows the central government to only inspect goods or passenger vehicles or vessels arriving at any land, port or aerodrome and detain travellers within the area of implementation of the Act. It became one of the primary legislations relied upon by the central and state governments to enforce restrictions such as quarantines, lockdowns, contact tracing and so on despite its many limitations.<sup>8</sup> However, the Act, even after its amendment in 2020, does not provide much guidance to state governments on the nature and extent of interventions required to contain a pandemic beyond certain temporary regulations. At the same time, state laws on the matter have also historically remained undeveloped and mostly limited to provisions of the central

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5. *Ibid.*

6. PTI, "BJP Stages Walkout In Rajasthan Assembly" *republicworld.com*, Feb. 26, 2020, available at: <https://www.republicworld.com/india-news/politics/bjp-stages-walkout-in-rajasthan-assembly.html> (last visited on Feb. 6, 2022).

7. Express News Service, "Rajasthan Assembly passes 13 Bills: BJP stages walkout after Deputy LoP confronts Speaker", *The Indian Express*, Aug. 25, 2020, available at: <https://indianexpress.com/article/india/rajasthan-assembly-passes-13-bills-bjp-stages-walkout-after-deputy-lop-confronts-speaker-6568607/> (last visited on Feb. 6, 2022).

8. Parikshit Goyal, "The Epidemic Diseases Act, 1897 Needs An Urgent Overhaul" 55(45) *Economic and Political Weekly* (Nov. 7, 2020) available at: <https://www.epw.in/engage/article/epidemic-diseases-act-1897-needs-urgent-overhaul> (last visited on Feb. 6, 2022).

Act. Consequently, various state governments passed ordinances and bills amending the central Act, and others passed their own Epidemic Diseases Acts to remedy the limited legal framework available to them for managing the pandemic.

Bypassing this framework,<sup>9</sup> the central government invoked the National Disaster Management Act (NDMA), 2005 to assume centralised authority over state response on the matter. The Act gives extensive powers to the central government and the National Disaster Management Authority, chaired by the prime minister, to issue orders to state governments which the latter are obligated to implement. It has been argued that executive orders issued under the Act have impinged upon several important items in the state list such as public health, markets, fairs, hospitals and industries among others.<sup>10</sup> Furthermore, the prevention of the spread of infectious diseases from one state to another is addressed in entry 29 of the concurrent list, which allows state governments a say in the matter along with the centre.

As the funds coming to states from the centre were also either delayed or stalled, the guidelines issued by the central government during the first wave virtually paralysed state finances. Thus, state governments were constrained in their response to the pandemic by the lack of an appropriate legal framework, and paucity of resources.

The Rajasthan legislature met these challenges in a proactive way by promulgating three ordinances, which were later passed as legislations: the Rajasthan Epidemic Diseases Ordinance, 2020 (Ordinance 1 of 2020), the Rajasthan Epidemic Diseases (Amendment) Ordinance, 2020 (Ordinance 5 of 2020) and the Rajasthan Epidemic Diseases Act, 2020.

### ***The Rajasthan Epidemic Diseases Act, 2020***

Prior to the amendment in 2020, the EDA was not applicable to the ‘whole of India’ and former princely states were excluded from the purview of the Act, Rajasthan being one among them.<sup>11</sup> Consequently, Rajasthan had its own separate Act to deal with contagious diseases and epidemics—the Rajasthan Epidemic Diseases Act, 1957. This Act provided the state with very limited scope for taking regulatory measures and empowered the collector to take such measures at the district level.

