

THE ANNUAL SURVEY OF STATE LAWS IN INDIA

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INTRODUCTION

Why an Annual Survey of State Laws?

It has been a long-acknowledged fact that though the Indian Constitution has divided the powers of lawmaking between the Union and the States, legal academic writing as well as public discourse in India has primarily focussed on the output of the Union. Even as there are as many as 27 national law schools established in different states in the country, they primarily study the legislative output of the Union. Other than land laws which are compulsorily taught in some law schools; the statutes enacted by the States are studied only incidentally when they become the subject of challenge before the Courts.

In order to encourage an informed understanding of legislative output in the country and to develop an evidence-based understanding of federalism in India NALSAR decided to launch an Annual Survey of State Laws (hereinafter ASSL) in 2020.¹ To this end the 2020 survey studied the legislative output of 16 States and one union territory. Whilst the idea was endorsed, friendly critics pointed out that if the survey aimed to understand Indian federalism in action, it could not do so by undertaking a study of selective states. To have a country wide understanding it was necessary to examine the lawmaking of all the States and union territories. The sharp comment hit home and it had to be admitted that the 2020 effort was at best a pilot project which at best could be relied upon to design and execute the annual survey of the laws of all states and union territories.

A Participative and Inclusive Methodology

Having decided to undertake an ASSL for the entire country, the next question was how should contributors be identified? Even as the digital availability of information had reduced

¹ Around the same time or a little before PRS Legislative Research started to collate and analyse the legislative output of the States. This database has been acknowledged by all contributors of the ASSL as a major research aid even as the objectives of both projects are admittedly different. See Manas Gubbi et al. *Annual Review of State Laws 2023*, PRS Legislative Research, available at https://prsindia.org/files/legislature/Annual_Review-State_Laws_2023.pdf.

some of the barriers on access to information, the 2020 ASSL had demonstrated that the websites of all states were not equally accessible. It therefore seemed desirable to create a team of locally stationed contributors. It was a known fact that generally such teams were created by relying on existing academic networks, a procedure which necessarily reinforces privilege and restricts equality of opportunity. Therefore, a need was felt to at least make an effort to move out of the comfort zone of the known and familiar and attempt to reach out to scholars in all parts of the country.

With this objective in view an open invite was extended to legal scholars in all parts of the country seeking an expression of interest to contribute to ASSL 2023. Since 2020 was a selective study, it seemed wise to begin anew instead of making the all India ASSL a continuation of the earlier selective survey. Keeping in view realistic deadlines, the all India ASSL zeroed in on the year 2023. In order to acquaint ourselves with all the writers of the surveys—known and unknown—an offline meeting of the contributors was held in June 2023. This meeting discussed the objectives of the survey, shared a common template and asked the contributors to share the sources of information they had found in their state or union territory. The meeting concluded with the expectation that the contributors would send their surveys by January 2024 and the Survey for 2023 would be out in the first quarter of 2024.

The Gap between Output and Expectation

It is said that a common mistake teachers make is that they fail to acknowledge the gap between teaching and learning. Just because something has been taught is no reason to conclude that it was either learnt or learnt in just the way in which it was taught². The second mistake occurs because the mind of the learner is seen as a blank slate which imprints what was written on it. This gap between what is said and what is understood is not restricted to teachers and taught but could well be extended to all collaborative work including bringing out an edited volume of multiple contributors such as the ASSL. The draft submissions did not meet editorial expectations. The first knee jerk reaction was to fix things centrally and make the timeliness of the publication its most critical requirement. On further reflection, it was admitted that the idea of collaborative learning and team building were equally if not more important in visualising the project. The time lines were reworked and contributors were asked if they would like to stay connected with this learning together ASSL project for the next five years. A few colleagues chose to opt out from the future editions but in the

² Paul Kirschner et al., *HOW TEACHING HAPPENS: SEMINAL WORKS IN TEACHING AND TEACHER EFFECTIVENESS AND WHAT THEY MEAN IN PRACTICE*, xiii-xix (Routledge 2022).

main a group of 40 odd scholars agreed to learn and grow together. It is this commitment to inclusion and teambuilding that has driven this 2023 ASSL and which makes its publication a worthwhile venture despite the many delays.

