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# ANDAMAN AND NICOBAR ISLANDS

SAHEB CHOWDHURY★

## Introduction

The Andaman and Nicobar Islands are a union territory of India. The territory consists of three districts, has two separate groups of islands known as Andaman and Nicobar and has a total land area of 8294 square kilometres.<sup>1</sup> The islands were classified as a union territory by virtue of the seventh amendment of the Constitution of India in 1956.<sup>2</sup> The union territory is administered by the President of India through an administrator appointed by the President called Lieutenant Governor.<sup>3</sup> While some union territories have legislative assemblies under the Constitution,<sup>4</sup> the Andaman and Nicobar Islands don't have such a legislative body. The Constitution of India empowered the President of India with the power to make regulations for peace, progress and good governance of the union territory.<sup>5</sup> And, the lawmaking power has been conferred on Parliament.<sup>6</sup> Therefore, legislative documents for this survey shall include Bills and Acts of the Parliament specific to the union territory of the Andaman and Nicobar Islands, regulations issued by the President and rules, orders and notifications issued by the Lieutenant Governor of the union territory under the abovementioned powers.

The Bills and Acts specific to the Andaman and Nicobar Islands, have been accessed from the website “digital sansad”,<sup>7</sup> Regulations promulgated by the President have been collated

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<sup>1</sup> The State Portal of U.T. Administration, A & N Islands, available at <https://www.andaman.gov.in/index> (Last visited on January 21, 2024).

<sup>2</sup> The Constitution (Seventh Amendment) Act, 1956.

<sup>3</sup> The Constitution of India, 1950, Article 239(1).

<sup>4</sup> *Id.*, Art 239 A and Art 239 AA.

<sup>5</sup> *Id.*, Art 240.

<sup>6</sup> *Id.*, Art 239.

<sup>7</sup> Digital Sansad, available at <https://sansad.in/poi/search> (Last visited on January 21, 2024).

from the Gazette of India<sup>8</sup> and the Rules and Orders issued by the Lieutenant Governor have been downloaded from the official website of the Andaman and Nicobar Islands administration.<sup>9</sup> One of the difficulties faced in the collection of data is that despite repeated mails to the offices of the Lieutenant Governor, Chief Secretary of A&N Islands and the MP of the A&N Islands, there has been no response from their respective offices, while some mails have even bounced back. However, this non-response did not impact on the survey as the relevant information and data were available on the official websites. All the relevant legal output have been digested in order of their introduction and issuance.

## **Legislative Developments Specific to the Andaman and Nicobar Islands**

Three Bills have been introduced in the parliament specific to the Union Territory of the Andaman and Nicobar Islands on the fourth of August, 2023. All three bills are private member's bills introduced by the member of parliament (MP) (Lok Sabha) of the union territory, Shri Kuldeep Rai Sharma. The bills are the Anganwadi Workers of Andaman and Nicobar Islands (Regularization of Service and Welfare) Bill, 2023 (Bill number 70 of 2023), The Welfare of shopkeepers in Andaman and Nicobar Islands Bill, 2023 (Bill number 72 of 2023) and The Andaman and Nicobar Islands (Right to Health) Bill, 2023 (Bill number 73 of 2023). All three bills introduced are still pending. It is worth noting in this regard that a private member's bill has a very low likelihood of being enacted into laws and till now only 14 private member's bills have been successfully enacted into laws.<sup>10</sup> Nevertheless, the importance of such bills lies in their capacity to influence public opinion and allow voicing of scholarly arguments, which might be ignored by the government. The bills introduced by the Member of Parliament drew attention to some important issues of welfare and social justice which have not received attention till now.