It has now been replaced by the Rajasthan Epidemic Diseases Act, 2020. The new Act provides an expanded framework for state response to epidemics compared to the previous law. It empowers the state government to notify any disease as an epidemic disease throughout or in any part of the state and contains a far more expansive description of the regulations that the state government is empowered to make. These include prohibition on gatherings, actions and commercial activities, etc. considered to aid transmission; inspection of individuals suspected of being infected; sealing of state boundaries; imposition of restrictions on public and private transport; prescription of social distancing norms; and other measures as it deems fit. The Act also defines culpability of an individual/institution/company for contravening any orders passed under the Act. While provisions of the Act are to a great extent comparable to Acts passed by other state governments such as Kerala and Karnataka, the state further

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9. Prashant Bhushan and Shyam Agarwal, “Riding roughshod over State governments” *The Hindu*, May 13, 2020, available at: <https://www.thehindu.com/opinion/op-ed/riding-roughshod-over-state-governments/article31568039.ece> (last visited on February 6, 2022).

10. Sansriti Pathak, “Federal Structure A Casualty in times of Pandemic?” *LiveLaw*, May 5, 2020, available at: <https://www.livelaw.in/columns/federal-structure-a-casualty-in-times-of-pandemic-156242> (last visited on Feb. 6, 2022).

11. *Ibid.*

amended section 4 of the Act to make wearing of face masks mandatory in public spaces, becoming the first state to have such a law. It later also notified black fungus as an epidemic under the Act.

## **Inculcating Public Opinion: Amendments to the Central Farm Laws**

The year 2020 saw policy questions related to agriculture come to the forefront. An engagement with agricultural policy consequently also came up importantly in the legislative activity of the Rajasthan assembly. The Rajasthan assembly passed one ordinance and two amendments to the Punjab Agricultural Produce Markets Act, 1961 and three bills amending the central farm laws which, however, failed to become Acts in the absence of the president's assent.

### ***Rajasthan Amendment Bills to the Three Farm Laws***

The Rajasthan legislative assembly also passed the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Rajasthan Amendment) Bill, 2020, the Farmers Produce Trade and Commerce (Promotion and Facilitation) (Rajasthan Amendment) Bill, 2020, and the Essential Commodities (Special Provisions and Rajasthan Amendment) Bill, 2020 on November 2, 2020. The bills were similar to the ones passed by Punjab and other states ruled by parties sitting in the opposition in parliament.

Article 254(2) of the Indian Constitution gives state legislatures the power to amend central legislations regarding an area included in the concurrent list subject to the president's assent. The state government cited "extraordinary outrage amongst the farmers" and others against the central legislations as the motive force behind their enactments. The first two bills were proposed with the preamble "to restore the safeguards for the farmers of the state of Rajasthan through the regulatory framework of the Rajasthan Agricultural Produce Markets Act, 1961, in order to secure and protect the interests and livelihood of farmers, farm labourers and also all other engaged in agriculture and related activities." The statement of objects and reasons for both the bills state that the central laws were "vulnerable to encroachment and manipulation by vested corporate interests." They reiterate that since "agriculture, land and markets is the primary legislative domain of the State" and the "production, supply and distribution of goods" is also a state subject, reading entry 27 of list-II with entry 33 of list-III of the Constitution, the state government feels that it can protect the interests of farmers and those in allied occupations by exercise of its powers under article 254(2) of the Constitution.

The Farmers Produce Trade and Commerce (Promotion and Facilitation) (Rajasthan Amendment) Bill, 2020 allows dispute resolution under the state APMC Act as opposed to the provision for approaching the sub-divisional magistrate. It also introduces a penalty for traders of upto three to seven years of imprisonment and a minimum fine of five lakhs rupees or both on non-acceptance of delivery of produce by farmers, and non-payment of agreed price according to terms of the contract or within three days of receiving the goods. The bill further allows the state government to impose a fee/cess on transactions involving agricultural produce undertaken by a corporation or trader, towards the welfare of farmers.

The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Rajasthan Amendment) Bill, 2020 introduces a provision addressing one of the central contentions of the protesting farmers – that of enforcing minimum support price (MSP) for agricultural produce. It invalidates any farming agreement based on a consideration not equal to or more than the MSP

declared by the central government. The bill also imposes a fee or cess on farming agreements, payable by the traders to the state government and earmarked for the welfare of farmers.