The ASSL 2023 is not just about analytically documenting what transpired in the year, it is as much about putting together a team which is wanting to map the lawmaking operation in a federal country. I have in other writings, in mechanical adoption of the classification proffered by many western scholars described India as a quasi-federal polity.³ I have learned to question this description after Malavika Prasad in her doctoral thesis⁴ convincingly questioned the description's presumption—that the western or rather the American model of federalism is the only authentic model of federalism and any departures are necessarily quasi-federal. Prasad argues that the Indian Constitution constructed its federal set up in the manner that suited India's needs. The ASSL, it is hoped, will help build an internal evidence-based critique on Indian federalism instead of mechanically working with non-indigenous categories.

A Work in Progress

ASSL 2023 is a much-delayed project. At the same time, I cannot claim that every contribution, whether in analysis or description, is on the same page. That is a goal the publication hopes to reach in future volumes. On that count, it would be correct to describe ASSL as a work in progress. The surveys in this volume of ASSL can be categorised as follows:

- Surveys which are tracing the lawmaking developments in a State in the backdrop of the normative demands of the constitution with regard to concepts such as: federalism, fundamental rights, separation of powers.
- Surveys which have thematically described the legislative and executive lawmaking in a State. These surveys have concentrated on sharing the evolution of the laws enacted in 2023 with the reader.
- The third kind of surveys have largely recorded in static form the legislative and quasi-legislative developments in a state or union territory.

³ Amita Dhanda, *India: Disability Rights in a 'Quasi' Federal Country* in FEDERALISM AND THE RIGHTS OF PERSONS WITH DISABILITIES: THE IMPLEMENTATION OF THE CRPD IN FEDERAL SYSTEMS AND ITS IMPLICATIONS, 191-214 (Delia Ferri et al. eds., Hart Publishing Company, 2023).

⁴ Malavika Prasad, *What is Cooperative About Cooperative Federalism (2024)* (Unpublished Doctoral Thesis, NALSAR University of Law Hyderabad) (On file with author).

With the growth of digital databases, dynamic websites and artificial intelligence, there is not much of a case for a static information-centric ASSL. In the years to come, the aim of ASSL is to examine the making of the rules of law from the lens of the Rule of Law. The project aims to examine the legislative process and output in all states and union territories to develop an informed understanding of Indian federalism at work. Since the realisation of this objective is still work in progress for the publication as a whole, the latter half of this introduction looks at the developments in ASSL 2023 from the perspective of Democracy and Rule of Law.

Democracy and Rule of Law

Legislative output is accorded a privileged position in a democracy because it is seen as an articulation of the voice of the people, an execution of the mandate that the representatives have received from the people. For a legislature constituted through 'first past the post' electoral system, it is important to ensure that the people's mandate does not descend into majoritarianism, hence the touchstone of Rule of Law.

Democracies are seen to build governance regimes which function in accordance with the Rule of Law.⁵ This belief arises from the fact that lawmaking happens with the participation of the people whether directly or indirectly. The preamble of the Constitution of India envisions India as a democratic republic. For India to be a democracy in substance and not just in name, the legislature needs to be the primary driver of the lawmaking process. The principle of legislative primacy is in evidence in several legal doctrines. Among the important ones being the subordination of the lawmaking powers of the executive to the scrutiny and judgement of the legislature. Thus, rules and regulations have to be made in conformity with the guidance provided by the legislature in the specific statute. For the same reason a statute which fails to provide guidance to the executive on how the tasks it is asked to perform need to be undertaken can be declared invalid as it is infected by the vice of excessive delegation. The legislature can delegate the performance of some of its tasks to the executive but only after it has laid down the essential policy of the law. Uncanalised delegation of lawmaking power to the executive is viewed as a breach of the Rule of Law.

In order to assess the degree to which lawmaking tasks are performed by the legislature or the executive, the surveys distinguish between statutes, ordinances and subordinate legislation. This classification is one way of evaluating the performance of the legislative

⁵ For the intersection between democracy and rule of law see Bruce Baker, *TAKING THE LAW IN THEIR OWN HANDS: LAWLESS LAW ENFORCERS IN AFRICA* 9-26 (Routledge 2002)

process. This division, though important, could without more, only be an evaluation of form and not substance.