The President of India promulgated The Andaman and Nicobar Islands Tenancy Regulation, 2023 under Article 240 of the Constitution of India.<sup>11</sup>

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<sup>8</sup> The Gazette of India, available at [https://egazette.gov.in/\(S\(5bpmxhwljnv4g3vjdq0kk1de\)\)/default.aspx](https://egazette.gov.in/(S(5bpmxhwljnv4g3vjdq0kk1de))/default.aspx), (Last visited on March 21, 2024)

<sup>9</sup> Andaman and Nicobar Administration, available at <https://www.andaman.gov.in/> (Last visited on January 21, 2024)

<sup>10</sup> Rajya Sabha Secretariat, Private members' Legislation, available at [https://cms.rajyasabha.nic.in/UploadedFiles/ElectronicPublications/pm\\_legislation2013.pdf](https://cms.rajyasabha.nic.in/UploadedFiles/ElectronicPublications/pm_legislation2013.pdf) (Last visited on March 21, 2024).

<sup>11</sup> *The Andaman and Nicobar Islands Tenancy Regulation, 2023* (No. 2 of 2023), Extraordinary, Part II-Section 1, No. 38, Ministry of Law and Justice (Legislative Department), New Delhi (24 November 2023), available at <https://egazette.gov.in/WriteReadData/2023/250253.pdf>.

Furthermore, the Lieutenant Governor of the Andaman and Nicobar Islands made rules in exercise of the powers conferred by Sections 41 and 42 of the Indian Forest Act, 1927 and the Rules are called the Andaman and Nicobar Islands Forest Produce Transit Rules, 2022.<sup>12</sup> These rules were notified in the Andaman and Nicobar Islands Extraordinary Gazette on the fifth of July, 2023.

The Lieutenant Governor of the Andaman and Nicobar Islands revised/declared minimum wages for six schedules of employment apart from government offices/departments/ industrial establishments under the powers conferred by Section 5 of the Minimum Wages Act, 1948.<sup>13</sup> The order was notified on the seventh of July, 2023. There has been an effective increase in the minimum wages.

The Lieutenant Governor also declared the revenue village of Bimblitan in the Port Blair tehsil under South Andaman District as a Local Area for the purpose of a revenue survey on the fourth of September, 2023 in pursuance of Sec 48 (1) of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966.<sup>14</sup> As per Section 44 of the Regulation “revenue survey” is done to determine or revise land revenue payable on lands in any local area. Such revenue survey is done to inquire into profits of agriculture and into the value of the land for agricultural and non-agricultural purposes for the purpose of assessment of land revenue. Section 48(1) empowers the chief commissioner to decide the revenue survey of any local area and conduct such survey for the said purpose.

## **A Comprehensive Review of the Laws**

In this section a detailed overview of the legislative interventions, as mentioned above, has been provided.

### **Private Member Bills**

The first bill introduced in the Lok Sabha is bill number 70 of 2023, titled the Anganwadi Workers of Andaman and Nicobar Islands (Regularization of Service and Welfare) Bill, 2023.<sup>15</sup>

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<sup>12</sup> Andaman and Nicobar Administration Department of Environment and Forests, The Andaman and Nicobar Islands Forest Produce Transit Rules, 2022, No. 74/2023/F.No.F.(T)/21/Vol-IV/03. (Notified on July 5, 2023).

<sup>13</sup> Andaman and Nicobar Administration Office of the Labour Commissioner, Declaration of Minimum Rates of Wages, F. No. 16/1/MW/2019-20/LC&DET/667. (Notified on July 7, 2023).

<sup>14</sup> Andaman and Nicobar Islands Secretariat, Notification Regarding Declaration of Local Area, No...../F No. 907/ Sett/2022. (Notified on September 4, 2023).

<sup>15</sup> The Anganwadi Workers of Andaman and Nicobar Islands (Regularization of Service and Welfare) Bill, 2023, 70 of 2023

In order to appreciate the context of the bill, reference is being made to a representation of the demands of the anganwadi workers and helpers to the Chief Secretary of Andaman and Nicobar Islands. In their memorandum the anganwadi workers sought an increase of their own remuneration to rupees 15,000 and of the helpers to rupees 10,000.<sup>16</sup> The charter of demands pointed out that they were not being paid salary at par with the 6th Pay Commission Grade III and Grade IV government employees nor was a special pay scale which had been implemented elsewhere paid to them. In fact even the meagre wages that they were entitled to remain unpaid for months due to non-availability of central funds. A large number of Anganwadi Centres were operating in rented rooms, and anganwadi workers are compelled to pay the rent for these premises from their own pockets due to delayed payment from the government.<sup>17</sup> The charter also highlighted the absence of a proper grievance redressal mechanism for resolution of grievances of the workers in a democratic manner.<sup>18</sup>