The Essential Commodities (Special Provisions and Rajasthan Amendment) Bill, 2020 amends two central Acts—the Essential Commodities Act, 1955, and the Essential Commodities (Amendment) Act, 2020—in their application to the state. The primary departure that it makes from the central Act is that it also empowers the state government to regulate the production, supply and distribution of essential commodities and imposes stock limits under extraordinary circumstances such as famine, price rise, natural calamity or any other situation, whereas the central Act only attributes such power to the central government. Another change from the central Act worth noting is that the Rajasthan amendment only requires ‘price rise’ as a condition for regulatory intervention by the state government, whereas the central Act requires ‘extraordinary price rise’ for regulation of foodstuff, and hundred percent increase in retail price of horticultural produce and fifty percent increase in retail price of non-perishable food stuff for imposing stock limits by the central government. The ‘statement of objects and reasons’ of the bill clearly states that the same was drafted with a “view to protect consumers from the hoarding and black-marketing of agricultural produce.”

The above description shows that all these statutes made crucial changes to the central laws. The three bills did not receive the president’s assent and, with the repeal of the three central laws by the parliament, they further lost their legislative significance. However, their introduction and passage highlighted a very important and often underplayed aspect of the legislative powers given to states in India’s federal system—their connection to public sentiment and popular demands.

## **Legislating for Social Welfare**

The Rajasthan government passed various legislations oriented towards social welfare. These included the Rajasthan Jan Aadhaar Authority Act, 2020, the Rajasthan Rehabilitation of Beggars or Indigents (Amendment) Act, 2020 and the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Rajasthan Amendment) Act, 2019. The survey now closely examines the Rajasthan Jan Aadhaar Authority Act, 2020.

### ***The Rajasthan Jan Aadhaar Authority Act, 2020***

The Rajasthan Jan Aadhaar Authority Act, 2020 is an important social welfare legislation passed by the Rajasthan government. It is modelled on the central Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, but identifies beneficiaries at the level of both families and individuals. It sets up the Rajasthan Jan-Aadhaar Authority as a statutory body and a Jan-Aadhaar Resident Data Repository of the resident families of the state, using demographic and biometric information along with socio-economic information as well as information of all state benefits received by them. It requires all government departments to seed their existing database into the new database and from then on rely solely on the identity information provided in the Jan-Aadhaar database. In other words, it seeks to centralise the disbursement of state benefits to the residents of the state and facilitate direct benefit transfers of state-run schemes to the accounts of beneficiaries. The Jan-Aadhaar card also serves as a proof of identity and address, aiming to give all residents “one number, one card, one identity”. The card replaces the Bhamasha card introduced by the previous government of Vasundhara Raje for purposes of direct benefit transfer while also expanding the scope of benefits provided through it. It also allows the use of the Aadhaar authentication for authentication of beneficiaries and relies on the central Act for various other schemes. So far, the government has already merged the ration card with the Jan-Aadhaar card.

The Act identifies the adult woman in the household as the head of the family, and mediates transfer of state benefits through her, thereby strengthening her social status. It, however, makes the possession of or application for either an Aadhar or a Jan-Aadhar card a necessary condition for availing state benefits. It further gives the state government the power to notify the list of services under section 7 of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, which includes services provided drawing upon the consolidated fund of the centre or the state. This conditionality may result in constraining individuals' and families' access to welfare schemes on the basis of non-possession of the card.

### ***The Code of Civil Procedure (Rajasthan Amendment) Bill, 2020***

Another important social welfare bill passed by the Rajasthan legislative assembly was the Code of Civil Procedure (Rajasthan Amendment) Bill, 2020, which, however, had not received the approval of the governor till March 2022. The bill exempts agricultural land up to five acres from attachment in recovery proceedings. This brings the land of small and marginal farmers at par with other exempted property such as tools of artisans, animal husbandry implements, cattle, seed grains and other means of livelihood, the homestead land of agricultural workers and marginal farmers, etc. This is an extremely important safeguard for social justice and welfare in the face of deep agrarian indebtedness and farmer suicides. The non-approval of the bill by the governor has been a cause of public outcry.<sup>12</sup>