The Lawmaking Time and Process of the Legislature

The quantitative dimension in the surveys of several states show the number of Bills, Acts and Ordinances produced by a State. Is Ordinance promulgation absent, rare or routine? The fact that several states have enacted a large number of statutes but have either not promulgated an ordinance or obtained legislative approval for it within the constitutionally specified time does not point to a robust legislative process. The scepticism stems from the fact that the surveys of nearly all the states report a major drop in the number of days and hours the Assembly was in session.⁶ Even more significantly, the time allocated for deliberation of statutes was largely absent.⁷ Innumerable surveys refer to statutes being passed by a voice vote⁸; not being scrutinised by any legislative committee and being passed on the same day that they were introduced in the house.⁹ In a parliamentary form of government, the privilege of introducing legislative proposals lies with the government, which is constituted by the party or a coalition of parties which are in a majority in the Assembly. Absence of debate, discussion, deliberation in the house makes the statute no different from an executive instrument of lawmaking such as the ordinance. There is provision for legislators who are not part of the government to introduce legislative proposals as private member bills. However, the time allocated for the introduction or deliberation of such bills is only a fraction of the sitting time of the Assembly; consequently, such bills (also) are not even discussed let alone adopted by the Assembly.¹⁰

⁶ On the decline of legislative time see *infra* the surveys for the states of Andhra Pradesh, Bihar, Goa which passed 40 bills in 26 days;

⁷ The surveys for the States of Goa, Himachal Pradesh, Mizoram, Nagaland, Uttar Pradesh spoke about Bills being passed on the very day they were introduced, see *infra* the surveys for the states of Goa, Himachal Pradesh, Mizoram, Nagaland, and Uttar Pradesh: The survey for the State of Bihar dividing the number of statutes enacted with the sitting time of the house opined that an average time of 57.5 days was allotted to every legislation adopted by the house, while at the same time the Bihar survey also reported that a number of statutes were adopted within seven to fourteen days. The high average was explained by the fact that the Bihar Sugarcane (Regulation and Supply) Amendment Act 2023 was adopted after 525 days, see *infra* the survey for the state of Bihar: The time taken could just be the time that the Bill was on the table of the house, not necessarily the time spent by the House in debating the Bill. The time spent on deliberation in the Assembly can be estimated from the Goa survey which speaks of 10 bills being passed in 148 minutes.

⁸ See *infra* the survey for the states of Jharkhand, Uttarakhand, Uttar Pradesh.

⁹ See *infra* the surveys for the states of Andhra Pradesh, Madhya Pradesh

¹⁰ See *infra* the Gujarat survey for a state which duly publicises and allocates house time to the private member Bills. Interestingly, a number of these legislative proposals are seeking an enhancement of the regulatory powers of the government and the prohibitory power of the government.

Executive Control of the Lawmaking Process

The other major trend demonstrating the shrinking importance of the legislative process is a statute firstly being conceived as an ordinance.¹¹ Article 213 of the Constitution of India permitted the Governor to promulgate an ordinance when “circumstances exist which render it necessary for him to take immediate action” provided the house or houses (where the legislature is bicameral) are not in session. Both the text of the Constitution and judicial interpretation of the power¹² stress that the prerequisite of urgency must be met before the executive power of lawmaking could be exercised. However, the surveys of several states show that the power to promulgate an ordinance has been used interchangeably with the power to introduce a legislation.¹³ Several surveys refer to bills being promulgated as ordinances after not obtaining the approval of the house.¹⁴ And after subsisting as an ordinance for the constitutionally permitted time, they are converted into statutes with retrospective effect.¹⁵

This pattern of shrunken deliberation time and the use of ordinance making power interchangeably with enactment of a statute collapses the distinction between legislative and executive power. This distinction is as much a part of the doctrine of separation of powers, and has been accorded as much significance in the Indian Constitution as the difference between legislative and judicial power. There is absence of unanimity in Indian judicial decisions on whether or not the doctrine of separation of powers is a part of the basic structure of the Constitution of India.¹⁶ However, the doctrine is unanimously accepted as an integral feature of the Indian Constitution.¹⁷

It can be argued that the government is after all formed by the party holding a majority in the legislature, hence how does it matter if the lawmaking process begins with an ordinance instead of a legislation. As already said an ordinance is supposed to be a lawmaking device meant to address an urgent situation when the legislature is not in session. The extent of

¹¹ On the use of this procedure by governments see *infra* the surveys for the States of Andhra Pradesh, Karnataka, Maharashtra

¹² A K Roy vs Union of India, AIR 1982 SC 710.