In the light of these peculiar challenges faced by the anganwadi workers and helpers in the Union Territory the bill was introduced, by the MP. Among others, the Bill intends to regularise the services of Anganwadi workers<sup>19</sup> by giving them the status of at least Group C employees of the central government.<sup>20</sup> Since accommodation is a major challenge, the bill also requires the government to provide housing facilities to the workers in the vicinity of their workplace.<sup>21</sup>

The second bill introduced in the Lok Sabha is bill number 72 of 2023 titled the Welfare of shopkeepers in Andaman and Nicobar Islands Bill, 2023, and it intends to put in place a social security net for shopkeepers by providing them with old-age pension, free healthcare, free insurance coverage and housing facilities in light of their economic vulnerability.<sup>22</sup> The absence of social security for shopkeepers on the island, who are particularly vulnerable to

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<sup>16</sup> Andaman Chronicle, *All India Federation of Anganwadi Workers & Helpers Demand Increase in Remuneration for Anganwadi Workers and Helpers in A&N Islands*, available at <https://www.andamanchronicle.net/index.php/27467-all-india-federation-of-anganwadi-workers-helpers-demand-increase-in-remuneration-for-anganwadi-workers-and-helpers-in-a-n-islands>, (Last visited on March 27, 2024).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Statement of Objects and Reasons*, supra note 15,

<sup>20</sup> *Id.* preamble, and Cl. 3 (1) & (2)

<sup>21</sup> *Id.*, Cl. 4.

<sup>22</sup> *Statement of Objects and Reasons* of The Welfare of shopkeepers in Andaman and Nicobar Islands Bill, 2023, 72 of 2023.

life's conditions and uncertainties, has been a major issue.<sup>23</sup> This issue had become further pronounced in light of the COVID-19 pandemic, during which they were left with a complete absence of any safety net whatsoever.<sup>24</sup> Therefore, this bill intends to provide a social security safety net to shopkeepers' who are extremely vulnerable during such adversities. The bill, among others, requires the central government to create a fund which is to be called Shopkeeper's Welfare Fund, which is to be created from the contributions of both the central government and the Andaman and Nicobar Islands administration.<sup>25</sup> It intends to cover various aspects of wellbeing including old-age pension, health facilities, insurance coverage housing etc. and thereby provide a safety net to the shopkeepers who form part of the informal sector.

Access to healthcare in the Union Territory of the Andaman and Nicobar Islands has been an issue of major concern. A recent study into the healthcare system in Port Blair and Andaman and Nicobar Islands has revealed the inconveniences faced by people with chronic diseases, particularly those with non-communicable diseases like stroke, diabetes, kidney diseases, cancer etc., during COVID 19 lockdown due to lack of access to care including emergency care which highlights the inadequacy of healthcare facilities and services on the islands.<sup>26</sup> Other similar studies and news reports too point towards inadequacy of healthcare workers and in particular specialist doctors in hospitals.<sup>27</sup> In the light of these problems of lack of access to healthcare facilities of the people of islands, infrastructure and personnels, the Member of Parliament of the Union Territory of the Andaman and Nicobar Islands introduced in the Lok Sabha the private members bill titled the Andaman and Nicobar Islands (Right to Health) Bill, 2023, provides a legally guaranteed right to have free access to healthcare by imposing enforceable duties of the State.<sup>28</sup> More specifically, the bill aims to provide, among others, a legal right to free inpatient and outpatient services including consultation, free drugs and medicines,

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<sup>23</sup> Andaman Sheekha, *Member of Parliament moves yet another Private Member's Bill "Welfare of Shopkeepers in Andaman and Nicobar Islands Bill, 2023"*, available at <https://www.andamansheekha.com/118178/>, (Last visited on March 27, 2024).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, Cl. 3(1) & (2).