### **Legislating on Minority Rights**

The principle of secularism enshrined in the preamble and the freedom of religion and cultural and educational rights of minorities guaranteed as fundamental rights in the Constitution are incumbent to be protected and promoted by both state and central governments. However, an increasingly sharper thrust towards majoritarian policies and legislations has been observed in the Indian polity. A 2020 report by the United States Commission on International Religious Freedom, an independent bipartisan commission, has recommended to “designate India as a ‘country of particular concern,’ or CPC, for engaging in and tolerating systematic, ongoing, and egregious religious freedom violations, as defined by the International Religious Freedom Act (IRFA).”<sup>13</sup> This brings additional focus on interventions by state legislatures towards furthering minority rights. In such a socio-political landscape, where attack and alienation of minority communities, particularly Muslims, has seen a rapid rise, the enactment of the Rajasthan Madrasa Board Act, 2020 gains significance as a politically distinct use of its legislative capacity by the state.

### ***The Rajasthan Madrasa Board Act, 2020***

The Rajasthan Madrasa Board Act, 2020 is an important social welfare legislation enacted by the Rajasthan legislative assembly. The Act provides for the establishment of a Board of Madrasa Education and gives various directions as to its constitution, powers, duties, funds, etc. It provides for a board constituted of 21 members, bringing together the secretaries in-charge or their nominees of the state's Minority Affairs and Waqf Department, Finance Department, Social Justice Department, Department of Personnel and the Education Department along with state university faculty, Sadars of the Madrasa

12. TNN, “Rajasthan govt reminds governor on pro-farmer land bill”, *The Times of India*, Jan. 25, 2022, available at: <https://timesofindia.indiatimes.com/city/jaipur/govt-reminds-guv-on-pro-farmer-land-bill/articleshow/89103039.cms> (last visited on Feb. 17, 2022).

13. U.S. Commission On International Religious Freedom, “Annual Report 2020” 20 (April 2020), available at: [https://www.uscifr.gov/sites/default/files/USCIRF%202020%20Annual%20Report\\_42720\\_new\\_0.pdf](https://www.uscifr.gov/sites/default/files/USCIRF%202020%20Annual%20Report_42720_new_0.pdf) (last visited on Jan. 2, 2022).

Management Committee and social workers from the Muslim community. The Act also provides for the setting up of a Madrasa Board Fund constituted by state and central government grants and private donations and any other funds received. Under the law, Madrasas previously registered under the 2002 Government Order on Elementary Education shall be deemed to be registered in accordance with the present Act. Madrasa education as defined by the Act combines the study of Islamic history, culture and theology with general education directed towards qualifying school examinations held by various national and state-level educational boards like the Central Board of Secondary Education (CBSE), Indian School Certificate Examinations (ISCE) and state boards. Presently, Rajasthan has 3290 Madrasas registered under the board. The state has the second highest number of Madrasas in the country after Uttar Pradesh,<sup>14</sup> with a combined strength of over 1.8 lakh students.<sup>15</sup> At the same time, the Muslim community reflects the highest average dropout rate at the upper primary school level in the state, at 20.59 percent compared to 6.03 percent for other communities as per a study conducted in 2015.<sup>16</sup>

### ***Public Response and Debates***

Despite what can be considered as an important step ahead on the matter of educational rights of the muslim minority, the significance of the Act must be judged within the context of a long history of policy interventions in the state to bring Madrasas under the institutional framework of the government as well as a history of contention between different political parties, s of civil society and social organisations of different communities on the matter. Earlier, the Rajasthan Madrasa Board Bill, 2018 had been introduced in the Assembly under the previous BJP government but was not brought up for debate. The bill faced strong protests from sections of the Muslim community like the Jamiat Ulama-i-Hind, which argued that the move would primarily take away the autonomy of the Madrasas, which fulfil an important religious need of the community. The Muslim leaders declared their intention to move the courts if the bill were to be passed, on the ground that it would impinge on the constitutional right of the community.<sup>17</sup> They alleged that despite the huge section of the community suffering educational backwardness, the state was doing little towards fulfilling its responsibility towards the education of Muslim children.