¹³ On such use of the Ordinance making power see *infra* the surveys for the States of Andhra Pradesh, Assam and Himachal Pradesh.

¹⁴ For the discussion on the interchangeable use of enacting statutes and promulgating ordinances see *infra* the survey on the state of Maharashtra. Also see *infra*, the section on legislation for socially and economically backward groups in the survey on the state of Odisha.

¹⁵ See e.g., the Surveys of the States of Andhra Pradesh, Goa, Maharashtra.

¹⁶ Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299; Bhim Singh v. Union of India, (2010) 5 SCC 538.

¹⁷ Kalpana Mehta Ors. v. Union of India, AIR 2018 SC 2493; Union of India v. State of Maharashtra, AIR 2019 SC 4917.

time and reflection that a more durable law requires is not accorded to an ordinance. More significantly, this reasoning betrays an authoritarian attitude where persons wielding authority or holding position believe they are all knowing and have nothing to learn from any other. The legitimacy of legislation arises in great measure from the deliberative nature of the process. It is an acknowledgement of the fact that wisdom is not an exclusive preserve of the power wielder and there is inherent value in debate and deliberation. The next section dwells on both the intrinsic value of legislative deliberation and draws attention to some examples from 2023 which demonstrate the value of deliberation and the disadvantage of thwarting it.

Need for Legislative Debate and Deliberation

It is believed that the pronouncement of judicial decisions with reasons renders judges accountable and contributes to the legitimacy of the judicial process. Debate and deliberation on legislative proposals whether on the floor of the house or in legislative committees plays a similar role for the legislative process. A statutory provision formulates a norm of general application. Legislative debates compel the house to view how the norm would impact on different segments of the polity. A study of legislative history shows the manner in which legislative proposals moved by the government alter on the floor of the house allowing for the smoothening of many sharp edges and making the legislative product the outcome of a reflective exercise. This deliberation also has a bearing on subsequent implementation and interpretation even when the text of the statute is not expressly changed. Ironically, despite the meta trend of shrinking legislative time, discussion and debate wherever present has contributed to the richness of the legislative product and robustness of parliamentary vigilance.

The Gains and Losses of Deliberation

The Rajasthan survey describes at length how the Rajasthan Platform Based Gig Workers (regulation and welfare) Act 2023 arrived at its transaction-based levy as a measure to finance the social security protection to gig workers after several rounds of consultation with the concerned stakeholders. The same survey also narrates how the government could not carry through its proposal of emergency care to be provided by all medical establishments whether public or private in the face of resistance from the private players.¹⁸ Even so the deliberation shows the skills and politics needed to negotiate a deal from the targeted group for the affected constituency. The Tamil Nadu survey documents how a government who

¹⁸ See *infra* the Survey for the State of Rajasthan.

had the numbers in the house, chose to withdraw its proposal to dilute the protections in the Factories Act 1948 in the face of relentless criticism from the fledgling opposition. And Kerala reports that every Bill except one went to a select or subject committee and how legislation gained from the exercise. The process followed by the Kerala legislature ensures that the counterview is at least articulated. Thus, for example when the government brought in a law to protect medical personnel, the absence of concern for patient rights was expressly pointed out.

Since this publication is tracking the law -making records of the States and UTs the other business transacted by the legislatures have not obtained as much attention. The legislators' duty to ask questions on the functioning of the government being a case in point. It is thus of interest that the Rajasthan survey mentions that 8871 questions were asked and answered in the Rajasthan Assembly. In the same vein, several surveys do not just mention what the legislature has done but also draw attention to what it ought to have done given the situation on the ground.