<sup>26</sup> Rakhi Kumari et.a., *Pandemics and Patients with Chronic Diseases: A Study on the Health Care System in Port Blair, Andaman and Nicobar Islands*, *Journal of the Anthropological Survey of India*, 71(2), 220-235 (2022).

<sup>27</sup> Salma Begum, *A Case Study of the Health Status of the Three Districts of Andaman and Nicobar Islands, A Union Territory of India*, *Humanities and Social Sciences Review*, 2395-6518, Vol 7, No 6, (2019); Andaman Sheekha, *Lack of Specialist Doctors in Nicobar Islands' Healthcare System Sparks Concern*, available at <http://www.andamansheekha.com/115859/>, (Last visited on March 27, 2024)

<sup>28</sup> The Andaman and Nicobar Islands (Right to Health) Bill, 2023, 73 of 2023, Statement of objects and reasons.

diagnostics, emergency transport, procedure and emergency care etc.<sup>29</sup> The bill lays particular emphasis on individual's right to have prompt access to treatment and care under any emergency, without prior -payment of requisite fee or charges.<sup>30</sup> Furthermore, the bill also requires the government to ensure equitable distribution of healthcare personnel<sup>31</sup> and provide a grievance redressal mechanism in case of violation of such rights.<sup>32</sup> The bill essentially intends to give legal recognition to the right to health and more specifically to healthcare as required under international human rights treaties and conventions.

The above narrative on the legislative initiatives of the member of parliament therefore, highlights the problem of lack of democratic lawmaking in the context of the union territory of the Andaman and Nicobar Islands. Furthermore, it also demonstrates the absence of legislative activity, when it comes to the welfare of the people of the islands. The problem also arises from the fact that while the Member of Parliament representing the Union Territory gets to vote on legislation affecting the entire country, their concerns specific to the territory have little to no chances of being heard in the Parliament. The Parliament is predominantly concerned with matters of national importance and therefore local concerns of the territory remain unaddressed.

In order to understand the representative travails of the lone member of parliament a comparison is being drawn between the situation of the member of parliament of the Islands and the resident commissioner of Puerto Rico. In this regard an important comparison can be made with the United States' Territory of Puerto Rico which is not a State of the US. The US Congress has the full and final authority when it comes to making policy decisions about islands under Article 4, Section 3 of the Constitution of the United States. The territory is represented by the Resident Commissioner of the territory elected by the people of Puerto Rico in the General Elections to represent them before the US Federal Government. The Resident Commissioner only has power to participate in the proceedings of the House of Representatives, including power to introduce legislations and speak before the house on behalf of the territory, but has no right to vote in the final passing of the bills including those specific to the territory. Furthermore, due to lack of apportionment of districts based on population, a single person represents five times more citizens than the average member of the house.

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<sup>29</sup> *Id.*, Cl. 3 (b).

<sup>30</sup> *Id.*, Cl. 3 (c).

<sup>31</sup> *Id.*, Cl. 4.

<sup>32</sup> *Id.*, Cl. 7.

In this disproportionate burden of representation there are striking similarities between the case of the US territories like Puerto Rico and the Union Territories like the Andaman and Nicobar Islands in India. While Puerto Rico, being an unincorporated territory and not a state, gets no voting rights in legislative matters in the house, the Member of Parliament of the Union Territory of the Andaman and Nicobar Islands has voting rights as any other Member of Parliament. Even with this little advantage, the fact that only one Member of Parliament represents the Union Territory, there is still an extremely inadequate representation of matters of local importance of the territory in the parliament. This is further worsened by the absence of a legislative body in the union territory to represent the voices, concerns and interests of the people of the islands. On the other hand, the US territory of Puerto Rico has a bicameral legislature consisting of the House of Representatives and the Senate.<sup>33</sup> Therefore, unlike the union territories in India the people living in the US territory of Puerto Rico have representation within the territory on matters that affect them locally.