The passing of the Rajasthan Madrasa Board Act, 2020 has not invited any protest from the Muslim community but a public interest litigation (PIL) has been filed before the Rajasthan high court averring that the law should be declared arbitrary, discriminatory and unconstitutional. The petition prays for Madrasa education to be brought under the National Education Policy 2020 so that secular education in Hindi as prescribed by the education department or Board of Secondary Education be provided to all.<sup>18</sup>

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14. Vishal D. Pajankar, "Maktabs and Madrasas in India: A Look at Statistics based on 8th All India School Education Survey" 7(5) *Asian Journal of Research in Social Sciences and Humanities* (2017) available at: [https://www.researchgate.net/publication/316894522\\_Maktabs\\_and\\_Madrasas\\_in\\_India\\_A\\_Look\\_at\\_Statistics\\_based\\_on\\_8th\\_All\\_India\\_School\\_Education\\_Survey](https://www.researchgate.net/publication/316894522_Maktabs_and_Madrasas_in_India_A_Look_at_Statistics_based_on_8th_All_India_School_Education_Survey) (last visited on Jan. 1, 2022).

15. Department of Minority Affairs and Waqf, Government of Rajasthan, Rajasthan Madarsa Board, available at: [https://minority.rajasthan.gov.in/Madarsa\\_Board/About\\_Us.aspx](https://minority.rajasthan.gov.in/Madarsa_Board/About_Us.aspx) (last visited on Feb. 6, 2022).

16. Vaibhav Jha, "Rajasthan: Highest school dropout rates among Muslims, SCs/STs", *Hindustan Times*, Nov. 2, 2015, available at: <https://www.hindustantimes.com/education/rajasthan-highest-school-dropout-rates-among-muslims-scs-sts/story-3m9lrBg4LsaGyaTVQ6VYWJ.html> (last visited on Feb. 6, 2022).

17. Patrika Desk, "मदरसा बोर्ड बिल को जमीयत ने क्यों बताया मुसलमानों के खिलाफ षड्यंत्र" पत्रिका, Jun. 30, 2018, available at: <https://www.patrika.com/jaipur-news/madarsa-board-bill-jamiyat-conspired-against-muslims-3029861/> (last visited on Feb. 6, 2022).

18. Salil Tiwari, "Rajasthan Madarsa Board Act 2020 be declared arbitrary, discriminatory and unconstitutional: Plea before Rajasthan HC", *Law Beat*, Aug. 14, 2021, available at: <https://lawbeat.in/news-updates/rajasthan-madarsa-board-act-2020-be-declared-arbitrary-discriminatory-and> (last visited on Feb 6, 2022).

## Facilitating Industry and Ease of Doing Business

The Rajasthan assembly also passed two important bills with regard to industrial development in 2020. These are: the Rajasthan Enterprises Single Window Enabling and Clearance (Amendment) Act, 2020 and the Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Act, 2020.