If the above discussed illustrations show how law-making gains from deliberation, a number of surveys point out how many problematic questions obtained no public reflection from the legislatures in the absence of deliberation. Illustratively several surveys speak of legislation that alter legal entitlements in land especially the conversion of common property into public property, or compelling voluntary land donations without compensation,¹⁹ making the acquisition of land easier for corporate players in a range of ways²⁰ by giving individual property rights in States which only had a common property system²¹ or allowing alteration of plot status in specific parcels of land,²² or addressing corporate needs through designated special projects.²³ There was evident need to deliberate on the impact of these choices on the environment as well the livelihood rights of the most disadvantaged. Such reflection was virtually not allowed to happen.²⁴ Similar questions were raised on the innumerable statutes enacted establishing private universities and even self-financing private universities.²⁵ This was being done ostensibly to strengthen the educational infrastructure in the concerned State without debating how the imparting of education through private

¹⁹ See The Arunachal Pradesh Protection of Drinking Water Catchment Areas Act, 2023, § 12.

²⁰ See *infra* the section on property, land use and planning in the Survey on the State of Goa

²¹ See *infra* the Survey on the State of Arunachal Pradesh

²² See *infra* the Survey on the State of Goa

²³ See *infra* the Survey on the State of Tamil Nadu

²⁴ The Andhra Pradesh Survey informs how the principal opposition was allowed 9.9% of total time to speak in the house, see *infra* the Survey on the State of Andhra Pradesh.

²⁵ See *infra* the Surveys for the State of Assam, Goa, Gujarat, Jharkhand, Karnataka, Rajasthan, Sikkim, Tripura and Uttar Pradesh.

universities would impact on the equality of opportunity the state is bound to ensure by the Constitution. The surveys are strewn with instances meriting debate²⁶ and demands for deliberation or reference to select committees being refused. The absence of debate then causes errors to creep in and laws having to be amended multiple times.²⁷

The Operation of a Federal Constitution

As already mentioned in the first part of this introduction, the need to obtain an evidence-based understanding of how the Indian Federation functions is one of the major objectives of the ASSL project. In this segment, the operative reality of Indian federalism is discussed

Union Directed Lawmaking or Template Legislation

A country with India's range of difference and diversity is constituted as a federation in acknowledgement of the fact that one size does not fit all and different parts of the country may need different kinds of intervention. Moreover, a federal set up also allows different parts of the country to attempt varied solutions. For the experimentation to happen, a receptiveness to the outlier ideas is needed. Instead, what the surveys reveal is a significant trend of states and Union Territories (UTs) mirroring Union-government legislation or following central policy priorities in 2023. This alignment, often described as part of **"cooperative federalism"** or a **"top-down approach,"** ensures uniformity across the country, particularly in fiscal²⁸, educational²⁹, and administrative³⁰ domains.

The Tension between Political and Fiscal Federalism

The above segment has referred to the number of states who amended their GST statutes to bring their laws in conformity to the Central Act and in compliance with the directive of

²⁶ See *infra* the Survey on the State of Goa on the provision for lifelong disqualification introduced in the Goa Cooperative Societies (Amendment) Act 2023

²⁷ See *infra* the Survey on the State of Goa.

²⁸ The most widespread example of mirroring occurred with the State Goods and Services Tax (GST) Acts. States are required to pass amendments to their respective acts to remain in consonance with changes made by the Parliament to the Central GST (CGST) Act and recommendations by the GST Council. For such examples, see *infra* the Surveys for the States of Arunachal Pradesh, Assam, Bihar, Haryana, Kerala, Madhya Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Tamil Nadu, Telangana, Tripura, West Bengal, and the UT of Puducherry.

²⁹ For enactment of laws to promote the National Education Policy see *infra* the Surveys on the States of Gujarat, and Haryana and UTs of Chandigarh, and Ladakh.