## Executive Law Making

The President of India promulgated the Andaman and Nicobar Islands Tenancy Regulation, 2023 on the twenty fourth of November, 2023, under Article 240 of the Constitution of India, to establish a Rent Authority in order to regulate renting of premises, to protect the interests of landlords and tenants and to provide an adjudicative mechanism for speedy resolution of disputes.<sup>34</sup> The new regulation replaces The Andaman and Nicobar Islands Tenancy Regulation, 2021 which too had the similar objectives including, among others, to provide a legal framework for creating an accountable and transparent ecosystem for renting premises in the union territories of the Andaman and Nicobar Island by balancing the interests and rights of both the landlord and tenant.<sup>35</sup>

The regulation accordingly lays down elaborately the rights and obligations of the landlord and tenant in Chapter IV, provides a mechanism for eviction and recovery of possession of premises by the landlord in Chapter V and also provides an adjudicative mechanism for disputes that includes Rent Courts and Rent Tribunals in Chapter VII. Some of the major intentions behind the new regulation seems to be to encourage private investment and entrepreneurship in the rental market, create new housing stock for all and formalisation of

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<sup>33</sup> Library of Congress, Guide to Online Law: U.S.. Puerto Rico, available at <https://guides.loc.gov/law-us-puertorico/legislative>, (Last visited on March 27, 2024).

<sup>34</sup> Supra note 11.

<sup>35</sup> *Id.* at Preamble.

the rental housing market.<sup>36</sup> While the government claims that the regulation will encourage private investment and entrepreneurship in the rental market and thereby ensure adequate housing for all by clearly laying down the rights and duties of landlords and tenants, it also raises worries about how the same might affect the islands and its pristine ecology when more private money and investments pour in to the market leading to a rise in tourism.

These concerns become relevant particularly in the wake of the recent rise in developmental and construction activities on the islands and plans of the government to initiate commercial, industrial and military activities which will seriously affect the islands coastal and forest ecology.<sup>37</sup> Construction projects planned on the islands by the NITI Aayog that includes massive shipping terminals and airports, power plants, townships etc. would result in the destruction of forests and coastal regions that fall within UNESCO Biosphere Reserve.<sup>38</sup> The government has already denotified land falling within these biospheres for such construction activities.<sup>39</sup>

This puts the pristine ecology, biodiversity and particularly the indigenous people of the islands in great danger. A spurt in tourist activities leading to the coming up of more new hotels and resorts will most certainly affect the conservation efforts made to protect the islands' ecology. Given that the government is single mindedly concerned with boosting private investments on the island and increasing tourism and commercial activities, the ecology of the islands is in great danger.<sup>40</sup>

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<sup>36</sup> Press Information Bureau, Promulgation of (i) The Andaman and Nicobar Islands Tenancy Regulation, 2023 (ii) The Dadra and Nagar Haveli and Daman and Diu Tenancy Regulation, 2023 (iii) The Lakshadweep Tenancy Regulation, 2023, available at <https://pib.gov.in/PressReleaselframePage.aspx?PRID=1964105> (Last visited on March 27, 2024).

<sup>37</sup> The Wire, Misguided Mega-Projects Threaten to Devastate the Andaman and Nicobar Islands, available at <https://thewire.in/environment/misguided-mega-projects-threaten-to-devastate-the-andaman-and-nicobar-islands>, (Last visited on March 27, 2024); Geographical 'It will destroy them': Indian mega-development could cause 'genocide' and 'ecocide', says charity, available at <https://geographical.co.uk/culture/shompen-india-government-genocide-great-nicobar-island>, (Last visited on March 27, 2024).