### ***The Rajasthan Enterprises Single Window Enabling and Clearance (Amendment) Act, 2020***

The state government has sought to strengthen the existing Single Window Clearance System existing in the state by introducing a one-stop shop (OSS) facility in the Bureau of Investment Promotion (BIP) under the industries department. The OSS provides assistance to investment proposals above Rs. 10 crores by offering 98 types of clearances in a time-bound manner. It shall have officers from 14 departments including industries, Rajasthan State Industrial Development and Investment Corporation Ltd (RIICO), energy, labour, urban development, and local self-governance.<sup>19</sup> It provides for fast-tracking clearance of customised packages under the Rajasthan Investment Promotion Scheme (2019). The amendment also provides for setting up a Board of Investment, which shall be the highest authority for approving industry-related policies, proposals, concessions, and exemptions, headed by the chief minister. The amendment comes in continuation of other enactments to encourage investments in the state such as the Rajasthan Industrial Development Policy (2019), Rajasthan Investment Promotion Scheme (2019) and Micro, Small & Medium Enterprises (MSME) (Facilitation of Establishment and Operation) Act, 2019. Between the period of March 2020 and March 2021, the OSS received investments worth Rs. 12,000 crores.<sup>20</sup> At the same time, enactments such as the MSME Act, 2019 attracted over 5000 small and medium-sized companies to the state in the previous year. With these enactments, Rajasthan became the sixth state to have completed the “ease of doing business” reforms as required by the Ministry of Finance as a condition for permitting additional borrowing by state governments.<sup>21</sup>

### ***The Rajasthan Imposition of Ceiling on Agricultural Holdings (Amendment) Act, 2020***

The Act permits land to be acquired in excess of the ceiling limit for the purpose of setting up a solar farm/park, solar plant/solar power plant or related activities towards the generation of solar or wind power. The same has additional clauses of requiring an application of approval to be filed within a year of the passage of the amendment or from the acquisition of land and commencement of development of the power project. Further, the project must be commenced within three years from the date of acquiring permission. This amendment is of great significance in the development policy adopted by the state, which is heavily reliant on the renewable energy sector.

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19. Srikanta Tripathy, “Rajasthan cabinet nod to One Stop Shop for fast tracking investments”, *The Times of India*, Jul. 17, 2020, available at: <https://timesofindia.indiatimes.com/city/jaipur/cabinet-nod-to-one-stop-shop-for-fast-tracking-investments/articleshow/77008892.cms> (last visited on Feb. 6, 2022).

20. Prakash Bhandari, “Rajasthan govt attracts investments worth over Rs 1,67,000 crore”, *National Herald*, May 18, 2021, available at: <https://www.nationalheraldindia.com/india/rajasthan-govt-attracts-investments-worth-over-rs-167000-crore> (last visited on Feb. 6, 2022).

21. ANI, “Rajasthan Becomes 6th State To Complete Ease of Doing Business Reforms”, *Business World*, Dec. 26, 2020, available at: <http://www.businessworld.in/article/Rajasthan-becomes-6th-State-to-complete-ease-of-doing-business-reforms/26-12-2020-358260/> (last visited on Feb. 6, 2022).

In fact, the majority of the investments that the state attracted through its trade, industry and commerce-related reforms were from the renewable energy sector. The highest quantum of investments received by the OSS were made in Jodhpur, Bikaner and Jaisalmer towards the green energy sector. By the end of 2020, solar power plants of 5,002 MW and wind energy plants for 4,337.65 MW were commissioned in the state.<sup>22</sup>

The sector also claims that it will generate 37,000 new jobs in non-agricultural desert land over the next couple of years. According to an assessment made by the Ministry of New and Renewable Energy, Rajasthan can potentially generate 142 GW of solar energy and 18,770 MW of wind energy.

It is, however, important to note that the move is part of a wider tendency to change land-use patterns and amend land ceiling acts in favour of industry over land rights of farmers and the landless rural population, which is a significant overturning of a long-standing though unaccomplished demand for equitable land reforms in the country.<sup>23</sup>

## Seeking Greater Fiscal Autonomy

It has been observed that the present government at the centre has backed out of the various financial commitments made to the states. This has been seen as a major attack on the principle of fiscal federalism,<sup>24</sup> which is a necessary complement to the effective working of federalism. The Goods and Services Tax (GST) regime notably constrained the fiscal autonomy and space for manoeuvre in financial planning by state governments. This trend was exacerbated during the first wave of the pandemic. An estimated Rs. 30,000 crore shortfall in GST compensation for states was followed by a declaration by the centre of reneging on its commitment to compensate the states for the shortfall in state-level GST.<sup>25</sup> Even mandatory tax transfers were delayed by the centre and major cut-backs were witnessed on fund transfers for various central-sector and centrally sponsored schemes.<sup>26</sup> Further, the suspension of the members of the Parliament Local Area Development Scheme and not recognising contributions to the chief minister's relief funds under corporate social responsibility (CSR) activity have been seen as having a damaging impact on COVID-19 relief work at the grassroots level.<sup>27</sup>

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22. Power Resources of Rajasthan, Rajras, available at: <https://www.rajras.in/rajasthan/economy/infrastructure/power/#solar> (last visited on Feb. 6, 2022).