³⁰ Following the Union's "Jan Vishwas" philosophy of improving "Ease of Doing Business" and removing imprisonment for minor civil defaults, the States of Maharashtra, Madhya Pradesh and Mizoram have introduced similar initiatives. See *infra* the Surveys on the States of Maharashtra, Madhya Pradesh, and Mizoram.

the GST Council. One of the consequences of the unification of GST taxation is the fiscal constraint experienced by the States resulting in a range of small big revenue raising efforts, which are referred to in several surveys.³¹

The desperation to raise resources has caused some states to float morally questionable proposals. Thus, the State of Karnataka has levied property tax even on buildings that have still not procured an occupancy certificate, claiming that it was required to meet urgent fiscal requirements. Kerala has increased the tax on wrongful advertisements on liquor and made the offence compoundable. And Manipur abandoned its policy of prohibition and allowed the import of liquor to be able to tax it. The opposition again pointing out that the State was compromising its principles at Mammon's altar.

The Kneejerk Response of Criminalisation

The other trend on lawmaking found across states is the urge to address every problem of any moment by criminalising the wrongful conduct. Thus, be it the need to protect medical personnel³² or legal professionals³³ or to prevent people from protesting with the dead body of their kin³⁴ the States have chosen to introduce legislation which criminalises the conduct and imposes the typical sanctions of imprisonment and fine. The motivations which drive the drop of imprisonment options in order to ease business evidently don't hold good here.³⁵

One problem which has resulted in a spurt of legislative intervention across states³⁶ is the problem of cheating in competitive exams. The statute wherever enacted was introduced as an extraordinary measure to address the rampant problem of unfair means. The severe punishments testify to the gravity accorded to the problem. And yet every Act includes a provision which states that the provisions of the Act should be seen in addition to and not in derogation of any other law on the subject. Does this mean that statutes providing lesser penalties would prevail over the stringent provisions of the Act? If not, then why has this particular provision been included in a penal statute which according to the standard rules of statutory interpretation is meant to be strictly construed?

³¹ Illustratively see also *infra* the surveys for the States of Andhra Pradesh, Arunachal Pradesh, Bihar, Karnataka, Kerala and Punjab

³² See *infra* the Survey of the State of Kerala

³³ See *infra* the Survey of the State of Karnataka

³⁴ See *infra* the Survey of the State of Punjab

³⁵ See *supra* note 30

³⁶ For Anti-cheating laws with stringent punishment that have been enacted See *infra* the Surveys on the States of Assam, Gujarat, Jharkhand, Karnataka, Rajasthan and Uttarakhand.

Federal Oversight on State's Power to Legislate

The 2020 Survey had demonstrated, especially in relation to the State of West Bengal, the difficulties that states experience in obtaining the consent of the Governor. In the face of those struggles the state had virtually given up using the instrument of law to implement its policy and preferred to rely upon schemes and programs. In the 2023 survey, many more states report difficulties in obtaining gubernatorial consent.³⁷ Other than matters which have to be mandatorily referred to the president, Article 200 of the Constitution provides three options to the Governor to either provide consent or seek reconsideration or refer the matter to the president. The article does not specify determinate time within which these choices have to be exercised by the Governor; instead, the open textured phrase “as soon as possible” has been employed. Multiple surveys report the use of the pocket veto by Governors and statutes lying in the Governor’s office for months together even after the Assembly has reconsidered and returned the legislation to their office. The power wrangles between the Governor and the executive of the State have been reported in other matters also. A new session of the house required the address of the Governor and where the Governor was unwilling to read the address provided by the state government, legislative business has been continued by not proroguing the house and letting the same session continue.³⁸ A rule being infringed in substance though observed in form.

It needs to be noted that the most common controversy that has occurred between State Governments and Governors relates to the appointment of vice chancellor and the states attempting to wrest this power from the Governor by replacing them by the office of the Chief Minister. Whilst between the Governor and the Chief Minister the wrangle is about the will of which executive should prevail. The matter of state intervention has been very overtly asserted in the appointment of vice chancellors. In Manipur, the Dhanamanjuri University (Amendment) Act, 2023 allows the Administration Secretary in charge of the Department of Higher and Technical Education to act as ex-officio vice chancellor if for any reason the post of vice chancellor and pro vice chancellor remain vacant. And in the National Law University of Meghalaya (Amendment) Act 2023 the vice chancellor has been replaced by an officer nominated by the government to head the finance committee of the University and the university is represented by its accounts officer. Possibly to underline who is in-

³⁷ For difficulties that have been reported from various states not governed by the National Democratic Alliance, see *infra* the Surveys on the States of Jharkhand, Kerala, Punjab, Tamil Nadu, Telangana, and West Bengal.