<sup>38</sup> Frontline, Massive infrastructure project threatens Great Nicobar Island, available at <https://frontline.thehindu.com/environment/massive-infrastructure-project-proposed-by-central-government-threatens-great-nicobar-island/article65991977.ece>, (Last visited on March 27, 2024; The Guardian, India's plan for untouched Nicobar isles will be 'death sentence' for isolated tribe, available at <https://www.theguardian.com/global-development/2024/feb/07/india-port-airport-power-plant-military-project-great-nicobar-island-death-sentence-shompen-indigenous-people-warning>, (Last visited on March 27, 2024).

<sup>39</sup> *Id.*

<sup>40</sup> The Economic Times, '2024 will be transformational year for Andaman and Nicobar Islands', available at <https://infra.economictimes.indiatimes.com/news/urban-infrastructure/2024-will-be-transformational-year-for-andaman-and-nicobar-islands/106341740>, (Last visited on March 27, 2024).

The Lieutenant Governor of the Andaman and Nicobar Islands has made rules in exercise of the powers conferred by Sections 41 and 42 of the Indian Forest Act, 1927 which are called the Andaman and Nicobar Islands Forest Produce Transit Rules, 2022.<sup>41</sup> The rules apply to any forest produce from any source within the union territory that are imported or exported and moved within the islands.<sup>42</sup> The rules prohibit movements of such forest produce without a transit pass. It also prohibits removal of timber from the islands.<sup>43</sup> It further empowers the chief conservator of forest to control the import and export of forest produce.<sup>44</sup> It then also lays down the process for importing and exporting forest produce from the island including the various punishments and penalties for contravening any provisions of the rules as laid down.

The Lieutenant Governor of the Andaman and Nicobar Islands has also revised/declared minimum wages for six schedules of employment apart from government offices/ departments/industrial establishments under the powers conferred by Section 5 of the Minimum Wages Act, 1948 and was notified on the seventh of July, 2023.<sup>45</sup> The minimum wages per day have been determined according to the category of employees, which for unskilled employees have been set at rupees 538 per day, for semi-skilled/unskilled employees at rupees 595 per day, for skilled/clerical employees at rupees 680 per day and for highly skilled employees at rupees 738 per day.

Apart from the above various draft rules relating to recruitments to various posts and amendments to various rules and regulations have been proposed by the Lieutenant Governor in exercise of various powers and functions.<sup>46</sup> These regulations, rules and orders have been issued by officials who are not elected by the inhabitants of the islands and therefore the norms laid down by them are deficient of the legitimacy of democracy.

## Conclusion

The lawmaking exercise in the Islands are not driven by the needs of the Islands and where the interest of the people of the Islands is motivating the law such as in the private member bills the mover of the legislation does not possess the legal and political power to translate the bills into full-fledged statutes. Executive law-making is driven by the interest of the

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<sup>41</sup> Andaman and Nicobar Islands Forest Produce Transit Rules, 2022, r 1.

<sup>42</sup> *Id.*, r. 3.

<sup>43</sup> *Id.*, r. 4 (c).

<sup>44</sup> *Id.*, r. 5.

<sup>45</sup> *Supra* note 8.

<sup>46</sup> Andaman and Nicobar Administration, *Draft Recruitment Rules and Notifications*, available at <https://www.andaman.gov.in/RecruitmentRules> (Last visited on January 10, 2023).

market more than the wellbeing of the native residents of the islands. There have been demands for a legislative assembly similar to the ones in the National Capital Territory of Delhi and Puducherry. The Member of Parliament, Mr. Kuldeep Rai Sharma, had introduced the Constitution (Amendment) Bill, 2019 for the insertion of a new Article 239 (C) in order to create a legislative assembly for the union territory of the Andaman and Nicobar Islands.<sup>47</sup> The demand for a legislative assembly has been reiterated by political parties active in the Islands<sup>48</sup> but despite local support bureaucratic governance remains the rule in the Andaman and Nicobar Islands.

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<sup>47</sup> The Constitution of India Amendment Bill, 2019.

<sup>48</sup> Andaman Sheekha, *CPI (M) Demands Establishment of Legislative Assembly for Andaman and Nicobar Islands*, available at <https://www.andamansheekha.com/103874>