23. Flavia Lopes and Mridula Chari, "In 12 Years, 11 States Changed Land Ceiling Laws in Favour of Industry Over Farmers" *India Spend*, Feb. 10, 2021, available at: <https://www.indiaspend.com/land-rights/in-12-years-11-states-changed-land-ceiling-laws-in-favour-of-industry-over-farmers-724650> (last visited on Feb. 7, 2022).

24. Kajol, Bharath Jairaj and Deepak Krishnan, "Erosion of fiscal federalism in the times of Covid-19", *Business Line*, May 25, 2020, available at: <https://www.thehindubusinessline.com/opinion/erosion-of-fiscal-federalism-in-the-times-of-covid-19/article31670568.ece> (last visited on Feb. 7, 2022).

25. C.P. Chandrasekhar, "The Great GST Impasse Threatens India's Federal Structure", *The Wire*, Aug. 30, 2020, available at: <https://thewire.in/economy/india-gst-tax-states-centre-federalism> (last visited on Feb. 7, 2022).

26. Prasanta Sahu and Sumit Jha, "Double Whammy: Tax slump and Central funds cut hit states", *Financial Express*, April 3, 2020, available at: <https://www.financialexpress.com/economy/double-whammy-tax-slump-and-central-funds-cut-hit-states/1917475/> (last visited on Feb. 7, 2022).

27. Sarthak Sethi, "Covid-19 and Indian Federalism: Through the Lens of the Disaster Management Act, 2005 and Fiscal Federalism", *India Law Journal*, available at: <https://www.indialawjournal.org/covid-19-and-indian-federalism.php> (last visited on Feb. 7, 2022).

## ***The Rajasthan Stamp (Amendment) Act and the Rajasthan Excise (Amendment) Act, 2020***

In the face of this resource crunch, the Rajasthan Stamp (Amendment) Act, 2020 provides for utilisation of surcharge earmarked for cow protection under the Stamp Act for the additional purposes of mitigating natural and man-made disasters. This surcharge amounts to 20 percent of the duty chargeable and thus involves significant resources. The state earned Rs. 1,252.9 crores from such taxes in 2018-2020.<sup>28</sup> The Act marks an important attempt on the part of a state legislature to assert its authority on certain fiscal matters as provided in the Constitution and tide over the financial crisis arising from the pandemic. It stands out for its innovative solution of rechanneling existing revenue resources to address the needs of the people during the pandemic.

The government brought in the change first through the Rajasthan Stamp (Amendment) Ordinance, 2020, which was later enacted as law. The Act amends the phrase “surcharge for the conservation and propagation of cows and its progeny” to include “and for mitigating natural or man-made calamities”. This has been justified with the express concern “to provide immediate relief to people suffering from the sudden outbreak of COVID-19 in the form of food, shelter, transportation and health services and also having in mind the future need of resources for emergent situations like drought, flood, epidemic, public health exigencies, fire, etc.” The surcharge towards cow protection was introduced by the Bharatiya Janata Party (BJP)-led Rajasthan government in 2016 in pursuance of a central agenda of the party. The amendment was met with protests by the BJP-led opposition and various *gauraksha dals* (cow-protection groups) in the state. Consequently, the chief minister declared earmarking 50 percent of the surcharge for the express purposes of cow protection.<sup>29</sup>

The Rajasthan Excise (Amendment) Act, 2020 similarly provides for charging a surcharge not exceeding 50 percent of the duty chargeable on intoxicating drugs and other articles charged with excise duty under section 28 of the principal Act as notified by the state government. The resources will be used to mitigate natural or man-made calamities like droughts, floods, epidemics, public health exigencies, fire outbreaks, etc.