³⁸ See *infra* the Survey of the State of West Bengal.

charge the Governing Council of the University would be now referred to as the General Council.

Governors are nominated by the union and appointed by the president. Their constitutional duty being to ensure that the state is governed in accordance with the constitution. Even as the party in power in the union makes gubernatorial appointments, the governors owe their allegiance to the constitution. This expectation is belied when the surveys find gubernatorial consent to be a problem only in states where a party in opposition to the ruling party at the Centre is in power. Where the party in power in the state belongs to the party ruling at the Centre, the governor's assent to legislation is routine and in the course of the matter.³⁹

An interesting example of gubernatorial bias has been provided in the survey on Himachal Pradesh which covers the period of governance shifting from the BJP to the Congress. The BJP Government in its term had enacted the Himachal Pradesh Loktantra Prahri Samman Act 2021 which provided a dignity pension to persons who were detained during the 1975-77 emergency. The Congress government upon assuming power introduced and passed the Himachal Pradesh Loktantra Prahri Samman (Repealing) Bill 2023. The Assembly has approved the Bill but the Governor is raising questions on the decision to repeal.

Central Governance of Union Territories and Aspirations of Local Self-Determination

The UTs, unlike the states, are more directly governed by the Union. However, as the surveys show all union territories are not similarly modelled. There are UTs with legislative assemblies⁴⁰ and others without them.⁴¹ What is noticeable in the reports on the UTs is the constant aspiration for local self-determination.⁴² Thus, UTs with an Assembly aspire for full state status⁴³ UTs without an Assembly but with parliamentary representation seek an Assembly to ensure that the aspirations of the people of the region obtain authentic articulation.⁴⁴ And where the UT has neither an Assembly nor parliamentary representation,

³⁹ See, e.g., *infra* the Surveys for the States of Goa, Haryana, Madhya Pradesh and Tripura.

⁴⁰ Jammu and Kashmir, National Capital Territory of Delhi and Puducherry, See *infra* the Surveys on the Union Territories of Jammu, and Kashmir, National Capital Territory of Delhi, and Puducherry.

⁴¹ The UTs of Andaman Nicobar Island, Dadra Nagar Haveli, Daman and Diu, Ladakh and Lakshwadeep.

⁴² See *infra* the Survey on the Union Territory of Lakshadweep where the need to recognise the UTs ecological fragility is continually referred to. The Survey on Dadra Nagar Haveli, Daman and Diu *infra* does not refer to the matter of local self-determination but provides a baseline description of governance that primarily occurs through rules and notifications.

⁴³ See *infra* the Survey on the Union Territory of Puducherry

⁴⁴ See *infra* the survey on Andaman and Nicobar Islands

the aspiration is to at least obtain parliamentary representation.⁴⁵ That the need for local self-determination sprouts quickly can be seen from the Ladakh survey which is a union territory carved out of the State of J&K. The demand for an Assembly and local governance has not been quelled by mere bifurcation. The survey on the UT also brings to the fore the difference between higher fund allocation and spending autonomy and how the absence of the latter could nullify the benefit of the former.⁴⁶ In the face of this all-pervasive aspiration, the conversion of Jammu and Kashmir from a full-fledged state to a union territory, cannot be overstated. Except for Jammu and Kashmir which has lost its status as a state, all other territories are seeking statehood or an Assembly because they perceive that position as enhancing freedom and local autonomy. These aspirations need to be seen in light of the receding powers of legislatures. This organ of the State, which housed the representatives of the people, has become an organ driven by the executive, and almost mechanically according its imprimatur of approval to the will of the government in power.

More the Law of the Ruler than the Rule of Law

As mentioned at the start of this introduction, this ASSL has been overly delayed. Despite the delay, it was decided to bring out the ASSL because the publication would be mapping the ebb and flow of the legislative process in the entire country. To avert any peril, it is important to read the warning signs and start designing preventive measures. The ASSL in analytically surveying the legislative output of all states and UTs is one such preventive measure. It is hoped that a constant vigil on the legislative process and the law output of the entire country, would help halt the process by which the law of the ruler is increasingly being conflated with the rule of law.