## ***The Rajasthan Agricultural Produce Markets (Amendment) Act, 2020***

The Rajasthan assembly passed the Rajasthan Agricultural Produce Markets (Amendment) Act, 2020 on 28 February 2020, giving legislative sanction to an ordinance passed in the previous year to address the fact that traders bringing in goods notified as agricultural produce from outside the state into the APMCs did not pay a market fee to the state of Rajasthan on the basis that the transaction took place beyond its territories. This was sought to be changed on the grounds that while produce is being brought from outside, it is being sold in the state and, therefore, the state government should be entitled to levy a fee on the transaction even though the issue was not clearly dealt with in the Rajasthan Agricultural Produce Markets Act, 1961. To enable this imposition, section 17 of the Act of 1961 was amended to

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28. Deep Mukherjee, “Rajasthan received over Rs 1,200 cr from cow protection surcharge in 2 years: Govt”, *The Indian Express*, Aug. 24, 2020, available at: <https://indianexpress.com/article/india/rajasthan-received-over-rs-1200-cr-from-cow-protection-surcharge-in-2-years-govt-6567081/> (last visited on Feb. 7, 2022).

29. TNN, “50% of cow cess for cattle conservation, says CM Gehlot”, *The Times of India*, Sep. 15, 2020, available at: <https://timesofindia.indiatimes.com/city/jaipur/50-of-cow-cess-for-cattle-conservation-says-cm-gehlot/articleshow/78115477.cms> (last visited on Feb. 7, 2022).

ensure that traders from other states paid the requisite market fee when bringing notified agricultural produce into the state APMCs and market areas. The amendment further introduced a new section 17-A allowing APMC market committees to collect a krishak kalyan fee, which would be deposited in a fund provided for under section 19-A of the amended Act, called krishak kalyan kosh. This collection was based on the need to mobilise regular resources to finance farmer's welfare in the state through various government schemes and policies. These changes, however, were overridden by the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020 promulgated by the central government in June 2020 due to its particular definition of "trade area", which restricted the application of all state APMC Acts in force. Responding to these changes, the Rajasthan Agricultural Produce Markets (Second Amendment) Act, 2020 was introduced in August 2020 amending provisions regarding the area of operation as defined in sections 17 and 17-A in the Rajasthan APMC Act, 1961.

## Conclusion

Regional interests and political dynamics of state-level actors have been seen as important factors in shaping the nature of federalism in practice in India.<sup>30</sup> Rajasthan is not only among the biggest states in the country but also stands out as being one of the few states ruled by the Congress, which is the largest opposition party in parliament. The legislative activity of Rajasthan, ruled by a national party sitting in opposition at the centre, is significantly shaped by national-level political polarisation. The Rajasthan government led by the Congress has, in its present tenure, enacted several social welfare legislations on controversial issues, and thereby explored the full scope of its legislative powers on issues where it may be at variance with the centre. This pattern can be noticed in the Acts it passed in 2019 as well. In 2019, the state enacted the Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Act, 2019 and the Rajasthan Protection from Lynching Act, 2019. The aforesaid interventions, including more recent amendments to the Farm Laws and the Epidemic Diseases Act, demonstrate how the legislative powers of the state can be employed to sharpen the political-ideological difference between the governments at the state and the centre. Such assertion could also be seen to check the centre from trenching into matters which lie within the jurisdiction of the state, thereby strengthening the federal commitment of the Constitution.

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30. Ambar Kumar Ghosh, "The Paradox of 'Centralised Federalism': An Analysis of the Challenges to India's Federal Design", *Observer Research Foundation*, Sep. 17, 2020, available at: <https://www.orfonline.org/research/the-paradox-of-centralised-federalism/> (last visited on Feb. 7, 2022).