The survey finds how with reduced legislative time, interchangeable use of legislation and ordinance, and wide-ranging power to govern through delegated legislation, the legislative oversight on the functioning of the executive is becoming largely symbolic, and the executive is largely driving governance. The rationale for providing gubernatorial oversight on the states was to ensure that every state functions within the four corners of the Constitution. The Goa Governor's forwarding of the Goa Highways Law (Revival of Operation Amendment and Validation) Bill 2023 as it is attempting to revive the land acquisition

⁴⁵ See *infra* The Survey on the Union Territory of Chandigarh

⁴⁶ See *infra* the Survey on the Union Territory of Ladakh

procedures repealed by the Land Acquisition Rehabilitation and Resettlement Act 2013 is a case in point.⁴⁷

Lon Fuller elaborates on the eight essential procedural principles that a legal system must follow to be considered a genuine functional system of law. Amongst the eight principles, one principle asks for the avoidance of retroactive laws, whilst acknowledging that a total prohibition of retroactive laws was not possible.⁴⁸ The General Clauses Act 1897 allows a legislature to accord retrospective operation to a law. In order to discourage the routine use of the power, it needs to be expressly provided for in the legislation. The Courts would not imply retrospective operation and the executive cannot read in retrospective operation if not provided in the text of the law. The number of states⁴⁹ that have used retrospective clauses to validate previous executive actions, court-invalidated rules, or long-standing practices is only on the increase. This increasing number of states resorting to retrospective operation of the law undermine the demands of the Rule of Law and needs questioning and curtailment. To publicise the use of the practice is the only corrective measure available to scholars, and the ASSL is a commitment to undertake this vigil.

An Invitation and Acknowledgements

The process of creating the Survey has been discussed at some length in this introduction as the publication would welcome both suggestions on how this objective could be achieved, and expressions of interest from persons who wish to affiliate with the project as contributors, correspondents, reviewers and research interns. The editorial team can be contacted at assl@nalsar.ac.in.

A project which overshoots its completion deadline by a mile can only survive due to the belief in and support of the venture. The Vice-Chancellor of NALSAR Prof. Srikrishna Deva Rao, who is also the patron of the journal, has provided that support in both word and deed. A university can launch an ambitious collaborative venture, such as this one, only if the institutional head believes in it, and provides both ideational and monetary support.

Dr Aymen Mohammed, Associate Editor has led from the front and kept the fires burning even when I went missing. Mr Aniket Sawant, Assistant Editor was a late entrant to the editorial team but has pulled his weight in full measure. If there was one person who kept

⁴⁷ Whether presidential approval would operate like gubernatorial assent remains to be seen, see *infra* the survey for the state of Goa.

⁴⁸ Lon Fuller, *THE MORALITY OF LAW* (Universal Book Traders First Indian Reprint 1995)

⁴⁹ The states that have employed this measure are Andhra Pradesh, Goa, Kerala, Maharashtra and Tripura. See *infra* the surveys for the states of Andhra Pradesh, Goa, Kerala, Maharashtra and Tripura.

all of us on our toes whilst doing everything from source checking to style consistency to filling gaps in the research it has been Syed Misbah Ameen the Research Associate in the team. I am grateful to Anindita Mukherjee for stepping in whenever required and doing all that needs to be done.

Before I acknowledge the contributors of this ASSL, I must remember the enthusiastic and ebullient Prof Tarun Arora who had joined the project from its inception, one of the not personally known contributors. At the one offline meeting we held in June 2023 he was so full of energy and enthusiasm that his untimely demise is a reality I still cannot accept.

The ASSL has come through because the contributors stayed the course and continued to believe in the project. I am thankful to the contributors of this project who have been understanding of the delay and allowed themselves to be stretched in every imaginable and unimaginable way. It is their willingness to teach and learn which is allowing for this all-India team to emerge to closely study annually the Laws of all states and union territories in India.

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